

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1546

THREEMILE CANYON WIND I, LLC,))	
)	
Complainant,))	THREEMILE CANYON'S
)	ANSWER TO PACIFICORP'S
v.))	COUNTERCLAIMS
)	
PACIFICORP, dba PACIFIC POWER,))	
)	
Defendant.))	

1 Threemile Canyon Wind I, LLC ("Threemile Canyon") hereby submits the following
2 Answer to the Counterclaims of PacifiCorp in this proceeding. PacifiCorp's
3 counterclaims are set forth in paragraphs 82 through 113 of PacifiCorp's Answer,
4 Defenses, and Counterclaims.

5 1. Paragraph 82 of PacifiCorp's Answer states:
6
7 *PacifiCorp alleges paragraphs 4, 6, 9, 10, 25, 26, 48, 54,*
8 *57, 61, 62, 63, 65, and 69 of this answer to the extent of*
9 *PacifiCorp's admissions therein.*

10 Threemile Canyon admits the allegations.

11
12 2. Paragraph 83 of PacifiCorp's Answer states:
13
14 *The Commission has jurisdiction over claims brought by*
15 *PacifiCorp, as a public utility, against Threemile Canyon,*
16 *as an owner-operator of a QF, regarding sales by*
17 *Threemile Canyon's QF to PacifiCorp in Oregon. ORS*
18 *756.500; Roats v Golfside, ALJ Ruling, UM 1248 (Apr. 19,*
19 *2006) ("[ORS 756.500(5)] permits a public utility or*
20 *telecommunications utility to file a complaint against any*
21 *person, so long as the matter involves the utility's own*

THREEMILE CANYON'S ANSWER TO PACIFICORP'S COUNTERCLAIMS

1 *rates or service.”); ORS 758.505 to 555 (charging the*
2 *Commission with administering PURPA rates and services*
3 *of public utilities).*

4 Threemile Canyon admits that PacifiCorp is a “public utility” and that Threemile Canyon
5 is the owner-operator of a QF. The remaining allegations of the paragraph are
6 conclusions of law to which no response is warranted. Threemile Canyon notes,
7 however, that the decision of the ALJ in *Roats Water System v. Golfside Investments* is
8 not itself controlling authority in light of the subsequent decision of the Oregon Court of
9 Appeals, *Roats Water System v. Golfside Investments*, 225 Or App 618 (2009).

10

11 3. Paragraph 84 of PacifiCorp’s Answer states:

12

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

16 Threemile Canyon does not know what PacifiCorp means by “near Arlington, Oregon”
17 and whether that location is intended to characterize the “point of delivery” or the
18 “Dalreed load pocket,” and therefore denies that allegation. Threemile Canyon admits
19 the remainder of the allegations.

20

21 4. Paragraph 85 of PacifiCorp’s Answer states:

22

23 *PacifiCorp purchased such Threemile Canyon QF output*
24 *under the Short- Term PPA.*

25 Threemile Canyon admits the allegation.

26

27 5. Paragraph 86 of PacifiCorp’s Answer states:

28

29 *The Short-Term PPA is in the form of PacifiCorp’s*
30 *Commission-approved standard agreement for intermittent*
31 *resources with mechanical available guarantee.*

32 Threemile Canyon admits the allegation with the clarification that the Short-Term PPA
33 also includes an addendum (Addendum R – “Clarification of Contract Price”) that is not
34 part of the standard agreement for intermittent resources with mechanical available
35 guarantee.

36

37 6. Paragraph 87 of PacifiCorp’s Answer states:

38

39 *Pursuant to the Short-Term PPA, PacifiCorp has paid*
40 *Threemile Canyon for all Threemile Canyon QF net output*

1 *at the fixed avoided cost prices in Schedule 37 in effect*
2 *June 2009.*

3 Threemile Canyon lacks sufficient information regarding the truth or falsity of the
4 allegations, on that basis denies the allegations, and leaves PacifiCorp to the proof
5 thereof.

6
7 7. Paragraph 88 of PacifiCorp's Answer states:

8
9 *The fixed avoided cost price set forth in PacifiCorp's*
10 *Schedule 37 is calculated with a formula prescribed by the*
11 *Commission and intended by the Commission to represent*
12 *PacifiCorp's avoided cost, as that term is defined in 18*
13 *C.F.R. § 292.303 (2011).*

14 Threemile Canyon denies that "avoided cost" is defined in 18 C.F.R. § 292.303.
15 Threemile Canyon lacks sufficient information regarding the truth or falsity of the
16 remaining allegations, on that basis denies the allegations, and leaves PacifiCorp to the
17 proof thereof.

