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October 6, 2014

***Via: Electronic Web Portal***

Steven V. King  
Executive Director and Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive S. W.  
P.O. Box 47250  
Olympia, Washington 98504-7250

Re: Docket No. UE-131723 - Comments of Avista Utilities on the "Rulemaking For Energy Independence Act, WAC 480-109."

Dear Mr. King,

Avista Corporation dba Avista Utilities (Avista or Company) submits the following comments in accordance with the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to File Written Comments (Notice) issued in Docket U-131723 dated September 5, 2014.

On October 2, 2013, the Washington Utilities and Transportation Commission (Commission) filed with the Office of the Code Reviser a Preproposal Statement of Inquiry (CR-101) to examine whether revised regulations are needed to govern the Commission's implementation of Initiative Measure No. 937, titled the Energy Independence Act (EIA). Washington voters approved the EIA on November 7, 2006, now codified at chapter 19.285 RCW. The Commission adopted rules to implement the EIA on November 30, 2007, by General Order R-546 in Docket UE-061895, promulgated as chapter 480-109 WAC. On October 4, 2013, prior to drafting any revised rule language the Commission issued a notice of opportunity to file

written comments regarding the need to revise chapter 480-109 WAC. The Commission accepted written and verbal comments during a workshop held on November 12, 2013. Additional comments were due on December 2, 2013.

On April 9, 2014, the Commission published informal draft revisions to chapter 480-109 WAC and issued a notice requesting responses to several questions and comments on the informal draft revisions. Comments were due on May 9, 2014, and the Commission accepted additional comments during a workshop held on May 15, 2014.

On September 3, 2014, the Commission filed a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser. The Commission has reviewed comments from stakeholders received to date in this docket and has prepared a proposed rule for review and comment by interested persons.

Avista appreciates the opportunity to provide the following comments on Staff's proposed rule modifications to WAC 480-109—Acquisition of Minimum Quantities of Conservation and Renewable Energy as required by the Energy Independence Act (Chapter 19.285 RCW), referred to below as “the Act”:

#### **Conservation Resources**

The Company has no additional comments regarding the proposed rules related to conservation.

#### **Renewable Portfolio Standard**

##### **WAC 480-109-060**

The rule indicates that biomass energy using “old growth forests” does not qualify under 480-109-060(2)(b)(ii), however old growth forests are not currently defined in the rule. Defining this term is important to Avista and others who will use existing qualifying biomass energy from forest debris and wood product residuals starting with the 2016 compliance. Using qualifying biomass energy for 2016 compliance requires a filing in January 2016 estimating its use. Given the complexities with defining the term old growth, the Company recommends a workshop with the Commission Staff, utilities, and other interested parties, so that a definition may be included in the rules by mid-2015.

### WAC 480-109-200(3)

While Avista appreciates the concerns of Staff, and WREGIS registration may be the most straight-forward way to ensure compliance with the law, it need not be the only way. This is especially true when such a requirement will disqualify a significant amount of qualifying renewable energy to the detriment of customers. Further, the Act itself does not require WREGIS registration except for renewable energy credits. Based on these facts, Avista proposes the following language to supplement the proposed language and intent of 480-109-200(3).

(3) All eligible renewable resource generation owned by utilities regulated by the Commission, and all renewable energy credits used for utility compliance with the renewable energy standards, must be registered in WREGIS, regardless of facility ownership.

(4) Where eligible renewable resource generation is acquired by a Commission-regulated utility from a non-Commission regulated entity, where such resources are not registered in WREGIS, the Commission-regulated utility:

(a) shall encourage such non-Commission regulated entity to register its facilities in WREGIS.

(b) where unsuccessful in encouraging WREGIS registration, shall provide all documentation provided by the non-Commission regulated utility to the State Auditor supporting the resources' eligibility under the Act, AND provide a written certification by an executive officer attesting to the fact that such eligible renewable resources were used for compliance with the Act and are not being used for compliance with the Act by any other entity.

Absent the modification and addition, the Staff-proposed language would disqualify more than 15,000 MWh of otherwise eligible renewable resources annually from Avista's compliance filing. Unfortunately, while Avista has a contract share of various Mid-Columbia hydro resources, the resources themselves are owned by utilities not regulated by the Commission. While it can encourage WREGIS registration, Avista is no more able to require it by these owners than the Commission itself could.

