

**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, PacifiCorp, 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.

DEC 10 2012

Made, entered, and effective \_\_\_\_\_.

  
Susan K. Ackerman

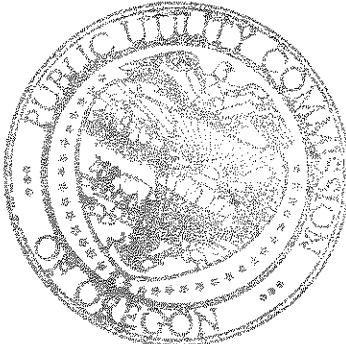
Chair

  
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.