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December 14, 2018

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

Re: Docket No. UE-161024 – Comments of Avista Corporation

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 UE-161024 on November 14, 2018 regarding the Public Utility Regulatory Policies Act, Obligations of the Utility to Qualifying Facilities (QFs), WAC 480-107.

As more fully discussed below, the Commission’s draft rules submitted with the Notice (“Draft Rules”) raise several concerns. The most significant concern is that the Draft Rules do not clearly define how the legally enforceable obligation (“LEO”) is to be established. While the Draft Rules state that a LEO may exist by contract, the Draft Rules also suggest that a LEO may be established simply by submitting some preliminary information to the utility.¹ Disagreements between QFs and the purchasing utilities regarding when the LEO occurred are to be determined by the Commission.² The ambiguity as to when and how the LEO is established is likely to lead

¹ Draft Rules at 480-106-030(2).

² Draft Rules at 480-106-030(2)(b).

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to more disputes between QFs and utilities. Such disputes will ultimately require the Parties and the Commission to expend significant time and resources to resolve them.

The Draft Rules also raise issues regarding transmission and the ability of small QFs to elect to deliver their output on an as-available basis.³ The Draft Rules also unnecessarily restrict QFs and utilities by dictating standard contracts.⁴ Avista offers the following comments for consideration and also provides, as Attachment A, a redline with specific proposed language changes to the Draft Rules and some additional comments specific to those proposed language changes, as well as a clean copy of the proposed language changes.

Establishing a Legally Enforceable Obligation

In its prior comments, Avista recommended that the Commission require each utility to adopt in its tariff a contracting procedure establishing contracting timelines and governing (i) the types of information that a QF developer must provide to the utility, (ii) the development of draft and final contracts, and (iii) when a LEO is established.⁵ As part of those recommendations, Avista, in conjunction with Pacific Power and Light Company, provided a draft contracting procedure to be used as a straw proposal. The Draft Rules take part of that proposed contracting procedure out of context within the full proposed procedure and use it as a potential basis for establishing a LEO.⁶ That portion of the proposed contracting procedure used by Staff in the draft rules only represents the preliminary information QFs provide as an initial step in a larger process; it was not intended, and is in fact entirely inadequate for use, as a basis for claiming a LEO. As noted by Avista and Pacific Power and Light Company in the Joint Utility Comments submitted in this docket on October 3, 2018, using this initial step of providing preliminary information as a basis for establishing a non-contractual LEO, “would allow QFs to unilaterally create put options on utilities without communicating even a minimal level of commitment to bind themselves to anything” and would create a substantial risk for utility ratepayers.⁷

³ Draft Rules at 480-106-020(4); 480-106-050(3), (4).

⁴ Draft Rules at 480-106-030(4).

⁵ See, e.g., Comments of Avista submitted on June 18, 2018 at pp. 4-5 and Attachment A (the joint recommendation of Avista and Pacific Power and Light Company). Avista incorporates all of its prior comments regarding PURPA issues previously filed in this docket as though fully set forth herein.

⁶ Draft Rules at 480-106-030(2)(a).

⁷ Joint Utility Comments, October 3, 2018, at p. 1.

More fundamentally, the Draft Rules do not clearly articulate when a LEO is established. Instead, the Draft Rules suggest a LEO may be established in an executed contract⁸ or may exist prior to an executed contract if a QF provides some preliminary information.⁹ The Draft Rules further state that disputes regarding when the LEO occurred will be resolved by the Commission based on the specific facts and circumstances of each case.¹⁰

Because the Draft Rules do not clearly state when a LEO is established, they will increase the prevalence of disputes regarding when the LEO is established—disputes that will need to be resolved by the Commission. To avoid unnecessary expense and resources resolving such disputes, any final rule should require each utility, in its tariff, to develop a clear contracting procedure that establishes a timeline for executing contracts with QFs. Any such final rule should also clearly state that, where the utility complies with the timeline in its Commission-approved tariff, the LEO **will** be established in the executed contract. If the utility does not act in accordance with its Commission-established contracting procedure, the QF can request that the Commission establish a LEO in the absence of an executed contract.

