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IDAHO PUBLIC
UTILITIES COMMISSION

ORIGINAL

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Application of PacifiCorp
for the Approval of a Power Purchase Sale
Agreement for the Sale and Purchase of
Electric Energy Between PacifiCorp and
Schwendiman Wind LLC

Case No. PAC-E-05-09

REPLY TO STAFF COMMENTS

COMES NOW Schwendiman Wind LLC ("Schwendiman") by and through its attorney of record and Replies to the Corrected Comments of the Commission Staff dated September 15, 2005 as follows, to wit:

A. It is not necessary to perform the Order No. 29839 exemption analysis.

Schwendiman disagrees with Staff's belief that Order No. 29839 applies to this application. (Staff Comments, pgs 3—5). That Order, in part, established a framework for determining which potential projects would be eligible for a QF contract for capacity up to 20 megawatts (MW) despite the Commission's determination to prospectively reduce the eligibility cap to 100 kilowatts (Kw). (The exemption analysis)

Order No. 29839 was issued on August 4, 2005. The Agreement between Schwendiman and PacifiCorp was executed on July 19, 2005. Thus, the law/policy in effect at the time the Agreement was signed was that PacifiCorp was entitled to execute contracts containing

published rates for projects with capacity of 20 megawatts (MW) or less. The Agreement should be evaluated based on the law/policy existing on the date it was executed, and, as noted, the law/policy existing on that date did not require a showing of entitlement to an exemption from the 100 Kw eligibility cap.

As a practical matter the Order No. 29839 exemption analysis is unnecessary and serves no meaningful purpose. The creation of criteria for determining which projects are sufficiently mature as to be exempt from the new eligibility cap assumes the existence of numerous potential projects and the resulting need to draw a line between those that should be allowed to proceed under the old rules and those that should not, so that the utility is not required to acquire “too much” QF wind generation. This arguably may have been the case with respect to Idaho Power Company—there were numerous potential projects competing, in a sense, for eligibility under the old cap. This, however, is not the case with respect to PacifiCorp. As the Commission noted in Order No. 29839, “We find that neither PacifiCorp nor Avista are in the situation of having to purchase an amount of QF wind generation as has been offered and presented to Idaho Power.” In fact, to Schwendiman’s knowledge, the Agreement in this case is the only QF wind contract PacifiCorp has executed. There is little point in performing an exemption analysis designed to draw lines between competing projects when there are no competing projects.

B. For the most part, Staff’s Comments correctly apply the Order No. 29839 exemption analysis.

Assuming the exemption analysis is to be performed, Staff correctly interprets Order No. 29839 to require a showing that the project meets one of the threshold tests and at least one of the described indicia of project development and maturity. (Staff Comments, pg. 5). Based on this, Staff correctly concludes that Scwhendiman meets the threshold submission of

interconnection application test and a secondary wind study criteria. Staff thus correctly concludes that the “Schwendiman Agreements meets the grandfathering provisions of Order No. 29839.”

While Staff’s ultimate conclusion is correct, Schwendiman believes there are deficiencies in Staff’s analysis of the other secondary criteria. For example, Staff’s analysis of the project financing criteria overlooks the commercial reality that no financier—where institutional or private—will make a definite, binding commitment until there is a signed purchase power agreement. The fact that Schwendiman signed an Agreement with PacifiCorp containing a definite on-line date with liquidated damages in the event of breach is, in its self, evidence that Schwendiman has arranged both financing and turbine availability. Because, however, Staff correctly concludes that the project meets the eligibility criteria, Schwendiman will not discuss in detail other analytical deficiencies.

C. The Agreement should be approved even in absence of a “90/110” clause.

Staff’s Comments interpret Order No. 29632 (Case No. IPC-E-04-08) as establishing performance criteria in the form of the so-called “90-110 Performance Band” that are applicable to all utilities. Schwendiman respectfully suggests that Order No. 29632 should not be interpreted so broadly.

In Order No. 29632, the Commission stated the issue it was considering as follows:

Should *Idaho Power* be allowed to include contractual provisions that impose financial penalties or liquidate damages if a PURPA generator’s energy deliveries vary by more than plus or minus 10% from its forecasted performance. (Emphasis added, Order No. 29632, pg 4).

The ordering language of the Order provides:

It is HEREBY ORDERED and *Idaho Power Company* is directed to conform its QF contracting practice and Firm Energy Sales Agreement contract provision

requirements to accord and comply with the Commission's findings set forth above. (Emphasis added, Order No. 29632, pg 23-24).

Thus, the specific language of Order No. 29632 is limited to the contracting practices of Idaho Power Company. It would be unwise to construe the Order to apply to all utilities because to do so would preclude other, perhaps more creative, approaches to the question of wind "firmness." For all the reasons stated in its Reply Comments dated September 20, 2005, PacifiCorp's "MAG" criteria is a reasonable, and probably superior, approach compared to the "90—110" approach.

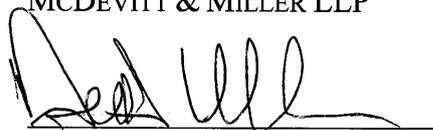
CONCLUSION

Based on the reasons and authorities cited herein, the Agreement should be approved as submitted.

DATED this 20 day of September, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September, 2005, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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