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November 15, 2019

Via Electronic Filing

Chair David Danner
Commissioner Ann Rendahl
Commissioner Jay Balasbas
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Utility PURPA Compliance Filings –
Comments on Utility PURPA Contracting Procedures for Consideration in Advance of the November 22, 2019 Open Meeting

Docket Nos. UE-190663 – Avista
UE-190665 – Puget Sound Energy
UE-190666 – PacifiCorp

Dear Commissioners:

The Northwest and Intermountain Power Producers Coalition ("NIPPC") and the Renewable Energy Coalition ("REC") submit these Comments on the Public Utility Regulatory Policies Act ("PURPA") contracting procedures proposed in Avista's PURPA Compliance Filing submitted in Docket No. UE-190663. These comments provide a general overview of appropriate and reasonable contracting procedures applicable to all three utilities and detailed issues on Avista's proposed Schedule 62 filed November 12, 2019. NIPPC and REC have also filed separate comments exclusively on Avista and PSE's avoided cost prices.

Per PacifiCorp's letter and revised compliance filing in Docket No. UE-190666 dated October 24, 2019, PacifiCorp's effective date is revised to January 24, 2020, and NIPPC and REC plan to submit comments on PacifiCorp's energy and capacity prices and contracting processes on December 6, 2019.[1]

Based on discussion with Puget Sound Energy ("PSE"), NIPPC and REC understand that a revised filing from PSE in Docket No. UE-190665 is forthcoming, which will address all or a

[1] Pursuant to discussions with Staff and PacifiCorp, PacifiCorp will make a revised filing by November 18, 2019, NIPPC/REC and other stakeholders will submit comment by December 6, 2019, PacifiCorp will file response comments on December 20, 2019, and Staff will review and prepare a memorandum for the January 23, 2020 open meeting.

majority of NIPPC and REC's concerns. NIPPC and REC plan to review that filing when it is posted and submit supplemental comments on PSE's revised filing, if necessary.

Contracting Process Generally

PURPA was enacted to "encourage the development of cogeneration and small power production facilities. Congress believed that increased use of these sources of energy would reduce the demand for traditional fossil fuels."[2] This goal is as important today as when PURPA was first enacted because, among other things, the state of Washington enacted the Clean Energy Transformation Act ("CETA") with the goal of transitioning the state away from fossil fuels. However, in developing PURPA, Congress felt that two problems impeded the development of nontraditional generating facilities: "(1) traditional electricity utilities were reluctant to purchase power from, and sell power to, the nontraditional facilities, and (2) the regulation of these alternative energy sources by state and federal utility authorities imposed financial burdens upon the nontraditional facilities and thus discouraged their development."[3] These barriers still exist today without appropriate PURPA implementation. As such, in reviewing each of the utility's PURPA contracting procedures, the Washington Utilities and Transportation Commission ("WUTC" or "Commission") should keep these goals in mind.

The Commission requires that each utility file a tariff that includes their contracting procedures.[4] The contracting procedures must set forth the obligations of the utility and the qualifying facility ("QF").[5] The tariff must specify the information required for QFs with a nameplate capacity of five megawatts or less to obtain draft executable contracts.[6] For QFs of greater than five megawatts in size, the tariff shall specify the information required to obtain draft and executable contracts.[7] It must provide that a legally enforceable obligation ("LEO") will be considered in an executed written contract prior to commercial operation, but that a LEO may exist prior to an executed written contract.[8] The rules state:

> If an irreconcilable disagreement arises during the contracting process, the [QF] or the purchasing utility may petition the commission to resolve the disagreement, including making a determination about whether the [QF] owner is entitled to a [LEO] and the date that such obligation occurred based on the specific facts and circumstances of each case. In making its determination, the commission will recognize that the formation of a [LEO] is based on a [QF] committing itself to sell all or part of its electric output to an electric utility.[9]

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2 *FERC v. Miss.*, 456 U.S. 742 at 750 (1982).
3 *Id.*
4 WAC 480-106-030(2)(a).
5 *Id.*
6 WAC 480-106-030(4).
7 WAC 480-106-030(5).
8 WAC 480-106-030(2)(a)-(b)
9 *Id.*

While no specific contracting timelines are mandated by the Commission's rules, the contracting process should anticipate a QF that begins the contracting process sufficiently in advance of the next planned avoided cost change, and provide sufficient time for the QF to complete the process prior to any change in the avoided cost price. QFs often make decisions about the viability of projects based on the currently effective avoided cost prices when they first enter the contracting queue, so it is good policy to allow sufficient time for those projects to contract at their expected rate.

