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March 18, 2013

**VIA ELECTRONIC FILING & US MAIL**

Oregon Public Utility Commission  
Attn: Filing Center  
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PO Box 2148  
Salem, OR 97308-2148

Re: In the Matter of Oregon Public Utility Commission of Oregon,  
Investigation into Qualifying Facility Contracting and Pricing.  
**Docket No. UM-1610**

Dear Filing Center:

Enclosed for filing in UM-1610 are an original and five copies of:

Direct Testimony of John A. Harvey on behalf of Threemile Canyon Wind I, LLC:

- Threemile Exhibits 101, 102, 103 and 104

This document is being filed by electronic mail with the Filing Center. Hard copies will be sent to the OPUC via US Mail.

Very truly yours,



Richard Lorenz

RGL:tb  
Enclosures  
cc: UM-1610 Service List

4842-0462-8243, v. 1

**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**

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**INTRODUCTION**

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

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

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

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

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

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

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

A. Yes.

**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.E<sup>1</sup>, 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 agreement<sup>2</sup> approved by this Commission in UM 1129 ("Standard  
26 Contract") unless Threemile Canyon agrees to pay for BPA Transmission Service

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<sup>1</sup> 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?

<sup>2</sup> 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.<sup>3</sup>

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.

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<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.

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

<sup>5</sup> 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. I  
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.<sup>6</sup>

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.<sup>7</sup> 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.

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<sup>6</sup> 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.

<sup>7</sup> 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 2. Stipulation 21 in part states "Schedule 37 does not expressly address third-  
20 party transmission costs or the cost of curtailment." The failure to state  
21 something in a contract does not make the contract ambiguous with respect  
22 to what is not stated. But even if the contract did address transmission costs,  
23 FERC's PURPA regulations do not permit a host utility to charge a QF that is  
24 selling directly to the host utility under PURPA for the costs of transmitting the  
25 QF's output to the host utility's load. Threemile Canyon objects to PacifiCorp's  
26 unwarranted attempt to force on Threemile Canyon an addendum to the  
27 Standard Contract by refusing to execute the Standard Contract with  
28 Threemile Canyon.
- 29 3. Because (a) Threemile Canyon has committed to sell all its output to  
30 PacifiCorp, but (b) PacifiCorp has refused to execute the Standard Contract  
31  
32

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 37<sup>8</sup> in  
18 effect at the time, as the text in the citation below demonstrates.

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

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<sup>8</sup> *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."<sup>9</sup>  
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

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<sup>9</sup> 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.<sup>10</sup>

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.**

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<sup>10</sup> 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;<sup>11</sup> 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?**

---

<sup>11</sup> § 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.<sup>12</sup> 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

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<sup>12</sup> 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."<sup>13</sup>

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."<sup>14</sup> 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?**

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

<sup>14</sup> 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.”<sup>15</sup>

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.*<sup>16</sup>

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.*<sup>17</sup>

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

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<sup>15</sup> *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).

<sup>16</sup> Order No. 05-584 at 40.

<sup>17</sup> Order No. 05-584 at 38.



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.<sup>20</sup> 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*

---

<sup>20</sup> (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           **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.”<sup>22</sup>

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.”<sup>23</sup> PacifiCorp’s claims in

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<sup>22</sup> 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.”

<sup>23</sup> 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.<sup>24</sup>

11 PacifiCorp noted in its response to a Threemile Canyon data request,<sup>25</sup>

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,<sup>26</sup> 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.**

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<sup>24</sup> 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.

<sup>25</sup> 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 ..."

<sup>26</sup> 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
- 21 • FERC regulation §292.303(a) obligates electric utilities to purchase, in  
22 accordance with §292.304, unless exempted by § 292.309 and § 292.310,  
23 any energy and capacity which is made available from a qualifying facility: (1)  
24 Directly to the electric utility ... .
  - 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.<sup>27</sup>  
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*?**

---

<sup>27</sup> 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,<sup>28</sup> 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.

---

<sup>28</sup> **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, of 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)."<sup>29</sup> 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.<sup>30</sup> 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.

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<sup>29</sup> *Entergy* at P 53.

<sup>30</sup> 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. 1<sup>31</sup> 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.<sup>32</sup>

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%.<sup>33</sup>

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

<sup>32</sup> 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.

<sup>33</sup> 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 O<sup>34</sup> (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.**

---

<sup>34</sup> 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,<sup>35</sup> 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.<sup>36</sup> 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**

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

<sup>36</sup> 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.<sup>37</sup>  
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 18<sup>38</sup>. 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.

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<sup>37</sup> 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.

<sup>38</sup> 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 18<sup>st</sup> day of March, 2013.

/s/ Richard G. Lorenz

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Of Attorneys for the  
Threemile Canyon Wind I, LLC

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1546

<b>THREEMILE CANYON WIND I, LLC,</b>	)	
	)	
<b>Complainant,</b>	)	<b>STATEMENT OF STIPULATED</b>
	)	<b>FACTS</b>
	)	
<b>v.</b>	)	
	)	
<b>PACIFICORP, dba PACIFIC POWER,</b>	)	
	)	
<b>Defendant.</b>	)	

1 Threemile Canyon Wind I, LLC (“Threemile Canyon”) and PacifiCorp hereby file with  
2 the Public Utility Commission of Oregon this Statement of Stipulated Facts. The parties  
3 stipulate only to the truth of the statements set forth in this stipulation. Each party  
4 reserves the right to object to the relevance of any fact set forth herein. This Statement of  
5 Stipulated Facts is principally derived from the admissions made by the parties in the  
6 pleadings filed to date in this proceeding. This Statement of Stipulated Facts is not an  
7 exhaustive statement of all uncontroverted facts which may be relevant in this  
8 proceeding. The parties reserve the right to submit evidence of additional facts, including  
9 additional uncontroverted facts, and reserve the right to seeks further admissions from  
10 one another or to engage in such other discovery as either party may deem necessary.

11 (1) PacifiCorp is an electric utility as defined in PURPA (16 U.S.C. § 2602(4)) and  
12 ORS 758.505(4) and is subject to Section 210 of PURPA (16 U.S.C. § 824a-3).

13 (2) PacifiCorp is a public utility as defined in ORS 757.005(1)(a)(A) and is subject to  
14 the Commission’s jurisdiction and regulation.

- 1 (3) Threemile Canyon Wind I, LLC is an Oregon limited liability company.
- 2 (4) Threemile Canyon owns, maintains and otherwise operates a wind-powered  
3 generating facility located in Morrow County, Oregon (the "Facility").
- 4 (5) Threemile Canyon has self-certified the Facility as a qualifying facility under  
5 PURPA.
- 6 (6) The Facility has six 1.65 MW Vestas V-82 wind-turbine generators installed; the  
7 total nameplate capacity of the Facility therefore is 9,900 kW.
- 8 (7) Threemile Canyon's Facility is located in PacifiCorp's service territory, in a locale  
9 which is served by PacifiCorp's Dalreed substation.
- 10 (8) PacifiCorp's transmission function ("PacifiCorp Transmission") maintains facilities  
11 originating at the Dalreed substation to serve PacifiCorp load in the vicinity of the  
12 substation.
- 13 (9) PacifiCorp's Dalreed substation and the associated PacifiCorp facilities serving  
14 PacifiCorp load in the vicinity of the substation are interconnected to the rest of  
15 PacifiCorp's system only by transmission facilities owned and operated by third  
16 parties. PacifiCorp refers to this situation as the "Dalreed load pocket."
- 17 (10) The principle load in the Dalreed load pocket is a single farming operation with a  
18 large irrigation system resulting in irrigation season loads in the Dalreed load  
19 pocket of up to 40 MW and non-irrigation load of as little as 2 MW.
- 20 (11) Exelon Wind, LLC (f/k/a John Deere Renewables, LLC) and joint developer  
21 Momentum Renewable Energy, Inc. approached PacifiCorp's merchant function  
22 ("PacifiCorp Merchant") in September of 2006 about purchasing output from one 5

- 1 MW project and one 10 MW project, to be located at the Threemile Canyon site and  
2 interconnected to PacifiCorp's Dalreed substation..
- 3 (12) On January 17, 2006, Threemile Canyon applied to PacifiCorp Transmission to  
4 request an interconnection agreement for the Facility—a single 10 MW project  
5 described in paragraphs 4 and 5 above.
- 6 (13) On July 31, 2006, PacifiCorp Transmission provided Threemile Canyon with a  
7 Feasibility Study Report regarding the proposed interconnection. PacifiCorp was  
8 identified in the report as the "Transmission Provider." Section 7.0, located on  
9 page 11 of the report, is titled, "Participation by Affected Systems" and the one  
10 sentence finding of that Section was "No Affected Systems were identified in  
11 relation to this Interconnection Request."
- 12 (14) On November 22, 2006, PacifiCorp Transmission provided Threemile Canyon with  
13 a System Impact Study Report regarding the proposed interconnection. PacifiCorp  
14 was identified in the report as the "Transmission Provider." Section 5.0, located on  
15 page 8 of the report, is titled, "Participation by Affected Systems" and the one  
16 sentence finding of that Section was "No Affected Systems were identified in  
17 relation to this Interconnection Request."
- 18 (15) On February 20, 2007, PacifiCorp Transmission provided Threemile Canyon with a  
19 Facilities Study Report. PacifiCorp was identified in the report as the  
20 "Transmission Provider." In addition, in the report's Section 2.0, "Scope and  
21 Objectives of the Study," the following statement was made with respect to such  
22 scope and objectives: "Specify and estimate the cost of the equipment, engineering,

1 procurement, and construction work (including overheads) needed to implement the  
2 conclusions of the system impact study(s).”

3 (16) On July 15, 2008, Threemile Canyon entered into a *Distribution Generation*  
4 *Interconnection Agreement* with PacifiCorp Transmission (“Interconnection  
5 Agreement”), permitting Threemile Canyon to interconnect to PacifiCorp’s utility  
6 system (“System”) on the 34.5 kV Simtag Feeder out of PacifiCorp’s Dalreed  
7 Substation (“Point of Interconnection”).

8 (17) Threemile Canyon has paid all costs for which the Interconnection Agreement held  
9 Threemile Canyon responsible.

10 (18) On December 19 2008, Threemile Canyon applied to PacifiCorp Merchant for a  
11 Long-Term Standard Contract PPA (Long-Term PPA) for Threemile Canyon’s  
12 Facility pursuant to PacifiCorp’s Tariff Schedule 37 (“Schedule 37”).

13 (19) On December 19, 2008, PacifiCorp Merchant notified Threemile Canyon by e-mail  
14 that PacifiCorp Merchant believed the Facility would generate net output in excess  
15 of load in the Dalreed load pocket during certain times of the year and that, under  
16 such circumstances, PacifiCorp would need to purchase third-party transmission  
17 services from BPA to move the excess generation to PacifiCorp load outside the  
18 Dalreed load pocket.

19 (20) On January 23, 2009, PacifiCorp Merchant notified Threemile Canyon that  
20 curtailment of the Facility’s output would be necessary if point-to-point  
21 transmission service from BPA was not available to move excess power out of  
22 Dalreed.

1 (21) Schedule 37 does not expressly address third-party transmission costs or the cost of  
2 curtailment. In an attempt to resolve the question of which party must bear the cost  
3 of third-party transmission or curtailment, the parties worked from December 2009  
4 through August 2010 to prepare a joint petition to the Commission asking it to  
5 resolve the question of who is responsible for such costs. The parties ultimately  
6 could not agree on the terms of a joint petition to the Commission to resolve their  
7 disagreement regarding the cost of third-party transmission or curtailment.

8 (22) As part of the collaborative process of developing the joint petition, which occurred  
9 after conclusion of the interconnection process, PacifiCorp Merchant represented to  
10 Threemile Canyon: (a) that PacifiCorp imports energy on a firm basis into the  
11 Dalreed substation across BPA-owned transmission pursuant to PacifiCorp's  
12 General Transmission Agreement (GTA) with BPA; (b) the GTA covers power  
13 flow into Dalreed substation; (c) under the GTA, the Dalreed load is telemetered for  
14 import into PacifiCorp West control area such that dynamic scheduling is not  
15 required for import energy; and (d) the current GTA makes no provision for firm  
16 export of energy from the Dalreed substation across BPA transmission.

17 (23) Also as part of the collaborative process of developing the joint petition, which  
18 occurred after conclusion of the interconnection process, PacifiCorp conducted an  
19 analysis based in part on information provided by Threemile Canyon which  
20 demonstrated on a backward-looking basis that output from the Facility would have  
21 exceeded total load in the Dalreed load pocket approximately 11 to 15 percent of  
22 total hours in a year during the months October through April with the majority of  
23 those hours concentrated in the months of November through March.

1 (24) PacifiCorp has referred to the times when the output of the Threemile Canyon QF  
2 exceeds total PacifiCorp load served by the Dalreed substation as “Excess  
3 Generation Events.”

4 (25) As part of the collaborative process of developing the joint petition, PacifiCorp has  
5 represented to Threemile Canyon: (a) that during an Excess Generation Event,  
6 PacifiCorp merchant may use (if available) firm BPA Point-To-Point (“PTP”)   
7 Transmission Service (PTPTS) as defined in BPA’s Open Access Transmission  
8 Tariff (“OATT”) in order to move the excess generation from Dalreed substation to  
9 PacifiCorp’s greater system such that PacifiCorp can use the Facility’s excess  
10 generation to serve its retail customer load; (b) that PacifiCorp has made a formal  
11 request to BPA to purchase sufficient capacity to transmit 100 percent of Threemile  
12 Canyon’s generation in excess of Dalreed Service Area load (8 megawatts) to  
13 PacifiCorp’s other load across BPA-owned transmission for a five-year term with  
14 roll-over rights to renew on an on-going basis through the term of the Power  
15 Purchase Agreement (“PPA”); and (c) a customer-financed upgrade to BPA’s  
16 system may be necessary before BPA long-term FFTP transmission sufficient to  
17 export Threemile Canyon’s excess generation in all months is available.

18 (26) As part of the collaborative process of developing the joint petition, PacifiCorp has  
19 represented to Threemile Canyon that in the event sufficient long-term firm  
20 transmission service (LTFPTPTS) is not available, PacifiCorp may attempt to  
21 obtain short-term firm transmission (STFPTPTS) on a month-to-month basis for the  
22 months when an Excess Generation Event is expected.

23 (27) As part of the collaborative process of developing the joint petition, PacifiCorp has

1 represented to Threemile Canyon that if PacifiCorp does not purchase BPA PTPTS,  
2 then PacifiCorp must curtail excess Facility generation during Excess Generation  
3 Events so not to incur penalties from BPA for unscheduled deliveries under BPA's  
4 OATT.

5 (28) On June 19, 2009, PacifiCorp and Threemile Canyon executed a Short-Term PPA  
6 with a four-month term. The Short-Term PPA is in the form of PacifiCorp's  
7 Commission-approved standard agreement for intermittent resources with  
8 mechanical available guarantee, but with the addition of an addendum (Addendum  
9 R – "Clarification of Contract Price"). The Short-Term PPA in its Addendum R  
10 memorialized and documented the Parties' agreement on the Contract Prices that  
11 would be paid by PacifiCorp to Threemile Canyon. PacifiCorp and Threemile  
12 Canyon later extended their Short-Term PPA's Termination Date in succession  
13 until: (a) October 31, 2009, (b) November 30, 2009; (c) April 30, 2010, (d) October  
14 31, 2010, (d) March 31, 2011, and (e) September 30, 2011.

15 (29) The Short-Term PPA requires PacifiCorp to purchase all net output from the  
16 Facility or else default on the Short-Term PPA, even during an Excess Generation  
17 Event.

18 (30) In executing the Short-Term PPA, the parties reserved their right to dispute who  
19 would pay incremental third-party transmission costs and incremental revenue  
20 reductions when the Short-Term PPA expires.

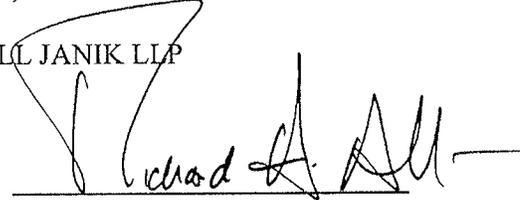
21 (31) Since June 2009, PacifiCorp has purchased all net output from the Facility at the  
22 point of delivery in the Dalreed load pocket. PacifiCorp has purchased such  
23 Facility output under the Short-Term PPA.

1 (32) On June 27, 2011, PacifiCorp filed Advice No. 11-011 with the Commission  
2 seeking revisions to Schedule 37.

3 (33) On July 1, 2011, Threemile Canyon filed its *Complaint* in this matter. PacifiCorp  
4 filed its *Answer, Defenses and Counterclaims* on July 25, 2001. Threemile Canyon  
5 filed its *Answer to the Counterclaims* on August 8, 2011.

6  
7 DATED this 6th day of September, 2011.

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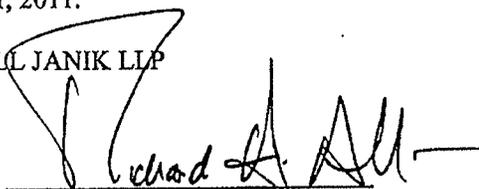
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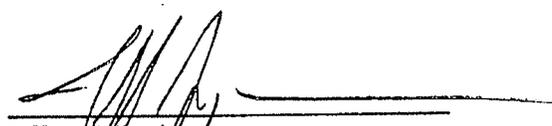
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7 DATED this 6th day of September, 2011.

