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IDAHO PUBLIC UTILITIES COMMISSION
Chas. F. McDevitt
(De) Miller

July 10, 2006

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

Re: Case No. IPC-E-05-34

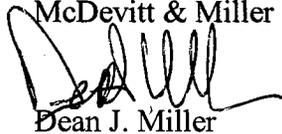
Dear Ms. Jewell:

Enclosed for filing in the above matter please find the original and seven (7) copies of Reply Comments of Magic Wind, LLC.

An additional copy of the document and this letter is included for return to me with your file stamp thereon.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh
Encl.

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2006 JUL 10 PM 3: 16
IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Magic Wind LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
MAGIC WIND LLC TO DETERMINE
EXEMPTION STATUS
(Corrected Caption)

Case No. **IPC-E-05-34**

**REPLY COMMENTS OF MAGIC
WIND**

COMES NOW Magic Wind LLC (“Magic Wind”) and, pursuant to the Commission’s Amended Notice of Scheduling dated June 28, 2006, submits the following Reply Comments.

Introduction and Background

In these Reply Comments, Magic Wind uses a number of terms or phrases that have defined meanings, which for the convenience of the Commission, are summarized as follows:

--“90-110 performance band” is the mechanism adopted in Case No. IPC-E-04-08, Order No. 29632, that defines the minimum degree of predictability required for published rate eligibility.

--“Surplus Energy” is energy provided by the QF that falls outside the performance band.

--“Market Method” is the method currently employed by Idaho Power for the pricing of Surplus Energy and is roughly equal to 85% of the Mid-C market price index for each month.

--“PacifiCorp Method” is an alternative method for pricing Surplus Energy approved by the Commission in Case No. PAC-E-05-9, which computes a schedule of fixed rates to be paid for Surplus Energy as an alternative to market based rates.

--“Modified PacifiCorp Method” is the method proposed by Magic Wind in this case which corrects a technical flaw in the PacifiCorp Method and adapts it to Idaho Power’s seasonalized avoided cost rate structure.

--“Staff Modified PacifiCorp Method” incorporates a technical change to the method relating to application of seasonalization factors.

In response to the Commission’s Notice of Petition dated June 21, 2006, Comments were filed by Magic Wind, the Commission Staff (“Staff”), and Idaho Power Company (“Idaho Power”, “IPCo”). Informal letter Comments were also submitted by the Renewable Northwest Project and NW Energy Coalition (together, “RNP”), Association and Energy Vision LLC. With the exception of Idaho Power, all commenting parties support Magic Wind’s request that the Modified PacifiCorp Method be available as an alternative to the Market Method.¹

Idaho Power misapprehends Magic Wind’s request.

Throughout its Initial Comments, Idaho Power characterizes Magic Wind’s Motion as a request to mandate that the Modified PacifiCorp Method replace the Market Method for computing prices for Surplus Energy. That is not Magic Wind’s request.

¹ As noted above and more fully discussed below, Staff suggests a slight change to the Modified PacifiCorp Method as initially proposed by Magic Wind with respect to seasonalization factors. Magic Wind concurs in this adjustment.

Rather, Magic Wind asks only that the Modified PacifiCorp Method be available as an option when a QF developer believes the Modified PacifiCorp Method is better suited to its project. Under Magic Wind's proposal, utilities and willing QF's, if desired, would still be free to negotiate contracts using the Market Method. (It is conceivable that a QF might prefer the Market Method because while it carries greater uncertainty risk, there is the possibility, under some circumstances it will produce higher prices for Surplus Energy than would the Modified PacifiCorp Method).

When Magic Wind's proposal is correctly understood, many of the concerns expressed by Idaho Power in its Initial Comments disappear. Magic Wind's proposal does not require the Commission to now reject the remedy it established in *U.S. Geothermal* (Idaho Power Initial Comments, pg. 6). It would not lead to a return to mandatory standard form contracts applicable to all utilities (Idaho Power Initial Comments, pg. 10). It would not have any so-called "chilling effect" on contract negotiations (Idaho Power Initial Comments, pg 10). It would not undermine, but would in fact promote a "freedom to contract" (Idaho Power Initial Comments, pg. 11).

