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April 5, 2013

**VIA ELECTRONIC FILING & US MAIL**

Oregon Public Utility Commission  
Attn: Filing Center  
550 Capitol St. NE #215  
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 please find an original and one copy of Threemile Canyon's Response To PacifiCorp's Motion To Strike.

Thank you for your assistance with this matter. Should you have any questions, please call.

Very truly yours,

  
Richard Lorenz

RGL:sk  
Enclosures  
cc: UM-1610 Service List (via electronic delivery)

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON  
UM 1610**

In the Matter of  
  
PUBLIC UTILITY COMMISSION OF  
OREGON,  
  
Investigation Into Qualifying Facility  
Contracting and Pricing

THREEMILE CANYON WIND I,  
LLC'S RESPONSE TO  
PACIFICORP'S MOTION TO  
STRIKE

**I. INTRODUCTION**

Threemile Canyon Wind I, LLC (“Threemile Canyon”) respectfully submits this response to PacifiCorp’s Motion to Strike (“Motion”). On March 18, 2013, Threemile Canyon submitted Direct Testimony of John Harvey (“Harvey Testimony”) to address certain issues relevant to this proceeding. On March 29, 2013, PacifiCorp filed the Motion seeking to strike more than 300 lines—which equates to more than 10 total pages—of the Harvey Testimony. The breadth of PacifiCorp’s Motion betrays its true intent to gut Threemile Canyon’s testimony and effectively nullify its participation in this proceeding. As explained below, however, the Harvey Testimony is all directly relevant to issues in this proceeding. It does not pose a substantial risk of unfair prejudice or confusion. There is no basis for striking any part of it.

**II. BACKGROUND FACTS**

PacifiCorp concedes, as it must, that Threemile Canyon met every one of its eligibility criteria for a long-term, standard contract back in 2009. For four years, however, PacifiCorp has steadfastly refused to execute a long-term, standard contract under the terms established by this

Commission in UM 1129. In its Order 05-584, this Commission expressly denied PacifiCorp the flexibility to make any price adjustments to the standard contract. Nevertheless, PacifiCorp has stubbornly insisted on making a price adjustment to any long term contract with Threemile Canyon to account for third-party transmission costs.

Threemile Canyon spent nearly two years attempting to persuade PacifiCorp to comply with its legal obligations under the Public Utility Regulatory Policies Act (“PURPA”) and Order 05-584. Threemile Canyon then filed a complaint proceeding with this Commission to enforce its legal entitlement to a long-term standard contract, which was docketed as UM 1546. At PacifiCorp’s request, Threemile Canyon’s complaint proceeding was stayed. The proceeding has remained stayed for nearly two years now. Most recently, PacifiCorp convinced the Commission that the third-party transmission issue raised by Threemile Canyon in its UM 1546 complaint would affect other parties and therefore must be resolved in this UM 1610 proceeding.<sup>1</sup> As a result, Threemile Canyon was ordered into this UM 1610 proceeding by the Commission, at PacifiCorp’s urging and over Threemile Canyon’s objections.

PacifiCorp is currently seeking through this UM 1610 proceeding to have the price flexibility previously denied in Order 05-584 added to its standard contract. As part of its case, PacifiCorp submitted direct testimony in which it specifically proposes to apply third-party transmission charges to Threemile Canyon. This testimony fails to address the fact that Threemile Canyon was entitled by law to a long-term standard contract under the terms and conditions established in UM 1129, including Order No. 05-584, many years before this proceeding was even initiated. PacifiCorp’s testimony also fails to address the fact that its proposed price adjustment for third-party transmission costs would violate the regulations

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<sup>1</sup> See Commission Order 12-475, dated December 10, 2012. For convenience, a copy of Order 12-475 is included with this Response.

adopted by the Federal Energy Regulatory Commission (“FERC”) to implement PURPA. Threemile Canyon found it necessary to submit the Harvey Testimony to address these oversights and other relevant issues.