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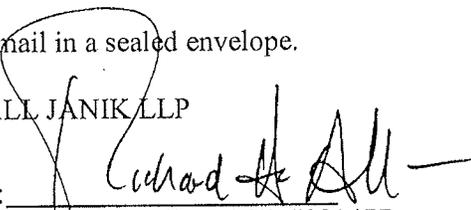
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20 825 NE. Multnomah, Suite 925  
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23

**CERTIFICATE OF FILING**

1  
2 I hereby certify that on September 6, 2011, I filed the foregoing STATEMENT  
3 OF STIPULATED FACTS (UM 1546) with the Public Utility Commission; Att'n Filing  
4 Center, by electronic transmission and mailed the original and five copies to the Public  
5 Utility Commission, Att'n. Filing Center, 550 Capitol Street NE, No. 215, P.O. Box 2148,  
6 Salem, Oregon 97308 by first-class mail in a sealed envelope.

7  
8 BALL JANIK LLP

9 By: 

Richard H. Allan, OSB #881477  
Of Attorneys for Complainant  
Threemile Canyon Wind I, LLC  
rallan@balljanik.com

12  
13 **CERTIFICATE OF SERVICE**

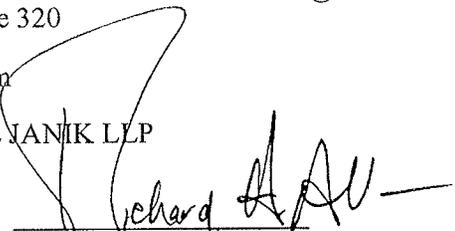
14 I hereby certify that on September 6, 2011, I served a true and correct copy of the  
15 foregoing STATEMENT OF STIPULATED FACTS (UM 1546) by electronic  
16 transmission and by first-class mail on the following individuals:

17 PacifiCorp Oregon Dockets  
18 825 NE Multnomah Street, Suite 2000  
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19 oregondockets@pacificorp.com

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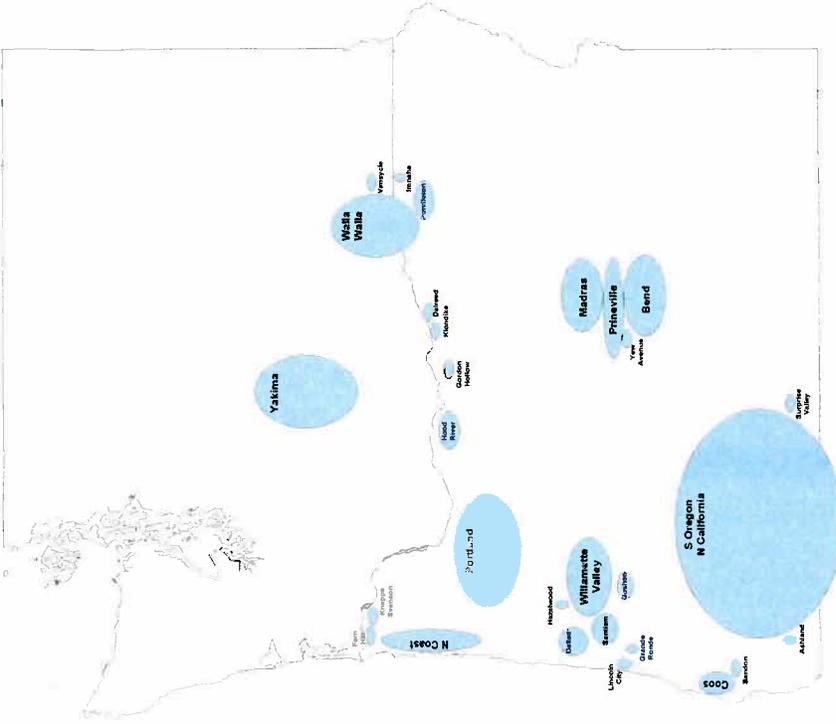
24 By: 

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25  
26 Page 1 CERTIFICATE OF FILING AND SERVICE

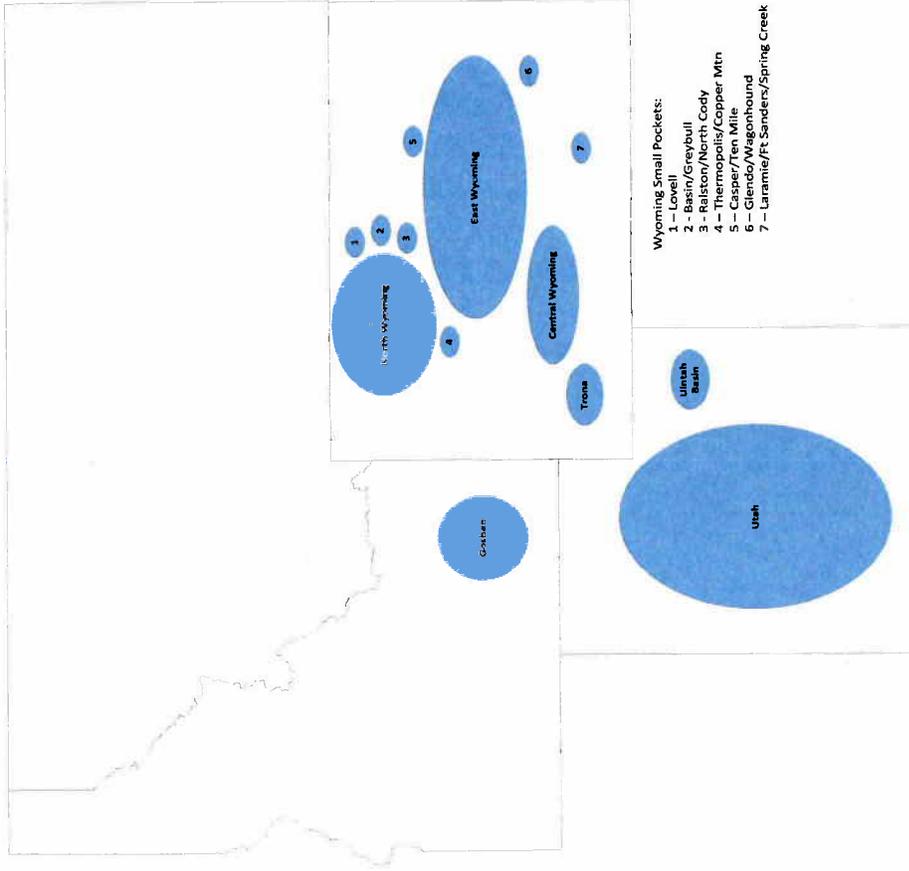
PacifiCorp load pockets within its PACW balancing authority area		
Plant Name	Load Pocket	
1 Bogus Creek	S Oregon / Northern California	
2 CroPro, Inc	S Oregon / Northern California	
3 Lake Siskiyou (Box Canyon)	S Oregon / Northern California	
4 Luckey, Paul	S Oregon / Northern California	
5 Rolphs Ranch, Inc	S Oregon / Northern California	
6 Roseburg Forest Products - Weed	S Oregon / Northern California	
7 Slate Creek	S Oregon / Northern California	
8 KG Hydro	Walla Walla	
9 Big Top LLC (QF)	S Oregon / Northern California	
10 Biomass Ops, L.P	Walla Walla	
11 Buter Creek Power L.L.C	Walla Walla	
12 C Drop	S Oregon / Northern California	
13 CHG Portland	Portland	
14 Central Oregon Irrigation District	Bend	
15 Central Oregon Irrigation District - Juniper Ridge	Bend	
16 City of Albany, Dept of Public Works	Willamette Valley	
17 City of Portland, Portland Hydro Bureau	Portland	
18 Curtiss Livestock (Cameron Curtis)	S Oregon / Northern California	
19 Deschutes Valley Hydro District	Bend	
20 Dorena Hydro	Willamette Valley	
21 Douglas County Forest Products	S Oregon / Northern California	
22 Duane Wiggins Hydro	Imbaha	
23 Eagle Point Irrigation District (Nichols Gap)	S Oregon / Northern California	
24 EIBD Hydro	Madras	
25 Evergreen BioPower	Willamette Valley	
26 Falls Creek	Willamette Valley	
27 Farm Power Misby Meadow	N Coast	
28 Farmers Irrigation	Hood River	
29 Finley Bioenergy	Walla Walla	
30 Four Corners Windfarm LLC	Walla Walla	
31 Four Mile Canyon Windfarm LLC	Walla Walla	
32 Galaville Dam (Douglas County)	S Oregon / Northern California	
33 High Plateau Windfarm LLC	Walla Walla	
34 Jim & Sharon Jans (Ocell Creek)	Hood River	
35 Jacomb Irrigation	Willamette Valley	
36 Lower Ridge Windfarm LLC	Walla Walla	
37 Loyd Ferry	Willamette Valley	
38 Middlefork Irrigation District	Hood River	
39 Monroe Hydro	Madras	
40 Mountain Energy	S Oregon / Northern California	
41 State Hollow Windfarm LLC (1)	Walla Walla	
42 DM Power 1	S Oregon / Northern California	
43 Oregon Environmental Industries	S Oregon / Northern California	
44 Oregon Institute of Technology	S Oregon / Northern California	
45 Oregon State University	Willamette Valley	
46 Oregon Trail Windfarm LLC	Walla Walla	
47 Pacific Canyon Windfarm LLC	Walla Walla	
48 Pine City Windfarm LLC (1)	Walla Walla	
49 PDS Ag- Oak Lea	Willamette Valley	
50 Roseburg Forest Products - Dillard	S Oregon / Northern California	
51 Roseburg LFG	S Oregon / Northern California	
52 Rough & Ready Lumber	S Oregon / Northern California	
53 Roush Hydro, Inc	Willamette Valley	
54 Sand Ranch Windfarm LLC	Walla Walla	
55 Santiam Hydro Council District	Willamette Valley	
56 Spague Hydro (North Fork Spague)	S Oregon / Northern California	
57 Stubbush Island Farms	Willamette Valley	
58 Swallow Irrigation District	Bend	
59 Thumme Canyon Wind LLC	Dooness	
60 TMF Biofuels	Dooness	
61 Wagon Trail LLC	Walla Walla	
62 Ward Butte Windfarm LLC	Walla Walla	
63 Denver Dairy	Yakima	
64 Walla Walla City of	Walla Walla	
65 Yakima Teton (Cowabe)	Yakima	
66 Yakima Teton (Orchards)	Yakima	

PACW – Load Pockets



**PACE - Load Pockets**

PacifiCorp load pockets within its PACE balancing authority area		Plant Name	Load Pocket
1	Bell Mountain Hydro LLC (Ted Sorenson)		Goshen
2	Bell Mountain Power (Jake Army)		Goshen
3	Birch Creek Hydro		Goshen
4	Cargill_Q3 (Kettle Butte Dairy)		Goshen
5	CDM Hydro		Goshen
6	Commercial Energy Management		Goshen
7	Dry Creek		Goshen
8	Georgetown Power		Goshen
9	Ingram Warm Springs Ranch		Goshen
10	Marsh Valley Hydro & Electric Company		Goshen
11	Meadow Creek Project Company - Five Pine		Goshen
12	Meadow Creek Project Company - North Point		Goshen
13	Mink Creek Hydro		Goshen
14	Nicholson Sunny-bar Ranch		Goshen
15	O.J. Power Company		Goshen
16	Power County Wind Park North		Goshen
17	Power County Wind Park South		Goshen
18	Preston City Hydro		Goshen
19	Ballard Hog Farms Inc		Utah
20	Cottonwood Hydro Lower		Utah
21	Cottonwood Hydro Upper		Utah
22	Wasatch Integrated Waste Management District (Davis County Waste Management)		Utah
23	Draper Irrigation Company		Utah
24	eBay - Solar		Utah
25	Hill Air Force Base		Utah
26	Kennecott Refinery		Utah
27	Kennecott Smelter		Utah
28	Magnesium Corporation of America		Utah
29	Spanish Fork Wind Park 2		Utah
30	Sunnyside Cogeneration Associates		Utah
31	Tesoro Refining and Marketing Company		Utah
32	Thayn Ranch Hydro		Utah
33	Weber County, State of Utah		Utah
34	Bureau of Land Management - Rawlins Office		North Wyoming
35	Chevron Wyoming Wind QF		North Wyoming
36	City of Buffalo		North Wyoming
37	ExxonMobile Production Company		Trona
38	Garland Canal (Shoshone)		North Wyoming
39	J Bar 9 Ranch		Central Wyoming
40	Lower Valley Energy		Goshen
41	Mountain Wind 1		Utah
42	Mountain Wind 2		Utah
43	Simplot Phosphates, LLC		Central Wyoming



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July 25, 2011

***Via Electronic and U.S. Mail***

Public Utility Commission of Oregon  
Attn: Filing Center  
P.O. Box 2148  
Salem, OR 97308-2148

Re: THREEMILE CANYON WIND I, LLC, Complainant, vs.  
PACIFICORP dba PACIFIC POWER, Respondent  
OPUC Docket No. UM 1546

Attention Filing Center:

Enclosed for filing in the above-captioned docket are an original and five copies of  
*PacifiCorp's Answer, Defenses, and Counterclaims.*

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to  
me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,



Jeffrey S. Lovinger  
Attorney for PacifiCorp

cc: UM 1546 Service List

Enclosures



1 provided by BPA. With the addition of the Threemile Canyon QF, generation at Dalreed  
2 will at times exceed load by up to 7.9 MW under normal load conditions (an “Excess  
3 Generation Event” resulting from “Excess Generation”). To ensure that Threemile  
4 Canyon QF output can be used during Excess Generation Events, PacifiCorp must obtain  
5 a minimum of 8 MW of firm point-to-point transmission from BPA to move the excess  
6 Threemile Canyon generation from Dalreed to another location on PacifiCorp’s system  
7 where there is sufficient load to absorb the Excess Generation.

8 PacifiCorp notified Threemile Canyon of Excess Generation issues in 2006. In  
9 December 2008, after its project was nearly completed, Threemile Canyon sought a 20-  
10 year power purchase agreement (“PPA”) at published avoided cost rates under  
11 PacifiCorp’s Oregon Tariff Schedule 37 (“Schedule 37”). PacifiCorp's merchant function  
12 and Threemile Canyon executed a short-term Schedule 37 PPA, which has been extended  
13 without interruption six times while PacifiCorp has sought to have Threemile Canyon  
14 agree to pay for the required 8 MW of BPA firm point-to-point transmission or agree that  
15 PacifiCorp can curtail Threemile Canyon output without payment when such output will  
16 exceed Dalreed load. Threemile Canyon has not been willing to agree to these  
17 conditions. To date, PacifiCorp has paid all costs of third party transmission to manage  
18 Excess Generation Events without contribution from Threemile Canyon.

19 Threemile Canyon alleges: (1) that it is eligible to sell its entire output net of  
20 station service to PacifiCorp in accordance with Schedule 37 without adjustments for  
21 incremental third-party transmission costs incurred by PacifiCorp when QF generation  
22 exceeds load in the Dalreed area;<sup>1</sup> and (2) that PacifiCorp committed several errors in

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<sup>1</sup> Complaint at ¶ 1.

1 processing Threemile Canyon’s interconnection and power purchase requests and that  
2 equitable considerations therefore dictate that PacifiCorp, rather than Threemile Canyon,  
3 should bear third-party transmission costs or other additional costs.<sup>2</sup> Regarding the  
4 alleged errors, Threemile asserts: (A) that PacifiCorp’s transmission function erred in  
5 concluding as part of the interconnection process that PacifiCorp was the “Transmission  
6 Provider”;<sup>3</sup> (B) that PacifiCorp transmission erred in concluding as part of the  
7 interconnection process that there was no “Affected System”;<sup>4</sup> and (C) that PacifiCorp  
8 merchant erred by not identifying that there would be Excess Generation Events requiring  
9 third-party transmission until after the interconnection process was complete and after  
10 Threemile Canyon had made contractual commitments to build its generation facility.<sup>5</sup>  
11 Threemile Canyon requests that the Commission order PacifiCorp to purchase the entire  
12 output of the Facility, including during any Excess Generation Event, on the terms and at  
13 the rates of PacifiCorp’s Schedule 37, without adjustments for incremental third-party  
14 transmission costs.<sup>6</sup> Alternatively, Threemile Canyon requests that the Commission  
15 order PacifiCorp to pay Threemile Canyon any revenue deductions arising from  
16 PacifiCorp’s failure to purchase the output of the Facility, including during an Excess  
17 Generation Event.<sup>7</sup>

18 PacifiCorp denies that it made the errors alleged by Threemile Canyon.  
19 PacifiCorp contends that it properly considered itself the Transmission Provider during

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<sup>2</sup> *Id.* at 2 ¶ 2.

<sup>3</sup> *Id.* at 12 ¶ 9.

<sup>4</sup> *Id.* at 13 ¶ 12.

<sup>5</sup> *Id.* at 13 ¶ 11.

<sup>6</sup> *Id.* at 16 ¶ 1.

<sup>7</sup> *Id.* at 17 ¶ 2.

1 the interconnection process and that it properly concluded that there is no Affected  
2 System for purposes of the interconnection process. PacifiCorp further contends that it  
3 committed no error by first identifying the potential for Excess Generation Events and  
4 third-party transmission on December 19, 2008—the same day Threemile Canyon made  
5 its first request for a PPA for its current 9.9 MW Facility.

6 Further, PacifiCorp denies that Schedule 37 compels the result sought by  
7 Threemile Canyon. Indeed, PacifiCorp takes the position that requiring it to pay full  
8 published avoided cost rates under Schedule 37 for Threemile Canyon's output *and*  
9 requiring PacifiCorp to pay for the third-party transmission necessary to move Excess  
10 Generation to adequate load violates PURPA by requiring a utility and its customers to  
11 pay more than full avoided cost for QF output. As a result, Threemile Canyon's  
12 requested relief should be denied. Furthermore, the Commission should allow PacifiCorp  
13 to recover amounts it has expended (or will expend prior to final resolution of this  
14 complaint) on third-party transmission necessary to avoid curtailing Threemile Canyon  
15 during Excess Generation Events, and interest thereon. The Commission should either  
16 declare that Threemile Canyon must pay any such future third-party transmission costs or  
17 that the Short-Term PPA is void *ab initio*.