In fact, denial of Magic Wind's Motion would have many of the consequences Idaho Power purports to think troublesome. A denial would discourage innovation and flexibility in devising solutions that meet Commission objectives. A denial would, in effect, mandate the one-size-fits-all approach that Idaho Power purports to believe is inadvisable. (Idaho Power Initial Comments, pg.10).

Idaho Power's concern about developer's "cherry picking" terms of power sales contracts (Idaho Power Initial Comments, pg. 9) is also misplaced in this case. It proposed only minimum changes to the Idaho Power template Firm Energy Sales

Agreement and the price for Surplus Energy issue does not interact with any other contract terms or change their risk allocations (*See Magic Wind's Motion for Declaratory Order, Attachment A*).

Magic Wind is not required to prove the current scheme is illegal.

Idaho Power asserts in its Initial Comments that Magic Wind must show that the Market Method of computing Surplus Energy is illegal under PURPA before being entitled to an alternative method (Idaho Power Initial Comments, pgs. 3—5). Idaho Power cites no authority for this breathtaking proposition, because, no doubt, none exists.

In crafting implementation policies and practices the Commission has the authority and discretion to authorize any contract terms, so long as they are not inconsistent with PURPA. There is no serious contention in this case that the Modified PacifiCorp Method is inconsistent with PURPA. The Commission is free to authorize use of the Modified PacifiCorp Method as an alternative to the Market Method without first finding that the Market Method is illegal.²

The Modified PacifiCorp Method does not shift risks to ratepayers.

Idaho Power's substantive objection to the Modified PacifiCorp Method is a claim that it shifts risks to ratepayers by not taking into account market prices when computing prices for Surplus Energy (Idaho Power Initial Comments pgs. 5—7). Idaho Power advanced the same argument in the *Schwindiman* case. Several parties, including Staff and PacifiCorp debunked this argument then (*See Comments of Magic Wind dated June 26, 2006 for a summary of Staff and PacifiCorp rebuttal in Schwendiman*).

² *See however* Letter Comments of RNP dated June 26, 2006, pg. 3 that raises doubts about the consistency of the 90-110 Band with PURPA. Because, from a business point of view, the Modified PacifiCorp Method provides a feasible alternative, Magic Wind does not believe it necessary to discuss or try the legality issue in this case.

In Comments filed in this case Staff makes a similar point:

Staff does not believe customers will face any greater risk under the fixed Surplus Energy Prices contained in the Amended Agreement than under the 85% of Mid-C pricing mechanism. Staff believes that the Surplus Energy Prices are a reasonable proxy for Mid-C market prices and represent a fair price to be paid for energy that cannot be delivered predictably. In addition, unlike market prices, they offer a fixed, known set of prices that will be paid over the life of the contract for energy delivered outside the 90/110 percent performance band.

Staff continues to believe that the pricing method used in the Schwendiman contract is reasonable. Because the approach creates certainty in rates for energy outside of the 90/110 percent band, and because the rates are a reasonable proxy for market-based rates, Staff recommends that the pricing method be permitted as an alternative to project developers seeking contracts with any of the electric utilities regulated by the Commission (Comments of Commission Staff, dated June 26, 2006, pgs 4 & 5).

RNP makes a similar observation:³

The best that can be said for Idaho Power's terms is that they *might sometimes* result in payments for deliveries outside the band that are less costly than payments under the published rates. Ratepayers should value the certainty created by the PacifiCorp method, which ensures that all out-of-band deliveries are purchased at a price that is lower than the published rate (Letter Comments of RNP dated June 26, 2006, pg. 2).

Moreover, the Modified PacifiCorp Method will likely incent QF projects to provide accurate forecasts of projected deliveries by eliminating the excessive economic distortion caused by market price volatility.

