

March 29, 2013

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

Attn: Filing Center

**RE: UM 1610 – Investigation into Qualifying Facility Contracting and Pricing
PacifiCorp’s Motion to Strike**

PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) encloses for filing in the above-referenced docket PacifiCorp’s Motion to Strike regarding certain portions of the testimony of Threemile Canyon Wind I, LLC witness John A. Harvey.

Please contact Joelle Steward, Director of Pricing, Cost of Service and Regulatory Operations, at (503) 813-5542 for questions on this matter.

Sincerely,



William R. Griffith
Vice President, Regulation

Enclosure

Cc: Service List – UM 1610

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document, in Docket UM 1610, 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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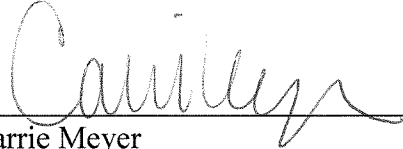
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DATED: March 29, 2013



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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1610

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation Into Qualifying Facility
Contracting and Pricing

PACIFICORP'S MOTION TO STRIKE

1 **I. INTRODUCTION**

2 Under OAR 860-001-0420, PacifiCorp, d/b/a Pacific Power (PacifiCorp or
3 Company), moves to strike certain portions of the testimony of Threemile Canyon Wind
4 I, LLC (Threemile Canyon) witness John A. Harvey. Mr. Harvey's testimony in this
5 docket circumvents the Public Utility Commission of Oregon's (Commission) order to
6 stay proceedings in docket UM 1546. In addition to being a thinly-veiled effort to
7 introduce stayed proceedings in a different forum, the testimony introduces extraneous
8 issues and disputed immaterial facts that are inapplicable to the resolution of the legal and
9 policy issues pending in this docket.

10 Specifically, the portions of Mr. Harvey's testimony that detail Threemile
11 Canyon's dispute with the Company and Threemile Canyon's contentions with respect to
12 the dispute's resolution should be stricken. Threemile Canyon's attempt to include this
13 testimony in this docket violates the Commission's order to stay in docket UM 1546. The
14 Issues List for this proceeding establishes and limits the scope of the proceeding. Factual
15 issues specific to Threemile Canyon's dispute with the Company are outside the scope of

1 the specific issues being considered in this docket.

2 The Company has conferred with Threemile Canyon and has been unable to reach
3 an agreement to resolve this dispute.

4 **II. BACKGROUND**

5 On June 27, 2011, the Company filed Advice No. 11-011, seeking to revise
6 Schedule 37 and make modifications that would designate eligible Qualifying Facilities
7 (QFs) larger than 100 kW as a network resource that could be charged transmission costs
8 to move the QF's output to the purchasing utility's load in some circumstances. The
9 Commission opened docket UE 235 to investigate the Company's proposed revisions.

10 On July 1, 2011, Threemile Canyon filed a complaint against the Company to
11 resolve issues between the parties concerning the allocation of third-party transmission
12 costs under an unexecuted standard long-term power purchase agreement (PPA). The
13 Commission opened docket UM 1546 to address Threemile Canyon's complaint. The
14 Company then requested a stay of UM 1546 because a core legal issue of the docket was
15 being addressed in UE 235, presenting the risk of inconsistent decisions. The
16 Administrative Law Judge (ALJ) granted the stay on October 6, 2011.

17 On June 29, 2012, the Commission opened docket UM 1610 to investigate QF
18 contracting and pricing generally. The Issues List established in this docket incorporated
19 the issues that were to be addressed in UE 235, because third-party transmission cost
20 issues affect utilities and QFs other than the Company and Threemile Canyon. Threemile
21 Canyon did not participate in developing the Issues List. After two workshops, the
22 parties who did participate reached agreement as to the relevant issues that the
23 Commission should address. The list of issues includes 4.B (whether the costs or benefits

1 associated with third party transmission should be included in the calculation of avoided
2 cost process or otherwise accounted for in the Standard Contract), 6.B (when a legally
3 enforceable obligation arises), and 6.E (how contracts should address mechanical
4 availability).¹

5 On September 18, 2012, after opting not to participate in the development of the
6 Issues List, Threemile Canyon filed a motion seeking relief from stay of the proceedings
7 in UM 1546. The ALJ denied Threemile's motion, reasoning that the Commission
8 recently opened docket UM 1610 to address QF issues generally, and that the third-party
9 transmission issue raised in Threemile Canyon's complaint would likely be resolved in
10 UM 1610. The ALJ further stated that because the third-party transmission matter affects
11 utilities and QFs other than Pacific Power and Threemile Canyon, all related legal issues
12 should be addressed in docket UM 1610.² The Commission, affirming the ALJ's decision
13 to deny Threemile Canyon's request to lift the stay, emphasized that both UM 1546 and
14 UM 1610 address the "legal question whether the provisions of [the Public Utility
15 Regulatory Policies Act ("PURPA")] prohibit a utility from paying both avoided cost
16 rates for a QF's output and related transmission costs to a third-party to move that
17 output," and that UM 1610 was the appropriate docket to resolve this "threshold legal
18 issue."³ In other words, UM 1546 was stayed, rather than dismissed, so that UM 1610
19 could decide the threshold legal issue presented in UM 1546, potentially disposing of the
20 dispute between Pacific Power and Threemile Canyon entirely.

¹ *Re Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Ruling (Oct. 25, 2012).

² *Threemile Canyon Wind I, LLC vs. PacifiCorp, dba Pacific Power*, Docket No. UM 1546, Ruling (Oct. 22, 2012).

³ *Threemile Canyon Wind I, LLC vs. PacifiCorp, dba Pacific Power*, Docket No. UM 1546, Order at 3 (Dec. 10, 2012).

1 On March 18, 2013, Threemile Canyon filed the testimony of its witness,
2 Mr. Harvey, in this docket. Mr. Harvey's testimony is, essentially, a legal brief arguing
3 Threemile Canyon's case against the Company—the case that is the subject of stayed
4 UM 1546. Not only does Mr. Harvey's testimony circumvent the stay ordered in
5 UM 1546, but a large portion of the testimony goes far beyond the scope of issues 4.B
6 and 6.E by attempting to inject matters into the proceeding that are not before the
7 Commission.

8 **III. MOTION**

9 **A. The ALJ Should Strike Threemile Canyon's Testimony Because It Violates**
10 **the Commission's Order to Stay UM 1546.**

11 The ALJ stayed UM 1546, the docket addressing Threemile Canyon's dispute
12 with the Company concerning the allocation of third-party transmission costs under its
13 standard PPA.⁴ The ALJ entered the stay because of the possibility that a "core legal
14 issue" in docket UM 1546, whether PURPA prohibits a utility from paying both avoided
15 cost rates and related transmission costs to a third party for a QF's output, would be
16 addressed in a separate docket, UE 235, and because there was a risk of inconsistent
17 decisions if UM 1546 were to proceed.⁵ Similarly, the ALJ did not lift the stay because
18 UM 1610 had been opened to address "QF issues, generally," and the third-party
19 transmission issue at the core of UM 1546 would likely be resolved in UM 1610. The
20 ALJ ordered that all related legal and policy issues must be addressed in UM 1610.⁶

⁴ *Threemile Canyon Wind I, LLC vs. PacifiCorp, dba Pacific Power*, Docket No. UM 1546, Ruling (Oct. 6, 2011).

⁵ *Threemile Canyon Wind I, LLC vs. PacifiCorp, dba Pacific Power*, Docket No. UM 1546, Prehearing Conference Memorandum (Sept. 28, 2011).

⁶ *Threemile Canyon Wind I, LLC vs. PacifiCorp, dba Pacific Power*, Docket No. UM 1546, Ruling (Oct. 22, 2012).

1 Mr. Harvey's testimony is primarily dedicated to (1) describing Threemile
2 Canyon's ongoing dispute with the Company concerning the allocation of third-party
3 transmission costs under the standard PPA and (2) arguing that the Company's stance on
4 the issues in its dispute with Threemile Canyon is wrong. For example, Mr. Harvey
5 states that "[s]ince 2009, PacifiCorp has refused to execute the standard long-term power
6 purchase agreement approved by the Commission in UM 1129 * * * unless Threemile
7 Canyon agrees to pay for BPA Transmission Service. * * * PacifiCorp has erroneously
8 asserted that the Standard Contract terms * * * are unlawful. * * *" Threemile/100,
9 Harvey/2-3. Mr. Harvey's testimony then delves further into Threemile Canyon's dispute
10 by arguing that Pacific Power is not meeting its legal obligations to Threemile Canyon
11 and is acting in bad faith:

12 "Because (a) Threemile Canyon has committed to sell all its output
13 to PacifiCorp, but (b) PacifiCorp has refused to execute the Standard
14 Contract with Threemile Canyon; (c) PacifiCorp has failed to act in good
15 faith and (d) consequently, Threemile Canyon's commitment to Sell to
16 PacifiCorp has caused a non-contractual legally enforceable obligation in
17 the form of the Standard Contract to exist between Threemile Canyon and
18 PacifiCorp, with pricing as detailed in Addendum R of the Short Term
19 PPA between PacifiCorp and Threemile." Threemile/100, Harvey/8-9.

20 Not only does Mr. Harvey offer factual assertions and legal conclusions that are
21 specific to Threemile Canyon's stayed dispute with the Company, but he specifically
22 references Threemile Canyon's complaint and Pacific Power's answer filed in UM 1546
23 in advancing his arguments. Threemile/100, Harvey/22-23. For example, Mr. Harvey
24 alleges that the Company's answer filed in UM 1546 "demonstrates its lack of
25 understanding of how PURPA and avoided cost based rates are to work." Threemile/100,
26 Harvey/22.

27 Mr. Harvey's testimony amounts to an attempt to force the ALJ to address the

1 fact-specific allegations presented in Threemile Canyon's complaint against the Company
2 in UM 1546, even though the ALJ and the Commission made clear that the Commission
3 will not adjudicate the dispute until it finishes its general investigation of the threshold
4 legal issues in UM 1610. In other words, Threemile Canyon is attempting to circumvent
5 the stay in UM 1546 by litigating the matters at issue in that proceeding in a different
6 forum. Threemile Canyon's submission of Mr. Harvey's testimony violates the
7 Commission's order to stay UM 1546. Therefore, the ALJ should strike the portions of
8 Mr. Harvey's testimony that describe Threemile Canyon's dispute with the Company in
9 UM 1546, or that make arguments that relate specifically to how the Commission should
10 resolve the issues in dispute in UM 1546.⁷

11 **B. The ALJ Should Strike Threemile Canyon's Testimony Because It Exceeds**
12 **the Scope of the Issues to be Considered in UM 1610.**

13 The Commission will not consider evidence that exceeds the scope of the issues
14 defined in a particular proceeding.⁸ Furthermore, the Commission's rules provide that
15 evidence may be excluded if it is irrelevant or will cause unfair prejudice or confusion of
16 the issues. OAR 860-001-0450(1). Evidence that exceeds the scope of the issues to be
17 considered in a proceeding is not only irrelevant, but risks unfair prejudice and confusion
18 of the issues and should be excluded.

19 Mr. Harvey contends that his testimony responds to the issues to be addressed in
20 the proceeding. Specifically, Mr. Harvey claims that his testimony is relevant to issues
21 4.B, 6.B, and 6E. It is difficult to understand how Mr. Harvey's summary of the

⁷ See the attached copy of Mr. Harvey's testimony for the specific portions of the testimony that the ALJ should strike.

⁸ *Re PGE Petition for a Declaratory Ruling*, Docket No. DR 32, Order No. 05-1064 (Oct. 5, 2005) ("[T]he facts to be considered in this docket are limited to those asserted by PGE in its Petition. For this reason, we strike the contested portions of the City's brief * * *").

1 intricacies of the dispute between Threemile Canyon and the Company, and his legal
2 conclusions as they relate to its resolution, are within the scope of the broad policy
3 questions. While Threemile Canyon may argue that its dispute with Company illustrates
4 why the ALJ should adopt its legal positions with respect to the issues at the center at
5 UM 1610, this argument is unavailing. As the Commission pointed out, UM 1610's
6 purpose is to decide the "threshold *legal* issue" whether the PURPA prohibits a utility
7 from paying both avoided cost rates and related transmission costs to a third party for a
8 QF's output.⁹ Because this is a question of law and policy rather than one of fact,
9 specifics of Threemile Canyon's dispute with the Company are irrelevant. Furthermore,
10 to the extent that Threemile Canyon believes it is appropriate to add different issues for
11 consideration in this proceeding, it should have done so by participating in creating the
12 Issues List. Having foregone that opportunity, Threemile Canyon should not now be
13 permitted to enlarge the issues in dispute. Adding new issues at this stage of the
14 proceeding is prejudicial because the Company did not have an opportunity to address
15 them through the submission of direct testimony.

16 Issue 4.B. asks: "Should the costs or benefits associated with third party
17 transmission be included in the calculation of avoided cost prices or otherwise accounted
18 for in the standard contract?"¹⁰ Mr. Harvey's testimony goes beyond the scope of this
19 issue. For example, after Mr. Harvey's recital of issue 4.B. and his answer to the question
20 it poses, he states:

21 "A QF may be assessed transmission charges only in one very limited
22 circumstance, which is not present *here* [meaning in its dispute with

⁹ *Threemile Canyon Wind I, LLC vs. PacifiCorp, dba Pacific Power*, Docket No. UM 1546, Order at 3 (Dec. 10, 2012) (emphasis added).

¹⁰ *Re Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Ruling (Oct. 25, 2012).

1 Pacific Power] * * * because Threemile Canyon is selling its output
2 directly to * * * PacifiCorp. * * * I conclude that since Threemile Canyon
3 had already committed to making a * * * Standard Contract sale to
4 PacifiCorp, it is impermissible for PacifiCorp to adjust the standard
5 contract rate for QF purchases or to otherwise try to assess third-party
6 transmission costs to Threemile Canyon." Threemile/100, Harvey/4-5
7 (emphasis added).

8 "Threemile Canyon would further emphasize that it is not only unlawful
9 but also inequitable for PacifiCorp to attempt to assess third-party
10 transmission charges to Threemile Canyon." Threemile/100, Harvey/27.

