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IDAHO PUBLIC UTILITIES COMMISSION

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

COMES NOW Schwendiman Wind LLC (“Schwendiman”) and Replies to the Letter Comments of Idaho Farm Energy Association (“IFEA”) dated March 8, 2006, and the Comments of Idaho Power Company dated March 7, 2006 as follows, to wit:

Idaho Farm Energy Association

Schwendiman appreciates the support and position of the Idaho Farm Energy Association, but wishes to make clear that Schwendiman does not seek any modification of the Amended Agreement’s pricing or terms. During negotiations with PacifiCorp, Schwendiman was well aware of the variable O&M issue discussed in the IFEA comments, but recognized that it was not a negotiable item for PacifiCorp. While Schwendiman agrees in theory with the IFEA analysis, Schwendiman has accepted the

Amended Agreement because the end result is reasonable in Schwendiman's circumstance.

Should this issue need further study with respect to other contracts in the future, it should not be in the context of this contract approval proceeding.

Idaho Power

The Idaho Power Comments devote substantial spreadsheet space and graphics to proving one simple point. If one assumes that 85% of the Mid-C price is lower than PacifiCorp's non-conforming energy price then the ratepayer will receive a larger benefit. Of course, the opposite is also true. Staff makes the key point that we do not know today which price will be higher or lower. (*See Staff Comments dated March 8, 2006, pg 7*). Idaho Power provided no information on the future relationship of these prices. No one can. The ratepayer is equally likely to benefit from either PacifiCorp's or Idaho Power's banding mechanism.

Idaho Power repeatedly characterizes payments made for energy delivered outside the 90—110 band as "liquidated damages." (*See Comments of Idaho Power Company, pgs 2, 3, 4, 5.*)

This description is inaccurate and the Commission should not adopt it as a way to characterize payments for energy delivered outside the 90-110 band. The phrase "liquidated damages" necessarily implies a breach of a contract:

Generally speaking, parties to a contract may agree upon liquidated damages in anticipation of a breach, in any case where the circumstances are such that accurate determination of the damages would be difficult or impossible, and provided that the liquidated damages fixed by the contract bear a reasonable relation to actual damages. *Graves v. Cupic*, 75 Idaho 451 (1954).

Deliveries outside the 90-110 band are not a breach of the Idaho Power standard form purchase power agreement, and the agreement itself does not use that phrase to describe payments for deliveries outside the band. The reduced payments outside the band are not damages for breach of the agreement; they are payments intended to reflect (in an imperfect way) a lesser value of the energy delivered.

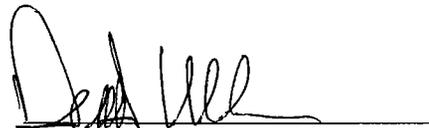
Idaho Power's attempt to create by implication the perception that QF's who make deliveries outside the 90-110 band are in breach of the purchase power agreement is inaccurate. The Commission should not adopt the phrase "liquidated damages" as a way to describe payment for deliveries outside the band.

Conclusion

For the reasons cited herein, Schwendiman respectfully requests that the Amended Agreement be approved. Issues raised in the comments that are peripheral to contract approval should be addressed separately in a manner the Commission thinks appropriate without delay to contract approval.

DATED this 22 day of March, 2006.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 2006, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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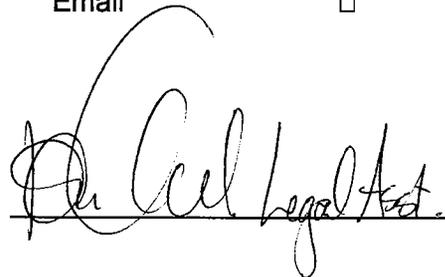
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