

SCOTT WOODBURY  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0320  
IDAHO BAR NO. 1895

10-10-05 PM 1:47  
IDAHO PUBLIC UTILITIES COMMISSION

Street Address for Express Mail:  
472 W. WASHINGTON  
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF	)	
MAGIC WIND LLC TO DETERMINE	)	CASE NO. IPC-E-05-34
EXEMPTION STATUS	)	
	)	COMMENTS OF THE
	)	COMMISSION STAFF
	)	

---

**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Petition for Declaratory Order, Notice of Modified Procedure and Notice on Comment/Protest Deadline issued on June 2, 2006, submits the following comments.

### BACKGROUND

On August 4, 2005, the Idaho Public Utilities Commission (Commission) in Case No. IPC-E-05-22, Order No. 29839, reduced the eligibility cap for avoided cost published rates for non-firm wind projects from 10 aMW to 100 kW, required individual negotiation for larger wind qualifying facilities (QFs), and established criteria for assessing QF contract entitlement. Reference Public Utility Regulatory Policies Act of 1978 (PURPA). By Commission Order No. 29872 the date for grandfathering eligibility was changed from July 1, 2004, the Notice of Petition date, to August 4, 2005, the date of Interlocutory Order No. 29839.

On October 20, 2005, Magic Wind LLC (Magic Wind) filed a Motion to Determine Exemption Status with the Commission seeking a Commission determination that Magic Wind was exempt from the rate eligibility cap established in Order No. 29839. The Motion was accompanied by the supporting affidavit of Armand Eckert.

On November 4, 2005, Idaho Power Company (Idaho Power; Company) filed a response to Magic Wind's Motion contending that the Company was without sufficient information to verify the truth or falsity of the factual allegations contained in the affidavit of Armand Eckert and was therefore denying same and requesting that the Motion be denied. Following Idaho Power's response, there was an informal stay of proceedings during which time the parties engaged in further negotiations.

On April 26, 2006, Magic Wind requested a Declaratory Order declaring that Magic Wind is entitled to receive from Idaho Power a Purchase Power Agreement that establishes prices for surplus energy using the "modified PacifiCorp method." Reference Order. No. 30000, Case No. PAC-E-05-6 (Schwendiman); Reference IDAPA 31.01.01.101 – Petition for Declaratory Order.

## **ANALYSIS**

### **Rate Eligibility**

In its Motion for a Declaratory Order, Magic Wind states that it has supplied to Idaho Power various information and documentation establishing Magic Wind's entitlement to an exemption from the rate eligibility cap as established by Order No. 29839. Magic Wind further asserts, "Upon review of the information and documentation provided, Idaho Power agreed that Magic Wind was exempt from the rate eligibility cap of Order No. 29839." In Idaho Power's Answer to Magic Wind's Motion for Declaratory Order, the Company admits to Magic Wind's assertion regarding exemption from rate eligibility.

Staff has reviewed the information provided by Magic Wind in its initial Motion to Determine Exemption Status and the accompanying affidavit of Armand Eckert, and agrees that Magic Wind should be exempt from the rate eligibility cap of Order No. 29839. Therefore, Staff, Idaho Power and Magic Wind all seem to agree with regard to Magic Wind's entitlement from the rate eligibility cap.

## **Pricing of Surplus Energy**

In Case Nos. IPC-E-04-8 and 04-10, Order No. 29632, the Commission established a “90/110 performance band” requirement, a provision that defines the minimum degree of predictability required for published rate eligibility. Under PURPA contracts submitted by Idaho Power and approved by the Commission, the price to be paid for energy purchases outside of the performance band (Surplus Energy) is equal to 85% of the Mid-C market index price for each month. In Order No. 30000, Case No. PAC-E-05-9 (Schwendiman), the Commission approved an alternate mechanism (“PacifiCorp Method”) for pricing energy deliveries that are outside the “90/110 performance band.” The Schwendiman Agreement includes a computed set of fixed rates (Non-Conforming Energy Purchase Prices) as a substitute for market-based rates.

Under a proposed Agreement tendered by Magic Wind to Idaho Power on April 5, 2006 (Amended Agreement), Magic Wind submitted an Idaho Power template contract that was modified to include a PacifiCorp-Schwendiman type fixed price mechanism for energy deliveries outside the 90/110 performance band (Surplus Energy Prices). The Amended Agreement modified the “PacifiCorp Method” so as to correct the calculation of variable operation and maintenance expense as was suggested by Dr. Don Reading on behalf of the Idaho Farm Energy Association in Case No. PAC-E-05-06 (“Modified PacifiCorp Method”). Dr. Reading characterizes the calculation of variable operation and maintenance expense in the Schwendiman contract as an error. Staff has reviewed Dr. Reading’s suggested “correction” to the calculation of variable operation and maintenance expense, and agrees that his recommendation is appropriate. A copy of the rates included in the Amended Agreement, incorporating the adjustments proposed by Dr. Reading, is included as Attachment A.

