ADVOCATES for the WEST
Public Interest Environmental Law

June 26, 2006

Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, ID 83702-5983

Re: Comments on IPC-E-05-34

Dear Ms. Jewell:

Renewable Northwest Project and NW Energy Coalition provide the following comments on the Petition for Declaratory Order filed by Magic Wind in the above-referenced matter.

Established in 1994, RNP promotes the responsible expansion of solar, wind and geothermal energy in the Northwest. RNP works to establish policies that support renewable energy development and nurture the development of a market for renewables. RNP's unique coalition of members includes renewable energy project developers, public and consumer interest groups, turbine manufacturers, environmental organizations and others. RNP's address is 917 SW Oak St, Suite 303; Portland, Oregon, 97205.

The NW Energy Coalition is a non-profit regional alliance of over 100 diverse environmental, civic, consumer, low-income customer advocacy groups, energy efficiency and renewable energy businesses, and progressive utilities in Idaho, Montana, Washington and Oregon. NW Energy Coalition advocates for increased energy conservation efforts, sustainable and ecologically-sound management of electric generating infrastructure, increased reliance on renewable sources of energy, and appropriate rate design policies consistent with these goals. In Idaho, the Coalition has numerous individual members and eleven (11) member organizations. NW Energy Coalition's address is: 219 First Ave South, Suite 100, Seattle, WA 98104.

The questions presented by Magic Wind's petition are essentially (1) whether the essential pricing terms of the contract recently approved by the Commission in Order 30000 ("PacifiCorp method") should also be available to Magic; and (2) if so, should the PacifiCorp method be corrected to properly split the respective value of capacity and energy in the published PURPA prices. We submit that both questions be answered "yes."

Magic Wind's petition for declaratory relief should be granted in full because it is reasonable and more protective of ratepayer interests than the contract terms demanded by Idaho Power.

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The Commission should not force Magic Wind to accept contract terms demanded by Idaho Power because such terms are inconsistent with PURPA regulations, unreasonable, and result in windpower qualifying facilities ("Wind QFs") receiving less than full avoided costs for their power deliveries.

While we support Magic Wind's effort to obtain contract terms that provide greater certainty for both the developer and Idaho Power ratepayers, we also must ask the Commission to encourage utilities and Wind QFs to negotiate contract terms that are more efficient and create more value for both the Wind QFs and the utilities' rate payers.

PacifiCorp Method Is Protective of Ratepayer Interests

The essential terms of the PacifiCorp method are equally, if not more protective of ratepayer interests than the terms demanded by Idaho Power Company.

A key purpose for the use of published rates is to eliminate speculation about the future price of energy and capacity. The published rates are, by Commission order, reasonable and economic rates. Under the PacifiCorp method, any deliveries outside the 90/110 band **always** will be purchased for the discounted "Surplus Energy Prices" stated in paragraph 7.2 of Magic's proposed agreement.

Idaho Power has argued that its contract model, which pays 85% of a non-firm Mid-C price for deliveries outside the 90/110 band, is likely to result in ratepayers paying a lower total price than they would under the PacifiCorp method. Idaho Power Comments, PAC-E-05-9. Underlying this argument is the speculative assumption that non-firm Mid-C prices will be below the published rate for the majority the 20-year contract term; and that Idaho Power's pricing method will not encourage low-ball production forecasts by Wind QFs.

As Idaho Power's comments in the Schwendiman case confirm, however, the non-firm Mid-C prices may well exceed the published rates (as they did in 2005). 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.

The Commission should approve the use of the PacifiCorp method for Magic Wind.

The PacifiCorp "Non-Conforming Energy" Price Calculation Is Erroneous

Magic seeks the Commission's approval of an economically correct approach to splitting the published rates into capacity and energy components. At its core, the task here is simple. The split should divide the costs of <u>building and ownership</u> of a pure capacity resource regardless of how much it runs (i.e. the capital and fixed O&M costs

for a simple cycle combustion turbine), from the additional costs of running the surrogate avoided resource ("SAR"). Variable O&M costs, by definition, vary with the amount of time the SAR is assumed to run. Therefore the variable O&M costs should be included in the energy component when the published rate is split.

