

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF JOINT PETITION OF ) CASE NO. AVU-E-22-07**  
**AVISTA CORPORATION AND FORD )**  
**HYDRO LIMITED PARTNERSHIP FOR )**  
**APPROVAL OF A POWER PURCHASE AND ) ORDER NO. 35489**  
**SALE AGREEMENT )**  
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On May 11, 2022, Avista Corporation d/b/a Avista Utilities (“Company”) and Ford Hydro Limited Partnership (“Seller”) (collectively, the “Parties”) petitioned the Commission for approval of a Power Purchase Agreement (“PPA”) for the sale of energy from Ford Hydro’s hydroelectric generating units (“Facility”), with a proposed effective date of July 1, 2022.

On June 17, 2022, the Commission issued a Notice of Application and Notice of Modified Procedure setting public comment and Company reply deadlines.

On June 23, 2022, the Company filed an Amended and Restated Power Purchase Agreement (“Amended PPA”) between the Company and the Seller that changed the term of the Amended PPA from one year to two. *See Amended Agreement* at p. 8, § 5.5. The Amended PPA also provides that it replaces the PPA in its entirety. *Id.* at p. 7, § 5.1.

On July 6, 2022, Commission Staff (“Staff”) filed comments recommending several changes to the Parties’ Amended PPA. On July 13, 2022, the Company filed reply comments and a draft Second Amended PPA—that the Company indicated it would finalize and submit for Commission review. The Company agreed with many of Staff’s recommended changes, but also advocated for permission to depart from certain recommendations.

On July 20, 2022, the Company filed a Second Amended PPA (“Second Amended PPA”) requesting Commission approval. The Second Amended PPA was signed on July 10, 2022, with a proposed effective date of July 1, 2022.

No public comments were submitted.

The Commission now issues this Order approving the Second Amended PPA.

**THE APPLICATION**

Under the proposed PPA, the Seller would sell net delivered output to the Company at the avoided cost rate for non-fueled projects. The Parties included the anticipated rates in Exhibit E. *Application* at 3; Exhibit E. For surplus energy, the Company proposed to pay the current month’s

market energy cost per megawatt-hour (“MWh”), or the net delivered cost, whichever is lower. *Id.* The Company would have the right—but not the obligation—to purchase any net delivered output from the Facility exceeding 1.499 megawatts (“MW”) in any hour. *PPA* at p. 8, § 6.2. The PPA provides that it is conditioned upon Commission approval and a determination that the prices paid for power delivered are just and reasonable, in the public interest, and that the costs are legitimate expenses. *PPA* at p. 7, § 5.2.

### **STAFF COMMENTS**

Staff reviewed the Company’s Application and Exhibits A-E, and recommended approval, if the following amendments were made to the Amended PPA: (1) Inclusion of the monthly generation estimates in Table No. 1; (2) wording changes clarifying provisions in Section 6.3.2 of the Amended PPA; (3) inclusion of provisions to address potential modifications to the Facility that may require Commission approval; (4) modification of Section 24 to reflect the need for Commission approval before an amendment to the Amended PPA is valid; (5) when the Parties update the Amended PPA, both parties need to sign and date it before submitting to the Commission for approval; (6) use of Staff’s proposed avoided cost rates in Table No. 2; (7) modification of the legally enforceable obligation (“LEO”) clarification paragraph to reflect the different timing establishing the LEO for the first year and second year of the Amended PPA; and (8) use of Staff’s proposed avoided cost rates for the first year of the lapse contract period.

### **COMPANY COMMENTS**

The Company indicated that they would submit a revised Second Amended and Restated Power Purchase Agreement (“Second Amended PPA”) similar to the draft attached to its Reply. The Company and Seller agreed with and incorporated many, but not all, of Staff’s recommendations in the draft Second Amended PPA.<sup>1</sup>

The Company disagreed with Staff recommendations on (1) inclusion of the monthly generation estimates in Table No. 1 to Staff’s comments (*Staff Recommendation 1*); (2) inclusion of provisions to address potential modification to the Facility that may require Commission approval (*Staff Recommendation 3*); and (3) use of Staff’s proposed avoided cost rates in Table

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<sup>1</sup> The Company proposed updates to Section 6.3.2 based on Staff’s recommended changes (*Staff Recommendation Number 2*). The Company modified Section 24 to expressly state the need for Commission approval. (*Staff Recommendation No. 4*), The Company agrees that both parties need to sign and date the Second Amended PPA before submitting to the Commission for approval. (*Staff Recommendation No. 5*).

