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February 1, 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 the original and one copy of the Petition to Intervene of Threemile Canyon Wind I, LLC, in the above-referenced docket.

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

Very truly yours,

  
Richard Lorenz

RGL:tb  
Enclosures  
cc: UM-1610 Service List

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1610**

In the Matter of	)	
	)	PETITION TO INTERVENE OF
PUBLIC UTILITY COMMISSION OF	)	THREEMILE CANYON WIND I, LLC
OREGON,	)	
	)	
Investigation Into Qualifying Facility	)	
Contracting and Pricing	)	

Pursuant to ORS § 756.525 and OAR § 860-001-0300(2), Threemile Canyon Wind I, LLC (“Threemile Canyon”) petitions the Public Utility Commission of Oregon (“Commission”) to intervene in this proceeding with full party status as described in OAR § 860-001-0010(7). Threemile Canyon waives paper service of all non-confidential filings. In support of this petition, Threemile Canyon provides the following information:

1. The name and address of Threemile Canyon Intervenor is:

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2. The names and addresses of the attorneys representing Threemile Canyon are<sup>1</sup>:

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3. Threemile Canyon is an Oregon limited liability company that owns, operates and maintains a wind-powered generating facility (“Facility”) located in Morrow County, Oregon. The Facility has an installed nameplate capacity rating that is less than 10MW, and it is located in PacifiCorp’s service territory. The Facility is a Qualifying Facility (“QF”) under state and federal law.

4. The Commission has developed, through a formal investigation (UM 1129), standardized power purchase agreement terms and rate schedules that electric utilities such as PacifiCorp must offer to QFs in their respective service territories.

5. In the context of its UM 1129 investigation, the Commission expressly rejected PacifiCorp’s request to impose non-standard contract terms or charges on QFs to recover additional costs that PacifiCorp may incur in connection with such facilities. Specifically, the Commission determined that a non-standard price adjustment, as sought by PacifiCorp, would “fundamentally undermine the purposes and advantages of standard contracts \* \* \*.” Order No. 05-584 at 39.

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<sup>1</sup> Threemile Canyon was previously represented in a related docket, UM 1546, by different legal counsel. For avoidance of doubt, Threemile Canyon will be filing Substitution of Counsel forms in both UM 1546 and UM 1610.

6. In defiance of the Commission's clear prohibition against such behavior, PacifiCorp has attempted to add non-standard terms and charges to Threemile Canyon's standard contract.

7. On or about July 15, 2008, Threemile Canyon executed a Distribution Generation Interconnection Agreement ("Interconnection Agreement") with PacifiCorp allowing it to deliver the output of the Facility to PacifiCorp at its Dalreed substation. Prior to executing the Interconnection Agreement, PacifiCorp performed a Feasibility Study and System Impact Study with respect to the interconnection of the Facility and the transmission of the Facility output. In these studies, PacifiCorp identified itself as the transmission provider and represented that there were no Affected Systems. In studying and negotiating the Interconnection Agreement, PacifiCorp did not identify any third-party transmission costs that may be applicable to the Facility, and no such costs are included in the Interconnection Agreement.

8. In reliance on PacifiCorp's representations and legal obligations, Threemile Canyon began construction of the Facility in December of 2008.

9. Threemile Canyon applied to PacifiCorp for a standard contract in December 2008. PacifiCorp refused to offer Threemile Canyon a standard contract for the Facility, however, unless Threemile Canyon agreed to a price adjustment for what PacifiCorp terms "third-party transmission costs." To be clear, there currently is no provision in the standard contract terms approved by this Commission in UM 1129 that would allow PacifiCorp to impose such a price adjustment.

10. PacifiCorp's proposed "third-party transmission" costs are not charges commonly thought of under PURPA as third-party transmission incurred to deliver

Facility output to PacifiCorp's service territory.<sup>2</sup> As stated above, the Facility is physically located in PacifiCorp's service territory and is directly interconnected to PacifiCorp's Dalreed substation. Instead, PacifiCorp seeks a price adjustment for additional transmission costs it may incur to move Facility output from one portion of its service territory to another. Furthermore, the additional third-party transmission costs that PacifiCorp wants to recover from Threemile Canyon are caused solely by the nature and shape of PacifiCorp's own retail load requirements, not the operating characteristics of the Facility.

11. Threemile Canyon has sought to enforce its legal right to sell the output of the Facility to PacifiCorp pursuant to a standard contract without any unauthorized price adjustments. PacifiCorp has refused to grant a standard offer power purchase agreement to Threemile Canyon. Since December of 2008, the Parties have executed a series of short term power purchase agreements to allow time to resolve this dispute.

12. On or about July 1, 2011, Threemile Canyon filed a complaint with the Commission alleging that PacifiCorp violated state and federal law, as well as its own rate tariff, by refusing to offer Threemile Canyon a standard contract. This complaint proceeding was docketed by the Commission as UM 1546.

13. The primary legal issue in UM 1546 was whether PacifiCorp may retroactively and unilaterally add an additional price adjustment provision to the standard contract approved by this Commission. In other words, can PacifiCorp force a QF that

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<sup>2</sup> In FERC Order No. 69, third-party transmission is discussed as a proposition where capacity and energy delivered by a PURPA qualifying facility, located in the transmission footprint of one electric public utility, is shipped to another electric public utility. See 12220 Federal Register / Vol. 45, No. 38 / Monday, February 25, 1980 / Rules and Regulations

properly applied for a standard contract to acquiesce to non-standard charges and conditions that were not approved by the Commission?

14. On April 25, 2012, the Commission opened this UM 1610 proceeding to investigate QF contracting and pricing.

15. On December 10, 2012, the Commission issued an order staying UM 1546 pending the resolution of the threshold legal issue in UM 1610. The Order further directs the ALJ in UM 1610 to adopt a procedural schedule that includes this issue in the initial phase of the case.

16. According to the Scheduling Order circulated by ALJ Grant on December 21, 2012, one of the issues to be addressed in UM 1610 is: “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?”

17. It is unclear from the Commission’s December 10, 2012 order staying UM 1546 whether or not Threemile Canyon would automatically have party status in UM 1610. Threemile Canyon therefore submits this petition to intervene for avoidance of any doubt as to Threemile Canyon’s right to participate in this proceeding, and to inform the other parties to UM 1610 as to the nature and scope of Threemile Canyon’s interest in this proceeding.

18. The narrow legal issue that Threemile Canyon seeks to address in this proceeding is a subset of an issue already designated on the issues list circulated by ALJ Grant on December 21, 2012. Threemile Canyon’s participation in this proceeding will not unreasonably broaden the issues, burden the record, or delay this proceeding.

19. As described above, Threemile Canyon has a substantial interest in this proceeding as it could affect the contract terms available to QFs that have already applied for a standard contract under the Commission's existing rules.

20. Threemile Canyon's interest in this proceeding will not be adequately represented by any other party, and may be affected by any Commission determination made in connection with these proceedings. It is in the public interest to allow Threemile Canyon to intervene in this proceeding.

WHEREFORE, Threemile Canyon respectfully requests that the Commission grant its petition to intervene with full party status in this proceeding.

DATED this 1<sup>st</sup> day of February, 2013.

/s/ Richard G. Lorenz

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## **CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served the foregoing **PETITION TO INTERVENE OF THREEMILE CANYON WIND I, LLC** via electronic mail and, where paper service is not waived, via postage-paid first class mail upon the following parties of record:

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Dated in Portland, Oregon, this 1<sup>st</sup> day of February, 2013.

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