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IDAHO PUBLIC
UTILITIES COMMISSION

AVU-G-20-02

April 7, 2020

Diane Hanian, Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd
Building 8, Suite 201-A
Boise, ID 83714

Via Electronic Mail: diane.hanian@puc.idaho.gov

RE: IN THE MATTER OF AVISTA CORPORATION'S PETITION FOR APPROVAL OF A
SETTLEMENT AGREEMENT BETWEEN CLEARWATER PAPER CORPORATION
AND AVISTA CORPORATION

Dear Ms. Hanian:

Enclosed for filing with the Commission is Avista's Petition for Approval of a Settlement Agreement between Clearwater Paper and Avista Corporation. Given current back office limitations related to the COVID 19 pandemic, Avista is only able to provide this filing in electronic format. Please direct any questions regarding this filing to Michael Andrea at (509) 495-2564 or michael.andrea@avistacorp.com and Patrick Ehrbar at (509) 495-8620 or patrick.ehrbar@avistacorp.com.

Sincerely,

/s/ Patrick Ehrbar

Patrick Ehrbar
Director of Regulatory Affairs

Cc: Terry Borden, Clearwater Paper Corporation
Malisa Maynard, Clearwater Paper Corporation

Michael G. Andrea (ISB No. 8308)
Senior Counsel
Avista Corporation
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AVISTA)
CORPORATION'S PETITION FOR)
APPROVAL OF A SETTLEMENT) **CASE NO. AVU-G-20-02**
AGREEMENT BETWEEN CLEARWATER)
PAPER CORPORATION AND AVISTA)
CORPORATION)

Pursuant to Idaho Public Utilities Commission Rule of Procedure 53, Avista Corporation ("Avista" or "Company") petitions the Idaho Public Utilities Commission ("Commission") for approval of a Settlement Agreement with Clearwater Paper ("Clearwater") that resolves a disputed penalty that arose under Avista's Idaho Natural Gas Tariff ("Tariff"). The Settlement Agreement is attached hereto as Exhibit A. This Settlement Agreement fully and finally resolves all issues associated with any entitlement penalties that were or could have been levied by Avista against Clearwater for exceeding its nominated natural gas volumes during the period between February 7, 2019 and March 4, 2019.

During the period February 7, 2019 to March 4, 2019, the penalties for Clearwater's unauthorized volumes during overrun entitlements were calculated to be \$926,202 ("Penalty"). As discussed herein, under the unique circumstances that gave rise to the Penalty, the full Penalty amount was unduly burdensome. Under the terms of the Settlement Agreement, Avista and

Clearwater agreed to settle the Penalty for a total of \$500,000. Clearwater has authorized Avista to represent that Clearwater supports this Petition.

Communications in reference to this Application should be addressed to:

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I. Clearwater Paper's Special Contract with Avista

Based on Clearwater's unique ability to bypass Avista's distribution facilities and take service directly from Northwest Pipeline, Avista and Clearwater entered into a special contract ("Contract").¹ The initial term of the Contract was 10 years ending November 30, 2016, and continuing in effect from year-to-year thereafter unless canceled twelve-months prior by written notice by either party. The Contract remains in effect today. Pursuant to section 7 of the Contract, Clearwater shall be responsible for imbalance charges or penalties as set forth in Avista's tariff. As noted in subsection 11 of the Contract, "Incorporated Terms", except as provided in the

¹ See Case No. AVU-G-07-01.

Contract, all terms and conditions set forth in Avista's Tariff are incorporated in the Agreement. Accordingly, the terms set forth in the Tariff are applicable to Clearwater.

II. Wholesale Natural Gas Prices and Entitlements

On October 9, 2018, the Enbridge-owned West Coast Pipeline experienced a rupture which greatly reduced natural gas flows to the Sumas natural gas trading hub for the entire 2018-2019 winter time period. That rupture, coupled with Jackson Prairie system maintenance and outages, resulted in unusually high prices and volatility at Sumas. In the February and March 2019 timeframe, Northwest Pipeline, the main interstate pipeline that transports natural gas from Sumas south along the I-5 corridor and east to the Rocky Mountains, issued certain entitlement notices requiring shippers on their pipeline to stay within a certain percentage of their nominated natural gas supplies. Avista, for its part, issued the same entitlement notice to those customers on Avista's distribution system who purchase their own natural gas, and procure their own natural gas transportation. Clearwater is one of those "transportation" customers. In spite of these notifications from Avista, and without passing judgement as to why, Clearwater exceeded its nominated natural gas volumes eight times between February 7, 2019 and March 4, 2019. Those eight exceedances, pursuant to the Company's tariff, led to the issuance of entitlement penalties.

