



**IDAHO
POWER**

An IDACORP Company

IDAHO POWER COMPANY
P.O. BOX 70
BOISE, IDAHO 83707

RECEIVED

2006 JUL 10 PM 4:51

IDAHO PUBLIC
UTILITIES COMMISSION

BARTON L. KLINE
Senior Attorney

July 10, 2006

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P. O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-05-34
Idaho Power Company's Reply Comments

Dear Ms. Jewell:

Please find enclosed for filing with the Commission an original and seven (7) copies of Idaho Power Company's Reply Comments regarding the above-referenced case.

I would appreciate it if you would return a stamped copy of this letter to me in the enclosed self-addressed envelope.

Very truly yours,

Barton L. Kline

BLK/sh
Enclosures

RECEIVED

2006 JUL 10 PM 4:51

IDAHO PUBLIC UTILITIES COMMISSION

BARTON L. KLINE ISB #1526
MONICA MOEN ISB #5734
Idaho Power Company
P. O. Box 70
Boise, Idaho 83707
Telephone: (208) 388-2682
FAX Telephone: (208) 388-6936
E-mail: bkline@idahopower.com
E-mail: mmoen@idahopower.com

Attorneys for Idaho Power Company

Street Address for Express Mail:

1221 West Idaho Street
Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF) CASE NO. IPC-E-05-34
MAGIC WIND LLC TO DETERMINE)
EXEMPTION STATUS) IDAHO POWER COMPANY'S
_____) REPLY COMMENTS

First, in responding to the Comments of the Commission Staff, Magic Wind, LLC ("Magic Wind") and Intervenors, Renewable Northwest Project and Northwest Energy Coalition (collectively "Northwest Parties") and Energy Vision, Idaho Power will direct the majority of its response to common themes contained in more than one set of Comments.

Second, consistent with its Initial Comments Idaho Power will refer to the remedy for nonperformance advocated by Magic Wind as the "Schwendiman Remedy" and Idaho Power's preferred remedy as the "U.S. Geothermal Remedy".

1. **The U.S. Geothermal Remedy has not discouraged robust development of QF resources.**

Both Magic Wind and Northwest Parties argue that continued use of the remedy for QF nonperformance that the Commission adopted in the U.S. Geothermal case will discourage the development of QF resources, and in particular discourage the development of wind QFs. This is the same argument that QF developers and their financiers made at the time the Commission issued its U.S. Geothermal Orders (Order Nos. 29632 and 29682). Actual experience shows that these dire predictions are not credible.

Since the U.S. Geothermal decision, Idaho Power has signed, and the Commission has approved 22 contracts totaling 229 MW of QF capacity. Of that total, 14 contracts totaling 187 MW are with wind generation projects. Each of those 14 Wind QF contracts contains the U.S. Geothermal Remedy. In addition, as this Commission well knows, were it not for the Commission's decision in Case No. IPC-E-05-22 to reduce the eligibility cap for avoided cost published rates for non-firm wind projects, even *more* wind QF contracts containing the U.S. Geothermal Remedy would have been signed and presented to the Commission for approval.

The argument that the U.S. Geothermal Remedy will discourage QF wind development is further rebutted by the fact that prior to April 5, 2006 Magic Wind was urging this Commission to require Idaho Power to enter into a contract that contained the U.S. Geothermal Remedy.

In the final analysis it is unlikely that continued use of the U.S. Geothermal Remedy or substitution of the Schwendiman Remedy will have a material affect on the demand by QF developers for new wind QF contracts.

2. The remedy for failure to deliver the agreed-upon monthly amounts of energy is a means to recover damages, not an alternative avoided costs computation.

The comments of Magic Wind, Northwest Parties and Envision indicate a fundamental misunderstanding of what the Commission was trying to accomplish when it first established a remedy for failure to deliver energy within the 90%/110% performance band in the U.S. Geothermal case. The comments of Northwest Parties provide the clearest example of this confusion. In their comments Northwest Parties argue that the U.S. Geothermal Remedy is a violation of PURPA because it does not comply with the QF's right to have avoided costs calculated on a "projected" basis. On page 3 of their comments Northwest Parties state:

The requirement that out-of-band deliveries in a certain month be priced at the discounted Mid-C Non-Firm monthly average price is a clear example of "avoided costs calculated at the time of delivery," as provided in Section 292.304(d)(2)(i) of the FERC's rules, rather than a "projected" avoided cost, pursuant to Section 292.304(d)(2)(ii). Yet deliveries within the 90/110 band, priced at the published rates, are a clear example of a "projected" avoided cost.

