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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

COMMISSION STAFF ("STAFF") OF the Idaho Public Utilities Commission, by and through its Attorney of record, Michael Duval, Deputy Attorney General, submits the following comments.

BACKGROUND

On October 2, 2023, Avista Corporation ("Avista" or "Company") and Clearwater Paper Corporation ("Clearwater") filed Amendment No. 1 to the 2018 Power Purchase and Sale Agreement ("Clearwater Agreement") to extend the contract term by three years through December 31, 2026. Under the current Clearwater Agreement, Clearwater is taking energy from Avista as a retail customer under Schedule 25P, while selling energy to Avista as a qualifying facility ("QF") under Public Utility Regulatory Policies Act of 1978 ("PURPA"). The Commission approved the Clearwater Agreement in Order No. 34252, which is set to expire on December 31, 2023.

Concurrently, the Company also filed Amendment No. 2 to the Renewable Energy Certificates ("REC") Agreement ("Morgan Stanley Agreement") to modify the energy prices and the REC prices defined in the contract and agreed to by the Company and Morgan Stanley Capital Group Inc. ("Morgan Stanley"). The Morgan Stanley Agreement was contained in the Clearwater Agreement as Exhibit F.

The Clearwater Agreement 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. To accomplish this, under the Clearwater Agreement, Avista supplies Clearwater with the energy that matches the Clearwater facility's ("Facility") generation amount at $24.56/MWh, while the Facility's generation is sold to Avista at a similar rate of $24.50/MWh.[1]

On November 27, 2023, the Company and Clearwater filed Amendment No. 2 to the Clearwater Agreement to correct some typological errors in Amendment No. 1 of the Clearwater Agreement, revise the original Morgan Stanley Agreement[2], and correct the definition of "REC Agreement".

STAFF ANALYSIS

Staff has reviewed Amendment No. 1 to the Clearwater Agreement and Amendment No. 2 to the Morgan Stanley Agreement focusing on the capacity size of the Facility, the avoided cost rates, the contract term, the 90/110 rule, the appropriateness of the change in the market index, the REC prices, Exhibit B, the definition of "REC Agreement," Section 24, and provisions addressing potential modifications to the Facility. Staff recommends the following:

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

[1] The small difference between $24.56/MWh and $$24.50/MWh is due to revenue-related gross up for Commission fees on the rate Clearwater pays Avista.
[2] The revised Morgan Stanley includes the original Morgan Stanley Agreement, Amendment No. 1 of the original Morgan Stanley Agreement, and Amendment No. 2 of the original Morgan Stanley Agreement.

(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 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 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.

Capacity Size

Currently, the capacity size of the Facility exceeds the capacity limit for PURPA QFs, which will disqualify the Facility as a PURPA QF. Staff recommends that the Company and Morgan Stanley modify the delivery schedule in the Morgan Stanley Agreement to 0-80 MW to continue operating as a QF.

The Facility has a capacity size of 132.2 MW. *See* Response to Staff Production Request No. 2. When the Morgan Stanley Agreement was originally approved in Order No. 34252, the delivery schedule was set at 0-50 MW in the contract. Morgan Stanley Agreement at 4. This

effectively capped the generation amount up to 50 MW, which complied with the PURPA capacity limit requirement of 80 MW.[3]

However, on February 27, 2019, the Company and Morgan Stanley modified the delivery schedule from 0-50 MW to 0-96 MW through Amendment No. 1 to the Morgan Stanley Agreement. However, the Company did not file the amendment with the Commission for approval due to a lack of administrative oversight. *See* Response to Staff Production Request No. 1 (a) and (b). This change practically allowed Clearwater to generate above 80 MW, which violated the PURPA capacity limit requirement. Although the impacts on customers may be positive due to higher revenues from increased sales of RECs,[4] Staff recommends that the Company and Morgan Stanley modify the delivery schedule from 0-96 MW to 0-80 MW through an updated Amendment No. 2 to the Morgan Stanley Agreement to comply with PURPA.