Despite the fact that PacifiCorp dragged Threemile Canyon into this proceeding to resolve the third-party transmission issue raised in UM 1546, PacifiCorp now wishes to preclude Threemile Canyon from fully addressing the issue. It is clear from its own testimony that PacifiCorp intends for the outcome of this proceeding to bind Threemile Canyon. It is equally clear that UM-1546 was stayed so that the third-party transmission issue raised by Threemile Canyon in its complaint could be resolved in this docket.<sup>2</sup> Nevertheless, PacifiCorp now asserts in its Motion that substantial portions of the Harvey Testimony explaining whether and how certain policy changes sought by PacifiCorp would affect Threemile Canyon are somehow “irrelevant” and “beyond the scope” of this proceeding. PacifiCorp’s basic premise is without merit and its Motion should be denied.

### **III. THE APPLICABLE LEGAL STANDARD**

According to the Commission’s rules of practice and procedure, Threemile Canyon is entitled to submit testimony that is relevant to the issues in this proceeding. In this context, the term “relevant” is defined broadly in OAR 860-001-0450(1)(a) to include any “evidence tending to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence.” OAR 860-001-0450(1)(c) provides that relevant evidence may be excluded only if “the probative value is *substantially* outweighed by the danger of *unfair* prejudice, confusion of the issues, or undue delay.” (Emphasis added).

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<sup>2</sup> Order 12-475, p. 3.

PacifiCorp's Motion does not properly allege any grounds by which the Harvey Testimony may be excluded under OAR 860-001-0450(1)(c). Although PacifiCorp states in passing that the Harvey Testimony is "prejudicial" and may cause "confusion," that does not satisfy the test for excluding evidence. All testimony that is technical in nature, which is commonplace in utility ratemaking, has the potential to be confusing. That is precisely why such testimony is subject to cross-examination, and that is why parties submitting testimony may be subject to discovery. Further, it is the very purpose of testimony to be "prejudicial" in the sense that it is intended to dissuade the Commission from adopting the competing position of another party. The actual legal standard for excluding testimony is that its probative value must be "substantially outweighed" by the risk of "unfair prejudice," confusion or delay. PacifiCorp's Motion fails to specifically allege, let alone demonstrate, that the probative value of the Harvey Testimony is substantially outweighed by the risk of unfair prejudice, confusion or delay.

Rather than applying the standard for excluding evidence set forth in OAR 860-001-0450(1)(c), PacifiCorp simply states in its Motion that substantial portions of the Harvey Testimony are "beyond the scope" of the UM 1610 proceeding. Two of the issues to be addressed in the first phase of UM 1610 are: (a) whether a utility may charge a QF for third-party transmission costs, and (b) when does a legally-enforceable obligation exist between a QF and the purchasing utility? As explained in greater detail below, the disputed portions of the Harvey Testimony are directly relevant to a utility's legal right to recover third-party transmission costs under PURPA and when and how a legally-enforceable obligation is created.

#### **IV. THE HARVEY TESTIMONY IS DIRECTLY RELEVANT TO UM 1610 ISSUES**

##### **A. Issue 4B: Third-Party Transmission Costs**

On December 21, 2012, the Commission adopted a final issues list for UM 1610. Issue 4B on this issues list is: “Should the costs or benefits associated with third party transmission be included in the calculation of avoided cost priced or otherwise accounted for in the standard contract?” Much of the Harvey Testimony, including nearly all of what PacifiCorp wishes to strike, is relevant to this question.

The Harvey Testimony focuses directly on whether PacifiCorp is required, or even permitted, by PURPA to allocate third-party transmission costs to a QF that is located in PacifiCorp’s service territory. PacifiCorp admits in its Motion that this question is squarely within the scope of Issue 4B.<sup>3</sup> The Harvey Testimony explains how the issue of transmission costs for QF projects is governed by §292.303 of the regulations adopted by FERC to implement PURPA. The applicable regulations set forth a fact-specific test, and allow a utility such as PacifiCorp to recover transmission costs from a QF *only* in the instance where the QF is making a voluntary but indirect sale to a second utility. The Harvey Testimony then explains how Threemile Canyon is not seeking an indirect sale to another utility for which PacifiCorp is allowed to recover transmission costs under §292.303(d). In other words, the Harvey Testimony that PacifiCorp would like to exclude demonstrates that FERC’s regulations actually prohibit PacifiCorp from allocating third-party transmission charges to Threemile Canyon.

The Harvey Testimony also explains how the FERC regulations implementing PURPA prohibit the utility from discriminating against QFs.<sup>4</sup> The Harvey Testimony uses PacifiCorp’s own cost data to show that PacifiCorp spends a massive amount of money on third-party

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<sup>3</sup> Motion to Strike, p. 3.

