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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF JOINT PETITION OF** )  
**AVISTA CORPORATION AND FORD** ) **CASE NO. AVU-E-22-07**  
**HYDRO LIMITED PARTNERSHIP** )  
)  
) **COMMENTS OF THE**  
) **COMMISSION STAFF**  
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**STAFF OF** the Idaho Public Utilities Commission (“Staff”), by and through its Attorney of record, Claire Sharp, Deputy Attorney General, submits the following comments.

**BACKGROUND**

On May 11, 2022, Avista Corporation d/b/a Avista Utilities (“Company”) and Ford Hydro Limited Partnership (“Seller”) (collectively, “Parties”) executed a Power Purchase Agreement (“PPA”), concerning the sale of energy from the Seller’s hydroelectric generating unit near Weippe, Idaho (the “Facility”). The Facility is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The proposed PPA will replace a prior contract executed in 1985 (“1985 Contract”), which expires on June 30, 2022.

On the same day, the Parties filed the PPA with the Commission for approval.

On June 23, 2022, the Parties filed an Amended and Restated Power Purchase Agreement (“Amended PPA”) with the Commission for approval, amending the contract term from one year to two years and providing avoided cost rates for two years.

## **STAFF REVIEW**

Staff’s review focused on the Contract Term, Capacity Size, Capacity Payment Eligibility, Monthly Generation Estimates, Advanced Notice for Adjusting Monthly Generation Estimates, Maximum Annual Amount, Potential Modifications to Facility, Section 24, Signature Page, Avoided Cost Rates, Legally Enforceable Obligation (“LEO”) Clarification Paragraph, and Lapse Contract Period. Staff recommends that the Parties further amend the Amended PPA to reflect the following:

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 the PPA before submitting to the Commission for approval;
6. Use of Staff’s proposed avoided cost rates in Table No. 2;
7. Modification of the 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.

### Contract Term

The PPA was a one-year contract. However, the Parties amended the contract term to two years in the Amended PPA. Staff believes this mutually agreed-upon change is acceptable.

### Capacity Size

The 1985 Contract stated that the capacity size was 1,500 kilowatts (“kW”), but the Amended PPA states that the capacity size is 1,499 kW. Response to Staff’s Production Request No. 2 states that the 1,499 kW is the current capacity provided by Project Developer, and the Company is not clear why the 1985 Contract stated 1,500 kW. Because the actual capacity size in the Amended PPA is smaller than that stated in the 1985 Contract, it does not create any issues. Accordingly, the maximum hourly scheduled amount of Net Delivered Output is set at 1.499 megawatt (“MW”). Staff believes this is reasonable and reflects the actual capacity size.

### Capacity Payment Eligibility

Staff believes that the Facility should be granted immediate capacity payments for the full term of the Amended PPA. In Order No. 32697, the Commission stated 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.” Because the 1985 Contract contained capacity payments, Staff recommends immediate capacity payments for the full term.

### Monthly Generation Estimates

The Amended PPA does not include monthly generation estimates for the purpose of the 90/110 Rule; therefore, Staff recommends its inclusion. The 90/110 Rule requires a QF to provide utilities with a monthly estimate of the amount of energy the QF expects to produce. If the QF delivers more than 110 percent of the estimated amount, then the utility must buy the excess energy for the lesser of 85 percent of the market price or the contract price. If the QF delivers less than 90 percent of the estimated amount, then the utility must buy total energy delivered for the lesser of 85 percent of the market price or the contract price. *See* Order No. 29632. However, the monthly generation estimates are not provided in the Amended PPA. Response to Staff’s Production Request No. 8 provides the monthly generation estimates below. Staff recommends inclusion of the estimates in the Amended PPA:

**Table 1. Monthly Generation Estimates**

<b>Month</b>	<b>Amounts in kWhs</b>
January	438,000
February	520,000
March	648,000
April	664,000
May	248,000
June	75,000
July	0
August	0
September	0
October	0
November	0
December	180,000

