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July 25, 2011

***Via Electronic and U.S. Mail***

Public Utility Commission of Oregon  
Attn: Filing Center  
P.O. Box 2148  
Salem, OR 97308-2148

Re: THREEMILE CANYON WIND I, LLC, Complainant, vs.  
PACIFICORP dba PACIFIC POWER, Respondent  
OPUC Docket No. UM 1546

Attention Filing Center:

Enclosed for filing in the above-captioned docket are an original and five copies of *PacifiCorp's Answer, Defenses, and Counterclaims*.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,



Jeffrey S. Lovinger  
Attorney for PacifiCorp

cc: UM 1546 Service List

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**UM 1546**

<b>THREEMILE CANYON WIND 1, LLC,</b> Complainant,  <b>vs.</b>  <b>PACIFICORP,</b>  Respondent.	<b>PACIFICORP’S ANSWER, DEFENSES, AND COUNTERCLAIMS</b>
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1           PacifiCorp, d/b/a Pacific Power (“PacifiCorp”), hereby submits the following  
2 answer, defenses, and counterclaims to the complaint of Threemile Canyon Wind 1, LLC  
3 (“Threemile Canyon”) in the above-captioned proceeding.

4   **A. NATURE OF THE CASE**

5           Threemile Canyon operates a 9.9 MW Qualifying Facility (“QF”), as the term is  
6 defined in the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601, *et seq.*  
7 (“PURPA”). The Threemile Canyon QF is directly interconnected to PacifiCorp’s  
8 system on the 34.5 kV Simtag Feeder out of the Dalreed substation in Oregon. The  
9 Dalreed substation and PacifiCorp’s associated transmission and distribution facilities  
10 serve isolated load, which is connected to the rest of PacifiCorp’s system only by  
11 transmission facilities owned by the Bonneville Power Administration (“BPA”).  
12 PacifiCorp load served from the Dalreed substation fluctuates from a high of 40 MW to a  
13 low of 2 MW. Prior to the interconnection and operation of the Threemile Canyon QF,  
14 there was no load-serving generation in the Dalreed area and PacifiCorp imported all of  
15 the power it needed to serve the Dalreed load by means of third-party transmission

1 provided by BPA. With the addition of the Threemile Canyon QF, generation at Dalreed  
2 will at times exceed load by up to 7.9 MW under normal load conditions (an “Excess  
3 Generation Event” resulting from “Excess Generation”). To ensure that Threemile  
4 Canyon QF output can be used during Excess Generation Events, PacifiCorp must obtain  
5 a minimum of 8 MW of firm point-to-point transmission from BPA to move the excess  
6 Threemile Canyon generation from Dalreed to another location on PacifiCorp’s system  
7 where there is sufficient load to absorb the Excess Generation.

8 PacifiCorp notified Threemile Canyon of Excess Generation issues in 2006. In  
9 December 2008, after its project was nearly completed, Threemile Canyon sought a 20-  
10 year power purchase agreement (“PPA”) at published avoided cost rates under  
11 PacifiCorp’s Oregon Tariff Schedule 37 (“Schedule 37”). PacifiCorp’s merchant function  
12 and Threemile Canyon executed a short-term Schedule 37 PPA, which has been extended  
13 without interruption six times while PacifiCorp has sought to have Threemile Canyon  
14 agree to pay for the required 8 MW of BPA firm point-to-point transmission or agree that  
15 PacifiCorp can curtail Threemile Canyon output without payment when such output will  
16 exceed Dalreed load. Threemile Canyon has not been willing to agree to these  
17 conditions. To date, PacifiCorp has paid all costs of third party transmission to manage  
18 Excess Generation Events without contribution from Threemile Canyon.

19 Threemile Canyon alleges: (1) that it is eligible to sell its entire output net of  
20 station service to PacifiCorp in accordance with Schedule 37 without adjustments for  
21 incremental third-party transmission costs incurred by PacifiCorp when QF generation  
22 exceeds load in the Dalreed area;<sup>1</sup> and (2) that PacifiCorp committed several errors in

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<sup>1</sup> Complaint at 1 ¶ 1.

1 processing Threemile Canyon’s interconnection and power purchase requests and that  
2 equitable considerations therefore dictate that PacifiCorp, rather than Threemile Canyon,  
3 should bear third-party transmission costs or other additional costs.<sup>2</sup> Regarding the  
4 alleged errors, Threemile asserts: (A) that PacifiCorp’s transmission function erred in  
5 concluding as part of the interconnection process that PacifiCorp was the “Transmission  
6 Provider”;<sup>3</sup> (B) that PacifiCorp transmission erred in concluding as part of the  
7 interconnection process that there was no “Affected System”;<sup>4</sup> and (C) that PacifiCorp  
8 merchant erred by not identifying that there would be Excess Generation Events requiring  
9 third-party transmission until after the interconnection process was complete and after  
10 Threemile Canyon had made contractual commitments to build its generation facility.<sup>5</sup>  
11 Threemile Canyon requests that the Commission order PacifiCorp to purchase the entire  
12 output of the Facility, including during any Excess Generation Event, on the terms and at  
13 the rates of PacifiCorp’s Schedule 37, without adjustments for incremental third-party  
14 transmission costs.<sup>6</sup> Alternatively, Threemile Canyon requests that the Commission  
15 order PacifiCorp to pay Threemile Canyon any revenue deductions arising from  
16 PacifiCorp’s failure to purchase the output of the Facility, including during an Excess  
17 Generation Event.<sup>7</sup>

18 PacifiCorp denies that it made the errors alleged by Threemile Canyon.  
19 PacifiCorp contends that it properly considered itself the Transmission Provider during

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<sup>2</sup> *Id.* at 2 ¶ 2.

<sup>3</sup> *Id.* at 12 ¶ 9.

<sup>4</sup> *Id.* at 13 ¶ 12.

<sup>5</sup> *Id.* at 13 ¶ 11.

<sup>6</sup> *Id.* at 16 ¶ 1.

<sup>7</sup> *Id.* at 17 ¶ 2.

1 the interconnection process and that it properly concluded that there is no Affected  
2 System for purposes of the interconnection process. PacifiCorp further contends that it  
3 committed no error by first identifying the potential for Excess Generation Events and  
4 third-party transmission on December 19, 2008—the same day Threemile Canyon made  
5 its first request for a PPA for its current 9.9 MW Facility.

6 Further, PacifiCorp denies that Schedule 37 compels the result sought by  
7 Threemile Canyon. Indeed, PacifiCorp takes the position that requiring it to pay full  
8 published avoided cost rates under Schedule 37 for Threemile Canyon’s output *and*  
9 requiring PacifiCorp to pay for the third-party transmission necessary to move Excess  
10 Generation to adequate load violates PURPA by requiring a utility and its customers to  
11 pay more than full avoided cost for QF output. As a result, Threemile Canyon’s  
12 requested relief should be denied. Furthermore, the Commission should allow PacifiCorp  
13 to recover amounts it has expended (or will expend prior to final resolution of this  
14 complaint) on third-party transmission necessary to avoid curtailing Threemile Canyon  
15 during Excess Generation Events, and interest thereon. The Commission should either  
16 declare that Threemile Canyon must pay any such future third-party transmission costs or  
17 that the Short-Term PPA is void *ab initio*.

18 **B. ANSWER**

19 PacifiCorp answers the complaint filed by Threemile Canyon as follows:

20 1. Paragraph (1) on pages 1 and 2 of the complaint states:

21 *Threemile Canyon is eligible to sell its entire net of station service output*  
22 *to Pacific Power in accordance with Pacific Power's Oregon Tariff*  
23 *Schedule 37, without any adjustment of Schedule 37 prices or additional*  
24 *cost responsibility. Such sale by Threemile Canyon to Pacific Power is*  
25 *just and reasonable and in the public interest as stated in OPUC and*  
26 *FERC regulations and orders.*

1 These allegations are conclusions of law requiring no response.

2 2. Paragraph (2) on page 2 of the complaint states:

3 *Equitable considerations also apply in favor of Threemile Canyon due to*  
4 *repeated PacifiCorp errors.*

5 The allegation that equitable considerations favor Threemile Canyon is a conclusion of  
6 law requiring no response. PacifiCorp denies it committed any errors.

