

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of	DOCKET UE-190663
AVISTA CORPORATION, d/b/a AVISTA UTILITIES,	ORDER 02
Schedule 62 Tariff Revision	APPROVING TARIFF REVISIONS SUBJECT TO CONDITIONS

BACKGROUND

- 1 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 revamping the implementation of the Public Utility Regulatory Policies Act (PURPA), which requires utilities to purchase energy and capacity from small power producers, also called qualifying facilities (QFs). The three electric utilities regulated by the Commission filed revisions updating their respective tariffs implementing the requirements of the new rules on August 9, 2019.¹ Discussions with the utilities and interested stakeholders prompted Commission staff (Staff) to bring these tariff revisions to the open meeting on September 12, 2019, for Commission discussion and stakeholder input.
- 2 Following multiple rounds of comments and extensive discussions with Staff and stakeholders, Avista Corporation, d/b/a Avista Utilities, (Avista or Company) filed tariff Schedule 62, which was approved by Order 01 in this Docket on March 12, 2020. As required by Order 01 and by rule, on May 28, 2020, Avista filed its standard Power Purchase Agreement (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

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

additional revisions on September 4, 2020, at which time it changed its requested effective date to October 1, 2020.

3 On August 17, 2020, the Northwest & Intermountain Power Producers Coalition (NIPPC) and Renewable Energy Coalition (REC) (collectively, NIPPC/REC) filed joint comments. In summary, these comments recommended the Commission order Avista to modify the PPA to:

- Remove the so-called “90-110 Performance Band”;
- Delete or revise the contract reopener clause;
- Revise the off-system delivery and payment provisions;
- Revise provisions to allow for facility changes and upgrades in a specified process, instead of allowing Avista to terminate or unilaterally modify pricing;
- Add reasonable cure periods for missing milestone dates, such as a one-year cure period for missing the commercial operation date;
- Remove the requirement that qualifying facilities (“QFs”) provide a legal opinion about their compliance with permits and instead require QFs only to provide copies of all permits, licenses, and similar documents; and
- Modify the non-delivery provisions to acknowledge the specific circumstances of seasonally available resources.

4 On September 4, 2020, Avista filed a response to the joint comments.

5 On September 24, 2020, revisions to the PPA were discussed at the Commission’s regularly scheduled open meeting. After hearing stakeholder comments, the Commission advised the Company to work with its advisory groups and file a revised PPA. Avista changed its requested effective date to November 1, 2020.

6 Avista filed revisions to its PPA on October 21, October 23, and October 26, 2020.

7 On October 27, 2020, NIPPC/REC filed comments in response to the Company’s most recent two revisions. NIPPC/REC makes the following additional recommendations:

- Add a more reasonable cure period for missing a scheduled commercial operation date, such as a one-year cure period, and ensure the QF's right to 12 years of fixed prices in the circumstance of an Avista-caused delay or force majeure event;
- Revise the off-system delivery and payment provisions consistent with the proposed revisions set forth in NIPPC/REC's comments.

8 After reviewing all comments and the newly revised PPA, Staff believes Avista's PPA should be approved. Staff appreciates that Avista accepted Staff's recommendation to remove the 90-110 performance band. However, Avista and NIPPC/REC continue to disagree about certain off-system delivery issues, as well as payment and contract termination for failure to meet the commercial operation date. Staff's evaluation of these issues is discussed in detail, below.

9 *Off-system delivery and payment.* Avista removed references in its revised PPA to a monthly settlement process for delivery of energy from an off-system QF. NIPPC/REC objects to this revision, arguing 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.

10 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.² Avista argues that this provision allows the Company 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. Staff does not believe Avista's argument is 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

² 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.

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.³

- 11 The PPA also requires the QF to commit to firm delivery 90 minutes before the hour. NIPPC/REC argues that this is inconsistent 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 the “Seller may update its schedule consistent with the scheduling requirements of Avista’s Open Access Transmission Tariff.” Staff agrees with the Company’s position.
- 12 *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. 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.
- 13 The Commission’s order adopting WAC 480-106-050(4)(a)(i) discussed the 12 to 15-year contract length, and stated that the Commission would consider changing these terms after implementation and experience with the rules, if appropriate. In light of 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 believes that Avista is responsible for the delays, 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.

³ 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. Accordingly, 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.