<sup>4</sup> See Harvey Testimony, p. 27.

transmission to move company-owned generation to load. The cost data shows that PacifiCorp has built a distribution system—and a business model—that is reliant on third-party transmission. The Harvey Testimony further explains how PacifiCorp is recovering these third-party transmission charges from its retail ratepayers. Finally, the Harvey Testimony concludes that it would be discriminatory for PacifiCorp to charge its retail ratepayers for third-party transmission costs for PacifiCorp’s generating resources, but then refuse to charge its retail ratepayers for third-party transmission costs for QF generating resources.

Finally, the Harvey Testimony addresses certain assertions made by PacifiCorp in the Direct Testimony of Bruce Griswold (“Griswold Testimony”). In connection with Issue 4B, the Griswold Testimony states, in part, that “Dalreed is a PacifiCorp load pocket near Arlington, Oregon where loads range from about 44 MW peak during the summer to less than 2 MW during the winter.” The Griswold Testimony implies that the so-called “load pocket” situation at Dalreed is well known to all, that third-party outbound transmission service was required, and that Threemile Canyon should have expected to pay for the transmission. The Harvey Testimony responds directly to this assertion, explaining how the need for PacifiCorp to purchase third-party transmission was actually unknown to Threemile Canyon. To the contrary, PacifiCorp completed the entire interconnection process with Threemile Canyon without once identifying the Bonneville Power Administration (“BPA”)—or any other transmission provider—as an “affected system.” Threemile Canyon made a multi-million dollar commitment of funds based in part on PacifiCorp’s mistaken representation that there were no affected systems.

This portion of the Harvey Testimony is also relevant to FERC’s anti-discrimination regulations. The Griswold Testimony states that there are other QFs that are similarly situated

and for which PacifiCorp has negotiated agreements concerning the allocation of third-party transmission costs.<sup>5</sup> Threemile Canyon believes that, with respect to some or all of these other QF projects mentioned by Mr. Griswold, PacifiCorp did in fact expressly identify BPA as an affected system. Threemile Canyon is currently pursuing discovery from PacifiCorp to confirm this point. It is inequitable for PacifiCorp to act as if Threemile Canyon, which was not informed of any affected systems, should be held accountable for the consequences of PacifiCorp's mistakes. The Harvey Testimony on this issue is critical to provide a full record on which the Commission can base its decision with respect to Issue 4B.

**B. Issue 6B: Legally Enforceable Obligation**

Issue 6B on the Commission's issues list for this proceeding asks: "When is there a legally enforceable obligation?" Another substantial portion of the Harvey Testimony that PacifiCorp wishes to strike is directly relevant to this question. The Harvey Testimony explains that a legally enforceable obligation exists when the QF commits itself to an electric utility. The Harvey Testimony rejects PacifiCorp's proposed benchmark for a legally-enforceable obligation, which would be only after the QF receives and approves the final draft power purchase agreement from the purchasing utility. The Harvey Testimony explains that PacifiCorp's proposal would allow the electric utility the opportunity to circumvent its PURPA obligations by simply refusing to tender the final draft power purchase agreement for approval by the QF.

Rather than rest on hypotheticals or mere accusations, the Harvey Testimony then takes the next step and provides the Commission with a concrete example of how PacifiCorp has, in fact, refused to offer Threemile Canyon a long-term power purchase agreement. This despite the fact that PacifiCorp agrees that Threemile Canyon meets all of the eligibility criteria for a

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<sup>5</sup> See Griswold Testimony, p. 15.



standard contract. The Harvey Testimony demonstrates how easy it would be for the utility to frustrate the creation of a legally enforceable obligation under PacifiCorp's proposal. Again, this entire portion of the Harvey Testimony is directly relevant to Issue 6B and there is no basis for striking any of it.

**C. Testifying Parties Are Clearly Permitted To Use Specific Facts To Illustrate The Application of Law and Policy, As PacifiCorp Itself Did.**

The focus of PacifiCorp's Motion seems to be that the Harvey Testimony has the audacity to apply specific facts to the legal and policy changes proposed in this docket. PacifiCorp writes in its Motion that "[b]ecause this is a question of law and policy rather than one of fact, specifics of Threemile Canyon's dispute with the Company are irrelevant." PacifiCorp apparently believes, therefore, that the Harvey Testimony may speak to law, and it may speak to policy, but it may not speak to specific facts. This is not the law. It is axiomatic that witnesses testifying before the Commission may speak to any facts within their personal knowledge that are relevant to the proceeding, subject only to the limitations set forth in OAR 860-001-0450(1)(c).