Further, it seems reasonable that the findings of the State Auditor, combined with the protections recommended in language above, are adequate for compliance and provide proof that the renewable generation component will not be double counted or resold. With Auditor acceptance, Avista does not see a need to question the validity of the eligible renewable resources generated by, for example, the utilities owning Mid-Columbia generation.

Where the Commission does not agree that the specific language proposed herein provides adequate protections, Avista requests the Commission to consider other means to count this valuable qualifying renewable energy.

#### **WAC 480-109-200(7)(c)**

During informal workshops between Staff, the utilities, and others, three incremental hydropower calculation methods were identified and agreed to. Avista believes that the outcome was a positive result and provides adequate flexibility ensuring that all reporting utilities have a method of compliance addressing their unique needs, and the intent of the Act.

The proposed language now suggests that Method 3 is not an adequate reporting method, unless specifically authorized by the Commission.

#### *Similarities Between Method 2 and Method 3*

Methods 2 and 3 are similar in two substantial ways: 1) they both rely on an historical period to make assumptions about future conditions, and 2) their annual estimates vary from actual conditions. Method 2 and Method 3 use an historical period to determine the amount of eligible renewable resources for compliance under the Act. The main difference is that Method 2 uses the historical period to estimate a percentage of annual generation that is qualifying, whereas Method 3 provides a specific number of MWh. Under Method 2, the number of MWh varies from year-to-year. Neither method results in a precise measurement and the same could be said of Method 1. Method 1 is an approximation because it is impossible to operate the system under historical and upgraded conditions simultaneously.

#### *Clark Fork Upgrades Under Method 2 Can Be Less Precise Than Methods 1 and 3*

The upgrades on the Clark Fork River at Cabinet Gorge (CG) and Noxon Rapids (NR) together average approximately 8.9 percent more electricity than before the upgrades, or 151,029 MWh.<sup>1</sup> See Figure 1. Year-to-year, the percentage varies between 7.6 percent and 10.0 percent. The use of Method 2, based on a percentage, ranges year to year between a low of 133,433 MWh, and a high of 196,477 MWh. The average over ten years is 151,661 MWh using Method

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<sup>1</sup> See Avista's final 2012 EIA Compliance filing.

2's 8.9 percent average upgrade gain. Method 2 overstates Clark Fork upgrades by 6,320 MWh over the ten years, or 632 MWh per year. While varying more year to year, the use of Method 3, based on a ten-year average, equates to the exact upgrade level over the ten-year study period. In this example Method 2 provides a less precise long-run average of generation on the Clark Fork than either Method 1 or Method 3 would.

**Figure 1. Avista Clark Fork Incremental Hydro Calculation Comparisons**

Year	Base Data on Incremental Upgrade MWh (i.e., Method 1)								Method 2 Variance Statistics				Method 3 Variance
	CG3	CG2	CG4	NR1	NR3	NR2	NR4	Total	Total CF Plant MWh	Upgrade % Gain	Flat %	Variance	
2002	46,810	26,882	23,493	26,118	14,667	8,894	24,351	171,214	1,784,723	9.6%	159,728	11,486	(20,185)
2003	49,045	25,233	19,173	18,243	14,334	4,475	7,800	138,303	1,490,916	9.3%	133,433	4,870	12,726
2004	57,013	16,472	18,964	24,523	10,259	6,509	3,221	136,961	1,557,872	8.8%	139,425	(2,464)	14,068
2005	56,495	26,096	24,854	13,014	14,045	6,558	3,177	144,238	1,540,233	9.4%	137,847	6,391	6,791
2006	33,813	44,828	15,680	26,767	17,737	6,400	20,486	165,711	1,839,352	9.0%	164,617	1,094	(14,682)
2007	40,336	26,420	19,474	18,154	11,181	10,171	(1,056)	124,679	1,635,735	7.6%	146,394	(21,715)	26,350
2008	36,328	32,724	15,718	20,790	19,828	7,373	13,503	146,264	1,752,876	8.3%	156,878	(10,614)	4,765
2009	64,735	27,659	20,771	19,947	14,744	8,179	8,369	164,405	1,639,969	10.0%	146,773	17,632	(13,376)
2010	49,588	22,827	19,324	19,130	13,119	8,685	10,253	142,925	1,508,836	9.5%	135,037	7,889	8,104
2011	23,914	40,941	27,717	27,661	15,372	9,850	30,136	175,590	2,195,339	8.0%	196,477	(20,887)	(24,561)
<b>Avg</b>	<b>45,808</b>	<b>29,008</b>	<b>20,517</b>	<b>21,435</b>	<b>14,529</b>	<b>7,709</b>	<b>12,024</b>	<b>151,029</b>	<b>1,694,585</b>	<b>8.9%</b>	<b>151,661</b>	<b>(632)</b>	<b>-</b>
Range	40,821	28,356	12,037	14,647	9,569	5,696	31,192	50,911	704,424	2.4%	63,044	39,347	50,911