7 3. Paragraph (3) on page 2 of the complaint states:

8 *Consequently, the Commission should grant Threemile Canyon's*  
9 *requested relief, namely (a) Requiring PacifiCorp to purchase the output*  
10 *of the Facility including during any Excess Generation Event, on the terms*  
11 *and at the rate selected by Threemile Canyon under Schedule 37, without*  
12 *adjustments for incremental third-party transmission costs, or*  
13 *alternatively, (b) Requiring PacifiCorp to pay to Threemile Canyon any*  
14 *revenue reductions arising from PacifiCorp's failure to purchase the*  
15 *output of the Facility, including during any Excess Generation Event.*

16 PacifiCorp denies the allegation that the Commission should grant the relief requested by  
17 Threemile Canyon.

18 4. The first sentence of paragraph (1) on page 2 of the complaint states:

19 *Threemile Canyon Wind I, LLC is an Oregon limited liability company.*

20 PacifiCorp admits this allegation.

21 5. The second sentence of paragraph (1) on page 2 of the complaint  
22 states:

23 *Threemile Canyon was established to develop, own, maintain and*  
24 *otherwise operate a wind-powered generating facility located in Morrow*  
25 *County, Oregon, within PacifiCorp's service territory (the "Facility").*

26 Having insufficient information or knowledge regarding the truth or falsity of this  
27 allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
28 thereof.

1           6.       The third sentence of paragraph (1) on page 2 of the complaint states:

2           *The Facility has six 1.65 MW Vestas V-82 wind-turbine generators*  
3           *installed; the total nameplate capacity of the Facility therefore is 9,900*  
4           *kW.*

5       PacifiCorp admits this allegation.

6           7.       Paragraph (1) on pages 2 and 3 of the complaint states:

7           *The Facility is a Qualifying Facility (QF), as that term is defined by*  
8           *FERC, 18 C.F.R. § 292.101(b)(1), and Oregon, ORS 758.505(8) and OAR*  
9           *860-029-0010(22). The Facility was re-certified by Threemile Canyon as*  
10          *a QF on April 15, 2011 in Docket No. QF09-142, in accordance with*  
11          *FERC rules, 18 C.F.R. § 292.207(a).*

12       These allegations are conclusions of law requiring no response.

13          8.       Paragraph (1) on page 3 of the complaint states:

14          *Threemile Canyon is a wholly owned subsidiary of Exelon Wind, LLC*  
15          *(formerly known as John Deere Renewables, LLC) which develops, builds,*  
16          *and operates renewable resource projects, including small (<10 MW*  
17          *nameplate) wind projects located in Oregon.*

18       Having insufficient information or knowledge regarding the truth or falsity of this

19       allegation, PacifiCorp denies it and leaves Threemile Canyon to the proof thereof.

20          9.       Paragraph (2) on page 3 of the complaint states:

21          *Pacific Power, a Division of PacifiCorp, is an electric utility as defined in*  
22          *PURPA (16 U.S.C. § 2602(4)) and ORS 758.505(4) and therefore is*  
23          *subject to Section 210 of PURPA (16 U.S.C. § 824a-3), and related FERC*  
24          *regulations and Oregon Administrative Rules that require PacifiCorp to*  
25          *interconnect with and purchase net output from a facility that is a QF*  
26          *under PURPA.*

27       PacifiCorp admits that it is an electric utility as defined in PURPA and ORS 758.505(4).

28       PacifiCorp admits it is subject to Section 210 of PURPA. The remaining allegations are

29       conclusions of law requiring no response.

1           10. Paragraph (3) on page 3 of the complaint states:

2           *PacifiCorp is a public utility as defined in ORS 757.005(1)(a)(A) and is*  
3           *subject to the Commission's jurisdiction and regulation.*

4 PacifiCorp admits the allegation.

5           11. Paragraph (4) on page 3 of the complaint states:

6           *The Public Utility Commission has determined a “standard contract*  
7           *eligibility threshold [of] 10 MW to be reasonable.” In the Matter of*  
8           *Staff's Investigation Relating to Electric Utility Purchases from Qualifying*  
9           *Facilities, Docket No. UM 1129, Order No. 05-584 (2005) at 17*  
10           *(hereafter, Order No. 05-584).*

11 PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
12 denies any other implication or aspect of the allegation.

13           12. Paragraph (5) on page 3 of the complaint states:

14           *The Commission has also determined, “Design capacity, as defined by the*  
15           *manufacturer's nameplate capacity for a QF project, will continue to be*  
16           *the measure of eligibility for standard contracts.”*

17 PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
18 denies any other implication or aspect of the allegation.

19           13. Paragraph (6) on page 4 of the complaint states:

20           *Pacific Power was required to file and have approved the standard*  
21           *contract form now in its tariff, entitled "Schedule 37, AVOIDED COST*  
22           *PURCHASES FROM QUALIFYING FACILITIES OF 10,000 KW OR*  
23           *LESS." Order No. 05-584 at 59 (“Within sixty days of the effective date of*  
24           *this order, each electric utility shall file by application ... one or more*  
25           *standard contract forms that set forth standard rates, terms and conditions*  
26           *that are consistent with the policy decisions made in this order”).*

27 PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
28 denies any other implication or aspect of the allegation. PacifiCorp denies that its  
29 currently filed and approved standard contract forms are the same forms that were filed  
30 and approved in response to Order No. 05-584.



1           14.     The unnumbered paragraph on page 4 of the complaint states:

2           *Because Threemile Canyon is a QF with a total nameplate capacity less*  
3           *than 10,000 kW, and meets the other applicability requirements of*  
4           *Schedule 37, it is eligible to sell to Pacific Power under Schedule 37's*  
5           *terms and conditions.*

6     The allegation is a conclusion of law requiring no response.

7           15.     Paragraph (1) on pages 4 and 5 of the complaint states:

8           *The Commission's Order No. 05-584, which concluded the first phase of*  
9           *the Commission's Docket No. UM 1129 investigation into issues related to*  
10          *energy purchases from QFs by electric utilities, focused principally on*  
11          *issues related to standard contracts. Order No. 05-584 at 12. Among the*  
12          *issues addressed by the Commission in Order No. 05-584 was the issue of*  
13          *"Pricing Adjustments for Standard Contracts," which had been raised by*  
14          *PacifiCorp (and PGE). Order No. 05-584 at 38-39.*

15     PacifiCorp admits that the Commission addressed issues related to standard contracts in  
16     Order No. 05-584. PacifiCorp further admits that the Commission noted in Order No.  
17     05-584 under the heading "Pricing Adjustments for Standard Contracts" that PacifiCorp  
18     and PGE had raised certain issues. PacifiCorp denies any other implication or aspect of  
19     the allegations in paragraph (1) on pages 4 and 5.

20          16.     Paragraph (1)(a) on pages 4 and 5 of the complaint states:

21          *As described by the Commission, PacifiCorp recommended "that utilities*  
22          *be allowed to impose certain pricing adjustments in order to address*  
23          *issues that might include integration costs, debt imputation, or*  
24          *commercial and operational costs associated with intermittent QF*  
25          *resources." Order No. 05-584 at 38.*

26     PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
27     denies any other implication or aspect of the allegation.