A hearing is not required to examine rates for Surplus Energy computed under the Modified PacifiCorp Method.

Idaho Power suggests that a hearing is necessary to examine the final rates produced by the Modified PacifiCorp Method (Idaho Power Initial Comments, pg. 12—13).

³ See also Letter Comments of Energy Vision dated June 25, 2005, containing a mathematical analysis showing that the PacifiCorp Method is superior to the Market Method from a ratepayer perspective.

As noted by Staff, however, calculation of Surplus Energy prices using the PacifiCorp Method is a straightforward exercise. The method uses the same avoided cost spreadsheet that is used to compute published avoided cost rates, and the source for the capital and O&M costs is Idaho Power's approved 2004 Integrated Resource Plan (Comments of Commission Staff pg. 3)⁴. Using a well-settled methodology and inputs, Staff is able to easily calculate Surplus Energy prices as displayed on Attachment B to the Staff Comments. In short, there are no issues requiring hearing with respect to the calculation of rates.

Staff correctly endorses the Modified PacifiCorp Method.

In its initial Comments in this case Magic Wind pointed out a technical flaw in the PacifiCorp method with respect to the treatment of variable O&M expense and proposed a change to the method to correctly treat variable O&M expense (Comments of Magic Wind dated June 26, 2006, pg. 4). Commission Staff, after reviewing the proposed change, agrees. "Staff has reviewed Dr. Reading's suggested 'correction' to the calculation of variable operation and maintenance expense, and agrees that his recommendation is appropriate." (Comments of the Commission Staff dated June 26, 2006, pg. 4).⁵ Accordingly, the Commission should adopt the Modified PacifiCorp Method.⁶

⁴ Idaho Power's suggestion that the parties await filing of the 2006 IRP which allegedly is in the "final stages of preparation" is farfetched (Idaho Power Initial Comments pg. 12).

⁵ See also, Letter Comments of Energy Vision LLC dated June 25, 2006 further demonstrating that variable O&M is an avoided energy cost.

⁶ In its Initial Comments, Idaho Power does not appear to express an opinion on which of the two PacifiCorp methods is preferable, focusing its efforts on opposing any change to the current method.

Staff's treatment of seasonalization factors is appropriate.

In its initial Comments, Magic Wind presented a set of rates for Surplus Energy that adapted the PacifiCorp Method to Idaho Power's seasonalized avoided cost rate structure. (PacifiCorp has never used seasonalized avoided cost rates). The Commission technical staff reviewed Magic Wind's proposal and, Staff in its Comments, propose a slightly different application of seasonalization factors and proposed rates shown on Attachment B to the Comments (Comments of Commission Staff dated June 26, 2006).

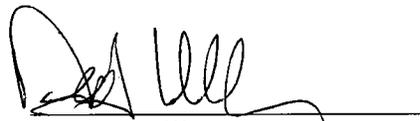
Magic Wind has reviewed Staff's proposed application of seasonalization factors and the resulting rates and concurs in the Staff methodology, which for convenience Magic Wind now refers to as the Staff Modified PacifiCorp Method.⁷

Conclusion

For the reasons and authorities cited herein. Magic Wind respectfully requests that the Commission enter its Order determining and declaring that Magic Wind is entitled to receive from Idaho Power a Firm Energy Sales Agreement that establishes prices for Surplus Energy using the Staff Modified PacifiCorp Method.

DATED this 10 day of July, 2006.

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⁷ In its Initial Comments, Idaho power does not appear to express an opinion on this issue.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2006, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Barton L. Kline
Idaho Power Company
1221 West Idaho Street
P.O. Box 70
Boise, ID 83707
BKline@idahopower.com

Hand Delivered	<input type="checkbox"/>
U.S. Mail	<input checked="" type="checkbox"/>
Fax	<input type="checkbox"/>
Fed. Express	<input type="checkbox"/>
Email	<input type="checkbox"/>

McDEVITT & MILLER LLP

BY Heather Houk, legal Asst.