

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>PACIFICORP FOR APPROVAL OF A POWER</b>	)	<b>CASE NO. PAC-E-05-9</b>
<b>PURCHASE AGREEMENT FOR THE SALE</b>	)	
<b>AND PURCHASE OF ELECTRIC ENERGY</b>	)	<b>NOTICE OF JOINT MOTION</b>
<b>BETWEEN PACIFICORP AND</b>	)	<b>FOR APPROVAL OF AMENDED</b>
<b>SCHWENDIMAN WIND LLC</b>	)	<b>POWER PURCHASE</b>
	)	<b>AGREEMENT</b>
	)	
	)	<b>NOTICE OF MODIFIED</b>
	)	<b>PROCEDURE</b>
	)	
	)	<b>NOTICE OF</b>
	)	<b>COMMENT/PROTEST</b>
	)	<b>DEADLINE</b>

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On August 15, 2005, PacifiCorp dba Utah Power & Light Company (PacifiCorp; Company) filed an Application for approval of a Power Purchase Agreement (Agreement) for the sale and purchase of electric energy between PacifiCorp and Schwendiman Wind LLC (Schwendiman). On October 4, 2005, the Commission in Order No. 29880 rejected the filed Application because the Agreement did not include a "90/110 percent performance band," a provision that defines the minimum degree of predictability required for published rate eligibility. In its Order the Commission found that the 90/110 performance band established in Order No. 29632 or a similarly rigorous requirement is necessary to assure that PacifiCorp's customers will receive the generation product they are paying for. Based on the established record, the Commission found the Agreement's "mechanical availability guarantee" (MAG) to be an unacceptable substitute for the 90/110 performance band and one that failed to sufficiently protect ratepayers from overpaying. An agreement without such a provision, the Commission found, is neither reasonable nor in the public interest. The Commission provided the parties 14 days to submit an amended Agreement containing a 90/110 performance band. Pursuant to subsequent filings the deadline for filing an amended Agreement was continued.

**Amended Agreement**

YOU ARE HEREBY NOTIFIED that on January 27, 2006, PacifiCorp and Schwendiman filed a Joint Motion with the Commission requesting approval of a 20-year

NOTICE OF JOINT MOTION  
NOTICE OF MODIFIED PROCEDURE  
NOTICE OF COMMENT/PROTEST DEADLINE

amended Power Purchase Agreement (Amended Agreement) dated January 27, 2006. Schwendiman proposes to design, construct, install, own, operate and maintain a wind generating facility with a nameplate capacity of 20 MW to be located in Bonneville County, Idaho. Pursuant to the Amended Agreement, Schwendiman will sell and PacifiCorp will purchase approximately 7.15 aMW of electric energy generated by the Schwendiman wind facility, a qualified small power production facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA).

Amended Agreement Paragraph 2.1 conditions the Amended Agreement's effectiveness upon a Commission determination that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the costs 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 proportional share of said expenses. Schwendiman's commercial operation date is scheduled to occur by July 31, 2007.

#### **Delivery of Energy and Capacity**

Pursuant to Amended Agreement, PacifiCorp will purchase the net output of 7.15 aMW from the eight 2.5 MW Clipper wind generators comprising the QF. In accordance with Section 4 of the Amended Agreement, Schwendiman will be required to achieve an actual monthly capacity factor within 10% of its forecasted monthly capacity factor (bandwidth). In the event Schwendiman is outside the bandwidth, then it will receive the energy-only price (capacity component removed) for all non-conforming energy delivered during that month.

Under Paragraphs 2.3 and 10.4 of the Amended Agreement Schwendiman will reimburse PacifiCorp's costs for obtaining replacement power if Schwendiman misses the scheduled commercial operation date of the plant (up to 120 days), or PacifiCorp terminates the Agreement in the event of a seller default (up to 12 months). The replacement power price is the average of the Mid-C and Palo Verde firm market price over the defined period of reimbursement. Schwendiman would be responsible for the positive difference, if any, between the contract price and the replacement power price for the volume of replacement energy.

Schwendiman will not be compensated for delivering more than 10 aMW in any given month. As described in Paragraph 5.4 of the Amended Agreement, if the facility delivers

more than 10 aMW on a monthly basis, PacifiCorp will accept the energy but will not purchase or pay for the portion delivered in excess of 10 aMW.

### **Purchase Price**

The contract purchase price to be paid Schwendiman for its wind generation are Idaho's published non-levelized avoided cost rates, as currently established by the Commission in Order No. 29646 for QFs that deliver less than 10 aMW on a monthly basis. The Schwendiman facility is expected to have net generation of approximately 62,700 MW hours annually. Thus, PacifiCorp's average annual energy purchase obligation over the term of the Amended Agreement will be approximately \$4 million, with a total nominal cost of \$72.7 million. All applicable interconnection charges and monthly operation and maintenance charges under the generation interconnection agreement with PacifiCorp transmission will be assessed to Schwendiman.

### **Changes to Original Agreement**

As reflected in the Joint Motion description of changes to the original Agreement, the Amended Agreement contemplates an estimated annual sale and purchase of 62,723,088 kW hours compared to the 54,882,702 kW hours contemplated in the original Agreement. The difference arises because Schwendiman proposes to add an additional turbine to the facility thereby increasing its nameplate capacity from 17.5 MW to 20.0 MW.

The Amended Agreement omits provisions related to guaranteed mechanical availability. Consequently, provisions related to seller's minimum availability obligations in Sections 4 and 5 of the original Agreement have been deleted, as have the defined terms "Availability," "Cut-in Speed," "Minimum Availability Obligation," "Output Shortfall," and "Sufficient Wind."

The Amended Agreement adds the term "Non-Conforming Energy" to describe energy delivered in excess or deficit of the seller's monthly delivery obligation. As required by Order No. 29880 the Amended Agreement requires seller to deliver between 90% and 110% of its scheduled delivery on a monthly basis and provides that seller receive the energy only price for all Non-Conforming Energy. These provisions are added to Sections 4 and 5 of the Amended Agreement.

The Amended Agreement measures monthly performance using a Monthly Capacity Factor. The Monthly Capacity Factor is subject to adjustment for periods of excusable non-

delivery, using a process purportedly analogous to the adjustment process contained in Commission approved Power Purchase Agreements filed by Idaho Power Company.

In Section 6.4, the Amended Agreement clarifies the formula for calculating PacifiCorp's liquidated damages in the event of termination due to seller's default.

The Amended Agreement revises the construction milestones in Section 2.2, postponing the Scheduled Commercial Operation Date from July 15, 2006 in the original Agreement to July 31, 2007 in the Amended Agreement. The cap on seller's potential liability for daily delay damages, to be assessed in the event of unexcused delay in Commercial Operation, has been extended from 90 days to 120 days.

In Order No. 29880 (pp. 11, 12), the Commission stated that an acceptable published avoided cost Power Purchase Contract should: (1) measure QF production on a monthly basis; (2) differentiate the price paid for energy based on its reliability and predictability; and (3) provide a similarly rigorous and reasonable equivalent to the 90/110 performance band established in Order No. 29632. PacifiCorp and Schwendiman contend that the Amended Agreement addresses all three of these concerns.

### **Grandfathering Treatment**

In Order No. 29880, the Commission found that the "grandfathering" provisions set forth in Order No. 29839 did not apply to the Application in Case No. PAC-E-05-9 because the original Agreement was signed and dated July 19, 2005 – well before the August 4, 2005 effective date that reduced eligibility for PURPA contract rates from 10 aMW to 100 kW. PacifiCorp and Schwendiman assert that the Amended Agreement should be accorded similar grandfathering treatment because the Schwendiman project was sufficiently mature at the time of Order No. 29839 and thus entitled to published rates. Additionally, the contract parties contend that the Amended Agreement, which was negotiated to meet the Commission's objections to the original Agreement, may properly be viewed as an extension of the original Agreement and it should therefore be subject to the same rules as the original Agreement.

YOU ARE FURTHER NOTIFIED that the Commission has reviewed the filings of record in Case No. PAC-E-05-9 including its prior Order No. 29880 and the January 27, 2006 Joint Motion filed by PacifiCorp and Schwendiman requesting approval of an amended Power Purchase Agreement. The Commission has preliminarily found that the public interest in this matter may not require a technical hearing to consider the issues presented and that issues raised

by the Company's filing may be processed under **Modified Procedure**, i.e., by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204.

YOU ARE FURTHER NOTIFIED that the **deadline for filing written comments or protests** with respect to the Joint Motion of PacifiCorp and Schwendiman for approval of an amended Power Purchase Agreement and the use of Modified Procedure in Case No. PAC-E-05-9 is **Wednesday, March 8, 2006**.

YOU ARE FURTHER NOTIFIED that if no written comments or protests are received within the deadline, the Commission may consider the matter on its merits and may enter its Order without a formal hearing. If comments or protests are filed within the deadline, the Commission will consider them and in its discretion may set the matter for hearing or may decide the matter and issue its Order based on the written positions before it. Reference IDAPA 31.01.01.204.

YOU ARE FURTHER NOTIFIED that written comments concerning Case No. PAC-E-05-9 should be mailed to the Commission and the Company at the addresses reflected below.

Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074

Street Address for Express Mail:

472 W. Washington Street  
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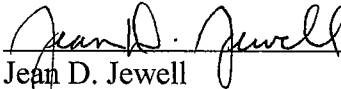
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All comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at [www.puc.idaho.gov](http://www.puc.idaho.gov). Click the "Comments and Questions" icon, and complete the comment form, using the case number as it appears on the front of this document. These comments must also be sent to PacifiCorp and Schwendiman at the e-mail addresses listed above.

YOU ARE FURTHER NOTIFIED that the Application, Joint Motion and other filings in Case No. PAC-E-05-9 may be viewed at [www.puc.idaho.gov](http://www.puc.idaho.gov) by clicking on "File Room" and "Electric Cases," or can be viewed during regular business hours at the Idaho Public Utilities Commission, 472 W. Washington Street, Boise, Idaho and at the Idaho offices of PacifiCorp dba Utah Power & Light Company.

DATED at Boise, Idaho this 8<sup>th</sup> day of February 2006.

  
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Jean D. Jewell  
Commission Secretary

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