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 IDAHO PUBLIC
 UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	CASE NO. PAC-E-05-9
PACIFICORP FOR APPROVAL OF A POWER)	
PURCHASE AGREEMENT FOR THE SALE)	REPLY COMMENTS OF
AND PURCHASE OF ELECTRIC ENERGY)	PACIFICORP
BETWEEN PACIFICORP AND)	
SCHWENDIMAN WIND LLC)	

PacifiCorp dba Utah Power & Light (“PacifiCorp”), by and through its attorneys of record, respectfully submits the following response to comments filed by the Commission Staff in the above captioned proceeding on September 13, 2005:

I. THE MECHANICAL AVAILABILITY GUARANTEE (“MAG”)

A. The Commission Did Not Mandate That All Utilities Adopt Idaho Power Company’s Standard QF Contract Approved in Order 29632 .

The Commission, in its Final Order on Reconsideration in Case No. IPC-E-04-10 (“the U.S. Geothermal Proceeding”), made clear that in approving the provisions in Idaho Power Company’s Power Purchase Agreement for QFs seeking published avoided cost rates (“Idaho Power PPA”), it remained open to alternative approaches that utilities and QFs may negotiate and present to the Commission for approval:

This Commission finds no compelling reason to convene further hearings to explore the new alternatives and proposals suggested for the first time on reconsideration. As indicated in [Order 29632], the Commission *will consider the*

reasonableness of any signed contract negotiated by and acceptable to the parties and their respective arguments as to the equity and fairness in approving same.

Order No. 29682, p. 10 (emphasis added). Staff now asserts that the eligibility criteria for avoided cost rate contracts approved in Order 29632 are mandatory requirements applicable to all Idaho electric utilities. *See* Staff Comments, pp. 2 and 8. This position goes against Order No. 29682 as well as established Commission practice.

The Commission can announce rules of general applicability in the context of a contested case, and has done so in the past. For example, in Case No. U-1006-292 -- a 1988 case investigating terms offered in QF contracts by Idaho Power -- the Commission left no doubt whether its ruling applied to other utilities. The Commission said:

Although framed as an Idaho Power Company case, the implications of this Order have *generic consequence for all Idaho regulated electric utilities*. We therefore discuss various items in generic terms, although we use [Idaho Power Company] in all of our examples.

Order No. 21690, p. 1 (emphasis added). The Commission did not make a similar statement in Order No. 29632, nor did the Commission frame the issues in generic terms. To the contrary, the Commission defined two of the three issues decided in terms specific to Idaho Power. Issue 1 was whether Idaho Power should be allowed to insert a regulatory out clause in its PURPA contracts. Issues 2 and 3 were set forth as follows:

2. 10 MW Definition—Eligibility for Posted (Published) Rates
What is the definition of the 10 MW size limit for entitlement to the Commission's published avoided cost rates?
3. 90-110% Performance Band
Should Idaho Power be allowed to include contractual provisions that impose financial penalties or liquidated damages if a PURPA generator's energy deliveries vary by more than plus or minus 10% from its forecasted performance?

Order No. 29632, p. 4 (emphasis added). If the Commission intended that Issue 3 have generic applicability, it presumably would have asked, “Should utilities be required. . .” instead of “Should Idaho Power be allowed [to include the 90-110 Performance Band].” All of the above strongly indicate that the Commission found that the 90-110 Performance Band is *a* reasonable, but not the *only* reasonable performance requirement for standard Idaho QF power purchase agreements offering published avoided cost rates.

Staff is correct that PacifiCorp supported the 90-110 Performance Band as reasonable in the U.S. Geothermal Proceeding. However, in doing so, PacifiCorp never intended to forego consideration of alternative approaches. PacifiCorp carefully read Commission Order No. 29632 and incorporated into the Schwendiman Wind Project L.L.C. Power Purchase Agreement (“Agreement”) several provisions of the Idaho Power PPA that were approved in that Order. However, when negotiations with Schwendiman Wind L.L.C. required PacifiCorp to explore ramifications of the 90-110 Performance Band at great depth, the Company determined that it might not be a good fit for use with PacifiCorp’s intermittent QF resources. Rather than automatically embrace an approach which both the QF developer and PacifiCorp found problematic, PacifiCorp accepted the Commission’s invitation to negotiate new alternatives and present them to the Commission in the form of a signed contract. While PacifiCorp continues to believe that the 90-110 Performance Band approach can be a desirable feature of non-intermittent QF contracts, PacifiCorp believes that for intermittent resource QFs, the provisions contained in the Schwendiman Agreement when taken as a whole better protect the interests of its ratepayers for the reasons provided below.

