

Agenda Date: September 24, 2020
Item Number: A1

Docket: UE-190663
Company Name: Avista Corporation, d/b/a Avista Utilities

Staff: Deborah Reynolds, Assistant Director Conservation & Energy Planning

Revised Recommendation

Issue an order in Docket UE-190663 rejecting the standard offer power purchase agreement (PPA) compliance filing submitted by Avista Corporation, d/b/a Avista Utilities (Avista or company) on September 4, 2020, and directing the company to submit a compliance filing by October 1, 2020, in accordance with the commission's order that:

1. Removes all references to the 90-110 performance band;
2. Includes an off-system sales addendum consistent with the version filed as an attachment to the August 17 stakeholder comments;
3. Does not prevent a qualifying facility (QF) from upgrading its facility; and
4. Does not terminate the agreement for failure to meet a milestone where the failure is caused by either Avista or Force Majeure.

Background

On June 12, 2019, the Washington Utilities and Transportation Commission (commission) concluded its rulemaking in Docket U-161024 with an order amending, adopting, and repealing parts of the Washington Administrative Code (WAC). Among other changes, the commission added a new Chapter 480-106 WAC clarifying the implementation of the Public Utilities Regulatory Policies Act (PURPA), which requires utilities to purchase energy and capacity from small power producers, also called QFs. The three electric utilities, including Avista, filed tariff revisions updating their respective tariffs to implement the requirements of Chapter 480-106 WAC on August 9, 2019.¹

After multiple rounds of comments and much discussion with commission staff (staff) and stakeholders, Avista's over-arching tariff Schedule 62 submitted under this docket was approved March 12, 2020, by commission order.² As required by that order and by rule, on May 28, 2020,

¹ Docket U-161024, General Order R-597, ¶ 23 (June 12, 2019).

² WAC 480-106-030(4) states, "All utilities shall file standard contract provisions for purchases from a qualifying facility with a capacity of five megawatts or less."

Avista filed its standard PPA as an attachment to Schedule 62, with a requested effective date of September 1, 2020. The company filed a revised PPA on August 6, 2020, and additional revisions on September 4, 2020, also moving the requested effective date to October 1, 2020.

Discussion

After reviewing the August 17, 2020, comments of the Northwest & Intermountain Power Producers Coalition (NIPPC) and Renewable Energy Coalition (REC; combined as “joint commenters” or “NIPPC/REC”) and the September 4, 2020, reply comments from Avista, staff believes Avista’s PPA should be rejected as inconsistent with the commission’s order in U-161024. An expanded list of issues between NIPPC/REC and Avista is provided as Attachment A to this memorandum. The key areas requiring revision so that the PPA complies with the commission’s order are explored in more detail below.

Remove proposed 90-110 performance band

The main remaining issue is Avista’s 90-110 performance band. Avista proposes to limit its avoided energy cost payments based on how well a Qualifying Facility (QF) estimates its monthly net output. If the actual output of the QF is less than 90 percent of the monthly estimate, Avista will pay the avoided cost price in the tariff, but it will also impose a penalty on the QF equal to the difference in the amount of power actually delivered and the 90 percent threshold, multiplied by the market price of power. This element effectively decreases the avoided cost price, which is simply not consistent with the PURPA requirement to pay a QF for all of the energy it produces at the avoided cost price.^{3, 4} Further, if the QF generates more than 110

³ The utility has already reflected characteristics such as variability of generation of various resource types in its estimated avoided *capacity* costs – it is not appropriate to add that element to the estimated avoided *energy* costs. Further, the practical effect of this condition in the short term would be unreasonable. Avista recovers power costs from customers, and this element could result in Avista collecting the penalty from the QF and recovering the same dollars from customers – raising the specter of double recovery.

⁴ See WAC 480-106-050(4)(a)(requiring utilities to file schedules of estimated avoided costs containing standard rates for purchases):

(a) A utility must file the schedule of estimated avoided costs containing standard rates for purchases pursuant to WAC 480-106-040 Schedules of estimated avoided costs as a revision to its tariff required in WAC 480-106-030 Tariff for purchases from qualifying facilities.

(i) The utility's standard rates for purchases must offer fixed rates to a new qualifying facility for a term of fifteen years beginning on the date of contract execution or a legally enforceable obligation, but not less than twelve years from the commercial operation date of the qualifying facility.

