

Moran, Christopher R. (TAX)

From: Healy Gallagher, Erin (TAX)
Sent: Tuesday, September 20, 2016 7:56 AM
To: jheideman@heidlaw.com; Donald Reay (donald@reaylaw.com)
Cc: caustin@heidlaw.com; tsorenson@heidlaw.com; Moran, Christopher R. (TAX)
Subject: US v. RaPower-3, LLC: notice of deposition
Attachments: 2016 09 20 pacificorp deposition subpoena and att a.pdf; 2016 09 20 notice of pacificorp deposition.pdf

Good morning Counsel,

Please see the attached.

Thank you,

Erin Healy Gallagher
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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828 DN</p> <p>UNITED STATES' NOTICE OF WITNESS DEPOSITION</p> <p>Judge David Nuffer</p>
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Pursuant to Fed. R. Civ. P. 30 and 45, please take notice that the United States will take the deposition of the witness listed in the table below at the date, time, and location indicated. The deposition will be recorded by stenographic means and will continue from day-to-day until

completed, without further notice, and will be used for discovery, the preservation of testimony, and any other permissible purpose under the Federal Rules of Civil Procedure in the above-captioned matter. A copy of the subpoena is attached to this notice.

Witness Name	Deposition Location	Date & Time
PacifiCorp via CT Corporation System 388 State Street, Ste. 420 Salem, OR 97301	United States Attorney's Office 1000 SW Third Ave Suite 600 Portland, Oregon 97204	November 15, 2016; 9:30 a.m.

Dated: September 20, 2016

JOHN W. HUBER
United States Attorney

/s/ Erin Healy Gallagher
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Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2016. The foregoing document was sent via electronic mail to the following counsel of record:

Justin D. Heideman
HEIDEMAN & ASSOCIATES
2696 North University Avenue, Suite 180
Provo, Utah 84604
jheideman@heidlaw.com
**ATTORNEY FOR RAPOWER-3, LLC,
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LTB1, LLC, and NELDON JOHNSON**

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**ATTORNEY FOR R. GREGORY SHEPARD
AND ROGER FREEBORN**

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
Attorney for the United States

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Utah

UNITED STATES OF AMERICA

Plaintiff

v.

RAPOWER-3, LLC, et al.

Defendant

Civil Action No. 2:15-cv-00828-DN-BCW

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: PacifiCorp via CT Corporation System,
388 State Street, Ste. 420, Salem, OR 97301
(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (United States Attorney's Office, 1000 SW Third Ave Suite 600, Portland, Oregon 97204) and Date and Time (11/15/2016 9:30 am)

The deposition will be recorded by this method: Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/20/2016

CLERK OF COURT

OR

/s/ Erin Healy Gallagher

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) United States of America, who issues or requests this subpoena, are: Erin Healy Gallagher, U.S.Dept. of Justice, P.O. Box 7238, Washington, D.C. 20044; erin.healygallagher@usdoj.gov; (202) 353-2452

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:15-cv-00828-DN-BCW

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

To the Fed. R. Civ. P. 30(b)(6) deposition subpoena to PacifiCorp in United States v. RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, R. Gregory Shepard, Neldon Johnson, and Roger Freeborn, Civil No. 2:15-cv-00828 (D. Utah)

I. Definitions and Instructions

1. This subpoena names PacifiCorp as the deponent. Pursuant to Fed. R. Civ. P. 30(b)(6), PacifiCorp is required to designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf about the matters set forth below. Please note that Rule 30(b)(6) also requires the designated witness(es) to investigate and prepare to testify on the designated topics.
2. To maximize the efficiency of the deposition, and to conserve resources for PacifiCorp and the parties, please designate a witness or witnesses with personal knowledge of the Topics for Examination numbered 6 through 11.
3. “Shepard” refers to Defendant R. Gregory Shepard, and to any of his employees or agents, unless otherwise stated.
4. “Johnson” refers to Defendant Neldon Johnson, and to any of his employees or agents, unless otherwise stated.
5. “Freeborn” refers to Defendant Roger Freeborn, and to any of his employees or agents, unless otherwise stated.
6. “RaPower-3” refers to Defendant RaPower-3, LLC, and to any of its employees, independent contractors, or agents, unless otherwise stated.
7. “IAS” refers to Defendant International Automated Systems, Inc., and to any of its employees, independent contractors or agents, unless otherwise stated.
8. “LTB” refers to Defendant LTB1, LLC, and to any of its employees or agents, unless otherwise stated.
9. All capitalized terms not identified in this section that are used in the requests below have the meaning that PacifiCorp gives them on its website “Generation Interconnection Process” (<http://www.pacificorp.com/tran/ts/gip.html>) or its “OASIS website” (<http://www.oasis.oati.com/ppw/index.html>).