Avoided Cost Rates

The Company did not update the avoided cost rates for the extended contract term. Staff recommends that the Company and Clearwater adopt updated avoided cost rates for the additional three years (2024, 2025, and 2026) based on the 80-MW capacity size discussed earlier and the model inputs effective on the signature date of October 2, 2023, in Amendment No. 1 of the Clearwater Agreement.

The original Clearwater Agreement used a blend of Integrated Resource Plan ("IRP") based rates and forward market prices. While Staff believes the blended prices approximated Avista's avoided costs, Staff recommends that the Company and Clearwater use the model inputs effective on the signature date of October 2, 2023. Staff's recommendation of using the signature date is based on the Idaho Supreme Court case resulting from appeals taken under Case Nos. IPC-E-I0-61 and IPC-E-10-62. *See Idaho Power Co. v. Idaho Public Utilities Com'n*, 155 Idaho 780, 316P.3d 1278 (2013). In the Idaho Power Co. case refenced above, the Idaho Supreme Court upheld the Commission's finding that when there is a signed agreement, the date of the Legally Enforceable Obligation ("LEO") should be the same date that the agreement was signed by both parties. Therefore, Staff recommends the Company and Clearwater adopt

[3] 18 CFR § 292.204(a)(1)
[4] REC revenues split between Avista (10%) and Clearwater (90%).

updated avoided cost rates for the additional three years based on the 80-MW capacity size and the model inputs based on 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[5] at 25;
- The base assumptions and preferred portfolio in the 2023 IRP. Order No. 32697[6] at 22;
- The contracts in the PURPA queue[7] 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[8] in Case No. AVU-E-23-01; and
- The exclusion of Washington's Climate Commitment Act ("CCA") costs.[9]

Contract Term

The Company and Clearwater extended the original Clearwater Agreement by three years through December 31, 2023. The Commission allowed IRP-based contracts to be more than two years if a longer contract term is justified. Order No. 33357 at 26. One major reason why IRP-based PURPA contracts are limited to two years is that avoided cost rates can reflect a utility's true avoided cost rates when being adjusted more frequently. Order No. 33357 at 23. Because the avoided cost rates used in this case are offset by the rates Clearwater pays Avista, Staff believes a less frequent adjustment is acceptable.

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[5] Order No. 33357 required utilities to use the capacity deficiency date established when an initial contract is signed.
[6] Order No. 32697 required that all variables and assumptions, except for load, natural gas, and contract information, utilized within the IRP Methodology remain fixed between IRP filings. The 2023 IRP was filed on May 31, 2023, in Case No. AVU-E-23-05.
[7] Originally, Order No. 32697 required utilities to include long-term contract considerations in an IRP Methodology "at such time as the QF and utility have entered into a signed contract for the sale and purchase of QF power." Order No. 32697 at 22. Later, Order No. 33357 allowed utilities to include prior queued QFs as well as signed contracts in the queue when determining indictive pricing. Order No 33357 at 28.
[8] The Commission issued Order No 35909 on August 31, 2023, updating the Company's capital structure and capital cost.
[9] The Commission had not made a determination regarding the recovery of the CCA costs from Idaho ratepayers as of October 2, 2023. On December 1, 2023, the Commission issued Order No. 36015, which "rejects the costs associated with the CCA in its entirety." Order No. 36015 at 7.

90/110 Rule

The Clearwater Agreement and its Amendment No. 1 do not contain 90/110 provisions. Staff recommends that the Company and Clearwater update Amendment No.1 of the Clearwater Agreement to include 90/110 provisions. Order No. 29632 states:

> In Order No. 15746 we equated firm with pursuant to a "legally enforceable obligation"; non-firm we equated to "as available."...It is the Commission's belief that a legally enforceable obligation translates into reciprocal contractual obligations for both parties, a quid pro quo. It is not just a lock-in of avoided cost rates but is also an obligation to deliver...The Commission finds it reasonable to define firmness as predictability on a monthly basis...the Commission finds that a legally enforceable obligation translates into contractual obligations of both parties. For a QF it translates into an obligation or commitment to deliver its monthly estimated production. Idaho Power propose that this delivery of committed energy fall within a 90/110 band. Staff proposes that the band be expanded to 80/120. We find 90/110 to be reasonable.
> Order No. 29632 at 12-14, 20.

