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March 22, 2006

Idaho Public Utilities Commission  
472 West Washington  
Boise, ID 83702-5983

Attention: Jean D. Jewell  
Commission Secretary

Re: Reply Comments of PacifiCorp in Case No. PAC-E-05-9

PacifiCorp (d.b.a. Utah Power & Light Company) hereby submits for filing an original and eight copies of its Reply Comments in Case No. PAC-E-05-9.

Service of pleadings, exhibits, orders and other documents relating to this proceeding should be served on the following:

Lisa Nordstrom  
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It is respectfully requested that all formal correspondence and Staff requests regarding this material be addressed to:

By e-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 800  
Portland, Oregon, 97232

By fax: (503) 813-6060

Sincerely,

A handwritten signature in black ink that reads "D. Douglas Larson / p. r.".

D. Douglas Larson  
Vice President, Regulation  
Enclosures

cc: Service List

## PROOF OF SERVICE

I hereby certify that on this 22nd day of March 2006 I caused to be served, via overnight delivery and email, 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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APR 23 AM 9:24  
UTILITIES COMMISSION

*Attorneys for PacifiCorp*

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
PACIFICORP FOR APPROVAL OF A POWER )  
PURCHASE AGREEMENT FOR THE SALE )  
AND PURCHASE OF ELECTRIC ENERGY )  
BETWEEN PACIFICORP AND )  
SCHWENDIMAN WIND LLC )  
\_\_\_\_\_ )

**CASE NO. PAC-E-05-9**  
**REPLY COMMENTS OF**  
**PACIFICORP**

PacifiCorp dba Utah Power & Light (“PacifiCorp”), by and through its attorneys of record, respectfully submits the following response to comments filed by Idaho Power Company (“IPC”) and Idaho Farmers Energy Association (“IFEA”) in the above captioned proceeding on March 8, 2006.

**Idaho Power Comments**

PacifiCorp respectfully disagrees with IPC’s contention that the pricing methodology for non-conforming energy contained in the power purchase agreement executed by PacifiCorp and Schwendiman Wind LLC (“Schwendiman PPA”) shifts financial risk from the QF developer to PacifiCorp ratepayers, relative to IPC’s pricing approach in its standard power purchase agreement (“PPA”). IPC correctly observes, in

pages 4 and 5 of its comments, that in months when market prices (defined in the IPC PPA as 85% of non-firm Mid-C index price) are less than the PacifiCorp off-peak energy price (defined as PacifiCorp's published energy-only avoided cost price in Idaho), PacifiCorp customers will pay a QF more for non-conforming energy than they would have paid under the pricing methodology included in the IPC PPA. Conversely, when market prices are *higher* than PacifiCorp's off-peak energy price, its customers will pay *less* than they would under Idaho Power's approach. However, the conclusion IPC draws from this difference—that its approach is better for utility customers—depends upon several subjective assumptions that cannot be substantiated or verified. For one matter, it is not always appropriate to assume that the market prices from the last several years are indicative of future market prices. One only has to look at the energy crisis of 2000-01 as a clear example of that. For another, IPC's conclusion assumes that the QF's behavior (e.g. scheduling algorithm and risk management strategies) will be identical under the two approaches—another unverifiable assumption. PacifiCorp believes (as Schwendiman has asserted to it) that Schwendiman's monthly delivery estimates will be more accurate under the Schwendiman PPA than they would be under the IPC PPA because the added risk from using indexed prices for non-conforming energy in the IPC PPA would cause Schwendiman to low-ball its estimates. In other words, fear of the unknown inherent in the IPC PPA could change Schwendiman's scheduling priority, from accurate prediction to under-prediction in order to avoid under-delivery price risk. For both reasons, PacifiCorp believes it is more accurate to say that its approach *changes* the allocation of risks associated with under- or over-deliveries compared to IPC's PPA; whether the net result of this difference favors PacifiCorp's customers or the QF,

however, is unknowable. The important point, in PacifiCorp's opinion, is that its pricing methodology for non-conforming energy, like IPC's, gives the QF a strong incentive to accurately schedule its Net Output (regardless what market prices may be in the future) while limiting the maximum potential liability of the ratepayer.

PacifiCorp's non-conforming energy price is based upon removing the fixed capital and fixed O&M costs for a simple cycle combustion turbine ("SCCT") from total avoided cost price as computed using the Commission-approved Surrogate Avoided Resource ("SAR") methodology. This modification to the SAR methodology, in the Company's opinion, is a prudent and reasonable approach to determine the energy-only price to be used for non-conforming energy. PacifiCorp's approach for adjusting the avoided cost in the SAR methodology is also consistent with similar price adjustments made in other approved avoided cost methodologies the Company employs in its other jurisdictions. It should also be noted that while IPC has a non-firm market index tariff, Schedule 86, that IPC can point to in its contract for non-conforming energy, PacifiCorp does not. In fact, PacifiCorp has generally opposed market index options in other jurisdictions because it places additional risk on ratepayers. While Commission Order No. 29880 makes clear that an Idaho electric utility must include the 90/110 performance band or similarly rigorous requirement in its standard contract, the Order does not require that non-conforming energy must be priced based upon a market index. PacifiCorp believes its approach is a reasonable and prudent approach that the Commission should approve.