B. *MAG Approach Better Suits the Interest of PacifiCorp's Ratepayers*

1. 90-110 Approach Does Not Ensure Firmness

PacifiCorp, with concurrence from Schwendiman Wind L.L.C., developed the MAG concept in the Agreement as an alternative to the 90-110 Performance Band. The MAG is founded on the simple premise that consistent, high availability of wind turbines results in more predictable energy delivery.¹ The converse is also true: if a wind QF is unreliable due to poor mechanical availability, predictability will be poor, even if the QF accurately forecasts the wind resource.

PacifiCorp's MAG approach recognizes that a wind QF cannot accurately predict monthly generation six months in advance (as required under the 90-110 Performance Band) and therefore grades the QF's performance by what it can control: mechanical availability. The Agreement's MAG provisions require that QF's average availability equal or exceed the following: 75% for Contract Year 1; 85% for Contract Years 2-10; and 80% for Contract years 11-20. With each passing year, PacifiCorp and the QF expect to gain more confidence in the dependable annual energy production of the facility—a number critical to PacifiCorp's long range resource planning. Without the MAG provision, PacifiCorp would have less confidence in the facility's minimum annual output because the QF would have less incentive to invest in reliability. In the event actual deliveries demonstrate that monthly QF output is predictable, PacifiCorp will make use of that information as well.

Staff urges the Commission to reject the Agreement because, it asserts, the 90-110 Performance Band insures a "reasonable degree of firmness" which the MAG approach does not. *See Staff Comments, p. 8.* In fact, the 90-110 Performance Band itself does nothing to ensure

¹ Generally speaking, monthly wind resource at a site can vary greatly from year to year, but the annual wind supply tends to be much more stable. Accordingly, once the annual wind resource at a facility has been established, the annual output from that facility should be predictable so long as the availability of the facility remains the same.

firmness of delivery. To the contrary, the 90-110 Performance Band allows a QF to revise downward its delivery schedule every six months with no floor and puts PacifiCorp at risk that the QF will phase out capacity before the end of its contract, thus forcing PacifiCorp to purchase a hedge. While it is true that the MAG approach proposed by PacifiCorp measures performance annually whereas the 90-110 approach uses monthly delivery requirements, Staff proffers no evidence that one approach will insure more firmness than the other. PacifiCorp believes that the MAG approach is superior to the 90-110 Performance Band in several respects, explained below.

2. The MAG Approach Should Yield More Total Energy.

Under the 90-110 Performance Band approach, the QF is paid the full published rate if it delivers between 90% and 110% of its monthly scheduled delivery. If the QF delivers more than 110% of its schedule, the QF is paid a reduced rate on the excess energy delivered. But if the QF delivers less than 90% of its schedule, it is paid a reduced rate on *the entire amount delivered*. Order No. 29632, p. 20. The asymmetric penalty provisions of the 90-110 Performance Band gives the QF an incentive to submit unrealistically low delivery targets in order to reduce its risk of incurring the harsh under-delivery penalty.

There is no such incentive under the MAG approach. Under the MAG approach, the QF is penalized only if it fails to achieve the availability benchmark. Compared to the 90-110 Performance Band, the MAG approach gives the QF greater incentive to maximize its production by maximizing its availability. Over the life of the contract, the MAG approach can reasonably be expected to yield more energy from the same facility than would the 90-110 Performance Band.

3. The MAG Approach Should Yield Fewer Contract Disputes.

Under the 90-110 Performance Band approach, the QF's monthly delivery target may be adjusted downward if the QF experiences a forced outage due to equipment failure. No such

adjustment will be made, however, if the forced outage resulted from “an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller’s Facility.”

Idaho Power PPA, Section 14.3.1. The difficulty of determining whether an outage should be excused under this provision, coupled with the large amount of money potentially at stake, makes fertile ground for repeated disputes whether a given outage should or should not be excused.²

Under the MAG approach, the QF bears the risk of equipment failure, whether or not such failure resulted from neglect. *See* Agreement, Section 1.2 (limiting excused non-performance to lack of wind, Force Majeure, and scheduled maintenance). Relative to the 90-110 Performance Band, the MAG approach for determining whether non-availability should be excused is straightforward, predictable, and less likely to give rise to contractual disputes over the cause of forced outages.