## 18 B. ANSWER

19 PacifiCorp answers the complaint filed by Threemile Canyon as follows:

20 1. Paragraph (1) on pages 1 and 2 of the complaint states:

21 *Threemile Canyon is eligible to sell its entire net of station service output*  
22 *to Pacific Power in accordance with Pacific Power's Oregon Tariff*  
23 *Schedule 37, without any adjustment of Schedule 37 prices or additional*  
24 *cost responsibility. Such sale by Threemile Canyon to Pacific Power is*  
25 *just and reasonable and in the public interest as stated in OPUC and*  
26 *FERC regulations and orders.*

1 These allegations are conclusions of law requiring no response.

2 2. Paragraph (2) on page 2 of the complaint states:

3 *Equitable considerations also apply in favor of Threemile Canyon due to*  
4 *repeated PacifiCorp errors.*

5 The allegation that equitable considerations favor Threemile Canyon is a conclusion of  
6 law requiring no response. PacifiCorp denies it committed any errors.

7 3. Paragraph (3) on page 2 of the complaint states:

8 *Consequently, the Commission should grant Threemile Canyon's*  
9 *requested relief, namely (a) Requiring PacifiCorp to purchase the output*  
10 *of the Facility including during any Excess Generation Event, on the terms*  
11 *and at the rate selected by Threemile Canyon under Schedule 37, without*  
12 *adjustments for incremental third-party transmission costs, or*  
13 *alternatively, (b) Requiring PacifiCorp to pay to Threemile Canyon any*  
14 *revenue reductions arising from PacifiCorp's failure to purchase the*  
15 *output of the Facility, including during any Excess Generation Event.*

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

18 4. The first sentence of paragraph (1) on page 2 of the complaint states:

19 *Threemile Canyon Wind I, LLC is an Oregon limited liability company.*

20 PacifiCorp admits this allegation.

21 5. The second sentence of paragraph (1) on page 2 of the complaint  
22 states:

23 *Threemile Canyon was established to develop, own, maintain and*  
24 *otherwise operate a wind-powered generating facility located in Morrow*  
25 *County, Oregon, within PacifiCorp's service territory (the "Facility").*

26 Having insufficient information or knowledge regarding the truth or falsity of this  
27 allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
28 thereof.

1           6.       The third sentence of paragraph (1) on page 2 of the complaint states:

2           *The Facility has six 1.65 MW Vestas V-82 wind-turbine generators*  
3           *installed; the total nameplate capacity of the Facility therefore is 9,900*  
4           *kW.*

5       PacifiCorp admits this allegation.

6           7.       Paragraph (1) on pages 2 and 3 of the complaint states:

7           *The Facility is a Qualifying Facility (QF), as that term is defined by*  
8           *FERC, 18 C.F.R. § 292.101(b)(1), and Oregon, ORS 758.505(8) and OAR*  
9           *860-029-0010(22). The Facility was re-certified by Threemile Canyon as*  
10          *a QF on April 15, 2011 in Docket No. QF09-142, in accordance with*  
11          *FERC rules, 18 C.F.R. § 292.207(a).*

12       These allegations are conclusions of law requiring no response.

13          8.       Paragraph (1) on page 3 of the complaint states:

14          *Threemile Canyon is a wholly owned subsidiary of Exelon Wind, LLC*  
15          *(formerly known as John Deere Renewables, LLC) which develops, builds,*  
16          *and operates renewable resource projects, including small (<10 MW*  
17          *nameplate) wind projects located in Oregon.*

18       Having insufficient information or knowledge regarding the truth or falsity of this  
19       allegation, PacifiCorp denies it and leaves Threemile Canyon to the proof thereof.

20          9.       Paragraph (2) on page 3 of the complaint states:

21          *Pacific Power, a Division of PacifiCorp, is an electric utility as defined in*  
22          *PURPA (16 U.S.C. § 2602(4)) and ORS 758.505(4) and therefore is*  
23          *subject to Section 210 of PURPA (16 U.S.C. § 824a-3), and related FERC*  
24          *regulations and Oregon Administrative Rules that require PacifiCorp to*  
25          *interconnect with and purchase net output from a facility that is a QF*  
26          *under PURPA.*

27       PacifiCorp admits that it is an electric utility as defined in PURPA and ORS 758.505(4).

28       PacifiCorp admits it is subject to Section 210 of PURPA. The remaining allegations are  
29       conclusions of law requiring no response.

1           10. Paragraph (3) on page 3 of the complaint states:

2           *PacifiCorp is a public utility as defined in ORS 757.005(1)(a)(A) and is*  
3           *subject to the Commission's jurisdiction and regulation.*

4 PacifiCorp admits the allegation.

5           11. Paragraph (4) on page 3 of the complaint states:

6           *The Public Utility Commission has determined a "standard contract*  
7           *eligibility threshold [of] 10 MW to be reasonable."* In the Matter of  
8           Staff's Investigation Relating to Electric Utility Purchases from Qualifying  
9           Facilities, *Docket No. UM 1129, Order No. 05-584 (2005) at 17*  
10           *(hereafter, Order No. 05-584).*

11 PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
12 denies any other implication or aspect of the allegation.

13           12. Paragraph (5) on page 3 of the complaint states:

14           *The Commission has also determined, "Design capacity, as defined by the*  
15           *manufacturer's nameplate capacity for a QF project, will continue to be*  
16           *the measure of eligibility for standard contracts."*

17 PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
18 denies any other implication or aspect of the allegation.

19           13. Paragraph (6) on page 4 of the complaint states:

20           *Pacific Power was required to file and have approved the standard*  
21           *contract form now in its tariff, entitled "Schedule 37, AVOIDED COST*  
22           *PURCHASES FROM QUALIFYING FACILITIES OF 10,000 KW OR*  
23           *LESS." Order No. 05-584 at 59 ("Within sixty days of the effective date of*  
24           *this order, each electric utility shall file by application ... one or more*  
25           *standard contract forms that set forth standard rates, terms and conditions*  
26           *that are consistent with the policy decisions made in this order").*

27 PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
28 denies any other implication or aspect of the allegation. PacifiCorp denies that its  
29 currently filed and approved standard contract forms are the same forms that were filed  
30 and approved in response to Order No. 05-584.

1           14.     The unnumbered paragraph on page 4 of the complaint states:

2           *Because Threemile Canyon is a QF with a total nameplate capacity less*  
3           *than 10,000 kW, and meets the other applicability requirements of*  
4           *Schedule 37, it is eligible to sell to Pacific Power under Schedule 37's*  
5           *terms and conditions.*

6     The allegation is a conclusion of law requiring no response.

7           15.     Paragraph (1) on pages 4 and 5 of the complaint states:

8           *The Commission's Order No. 05-584, which concluded the first phase of*  
9           *the Commission's Docket No. UM 1129 investigation into issues related to*  
10          *energy purchases from QFs by electric utilities, focused principally on*  
11          *issues related to standard contracts. Order No. 05-584 at 12. Among the*  
12          *issues addressed by the Commission in Order No. 05-584 was the issue of*  
13          *"Pricing Adjustments for Standard Contracts," which had been raised by*  
14          *PacifiCorp (and PGE). Order No. 05-584 at 38-39.*

15     PacifiCorp admits that the Commission addressed issues related to standard contracts in  
16     Order No. 05-584. PacifiCorp further admits that the Commission noted in Order No.  
17     05-584 under the heading "Pricing Adjustments for Standard Contracts" that PacifiCorp  
18     and PGE had raised certain issues. PacifiCorp denies any other implication or aspect of  
19     the allegations in paragraph (1) on pages 4 and 5.

20          16.     Paragraph (1)(a) on pages 4 and 5 of the complaint states:

21          *As described by the Commission, PacifiCorp recommended "that utilities*  
22          *be allowed to impose certain pricing adjustments in order to address*  
23          *issues that might include integration costs, debt imputation, or*  
24          *commercial and operational costs associated with intermittent QF*  
25          *resources." Order No. 05-584 at 38.*

26     PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
27     denies any other implication or aspect of the allegation.

28          17.     Paragraph (1)(b) on page 5 of the complaint states:

29          *The Commission Staff opposed PacifiCorp's recommendation, noting*  
30          *"that the characteristics of a specific QF may impose costs greater or*  
31          *lesser than costs captured by the standard contract rate, but notes that on*

1           *balance, the standard contract rate is deemed to provide a fair rate to QFs*  
2           *eligible to receive it.” Order No. 05-584 at 38.*

3       PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
4       denies any other implication or aspect of the allegation. PacifiCorp notes that the third-  
5       party transmission costs at issue in this case always impose costs greater than costs  
6       captured by the standard contract rate.

7           18. Paragraph (2) on pages 5 and 6 of the complaint states:

8           *The Commission **rejected** PacifiCorp's recommendation, stating:*

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

20          *Standard contracts are designed to minimize the need for parties to*  
21          *engage in contract negotiations. Consequently, **any flexibility in the***  
22          ***terms and conditions of a standard contract should be specifically***  
23          ***delineated and bounded. To the extent that a party anticipated the need***  
24          ***for flexibility with regard to a particular standard contract term or***  
25          ***condition, the specific issue should have been raised and examined in***  
26          ***this proceeding. It is inappropriate to request that standard contracts be***  
27          ***subject to potential negotiation to address project-specific***  
28          ***characteristics. In any case, we note that certain issues, such as***  
29          ***integration costs, will likely be taken up during the second phase of this***  
30          ***investigation when interconnection procedures and agreements will be***  
31          ***addressed. Order No. 05-584 at 39 (emphasis added).***

32       PacifiCorp admits that Order No. 05-584 contains the language quoted in paragraph (2)  
33       on pages 5 and 6 of the complaint. PacifiCorp denies any other implication or aspect of  
34       the allegation.

1           19.     The first sentence of paragraph (3) on page 6 of the complaint states:

2           *The Commission, as quoted, noted that if a “party anticipated the need for*  
3           *flexibility with regard to a particular standard contract term or condition,*  
4           *the specific issue should have been raised and examined in this*  
5           *proceeding.”*

6     PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
7     denies any other implication or aspect of the allegation.

8           20.     The second and third sentences of paragraph (3) on page 6 of the  
9     complaint state:

10           *Even if PacifiCorp anticipated the need for flexibility with regard to a*  
11           *particular contract term or condition, it did not raise it for examination in*  
12           *that proceeding. Nor, to Threemile Canyon's knowledge, did PacifiCorp*  
13           *at any time prior to Threemile Canyon's demand to sell to Pacific Power*  
14           *under Schedule 37, go back to the Commission and attempt to delineate,*  
15           *bound, and have examined any specific contract term or condition.*

16     PacifiCorp acknowledges it did not formally request that the Commission make a  
17     determination regarding the Excess Generation Events and third-party transmission issues  
18     raised by Threemile Canyon’s complaint until it filed Advice No. 11-011 on June 27,  
19     2011. However, PacifiCorp notes that its initial efforts to deal with the Threemile  
20     Canyon matter involved seeking a mutually agreeable compromise with Threemile  
21     Canyon rather than seeking Commission resolution. PacifiCorp further notes that it was  
22     not until 2011 that it became clear that QFs other than Threemile Canyon would seek to  
23     deliver output to a load pocket in such magnitude as to require additional third-party  
24     transmission. Once it became clear that PacifiCorp faced multiple actual requests for  
25     PPAs that implicated the third-party transmission issue (rather than a mere theoretical  
26     problem or a single, isolated occurrence of the problem), PacifiCorp prepared and  
27     submitted Advice No. 11-011 in order to bring the issue to the Commission for  
28     resolution.

1           21.     The first sentence of paragraph (4) on page 6 of the complaint states:

2           *As also quoted above, the Commission has declared, "It is inappropriate*  
3           *to request that standard contracts be subject to potential negotiation to*  
4           *address project-specific characteristics."*

5     PacifiCorp admits that Order No. 05-584 contains the quoted language. PacifiCorp  
6     denies any other implication or aspect of the allegation.

7           22.     The second sentence of paragraph (4) on pages 6 and 7 of the complaint  
8     states:

9           *In the case of Threemile Canyon, PacifiCorp has done precisely that: it*  
10          *has attempted to force a QF eligible for a standard contract to negotiate*  
11          *to address project-specific characteristics.*

12     The allegation that Threemile Canyon is eligible for a standard contract is a conclusion of  
13     law requiring no response. PacifiCorp otherwise denies the allegation.

14          23.     The third sentence in paragraph (4) on page 7 of the complaint states:

15          *Specifically, PacifiCorp has ignored the Commission prohibition against*  
16          *negotiating project specific characteristics with respect to a characteristic*  
17          *specific to the Facility, namely payment for third-party transmission*  
18          *service.*

19     The allegation is a conclusion of law requiring no response.

20          24.     The fourth sentence of paragraph (4) on page 7 of the complaint states:

21          *Moreover, as Threemile Canyon discusses later in this Complaint,*  
22          *PacifiCorp did not attempt to commence negotiations until after Threemile*  
23          *Canyon had made its major financial commitments to build the Facility.*

24     Having insufficient information or knowledge regarding when Threemile Canyon “made  
25     its major financial commitments to build the Facility,” PacifiCorp denies the allegation  
26     and leaves Threemile Canyon to the proof thereof. PacifiCorp notes that it commenced  
27     negotiations with Threemile Canyon on a PPA on December 19, 2008—the same day  
28     Threemile Canyon requested a PPA for its current QF project.

1           25.     Paragraph (1) on page 7 of the complaint states:

2           *FERC defines "Avoided Cost" as "the incremental costs to an electric*  
3           *utility of electric energy or capacity or both which, but for the purchase*  
4           *from the qualifying facility or qualifying facilities, such utility would*  
5           *generate itself or purchase from another source." 18 C.F.R. §*  
6           *292.101(b)(6).*

7     PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
8     denies any other implication or aspect of the allegation.

9           26.     Paragraph (2) on page 7 of the complaint states:

10          *The Commission defines "Avoided costs" in much the same manner, as*  
11          *"the electric utility's incremental costs of electric energy or capacity or*  
12          *both which, but for the purchase from the qualifying facility or qualifying*  
13          *facilities, the electric utility would generate itself or purchase from*  
14          *another source and shall include any costs of interconnection of such*  
15          *resource to the system." OAR 860-029-0010.*

16     PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
17     denies any other implication or aspect of the allegation.

18          27.     The first and second sentences of paragraph (3) on page 7 of the complaint  
19     state:

20          *Threemile Canyon and PacifiCorp executed a Distribution Generator*  
21          *Interconnection Agreement (DGIA) in July 2008. Threemile Canyon has*  
22          *paid all costs for which the DGIA held Threemile Canyon responsible.*

23     PacifiCorp admits these allegations.

24          28.     The third sentence of paragraph (3) on pages 7 and 8 of the complaint  
25     states:

26          *When such interconnection costs are subtracted from the description of*  
27          *Avoided Costs in OAR 860-029-0010, the remaining "Avoided costs" as*  
28          *described in the Commissions rules are identical to those described in*  
29          *FERC's regulations.*

30     The allegation is a conclusion of law requiring no response.

1           29. Paragraph (4)(a) on page 8 of the complaint states:

2           *FERC requires that Rates for Purchases be “just and reasonable to the*  
3           *electric consumer of the electric utility and in the public interest.”*  
4           *18 C.F.R. § 292.304.*

5 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
6 denies any other implication or aspect of the allegation.

7           30. Paragraph (4)(b) on page 8 of the complaint states:

8           *Similarly, the Commission requires that Rates for Purchases be “Just and*  
9           *reasonable to the public utility's customers and in the public interest.” OAR 860-*  
10          *029-0040(1)(a).*

11 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
12 denies any other implication or aspect of the allegation.

13          31. Paragraph (4)(c) on page 8 of the complaint states:

14          *FERC's regulations state, “In the case in which the rates for purchases*  
15          *are based upon estimates of avoided costs over the specific term of the*  
16          *contract or other legally enforceable obligation, the rates for such*  
17          *purchases do not violate this subpart if the rates for such purchases differ*  
18          *from avoided costs at the time of delivery.” 18 C.F.R. § 292.304 (b)(5).*

19 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
20 denies any other implication or aspect of the allegation.

21          32. Paragraph (4)(d) on page 8 of the complaint states:

22          *The Commission's rules make a virtually identical statement, “When the*  
23          *purchase rates are based upon estimates of avoided costs over a specific*  
24          *term of the contract or other legally enforceable obligation, the rates do*  
25          *not violate these rules if any payment under the obligation differs from*  
26          *avoided costs” OAR 860-029-0040(c).*

27 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
28 denies any other implication or aspect of the allegation.

1           33.     Paragraph (4)(e) on pages 8 and 9 of the complaint states:

2           *As the Commission noted in the section of Order No. 05-584 dealing with*  
3           *Standard Avoided Costs, “the goal of calculating avoided costs is to*  
4           *accurately estimate the costs a utility would incur to obtain any amount of*  
5           *power that it purchases from a QF . . . .” Order No. 05-584 at 20.*

6     PacifiCorp admits that the quoted language appears in the cited order. PacifiCorp denies  
7     any other implication or aspect of the allegation.