Northwest Parties argue that the published rates are based on avoided costs calculated at the time the obligation is incurred and therefore using current market prices as a measure of cost is a violation of the QF's option to be paid on a "projected" basis. (Northwest Parties Comment p. 3-4.) The critical point that Northwest Parties miss is

that the remedy at issue in this proceeding is not a *computation of avoided cost*. It is a means to recover the additional costs the utility and its customers are likely to incur as a result of the QF's failure to deliver within the performance band. It is a measurement of damages. If the QF performs as agreed, it receives published rates based on "projected" avoided costs. It is only when the QF fails to perform that the remedy is invoked. The Commission understood this distinction and described it in the U.S. Geothermal case. In the U.S. Geothermal case the Commission acknowledged that if the QF fails to deliver within the performance band, the purchasing utility and its customers will incur additional costs.

As reflected in our 10 MW cap discussion, the Commission finds that a legally enforceable obligation translates into contractual obligations of both parties. For a QF it translates into an obligation or commitment to deliver its monthly estimated production. Idaho Power proposes that this delivery of committed energy fall within a 90/110 band. Staff proposes that the band be expanded to 80/120. we find 90/110 to be reasonable. The Commission recognizes that excess energy is not accepted by the Company without consequence. *If unplanned for and not easily integrated, the energy may, as suggested by the Company, have to be sold in the surplus market or other more economic resources of the Company backed down.* (Emphasis added.)

(Order No. 29632 p. 20). Additional costs will also be incurred when under-deliveries occur. Again the Commission understood that logic and addressed it in the U.S.

Geothermal Order:

Idaho Power proposes that if the QF delivers less than 90% of the scheduled "net energy" amount (for reasons other than forced outage or forced majeure events) that the shortfall energy be priced at 85% of the market price, less the contract rate, the difference capped at 150% of contract rate. The Commission believes that such a shortfall energy pricing method might have the potential of exacting too heavy a price. We instead find it reasonable when the QF

fails to deliver 90% of the monthly commitment amount to price all delivered energy at 85% of the market price, or the contract rate, whichever is less.

The remedy the Commission fashioned in the U.S. Geothermal case was tied to market prices because current market prices are the best yardstick for measuring the costs the utility is likely to incur if a QF fails to deliver the amounts of energy it agreed to provide. By disconnecting from current market prices, the Schwendiman Remedy moves away from a contemporaneous measurement of the actual costs Idaho Power may incur when a QF fails to perform.

Magic Wind also misapprehends the purpose of including a remedy when the QF fails to perform. In its comments Magic Wind argues that the Schwendiman Remedy, which it refers to as the Modified PacifiCorp Method, is consistent with and is derived from the surrogate avoided resource (SAR) avoided cost calculation methodology because it utilizes simple cycle combustion turbine (SCCT) costs to develop the rates it is asking the Commission to require Idaho Power to pay QFs when their performance falls outside of the 90%/110% performance band. On page 5 of its comments Magic Wind states "It (the Schwendiman Remedy) is thus consistent with the current avoided cost methodology which bases avoided costs on an SCCT as the surrogate avoided resource." (Parenthetical added). In Idaho, the surrogate avoided resource is *not* an SCCT. It is a combined cycle combustion turbine (CCCT). The only time a SCCT has ever played a role in establishing purchase price for QF resources was when Schwendiman and PacifiCorp negotiated the Schwendiman Contract. In the past PacifiCorp has recommended that the Commission use the SCCT methodology that PacifiCorp has implemented in Utah to set avoided costs in Idaho. To date this

Commission has declined to do so. Idaho Power believes this is further evidence that the contract Schwendiman and PacifiCorp negotiated must be viewed as a stand-alone arrangement. As the Company noted in its comments in the Schwendiman case, Idaho Power has no objection to PacifiCorp's use of the Schwendiman methodology because that method is consistent with the way PacifiCorp computes avoided costs in Oregon and Utah. But it is not equivalent to the SAR methodology used in Idaho and Idaho Power should not be required to apply the methodology to its contracts.