No. 2; legally enforceable obligation (“LEO”) and use of avoided cost rates (*Staff Recommendations 6-8*).

***Inclusion of the Monthly Generation Estimates in Table No. 1 (Staff Recommendation No. 1)***

The Company argued that Staff misunderstood the timing for providing monthly estimates under Section 6.3.1. Under that Section, Seller was to provide monthly estimates for the first year on or before June 26, 2022, explaining that the monthly estimates are not typically included in the Company’s PPAs, but are provided to the Company prior to the effective date. The Company reasoned that it is impractical to provide monthly estimates in the Amended PPA because those estimates may be updated or revised. However, the Company stated that it would submit preliminary monthly generation estimates in its Second Amended PPA.

***Inclusion of Provisions to Address Potential Modifications to the Facility that may Require Commission Approval (Staff Recommendation No.3)***

The Company disagreed with Staff’s assertions that the Amended PPA did not contain any provisions to address potential modifications, and cited Section 6.2 of the Amended PPA, which states, “The maximum annual amount of electric power that Avista is obligated to purchase hereunder shall be 5,000. . .[MWh] in any Operating Year . . . .” The Company believes that this 5,000 MWh limitation is intended to ensure that the Facility cannot be modified to increase its capacity, while ensuring sufficient operational flexibility of the existing Facility.

Notwithstanding its disagreement, the Company addressed Staff’s Recommendation No. 3 by modifying Section 9.7 to expressly prohibit the Seller from modifying the Facility from the as-built description of the Facility in Exhibit D of the Amended PPA or to depart from the capacity size of 1.499 MW without the Company’s written consent and, if required, Commission approval. With this change to Section 9.7, the Company argued that the expectation is clear that if future modifications occur, the Seller would need a new agreement with the Company, and such agreement would be subject to Commission approval.

***LEO and Use of Avoided Cost Rates (Staff Recommendations 6-8)***

The Company disagreed that the LEO for the first year of the term should be based on the date the original PPA was entered by the Parties. The Company argued that neither Commission precedent nor Idaho law prohibits the Parties from mutually agreeing that the LEO arises on a date other than the execution date. The Company also argued that Staff took an impractical stance, because it creates an incentive to wait until new rates become effective to submit new agreements

even if the effective date of the agreement is subsequent to the avoided cost rate update. The Company argued that this approach would potentially leave the Commission without sufficient time to review and approve agreements before the effective date.

The Company also disagreed with Staff's assertion that the avoided cost rates in effect on June 1, 2022, should apply to the first year of the term and the avoided cost rates in effect after June 1, 2022 should apply to the second year of the term. The Company explained that the Parties chose to execute the PPA on May 11, 2022, to allow sufficient time for the Commission's review and approval of the PPA; however, the effective date is July 1, 2022, and the Parties should be able to use the avoided cost rates that became effective on June 1, 2022.

The Company also argued that Staff's reliance on Case No. AVU-E-19-16, Order No. 34692, (*Stimson Lumber*) is misplaced, because *Stimson* involved the parties executing an amendment to the agreement that extended the term, and did not terminate or supersede the underlying agreement. Even if the LEO can only arise on the date when the parties enter into an agreement and that the parties cannot mutually agree that the LEO arises on some other date, the Company argued that the original PPA was terminated and superseded in its entirety by the Amended PPA signed by the Company and Seller. The Company argued that the Amended PPA *terminates the Original Agreement*—including the execution date—resulting in an LEO arising on June 21, 2022—the date the Parties executed the Amended PPA. Therefore, the Company argued that Staff is not recognizing that by its terms, the Amended PPA “terminates, supersedes, and replaces the [PPA] in its entirety,” making the date of execution in the PPA irrelevant to the issue of when the LEO arose.

### **THE SECOND AMENDED PPA**

The Company submitted a Second Amended PPA on July 20, 2022. As with the Amended PPA, Seller would sell net delivered output to the Company at the avoided cost rate for non-fueled projects at the purchase prices in Exhibit E to the Second Amended PPA. (*Second Amended PPA*, Section 11.1; Exhibit E.) The Company requested that the Commission issue an order approving the Second Amended PPA and declare the prices to be just and reasonable, in the public interest, and the costs as legitimate. *Id.* at 7.