Advanced Notice for Adjusting Monthly Generation Estimates

Staff believes the timeframes of advanced notice for adjusting monthly generation estimates are reasonable. Section 6.3.2 describes a timeframe of at least one-month in advance to adjust monthly generation estimates, and Section 6.3.5 describes an additional timeframe of three months in advance to adjust monthly generation estimates. Because both timeframes were allowed by the Commission in the past (*see* Order Nos. 29632 and 33103), Staff believes it is acceptable to use both when the Parties prefer the combination of the two timeframes. However, Staff recommends language improvements for Section 6.3.2, which states:

Prior to the end of the first month following the Effective Date, and *prior to* the end of every month thereafter, Project Developer may provide to Avista updated monthly Net Delivered Output estimates for the month following the next month...Project Developer may provide such monthly Net Delivered Output estimates to Avista by written notice in accordance with Section 29, no later than 5:00 p.m. of the last business day of the month *during* which they are required to be provided.

Staff recommends that “*during*” be replaced with “*by*” in Section 6.3.2. Because the Project Developer is allowed to provide the updates in earlier months *prior to* the final deadline, it is not accurate to state that the estimates are required to be provided *during* the last month.

#### Maximum Annual Amount

The Parties agreed to a maximum annual generation amount of 5,000 megawatt-hours (“MWhs”). Staff believes it is acceptable when the Parties mutually agree to a maximum annual generation, as long as the Facility will not generate more than 10 average MW in any given month. Order No. 29632 states:

By way of eligibility criteria, we find it reasonable for the utility to make an initial capacity determination and require that the QF demonstrate that under normal or average design conditions the project will generate at no more than 10 aMW in any given month. To provide further definition and sideboards, we also find it reasonable to cap the maximum monthly generation that qualifies for published rates at the total number of hours in the month multiplied by 10 MW.

Order No. 32697 further states that published avoided cost rates for resources other than wind and solar are available for projects up to 10 aMW. Therefore, the monthly generation is capped at 7,440 MWhs, if a month has 31 days, or at 7,200 MWhs, if a month has 30 days. Given the fact that the maximum hourly output is set at 1.499 MW, which results in a maximum monthly output of 1,115 MWhs (31 days) or 1,079 MWhs (30 days), the cap of 10 aMW in a month will not be challenged. Therefore, Staff believes the maximum annual generation amount of 5,000 MWhs is acceptable.

In terms of the purpose of the mutually agreed-upon maximum annual amount, the Company explains that it would allow for an above-normal water and generation year while providing a cap to avoid significant generation increases due to unanticipated operational changes as a result of facility upgrades.<sup>1</sup> See Response to Production Request No. 9. The response also explains why the same cap is used for both Leap and non-Leap years: the amount is flexible enough to not be affected by one day’s generation.

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<sup>1</sup> The Amended PPA does not contain any provision that requires amendment to the PPA when modifications to the Facility occur.

### Potential Modifications to Facility

The Amended PPA does not contain any provisions that address potential modifications to the Facility. Staff recommends that the Parties further amend the Amended PPA to include such provisions. Although Section 24 states that “[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 “change, amendment or modification of any provision” is not equivalent to a change in the Facility. For example, a QF could modify its facility, increasing its capacity and its output without modifying its contract. This would result in overpayments to the QF by allowing it to receive compensation for potential increases in output due to facility upgrades prior to the Company’s need for additional capacity.

Potential modifications to the Facility for the Parties to consider include, but are not limited to, nameplate capacity changes, generation output changes,<sup>2</sup> QF categories<sup>3</sup> (Small Power Production Facilities vs. Cogeneration Facilities), changes to the primary energy sources (non-seasonal hydro, seasonal-hydro, wind, solar, and others), and changes to the generator fuel<sup>4</sup> (which could lead to the options of Fueled Rates vs Non-Fueled Rates).