II. Topics for Examination

1. The process by which PacifiCorp searched for, identified, and produced documents responsive to the September 20, 2016 subpoena for the production of documents.

2. The authenticity of the documents produced by PacifiCorp in response to the United States' subpoena for the production of documents dated September 20, 2016, and whether such documents are records of PacifiCorp's regularly conducted activities under Fed. R. Evid. 803(6).
3. The relationship between Rocky Mountain Power and PacifiCorp.
4. The manner of applying for an Interconnection Agreement, a Power Purchase Agreement, and a Transmission Service Agreement.
5. The requirements to enter an Interconnection Agreement, a Power Purchase Agreement, and a Transmission Service Agreement.
6. The Interconnection Agreement(s), Power Purchase Agreement(s), and Transmission Service Agreement(s) that PacifiCorp has or had with respect to any qualifying facility located within Millard County, Utah since January 1, 2005.
7. The Interconnection Agreement(s), Power Purchase Agreement(s), and Transmission Service Agreement(s) that PacifiCorp has or had with respect to any qualifying facility related to Shepard, Johnson, Freeborn, or any of the following entities: RaPower-3; IAS; LTB; DCL1GBLT, Inc.; Ilios, LLC; PFO Solar, LLC; Renewable Energy Development Corp.; Shepard Energy; Shepard Global; Solco I, LLC (or any entity with "Solco" as part of its name); XSun Power, LLC; XSun Energy, LLC; Sun Power Associates; or Sun Power Solutions, LLC.
8. The requests made, on or since January 1, 2005, for a Transmission Consulting Agreement, Pre-Application Report, or Transmission Study, with respect to any qualifying facility located within Millard County, Utah; and any written responses to such requests.
9. The requests that PacifiCorp made with respect to any qualifying facility related to Shepard, Johnson, Freeborn, or any of the following entities: RaPower-3; IAS; LTB; DCL1GBLT, Inc.; Ilios, LLC; PFO Solar, LLC; Renewable Energy Development Corp.; Shepard Energy; Shepard Global; Solco I, LLC (or any entity with "Solco" as part of its name); XSun Power, LLC; XSun Energy, LLC; Sun Power Associates; or Sun Power Solutions, LLC, for a Transmission Consulting Agreement, Pre-Application Report, or Transmission Study; and any written responses to such requests.
10. Any Transmission Service Request Application or Transmission Service Request Process (illustrated in "TSR_Process_Flowchart_-_PacifiCorp_07152014.pdf, available at <http://www.oasis.oati.com/ppw/index.html>, "TSR Queue Process Flowchart") that was initiated or was ongoing from January 1, 2005 to the present date with respect to any qualifying facility located within Millard County, Utah.

11. Any Transmission Service Request Application or Transmission Service Request Process (illustrated in “TSR_Process_Flowchart_-_PacifiCorp_07152014.pdf, available at <http://www.oasis.oati.com/ppw/index.html>, “TSR Queue Process Flowchart”) with respect to any qualifying facility related to Shepard, Johnson, Freeborn, or any of the following entities: RaPower-3; IAS; LTB; DCL1GBLT, Inc.; Ilios, LLC; PFO Solar, LLC; Renewable Energy Development Corp.; Shepard Energy; Shepard Global; Solco I, LLC (or any entity with “Solco” as part of its name); XSun Power, LLC; XSun Energy, LLC; Sun Power Associates; or Sun Power Solutions, LLC.
12. The identity of the companies 1) involved in an Interconnection Request (whether such Request is “Deactivated” or “In Progress”) as reflected in the most recent version of the PacifiCorp Generation Interconnection Queue, and 2) which requested to connect or do connect within Utah.
13. The identity of the companies in the most recent version of the PacifiCorp Transmission Services Queue which operate in Utah.
14. The identity of the owner(s) and operator(s) of the “[s]olar projects owned by others providing power to PacifiCorp” which are located within Utah, as shown on Solar_Projects_Map.pdf, which that can be downloaded from the “Solar Resources Map” link at <http://www.pacificorp.com/es/re.html>.