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September 18, 2012

Richard H. Allan  
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Filing Clerk  
Public Utilities Commission  
Filing Center  
550 Capitol Street NE; # 215  
PO Box 2148  
Salem, OR 97308

Re: Threemile Canyon Wind I, LLC v. PacifiCorp, dba Pacific Power  
Docket UM 1546

Dear Filing Clerk:

This firm represents Complainant, Threemile Canyon Wind I, LLC, in Docket UM 1546. Enclosed are the original and one copy of the Threemile Canyon's Motion for Relief from Stay and for Scheduling Conference.

Thank you for your courtesies in this matter.

Very truly yours,

Richard H. Allan

RHA:crs

Enclosures

cc by email w/encl: PacifiCorp Oregon Dockets  
Jeffrey S. Lovinger  
Kenneth E. Kaufmann  
Mary Wiencke

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

2 **UM 1546**

3  
4 **THREEMILE CANYON WIND I, LLC,**

5 **Complainant,**

6 **v.**

7 **PACIFICORP, dba, PACIFIC POWER,**

8 **Defendant.**

**MOTION FOR RELIEF FROM STAY  
AND FOR SCHEDULING  
CONFERENCE**

9  
10 **I. INTRODUCTION**

11 Complainant Threemile Canyon Wind I, LLC (“Complainant”) requests that the stay of  
12 the proceedings in this docket “pending the outcome of the first phase of docket UE 235,” issued  
13 by ruling of October 6, 2011, be lifted and that the Administrative Law Judge set a conference  
14 for the purpose of establishing a new briefing schedule in this docket.

15 As discussed below, the “first phase” of UE 235 was fully briefed on December 12, 2011  
16 when reply briefs were filed. No ruling on phase one issues has been issued and there has been  
17 no activity in the UE 235 docket since February 1, 2012.

18 **II. ARGUMENT**

19 **A. History of this Proceeding.**

20 This docket was initiated by Complainant’s filing of the Complaint against PacifiCorp on  
21 July 1, 2011. The Complaint seeks an order requiring PacifiCorp to purchase the output of  
22 Complainant’s 9.5 MW wind-powered generating facility, located in Morrow County, Oregon,  
23 on the terms and at the rate selected by Complainant under Pacific Power’s then-effective  
24 Oregon Schedule 37 (Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less).  
25 Pursuant to a pre-hearing conference memorandum dated August 15, 2011, which established a  
26

1 procedural schedule for this docket, the parties timely filed stipulated facts on September 6,  
2 2011.

3 On September 21, 2011, six days prior to the deadline for the parties to file simultaneous  
4 direct testimony, PacifiCorp requested a status conference; the purpose of the status conference  
5 was to discuss altering the procedural schedule in this docket so that a common issue raised by  
6 PacifiCorp – “whether it violates PURPA to require PacifiCorp to both pay Schedule 37 rates  
7 and to pay for third-party transmission needed to move QF output from the point of delivery to  
8 PacifiCorp load” – could be addressed in the first phase of a separate docket, UE 235. The UE  
9 235 docket was initiated by the Commission to investigate issues raised by PacifiCorp Advice  
10 No. 11-011, concerning Schedule 37. By ruling dated October 6, 2011, the docket in UM 1546  
11 was “stayed pending the outcome in phase one of docket UE 235.”

12 B. Subsequent “Parallel” Proceedings.

13 The briefing of phase one issues in docket UE 235 was complete on December 12, 2011  
14 – over 9 months ago – when reply briefs were filed. There is as yet no ruling on any phase one  
15 issues, and in fact there has been no activity in the UE 235 docket since February 1, 2012.

16 On April 25, 2012, the Commission issued Order No. 12-146, which states:

17 “After discussion of recent issues related to QF contracting, we  
18 ordered that a generic docket be opened to investigate issues  
related to electric utilities’ purchases from QFs, generally.”

19 That generic docket, UM 1610 (“Investigation into Qualifying Facility Contracting and  
20 Pricing”) is still in the very early stages, with the parties attempting to identify the scope of  
21 issues to be addressed in the investigation. Not surprisingly, PacifiCorp has intervened in UM  
22 1610. Thus, it is not clear as this juncture whether the phase one issues in UE 235 will be  
23 subsumed into the UM 1610 investigation.

24 Complainant has not intervened in either UE 235 or UM 1610, and has no intention of  
25 doing so.

26

1 C. The Issues Raised in the Complaint Must be Adjudicated through Proceedings in  
2 this docket, not in Parallel Proceedings.

3 Complainant filed the Complaint in this docket in order to obtain a prompt and efficient  
4 resolution of a dispute with PacifiCorp relating to a single 9.9 MW QF project eligible for a  
5 Schedule 37 QF Contract. Although the Commission – by adopting the expedited dispute  
6 resolution provisions of OAR 860-029-0100 – has recognized the need for prompt and efficient  
7 dispute resolution to reduce transaction costs for QF projects, those Division 29 dispute  
8 resolution provisions ironically are available for “large” QF projects (over 10,000 kW), but not  
9 for the smaller projects eligible for the Schedule 37 Contract. Although the Commission’s  
10 Division 1 rules do not provide the same expedited and efficient form for dispute resolution,  
11 Complainant nonetheless is entitled to an adjudication of the issues raised by its Complaint.

12 The Commission’s other dockets (UE 235 and UM 1610) do not provide an adequate or  
13 acceptable forum for resolution of those issues. First, and most obviously, Complainant is not a  
14 party to those dockets and should not be required to become a party to multiple dockets in order  
15 to pursue a resolution of its own Complaint. Second, UE 235 and UM 1610 are both “forward  
16 looking” dockets: they concern how QF Contracts and pricing should be handled in the future.  
17 This docket addresses whether PacifiCorp is required to purchase the output of an existing QF  
18 project under the terms and pricing in the existing Schedule 37. Third, UE 235 and UM 1610  
19 offer no prospect of a timely resolution. Indeed, the Commission’s last general investigation into  
20 QF contracting, UM 1129, lasted for over 4 years.

21 If necessary, Complainant is prepared to present testimony, in writing or in person,  
22 regarding the financial impact on a project of this size of participating in protracted multi-party  
23 investigative dockets in what could be a futile attempt to obtain a ruling from the Commission on  
24 the specific issues in this docket.

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26 ///

1 **III. CONCLUSION**

2 For the reasons set forth above, Complainant requests that the Motion be granted, that the  
3 stay issued on October 6, 2011 be lifted, and that a conference be scheduled as soon as  
4 convenient for the Administrative Law Judge and the parties in order to establish a new briefing  
5 schedule in this docket.

6 Respectfully submitted this 18<sup>th</sup> day of September, 2012.

7  
8 By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2012, I served a true and correct copy of the foregoing Motion for Relief from Stay and for Scheduling Conference by electronic transmission on the individuals listed below:

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