

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT PETITION)
OF AVISTA CORPORATION AND STIMSON) CASE NO. AVU-E-19-16
LUMBER COMPANY FOR APPROVAL OF)
POWER PURCHASE AND SALE)
AGREEMENT) ORDER NO. 34692
)

On December 31, 2019, Avista Corporation (“Company”) filed a Joint Petition (“Petition”) seeking approval of a proposed Power Purchase Agreement (“Agreement”) with Stimson Lumber (“Seller”) for the energy generated by a thermal wood waste small power electric generation plant operated by the Seller in Plummer, Idaho (“Facility”). The Facility is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

On February 14, 2020, the Company filed proposed amendments to the Agreement (collectively the “Amended Agreement”). The Amended Agreement, if approved, would replace the parties’ prior power purchase and sale agreement that expired on December 31, 2019. The Company requested that its Petition be processed by modified procedure.¹

On January 31, 2020, the Commission issued its Notice of Petition and Notice of Modified Procedure setting comment and reply comment deadlines. Order No. 34538. Staff filed comments on February 7, 2020.

On February 25, 2020, the Commission issued an Amended Notice of Petition providing the parties with an opportunity to submit comments on the Amended Agreement. *See* Order No. 34559. Staff filed amended comments on March 10, 2020. The Company filed reply comments on March 16, 2020.

Having reviewed the record, the Commission enters this Order approving the Company’s Petition and Amended Agreement as modified by our findings and decision set forth below.

BACKGROUND

On December 31, 2019, the Company filed the Agreement, which had a proposed one-year term. Under the Agreement, Seller would sell the electric energy generated by the Facility to the Company at the On-Peak or Off-Peak Avoided Cost Rates for Non-Fueled Projects Smaller

¹ The Company originally requested an effective date of January 1, 2020.

than Ten Average Megawatts per month-Non-Levelized as set forth in Exhibit E to the Agreement. *Id.* at 3. The Facility "is capable of generating up to approximately 6.5 megawatts of energy." *Id.* at 2.

In response to Staff Comments discussed below, the Company submitted the Amended Agreement that: 1) extended the term to two years; 2) corrected the definition of Market Energy Cost; 3) removed provisions that require the Commission approve the Agreement by February 21, 2020; and 4) replaced Exhibit E to include rates for the period from January 1, 2020, through December 31, 2021. *See Amended Agreement* at 1-2 and *Amended Exhibit E to the Amendment*. The Company did not address Staff's recommendation in its comments to modify the prices that should be paid for capacity and energy deliveries between January 1, 2020, and the day before the service date of a Commission order approving the Amended Agreement ("Lapse Period").

COMMENTS

1. Staff Comments and Amended Comments.

a. Pricing for Lapse Period.

Staff asserted a lapsed or expired contract period is avoidable and the Commission should not encourage the operation of a QF without a contract. *Id.* at 7; *see also Staff's Amended Comments* at 2. Staff alleged during the Lapse Period there is no obligation created by the Commission or Federal Energy Regulatory Commission ("FERC") to guarantee a specific rate. *Id.* Staff believed there is value in the generation but not to the level of a guaranteed contract price inclusive of contractual obligations that accompany it. *Id.* Staff recommended that the Commission use the lesser of the avoided cost proposed by Staff (without capacity payments) or 85% of the non-firm market energy price for each month for Lapse Period capacity and energy deliveries. *Id.*

b. Pricing for Second Year of the Term.

Staff asserted because the Facility was receiving capacity payments at the end of the expired contract, and the proposed Amended Agreement has a two-year term, the Facility can account for avoided capacity through the Company's resource planning cycles. *Staff Amended Comments* at 3. Staff thus confirmed Seller should receive capacity payments for the proposed two-year term. *Id.* However, Staff noted the Agreement was filed with the Commission on December 31, 2019, but the Amended Agreement was filed on February 14, 2020. Based on the different dates for commitments, Staff asserted the Company should pay for capacity and energy

delivered in the Amended Agreement's first year (except for the Lapse Period) at the rates effective on June 1, 2019, as approved by Commission Order No. 34350. Staff also argued that in the Amended Agreement's second year the Company should pay for capacity and energy delivered at the published avoided cost rates, effective on February 7, 2020, as established by Commission Order No. 34547.

2. Avista Reply Comments.

a. Pricing for Lapse Period.

The Company argued that applying a different avoided cost rate for the Lapse Period is unprecedented and inconsistent with its Schedule 62 and FERC regulations. *Reply Comments* at 3-4. The Company asserted a QF has the option to provide energy or capacity pursuant to a legally enforceable obligation ("LEO"), exercised before a specified term has begun based on "[t]he avoided costs calculated at the time the obligation is incurred." *Id.* at 4; citing 18 C.F.R. § 292.304(d)(2)(ii). The Company also alleged FERC requires standard rates for small QFs. *Id.* The Company further contended the Commission requires standard rates for QFs, other than wind and solar QFs, up to 10 aMWs and the Facility is eligible for standard rates. *Id.*

The Company asserted under its Schedule 62, the avoided cost rates in the Amended Agreement bound the Company when the original Agreement was filed on December 31, 2019. *Id.* The Company agreed that contracts should generally be finalized and submitted to the Commission in time for the Commission to approve them before they expire. *Id.* However, the Company believed if the parties are out of contract, Schedule 62 does not allow for a reduced rate between the time a contract is executed and when the Commission approves it. *Id.* Rather, the Company must provide the applicable published avoided cost rate under Schedule 62. *Id.* The Company requested that the Commission use the standard avoided cost rate in effect during the Lapse Period. *Id.* at 5.

b. Pricing for the Second Year of the Term.

