BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AVISTA CORPORATION'S AND CLEARWATER PAPER CORPORATION'S JOINT PETITION FOR APPROVAL OF AMENDMENT NO. 1 TO POWER PURCHASE AND SALE AGREEMENT	)))))))	**CASE NO. AVU-E-23-15** **ORDER NO. 36046**

On October 2, 2023, Avista Corporation ("Avista" or "Company") and Clearwater Paper Corporation ("Clearwater") (collectively the "Parties") filed a Joint Petition ("Petition") seeking Commission approval to amend their 2018 Power Purchase and Sale Agreement ("2018 PPA" or "Clearwater Agreement") ("Petition"). Also relevant to this Petition is an agreement that, according to Avista, is strictly between itself and Morgan Stanley. After Avista buys Renewable Energy Credits ("RECs") from Clearwater, this agreement outlines the terms for selling these RECs to Morgan Stanley ("REC Agreement" or "Morgan Stanley Agreement").[1] Supplemental materials were filed concurrently with the Petition. The Parties requested a three-year extension of the 2018 PPA and authority to file a revised Schedule 25P. The Parties also requested that this case be processed by Modified Procedure.

On November 9, 2023, the Commission issued a Notice of Petition and Notice of Modified Procedure establishing public comment and Party reply deadlines. Order No. 35992. Commission Staff ("Staff") filed comments to which the Parties replied. On November 27, 2023, the Company filed a revised version of Amendment No. 2 to the PPA. Attachment A to this filing also contained information relative to the REC Agreement and its amendments.

With this Order, the Commission approves the Parties' Petition as discussed below.

BACKGROUND AND PETITION

The Commission approved the 2018 PPA which is set to expire on December 31, 2023. Order No. 34252. The Parties stated that Clearwater has business ventures that include manufacturing paper in Nez Perce County, Idaho. Clearwater operates a generation facility ("Facility") that generates approximately 132.2 megavolt-amperes ("MVA"). The Facility is a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

[1] The term "Parties" refers to only Avista and Clearwater. Morgan Stanley shall be referenced individually.

The 2018 PPA also contained a provision whereby Avista buys bundled RECs from Clearwater's biomass generation that are then sold to Morgan Stanley with Clearwater receiving 90% and Avista receiving 10% of the net revenues. Idaho receives 100% jurisdictional allocation of the revenue from the sale of Clearwater's RECs.

In this case, there are two separate agreements each with two amendments; the agreements are the original 2018 PPA between Avista and Clearwater and the REC Agreement that Avista stated was between itself and Morgan Stanley. Generally, the 2018 PPA's proposed Amendment No. 1 seeks to extend the term of the contract through December 31, 2026, and notes that Clearwater acknowledged the REC Agreement ("PPA Amendment No. 1"). Amendment No. 2 to the 2018 PPA proposed to amend how the REC Agreement is defined in PPA Amendment No. 1 ("PPA Amendment No. 2").

To extend the 2018 PPA, the Parties also needed to amend the REC Agreement. The REC Agreement also has two amendments. Amendment No. 1 to the REC Agreement proposed to increase the Facility's delivery schedule from 0-50 megawatts ("MW") to 0-96 MWs (REC Amendment No. 1).[2] Amendment No. 2 to the REC Agreement generally seeks to correct certain dates, update information on the RECs delivery point and price, and notes Avista and Morgan Stanley's desire to extend the REC Agreement to December 31, 2026, to align with the proposed extension on the 2018 PPA. ("REC Amendment No. 2").[3]

The 2018 PPA was designed to optimize the value of Clearwater's generation and the value of its RECs while having a neutral effect upon Avista's customers. Under the 2018 PPA, Avista *sells* Clearwater all the energy that its Facility needs at $24.50 per megawatt-hour (as specified in Schedule 25P) while Avista *buys* the Facility's generation output at the same rate of $24.50 per MWh.[4]

The Parties requested that PPA Amendment No. 1 extend the terms of the 2018 PPA through December 31, 2026. The Parties proposed to amend Sections 3(a) and 5(a) of the 2018

[2] REC Amendment No.1 was agreed to by Avista and Morgan Stanley in 2019. Staff noted that REC Amendment No. 1 was not approved by, or submitted to, the Commission.
[3] The Parties pleadings cause some confusion by using the generic terms "Amendment No. 1" or "Amendment No. 2" without reference to whether that amendment is amending the 2018 PPA or the REC Agreement.
[4] Staff asserted that Avista supplied generation to Clearwater at $24.56 per megawatt hours ("MWh") while Clearwater's generation is sold to the Company at $24.50 per MWh. Staff stated this slight difference is due to a Commission revenue-related gross-up fee for the rate that Clearwater pays Avista. The Parties' Joint Reply Comments reasserted that the Parties exchanged power at the same rate of $24.50 per MWh.

PPA to facilitate this extension. The Parties requested authority to file a revised Schedule 25P accordingly.

The Parties also proposed various terms amending the treatment of the RECs as described in Attachment A of PPA Amendment No. 2 as described below.

STAFF'S RECOMMENDATIONS

Staff reviewed the Petition and made the following recommendations regarding the Parties' proposals:

1. The Company and Morgan Stanley modify the delivery schedule from 0-96 MW to 0-80 MW through an updated Amendment No. 2 of the Morgan Stanley Agreement;
2. The Company and Clearwater update Amendment No. 1 of the Clearwater Agreement to adopt updated avoided cost rates for the additional three years (2024, 2025, and 2026) based on the 80 MW capacity size and the model inputs effective on the signature date of October 2, 2023;
3. The Company and Clearwater update Amendment No. 1 of the Clearwater Agreement to include 90/110 provisions;
4. The Company and Morgan Stanley update Section 2 (a) of Amendment No. 2 of the Morgan Stanley Agreement to reflect the significance of Commission approval.
5. The Company and Clearwater update Exhibit B of the Clearwater Agreement to correct the typographical errors and to update Schedule 25P with the currently approved version;
6. The Company and Clearwater update Section 24 of the Clearwater Agreement to reflect the significance of the Commission['s] approval;
7. The Company and Clearwater update Amendment No. 1 of the Clearwater Agreement to include additional language to address potential modifications to the Facility in accordance with Order No. 35705;
8. That if Clearwater modifies the Facility in the future, the Company 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; and
9. That an extension of the contract term of any existing PURPA agreement be treated as a renewal agreement, instead of an amendment.

Staff Comments at 2-3. Each item shall be discussed below.

JOINT REPLY COMMENTS

Avista and Clearwater filed Joint reply comments ("Reply Comments") disagreeing with some of Staff's recommendations while not objecting to others as discussed below. The Parties also requested that the Final Order be issued in this case as soon as possible and before the 2018

PPA expires on December 31, 2023. Staff Comments and the Reply Comments will be discussed together based on specific recommendation subjects.

I. Capacity Size

Staff Comments

Staff stated that PURPA only allows for a QF to have a maximum delivery schedule of 80 MW. While the Facility has a capacity size of 132.2 MW,[5] the 2018 PPA had a delivery schedule of only 0-50 MW. However, in Avista's 2019 agreement with Morgan Stanley as found in REC Amendment No. 1, the Company changed the delivery schedule from 0-50 MW to 96 MW. Staff stated that due to an apparent mistake, this change was not filed with the Commission. Although the impact on customers was likely positive due to higher REC sales, Staff stated that REC Amendment No. 1 violates PURPA with its higher delivery schedule. Therefore, Staff recommends that the delivery schedule be updated to 0-80 MW to comply with PURPA.

Reply Comments

The Parties believed that Staff was incorrect regarding the Facility's maximum delivery schedule for two reasons: 1) citing 18 C.F.R. § 292.202(c)[6] and 18 C.F.R. § 292.203(b),[7] the Parties asserted that the Facility is a cogeneration facility and thus not subject to a 80 MW cap; and 2) the Parties stated that the REC Agreement does not control whether or not the Facility meets the qualifications necessary to be certified as QF; the Parties stated that Clearwater has obtained such certification for the Facility. Therefore, the Parties asserted that modifying the REC Agreement is unnecessary.

[5] The Parties stated that the Facility is capable of generating 132.2 MVA; Staff stated that the Facility had a capacity size of 132.2 MW. A MW refers to a million watts whereas MVA refers to a million volt-amperes. Watts measure "real power" whereas volt-amperes measure "apparent power."

[6] 18 C.F.R. § 292.202(c) states the following: "**Cogeneration facility** means equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy."

[7] 18 C.F.R. § 292.203(b) states the following:

> **Cogeneration facilities.** A cogeneration facility, including any diesel and dual-fuel cogeneration facility, is a qualifying facility if it:
> **(1)** Meets any applicable standards and criteria specified in §§ 292.205(a), (b) and (d); and
> **(2)** Unless exempted by paragraph (d), has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.

II. Avoided Cost Rates and the Extended Contract Terms

Staff Comments

Staff stated that this filing did not update the avoided cost rates for the contract extension. Likewise, the Company used a blend of prices that are likely close to Avista's avoided costs. However, Staff recommended using the signature date (October 2, 2023) as determined previously by the Idaho Supreme Court. *See Idaho Power Co. v. Idaho Public Utilities Com'n*, 155 Idaho 780, 316 P.3d 1278 (2013). Staff recommended updating the avoided cost rates for the additional three years—taking into account an 80 MW capacity size—while modeling the inputs around the signature date of October 2, 2023, including but not limited to:

- Load forecast approved in Order No. 35639 in Case No. AVU-E-22-15;
- The first capacity deficiency date used in the original Clearwater Agreement, which should be based on the authorized first capacity deficiency date when the original Clearwater Agreement was executed. Order No. 33357 at 25;
- The base assumptions and preferred portfolio in the 2023 IRP. Order No. 32697 at 22;
- The contracts in the PURPA queue as of October 2, 2023. Order No. 32697 at 22 and Order No. 33357 at 28;
- The capital structure and capital cost approved in Order No. 35909 in Case No. AVU-E-23-01; and
- The exclusion of Washington's Climate Commitment Act ("CCA") costs.

Staff Comments at 5. Staff also noted that, pursuant to Order No. 33357, IRP based PURPA contracts are generally limited to two years without sound justification for a longer contract term. Staff believed that the avoided costs in this case are offset by Clearwater's rate payments to Avista—thus justifying a longer contract term.

Reply Comments

The Parties stated that Avista both sells and buys generation from Clearwater at the same rate of $24.50 (*See* footnote 4 *supra*). The Parties stated that Staff's recommendations related to the 80 MW cap should be rejected for the reasons explained above (Capacity Size). The Parties agreed to update Schedule 25P in a compliance filing and noted that it would update the signature block to reflect the correct date of October 2, 2023. The Parties agreed to not rely on data that could be affected by the CCA given the uncertainty of the CCA's future.

III. The Inclusion of the 90/110 Rule

Staff Comments

The 2018 PPA did not contain a 90/110 provision. Staff recommended that this be included pursuant to Order No. 29632.

Reply Comments

The Parties stated that the Clearwater Agreement did not include the 90/110 rule because Avista does not rely on Clearwater to meet its load requirements. However, the Parties agreed to include the 90/110 rule in a compliance filing.

IV. The Proposed Market Index

Staff Comments

Staff noted the Parties currently use the Powerdex Hourly index to determine the price that Morgan Stanley pays to Avista. In REC Amendment No. 2, Morgan Stanley proposed using the Intercontinental Exchange ("ICE") Daily Mid-Columbia Index or an alternative that is mutually agreed upon. Staff believed that using the ICE index was reasonable and argued that, whether the entities involved elect to use the ICE index or an alternative, they would need to seek Commission approval.

Reply Comments

The Parties stated that the REC Agreement is an agreement between Avista and Morgan Stanley; therefore, Clearwater took no position on this recommendation. The Parties stated that "[b]undled 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." Reply Comments at 8. Nevertheless, Avista noted that it was willing to include the language recommended by Staff. However, Avista also noted that including this language in the REC Agreement would also require the approval of Morgan Stanley.[8]

V. REC Prices, Errors in Exhibit B, and the Definition of "REC Agreement"

Staff Comments

The original REC Agreement with Morgan Stanley contained two different bundles of RECs—with PCC1-Resource Contingent Bundled RECs ("PCC1 RECs") being priced higher than

[8] The Reply Comments did not indicate Morgan Stanley's position on this matter.

PCC2-Resource Contingent Bundled RECs ("PCC2 RECs").[9] Due to the elevated costs of both sets of RECs, the agreeing entities proposed pricing both PCC1 RECs and PCC2 RECs at the rate of $27.10/MWh, which Staff believed was reasonable.[10]

VI. Exhibit B

Staff Comments

Staff noted two potential errors in Exhibit B of the Clearwater Agreement. First, Exhibit B references Section 5(a) and Section 5(d) instead of Section 7 when describing the Schedule 25 rate. Second, Schedule 25 should be updated in accordance with the Company's most recent general rate case in Case No. AVU-E-23-01. Staff suggested Exhibit B to the Clearwater Agreement should be updated.

Staff noted that the Clearewater Agreement had an incorrect date; however, this was corrected in the Company's and Clearwater's November 27, 2023, filing.

Reply Comments

The Parties stated that the Clearwater Agreement expressly factored in the fact that Schedule 25P and other tariffs may be occasionally amended and approved by the Commission. The Parties stated Schedule 25P would be updated in accordance with Avista's most recent rate case.

VII. Updating Section 24 of the Clearwater Agreement and Facility Modification

Staff Comments

a. Agreement Modification: Updating Section 24 of the Clearwater Agreement

Section 24 of the Clearwater Agreement stated that no change to that agreement was valid unless it is signed by both Parties. Staff noted that any changes to the Clearwater Agreement must also be approved by the Commission.

b. Addressing Modifications to the Facility: Commission Approval

Staff noted that the proposed PPA Amendment No. 1 does not address proposed changes to the Facility itself. Staff noted that modifications to the Facility must be approved by the

[9] The difference between PCC1 RECs and PCC2 RECs is discussed at length in footnotes 10 and 11 of Staff's Comments. In short, the difference deals with how the RECs are treated from the generation source to the delivery point relative to the California balancing authority.

[10] With the Parties' original proposal being supported by Staff, the Parties did not materially comment on this issue in their Reply.

Commission. Order No. 35705. Staff noted several recommendations from Order No. 35705 that enumerate the approved way to engage in this process.

c. Addressing Modifications to the Facility: What to Include in the PCA

Staff noted that, if the Facility is modified, the Company should only include Net Power Cost data in the Power Cost Adjustment that correlates with the rates for the modified Facility.

d. Renewal Agreement Classification

Staff stated that PPA Amendment No. 1 is a renewal agreement rather than amendment and recommended that future analogous filings should be classified accordingly.

Reply Comments

The Parties had no objection to complying with Staff's recommendations on these matters.

COMMISSION DECISION 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 61-503. In addition, the Commission has authority under PURPA and Federal Energy Regulatory Commission ("FERC") regulations to implement PURPA in Idaho. This includes setting the length of PURPA contracts, establishing pricing methodologies, and dictating other terms of contracts between utilities and QFs. The Commission may enter any final order consistent with its authority under Title 61.

The Commission has reviewed the record, including the Parties' Petition, the Parties' subsequent filings, and all comments filed in this case. The Commission notes that cogeneration facilities are not subject to the 80 MW cap for QFs. Based upon the Parties' assertion that the Facility is a cogeneration facility, as well as the associated FERC Dockets cited in the Parties' Reply Comments, the Commission finds that no cap is necessary for the Facility in this case.

The Commission grants the Parties' request to extend the Clearwater Agreement through December 31, 2026. The Commission notes that the default contract length for IRP method contracts is two years, but the Commission has recognized that the Parties can extend the length beyond two years by agreement. Order No. 33357 at 26. We approve these individually negotiated

contract provisions based on the specific facts of this case, and our approval here does nothing to alter the PURPA implementation framework in the State of Idaho.

The Commission directs the Company to update PPA Amendment No. 1 to include those items listed in Section II of this Order that remain applicable sans Staff's proposed 80 MW cap. The Company must also include the 90/110 Rule in the Clearwater Agreement.

The Commission notes that using the ICE index proposed by Morgan Stanley and Avista is acceptable. The Commission recommends that Avista and Morgan Stanley update Section 2 (a) of REC Amendment No. 2 to reflect the need for Commission approval should an alternative method ever be utilized to determine the price of energy between Avista and Morgan Stanley. The Commission notes that the REC Agreement and the Clearwater Agreement are intertwined. While efforts have been taken to make the effects of the various agreements in this case neutral upon customers, it is also true that the modifications to REC Agreement clearly have the potential to affect Avista's Idaho customers. Accordingly, the Commission finds it is in the public interest for future amendments of the REC Agreement to be submitted to the Commission for approval.

Finally, the Commission finds that the Parties must do the following: 1) Update Exhibit B of the Clearwater Agreement to correct the typographical errors and to update Schedule 25P as discussed above; 2) update PPA Amendment No. 1 to include additional language requiring Commission approval to address potential modifications to the Clearwater Agreement and the Facility in accordance with Order No. 35705; and 3) in the event that Clearwater modifies the Facility in the future, the Company must only include NPC data in the PCA that reflect rates for any energy delivered appropriate for the Facility as modified—regardless of the compensation paid to the Seller.

We find the Clearwater Agreement, with the incorporation of the required items discussed above, to be fair, just, and reasonable.

ORDER

IT IS HEREBY ORDERED that, effective January 1, 2024, the Clearwater Agreement is extended through December 31, 2026. Relatedly, the Commission also orders the Parties to update the Clearwater Agreement as recommended by Staff in Section II—except for those items related to the irrelevant 80 MW cap—as discussed above.

IT IS FURTHER ORDERED that the Parties shall update the Clearwater Agreement to include the 90/110 Rule.

IT IS FURTHER ORDERED that the Parties shall update Exhibit B of the Clearwater Agreement to correct the typographical errors and to update Schedule 25P as discussed above.

IT IS FURTHER ORDERED that the Parties shall update PPA Amendment No. 1 to include additional language that complies with Order No. 35705. PPA Amendment No. 1 must contain language stating that Commission approval is required before modifications are made to the Clearwater Agreement or the Facility. Relatedly, if Clearwater modifies the Facility in the future, the Company must only include NPC data in the PCA that reflects rates for any energy delivered appropriate for the Facility as modified—regardless of the compensation paid to the Seller.

IT IS FURTHER ORDERED that the Company shall work with Staff to determine the respective rates that Avista pays Clearwater, and that Clearwater pays Avista. These rates shall be submitted to the Commission in a compliance filing within thirty (30) days of the service date upon this Order. Once approved, these rates shall be effective January 1, 2024.

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 about 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.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 29th day of December 2023.

ERIC ANDERSON, PRESIDENT

JOHN R. HAMMOND JR., COMMISSIONER

EDWARD LODGE, COMMISSIONER

ATTEST:

Monica Barrios-Sanchez
Interim Commission Secretary

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