11 "In any case, with respect to past transactions where standard rates
12 for purchases applied, PacifiCorp already has lost the opportunity to pay
13 less than the full amount of third party transmission and must also
14 compensate the QF using the full standard rate for purchase."
15 Threemile/100, Harvey/30.

16 It is one thing to make a legal argument or to state a position in response to the
17 question posed by issue 4.B, but it is quite another to then *apply* those arguments to the
18 facts of Threemile Canyon's dispute with the Company in an attempt to persuade the
19 Commission to resolve the dispute in Threemile Canyon's favor. This attempt to resolve
20 the UM 1546 complaint in UM 1610 is well outside the scope of the threshold legal
21 issues presented in UM 1610.

22 Mr. Harvey's testimony further exceeds the scope of the issue posed in 4.B when
23 it "responds" to the question by airing tangentially related grievances against the
24 Company. For instance, Mr. Harvey spends several pages detailing its interconnection
25 study process with the Company as a build up to Threemile Canyon's complaint that the
26 Company did not identify the Bonneville Power Administration as an affected system in
27 its Feasibility Study Report and System Impact Study Report. Threemile/100, Harvey/31-
28 35. Not only does this testimony parrot a large part of Threemile Canyon's complaint in
29 stayed UM 1546, but nowhere does Mr. Harvey state how the Company's alleged failure
30 to identify BPA as an affected system has any bearing on the legal question whether

1 benefits associated with third-party transmission should be included in the calculation of
2 avoided cost prices as a general matter. The issue of affected systems is specific to
3 Threemile Canyon and its dealings with the Company. Mr. Harvey's affected systems
4 testimony serves only to inject extraneous issues and disputed, immaterial facts into a
5 docket designed to address purely legal and policy issues.

6 Mr. Harvey's testimony also exceeds the scope of issue 6.B, which asks: "When
7 is there a legally enforceable obligation?"¹¹ Rather than responding to the question,
8 Mr. Harvey uses issue 6.B's prompt as an opportunity to provide "a concrete example that
9 demonstrates the need to keep the commitment (i.e., LEO creation) process in a QF's
10 possession." Threemile/100, Harvey/37. Mr. Harvey then provides yet another summary
11 of the dispute between Threemile Canyon and the Company that ends with Mr. Harvey's
12 "opinion" that "a long-term, legally enforceable obligation between Threemile Canyon
13 and PacifiCorp commenced, at the latest, when Threemile Canyon executed the first
14 Short-Term PPA, which now have been extended many times." Threemile/100,
15 Harvey/37. Again, it is one thing to make a legal argument or to state a broad position in
16 response to the question posed by issue 6.B, but it is quite another to provide a factual
17 account of Threemile Canyon's dispute with the Company in an effort to force the
18 Commission to rule on the dispute.

19 Because portions of Mr. Harvey's testimony exceed the scope of the issues, those
20 portions not only are irrelevant, but also create a risk of prejudice and confusion of the
21 issues by asking the Commission to rule on issues that are not before it and pending (and
22 stayed) in a completely separate docket. Accordingly, the ALJ should strike the portions

¹¹ *Re Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Ruling (Oct. 25, 2012).

1 of Mr. Harvey's testimony that seek to apply Threemile Canyon's interpretation of the law
2 to its dispute with the Company.

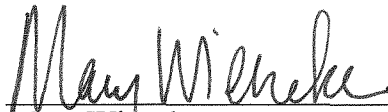
3 //

4 IV. CONCLUSION

5 By attempting to argue its case against the Company in this docket, Threemile
6 Canyon is attempting to circumvent the Commission's order to stay proceedings in
7 UM 1546, and is exceeding the scope of the issues presented in UM 1610. Mr. Harvey's
8 testimony improperly inserts its factual dispute with the Company into an investigative
9 docket set up to decide legal and policy issues of general applicability, is irrelevant, and
10 creates a risk of unfair prejudice and confusion of the issues. Therefore, the Company
11 asks that the ALJ strike the portions of Mr. Harvey's testimony that relate to the specific
12 dispute between the Company and Threemile Canyon.

DATED this 29th day of March, 2013.

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

**DIRECT TESTIMONY OF JOHN A HARVEY
ON BEHALF OF
THREEMILE CANYON WIND I, LLC**

MARCH 18, 2013

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
INTRODUCTION	1
SUMMARY	2
INTRODUCTION OF THREEMILE CANYON	6
STATED REQUIREMENTS OF PURPA	10
STANDARD RATES FOR PURCHASES	12
AVOIDED COSTS	17
THIRD PARTY TRANSMISSION	19
THIRD PARTY TRANSMISSION BACKGROUND INFORMATION	27
LEGALLY ENFORCEABLE OBLIGATIONS	35
MECHANICAL AVAILABILITY	37
WITNESS' EXPERIENCE	47

INTRODUCTION

1

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT**
3 **EMPLOYMENT POSITION OR TITLE.**

4 A. My name is John A. Harvey. My business address is 4601 Westown Parkway,
5 West Des Moines, Iowa 50266. My current employment position title is Manager,
6 Regulatory and Markets Liaison.

7 **Q. BY WHOM ARE YOU EMPLOYED AND ON WHOSE BEHALF ARE YOU**
8 **TESTIFYING IN THIS CASE?**

9 A. I am employed by Exelon Generation. I am testifying on behalf of Threemile
10 Canyon Wind I, LLC (hereinafter "Threemile Canyon"), which is a wholly-owned
11 subsidiary of Exelon Generation

12 **Q. IS YOUR TESTIMONY BASED ON YOUR PERSONAL KNOWLEDGE AND**
13 **EXPERIENCE?**

14 A. Yes, my testimony is based on my personal knowledge gained through my six
15 years of employment at Exelon Wind and its predecessor company, John Deere
16 Renewables, as well as my long experience with utility regulatory agencies and
17 the electric utility industry. A description of my professional background and
18 experience that is relevant to my testimony in this proceeding is at the end of this
19 direct testimony.

20 **Q. DID YOU RELY ON SOURCES OF INFORMATION THAT YOU REGARD AS**
21 **RELIABLE AND ARE ORDINARILY AND CUSTOMARILY USED AND RELIED**
22 **ON BY THOSE INVOLVED IN THE ELECTRIC INDUSTRY?**

23 A. Yes.

24 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

1 A. The purpose of my testimony is to provide issue-related information, specifically
 2 on issues 4.B, 6.B, and 6.E¹, relevant to Phase I of the Oregon Public Utility
 3 Commission's ("Commission") investigation into Qualifying Facility ("QF")
 4 contracting in Docket No. UM 1610, including information specific to PacifiCorp's
 5 refusal to offer a long-term standard contract to Threemile Canyon. In so doing, I
 6 will:

- 7 (1) Provide a Summary.
 8 (2) Introduce Threemile Canyon ~~and its ongoing dispute with PacifiCorp~~
 9 ~~concerning the allocation of third-party transmission costs under the standard~~
 10 ~~contract terms and conditions adopted by this Commission in UM1129.~~
 11 (3) Discuss the stated requirements of the Public Utility Regulatory Policies Act of
 12 1978 ("PURPA"), including standard rates for purchases and avoided costs.
 13 (4) Discuss third-party transmission and how my evaluation of that issue leads
 14 me to conclude that having PacifiCorp pay for Addendum R prices (as defined
 15 below), without adjustment, and for transmission service over the Bonneville
 16 Power Administration ("BPA") transmission system to serve its load, does not
 17 violate PURPA's just and reasonable and public interest standards.
 18 (5) Discuss Legally Enforceable Obligations ("LEO"), using PacifiCorp's behavior
 19 toward Threemile Canyon as an example why the process of commitment,
 20 which must take place for a LEO to exist, must remain within the control of the
 21 QF and not shared with the electric utility.

22 SUMMARY

23 **Q. PLEASE SUMMARIZE YOUR TESTIMONY**

24 A. ~~Since 2009, PacifiCorp has refused to execute the standard long-term power~~
 25 ~~purchase agreement² approved by this Commission in UM 1129 ("Standard~~
 26 ~~Contract") unless Threemile Canyon agrees to pay for BPA Transmission Service~~

¹ Issue 4.B—Should the costs or benefits associated with third party transmission be included in the calculation of avoided cost prices or otherwise accounted for in the standard contract? Issue 6.B—When is there a Legally Enforceable Obligation? and 6.E—How should contracts address mechanical availability?

² During the pendency of the dispute PacifiCorp and Threemile Canyon executed a Short-Term PPA and a series of extensions to the Short-Term PPA.

1 ~~when Threemile Canyon's output exceeds load in the Dalreed locale of~~
2 ~~PacifiCorp's service territory. PacifiCorp has erroneously asserted that the~~
3 ~~Standard Contract terms approved by this Commission in UM 1129 are unlawful~~
4 ~~and therefore preempted by PURPA. PacifiCorp argues that if it pays standard~~
5 ~~rates for purchases prices and also pays for BPA Transmission Service, its~~
6 ~~payments will violate PURPA's just and reasonable and public interest standards~~
7 ~~by exceeding avoided cost.~~

8 Threemile Canyon has filed a complaint against PacifiCorp in Docket No. UM
9 1546. Around the same time as the complaint, PacifiCorp filed Advice No. 11-
10 011, which became Docket No. UE 235. PacifiCorp requested a stay of the UM
11 1546 proceedings while Docket No. UE 235 proceeded. Threemile Canyon did
12 not participate in UE 235, which was closed without an order. The Commission
13 then established this QF contracting investigation in Docket No. UM 1610. The
14 Commission has determined that there are certain similar issues between this
15 investigation and the issues in the UM 1546 complaint. Principally, whether the
16 Standard Contract adopted by this Commission in UM 1129, which precludes any
17 price adjustment for third-party transmission costs, violates PURPA.³

18 My testimony discusses in detail and provides recommendations for issues 4.B,
19 6.B, and 6.E of the UM 1610 issues list. It does so both to generally inform the
20 Commission on those issues and to inform the Commission how the resolution of
21 these issues may affect Threemile Canyon.

³ In Order 12-475, the Commission explains that “[b]oth proceedings [UM 1546 and UM 1610] address the legal question whether the provisions of PURPA prohibit a utility from paying both avoided cost rates for a QF’s output and related transmission costs to a third-party to move that output. If so, Pacific Power’s standard contract, without adjustment to account for third-party transmission costs, is preempted by PURPA and unenforceable.”

1 **Issue 4.B** is: “Should the costs or benefits associated with third party
2 transmission be included in the calculation of avoided cost prices or otherwise
3 accounted for in the standard contract?” PURPA, and FERC’s regulations
4 implementing PURPA, do not permit a host utility to assess transmission charges
5 to a QF that is selling its output to the host utility. FERC has made it abundantly
6 clear through its rules and orders that once the QF delivers its output to the host
7 utility, it is the host utility’s responsibility to deliver the QF’s output to the host
8 utility’s load.⁴

9 A QF may be assessed transmission charges only in one very limited
10 circumstance, which is not present here, namely, when the QF elects to make an
11 indirect sale. Section 292.303(d) of FERC’s regulations provides that, when both
12 the QF and the host utility to which the QF is interconnected (“Electric Utility A”)
13 agree that the host utility will transmit the QF’s output for delivery to another
14 utility’s system (“Electric Utility B”), Electric Utility A may charge the QF for
15 transmitting its output to Electric Utility B.⁵ ~~This is not the case here because~~
16 ~~Threemile Canyon is selling its output directly to its interconnected host utility,~~
17 ~~PacifiCorp, rather than indirectly to BPA or any other utility.~~ Even where the QF
18 may be assessed transmission charges for wheeling its power, FERC’s
19 regulations provided that these transmission charges shall not be included in the
20 avoided cost rate paid by Utility B for the QF’s output.

⁴ See *Entergy Servs., Inc.*, 137 FERC ¶ 61,199 at P 52 (2011) (“*Entergy*”).

⁵ PacifiCorp has claimed that there is a second circumstance where the host utility may charge a QF selling its output to its host utility under PURPA for transmission, namely, where the QF is located in a “load pocket.” There is no basis in PURPA, or in FERC’s implementing regulations or precedent, for PacifiCorp’s second purported exception to the rule against charging QFs selling under PURPA for transmission service.

1 | ~~I conclude that since Threemile Canyon had already committed to making a~~
2 | ~~direct, long-term, Standard Contract sale to PacifiCorp, it is impermissible for~~
3 | ~~PacifiCorp to adjust the standard contract rate for QF purchases or to otherwise~~
4 | ~~try to assess third-party transmission costs to Threemile Canyon. Even if~~
5 | ~~PacifiCorp were permitted to make such adjustments, it would now be too late for~~
6 | ~~PacifiCorp to attempt to demonstrate that the Standard Contract approved by this~~
7 | ~~Commission in UM 1129 (or a LEO based on that Standard Contract) was unjust~~
8 | ~~and unreasonable at the time Threemile Canyon requested the Standard~~
9 | ~~Contract from PacifiCorp. PURPA does not prohibit PacifiCorp from paying for~~
10 | ~~the third-party transmission costs that it has incurred in connection with~~
11 | ~~Threemile Canyon's direct sale to PacifiCorp.~~

12 | **Issue 6.B** is: "When is there a Legally Enforceable Obligation?" I conclude that a
13 | LEO comes into existence when a QF commits itself to an electric utility. †
14 | ~~provide Threemile Canyon as an example of why PacifiCorp's proposal to have a~~
15 | ~~LEO commence at the time a QF executes an acceptable final draft PPA~~
16 | ~~presented to it by an electric utility does not work—because it puts control of the~~
17 | ~~commitment process in the electric utility's hands.~~

18 | **Issue 6.E** is: "How should contracts address mechanical availability?" First, I
19 | conclude that QF contracts should not address mechanical availability because it
20 | is an out-of-date concept, given the change in compensation schemes over time.
21 | Second, I conclude that in the event the Commission wishes to continue to
22 | address mechanical availability in QF contracts, the total financial impact of the
23 | QF contract, including mechanical availability, must not stray from the avoided
24 | cost requirement. Third, I also address the effect of mechanical availability on

1 smaller projects and recommend that if the Commission wishes to start
2 somewhere on having QF contracts not address mechanical availability that it do
3 so first with contracts for projects of less than or equal to 10 MW. Fourth, I also
4 address both PacifiCorp's and PGE's mechanical availability testimony and
5 conclude (a) that neither utility has presented an adequate case for having
6 contracts address mechanical availability, (b) that PacifiCorp has not
7 demonstrated a need to increase the mechanical availability provisions of its QF
8 contract, and that (c) in the event the Commission wishes to continue to address
9 mechanical availability in QF contracts, PGE's mechanical availability provisions
10 of its QF contract ought to be conformed to PacifiCorp's currently existing
11 provisions.

