

**From:** [GRANT Michael](#)  
**To:** ["McVee, Matthew"; "irion@sanger-law.com"](#)  
**Cc:** [MENZA Candice](#)  
**Subject:** RE: UM 1742  
**Date:** Tuesday, March 15, 2016 8:51:36 AM

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I have received your request and will ask my legal secretary to arrange a conference call for tomorrow or later this week to discuss.

In the interim, I ask Surprise Valley to provide, by the end of today, a short email response to PacifiCorp's three primary arguments presented below. Those arguments are:

1. Testimony is not a substitute for discovery
2. A party may not withhold discovery responses simply because the deadline for testimony is approaching
3. Surprise Valley must respond fully, and as soon as possible, to PacifiCorp's discovery requests regarding Surprise Valley's proposed method of QF power delivery.

**Michael Grant**

Chief Administrative Law Judge  
Public Utility Commission of Oregon  
(503) 378-6102

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**From:** McVee, Matthew [mailto:Matthew.McVee@pacificorp.com]  
**Sent:** Monday, March 14, 2016 4:33 PM  
**To:** GRANT Michael; 'irion@sanger-law.com'  
**Subject:** UM 1742

Dear Judge Grant,

PacifiCorp respectfully requests assistance with a discovery dispute in Docket No. UM 1742, *Surprise Valley Electrification Corporation v. PacifiCorp*.

OAR 860-001-0500(6) allows parties involved in a discovery dispute to request a conference with an ALJ to facilitate resolution of the dispute. PacifiCorp has not been able to resolve a discovery issue informally with Surprise Valley and believes an informal conference would be the most efficient way to address the issue.

OAR 860-001-0500(6) also states that a party requesting a discovery conference with an ALJ must "identify the specific discovery sought" and "describe the efforts of the parties to resolve the dispute informally." PacifiCorp is attaching the discovery responses in dispute (UM 1742 – Disputed SVEC Responses PacifiCorp's 2<sup>nd</sup> Set of Data Requests.pdf), as well as the parties' email string regarding their dispute (eMail – UM1742 PacifiCorp's 2<sup>nd</sup> Set of Data Requests.pdf).

PacifiCorp understands that parties will have the opportunity during a conference to address their positions in more detail.

### **Requested Findings**

PacifiCorp respectfully requests the following findings from the ALJ:

1. Testimony is not a substitute for discovery. PacifiCorp would ask the Commission to confirm that a party must respond fully to discovery requests, even if the party intends to address a topic in testimony. (Surprise Valley has withheld key discovery responses on the ground that it will soon state its position on various issues in “testimony.”) Testimony is advocacy, it is not discovery, and parties are entitled to conduct fact-finding in discovery.
2. A party may not withhold discovery responses simply because the deadline for testimony is approaching. In this case, PacifiCorp sent discovery requests to Surprise Valley on February 15, 2016, more than a week before any schedule for testimony was established in this case. In other words, *Surprise Valley knew of the deadline for its discovery responses well before it agreed to a new schedule for testimony in this docket on March 1.* Given this order of events, it is unreasonable for Surprise Valley to assert that the timing of the PacifiCorp’s requests was burdensome (*see* eMail – UM1742 Schedule.pdf). In any case, it is inappropriate under any circumstances to refuse to respond to discovery requests on the ground the information will be in “testimony.”
3. Surprise Valley must respond fully, and as soon as possible, to PacifiCorp’s discovery requests regarding Surprise Valley’s proposed method of QF power delivery. These questions go to a central issue in the case. Surprise Valley has stated to PacifiCorp and the Commission that it actually *has* an acceptable method of QF power delivery, yet Surprise Valley has refused to describe or confirm that method in discovery.

Surprise Valley’s discovery responses are now two weeks late, and Surprise Valley’s failure to respond means that PacifiCorp will lose an additional two weeks to prepare testimony while it waits for responses to additional data requests. PacifiCorp therefore seeks Judge Grant’s assistance in resolving this discovery dispute and affirming the Commission’s ground rules for discovery.

