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March 16, 2020

Diane Hanian
Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd
Building 8, Suite 201-A
Boise, ID 83714

**Re: Stimson Lumber Company PPA (Amendment No. 1)
Case No. AVU-E-19-16**

Dear Ms. Hanian:

Pursuant to the Notice issued by the Idaho Public Utilities Commission on February 25, 2020, Avista Corporation respectfully submits the following reply comments in response to the Amended Comments of Commission Staff submitted in the above-captioned proceeding on March 10, 2020. As discussed herein, Avista respectfully requests that the Commission approve the Power Purchase Agreement between Avista and Stimson Lumber Company as amended by Amendment No. 1 without modification with an effective date of January 1, 2020.

Please direct any questions regarding this filing to (509) 495-2564 or Michael.andrea@avistacorp.com

Sincerely,

/s/ Paul Kimball

Paul Kimball
Manager of Compliance & Discovery

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT PETITION)
OF AVISTA CORPORATION AND) CASE NO. AVU-E-19-16
STIMSON LUMBER COMPANY FOR)
APPROVAL OF POWER PURCHASE AND) REPLY COMMENTS OF AVISTA
SALE AGREEMENT) CORPORATION
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Pursuant to the Notice issued by the Idaho Public Utilities Commission (“Commission”) on February 25, 2020 (“Notice”), Avista Corporation (“Avista”) respectfully submits the following reply comments in response to the Amended Comments of Commission Staff submitted in the above-captioned proceeding on March 10, 2020 (“Amended Comments”). As discussed herein, Avista respectfully requests that the Commission approve the Power Purchase Agreement between Avista and Stimson Lumber Company (“Stimson”) as amended by Amendment No. 1 without modification with an effective date of January 1, 2020.

I. Background

On December 31, 2019, Avista and Stimson filed a joint petition requesting an order approving a Power Purchase Agreement (“Agreement”) under which Avista continues to purchase the output from Stimson’s wood waste small power electric generation plant (“Facility”) pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The

proposed effective date of the Agreement was January 1, 2020. The proposed term of the Agreement was for one year.

On February 7, 2020, Staff submitted Comments on the Agreement. Among other things, Staff recommended modifying the Agreement in two material ways (“Recommendations”)¹: (1) modifying the contract price during the period between January 1 and the date of the Commission’s approval (“Lapsed Period”) such that the price during that period would be the lesser of the avoided cost rates approved by the Commission for the Agreement or the Market Energy Cost, which would be 85 percent of the non-firm market energy price for each month, and (2) because the Agreement was for a one-year term, modifying the avoided cost rates for the remainder of the term so that the avoided cost rates would not include capacity payments.²

Applying a different avoided cost rate for the Lapse Period is unprecedented at the Commission is also inconsistent with Federal Energy Regulatory Commission (“FERC”) regulations.³ Also, because Stimson was renewing a contract under which Stimson received a capacity payment, modifying the avoided cost rates to remove the capacity payment for Stimson’s Facility because Stimson requested a one-year term is also inconsistent with Commission precedent⁴ and FERC regulations. Nevertheless, in an attempt to sidestep the issues of whether Stimson was or was not entitled to a capacity payment under the Agreement, Stimson agreed to amend the term of the Agreement to two years.

¹ Staff also recommended (i) applying the 82.4 percent discount rate to the Intercontinental Exchange firm energy index to determine the non-firm market price for the 90/110 rule and (ii) correcting the date on the Replacement Exhibit E. Staff Comments at 2. Avista made these changes in the Amended Agreement and, therefore, these recommendations are not addressed in these reply comments.

² Staff Comments at 2

³ See 18 C.F.R. § 292.304.

⁴ See Order No. 32697 at 21; 18 C.F.R. § 292.304.