28          17.     Paragraph (1)(b) on page 5 of the complaint states:

29          *The Commission Staff opposed PacifiCorp's recommendation, noting*  
30          *"that the characteristics of a specific QF may impose costs greater or*  
31          *lesser than costs captured by the standard contract rate, but notes that on*

1           *balance, the standard contract rate is deemed to provide a fair rate to QFs*  
2           *eligible to receive it.” Order No. 05-584 at 38.*

3 PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
4 denies any other implication or aspect of the allegation. PacifiCorp notes that the third-  
5 party transmission costs at issue in this case always impose costs greater than costs  
6 captured by the standard contract rate.

7           18. Paragraph (2) on pages 5 and 6 of the complaint states:

8           *The Commission **rejected** PacifiCorp's recommendation, stating:*

9           ***In this order, we establish standard contract rates, terms and conditions***  
10           ***that incorporate sufficient flexibility to address QF project-specific***  
11           ***characteristics that we have deemed it appropriate to address. For***  
12           ***example, the pricing structure we have adopted allows certain QFs to***  
13           ***select a pricing option suitable to fuel and risk characteristics of the***  
14           ***facility. As another example, QF pricing provides differentiation on a***  
15           ***seasonal, as well as peak and off-peak basis. We believe further flexibility***  
16           ***in negotiating the terms of a standard contract would fundamentally***  
17           ***undermine the purposes and advantages of standard contract and,***  
18           ***therefore, deny the request by PacifiCorp and PGE for additional pricing***  
19           ***flexibility.***

20           *Standard contracts are designed to minimize the need for parties to*  
21           *engage in contract negotiations. Consequently, **any flexibility in the***  
22           ***terms and conditions of a standard contract should be specifically***  
23           ***delineated and bounded. To the extent that a party anticipated the need***  
24           ***for flexibility with regard to a particular standard contract term or***  
25           ***condition, the specific issue should have been raised and examined in***  
26           ***this proceeding. It is inappropriate to request that standard contracts be***  
27           ***subject to potential negotiation to address project-specific***  
28           ***characteristics. In any case, we note that certain issues, such as***  
29           ***integration costs, will likely be taken up during the second phase of this***  
30           ***investigation when interconnection procedures and agreements will be***  
31           ***addressed. Order No. 05-584 at 39 (emphasis added).***

32 PacifiCorp admits that Order No. 05-584 contains the language quoted in paragraph (2)  
33 on pages 5 and 6 of the complaint. PacifiCorp denies any other implication or aspect of  
34 the allegation.

1           19.     The first sentence of paragraph (3) on page 6 of the complaint states:

2           *The Commission, as quoted, noted that if a “party anticipated the need for*  
3           *flexibility with regard to a particular standard contract term or condition,*  
4           *the specific issue should have been raised and examined in this*  
5           *proceeding.”*

6     PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
7     denies any other implication or aspect of the allegation.

8           20.     The second and third sentences of paragraph (3) on page 6 of the  
9     complaint state:

10           *Even if PacifiCorp anticipated the need for flexibility with regard to a*  
11           *particular contract term or condition, it did not raise it for examination in*  
12           *that proceeding. Nor, to Threemile Canyon's knowledge, did PacifiCorp*  
13           *at any time prior to Threemile Canyon's demand to sell to Pacific Power*  
14           *under Schedule 37, go back to the Commission and attempt to delineate,*  
15           *bound, and have examined any specific contract term or condition.*

16     PacifiCorp acknowledges it did not formally request that the Commission make a  
17     determination regarding the Excess Generation Events and third-party transmission issues  
18     raised by Threemile Canyon’s complaint until it filed Advice No. 11-011 on June 27,  
19     2011. However, PacifiCorp notes that its initial efforts to deal with the Threemile  
20     Canyon matter involved seeking a mutually agreeable compromise with Threemile  
21     Canyon rather than seeking Commission resolution. PacifiCorp further notes that it was  
22     not until 2011 that it became clear that QFs other than Threemile Canyon would seek to  
23     deliver output to a load pocket in such magnitude as to require additional third-party  
24     transmission. Once it became clear that PacifiCorp faced multiple actual requests for  
25     PPAs that implicated the third-party transmission issue (rather than a mere theoretical  
26     problem or a single, isolated occurrence of the problem), PacifiCorp prepared and  
27     submitted Advice No. 11-011 in order to bring the issue to the Commission for  
28     resolution.

1           21.     The first sentence of paragraph (4) on page 6 of the complaint states:

2           *As also quoted above, the Commission has declared, “It is inappropriate*  
3           *to request that standard contracts be subject to potential negotiation to*  
4           *address project-specific characteristics.”*

5     PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
6     denies any other implication or aspect of the allegation.

7           22.     The second sentence of paragraph (4) on pages 6 and 7 of the complaint  
8     states:

9           *In the case of Threemile Canyon, PacifiCorp has done precisely that: it*  
10          *has attempted to force a QF eligible for a standard contract to negotiate*  
11          *to address project-specific characteristics.*

12     The allegation that Threemile Canyon is eligible for a standard contract is a conclusion of  
13     law requiring no response. PacifiCorp otherwise denies the allegation.

14          23.     The third sentence in paragraph (4) on page 7 of the complaint states:

15          *Specifically, PacifiCorp has ignored the Commission prohibition against*  
16          *negotiating project specific characteristics with respect to a characteristic*  
17          *specific to the Facility, namely payment for third-party transmission*  
18          *service.*

19     The allegation is a conclusion of law requiring no response.

20          24.     The fourth sentence of paragraph (4) on page 7 of the complaint states:

21          *Moreover, as Threemile Canyon discusses later in this Complaint,*  
22          *PacifiCorp did not attempt to commence negotiations until after Threemile*  
23          *Canyon had made its major financial commitments to build the Facility.*

24     Having insufficient information or knowledge regarding when Threemile Canyon “made  
25     its major financial commitments to build the Facility,” PacifiCorp denies the allegation  
26     and leaves Threemile Canyon to the proof thereof. PacifiCorp notes that it commenced  
27     negotiations with Threemile Canyon on a PPA on December 19, 2008—the same day  
28     Threemile Canyon requested a PPA for its current QF project.

1           25.     Paragraph (1) on page 7 of the complaint states:

2           *FERC defines “Avoided Cost” as “the incremental costs to an electric*  
3           *utility of electric energy or capacity or both which, but for the purchase*  
4           *from the qualifying facility or qualifying facilities, such utility would*  
5           *generate itself or purchase from another source.” 18 C.F.R. §*  
6           *292.101(b)(6).*

7     PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
8     denies any other implication or aspect of the allegation.

9           26.     Paragraph (2) on page 7 of the complaint states:

10          *The Commission defines “Avoided costs” in much the same manner, as*  
11          *“the electric utility's incremental costs of electric energy or capacity or*  
12          *both which, but for the purchase from the qualifying facility or qualifying*  
13          *facilities, the electric utility would generate itself or purchase from*  
14          *another source and shall include any costs of interconnection of such*  
15          *resource to the system.” OAR 860-029-0010.*

16     PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
17     denies any other implication or aspect of the allegation.

18          27.     The first and second sentences of paragraph (3) on page 7 of the complaint  
19     state:

20          *Threemile Canyon and PacifiCorp executed a Distribution Generator*  
21          *Interconnection Agreement (DGIA) in July 2008. Threemile Canyon has*  
22          *paid all costs for which the DGIA held Threemile Canyon responsible.*

23     PacifiCorp admits these allegations.

24          28.     The third sentence of paragraph (3) on pages 7 and 8 of the complaint  
25     states:

26          *When such interconnection costs are subtracted from the description of*  
27          *Avoided Costs in OAR 860-029-0010, the remaining “Avoided costs” as*  
28          *described in the Commissions rules are identical to those described in*  
29          *FERC's regulations.*

30     The allegation is a conclusion of law requiring no response.

1           29. Paragraph (4)(a) on page 8 of the complaint states:

2           *FERC requires that Rates for Purchases be “just and reasonable to the*  
3           *electric consumer of the electric utility and in the public interest.”*  
4           *18 C.F.R. § 292.304.*

5 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
6 denies any other implication or aspect of the allegation.

