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November 13, 2012

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

Oregon Public Utility Commission  
550 Capitol Street NE, Ste 215  
Salem, OR 97301-2551

Attn: Filing Center

**RE: UM 1546 – PacifiCorp’s Response to Threemile Canyon Wind I, LLC. Motion for Ruling Certification**

PacifiCorp, d.b.a. Pacific Power, submits for filing its Response to Threemile Canyon Wind I, LLC Motion for Ruling Certification in the above-referenced proceeding.

Please direct any informal inquiries to Bryce Dalley, Director, Regulatory Affairs & Revenue Requirement, at (503) 813-6389.

Sincerely,

*William R. Griffith / As*

William R. Griffith  
Vice President, Regulation

Enclosures

cc: Service List UM 1546

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1546

THREEMILE CANYON WIND I, LLC,

Complainant,

v.

PACIFICORP, dba, PACIFIC POWER

Defendant.

PACIFICORP RESPONSE TO  
THREEMILE CANYON WIND I, LLC  
MOTION FOR RULING  
CERTIFICATION

1           On October 22, 2012, Chief Administrative Law Judge (ALJ) Michael Grant issued a  
2 Ruling in this docket denying a motion for relief from stay made by Threemile Canyon Wind  
3 I, LLC (Complainant). On November 6, 2012, Complainant filed a Request to Certify Ruling  
4 for Appeal to Commission (Request) asking that the Commission certify the October 22,  
5 2012 ALJ Ruling. In accordance with OAR 860-001-0420(5), PacifiCorp, d.b.a. Pacific  
6 Power (PacifiCorp or Company), files this Response to the Request. The Request should be  
7 denied because the legal and policy issues to be resolved in this docket will be resolved as  
8 part of the Commission's generic investigation into qualifying facility (QF) contracting and  
9 pricing. As the Company stated in response to Complainant's Motion for Relief from Stay,  
10 Complainant does not offer a compelling reason to lift the stay it agreed to in this docket  
11 approximately one year ago.

12 **I.     ARGUMENT**

13           This docket was initiated by Complainant's filing of a complaint against the  
14 Company on July 1, 2011. The sole matter at issue in the initial complaint was whether or  
15 not under the Public Utilities Regulatory Policies Act (PURPA), the Company could charge  
16 Complainant certain costs associated with the Company's purchase of third-party

1 transmission.<sup>1</sup> On June 27, 2011, the Company filed Advice Filing No. 11-011, proposing  
2 revisions to its Oregon Tariff Schedule 37 – Avoided Cost Purchases from Qualifying  
3 Facilities (10,000 kW or less) that would allow the Company to charge QFs for additional  
4 transmission that may be required for the Company to move QF output to load. Advice  
5 Filing No. 11-011 was docketed in UE 235. The legal and policy question at issue – namely  
6 whether the Company may charge or credit QFs for costs incurred or avoided associated with  
7 third-party transmission – is identical in this docket as in UE 235.

8 As a result, the Company proposed to stay filing of testimony in this docket until the  
9 Commission issued a legal ruling in UE 235.<sup>2</sup> In the interim, the Company agreed to enter  
10 into an extension of the short-term power purchase agreement (PPA) to preserve the status  
11 quo during the resulting delay. Complainant did not object to the Company’s request for a  
12 stay.<sup>3</sup> In addition, the Company has executed extensions of the current short-term PPA in  
13 order to continue maintaining status quo while delay continues. In its Request, complainant  
14 argues that “the only ‘status quo’ that is being maintained is a situation where a small QF  
15 facility faces on (sic) ever-increasing contingent liability (the counterclaim for third-party  
16 transmission costs) with no realistic prospect for resolution.”<sup>4</sup> For similar reasons, the  
17 Company also desires expeditious resolution of this issue. The costs of third-party  
18 transmission associated with Complainant’s facility are on-going and because the Company  
19 contends those costs are above the Company’s avoided cost, the Company’s customers are  
20 effectively bearing costs that should lawfully be borne by Complainant.

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<sup>1</sup> See Complaint of Threemile Wind Canyon I, LLC at 16-17 (July 1, 2011).

<sup>2</sup> See Pacific Power Request for a Stay of Proceedings (September 22, 2011).

<sup>3</sup> Administrative Law Judge Sarah K. Wallace Ruling (October 6, 2011).

<sup>4</sup> Request at p. 3.

1           However, although the Company is similarly interested in a speedy resolution,  
2 resolving a broad policy issue in this docket may not in fact result in a more expeditious  
3 resolution as Complainant assumes. Because the threshold legal and policy issue will affect  
4 all QFs, if the Commission decides to resolve it as part of this complaint docket rather than in  
5 a generic investigation, it is likely that a number of other parties will also be interested in the  
6 outcome of this complaint. Those parties may intervene in this docket, causing further delay  
7 and confusion as to how the resolution of this docket will relate to that of UM 1610, the  
8 generic docket opened to investigate QF issues generally. The third-party transmission issue  
9 identified in this docket and in UE 235 has been discussed with parties to UM 1610 and was  
10 included as an issue to be resolved in that docket.<sup>5</sup> As noted already, considering the same  
11 issue in two different forums at the same time is unnecessary and redundant and could lead to  
12 unclear or inconsistent outcomes, which could, in turn, lead to further delay.

