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June 08, 2018

VIA – Commission Web-Portal

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

Re: Avista Response Comments - Docket UE-161024

Dear Mr. Johnson,

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 Submit Written Comments ("Notice") issued in Docket U-161024 on May 21, 2018 regarding Rulemaking for Integrated Resource Planning, WAC 480-100-238, WAC 480-90-238 and WAC 480-107. Also, a joint recommendation on the legally enforceable obligation (LEO) that was developed in collaboration with Pacific Power and Light Company ("Pacific Power") is provided as "Attachment A."

I. COMMENTS OF AVISTA

With regard to the Commission's informal draft PURPA rules, Avista reiterates and incorporates herein its comments submitted on April 13, 2018 ("April 13 Comments"). Avista provides the following comments to supplement its prior comments on the issues of contract term, the maximum size Qualifying Facility (QF) that should be eligible for standard offer rates, and the treatment of capacity.

A. Contract Term

As a threshold matter, neither PURPA nor Federal Energy Regulatory Commission ("FERC") regulations dictate any particular term for PURPA contracts. FERC regulations provide QFs the option to elect to "provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term", but there is nothing in FERC's regulations that dictates how long that "specified term" should be. State public utility commissions therefore must balance the risk and burden of longer-term contracts to utility customers[1] against QF developers' desire for longer-term contracts.

In the informal draft PURPA rules, the Commission proposes a 15-year term for new QFs that are eligible for standard offer rates. *See* Draft 480-106-HHH(4)(a). Simply stated, 15 years is too long. As Avista noted in its April 13 Comments, there is a significant likelihood that a standard offering, especially when proposed to be seven MW, which is 70 times larger than the 100 kW that federal law requires,[2] will not accurately value a QF and, therefore, the price paid for the QF's output will not reflect the utility's actual avoided cost. Utility customers will bear the burden of any delta between the utility's actual avoided cost and the rates that are locked in as much as 15 years earlier. The larger the QF, the larger the magnitude of such delta and, therefore, the larger the risk and burden on utility customers.

Shorter contract terms ensure that the avoided cost rate is periodically adjusted to reflect the utility's actual avoided cost, which provides some protection to utility customers and, if the utility's avoided cost increases (which at least one participant in the May 14 workshop indicated is the most likely scenario going forward), also benefits the QF. For these reasons, Avista supports retaining the current five-year maximum required term for QFs that are eligible for the standard offer rate. Avista also supports applying the same five-year maximum required term to larger QFs.

As noted in Avista's April 13 Comments, pursuant to RCW 80.80, the contract term for certain QFs must be less than five years.[3] The Commission should ensure that any rule regarding contract term for QFs does not conflict with the requirements of RCW 80.80.

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[1] WAC 480-100-001.
[2] 18 C.F.R. § 292.304(c).
[3] *See* RCW 80.80.040 (limiting electric utilities' ability to enter into long-term financial commitments for certain types of generating resources); RCW 80.80.010(16) (defining "long-term financial commitment to mean, with regard to certain generating resources, a term of five years or more).

B. QF Eligibility for Standard Offer Rates

While each state can establish a higher standard offer cap, FERC rules require published avoided cost rates to be available only for QFs that are 100 kW or less.[4] Similar to the balance that must be considered when setting a contract term, state public utility commissions must balance the risk and burden to utility customers of an eligibility cap that is larger than 100 kW against the burden placed on QF developers who are not eligible for standard offer rates. In the informal draft PURPA rules, the Commission proposes that QFs with a nameplate capacity of seven MWs or less will be eligible for standard offer rates. *See* Draft 480-106-HHH(4). Seven MWs is too large.

Standard offer avoided cost rates do not, and cannot, reflect the actual attributes of any particular QF. It follows that the standard offer avoided cost rates will not accurately reflect the utility's actual avoided costs, a requirement specifically laid out in informal draft rule 480-106-FFF(1). While the impact to customers of the delta between the standard offer avoided cost rates and the utility's actual avoided cost for any particular QF will be relatively small for very small QFs, that delta is significant for larger projects and can be very significant for QFs as large as seven MWs. This delta, and therefore the risk and burden to customers, is further exacerbated by longer-term contracts.

Avista submits that, with the possible exception of very small QFs, the burden to QF developers associated with a negotiated rate is insignificant. To the extent that small QF developers do not themselves have the sophistication necessary to negotiate an avoided cost rate with a utility, the cost of obtaining such sophistication should be *de minimus* relative to the overall cost of developing even a small QF. Any such burden to QF developers can be further mitigated by using a known IRP methodology for establishing the applicable avoided cost rate and clear contracting procedures such as those proposed by Avista below.

Simply stated, the burden, if any, imposed on QFs by a lower eligibility cap for standard offer rates does not justify putting utility customers at risk for paying standard offer rates that do not reflect the utility's actual avoided cost for the QF. To ensure that utility customers are not harmed by standard offer rates, the Commission should reduce the maximum eligibility level of a

[4] 18 C.F.R. § 292.304(c).

