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January 4, 2011

Via Email and Overnight Mail
Jean Jewell
Idaho Public Utilities Commission
472 W. Washington Street
Boise, ID 93702
Email: jean.jewell@puc.idaho.gov

Re: Orem Family Wind, LLC v. Avista Corporation, IPUC Case No. AVU-E-10-06
Avista Corporation' Answer

Dear Ms. Jewell:

Please find enclosed for filing an original and seven copies of Avista Corporation's Answer to the complaint filed by Orem Family Wind, LLC in the above-referenced docket. Please let me know if you have any questions regarding this filing.

Sincerely,

Michael G. Andrea
Senior Counsel

Enclosures

cc: Peter Richardson
Gregory M. Adams

MICHAEL G. ANDREA (ISB No. 8308)
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

OREM FAMILY WIND, LLC, Complainant, v. Avista Corporation dba Avista Utilities, Inc., Defendant	)	CASE NO. AVA-E-10-06 ANSWER

Avista Corporation, by and through its attorney, Michael G. Andrea, hereby answers the complaint ("Complaint") of Orem Family Wind, LLC ("Orem") in the above-captioned matter.

I. Introduction.

1. In its Complaint, Orem requests that the Commission declare that Avista is in violation of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and that the Commission order Avista to "execute a standard PURPA power purchase agreement with Orem Family Wind, LLC containing Avista's avoided cost rates on file for QFs under 10 aMW in Order No. 31025, and the terms deemed reasonable by the Commission for the disputed clauses described in [Orem's] Complaint." Complaint, Prayer ¶¶ 1, 2.

2. Orem alleges, among other things, that Avista has rejected Orem's attempt to obligate itself to a power purchase agreement containing Commission-approved terms of a standard PURPA power purchase agreement and has refused to negotiate reasonable terms

regarding (i) environmental attributes, (ii) delay default liquidated damages and security, and (iii) wind integration charges. *E.g.*, Complaint, Introduction.

3. On or around November 22, 2010, Orem sent Avista a power purchase agreement executed by Orem ("Orem PPA", attached hereto as Attachment 1) along with a letter discussing certain issues regarding the Orem PPA ("November 22 Letter"). (The November 22 Letter is attached hereto as Attachment 2.) At no time prior to Avista's receipt of the executed Orem PPA did Orem make any attempt contact Avista. Rather, Orem simply took a draft power purchase agreement provided to another developer and unilaterally changed material terms to that draft power purchase agreement. Prior to Avista's receipt of the Orem PPA, Orem did not contact Avista or make any effort to negotiate the terms of the Orem PPA.

4. In a letter dated December 1, 2010, Avista rejected the Orem PPA, but made clear that Avista stood ready to engage in the necessary discussions to negotiate in good faith a mutually acceptable power purchase agreement with Orem ("December 1 Letter"). (The December 1 Letter is attached hereto as Attachment 3.) On December 9, 2010, Avista engaged in a brief discussion with Orem regarding the terms of the Orem PPA at which time Avista indicated that it was not willing to accept certain terms demanded by Orem, but Avista was willing to negotiate in good faith. Following that brief discussion, Orem filed its Complaint alleging, among other things, that Avista has negotiated in bad faith and has violated PURPA, FERC's implementing regulations, and the Commission's orders. Complaint, ¶ 28, Prayer ¶ 1. Orem alleges that Avista has violated PURPA by, in its view, unjustifiably (a) refusing to disclaim ownership of environmental attributes in a power purchase agreement that will contain published avoided cost rates, (b) insisting on delay liquidated damages and delay security

amount of $45 per kW nameplate capacity, and (c) requiring Orem to pay 50 percent of the standard wind integration charge. Complaint, ¶¶ 23-25.