We have reviewed the letter of Dr. Don Reading submitted on behalf of the Idaho Farm Energy Association in the Schwendiman matter (and attached to Magic's petition in this case), and agree with the principal arguments stated therein. Of particular interest in this case is the impact in Idaho Power's service territory of wrongly including the variable O&M costs of a peaking resource with the capacity component when splitting the published rate. Idaho Power's variable O&M costs for a peaking resource would be calculated at a 59% capacity factor (as provided in the Company's 2004 IRP) versus 18% for PacifiCorp. Thus, the impact of the error is much greater on the price paid to the Wind QF.

Compounding the problem, this assumed 59% capacity factor is a hypothetical number created to compare costs in the IRP process. (We understand it is based on the maximum amount of time Idaho Power can theoretically run a peaker plant due to air quality permitting constraints.) We believe Idaho Power actually only runs its peakers for a few hundred hours per year, not 5,000+ hours. To use such a high capacity factor for a peaking resource to reduce the price paid to Wind QFs for out-of-band deliveries would be particularly unreasonable.

The Commission should grant Magic Wind's requested declaratory relief and order that all variable O&M costs be included in the energy component of the split published rate.

The Idaho Power Contract Model Violates PURPA Regulations

The Commission should not require that Magic sign Idaho Power's form of the 90/110 band, because the market-based price for out-of-band deliveries is unlawful under PURPA regulations.

First, the 90/110 band does not comply with either of the two pricing alternatives of 18 C.F.R. § 292.304(d)(2). Section 292.304(d) of the FERC's PURPA rules provides to a QF the option either to (1) provide energy only when the QF chooses to provide energy to the utility, or (2) provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term. If a QF elects the second option, the QF has a further option, namely that the purchase rate be based on either (a) the utility's avoided costs, calculated at the time of delivery, or (b) the utility's avoided cost, as calculated at the time the legally enforceable obligation is incurred.

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.

In short, rather than complying with the FERC regulations which give the QF the choice of "either" of the options under 18 C.F.R. § 292.304(d)(2), Idaho Power would extend Wind QFs no choice but to accept a hybrid version of both options. Yet the QF's deliveries still must be made to Idaho Power as a legally enforceable obligation. The Commission should discontinue the use of this unlawful pricing method.

Second, Idaho Power's version of the 90/110 band requires Wind QFs to be paid at least 15% less than the full avoided cost for power delivered outside the band. In approved Schedule 86, Idaho Power itself defines the term "avoided energy cost" as the Mid-C Non-Firm Average – the same starting point for calculating the price paid for energy delivered outside of the 90/110 band under Idaho Power's QF contracts.

Despite having defined the Mid-C Non-Firm Average price as "avoided energy cost," Idaho Power's QF contracts require the actual price paid for energy delivered from QFs be reduced by 15% below than the Mid-C Non-Firm Average.

The supposed basis for reducing the avoided energy cost by 15% is to compensate for assumed transaction costs incurred by Idaho Power. However, this rough compensation rubric does not account for energy deliveries by QFs during times when a utility is acquiring expensive marginal energy resources from the market, or dispatching high-cost peaking resources. At such times, any delivery of energy to the utility's system is available for use by the utility at very low marginal cost, or likely can be resold on the market at a substantial net gain. Moreover, there is no solid evidence that transaction costs amount to 15% of Mid-C Non-Firm Average prices.

The Commission Should Seek Alternatives To The 90/110 Performance Band

Although Magic's proposed contract is an improvement over Idaho Power's requested contract and should be approved, the Commission should affirmatively request that utilities and developers negotiate contract terms that are both more valuable to ratepayers and require the best level of achievable performance for Wind QFs.

