

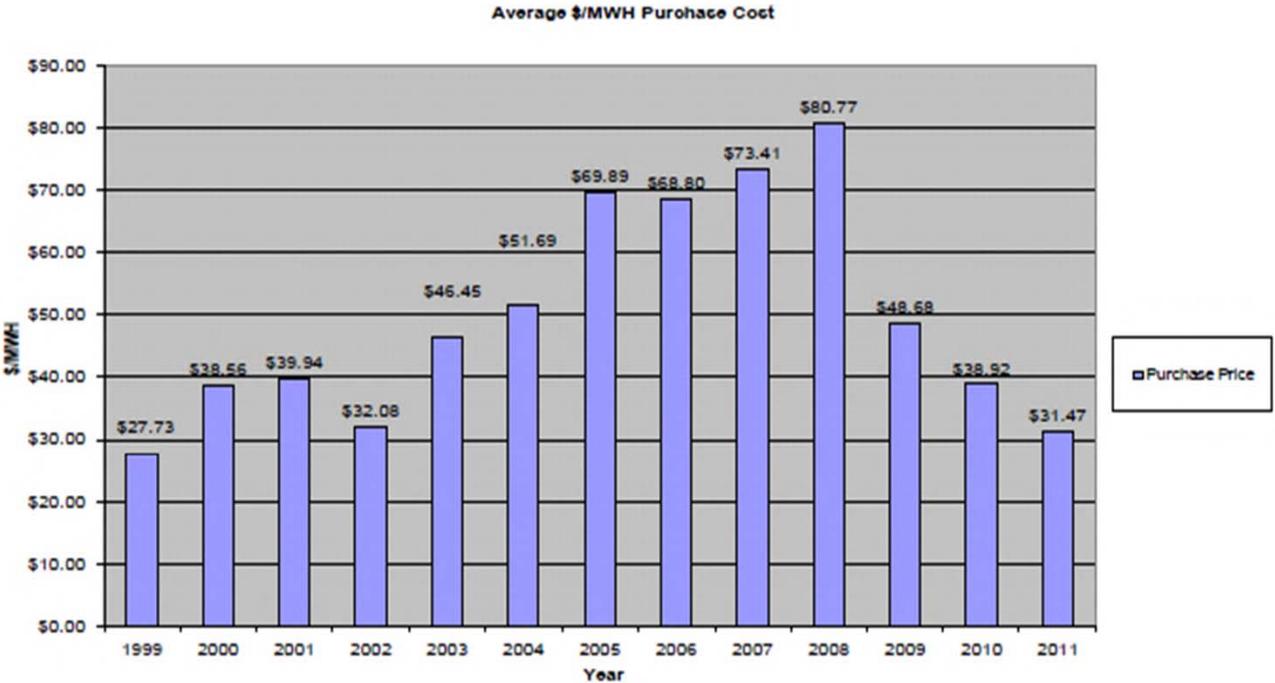
Oak Tree Energy, LLC  
*NorthWestern Energy Matter*  
E11-006

It is often difficult to distinguish short-term variations in fuel prices, which are expected...from significant long-term changes that can be expected to fundamentally alter the whole range of future expectations.

*Northwest Power Planning Council*

### Historical Spot Market Pricing

NorthWestern's historical average prices paid for spot market pricing as filed in the FERC Form 1 over the past 12 years.



The EPA is expected to enact several key regulations in the coming decade that will have an impact on the U.S. power sector, particularly the fleet of coal-fired power plants. Because the rules have not yet been finalized, their impacts cannot be fully analyzed, and they are not included in the Reference case.

*EIA 2011 AEO*

The simple calculation that NWE prepared for Oak Tree suffers in at least three major ways, which shortcomings were not reflected in NWE's elaborate calculation of the value of Spion Kop:

- 1) For Oak Tree calculations, NWE assumed no increase in the real cost of natural gas from 2015 - 2031. This is not a credible assumption;
- 2) For Oak Tree calculations, NWE assumed no change in the relationship of spot electricity prices to spot gas prices from 2012 - 2031. This also is not a credible assumption; and
- 3) For Oak Tree calculations, NWE did not give Oak Tree its spot market "value" whenever NWE felt it would be "long on power."