QFs need to be responsible and begin the contracting process well before a planned utility tariff filing. The Commission adopted a clear policy that utilities are required to file their annual regular updates on November 1 each year.[10] A QF should be aware of the Commission's rules and the utilities' tariffs to understand that, absent a lengthy tariff review or suspension, the QF should not expect to obtain a contract or form a LEO if the QF first approaches the utility for a contract immediately before the planned date in which new tariffs are filed (e.g., October).

The Commission also recognized that there are legitimate reasons for a utility to change its tariffs and rates at other times and adopted a rule that they may file out-of-cycle updates at any time.[11] Critically important is that such out-of-cycle updates may not go into effect until at least 60 calendar days after the filing.[12] Therefore, any contracting process should be capable of completion within a 60-calendar-day period to allow a QF to obtain at least a LEO when there is an out-of-cycle update.[13]

An ideal contracting process is clearly articulated, reasonable, and reduces the utility's discretion to prevent or delay QF progress. In light of utility reluctance to contract with QFs, it

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[10] WAC 480-106-040.

[11] WAC 480-106-040.

[12] WAC 480-106-040(3).

[13] NIPPC and REC note that the Commission essentially adopted the rule language proposed by NIPPC/REC and PSE. NIPPC and REC's intention for this language is as explained in these comments: provide responsible QFs an opportunity to obtain contracts while providing utilities with flexibility when changing their tariffs and rates. *See* Consideration of Changes to IRP, RFP and PURPA Rules, Docket No. U-161024, Joint Recommendation of PSE, NIPPC, REC, Renewable Northwest, Northwest Energy Coalition, and Climate Solutions at 2 (Feb. 26, 2018) ("Utilities may file avoided cost prices at times other than November or December, after providing minimum notice of 60 calendar days to the Commission and QFs negotiating contracts."); *See also* Consideration of Changes to IRP, RFP and PURPA Rules, Docket No. U-161024, NIPPC and REC Comments at 24 (Apr. 13, 2018); *See also* Consideration of Changes to IRP, RFP and PURPA Rules, Docket No. U-161024, NIPPC and REC Proposed Edits to Informal Draft Rules at Attachment A at 5 (June 8, 2018); *See also* Consideration of Changes to IRP, RFP and PURPA Rules, Docket No. U-161024, NIPPC and REC Comments at 3 (Apr. 1, 2019).

is important to hold the utility to clearly defined processes and enable QFs to advance in the contracting process, so long as they meet their reasonable obligations. NIPPC and REC's experience in other states has shown that the contracting process can be a major source of litigation especially where a utility makes an unexpected and out-of-cycle update to lower its avoided cost prices, while simultaneously delaying the contracting queue. While it is not guaranteed that any utility in Washington will necessarily act in such a manner, the Commission should still require each utility to establish a reasonable contracting procedure that would avoid such disputes in the future.

All utilities in the state should have similar contracting timelines. For example, in Oregon, all three utilities follow a similar contracting timeline for QFs eligible for standard contracts based on a 15 business-day turn-around period for providing draft and executable contracts. Oregon's timeline is a reasonable template. The process that REC and NIPPC propose is based on Oregon's timeline.

The first step in the contract formation process for QFs 5 MW and lower, should be that the QF provides all the required information and requests a draft contract. Prior to requesting the contract, the QF should be able to review the utilities' tariffs, the applicable rates, and information necessary to obtain a contract. Ideally and under normal circumstances, a QF eligible for standard rates and a standard contract should receive a draft contract within 15 business days (or within 21 calendar days or about three weeks) of submitting the required information to the utility. When the QF indicates agreement to that contract, it should receive an executable contract within another 15 business days. If changes need to be made to the contract or the utility has a reasonable need for additional or clarifying information, the utility should similarly be held to a 15-business-day deadline to provide the next draft. All timelines should be subject to a reasonableness standard.[14] Without clearly articulated deadlines, the QF will not have adequate information to determine how early before an annual avoided cost change it will need to provide the required information in order to lock in current published prices, and it will not know whether it can complete the contracting process if the utility files an out-of-cycle change.