5. With regard to Orem's specific allegations, the Commission has not specifically ruled on the issue of ownership of environmental attributes with regard to PURPA projects and, therefore, the disclaimer of rights to such environmental attributes requested by Orem is not required. Second, delay liquidated damages and security of $45 per kW nameplate capacity is consistent with power purchase agreements executed by other developers and approved by the Commission. *E.g.*, Order No. 32144 (approving agreement between Idaho Power Company and wind developer containing $45 per kW delay liquidated damages). Finally, the Commission approved a wind integration charge in Order No. 30500. Avista's reduction of the standard wind integration charge by 50 percent due to Orem's circumstances is consistent both with that Commission order and the purposes of the wind integration charge. Orem's allegations are without merit. Moreover, Avista takes exception to Orem's allegations that Avista negotiated in bad faith.

II. Answer

6. Avista hereby provides the following answer to the allegations in Orem's Complaint. Except as expressly admitted herein, Avista denies all material allegations of the Complaint.

7. Avista admits the allegations of paragraph 1 of the Complaint.

8. Avista lacks sufficient information or knowledge regarding the allegations contained in paragraph 2 of the Complaint and, therefore, neither admits nor denies those allegations.

9. Paragraphs 3, 4, and 5 of the Complaint contain conclusions of law that require no response and, therefore, Avista neither admits nor denies those allegations.

10. Avista lacks sufficient information or knowledge regarding the allegations contained in paragraphs 6, 7, 8, and 9 of the Complaint and, therefore, neither admits nor denies those allegations.

11. Avista admits the allegations of paragraph 10 of the Complaint.

12. Paragraph 11 of the Complaint contains conclusions of law that require no response and, therefore, Avista neither admits nor denies those allegations.

13. In response to paragraph 12 of the Complaint, the documents referenced in paragraph 12 of the Complaint speak for themselves.

14. Avista admits the allegations of paragraphs 13 and 14 of the Complaint.

15. In response to paragraph 15 of the Complaint, Avista admits that it refused to agree to terms unilaterally proposed by Orem in the Orem PPA regarding ownership of environmental attributes, delay liquidated damages and security, and the wind integration charge.

16. In response to paragraph 16 of the Complaint, Avista admits that it refused to agree to terms unilaterally proposed by Orem in the Orem PPA regarding ownership of environmental attributes. In response to the remaining allegations in Paragraph 16 of the Complaint, the Idaho Power Company and Rocky Mountain Power PURPA PPAs referenced in paragraph 16 of the Complaint speak for themselves.

17. In response to paragraph 17 of the Complaint, Avista admits that, in the brief discussion it had with Orem, it would not agree to delay liquidated damages and security clauses containing damages and security amounts less than $45 per kW. To the extent implied by

paragraph 17 of the Complaint, Avista denies that its proposed delay liquidated damages and security amounts are not reasonable.

18. In response to paragraph 18 of the Complaint, Avista admits that, in the brief discussion it had with Orem, it agreed to reduce its standard wind integration charge by 50% because Avista understands that Orem will schedule energy to Avista's electrical system on an hourly firm basis. The remaining allegations of paragraph 18 of the Complaint either contain conclusions of law for which no response is required or Avista lacks sufficient information or knowledge and, therefore, Avista neither admits nor denies those allegations.

19. Paragraph 19 of the Complaint contains conclusions of law that require no response and, therefore, Avista neither admits nor denies those allegations. To the extent a response is required the documents referenced in paragraph 19 of the Complaint speak for themselves.

20. Avista lacks sufficient information or knowledge regarding the allegations contained in paragraph 20 of the Complaint and, therefore, neither admits nor denies those allegations.

21. In response to paragraph 21 of the Complaint, Avista incorporates its responses to paragraphs 1-20 of the Complaint.

22. Paragraphs 22-28 of the Complaint contains conclusions of law that require no response and, therefore, Avista neither admits nor denies those allegations. To the extent any response is required, Avista denies the allegations in paragraphs 23, 24, and 25 and further denies that Avista's actions are unjustifiable or unreasonable. Avista takes particular exception to the allegation in paragraph 29 of the Complaint that Avista negotiated in bad faith, which it also denies.