The Second Amended PPA was executed on July 10, 2022, and provided for a two-year term commencing on July 1, 2022, and clarified that the LEO under the Second Amended PPA was the date upon which the Parties executed the agreement. The Parties requested the applicable

Avoided Cost Rates for Non-Fueled Projects Smaller than Ten Average Megawatts (“aMW”) per month—Non-Levelized, in effect on the Effective Date of July 10, 2022. Exhibit E (Avoided Cost Rates for Non-Fueled Projects Smaller than Ten aMW per month (Non-Levelized)). The Parties’ existing PPA expired on June 30, 2022.

Again, the Company incorporated Staff Recommendations 2, 4 & 5, but departed from Staff Recommendations 1, 3 & 6-8 for the reasons outlined in the Company’s Reply.<sup>2</sup> Because the Second Amended PPA is different in several respects, and Staff’s recommendations were not directed at the Second Amended PPA, many of the issues have resolved and the arguments raised no longer apply.

***The Second Amended PPA’s Inclusion of the Monthly Generation Estimates in Table No. 1 (Staff Recommendation No. 1)***

The Company registered its disagreement with Staff’s recommendation due to practicality concerns, but included monthly generated estimates in Exhibit F.

***The Second Amended PPA’s Inclusion of Provisions to address Potential Modifications to the Facility that may require Commission approval (Staff Recommendation No. 3)***

The contract term was first changed in the Amended PPA from one to two-years, which term was included in the Second Amended PPA. The Company agreed that modifications may require Commission approval and included language to address potential modification. Section 9.7 *Modifications to the Facility/Avista Right to Inspect*, states “the Project Developer shall not modify the Facility from the as-built description of the Facility in Exhibit D without Avista’s written consent and, if required, Commission approval.”

***The Second Amended PPA’s LEO and Use of Avoided Cost Rates (Staff Recommendations Nos. 6-8)***

Due to revisions, the Second Amended PPA’s LEO and use of Avoided Cost Rates avoids the issues raised by Staff’s recommendations and the Company’s comments. The Second Amended PPA was executed on July 10, 2022, and clarified that the LEO was the date upon which the Parties executed the Second Amended PPA. The Parties requested the applicable avoided cost rates for non-fueled projects smaller than ten aMW per month—non-levelized, in effect on the

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<sup>2</sup> Page 21 of the Second Amended PPA includes both parties; signatures and the date of execution, although there is a duplicate Page 21 to the Second Amended PPA that only contains the Seller’s signature.

effective date of July 10, 2022. Exhibit E (Avoided Cost Rates for Non-Fueled Projects Smaller than Ten aMW per month (Non-Levelized)).

### **COMMISSION DISCUSSION AND FINDINGS**

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-501, -502, and -503. *Idaho Code* § 61-501 authorizes the Commission to “supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the [Public Utilities Law].” 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 -503. In addition, the Commission has authority under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and Federal Energy Regulatory Commission (“FERC”) regulations to set avoided costs, to order electric utilities to enter fixed-term obligations for the purchase of energy and capacity from qualifying 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 Company’s Application, Staff’s comments, the Company’s reply comments, the Amended PPA and Second Amended PPA. We appreciate that the Parties have substantially incorporated Staff’s recommendations in in the Second Amended PPA. With respect to the modification to Section 9.7 *Modifications to the Facility/Avista Right to Inspect*, we remain persuaded that the statement should be updated consistent with Staff’s recommendations to reflect the significance of Commission approval. This can be accomplished by replacing the first sentence of Section 9.7 from “Project Developer shall not modify the Facility from the as-built description of the Facility in Exhibit D without Avista’s written consent and, if required, Commission approval” to the following: “Any modifications to the Facility from the as-built description of the Facility in Exhibit D shall not be valid unless set forth in a written amendment to this Agreement signed by both Parties and subsequently approved by the Commission.” With this additional change to Section 9.7 to be reflected in an amended Second Amended PPA to be submitted to the Commission, and recognizing the substantial incorporation of Staff’s recommendations, we find it to be fair, just, and reasonable to approve the Company’s Second Amended PPA.

**ORDER**

IT IS HEREBY ORDERED that the Parties' Second Amended PPA is approved, effective as of July 1, 2022, provided the Parties update Section 9.7 *Modification to the Facility/Avista Right to Inspect* as described above. The Parties are directed to provide the Commission with an updated Second Amended PPA as a compliance filing within fifteen (15) days of this Order being issued.

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 regarding 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. *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8<sup>th</sup> day of August 2022.



ERIC ANDERSON, PRESIDENT

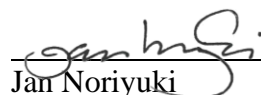


JOHN CHATBURN, COMMISSIONER



JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:



Jan Noriyuki  
Commission Secretary