7           30. Paragraph (4)(b) on page 8 of the complaint states:

8           *Similarly, the Commission requires that Rates for Purchases be “Just and*  
9           *reasonable to the public utility's customers and in the public interest.” OAR 860-*  
10          *029-0040(1)(a).*

11 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
12 denies any other implication or aspect of the allegation.

13          31. Paragraph (4)(c) on page 8 of the complaint states:

14          *FERC's regulations state, “In the case in which the rates for purchases*  
15          *are based upon estimates of avoided costs over the specific term of the*  
16          *contract or other legally enforceable obligation, the rates for such*  
17          *purchases do not violate this subpart if the rates for such purchases differ*  
18          *from avoided costs at the time of delivery.” 18 C.F.R. § 292.304 (b)(5).*

19 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
20 denies any other implication or aspect of the allegation.

21          32. Paragraph (4)(d) on page 8 of the complaint states:

22          *The Commission's rules make a virtually identical statement, “When the*  
23          *purchase rates are based upon estimates of avoided costs over a specific*  
24          *term of the contract or other legally enforceable obligation, the rates do*  
25          *not violate these rules if any payment under the obligation differs from*  
26          *avoided costs” OAR 860-029-0040(c).*

27 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
28 denies any other implication or aspect of the allegation.

1           33. Paragraph (4)(e) on pages 8 and 9 of the complaint states:

2           *As the Commission noted in the section of Order No. 05-584 dealing with*  
3           *Standard Avoided Costs, “the goal of calculating avoided costs is to*  
4           *accurately estimate the costs a utility would incur to obtain any amount of*  
5           *power that it purchases from a QF. ...” Order No. 05-584 at 20.*

6           PacifiCorp admits that the quoted language appears in the cited order. PacifiCorp denies  
7           any other implication or aspect of the allegation.

8           34. Paragraph (4)(f) on page 9 of the complaint states:

9           *Rates in standard contracts, as estimates of avoided costs, do not violate*  
10           *the FERC and Commission rules requiring Rates for Purchases to be just*  
11           *and reasonable and in the public interest, if any payment under the*  
12           *obligation differs from avoided costs.*

13           This allegation is a conclusion of law requiring no response.

14           35. The first sentence of the unnumbered paragraph on page 9 of the  
15           complaint states:

16           *As earlier noted in this Complaint, PacifiCorp missed the opportunity in*  
17           *Docket No. UM 1129 to bring specific issues to the Commission's*  
18           *attention, so that such issues could be delineated, bounded, and*  
19           *examined.*

20           PacifiCorp denies the allegation.

21           36. The second sentence of the unnumbered paragraph on page 9 of the  
22           complaint states:

23           *Moreover, PacifiCorp had years subsequent to the Commission's issuance*  
24           *of Order No. 05-584 when it could have returned to the Commission with*  
25           *a specific issue to be delineated, bounded, and examined.*

26           PacifiCorp admits that years have passed since the Commission issued Order No. 05-584.

27           PacifiCorp otherwise denies the allegation.

28           37. The third sentence of the unnumbered paragraph on page 9 of the  
29           complaint states:

1           *PacifiCorp failed to do so.*

2       PacifiCorp admits that it did not initiate a formal proceeding before the Commission to  
3       address the excess generation and third-party transmission issue prior to filing Advice  
4       No. 11-011 on June 27, 2011. PacifiCorp notes that prior to 2011, the Threemile Canyon  
5       QF was the only actual case which raised the issue and PacifiCorp was working in good  
6       faith with Threemile Canyon to resolve the issue without the need for a Commission  
7       proceeding. In 2011, it became clear that other QFs would seek Schedule 37 PPAs that  
8       implicate the load pocket issue and PacifiCorp therefore filed Advice No. 11-011 to  
9       obtain formal Commission approval of a solution to the problem. PacifiCorp denies that  
10      it has failed to properly or timely respond to or address the issues implicated in Threemile  
11      Canyon's complaint.

12           38.     The fourth sentence in the unnumbered paragraph on page 9 of the  
13      complaint states:

14                   *For PacifiCorp to now attempt to push the consequences of missed*  
15                   *opportunities to Threemile Canyon -- especially where the justness and*  
16                   *reasonableness and public interest standards of PURPA Rates for*  
17                   *Purchases are not violated, the terms and conditions of Schedule 37 are*  
18                   *clear, and the Commission has expressly rejected project-by-project*  
19                   *negotiation of what are supposed to be "standard offer" contracts -- is*  
20                   *both unfair and unjust to Threemile Canyon, and must not be allowed.*

21      This allegation is a series of legal conclusions requiring no response.

22           39.     The fifth sentence in the unnumbered paragraph on page 9 of the  
23      complaint states:

24                   *Threemile Canyon is eligible to sell under Schedule 37 without adjustment*  
25                   *in prices or additional cost responsibility.*

26      This allegation is a conclusion of law requiring no response.



1           40. Paragraph (1) on page 10 of the complaint states:

2           *Under Oregon's laws and regulations implementing PURPA, a QF located*  
3           *within PacifiCorp's service territory wishing to sell its net output to*  
4           *PacifiCorp must first enter into: (1) a generation interconnection*  
5           *agreement with PacifiCorp transmission - the function at PacifiCorp*  
6           *responsible for PacifiCorp grid operations, including interconnections;*  
7           *and (2) a power purchase agreement with PacifiCorp merchant - the*  
8           *function at PacifiCorp responsible for contracting to purchase net output*  
9           *from QFs. PacifiCorp's Oregon tariff Schedule 37 establishes the terms*  
10           *and conditions on which PacifiCorp must purchase the net output of a QF*  
11           *with a nameplate capacity of 10,000 kilowatts or less.*

12           These allegations are conclusions of law requiring no response.

13           41. Paragraph (2) on page 10 of the complaint states:

14           *Exelon Wind, LLC (f/k/a John Deere Renewables, LLC) and joint*  
15           *developer Momentum Renewable Energy, Inc. first approached*  
16           *PacifiCorp merchant about purchasing output from one 5 MW project and*  
17           *one 10 MW project, to be located at the Threemile Canyon site and*  
18           *interconnected to PacifiCorp's Dalreed substation, in 2006.*

19           PacifiCorp admits the allegation.

20           42. Paragraph (3) on pages 10 and 11 of the complaint states:

21           *Threemile Canyon received from PacifiCorp transmission a Feasibility*  
22           *Study Report regarding its proposed interconnection on July 31, 2006.*  
23           *PacifiCorp was identified in the report as the "Transmission Provider."*  
24           *Section 7.0, located on page 11 of the report, is titled, "Participation by*  
25           *Affected Systems" and the one sentence finding of that Section was "No*  
26           *Affected Systems were identified in relation to this Interconnection*  
27           *Request."*

28           PacifiCorp admits the allegations.

29           43. Paragraph (4) on page 11 of the complaint states:

30           *Threemile Canyon received from PacifiCorp transmission a System*  
31           *Impact Study regarding its proposed interconnection on November 22,*  
32           *2006. PacifiCorp was identified in the report as the "Transmission*  
33           *Provider." Section 5.0, located on page 8 of the report, is titled,*  
34           *"Participation by Affected Systems" and the one sentence finding of that*  
35           *Section was "No Affected Systems were identified in relation to this*  
36           *Interconnection Request."*

1 PacifiCorp admits the allegations.

2 44. Paragraph (5) on page 11 of the complaint states:

3 *Threemile Canyon received from PacifiCorp transmission a Facilities*  
4 *Study Report on February 20, 2007. PacifiCorp was identified in the*  
5 *report as the "Transmission Provider." In addition, in the report's*  
6 *Section 2.0, "Scope and Objectives of the Study," the following statement*  
7 *was made with respect to such scope and objectives: "Specify and*  
8 *estimate the cost of the equipment, engineering, procurement, and*  
9 *construction work (including overheads) needed to implement the*  
10 *conclusions of the system impact study(s)."*

11 PacifiCorp admits the allegations.

12 45. Paragraph (6) on page 11 of the complaint states:

13 *In 2007, John Deere Renewables acquired 100 percent ownership of*  
14 *Threemile Canyon.*

15 Having insufficient information or knowledge regarding the truth or falsity of the  
16 allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
17 thereof.