Indeed, PacifiCorp does not even hold itself to the standard that it wishes to apply to Threemile Canyon. PacifiCorp's own Griswold Testimony addresses the specific facts surrounding Threemile Canyon at some length. In connection with Issue 4B, the Griswold Testimony states as follows:

**Q. HAS THE COMPANY INCURRED THIRD-PARTY TRANSMISSION COSTS WITH ANY OF ITS CURRENT STANDARD CONTRACTS UNDER SCHEDULE 37?**

A. Yes. The Company's recent experience with the Threemile Canyon Wind Farm 1, LLC (Threemile) 9.9 MW wind QF project illustrates the incremental costs that are involved. In eastern Oregon, BPA owns transmission linking the Company's load pockets to other portions of PacifiCorp's system. Dalreed is a PacifiCorp load pocket near Arlington, Oregon where loads range from about 44 MW peak during the summer to

less than 2 MW during the winter. Prior to the Threemile project becoming operational in 2009, the Company required no transmission service provision for energy exports out of the Dalreed load pocket as there was only load and no generation. In order to insure [sic] that any excess generation could be moved to load outside the Dalreed load pocket, the Company initiated the purchase of long-term firm PTP transmission (with rollover rights) from BPA and entered BPA's queue in the spring of 2009 to secure such transmission prior to initial start-up of the wind turbines. BPA determined it would not have firm long-term capacity available to grant this request until upgrades were completed on their system. In 2009, Threemile began commercial operation, and excess generation occurred throughout the winter months. As an interim measure, the Company purchased short-term firm PTP transmission during the winter and spring months to address the period when generation could exceed load. When LTF PTP transmission is available at Dalreed, the Company would secure the long-term to ensure firm rights in all hours for any excess generation.

In theory, the cost to export excess generation from Dalreed should be partially offset by any transmission service savings realized under the current transmission agreement with BPA. Therefore, if the QF generation reduced peak imports, the Company might realize a reduction in transmission service charges into the load pocket. In actuality, the amount of savings realized has been minimal. In 2009, there was no reduction in peak hourly demand and in 2010 Threemile reduced the annual peak hour demand at Dalreed by just over 300 kW.

Compared to the cost the Company incurred for short-term firm transmission out of Dalreed, or the estimated annual cost the Company expects to incur once long-term firm transmission out of Dalreed is available, the reduction to import costs is negligible. Adding the Threemile facility to the Dalreed load pocket has had a net effect of increasing the Company's cost above the Schedule 37 standard avoided cost rates.

**Q. IS THE THREEMILE CANYON WIND FARM 1, LLC EXAMPLE AN ISOLATED CASE?**

A. No. There are other QF projects in Oregon that have executed PPA's with the Company that are located within a load pocket.

In the Griswold Testimony, PacifiCorp uses Threemile Canyon as the poster-child for its proposal to recover third-party transmission costs from QFs. But at the same time, PacifiCorp cries foul where the Harvey Testimony uses Threemile Canyon to illustrate why the Commission

should reject PacifiCorp's proposal on third-party transmission costs. PacifiCorp cannot have it both ways.

V. **THE COMMISSION SPECIFICALLY DIRECTED THREEMILE CANYON TO ADDRESS IN UM 1610 THE ISSUES THAT IT RAISED IN ITS UM 1546 COMPLAINT**

PacifiCorp's Motion also advances the misconception that there is a bright-line distinction between issues raised in UM 1546 and those raised in UM 1610. The reality is that the issues in UM 1546 and UM 1610 are not distinct but are overlapping. Threemile Canyon actually tried to argue that the issues raised in the two proceedings were separate and distinct in order to stay out of UM 1610. The Commission rejected that position. The Commission stated:

We are not persuaded by complainant's attempt to distinguish the third-party transmission cost issue raised here and in docket UM 1610. Both proceedings address the legal question whether the provisions of PURPA prohibit a utility from paying both avoided cost rates for a QFs output and related transmission costs to a third-party to move that output.