12 **INTRODUCTION OF THREEMILE CANYON**

13 **Q. PLEASE INTRODUCE THREEMILE CANYON AND ITS DISPUTE WITH**
14 **PACIFICORP.**

15 A. Threemile Canyon is (a) an Oregon limited liability company; that (b) owns,
16 maintains and otherwise operates a wind-powered generating facility located in
17 Morrow County, Oregon ("Facility"); and (c) has six 1,650 kilowatt (kW or 1.65
18 MW) Vestas V-82 wind turbine generators installed with the total nameplate
19 capacity of the Facility being 9,900 kW.

20 ~~In 2009, Threemile Canyon committed to sell all of its net of station service~~
21 ~~output to PacifiCorp by applying to PacifiCorp Merchant for a long-term Standard~~
22 ~~Contract pursuant to PacifiCorp's Tariff Schedule 37 in effect at that time.~~
23 ~~PacifiCorp agrees that the Standard Contract approved by this Commission and~~

1 ~~in effect at that time provided no adjustment for third-party transmission costs.⁶~~

2 In fact, as I explain below, in adopting the Standard Contract, the Commission
3 expressly declined to give utilities the flexibility to negotiate any such non-
4 standard price adjustments. ~~The Commission-approved rates in effect at that
5 time are memorialized in Addendum R of the Short-Term PPA between
6 Threemile Canyon and PacifiCorp.~~

7 ~~Notwithstanding this Commission's Order adopting the Standard Contract,
8 PacifiCorp refused, and continues to refuse, to execute a Standard Contract for
9 the Facility unless Threemile Canyon agrees accept a unilateral price adjustment
10 imposed by PacifiCorp.⁷ The price adjustment that PacifiCorp seeks is to pay for
11 BPA Transmission Service when facility output exceeds load in the Dalreed
12 locale of PacifiCorp's service territory. Threemile Canyon objects because
13 Threemile Canyon's sales to PacifiCorp at the rates approved by this
14 Commission, as reflected in Addendum R, with no adjustment for BPA
15 Transmission Service, do not violate PURPA's requirements that standard rates
16 for purchases be just and reasonable and in the public interest, including that
17 they do not exceed avoided cost.~~

⁶ Threemile Canyon and PacifiCorp filed stipulated facts in UM 1546. A copy of these Stipulated Facts is attaché hereto as Exhibit JAH-101. In Stipulation 21, the parties agree that the Standard Contract does not address third party transmission or curtailment costs.

⁷ PacifiCorp asserts that having it pay the unadjusted Standard Rates for Purchases and pay for BPA Transmission Service will cause it to exceed avoided cost. So, PacifiCorp seeks to adjust its Standard Contract referenced in its Schedule 37, *Avoided Cost Purchase From Qualifying Facilities of 10,000 kW or Less*, in such adjustment imposing on Threemile canyon an adjustment caused by Threemile Canyon's project-specific characteristics. The specific adjustment PacifiCorp seeks to impose due to Threemile Canyon's project specific characteristics is to have Threemile Canyon pay for Bonneville Power Administration firm point-to-point transmission service. In seeking that specific adjustment, PacifiCorp ignores this Commission's express direction stated in its Order No. 05-584. PacifiCorp seeks to exercise the type of pricing flexibility PacifiCorp sought in Docket No. UM 1129, but that this Commission denied..

1 In addition, Threemile Canyon had no idea that PacifiCorp even expected
2 Threemile Canyon to pay for BPA Transmission Service until well after Threemile
3 Canyon had committed to selling its output to PacifiCorp and had commenced
4 construction on its Facility. Throughout the interconnection process PacifiCorp
5 failed to identify BPA's transmission system as an Affected System. To the
6 contrary, PacifiCorp represented that there were no other Affected Systems.
7 Additionally, throughout the interconnection process, PacifiCorp failed to inform
8 Threemile Canyon that PacifiCorp expected Threemile Canyon to bear the cost
9 of transmission incurred by PacifiCorp to move the output from one portion of
10 PacifiCorp's service territory to another. Finally, Threemile Canyon relied on the
11 terms of the Long Term PPA approved by the Commission, which included no
12 mechanism for PacifiCorp to impose "price adjustments" on Threemile Canyon.

13 PacifiCorp now seeks to create ambiguity in the Standard Contract where there
14 is none.

15 1. PacifiCorp's Standard Contract states that "the Seller will sell and PacifiCorp
16 will purchase all Net Output from the Facility" (see subsection 4.1); nowhere
17 does the Standard Contract state a QF must pay for third-party transmission
18 service.

19
20 2. Stipulation 21 in part states "Schedule 37 does not expressly address third-
21 party transmission costs or the cost of curtailment." The failure to state
22 something in a contract does not make the contract ambiguous with respect
23 to what is not stated. But even if the contract did address transmission costs,
24 FERC's PURPA regulations do not permit a host utility to charge a QF that is
25 selling directly to the host utility under PURPA for the costs of transmitting the
26 QF's output to the host utility's load. Threemile Canyon objects to PacifiCorp's
27 unwarranted attempt to force on Threemile Canyon an addendum to the
28 Standard Contract by refusing to execute the Standard Contract with
29 Threemile Canyon.

30
31 3. Because (a) Threemile Canyon has committed to sell all its output to
32 PacifiCorp, but (b) PacifiCorp has refused to execute the Standard Contract

1 ~~with Threemile Canyon; (c) PacifiCorp has failed to act in good faith and (d)~~
2 ~~consequently, Threemile Canyon's commitment to Sell to PacifiCorp has~~
3 ~~caused a non-contractual legally enforceable obligation in the form of the~~
4 ~~Standard Contract to exist between Threemile Canyon and PacifiCorp, with~~
5 ~~pricing as detailed in Addendum R of the Short Term PPA between~~
6 ~~PacifiCorp and Threemile.~~

7 ~~Threemile Canyon's commitment to sell all its output to PacifiCorp has caused~~
8 ~~PacifiCorp to be committed to purchasing all Threemile Canyon's output in~~
9 ~~accordance with the terms of the non-contractual legally enforceable obligation.~~

10 **Q. — WHAT IS ADDENDUM R?**

11 ~~A. — As noted in Stipulated Fact 28, on June 19, 2009, PacifiCorp and Threemile~~
12 ~~Canyon executed a Short-Term PPA with a four-month term. The Short-Term~~
13 ~~PPA includes Addendum R, entitled "Clarification of Contract Price." Addendum~~
14 ~~R memorialized and documented the Parties agreement of the Contract Prices~~
15 ~~that would be paid to Threemile Canyon.~~

16 **Q. — PLEASE EXPLAIN THE PRICES IN ADDENDUM R.**

17 ~~A. — The prices in Addendum R are in fact prices excerpted from the Schedule 37⁸ in~~
18 ~~effect at the time, as the text in the citation below demonstrates.~~

19 **Q. IS THREEMILE CANYON A PURPA QUALIFYING FACILITY (QF)?**

⁸ *Whereas*, the Agreement provides that PacifiCorp shall pay Seller the Fixed Avoided Cost Price from PacifiCorp's Oregon Schedule 37 Tariff ("**Schedule 37**", attached to this Agreement as Exhibit G) for fifteen years commencing on the Scheduled Initial Delivery Date, and thereafter PacifiCorp shall pay Seller the Firm Market Index Avoided Cost Price; and

Whereas, the Fixed Avoided Cost Prices set forth in Schedule 37 (in "Pricing Option 1", page 5) inadvertently omitted pricing for calendar years after year 2023; and

Whereas, Seller is entitled under the Agreement to be paid the Fixed Avoided Cost Price until June 18, 2024 (such day being exactly fifteen years after the 2009 Scheduled Initial Delivery Date) ("**Changeover Date**"); and

Whereas, the filed and approved Fixed Avoided Cost Prices for years 2012 through 2028 are set forth in columns "f" and "g" or Pricing Option 2, on page 6 of Schedule 37

- 1 A. Yes. The Facility is a QF for the following reasons:
- 2 1. In 18 C.F.R. § 292.101 Qualifying facility is defined as "... a small power
3 production facility that is a qualifying facility under Subpart B of this part."
4
- 5 2. Threemile Canyon meets the 18 C.F.R. § 292.203(a) general requirements
6 for qualification as a QF that is a small power production facility, namely that
7 the Facility (1) meets the maximum size criteria specified in § 292.204(a); (2)
8 meets the fuel use criteria specified in § 292.204(b); and (3) has filed with
9 FERC a notice of self-certification, pursuant to § 292.207(a).
10
- 11 3. As indicated in Stipulation 5, Threemile Canyon has self-certified its Facility
12 under PURPA. That self-certification took place in FERC Docket No. QF09-
13 142, in accordance with procedures specified in 18 C.F.R. § 292.207(a). The
14 Facility was re-certified as a QF on April 15, 2011.

15 By virtue of its unopposed self-certification/self-recertification, the Facility is a
16 PURPA QF.

17 ~~Q. DOES PACIFICORP CONTEND THAT THREEMILE CANYON'S FACILITY IS~~
18 ~~NOT A PURPA QF THAT IS ELIGIBLE FOR A STANDARD CONTRACT?~~

19 ~~A. No. As far as I am aware, PacifiCorp has never asserted that Threemile~~
20 ~~Canyon's Facility is not eligible for the Standard Contract because it is not a QF.~~
21 ~~Rather, PacifiCorp's only stated objection to executing a Standard Contract with~~
22 ~~Threemile Canyon is that the rates and terms approved by this Commission in~~
23 ~~UM-1129 would, in PacifiCorp's opinion, result in overcompensation to Threemile~~
24 ~~Canyon.~~

25 **THE STATED REQUIREMENTS OF PURPA, INCLUDING "STANDARD**
26 **RATES FOR PURCHASES" AND "AVOIDED COSTS"**

27 **Q. PLEASE DESCRIBE THE STATED REQUIREMENTS FOR IMPLEMENTING**
28 **PURPA.**

1 A. PURPA was adopted by Congress in 1978. Section 210 of PURPA, among other
2 things, directly states that FERC is required to prescribe rules encouraging
3 cogeneration and small power production. In passing those rules, PURPA
4 requires FERC to assure that rates be just and reasonable and in the public
5 interest and that they not discriminate against the QF. They are not required to
6 exceed the incremental cost to the electric utility of alternative electric energy.

7 **Q. WHEN DID FERC'S IMPLEMENTING REGULATIONS GO INTO EFFECT?**

8 A. FERC completed its rulemaking in Docket No. RM79-55 and issued Order No.
9 69, "Small Power Production and Cogeneration Facilities; Regulations
10 Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978."⁹
11 Order No. 69 was published in the Monday, February 25, 1980 Federal Register
12 with an effective date of March 20, 1980 and FERC's PURPA regulations have
13 been amended a number of times since.

14 **Q. PLEASE DESCRIBE THE REGULATORY ENVIRONMENT FERC INSTITUTED**
15 **UPON ADOPTION OF ITS REGULATIONS.**

16 A. PURPA states that FERC must adopt regulations designed to encourage QF
17 development and that state commissions in turn must implement FERC's PURPA
18 regulations. So, the regulatory environment is one of shared responsibility, with
19 the nitty gritty details specifying how the required level of encouragement was to

⁹ Order No. 69, *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, FERC Stats & Regs. ¶ 30,128, 45 Fed. Reg. 12,214, 12,230-31 (Feb. 25, 1980) ("Order No. 69"), *aff'd in part & vacated in part on other grounds, Amer. Elec. Power Serv. Corp. v. FERC*, 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part on other grounds, Amer. Paper Inst., Inc. v. Amer. Elec. Power Serv. Corp.*, 461 U.S. 402 (1983) ("Order No. 69").

1 be carried out over time being left to state commissions such as this
2 Commission.¹⁰

3 **Q. IN YOUR ANSWER ABOVE, YOU NOTED THAT FERC LEFT THE**
4 **IMPLEMENTATION OF NITTY GRITTY DETAILS SPECIFYING HOW THE**
5 **REQUIRED LEVEL OF ENCOURAGEMENT WAS TO BE CARRIED OUT**
6 **OVER TIME TO STATE COMMISSIONS, INFERRING THAT STATE**
7 **COMMISSIONS SUCH AS THIS COMMISSION HAVE LATITUDE IN**
8 **DETERMINING HOW TO IMPLEMENT PURPA. DO STATE COMMISSIONS**
9 **HAVE LATITUDE AND, IF SO, HOW FAR DOES SUCH LATITUDE GO?**

10 A. Yes, state commissions have significant latitude. However, state commissions do
11 not have full discretionary power, *carte blanche*, to implement PURPA and
12 FERC's implementing regulations any way they see fit, for that would violate
13 PURPA's requirement for state commissions to implement the FERC rules. State
14 commissions are required to implement FERC's PURPA regulations in a way that
15 encourages the development of qualifying facilities to at least as great an extent
16 as required by FERC's regulations. If state commissions had *carte blanche*,
17 FERC would not have stated, as it did in Order No. 69, "... state laws or
18 regulations which would provide rates lower than the federal standards would fail
19 to provide the requisite encouragement of these technologies, and must yield to
20 federal law."

21 **STANDARD RATES FOR PURCHASES**

22 **Q. PLEASE DISCUSS FERC'S REGULATIONS REGARDING STANDARD**
23 **RATES FOR PURCHASES.**

¹⁰ The implementation of these rules is reserved to the State regulatory authorities or nonregulated electric utilities. Within one year of the issuance of the Commission's rules, each State regulatory authority or nonregulated utility must implement these rules. That implementation may be accomplished by the issuance of regulations, on a case-by-case basis, or by any other means reasonably designed to give effect to the Commission's rules." Source: Order No. 69 as published in Federal Register, Vol. 45, No. 38, February 25, 1980, p. 12216.

