

Agenda Date: October 29, 2020
Item Number: A5

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

Staff: Deborah Reynolds, Assistant Director Conservation & Energy Planning

Recommendation

Direct the secretary to issue an order in Docket UE-190663 accepting the standard offer power purchase agreement (PPA) compliance filing submitted by Avista Corporation, d/b/a Avista Utilities (Avista or company) on October 26, 2020.

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, Avista filed its standard PPA as an attachment to Schedule 62. The company filed a revised PPA on August 6, 2020. The Northwest & Intermountain Power Producers Coalition (NIPPC) and Renewable Energy Coalition (REC; combined as "joint commenters" or "NIPPC/REC") filed extensive comments on August 17, 2020, and Avista filed reply comments and additional revisions to its PPA on September 4, 2020. The commission devoted significant time to this filing at the September 24, 2020, open meeting, and asked the parties to engage in further discussions to resolve the issues in staff's memo of that date. Avista filed revisions to its PPA on October 21, October 23, and October 26, 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."

Discussion

Staff appreciates Avista's removal of the 90-110 performance band raised in staff's memo from September 24. However, disagreement between Avista and NIPPC/REC remain in the areas of off-system delivery and payment and contract termination for failure to meet the commercial operation date.

Off-system delivery and payment

Avista removed references in the revised PPA to a monthly settlement process for delivery of energy from an off-system QF. NIPPC/REC asserts that this settlement process is necessary because hourly net output from a QF will not match firm delivery estimates, which must be made in whole megawatts. Avista added the word "monthly" to the second sentence of subsection 7.3 to modify Net Output.

The PPA adjusts the megawatt-hours from an off-system QF for the losses between the point of interconnection in someone else's system and the point of delivery in Avista's system.³ Avista argues that this provision allows them to avoid paying for power that was not directly produced by the QF, referring to the power the transmission provider uses to compensate for line losses. Avista's argument is not relevant. As stated in WAC 480-106-020(1), as long as the facility is certified as a QF, Avista must purchase the full amount of power made directly or indirectly available by the QF. The commission's rule directs the utility to adjust the rates for losses. The PPA appropriately uses an analysis of megawatt-hour losses to identify the percentage adjustment to rates for line losses. NIPPC/REC continues to argue that an adjustment for line losses is inappropriate, but staff believes the rule is clear.⁴

The PPA requires the QF to commit to firm delivery 90 minutes before the hour. NIPPC/REC argues that this is not consistent with current practice, which allows updates as late as 35 minutes before the hour. Avista states that there is no prohibition against updating the delivery after the 90-minute deadline. Avista added a sentence to the end of Section 6.4 stating that Seller may

³ PPA Definition 1.33 "Net Output" means the capability and electric energy generated by the Facility, less Facility Service Power and Losses expressed in megawatt-hours (MWh) or kilowatt-hours (kWh). Definition 1.26 "Losses" means the loss of electrical energy occurring as a result of the transformation and transmission of energy between the Point of Interconnection and the Point of Delivery. For purposes of this Agreement, Losses shall equal x percent of the total generation of the Facility as metered at the Facility.

⁴ WAC 480-106-020(1) requires a utility to purchase any energy and capacity made directly or indirectly available from a QF. WAC 480-106-020(4) directs the utility to adjust rates for off-system QFs 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 losses.

update its schedule consistent with the scheduling requirements of Avista's Open Access Transmission Tariff.

Termination of contract for failure to meet commercial operation date

Section 4.2 of the contract requires termination of the contract if the QF fails to meet the commercial operation date for any reason. Avista asserts that the commission's rules prevent it from offering a cure period beyond three years from the contract effective date for a failure to meet the commercial operation date.⁵ NIPPC/REC asserts that this is inconsistent with general contract doctrines such as prevention of performance, and asks that if Avista is responsible for the QF's failure to achieve commercial operation by year three, that the PPA be extended for an additional year, resulting in a 16 year PPA with at least 12 years of effective rates.

In establishing WAC 480-106-050(4)(a)(i), the commission's adoption order discussed the 12 to 15 year contract length, and said it would consider changing these terms after implementation and experience with the rules.⁶ Given this discussion, staff hesitates to recommend a contract longer than 15 years even if it might be permissible under the rules. Further, if a QF is approaching the commercial operation date, and it believes the delays are the fault of Avista, the QF may petition the commission for relief at that time. Finally, staff believes that termination of the existing contract pursuant to section 4.2 does not affect the right of the QF to a subsequent standard contract offering at the most recent avoided costs, nor should it preclude a QF from seeking other remedies at law.

Conclusion

Issue an order in Docket UE-190663 accepting Avista's compliance filing.

⁵ WAC 480-106-050(4)(a)(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.

⁶ Docket U-161024, General Order R-597, ¶¶ 14 and 15 (June 12, 2019).