18 46. Paragraph (7) on pages 11 and 12 of the complaint states:

19 *On July 15, 2008, Threemile Canyon entered into a Distribution*  
20 *Generation Interconnection Agreement with PacifiCorp transmission*  
21 *("Interconnection Agreement"), permitting Threemile Canyon to*  
22 *interconnect to PacifiCorp's utility system ("System") at PacifiCorp's*  
23 *Dalreed Substation ("Point of Interconnection").*

24 With the clarification that the point of interconnection between Threemile Canyon's  
25 Facility and PacifiCorp's system is actually on the 34.5 kV Simtag Feeder out of the  
26 Dalreed substation, PacifiCorp admits the allegation.

27 47. Paragraph (8) on page 12 of the complaint states:

28 *Between December 2008 and June 2009, Threemile Canyon constructed*  
29 *its Facility.*

1 Having insufficient information or knowledge regarding the truth or falsity of the  
2 allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
3 thereof.

4 48. The first sentence of paragraph (9) on page 12 of the complaint states:

5 *Threemile Canyon's Facility is located in PacifiCorp's service territory, in*  
6 *a locale which is served by PacifiCorp's Dalreed substation.*

7 PacifiCorp admits the allegation.

8 49. The second sentence of paragraph (9) on page 12 of the complaint states:

9 *As Threemile Canyon has come to understand, the Dalreed substation is*  
10 *served only from Bonneville Power Administration (BPA) owned*  
11 *transmission facilities, not by facilities owned by PacifiCorp.*

12 PacifiCorp denies the allegation. PacifiCorp's transmission function maintains 34.5 kV  
13 and 230 kV facilities originating at the Dalreed substation to serve PacifiCorp load in the  
14 vicinity of the substation.

15 50. The third sentence of paragraph (9) on page 12 of the complaint states:

16 *It is physically isolated from the rest of PacifiCorp's service territory.*

17 PacifiCorp admits that its Dalreed substation and the associated 34.5 kV and 230 kV  
18 PacifiCorp facilities serving PacifiCorp load in the vicinity of the substation are  
19 interconnected to the rest of PacifiCorp's system only by transmission facilities owned  
20 and operated by third parties.

21 51. The fourth sentence of paragraph (9) on page 12 of the complaint states:

22 *PacifiCorp describes this arrangement as a "load pocket."*

23 PacifiCorp admits that it has referred to its Dalreed substation and PacifiCorp's  
24 associated 34.5 kV and 230 kV facilities serving PacifiCorp load in the vicinity of the  
25 substation as a "load pocket" or the "Dalreed load pocket."

1           52.     The fifth sentence of paragraph (9) on page 12 of the complaint states:

2           *Under the circumstances of this specific generator interconnection*  
3           *process, PacifiCorp clearly erred in calling itself the Transmission*  
4           *Provider, as it did in the several instances noted above in this Complaint.*

5     PacifiCorp denies the allegation.

6           53.     The first sentence of paragraph (10) on page 12 of the complaint states:

7           *PacifiCorp's Dalreed load consists of a single farming operation that has*  
8           *a dairy farm and large irrigation system resulting in irrigation season*  
9           *loads up to 40 MW and non-irrigation loads of approximately 2-4 MW.*

10    PacifiCorp denies the allegation. PacifiCorp admits that the principle load in the Dalreed  
11    load pocket is a single farming operation with a large irrigation system resulting in  
12    irrigation season loads up to 40 MW and non-irrigation load of as little as 2 MW.

13           54.     The second sentence of paragraph (10) on page 12 of the complaint states:

14           *Long after conclusion of the interconnection process, PacifiCorp*  
15           *represented to Threemile Canyon: (a) that PacifiCorp imports energy on a*  
16           *firm basis into the Dalreed substation across BPA-owned transmission*  
17           *pursuant to PacifiCorp's General Transmission Agreement (GTA) with*  
18           *BPA; (b) the GTA covers power flow into Dalreed substation; (c) under*  
19           *the GTA, the Dalreed load is telemetered into PacifiCorp West control*  
20           *area such that dynamic scheduling is not required for import energy; and*  
21           *(d) the current GTA makes no provision for firm export of energy from the*  
22           *Dalreed substation across BPA transmission.*

23    PacifiCorp objects to the phrase “[l]ong after conclusion of the interconnection process”  
24    because it is too vague for PacifiCorp to understand the allegation and PacifiCorp  
25    therefore denies any allegation stemming from the phrase. With the exclusion of this  
26    phrase, PacifiCorp admits that it has represented to Threemile Canyon the rest of the  
27    information contained in the second sentence of paragraph (10) on pages 12 and 13.  
28    More specifically, with regard to item (c) in the list, PacifiCorp has represented to  
29    Threemile Canyon that under the GTA, the Dalreed load is telemetered *for import* into

1 PacifiCorp West control area such that dynamic scheduling is not required to import  
2 energy.

3 55. The first sentence of paragraph (11) on page 13 of the complaint states:

4 *The Facility is currently the only generation source in the Dalreed load*  
5 *pocket.*

6 PacifiCorp admits that, as of the date PacifiCorp was served with the complaint, the  
7 Facility is the only constructed and operational generation source in the Dalreed load  
8 pocket that is relied on by PacifiCorp to serve load.

9 56. The second sentence of paragraph (11) on page 13 of the complaint states:

10 *After conclusion of the interconnection process and after Threemile*  
11 *Canyon made its contractual commitments to build the Facility,*  
12 *PacifiCorp merchant determined that the generation from the Facility is*  
13 *likely to exceed total load at the Dalreed substation approximately 11 to*  
14 *15 percent of total hours in any year during the months October through*  
15 *April with the majority of those hours concentrated in the months of*  
16 *November through March.*

17 PacifiCorp admits that it conducted an analysis based on information provided by  
18 Threemile Canyon which demonstrated on a backward-looking basis that generation from  
19 the Facility would have exceeded total load in the Dalreed load pocket approximately 11  
20 to 15 percent of total hours in a year during the months October through April with the  
21 majority of those hours concentrated in the months November through March.

22 PacifiCorp admits this analysis was conducted after Threemile Canyon had completed the  
23 interconnection process. PacifiCorp notes that Threemile Canyon had completed its  
24 interconnection process before it approached PacifiCorp merchant to seek a PPA for its  
25 current project and Threemile Canyon did not provide the hourly data necessary for the  
26 analysis discussed above until after it had completed its interconnection process. Lacking  
27 sufficient information or knowledge regarding when Threemile Canyon made its

1 contractual commitments to build its Facility, PacifiCorp denies the allegation that  
2 PacifiCorp merchant made the determination discussed above after Threemile Canyon  
3 made its contractual commitments to build its Facility and leaves Threemile Canyon to  
4 the proof thereof.

5 57. The third sentence of paragraph (11) on page 13 of the complaint states:

6 *PacifiCorp refers to the times when Threemile Canyon output exceeds*  
7 *total load in the locale served through the Dalreed Substation as "Excess*  
8 *Generation Events".*

9 PacifiCorp admits the allegation that it has referred to the times when the output of the  
10 Threemile Canyon QF exceeds total PacifiCorp load served by the Dalreed substation as  
11 "Excess Generation Events."