This 15-business-day schedule would enable a QF that provides complete information at or before the time a utility makes an out-of-cycle update to complete the contracting process before the new rate goes into effect 60 calendar days later. Thus, utilities have discretion to update prices in a way that protects QFs that are in or about to begin the contracting process.

Avista proposes differing timelines which are discussed below. However, whatever the Commission decides, it is ideal for all utilities in the state to have the same or a similar

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[14] For example, if the draft contract is done in less than 15 business days, there is no reason to wait until the 15th day just "to run out the clock" when there is an impending rate decrease as some utilities have done. If there is an impending rate decrease, then the utility should endeavor to provide the draft contracts back as quickly as possible.

contracting timeline so a QF knows what to expect regardless of the utility it decides to contract with.

Avista Contracting Procedures

1. Contracting Timeline

Avista's contracting timeline for QFs eligible for standard published prices and contracts is generally acceptable and consistent with the above-outlined process. Avista lists the information required to obtain an indicative pricing proposal or draft PPA.[15] While the information requirements are generally reasonable, they may not apply to all QFs and there should be some flexibility built into the tariff. For example, many small QFs may not have an accurate 8760 until after they begin operating, so that requirement should only be imposed when appropriate. Once Avista receives the required information, Avista will provide the draft contract within 15 business days,[16] but will also let the QF know within 10 business days whether there are any deficiencies.[17] Once the parties are in full agreement, Avista will provide a final executable contract within 10 business days.[18] Avista then allows the QF and itself 20 business days each to execute the contract.[19] NIPPC and REC find these timelines acceptable, with the exception of the requirement that a QF execute the contract within 20 business days.

NIPPC and REC find PSE's proposal to require execution within 60 calendar days to be more reasonable and consistent with NIPPC and REC's desire to have uniform timelines across utilities. While not the norm, some QFs will need more than 20 business days. For example, certain governmental units like cities and irrigation districts may have lengthy and pre-established and multi-layered review processes. Similarly, some companies also need multiple reviews from different business units. NIPPC and REC note that most states do not impose a requirement that a contract be executed in a set amount of time, but agree that such a requirement is generally reasonable.

2. Contracting Procedure Issues

There are, however a few additions NIPPC and REC suggest and issues unrelated to timing.

A. The Contracting Procedures Applicable to Large and Small QFs Should be Separate or at Least Clearly Articulated

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15 Avista draft Schedule 62 at Section III(1)A&E (Oct. 28, 2019).
16 *Id.* at Section III(1)G.
17 *Id.* at Section III(1)F.
18 *Id.* at Section III(1)K.
19 *Id.* at Section III(1)L&M.

First, Avista's contracting procedures are confusing because it appears to present a combined process that is designed to apply to both QFs that are eligible for standard published prices and contracts (small 5 MW or less) and larger QFs that must negotiate those terms (greater than 5 MW). Relatedly, the proposed contracting tariff states that it applies only to QFs up to 5 MW in capacity on the first page (proposed tariff sheet 62), yet on proposed tariff sheet 62I it provides a description of the rates offered to larger QFs. Larger projects are more complex and can sometimes require more time because they require negotiation of the price and contract terms. Due to these differences, NIPPC and REC's experience is that it is more appropriate for there to be separate processes for large and smaller projects.

However, NIPPC and REC are not opposed in principle to combining the large and small QF contracting process in Avista's tariff into one tariff provision, but the contracting process must be clear, understandable and not result in unnecessary delays. While Avista has made a good faith attempt to clarify its contracting process from its original filing in this proceeding, NIPPC and REC believe that it should be improved because it can lead to unnecessary confusion, as discussed below.