Because the Company and Clearwater have a LEO, Staff believes that 90/110 provisions should be adopted.

Market Index

The Company and Clearwater used Powerdex Hourly Index to price the energy Avista sold to Morgan Stanley in the original Morgan Stanley Agreement. Amendment No. 2 of Morgan Stanley Agreement proposes to use the Intercontinental Exchange ("ICE") Daily Mid-Columbia Index or mutually agreed-to alternative in the extended period. Staff believes it is reasonable to use the ICE Index to price the energy. However, if mutually agreed-to alternative is adopted, Staff believes the alternative needs to be approved to reflect the significance of Commission approval.

First, the ICE Index is the most heavily referenced market index in the Pacific Northwest. *See* Response to Staff Production Request No. 5 (a). Second, Clearwater is a baseload generator with little variability in hour-to-hour generation. *See* Response to Staff Production Request No. 5 (b). Compared to the Powerdex Hourly Index, ICE's On-Peak/Off-Peak prices will increase administrative efficiencies by using block prices instead of hourly prices. *See* Response to Staff Production Request No. 5 (a). Therefore, Staff believes it is reasonable to use the ICE Index to price the energy Avista will sell to Morgan Stanley.

Besides the ICE Index, the Company and Morgan Stanley propose prices that are mutually agreed-to in Section 2 (a) of Amendment No. 2 of Morgan Stanley Agreement. Staff believes this neglects the significance of Commission approval and recommends that this option is modified to reflect the need for Commission approval before any change. For example, the statement can be updated as follows: "...equal the Intercontinental Exchange (ICE) Mid-Columbia Firm On Peak (DAILY) and ICE Mid-Columbia Firm Off Peak (DAILY) (or mutually agreed to alternative *approved by the Commission)*."

REC Prices

The original Morgan Stanley Agreement priced PCC1-Resource Contingent Bundled RECs[10] ("PCC1 RECs") and PCC2-Resource Contingent Bundled RECs[11] ("PCC2 RECs") at $9.00/MWh and $4.50/MWh, respectively. Amendment No. 2 of the Morgan Stanley Agreement proposes to price both PCC1 RECs and PCC2 RECs at the same rate of $27.10/MWh for the extended period. Staff believes this rate is reasonable.

The REC prices are determined through negotiations between the Company and Morgan Stanley based on the surplus and deficit of RECs in the market. *See* Response to Staff Production Request No. 6 (a). Due to a larger deficit in available bundled products in the market, the proposed REC prices are higher than those in the original Morgan Stanley Agreement. *See* Response to Staff Production Request No. 6 (a). In the original Morgan Stanley Agreement, PCC1 RECs have higher prices than PCC2 RECs. However, Amendment No. 2 of

[10] Morgan Stanley Agreement defined "PCC1-Resource Contingent Bundled RECs" as "[electricity produced by the Project(s) ("Project Energy") bundled with the associated Renewable Energy Certificates ("RECs") delivered on an hourly basis, without substituting Energy from another source to the Delivery Point ("Bundled Green Energy") that qualifies as Resource Contingent Bundled REC as described in WSPP Agreement, Schedule R, Section R-2.3.4." Morgan Stanley Agreement at 1. "Such transactions are eligible to meet the RPS compliance requirements for Portfolio Content Category 1 as set forth in PUC Code 399.16(b)(1)(A) and California Public Utilities Commission ("CPUC") Decision 11-12-052 ("PCC1 Regulations") if scheduled from the Project into a California balancing authority area without substituting electricity from another source. Buyer shall be responsible for scheduling the Product from the Delivery Point to a California balancing authority area. Buyer shall pay Seller the applicable Energy Price and PCC1 REC price for Bundled Green Energy delivered to Buyer at the Delivery Point." Morgan Stanley Agreement at 1.