Order 12-475, p. 3. The Commission then directed that the third-party transmission issues raised in UM 1546 be resolved in UM 1610 because the issues also affect other utilities and QFs. *Id.*

Furthermore, the argument that PacifiCorp now makes in its Motion directly contradicts the argument that PacifiCorp made to have UM 1546 stayed. In the Motion, PacifiCorp asserts that the Commission should bar Threemile Canyon from introducing any testimony relevant to its complaint proceeding, as such testimony is allegedly "irrelevant" and would exceed the scope of this proceeding. In seeking to stay UM 1546, however, PacifiCorp's actually argued (successfully) that Threemile Canyon's complaint regarding third-party transmission *should be* addressed in UM 1610. In its Order 12-475, Commission noted that "Pacific Power responds that it too desires an expeditious resolution of *this* third-party transmission cost issue, but prefers

the Commission do so in docket UM 1610.” *Id.* (Emphasis added).<sup>6</sup> Further, “Pacific Power contends that complainant [Threemile Canyon] has failed to support its claim that docket UM 1610 does not provide an adequate forum to resolve the issue raised in its complaint.” *Id.* In other words, PacifiCorp sold the Commission on staying UM 1546 precisely because Threemile Canyon would be permitted to assert the issues raised in its UM 1546 complaint in the UM 1610 investigation, and that UM 1610 is an appropriate and “adequate forum” for such issues. PacifiCorp appears to have conveniently forgotten that was the very basis of the stay.

## **VI. CONCLUSION**

Threemile Canyon will withdraw the disputed portions of the Harvey Testimony in this proceeding if PacifiCorp will stipulate that none of the Commission’s rulings in UM 1610 apply to Threemile Canyon.

Unless and until that happens, however, it is clear that PacifiCorp desires and intends for the outcome of this proceeding to retroactively apply to Threemile Canyon. Threemile Canyon therefore has every right to submit testimony concerning whether and how the outcome of this proceeding would apply to Threemile Canyon. That is what PacifiCorp did in its own testimony, which specifically discusses Threemile Canyon at length. In fact, that is precisely what the Commission directed the parties to do in Order 12-475. Threemile Canyon’s testimony is directly relevant to issues in this proceeding. PacifiCorp has presented no basis for striking any of it.

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<sup>6</sup> By referring to “this” third-party transmission cost issue, the Commission was clearly referring to the specific third-party transmission issue raised by Threemile Canyon in UM 1546 and not just to third-party transmission costs generically.

DATED this 5<sup>th</sup> day of April, 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

THREEMILE CANYON WIND I, LLC,  
Complainant  
vs.  
PACIFICORP, dba PACIFIC POWER,  
Defendant

ORDER

**DISPOSITION: ALJ RULING CERTIFIED AND AFFIRMED**

On November 6, 2012, Threemile Canyon Wind I, LLC (complainant) filed a motion seeking certification and Commission review of a ruling issued by an Administrative Law Judge (ALJ). In the ruling, the ALJ denied complainant's motion to lift the stay in this docket.<sup>1</sup> On November 13, 2012, PacificCorp, dba Pacific Power, filed a response in opposition to the request.

The ALJ has found good cause to certify the ruling under OAR 860-001-0110(2). For reasons that follow, we affirm the ALJ's ruling.

**I. PROCEDURAL HISTORY**

The issue raised in this complaint is whether, under the Public Utility Regulatory Policies Act (PURPA), Pacific Power may charge complainant certain costs associated with Pacific Power's purchase of third-party transmission to move output from complainant's facilities. The same issue is also raised in docket UE 235, an investigation of tariff revisions that allow Pacific Power to charge qualifying facilities (QFs) necessary third-party transmission costs.

Due to the overlap of issues, Pacific Power recommended holding this complaint in abeyance pending the outcome of the investigation in docket UE 235. Complainant did not object to the request. By ruling dated October 6, 2011, an ALJ granted the request.

On September 18, 2012, complainant filed a motion seeking to lift the stay, noting that docket UE 235 has been inactive since December 2011. Pacific Power opposed the

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<sup>1</sup> ALJ Ruling (Oct 22, 2012).

request, stating that the third-party transmission issue will likely be addressed in a newly-opened generic proceeding, docket UM 1610. Pacific Power also noted that complainant is not prejudiced by the stay, because Pacific Power has extended its short-term power purchase agreement (PPA) with complainant to maintain the status quo during the delay.