Generally, there are two types of modifications to a facility. The first type happens when a project is first built, and the completed project deviates from what was approved in the contract. The second type happens during the contract term after the project is built where modifications are made to the originally-built project. In order to address the first type of modifications, the Commission issued Order No. 35239 requiring new QFs to submit an “as-built” description of their facilities by the first operation date. If the “as-built” description does not match the description in the original, approved contract, the contract should be amended to reflect the “as-built” description. For the second type of modifications, Staff believes there are two options. The first requires an “as-built” description<sup>5</sup> in the contract and a provision that any major modifications causing the project to deviate from the “as-built” description will trigger an amendment to the contract requiring Commission approval. The second solution does not

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<sup>2</sup> Generation output changes are not necessarily correlated with nameplate capacity changes; generation output can change with the nameplate capacity staying the same.

<sup>3</sup> A QF can switch from a small power production facility to a cogeneration facility. See example of Case No. IPC-E-19-39.

<sup>4</sup> A QF can also switch from non-fueled rates to fueled rates. See example of Case No. IPC-E-19-39.

<sup>5</sup> Staff notes that Exhibit D of the Amended PPA includes a description of the Facility, but the description does not describe the capacity size of 1.499 MW.

require an “as-built” description, but instead lists in the contract all the items that can trigger an amendment to the contract and subsequently require approval from the Commission, such as the items listed in the previous paragraph.

Because the Amended PPA includes a description of the Facility in Exhibit D, Staff recommends that the Parties use the first option and include provisions that:

1. Restrict the Seller from modifying the Facility from the as-built description of the Facility included in Exhibit D or from the capacity size of 1.499 MW without promptly notifying the Company of that intent.
2. With notification, Seller provides planned modifications to the as-built description and any resulting increases to the capacity size of the Facility.
3. Once the Company verifies commitment of the Seller’s intent and concurs that the Seller is capable of providing such increases to the capacity size of the Facility, the incremental net output may not be at the rates approved by the Commission, but instead will be priced at the appropriate avoided cost rates in effect at the time a new LEO is established for such increases. As such, the Company will be required to file an amendment to the contract for approval by the Commission with then-current pricing for the incremental net output.
4. If planned modifications to the Facility, as reflected in the proposed, new as-built description of the Facility, results in an additional project such that the Facility combined with the additional project would still be deemed a single QF or on the same site under FERC regulations, Seller may not require the Company to purchase and the Company will have no obligation to purchase pursuant to this Agreement, the output of any such additional facility under the terms, conditions, and prices in the Agreement. Instead, Seller may exercise any rights to enter into a new agreement for the sale of such incremental energy from the additional facility that is a QF under then-applicable laws and regulations.
5. If the actual modification deviates from the proposed modification, the Parties need to amend the Agreement again to reflect the actual modification and seek approval from the Commission.
6. The Seller will be in default if it does not adhere to any of the above.

## Section 24

Section 24 of the Amended PPA states that “[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 any modification becomes valid. For example, the statement can be updated as follows: No 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*.

## Signature Page

The signature page of the Amended PPA shows that Ford Hydro signed the contract on June 21, 2022. However, the Company’s signature was not dated. Staff recommends both Parties sign and properly date when the Parties update the Amended PPA.

## Avoided Cost Rates

The original PPA filed with the Commission was executed on May 11, 2022, for a one-year term, but the Parties proposed to use avoided cost rates effective after June 1, 2022. The Amended PPA was executed after June 1, 2022,<sup>6</sup> for a two-year term, and the Parties proposed to use avoided cost rates effective after June 1, 2022, for both years. However, Staff recommends using avoided cost rates contained in Table 2 that include the rates effective before June 1, 2022, for the first year of the contract and the rates effective after June 1, 2022, for the second year of the contract. Staff believes this treatment reflects the applicable avoided cost rates when a LEO is established and is also consistent with Commission’s decision in Order No. 34692 in Case No. AVU-E-19-16.