In its comments Staff acknowledges the need to consider market prices when the QF fails to perform. But Staff responds to that concern by asserting that the energy prices computed under the Schwendiman Remedy "are a reasonable proxy for Mid-C market prices and a fair price to be paid for energy that cannot be delivered predictably." (Staff Comments p. 4). Idaho Power is uncertain as to why Staff believes it is preferable to create a proxy for Mid-C market prices when the U.S. Geothermal Remedy utilizes actual Mid-C prices that are current and readily available.

3. The Schwendiman Remedy will not result in better estimates of monthly production.

In their comments both Magic Wind and Northwest Parties refer to reply comments filed by PacifiCorp in the Schwendiman case (PAC-05-9). In its reply comments PacifiCorp indicated it believed that the U.S. Geothermal Remedy could result in QFs "low-balling" their monthly energy estimates to avoid the potential impact of low market prices. However, there is no evidence that the Schwendiman Remedy Magic Wind favors will result in better QF estimates of monthly energy production.

QF developers prefer the Schwendiman Remedy because it allows them to maximize their revenues by increasing their estimates of monthly energy production. Whether that tendency to increase the estimates will result in better estimates of monthly production amounts is questionable. It is equally likely that QFs will overstate the amounts they agree to deliver each month knowing that there is a decreased risk of adverse financial consequences if they fail to deliver the estimated amount. Of course, if QFs overestimate their monthly energy production, it is more likely that Idaho Power will be going to the wholesale energy market to replace energy delivery shortfalls.

4. The 90%/110% performance band is not at issue in this proceeding.

Northwest Parties devote a considerable portion of their comments to a critique of the 90%/110% performance band and a discussion of alternatives to the performance band that the Northwest Parties believe would be more favorable to the development of QF wind resources.

The scope of this proceeding is limited. Magic Wind's motion seeks a determination that Idaho utilities should be compelled to offer a remedy of the QF's choosing when a QF fails to deliver the amount of energy it agreed to provide within the 90%/110% band. Magic Wind has not asked the Commission to reverse its prior decisions requiring the inclusion of the 90%/110% performance band. The Commission should not rise to the bait offered by Northwest Parties.

5. Schedule 86 is not at issue in this case.

Both Magic Wind and Northwest Parties are critical of the use of Idaho Power's Schedule 86 pricing in the U.S. Geothermal Remedy. Of course Schedule 86 pricing is not at issue in this case. Idaho Power's Schedule 86 has been in effect since

1981. Schedule 86 has been evaluated by the Commission several times. The last time it was considered, the Commission recognized that paying the full Mid-C average price for non-firm energy would leave customers holding the bag for transaction costs associated with the unpredictable nature of non-firm deliveries. The Commission also recognized that Schedule 86 as currently structured provides protection to customers from overpaying for non-firm energy deliveries.

The Schedule 86 purchase price is not at issue in this case and the Commission should ignore Magic Wind's and Northwest Parties' unsupported critique.

6. This case does not need to be bifurcated.

In its initial comments Idaho Power indicated that it had been unable to replicate and verify the computation of the specific rates proposed by Magic Wind for application to Idaho Power if the Commission ultimately determined that Idaho Power should be required to include the Schwendiman Remedy in its contracts with QFs. In its initial comments Idaho Power suggested that a separate proceeding would be needed to actually set rates if the Commission required acceptance of the Schwendiman Remedy. Since filing its initial comments, Idaho Power has been able to confirm the derivation of the rates computed by Magic Wind and the revised rates computed by the Commission Staff. If at the conclusion of the comment period the Commission ultimately determines that it is in the public interest to order Idaho Power to offer the Schwendiman Remedy in future QF contracts, the purchase rates applicable to QF deliveries outside the 90%/110% performance band should be the rates recommended by the Commission Staff, not the rates computed by Magic Wind.