The average price for natural gas at various non-Sumas trading hubs during those exceedances was \$6.46 per dekatherm. The average price at Sumas, however, was \$35.98 per dekatherm, including a high price of \$159.27 per dekatherm (or \$15.93 per therm). As set forth in Idaho Schedule 146, the entitlement penalty was the greater of \$10 per dekatherm or 150% of the highest price basin. Given that the price of natural gas at Sumas exceeded \$10 per dekatherm, the "150% of the highest price basin" became the penalty. Ultimately, using that penalty methodology

and the volumes that exceeded the nominations, the resulting penalty for Clearwater is \$926,202. In Avista's (and Clearwater's) view, that level of penalty may be unduly burdensome. Despite the regional supply constraints, and entitlements put on Avista by Northwest Pipeline, Avista at no time was forced to buy more natural gas to make up for the natural gas Clearwater used in excess of the various entitlements. As such there was no financial harm to any of Avista's core customers, nor was Avista penalized by Northwest Pipeline.

III. Commission Approval of a Request for Limited Waiver of Schedule 146 of Avista's Tariff

On November 14, 2019, Avista petitioned the Commission to grant a limited waiver of certain penalty provisions in Schedule 146 of Avista's tariff, seeking authorization to enter into settlement discussions with Clearwater. On February 7, 2020, the Commission approved Avista's Petition in Order No. 34549 (Case No. AVU-G-19-08).

We approve a limited waiver of Schedule 146's penalty provisions, understanding that the Company will negotiate with Clearwater to establish a less burdensome penalty. This limited waiver does not authorize the Company to forgive the penalty or to negotiate a nominal penalty. Clearwater agreed to follow Schedule 146 and failed to do so. Under different circumstances, Clearwater's exceedances could have subjected Avista to entitlement penalties from Northwest Pipeline. Entitlement orders are designed for circumstances like the Enbridge pipeline rupture, and such orders need meaningful teeth. We approve the limited waiver here for one reason-no one appears to have been harmed by Clearwater's exceedances. Avista was not penalized by Northwest Pipeline, and no other transportation customers appear to have been harmed. Considering these facts, we find it fair, just, and reasonable to waive the penalty provisions in Schedule 146 to allow the Company to negotiate a less burdensome penalty.

IV. Settlement between Avista and Clearwater

On February 21, 2020, and again on March 2, 2020, Avista and Clearwater representatives met to discuss a potential settlement related to the entitlement penalty. Understanding the Commission's directives that the penalty should be (1) less burdensome, (2) not zero or nominal

in nature, and (3) that the penalty should have “meaningful teeth”, Avista and Clearwater agreed to a \$500,000 penalty, a reduced level from \$926,202 as calculated pursuant to Avista’s Commission approved tariff.

The agreed-upon penalty strikes a reasonable balance whereby the penalty is still a sizeable amount at \$500,000 and provides meaningful teeth, but at the same time is not so high that the penalty is unduly burdensome. The agreed-upon penalty is large enough to deter future entitlement violations. Finally, Avista has reviewed the circumstances that gave rise to Clearwater’s Penalty. Under the circumstances that gave rise to Clearwater’s Penalty, the agreed-upon penalty amount is appropriate. Importantly, Avista has determined that other customers were not harmed by Clearwater’s entitlement violations.

The turmoil in the natural gas markets that ultimately led to the entitlement penalty in itself resulted in significant burden to Clearwater as it relates to the cost of natural gas. Clearwater absorbed higher natural gas costs that exceeded \$8 million during the same time period. Under the circumstances, imposing the full amount of the Penalty would be unduly burdensome.

V. Communication to Avista’s Idaho Transportation Customers

In Order No. 34549, the Commission stated that “Additional notice of the settlement shall be given to Avista's Idaho transportation customers by the date the settlement agreement is filed with the Commission.” Simultaneous with the filing of this Settlement Agreement, Avista provided a copy of this Petition and Settlement to Avista’s other Idaho transportation customers. A copy of that notice is Attached as Exhibit B.

CONCLUSION

WHEREFORE, based on the foregoing, Avista hereby requests that the Commission approve the Settlement Agreement, attached as Exhibit A. The Company requests that the matter be processed under the Commission's Modified Procedure rules through the use of written comments.

Dated at Spokane, Washington this 7th day of April 2020.

AVISTA CORPORATION

By: /s/ Michael G. Andrea
Michael G. Andrea
Senior Counsel

Exhibit A

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into on April 2, 2020, between Avista Corporation ("Avista") and Clearwater Paper Corporation ("Clearwater") (individually a "Party" and collectively, the "Parties") to fully and finally resolve all issues associated with any entitlement penalties that were levied by Avista against Clearwater for exceeding its nominated natural gas volumes during the period between February 7, 2019 and March 4, 2019 ("Entitlement Issue").

