Avista Corp.
1411 East Mission PO Box 3727
Spokane, Washington 99220-3727
Telephone 509-489-0500
Toll Free 800-727-9170

AVISTA Corp.

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Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Docket No. UE-061895: Rulemaking to Implement the Washington Energy Independence Act, 19.285 RCW; Comments of Avista Corporation

Avista appreciates the work staff has done to integrate the collective comments of all parties on the draft rule, and for the opportunity to comment on this current draft. We also want to express our thanks to our sister utilities, the Initiative sponsors, and other stakeholders, for the joint effort we made to develop consensus rule language during the last round of comments. At this stage in the rulemaking, we have restricted our comments to the few areas we believe must be defined effectively before the end of 2007. These focus areas are restricted to the renewable resources portion of the draft rule, and include the definition of the first compliance year, when the compliance target must be achieved, annual reporting requirements, and the definition of "real time basis..." for importing eligible renewable energy from outside the Pacific Northwest.

Discussion of the Renewable Resources Requirements – Definition of the Compliance Year, Acquisition of Resources, and Reporting

Several issues have arisen in our discussions with the sponsors and other stakeholders about what is, in effect, the first compliance year for meeting the renewable resources target, when in time the resources or renewable energy credits must be acquired to meet the target in a given compliance year, and the requirements for reporting. We address these topics in our comments below.

Definition of Compliance Year

In section 19.285.040, the statute requires the utility to use eligible renewable resources to meet an annual target that is established January 1, 2012. We believe it's fair to acknowledge the potential for ambiguity in a plain reading of this language alone: does the first year of compliance commence on January 1, 2012, or is the utility required to be

compliant on that instant date? Throughout our discussions, all parties in this rulemaking (including the initiative sponsors and the WUTC staff) have read the statute to establish year 2012 as the first year of compliance with the renewable resource annual target. But, where there has been a divergence of views among parties, is with respect to what is intended by the language in the statute that requires the utility to be compliant with the annual target "by January 1", 2012. We believe consideration of other elements of the statute, which relate to compliance with the annual target and reporting, support the case that compliance with the first annual target *commences* January 1, 2012.

- **Does the statute intend the annual target be met on a date instant, and if so, what is that date?** In section 19.285.040 (e)(2)(a), the utility is required to meet an annual target in serving a percentage of its load with eligible resources. We believe the "by January 1" language was intended by the sponsors to actually initiate the calendar compliance year (i.e. "by January 1, 2012" initializes the compliance year that begins on January 1, 2012 and ends December 31, 2012). Alternatively, however, it has been suggested by the sponsors that the statute instead requires a utility to be judged as compliant with the annual target for a given compliance year, as assessed on January 1st of that compliance year. This view is in conflict with the plain reading of the complete statute. The law does require a utility to be compliant with their annual target on a date instant, but it is not January 1st of a given compliance year. Rather, the statute requires the final assessment of the utility's performance in meeting its target during a given compliance year, as being December 31st of the year following that given compliance year. You cannot read the statute as requiring a utility to be compliant with an annual target on January 1st of that compliance year (especially considering that the target for that year cannot be known on January 1 of that year), when the law explicitly states that the utility is judged as meeting or not meeting its target for a given year on December 31 of the calendar year following the given compliance year.

- **Is the first year of compliance with the annual target the calendar year 2012 or is it year 2011?** In section 19.285.040 (e)(2)(a), the utility is required to meet an annual target in serving a percentage of its load with eligible resources. We believe the law intends that the first annual target is established for the year 2012, which would commence on January 1st and end on December 31st of that year. One might construe that the compliance requirement of "by January 1, 2012", could implicitly refer to compliance with an annual target that was established for the year 2011 (i.e. the compliance year would commence January 1, 2011 and end on December 31, 2011). But, as outlined in our discussion below, the statute does not support an interpretation that the first year of compliance is calendar year 2011.