1 A. FERC regulation 18 C.F.R. § 292.304(c) states,

2 *Standard rates for purchases.* (1) There shall be put into effect (with
3 respect to each electric utility) standard rates for purchases from qualifying
4 facilities with a design capacity of 100 kilowatts or less.

5 (2) There may be put into effect standard rates for purchases from
6 qualifying facilities with a design capacity of more than 100 kilowatts.

7 (3) The standard rates for purchases under this paragraph:

8 (i) Shall be consistent with paragraphs (a) and (e) of this section;¹¹ and

9 (ii) May differentiate among qualifying facilities using various technologies
10 on the basis of the supply characteristics of the different technologies.

11 Clearly, standard rates for purchases must be available to QFs with a design
12 capacity of 100 kW or less. FERC regulations also allow state commissions the
13 choice to make standard rates for purchases to QFs larger than 100 kW.

14 **Q. HAS THE COMMISSION PUT INTO EFFECT STANDARD RATES FOR**
15 **PURCHASES FROM QFS?**

16 A. Yes.

17 **Q. IN REQUIRING STANDARD RATES FOR PURCHASES BE PUT INTO**
18 **EFFECT, HAS FERC ALLOWED FOR STANDARD RATE FOR PURCHASES**
19 **DIFFERENTIATION AMONG QFS?**

20 A. Yes. As stated in 18 C.F.R. § 292.304(c)(3)(ii), standard rates for purchases
21 may be differentiated among QFs using various technologies on the basis of the
22 supply characteristics of the different technologies.

23 **Q. HAS THE COMMISSION, AS FERC REGULATIONS ALLOW,**
24 **DIFFERENTIATED AMONG QFS USING VARIOUS TECHNOLOGIES ON THE**
25 **BASIS OF THE SUPPLY CHARACTERISTICS OF THE DIFFERENT**
26 **TECHNOLOGIES?**

¹¹ § 292.304 Rates for purchases.

(a) *Rates for purchases.* (1) Rates for purchases shall:

(i) Be just and reasonable to the electric consumer of the electric utility and in the public interest; and

(ii) Not discriminate against qualifying cogeneration and small power production facilities.

(2) Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases.

(e) *Factors affecting rates for purchases.* [description of such factors not included in this footnote]

1 A. No, nor is it required to do so. 18 C.F.R. § 292.304(c)(3)(ii) is permissive, not
2 prescriptive.

3 **Q. HAS FERC ALLOWED FOR ANY OTHER STANDARD RATE FOR**
4 **PURCHASES DIFFERENTIATION?**

5 A. No.

6 **Q. HAS THE COMMISSION PROVIDED FOR ANY OTHER DIFFERENTIATION**
7 **OF STANDARD RATE FOR PURCHASES AMONG QFS?**

8 A. No, nor is it at all clear that it is free to do so and adequately implement PURPA.
9 As I already noted in my response to an earlier question, state commissions are
10 required to implement FERC's PURPA regulations in a way that encourages the
11 development of qualifying facilities to at least as great an extent as required by
12 FERC's regulations.¹² When FERC only enumerates standard rates for
13 purchases differentiation among QFs "using various technologies on the basis of
14 the supply characteristics of the different technologies," it is doubtful that a state
15 commission would be seen as demonstrating requisite authorization if it were to
16 provide for additional differentiation.

17 **Q. DOES FERC CONSIDER STANDARD RATES FOR PURCHASES TO BE**
18 **AVERAGE COST RATES?**

19 A. Yes, the following text from Order No. 69 demonstrates that FERC considers
20 Standard Rates for Purchases to be average cost rates: "[FERC] is aware that
21 the supply characteristics of a particular facility may vary in value from the

¹² Order No. 69 as published in Federal Register, Vol. 45, No. 38, February 25, 1980, p. 12221.

1 average rates set forth in the utility's standard rate required by this
2 paragraph."¹³

3 **Q. DOES THE VARIANCE OF ANY PARTICULAR QF'S COSTS FROM THOSE**
4 **AVERAGE COST RATES MEAN THAT A UTILITY'S PURCHASES FROM IT**
5 **USING STANDARD RATES FOR PURCHASES WOULD BE UNJUST,**
6 **UNREASONABLE AND NOT IN THE PUBLIC INTEREST?**

7 A. No. As the text quoted in my immediate previous answer demonstrates, in Order
8 No. 69 FERC was well aware that the supply characteristics of different QFs
9 would vary in value, but then went on to state its decision to require standard
10 rates for purchases anyway, "If [FERC] were to require individualized rates,
11 however, the transaction costs associated with administration of the program
12 would likely render the program uneconomic for this size of qualifying facility. As
13 a result, [FERC] will require that standardized tariffs be implemented for facilities
14 of 100 kW or less."¹⁴ Later in that same Federal Register page, FERC also
15 stated it would allow standardized tariffs for QF greater than 100 kW, "... [FERC]
16 has added subparagraph (2) which permits, but does not require, State
17 regulatory authorities and nonregulated electric utilities to put into effect a
18 standard rate for purchases from qualifying facilities with a design capacity
19 greater than 100 kilowatts."

20 **Q. WHAT IS THE STANDARD RATE FOR PURCHASES ELIGIBILITY**
21 **THRESHOLD FOR QFS IN OREGON, WHERE THE ELECTRIC/PUBLIC**
22 **UTILITY IS SUBJECT TO THE COMMISSION'S JURISDICTION?**

¹³ Order No. 69 as published in Federal Register, Vol. 45, No. 38, February 25, 1980, p. 12223. Emphasis added.

¹⁴ Order No. 69 as published in Federal Register, Vol. 45, No. 38, February 25, 1980, p. 12223.

1 A. The Commission has determined a “standard contract eligibility threshold [of] 10
2 MW to be reasonable.”¹⁵

3 **Q. HOW IS THE 10 MW MEASURED?**

4 A. The Commission has also determined that:

5 *Design capacity, as defined by the manufacturer’s nameplate capacity for*
6 *a QF project, will continue to be the measure of eligibility for standard*
7 *contracts. In order to be eligible to receive standard contract terms and*
8 *conditions, a QF must have a manufacturer’s nameplate capacity at or*
9 *under 10 MW.*¹⁶

10 **Q. WITH RESPECT TO STANDARD RATES FOR PURCHASES ESTABLISHED**
11 **IN UM-1129, DID THE COMMISSION ALLOW UTILITIES FLEXIBILITY TO**
12 **ADJUST SUCH RATES?**

13 A. No.

14 **Q. PLEASE EXPLAIN.**

15 A. Among the issues expressly addressed by the Commission in its Order No. 05-
16 584 was the issue of pricing adjustments for Standard Contracts, which had been
17 raised by PacifiCorp and PGE. In arguments presented in its filing with the
18 Commission, PacifiCorp recommended that:

19 *[U]tilities be allowed to impose certain pricing adjustments in order to address*
20 *issues that might include integration costs, debt imputation, or commercial and*
21 *operational costs associated with intermittent QF resources.*¹⁷

22 The Commission’s Staff opposed PacifiCorp’s recommendation, noting that:

¹⁵ *In the Matter of Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities,*
Docket No. UM 1129, Order No. 05-584 (2005) at 17 (hereafter, Order No. 05-584).

¹⁶ Order No. 05-584 at 40.

¹⁷ Order No. 05-584 at 38.

1 [T]he characteristics of a specific QF may impose costs greater or lesser than
2 costs captured by the standard contract rate, but notes that on balance, the
3 standard contract rate is deemed to provide a fair rate to QFs eligible to
4 receive it.¹⁸

5 The Commission rejected PacifiCorp's filing, stating:

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

16 *Standard contracts are designed to minimize the need for parties to engage in*
17 *contract negotiations. Consequently, any flexibility in the terms and*
18 *conditions of a standard contract should be specifically delineated and*
19 *bounded. To the extent that a party anticipated the need for flexibility*
20 *with regard to a particular standard contract term or condition, the*
21 *specific issue should have been raised and examined in this proceeding.*
22 *It is inappropriate to request that standard contracts be subject to*
23 *potential negotiation to address project-specific characteristics. In any*
24 *case, we note that certain issues, such as integration costs, will likely be taken*
25 *up during the second phase of this investigation when interconnection*
26 *procedures and agreements will be addressed.¹⁹*

27 **AVOIDED COSTS**

28 **Q. PLEASE DISCUSS FERC'S REGULATIONS REGARDING AVOIDED COSTS.**

29 A. FERC regulation 18 C.F.R. § 292.101(b)(6) defines Avoided Cost as "the
30 incremental costs to an electric utility of electric energy or capacity or both which,

¹⁸ Order No. 05-584 at 38 (emphasis added).

¹⁹ Order No. 05-584 at 39 (emphasis added).

1 but for the purchase from the qualifying facility or qualifying facilities, such utility
2 would generate itself or purchase from another source.”

3 **Q. WHEN ARE AVOIDED COSTS CALCULATED?**

4 A. At the option of the QF, Avoided Costs may be determined either (a) at the time
5 of delivery or (b) calculated at the time the legally enforceable obligation (LEO,
6 whether contractual or non-contractual) between the QF and the utility is
7 incurred.²⁰ Binding legally enforceable obligations take place when the QF
8 commits itself to selling all its output to the utility.

9 **Q. GIVEN THAT RATES FOR PURCHASES BASED ON (A) AVOIDED COSTS**
10 **CALCULATED AT THE TIME OF DELIVERY ARE LIKELY TO BE DIFFERENT**
11 **THAN (B) ESTIMATES OF AVOIDED COSTS CALCULATED AT THE TIME**
12 **THE LEO IS INCURRED, DO PURCHASES USING FORECAST AVOIDED**
13 **COSTS THAT ARE HIGHER THAN TIME-OF-DELIVERY AVOIDED COSTS**
14 **VIOLATE REQUIREMENTS THAT RATES FOR PURCHASES BE JUST AND**
15 **REASONABLE AND IN THE PUBLIC INTEREST?**

16 A. No. FERC regulation § 292.304(b)(5) specifically states:

17 *In the case in which the rates for purchases are based upon estimates of*
18 *avoided costs over the specific term of the contract or other legally*
19 *enforceable obligation, the rates for such purchases do not violate this subpart*

²⁰ (d) Purchases “as available” or pursuant to a legally enforceable obligation. Each qualifying facility shall have the option either:

- (1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility’s avoided costs calculated at the time of delivery; or
- (2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:
 - (i) The avoided costs calculated at the time of delivery; or
 - (ii) The avoided costs calculated at the time the obligation is incurred.

1 *if the rates for such purchases differ from avoided costs at the time of*
2 *delivery.*²¹

3 **Q. ARE STANDARD RATES FOR PURCHASES BASED ON AVOIDED COSTS?**

4 A. Yes. The process of establishing standard rates for purchases for utilities
5 regulated by state commissions commonly requires the utility to submit rates for
6 purchases based on estimates of avoided costs. At the conclusion of such
7 process, such rates would be approved by the state commission. Standard rates
8 for purchases become “avoided costs over the specific term of the contract or
9 other legally enforceable obligation” (i.e., Forecast Avoided Costs) when a QF
10 commits to sell all its output to a utility in accordance with the terms of a standard
11 contract or other type of LEO.

12 **Q. ONCE A QF HAS COMMITTED TO SELL ALL ITS OUTPUT TO A UTILITY IN**
13 **ACCORDANCE WITH THE TERMS OF A STANDARD CONTRACT USING**
14 **STANDARD RATES FOR PURCHASES, DO PURCHASES BY THE UTILITY**
15 **VIOLATE REQUIREMENTS THAT RATES FOR PURCHASES BE JUST AND**
16 **REASONABLE AND IN THE PUBLIC INTEREST IF TIME OF DELIVERY**
17 **AVOIDED COSTS ARE LOWER?**

18 A. No. Just as with any other rates for purchases based on “avoided costs over the
19 specific term of the contract or other legally enforceable obligation,” such
20 purchases do not violate PURPA regulations if the rates for such purchases differ
21 from avoided costs at the time of delivery.

22 **THIRD PARTY TRANSMISSION**

23 **Q. ISSUE 4. PRICE ADJUSTMENTS FOR SPECIFIC QF CHARACTERISTICS.**
24 **B. SHOULD THE COSTS OR BENEFITS ASSOCIATED WITH THIRD PARTY**
25 **TRANSMISSION BE INCLUDED IN THE CALCULATION OF AVOIDED COST**

²¹ 18 C.F.R. § 292.304(b)(5) (2012).

1 **PRICES OR OTHERWISE ACCOUNTED FOR IN THE STANDARD**
2 **CONTRACT?**

3 A. The answer is “no” where, as here, the QF is selling its output directly to its host
4 utility under PURPA and the host utility is using third party transmission to move
5 the QF’s output to its own load. The one and only exception to this general rule
6 against charging QFs for transmission is where, pursuant to Section 292.303(d)
7 of FERC’s regulations, both the QF and the host utility have agreed that the QF’s
8 output will be transmitted over the host utility’s system and sold to a second
9 utility. This limited exception for indirect sales does not apply here. Threemile
10 Canyon is making a direct sale to PacifiCorp under PURPA. There is simply no
11 basis in PURPA, or in FERC’s implementing regulations or precedent, for
12 PacifiCorp’s claim that it may assess these charges to QFs located in “load
13 pocket.”²²

14 **Q. HOW MIGHT THE TERM “LOAD POCKET” AFFECT PERCEPTIONS IN THIS**
15 **INVESTIGATION AND HOW DOES PACIFICORP’S USE OF THE TERM VARY**
16 **FROM NORMS?**

17 A. There is no basis for PacifiCorp’s purported exception to the above FERC rules
18 concerning transmission costs for QFs in “load pockets.”²³ PacifiCorp’s claims in

²² In its Data Request 1.6, Threemile Canyon asked PacifiCorp: “Please identify all existing and proposed QF projects, of which PacifiCorp is aware, that are or that will be in what PacifiCorp considers to be a load pocket within PacifiCorp’s service territory.” PacifiCorp responded, “All qualified facilities (QFs) are located in load pockets within PacifiCorp’s service territory. Please refer to Attachment Threemile Canyon Wind 1.6.”

