CHRIS BURDIN
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0314
IDAHO BAR NO. 9810

Street Address for Express Mail:
11331 W CHINDEN BLVD, BLDG 8, SUITE 201-A
BOISE, ID 83714

Attorney for the Commission Staff

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT PETITION OF AVISTA CORPORATION AND REGENTS OF THE UNIVERSITY OF IDAHO FOR APPROVAL OF POWER PURCHASE AGREEMENT	)))))))	**CASE NO. AVU-E-24-02** **COMMENTS OF THE COMMISSION STAFF**

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

BACKGROUND

On January 31, 2024, Avista Corporation ("Avista") and the Regent of the University of Idaho ("University" or "Seller") (collectively, the "Parties") petitioned the Idaho Public Utilities Commission ("Commission") for an order approving the renewal Power Purchase Agreement ("PPA") between Avista and the University for its 132.32-kW solar facility ("Facility") located in Moscow, Idaho. The Facility is a qualifying facility ("QF") pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA").

The original agreement between the Parties, as amended by the First Amended and Restated Power Purchase Agreement, was approved by the Commission in Order No. 35440, and expired on February 16, 2024. The Parties request that the Commission issue an order approving the renewal PPA with an Effective Date of February 17, 2024. The term of the renewal PPA is two years from the Effective Date.

STAFF ANALYSIS

Commission Staff ("Staff") reviewed the PPA focusing on the proposed avoided cost rates, the lapsed-contract period, and Section 9.6 of the PPA. Based on its review, Staff recommends approval of the PPA conditioned upon the modification of Section 9.6 to meet the requirement in Order No. 35705. Staff also recommends:

1. the Seller be paid at the proposed avoided cost rates with an effective date of February 17, 2024; and
2. if the Seller modifies the Facility, 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.

Avoided Cost Rates

The renewal PPA, like the original agreement, uses avoided cost rates based on "time of delivery." These are avoided cost rates available to a QF when a legally enforceable obligation ("LEO") has been established,[1] which the Commission has determined as non-firm market prices discounted 15% for the cost of transmission. When using non-firm market prices as the avoided cost rates, the Commission has determined that the non-firm market prices should be discounted 15% to account for costs of transmission, transmission losses, and transmission transaction costs associated with the energy being "must-take" and potentially needing to be sold into the market. Order No. 29093 at 4 and 5. For these reasons, Staff believes the proposed avoided cost rates are reasonable.

[1] Power purchases that fall under the category of LEO Purchases can be calculated at the time of delivery, because the terms of purchase are made through a contract between the Parties. There are two categories of purchases under PURPA: (1) as-available purchases; and (2) LEO purchases. The former allows a QF to provide energy whenever it is available and use avoided costs calculated at the time of delivery, while the latter requires a QF to provide energy or capacity pursuant to a LEO for the delivery of energy or capacity over a specified term, using either the avoided costs calculated at the time of delivery, or the avoided costs calculated at the time the obligation is incurred. *See* 18 CFR $ 292.304 (d).

Lapsed-Contract Period

The original agreement expired on February 16, 2024. Until the Commission approves the proposed PPA and establishes an effective date, the Facility is and will be operating during a lapsed-contract period. Section 4 of the PPA states that the Effective Date is February 17, 2024, or such other date set by the Commission order. Staff recommends that the Commission retroactively set the effective date for February 17, 2024, and pay the Seller the proposed avoided cost rates starting at that time.

Staff justifies its recommendation for two reasons. First, the Commission has historically set the effective date for other PURPA contracts either the day following the end of the previous contract term (e.g. Order Nos. 34792, 35123, and 35383) or after the Commission's approval (e.g. Order Nos. 35303 and 35486). Regardless of when the effective date was set by the Commission in those examples, the retroactive rates for the lapsed contract period were the avoided cost rates established in the approved contract. Second, a QF's eligibility for capacity payments may be affected if the facility lacks continuous operation during the lapsed period. Order No. 34792 at 3. Because the proposed PPA uses non-firm market prices that do not include capacity payments, Staff is not concerned about lack of continuous operation, if any, in this case. Therefore, Staff believes the treatment is reasonable.

In addition, Staff echoes the Commission's past concerns regarding late-filed renewal contracts that result in a lapsed contract period and a lack of contractual commitment. This lack of commitment can create uncertainty for the Company's resource planning. The Commission expects renewal QF contracts to be filed well before an existing contract expires to avoid these situations. Order Nos. 35067 at 4 and 35060 at 4.

Section 9.6

Commission Order No. 35705 in Case No. IPC-E-22-28 requires inclusion of language that restricts a seller from modifying the facility from the as-built description of the facility without promptly notifying the Company of that intent. However, Section 9.6 of the PPA only states that "Seller shall notify Avista in writing of any material modifications to the Facility," which does not ensure that a notification will be made before modifications to the Facility. Staff recommends that the Parties modify Section 9.6 to meet the requirement in Order No. 35705. For example, Amendment No. 5 to the contract between Stimson Lumber and the Company approved in Case No. AVU-E-23-14 states that the "Project Developer shall notify Avista in writing prior to making any material modifications to the Facility…"

In addition, if the Seller modifies the Facility, Staff recommends that the Company only include NPC in the PCA that reflects rates for any energy delivered appropriate for the Facility as modified, regardless of the compensation paid to the Seller. Order No. 35705 at 4.

STAFF RECOMMENDATION

Staff recommends approval of the PPA conditioned upon the modification of Section 9.6 to meet the requirement in Order No. 35705. Staff also recommends:

1. the Facility be paid at the proposed avoided cost rates with an effective date of February 17, 2024; and
2. if the Seller modifies the Facility, the Company only include Net Power Cost in the Power Cost Adjustment that reflects rates for any energy delivered appropriate for the Facility as modified, regardless of the compensation paid to the Seller.

Respectfully submitted this 15th day of March 2024.

Chris Burdin
Deputy Attorney General

Technical Staff: Yao Yin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 15TH DAY OF MARCH 2024, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF,** IN CASE NO. AVU-E-24-02, BY E-MAILING A COPY THEREOF TO THE FOLLOWING:

CHRIS DRAKE
AVISTA CORPORATION
PO BOX 3727
SPOKANE WA 99220-3727
E-MAIL: chris.drake@avistacorp.com

MICHAEL G. ANDREA
SENIOR COUNSEL
AVISTA CORPORATION
PO BOX 3727
SPOKANE WA 99220-3727
E-mail: michael.andrea@avistacorp.com

EDITH PACILLO
OFFICE OF GENERAL COUNSEL
322 E FRONT ST 340G
BOISE ID 83702
E-MAIL: elpacillo@uidaho.edu

GREGORY M ADAMS
RICHARDSON ADAMS PLLC
515 N 27TH ST
BOISE ID 83702
E-MAIL: greg@richardsonadams.com

Keri J. Hawker
SECRETARY