    - **The language in the statute that creates renewable energy targets for years 2016 and 2020 helps define the intended first**

year of compliance with the annual target as year 2012. In section 19.285.040 (e)(2)(a)(ii), it is undisputable that the annual target applies to the compliance year that begins January 1, 2016. It could not refer to an implied compliance year of 2015 since the target for that year is already defined in the statute under section (i) through December 31, 2015. Similarly, the requirement to meet fifteen percent of load with eligible renewable resources by January 1, 2020, refers to the compliance year of 2020, and not an implicit compliance year that ends December 31, 2019. It's clear from this construction that the sponsors intended the first year of compliance with renewable energy target to be calendar year 2012, and not an implicit compliance year of 2011.

- **The statute defines the annual target as a year, which begins January 1, and ends on December 31.** Language in section 19.285.040 (e)(2)(a)(ii, iii) defines that compliance with the annual renewable energy target ends on December 31st. Section 19.285.030 (20) of the statute, defines a "year" as "the twelve-month period commencing January 1st and ending December 31st." It's clear that the intent of the sponsors was for the annual renewable energy target to apply to a year that begins on January 1st and ends on December 31st. Logically, then, the first compliance year is the calendar period January 1, 2012 through December 31, 2012. If the sponsors had intended for year 2011 to be the first year of compliance with the annual target, then the initiative would have established the annual target as either commencing January 1, 2011, or ending December 31, 2011.

- **Comments of the sponsors articulate their understanding of the statute as requiring compliance with the first annual renewable energy target that is established for the year 2012.** In their proposed changes to the draft chapter, WAC 480-109-020, RNP, NWEC and NEEC define the first year when compliance will be measured as the calendar year 2012. On page 6 of their filing, they state in language proposed for the new rule that *"By June 1 of each year beginning in 2012, as part of its annual reporting requirement under WAC 180-109-040, a utility must demonstrate compliance with the renewable resource target for that year."* The sponsors further expand their understanding that year 2012 is the first year of compliance, when on page 7, section 4 of their proposed rule language, they highlight the June 1, 2014 report as providing the final accounting of the utility's effort to comply with the annual renewable energy target established for year 2012: *"a utility must demonstrate that it... acquired sufficient eligible renewable resources by December 31 of the calendar year two years prior and/or sufficient renewable energy credits by*

December 31 of the prior calendar year to meet the percent of load target for the calendar year two years prior (e.g., a utility's 2014 report will show its final acquisitions for meeting the percent of load target in calendar year 2012)."

- **The reporting requirements of the statute intend the calendar year 2012 as the first year of compliance with the renewable energy target.** In section 19.285.070 of the statute, the utility is required to provide a report on its progress in meeting resource and conservation targets. The date of the first report is June 1, 2012. Among other required information the utility is required to report on June 1, 2012, is its annual load for the prior two years, which would be for the calendar years 2010 and 2011. The statute (section 19.285.040 (e)(2)(c)) requires the utility's annual renewable energy target to be its "annual load based on the average of the utility's load for the previous two years." The requirement of the utility to report its annual loads for the years 2010 and 2011, provides the basis for establishing the utility's target load for the year 2012. In addition, the timing of the report, as June 1, 2012, provides the time (during the first quarter of year 2012) required by a utility to close its books on year 2011, so it can derive an actual annual load number for year 2011. The sponsors suggest the statute be read as requiring a utility to have identified and secured all required renewable energy generation and/or renewable energy credits by January 1, 2012, for compliance with the annual target for the year 2012, and at a calendar date (January 1) when the actual target for year 2012 (the average of the utility's load for 2011 and 2012) cannot be known. This position is clearly contrary to what the sponsors initially intended when they wrote the language that is now the statute.