PURPA for standard rates to a level much closer to the federal requirement of 100 kW and in no event should the eligibility be increased above five megawatts.

C. Treatment of Capacity

As Avista explained in its April 13 Comments, customers should not pay for capacity twice, which absent an adjustment for years of no need is what will happen. In Order No. 69, FERC addressed the treatment of capacity where a QF offers to sell energy and capacity to a utility that is already in an excess capacity situation stating: "Since the supplying utility has excess capacity its avoided cost would include only energy costs."[5] Accordingly, while levelizing the payment might appear to be a useful means to provide a price signal, such levelizing (i) risks overstating the need and paying for capacity years ahead of any need for such capacity, (ii) can result in intergenerational inequity and, (iii) at a minimum, forces customers to bear the risk of any QF default. A QF should be paid for capacity only when a resource is actually needed and the QF actually contributes to that capacity need.

II. LEGALLY ENFORCEABLE OBLIGATION

Avista and Pacific Power (collectively, the "Joint Utilities") submit the following recommendation regarding the LEO and contracting procedures.

In addressing the LEO issue, the Commission should encourage utilities to adopt a PURPA contracting procedure that clearly sets out the obligations of both the QF and the utility, including specific timelines for completing specific steps in that process. Such contracting procedure should clearly articulate exactly how, and when, a LEO is established. Avista and Pacific Power each have such a procedure in Schedule 62 and Schedule 38 of their respective Idaho tariffs. As a straw proposal, the Joint Utilities submit a procedure based on their Idaho tariffs as Attachment A to these comments. The Joint Utilities are open to discussing the specific requirements of a contracting procedure, but strongly urge the Commission to adopt a PURPA contracting procedure that is similar to Attachment A.

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[5] *Small Power Production and Cogeneration Facilities*, 45 Fed. Reg 12214, 12219 (1980) ("Order No. 69").

Under PURPA, QFs have the option to sell their output either (i) on an "as available" basis, or (ii) "pursuant to a legally enforceable obligation [LEO] for the delivery of energy or capacity over a specified term. . . ."[6] The point at which that LEO occurs is important because the rate for such purchases is generally[7] based on "avoided costs calculated at the time the [LEO] is incurred."[8]

FERC has not clearly articulated when a LEO occurs. FERC has, however, indicated that establishing a LEO "may be done through a contract, [but] if the electric utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a non-contractual, but still legally enforceable, obligation will be created pursuant to the state's implementation of PURPA."[9] Thus, a requirement that the only way to create a LEO is through a contract executed by both parties is, in FERC's view, inconsistent with PURPA and [FERC's] regulations implementing PURPA, particularly section 292.304(d)(2).'"[10]

Consistent with how the LEO is established in the proposed tariff set forth in Attachment A, the Joint Utilities propose that, as part of a larger PURPA contracting procedure, a LEO should be established either:

1. At such time as the QF and the utility sign a power purchase agreement, or

2. If it is determined by the Commission that the utility has acted improperly (i.e., not in accordance with the Commission-approved contracting procedure), at the time the QF files a complaint with the Commission alleging such misconduct.

The Joint Utilities submit that this methodology for determining when a LEO exists is consistent with FERC precedent,[11] provides a clear and unambiguous date upon which the LEO is established, and provides QF developers an avenue to establish a LEO even if the utility improperly refuses to timely execute a contract.

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[6] 18 C.F.R. § 292.304(d). It is worth noting that, although the option to sell pursuant to a LEO requires the delivery of energy and capacity over a "specified term", PURPA does not dictate the length of that "specified term." *See id.*
[7] The QF may elect to have such rates be based on the avoided costs calculated at the time of delivery, but generally QFs elect to have the rates be based on the avoided costs calculated at the time the obligation is incurred. *See* 18 C.F.R. §§ 292.304(d)(2)(i), (ii).
[8] 18 C.F.R. § 292.304(d)(2)(ii).
[9] *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, P 32 (2011) (footnote omitted).
[10] *Rainbow Ranch Wind, LLC, et al.*, 139 FERC ¶ 61,077, P 23 (2011) (quoting *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, P 30 (2011)).
[11] *See supra n.4, 5.*

III. CONCLUSTION

Avista appreciates the opportunity to submit these comments on the Commission's informal draft PURPA rules. As more fully explained above, and in prior comments submitted by Avista, the Company respectfully submits that in adopting final rules implementing PURPA in the State of Washington, and in particular rules regarding the length of the required term for PURPA contracts, the size limit for standard offer eligibility, and the treatment of capacity, that the Commission should carefully balance the costs and risks to utility customers with QF developer interests. The policies recommended herein attempt to reach a balance that provides QF developers with the opportunity to obtain the avoided costs rates that they are entitled to while at the same time still protecting utility customers from excessive risks and burdens associated with longer-term contracts and standard offer rates that do not reflect the utility's actual avoided costs. Please direct any questions regarding this filing to me at 509-495-4975.

Sincerely,

/S/Linda Gervais

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