Highlight of the Averages  
 Represents Method 3 Average Value Used by Avista For Compliance  
 Represents Method 2 Average % That Would Hypothetically Be Applied to All Years  
 Represents Method 3 Average Variance (zero)  
 Represents Method 2 Average Variance (632 MWh over-estimation) of Qualifying Renewable Energy

### Benefits of Certainty with Method 3

The Act obligates utilities to commit to and procure eligible renewable resources prior to delivery. This introduces a level of uncertainty into the analysis that over time, and on average, increases customer costs. Output from wind farms, for example, depends on the amount of renewable energy actually generated by wind, discounted for outages and reduced wind in the environment.<sup>2</sup> Hydro under Method 3 has the benefit of both providing a valid estimate of expected benefits from hydro upgrades over time, as well as more certainty about the amount of eligible renewable energy to include in the annual reports. This certainty can help stabilize renewable energy costs, meeting the least-cost principle of resource planning.

<sup>2</sup> Wind also could be above-normal.

### *Differences Are Acceptable*

The accuracy of the three methods is subject to the sophistication and capabilities of the models being used by the utility. Each of the three Commission-regulated utilities uses a different hydro model with different capabilities and the publicly-owned utilities have their own models. In Avista's opinion, each is more than adequate for this exercise given the complexity of the problem. The lack of precision should not automatically preclude a methodology that benefits customers. The rule envisions a 5-year look-back at the performance of Method 3. Such a look back would benefit Method 2 as well. Even Method 1 could benefit from a periodic review to the extent the performance of the upgrade ended up being different from the engineering estimates.

### *Modification of Draft Rule*

In light of the facts described above, Avista believes that the rules should not pre-judge Method 3 before evidence to the contrary exists. No evidence has been presented that demonstrates Method 3 provides an inaccurate estimation of incremental hydro generation. Avista recommends that pre-judging Method 3 be eliminated by striking the first sentence from WAC 480-109-200(7)(c), as follows.

~~(c) Method three. A utility may only use method three to demonstrate compliance for a target year after 2017 by commission order.~~ Method three is a one-time calculation of the quantity of renewable energy performed by:

If the 2017 reporting provides clear evidence that Method 3 is not providing a fair valuation of the hydro upgrades, then a Commission order and/or a modification to the rule may be taken up at that time.

### **WAC 480-109-201(2)(E)**

This section requires the Company to use its latest IRP to determine the lowest-cost non-eligible resource in the incremental cost calculation. In some cases, this value will be a reasonable approximation. However, the latest IRP might not reflect the lowest-cost non-eligible resource. This situation occurs in periods of rapid change, and the latest IRP data could be as much as three years old.

Two examples illustrate this point. The first is natural gas prices, which can greatly affect the non-qualifying resource. Avista's 2009 IRP relied on natural gas market conditions during 2008, when prices were at their highest of record. Shortly after publication of the 2009 IRP, natural gas prices began to fall in response to the "fracking revolution," and did so drastically. The impact of this fall was not reported until the 2011 IRP, where natural gas prices were shown to be 20 percent lower than in the 2009 IRP. Natural gas prices continued to collapse, falling another 23 percent by publication of the 2013 IRP.