4. The MAG Approach Should Yield More Predictable Delivery Over the Term of the Contract.

Because the MAG rewards reliability and does not create incentives for gaming the monthly performance target, it should also yield more predictable energy supply over time than will the 90-110 Performance Band. An unreliable QF is an unpredictable source of energy, regardless of how precisely that resource is scheduled.

² For example, during times when the wind QF is on the verge of not making 90% of its monthly target, if actual wind speeds are below forecasted wind speeds, the QF may have a strong financial incentive to game the 90-110 Performance Band by declaring a forced outage (or forced curtailment).

5. The Agreement Protects Ratepayers in Other Respects.

When evaluating the relative merits of the two approaches, the Commission should also consider the following:

- a) *QFs Using PacifiCorp's PPA Are More Likely to Achieve the Scheduled Operation Date.*

PacifiCorp's Agreement includes a liquidated damage formula, specifying daily damages PacifiCorp will incur in the event the QF fails to meet its Scheduled Commercial Operation Date. *See* Agreement, Section 2.3. Thus, the PacifiCorp Agreement affords the ratepayer more protection against exposure to market rates in the event the QF fails to achieve its scheduled online date.

- b) *PacifiCorp PPA Preserves Ratepayers' Claim to QF Project Green Tags.*

The PacifiCorp Agreement preserves (by remaining silent on the matter) the utility's claim to potentially valuable Project environmental attributes, pending final resolution of Green Tag ownership by the Commission or the Idaho legislature. PacifiCorp believes that its approach regarding Green Tags potentially captures more value for its ratepayers.

- c) *The PacifiCorp Agreement Better Protects Ratepayers From Under-delivery Damages.*

In the event of under-delivery, the Idaho Power PPA reduces the purchase price Idaho Power must pay for the energy the QF does deliver. Order No. 29632, p. 20. If market prices are much higher than the contract rate, the Idaho Power formula may not cover Idaho Power's cost to replace the amount under-delivered. This is particularly true if the QF delivers only a small fraction of its scheduled delivery and Idaho Power has to purchase replacement power when the market prices are high. The PacifiCorp Agreement, on the other hand, requires the QF to pay PacifiCorp's cost (if any) of covering the QF's under-delivery with market purchases. *See*

Agreement, Section 5.2. The QF must pay PacifiCorp's replacement cost plus any wheeling costs, plus an administrative overhead fee, thus leaving ratepayers less exposed to market prices.

6. 90-110 Performance Band Approach Is Unduly Burdensome to Administer.

Compared to the 90-110 Performance Band, the MAG approach is much less burdensome to administer. Under the MAG approach, PacifiCorp calculates the QF's availability once each year and, if necessary, deducts liquidated damages from the next regular QF payment. *See* Agreement, Section 5.3. The 90-110 Performance Band approach is more complicated. At the end of every month, Idaho Power must calculate the Surplus Energy delivered, adjusting the monthly delivery target to take into account: (1) Idaho Power-initiated curtailments; (2) Force Majeure events; and (3) qualifying forced outages. *See* Idaho Power PPA, Section 14.3.1.

PacifiCorp has no existing capability to administer the Surplus Energy calculation used in the 90-110 Performance Band approach. To implement, PacifiCorp will have to modify existing, or develop new, contract administration tools. In particular, Section 14.3.1 of the Idaho Power PPA (excusing forced outages "not caused by . . . neglect, disrepair or lack of adequate preventative maintenance") is likely to give rise to extraordinary administrative effort because of its subjectivity and its susceptibility to gaming. In sum, compared to the MAG approach, the 90-110 Performance Band approach requires more investment to implement, more resources to administer on an ongoing basis, and is more likely to result in disputes between PacifiCorp and the Seller regarding which forced outages should be excused.

7. 90-110 Performance Band Approach Is Burdensome for Smaller QFs.

In selecting the MAG approach, PacifiCorp also took into account the precedent it was setting for future PacifiCorp Idaho published rate QF contracts. Even if the Commission believes that the 90-110 Performance Band approach is not unduly burdensome in the isolated case of the Schwendiman Agreement, it should also consider the cumulative effect of using the

approach with all small Idaho QFs. Generic application of the 90-110 Performance Band to all of PacifiCorp Idaho QFs under 10 aMW would be burdensome and would not be cost effective.