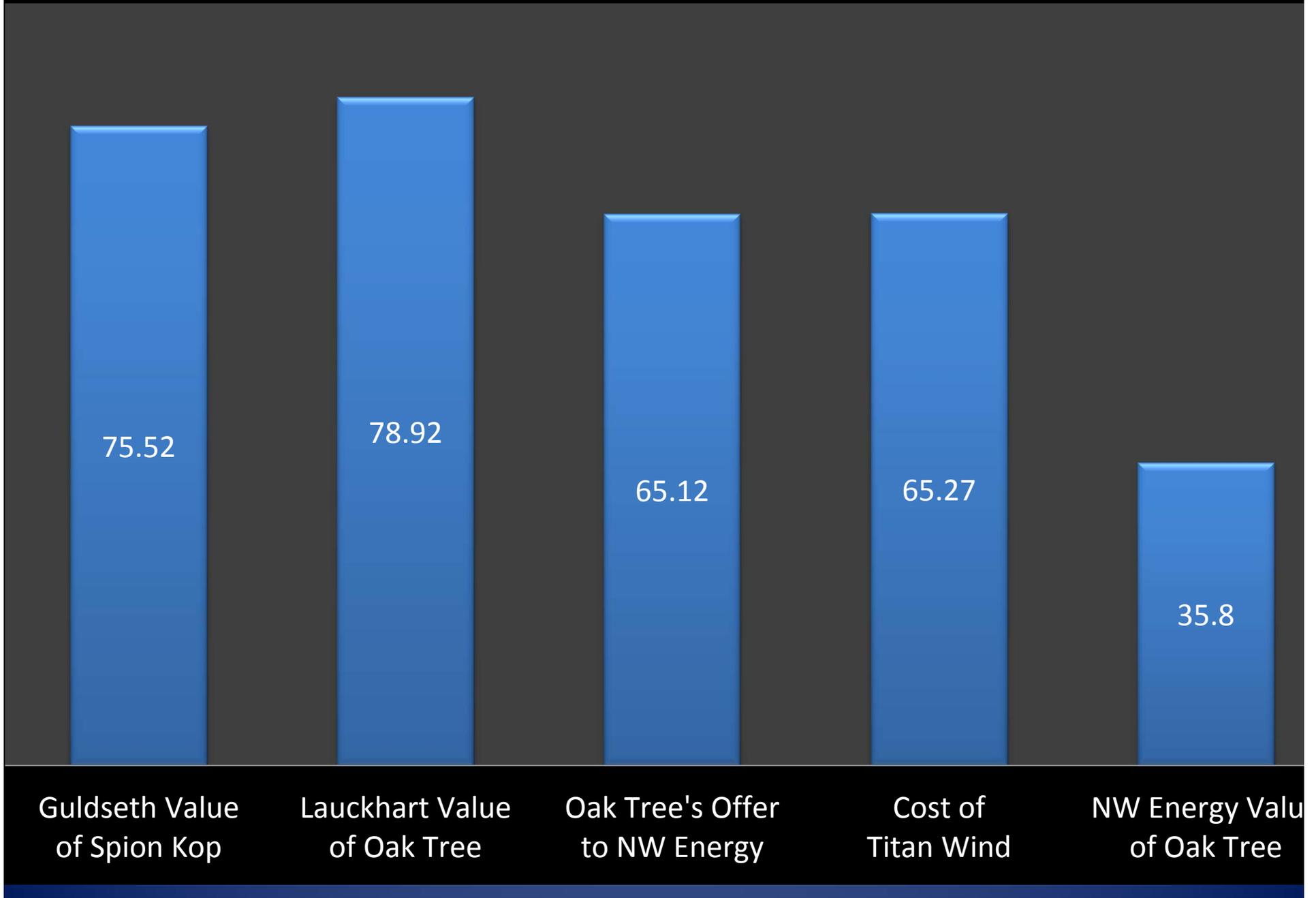
This is not a legitimate way to calculate the value of Oak Tree.

(c) The net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction) when such energy is purchased on an economic dispatch basis.

Included therein may be such costs as the charges for economy energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the utility to substitute for its own higher cost energy;

*NWE Electric Rate Adjustment Clause*

## Oak Tree Value (\$/MWh)



- (d) *Purchases “as available” or pursuant to a legally enforceable obligation.* Each qualifying facility shall have the option either:
- (1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or
  - (2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:
    - (i) The avoided costs calculated at the time of delivery; or
    - (ii) The avoided costs calculated at the time the obligation is incurred.

*18 CFR §292.304(d)(2)*

Many commenters have stressed the need for certainty with regard to return on investment in new technologies. The Commission agrees with these latter arguments, and believes, that in the long run “overestimations” and “underestimations” of avoided cost will balance out. FERC Order 69, 45 Fed Reg. 12224

Paragraph (d)(2) permits a *qualifying facility* to enter into a contract or other legally enforceable obligation to provide energy or capacity over a *specified term*. (emphasis added) Id.

Thus, under our regulations, a QF has the option to commit itself to sell all or part of its electric output to an electric utility. *While this may be done through a contract, if the electric utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a non-contractual, but still legally enforceable, obligation will be created pursuant to the state's implementation of PURPA.* Accordingly, a QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations.

*Cedar Creek Wind*, 137 FERC ¶ 61,006 at ¶ 32, pp. 13-14 (emphasis added, citations omitted).

Idaho PUC and other protesters interpret *West Penn*'s discussion to give broad discretion to the states as to what constitutes a legally enforceable obligation and when such obligation is incurred. We disagree. While *West Penn* stands for the notion that the Commission gives deference to the states to determine the date on which a legally enforceable obligation is incurred, such deference is subject to the terms of the Commission's regulations. *West Penn* does not, as Idaho PUC argues, give states the unlimited discretion to limit the ways a legally enforceable obligation is incurred.

*Id.* at ¶ 35, pp. 14-15 (emphasis added).

Like the Public Utility Commission of Texas (Texas PUC) in *JD Wind 1*, the Idaho PUC has imposed requirements on QFs seeking to enter into agreements to sell electricity that are in addition to those contained in the Commission's regulations.

*Id.* at ¶ 37, p. 16 (emphasis added).

The Commission intends that rates for purchases be based, at the option of the qualifying facility, on either the avoided cost at the time of delivery or the avoided costs calculated at the time the obligation is incurred. *This change enables a qualifying facility to establish a fixed contract price for its energy and capacity at the outset of its obligation* or to receive the avoided costs determined at the time of delivery. (emphasis added). FERC Order 69, Fed. Reg. 45, 12224