The second example showing drastic changes between IRPs concerns the price of wind generation. The 2011 IRP forecast wind prices at just over \$100 per MWh. As analysis for the 2011 IRP concluded, the Company learned that delivered wind prices were collapsing. An RFP issued in March 2011 resulted in the purchase of a wind resource in June 2011 for nearly 40 percent less than estimated by the 2011 IRP. Because the 2011 IRP was in the process of being printed, it was not possible to include this new information in the document. While wind likely would not be used as a non-eligible capacity resource in any compliance filing, the large price movement illustrates the potential risk of always relying on an IRP.

In Avista's view, these examples do not warrant removing the IRP as the primary source for valuing the non-eligible capacity resource. It does illustrate the possibility that an IRP might not be the best source at a given point in time because of quickly changing market conditions. To account for this possibility, Avista provides the following modifications to the draft rule.

(E) Noneligible levelized capacity cost. Calculate the levelized capital cost of obtaining an equivalent amount of capacity provided by the eligible resource, as determined in (a)(i)(B) of this subsection, from a noneligible resource. This cost must be levelized over a period equal to the facility life of the eligible resource and at the same discount rate used in (a)(i)(A) of this subsection. To make this calculation, a utility must use the lowest-cost, noneligible capacity resource identified in its most recent integrated resource plan acknowledged by the commission. Or where cost information in the IRP is no longer substantially representative of the lowest-cost, noneligible capacity resource, provide detailed documentation of the costs used, and why the figures are superior to those contained in the latest IRP.

**WAC 480-109-210(2)(i)**

Qualifying resources acquired or committed to prior to passage of the Act occurred for reasons other than the Act. Therefore, such acquisition costs should not be considered incremental for purposes of the Act, or included in the incremental cost calculation at a value other than zero. Avista recommends the following new section (G) be included in the rules:

(G) Pre-Act Qualifying Resources. Any qualifying resources acquired or committed to prior to November 2006 shall be attributed a cost of zero in the incremental cost calculation.

**WAC 480-109-210(2)(a)(ii)**

The current language proposes subtracting the value of energy sales from the incremental cost of eligible renewable resources when determining the annual calculation of revenue requirement ratio. As written, this would double-count the energy value, as energy sales already are subtracted from each eligible resource's cost in section 480-109-210(2)(a)(i)(F). To correct this error, the language should add back the assumed energy value from the original incremental cost calculation under 480-109-210(2)(a)(i)(D) in the present draft. The following modifications are recommended for section 480-109-201(2)(a)(ii).

(C) Subtract the revenue from the sales of any renewable energy credits and capacity and energy from eligible facilities; and

~~—(D) Divide the total obtained in (a)(ii)(A) through (C) of this subsection by the utility's annual revenue requirement, which means the revenue requirement that the commission established in the utility's most recent rate case, and multiply by one hundred.~~

(D) Add the pro-rated non-eligible levelized energy and capacity costs calculated in (a)(i)(C) and (a)(i)(D); and

(E) Divide the total obtained in (a)(ii)(A) through ~~(C)~~ (D) of this subsection by the utility's annual revenue requirement, which means the revenue requirement that the commission established in the utility's most recent rate case, and multiply by one hundred.

**WAC 480-109-210(3)**

This proposed rule obligates the utility to retain all reports filed under the Act in perpetuity. To limit the reporting burden, and maintain a more reasonable retention period, Avista recommends limiting the posting of historical reports on utility websites to ten years. This



period of record should be more than adequate for evaluation of utility compliance. Further, earlier reports may be obtained from the Records Center. The following language addition is recommended:

(4) Publication of reports. All current and ten years of historical renewable portfolio standard reports required in this section must be posted and maintained on the utility's web site and a copy of any report must be provided to any person upon request.

To be consistent in conservation reporting, the Commission might also consider a similar change to WAC 480-109-123(6).

### **WAC 480-109-300**

Avista believes WAC 480-109-300 related to carbon emission levels from fossil-fueled resources warrant further discussions, the Company recommends a workshop with the Commission Staff, utilities, and other interested parties to discuss its inclusion in the rules.

Again, the Company appreciates the opportunity to provide these comments. If you have any questions regarding these comments, please contact Clint Kalich at 509-495-4532 or me at 509-495-4975.

Sincerely,

*/s/Linda Gervais/*

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