23. In response to the Prayer for Relief contained in the Complaint, Avista denies that Orem is entitled to the relief prayed for.

WHEREFORE, Avista respectfully requests that the Commission issue an order denying the relief sought by Orem in its Prayer for Relief.

Respectfully submitted this 4th day of January 2011.

Michael G. Andrea
Attorney for Avista Corporation

POWER PURCHASE AGREEMENT

BETWEEN

Orem Family Wind, LLC

AND

AVISTA CORPORATION

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POWER PURCHASE AGREEMENT

This Agreement is made by and between Avista Corporation, a Washington corporation ("Avista"), and Orem Family Wind LLC an Oregon LLC ("Seller"). Avista and Seller aresometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seller will design, construct, own, operate and maintain a 10 megawatt electric power generating facility ("Facility") at Lexington, OR as more fully described in Exhibit G;

WHEREAS, Seller will operate the Facility as a Qualifying Facility, as defined by the Public Utility Regulatory Policies Act of 1978 ("PURPA"); and

WHEREAS, Seller will deliver and sell, and Avista will purchase, electric energy generated from the Facility subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows.

1 DEFINITIONS

Except as otherwise defined in this Agreement, whenever used in this Agreement and exhibits hereto, the following terms shall have the following meanings:

1.1 "Agreement" means this Power Purchase Agreement, including all exhibits, and any written amendments.

1.2 "Alternate Point of Delivery" shall have the meaning provided in Section 12.3 of this Agreement.

1.3 "Avoided Cost Rates" or "Base PURPA rate" shall have the meaning provided in Section 8.2 of this Agreement.

1.4 "aMW" means average megawatt(s). An average megawatt is calculated by dividing the total generation in MWh over a given period of time (e.g., a calendar month) by the number of hours in that period of time.

1.5 "Ancillary Services" means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the electrical systems in accordance with Prudent Utility Practices and any existing or future WECC requirements.

1.6 "Availability Factor" shall equal the ratio of the availability of all turbines (the "Numerator") as compared to the planned availability adjusted for Force Majeure and Schedule Outages (the "Denominator"). The Numerator shall be calculated by taking the number of hours for which each turbine is available multiplied by its nameplate capacity rating and summing these resulting values for all turbines in the Facility. The Denominator shall be calculated as the nameplate capacity rating for each turbine multiplied by the result of the total number of hours in the Calendar Month less Scheduled Outage hours during the Calendar Month less Force Majeure hours during the Calendar Month for each turbine and summing these resulting values for all turbines in the Facility. Accordingly the formula that will be applied to calculate the Availability Factor is:

$$\text{Availability Factor} = \frac{\text{(nameplate capacity for each turbine * number of hours such turbine was available during the Calendar Month}}{\text{[nameplate capacity for each turbine (total hours in the Calendar Month - Force Majeure hours – Scheduled Outage hours)]}}$$

A sample calculation is attached as Exhibit H to this Agreement for illustrative purposes only.

1.7 "Balancing Authority Area" means an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Balancing Authority Areas and contributing to frequency regulation of the interconnection. A Balancing Authority Area must be certified by the applicable reliability council (such as WECC or other reliability council).

1.8 "Business Day" means every day other than a Saturday or Sunday or a national holiday. National holidays shall be those holidays observed NERC.

1.9 "Commercial Operation" means the Facility is fully operational and reliable, is a Qualified Facility and Seller has fulfilled all of the conditions required by Section 4.2 of the Agreement.

1.10 "Commercial Operation Date" means the day following the date that the Facility first achieves Commercial Operation.

1.11 "Commission" means the Idaho Public Utilities Commission, or its successor.

1.12 "Delay Liquidated Damages" means the damages payable to Avista due to Seller's failure to achieve Commercial Operation by the Scheduled Operation Date as set out in Sections 4.3 and 4.4 of this Agreement.