²³ Threemile Canyon Wind Data Request 1.3. “Please provide the definition recognized in the electric utility industry for the term “load pocket” as such term is used by PacifiCorp witness Bruce W. Griswold ...” PacifiCorp’s answer (in part):

PacifiCorp’s use of the term “load pocket” is used in the referenced testimony to identify areas of PacifiCorp’s service territory not fully integrated with the rest of PacifiCorp’s service territory not fully integrated with the rest of PacifiCorp’s service territory via PacifiCorp transmission. These areas are interconnected with other PacifiCorp service territory partially (if PacifiCorp transmission is inadequate) or fully (if PacifiCorp transmission does not exist) using transmission service from another provider (not PacifiCorp) to achieve integration. PacifiCorp’s load pockets may or may not include internal generation to the load pocket.

1 this regard are without merit. In fact, PacifiCorp applies this term in a manner
2 that turns FERC's own use of "load pocket" on its head. PacifiCorp's
3 idiosyncratic definition of the term thus has the potential for the term to cause
4 confusion that could lead this Commission to infer something wrong is taking
5 place. FERC uses the term "load pocket" in the following way:

6 A load pocket is an area that is separated electrically from the rest of the grid
7 by one or more transmission constraints that limit the amount of energy that
8 can be imported into the area. Often, there is limited competition among
9 generators within the area to relieve the transmission constraints into the
10 area.²⁴

11 PacifiCorp noted in its response to a Threemile Canyon data request,²⁵

12 *Edison Electric Institute (EEI) defines load pocket as "an area of the electrical*
13 *system that, because of transmission limitations, must have internal*
14 *generation resources available because the area cannot be served entirely*
15 *by external sources." Please refer to Attachment Threemile Canyon Wind*
16 *1.3.*

17 Further, PacifiCorp's Attachment Threemile Canyon Wind 1.6, attached to its
18 response to another data request,²⁶ which I have attached to my testimony as
19 Exhibit JAH-102, makes it appear that PacifiCorp considers its entire service
20 territory to be a series of load pockets (the way Mr. Griswold uses the term).

21 **Q. NOW THAT YOU HAVE FINISHED YOUR DISCUSSION OF LOAD POCKETS,**
22 **PLEASE GO ON WITH YOUR DISCUSSION OF ISSUE 4.B THE TREATMENT**
23 **OF THIRD PARTY TRANSMISSION IN STANDARD CONTRACTS.**

²⁴ See "Order On Rehearing, Clarification, And Compliance Filings, Establishing Further Hearing Procedures, And Consolidating Proceedings," (Issued July 5, 2005) 112 FERC ¶ 61,031, p. 2.

²⁵ Threemile Canyon Wind Data Request 1.3. "Please provide the definition recognized in the electric utility industry for the term "load pocket" as such term is used by PacifiCorp witness Bruce W. Griswold ..."

²⁶ Threemile Canyon Wind Data Request 1.6. Please identify all existing and proposed QF projects, of which PacifiCorp is aware, that are or that will be located in what PacifiCorp considers to be a load pocket within PacifiCorp's service territory. All qualified facilities (QFs) are located in load pockets within PacifiCorp's service territory. Please refer to Attachment Threemile Canyon Wind 1.6.

1 ~~A. In its complaint filed in Docket No. UM 1546, Threemile Canyon Wind I, LLC~~
2 ~~noted in Paragraph (1)(b) on page 5:~~

3 ~~*The Commission Staff opposed PacifiCorp's recommendation, noting "that*~~
4 ~~*the characteristics of a specific QF may impose costs greater or lesser*~~
5 ~~*than costs captured by the standard contract rate, but notes that on a fair*~~
6 ~~*rate to QFs eligible to receive it." Order No. 05-584 at 38.*~~

7 ~~In "PacifiCorp's Answer, Defenses, and Counterclaim" (PacifiCorp Answer) to~~
8 ~~Threemile Canyon's complaint, which PacifiCorp provided with a cover letter~~
9 ~~dated July 25, 2011, PacifiCorp admitted that Order No. 05-584 contained the~~
10 ~~quoted language. Later in the paragraph containing this admission, PacifiCorp~~
11 ~~went on to state, "PacifiCorp notes that the third party transmission costs at issue~~
12 ~~in this case always impose costs greater than costs captured by the standard~~
13 ~~contract rate." A copy of PacifiCorp's answer in UM 1546 is attached as Exhibit~~
14 ~~JAH-103 to this testimony.~~

15 ~~PacifiCorp's answer demonstrates its lack of understanding of how PURPA and~~
16 ~~avoided cost based rates are to work. After three bullet points to set the stage, I~~
17 ~~will provide three examples with different circumstances and provide answers to~~
18 ~~questions that fit the circumstances. In so doing I will provide the nuanced~~
19 ~~answers PacifiCorp should have known when it provided its answer.~~

- 20 • FERC regulation §292.303(a) obligates electric utilities to purchase, in
21 accordance with §292.304, unless exempted by § 292.309 and § 292.310,
22 any energy and capacity which is made available from a qualifying facility: (1)
23 Directly to the electric utility
24
25 • §292.303(a) similarly obligates electric utilities to purchase ... any energy and
26 capacity which is made available from a qualifying facility ... (2) Indirectly to
27 the electric utility in accordance with paragraph (d) of this section.
28

- 1 • §292.303(d), titled "Transmission to other electric utilities." describes a
2 situation where an electric utility which would otherwise be obligated to
3 purchase energy or capacity from such qualifying facility may transmit the
4 energy or capacity to any other electric utility, assuming the qualifying facility
5 agrees. In such a situation:
6
7 ○ The electric utility to which such energy or capacity is transmitted is
8 required to purchase such energy or capacity as if the qualifying facility
9 were supplying energy or capacity directly to such electric utility.
10
11 ○ The rate for purchase by the electric utility to which such energy is
12 transmitted is not to include any charges for transmission.

13 Example 1. A QF eligible for the standard contract interconnects with Electric
14 Utility A, but wishes to sell to Electric Utility B.

15 **QUESTION 1: DOES §292.303(D) APPLY TO THIS EXAMPLE? IF SO,
16 PLEASE EXPLAIN HOW IT APPLIES?**

17 Answer: Yes, §292.303(d) applies to this example. The QF, which
18 interconnected to Electric Utility A, has chosen to make an indirect sale to
19 Electric Utility B. Consequently, the rate for purchase paid by the
20 receiving utility generally is not to include charges for transmission.²⁷
21 Hence, any Electric Utility A transmission charges generally would not be
22 paid by Electric Utility B.

23 **QUESTION 2: WHY DO YOU CONDITION YOUR ANSWER BY
24 THE USE OF THE WORD *GENERALLY*?**

²⁷ Note that FERC Order No. 69 provides an exception: If a State program were to provide that electric utilities must purchase power from certain types of facilities, among which are included "qualifying facilities," at a rate higher than that provided by these rules, a qualifying facility might seek to obtain the benefit of that State program. In such a case, however, the higher rates would be based on State authority to establish such rates, and not on the Commission's rules. (see Federal Register, Vol. 45. No. 38/Monday, February 25, 1980/Rules and Regulations, p. 12221)

1 Answer: ~~I reiterate that, for purposes of PURPA, Threemile Canyon is~~
2 ~~making a direct sale to PacifiCorp, and not an indirect sale.~~ Even in the
3 hypothetical case of an indirect sale, however, there may be
4 circumstances in which the rate for purchase paid by the receiving utility
5 would include charges for transmission, although, pursuant to Section
6 292.303(d) of FERC's regulations, the transmission cost component of the
7 rate paid by the receiving utility may not be reflected in the receiving
8 utility's avoided cost rate. Electric Utility A and B would make separate
9 arrangements to obtain and pay for transmission the transmission
10 necessary to wheel the QF's output over Electric Utility A's system.
11 ~~Below, I use PacifiCorp's own transmission arrangements to illustrate this~~
12 ~~exception.~~

13 In its Data Request 1.19, Threemile Canyon asked PacifiCorp to provide
14 the names and locations, including the name(s) of the transmission owner
15 and/or transmission operator of the transmission/distribution system to
16 which it is interconnected, of wind-powered generating facilities owned by
17 PacifiCorp, and/or affiliates of PacifiCorp, in the western interconnection.

18 PacifiCorp's answer contained the following statement, "With respect to
19 wind powered generating projects owned by PacifiCorp that are included
20 in customer rates; the Leaning Juniper I and Goodnoe Hills wind projects
21 are interconnected to the transmission system owned by the Bonneville

1 Power Administration.” In response to Threemile Canyon’s Data Request
2 1.20,²⁸ PacifiCorp stated:

3 (a) *Energy from both Leaning Juniper 1 and Goodnoe Hills is used*
4 *to serve PacifiCorp customers.*

5
6 (b) *The wind-powered projects, Leaning Juniper I and Goodnoe*
7 *Hills, identified in the Company’s response to Threemile Canyon*
8 *Wind 1.19 are included in rate base.*

9
10 (c) *Payments to others for transmission service are recorded in*
11 *PacifiCorp’s expense accounts under Transmission of Electricity*
12 *by Others (FERC Account 565).*

13
14 (d) *For PacifiCorp customers in California, Oregon, and*
15 *Washington:*

- 16 • *Leaning Juniper to the Yakima area.*
- 17 • *Goodnoe Hills to the Mid-Columbia.*
- 18 • *Mid-Columbia to the Portland area.*
- 19 • *Mid-Columbia to the Southern Oregon Northern*
- 20 *California area.*
- 21 • *Mid-Columbia to the Willamette Valley area.*

22 Example 2. A QF eligible for the standard contract interconnects with Electric Utility A
23 and wishes to sell to Electric Utility A. Electric Utility B is the neighboring transmission
24 owner, but the point of interconnection is in a location on Electric Utility A’s system
25 where all the QF’s output can be utilized by Electric Utility A’s customers in that location.

²⁸ **Threemile Canyon Wind Data Request 1.20** For each generating facility identified in 1.19 above that is interconnected to the transmission/distribution system of an owner and/or operator other than PacifiCorp: (a) Identify whether energy from the facility is being used to serve Pacific Power customers. (b) Identify whether such facility is in Pacific Power’s rate base, or in the event the facility is too new to have been specifically identified in rate base, whether Pacific Power will attempt to place it in rate base at some future time. (c) Identify whether payments to others for transmission service related to such facility is being recorded in PacifiCorp and/or Pacific Power’s expense accounts under Transmission of Electricity by Others (FERC Account 565). If not Account 565, then under what other FERC account. (d) If energy is being used to serve Pacific Power customers (see 2.a. above), identify the transmission service contract under which such energy is delivered to PacifiCorp load, identify which footnote it relates to on any page in the 450 pages.

1 **QUESTION: DOES §292.303(D) IN ANY WAY APPLY TO THIS EXAMPLE?**

2 Answer: No. Section 292.303(d) applies only when a QF chooses to
3 make an indirect sale to another utility and the QF has not chosen to go
4 the indirect sale route here.

5 Example 3. A QF eligible for the standard contract interconnects with Electric
6 Utility A and wishes to sell to Electric Utility A. The point of interconnection is in a
7 location on Electric Utility A's system where not all the QF's output can be utilized
8 by Electric Utility A's customers in that location at all times. The only way the
9 QF's output can be utilized Electric Utility A's customers in other locations is if it
10 pays Electric Utility B to ship to those locations.

11 **QUESTION 1: DOES §292.303(D) IN ANY WAY APPLY TO THIS**
12 **EXAMPLE?**

13 Answer: No. The QF has interconnected with one electric utility and
14 wishes to sell directly to that electric utility, not to sell indirectly to another
15 electric utility. On its face, §292.303(d) doesn't fit the circumstances and
16 hence does not apply.

17 **QUESTION 2. MUST ELECTRIC UTILITY A PAY ELECTRIC**
18 **UTILITY B TO SHIP THE REMAINING QF OUTPUT TO ANOTHER**
19 **ELECTRIC UTILITY A LOCATION AND STILL COMPENSATE THE QF**
20 **THE FULL STANDARD RATE FOR PURCHASE?**

21 Answer: Yes. FERC's rules and precedent are quite clear that a QF
22 that is interconnected to Electric Utility A and selling its output to Electric
23 Utility A under PURPA is not to be assessed transmission charges for
24 Electric Utility A to deliver the QF's output to its own load. In *Entergy*, for
25 example, FERC recently explained that once the QF has delivered its

1 output to its host utility and the host utility has purchased that energy, it is
2 the host utility's "responsibility to deliver that energy to its load (or
3 otherwise manage the energy)." ²⁹ If the host utility must obtain third-party
4 transmission service to deliver the QF energy to its load, then it is the host
5 utility's responsibility to pay for that service.

6 The avoided cost rates paid for QF purchases must also be just and
7 reasonable and not discriminate against QFs. ³⁰ If the electric utility is
8 charging its retail and/or wholesale customers for third party transmission
9 costs of transmitting electricity to them from non-QF generation, especially
10 including those which are company owned renewable generators of the
11 identical generation technology (i.e., wind powered), it cannot discriminate
12 against QFs by trying to allocate such costs for them.

13 ~~Threemile Canyon would further emphasize that it is not only unlawful but also~~
14 ~~inequitable for PacifiCorp to attempt to assess third-party transmission charges~~
15 ~~to Threemile Canyon. As explained further below, PacifiCorp did not inform~~
16 ~~Threemile Canyon during the interconnection process that BPA was an "Affected~~
17 ~~System" or that PacifiCorp intended to make Threemile Canyon pay for~~
18 ~~transmission service from BPA to deliver Threemile Canyon's output to~~
19 ~~PacifiCorp's load. Threemile Canyon made its investment decision and~~
20 ~~committed funds in reliance on these facts. Thus, in the instant circumstances, it~~
21 ~~would be inequitable to permit PacifiCorp to charge Threemile Canyon for third~~
22 ~~party transmission costs.~~

²⁹ Entergy at P 53.