(ii) The utility's standard rates for purchases must offer fixed rates to an existing qualifying facility entering into a new agreement with the utility for a term of ten years.

percent of its estimated monthly output, Avista proposes to pay the lesser of market or the avoided cost price. This is inconsistent with the PURPA requirement that QFs may select from rates based on avoided costs forecasted at time of contract execution or legally enforceable obligation, or rates determined at time of delivery.⁵

The issue Avista is trying to address around power delivery predictability could be significant. However, Staff does not agree that resource contracts related to a facility 5 MW or less can in any way be called substantial. Avista's system resources amount to around 1,100 MW, so a QF project qualifying for a standard contract would represent less than 1 percent of Avista's resources. The proposed performance band is simply not appropriate for resources of 5 MW or less, as in this tariff.

At the top of page 6 of its September 4 reply, Avista argues that the performance band does not prevent QFs from obtaining avoided cost prices. While Avista is correct that the QF would get the avoided cost price if they generate at least 90 percent and no more than 110 percent of their estimated monthly power, that is certainly not the same as getting the avoided cost price for any energy and capacity that a QF makes directly or indirectly available, which is the actual requirement in commission rule.⁶

Develop off-system sales addendum

The PPA currently embeds and combines the treatment of off-system sales and on-system sales, mainly in section 5 of the PPA. Staff believes there is a clear difference between these two types of sales, and asks the commission to direct Avista to develop an off-system sales addendum that clearly identifies how losses will or will not be applied under the PPA.⁷ The draft addendum

⁵ See WAC 480-106-050(4)(b):

- (b) A utility's standard rates for purchases must provide **the qualifying facility the option** to either:
 - (i) Provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided cost of energy at the time of delivery; or
 - (ii) Provide energy, capacity, or both, pursuant to a legally enforceable obligation, in which case the rates for purchases shall, **at the option of the qualifying facility** exercised prior to the beginning of the specified term, be based on:
 - (A) The avoided energy and capacity calculated at the time of delivery; or
 - (B) The avoided costs of energy and capacity identified in the utility's schedule of estimated avoided costs in effect when the parties incur the obligation. (**emphasis added**)

⁶ WAC 480-106-020(1) requires a utility to purchase any energy and capacity that a QF makes directly or indirectly available.

⁷ WAC 480-106-020(4) directs the utility to adjust rates to reflect line losses. So the utility must pay the QF for the full amount of power made indirectly available, but it must also adjust the rate to reflect line

attached to the 8/17 comments of NIPPC/REC is a very good example, and is consistent with the Puget Sound Energy PPA allowed to go into effect in late 2019.⁸

Remove prohibition against facility expansion

The PPA currently prohibits facility expansion. This requirement is not reasonable. Staff believes the simple approach of allowing facility expansions up to 5 MW to use the existing contract best prevents gaming by the QF. Staff asks the commission to direct Avista to delete the following sentence in section 3.4 of the PPA “During the term of this Agreement, Seller shall not cause the capacity of the Facility to be greater than the Initial Capacity Determination by any means, including by addition, upgrade, or replacement.”

Revise termination terms to address milestone failures outside of QF’s control

The PPA is not currently clear about when a QF can use a cure period. It also does not differentiate between the various causes of a milestone failure. Staff asks the commission to direct Avista to amend section 4.2 of the PPA as follows:

In the event that the Seller fails to achieve the milestones set forth in Exhibit J, and such failure is not caused by Avista or the result of an Event of Force Majeure, such failure shall constitute a Default, and Avista may give written notice to Seller of a Default in accordance with Section 30. Seller may cure such Default within 30 days of receiving written notice of Default from Avista. However, if Seller fails to achieve the Commercial Operation Date of the Facility within three (3) years of the Effective date, Avista may terminate this Agreement by providing Seller written notice of termination without an opportunity for cure.

Conclusion

Issue an order in Docket UE-190663 rejecting Avista’s compliance filing and directing the company to revise the PPA as described above.

losses. There are multiple scenarios that might affect how losses should be incorporated. The simplest approach is likely to agree on a percentage reduction in the energy rate, as shown in the off-system sales addendum attached to the NIPPC/REC comments.

⁸ See staff open meeting memo, Docket UE-190665, December 5, 2019.