

SCOTT WOODBURY
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0320
BAR NO. 1895

FILED
2006
MARCH 8 PM 2:15
IDAHO PUBLIC
UTILITIES COMMISSION

Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

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)	
BETWEEN PACIFICORP AND)	COMMENTS OF THE
SCHWENDIMAN WIND LLC)	COMMISSION STAFF
_____)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Joint Motion for Approval of Amended Power Purchase Agreement, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on February 8, 2006 in Case No. PAC-E-05-9, submits the following comments.

BACKGROUND

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 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 percent 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 MWh 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 kWh compared to the 54,882,702 kWh 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 percent 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.

STAFF ANALYSIS

90/110 Percent Performance Band

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.

The 90/110 percent performance band has been included in the Amended Agreement. Thus, the deficiency identified by the Commission as the basis for rejecting the original Agreement has been corrected. Under the Amended Agreement, Schwendiman is required to provide monthly estimates of expected generation amounts. As long as the actual monthly generation falls within a band of 90 to 110 percent of the estimate (Conforming Energy), PacifiCorp will pay the full published avoided cost rates for the energy in accordance with Order No. 29646.

The Amended Agreement, however, proposes a different method for pricing energy that falls outside of the 90/110 percent performance band (Non-Conforming Energy). In existing contracts, the price to be paid for energy purchases outside of the performance band is equal to 85% of the Mid-C market index price for each particular month.¹ In the Amended Agreement, the parties have computed a set of fixed rates (Non-Conforming Energy Purchase Prices) as a substitute for market-based rates.

¹ To date, all existing contracts subject to the 90/110 performance band have been signed by Idaho Power.

Prices to be paid for Conforming and Non-Conforming Energy are shown below:

Year	Conforming Energy Price \$/MWh	Non-Conforming Energy Price \$/MWh
2006	52.59	43.51
2007	53.80	44.51
2008	55.03	45.53
2009	56.30	46.58
2010	57.59	47.64
2011	58.92	48.74
2012	60.27	49.86
2013	61.66	51.00
2014	63.08	52.17
2015	64.53	53.37
2016	66.02	54.59
2017	67.54	55.84
2018	69.09	57.12
2019	70.68	58.43
2020	72.31	59.77
2021	73.97	61.15
2022	75.68	62.55
2023	77.42	63.98
2024	79.20	65.45
2025	81.03	66.95
2026	82.89	68.49
2027	84.80	70.06

The Non-Conforming Energy Prices have been derived using the same avoided cost spreadsheet used to compute published avoided cost rates. The Non-Conforming Prices reflect approximately a 17 percent discount from the published avoided cost rates. The discount is equal to the capital cost, plus the fixed O&M, plus a proportionate share of variable O&M costs of a simple cycle combustion turbine (SCCT).

One way to rationalize the discount is to assume that a simple cycle combustion turbine would be used as a backup to a wind project whenever the wind project's generation could not be accurately predicted. One of the things a utility does not get if it accepts unpredictable energy from a wind project is dependable capacity. It is reasonable to assume that backup capacity to a wind project would be provided by a SCCT, the cheapest capacity available. The cost of capacity of a SCCT is equal to its capital cost and its fixed O&M cost. In addition, to the extent that the variable O&M costs for a SCCT are higher than for a CCCT, it is reasonable to assign those incremental costs as SCCT capacity costs.

The source for the capital and O&M costs of a SCCT is PacifiCorp's 2004 Integrated Resource Plan Update. The 2004 IRP was accepted by the Commission. Reference Case No. PAC-E-05-2, Acceptance of Filing issued August 26, 2005. The 2004 IRP Update was submitted in 2005 by PacifiCorp to reflect significant changes in the Company's plan. However, while the Update was submitted, the Staff did not formally review the Update nor did the Commission issue an order accepting or acknowledging the Update. Nevertheless, Staff believes that the revised resource costs included in the Update are reasonable, and reflect the most up-to-date costs available for a new SCCT resource in PacifiCorp's service territory.

Over time, the Non-Conforming Energy Prices could turn out to be higher or lower than market prices. Staff believes that the Non-Conforming Energy Prices are a reasonable proxy for Mid-C market index prices and represent a fair price to be paid for energy that cannot be delivered predictably. In addition, unlike market prices, they offer a fixed, known set of prices that will be paid over the life of the contract for energy delivered outside of the 90/110 percent performance band.

Staff does not view the Non-Conforming Energy Prices in this Agreement as necessarily establishing a precedent to be followed in all future PacifiCorp contracts or in contracts for wind projects that may be signed by other utilities. Staff does believe, however, that the approach used here could provide a reasonable alternative for future wind contracts for PacifiCorp, Idaho Power and Avista.

Other Contract Changes

Although the original Agreement was rejected by the Commission solely because it did not contain the 90/110 percent performance band provisions, the Amended Agreement, Staff notes, contains new and revised provisions addressing more than just the performance band. The Amended Agreement clarifies the formula for calculating liquidated damages in the event of termination due to Seller's default. The Commission has never adopted rules requiring payment of liquidated damages for small QF projects that are delayed or fail to materialize. However, Staff is not opposed to such provisions and believes they should be permitted.

In addition, the Amended Agreement requires Schwendiman to meet monthly estimates of capacity factor rather than monthly estimates of generation. Because monthly capacity factor

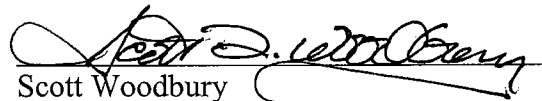
and monthly energy generation are mathematical derivations of each other, this change is not material.

The Amended Agreement contemplates an estimated annual sale and purchase of 62,723,088 kWh, compared to the 54,882,702 kWh 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 also revises the construction milestones, postponing the scheduled commercial operation date from July 15, 2006 to July 31, 2007. Staff does not oppose these changes.

RECOMMENDATIONS

Staff believes that the Amended Agreement 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. Staff recommends that the Amended Agreement be approved. In the event costs associated with the Agreement exceed the costs PacifiCorp would have otherwise incurred acquiring Comparable Resources, those costs may be assigned on a situs basis to PacifiCorp's Idaho jurisdiction in accordance with the terms of the Revised Protocol adopted in Case No. PAC-E-02-3, Order No. 29708.

Respectfully submitted this 8th day of March 2006.


Scott Woodbury
Deputy Attorney General

Technical Staff: Rick Sterling

i:umisc:comments/pace05.9swros

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 8TH DAY OF MARCH 2006, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. PAC-E-05-09, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

BRUCE GRISWOLD
MANAGER ORIGINATION
PACIFICORP
825 NE MULTNOMAH STE 1800
PORTLAND OR 97232

LISA NORDSTROM
OFFICE OF THE GENERAL COUNSEL
PACIFICORP
825 NE MULTNOMAH SUITE 1800
PORTLAND OR 97232

DATA REQUEST RESPONSE CENTER
PACIFICORP
825 NE MULTNOMAH SUITE 800
PORTLAND OR 97232
E-MAILED TO datarequest@pacificorp.com

BRIAN D. JACKSON, P.E.
7800 ALFALFA LANE
MELBA, ID 83641

DEAN J MILLER ESQ
McDEVITT & MILLER LLP
420 W. BANNOCK
BOISE ID 83702



SECRETARY