18
19 8. Paragraph 89 of PacifiCorp's Answer states:

20
21 *The Schedule 37 fixed avoided cost price was derived*
22 *without regard to, and makes no allowance for, third-party*
23 *transmission costs PacifiCorp must incur to make use of*
24 *Excess Generation from the Threemile Canyon QF.*

25 Threemile Canyon lacks sufficient information regarding the truth or falsity of the
26 allegations, on that basis denies the allegations, and leaves PacifiCorp to the proof
27 thereof.

28
29 9. Paragraph 90 of PacifiCorp's Answer states:

30
31 *Net output from the Threemile Canyon QF has at*
32 *unpredictable times exceeded, and likely will continue to*
33 *exceed unpredictably, all load served in the Dalreed load*
34 *pocket by up to 7.9 MW.*

35 Threemile Canyon lacks sufficient information regarding the truth or falsity of these
36 allegations and the intended meaning of "unpredictable," on those grounds denies the
37 allegations, and leaves PacifiCorp to the proof thereof.

38
39 10. Paragraph 91 of PacifiCorp's Answer states:

40

1 *Excess Generation Events have occurred in 2009, 2010,*
2 *and 2011.*

3 Threemile Canyon lacks sufficient information regarding the truth or falsity of the
4 allegations, on that basis denies the allegations, and leaves PacifiCorp to the proof
5 thereof.
6

7 11. Paragraph 92 of PacifiCorp's Answer states:
8

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

13 Threemile Canyon lacks sufficient information regarding the truth or falsity of this
14 allegation, on that basis denies the allegation, and leaves PacifiCorp to the proof thereof.
15

16 12. Paragraph 93 of PacifiCorp's Answer states:
17

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

24 Threemile Canyon lacks sufficient information regarding the truth or falsity of these
25 allegations, on that basis denies these allegations, and leaves PacifiCorp to the proof
26 thereof.
27

28 13. Paragraph 94 of PacifiCorp's Answer states:
29

30 *At present, PacifiCorp has expended over \$180,000 on*
31 *such BPA Transmission Services.*

32 Threemile Canyon lacks sufficient information regarding the truth or falsity of this
33 allegation, on that basis denies the allegation, and leaves PacifiCorp to the proof thereof.
34

35 14. Paragraph 95 of PacifiCorp's Answer states:
36

37 *Prior to PacifiCorp paying for BPA Transmission Services,*
38 *Threemile Canyon was aware that PacifiCorp acquired*
39 *such BPA Transmission Services in order to provide*
40 *transmission for the Threemile Canyon QF output during*
41 *Excess Generation Events.*

1 Threemile Canyon lacks sufficient information regarding the truth or falsity of these
2 allegations, on that basis denies these allegations, and leaves PacifiCorp to the proof
3 thereof.
4

5 15. Paragraph 96 of PacifiCorp's Answer states:
6

7 *PacifiCorp and Threemile Canyon agreed to disagree who*
8 *must pay for BPA transmission necessary to move Excess*
9 *Generation out of the Dalreed load pocket.*

10 Threemile Canyon admits that in the Short-Term PPA the parties reserved their right to
11 dispute who would pay incremental third-party transmission costs when the Short-Term
12 PPA expires. Threemile Canyon does not know what "agreed to disagree" is otherwise
13 intended to mean, and on that basis denies any other implication of the allegation.
14

15 16. Paragraph 97 of PacifiCorp's Answer states:
16

17 *PacifiCorp would not have incurred the costs of BPA*
18 *Transmission Services if Threemile Canyon were not*
19 *delivering to PacifiCorp's system at the Dalreed load*
20 *pocket (or another PacifiCorp load pocket).*

21 Threemile Canyon lacks sufficient information regarding the truth or falsity of these
22 allegations, on that basis denies these allegations, and leaves PacifiCorp to the proof
23 thereof.
24

25 17. Paragraph 98 of PacifiCorp's Answer states:
26

27 *In Docket No. UM 1129, the Commission adopted standard*
28 *terms and conditions applicable to an investor-owned*
29 *utility's purchase of net output from QFs with capacity of*
30 *10 MW or less.*

31 Threemile Canyon admits the allegation.
32

33 18. Paragraph 99 of PacifiCorp's Answer states:
34

35 *In Docket No. UM 1129, the Commission did not address*
36 *whether a utility must bear the cost of third-party*
37 *transmission service needed to move QF output from the*
38 *point of delivery to load.*

39 Threemile Canyon admits only that in UM 1129 the Commission was not expressly asked
40 to address whether a utility must bear the cost of third-party transmission needed to move

1 QF output from the point of delivery to load and did not expressly address the issue, and
2 denies any further implication.