In the ruling dated October 22, 2012, the ALJ denied complainant's request to lift the stay, stating:

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

## II. MOTION TO CERTIFY

In its challenge to the ALJ's ruling, complainant contends that docket UM 1610 does not provide an adequate forum to resolve the issue in this complaint. Complainant attempts to distinguish the two proceedings by claiming that the issue raised in the complaint is one of law, while the issue being addressed in docket UM 1610 is one of policy.

Complainant explains that Pacific Power's standard contract for small QFs did not, at the time relevant to the complaint, provide for adjustments for third-party transmission costs. Thus, according to complainant, it is legally entitled to the rates provided in the standard contract without adjustment. Complainant adds that, in contrast, the relevant third-party transmission cost issue in docket UM 1610, as set forth in the recently adopted final issues list, addresses the policy question of how third-party transmission costs should be treated in future QF contracting. Complainant notes the recently adopted issues list identifies that policy issue as follows:

Should the cost or benefits associated with third-party transmission be included in the calculation of avoided cost process or otherwise accounted for in the standard contract?<sup>2</sup>

Complainant also expresses concern that the policy issue in docket UM 1610 may be subject to negotiation and compromise and that it has no interest in policy trade-offs. Instead, it requests the stay be lifted so the Commission can determine complainant's legal rights with regard to its existing project.

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<sup>2</sup> *In the Matter of an Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, ALJ Ruling, Appendix A (Oct 25, 2012).

Pacific Power responds that it too desires an expeditious resolution of this third-party transmission cost issue, but prefers the Commission do so in docket UM 1610. Pacific Power notes that resolving the issue in this complaint may not result in a more expeditious resolution as complainant assumes. Because the threshold legal and policy issues affecting third-party transmission costs will affect other utilities and QFs, Pacific Power believes other parties might intervene in this complaint causing confusion and delay. In addition, Pacific Power contends that complainant has failed to support its claim that docket UM 1610 does not provide an adequate forum to resolve the issue raised in its complaint.

### III. RESOLUTION

We are not persuaded by complainant's attempt to distinguish the third-party transmission cost issue raised here and in docket UM 1610. Both proceedings 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. If not, complainant may be entitled to relief in this complaint, and we will be required to address policy issues surrounding the payment of third-party transmission costs in docket UM 1610. Moreover, contrary to complainant's assertion, that threshold legal issue cannot, and, will not, be subject to negotiation or compromise.

Because the third-party transmission cost issue affects other utilities and QFs, we affirm the decision to address the issue in docket UM 1610 with input from all affected parties. To help address the desire of both complainant and Pacific Power for an expeditious resolution, we direct the ALJ to adopt a procedural schedule that includes this issue in the initial phase of the case.

Complainant has failed to establish that it is unduly prejudiced by this decision. As noted above, Pacific Power has extended its short-term PPA with complainant to maintain the status quo during the stay. Furthermore, complainant's concerns about additional legal costs of participating in the generic proceeding are unfounded. Complainant may intervene for the purposes of addressing solely the third-party transmission issue, and may pool resources with other similarly situated QFs.

To avoid unnecessary duplicative litigation and to resolve the issue of third-party transmission costs in a proceeding involving all affected parties, the ALJ's ruling dated October 22, 2012, maintaining the stay of this docket is affirmed.

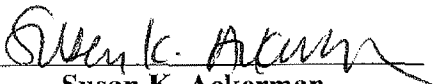



IV. ORDER

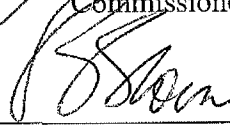
IT IS ORDERED that:

1. The motion to certify the Administrative Law Judge Ruling dated October 22, 2012, ruling is granted.
2. The Administrative Law Judge ruling dated October 22, 2012 is affirmed.

Made, entered, and effective DEC 10 2012

  
Susan K. Ackerman  
Chair

  
John Savage  
Commissioner

  
Stephen M. Bloom  
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

**CERTIFICATE OF SERVICE**

I CERTIFY that I have on this day served the foregoing document upon all parties of record in this proceeding via electronic mail and/or by mailing a copy properly addressed with first class postage prepaid.

**PACIFIC POWER**

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