NIPPC and REC believe that larger QFs should receive an indicative pricing proposal first and then if they wish to proceed, provide updated information and receive a draft contract.[20] However, there is no reason to provide a small QF with an indicative pricing proposal because their prices are set forth in the published schedule.[21] Avista appropriately starts the contracting process with a request for indicative prices for large QFs, but upon first read appears to require a small QF to request indicative prices prior to obtaining a contract. It appears that Avista may be attempting to remedy this issue by specifying that an indicative pricing proposal for small QFs is "deemed to be provided to the Customer on the day the Company receives all of the information required in Section (1)A."[22] This is a clunky and awkward provision and its significance is not clear. Specifically, it is not clear whether the small QFs are then required to immediately send another request to Avista pursuant to Section E indicating the QFs desire to proceed with contracting and by providing updated information.

For small QFs, it makes practical sense to simply collapse those two steps, and just have one set of information provided, to which Avista would respond with a draft contract. This is how PacifiCorp's Washington and Oregon tariffs read as well as Idaho Power and Portland General Electric Company in Oregon. Smaller QFs are often not sophisticated and may become confused by the language relating to both the large and small QFs. As such, the Commission

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20 *Id*. at Section III(1)C-E

21 Avista's tariff provides for an individually calculated capacity price based on past energy production for existing facilities or based on a cross reference to similar resources in the IRP, which may necessitate an indicative pricing proposal. However, as articulated in NIPPC and CREA's comments on the avoided cost prices submitted in these dockets on November 14, 2019, Avista should pre-set and publish the capacity price by resource type.

22 *Id*. at Section III(1)C.

should require that Avista revise its contracting procedures to provide a clear and easily understandable set of contracting procedures for small QFs that is separate from its process for large QFs. Alternatively, the Commission should direct Avista to revise the language to make it clear that a small QF just needs to provide information in one step to receive a draft contract.

B. Interim Drafts Should Also Be Provided at 15-Business-Day Intervals

Second, Avista should also provide interim drafts at 15-business-day intervals. An interim draft is needed when a QF responds to the first draft with a request for revisions, and the company provides a new draft contract with the requested changes. Avista should also provide revised interim draft contracts within 15 business days of the QF's request for changes. This provides certainty and predictability in the process and limits any ambiguity about the appropriate length of time within which the utility should respond.

Avista's Schedule 62 currently does not contemplate interim drafts. It notes only that the QF will have 90 calendar days to review the first draft agreement and respond that it accepts the agreement or provide written comments, and that Avista is not obliged to "commence negotiations" with the QF unless or until it receives the initial set of written comments. As written, it is not clear what it means to "commence negotiations," and there is no certainty about when the QF will receive a revised draft in response to its initial set of written comments. By providing that the revised draft should be provided within 15 business days, that ambiguity is removed, and there is no room for a utility to delay negotiations. As such, the Commission should require that interim drafts also be provided at 15 business day intervals.

C. The Contracting Procedures Should Not Require that the QF Request a Meeting to Discuss Changes to the Draft Contract

Third, the meeting detailed in Section I should be optional for either the QF or Avista. That section provides for a meeting in the event that the parties have a draft contract but are not in agreement on all terms of the contract or where the QF has not notified Avista that it accepts the draft contract and that it does not have any other issues. At this stage in Avista's tariff, the QF "shall" contact Avista to schedule a meeting to discuss issues regarding the draft agreement, but Avista "may" request such a meeting.[23] Avista uses the term "shall" when referring to the QF scheduling a meeting with Avista, and the term "may" when referring to Avista scheduling a meeting.

The same language should be used for both, giving each the opportunity to request a meeting but not requiring it of one party or the other. Otherwise, it would appear that a QF could be kicked out of the contracting queue for simply sending an email with a few requested revisions to its draft contract but not also requesting a meeting. A meeting will not be necessary in all circumstances, and may not be necessary in most circumstances, especially since the

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[23] *Id*. at Section III(1)I (It appears that the tariff contains a typo because it says "[t]he Company many (sic) request such a meeting.").

contract is standardized and very few revisions will be needed. Therefore, this should not be a requirement for the QF, but should be converted into an option using the same permissive ("may" rather than "shall") language that Avista uses in reference to itself.

