

**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.

RULING

DISPOSITION: MOTION TO STRIKE DENIED

I. BACKGROUND

On June 27, 2011, PacifiCorp, dba Pacific Power (Pacific Power) filed Advice No. 11-011, to revise Schedule 37 to designate qualifying facilities (QFs) larger than 100 kW as a network resource that could be charged, in some circumstances, transmission costs to move the QF's output to the purchasing utility's load. The Commission opened docket UE 235 to investigate the proposed revisions.

On July 1, 2011, Threemile Canyon Wind I, LLC (Threemile Canyon) filed a complaint against Pacific Power to resolve disputed issues regarding the allocation of third-party transmission costs under an unexecuted standard long-term power purchase agreement (PPA). The Commission opened docket UM 1546 to address the complaint. Pacific Power requested a stay of the docket until docket UE 235 concluded consideration of a core legal issue. The stay was granted by an Administrative Law Judge (ALJ) ruling on October 6, 2011.

On June 29, 2012, the Commission opened this docket, UM 1610, to investigate QF contracting and pricing issues. The issues list adopted in this docket included issues, such as third-party transmission costs, also raised in docket UE 235.

On September 18, 2012, Threemile Canyon filed a motion seeking relief from the stay in docket UM 1546. The motion was denied by ALJ ruling on October 22, 2012 on the basis that this docket would generally address the threshold legal issue of the allocation of third-party transmission costs under the Public Utilities Regulatory Act (PURPA), thereby addressing disputed issues in docket UM 1546. The October 22, 2012 ruling was affirmed by the Commission in Order No. 12-475, entered December 10, 2012.

II. MOTION TO STRIKE AND REPLY

On March 29, 2013, Pacific Power filed a motion to strike certain portions of testimony offered by Threemile Canyon witness John A. Harvey in this docket. Movant claims that the testimony at issue circumvents the stay in docket UM 1546, and seeks to introduce

issues and disputed facts that are extraneous to the issues in this docket. Movant seeks to strike portions of the testimony that detail the contractual dispute between Threemile Canyon and Pacific Power and contentions regarding resolution of that dispute.

On April 5, 2013, Threemile Canyon filed a reply opposing the motion on the basis that the disputed testimony is directly relevant to the legal issues of whether a utility can recover third-party transmission costs under PURPA.

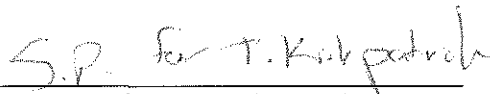
III. DISCUSSION

The Commission opened this docket to address, in a generic fashion, legal and policy issues related to PURPA implementation and QF contracting. The identified issues include the allocation of third-party transmission costs in standard contracts, and a determination when a legally enforceable obligation is triggered between a QF and purchasing utility. Pacific Power argues that the testimony of Threemile Canyon's witness improperly addresses specific factual and legal disputes between the parties rather than addressing the generic issues in this docket.

We disagree. A party may properly refer to specific examples of the kinds of conflicts taking place between utilities and QFs in order to advocate by way of illustration for changes to how the Commission implements PURPA. To the extent that the testimony of Threemile Canyon's witness is intended to provide context and background for positions supported by Threemile Canyon in this docket, we discern nothing improper in the testimony and decline to strike it.

Although the order issued in this docket will not resolve specific, ongoing factual disputes between QFs and utilities pending in other dockets before this Commission, the order may affect the legal arguments made by the parties in those dockets. The underlying facts of such disputes have little relevance to this proceeding other than providing context for an illustration of a current PURPA implementation problem and will not be addressed by the Commission. Thus, while we will not strike the testimony at issue, we ask the parties to remain focused on the issues to be resolved in this docket.

Dated this 30th day of April 2013 at Salem, Oregon.



Traci A.G. Kirkpatrick
Administrative Law Judge



Shani Pines
Administrative Law Judge