Consistent with the “PacifiCorp Method,” the Surplus Energy Prices have been derived using the same avoided cost spreadsheet used to compute published avoided cost rates. The Surplus Energy Prices reflect approximately a 14.5 percent discount from the published avoided cost rates. The discount is equal to the difference in capital cost and fixed O&M cost between a simple and a combined-cycle combustion turbine, plus the variable O&M costs of a combined-cycle combustion turbine (CCCT). The source for the capital and O&M costs of a SCCT is Idaho Power’s 2004 Integrated Resource Plan. The 2004 IRP was accepted by the Commission. Reference Case No. IPC-E-04-18, Acceptance of Filing issued April 22, 2005. Staff believes

that the resource costs included in the 2004 IRP are reasonable, and reflect the most up-to-date costs available for a new SCCT resource in Idaho Power's service territory.

Idaho Power by letter response dated April 25, 2006 states its belief that the draft contract presented by Magic Wind on April 5, 2006 fails to acknowledge the role that market prices play in determining the cost Idaho Power is likely to incur should the Magic Wind project fail to perform in accordance with the terms of the Agreement. The change that Magic Wind proposes, Idaho Power contends, eliminates consideration of market prices and the determination of costs Idaho Power will incur if Magic Wind does not provide the monthly amount of energy it agreed to provide. It is Idaho Power's belief that elimination of market prices from consideration will shift costs and risks to customers that should be appropriately borne by Magic Wind and that such shift is inconsistent with PURPA. As a result, Idaho Power proposes to utilize the template contract it has signed with numerous QFs similar to Magic Wind.

Staff believes that Idaho Power is correct in its belief that establishing fixed prices for Surplus Energy will fail to acknowledge the connection between market prices and the cost Idaho Power is likely to incur should the Magic Wind project fail to perform. However, fixed price PURPA contracts, whether intermittent or not, currently have no connection between market prices and the price Idaho Power actually incurs. The risk that long-term fixed prices for PURPA contracts are inaccurate compared to market is already borne by ratepayers. Moreover, discount price risk would only occur if forecasts prove inaccurate, and today there is no way to determine if the overall Mid-C price will turn out to be higher or lower than the discounted price. 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 of the 90/110 percent performance band.

#### **Applicability of the Schwendiman Agreement to Idaho Power**

Idaho Power notes in its letter response that the Schwendiman Order No. 30000 stated the Agreement did not set precedent. Idaho Power contends that the Company has fully satisfied its mandatory purchase obligation under PURPA by offering to purchase the generation from

Magic Wind's proposed wind farm by entering into a firm Energy Sales Agreement in the form previously signed and tendered by Magic Wind on June 14, 2005. Reference October 20, 2005, Affidavit of Armand Eckert, p. 2.

In its comments in the Schwendiman case (Case No. PAC-E-05-9), Staff stated that it does not view the Non-Conforming Energy Prices in the Schwendiman Agreement as necessarily establishing a precedent to be followed in all future PacifiCorp contracts or in contracts for wind projects that may be signed by other utilities. Staff went on to state, however, that the approach used in the Schwendiman contract could provide a reasonable alternative for future wind contracts for PacifiCorp, Idaho Power and Avista. 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.

#### **Adaptation of the PacifiCorp Method to Idaho Power**

In addition to computing fixed, discounted rates for energy outside of the 90/110 percent band, the Amended Agreement adapts the "PacifiCorp Method" to Idaho Power's seasonalized avoided cost rates. Seasonalized rates are rates to which a weighting factor has been applied in certain months of the year. Idaho Power uses three seasons, with weighting factors of 0.735, 1.20 and 1.00. PacifiCorp has never used seasonalized avoided cost rates.

Based on the recommendations of Dr. Reading, the seasonalization factors used in the Magic Wind contract have not been uniformly applied to the capacity and energy components of the avoided cost rates. Staff believes that the use of seasonalization factors already properly recognizes the relative differences in value of capacity and energy throughout the course of the year. Further manipulation of how the seasonalization factors are applied to capacity and energy, as suggested by Dr. Reading, is not justified in Staff's opinion. Staff recommends uniform application of established seasonalization factors to the capacity and energy components of the rates. Staff's proposed rates are shown on Attachment B.

