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IDAHO PUBLIC
UTILITIES COMMISSION

December 8, 2023

Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd. Bldg. 8, Ste. 201-A
Boise, Idaho 83714

RE: AVU-E-23-15 – Power Purchase Agreement between Avista Corporation and Clearwater Paper Corporation

Included for filing with the Commission is the electronic copy of Avista Corporation and Clearwater Paper Corporation's Joint Reply Comments to Staff Comments submitted on December 5, 2023.

Should you have any questions regarding this filing, please do not hesitate to call Michael Andrea at (509) 495-2564. Thank you in advance for your assistance.

Sincerely,

/s/ Paul Kimball

Paul Kimball
Mgr. of Compliance & Discovery

Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AVISTA)
CORPORATION'S AND CLEARWATER) CASE NO. AVU-E-23-15
PAPER CORPORATION'S JOINT PETITION)
FOR APPROVAL OF AMENDMENT NO. 1) JOINT REPLY COMMENTS OF
TO POWER PURCHASE AND SALE) AVISTA CORPORATION AND
AGREEMENT) CLEARWATER PAPER
) CORPORATION
)
_____)

Avista Corporation ("Avista") and Clearwater Paper Corporation ("Clearwater") respectfully submit the following reply comments in response to the comments of Idaho Public Utility Commission ("Commission") Staff submitted on December 5, 2023 ("Staff Comments") on the amendment to extend the Power Purchase and Sale Agreement ("Clearwater Agreement") between Avista and Clearwater through December 31, 2026. Unless the Clearwater Agreement is extended as requested in Avista's and Clearwater's joint petition submitted in the above-captioned matter on October 2, 2023, the Clearwater Agreement will expire on December 31, 2023. Accordingly, Avista and Clearwater respectfully requests expedited review of the amendments submitted in this proceeding and that the Commission issue an order approving the

Clearwater Agreement effective January 1, 2024, subject to a compliance filing as further discussed herein.

As discussed below, Avista and Clearwater appreciate Staff's diligence and are amenable to making most of the proposed modifications to the Clearwater Agreement recommended by Staff. Avista and Clearwater provide the following reply comments to Staff's Comments.

I. Reply Comments

On October 2, 2023, Avista and Clearwater filed a joint petition for approval of Amendment No. 1 to the Clearwater Agreement. The sole purpose of Amendment No. 1 was to extend the term of the Clearwater Agreement, which was originally approved by the Commission on February 27, 2019,¹ for an additional three years. Accordingly, Avista and Clearwater submitted an amendment to the Clearwater Agreement ("Amendment No. 1") to (i) update Section 3(a) of the Clearwater Agreement to reflect the extended term such that the Clearwater Agreement will terminate on December 31, 2026, and (ii) to update section 5(a) of the Clearwater Agreement to reflect the corresponding amendment to the related Transaction Confirmation: Resource Contingent Bundled REC - Energy and Green Attributes ("REC Agreement") that is Exhibit F to the Clearwater Agreement.

On November 27, 2023, Avista submitted a second amendment ("Amendment No. 2") to the Clearwater Agreement to correct some minor typographical errors. Amendment No. 2 also provides the updated REC Agreement as Revised Exhibit F.

On December 5, 2023, Staff submitted comments, including nine recommendations. Avista and Clearwater have reviewed the Staff Comments. As discussed below, Avista and

¹ Order No. 34252,

Clearwater accept most of Staff's recommendations and are prepared to submit a compliance filing consistent with the Commission's order in this matter to update the Clearwater Agreement.

Avista and Clearwater provide the following responses to Staff's specific recommendations.

A. Staff's Recommendation to Modify the Delivery Schedule in the REC Agreement from 0-96 MW to 0-80 MW Through an Amendment to the REC Agreement Should be Rejected.

In the Staff Comments, Staff recommends that Avista and Morgan Stanley "modify the delivery schedule from 0-96 MW to 0-80 MW through an updated Amendment No. 2 of the [REC Agreement]."² Staff's asserts that this modification to the REC Agreement is necessary because "the capacity size of the Facility exceeds the capacity limit for PURPA QFs, which will disqualify the Facility as a PURPA QF."³ Staff is incorrect for two reasons.

First, the Facility is a "cogeneration facility" as defined by the Federal Energy Regulatory Commission's regulations.⁴ In contrast to other types of QFs, cogeneration facilities are not subject to the 80 MW size limitation.⁵

Second, the delivery schedule in the REC Agreement is not determinative of whether the Facility is or is not a QF. The Facility is a QF because it satisfies the requirements for a

² Staff Comments at 2, 3-4, 10 (Staff Recommendation No. 1).

³ Staff Comments at 3.

⁴ 18 C.F.R. § 292.202(c).

⁵ See 18 C.F.R. § 292.203(b) (specifying the requirements for a cogeneration facility to be a QF); 18 C.F.R. § 292.101(b) (defining "qualifying facility" to mean a cogeneration facility or a small power production facility); see also *Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility*, 130 FERC ¶ 61,214, PP 24, 33 (2010) (discussing requirements for small power production or cogeneration facilities separately and clarifying that cogeneration facilities must satisfy the requirements in 18 C.F.R. § 292.203(b) to qualify as QFs); PURPA Title II Compliance Manual 2.0 (2021) at 12 available at pubs.naruc.org (stating: "Unlike small power production facility QFs, there is no size limitation on cogeneration QFs.").

Cogeneration Facility to be a QF and Clearwater has certified it as a QF. Even assuming that the Facility was subject to the 80 MW size limit to be a QF (which as explained above, it is not), the delivery schedule in the REC Agreement does not, by itself,⁶ have any bearing on whether the Facility is or is not a QF. Therefore, modification of the REC Agreement is not necessary.⁷

B. Avista and Clearwater will Amend the Clearwater Agreement to Adopt Updated Avoided Cost Rates for the 2024-2026 and Avista will Update Schedule 25P.

As noted by Staff, Avista did not update the avoided cost rates for the extended contract term (2024-2026) and, therefore, recommends that Avista and Clearwater Amend the Clearwater Agreement to adopt avoided cost rates for 2024-2026 based on the 80 MW capacity size and the model inputs effective on the signature date of October 2, 2023.⁸ Staff further recommended that Schedule 25P, which is included as Exhibit B to the Clearwater Agreement, be replaced by the new Schedule 25P approved in Case No. AVU-E-23-01 (Avista's 2023 general rate case).⁹

As described in the petition requesting approval of the Clearwater Agreement in Case No. AVU-E-18-13, under the terms of the Clearwater Agreement: "Avista will sell to Clearwater all of Clearwater's required energy and capacity at the [then-]new Schedule 25P Block 2 PURPA rate of \$24.50/MWh and would purchase all of the output from Clearwater's Generation, including the RECs at the same PURPA rate of \$24.50/MWh."¹⁰ In other words, Avista's

⁶ To be sure, if a QF that is subject to the 80 MW size limit actually did exceed that size limit, that would impact that facility's status as a QF, but a delivery schedule in the REC Agreement does not, by itself, have any bearing on the facility's status as a QF.

⁷ Clearwater agrees that its Facility is a cogeneration facility that is not subject to the 80 MW size cap applicable to other types of QFs and that the delivery schedule in the REC Agreement has no bearing on the Facilities status as a QF. Clearwater further asserts that the Facility is a QF. See FERC Docket Nos. QF83-142, QF83-143, QF83-144, and QF92-64. Clearwater is not a party to the REC Agreement, which is an agreement between Avista and Morgan Stanley Capital Group ("Morgan Stanley"). Accordingly, Clearwater takes no position on any issues regarding the REC Agreement.

⁸ Staff Comments at 2-3, 4-5, 10 (Staff Recommendation No. 2).

⁹ Staff Comments at 3, 8, 10 (Staff Recommendation No. 5).

¹⁰ Joint Petition of Avista and Clearwater filed in Case No. AVU-E-18-13 on November 29, 2018 ("Original Petition") at 4.

purchase of Clearwater's output and its sale of a commensurate amount of energy and capacity are at the same rate. The Clearwater Agreement expressly contemplates that Schedule 25P (and other tariff schedules) may be amended and approved by the Commission from time to time and that, notwithstanding the then-current Schedule 25P rates, the applicable rates will be the rates in Avista's Commission-approved tariff as it may be amended and approved by the Commission from time to time.¹¹

Avista will update Schedule 25P as recommended by Commission Staff. Avista and Clearwater will also further amend the Clearwater Agreement to update the avoided cost rate. However, as discussed above, the Facility is not subject to the 80 MW size limitation and, therefore, Staff's recommendation to update the avoided cost rates based on the 80 MW size cap should be rejected. The updated avoided cost rate will be updated to be consistent with the model inputs effective on October 2, 2023, and the updated Schedule 25P.

Avista proposes to update the rate for energy and capacity in Schedule 25P to \$39.06¹² per MWh in a compliance filing. This price is the 2024-2026 levelized northwest energy price from the 2023 IRP. Given forward markets are not traded for the future periods of this contract and the uncertainty of Washington's Climate Commitment Act's future, using the forward price curve is inappropriate.

¹¹ Clearwater Agreement at Section 7.

¹² The Block 2 PURPA rate will be grossed up for revenue related expenses associated with Commission Fees in order to make the new agreement cost neutral for customers. The Commission Fee gross up results in a Block 2 rate of \$39.14 per MWh for Schedule 25P.

C. Avista and Clearwater will Amend the Clearwater Agreement to include 90/110 Provisions.

Commission Staff recommends amending the Clearwater Agreement to include the 90/110 provisions.¹³ The original Clearwater Agreement did not include the 90/110 performance standard that is generally required in Idaho PURPA agreements where the avoided cost rate is determined based on the date of the legally enforceable obligation. Unlike other firm PURPA agreements, Avista does not rely on the output of Clearwater's Facility to serve its load. Instead, the output of the Clearwater Facility is sold to a third party pursuant to the REC Agreement. As explained in the Original Petition requesting approval of Clearwater Agreement in Case No. AVU-E-18-13: "Sales of Clearwater-related bundled RECs by Avista to the Third Party will be based on actual deliveries from Clearwater to Avista."¹⁴

Because Avista and Clearwater have a legally enforceable obligation, Staff recommends amending the Clearwater Agreement to include the 90/110 performance standard.¹⁵ Avista and Clearwater will, in a compliance filing, amend the Clearwater Agreement to include the 90/110 performance standard.

D. Avista¹⁶ will Work with Morgan Stanley to Update Section 2 of Amendment No. 2 of REC Agreement to Expressly Require Commission Approval for any Change to the Pricing Provisions in the REC Agreement.

In the Staff Comments, Staff notes that in Section 2 of Amendment 2 to the REC Agreement, the energy price is based, in part, on the Intercontinental Exchange ("ICE") on peak and off peak daily index followed by a parenthetical that states "or mutually agreed to

¹³ Staff Comments at 3, 6, 10 (Staff Recommendation No. 3).

¹⁴ Original Petition at 7.

¹⁵ Staff Comments at 6.

¹⁶ The REC Agreement is an agreement between Avista and Morgan Stanley. Clearwater is not a party to the REC Agreement and, therefore, Clearwater does not join in the comments, and takes no position, with regard to this Section I.D. and Staff Recommendation No. 3.

alternative”.¹⁷ This parenthetical is included in Section 2 both for the Powerdex Mid-Columbia (“Powerdex”) index applicable to Delivery Period 1 (Section 2(a) of Amendment 2) and the ICE indices applicable to Delivery Period 2 (Section (2)(b) of Amendment 2) and is included to address the potential that the Powerdex and/or ICE indices could be discontinued during the term of the REC Agreement. Staff asserts that it believes that if a mutually agreed-to alternative is adopted, the alternative needs to be approved by the Commission and, therefore, Staff recommends amending Section 2 to indicate that any mutually agreed to alternative is required to be approved by the Commission.¹⁸

As a threshold matter, the REC Agreement is a bundled energy and REC agreement with Morgan Stanley. The REC Agreement is provided as an exhibit to the Clearwater Agreement solely to provide the Commission visibility into the REC Agreement because the Clearwater Agreement was contingent upon the REC Agreement. As explained in the Original Petition: The [Clearwater] Agreement is expressly conditioned on the existence of the agreement with the Third Party.”¹⁹

Bundled energy and REC agreements such as the REC Agreement are not generally filed with and approved by the Commission. More fundamentally, the rates paid for output of the Facility under the Clearwater Agreement are based on Avista’s Schedule 25P, not the REC Agreement. Nevertheless, Avista is willing to amend the REC Agreement as recommended by Staff. Avista notes, however, that such amendment will need to be agreed to by Morgan Stanley. Accordingly, Avista’s ability to provide that amendment is subject to Morgan Stanley’s agreement to such amendment.

¹⁷ In the Staff Comments, Staff points to Section 2(a) of Amendment 2 to the REC Agreement. It appears, however, that Staff intended to point to Section 2(b).

¹⁸ Staff Comments at 3, 6-7, 10 (Staff Recommendation No. 4).

¹⁹ Original Petition at 7.

E. Avista and Clearwater Will Update Section 24 of the Clearwater Agreement to Reflect the Significance of Commission Approval as Recommended by Staff.

On compliance, Avista and Clearwater will amend Section 24 of the Clearwater Agreement as recommended by Staff to indicate that any amendment to the Clearwater Agreement requires Commission approval.²⁰

F. Avista and Clearwater will Update the Clearwater Agreement to Address Possible Modifications to the Facility as Recommended by Staff.

Staff recommends that Avista and Clearwater update the Clearwater Agreement to include additional language to address potential modifications to the Facility in accordance with Order No. 35705.²¹ Avista notes that the Clearwater Agreement is a contract to purchase the output from the Facility as defined in the agreement. Any material modification of the Facility that, for example, changed the type of fuel for the facility or resulted in a material change in capacity, would, therefore, require an amendment to the Clearwater Agreement. Avista and Clearwater have no objection to addressing such modifications consistent with Order No. 35707 as recommended by Staff.

G. If Clearwater Modifies the Facility in the Future, Avista will only Include Net Power Cost (“NPC”) in the Power Cost Adjustment (“PCA”) that Reflects Rates for Any Energy Delivered Appropriate for the Facility as Modified, Regardless of the Compensation Paid to the Seller.

Staff recommends that, if Clearwater modifies the Facility in the future, the Company only include NPC in the PCA any energy delivered appropriate for the Facility as modified, regardless of the compensation paid to the Seller.²² Avista agrees with this recommendation.²³

²⁰ Staff Comments at 3, 8, 10 (Staff Recommendation No. 6).

²¹ Staff Comments at 3, 9-10 (Staff Recommendation No. 7).

²² Staff Comments at 3, 10 (Staff Recommendation No. 8).

²³ Avista’s inclusion of NPC in its PCA is an Avista-only issue and, therefore, Clearwater does not join in this Section I.G. and Clearwater takes no position with regard to Staff Recommendation No. 8.

H. The Extension of the Contract Term of Any Existing PURPA Agreement be Treated as a Renewal Agreement, Instead of an Amendment.

Staff recommends that an extension of the contract term of an existing PURPA Agreement be treated as a renewal agreement, instead of an amendment.²⁴ Avista and Clearwater agree with this recommendation.


II. Conclusion

Avista and Clearwater appreciate the opportunity to submit these reply comments. The parties respectfully request that the Commission approve the amendments extending the term of the Clearwater Agreement through December 31, 2026, with an effective date of January 1, 2024, subject to a compliance filing. The Clearwater Agreement is currently due to expire pursuant to its terms on December 31, 2023. Accordingly, Avista and Clearwater respectfully request that the Commission issue an order as soon as possible, but no later than December 31, 2023, to ensure that the extension to the Clearwater Agreement will become effective upon the expiration of the current Clearwater Agreement.

DATED this 8th day of December, 2023.

/s/ Michael G. Andrea

Michael G. Andrea
Attorney for Avista Corporation



Peter Richardson
Attorney for Clearwater Paper Corporation

²⁴ Staff Comments at 3, 10 (Staff Recommendation No. 9).