D. The QF Should be Permitted Reasonable Flexibility in Meeting Contracting Deadlines

Fourth, the QF should be permitted some flexibility to remain in the contracting queue if it misses a deadline due to reasonable circumstances. Section N provides that "[f]ailure of the Customer to meet any deadlines set forth in this Section relieves the Company of any obligation under this tariff until such time as the Customer resubmits its [QF] and the procedures begin anew."[24] However, there may be circumstance where a QF will need more time to meet a deadline, for example, where the QF's contracting personnel experiences an unexpected family emergency, there is a change in employees or ownership, or when there are approvals needed from government bodies. Avista provides itself with some flexibility in the process and commits to "not unreasonably delay negotiations."[25] To require such a rigid standard on the QF and require it to return to the beginning of the process even in circumstances where the delay is reasonable, would affect a substantial injustice. Therefore, the QF should be afforded flexibility to miss a deadline and remain in the contracting queue, so long as it does not do so unreasonably.

E. Avista Should Notify QFs in the Queue of Out-of-Cycle Avoided Cost Updates

Fifth, Avista should indicate in its contracting procedures that it will reasonably notify QFs in the contracting queue when it makes an out-of-cycle avoided cost update or if there is such an update pending when the QF enters the contracting process. While Avista's contracting process may be capable of completion within the 60-calendar-day timeframe before an out-of-cycle update becomes effective, the process could take longer. Notably, Avista allows the QF 90 calendar days from the date it receives a draft contract within which to notify Avista that it agrees or has changes. A QF unaware of an out-of-cycle avoided cost update may not proceed as quickly in its review as it would if it knew that the prices could change in 60 calendar days. Many QFs are small and unsophisticated and will not be monitoring every filing a utility makes and may be oblivious to the fact that there is an impending deadline to lock in the rates. Therefore, it is reasonable for the utilities to provide reasonable notice to the QFs of such out-of-cycle updates.

F. Avista Should Include the Entirety of the Commission's LEO Rule in its Contracting Procedures

Sixth, Avista should include the entirety of the Commission's LEO rule in its contracting procedures. Specifically, Avista provides that:

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[24] *Id*. at Section III(1)N.
[25] *Id*. at Section III(1)J.i.

> If an irreconcilable disagreement arises during the contracting process, the Company or the Customer may petition the Washington Utilities and Transportation Commission to resolve the disagreement, which may include making a determination about whether the Customer is entitled to a legally enforceable obligation in the absence of a fully executed power purchase agreement for the output of such Qualifying Facility and, if so, the date such legally enforceable obligation occurred.[26]

This language mirrors that of WAC 480-106-030(2)(b), except that it fails to include two important aspects of the rule. First, it does not recognize that "[a] [LEO] may exist prior to an executable written contract."[27] Second, it completely ignores that "[i]n making its determination, the commission will recognize that the formation of a [LEO] is based on a [QF] committing itself to sell all or part of its electric output to an electric utility."[28] Each of these pieces of the Commission LEO standard are included in the rule and the rule requires that Avista's tariff be consistent with the rule. By using some, but not all of the LEO language from the rule, Avista appears to impose a different LEO standard. As such, the Commission should direct Avista to revise its tariff to be consistent with the LEO language from WAC 480-106-030(2)(b).

Even more importantly, Avista's LEO language changes the standard of review. Avista would have the Commission "determine whether the Customer or the Company failed to comply with any material requirement of the contracting procedures set forth in Schedule 62 or otherwise acted unreasonably, and, if so, the [WUTC] will determine the date upon which a [LEO] occurred." Therefore, as a prerequisite of making a LEO determination, the WUTC would need to find that Avista violated its tariff or acted unreasonably, rather than making its determination "based on the specific facts and circumstances of each case."[29]

The Commission's rules do not require a QF to prove utility failure to follow the law or a utility tariff to obtain a LEO. There may be a circumstance where all requirements of the tariff have been met by both parties, no one acted unreasonably, but a LEO was still created.[30] Rather,

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26 *Id*. at Section III(1)D.ii.