RECITALS

WHEREAS, On October 9, 2019, the Enbridge-owned West Coast Pipeline experienced a rupture which greatly reduced natural gas flows to the Sumas natural gas trading hub for the entire 2018-2019 winter time period;

WHEREAS, in the February and March 2019 timeframe, Northwest Pipeline, issued certain entitlement notices requiring shippers on their pipeline to stay within a certain percentage of their nominated gas supplies;

WHEREAS, as a result of Northwest Pipeline's entitlement notices, Avista issued entitlement notices to those customers on Avista's distribution system, including Clearwater, who purchase their own natural gas and procure their own natural gas transportation;

WHEREAS, Clearwater exceeded its nominated natural gas volumes eight times between February 7, 2019 and March 4, 2019 and, as a result, Avista issued entitlement penalties on Clearwater in accordance with the then-approved Schedule 146 of Avista's natural gas tariff ("Schedule 146");

WHEREAS, under the unique circumstances that gave rise to Clearwater's entitlement penalties, Avista and Clearwater desired to enter into settlement discussions to ensure that the amount of any penalty is appropriate to satisfy the intent of the entitlement penalties in Schedule 146, but is not unduly burdensome or otherwise unjust and unreasonable;

WHEREAS, Avista filed a petition for limited waiver of the penalty terms set forth in Schedule 146 ("Petition") with the Idaho Public Utilities Commission ("Commission") requesting a limited waiver of the prescribed entitlement penalties in Schedule 146 and to allow Avista to engage in settlement discussions with Clearwater to resolve the disputed penalty amount;

WHEREAS, in Order No. 34549, the Commission approved Avista's Petition to allow Avista to negotiate a less burdensome penalty, provided that any settlement that is reached shall be submitted to the Commission for approval.

NOW THEREFORE, the Parties agree as follows:

MA
[Handwritten signature]

AGREEMENT

1. Effective Date. The Parties understand and agree that this Agreement is subject to approval by the Commission. The Agreement shall be effective on the date first stated above or such other date established by the Commission.

2. Entitlement Penalty. Avista calculated the entitlement penalty against Clearwater for exceeding its nominated natural gas volumes during the period between February 7, 2019 and March 4, 2019 under Schedule 146 to be \$926,202 ("Original Penalty"). Clearwater and Avista agree that, under the unique circumstances that existed at the time, the Original Penalty is unduly burdensome. Notably, Avista was not forced to buy more natural gas to make up for excessive natural gas used by Clearwater, there was no financial harm to any of Avista's core customers, and Avista was not penalized by Northwest Pipeline. Accordingly, the Parties agree to reduce the Original Penalty such that the total penalty that Clearwater will pay for the Entitlement Issue shall be \$500,000 ("Settlement Amount").

3. Commission Approval. The obligations of the Parties under this Agreement are subject to Commission approval in accordance with its terms and conditions and, upon such approval, the order approving this Agreement being upheld on appeal, if any, by a court of competent jurisdiction.

A. Upon execution of this Agreement, Avista shall file this Agreement with the Commission for approval. Clearwater will not oppose Avista's filing of this Agreement and Clearwater shall support Avista's filing to the extent such support is reasonably requested by Avista. Except as provided in section 3.B of this Agreement, neither Party shall appeal a Commission order approving the Agreement. If this Agreement is challenged by any person not a party to the Agreement, each Party to this Agreement reserves the right to file testimony, cross-examine witnesses and put on such case as it deems appropriate to respond fully to the issues presented, including the right to raise issues that are incorporated in the settlement terms embodied in this Agreement; provided, however, that all statements made and positions taken in negotiations relating to this Agreement shall be confidential.

B. If the Commission rejects any part or all of this Agreement or imposes any additional material conditions on approval of this Agreement, each Party reserves the right, upon written notice to the other Party within 14 days of the date of such action by the Commission, to withdraw from this Agreement. In such case, no Party shall be bound or prejudiced by the terms of this Agreement, and each Party shall be entitled to seek reconsideration of the Commission's order, file testimony as it chooses, cross-examine witnesses, and do all other things necessary to put on such case as it deems appropriate.

4. Settlement Payment. Upon Commission approval of this Agreement, Avista will invoice Clearwater for the Settlement Amount. Clearwater shall pay the Settlement Amount within 30 days of the date of such invoice. Clearwater's payment of the Settlement Amount shall fully and finally resolve the Entitlement Issue.

5. No Precedent. The Parties agree that this Agreement represents a compromise of the positions of the Parties in this case and is entered into by the Parties to resolve the Entitlement Issue. The Parties acknowledge that the Entitlement Issue is based on unique circumstances that existed only for Clearwater's Entitlement Issue. The Parties understand and agree that this Agreement shall not establish a course of dealing or otherwise provide any precedent for addressing future entitlement penalties or any other penalties that may be imposed under Avista's tariff.

6. Confidentiality; Reservation of Rights. Except to the extent necessary to support the approval of this Agreement by the Commission, this Agreement and all statements made and positions taken in negotiations relating to this Agreement shall be confidential and shall not be admissible in evidence in this or any other proceeding. In no event shall either Party shall be bound, benefited or prejudiced by any position asserted in the negotiation of this Agreement, except to the extent expressly stated herein. This Agreement shall not be construed as a waiver of the rights of either Party unless such rights are expressly waived herein. No findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Agreement.

7. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

DATED this 2nd day of April, 2020.

AVISTA CORPORATION

CLEARWATER PAPER CORPORATION

By: Michael Andrea P.E.

By: Terry Borden

Michael Andrea
Senior Counsel for Avista

Terry Borden
Vice President of Procurement for Clearwater
Paper Corporation

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