On February 14, 2020, Avista filed Amendment No. 1 to the Agreement (“Amendment No. 1”)⁵ to, among other things, amend the term of the Agreement so that the term would be two years. After the Agreement was executed, but prior to execution of Amendment No. 1, Avista’s published avoided cost rates were updated in Order No. 34547 effective February 7, 2020. The avoided cost rates in the new Exhibit E submitted with the Amendment are based on the avoided cost rates that were in effect when the Agreement was originally executed and are to apply from the requested January 1, 2020 effective date through the term of the Agreement.

On March 10, 2020, Commission Staff submitted its Amended Comments. In the Amended Comments, Staff recommended two modifications. First, Staff again recommended that the avoided cost rates for the Lapsed Period be the lesser of the avoided cost rates without capacity payment and 85 percent of the non-firm market energy price for each month.⁶ Second, Staff recommended that the avoided cost rates for the second year of the Agreement should be based on the new published rates for Avista that became effective on February 7, 2020 in Order No. 34547. Avista submits this reply to the Amended Comments.

II. Reply Comments

A. The Avoided Cost Rate for the Lapse Period Should be the Published Rate in Effect at the Time the Legally Enforceable Obligation was Established

As discussed above, Staff recommends that the avoided cost rate for the Lapsed Period be the lesser of the avoided cost rates without capacity payment and 85 percent of the non-firm market energy price for each month.⁷ Staff’s recommendation is based on its view that (i) neither FERC nor the Commission require a specified rate for a period when a project continues to operate with a lapsed contract, and (ii) a lapsed contract period is avoidable and should be

⁵ The Agreement as amended by Amendment No. 1 is referred to herein as the “Amended Agreement.”

⁶ Amended Comments at 2.

⁷ Amended Comments at 2.

discouraged. This recommendation is inconsistent with FERC's regulations and Avista's Commission-approved Schedule 62. In addition, Staff's recommendation appears to be inconsistent with this Commission's precedent.

FERC's regulations provide that the Qualifying Facility ("QF") has the option to provide energy or capacity pursuant to a legally enforceable obligation ("LEO"), exercised prior to the beginning of a specified term based on "[t]he avoided costs calculated at the time the obligation is incurred."⁸ FERC also requires standard rates for small QFs. The Commission requires standard rates for QFs, other than wind and solar QFs, up to 10 aMWs. Stimson's Facility is 6.5 MW facility that is eligible for standard rates.

With regard to the Lapsed Period, the Agreement included the applicable standard avoided cost rates required under Avista's Schedule 62 in effect at the time the Agreement was executed. The Amended Agreement similarly included the applicable standard avoided cost rate for the Lapsed Period. Under Avista's Schedule 62, the avoided cost rates in the Agreement were binding on Avista at the time that the Agreement was executed, subject only to Commission approval.⁹ Avista agrees that contracts should generally be finalized and submitted to the Commission in time for the Commission to approve before the prior contract lapses. However, if such a Lapse Period does occur, Avista's Schedule 62 does not provide for a reduced rate to apply between the time a contract is executed and the time that the Commission approves such contract; rather, Avista is bound by its Schedule 62 to provide to provide the applicable published avoided cost rate. Revising the rates for the Lapsed Period is inconsistent with Avista's Schedule 62.

⁸ 18 C.F.R. § 292.304(d)(2)(ii).

⁹ Schedule 62, Contracting Procedures (1)D(i).

Stimson's Facility is a QF that is eligible for a standard rate under the Commission's established policy. Commission Staff recommends modifying the avoided cost rate for the Lapsed Period to the lesser of the avoided cost rates without capacity payment and 85 percent of the non-firm market energy price for each month. Staff's proposed avoided cost rate for the Lapsed Period is not a standard rate under Avista's Schedule 62 and, therefore, Avista did not have the option to include that rate in the Amended Agreement. The standard avoided cost rate that was in effect at the time the Agreement was signed by the parties should apply to the Lapsed Period.

B. Stimson Should Not be Penalized for Responding to Staff's Comments

Staff asserts that, because Amendment No. 1 extending the term of the Agreement for a second year was signed after February 7, 2020, the commitment for the second year was made when the Amendment was signed. Accordingly, Staff recommends that the published rates that became effective on February 7, 2020, should apply to the second year of the contract.