8           34.     Paragraph (4)(f) on page 9 of the complaint states:

9           *Rates in standard contracts, as estimates of avoided costs, do not violate*  
10          *the FERC and Commission rules requiring Rates for Purchases to be just*  
11          *and reasonable and in the public interest, if any payment under the*  
12          *obligation differs from avoided costs.*

13     This allegation is a conclusion of law requiring no response.

14          35.     The first sentence of the unnumbered paragraph on page 9 of the  
15     complaint states:

16          *As earlier noted in this Complaint, PacifiCorp missed the opportunity in*  
17          *Docket No. UM 1129 to bring specific issues to the Commission's*  
18          *attention, so that such issues could be delineated, bounded, and*  
19          *examined.*

20     PacifiCorp denies the allegation.

21          36.     The second sentence of the unnumbered paragraph on page 9 of the  
22     complaint states:

23          *Moreover, PacifiCorp had years subsequent to the Commission's issuance*  
24          *of Order No. 05-584 when it could have returned to the Commission with*  
25          *a specific issue to be delineated, bounded, and examined.*

26     PacifiCorp admits that years have passed since the Commission issued Order No. 05-584.

27     PacifiCorp otherwise denies the allegation.

28          37.     The third sentence of the unnumbered paragraph on page 9 of the  
29     complaint states:

1           *PacifiCorp failed to do so.*

2 PacifiCorp admits that it did not initiate a formal proceeding before the Commission to  
3 address the excess generation and third-party transmission issue prior to filing Advice  
4 No. 11-011 on June 27, 2011. PacifiCorp notes that prior to 2011, the Threemile Canyon  
5 QF was the only actual case which raised the issue and PacifiCorp was working in good  
6 faith with Threemile Canyon to resolve the issue without the need for a Commission  
7 proceeding. In 2011, it became clear that other QFs would seek Schedule 37 PPAs that  
8 implicate the load pocket issue and PacifiCorp therefore filed Advice No. 11-011 to  
9 obtain formal Commission approval of a solution to the problem. PacifiCorp denies that  
10 it has failed to properly or timely respond to or address the issues implicated in Threemile  
11 Canyon's complaint.

12           38. The fourth sentence in the unnumbered paragraph on page 9 of the  
13 complaint states:

14           *For PacifiCorp to now attempt to push the consequences of missed*  
15           *opportunities to Threemile Canyon -- especially where the justness and*  
16           *reasonableness and public interest standards of PURPA Rates for*  
17           *Purchases are not violated, the terms and conditions of Schedule 37 are*  
18           *clear, and the Commission has expressly rejected project-by-project*  
19           *negotiation of what are supposed to be "standard offer" contracts -- is*  
20           *both unfair and unjust to Threemile Canyon, and must not be allowed.*

21 This allegation is a series of legal conclusions requiring no response.

22           39. The fifth sentence in the unnumbered paragraph on page 9 of the  
23 complaint states:

24           *Threemile Canyon is eligible to sell under Schedule 37 without adjustment*  
25           *in prices or additional cost responsibility.*

26 This allegation is a conclusion of law requiring no response.

1           40.     Paragraph (1) on page 10 of the complaint states:

2           *Under Oregon's laws and regulations implementing PURPA, a QF located*  
3           *within PacifiCorp's service territory wishing to sell its net output to*  
4           *PacifiCorp must first enter into: (1) a generation interconnection*  
5           *agreement with PacifiCorp transmission - the function at PacifiCorp*  
6           *responsible for PacifiCorp grid operations, including interconnections;*  
7           *and (2) a power purchase agreement with PacifiCorp merchant - the*  
8           *function at PacifiCorp responsible for contracting to purchase net output*  
9           *from QFs. PacifiCorp's Oregon tariff Schedule 37 establishes the terms*  
10           *and conditions on which PacifiCorp must purchase the net output of a QF*  
11           *with a nameplate capacity of 10,000 kilowatts or less.*

12        These allegations are conclusions of law requiring no response.

13           41.     Paragraph (2) on page 10 of the complaint states:

14           *Exelon Wind, LLC (f/k/a John Deere Renewables, LLC) and joint*  
15           *developer Momentum Renewable Energy, Inc. first approached*  
16           *PacifiCorp merchant about purchasing output from one 5 MW project and*  
17           *one 10 MW project, to be located at the Threemile Canyon site and*  
18           *interconnected to PacifiCorp's Dalreed substation, in 2006.*

19        PacifiCorp admits the allegation.

20           42.     Paragraph (3) on pages 10 and 11 of the complaint states:

21           *Threemile Canyon received from PacifiCorp transmission a Feasibility*  
22           *Study Report regarding its proposed interconnection on July 31, 2006.*  
23           *PacifiCorp was identified in the report as the "Transmission Provider."*  
24           *Section 7.0, located on page 11 of the report, is titled, "Participation by*  
25           *Affected Systems" and the one sentence finding of that Section was "No*  
26           *Affected Systems were identified in relation to this Interconnection*  
27           *Request."*

28        PacifiCorp admits the allegations.

29           43.     Paragraph (4) on page 11 of the complaint states:

30           *Threemile Canyon received from PacifiCorp transmission a System*  
31           *Impact Study regarding its proposed interconnection on November 22,*  
32           *2006. PacifiCorp was identified in the report as the "Transmission*  
33           *Provider." Section 5.0, located on page 8 of the report, is titled,*  
34           *"Participation by Affected Systems" and the one sentence finding of that*  
35           *Section was "No Affected Systems were identified in relation to this*  
36           *Interconnection Request."*

1 PacifiCorp admits the allegations.

2 44. Paragraph (5) on page 11 of the complaint states:

3 *Threemile Canyon received from PacifiCorp transmission a Facilities*  
4 *Study Report on February 20, 2007. PacifiCorp was identified in the*  
5 *report as the "Transmission Provider." In addition, in the report's*  
6 *Section 2.0, "Scope and Objectives of the Study," the following statement*  
7 *was made with respect to such scope and objectives: "Specify and*  
8 *estimate the cost of the equipment, engineering, procurement, and*  
9 *construction work (including overheads) needed to implement the*  
10 *conclusions of the system impact study(s)."*

11 PacifiCorp admits the allegations.

12 45. Paragraph (6) on page 11 of the complaint states:

13 *In 2007, John Deere Renewables acquired 100 percent ownership of*  
14 *Threemile Canyon.*

15 Having insufficient information or knowledge regarding the truth or falsity of the  
16 allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
17 thereof.

18 46. Paragraph (7) on pages 11 and 12 of the complaint states:

19 *On July 15, 2008, Threemile Canyon entered into a Distribution*  
20 *Generation Interconnection Agreement with PacifiCorp transmission*  
21 *("Interconnection Agreement"), permitting Threemile Canyon to*  
22 *interconnect to PacifiCorp's utility system ("System") at PacifiCorp's*  
23 *Dalreed Substation ("Point of Interconnection").*

24 With the clarification that the point of interconnection between Threemile Canyon's  
25 Facility and PacifiCorp's system is actually on the 34.5 kV Simtag Feeder out of the  
26 Dalreed substation, PacifiCorp admits the allegation.

27 47. Paragraph (8) on page 12 of the complaint states:

28 *Between December 2008 and June 2009, Threemile Canyon constructed*  
29 *its Facility.*

1 Having insufficient information or knowledge regarding the truth or falsity of the  
2 allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
3 thereof.

4 48. The first sentence of paragraph (9) on page 12 of the complaint states:

5 *Threemile Canyon's Facility is located in PacifiCorp's service territory, in*  
6 *a locale which is served by PacifiCorp's Dalreed substation.*

7 PacifiCorp admits the allegation.

8 49. The second sentence of paragraph (9) on page 12 of the complaint states:

9 *As Threemile Canyon has come to understand, the Dalreed substation is*  
10 *served only from Bonneville Power Administration (BPA) owned*  
11 *transmission facilities, not by facilities owned by PacifiCorp.*

12 PacifiCorp denies the allegation. PacifiCorp's transmission function maintains 34.5 kV  
13 and 230 kV facilities originating at the Dalreed substation to serve PacifiCorp load in the  
14 vicinity of the substation.

15 50. The third sentence of paragraph (9) on page 12 of the complaint states:

16 *It is physically isolated from the rest of PacifiCorp's service territory.*

17 PacifiCorp admits that its Dalreed substation and the associated 34.5 kV and 230 kV  
18 PacifiCorp facilities serving PacifiCorp load in the vicinity of the substation are  
19 interconnected to the rest of PacifiCorp's system only by transmission facilities owned  
20 and operated by third parties.

21 51. The fourth sentence of paragraph (9) on page 12 of the complaint states:

22 *PacifiCorp describes this arrangement as a "load pocket."*

23 PacifiCorp admits that it has referred to its Dalreed substation and PacifiCorp's  
24 associated 34.5 kV and 230 kV facilities serving PacifiCorp load in the vicinity of the  
25 substation as a "load pocket" or the "Dalreed load pocket."

1           52.     The fifth sentence of paragraph (9) on page 12 of the complaint states:

2           *Under the circumstances of this specific generator interconnection*  
3           *process, PacifiCorp clearly erred in calling itself the Transmission*  
4           *Provider, as it did in the several instances noted above in this Complaint.*

5     PacifiCorp denies the allegation.

6           53.     The first sentence of paragraph (10) on page 12 of the complaint states:

7           *PacifiCorp's Dalreed load consists of a single farming operation that has*  
8           *a dairy farm and large irrigation system resulting in irrigation season*  
9           *loads up to 40 MW and non-irrigation loads of approximately 2-4 MW.*

10    PacifiCorp denies the allegation. PacifiCorp admits that the principle load in the Dalreed  
11    load pocket is a single farming operation with a large irrigation system resulting in  
12    irrigation season loads up to 40 MW and non-irrigation load of as little as 2 MW.

13           54.     The second sentence of paragraph (10) on page 12 of the complaint states:

14           *Long after conclusion of the interconnection process, PacifiCorp*  
15           *represented to Threemile Canyon: (a) that PacifiCorp imports energy on a*  
16           *firm basis into the Dalreed substation across BPA-owned transmission*  
17           *pursuant to PacifiCorp's General Transmission Agreement (GTA) with*  
18           *BPA; (b) the GTA covers power flow into Dalreed substation; (c) under*  
19           *the GTA, the Dalreed load is telemetered into PacifiCorp West control*  
20           *area such that dynamic scheduling is not required for import energy; and*  
21           *(d) the current GTA makes no provision for firm export of energy from the*  
22           *Dalreed substation across BPA transmission.*

23    PacifiCorp objects to the phrase “[l]ong after conclusion of the interconnection process”  
24    because it is too vague for PacifiCorp to understand the allegation and PacifiCorp  
25    therefore denies any allegation stemming from the phrase. With the exclusion of this  
26    phrase, PacifiCorp admits that it has represented to Threemile Canyon the rest of the  
27    information contained in the second sentence of paragraph (10) on pages 12 and 13.  
28    More specifically, with regard to item (c) in the list, PacifiCorp has represented to  
29    Threemile Canyon that under the GTA, the Dalreed load is telemetered *for import* into

1 PacifiCorp West control area such that dynamic scheduling is not required to import  
2 energy.

3 55. The first sentence of paragraph (11) on page 13 of the complaint states:

4 *The Facility is currently the only generation source in the Dalreed load*  
5 *pocket.*

6 PacifiCorp admits that, as of the date PacifiCorp was served with the complaint, the  
7 Facility is the only constructed and operational generation source in the Dalreed load  
8 pocket that is relied on by PacifiCorp to serve load.

9 56. The second sentence of paragraph (11) on page 13 of the complaint states:

10 *After conclusion of the interconnection process and after Threemile*  
11 *Canyon made its contractual commitments to build the Facility,*  
12 *PacifiCorp merchant determined that the generation from the Facility is*  
13 *likely to exceed total load at the Dalreed substation approximately 11 to*  
14 *15 percent of total hours in any year during the months October through*  
15 *April with the majority of those hours concentrated in the months of*  
16 *November through March.*

17 PacifiCorp admits that it conducted an analysis based on information provided by  
18 Threemile Canyon which demonstrated on a backward-looking basis that generation from  
19 the Facility would have exceeded total load in the Dalreed load pocket approximately 11  
20 to 15 percent of total hours in a year during the months October through April with the  
21 majority of those hours concentrated in the months November through March.  
22 PacifiCorp admits this analysis was conducted after Threemile Canyon had completed the  
23 interconnection process. PacifiCorp notes that Threemile Canyon had completed its  
24 interconnection process before it approached PacifiCorp merchant to seek a PPA for its  
25 current project and Threemile Canyon did not provide the hourly data necessary for the  
26 analysis discussed above until after it had completed its interconnection process. Lacking  
27 sufficient information or knowledge regarding when Threemile Canyon made its

1 contractual commitments to build its Facility, PacifiCorp denies the allegation that  
2 PacifiCorp merchant made the determination discussed above after Threemile Canyon  
3 made its contractual commitments to build its Facility and leaves Threemile Canyon to  
4 the proof thereof.

5 57. The third sentence of paragraph (11) on page 13 of the complaint states:

6 *PacifiCorp refers to the times when Threemile Canyon output exceeds*  
7 *total load in the locale served through the Dalreed Substation as "Excess*  
8 *Generation Events".*

9 PacifiCorp admits the allegation that it has referred to the times when the output of the  
10 Threemile Canyon QF exceeds total PacifiCorp load served by the Dalreed substation as  
11 "Excess Generation Events."

12 58. Paragraph (12) on page 13 of the complaint states:

13 *Because Excess Generation Events are expected to occur, PacifiCorp*  
14 *clearly erred in stating there is no "affected system," as it did in the*  
15 *several instances noted above in this Complaint.*

16 PacifiCorp denies the allegation.

17 59. The first sentence of paragraph (13) on page 13 of the complaint states:

18 *Under FERC and Commission rules implementing PURPA, PacifiCorp is*  
19 *required to purchase any energy and capacity which is made available*  
20 *from Threemile Canyon, except when a system emergency exists.*  
21 *18 C.F.R. § 292.303(a); OAR 860-029-0030(1).*

22 The allegation is a conclusion of law requiring no response.

23 60. The second sentence of paragraph (13) on pages 13 and 14 states:

24 *The Commission defines "system emergency" as "a condition on a public*  
25 *utility's system which is likely to result in imminent, significant disruption*  
26 *of service to customers, in imminent danger of life or property, or both."*  
27 *OAR 860-029-0010(27).*

28 PacifiCorp admits that the quoted language appears in the cited regulation. PacifiCorp  
29 denies any other implications or aspects of the allegation.

1           61.     Paragraph (14) on page 14 of the complaint states:

2           *PacifiCorp has represented to Threemile Canyon: (a) that during an*  
3           *Excess Generation Event, PacifiCorp merchant may use (if available) firm*  
4           *BPA point-to-Point (“PTP”) Transmission Service (“PTPTS”) as defined*  
5           *in BPA's Open Access Transmission Tariff (“OATT”) in order to move the*  
6           *excess generation from Dalreed substation to PacifiCorp's greater system*  
7           *such that PacifiCorp can use the Facility's excess generation to serve its*  
8           *retail customer load; (b) that PacifiCorp has made a formal request to*  
9           *BPA to purchase sufficient capacity to transmit 100 percent of Threemile*  
10           *Canyon's generation in excess of Dalreed Service Area load*  
11           *(8 megawatts) to PacifiCorp's other load across BPA-owned transmission*  
12           *for a one-year term with roll-over rights to renew on an on-going basis*  
13           *through the term of the Power Purchase Agreement (“PPA”); and (c) a*  
14           *customer-financed upgrade to BPA's system may be necessary before BPA*  
15           *long-term FFTP transmission sufficient to export Threemile Canyon's*  
16           *excess generation in all months is available.*

17           PacifiCorp denies the allegation because the phrase “for a one-year term” makes the  
18           allegation inaccurate. If this phrase is replaced with the phrase “for a five-year term”  
19           then PacifiCorp admits the allegation.

20           62.     Paragraph (15) on page 14 of the complaint states:

21           *PacifiCorp has represented to Threemile Canyon that in, the event*  
22           *sufficient long-term firm transmission service (LTFPTPTS) is not*  
23           *available, PacifiCorp may attempt to obtain short-term firm transmission*  
24           *(STFPTPTS) on a month-to-month basis for the months when an Excess*  
25           *Generation Event is expected.*

26           PacifiCorp admits the allegations.

27           63.     The first sentence of paragraph (16) on pages 14 and 15 of the complaint  
28           states:

29           *PacifiCorp has represented to Threemile Canyon that if PacifiCorp does*  
30           *not purchase BPA PTPTS, then PacifiCorp would curtail excess Facility*  
31           *generation during Excess Generation Events so not to incur penalties from*  
32           *BPA for unscheduled deliveries under BPA's OATT.*

33           PacifiCorp denies the allegation because the word “would” is inaccurate. If the word  
34           “would” is replaced with the word “must” then PacifiCorp admits the allegation.

1           64.     The second sentence of paragraph (16) on page 15 of the complaint states:

2           *If PacifiCorp purposely puts itself in a position where it must cause such*  
3           *curtailments of Threemile Canyon output, PacifiCorp will be violating its*  
4           *PURPA responsibilities to purchase any energy and capacity which is*  
5           *made available from Threemile Canyon, except when a system emergency*  
6           *exists.*

7     These allegations are conclusions of law requiring no response.

8           65.     The first sentence in paragraph (1) on page 15 of the complaint states:

9           *In December 2008, Threemile Canyon applied to PacifiCorp merchant for*  
10          *a Long-Term Standard Contract PPA (Long-Term PPA) for Threemile*  
11          *Canyon's Facility pursuant to PacifiCorp's Tariff Schedule 37*  
12          *("Schedule 37").*

13     PacifiCorp admits the allegation.

14          66.     Paragraph (1) on page 15 of the complaint states:

15          *Threemile Canyon has been, and remains, willing to enter into a Long-*  
16          *Term PPA with PacifiCorp on the terms and conditions set forth under*  
17          *Schedule 37.*

18     Having insufficient information or knowledge regarding the truth or falsity of the  
19     allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
20     thereof.