Compliance Dates in the Statute for the Annual Renewable Energy Target

The law explicitly provides two dates by which a utility's performance in meeting the annual renewable energy target for a given year will be assessed: 1) December 31st of the compliance year - for a utility's reporting of actual generation from eligible renewable resources that it has applied toward the target for that given compliance year, and December 31st of the year following that compliance year - for the application of renewable energy credits toward the target for the compliance year. This understanding is clear and consistent among the parties, as represented in the filing of the sponsors (as previously mentioned above), the private utilities, and the Commission staff. For clarity, in the rule draft of June 15, 2007, in section WAC 480-109-050 (3)(b)(i), where the rule refers to the "utility's year 1 annual report", this year 1 report should be clarified to refer to the report that is filed on June 1 in the year following the given compliance year. And the "year 2 annual report" should likewise be noted as that report filed on June 1 two

years following the given compliance year. So, by example, for the compliance year 2012, the "year 1 annual report will be filed on June 1, 2013, and the "year 2 annual report" will be filed on June 1, 2014.

The Sponsors' Proposed Additional Compliance Framework

The sponsors have proposed an extra-statutory compliance requirement of January 1, 2012, and each year thereafter, where the utility would be required, for that compliance year, to have owned or contractually arranged for the rights to resources and/or renewable energy credits "that can be expected with a high degree of confidence to meet the annual target." It's our understanding that this proposal is based on an interpretation of the statute that would require a utility to be in compliance with the annual target for a given compliance year "by January 1" of that compliance year. We acknowledged in our comments above, that there is potential for ambiguity in the meaning of the "by January 1" language. But we have also provided the rationale for the interpretation of the meaning of the "by January 1" language, in the manner that is most-consistent with the overall statute (i.e. as commencing the compliance year).

To construe the "by January 1" language in the way the sponsors have (to require a utility to have acquired all resources and credits by January 1 that will be needed to have met an annual renewable energy target for a given compliance year) has two fatal shortcomings. First, the annual renewable energy target for a given compliance year cannot be known on January 1st of that compliance year (as we have described in our comments above). Second, and more importantly, is that the law explicitly provides a utility flexibility in meeting the annual renewable energy target, both in the type of "resource" that it will apply to its annual target (MWh's or REC's), and in the timing of when those renewable energy credits can be acquired and applied to the target. During our deliberations with the sponsors, the private utilities advocated for the option of using average expected output from intermittent resources on an annual basis, instead of their actual MWh's of generation within the compliance year. The sponsors were supportive of our interest in protecting customers from the potential "second costs" associated with intermittent resources, however, they stated clearly that "average expected output" was not provided for in the statute, and, more importantly, that there was substantial flexibility already provided in the law related to when renewable energy credits could be generated (previous year, current year, and subsequent year), and when they could be applied to the annual target for a given compliance year (within that compliance year or the year following). To now argue that a utility would have to have acquired all ownership or contract rights to renewable energy and/or credits by the first day of a given compliance year (notwithstanding that the target for that year cannot be established by that date), is to contradict the explicit assessment dates established in the statute, and to substantially destroy the flexibility a utility has been provided under the law to optimize the costs for its customers.

Technically, under the statute, a utility could wait until December 31st of the year following a given compliance year, and on that date, purchase renewable energy credits in the amount needed to satisfy the annual target in the compliance year. While that's

likely a risky strategy in practice, the example illustrates the discretion provided to the utility, under the law, to meet the annual target for a given compliance year. On the other hand, and in fairness to the wishes of the sponsors, Avista acknowledged in our joint discussions with them, that we would likely run our business in a manner somewhat akin to their proposal: that by the beginning of a compliance year (January 1), our utilities would likely be in a position of having made substantial arrangements for either renewable energy or credits to apply to the annual target for that compliance year. Our point of departure from their proposal, however, is that every utility will choose how much of its portfolio to have locked up at the beginning of the compliance year, based on the expected output of its own renewable resources, market price and forecast for renewable energy, and the market availability, price, and price forecast of renewable energy credits. Accordingly, the amount each utility will hedge each year will vary, under the flexibility afforded in the statute, and executed in a manner that optimizes risks and costs for its consumers.