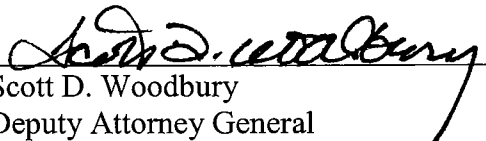
## RECOMMENDATION

Staff has reviewed the information provided by Magic Wind in its initial Motion to Determine Exemption Status and the accompanying affidavit of Armand Eckert, and agrees that Magic Wind should be exempt from the rate eligibility cap of Order No. 29839. Furthermore, it appears that Idaho Power also agrees that Magic Wind should be exempt. Therefore, published rate eligibility does not appear to be an issue in this case. The primary issue seems to be whether Magic Wind is entitled to rates developed using a method similar to the method used for the Schwendiman-PacifiCorp contract.

Staff believes that the modified PacifiCorp method provides a reasonable alternative for pricing power that falls outside of the 90/110 percent performance band. Despite Idaho Power's objection to using the method for its contracts, Staff believes that a consistent pricing methodology should be offered by all three utilities – Idaho Power, PacifiCorp and Avista. Therefore, Staff recommends that the methodology be used to compute rates under this contract.

Further, Staff agrees that the adjustment to the computation methodology as proposed by Dr. Reading (which he characterizes as an error) is appropriate and should be accepted. Staff disagrees, however, with the manner in which Dr. Reading has applied seasonalization factors to the computed rates. Staff recommends its own computation of the rates instead which are shown on Attachment B.

Respectfully submitted this 26<sup>th</sup> day of June 2006.

  
Scott D. Woodbury  
Deputy Attorney General

Technical Staff: Rick Sterling

i:umisc:comments/ipce05..34swrps2

# IDAHO POWER - SAR WITH PEAKER CREDIT METHOD

## Magic Wind's Proposed Allocation of Peak Credit to Seasonal Periods

Year	CAPACITY PRICE				SURPLUS ENERGY PRICE				TOTAL SEASONAL PRICE			
	Mar-May 73.3% Mo: 3	Jul, Aug, Nov, Dec 120.0% 4	Jan, Feb, Jun, Sep, Oct 100.0% 5	Wtd Avg 12	Mar-May 73.3% 3	Jul, Aug, Nov, Dec 120.0% 4	Jan, Feb, Jun, Sep, Oct 100.0% 5	Wtd Avg 12	Mar-May 73.3% 3	Jul, Aug, Nov, Dec 120.0% 4	Jan, Feb, Jun, Sep, Oct 100.0% 5	Wtd Avg 12
2006	-	14.51	4.21	44.91	37.77	47.29	47.29	44.91	37.77	61.80	51.50	51.50
2007	-	14.84	4.30	45.95	38.64	48.39	48.39	45.95	38.64	63.22	52.69	52.69
2008	-	15.17	4.39	47.02	39.53	49.51	49.51	47.02	39.53	64.68	53.90	53.90
2009	-	15.50	4.48	48.11	40.44	50.67	50.67	48.11	40.44	66.17	55.14	55.14
2010	-	15.85	4.57	49.23	41.37	51.85	51.85	49.23	41.37	67.70	56.41	56.41
2011	-	16.20	4.66	50.37	42.32	53.05	53.05	50.37	42.32	69.26	57.71	57.71
2012	-	16.56	4.76	51.54	43.30	54.29	54.29	51.54	43.30	70.85	59.04	59.04
2013	-	16.93	4.85	52.74	44.30	55.55	55.55	52.74	44.30	72.48	60.40	60.40
2014	-	17.31	4.95	53.96	45.32	56.85	56.85	53.96	45.32	74.16	61.80	61.80
2015	-	17.70	5.05	55.22	46.36	58.17	58.17	55.22	46.36	75.87	63.22	63.22
2016	-	18.09	5.16	56.50	47.43	59.52	59.52	56.50	47.43	77.61	64.68	64.68
2017	-	18.49	5.26	57.81	48.52	60.91	60.91	57.81	48.52	79.40	66.17	66.17
2018	-	18.91	5.37	59.16	49.64	62.33	62.33	59.16	49.64	81.23	67.70	67.70
2019	-	19.33	5.48	60.53	50.79	63.78	63.78	60.53	50.79	83.11	69.26	69.26
2020	-	19.76	5.59	61.94	51.96	65.27	65.27	61.94	51.96	85.03	70.85	70.85
2021	-	20.20	5.70	63.38	53.16	66.79	66.79	63.38	53.16	86.99	72.49	72.49
2022	-	20.65	5.82	64.85	54.38	68.34	68.34	64.85	54.38	88.99	74.16	74.16
2023	-	21.11	5.94	66.36	55.64	69.93	69.93	66.36	55.64	91.05	75.87	75.87
2024	-	21.58	6.06	67.90	56.92	71.56	71.56	67.90	56.92	93.15	77.62	77.62
2025	-	22.07	6.18	69.48	58.24	73.23	73.23	69.48	58.24	95.30	79.41	79.41
2026	-	22.56	6.31	71.10	59.58	74.94	74.94	71.10	59.58	97.50	81.25	81.25
2027	-	23.06	6.44	72.75	60.96	76.68	76.68	72.75	60.96	99.75	83.12	83.12
2028	-	23.58	6.57	74.44	62.36	78.47	78.47	74.44	62.36	102.05	85.04	85.04
2029	-	24.10	6.70	76.17	63.80	80.30	80.30	76.17	63.80	104.40	87.00	87.00
2030	-	24.64	6.84	77.95	65.27	82.17	82.17	77.95	65.27	106.81	89.01	89.01