14 This item came before the Commission at its regularly scheduled open meeting on October 29, 2020. Following an in-depth discussion with the Company and interested stakeholders, Staff recommends the Commission approve Avista's compliance filing subject to the condition that Avista file revised tariff pages that incorporate the following changes based on NIPPC/REC's comments:

- Section 4.2 - Except as otherwise provided in this Section 4.2 or in Section 13, in the event that the Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date and such failure is not caused by Avista or an event of Force Majeure, such failure shall constitute an Event of Default, and Avista may give Seller written notice a Default in accordance with Section 30.
- Section 13.6 - Notwithstanding anything to the contrary herein, Force Majeure shall not apply to, or excuse any default under, Sections 17.1(a), 17.1(b), 17.1(c), or 17.1(d). For the avoidance of doubt, Avista may declare Seller in Default if an event described in any of Sections 17.1(a), 17.1(b), 17.1(c), or 17.1(d), occurs and Avista may pursue any remedy available to it under this agreement.

DISCUSSION AND DECISION

15 We accept Avista's compliance filing subject to conditions that Staff recommends for the reasons discussed below.

16 *Off-system delivery and payment.* Staff correctly observes that WAC 480-106-020(1) requires Avista to purchase the full amount of power made directly or indirectly available by certified QFs. WAC 480-106-020(4) additionally requires the utility to adjust for line losses. Accordingly, the PPA provision adjusting the megawatt-hours from an off-system QF for the losses between the point of interconnection in another entity's system and the point of delivery in Avista's system is acceptable.

17 While we appreciate NIPPC/REC's concerns regarding the removal of a monthly settlement process for delivery of energy from an off-system QF and the requirement that the QF must commit to firm delivery 90 minutes before the hour, these provisions are consistent with Commission rules. Accordingly, we decline to require Avista to modify this section of the PPA.

18 *Termination of contract for failure to meet commercial operation date.* We share NIPPC/REC's concerns related to Section 4.2 and Section 13.6 of the standard PPA.

Avista's PPA, as filed, terminates the contract automatically if the QF does not achieve commercial operation within three years of the effective date of the PPA. However, termination does not occur automatically in similar provisions of other utility standard PPAs.⁴ Additionally, the Company's PPA does not make clear that the contract will not terminate if the delays were not caused by the QF.

19 To remedy these concerns, we accept Avista's compliance filing subject to the condition that Avista file revised tariff pages that incorporate the following changes:

- Section 4.2 - Except as otherwise provided in this Section 4.2 or in Section 13, in the event that the Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date and such failure is not caused by Avista or an event of Force Majeure, such failure shall constitute an Event of Default, and Avista may give Seller written notice of a Default in accordance with Section 30.
- Section 13.6 - Notwithstanding anything to the contrary herein, Force Majeure shall not apply to, or excuse any default under, Sections 17.1(a), 17.1(b), 17.1(c), or 17.1(d). For the avoidance of doubt, Avista may declare Seller in Default if an event described in any of Sections 17.1(a), 17.1(b), 17.1(c), or 17.1(d), occurs and Avista may pursue any remedy available to it under this agreement.

FINDINGS AND CONCLUSIONS

- 20 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including electric companies.
- 21 (2) Avista is an electric company and a public service company subject to Commission jurisdiction. Avista is a qualifying electrical company under RCW 80.04.010.
- 22 (3) On May 28, 2020, Avista filed a proposed standard PPA as a compliance filing in this docket. Avista filed revised standard PPAs on May 28, August 6, September 4, October 21, and October 23, 2020.

⁴ Docket UE-190665, Schedule 92, Puget Sound Energy (November 22, 2019).

- 23 (4) Avista's proposed PPA is consistent with General Order R-597 in Docket U-
161024, WAC 480-106, and with PURPA.
- 24 (5) This matter came before the Commission at a regularly scheduled open meeting
on October 29, 2020.

ORDER

THE COMMISSION ORDERS:

- 25 (1) The Commission approves the proposed standard purchase power agreement filed
by Avista Corporation, d/b/a Avista Utilities, is subject to the conditions set out in
paragraph 19, above.
- 26 (2) The Commission retains jurisdiction over this matter for purposes of effectuating
this Order.

27 The Commissioners, having determined this Order to be consistent with the public
interest, directed the Secretary to enter this Order.

DATED at Lacey, Washington, and effective October 30, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



MARK L. JOHNSON
Executive Director and Secretary