Avista generally agrees with Staff that the commitment to sell to the utility occurs when there is a fully executed power purchase agreement. Under that rationale, the published rates that were in effect when the Agreement was originally signed should apply for the first year of the Agreement (including the Lapsed Period, as discussed above), and, because Amendment No. 1 was signed after February 7, 2020, the published rates that became effective on February 7, 2020, should apply to the second year of the Amended Agreement. However, under the circumstances at issue here, it would be unfair to Stimson to apply the published rates that became effective on February 7, 2020 to the second year of the Amended Agreement.

As discussed above, Stimson originally requested and executed the Agreement with a one-year term. That Agreement included the applicable published avoided cost rate and,

consistent with Commission policy for QFs that are renewing, included a capacity payment.¹⁰ In its Comments on that Agreement, Staff recommended that the Commission establish a brand new policy that an existing QF that renews for a term of one year would not receive a capacity payment. Staff acknowledges this departure from Commission precedent in its Comments stating: “Stimson was receiving capacity payments at the end of its previous contract; therefore, Staff believes that the proposed Agreement complies with past Commission orders. However, because the Agreement only has a one-year term, Staff believes that including immediate capacity payments is not appropriate.”¹¹

Stimson entered into Amendment No. 1 to extend the term of the Agreement to two years in response to Staff’s Comments. Staff now recommends that Stimson should receive a capacity payment (at least for the part of the term that is after the Lapsed Period), but for the second year of the term of the Amended Agreement, Stimson should only receive the lower avoided cost rates that became effective on February 7, 2020.

To be sure, if the Commission had an policy that QFs, including renewing QFs that previously received a capacity payment, that elect a one-year term are not eligible for a capacity payment, it is reasonable to assume that Stimson would have requested a longer term in the original Agreement. After Stimson elected a one-year term, Staff recommended a change in policy to eliminate the capacity payment on one-year contracts. Stimson acted reasonably in choosing to extend the term to two-years rather than risk that the Commission would adopt Staff’s recommended new policy to disallow capacity payments for one-year contracts.

¹⁰ Order No. 32697 at 21 (stating that “if a QF project is being paid for capacity at the end of the contract term and the parties are seeking renewal/extension of the contract, the renewal/extension would include immediate payment of Capacity.”) The Agreement is a renewal and Stimson was receiving a capacity payment at the end the contract term.

¹¹ Comments at 5 (emphasis added).

Under the unique circumstances at issue here, Stimson should not be penalized for requesting a contract consistent with the then-current Commission precedent. Stimson should also not be penalized for extending the term of the Agreement to two years in response to Staff's recommendation to establish a new policy that would have adversely impacted Stimson. The Commission should approve the Amended Agreement as submitted such that the avoided cost rates in effect when the Agreement was originally executed apply for the entire two-year term.

III. Staff's Recommendations, if Adopted by the Commission, Would Change the Commission's Current PURPA Policy

As discussed above, Staff's Recommendations represent a change in the Commission's PURPA policy. Specifically, if the Commission adopts Staff's recommendations it would create new policy that presumably would be applicable to all QFs. Specifically, Staff recommends a new policy that would apply a discounted non-standard rate to lapse periods. Staff also recommends departing from established Commission precedent by recommending that capacity payments are not available to QFs with a one-year contract even if the QF previously received a capacity payment under its prior contract.

To the extent that the Commission revises its PURPA policy, such changes should be made in a generic proceeding. A generic proceeding on these issues would give utilities, QFs, and the Commission an opportunity to fully vet these proposed changes in policy. Such changes should not be made in the context of this proceeding.

IV. Conclusion

Avista appreciates the opportunity to submit these reply comments in response to Commission Staff's Amended Comments. For the reasons stated herein, Avista respectfully requests that the Commission approve the Amended Agreement as filed with an effective date of January 1, 2020.

DATED this 16th day of March 2020.

/s/ Michael G. Andrea
Michael G. Andrea
Attorney for Avista Corporation