³⁰ See 18 C.F.R. §§ 292.304(a)(1)(i), 292.304(a)(1)(ii) (2012).

1 **THIRD PARTY TRANSMISSION BACKGROUND INFORMATION**

2 ~~Q. WHAT WERE PACIFICORP'S EXPENSES RECORDED AS TRANSMISSION~~
3 ~~OPERATION EXPENSES FOR 2010, 2011, AND 2012?~~

4 ~~A. Based on PacifiCorp's FERC Form No. 1³¹ data (see Page 321) filed in 2010,~~
5 ~~and 2011, plus estimated for 2012, PacifiCorp's Transmission Operation~~
6 ~~Expenses for 2010, 2011, and 2012 were \$160,047,938, \$162,697,913, and \$~~
7 ~~TBD, respectively.³²~~

8 ~~Q. WHICH OF FERC'S UNIFORM SYSTEM OF ACCOUNTS ARE SUMMED TO~~
9 ~~MEASURE TOTAL TRANSMISSION OPERATION EXPENSES?~~

10 ~~A. Account numbers 560, Operation Supervisor and Engineering; 561, Load~~
11 ~~Dispatching; 562, Station Expenses; 563, Overhead Lines Expenses;~~
12 ~~564, Underground Lines Expenses; 565, Transmission of Electricity by Others;~~
13 ~~566, Miscellaneous; and 567, Rents.~~

14 ~~Q. OF PACIFICORP'S EXPENSES RECORDED AS TRANSMISSION~~
15 ~~OPERATION EXPENSES FOR 2010, 2011, AND 2012, WHAT RESPECTIVE~~
16 ~~PORTIONS AND PERCENTAGES WERE RECORDED IN ACCOUNT 565,~~
17 ~~TRANSMISSION OF ELECTRICITY BY OTHERS?~~

18 ~~A. 2010: \$136,854,649 & 85.5%. 2011: \$138,234,854 & 85.0%. 2012: \$ TBD &~~
19 ~~TBD%.³³~~

³¹ FERC [Federal Energy Regulatory Commission] FINANCIAL REPORT, FERC FORM No. 1: Annual Report of Major Electric Utilities, Licensees and Others

³² Note PacifiCorp's FERC Form 1 data is not yet available for 2012. PacifiCorp has represented that it will be available in mid-April. I expect to update this data as soon as it is available from PacifiCorp.

³³ Here, I use total PacifiCorp costs. As a check of reasonableness for making this conceptual argument, in Threemile Canyon Wind Data Request 1.13, Threemile Canyon requested of PacifiCorp, "Using jurisdictional allocation factors allowed (and/or not objected to by parties) by the Oregon Public Utility Commission in a filing by PacifiCorp, allocate each of PacifiCorp Transmission Expenses identified in response to DR No. 1.12 above by year for each of 2010, 2011, and 2012 to the following: (a) Pacific Power i. Oregon Public Utility Commission jurisdiction and so on. A check of the allocations to the Oregon jurisdiction provided by PacifiCorp demonstrated that the percentages of total PacifiCorp

1 ~~Q. OF THE AMOUNTS RECORDED IN ACCOUNT 565, WHAT RESPECTIVE~~
2 ~~PORTIONS AND PERCENTAGES WERE ATTRIBUTED TO BONNEVILLE~~
3 ~~POWER ADMINISTRATION?~~

4 ~~A. 2010: \$97,156,076 & 71.0%. 2011: \$97,125,556 & 70.3%. 2012: \$ TBD &~~
5 ~~TBD%.~~

6 ~~Q. WHAT WERE THE OTHER FOUR ORGANIZATIONS TO WHICH PACIFICORP~~
7 ~~PAID THE LARGEST AMOUNT TRANSMIT ELECTRICITY TO PACIFICORP~~
8 ~~(I.E., ACCOUNT 565) IN 2011?~~

9 ~~A. California ISO, \$4,434,630; Deseret Generation and Transmission, \$6,254,360;~~
10 ~~Idaho Power, \$18,884,331; and Western Area Power Administration, \$9,314,770.~~
11 ~~The total amount for the rest of the top five suppliers to PacifiCorp of~~
12 ~~Transmission of Electricity by Others is \$38,888,091.~~

13 ~~Q. WHAT CONCLUSION DOES THE INFORMATION CONTAINED IN THE~~
14 ~~ABOVE FIVE QUESTIONS AND ANSWERS CAUSE YOU TO REACH?~~

15 ~~A. Each year, a massive percentage of the amount of Transmission Operation~~
16 ~~Expense PacifiCorp reports to FERC, which could in turn be used to calculate its~~
17 ~~annual jurisdictional revenue requirements, are amounts paid for third-party~~
18 ~~transmission service.~~

19 Earlier in this testimony, I presented an example where a QF interconnects with
20 an electric utility (i.e., Electric Utility A) in a location where not all the QF's output
21 can be utilized by that electric utility's customers in that location at all times and
22 the QF wishes to sell all the QF's output to Electric Utility A. In such a case,
23 §292.303(d) does not apply because the QF has not chosen to make an indirect
24 sale to another electric utility.

Transmission Operation Expenses versus costs recorded in Account 565, Transmission of Electricity by Others was virtually identical to the percentages of the similar total PacifiCorp comparison.

1 I then posed the question whether, in circumstances where Electric Utility A
2 decided to pay Electric Utility B to transmit the remaining QF output to another
3 Electric Utility A location and still compensate the QF the full standard rate for
4 purchase. Under FERC's regulations, the answer is "yes," because the host
5 utility is not permitted to charge the QF for transmission service needed to deliver
6 the QF's output to the host utility's own load.

7 In my answer, I also laid out a two part test, the first being whether Electric Utility
8 A is charging its retail and/or wholesale customers for third party transmission
9 costs of transmitting electricity to them from non-QF generation, including those
10 which are company owned. I concluded that in the event the electric utility is
11 charging its retail and/or wholesale customers for third party transmission costs,
12 the rates for purchases cannot discriminate against QFs by failing to pay such
13 costs for them. ~~The information I have laid out in the five previous questions and
14 answers makes it clear PacifiCorp is paying massive amounts of money to third
15 party transmission owners and then in all likelihood is charging its retail and/or
16 wholesale customers for such third party transmission costs. In such
17 circumstances, it would be unlawful for PacifiCorp to discriminate against QFs by
18 failing to pay for third party transmission; PURPA requires PacifiCorp to
19 compensate the QF at the full standard avoided cost rate for QF purchases, and
20 it may not deduct the costs of transmission service.~~

21 In any case, with respect to past transactions where standard rates for purchases
22 applied, PacifiCorp already has lost the opportunity to pay less than the full
23 amount of third party transmission and must also compensate the QF using the
24 full standard rate for purchase.

1 I also conclude that, though PacifiCorp owns a very significant amount of
2 transmission plant itself, and does not fit the profile of a truly transmission
3 dependent utility, PacifiCorp could not fail to be aware of the importance of
4 transmission systems owned by others to the provision of electric service to
5 PacifiCorp's customers.

6 **Q. ~~WHAT IS AN AFFECTED SYSTEM?~~**

7 A. ~~PacifiCorp and Threemile Canyon executed a Distribution Generator~~
8 ~~interconnection Agreement ("DGIA") in July, 2008. That DGIA contains a~~
9 ~~common utility industry definition of the term Affected System: "An electric~~
10 ~~system other than the Company's Transmission System or Distribution System~~
11 ~~that may be affected by the proposed interconnection." The Affected System~~
12 ~~definition found in Attachment O³⁴ (titled see Original Sheet No. 496) of~~
13 ~~PacifiCorp's FERC Electric Tariff Seventh Revised Volume No. 11 Pro Forma~~
14 ~~open Access Transmission Tariff ("OATT") is nearly identical, "An electric system~~
15 ~~other than the Transmission Provider's Transmission System that may be~~
16 ~~affected by the proposed interconnection."~~

17 **Q. ~~DO PACIFICORP'S GENERATOR INTERCONNECTION PROCESSES~~**
18 **~~EXPECT THAT AFFECTED SYSTEMS WILL BE IDENTIFIED, AND IMPACTS~~**
19 **~~STUDIED, DURING THE COURSE OF STUDYING A GENERATOR'S~~**
20 **~~INTERCONNECTION REQUEST?~~**

21 A. ~~Yes.~~

22 **Q. ~~PLEASE PROVIDE EXAMPLES.~~**

³⁴ APPENDIX 1 TO SGIP [Small Generator Interconnection Procedures], Glossary of Terms

1 ~~A. Example 1. The recital sections of PacifiCorp's Feasibility Study Agreement and~~
2 ~~System Impact Study Agreement respectively provide the following:~~

3 ~~**WHEREAS,** Interconnection Customer has requested the Transmission~~
4 ~~Provider to perform a feasibility study to assess the feasibility of~~
5 ~~interconnecting the proposed Small Generating Facility with the Transmission~~
6 ~~Provider's Transmission System, and of any Affected Systems;~~

7 ~~**WHEREAS,** the Interconnection Customer has requested the Transmission~~
8 ~~Provider to perform a system impact study(s) to assess the impact of~~
9 ~~interconnecting the Small Generating Facility with the Transmission Provider's~~
10 ~~Transmission System, and of any Affected Systems;~~

11 ~~Clearly, the party requesting each type study expects such identification and~~
12 ~~study to take place and PacifiCorp should fully understand that expectation.~~

13 ~~Example 2. Further, as shown in the excerpted Section 5.0 of the System Impact~~
14 ~~Study Agreement below, the potential for Affected Systems to participate in~~
15 ~~preparation of a system impact study and that Affected Systems must be allowed~~
16 ~~to review and comment in certain circumstances is discussed.~~

17 ~~5.0 Affected Systems may participate in the preparation of a system~~
18 ~~impact study, with a division of costs among such entities as they may~~
19 ~~agree. All Affected Systems shall be afforded an opportunity to review and~~
20 ~~comment upon a system impact study that covers potential adverse~~
21 ~~system impacts on their electric systems, and the Transmission Provider~~
22 ~~has 20 additional Business Days to complete a system impact study~~
23 ~~requiring review by Affected Systems.~~

1 ~~Example 3. Finally, as shown in the excerpts below, PacifiCorp is expected to~~
2 ~~coordinate with all Affected Systems to support the interconnection.~~

3 ~~(a) Subsection 1.2.6 of PacifiCorp's "Small Generator Interconnection~~
4 ~~Agreement for a Qualifying" Facility provides the following, "The~~
5 ~~Transmission Provider shall coordinate with all Affected Systems to~~
6 ~~support the interconnection."~~

7
8 ~~(b) Subsection 1.5.6 of the Small Generator Interconnection Agreement~~
9 ~~(SGIA) in PacifiCorp's OATT (which has been in effect since July 2007)~~
10 ~~contains identical language.~~

11 ~~**Q. IS THE TRANSMISSION PROVIDER THE CORRECT PARTY TO IDENTIFY**~~
12 ~~**AFFECTED SYSTEMS IN AN INTERCONNECTION PROCESS?**~~

13 ~~A. Yes, the Transmission Provider is the expert about its own transmission system.~~

14 ~~**Q. IS THREEMILE CANYON INTERCONNECTED WITH PACIFICORP? IF SO,**~~
15 ~~**WHERE?**~~

16 ~~A. Yes, Threemile Canyon is interconnected with the PacifiCorp distribution system,~~
17 ~~on its Simtag 34.5 kV distribution feeder that is connected to PacifiCorp's~~
18 ~~Dalreed Substation in Morrow County, OR.~~

19 ~~**Q. PLEASE BRIEFLY DESCRIBE THREEMILE CANYON'S INTERCONNECTION**~~
20 ~~**STUDY PROCESS UP TO THE POINT WHERE THREEMILE CANYON**~~
21 ~~**EXECUTED AN INTERCONNECTION AGREEMENT.**~~

22 ~~A. Threemile Canyon submitted an application for interconnection on January 17,~~
23 ~~2006. PacifiCorp provided a 3/14/2006 letter acknowledging Threemile Canyon's~~
24 ~~completion of site control documentation, which completed its original request~~
25 ~~application. After a scoping meeting, Threemile Canyon in succession applied~~
26 ~~for and received a Feasibility Study Report (completed 7/31/2006), a System~~
27 ~~Impact Study Report (completed 11/22/2006), and a Facilities Study Report~~

1 ~~(completed 4/16/2007). Later (7/11/2008), as already noted earlier in this~~
2 ~~testimony, Threemile Canyon executed a DGIA with PacifiCorp.~~

3 ~~**Q. IN THE ENTIRETY OF THREEMILE CANYON'S INTERCONNECTION**~~
4 ~~**PROCESS, WAS THREEMILE CANYON INFORMED BY PACIFICORP THAT**~~
5 ~~**AN AFFECTED SYSTEM EXISTED?**~~

6 ~~A. No, quite to the contrary. In the cases of both the Feasibility Study Report and~~
7 ~~System Impact Study Report PacifiCorp's report stated, "No Affected Systems~~
8 ~~were identified in relation to this Interconnection Request."~~

9 ~~**Q. DO PACIFICORP'S TRANSMISSION LINES DIRECTLY CONNECT TO THE**~~
10 ~~**DALREED SUBSTATION?**~~

11 ~~A. No.~~

12 ~~**Q. KNOWING WHAT YOU KNOW NOW, DO YOU BELIEVE PACIFICORP**~~
13 ~~**CORRECT IN MAKING THOSE NO AFFECTED SYSTEMS STATEMENTS IN**~~
14 ~~**THE TWO STUDY REPORTS? WHY?**~~

15 ~~A. No. Threemile Canyon now understands that BPA owns the Transmission line~~
16 ~~that serves the Dalreed Substation. As noted earlier, the DGIA's definition of~~
17 ~~Affected System is "An electric system other than the Company's Transmission~~
18 ~~System or Distribution System that may be affected by the proposed~~
19 ~~interconnection."~~

20 ~~**Q. HOW DID THREEMILE CANYON TREAT PACIFICORP'S STATEMENTS**~~
21 ~~**THAT NO AFFECTED SYSTEMS WERE IDENTIFIED?**~~

22 ~~A. Affected Systems can cause Generator Interconnection Customers to experience~~
23 ~~costs and/or risks (e.g., curtailments). Since there were no Affected Systems,~~
24 ~~Threemile Canyon then expected that it would experience no Affected System-~~
25 ~~related costs and/or risks. Since PacifiCorp is expected to be the expert with~~

1 ~~regard to its own transmission system, Threemile Canyon acted in reliance on~~
2 ~~PacifiCorp's statements as Threemile Canyon moved forward with its investment~~
3 ~~decisions.~~

4

5 **LEGALLY ENFORCEABLE OBLIGATIONS**

6 **Q. ISSUE 6. CONTRACTING ISSUES B. WHEN IS THERE A LEGALLY** 7 **ENFORCEABLE OBLIGATION?**

8 A. LEO exists when a QF commits itself to an electric utility. A QF can commit itself
9 more than one way, but the key is to keep the commitment process in the QF's
10 possession, not that of the electric utility.