Both PacifiCorp's and Idaho Power's versions of the 90/110 band unduly discriminate against Wind QFs because they impose a requirement (the monthly forecast of production provided months ahead) that wind QFs cannot accurately meet with any known forecasting method; and because it imposes a price penalty for failing to meet that forecast, which wind QFs cannot avoid. See *Notice of Proposed Rulemaking on Imbalance Provisions for Intermittent Resources*, 111 FERC ¶ 61,026 (April 14, 2005) (finding transmission tariff provisions to be discriminatory against wind facilities because they imposed performance requirements that were impossible for wind facilities to meet); see also *Notice of Proposed Rulemaking on Preventing Undue Discrimination and Preference In Transmission Service*, Dockets RM05-25-000 and RM05-17-000 (May 19, 2006) at ¶ 239 (FERC proposes to "create new energy and generator imbalance schedules based on three principles [including] . . . (2) the charges must provide an **incentive for**

accurate scheduling, such as by increasing the percentage of the adder above(and below) incremental cost as the deviations become larger; and (3) the provisions must account for the **special circumstances presented by intermittent generators** and their limited ability to precisely forecast or control generation levels, such as waiving the more punitive adders associated with higher deviations") (emphasis added).

Wind QFs can only minimize their exposure from the 90/110 band penalties by providing artificially low forecasts of power production. See PacifiCorp Reply Comments, PAC-E-05-09. This fact undercuts the very purpose of the 90/110 band, which is supposedly to encourage (not discourage) the reliable delivery of power from Wind QFs.

But legalities aside, the 90/110 band is an example of a public policy that seemed reasonable when adopted, but has proven to be ineffective. The bandwidth may be useful and relevant for renewable technologies like geothermal power that can control their output. In relation to wind, the 90/110 band is nothing more than an inaccurate and ever-changing price reduction; its penalties are imbalanced, unfair and fail to provide significant value to utility operations. Moreover, to our knowledge, no other state imposes a similar banding requirement on wind projects. Yet many other states have much more significant wind energy penetration than Idaho does today.

Better contracting alternatives exist that could offer terms that are "similarly rigorous" to the 90/110 band (Order 29880) and also create more useful planning information for utilities. Most importantly, the combined use of a mechanical availability guarantee (MAG), together with the use of high quality short term forecasting by companies such as 3Tier Environmental Forecast Group, would create both a high level of performance by the QFs, while also offering utilities accurate tools for dispatch.

Currently, Idaho Power's contracts with Wind QFs do not require short-term forecasting. Thus, apart from its own dispatch personnel and engineers continually reviewing wind plant output and estimating the expected persistence of that output over the next hour or two, Idaho Power has very little useful information about expected wind performance.

This is an extremely unfortunate situation for ratepayers and the utility. Idaho Power makes frequent purchases and sales of energy on the market. If Idaho Power knew with 90% certainty that its wind portfolio would produce a certain number of megawatts over the next few hours, the Company would be in a much stronger position to make market transactions.

Lastly, the cumulative mass of approved QF contracts in Idaho appears sufficient in size to delay or reduce the size of other resource acquisitions by utilities, provided those approved QFs are developed. It may be appropriate to require more certainty for QFs to meet commercial operation dates, so that utilities can make better decisions in reliance upon expected future QF power deliveries. By requiring the use of a 90/110 band pricing approach, the Commission has expressed its support for long-term planning

certainty. Better long-term planning certainty can also be enhanced through contract terms that ensure the project will be built and operational by a date certain.

The Schwendiman contract offers one alternative to create greater certainty in this regard through the use of a liquidated damages provision assessing financial penalties if the Wind QF fails to meet its online date. See Schwendiman contract, Section 2. The fairness of this particular approach may not extend to other developers. Because other approaches may be also reasonable, we recommend this issue be explored for establishment as a general policy by the Commission when considering reinstatement of standard offers in for Wind QFs under PURPA.

Thank you for your consideration of these comments.

Sincerely,

William M. Eddie
On behalf of Renewable Northwest Project and
NW Energy Coalition

cc:

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