3
4 19. Paragraph 100 of PacifiCorp's Answer states:

5
6 *Oregon statutes and Commission regulations do not*
7 *expressly require PacifiCorp to pay the cost of third-party*
8 *transmission service required to move QF output from the*
9 *point of delivery to load.*

10 Threemile Canyon admits that no Oregon statute or Commission regulations contains an
11 "express" requirement that PacifiCorp must "pay the cost of third-party transmission
12 service required to move QF output from the point of delivery to load" and Threemile
13 Canyon denies any implication that Threemile Canyon therefore is legally required to pay
14 such costs.

15
16 20. Paragraph 101 of PacifiCorp's Answer states:

17
18 *PacifiCorp's Schedule 37 tariff does not expressly require*
19 *PacifiCorp to pay the cost of third-party transmission*
20 *service required to move QF output from the point of*
21 *delivery to load.*

22 Threemile Canyon admits that Schedule 37 contains no "express" requirement that
23 PacifiCorp must "pay the cost of third-party transmission service required to move QF
24 output from the point of delivery to load" and Threemile Canyon denies any implication
25 that Threemile Canyon therefore is legally required to pay such costs.

26
27 21. Paragraph 102 of PacifiCorp's Answer states:

28
29 *The Short-Term PPA does not expressly allocate third-*
30 *party transmission costs PacifiCorp must incur to make use*
31 *of Excess Generation from the Threemile Canyon QF.*

32 Threemile Canyon admits that the Short-Term PPA does not expressly allocate third-
33 party transmission costs, and Threemile Canyon denies any implication that PacifiCorp
34 therefore contains no "express" requirement that PacifiCorp must "pay the cost of third-
35 party transmission service required to move QF output from the point of delivery to load"
36 and Threemile Canyon denies any implication that Threemile Canyon therefore is legally
37 required to pay such costs.

38
39 22. Paragraph 103 of PacifiCorp's Answer states:

40
41 *Under PURPA, the maximum rate that a utility can be*
42 *required to pay for QF output is the utility's avoided cost.*

1 American Paper Institute, Inc. v. American Elec. Power
2 Serv. Corp., 461 U.S. 402, 413 (1983); Connecticut Light
3 & Power Co., 70 FERC ¶ 61,012 (1995). In other words,
4 PURPA requires that the utility and its retail customers be
5 indifferent or neutral to the transaction (the "ratepayer
6 neutrality principle").

7 The allegations are conclusions of law to which no response is required.
8

9 23. Paragraph 104 of PacifiCorp's Answer states:
10

11 *In Docket No. UM 1401 (Order No. 10-132, 7) and in*
12 *Docket No. AR 521 (Order No. 09-196, 5), the Commission*
13 *concluded that QFs must pay for system upgrades required*
14 *to mitigate any adverse system impacts resulting from the*
15 *QF interconnection.*

16 The allegations state conclusions of law which do not require response. To the extent the
17 allegations purport to factually summarize Commission Orders, Threemile Canyon denies
18 the allegations on the grounds that the Commission's Orders speak for themselves.
19 Threemile Canyon further denies any implication that Docket No. UM 1401 or Order No.
20 10-132 are applicable to the Threemile Canyon QF. Threemile Canyon further denies
21 any implication that interconnection costs, which PacifiCorp admits Threemile Canyon
22 has paid in full under the terms of the Distribution Generator Interconnection Agreement
23 (PacifiCorp's Answer, Defenses and Counterclaims, para. 28), are at issue in this
24 proceeding.
25

26 24. Paragraph 105 of PacifiCorp's Answer states:
27

28 *The Commission's approach in Docket No. UM 1401 and*
29 *Docket No. AR 521 reflects a policy determination that*
30 *(consistent with PURPA's ratepayer-neutrality principle) a*
31 *QF must bear those costs that are directly associated with*
32 *its interconnection.*