12 58. Paragraph (12) on page 13 of the complaint states:

13 *Because Excess Generation Events are expected to occur, PacifiCorp*  
14 *clearly erred in stating there is no "affected system," as it did in the*  
15 *several instances noted above in this Complaint.*

16 PacifiCorp denies the allegation.

17 59. The first sentence of paragraph (13) on page 13 of the complaint states:

18 *Under FERC and Commission rules implementing PURPA, PacifiCorp is*  
19 *required to purchase any energy and capacity which is made available*  
20 *from Threemile Canyon, except when a system emergency exists.*  
21 *18 C.F.R. § 292.303(a); OAR 860-029-0030(1).*

22 The allegation is a conclusion of law requiring no response.

23 60. The second sentence of paragraph (13) on pages 13 and 14 states:

24 *The Commission defines "system emergency" as "a condition on a public*  
25 *utility's system which is likely to result in imminent, significant disruption*  
26 *of service to customers, in imminent danger of life or property, or both."*  
27 *OAR 860-029-0010(27).*

28 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
29 denies any other implications or aspects of the allegation.

1           61. Paragraph (14) on page 14 of the complaint states:

2           *PacifiCorp has represented to Threemile Canyon: (a) that during an*  
3           *Excess Generation Event, PacifiCorp merchant may use (if available) firm*  
4           *BPA point-to-Point (“PTP”) Transmission Service (“PTPTS”) as defined*  
5           *in BPA's Open Access Transmission Tariff (“OATT”) in order to move the*  
6           *excess generation from Dalreed substation to PacifiCorp's greater system*  
7           *such that PacifiCorp can use the Facility's excess generation to serve its*  
8           *retail customer load; (b) that PacifiCorp has made a formal request to*  
9           *BPA to purchase sufficient capacity to transmit 100 percent of Threemile*  
10           *Canyon's generation in excess of Dalreed Service Area load*  
11           *(8 megawatts) to PacifiCorp's other load across BPA-owned transmission*  
12           *for a one-year term with roll-over rights to renew on an on-going basis*  
13           *through the term of the Power Purchase Agreement (“PPA”); and (c) a*  
14           *customer-financed upgrade to BPA's system may be necessary before BPA*  
15           *long-term FFTP transmission sufficient to export Threemile Canyon's*  
16           *excess generation in all months is available.*

17 PacifiCorp denies the allegation because the phrase “for a one-year term” makes the  
18 allegation inaccurate. If this phrase is replaced with the phrase “for a five-year term”  
19 then PacifiCorp admits the allegation.

20           62. Paragraph (15) on page 14 of the complaint states:

21           *PacifiCorp has represented to Threemile Canyon that in, the event*  
22           *sufficient long-term firm transmission service (LTFPTPTS) is not*  
23           *available, PacifiCorp may attempt to obtain short-term firm transmission*  
24           *(STFPTPTS) on a month-to-month basis for the months when an Excess*  
25           *Generation Event is expected.*

26 PacifiCorp admits the allegations.

27           63. The first sentence of paragraph (16) on pages 14 and 15 of the complaint  
28 states:

29           *PacifiCorp has represented to Threemile Canyon that if PacifiCorp does*  
30           *not purchase BPA PTPTS, then PacifiCorp would curtail excess Facility*  
31           *generation during Excess Generation Events so not to incur penalties from*  
32           *BPA for unscheduled deliveries under BPA's OATT.*

33 PacifiCorp denies the allegation because the word “would” is inaccurate. If the word  
34 “would” is replaced with the word “must” then PacifiCorp admits the allegation.

1           64.     The second sentence of paragraph (16) on page 15 of the complaint states:

2           *If PacifiCorp purposely puts itself in a position where it must cause such*  
3           *curtailments of Threemile Canyon output, PacifiCorp will be violating its*  
4           *PURPA responsibilities to purchase any energy and capacity which is*  
5           *made available from Threemile Canyon, except when a system emergency*  
6           *exists.*

7     These allegations are conclusions of law requiring no response.

8           65.     The first sentence in paragraph (1) on page 15 of the complaint states:

9           *In December 2008, Threemile Canyon applied to PacifiCorp merchant for*  
10          *a Long-Term Standard Contract PPA (Long-Term PPA) for Threemile*  
11          *Canyon's Facility pursuant to PacifiCorp's Tariff Schedule 37*  
12          *("Schedule 37").*

13     PacifiCorp admits the allegation.

14          66.     Paragraph (1) on page 15 of the complaint states:

15          *Threemile Canyon has been, and remains, willing to enter into a Long-*  
16          *Term PPA with PacifiCorp on the terms and conditions set forth under*  
17          *Schedule 37.*

18     Having insufficient information or knowledge regarding the truth or falsity of the  
19     allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
20     thereof.

21          67.     Paragraph (2) on page 15 of the complaint states:

22          *PacifiCorp has refused for over two years, and continues to refuse, to*  
23          *enter into a Long-term PPA with Threemile Canyon on the terms provided*  
24          *under Schedule 37 unless Threemile Canyon agrees to bear the cost to*  
25          *purchase BPA FFTP transmission to export excess generation (including*  
26          *administrative costs) or, alternatively, the cost to Threemile Canyon (in*  
27          *lost generation and associated benefits, e.g. production tax credits) to*  
28          *curtail excess Facility generation.*

29     Since June 19, 2009, PacifiCorp and Threemile Canyon have been party to a short-term  
30     PPA that has kept Threemile Canyon whole and under which PacifiCorp has borne the  
31     cost of third-party transmission. The purpose of this arrangement has been to allow the



1 parties time to resolve their disagreement or obtain a Commission determination.  
2 PacifiCorp admits that it is unwilling to enter into a long-term PPA under which it would  
3 pay Threemile Canyon full published Schedule 37 avoided cost rates unless Threemile  
4 Canyon agrees to bear the cost to purchase necessary third-party transmission or,  
5 alternatively, agrees to allow PacifiCorp to curtail Excess Generation without payment  
6 because such a contract would violate PURPA.

7 68. The first sentence of paragraph (3) on pages 15 and 16 of the complaint  
8 states:

9 *Schedule 37 includes no provision for requiring the QF to pay additional*  
10 *third-party transmission costs incurred by PacifiCorp or to bear the cost*  
11 *of curtailed generation due to PacifiCorp's failure to secure adequate*  
12 *third-party transmission.*

13 PacifiCorp admits that Schedule 37 does not expressly address third-party transmission  
14 costs or the cost of curtailment.

15 69. The second through fifth sentences of paragraph (3) on page 16 of the  
16 complaint state:

17 *On June 19, 2009, PacifiCorp and Threemile Canyon executed a Short-*  
18 *Term PPA with a four-month term. The Short-Term PPA, in its Addendum*  
19 *R (Clarification of Contract Price), memorialized and documented the*  
20 *Parties agreement on the Contract Prices that would be paid by*  
21 *PacifiCorp to Threemile Canyon. In executing the Short-Term PPA, the*  
22 *parties reserved their right to dispute who would pay incremental third-*  
23 *party transmission costs and incremental revenue reductions when the*  
24 *Interim PPA expires. PacifiCorp and Threemile Canyon later extended*  
25 *their Short-Term PPA's Termination Date in succession until: (a) October*  
26 *31, 2009, (b) April 30, 2010, (c) October 31, 2010, (d) March 31, 2011,*  
27 *and (e) September 30, 2011.*

28 PacifiCorp notes that the parties extended their Short-Term PPA's Termination  
29 Date in succession until (a) October 31, 2009, (b) November 30, 2009, (c) April

1 30, 2010, (d) October 31, 2010, (e) March 31, 2011, and (f) September 30, 2011.