21          67.     Paragraph (2) on page 15 of the complaint states:

22          *PacifiCorp has refused for over two years, and continues to refuse, to*  
23          *enter into a Long-term PPA with Threemile Canyon on the terms provided*  
24          *under Schedule 37 unless Threemile Canyon agrees to bear the cost to*  
25          *purchase BPA FFTP transmission to export excess generation (including*  
26          *administrative costs) or, alternatively, the cost to Threemile Canyon (in*  
27          *lost generation and associated benefits, e.g. production tax credits) to*  
28          *curtail excess Facility generation.*

29     Since June 19, 2009, PacifiCorp and Threemile Canyon have been party to a short-term  
30     PPA that has kept Threemile Canyon whole and under which PacifiCorp has borne the  
31     cost of third-party transmission. The purpose of this arrangement has been to allow the

1 parties time to resolve their disagreement or obtain a Commission determination.  
2 PacifiCorp admits that it is unwilling to enter into a long-term PPA under which it would  
3 pay Threemile Canyon full published Schedule 37 avoided cost rates unless Threemile  
4 Canyon agrees to bear the cost to purchase necessary third-party transmission or,  
5 alternatively, agrees to allow PacifiCorp to curtail Excess Generation without payment  
6 because such a contract would violate PURPA.

7 68. The first sentence of paragraph (3) on pages 15 and 16 of the complaint  
8 states:

9 *Schedule 37 includes no provision for requiring the QF to pay additional*  
10 *third-party transmission costs incurred by PacifiCorp or to bear the cost*  
11 *of curtailed generation due to PacifiCorp's failure to secure adequate*  
12 *third-party transmission.*

13 PacifiCorp admits that Schedule 37 does not expressly address third-party transmission  
14 costs or the cost of curtailment.

15 69. The second through fifth sentences of paragraph (3) on page 16 of the  
16 complaint state:

17 *On June 19, 2009, PacifiCorp and Threemile Canyon executed a Short-*  
18 *Term PPA with a four-month term. The Short-Term PPA, in its Addendum*  
19 *R (Clarification of Contract Price), memorialized and documented the*  
20 *Parties agreement on the Contract Prices that would be paid by*  
21 *PacifiCorp to Threemile Canyon. In executing the Short-Term PPA, the*  
22 *parties reserved their right to dispute who would pay incremental third-*  
23 *party transmission costs and incremental revenue reductions when the*  
24 *Interim PPA expires. PacifiCorp and Threemile Canyon later extended*  
25 *their Short-Term PPA's Termination Date in succession until: (a) October*  
26 *31, 2009, (b) April 30, 2010, (c) October 31, 2010, (d) March 31, 2011,*  
27 *and (e) September 30, 2011.*

28 PacifiCorp notes that the parties extended their Short-Term PPA's Termination  
29 Date in succession until (a) October 31, 2009, (b) November 30, 2009, (c) April

1 30, 2010, (d) October 31, 2010, (e) March 31, 2011, and (f) September 30, 2011.

2 With this correction, PacifiCorp admits the allegations.

3 70. The sixth sentence of paragraph (3) on page 16 of the complaint states:

4 *Threemile Canyon seeks a 20-year Long-term PPA for the Facility that*  
5 *will take effect when the Short-Term PPA expires.*

6 Having insufficient information or knowledge regarding the truth or falsity of the  
7 allegation, PacifiCorp denies the allegation and leaves Threemile Canyon to the proof  
8 thereof.

9 71. Paragraph (4) on page 16 of the complaint states:

10 *As the specific circumstances documented throughout this Complaint*  
11 *make clear, PacifiCorp must be the party that will pay third-party*  
12 *transmission costs in this specific case.*

13 The allegation is a conclusion of law requiring no response.

14 72. Paragraphs (1) and (2) on pages 16 and 17 of the complaint state:

15 *WHEREFORE, Threemile Canyon seeks an order from the Commission:*  
16 *(1) Requiring PacifiCorp to purchase the output of the Facility, including*  
17 *during any Excess Generation Event, on the terms and at the rate selected*  
18 *by Threemile Canyon under Schedule 37, without adjustments for*  
19 *incremental third-party transmission costs, or alternatively, (2) Requiring*  
20 *PacifiCorp to pay to Threemile Canyon any revenue reductions arising*  
21 *from PacifiCorp's failure to purchase the output of the Facility, including*  
22 *during any Excess Generation Event.*

23 *WHEREFORE, Threemile Canyon respectfully requests expedited review*  
24 *of this Complaint so that it may have the benefit of this Commission's*  
25 *decision prior to executing their Long-term PPA.*

26 PacifiCorp denies that the Commission should order the relief sought by Threemile  
27 Canyon in paragraphs (1) or (2) on pages 16 and 17 of the complaint.

28 73. PacifiCorp denies any allegation not specifically admitted above.

29 PacifiCorp reserves the right to supplement this answer or file a new answer in the event

30 Threemile Canyon amends or otherwise modifies its complaint. PacifiCorp reserves the

1 right to assert and file any affirmative or special defense that may become known by  
2 discovery proceedings or by other means.

3 **C. DEFENSES**

4 74. For its FIRST DEFENSE, PacifiCorp states that notwithstanding any  
5 ambiguity in Schedule 37 or the Commission's orders regarding PURPA, the  
6 Commission should conclude as a matter of law that Oregon law and regulation does not  
7 require PacifiCorp to pay Threemile Canyon the full published avoided cost rate for its  
8 QF output *and* to pay the cost of BPA or other third-party transmission service required  
9 to move Threemile Canyon's QF output from the point of delivery to another point on  
10 PacifiCorp's system where adequate load exists to absorb Threemile Canyon's output.  
11 The Commission should reach this conclusion of law because requiring PacifiCorp to pay  
12 full published avoided costs rates and to pay for necessary third-party transmission would  
13 violate PURPA by establishing a state regulatory scheme which systematically requires a  
14 public utility to pay more than its avoided cost for QF output. Because the third-party  
15 transmission costs arising when a QF generates excess generation in a load pocket will  
16 always increase a utility's cost, the Commission cannot and should not ignore such costs  
17 on the theory that sometimes they will increase and sometimes they will decrease a  
18 utility's avoided cost.

19 75. For its SECOND DEFENSE, PacifiCorp states that even if current Oregon  
20 law and regulation, including PacifiCorp's Schedule 37, are deemed to require PacifiCorp  
21 to pay both full published avoided cost rates for Threemile Canyon's net output *and* to  
22 pay for any third-party transmission necessary to move Threemile Canyon's output from  
23 the point of delivery to load, PacifiCorp cannot be compelled to enter into a contract with

1 Threemile Canyon to purchase output under such terms because such a contract is void  
2 *ab initio*. See *Connecticut Light & Power Company*, 70 FERC ¶ 61,012 (1995).

3 76. For its THIRD DEFENSE, PacifiCorp states that equitable considerations  
4 do not favor Threemile Canyon but rather favor PacifiCorp. Threemile Canyon alleges in  
5 its complaint that PacifiCorp made three errors in processing Threemile Canyon's request  
6 to interconnect and sell power and that the Commission should therefore conclude that  
7 equity favors Threemile Canyon. Specifically, Threemile Canyon alleges that PacifiCorp  
8 transmission erred during the interconnection process by concluding that PacifiCorp was  
9 the Transmission Provider and by concluding that there was no Affected System.  
10 Threemile Canyon also alleges that PacifiCorp merchant erred by not informing  
11 Threemile Canyon of the potential for Excess Generation and third-party transmission  
12 concerns until after Threemile Canyon had entered into an interconnection agreement  
13 with PacifiCorp and made contractual commitments to construct the Facility.

14 77. Threemile Canyon is wrong as a matter of fact and law in its assertions  
15 that PacifiCorp erred. In the context of an interconnection request under Schedule 37,  
16 PacifiCorp transmission was correct to conclude that it is the "Transmission Provider"  
17 and that there is no "Affected System." In the context of a Schedule 37 request for a  
18 power purchase agreement, PacifiCorp merchant timely and reasonably identified and  
19 notified Threemile Canyon of the potential for Excess Generation and third-party  
20 transmission issues. Moreover, PacifiCorp merchant worked diligently, cooperatively,  
21 and in good faith with Threemile Canyon to seek a mutually agreeable resolution to this  
22 matter that would include an addendum to the long-term power purchase agreement to  
23 clarify the transmission, curtailment, and other issues requested by Threemile Canyon.

1 PacifiCorp merchant executed a standard PPA on a short-term basis, which the parties  
2 have extended six times, in order to allow Threemile Canyon to sell power from its  
3 Facility at full published avoided cost rates while the parties attempted to resolve this  
4 matter. Any delay in resolving this matter has not been caused by PacifiCorp but by the  
5 inherent difficulty in finding a mutually agreeable resolution and to some degree by the  
6 delay in progress and negotiations created when Exelon Generation Company, LLC  
7 purchased 100 percent of the John Deere Renewables, LLC assets in August 2010 with  
8 the sale closing in December 2010.

9 78. Equitable consideration and the public interest favor not requiring  
10 PacifiCorp, and ultimately PacifiCorp's customers, to pay both full published avoided  
11 cost rates *and* the cost of third-party transmission service made necessary by Threemile  
12 Canyon's decision to deliver Excess Generation to the Dalreed load pocket.

13 79. For its FOURTH DEFENSE, PacifiCorp states that Threemile Canyon has  
14 failed to state a claim upon which relief can be granted because PacifiCorp's actions are  
15 consistent with PURPA or Oregon law or both.

16 80. PacifiCorp reserves the right to raise any additional defenses which are not  
17 affirmative defenses of the type that are waived as a matter of law if not raised in the first  
18 responsive pleading.

19 81. WHEREFORE, PacifiCorp hereby respectfully requests that the  
20 Commission deny the relief requested by Threemile Canyon.

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**D. COUNTERCLAIMS**

By way of counterclaim against Threemile Canyon, PacifiCorp alleges:

82. PacifiCorp alleges paragraphs 4, 6, 9, 10, 25, 26, 48, 54, 57, 61, 62, 63, 65, and 69 of this answer to the extent of PacifiCorp’s admissions therein.

**Jurisdiction**

83. The Commission has jurisdiction over claims brought by PacifiCorp, as a public utility, against Threemile Canyon, as an owner-operator of a QF, regarding sales by Threemile Canyon’s QF to PacifiCorp in Oregon. ORS 756.500; *Roats v Golfside*, ALJ Ruling, UM 1248 (Apr. 19, 2006) (“[ORS 756.500(5)] permits a public utility or telecommunications utility to file a complaint against any person, so long as the matter involves the utility’s own rates or service.”); ORS 758.505 to 555 (charging the Commission with administering PURPA rates and services of public utilities).

**Factual Allegations**

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

85. PacifiCorp purchased such Threemile Canyon QF output under the Short-Term PPA.

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

87. Pursuant to the Short-Term PPA, PacifiCorp has paid Threemile Canyon for all Threemile Canyon QF net output at the fixed avoided cost prices in Schedule 37 in effect June 2009.

1           88.    The fixed avoided cost price set forth in PacifiCorp's Schedule 37 is  
2 calculated with a formula prescribed by the Commission and intended by the  
3 Commission to represent PacifiCorp's avoided cost, as that term is defined in 18 C.F.R.  
4 § 292.303 (2011).

5           89.    The Schedule 37 fixed avoided cost price was derived without regard to,  
6 and makes no allowance for, third-party transmission costs PacifiCorp must incur to  
7 make use of Excess Generation from the Threemile Canyon QF.

8           90.    Net output from the Threemile Canyon QF has at unpredictable times  
9 exceeded, and likely will continue to exceed unpredictably, all load served in the Dalreed  
10 load pocket by up to 7.9 MW.

11          91.    Excess Generation Events have occurred in 2009, 2010, and 2011.

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

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

19          94.    At present, PacifiCorp has expended over \$180,000 on such BPA  
20 Transmission Services.

21          95.    Prior to PacifiCorp paying for BPA Transmission Services, Threemile  
22 Canyon was aware that PacifiCorp acquired such BPA Transmission Services in order to

1 provide transmission for the Threemile Canyon QF output during Excess Generation  
2 Events.

3 96. PacifiCorp and Threemile Canyon agreed to disagree who must pay for  
4 BPA transmission necessary to move Excess Generation out of the Dalreed load pocket.

5 97. PacifiCorp would not have incurred the costs of BPA Transmission  
6 Services if Threemile Canyon were not delivering to PacifiCorp's system at the Dalreed  
7 load pocket (or another PacifiCorp load pocket).

8 **Claim One**  
9 (Violation of Oregon's implementation of PURPA)

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

13 99. In Docket No. UM 1129, the Commission did not address whether a utility  
14 must bear the cost of third-party transmission service needed to move QF output from the  
15 point of delivery to load.

16 100. Oregon statutes and Commission regulations do not expressly require  
17 PacifiCorp to pay the cost of third-party transmission service required to move QF output  
18 from the point of delivery to load.

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

22 102. The Short-Term PPA does not expressly allocate third-party transmission  
23 costs PacifiCorp must incur to make use of Excess Generation from the Threemile  
24 Canyon QF.



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

4           111. When PacifiCorp pays Threemile Canyon the Schedule 37 fixed avoided  
5 cost rate for net output from the Threemile Canyon QF and also pays for BPA  
6 Transmission Services necessary to move Excess Generation to a place on PacifiCorp's  
7 system where it can be used to serve load, PacifiCorp is paying more than its avoided  
8 cost for Threemile Canyon QF net output.

9           112. Threemile Canyon's refusal to pay for BPA Transmission Services  
10 necessary to move Excess Generation to a place on PacifiCorp's system where it can be  
11 used to serve load violates Section 210(b) of PURPA (16 U.S.C. 824a-3(b)), 18 C.F.R.  
12 § 292.304(a)(2), *Connecticut Light & Power Co.*, 70 FERC ¶ 61,012 (1995), and  
13 Oregon's implementation of PURPA in ORS 758.505 to 758.555, Division 29 of the  
14 Commission's administrative rules, relevant Commission orders, and PacifiCorp's  
15 Schedule 37 by requiring PacifiCorp to pay more than avoided costs for Threemile  
16 Canyon QF net output.

17           113. WHEREFORE, PacifiCorp seeks an order from the Commission:

18           a) Declaring that:

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

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

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

14          b) Or alternatively, declaring that:

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

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

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

2 **E. PACIFICORP'S AUTHORIZED REPRESENTATIVES**

3 114. PacifiCorp designates the following individuals as its authorized  
4 representatives in this matter:

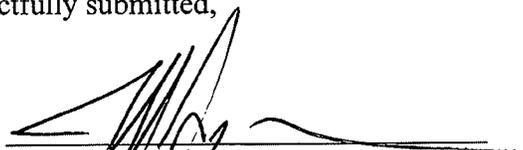
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Dated this 25<sup>th</sup> day of July 2011.

Respectfully submitted,

By



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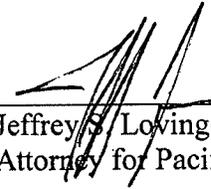
CERTIFICATE OF SERVICE

I hereby certify that, on July 25, 2011, I served a true and correct copy of the foregoing *PacifiCorp's Answer, Defenses, and Counterclaims* on the following named persons/entities by electronic mail:

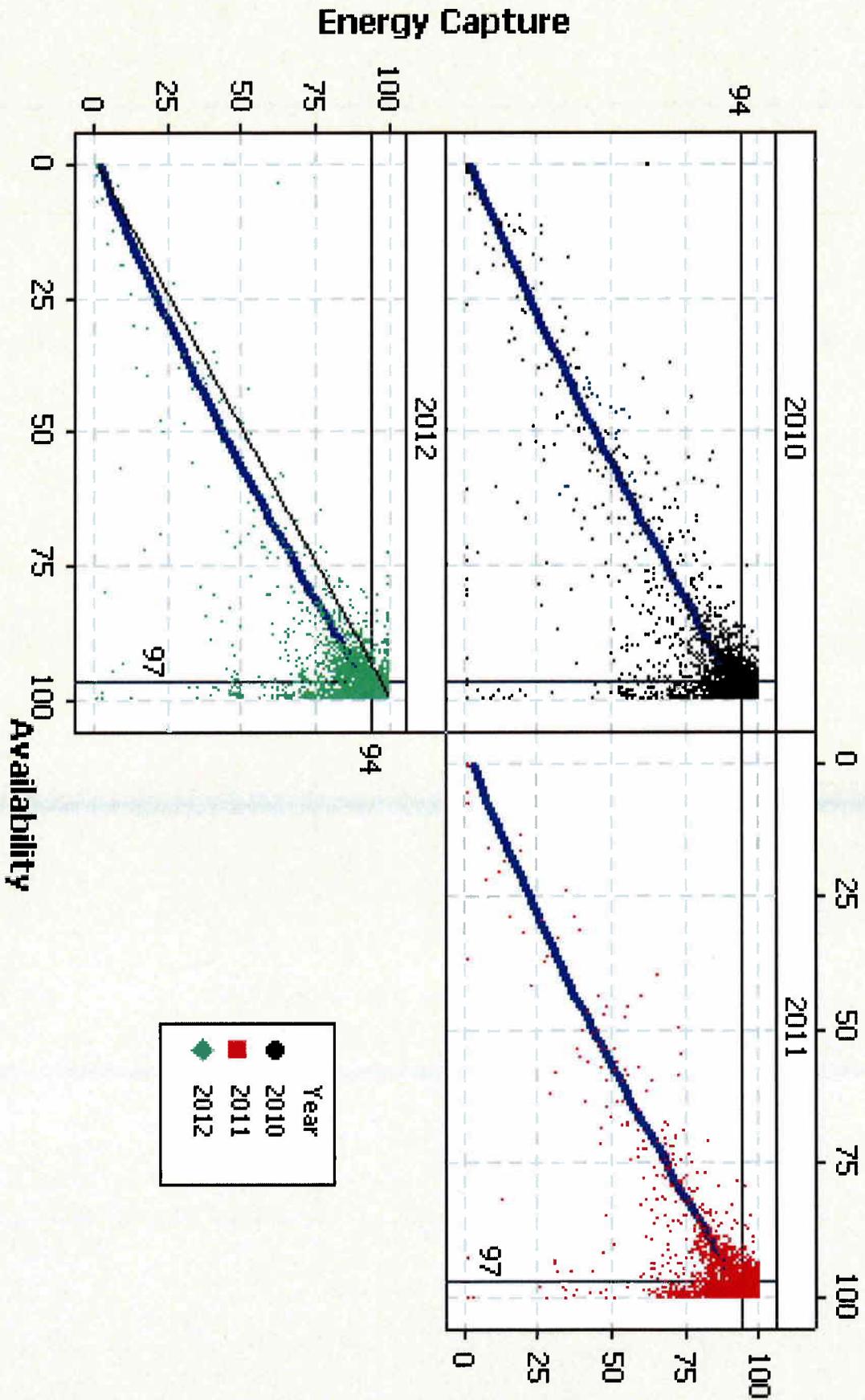
<p>BALL JANIK LLP RICHARD H ALLAN 101 SW MAIN ST, STE 1100 PORTLAND OR 97204 <a href="mailto:rallan@bjllp.com">rallan@bjllp.com</a></p> <p>PACIFIC POWER &amp; LIGHT JORDAN A WHITE SENIOR COUNSEL 1407 W NORTH TEMPLE, STE 320 SALT LAKE CITY UT 84116 <a href="mailto:jordan.white@pacificorp.com">jordan.white@pacificorp.com</a></p>	<p>PACIFICORP, DBA PACIFIC POWER OREGON DOCKETS 825 NE MULTNOMAH ST, STE 2000 PORTLAND OR 97232 <a href="mailto:oregondockets@pacificorp.com">oregondockets@pacificorp.com</a></p>
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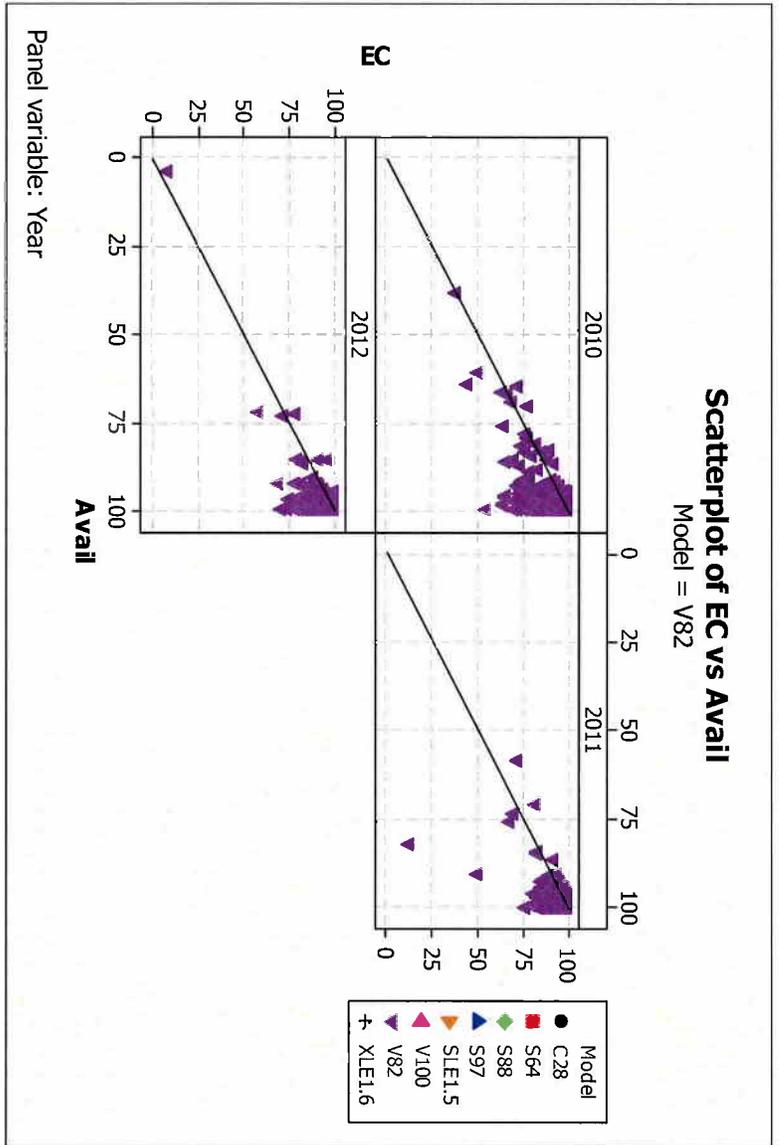
DATED this 25<sup>th</sup> day of July, 2011.

LOVINGER KAUFMANN LLP

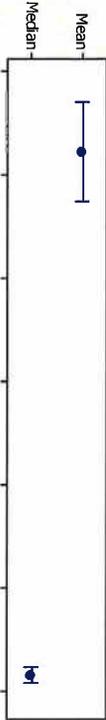
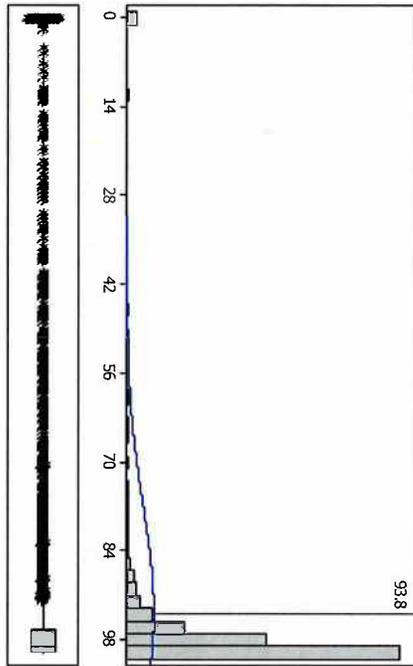
  
\_\_\_\_\_  
Jeffrey S. Lovinger, OSB 960147  
Attorney for PacifiCorp

### Fleet Scatterplot of Performance (EC vs Avail)



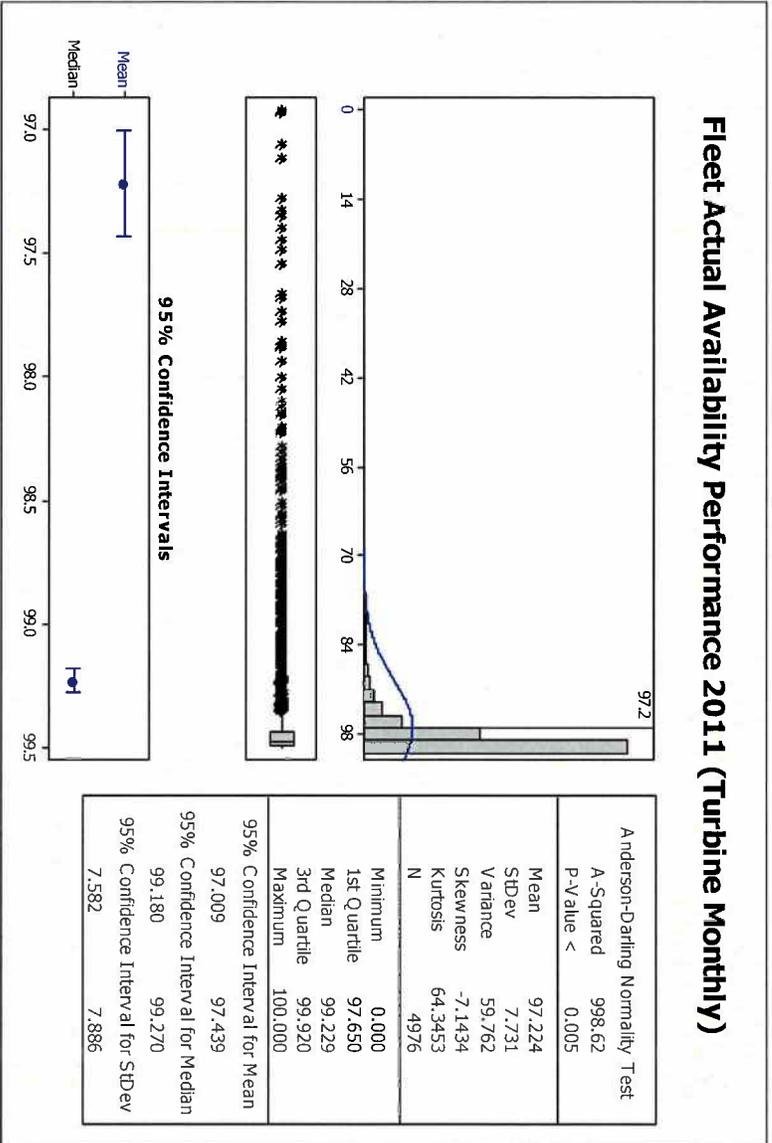


### Fleet Actual Availability Performance 2010 (Turbine Monthly)

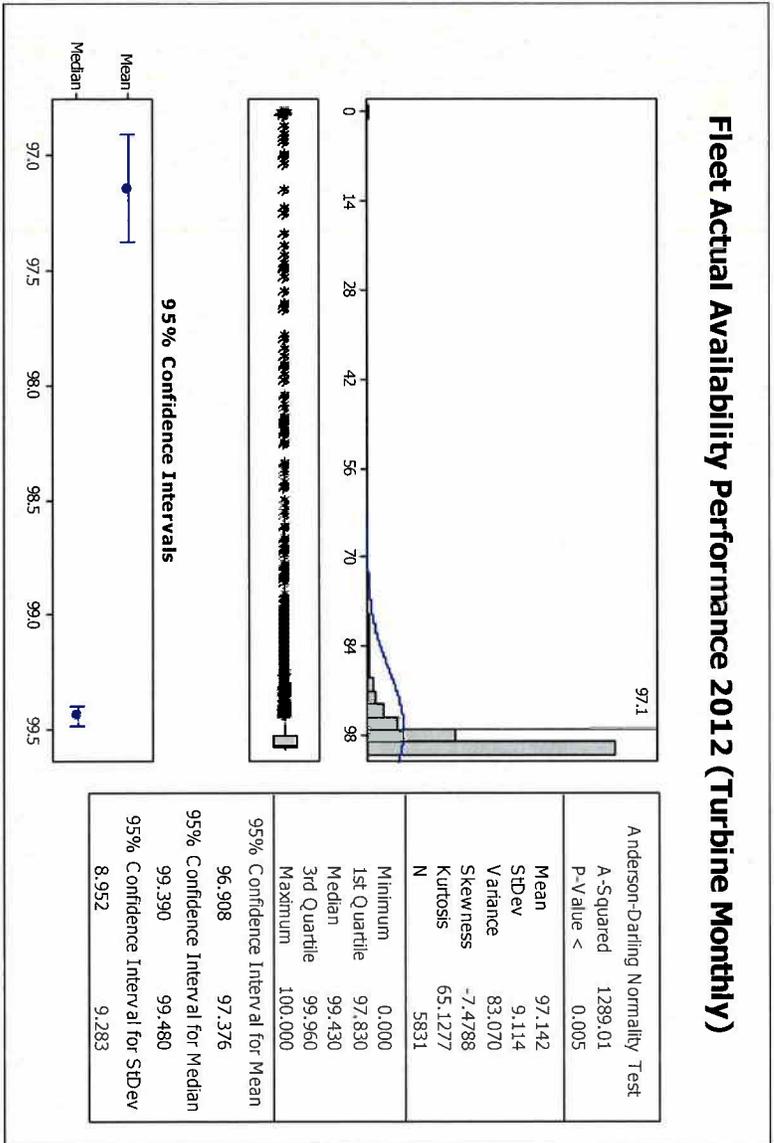


Anderson-Darling Normality Test	
A-Squared	1072.85
P-Value <	0.005
Mean	93.788
StDev	16.858
Variance	284.182
Skewness	-4.2701
Kurtosis	18.6027
N	4620
Minimum	0.000
1st Quartile	96.472
Median	98.840
3rd Quartile	99.780
Maximum	100.000
95% Confidence Interval for Mean	
	93.302 94.274
95% Confidence Interval for Median	
	98.750 98.920
95% Confidence Interval for StDev	
	16.521 17.209

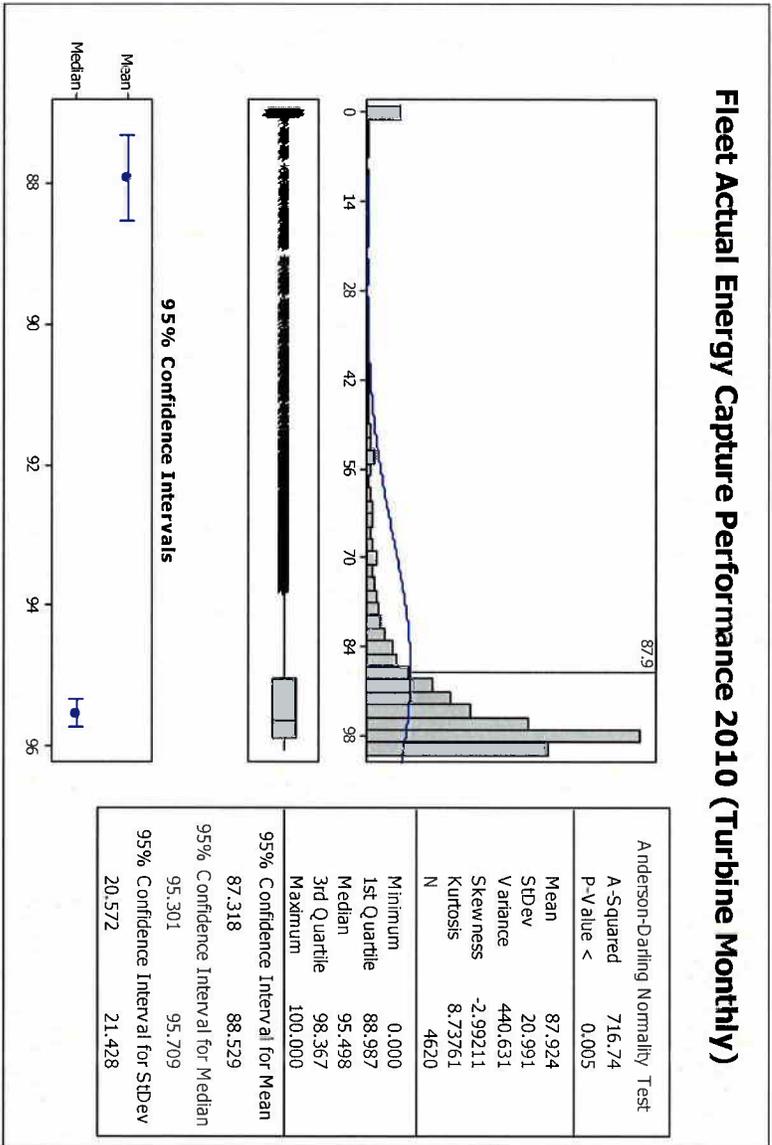
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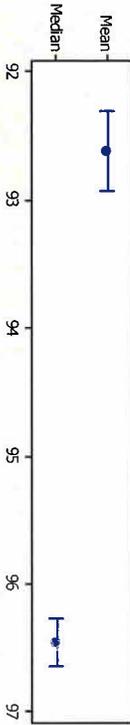
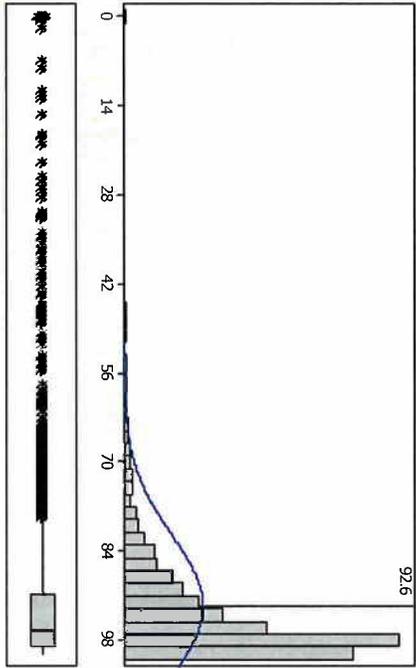
### Fleet Actual Availability Performance 2012 (Turbine Monthly)