7. **Conclusion.**

The critical distinction between the positions taken by Magic Wind and Intervenors and the position taken by Idaho Power is that Idaho Power believes that the purpose of including a remedy to be applied when the QF fails to perform, is to measure costs the utility is likely to incur. Idaho Power believes that the best measure of the utility's potential costs is wholesale market prices prevailing at the time that the utility must make up any shortfalls or dispose of any over-deliveries. Removing wholesale market prices from the equation for measuring damages is counterintuitive in light of Northwest utilities active use of the wholesale energy markets to balance loads and resources. Removing market prices from consideration of replacement costs shifts financial risk from QF developers to the utilities' customers.

The Commission was careful to point out in the Schwendiman case that the bargain reached between Schwendiman and PacifiCorp was a negotiated arrangement between those two parties. The Commission was crystal clear in its determination that the Schwendiman contract was not intended to set precedent or to establish a rule that would be applicable to all electric utilities subject to the Commission's jurisdiction. The Commission should not abandon its longstanding practice of providing utilities and QFs with the freedom to contract so long as the terms and conditions of those contracts are not unreasonable. The U.S. Geothermal Remedy that has been approved in 22 QF contracts is reasonable.

DATED at Boise, Idaho, this 10th day of July, 2006.



BARTON L. KLINE
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2006, I served a true and correct copy of IDAHO POWER COMPANY'S INITIAL COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

Scott Woodbury
Deputy Attorney General
Idaho Public Utilities Commission
472 W. Washington Street
P.O. Box 83720
Boise, ID 83720-0074
scott.woodbury@puc.idaho.gov

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (208) 334-3762
 E-mail

Peter J. Richardson
Richardson & O'Leary PLLC
515 N. 27th Street
P.O. Box 7218
Boise, ID 83707
peter@richardsonandoleary.com

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (208) 938-7904
 E-mail

Richard L. Storro
Director, Power Supply
Avista Corporation
1411 E. Mission Avenue
P.O. Box 3727, MSC-7
Spokane, WA 99220-3727
dick.storro@avistacorp.com

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (509) 495-4272
 E-mail

R. Blair Strong
Paine, Hamblen, Coffin, Brooke & Miller
717 West Sprague Avenue, Suite 1200
Spokane, WA 99201-3505
r.blair.strong@painehamblen.com

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (509) 838-0007
 E-mail

Dean J. Miller
McDevitt & Miller LLP
420 W. Bannock Street
P.O. Box 2564
Boise, ID 83701
joe@mcdevitt-miller.com

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (208) 336-6912
 E-mail

Glenn Ikemoto
Energy Vision LLC
672 Blair Avenue
Piedmont, CA 94611
glenni@pacbell.net

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (510) 217-2239
 E-mail

Bob Lively
PacifiCorp
One Utah Center, 23rd Floor
201 S. Main Street
Salt Lake City, UT 84140
bob.lively@pacificorp.com

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (801) 220-2798
 E-mail

Dean Brockbank
Rocky Mountain Power
201 S. Main, Suite 2200
Salt Lake City, Utah 84111

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (801) 220-3299
 E-mail

William M. Eddie
Advocates For the West
1320 W. Franklin Street
P.O. Box 1612
Boise, ID 83701
billeddie@rmci.net

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (208) 342-8286
 E-mail

David Hawk, Director
Energy Natural Resources
J.R. Simplot Company
999 Main Street
P.O. Box 27
Boise, ID 83702
dhawk@simplot.com

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (208) 389-7333
 E-mail

R. Scott Pasley
Assistant General Counsel
J.R. Simplot Company
999 Main Street
P.O. Box 27
Boise, ID 83702
spasley@simplot.com

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (208) 389-7464
 E-mail

William J. Batt
John R. Hammond, Jr.
Batt & Fisher, LLP
101 S. Capitol Blvd., Suite 500
P.O. Box 1308
Boise, ID 83701
wjb@battfisher.com
jrh@battfisher.com

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX (208) 331-2400
 E-mail

Michael Heckler
Director of Marketing & Development
Windland Incorporated
7669 W. Riverside Drive, Suite 102
Boise, ID 83714
mheckler@windland.com

| | |
|-------------------------------------|--------------------|
| <input type="checkbox"/> | Hand Delivered |
| <input checked="" type="checkbox"/> | U.S. Mail |
| <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | FAX (208) 375-2894 |
| <input checked="" type="checkbox"/> | E-mail |



BARTON L. KLINE