33 The allegations state conclusions of law which do not require response.
34 To the extent the allegations purport to factually summarize Commission
35 Orders, Threemile Canyon denies the allegations on the grounds that the
36 Commission's Orders speak for themselves. Threemile Canyon further
37 denies any implication that Docket No. UM 1401 is applicable to the
38 Threemile Canyon QF. Threemile Canyon further denies any implication
39 that interconnection costs, which PacifiCorp admits Threemile Canyon has
40 paid in full under the terms of the Distribution Generator Interconnection
41 Agreement (PacifiCorp's Answer, Defenses and Counterclaims, para. 28),
42 are at issue in this proceeding.

1 25. Paragraph 106 of PacifiCorp's Answer states:
2

3 *This conclusion ensured that utilities and their retail*
4 *customers are not required to pay more than avoided cost*
5 *and therefore remain indifferent to the transaction.*

6 The allegations state conclusions of law which do not require response. To the extent the
7 allegations purport to factually summarize Commission Orders, Threemile Canyon denies
8 the allegations on the grounds that the Commission's Orders speak for themselves.
9 Threemile Canyon further denies any implication that Docket No. UM 1401 is applicable
10 to the Threemile Canyon QF. Threemile Canyon further denies any implication that
11 interconnection costs, which PacifiCorp admits Threemile Canyon has paid in full under
12 the terms of the Distribution Generator Interconnection Agreement (PacifiCorp's
13 Answer, Defenses and Counterclaims, para. 28), are at issue in this proceeding.
14

15 26. Paragraph 107 of PacifiCorp's Answer states:
16

17 *Applying the policy discussed above to the question of who*
18 *must pay for third-party transmission required to move QF*
19 *output to load, the Commission can and should conclude*
20 *that QFs are required to bear such costs.*

21 Threemile Canyon denies any implication in this allegation that the Commission can or
22 should in this proceeding be determining policy with respect to QFs generally. Threemile
23 Canyon denies that the Commission can or should require Threemile Canyon to bear the
24 costs of third-party transmission incurred by PacifiCorp with respect to Excess
25 Generation Events for the Threemile Canyon QF.
26

27 27. Paragraph 108 of PacifiCorp's Answer states:
28

29 *PacifiCorp re-alleges paragraphs 98-103.*

30 Threemile Canyon incorporates by reference its responses to paragraphs 98-103 of
31 PacifiCorp's Answer.
32

33 28. Paragraph 109 of PacifiCorp's Answer states:
34

35 *The Short-Term PPA requires PacifiCorp to purchase all*
36 *net output from the Threemile Canyon QF or else default*
37 *on the Short-Term PPA, even during an Excess Generation*
38 *Event.*

39 Threemile Canyon admits the allegations.
40

41 29. Paragraph 110 of PacifiCorp's Answer states:

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

5 To the extent the allegation is a legal conclusion based on the terms of the Short-Term
6 PPA, it requires no response. To the extent it is a factual allegation, Threemile Canyon
7 does not know what PacifiCorp means by “makes no allowance” and denies the
8 allegation as unduly vague.

9
10 30. Paragraph 111 of PacifiCorp’s Answer states:

11
12 *When PacifiCorp pays Threemile Canyon the Schedule 37*
13 *fixed avoided cost rate for net output from the Threemile*
14 *Canyon QF and also pays for BPA Transmission Services*
15 *necessary to move Excess Generation to a place on*
16 *PacifiCorp’s system where it can be used to serve load,*
17 *PacifiCorp is paying more than its avoided cost for*
18 *Threemile Canyon QF net output.*

19 Threemile Canyon admits that any payments made by PacifiCorp to BPA for
20 transmission services are in addition to any payments to Threemile Canyon for the output
21 of the QF under the terms of Schedule 37. Threemile Canyon otherwise denies the
22 allegations.