PacifiCorp also objects to IPC's characterization of the non-conforming energy price as "liquidated damages" unless that difference is purely semantic. Liquidated

damages are generally a monetary sum that a contracting party agrees to pay if it breaks a promise contained in the contract.<sup>1</sup> PacifiCorp and Schwendiman understand that deliveries outside the 90/110 band are not a breach of the Schwendiman PPA; in fact the Schwendiman PPA does not use that phrase to describe deliveries outside the band. The Schwendiman PPA does, however, use the term “liquidated damages” in the context of delay-related damages in Section 2.3. PacifiCorp feels that the term “liquidated damages” carries a negative connotation that should not be imputed to non-conforming energy deliveries, which are more akin to a purchase price adjustment. The reduced payments for non-conforming energy are intended to reflect the lesser value of the energy delivered, analogous to *Idaho Code* §61-317, which allows for a sliding scale of charges that are not liquidated damages.<sup>2</sup> To avoid possible negative connotations and possible confusion with the term used in the Schwendiman PPA, PacifiCorp would prefer “non-conforming energy price adjustment”, or a similar term, to the term “liquidated damages.”

### **IFEA Comments**

PacifiCorp has two concerns with the comments submitted by IFEA. First, to the extent IFEA’s remarks are intended to influence Commission policy regarding the proper

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<sup>1</sup> *Black’s Law Dictionary*, 6<sup>th</sup> Ed. 1990 (citing *In re Plywood Co. of Pa.*, C.A.Pa., 425 F.2d 151, 154).

<sup>2</sup> 61-317 SLIDING SCALE OF CHARGES – AUTOMATIC ADJUSTMENT. Nothing in this act shall be taken to prohibit a corporation or person engaged in the production, generation, transmission or furnishing of heat, light, water or power, or telephone service, from establishing a sliding scale of charges: provided, that a schedule showing such scale of charges shall first have been filed with the commission and such schedule and each rate set out therein approved by it. Nothing in this act shall be taken to prohibit any such corporation or person from entering into an arrangement for a fixed period for the automatic adjustment of charges for heat, light, water or power or telephone service, in relation to the dividends to be paid to stockholders of such corporation, or the profit to be realized by such person: provided, that a schedule showing the scale of charges under such arrangements shall first have been filed with the commission and such schedule and each rate set out therein approved by it. Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service, as authorized by this act.

pricing for *future* QF power purchase agreements, they are outside the scope of this proceeding and should not be considered at this time. The purpose of this proceeding is to determine whether the Schwendiman PPA conforms to Order No. 29880 and is otherwise just and reasonable. The Commission should credit IFEA's comment that it "supports approval of the Schwendiman Amended Agreement" and ignore the rest as irrelevant. PacifiCorp does not agree with many of the substantive assertions in IFEA's comments; however PacifiCorp will withhold a lengthy rebuttal of IFEA's assertions because they have no place in this instant proceeding. Should the Commission feel differently, PacifiCorp respectfully asks it be given leave to file a supplemental reply.

PacifiCorp's second concern is that the author of IFEA's comments was also one of Schwendiman Wind LLC's negotiators throughout its PPA negotiations with PacifiCorp. As the Commission is aware, PacifiCorp worked collaboratively with Schwendiman for nearly a year to finalize a PPA, which PacifiCorp believed complied with Order No. 29880 but better suits the needs of Schwendiman than does the IPC approach in its PPA. PacifiCorp's efforts went well beyond what the Commission or PURPA require. PacifiCorp was willing to undertake this effort, however, so long as PacifiCorp and Schwendiman were working in good faith to bring to the Commission a mutually-acceptable agreement. Precisely because of his extensive participation in negotiations and because of the close collaboration between the parties in developing this agreement, PacifiCorp is very concerned that statements by Mr. Jackson on behalf of the IFEA will be imputed to Schwendiman Wind LLC and, ultimately, to PacifiCorp. Specifically, PacifiCorp wishes to clarify that, to the best of its knowledge, IFEA's comments in this proceeding are wholly unrelated to its president's work on the

Schwendiman Wind PPA, and not a coordinated collateral attack on the Commission's prior Orders.

### CONCLUSION

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

(1) Approving the Amended Power Purchase Agreement between PacifiCorp and Schwendiman Wind LLC 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.

Respectfully submitted this 22<sup>th</sup> day of March, 2006.



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Lisa Nordstrom  
Attorney for PacifiCorp