1.13 "Delay Period" means all hours within a given calendar month for all months and partial months past the Scheduled Operation Date until Seller's Facility achieves Commercial Operation.

1.14 "Delay Price" means the positive difference, if any, of the Market Energy Price minus the Net Avoided Cost Rate applicable for the Delay Period as specified in Section 8.2 of this Agreement. If this calculation results in a value less than 0, the result of this calculation will be 0.

1.15 "Deliverable Net Output" means Net Output less any applicable Losses and other applicable adjustments associated with the transmission of energy from the Point of Interconnection to the Point of Delivery or to an Alternate Point of Delivery, if any.

1.16 "Effective Date" shall have the meaning provided in Section 4 of this Agreement.

1.17 "Excess Energy" shall have the meaning provided in Section 8.3 of this Agreement.

1.18 "Facility" means the electric energy generating facilities, including all equipment and structures necessary to generate and supply electric energy, more particularly described in Exhibit C.

1.19 "Facility Service Power" means the electric energy generated and used by the Facility during its operation to operate equipment that is auxiliary to primary generation equipment including, but not limited to, pumping, generator excitation, cooling or other operations related to the production of electric energy by the Facility.

1.20 "Force Majeure" shall have the meaning provided in Section 13 of this Agreement.

1.21 "FERC" means the Federal Energy Regulatory Commission, or its successor.

1.22 "Independent Engineering Certification" means certifications detailed in Section 3.4 provided by a professional engineer registered in Idaho or the state in which the Facility is located, who has no direct or indirect, legal, or equitable ownership interest in the Facility.

1.23 "Initial Capacity Determination" shall have the meaning provided in Section 3.5 of this Agreement.

1.24 "Initial Expected Energy" shall have the meaning provided in Section 3.6 of this Agreement.

1.25 "Interconnection Agreement" means, as applicable, the agreement between Seller and Avista or Seller and a Transmitting Entity that is providing interconnection service which governs how the Net Output is delivered to Avista's or the Transmitting Entity's electrical system at the Point of Interconnection during the Term of this Agreement.

1.26 "Interconnection Facilities" means, if applicable, all facilities required to connect the Facility to the Point of Interconnection, including connection, transformation, switching, relaying and safety equipment. Interconnection Facilities shall also include all telemetry, metering, cellular telephone, and/or communication equipment required under this Agreement regardless of location.

1.27 "Losses" means the loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the Point of Interconnection and the Point of Delivery.

1.28 "MW" means megawatt. One thousand kilowatts equals one megawatt.

1.29 "MWh" means megawatt-hour. One thousand kilowatt-hours equals one megawatt-hour.

1.30 "MAG Shortfall" shall have the meaning provided in Section 5.2 of this Agreement.

1.31 "Market Energy Price" means the monthly weighted average, based on daily on- and off-peak Net Output, of the daily On- and Off-Peak Dow Jones Mid-Columbia Firm Index (Dow Jones Mid-C Firm Index) prices for firm energy.

1.32 "Mechanical Availability Guaranty" or "MAG" shall have the meaning provided in Section 5.1 of this Agreement.

1.33 "Nameplate Capacity Rating" means the maximum generating capacity of the Facility, as determined by the manufacturer, and expressed in kilowatts (kW).

1.34 "NERC" means the North American Electric Reliability Corporation or its successor.

1.35 "Net Avoided Cost Rates" or "Net PURPA rate" shall have the meaning provided in Section 8.2 of this Agreement.

1.36 "Net Output" means the electric power generated by the Facility less Facility Service Power that is delivered to the Point of Interconnection, expressed in kilowatt-hours.

1.37 "Off-Peak" means all hours other than On-Peak hours.

1.38 "On-Peak" means the hours ending 0700 through 2200 Pacific Prevailing time, Monday through Sunday, excluding national holidays.