Definition of "Real Time Basis" for Eligible Renewable Resources Located Outside the Pacific Northwest

The statute allows energy delivered into Washington State from an eligible renewable resource located outside the Pacific Northwest, to be counted against the utility's annual renewable resource target, providing it is delivered "on a real-time basis without shaping, storage, or integration services;..." We have invested a tremendous amount of time, working amongst ourselves and with the sponsors, in an attempt to define what deliveries of energy might be allowed under the law. The reason we have chosen to work through this issue during the course of this rulemaking (as opposed to pushing it out to a later rulemaking, or waiting for an adjudicative process), is that we have the opportunity at present, to evaluate proposals from developers whose projects would be subject to this restriction. We need to understand in the present time how the restrictions of the statute will impact the economics of certain projects that we might procure now (when resources are still somewhat cost-effective) to meet future renewables targets.

The principal problem we encountered in our discussions is that there are no standard utility definitions for "real time", "shaping", "storage", or "integration services". At the time the initiative language was being developed, we believed the sponsors, and their developer-partners, had in mind to restrict the kinds of services that were, at the time, being used by SCL, for example, to delay the delivery, and firm and shape its output, for delivery months later. Regardless of the lack of standardization of utility definitions, the structure of these contracts clearly represented an integration service. Accordingly, and over the course of our discussions, we proposed several definitions of "real-time", which were much more restrictive than the SCL-types of contracts. Several of these definitions are briefly recapped below, ranging from less to more restrictive.

1. Anything shorter than the day-ahead market. This definition defined "real time" as energy and capacity blocks purchased in any market shorter than the day-ahead market. This time frame, thus defined, could extend from periods as short as one hour, up to several days, which is the case when transactions are conducted on a

Friday, for example, for both days of the weekend, or longer if it includes an adjacent holiday(s).

2. Real-time Market. This definition focused on the timeframe intended by the term "real time", as it might apply during a weekday. In this definition, we proposed the "real-time market" as referring to intra-day trading of energy and capacity blocks as short as one hour, and extending up to many hours.
3. Hour-Ahead Purchases. This definition is similar to, but more restrictive than # 2 above. It is defined by very-short-term transmission purchases in the real time market, up to an hour ahead. It is also, interestingly, similar to the definition (hour-to-hour) toward which the sponsors described themselves as "amenable" in their comments to CTED on March 22, 2007, page 2.
4. The Lesser of Hourly Scheduled Delivery or Actual Generation. This definition, which we worked on with the sponsors in our joint work sessions, and thought we had reached an agreement, was filed in our joint comments on May 18, 2007. This definition is still more restrictive than #3 above.
5. Dynamic Scheduling. This definition refers to the instantaneous delivery of energy on a SCADA level requiring the use of firm, full-boat transmission. This definition has been, at most times, the one preferred by the sponsors to define the restrictions on renewable energy imported from outside the PNW. We have never advocated for this definition.

We believe the Commission can define by rule, and from examples represented in the continuum above, what reasonable restrictions should be on renewable energy coming from outside the Region. The flux in definitions of the terms used in the statute, which existed at the time the Initiative was written, as well as today, provide the Commission with latitude to adopt a definition that meets the spirit and intent of the statute, yet affords some cost benefits to the consumers it represents, all while avoiding potential legal entanglements (Commerce Clause, NAFTA, etc.). We advocate the Commission adopt a definition for restrictions on the import of renewable energy from outside the Pacific Northwest that comports with our definition #1 above.

Again, thank you for the opportunity to comment on this draft rule. We hope our comments are useful, and we look forward to working with you and others toward the conclusion of this process.

Sincerely,

Larry La Bolle
Director, Federal and Regional Affairs
Avista Corporation
509.495.4710
larry.labolle@avistacorp.com