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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF AVISTA AND THE )  
UNIVERSITY OF IDAHO'S JOINT PETITION ) CASE NO. AVU-E-22-03  
FOR APPROVAL OF A POWER PURCHASE )  
AGREEMENT (STEAM FACILITY) )  
 )  
 ) COMMENTS OF THE  
 ) COMMISSION STAFF  
 )  
\_\_\_\_\_ )**

**STAFF OF** the Idaho Public Utilities Commission, by and through its Attorney of record, Dayn Hardie, Deputy Attorney General, submits the following comments.

**BACKGROUND**

On February 23, 2022, Avista Corporation ("Avista") and the Regents of the University of Idaho ("University") jointly petitioned the Commission for an order approving a power purchase agreement ("Agreement") between Avista and the University for the excess energy generated by the University's three micro-steam turbine-generator sets ("Facility") with a total generating capacity of 825 kilowatts ("kW") after meeting the University's load. The Parties requested a Commission order approving the Agreement's effective date of February 16, 2022.

The University's Facility is located in Moscow, Idaho and is connected to Avista's electrical system. The University intends to use the output from the Facility to serve its load first and if the Facility's output exceeds the University's load, the excess energy will be delivered and sold to the Company at the avoided costs calculated at the time of delivery. For any energy

delivered from the Facility to the Point of Delivery in any hour, the avoided cost will equal the Market Energy Price for the hour expressed in \$/kilowatt-hour (“kWh”) multiplied by the total kWh delivered in that hour. The Parties have agreed to a term of 20 years from February 16, 2022.

## **STAFF REVIEW**

Staff reviewed the Agreement focusing on the Public Utility Regulatory Policies Act of 1978 (“PURPA”) purchasing category, the proposed avoided cost rates associated with the category, the nameplate capacity size, the potential for a lapsed contract period, the Renewable Energy Certificates<sup>1</sup> (“RECs”), and Article 21. Based on the review, Staff recommends the following changes to the Agreement:

1. Remove the option of other mutually agreed-to index in the Agreement;
2. Set avoided cost rates in this Agreement at 85% of the PowerDex hourly Mid-Columbia (“Mid-C”) index price;
3. Correct the mistaken Nameplate Size in Attachment 2 of Exhibit D;
4. Use 85% of the PowerDex hourly Mid-Columbia (“Mid-C”) index price as avoided cost rates for the potential of a lapsed contract period; and
5. Update Article 21 in the Agreement to ensure any amendment or modification does not become valid without Commission authorization.

### Categories of PURPA Purchases: As-available Purchases vs. Legally Enforceable Obligation (“LEO”) Purchases

The power purchases contemplated in this Agreement fall under the category of LEO Purchases calculated at the time of delivery because the terms of purchase are made through a contract between the Parties. There are two categories of purchases under PURPA: (1) as-available purchases; and (2) LEO purchases. The former allows a qualifying facility (“QF”) to provide energy whenever it is available and use avoided costs calculated at the time of delivery, while the latter requires a QF to provide energy or capacity pursuant to a LEO for the delivery of energy or capacity over a specified term, using either the avoided costs calculated at the time of delivery, or the avoided costs calculated at the time the obligation is incurred. *See* 18 CFR §

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<sup>1</sup> Also known as Renewable Energy Credits.



292.304 (d). The Parties in this case entered into a LEO on February 16, 2022, with a specified contract term of 20 years.

### Avoided Cost Rates

The Agreement proposes a market-based rate that is not currently covered as a LEO purchase within Avista's Schedule 62 Cogeneration and Small Power Production Schedule. However, Staff believes the terms are acceptable if "other mutually agreed-to index" besides PowerDex is removed from the language in the contract and if an 85% adjustment factor is applied to the PowerDex hourly Mid-Columbia ("Mid-C") index price.

Currently, for LEO Purchases, Avista's Schedule 62 Cogeneration and Small Power Production Schedule provides six rate options: (1) Levelized Fueled Rates; (2) Non-Levelized Fueled Rates; (3) Levelized Non-Fueled Rates; (4) Non-Levelized Non-Fueled Rates; (5) Short-Term Rate;<sup>2</sup> and (6) Integrated Resource Plan ("IRP")-Based Rate—none of which are purely market-based. The Agreement proposes to use purely market-based rates as avoided cost rates: "the PowerDex hourly Mid-Columbia ("Mid-C") index price, or other mutually agreed-to index." *See* Article 1.16 and Article 5.2 of the Agreement. Staff believes that market-based rates should be allowed for LEO purchases because the Commission has approved several Idaho Power's PURPA contracts that used market-based rates through Uniform Agreements. *See* Order Nos. 29607 and 30631.

However, Staff offers two recommended changes related to the establishment of rates in the Agreement. First, Staff recommends that the option of "other mutually agreed-to index" be removed from the language of the Agreement and if Parties decide to use another market price index in the future, they should file an amendment to the Agreement so that index can be reviewed and approved by the Commission. Second, Staff believes that the avoided cost rates used in this Agreement for non-firm energy generation should be 85% of the non-firm market

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<sup>2</sup> Schedule 62 states "The Short-Term Rate shall be applicable to any Qualifying Facility when the Customer chooses to supply output including energy and capacity at market-based rates under contract. The Short-Term Rate shall be the lower of the applicable Non-Levelized Non-Fueled Rate or the Market Rate. The rate is subject to a Seasonal Factor, a Daily Shape Adjustment, and Integration Charges. The resultant rate shall be applied to all kilowatt-hours of generation up to the Eligibility Cap for Qualifying Facilities below the Eligibility Cap, and to all hourly Facility output up to contracted nameplate capacity for Qualifying Facility exceeding the Eligibility Cap." This rate option involves using the market-based rates in the calculation, but it is not a purely market-based rate.

rates, and thus recommends that an 85% adjustment factor be applied to the PowerDex hourly Mid-Columbia (“Mid-C”) index price. *See* Order No. 29093.