1.39 "Operating Year" means each 12-month period from January 1 through December 31.

1.40 "Point of Delivery" means the location, as specified in Exhibit C of this Agreement, where the electric energy produced by the Facility is delivered to Avista's electrical system.

1.41 "Point of Interconnection" means the high voltage side of Seller's step-up transformer at the point of interconnection between Seller's Facility and the Transmitting Entity's electric system, which is commonly referred to as the "busbar."

1.42 "Prudent Utility Practices" means the practices, methods, and acts commonly and ordinarily used in electrical engineering and operations by a significant portion of the electric power generation and transmission industry, in the exercise of reasonable judgment in the light of the facts known or that should have been known at the time a decision was made, that would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

1.43 "Qualifying Facility" or **"QF"** means a generating facility which meets the requirements for "QF" status under PURPA and part 292 of FERC's Regulations, 18 C.F.R. Part 292, and which has obtained certification of its QF status.

1.44 "Scheduled Operation Date" means the date specified in Section 3.1 when Seller anticipates achieving the Commercial Operation.

1.45 "Scheduled Outage" means any outage which is scheduled by the Seller to remove electrical or mechanical equipment from service for repair, replacement, maintenance, safety or any other reason, and which thereby limits the generating capability of the Facility to less than the Initial Capacity Determination.

1.46 "Start-Up Testing" means the start-up tests required by the factory and/or Avista that prove that the Facility is reliably producing electric energy.

1.47 "Term" shall have the meaning provided in Section 4.1 of this Agreement.

1.48 "Test Energy" shall be the energy generated during Start-Up Testing and shall have the meaning provided in Section 8.4 of this Agreement.

1.49 "Transmitting Entity" means any entity or entities that provide transmission and/or interconnection service to deliver electric energy from the Facility to Avista's electrical system at the Point of Delivery, if applicable.

1.50 "Transmission Agreement" means any agreement(s) entered into between Seller and a Transmitting Entity under which the Transmitting Entity shall provide firm transmission and any necessary Ancillary Services to facilitate deliveries hereunder from the Facility to Point of Delivery for the Term of this Agreement. The Transmission Agreement(s) is attached hereto as Exhibit D.

1.51 "WECC" means the Western Electricity Coordinating Council or its successor.

1.52 "Wind Energy Forecasting" shall have the meaning provided in Section 6 of this Agreement.

1.53 "Wind Integration Charge" shall mean a wind integration charge up to the wind integration charge authorized by the Commission in Order No. 30500, or any replacement wind integration charge authorized by the Commission. The Wind Integration Charge applicable to this Agreement is specified in Exhibit E.

2. WARRANTIES

21 No Warranty by Avista. Avista makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review Seller's design, specifications, equipment or Facility shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC and/or WECC reliability standard associated with the Facility or the delivery of electric energy from the Facility to the Point of Delivery.

2.2 Seller's Warranty. Seller warrants and represents that: (a) Seller has investigated and determined that it is capable of performing and will perform the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; (b) all professionals and experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller; (c) Seller will comply with all applicable laws and regulations and shall obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Facility; and (d) the Facility is, and during the Term of this Agreement will remain, a Qualifying Facility as that term is used in 18 C.F.R Part 292. Seller's failure to maintain Qualifying Facility status will be a material breach of this Agreement. Avista reserves the right to review the Seller's Qualifying Facility status and associated support and compliance documents at anytime during the Term of this Agreement.

3. CONDITIONS PRIOR TO COMMERCIAL OPERATION

3.1. Time is of the Essence. Time is of the essence in the performance of this Agreement and Seller understands and agrees that Avista is relying on Seller to meet the requirements of Section 4.2 on or before Dec 31,2012 (the "Scheduled Operation Date").

Seller understands and agrees that Avista's acceptance of deliveries of energy from Seller is contingent upon Seller fully satisfying each of the requirements in Section 4.2 of this Agreement prior to the Commercial Operation Date.