

DECISION MEMORANDUM

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

FROM: SCOTT WOODBURY

DATE: FEBRUARY 2, 2006

SUBJECT: CASE NO. PAC-E-05-9 (PacifiCorp)
JOINT MOTION FOR APPROVAL OF AMENDED POWER PURCHASE
AGREEMENT – SCHWENDIMAN WIND LLC

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

On January 27, 2006, PacifiCorp and Schwendiman filed a Joint Motion with the Commission requesting approval of a 20-year 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 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 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 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.

Swendiman will not be compensated for delivering more than 10 aMW in even 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. 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, which the Commission disapproved in Order No. 29880. 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 (page 11), 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) be as "rigorous" as Idaho Power Company's power purchase contracts containing its version of the 90/110 performance band. 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.

COMMISSION DECISION

PacifiCorp and Schwendiman have filed a Joint Motion in Case No. PAC-E-05-9 for approval an amended 20-year PURPA Power Purchase Agreement at the non-levelized published rates approved by the Commission in Order No. 29646. As the Amended Agreement contains an alternative pricing mechanism for the 90/110 performance band (reference Lewandowski Order No. 29632), Staff contends that the Amended Agreement may have precedential value and the other interested parties should be provided an opportunity to comment. Staff recommends that

the Commission process the Amended Agreement pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. Does the Commission agree that Modified Procedure is appropriate?

Scott D. Woodbury

bls/M:PAC-E-05-09_sw