In determining the avoided cost rates for non-firm energy based on a market index, 85% of the non-firm market index has been used to account for costs of transmission, losses, and transaction costs in case utilities must sell QF generation that they do not need. *See* Order No. 29093. For example, when a QF delivers energy outside the 90/110 band, prices for the energy outside the band are determined at 85% of the non-firm market price, or the contract rate, whichever is less. *See* Order No. 29632. Another example is Idaho Power’s Schedule 86, where 85% of the non-firm<sup>3</sup> market price is used to determine avoided cost rates for non-firm energy. Lastly, Avista’s Schedule 62 defines Market Rate as 85% of the non-firm<sup>4</sup> market price to compare against contract rates for determining the Short-Term Rate. *See* Application and Order No. 33048 in Case No. AVU-E-14-03.

Because the Commission has approved the PowerDex hourly Mid-C index in lieu of the non-firm market index, Staff believes it is reasonable to continue to use it as a non-firm market index consistent with Order No. 33048; however, for reasons stated above, an 85% adjustment factor should be applied to comply with prior Orders.

#### Nameplate Size

Attachment No. 2 of Exhibit D states the Facility’s Nameplate Size is 1,050 kW. Staff believes that it should have been 825 kW and thus recommends the Parties correct the mistake. First, Page 1 of the Agreement states that the Nameplate Capacity Rating is 825 kW. Second, Exhibit A states that the project consists of three micro-steam turbine-generator sets, each designed to produce 275 kW for a total design capacity of 825 kW. Third, Attachment No. 2 of Exhibit D states that the Maximum Generation Injection at Point Common Coupling is 825 kW. The Company’s response to Staff’s Production Request No. 1 (a) states that the Maximum Generation Injection at Point of Common Coupling is “equal to maximum generation capability of the facility (a.k.a. nameplate rating)”.

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<sup>3</sup> Since the discontinuation of the non-firm market index, 82.4% of Intercontinental Exchange (“ICE”) daily firm Mid-C market prices has been used by Idaho Power in lieu of the non-firm market index. *See* Order No. 33053.

<sup>4</sup> Since the discontinuation of the non-firm market index, PowerDex hourly Mid-C index has been used by Avista in lieu of the non-firm market index. *See* Order No. 33048.



Order No. 29093 limited Idaho Power's Schedule 86 tariff eligibility for non-firm energy contracts with a capacity nameplate rating of less than 10 MW to align with the Commission's orders in Case No. GNR-E-02-01 that increased the capacity size for eligibility of published rates to 10 MW. Although Avista does not have a similar tariff for non-firm energy, Staff does not believe the Facility's nameplate capacity of 825 kW challenges the Commission's size expectation for non-firm QF.

#### Lapsed Contract Period

Page 5 of the Agreement states that the effective date is February 16, 2022, or such other date set by Commission order. If the final approved effective date results in a lapsed contract period in which retroactive rates are required, Staff recommends that the Parties use 85% of the PowerDex hourly Mid-Columbia ("Mid-C") index price for the energy delivered during the lapsed contract period. As of March 23, 2022, the project has not generated any energy sold to Avista. *See* Company Response to Staff's Production Request No. 6.

#### RECs

The Agreement allows the University to retain and own all the RECs. Because this contract uses neither published avoided cost rates nor IRP-based avoided cost rates, Staff believes the arrangement is in the discretion of the Parties. The Commission has stated that a QF being paid published avoided cost rates will retain all the RECs, and a QF that is paid IRP-based avoided cost rates will share the RECs with the utility equally. *See* Order No. 32697. The Commission has not determined REC ownership for QFs that use market-based rates.

#### Article 21: AMENDMENT

Article 21 of the Agreement (AMENDMENT) states "[n]o change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties." Staff believes that this statement neglects the significance of Commission approval and recommends that the statement be updated to reflect the need for the Commission approval before it becomes valid. For example, the statement could be modified to state "[n]o change, amendment, or modification of any provision

of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties *and subsequently approved by the Commission.*”


### STAFF RECOMMENDATION

Staff recommends approval of an amended agreement contingent on including the following changes to the Agreement:

1. Remove the option of “other mutually agreed-to index” in the Agreement;
2. Set avoided cost rates in this Agreement at 85% of the PowerDex hourly Mid-Columbia (“Mid-C”) index price;
3. Correct the mistaken Nameplate Size in Attachment 2 of Exhibit D;
4. Use 85% of the PowerDex hourly Mid-Columbia (“Mid-C”) index price as avoided cost rates for a potential lapsed contract period; and
5. Update Article 21 in the Agreement to ensure any amendment or modification does not become valid without Commission authorization.

If the Commission approves these changes, Staff recommends that the Parties file an updated Agreement as a compliance filing to reflect these changes.

Respectfully submitted this <sup>3rd</sup> day of May 2022.

  
Dayn Hardie  
Deputy Attorney General

Technical Staff: Yao Yin  
Travis Culbertson

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 3<sup>RD</sup> DAY OF MAY 2022, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-22-03, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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