11 The following is stated in PacifiCorp's Summary of Issues (Exhibit PAC/101,
12 Dickman/1):

13 *It is reasonable to establish that a legally enforceable obligation has arisen*
14 *when the QF approves the final draft PPA as contemplated in B(5) on*
15 *page 10 of Schedule 37. [See Exhibit PAC/200].*

16 While it is clear that a QF would be committing itself to an electric utility if and
17 when the QF approved a final draft PPA, that is not the only way for a QF to
18 commit itself to the electric utility. PacifiCorp's suggested benchmark for
19 establishing a LEO is deficient for the same reason as FERC noted when it
20 initially provided for non-contractual LEOs in addition to contractual LEOs in its
21 regulations—when control rests at least partially in the hands of the electric
22 utility, such control allows the electric utility the opportunity to circumvent entering
23 into a legally enforceable obligation. Control over the commitment process must

1 remain with the QF. In my opinion, the Commission risks failing to appropriately
2 implement PURPA if it places full or partial control over the process of creating a
3 LEO in the possession of electric utilities instead of leaving it to QFs to commit
4 themselves.

5 **Q. PLEASE LIST AND DISCUSS THE FERC REGULATION ESTABLISHING**
6 **LEGALLY ENFORCEABLE OBLIGATIONS.**

7 A. FERC Regulation § 292.304 (Rates for purchases), specifically § 292.304(d)(2),
8 provides qualifying facilities the option:

9 *To provide energy or capacity pursuant to a **legally enforceable***
10 ***obligation** for the delivery of energy or capacity over a specified term*
11 *... . (emphasis added)*

12 As FERC explained on pages 13-14 in its “Notice of Intent Not To Act and
13 Declaratory Order” issued October 4, 2011 in the Cedar Creek Wind, LLC case
14 (see Docket No. EL11-59-000):

15 *Section 292.304(d) and the requirement that a QF can sell and a utility must*
16 *purchase pursuant to a legally enforceable obligation were specifically*
17 *adopted to prevent utilities from circumventing the requirement of PURPA*
18 *that utilities purchase energy and capacity from QFs. [FERC] explained:*

19 *Paragraph (d)(2) permits a qualifying facility to enter into a contract or*
20 *other legally enforceable obligation to provide energy or capacity over a*
21 *specified term. Use of the term “legally enforceable obligation” is*
22 *intended to prevent a utility from circumventing the requirement that*
23 *provides capacity credit for an eligible facility merely by refusing to*
24 *enter into a contract with a qualifying facility.[50]*

25 *Thus, under our regulations, a QF has the option to commit itself to sell all or*
26 *part of its electric output to an electric utility. While this may be done through*
27 *a contract, if the electric utility refuses to sign a contract, the QF may seek*
28 *state regulatory authority assistance to enforce the PURPA-imposed*
29 *obligation on the electric utility to purchase from the QF, and a non-*
30 *contractual, but still legally enforceable, obligation will be created pursuant to*
31 *the state’s implementation of PURPA.51 Accordingly, a QF, by committing*

1 *itself to sell to an electric utility, also commits the electric utility to buy from*
 2 *the QF; these commitments result either in contracts or in non-contractual,*
 3 *but binding, legally enforceable obligations.***52**

4
 5 **50** Order No. 69 as published in Federal Register, Vol. 45, No. 38,
 6 February 25, 1980, p. 12224; *accord id.* (noting “the need for qualifying
 7 facilities to be able to enter into contractual commitments” and agreeing to
 8 “the need for certainty with regard to return on investment in new
 9 technologies”).

10 **51** *New PURPA Section 210(m) Regulations Applicable to Small*
 11 *Power Production and Cogeneration Facilities*, Order No. 688, FERC
 12 Stats. & Regs. ¶ 31,233, at P 212 (2006), *order on reh’g*, Order No. 688-A,
 13 FERC Stats. & Regs. ¶ 31,250, at P 136-137 (2007), *aff’d sub nom.*
 14 *American Forest and Paper Association v. FERC*, 550 F.3d 1179 (D.C.
 15 Cir. 2008); *see also Midwest Renewable Energy Projects, LLC*, 116 FERC
 16 ¶ 61,017 (2006).

17 **52** *JD Wind 1 LLC*, 129 FERC ¶ 61,148 at P 25 (2009).

18 ~~Q. DO YOU HAVE A CONCRETE EXAMPLE THAT DEMONSTRATES THE NEED~~
 19 ~~TO KEEP THE COMMITMENT (I.E., LEO CREATION) PROCESS IN A QF’S~~
 20 ~~POSSESSION?~~

21 ~~A. Yes. Almost four years ago now, in 2009, Threemile Canyon formally requested~~
 22 ~~that PacifiCorp execute its Standard Contract to purchase the output from the~~
 23 ~~Facility. PacifiCorp has steadfastly refused to execute the Standard Contract~~
 24 ~~with Threemile Canyon until and unless Threemile Canyon agrees to modify the~~
 25 ~~Standard Contract and pay for third party transmission. Earlier in this testimony,~~
 26 ~~I discussed why it is appropriate that PacifiCorp must not discriminate against~~
 27 ~~QFs in situations such as that faced by Threemile Canyon by failing to pay for~~
 28 ~~third party transmission and must also compensate the QF using the full standard~~
 29 ~~rate for purchase. In my opinion, a long-term legally enforceable obligation~~
 30 ~~between Threemile Canyon and PacifiCorp commenced, at the latest, when~~
 31 ~~Threemile Canyon executed the first Short-Term PPA, which now have been~~
 32 ~~extended many times. If Threemile Canyon had to wait for PacifiCorp to present~~

1 ~~it with an acceptable final draft PPA it could sign in order to create a LEO,~~
2 ~~Threemile Canyon would still be waiting some four years later.~~

3 **MECHANICAL AVAILABILITY**

4 **Q. HOW SHOULD CONTRACTS ADDRESS MECHANICAL AVAILABILITY?**

5 A. The need for mechanical availability provisions in QF contracts is out-of-date and
6 contracts should not address mechanical availability.

7 Mechanical availability in QF contracts commonly is designed to extract financial
8 penalties in the event such availability falls below benchmark levels. Standard
9 QF contracts must be in compliance with the requirement that QFs be
10 compensated at the particular electric utility's avoided cost level and having a
11 contract address mechanical availability is not a way a utility is allowed to get
12 around the avoided cost requirement. So, in the event the Commission wishes to
13 continue to address mechanical availability in QF contracts, the total financial
14 impact of the standard contract, including mechanical availability, must not stray
15 from the avoided cost requirement.

16 **Q. DOES EXELON WIND USE MECHANICAL AVAILABILITY? IF SO, WHAT IS** 17 **IT USED FOR?**

18 A. Yes, Exelon uses mechanical availability as an indicator of performance, but not
19 in isolation. I have attached as Exhibit JAH-104 a number of graphs used by
20 Exelon to view progress in its improvement initiatives. Exelon tends to rely more
21 on Energy Capture to measure performance.

1 Graph 1 shows scatter plot graphs of Exelon Wind's fleet wide (a) Mechanical
2 Availability (see X-axis) and (b) Energy Capture (see Y-axis). Each black dot
3 (2010), red box (2011), and green box (2012) shows a turbine month with
4 combined percentages availability and capture percentages. Of course, the best
5 outcome would be to have all the dots and boxes lie on top of each other in the
6 extreme top right corner (100% available and 100% energy capture). One can
7 readily see a march toward that corner from 2010 to 2011 to 2012. Note also
8 that to the extent there are turbine months of less than 100% availability the
9 outcomes are trending toward a narrowed band around the blue equality line,
10 which visually depicts a trend toward getting the maximum amount of energy one
11 can given whatever availability there is.

12 Graph 2 shows scatter plot graphs of Exelon Wind's company-wide (a)
13 Mechanical Availability (see X-axis) and (b) Energy Capture (see Y-axis) for
14 Vestas V82 type wind turbine generators. V82s are installed at eight of Exelon's
15 10 QFs in Oregon, comprising approximately 73 percent of Exelon's total QF
16 nameplate capacity in Oregon. The same general observation applies as for
17 Exelon's total fleet, except that the compression toward the top right corner is
18 more pronounced, indicating combined very high Mechanical Availability and
19 Energy Capture.

20 Graphs 3, 5 & 7 are bar graphs showing Exelon Wind's fleet-wide progress in
21 Mechanical Availability from 2010 (93.8%) to 2011 (97.2%) to 2012 (97.1%).f

22 Graphs 4, 6 & 8 are bar graphs showing Exelon Wind's fleet-wide progress in
23 Energy Capture from 2010 (87.9%) to 2011 (92.6%) to 2012 (92.3%).

1 Mechanical Availability is particularly useful as a measure for Original Equipment
2 Manufacturer (OEM) warranties and as a result the set up of OEM SCADA
3 equipment measures Mechanical Availability primarily from that perspective.

4 **Q. WHY SHOULD QF CONTRACTS NOT ADDRESS MECHANICAL**
5 **AVAILABILITY?**

6 A. QF contracts should not address mechanical availability because the design for
7 compensating QFs has changed over time. When QFs were compensated either
8 fully or partially in terms of dollars per kilowatt of capacity, they could earn money
9 whether or not they generated any electricity, potentially receiving something for
10 nothing. Mechanical availability guarantees made sense in such a compensation
11 scheme to make sure QFs had an incentive to provide value for the value they
12 received.

13 Today, all of Exelon's Oregon-based QFs are paid in accordance with a
14 PacifiCorp Schedule 37-based methodology. All pricing in Schedule 37, whether
15 derived from avoided energy cost or avoided capacity cost, is priced on a cents
16 per kilowatt-hour basis. When an Exelon QF in Oregon is not generating it is not
17 earning money and hence its compensation follows the amount of value it is
18 providing to the electric utility and the utility's customers. No additional
19 optimization incentive is needed.

20 **Q. HOW DOES HAVING A QF CONTRACT ADDRESS MECHANICAL**
21 **AVAILABILITY IMPACT SMALL QFS THAT QUALIFY FOR THE STANDARD**
22 **CONTRACT?**

23 A. All of Exelon's Oregon-based QFs qualify for PacifiCorp's Schedule 37. The
24 QFs' respective nameplate capacities range in size from 1.65 megawatts to 9.9-
25 10 megawatts. When the smallest QF has its single wind turbine generator

1 (WTG) become unavailable, 100 percent of its capacity becomes unavailable. In
2 comparison, consider a hypothetical QF having a 79.2 megawatt nameplate
3 capacity QF with 48-1.65 megawatt WTGs installed. If the hypothetical QF has a
4 single WTG become unavailable, it loses only about 2.1 percent (versus 100%)
5 of its nameplate capacity. Consequently, smaller QFs' penalty-related risk
6 exposure by having its contract address mechanical availability is staggeringly
7 larger than for a larger QF. The risk profile would be even larger if small QF
8 Mechanical Availability was measured, and penalties assessed, on a month-by-
9 month basis—as a visual inspection of Graphs 1 and 2 demonstrates. If the
10 Commission wishes to consider removing inappropriate mechanical availability
11 risk impacts from QFs, which I recommend it should, I suggest it should first look
12 to remove it from QFs less than or equal to 10 megawatts nameplate capacity,
13 which currently are eligible for standard contracts.

14 **Q. DOES THE REQUIREMENT TO USE MECHANICAL AVAILABILITY PRESENT**
15 **CHALLENGES TO A QF?**

16 A. Yes. Original Equipment Manufacturers (OEM) of wind turbine generators
17 (WTG) gather data primarily to support warranty requirements. To the extent
18 electric utilities require measures of mechanical availability other than that which
19 can be supported by an OEM's normal processes, time and cost is added.

20 **Q. EXPLAIN ENERGY CAPTURE AS A GOAL.**

21 A. Energy Capture values the availability of a WTG to produce energy when the
22 wind is blowing. The more the wind blows the greater the value of the WTG
23 being available.

1 **Q. IS ENERGY CAPTURE MAINSTREAM AT EXELON?**

2 A. Yes. One way I can reinforce my yes answer is to note that Wind Energy
3 Capture is among the Business Unit Goals components of Exelon Power's
4 annual incentive compensation program. Exelon Wind is part of Exelon Power.
5 Exelon Power is a division of Exelon Generation and is responsible for the non-
6 nuclear portion of Exelon Generation's fleet of generators.

7 **Q. CAN HAVING MECHANICAL AVAILABILITY BE ADDRESSED IN A QF'S**
8 **STANDARD CONTRACT CAUSE ANY DIFFICULTIES WITH RESPECT TO**
9 **USING ENERGY CAPTURE AS A QF'S PRIMARY PERFORMANCE**
10 **MEASURE? IF SO, PLEASE EXPLAIN.**

11 A. Yes. Mechanical availability values availability equally in all hours. It does not
12 discriminate between hours when the wind may not be blowing up to a WTG's
13 cut-in speed,³⁵ and no value can be provided and also does not measure/value a
14 WTG's provision of progressive amounts of value as wind speed goes up the
15 WTG's power curve.³⁶ Because Energy Capture does discriminate between the
16 value that can be provided as wind speed picks up, it can cause a WTG's
17 operator to operate a WTG that is experiencing minor mechanical issues until the
18 wind subsides rather than immediately try to fix the minor problem. More energy
19 is generated, but there likely will also be more WTG faults and short-lived forced
20 outages, causing the Mechanical Availability measure to decline.