[11] Morgan Stanley Agreement defined "PCC2-Resource Contingent Bundled RECs" as "Renewable Energy Certificates ("RECs") that are generated but not schedule to a California balancing authority." Morgan Stanley Agreement at 2. "In hours where Seller schedules Energy from the Project to the Delivery Point that is less than the hourly metered Project Energy generated by the Project, the RECs associated with such metered Project Energy that is in excess of the scheduled Energy ("Excess Energy") shall be deemed "PCC2 Bundled RECs. The Parties hereby acknowledge and agree that (a) Seller shall retain such Excess Energy; and (b) the PCC2 Bundled RECS shall be transferred to the Buyer in accordance with Settlements and Payments section below. Buyer shall pay Seller the PCC2 REC price for such PCC2 Bundled RECs." Morgan Stanley Agreement at 2.

the Morgan Stanley Agreement proposes to set both types of RECs at the same price, because the current demand for both types of RECs is elevated. *See* Response to Staff Production Request No. 6 (b).

Exhibit B

Staff discovered two issues with Exhibit B of the Clearwater Agreement and recommends that the Company and Clearwater update Exhibit B accordingly. First, Exhibit B mistakenly references Section 5(a) and Section 5(d) when describing the Schedule 25P energy rate, the rate Clearwater pays Avista for the remaining load separated from the Facility's generation load. Staff believes that Exhibit B may have intended to reference Section 7. Second, Schedule 25P, included in Exhibit B, should be replaced by the new Schedule 25P approved in the Company's recent general rate case, Case No. AVU-E-23-01. The new Schedule 25P became effective on September 1, 2023.

Definition of REC Agreement

The Clearwater Agreement defined "REC Agreement" as "the Transaction Confirmation between Avista and MSCG dated December 15, 2018, under which Avista is to sell and MSCG is to buy the RECs generated by the Project bundled with energy,..." Clearwater Agreement at 5. However, the date should have been October 19, 2018. The Company and Clearwater corrected this mistake in Amendment No. 2 of the Clearwater Agreement filed on November 27, 2023.

Section 24 of Clearwater Agreement

Section 24 of the Clearwater Agreement 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." Clearwater Agreement at 20. Staff believes that this statement neglects the significance of Commission approval and recommends that the statement be updated to reflect the need for Commission approval before any change 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*."

Provisions Addressing Modifications to Facility

The original Clearwater Agreement and the proposed Amendment No. 1 do not contain provisions that address potential future modifications to the Facility. Staff recommends that the Company and Clearwater include language as directed by the Commission in Order No. 35705.[12] In that order, the Commission required the following be included in a contract:

- Requirement 1: "Language that restricts the Seller from modifying the Facility from the as built description of the Facility…without promptly notifying the Company of that intent." Order No. 35705 at 3;
- Requirement 2: "Language that requires the Seller to provide notification of planned modifications (such as fuel change or capacity size change) to the as-built description." *Id* at 3;
- Requirement 3: Language that requires parties to "amend the contract reflecting the facility as actually modified." *Id* at 4; and
- Requirement 4: Language that ensures that the payment structure allows payment for only the proper authorized rates of the facility as actually modified and as of the date when energy is first delivered as a modified facility. *Id* at 4.

In addition, if a facility is modified, the Commission required the utility to only include NPC in the PCA that reflect rates for any energy delivered appropriate for the facility as modified, regardless of the compensation paid to the facility. *Id* at 4.

Staff believes these requirements and additional amendments are appropriate because the Commission previously found it reasonable to include them in any new PURPA contract or contract renewal. Order No. 35254 at 4, Order No. 35255 at 4, Order No. 35256 at 6, Order No. 35259 at 3, and Order No. 35267 at 4. In the past, the Commission has not allowed the facility modification language to be added to PURPA contract through an amendment. *Id.* However, the main purpose of proposed Amendment No. 1 of the Clearwater Agreement is to extend the term

[12] See examples in cases IPC-E-22-28, IPC-E-23-02, IPC-23-15, and IPC-E-23-22 that followed the direction of Order No. 35705.

of the contract for an additional three years. Staff believes that Amendment No. 1 should be classified as a renewal contract and recommends that similar extensions be treated as renewal contracts in the future.

STAFF RECOMMENDATION

Staff recommends the following:

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 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 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.

Respectfully submitted this 5th day of December 2023.

Michael Duval
Deputy Attorney General

Technical Staff: Yao Yin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 5th DAY OF DECEMBER 2023, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF TO AVISTA CORPORATION,** IN CASE NO. AVU-E-23-15, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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