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<sup>6</sup> Ford Hydro signed the Amended PPA on June 21, 2022, and the Company’s signature was not dated.



**Table 2. Staff's Proposed Avoided Cost Rates**

Period		Season 1(\$/MWh)		Season 2(\$/MWh)	
		Heavy	Light	Heavy	Light
		Load	Load	Load	Load
		Hour	Hour	Hour	Hour
Year 1	July 1, 2022-December 31, 2022	60.27	54.87	46.88	42.68
Year 1	January 1, 2023-June 30, 2023	59.66	54.26	46.41	42.21
Year 2	July 1, 2023-December 31, 2023	64.75	59.35	50.36	46.16
Year 2	January 1, 2024-June 30, 2024	63.12	57.72	49.09	44.89

In terms of a LEO, Staff's recommendation is based on the Commission's decision in Order No. 34692 in Case No. AVU-E-19-16 (the Stimson Lumber case). In that case, the original agreement proposed a one-year term, and later amended the agreement, extending the term to two years, but the avoided cost rates had changed before the amended agreement was executed. Order No. 34692 states:

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.

Staff believes the proposed treatment of basing the rate on the date of contract execution is consistent with Stimson Lumber.

In Response to Staff's Production Request No. 7, the Company argued that the Effective Date of the proposed PPA is July 1, 2022, and that the Parties can mutually agree the LEO arises at some date other than the date of execution. Staff disagrees with the Company, because the Commission based the rate on the date of contract execution in Stimson Lumber, and there is no need for a determination regarding any other LEO when a contract has been entered into by the parties and submitted to the Commission for approval.

Therefore, Staff believes the Parties should use the avoided cost rates effective on May 11, 2022, for the first year. Additionally, the main purpose of the Amended PPA is to extend the contract term and include a second year. Staff does not believe the execution of the Amended PPA should affect the LEO established for the first year.

#### LEO Clarification Paragraph

The Amended PPA includes a LEO clarification paragraph that states:

WHEREAS, the Parties have agreed to revise the May 11 Agreement to provide for a two-year term commencing on July 1, 2022, and to clarify that the Legally Enforceable Obligation under this Agreement<sup>7</sup> shall be the date upon which the Parties execute this Agreement.

Staff believes that the LEO for the first year was established on May 11, 2022, when the PPA was executed and that the LEO for the second year was established after June 1, 2022, when the Amended PPA was executed. Therefore, Staff recommends that the Parties modify the LEO clarification paragraph to reflect the different timing.

#### Lapse Contract Period

The 1985 Contract expired on June 30, 2022, and the Amended PPA's Effective Date is July 1, 2022, or such other date as ordered by the Commission. Assuming the Commission decides to adopt Staff's recommendations and requires the Parties to file an updated Amended PPA, Staff recommends that the QF be paid for energy and capacity during the period between July 1, 2022, and the Commission's final approval of the updated Amended PPA ("Lapse Contract Period") based on Staff's proposed avoided cost rates for the first year. This is consistent with the Commission's decision in Order No. 34692.

#### **STAFF RECOMMENDATIONS**

Staff recommends Commission approval of the Amended PPA if it is updated to reflect the following:

1. Inclusion of the monthly generation estimates in Table No. 1 included in these comments;


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<sup>7</sup> The "Agreement" refers to the Amended PPA, which was executed after June 1, 2022.

2. Implement Staff's 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 the PPA before submitting to the Commission for approval;
6. Use of Staff's proposed avoided cost rates in Table No. 2;
7. Modification of the 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 for the lapse contract period.

If the Commission approves Staff's recommendations, the Parties should file an updated Amended PPA as a compliance filing to reflect Staff's recommended changes.

**Respectfully** submitted this 6<sup>th</sup> day of July, 2022.

  
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Claire Sharp  
Deputy Attorney General

Technical Staff: Yao Yin

i: umisc/comments/avue22.7csyy comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 6<sup>TH</sup> DAY OF JULY 2022, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-22-07, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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