13           Complainant further states that the issue identified for resolution in UM 1610 will not  
14 resolve Complainant's issue because the policy issue does "not even purport to address  
15 whether the Schedule 37 provisions in effect when Complainant requested a PPA from  
16 PacifiCorp entitled Complainant to the Schedule 37 rates without adjustment for third party  
17 transmission costs."<sup>6</sup> While this is still not a fact-specific issue, it is a different  
18 characterization of the issue in this docket than what was raised initially and agreed to by the  
19 parties. As initially contemplated, the parties in this docket intended to file cross-motions for  
20 summary judgment to address the core legal question of whether it violates PURPA to  
21 require PacifiCorp to both pay Schedule 37 rates and pay for third-party transmission needed

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<sup>5</sup> See ALJ Ruling Finalizing Issues List, UM 1610, Appendix A, p.2 (October 25, 2012).

<sup>6</sup> Request at p.2.

1 to move QF output.<sup>7</sup> Now, however, Complainant is characterizing the issue as procedural –  
2 i.e., whether or not Complainant is entitled, apparently in perpetuity, to the provisions of  
3 Schedule 37 that were in effect at the time Complainant initially requested a PPA from the  
4 Company. As it happens, the procedural issue of when and how the Company may update its  
5 avoided cost filings, and presumably the characterization and effective dates of those  
6 updates, is also a generic issue that affects many QFs and is also on the issues list for UM  
7 1610.<sup>8</sup> For similar reasons as those described above, this issue should also be resolved as  
8 part of a broader generic investigation.

9 Complainant again asserts without support that the Commission’s other dockets (UE  
10 235 and UM 1610) do not provide an adequate forum for resolution of issues raised by its  
11 complaint.<sup>9</sup> The Company notes that less than a year ago Complainant agreed to stay the  
12 outcome of this proceeding pending the outcome of UE 235, at which time Complainant was  
13 not a party to that docket. It remains unclear why Complainant felt it was acceptable to  
14 adjudicate this matter in UE 235 a year ago but is now opposed to essentially the same  
15 approach. Complainant asserts that it is the nature of a wide-ranging policy debate that  
16 “parties will compromise on one issue in return for an advantageous outcome on a different  
17 issue.”<sup>10</sup> If Complainant feels strongly that compromise is not appropriate with respect to the  
18 issue of third-party transmission, a better approach would be to voice its concern to the  
19 Commission and other affected parties in UM 1610. It simply does not follow that it would  
20 be better to resolve this generic policy issue on a one-off basis because the issue may become  
21 the subject of a compromise in the more appropriate forum.

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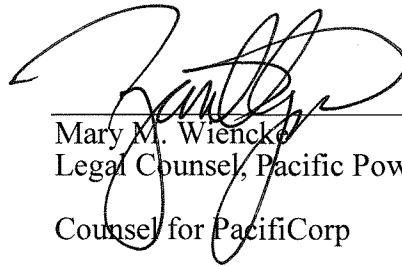
<sup>7</sup> PacifiCorp E-mail Request for Stay (September 21, 2011).  
<sup>8</sup> See ALJ Ruling Finalizing Issues List, UM 1610, Appendix A, p.2 (October 25, 2012).  
<sup>9</sup> Request at p.2.  
<sup>10</sup> Request at p.2.

1           Furthermore, the ALJ Ruling adopting an issues list in UM 1610 specifically directed  
2 parties to discuss and recommend what the Commission should do with various QF  
3 proceedings whose issues have now been moved into UM 1610.<sup>11</sup> Due to this and the  
4 foregoing, it continues to make sense to stay these proceedings until such time that the  
5 generic policy and legal issues raised herein are resolved. Once the generic policy and legal  
6 issues are determined in UM 1610, the issues in this docket may be resolved. As a result,  
7 there is no need to lift the stay originally issued in this docket.

8           **III. CONCLUSION**

9           The Commission should reject the Request because it could result in unnecessary  
10 duplicative litigation and because the basis for the original stay of the proceedings remains  
11 unchanged.

DATED: November 13, 2012



Mary M. Wiencke  
Legal Counsel, Pacific Power  
Counsel for PacifiCorp

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<sup>11</sup> ALJ Ruling Finalizing Issues List, UM 1610, p.2 (October 25, 2012).

## CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document, in Dockets UM 1546, on the date indicated below by email and/or US Mail, addressed to said parties at his or her last-known address(es) indicated below.

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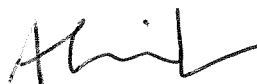
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DATED: November 13, 2012



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