### **The specific discovery sought.**

#### Discovery regarding transmission arrangements.

On February 15, 2016, PacifiCorp sent its Second Set of Data Requests to Surprise Valley. In those requests, PacifiCorp asked Surprise Valley to confirm that Surprise Valley does, indeed, have firm transmission arrangements to deliver QF power to PacifiCorp’s system. It also asked Surprise Valley to provide a description of and documents supporting those transmission arrangements. *See* PacifiCorp Data Requests 2.3(c), 2.5, 2.7, 2.8, 2.17, 2.21. Surprise Valley has not responded fully to these requests. (Note: PacifiCorp’s email exchange with Surprise Valley inadvertently referred to Data Request 2.1 when it should have referred to Data Request 2.2. PacifiCorp will re-address the

issue of this specific data request, as well as Data Request 2.12(f), with Surprise Valley in a future data request.)

*Relevance:* Surprise Valley has told PacifiCorp (and the Commission) in motions and in discovery that it is willing and able to provide firm transmission arrangements to deliver its QF's power to PacifiCorp's system. PacifiCorp is still not sure what those arrangements are, or what Surprise Valley is actually referring to when it makes such assertions.

This is a critical issue in the case. PacifiCorp does not believe it is required to sign a standard PPA with Surprise Valley because it believes, without proof to the contrary, that Surprise Valley: (1) has failed to make firm transmission arrangements to deliver the QF's power to PacifiCorp's system, despite that such arrangements are a requirement of the Commission-approved standard off-system PPA, and (2) has failed to make any delivery arrangements *of any kind* that would allow PacifiCorp to verify that it would actually receive any power from the QF at all.

PacifiCorp therefore seeks a ruling that Surprise Valley's testimony is not a substitute for discovery and that Surprise Valley is required to provide full and complete responses as soon as possible.

#### Discovery regarding "displacement."

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PacifiCorp also asked Surprise Valley a number of questions about "displacement." See PacifiCorp Data Requests 2.13.

*Relevance:* Surprise Valley has taken the position that it is entitled to deliver QF power through "displacement." Although QF power delivery is a critical issue in this case, PacifiCorp is unsure what Surprise Valley means by "displacement." It is not a commercial power delivery term.

Surprise Valley has withheld responses to 2.14(b) on the ground that it will discuss the issue in testimony and provided only "illustrative" communications response to 2.13.

PacifiCorp seeks a ruling that Surprise Valley's testimony is not a substitute for discovery and that Surprise Valley is required to provide a full response as soon as possible.

#### **Efforts of the parties to resolve the dispute informally.**

On February 26, 2016, Surprise Valley informed PacifiCorp that it intended to withhold responses to a number of PacifiCorp's data requests. Surprise Valley stated, "One of our objections will be to providing information that we are going to include in our testimony that will be due in a couple weeks. If our testimony does not fully answer the questions, we would be happy to provide updated or new responses." See *attached email exchange* (eMail – UM1742 PacifiCorp's 2<sup>nd</sup> Set of Data Requests.pdf).

That same day, PacifiCorp informed Surprise Valley that its objection was not valid. In the parties' back-and-forth on this issue PacifiCorp ultimately agreed to give Surprise Valley an extension of time to provide a narrative response to certain data requests, but insisted that Surprise Valley provide

full answers to other requests immediately. Surprise Valley refused, and also stated that the timing of PacifiCorp's data requests was burdensome. PacifiCorp strongly disputes this, as the data requests were sent on February 15, *over a week before* Surprise Valley had any deadline for testimony at all. (Surprise Valley proposed the new schedule on February 19, 2016, and in fact sent Chief ALJ Grant an email requesting an agreed schedule, on February 26, 2016, well after Surprise Valley was aware of the discovery requests.)

On March 7 and March 9, Surprise Valley repeated its assertion that it would respond to the data requests "in testimony." PacifiCorp therefore seeks Judge Grant's assistance in resolving this discovery dispute and affirming the Commission's ground rules for discovery. Only today, March 14, 2016, did Surprise Valley articulate any additional arguments. The additional arguments continued to be evasive, and refused to provide information within Surprise Valley's possession.

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