21 **Q. HAVE YOU REVIEWED PACIFICORP WITNESS GRISWOLD'S**
22 **SUPPLEMENTAL DIRECT TESTIMONY REGARDING THIS ISSUE? PLEASE**

³⁵ Cut-in wind speed - the minimum wind speed at which a WTG's blades overcome friction and begin to rotate.

³⁶ Power curve - the steady power delivered by a WTG as a function of steady wind speed between the cut-in and cut-out speeds (i.e., the speed at which a WTG's blades are brought to rest to avoid damage from high winds.)

1 **BRIEFLY DISCUSS HIS TESTIMONY AND PROVIDE YOUR OPINION OF ITS**
2 **VALUE.**

3 A. Yes, I have reviewed the testimony vis-à-vis mechanical availability and I don't
4 believe Mr. Griswold has provided any fact-based rationale for having
5 PacifiCorp's standard contract address mechanical availability. Further, his
6 testimony certainly does not provide any evidence of (1) a need to raise the
7 mechanical availability benchmark in year three and beyond (year one in contract
8 renewals) in PacifiCorp's Schedule 37 and (2) no evidence of mechanical
9 availability impacting PacifiCorp's Oregon jurisdictional avoided cost.

10 Mr. Griswold has stated, "The Company proposes to increase the guaranteed
11 availability in its QF power purchase agreements (PPAs) to 90 percent beginning
12 in contract year three through the remaining term of the PPA. The Company also
13 proposes to reduce allowed scheduled maintenance to 60 hours per wind turbine
14 per year." [See p. 1] Later in his testimony, Mr. Griswold adds, "For existing QF
15 wind projects that are renewing a PPA or have previously had a PPA with
16 another utility, the Guaranteed Availability should be set at 0.90 in Contract Year
17 1 for each year of the term of the PPA." [See p. 4]

18 Yet, Mr. Griswold has stated no real rationale for such a change, no evidence
19 that the change will provide a material benefit to PacifiCorp consumers. He has
20 simply stated that, "Both are within the limits set in recent PPAs that resulted
21 from the Company's renewable request for proposals (RFP) as well as recent QF
22 PPAs executed in other jurisdictions." [See p. 1]

23 Later in his testimony, Mr. Griswold similarly states, "The change is consistent
24 with the most recent Guaranteed Availability levels (consistent with the definition

1 of a MAG for QFs) used in the Company's renewable request for proposals and,
2 in the Company's experience, wind QFs have consistently demonstrated an
3 ability to meet these levels of Guaranteed Availability after excluding hours lost to
4 force majeure and scheduled maintenance." [See p. 4]

5 Simply stating that (1) a party bidding into a renewable RFP or (2) that QFs that
6 have executed QF PPAs in other jurisdictions have been willing to accept such a
7 level of mechanical availability guarantee is not adequate evidence for changing
8 a term in a standard offer contract. Examining any contract term in isolation in
9 the way Mr. Griswold has done with this issue is of almost no value to the
10 investigative process this Commission has undertaken. One would need to look
11 at the particular circumstances (for example, expected project site capacity
12 factor) and all the contract terms to get a better understanding of why a project
13 developer might be willing to take any one particular action when it responds to a
14 RFP or executes a QF PPA. Since a QF may elect, rather than arguing with an
15 electric utility, to accept a contract that contains otherwise objectionable
16 conditions, perhaps including conditions that are discriminatory that drive prices
17 paid to the QF below the utility's avoided cost, acceptance of such a contract is
18 not necessarily evidence of having met avoided cost principles.

19 **Q. HAVE YOU REVIEWED PGE WITNESSES MACFARLANE AND BETTIS**
20 **SUPPLEMENTAL DIRECT TESTIMONY REGARDING THIS ISSUE? PLEASE**
21 **BRIEFLY DISCUSS THAT TESTIMONY AND PROVIDE YOUR OPINION OF**
22 **ITS VALUE.**

23 **A.** Yes, I have reviewed the testimony and I don't believe Messrs. MacFarlane and
24 Bettis provided any fact-based rationale for having PGE's standard contract
25 address mechanical availability. Further, their testimony certainly does not

1 provide any evidence of (1) a need to maintain the mechanical availability
2 benchmark from its currently very high level in PGE's Schedule 201 and (2)
3 especially whether there is an impact on PGE's Oregon jurisdictional avoided
4 cost. Any reduction in PGE's current mechanical availability level would be an
5 improvement from its currently very high level. At a minimum, I recommend that
6 the PGE mechanical availability level be made consistent with that in PacifiCorp's
7 Schedule 37.

8 PGE presents historical availability data on the three phases of PGE's Biglow
9 Canyon wind farm and notes that it has been able to consistently achieve 95%
10 availability without a planned maintenance exception and declares its proposed
11 MAP is achievable for QFs.

12 ***Q. Is PGE's proposed MAP achievable?***

13 *A. Yes. PGE's MAP is written to provide incentive for the efficient*
14 *operation of renewable QF facilities. PGE's own wind resource - Biglow*
15 *Canyon - has been able to consistently achieve 95% availability without a*
16 *planned maintenance exception. Further, 95% availability is well in line*
17 *with the industry standard.*

18 With all due respect to Messrs. MacFarlane and Bettis,

19 (a) Simply pointing to a single wind project's first five years' availability
20 experience is not credible evidence that such experience can be
21 maintained or duplicated consistently just by a wind project owner doing
22 everything in its power to maintain the project appropriately. For example,
23

24 (i) Exelon has experienced the failure of an Idaho-based wind
25 project's substation transformer (which is analogous to a Generator
26 Step Up Transformer) and even though we pulled out all the stops

1 to get our project up and running again, months of 100% lost
2 production went by before that happened.
3

4 (ii) Exelon has also experienced a serial defect in one particular
5 manufacturer's blades that caused us to (we believe responsibly to
6 protect the public safety) shut down an entire fleet of turbines at
7 multiple locations until they could all have their blades be tested
8 and replaced as necessary.
9

10 (b) Exelon has working relationships with Vestas, GE, and other wind turbine
11 generator manufacturers. Maintenance programs come at a cost and
12 such costs should be expected to grow substantially as turbines age. If
13 the Commission wishes to hear from those WTG manufacturers about
14 mechanical availability and maintenance programs, it ought to hear from
15 them, not rely on a very short paragraph and footnotes like that offered by
16 PGE.³⁷
17

18 (c) PGE and all other Oregon jurisdictional vertically integrated electric utilities
19 are in a much different place than independent power producers (IPPs).
20 I've worked for a state commission for six years and for a vertically
21 integrated regulated electric utility for 19 years. Now I've worked with IPP
22 owners for approximately six years. I read with interest in the
23 Commission's Order No. 12-493 the discussion regarding PacifiCorp's
24 proposal to establish a power cost adjustment mechanism (PCAM) and
25 then the Commission's decision to allow PacifiCorp (like PGE) to establish
26 a PCAM that included a dead band and a sharing mechanism among
27 other features. IPPs don't get automatic adjustment mechanisms of any
28 kind, let alone 18³⁸. IPPs must live with the terms and prices of the
29 contracts they execute and know what terms will be commercial (i.e.,
30 acceptable to lenders) and what won't. We're not going to whine about
31 that, but to try to characterize an IPP's risk profile as being in any way
32 similar to a vertically integrated utility, which has available regulatory
33 processes that allow it to adjust its annual revenue requirements and
34 adjustment clauses to financially account for changes in circumstances is
35 just plain wrong, as it's consequently wrong to suggest/infer IPPs should
36 necessarily be willing to accept something a vertically integrated utility
37 might be willing to accept.

³⁷ Further, a survey of manufacturer data (footnotes 2,3,&4 below) shows that major companies estimate a 97% availability factor per turbine (all available hours) if the QF elects to allow the manufacturer to perform maintenance. Vestas even goes so far as to offer liquidated damages if 97% availability is not maintained.

³⁸ Pacific Power's Oregon Schedule 90 summarizes the applicability of its 18 adjustment schedules, showing which ones apply to which of 25 different pricing schedules.

EXPERIENCE OF JOHN A HARVEY

1
2 **Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE THAT IS**
3 **RELEVANT TO YOUR TESTIMONY.**

4 A. After serving seven years in the U. S. Navy (1973-80), as a naval intelligence
5 officer, in 1980 I began my career in the energy industry in Iowa Power Inc.'s
6 (Iowa Power, n/k/a MidAmerican Energy Company) Rate Department. During my
7 5½ years in the Rate Department I held positions as Accountant II, Rate
8 Engineer, and finally Senior Rate Engineer. Among my responsibilities were to
9 assure that Iowa Power's required filings under Sections 212 and 210 of the
10 Public Utility Regulatory Policies Act of 1978 were made with requisite quality
11 and timeliness. In 1986, I was promoted to the position of Area Supervisor, in
12 charge of Iowa Power's Red Oak (Iowa) service area. In that position, I was
13 responsible for electric transmission and distribution construction, operation, and
14 maintenance in the service area. I was also responsible for customer service
15 (including metering and meter reading and the provision of contract customer
16 service for Iowa Gas Inc.), marketing, and government relations in the local area,
17 as well as provided administrative support for substation crews stationed in the
18 Red Oak Service Center. In 1991, after Iowa Power's merger with Iowa Public
19 Service Company (merged entity's electric utility properties subsequently known
20 as Midwest Power), I was transferred to [Midwest Resources'] corporate, where I
21 held successive positions as Special Projects Administrator and Regulatory
22 Projects Coordinator. My responsibilities as Regulatory Projects Coordinator
23 included coordination of Midwest Power electric rate cases and Midwest Power
24 electric and Midwest Gas energy efficiency rate regulatory filings. In 1995, after
25 the merger of Midwest Resources Inc. and Iowa-Illinois Gas & Electric Company

1 into MidAmerican Energy Company (MidAmerican), I was selected as
2 MidAmerican's Manager, Distribution Operations Support. In that position, I had
3 responsibility for Electric Distribution Planning, Electric Business Unit Safety
4 (including OSHA compliance coordination) and worker's compensation. I was
5 also responsible for the compilation and analysis of electric distribution Capital
6 and O&M Budgets. Finally, I served as the electric distribution fleet advisor.

7 In 1996, in the aftermath of MidAmerican's acquisition by Cal Energy,
8 MidAmerican reorganized its electric and gas business units so that energy
9 delivery functions (electric transmission and distribution and gas distribution)
10 were combined into one business unit (with electric generation being in another).
11 My position title was changed to Manager, Operations Support for the Energy
12 Delivery business unit and my responsibilities changed. Thereafter, I assumed
13 responsibility for vegetation management (with responsibilities for contracts worth
14 up to \$12 million annually, under which approximately 200 contract personnel
15 were employed), right-of-way acquisition, geospatial information systems (GIS,
16 including MidAmerican Energy's three-year, \$20-plus million build out of electric
17 and natural gas GIS systems), Electric Transmission System maintenance
18 scheduling (including outside contracting), and compilation and analysis of
19 Energy Delivery Capital Budgets.

20 In 2000, after a 1999 MidAmerican Energy reorganization following its further
21 acquisition and being taken private by a partnership led by Berkshire Hathaway, I
22 took the position of Manager, Energy Section for the Iowa Utilities Board (IUB). In
23 that position, in addition to being responsible for a section of eight utility analysts
24 that dealt with electric, natural gas and water utility tariff filings, I was lead advisor

1 to the Utilities Board members on electric and natural gas issues. In addition, I
2 served as a member of the National Association of Utility Commissioners
3 (NARUC) Staff Subcommittee on Electricity and I also served as a staff advisor
4 to the Organization of MISO States (OMS) Board of Directors, including serving
5 as a member of OMS's Markets Working Group and member/co-chair of its
6 Congestion Management & Financial Transmission Rights Allocation Working
7 Group. I also served as co-chair of the Midwest Independent Transmission
8 System Operator's (MISO) Ancillary Services Task Force.

9 In 2006, I retired from the IUB and took a position with the Federal Energy
10 Regulatory Commission as Chief of the FERC Office of Enforcement's Market
11 Monitor Relations Branch. My responsibilities included energy market oversight
12 regarding RTO/ISO Independent Market Monitors and other transmission
13 providers.

14 In 2007, I assumed a position as Utility Relations Manager with John Deere
15 Renewables, LLC. My responsibilities included federal and state regulatory
16 issues and transactions with utilities. John Deere Renewables had business
17 plans based upon federal and state regulatory constructs. Because of my
18 significant experience with regulatory constructs, both from the private and public
19 sector sides of the regulatory fence, I was charged with helping assure that John
20 Deere Renewables business plans and their execution appropriately and
21 successfully took into account those constructs.

22 In 2010, Deere and Company sold John Deere Renewables (n/k/a Exelon Wind,
23 LLC) to Exelon Generation, LLC. I then assumed my current position as
24 Manager, Regulatory and Markets Liaison. My responsibilities include federal

1 and state regulatory issues and transactions (including power purchase
2 agreements and interconnection agreements) with utilities, as well as generator
3 owner-operator market participant responsibilities in Regional Transmission
4 Organizations. I also advise Exelon Wind executives on reliability responsibilities
5 of Exelon Wind generating facilities that are or will be subject to North American
6 Electric Reliability Corporation Mandatory Standards/Requirements.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

8 A. I received a Master of Business Administration degree, majoring in Finance, from
9 Southern Illinois University at Edwardsville in 1979 and I earlier received a
10 Bachelor of Arts degree, majoring in history and political science, from Luther
11 College, Decorah, IA. I have also attended Camp NARUC and the Edison
12 Electric Institute's Basic and Advanced Ratemaking courses.

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20 4824-0094-7731, v. 1

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing **DIRECT TESTIMONY OF JOHN A. HARVEY ON BEHALF OF THREEMILE CANYON WIND I, LLC** via electronic mail on following parties of record:

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Dated in Portland, Oregon, this 18st day of March, 2013.

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