The Company asserted the Seller should not be penalized for responding to Staff's concerns about the one-year term of the proposed Agreement as originally filed. *Id.* The Company generally agreed with Staff that the commitment to sell to the utility occurs when there is a fully executed power purchase and sale agreement. *Id.* However, the Company believed Staff's recommendation that the Commission establish a new policy that a QF that renews for a one-year term would not receive a capacity payment is not appropriate. *Id.* at 6. The Company asserted the

Seller acted reasonably in choosing to extend the term to two years instead of risking that the Commission would adopt Staff's recommendation. *Id.*

The Company also asserted Staff's recommendation represents a change in the Commission's PURPA policy and such proposals should only be considered in a generic proceeding where utilities and QFs can participate. *Id.*

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. The Commission is empowered 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 to fix the same by order. *Idaho Code* §§ 61-502 and 61-503. The Commission also has authority under PURPA and FERC regulations to set avoided cost rates, to order electric utilities to enter fixed-term obligations for the purchase of energy from QFs, 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 Petition, Agreement, Amended Agreement, the comments and amended comments of Staff, and the reply comments of the Company. The Commission finds it fair, just, and reasonable to approve the Amended Agreement because the Amended Agreement contains Commission-approved terms for which the Facility is eligible based on the Facility's characteristics, such as fuel source, project size, generation output profile, and renewal contract status. However, the Commission's approval is contingent on the following modifications to the Amended Agreement.

The Commission finds it appropriate for the Company to pay the Seller for capacity and energy deliveries during the Lapse Period—the time between the prior power purchase agreement's December 31, 2019 expiration and the day before the service date of this Order—at the published avoided cost rates in effect on June 1, 2019. *See* Order No. 34350. This treatment is consistent with prior Commission decisions. However, at some point after a contract expires, the lack of further contractual commitment could create uncertainty for the Company's resource planning. Moreover, payment of capacity relies on continuous operation under a valid power purchase agreement. *See* Order 33357 at 25-26. The Commission notes that in a previous contract, the Company and Seller asked the Commission to approve a short extension to the 2006 Agreement so it would not expire while the parties were negotiating the terms of a new power purchase

agreement. *See* Order No. 32382 at 1. The Commission believes this prior action was prudent and could have been requested again here as a means to avoid a time gap between contracts. Ideally, the Company should file any renewal QF contract with the Commission well before the prior QF contract expires.

When the parties' one-year contract was executed and the initial Application and Agreement was filed with the Commission, the Seller was eligible for published avoided cost rates set by Order No. 34350. At the time the parties amended the Agreement, new published avoided cost rates had taken effect. *See* Order No. 34547. The Commission thus finds it reasonable that the Company pays the Seller for capacity and energy deliveries during the Amended Agreement's first year at the published avoided cost rates established by Order No. 34350. For the second year of the Amended Agreement, it is appropriate for the Company to pay the Seller for capacity and energy deliveries at the published avoided cost rates set by Order No. 34547. This compensation structure prevents unjust enrichment while also avoiding what would amount to a penalty if inflated rates or reduced rates were used for the duration of the two-year contract. We find this approach fair and balanced.

The Commission also finds it fair, just, and reasonable to allow the Company's payments for energy and capacity under the Amended Agreement, as modified by this Order, as prudently incurred expenses for ratemaking purposes.

Last, the Commission finds the term of the Amended Agreement shall begin on the service date of this Order.

ORDER

IT IS HEREBY ORDERED that the Amended Agreement, as modified by this Order, is approved.

IT IS FURTHER ORDERED that the Company shall pay Seller for capacity and energy deliveries during the Lapse Period (between January 1, 2020, until the day before the service date of this Order) using published avoided cost rates that were effective on June 1, 2019. *See* Order No. 34350.

IT IS FURTHER ORDERED that the term of the Amended Agreement shall begin on the service date of this Order.

IT IS FURTHER ORDERED that for the first year of the Amended Agreement, the Company shall pay the Seller for capacity and energy deliveries using the published avoided cost

rates established by Order No. 34350. For the Amended Agreement's second year, the Company shall pay the Seller for capacity and energy deliveries using the published avoided cost rates set by Order No. 34547.

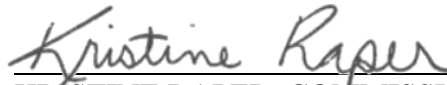
IT IS FURTHER ORDERED that the Company's payments for energy and capacity under the Amended Agreement are allowed as prudently incurred expenses for ratemaking purposes.

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 about 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.

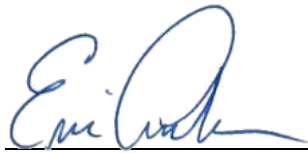
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 12th day of June 2020.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary