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November 6, 2012

Richard H. Allan  
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**By Electronic Transmission and  
First Class Mail**

Filing Clerk  
Public Utilities Commission  
Filing Center  
550 Capitol Street NE; # 215  
PO Box 2148  
Salem, OR 97308

Re: Threemile Canyon Wind I, LLC v. PacifiCorp, dba Pacific Power  
Docket UM 1546

Dear Filing Clerk:

This firm represents Complainant, Threemile Canyon Wind I, LLC, in Docket UM 1546. Enclosed are the original and one copy of the Threemile Canyon's Request to Certify Ruling for Appeal to Commission.

Thank you for your courtesies in this matter.

Very truly yours,

Richard H. Allan

RHA:crs

Enclosures

cc by email w/encl: PacifiCorp Oregon Dockets  
Jeffrey S. Lovinger  
Mary Wiencke

:::ODMA\PCDOCS\PORTLAND\869281\1

1 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

2 **UM 1546**

3  
4 **THREEMILE CANYON WIND I, LLC,**  
5 **Complainant,**  
6 **v.**  
7 **PACIFICORP, dba, PACIFIC POWER,**  
8 **Defendant.**

**REQUEST TO CERTIFY RULING FOR  
APPEAL TO COMMISSION**

9  
10 Pursuant to OAR 860-001-0110 and OAR 860-001-0090, Complainant Three Mile  
11 Canyon Wind I, LLC requests that the Administrative Law Judge certify to the Commission for  
12 its review the issues raised by the ruling of October 22, 2012, a copy of which is attached hereto.

13 1. Applicable Law

14 Under OAR 860-001-0090(1)(j), the Administrative Law Judge has the authority to  
15 certify a question to the Commission for consideration and disposition. OAR 860-001-0110  
16 describes the process and grounds for certification:

17 “(1) A party may request that the ALJ certify an ALJ’s written  
18 or oral ruling for the Commission’s consideration. A party must  
request certification of a ruling within 15 days of the date of  
service of the ruling or date of the oral ruling.

19 “(2) The ALJ must certify the ruling to the Commission under  
20 OAR 860-001-0090 if the ALJ finds that:

21 “(a) The ruling may result in substantial detriment to the public  
interests or undue prejudice to a party;

22 “(b) The ruling denies or terminates a person’s participation; or

23 “(c) Good cause exists for certification.”

24 2. Timeliness of Request

25 This request is being made within 15 days of October 22, 2012, the date of service of the  
26 written ruling in question. Therefore, this request is timely under OAR 860-001-0110(1).

1 3. Grounds for Certification

2 The ruling will result in undue prejudice to Complainant for the reasons set forth below.

3 (a) UM 1610 Does Not Provide an Adequate Forum for Resolving the Issues Raised  
4 in the Complaint.

5 The Administrative Law Judge's ruling states that in the UM 1610 proceeding, "the  
6 Commission will likely resolve the third-party transmission issue raised in this complaint."  
7 Complainant does not see how that could be the case. Complainant's contention in the UM 1546  
8 complaint is that PacifiCorp's Schedule 37 power purchase agreement for small qualifying  
9 facilities did not, at the time Complainant requested a power purchase agreement with PacifiCorp  
10 under Schedule 37, provide for adjustments to rates to account for third-party transmission costs.  
11 Complainant, in other words, believes that it is legally entitled to the rates in that Schedule 37  
12 contract, without adjustment.

13 As relevant to third-party transmission costs, however, the finalized issues list for UM  
14 1610, released on October 25, 2012, identifies the following issue:

15 "Should the costs or benefits associated with third party  
16 transmission be included in the calculation of avoided cost prices  
or otherwise accounted for in the standard contract?"

17 That is a policy question regarding what the terms of the standard contract should be in  
18 the future. It does not even purport to address whether the Schedule 37 provisions in effect when  
19 Complainant requested a PPA from PacifiCorp entitled Complainant to the Schedule 37 rates  
20 without adjustment for third party transmission costs.

21 Moreover, it is the nature of a wide-ranging policy debate – such as the general  
22 investigation in UM 1610 – that the parties will compromise on one issue in return for an  
23 advantageous outcome on a different issue. Complainant, however, owns only one small QF  
24 wind project in Oregon, and that project is already developed. It has no interest in policy  
25 tradeoffs, only in determining its legal rights with regard to its existing project.

1 Finally, the legal costs of participating in an extended general investigation, already  
2 populated by numerous parties, are likely to be significantly higher than the cost of resolving the  
3 UM 1546 complaint, and all for the doubtful prospect that UM 1610 – possibly years from now –  
4 will provide a clear resolution of the legal issues raised in the complaint.

5 (b) Interim Power Purchase Agreements between PacifiCorp and Complainant do not  
6 Alleviate the Prejudice to Complainant

7 The Administrative Law Judge’s ruling concludes that there is no prejudice to  
8 Complainant from the prolonged stay of UM 1546 because PacifiCorp “has extended the short-  
9 term power purchase agreement (PPA) to maintain the status quo while the delay continues.”  
10 Complainant notes that PacifiCorp has asserted counterclaims in UM 1546, alleging that it is  
11 entitled to recover from Complainant the third-party transmission costs that it is now incurring.  
12 In other words, the only “status quo” that is being maintained is a situation in which a small QF  
13 facility faces on ever-increasing contingent liability (the counterclaim for third-party  
14 transmission costs) with no realistic prospect for resolution.

15 OAR 860-001-0110(3)(c) also requires that the ALJ certify the ruling to the Commission  
16 if “good cause exists for certification.” Complainant believes that good cause exists in that the  
17 UM 1610 investigation was initiated at the Commission’s request. The last such general  
18 investigation into QF contracting, UM 1129, lasted several years. Complainant reasonably seeks  
19 a determination from the body that initiated UM 1610 as to whether it was really the  
20 Commission’s intent to sweep UM 1546 into UM 1610. In other words, does the Commission  
21 believe that a general investigation intended to shape the future of QF contracting is the  
22 appropriate forum for resolving a fact’s specific and fundamentally adjudicative complaint  
23 proceeding regarding the rights and obligations of the two parties to PPA under a preexisting  
24 small QF tariff?

1 4. Conclusion

2 For the reasons set forth above, Complainant respectfully requests that the Administrative  
3 Law Judge certify to the Commission the question whether the stay in UM 1546 should be lifted.

4 Respectfully submitted this 6<sup>th</sup> day of November, 2012.

5  
6 By: 

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1546

THREEMILE CANYON WIND I, LLC,

vs.

RULING

PACIFICORP, dba PACIFIC POWER,

Pursuant to ORS 756.500.

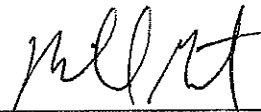
**DISPOSITION: MOTION TO LIFT STAY DENIED**

On September 18, 2012, Threemile Canyon Wind I, LLC (Complainant) filed a motion seeking relief from the stay in these proceedings. Complainant notes that this matter was stayed last October pending the outcome of docket UE 235, which itself has been inactive since December 2011. Complainant requests the stay in this complaint be lifted and a conference be scheduled to establish a new schedule.

On September 25, 2012, PacifiCorp, dba Pacific Power, filed a response in opposition. Pacific Power notes that the third-party transmission issue raised here will likely be addressed in a newly opened generic docket, UM 1610, to address issues related to Qualifying Facilities (QF). Pacific Power also notes that complainant is not prejudiced by the stay, because the company has extended the short-term power purchase agreement (PPA) to maintain the status quo while the delay continues.

Complainant's motion is denied. As Pacific Power notes, the Commission recently opened docket UM 1610 to address QFs issues, generally. Although the issues list in that docket has not been finalized, the Commission will likely resolve the third-party transmission issue raised in this complaint. Because that matter affects utilities and QFs other than Pacific Power and Complainant, all related legal and policies issues should be addressed in docket UM 1610. Furthermore, because Pacific Power has been willing to extend the short-term PPA to maintain the status quo, there is no need to lift the stay originally issued in this docket.

Dated this 22nd day of October, 2012, at Salem, Oregon.



Michael Grant  
Chief Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on November 6, 2012, I served a true and correct copy of the foregoing Request to Certify Ruling for Appeal to Commission by electronic transmission on the individuals listed below:

PacifiCorp Oregon Dockets  
oregondockets@pacificorp.com

Mary Wiencke  
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Jeffrey S. Lovinger  
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By: 

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Of Attorneys for Complainant  
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