Transmission

The Draft Rules state that a QF may request a utility to transmit its output to another electric service provider.¹¹ Such transmission of QF output will be pursuant to the transmitting utility's open access transmission tariff and at the QF's expense. The Draft Rules further provide:

“Any utility to which energy or capacity generated by a qualifying facility and transmitted to such utility over facilities of another utility shall purchase the energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to the purchasing utility.”

⁸ Draft Rules at 480-106-030(2) (requiring utilities to file procedures memorializing a legally enforceable obligation in an executed written contract).

⁹ Draft Rules at 480-106-030(2)(a) (stating: “A legally enforceable obligation may exist prior to an executed written contract” if the QF provides the listed preliminary information. (Emphasis added.)).

¹⁰ Draft Rules at 480-106-030(2)(b).

¹¹ Draft Rules at 480-106-020(4). It is worth noting that FERC regulations state: “If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility.” 18 C.F.R. 292.303(d). In contrast, the Draft Rules provide transmission to other electric companies is to occur “[a]t the request of a qualifying facility”. It is not clear whether, by using different language, the Commission intends something different than what is intended by FERC's regulations. To avoid ambiguity and conflicts between the Commission's rules and FERC's regulations, the Commission should, to the extent practical, conform the language of its final rule to FERC's regulations.

There are several issues that arise when a QF transmits its output to another utility. These issues have not been fully discussed and vetted in this proceeding. For example, any such rule should be clear that the QF is required to obtain long-term firm transmission and to provide the purchasing utility a firm schedule. If the QF does not obtain firm transmission and provide a firm schedule, the QF should, at a minimum,¹² receive the as-available rate and should not be eligible to receive a rate established at the time of the LEO. The rule should also be clear that the purchasing utility is only required to purchase the QF output at the avoided cost rate, and is not responsible for any third-party transmission costs, including ancillary service costs. Where more energy is scheduled than is generated by the QF, any energy that is provided from other sources to satisfy the schedule should be purchased at a significant discount. Avista recommends a discount equal to fifty-percent of the wholesale market price in effect at the time of delivery. In the case of oversupply where wholesale prices are negative, and deliveries are not curtailed, the QF should be charged 150% of the price.

Standard Offer Rates

The Draft Rules require a utility to offer standard rates for purchases from QFs with capacities of five megawatts or less. The Commission should clarify that the determination of whether a QF is or is not eligible for standard rates shall be based on nameplate capacity.

Standard Contracts

The Draft Rules require utilities to file standard contract provisions for purchases from a QF with a capacity of five megawatts or less. Such standard contracts unnecessarily restrict the Parties' ability to negotiate contracts and for contracts to evolve over time.

The Draft Rules provide the duration of the term for contracts and the maximum size of a QF that is eligible for standard rates. Thus, the Draft Rules resolve any questions regarding the most contentious terms of any contract with a QF—i.e., duration of term and eligibility for standard rates. Establishing a standard contract that must apply to all QFs that are eligible for standard offer rates is therefore neither necessary nor appropriate. Certain terms may depend on specific circumstances. For example, the terms ensuring firm delivery differ depending on

¹² As noted herein, this issue has not been vetted, so other and different limitations or requirements may be appropriate.

whether the QF is on or off-system. Terms likely will differ between a variable and non-variable resource. To capture these terms, utilities would likely need to file multiple standard contracts. It is important that the final rules require clear contracting procedures, including timelines for contraction execution. Such final rules should not, however, require utilities to rigidly comply to a one-size-fits-all filed contract.

Avista appreciates the opportunity to provide these comments and looks forward to further conversation. Please direct any questions regarding these comments to Clint Kalich at (509) 495-4532 or clint.kalich@avistacorp.com.

Sincerely,

/s/Linda Gervais

Linda Gervais

Sr. Manager, Regulatory Policy