2 With this correction, PacifiCorp admits the allegations.

3 70. The sixth sentence of paragraph (3) on page 16 of the complaint states:

4 *Threemile Canyon seeks a 20-year Long-term PPA for the Facility that*  
5 *will take effect when the Short-Term PPA expires.*

6 Having insufficient information or knowledge regarding the truth or falsity of the  
7 allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
8 thereof.

9 71. Paragraph (4) on page 16 of the complaint states:

10 *As the specific circumstances documented throughout this Complaint*  
11 *make clear, PacifiCorp must be the party that will pay third-party*  
12 *transmission costs in this specific case.*

13 The allegation is a conclusion of law requiring no response.

14 72. Paragraphs (1) and (2) on pages 16 and 17 of the complaint state:

15 *WHEREFORE, Threemile Canyon seeks an order from the Commission:*  
16 *(1) Requiring PacifiCorp to purchase the output of the Facility, including*  
17 *during any Excess Generation Event, on the terms and at the rate selected*  
18 *by Threemile Canyon under Schedule 37, without adjustments for*  
19 *incremental third-party transmission costs, or alternatively, (2) Requiring*  
20 *PacifiCorp to pay to Threemile Canyon any revenue reductions arising*  
21 *from PacifiCorp's failure to purchase the output of the Facility, including*  
22 *during any Excess Generation Event.*

23 *WHEREFORE, Threemile Canyon respectfully requests expedited review*  
24 *of this Complaint so that it may have the benefit of this Commission's*  
25 *decision prior to executing their Long-term PPA.*

26 PacifiCorp denies that the Commission should order the relief sought by Threemile  
27 Canyon in paragraphs (1) or (2) on pages 16 and 17 of the complaint.

28 73. PacifiCorp denies any allegation not specifically admitted above.

29 PacifiCorp reserves the right to supplement this answer or file a new answer in the event

30 Threemile Canyon amends or otherwise modifies its complaint. PacifiCorp reserves the

1 right to assert and file any affirmative or special defense that may become known by  
2 discovery proceedings or by other means.

### 3 **C. DEFENSES**

4 74. For its FIRST DEFENSE, PacifiCorp states that notwithstanding any  
5 ambiguity in Schedule 37 or the Commission's orders regarding PURPA, the  
6 Commission should conclude as a matter of law that Oregon law and regulation does not  
7 require PacifiCorp to pay Threemile Canyon the full published avoided cost rate for its  
8 QF output *and* to pay the cost of BPA or other third-party transmission service required  
9 to move Threemile Canyon's QF output from the point of delivery to another point on  
10 PacifiCorp's system where adequate load exists to absorb Threemile Canyon's output.  
11 The Commission should reach this conclusion of law because requiring PacifiCorp to pay  
12 full published avoided costs rates and to pay for necessary third-party transmission would  
13 violate PURPA by establishing a state regulatory scheme which systematically requires a  
14 public utility to pay more than its avoided cost for QF output. Because the third-party  
15 transmission costs arising when a QF generates excess generation in a load pocket will  
16 always increase a utility's cost, the Commission cannot and should not ignore such costs  
17 on the theory that sometimes they will increase and sometimes they will decrease a  
18 utility's avoided cost.

19 75. For its SECOND DEFENSE, PacifiCorp states that even if current Oregon  
20 law and regulation, including PacifiCorp's Schedule 37, are deemed to require PacifiCorp  
21 to pay both full published avoided cost rates for Threemile Canyon's net output *and* to  
22 pay for any third-party transmission necessary to move Threemile Canyon's output from  
23 the point of delivery to load, PacifiCorp cannot be compelled to enter into a contract with

1 Threemile Canyon to purchase output under such terms because such a contract is void  
2 *ab initio*. See *Connecticut Light & Power Company*, 70 FERC ¶ 61,012 (1995).

3 76. For its THIRD DEFENSE, PacifiCorp states that equitable considerations  
4 do not favor Threemile Canyon but rather favor PacifiCorp. Threemile Canyon alleges in  
5 its complaint that PacifiCorp made three errors in processing Threemile Canyon’s request  
6 to interconnect and sell power and that the Commission should therefore conclude that  
7 equity favors Threemile Canyon. Specifically, Threemile Canyon alleges that PacifiCorp  
8 transmission erred during the interconnection process by concluding that PacifiCorp was  
9 the Transmission Provider and by concluding that there was no Affected System.  
10 Threemile Canyon also alleges that PacifiCorp merchant erred by not informing  
11 Threemile Canyon of the potential for Excess Generation and third-party transmission  
12 concerns until after Threemile Canyon had entered into an interconnection agreement  
13 with PacifiCorp and made contractual commitments to construct the Facility.

14 77. Threemile Canyon is wrong as a matter of fact and law in its assertions  
15 that PacifiCorp erred. In the context of an interconnection request under Schedule 37,  
16 PacifiCorp transmission was correct to conclude that it is the “Transmission Provider”  
17 and that there is no “Affected System.” In the context of a Schedule 37 request for a  
18 power purchase agreement, PacifiCorp merchant timely and reasonably identified and  
19 notified Threemile Canyon of the potential for Excess Generation and third-party  
20 transmission issues. Moreover, PacifiCorp merchant worked diligently, cooperatively,  
21 and in good faith with Threemile Canyon to seek a mutually agreeable resolution to this  
22 matter that would include an addendum to the long-term power purchase agreement to  
23 clarify the transmission, curtailment, and other issues requested by Threemile Canyon.

1 PacifiCorp merchant executed a standard PPA on a short-term basis, which the parties  
2 have extended six times, in order to allow Threemile Canyon to sell power from its  
3 Facility at full published avoided cost rates while the parties attempted to resolve this  
4 matter. Any delay in resolving this matter has not been caused by PacifiCorp but by the  
5 inherent difficulty in finding a mutually agreeable resolution and to some degree by the  
6 delay in progress and negotiations created when Exelon Generation Company, LLC  
7 purchased 100 percent of the John Deere Renewables, LLC assets in August 2010 with  
8 the sale closing in December 2010.

9 78. Equitable consideration and the public interest favor not requiring  
10 PacifiCorp, and ultimately PacifiCorp's customers, to pay both full published avoided  
11 cost rates *and* the cost of third-party transmission service made necessary by Threemile  
12 Canyon's decision to deliver Excess Generation to the Dalreed load pocket.

13 79. For its FOURTH DEFENSE, PacifiCorp states that Threemile Canyon has  
14 failed to state a claim upon which relief can be granted because PacifiCorp's actions are  
15 consistent with PURPA or Oregon law or both.

16 80. PacifiCorp reserves the right to raise any additional defenses which are not  
17 affirmative defenses of the type that are waived as a matter of law if not raised in the first  
18 responsive pleading.

19 81. WHEREFORE, PacifiCorp hereby respectfully requests that the  
20 Commission deny the relief requested by Threemile Canyon.

1 **D. COUNTERCLAIMS**

2 By way of counterclaim against Threemile Canyon, PacifiCorp alleges:

3 82. PacifiCorp alleges paragraphs 4, 6, 9, 10, 25, 26, 48, 54, 57, 61, 62, 63, 65,  
4 and 69 of this answer to the extent of PacifiCorp’s admissions therein.

5 **Jurisdiction**

6 83. The Commission has jurisdiction over claims brought by PacifiCorp, as a  
7 public utility, against Threemile Canyon, as an owner-operator of a QF, regarding sales  
8 by Threemile Canyon’s QF to PacifiCorp in Oregon. ORS 756.500; *Roats v Golfside*,  
9 ALJ Ruling, UM 1248 (Apr. 19, 2006) (“[ORS 756.500(5)] permits a public utility or  
10 telecommunications utility to file a complaint against any person, so long as the matter  
11 involves the utility’s own rates or service.”); ORS 758.505 to 555 (charging the  
12 Commission with administering PURPA rates and services of public utilities).