27 WAC 480-106-030(2)(b).

28 *Id.*

29 *Id.*

30 In Utah, PacifiCorp, dba Rocky Mountain Power, argued that the standard for establishing a LEO requires "a 'showing that there would have been a contract *but for* the actions of the utility.'" *In re Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Thayn Hydro*, Pub. Serv. Comm'n of Utah Docket No. 16-035-04, Order at 12 (July 29, 2016) (quoting RMP Resp. Br. At 7) (emphasis added). The Public Service Commission of Utah ("Utah Commission") noted that this "places a relatively high burden on the QF, which is required to show not only that it 'committed itself' to sell but also to show the utility did something (or failed to do something) that interfered with the QF's ability to enter a contract." *Id.* Ultimately,

the most important aspect of LEO formation is whether the QF commits to sell to the utility. For example, in *Cedar Creek*, the Idaho Public Utilities Commission and PacifiCorp both argued that absent a fully executed contract, a LEO can only be formed where "*but for* the conduct of the utility, there would be a contract,"[31] or "*but for* the utility's inappropriate refusal to execute an agreement the QF would have obtained a power purchase agreement."[32] In that case, FERC ultimately concluded that it is a QF's commitment to sell that is important in establishing a LEO.[33] Therefore, the Commission should direct Avista to revise its tariff to remove the requirement that a failure to comply with the tariff or some unreasonable behavior is a prerequisite to the formation of a LEO.

G. A QF is Still Entitled to Standard Prices and Contracts Even Where it Provides Part of its Energy or Capacity to a Utility

Additionally, Avista's proposal to require that a QF supply all of its output to Avista in order to be eligible for standard published prices is inconsistent with PURPA. Specifically, Avista's Schedule 62 states that "[t]he Standard Power Rate shall apply to customers agreeing to supply *all QF output* to the Company."[34] PURPA requires that a utility purchase "any energy and capacity which is *made available* from a [QF]."[35] The QF has the option to either: 1) "provide energy as the [QF] determines such energy to be available for such purchases," or 2) "pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term."[36] The WUTC confirmed these basic elements of PURPA in its own rules.[37] The Commission also expressly recognizes that "the formation of a [LEO] is based on a [QF] committing to sell *all or part* of its electric output to an electric utility."[38] Therefore, regardless of whether a QF sells its net output pursuant to a [LEO] or "as available," it can sell to the utility some amount of output that is less than the full output.

Here, Avista expressly requires the QF to sell *all QF output* in order to receive standard published prices directly inconsistent with PURPA and the Commission's rules. Avista asserts that if a QF "elects to sell some of its output to another entity or uses some of its output for some other purpose, the output that is delivered to Avista is per se non-firm. . . and therefore is being

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the Utah Commission determined that the QF met that burden in the case at hand, which was *sufficient* to establish a LEO, but that "we need not reach the question of whether meeting this standard *is necessary*." *Id.* at 13 (emphasis in original).

31 *Cedar Creek Wind, LLC* 137 FERC ¶ 61,006 at P. 17 (Oct. 4, 2011) (emphasis added).

32 *Id.* at P. 20 (emphasis added).

33 *Id.* at P. 39.

34 Avista draft Schedule 62 at Section I(1) (Nov. 12, 2019) (emphasis added).

35 18 C.F.R. 292.303(a) (emphasis added).

36 18 C.F.R. 292.304(d).

37 *See* WAC 480-106-020; *See also* WAC 480-106-050(4)(b).

38 WAC 480-106-030(a) (emphasis added).

provided on an as-available basis. Accordingly, by electing to provide less than all of the output of the QF, the QF has elected to receive an as-available avoided cost rate."[39]

What Avista fails to recognize, however, is that a QF can still provide firm output and reserve some of its output for its own or other uses. For example, the Oregon utility schedules for published prices indicate that they are applicable to owners of QFs "making sales of electricity to the Company,"[40] or for "power delivered to the Company's control area within the State."[41] There is no requirement that the QF deliver *all* of its output. PacifiCorp's Oregon schedule specifically allows the QF to elect to sell only its net output surplus of its needs at the facility site and purchase only partial electric requirements.[42] Also, Idaho Power Company considers a QF to be providing firm energy or capacity if "the contract requires delivery of a specified amount of energy or capacity over a specified term and includes sanctions for non-compliance."[43] Therefore, a QF can still provide firm output even where it does not provide *all* of its output. Additionally, under PURPA, it is the QF's commitment to provide energy or capacity that governs whether the sale is "as available" or pursuant to a LEO, and a QF can commit to sell *all or part* of its output. Therefore, the Commission should reject Avista's proposal to require a QF to provide all net output in order to receive standard published prices and require Avista to make a revised filing.

