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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 )**  
**FOR APPROVAL OF A POWER PURCHASE )**  
**AGREEMENT (SOLAR FACILITY) )**  
**)** **CASE NO. AVU-E-22-04**  
**)**  
**)** **COMMENTS OF THE**  
**)** **COMMISSION STAFF**  
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**STAFF OF** the Idaho Public Utilities Commission, by and through its Attorney of record, Riley Newton, Deputy Attorney General, submits the following comments.

**BACKGROUND**

On February 23, 2022, Avista Corporation (“Company”) and the Regents of the University of Idaho (“University”) (collectively, the “Parties”) petitioned the Commission for an order approving a power purchase agreement (“Agreement”) between the Company and the University for the University’s 132.32 Kilowatt (“kW”) solar facility (“Facility”). The Parties requested a Commission order approving the Agreement’s effective date of February 16, 2022.

The Facility is in Moscow, Idaho and is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The University intends to use the output from the Facility to serve the University’s load. Under the Agreement, the University will sell to the Company all output from the Facility in excess of the University’s load. The avoided cost

rates used in the Agreement are calculated at the time of delivery, using the PowerDex hourly Mid-Columbia (“Mid-C”) index price, or other mutually agreed-to index. The term of the Agreement is for two years from February 16, 2022

## **STAFF REVIEW**

Staff has reviewed the Agreement focusing on the PURPA purchasing category, the proposed avoided cost rates associated with the category, the Nameplate Size and Maximum Generation Injection at Point of Interconnection, the potential lapsed contract period, the Renewable Energy Certificates<sup>1</sup> (“RECs”), and Article 21 in the Agreement. 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-C index price;
3. Verify the Nameplate Size and the Maximum Generation Injection at Point of Interconnection and make sure the correct amounts are used in the Agreement;
4. Use 85% of the PowerDex hourly 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.

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

The power purchases 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 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

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

costs calculated at the time the obligation is incurred. *See* 18 CFR § 292.304 (d). The Parties in this case entered a LEO on February 16, 2022, with a specified contract term of two years.

### **Avoided Cost Rates**

The Agreement proposes a market-based rate that is not currently covered as a LEO purchase within the Company’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-C index price.

Currently, for LEO Purchases, the Company’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 is purely market-based. The Agreement proposes to use purely market-based rates as avoided cost rates: “the PowerDex hourly 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 of Idaho Power Company’s (“Idaho Power”) PURPA contracts that used market-based rates through Uniform Agreements. *See* Order Nos. 29607 and 30631.

However, Staff has 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 the Parties decide to use another market price index in the future, they should file an amendment to the Agreement so the 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-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 are forced to sell QF generation that they don't 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 the lesser of 85% of the non-firm market price, or the contract rate. *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, the Company'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 and Maximum Generation Injection at Point of Interconnection**

Exhibit A of the Agreement states that both the Nameplate Size and the Maximum Generation Injection at Point of Interconnection is 132.2 kW alternating current ("AC"). However, Federal Energy Regulatory Commission Form 556 for the Facility states that the Maximum Gross Production Capacity is 147.2 kW direct current ("DC") or 133.2 kW AC after AC/DC conversion, and the Maximum Net Power Production Capacity at the Point of Interconnection is 132.0 kW AC after deduction of line losses. Staff recommends that the Parties verify the Nameplate Size and the Maximum Generation Injection at Point of Interconnection and make sure the correct amounts are used in the Agreement. Staff also believes the Maximum Generation Injection at Point of Interconnection should consider the line losses between the Facility and the Point of Interconnection, unless the losses are so negligible

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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 the Company in lieu of the non-firm market index. *See* Order No. 33048.

that the Nameplate Size and the Maximum Generation Injection at Point of Interconnection can be reasonably considered the same.

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 megawatts ("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 the Company does not have a similar tariff for non-firm energy, Staff believes that this Facility's Nameplate Size does not challenge the Commission's size expectation for non-firm QFs.

### **Lapsed Contract Period**

Page 5 of the Agreement states that the effective date is February 16, 2022, or 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-C index price for the energy delivered during the lapsed contract period. As of March 23, 2022, the project has generated energy to serve the University's load but has not delivered or sold any energy to the Company. *See* Response to Staff's Production Request No. 4.

### **RECs**

The Agreement allows the Parties to share the RECs equally. 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 that uses published avoided cost rates will retain all the RECs, and a QF that uses the 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 can be updated to be “[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 Commission approval of the Agreement if it is amended to include the following changes:

1. Remove the option of “other mutually agreed-to index” in the Agreement;
2. Set avoided cost rates in the Agreement at 85% of the PowerDex hourly Mid-C index price;
3. Verify the Nameplate Size and the Maximum Generation Injection at Point of Interconnection and make sure the correct amounts are used;
4. Use 85% of the PowerDex hourly 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 Staff’s recommended changes.

Respectfully submitted this 4<sup>th</sup> day of May 2022.



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Riley Newton  
Deputy Attorney General

Technical Staff: Yao Yin  
Travis Culbertson

i:umisc/comments/avue22.4rnyytnc comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 4<sup>th</sup> DAY OF MAY 2022, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-22-04, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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