Currently, PacifiCorp has contracts with thirteen QFs under 10 aMW in Idaho, comprising just over 21 MW. The median nameplate capacity rating for those projects is 900 kW. PacifiCorp currently is negotiating a standard QF power purchase agreement with an existing Idaho QF that is adding 120 kW of new hydroelectric capacity. If the Commission adopts Staff's position, PacifiCorp would be required to incorporate the 90-110 Performance Band into this Agreement and any other small QF agreement in the future. Applying the 90-110 Performance Band uniformly to all new Idaho QF projects would impose an onerous forecasting and accounting burden on small QF developers and likely would increase PacifiCorp's administrative costs in excess of any corresponding benefit. In adopting the MAG, PacifiCorp sought an approach that would work for all eligible QF projects, from 10 aMW down to 100 kW projects, and smaller.

No.	Type	Name	Capacity (kW)
1	Hydro	Bell Mountain	600
2	Hydro	Birch Creek	2,800
3	Hydro	CDM Hydro	6,000
4	Hydro	Com. Energy Mgmt	900
5	Hydro	Georgetown Power	350
6	Hydro	Ingram Warm Springs	950
7	Hydro	Marsh Valley	1,700
8	Hydro	Mink Creek	2,700
9	Hydro	Nicholson Sunny Bar	350
10	Hydro	O.J. Power	260
11	Hydro	Pancheri	80
12	Hydro	Preston City	400
13	Hydro	Westinghouse	4,000
		TOTAL:	21,090

Fig. 1: Table showing Idaho QF's Currently under Contract to PacifiCorp

In sum, PacifiCorp does not believe that the Commission intended its findings in Order No. 29632 to preclude other approaches, and does believe that the MAG provides better value, in the case of intermittent resources, to its ratepayers than does the 90-110 Performance Band. For

the reasons stated herein, and in its previous application, PacifiCorp urges the Commission to approve the Agreement in its current form.³

II. PACIFICORP DOES NOT DETERMINE THE “COMPARABLE RESOURCE” FOR ITS QF CONTRACTS.

Determination of the Comparable Resources for purposes of the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol is a process that PacifiCorp believes is best undertaken in the context of a general rate case. The Revised Protocol defines Comparable Resources as ones with "similar capacity factors, start-up costs and other output and operating characteristics." PacifiCorp does not know which Comparable Resources will be used in evaluating how much, if any, excess costs under the Revised Protocol may result from approval of the Schwendiman Agreement.

If, for example, a state commission were to use the 64.5 MW Goshen Wind Generation Project as the sole determinate of a Comparable Resource, excess costs could be assigned to Idaho ratepayers because power from that recently acquired Idaho resource is significantly less expensive than Schwendiman Wind power priced at standard avoided cost rates. Such a comparison is complicated by the fact that the Goshen project includes wind integration costs, the market value of green tags, and other site-specific adjustments that are not and cannot be accounted for in Idaho Standard QF contracts.

³ As with the 90-110 Performance Band approach, opinions differ on the ideal performance target value (e.g., Staff recommended an 80-120 Performance Band in the U.S. Geothermal Proceeding). PacifiCorp agreed to annual MAG values ranging from 75 to 85% depending on the age of the QF facilities. However, the Commission may conclude that higher MAG values, or monthly MAG values, are more appropriate. PacifiCorp stands by the MAG values in its Agreement; however if the Commission agrees with Staff that the Agreement is not acceptable in its current form, PacifiCorp believes that a modified MAG provision would address Staff's concerns and protect ratepayers better than would the 90-110 Performance Band.

III. CONCLUSION

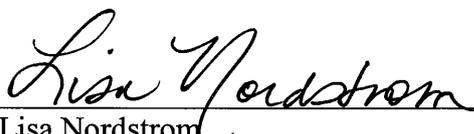
For the reasons herein, PacifiCorp respectfully requests that the Commission issue its Order:

(1) Approving the Power Purchase Agreement between PacifiCorp and Schwendiman Wind L.L.C. without change or condition; and

(2) Declaring that prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the cost incurred by PacifiCorp for purchasing capacity and energy from Schwendiman are legitimate expenses, all of which the Commission will allow PacifiCorp to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses.

In the alternative, PacifiCorp urges the Commission to provide PacifiCorp guidelines for developing a revised PPA utilizing the MAG approach in a manner that the Commission finds acceptable.

Respectfully submitted this 20th day of September 2005.

By 

Lisa Nordstrom
Attorney for PacifiCorp

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I hereby certify that on this 20th day of September 2005 I caused to be served, via hand delivery, a true and correct copy of the foregoing REPLY COMMENTS OF PACIFICORP in Case No. PAC-E-05-9 to the following parties as shown:

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