13 **Factual Allegations**

14 84. Since June 2009, PacifiCorp has purchased all net output from the  
15 Threemile Canyon QF at a point of delivery in the Dalreed load pocket near Arlington,  
16 Oregon.

17 85. PacifiCorp purchased such Threemile Canyon QF output under the Short-  
18 Term PPA.

19 86. The Short-Term PPA is in the form of PacifiCorp’s Commission-approved  
20 standard agreement for intermittent resources with mechanical available guarantee.

21 87. Pursuant to the Short-Term PPA, PacifiCorp has paid Threemile Canyon  
22 for all Threemile Canyon QF net output at the fixed avoided cost prices in Schedule 37 in  
23 effect June 2009.

1           88.     The fixed avoided cost price set forth in PacifiCorp's Schedule 37 is  
2 calculated with a formula prescribed by the Commission and intended by the  
3 Commission to represent PacifiCorp's avoided cost, as that term is defined in 18 C.F.R.  
4 § 292.303 (2011).

5           89.     The Schedule 37 fixed avoided cost price was derived without regard to,  
6 and makes no allowance for, third-party transmission costs PacifiCorp must incur to  
7 make use of Excess Generation from the Threemile Canyon QF.

8           90.     Net output from the Threemile Canyon QF has at unpredictable times  
9 exceeded, and likely will continue to exceed unpredictably, all load served in the Dalreed  
10 load pocket by up to 7.9 MW.

11          91.     Excess Generation Events have occurred in 2009, 2010, and 2011.

12          92.     Prior to purchasing net output from Threemile Canyon QF, PacifiCorp  
13 owned no generation resource within the Dalreed load pocket and controlled no  
14 transmission rights for moving power out of the Dalreed load pocket.

15          93.     In order to move Threemile Canyon QF generation out of the Dalreed load  
16 pocket during Excess Generation Events, PacifiCorp has paid BPA for point-to-point  
17 transmission service (including required ancillary services) and associated transmission  
18 service application fees (collectively "BPA Transmission Services").

19          94.     At present, PacifiCorp has expended over \$180,000 on such BPA  
20 Transmission Services.

21          95.     Prior to PacifiCorp paying for BPA Transmission Services, Threemile  
22 Canyon was aware that PacifiCorp acquired such BPA Transmission Services in order to

1 provide transmission for the Threemile Canyon QF output during Excess Generation  
2 Events.

3 96. PacifiCorp and Threemile Canyon agreed to disagree who must pay for  
4 BPA transmission necessary to move Excess Generation out of the Dalreed load pocket.

5 97. PacifiCorp would not have incurred the costs of BPA Transmission  
6 Services if Threemile Canyon were not delivering to PacifiCorp's system at the Dalreed  
7 load pocket (or another PacifiCorp load pocket).

8 **Claim One**  
9 (Violation of Oregon's implementation of PURPA)

10 98. In Docket No. UM 1129, the Commission adopted standard terms and  
11 conditions applicable to an investor-owned utility's purchase of net output from QFs with  
12 capacity of 10 MW or less.

13 99. In Docket No. UM 1129, the Commission did not address whether a utility  
14 must bear the cost of third-party transmission service needed to move QF output from the  
15 point of delivery to load.

16 100. Oregon statutes and Commission regulations do not expressly require  
17 PacifiCorp to pay the cost of third-party transmission service required to move QF output  
18 from the point of delivery to load.

19 101. PacifiCorp's Schedule 37 tariff does not expressly require PacifiCorp to  
20 pay the cost of third-party transmission service required to move QF output from the  
21 point of delivery to load.

22 102. The Short-Term PPA does not expressly allocate third-party transmission  
23 costs PacifiCorp must incur to make use of Excess Generation from the Threemile  
24 Canyon QF.





1           110. The Short-Term PPA makes no allowance for third-party transmission  
2 costs PacifiCorp must incur to make use of Excess Generation from the Threemile  
3 Canyon QF.

4           111. When PacifiCorp pays Threemile Canyon the Schedule 37 fixed avoided  
5 cost rate for net output from the Threemile Canyon QF and also pays for BPA  
6 Transmission Services necessary to move Excess Generation to a place on PacifiCorp's  
7 system where it can be used to serve load, PacifiCorp is paying more than its avoided  
8 cost for Threemile Canyon QF net output.

9           112. Threemile Canyon's refusal to pay for BPA Transmission Services  
10 necessary to move Excess Generation to a place on PacifiCorp's system where it can be  
11 used to serve load violates Section 210(b) of PURPA (16 U.S.C. 824a-3(b)), 18 C.F.R.  
12 § 292.304(a)(2), *Connecticut Light & Power Co.*, 70 FERC ¶ 61,012 (1995), and  
13 Oregon's implementation of PURPA in ORS 758.505 to 758.555, Division 29 of the  
14 Commission's administrative rules, relevant Commission orders, and PacifiCorp's  
15 Schedule 37 by requiring PacifiCorp to pay more than avoided costs for Threemile  
16 Canyon QF net output.

17           113. WHEREFORE, PacifiCorp seeks an order from the Commission:

18           a) Declaring that:

- 19           1. Threemile Canyon must pay for third-party transmission (including  
20           ancillary services) necessary to move Excess Generation from Dalreed  
21           substation to a useful destination on PacifiCorp's system under the Short-  
22           Term PPA; and

1           2. Threemile Canyon must pay for third-party transmission (including  
2           ancillary services) necessary to move Excess Generation from Dalreed  
3           substation to a useful destination on PacifiCorp's system under any  
4           subsequent PPA between the parties regarding the Threemile Canyon QF  
5           in the form of PacifiCorp's current Commission-approved standard form  
6           PPA; and

7           3. PacifiCorp is authorized to deduct over a reasonable period of time from  
8           any future payments for net output from the Threemile Canyon QF the  
9           actual payments PacifiCorp has made to date and payments PacifiCorp  
10          makes to BPA pending final resolution of this complaint for the purpose of  
11          purchasing the BPA Transmission Services identified in paragraphs 93  
12          and 94 (all in a sum to be proved and in excess of \$180,000) and interest  
13          thereon.

14          b) Or alternatively, declaring that:

15           1. The Short-Term PPA violates the requirement in Section 210(b) of  
16           PURPA that a utility not be required to pay for QF output at a rate in  
17           excess of the utility's avoided cost and therefore the Short-Term PPA is  
18           void *ab initio*; and

19           2. Threemile Canyon must refund the actual payments PacifiCorp has made  
20           to date and payments PacifiCorp makes to BPA pending final resolution of  
21           this complaint for the purpose of purchasing BPA Transmission Services  
22           identified in paragraphs 93 and 94 (all in a sum to be proved and in excess  
23           of \$180,000) and interest thereon.

1 c) And, any other relief the Commission deems appropriate.

2 **E. PACIFICORP'S AUTHORIZED REPRESENTATIVES**

3 114. PacifiCorp designates the following individuals as its authorized  
4 representatives in this matter:

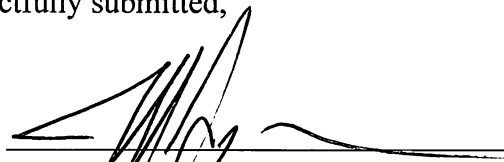
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Dated this 25<sup>th</sup> day of July 2011.

Respectfully submitted,

By



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CERTIFICATE OF SERVICE

I hereby certify that, on July 25, 2011, I served a true and correct copy of the foregoing *PacifiCorp's Answer, Defenses, and Counterclaims* on the following named persons/entities by electronic mail:

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DATED this 25<sup>th</sup> day of July, 2011.

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