

## **DECISION MEMORANDUM**

**TO:           COMMISSIONER KJELLANDER  
              COMMISSIONER SMITH  
              COMMISSIONER HANSEN  
              COMMISSION SECRETARY  
              COMMISSION STAFF  
              LEGAL**

**FROM:       KIRA DALE PFISTERER**

**DATE:       AUGUST 26, 2005**

**RE:         APPLICATION OF PACIFICORP (DBA UTAH POWER & LIGHT) FOR  
              APPROVAL OF A POWER PURCHASE AGREEMENT –  
              SCHWENDIMAN WIND LLC. CASE NO. PAC-E-05-9.**

On August 15, 2005, PacifiCorp filed an Application for approval of a Power Purchase Agreement for the sale and purchase of electric energy between PacifiCorp and Schwendiman Wind LLC (“Schwendiman”). Under the Agreement, Schwendiman will sell and PacifiCorp will purchase electric energy generated by the Schwendiman Wind Facility (“Facility”) located near Idaho Falls, Idaho.

### **BACKGROUND**

Pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA), an electric utility, such as PacifiCorp, is required to purchase electric energy from qualifying small power production facilities (QFs). 16 U.S.C. § 824(a)-3(a). The state commissions set the rate for such purchases. 16 U.S.C. § 824(a)-3(b). These published rates, referred to as the “avoided cost” rates, are designed to reflect the incremental cost to an electric utility of electric energy or capacity or both, which, but for the purchase from the qualifying facility, such utility would generate itself or purchase from another source. PURPA and related FERC regulations provide that the rates for QF purchases (1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and (2) shall not discriminate against qualifying cogenerators or small power producers.

In order to qualify for the published avoided cost rates, a qualifying facility must meet an eligibility cap limiting the size of the projects. 18 C.F.R. § 292.304(c)(1). Since

December 2004, QFs in Idaho with a production capacity under 10 average megawatts (aMW) have been eligible for the published avoided cost rates. *See* Order No. 29646.

On August 4, 2005 and in response to a petition from Idaho Power Company in Case No. IPC-E-05-22, this Commission temporarily reduced the published rate eligibility cap for non-firmed wind projects in Idaho from 10 aMW to 100 kW and established criteria for assessing QF contract entitlement. *See* Order No. 29839. The Commission determined that the new cap of 100 kW would be effective as of July 1, 2005. *Id.* at 10. However, for those wind QF projects less than 10 aMW and in the negotiation queue on that date, the Commission set forth certain “grandfathering” provisions that would allow these QF projects to be eligible for the published avoided cost rates provided that they demonstrate sufficient progress and maturity.

The grandfathering provisions set up a two-prong test for eligibility. First, the QF must demonstrate either: (1) submittal of a signed power purchase agreement to the utility, or (2) submittal to the utility of a completed Application for Interconnection Study and payment of fee. *Id.* Provided that one of these threshold criteria is satisfied, the QF must also demonstrate other indicia of substantial progress and project maturity, such as (1) a wind study demonstrating a viable site for the project, (2) a signed contract for wind turbines, (3) arranged financing for the project, and/or (4) related progress on the facility permitting and licensing path. *Id.*

The Commission’s Order No. 29839 has been the subject of three separate petitions filed by Windland Incorporated (Windland) all related to the grandfathering provisions. On August 5, 2005, Windland filed a Petition for Reconsideration of the Order addressing the grandfathering provisions; on August 9, 2005, Windland filed a Petition for Stay of the Commission’s Order specific to the grandfathering provisions until such time as the Petition for Reconsideration is considered or resolved; and on August 10, 2005, Windland filed a Petition requesting that the Commission treat as final its findings in Order No. 29839 regarding the grandfathering provisions.

On August 23, 2005, the Commission granted Windland’s Petition to treat as final its findings in Order No. 29839 regarding the grandfathering provisions. *See* Order No. 29851. The Commission also decided to treat Windland’s Petition for Reconsideration as though it had been filed on August 24, 2005. *Id.* at 3. The Commission has yet to make a decision regarding Windland’s related Petitions for Reconsideration and Stay.

## APPLICATION

On July 19, 2005, PacifiCorp and Schwendiman entered into a Power Purchase Agreement (the Agreement) pursuant to PURPA. The Agreement is for a 20-year term.

Pursuant to the Agreement, Schwendiman intends to design, construct, install, own, operate, and maintain a wind generating facility with a nameplate capacity rating of 17,500 kilowatts (17.5 MW) to be located in Bonneville County, Idaho. Schwendiman intends to operate the Facility as a qualified small power production facility (QF) under PURPA. The wind power will not be firmed.

Under the Agreement, Schwendiman will be required to provide certain data to PacifiCorp in order that PacifiCorp may determine whether, under normal or average conditions, the Facility will not exceed 10 aMW on a monthly basis. Furthermore, should the Facility exceed 10 aMW on a monthly basis, PacifiCorp will accept the energy but will not purchase or pay for the accepted, excess energy.

The Application includes a letter from Brian D. Jackson on behalf of the Schwendiman Wind Project. Mr. Jackson is the project engineer for Schwendiman. His letter asserts that Schwendiman meets the grandfathering requirements from Order No. 29839. More specifically, Mr. Jackson states that Schwendiman submitted a signed power purchase agreement to PacifiCorp on June 26, 2005. Although this signed Agreement was ultimately revised, Mr. Jackson states that the revisions were not significant. Mr. Jackson also describes interconnection studies and payments to PacifiCorp dating as far back as August 2003. With regard to the other indicia of project maturity, Mr. Jackson describes wind studies and evaluations dating back to 2002; preliminary agreements for the supply of wind turbines with actual delivery scheduled for 2005; on-going negotiations regarding financing arrangements; and a conditional use permit from Bonneville County Planning and Zoning granted in 2004.

In addition to the statements in the Application, Mr. Jackson sent a letter to Commission Staff on August 22, 2005 requesting expedited treatment of the Application. According to Mr. Jackson, “[t]he finalization of this project has been delayed substantially by externalities and current events which were not related to this project.” Mr. Jackson would like expedited treatment in order to make future project deadlines, including an in-service date generation target of December 31, 2005 and a final commercial on-line date of March 31, 2006.

Mr. Jackson also expressed concern that delays in the Application process could affect the project's priority in the PacifiCorp transmission queue.

#### **STAFF RECOMMENDATION**

The Commission Staff recommends that this Application be processed under Modified Procedure, i.e., by written submission rather than by hearing. *See* IDAPA 31.01.01.201-204. Commission Staff further recommends a 21-day comment period consistent with Commission Rule of Procedure 202.02.

Despite Mr. Jackson's concerns, Staff does not believe expedited treatment is advisable. Staff notes that this is the first wind power purchase agreement submitted by PacifiCorp in Idaho and requires sufficient time for adequate review. Staff further believes that the Commission's decision regarding the grandfathering provisions in this case are closely tied to the Commission's decisions on the grandfathering provisions addressed in Windland's Petitions for Reconsideration and Stay in Case No. IPC-E-05-22. Staff believes a full 21-day comment cycle is necessary both to allow Staff to fully evaluate the terms of the proposed contract and the implications of this Application in light of Case No. IPC-E-05-22.

#### **COMMISSION DECISION**

Does the Commission wish to process PacifiCorp's Application for approval of a Power Purchase Agreement with Schwendiman Wind LLC under Modified Procedure?

How long does the Commission think the comment cycle should be?

  
\_\_\_\_\_  
Kira Dale Pfisterer