### Fleet Actual Energy Capture Performance 2010 (Turbine Monthly)

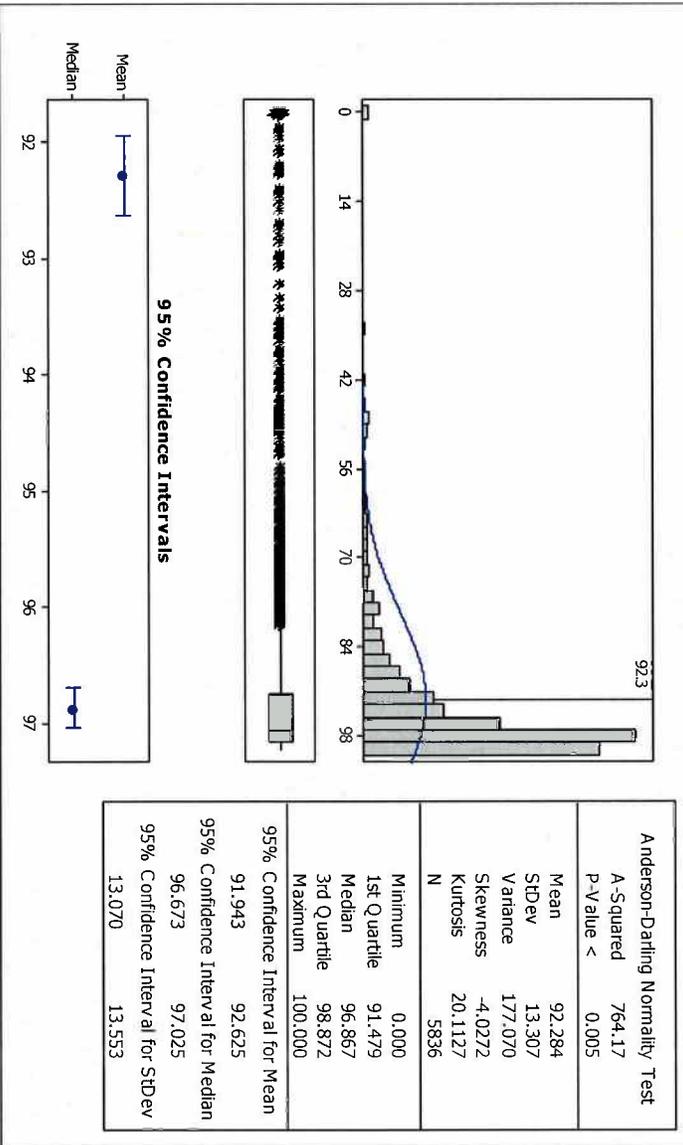


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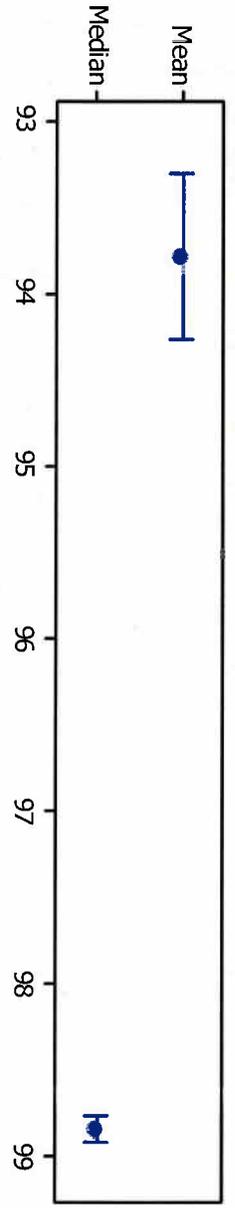
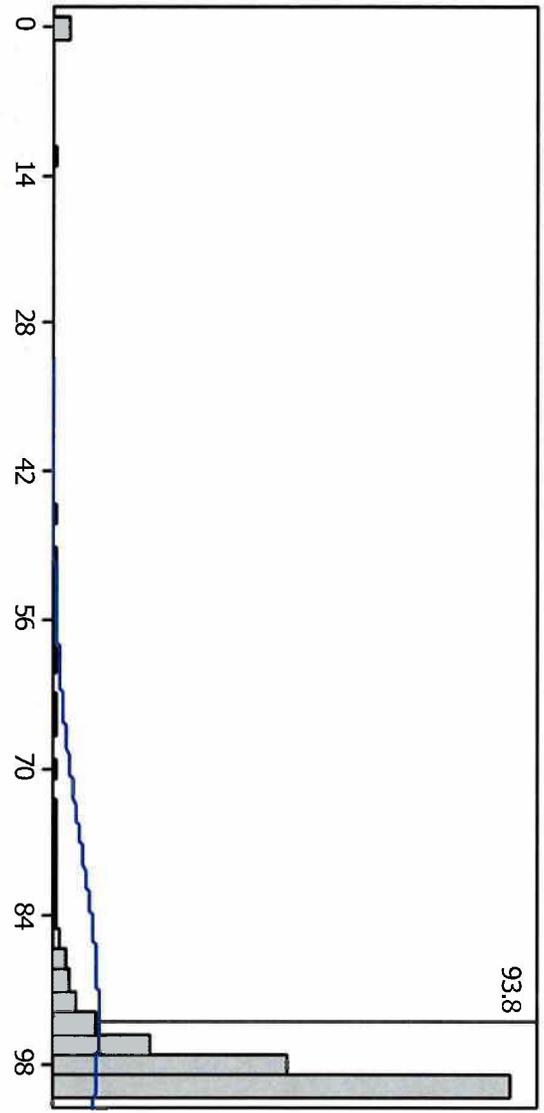
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Kurtosis	22.5742
N	4976
Minimum	0.000
1st Quartile	90.694
Median	96.446
3rd Quartile	98.748
Maximum	100.000
95% Confidence Interval for Mean	
	92.305
95% Confidence Interval for Median	
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95% Confidence Interval for STDev	
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	11.367

### Fleet Actual Energy Capture Performance 2012 (Turbine Monthly)



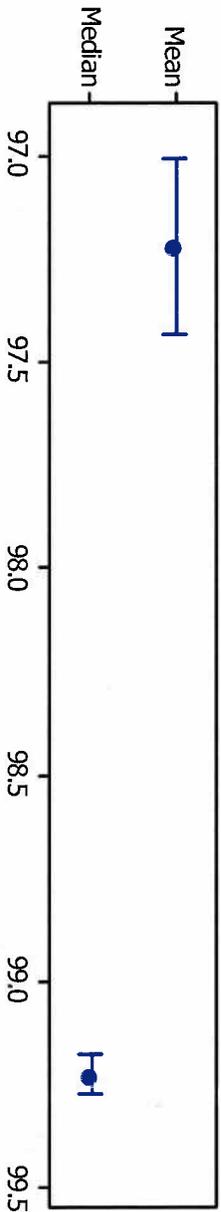
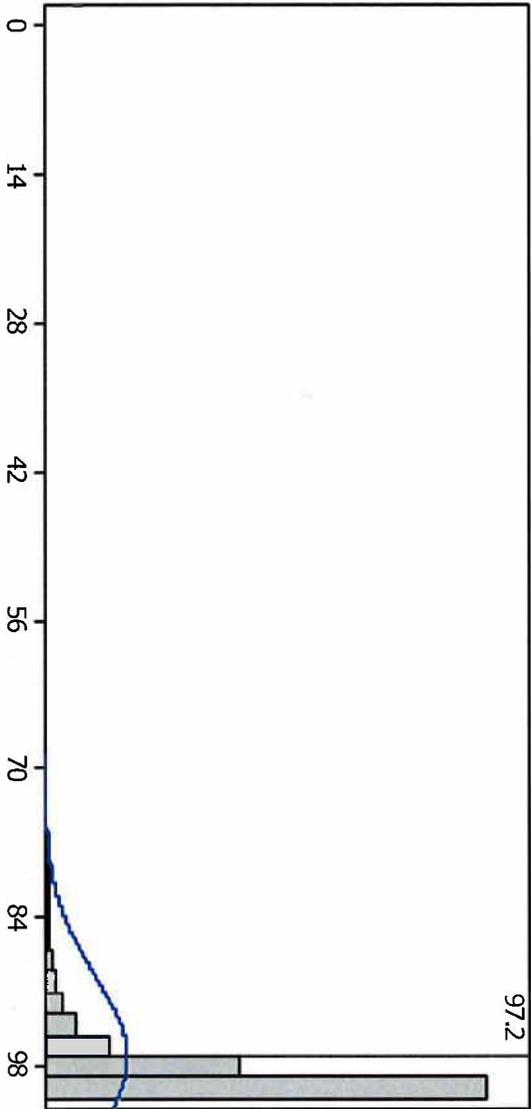
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Variance	177.070
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Kurtosis	20.1127
N	5836
Minimum	0.000
1st Quartile	91.479
Median	96.867
3rd Quartile	98.872
Maximum	100.000
95% Confidence Interval for Mean	
91.943	92.625
95% Confidence Interval for Median	
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95% Confidence Interval for StDev	
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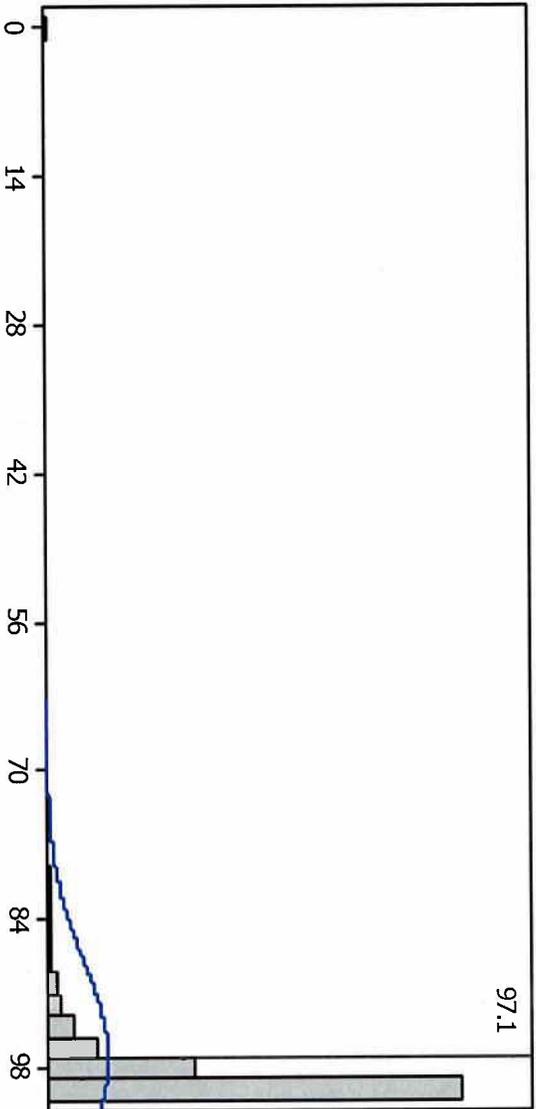
Anderson-Darling Normality Test	
A-Squared	1072.85
P-Value <	0.005
Mean	93.788
StDev	16.858
Variance	284.182
Skewness	-4.2701
Kurtosis	18.6027
N	4620
Minimum	0.000
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95% Confidence Interval for Mean	
93.302	94.274
95% Confidence Interval for Median	
98.750	98.920
95% Confidence Interval for StDev	
16.521	17.209

# Fleet Actual Availability Performance 2011 (Turbine Monthly)



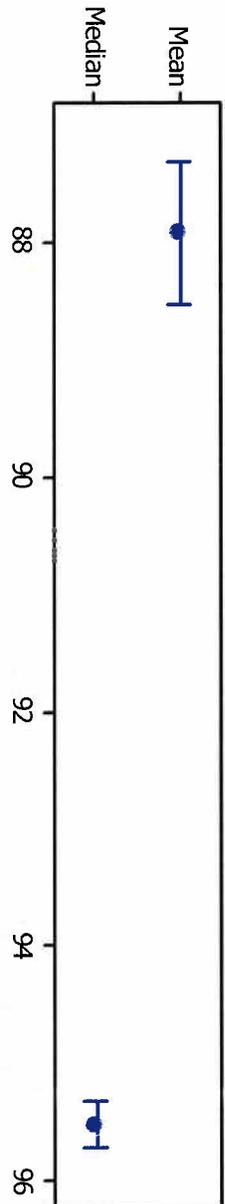
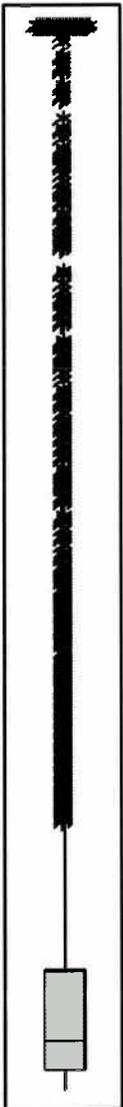
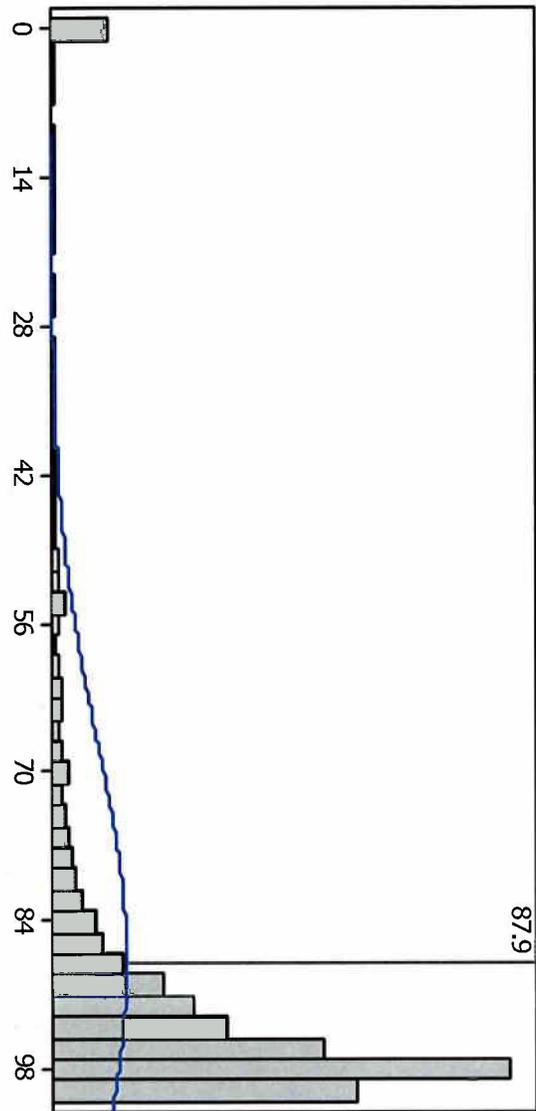
Anderson-Darling Normality Test	
A-Squared	998.62
P-Value <	0.005
Mean	97.224
StdDev	7.731
Variance	59.762
Skewness	-7.1434
Kurtosis	64.3453
N	4976
Minimum	0.000
1st Quartile	97.650
Median	99.229
3rd Quartile	99.920
Maximum	100.000
95% Confidence Interval for Mean	
	97.009 97.439
95% Confidence Interval for Median	
	99.180 99.270
95% Confidence Interval for StdDev	
	7.582 7.886

# Fleet Actual Availability Performance 2012 (Turbine Monthly)



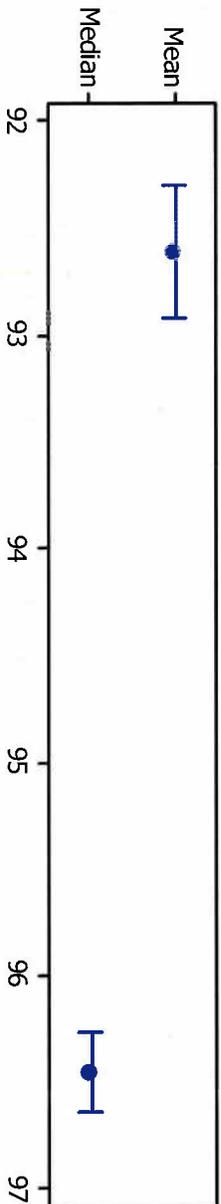
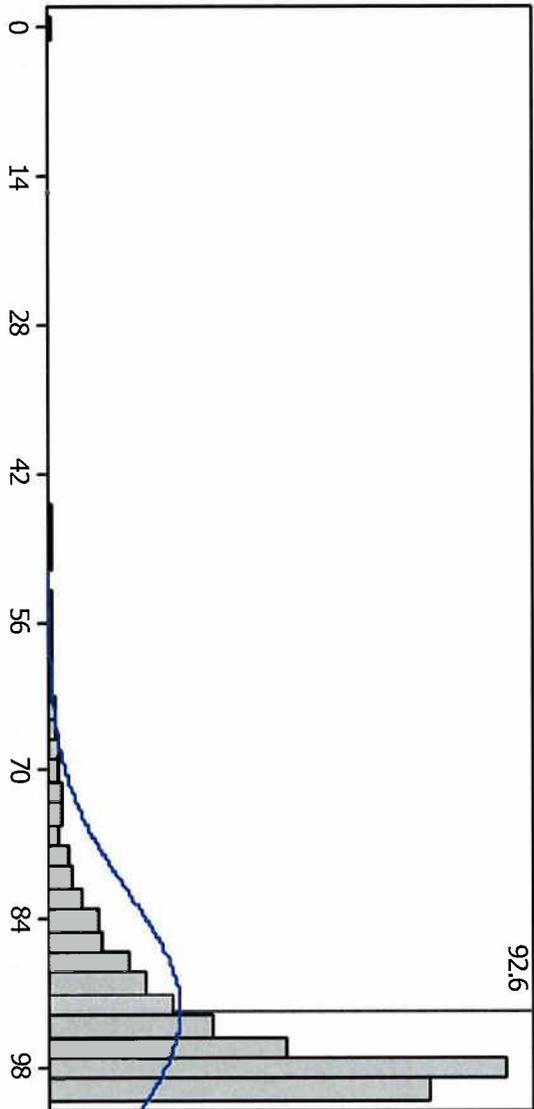
Anderson-Darling Normality Test	
A-Squared	1289.01
P-V alue <	0.005
Mean	97.142
StDev	9.114
Variance	83.070
Skewness	-7.4788
Kurtosis	65.1277
N	5831
Minimum	0.000
1st Q quartile	97.830
Median	99.430
3rd Q quartile	99.960
Maximum	100.000
95% Confidence Interval for Mean	
	96.908      97.376
95% Confidence Interval for Median	
	99.390      99.480
95% Confidence Interval for StDev	
	8.952      9.283

