

TAYLOR Annette

Subject: FW: Threemile Canyon v. PacifiCorp, OPUC Docket No. UM 1546

-----Original Message-----

From: Jeff Lovinger [<mailto:lovinger@lklaw.com>]
Sent: Wed 9/21/2011 4:51 PM
To: WALLACE Sarah K.; Richard Allan
Cc: Jordan White; Ken Kaufmann
Subject: Threemile Canyon v. PacifiCorp, OPUC Docket No. UM 1546

Judge Wallace:

On August 15, 2011, PacifiCorp and Threemile Canyon participated in a prehearing conference in UM 1546. During that conference, the parties took the view that there are some legal issues in the case that might be resolved on summary judgment after testimony but without the need for discovery. From PacifiCorp's perspective, the question we were interested in addressing in this manner is the question of whether it violates PURPA to require PacifiCorp to both pay Schedule 37 rates and pay for third-party transmission needed to move QF output from the point of delivery to PacifiCorp load. We think this is the "core legal question" in the case.

On September 8, 2011, the Commission initiated UE 235 to investigate the issues raised by PacifiCorp Advice No. 11-011. Commission staff is now working with the UE 235 parties to develop a scope and schedule for Phase One of the investigation. The current proposal is for Phase One to answer the very "core legal question" identified above. Under the current proposal, the parties would submit testimony in October and November and brief the question in December and January.

Given that the Commission intends to answer the "core legal question" in a general investigation, PacifiCorp believes it is undesirable and perhaps inappropriate to answer the same question through an expedited summary judgment process in UM 1456. We believe that a fair and efficient way to move forward is to set over the current schedule for filing of testimony in UM 1456 until the Commission issues its legal ruling in Phase One of UE 235. We are hopeful Threemile Canyon will agree to set over the schedule in UM 1456 and participate in resolution of the "core legal question" in UE 235. If Threemile Canyon is agreeable to such an approach, PacifiCorp Merchant would be willing to enter into an extension of the short-term PPA to preserve the status quo during the resulting delay in UM 1456.

PacifiCorp respectfully requests an immediate telephone conference to discuss whether the current procedural schedule in UM 1546 continues to make sense in light of UE 235. If it is decided that the parties should proceed with testimony in UM 1546 before resolution of Phase One of UE 235, then PacifiCorp respectfully requests a three week extension of the current deadlines in UM 1456 in order to cope with the competing time demands associated with (i) UM 1546, (ii) UE 235, and (iii) the Commission-mandated settlement negotiations with the Butter Creek Projects (regarding third-party transmission costs).

PacifiCorp is available to participate in a telephone status conference anytime this week, anytime September 26 except from 10-12, or anytime September 27.

Thank you,

Jeff

Jeffrey S. Lovinger
Lovinger Kaufmann LLP
825 NE Multnomah, Suite 925
Portland, OR 97232-2150
(503) 230-7715 (office)
(503) 972-2921 (fax)
(503) 230-7120 (direct)
www.LKLaw.com
lovinger@LKLaw.com

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