**IDAHO POWER - SAR WITH PEAKER CREDIT METHOD**

**Staff's Proposed Allocation of Peak Credit to Seasonal Periods**

Year	CAPACITY PRICE			SURPLUS ENERGY PRICE			TOTAL SEASONAL PRICE				
	Mar-May 73.3% Mo: 3	Jul, Aug, Nov, Dec 120.0% 4	Jan, Feb, Jun, Sep, Oct 100.0% 5	Mar-May 73.3% 3	Jul, Aug, Nov, Dec 120.0% 4	Jan, Feb, Jun, Sep, Oct 100.0% 5	Wtd Avg 12	Mar-May 73.3% 3	Jul, Aug, Nov, Dec 120.0% 4	Jan, Feb, Jun, Sep, Oct 100.0% 5	Wtd Avg 12
2006	4.84	7.91	6.59	32.93	53.89	44.91	44.91	37.77	61.80	51.50	51.50
2007	4.94	8.08	6.74	33.70	55.14	45.95	45.95	38.64	63.22	52.69	52.69
2008	5.05	8.26	6.88	34.48	56.42	47.02	47.02	39.53	64.68	53.90	53.90
2009	5.16	8.44	7.03	35.28	57.73	48.11	48.11	40.44	66.17	55.14	55.14
2010	5.27	8.62	7.19	36.10	59.07	49.23	49.23	41.37	67.70	56.41	56.41
2011	5.38	8.81	7.34	36.94	60.44	50.37	50.37	42.32	69.26	57.71	57.71
2012	5.50	9.00	7.50	37.80	61.85	51.54	51.54	43.30	70.85	59.04	59.04
2013	5.62	9.20	7.67	38.67	63.29	52.74	52.74	44.30	72.48	60.40	60.40
2014	5.74	9.40	7.83	39.57	64.76	53.96	53.96	45.32	74.16	61.80	61.80
2015	5.87	9.60	8.00	40.49	66.26	55.22	55.22	46.36	75.87	63.22	63.22
2016	6.00	9.81	8.18	41.43	67.80	56.50	56.50	47.43	77.61	64.68	64.68
2017	6.13	10.03	8.36	42.40	69.38	57.81	57.81	48.52	79.40	66.17	66.17
2018	6.26	10.25	8.54	43.38	70.99	59.16	59.16	49.64	81.23	67.70	67.70
2019	6.40	10.47	8.72	44.39	72.64	60.53	60.53	50.79	83.11	69.26	69.26
2020	6.54	10.70	8.92	45.42	74.33	61.94	61.94	51.96	85.03	70.85	70.85
2021	6.68	10.93	9.11	46.48	76.05	63.38	63.38	53.16	86.99	72.49	72.49
2022	6.83	11.17	9.31	47.56	77.82	64.85	64.85	54.38	88.99	74.16	74.16
2023	6.98	11.41	9.51	48.66	79.63	66.36	66.36	55.64	91.05	75.87	75.87
2024	7.13	11.66	9.72	49.80	81.48	67.90	67.90	56.92	93.15	77.62	77.62
2025	7.28	11.92	9.93	50.95	83.38	69.48	69.48	58.24	95.30	79.41	79.41
2026	7.44	12.18	10.15	52.14	85.32	71.10	71.10	59.58	97.50	81.25	81.25
2027	7.60	12.44	10.37	53.35	87.30	72.75	72.75	60.96	99.75	83.12	83.12
2028	7.77	12.72	10.60	54.59	89.33	74.44	74.44	62.36	102.05	85.04	85.04
2029	7.94	12.99	10.83	55.86	91.41	76.17	76.17	63.80	104.40	87.00	87.00
2030	8.11	13.28	11.06	57.16	93.54	77.95	77.95	65.27	106.81	89.01	89.01



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 26<sup>TH</sup> DAY OF JUNE 2006, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-05-34, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

MONICA MOEN  
BARTON L KLINE  
IDAHO POWER COMPANY  
PO BOX 70  
BOISE ID 83707-0070

JOHN R GALE  
VICE PRESIDENT REGULATORY  
AFFAIRS  
IDAHO POWER COMPANY  
PO BOX 70  
BOISE ID 83707-0070

DEAN J MILLER  
McDEVITT & MILLER LLP  
PO BOX 2564  
BOISE ID 83701

  
\_\_\_\_\_  
SECRETARY