# Fleet Actual Energy Capture Performance 2010 (Turbine Monthly)



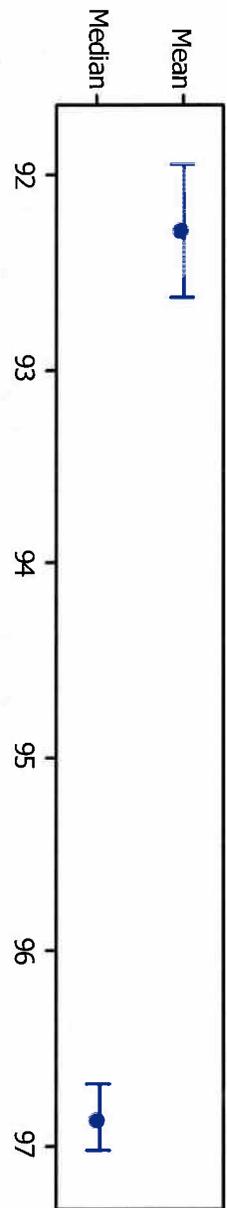
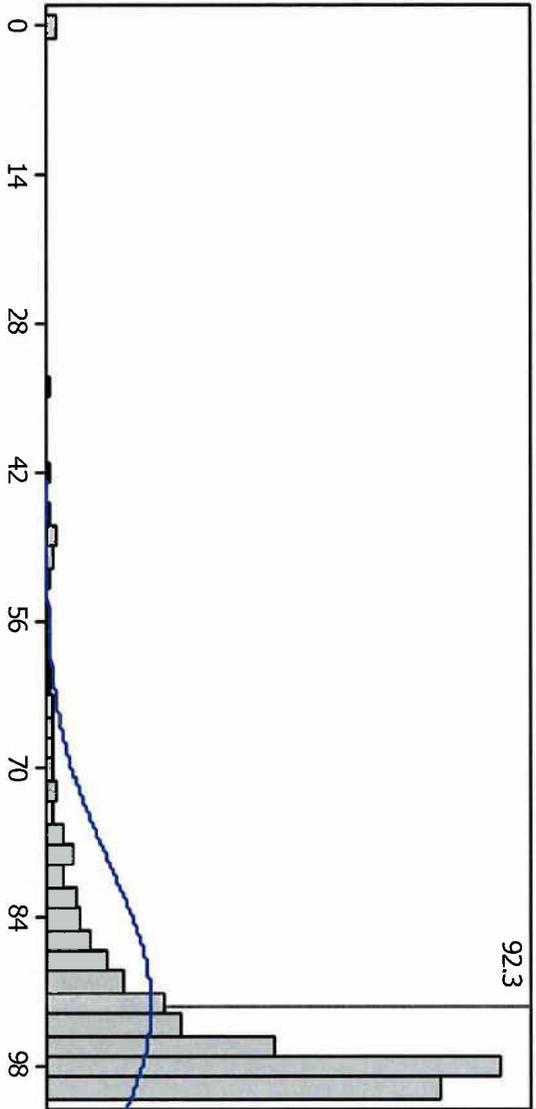
Anderson-Darling Normality Test	
A-Squared	716.74
P-Value <	0.005
Mean	87.924
StDev	20.991
Variance	440.631
Skewness	-2.99211
Kurtosis	8.73761
N	4620
Minimum	0.000
1st Q quartile	88.987
Median	95.498
3rd Q quartile	98.367
Maximum	100.000
95% Confidence Interval for Mean	
	87.318      88.529
95% Confidence Interval for Median	
	95.301      95.709
95% Confidence Interval for StDev	
	20.572      21.428

# Fleet Actual Energy Capture Performance 2011 (Turbine Monthly)



Anderson-Darling Normality Test	
A-Squared	498.87
P-V alue <	0.005
Mean	92.615
StdDev	11.144
Variance	124.181
Skewness	-3.9948
Kurtosis	22.5742
N	4976
Minimum	0.000
1st Quartile	90.694
Median	96.446
3rd Quartile	98.748
Maximum	100.000
95% Confidence Interval for Mean	
	92.305      92.924
95% Confidence Interval for Median	
	96.258      96.640
95% Confidence Interval for StdDev	
	10.929      11.367

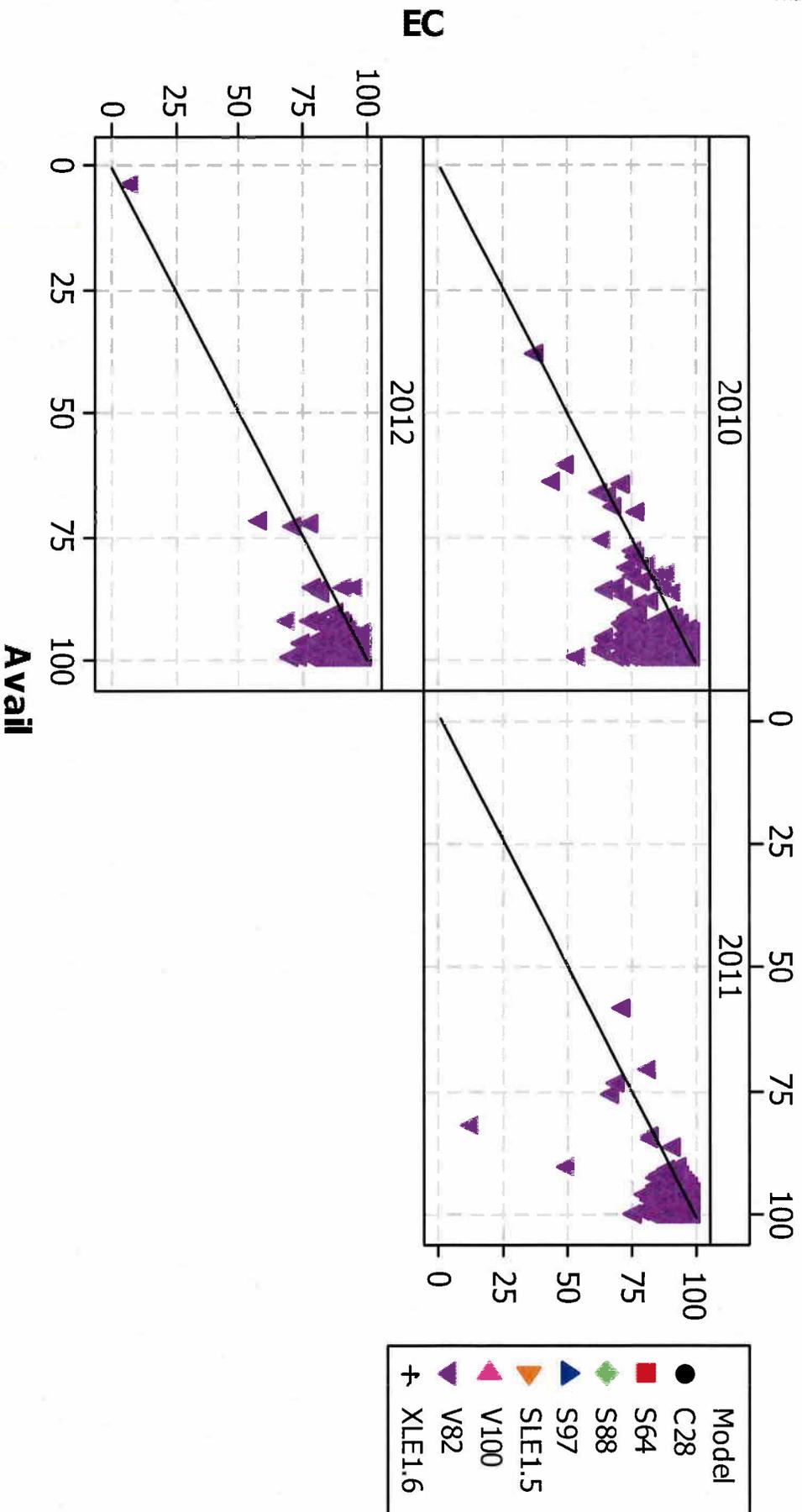
# Fleet Actual Energy Capture Performance 2012 (Turbine Monthly)



Anderson-Darling Normality Test	
A-Squared	764.17
P-Value <	0.005
Mean	92.284
STDev	13.307
Variance	177.070
Skewness	-4.0272
Kurtosis	20.1127
N	5836
Minimum	0.000
1st Quartile	91.479
Median	96.867
3rd Quartile	98.872
Maximum	100.000
95% Confidence Interval for Mean	
	91.943      92.625
95% Confidence Interval for Median	
	96.673      97.025
95% Confidence Interval for STDev	
	13.070      13.553

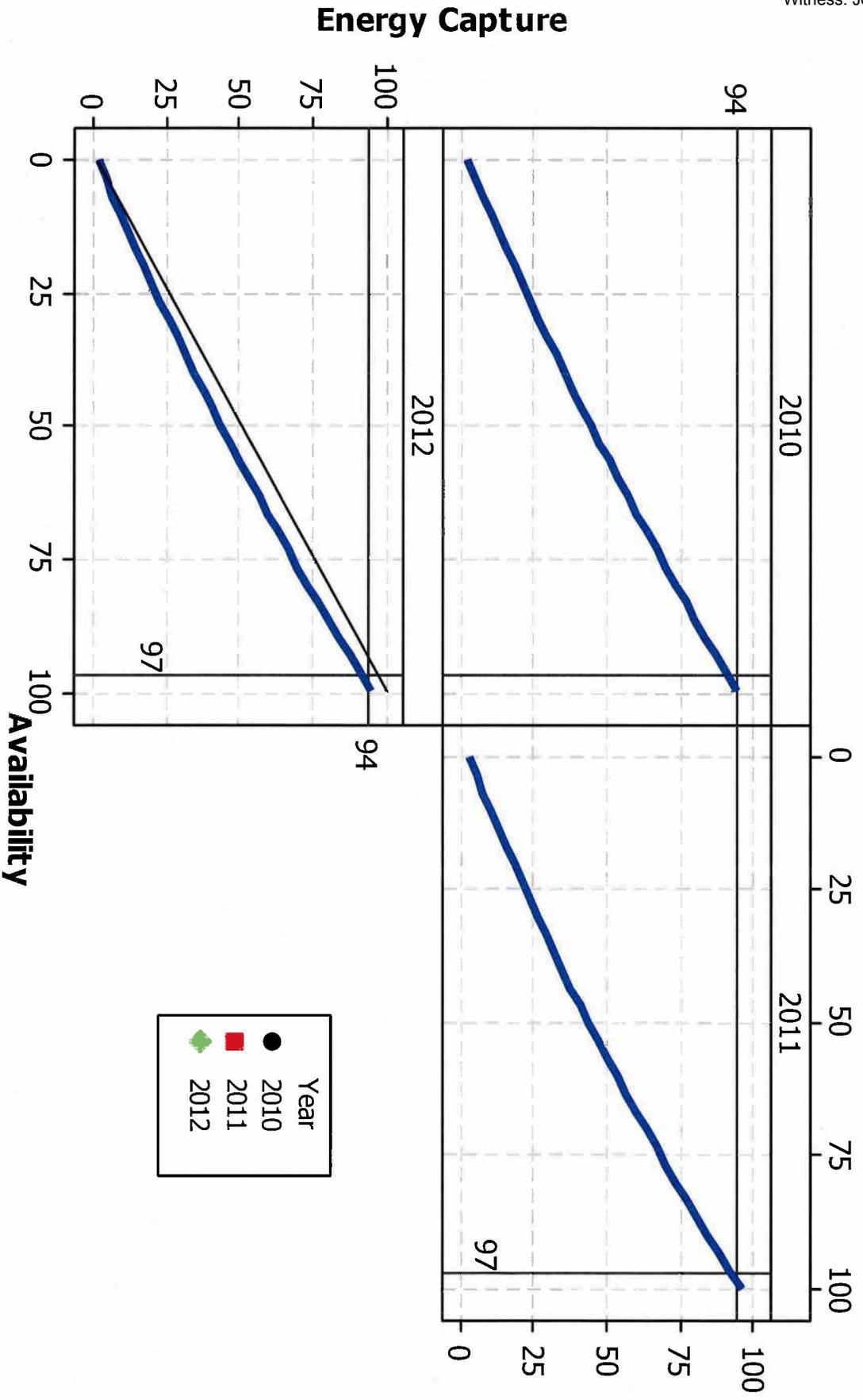
## Scatterplot of EC vs Avail

Model = V82

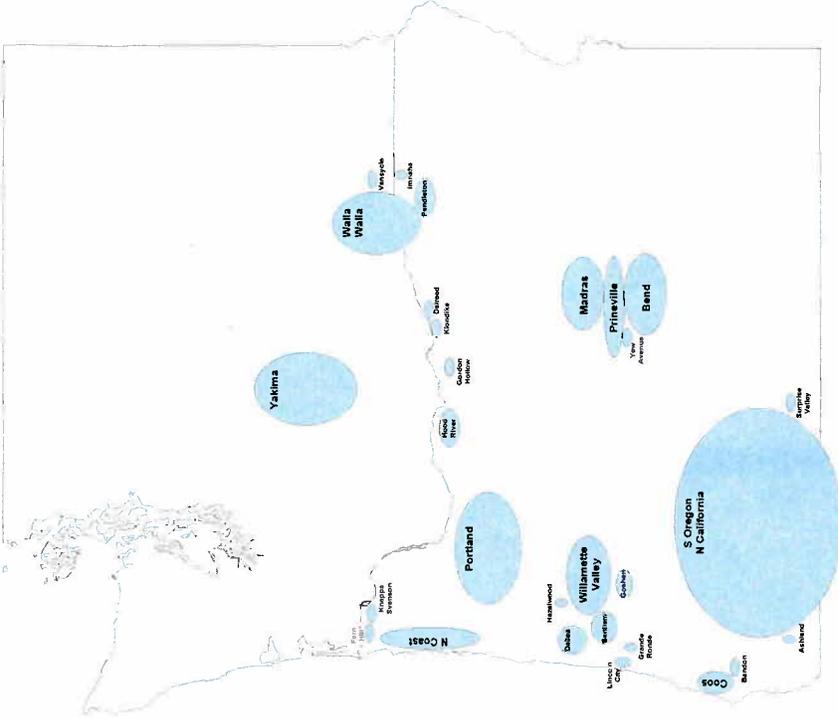


Panel variable: Year

### Fleet Scatterplot of Performance (EC vs Avail)



PACW – Load Pockets



PacifiCorp load pockets within its PACW balancing authority area		
Plant Name	Load Pocket	
1 Bequa Creek	S Oregon / Northern California	
2 Grobco, Inc	S Oregon / Northern California	
3 Lake Stikivou (Box Canyon)	S Oregon / Northern California	
4 Luckey, Paul	S Oregon / Northern California	
5 Ralphs Ranch, Inc	S Oregon / Northern California	
6 Roseburg Forest Products - Weed	S Oregon / Northern California	
7 Slate Creek	S Oregon / Northern California	
8 AGE Hydro	Walla Walla	
9 Rig Top LLC (OP)	Walla Walla	
10 Biomass One, L.P	Walla Walla	
11 Butler Creek Power LLC	Walla Walla	
12 C Drop	Portland	
13 CFC Portland	Bend	
14 Central Oregon Irrigation District	Bend	
15 Central Oregon Irrigation District - Juniper Ridge	Willamette Valley	
16 City of Albany, Dept of Public Works	Portland	
17 City of Portland, Portland Hydro Bureau	S Oregon / Northern California	
18 Curtis Livestock (Cameron Curtis)	Bend	
19 Deschutes Valley Hydro District	Willamette Valley	
20 Dorema Hydro	S Oregon / Northern California	
21 Douglas County Forest Products	Traskia	
22 Duane Wiggins Hydro	Medford	
23 Eagle Point Irrigation District (Nichols Gap)	Willamette Valley	
24 EHD Hydro	Willamette Valley	
25 Evergreen BioPower	Willamette Valley	
26 Falls Creek	Willamette Valley	
27 Farm Power Misty Meadow	N Coast	
28 Haines Irrigation	Hood River	
29 Hints, Disconerg	Walla Walla	
30 Four Corners Windfarm LLC	Walla Walla	
31 Four Mile Canyon Windfarm LLC	Walla Walla	
32 Galeville Dam (Douglas County)	Walla Walla	
33 High Plateau Windfarm LLC	Walla Walla	
34 Jim & Sharon Jans (Odeh Creek)	Hood River	
35 Leasomb Irrigation	Willamette Valley	
36 Lower Ridge Windfarm LLC	Walla Walla	
37 Low Ferry	Willamette Valley	
38 Middlefork Irrigation District	Hood River	
39 Monroe Hydro	Macrae	
40 Mountain Energy	S Oregon / Northern California	
41 Mule Hollow Windfarm LLC (1)	Walla Walla	
42 O&M Power I	S Oregon / Northern California	
43 Oregon Environmental Industries	S Oregon / Northern California	
44 Oregon Institute of Technology	Willamette Valley	
45 Oregon State University	Walla Walla	
46 Oregon Trail Windfarm LLC	Walla Walla	
47 Pacific Canyon Windfarm LLC	Walla Walla	
48 Pine City Windfarm LLC (1)	Willamette Valley	
49 RES Ag - Oak Lea	Willamette Valley	
50 Roseburg Forest Products - Dillard	S Oregon / Northern California	
51 Roseburg JEG	S Oregon / Northern California	
52 Rough & Ready Lumber	S Oregon / Northern California	
53 Roush Hydro, Inc	Willamette Valley	
54 Sand Ranch Windfarm LLC	Walla Walla	
55 Santiam Hydro Central District	Willamette Valley	
56 Spangate Hydro (North Fork Spangate)	S Oregon / Northern California	
57 Stanbush Island Farms	Willamette Valley	
58 Sw. Valley Irrigation District	Bend	
59 Thecmile Canyon Wind LLC	Dalreed	
60 TMF Biofuels	Walla Walla	
61 Wagen Trail LLC	Walla Walla	
62 Ward Butte Windfarm LLC	Walla Walla	
63 Denver Dairies	Yakima	
64 Walla Walla, City of	Walla Walla	
65 Yakima Tison (Cowhee)	Yakima	
66 Yakima Tison (Orchards)	Yakima	