

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT) CASE NO. AVU-E-18-01
APPLICATION OF AVISTA CORPORATION)
AND CLARK FORK HYDRO LLC FOR)
APPROVAL OF A POWER PURCHASE) ORDER NO. 33992
AGREEMENT)

On January 9, 2018, Avista Corporation dba Avista Utilities and Clark Fork Hydro LLC (collectively, “the Parties”) jointly applied to the Commission for an order approving their Power Purchase Agreement (PPA), with a requested effective date of January 1, 2018.¹ Application at 1. The PPA is for the purchase by Avista of energy from Clark Fork’s 250-kilowatt (kW) Derr Creek Hydroelectric Project, a “qualifying facility” (QF) under the Public Utility Regulatory Policies Act (PURPA). *Id.* at 2. The Commission issued a Notice of Application and Notice of Modified Procedure setting comment and reply deadlines. Order No. 33972. Commission Staff timely filed comments; no other comments were received. The Commission now issues this Order approving the PPA.

BACKGROUND

PURPA was enacted in 1978 “to lessen the country’s dependence on foreign oil and to encourage the promotion and development of renewable energy technologies as alternatives to fossil fuels.” Order No. 32580 at 3, *citing FERC v. Mississippi*, 456 U.S. 742, 745-46 (1982). PURPA and its implementing regulations require electric utilities to purchase the power produced by QFs. 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.303(a).

The rate that a QF receives for the sale of its power to a utility, called the “avoided cost” rate, is approved by the Commission, and represents “the ‘incremental cost’ to the purchasing utility which, but for the purchase of power from the QF, such utility would either generate itself or purchase from another source.” Order No. 33419 at 3, *citing Rosebud Enterprises v. Idaho PUC*, 128 Idaho 624, 627, 917 P.2d 781, 784 (1996); 18 C.F.R. § 292.101(b)(6) (defining “avoided cost”).

¹ Although Avista and Clark Fork Hydro styled their filing as a “Petition,” the Commission indicated it would treat the filing as an Application. Order No. 33972.

For QFs generating less than 10 average megawatts (aMW) of energy, the Commission calculates and publishes rates with a Surrogate Avoidable Resource methodology, using long-term natural gas price forecasts. Order No. 31092 at 3. These published avoided cost rates are periodically updated as new natural gas price forecasts are issued. *Id.* at 9.

In calculating avoided costs, the Commission has found it “reasonable, appropriate and in the public interest to compensate QFs separately based on a calculation of not only the energy they produce, but the capacity that they can provide to the purchasing utility.” Order No. 32697 at 16. In calculating capacity, the Commission considers “each utility’s capacity deficiency based on load and resource balances found in each utility’s [Integrated Resource Plan] IRP,” as well as “a QF’s ability to contribute to a utility’s need for capacity.” *Id.* at 16, 21.

THE APPLICATION

The Parties explained that Clark Fork is the developer of the Derr Creek Hydroelectric Project, a 250 kW QF under PURPA. Application at 2. Under the PPA, Avista will buy the QF’s output at the applicable non-levelized rates for non-seasonal hydro projects smaller than 10 average megawatts. *Id.* at 3. The PPA has a 20-year term. *See id.* at 4.

According to the PPA, the Parties had a prior agreement under which Avista purchased the output from the QF, which expired on December 31, 2017. PPA at 3. The Parties signed the proposed PPA so Avista could continue to purchase the output from the QF. *Id.*

On January 25, 2018, the Parties submitted an amendment to section 5.3 of the proposed PPA. That section originally stated that if the Commission did not approve the PPA by January 30, 2018, the Parties would have no further obligations to purchase or sell power, and the PPA would terminate. With the Parties’ amendment, the January 30, 2018 date has been changed to February 28, 2018. Section 5.3 now states that if the Commission fails to approve the PPA by February 28, 2018, the Parties shall have no further obligations to purchase or sell power, and the PPA shall terminate. *See* Amendment No. 1 to PPA.

In sum, the Parties jointly requested that the Commission issue an order accepting the PPA, without change or condition, with an effective date of January 1, 2018, and declaring that all payments made by Avista for purchases under the PPA be allowed as prudently incurred expenses for ratemaking purposes. Application at 4.

STAFF'S COMMENTS

Staff reviewed the proposed rates and confirmed they are correct and that all other terms contained in the proposed PPA are consistent with prior Commission Orders. Staff Comments at 2. Because the Company is seeking approval of the new PPA after the expiration of the prior contract, Staff's understanding is that, if the Commission approves the PPA, the Company will retroactively pay the QF for the output of the facility at the rates in the Agreement from January 1, 2018 moving forward. *Id.* Staff thus recommends the Commission approve the PPA and declare that all payments made by Avista for purchases of energy under the PPA will be allowed as prudently incurred expenses for ratemaking purposes. *Id.*

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. The Commission has the express statutory authority to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and may fix the same by order. *Idaho Code* §§ 61-502 and 61-503. In addition, the Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from qualified facilities and to implement FERC rules. The Commission may enter any final order consistent with its authority under Title 61 and PURPA.

The Commission has reviewed the record, including the Application, the PPA, and the comments and recommendations of Commission Staff. We find that the Derr Creek Hydroelectric Project is qualified to receive the non-levelized, non-seasonal hydro published avoided cost rates contained in the PPA. We further find that the PPA contains acceptable contract provisions consistent with PURPA, FERC regulations, and this Commission's prior orders. We therefore approve the PPA without change or condition. Finally, we find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.


ORDER

IT IS HEREBY ORDERED that the PPA between Avista and Clark Fork is approved, effective January 1, 2018.

IT IS FURTHER ORDERED that all payments made by Avista for purchases of energy under the PPA are allowed as prudently incurred expenses for ratemaking purposes.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21st day of February 2018.



PAUL KJELLANDER, PRESIDENT




KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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