23
24 31. Paragraph 112 of PacifiCorp’s Answer states:

25
26 *Threemile Canyon’s refusal to pay for BPA Transmission*
27 *Services necessary to move Excess Generation to a place*
28 *on PacifiCorp’s system where it can be used to serve load*
29 *violates Section 210(b) of PURPA (16 U.S.C. 824a-3(b)),*
30 *18 C.F.R. § 292.304(a)(2), Connecticut Light & Power Co.,*
31 *70 FERC 61,012 (1995), and Oregon’s implementation of*
32 *PURPA in ORS 758.505 to 758.555, Division 29 of the*
33 *Commission’s administrative rules, relevant Commission*
34 *orders, and PacifiCorp’s Schedule 37 by requiring*
35 *PacifiCorp to pay more than avoided costs for Threemile*
36 *Canyon QF net output.*

37 The allegation is a conclusion of law to which no response is required.

38
39 32. Paragraph 113 of PacifiCorp’s Answer states:

40
41 *WHEREFORE, PacifiCorp seeks an order from the*
42 *Commission:*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

a) *Declaring that:*

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

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

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

b) *Or alternatively, declaring that:*

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

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

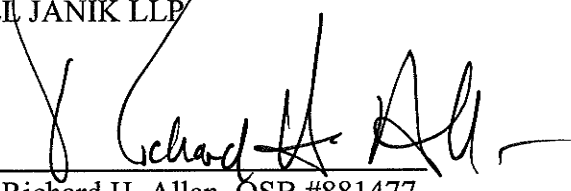
c) *And, any other relief the Commission deems appropriate.*

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

1 Respectfully submitted this 8th day of August, 2011.

2
3
4
5
6
7
8
9
10
11
12

BALL JANIK LLP

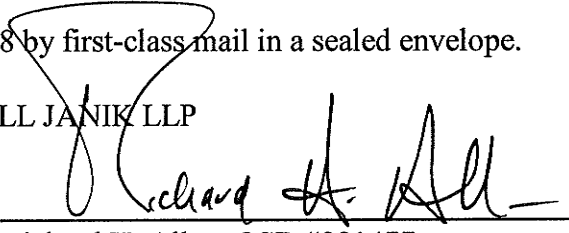
By: 

Richard H. Allan, OSB #881477
101 SW Main Street, Suite 1100
Portland, OR 97204
Telephone: (503) 228-2525
Email Address: rallan@bjllp.com
Of Attorneys for Complainant,
Threemile Canyon Wind I, LLC

CERTIFICATE OF FILING

I hereby certify that on August ^{8th}, 2011, I filed the foregoing THREEMILE CANYON'S ANSWER TO PACIFICORP'S COUNTERCLAIMS (Case UM 1546) with the Public Utility Commission; Att'n Filing Center, by electronic transmission and mailed the original and five copies to the Public Utility Commission, Att'n. Filing Center, 550 Capitol Street NE, No. 215, P.O. Box 2148, Salem, Oregon 97308 by first-class mail in a sealed envelope.

BALL JANIK LLP

By: 
Richard H. Allan, OSB #881477
Of Attorneys for Complainant
Threemile Canyon Wind I, LLC

CERTIFICATE OF SERVICE

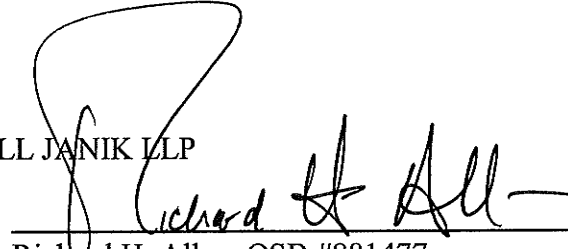
I hereby certify that on August ^{8th}, 2011, I served a true and correct copy of the foregoing THREEMILE CANYON'S ANSWER TO PACIFICORP'S COUNTERCLAIMS (Case UM 1546) by electronic transmission and by first-class mail on the following individuals:

PacifiCorp Oregon Dockets
825 NE Multnomah Street, Suite 2000
Portland, OR 97932
oregon.dockets@pacificorp.com

Jordan A. White
Legal Counsel
1407 W. North Temple, Suite 320
Salt Lake City, UT 84116
jordan.white@pacificorp.com

Jeffrey S. Lovinger
Kenneth E. Kaufmann
Lovinger & Kaufmann
825 NE. Multnomah, Suite 925
Portland, OR 97232
lovinger@lklaw.com
kaufmann@lklaw.com

BALL JANIK LLP

By: 
Richard H. Allan, OSB #881477
Of Attorneys for Complainant
Threemile Canyon Wind I, LLC

CERTIFICATE OF FILING AND SERVICE