H. Clarifications

Finally, there are a couple points of clarification NIPPC and REC would like to make, which may or may not necessitate a change. First, NIPPC and REC understand that statements giving Avista the authority or permission to request additional, open-ended information are limited to information that is reasonably necessary and that Avista will only request in good faith and not out of any drive to delay the contracting process. For example, Avista "may request any additional information from the Customer necessary to finalize the terms of the power purchase agreement and to satisfy the Company's due diligence with respect to the Qualifying Facility."[44] This is the type of language that a utility may lean on to delay the negotiation process until a lower avoided cost price becomes effective and for that reason is suspect. NIPPC and REC understand, however, that there may instances where such information is reasonably necessary. As such, NIPPC and REC are taking this opportunity to clarify that requests for such information must be made in good faith and must be reasonable. The Commission may consider requiring that Avista make this clear in the tariff, or at least clarifying in an order that it expects such requests to be reasonable and made in good faith.

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39 Avista's Responses to Stakeholder Comments, Attachment at Issue #9 (Sept. 27, 2019).

40 *See* Portland General Electric Schedule 201-1 (effective April 24, 2019); PacifiCorp Oregon Standard Avoided Cost Rates at 1 (effective April 24, 2019).

41 Idaho Power Company Oregon Schedule 85 (effective April 24, 2019).

42 PacifiCorp Oregon Standard Avoided Cost Rates at 4 (effective April 24, 2019).

43 Idaho Power Company Oregon Schedule 85 (effective April 24, 2019).

44 Avista draft Schedule 62 at Section III(1)J (Oct. 28, 2019).

Second, NIPPC and REC understand Avista will require the QF to provide an executed interconnection agreement and/or transmission service agreement by the time it commences commercial operation, but such agreements will not be required prior to executing thepower purchase agreement. Avista's tariff provides that "[t]he Company's obligation to purchase Qualifying Facility electrical output from the Customer will be conditioned on the existence of a fully executed interconnection agreement," and for off-system QFs, "the Company's obligation to purchase such electrical output will be conditioned on the Customer obtaining a firm transmission agreement or agreements to deliver electrical output to the Company's system for the term of the power purchase agreement."[45] The requirement to provide an executed interconnection or transmission agreement should not (and cannot) limit the ability of a QF to execute a power purchase agreement or establish a LEO. NIPPC and REC understand these two sections to mean that such agreements will be required prior to commencing commercial operation, but that it will not bar a QF from executing a power purchase agreement or establishing a LEO. To the extent that Avista would apply these provisions to prevent a QF from executing a PPA or establishing a LEO, the provision should be revised. In any event, the Commission may also consider requiring that Avista make this clear in the tariff, or at least clarifying this interpretation in an order.

Third, NIPPC and REC understand that Avista's rate schedules apply to various classes of QFs, but the descriptors are not entirely clear. For example, the headings state that they are applicable to "80.80.040 Compliant" QFs or to "80.80.040 Non-Compliant" QFs. NIPPC and REC understand 80.80.040 to refer to RCW 80.80.040, regarding greenhouse gas emissions standards, and that it is relevant to the avoided cost prices because the Commission's rules provide that QFs that do not meet those standards are only entitled to a five year contract. However, these references are confusing and Avista should use more easily understandable descriptors for its rate schedules perhaps with a footnote to the RCW.

Other Issues

It is NIPPC and REC's understanding that the remaining issues related to Avista's compliance filing will be resolved on the following schedule:

- The methodology for negotiating non-standard prices will be filed by Avista in a separate filing before December 31, 2019.

- The contract terms and conditions will be addressed in 2020.

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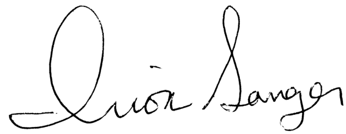
[45] Avista draft Schedule 62 at Section III(2) (Oct. 28, 2019).

Conclusion

For the reasons articulated above, NIPPC/REC recommend that the Commission direct Avista to make changes to its proposed Schedule 62 consistent with this letter.

Sincerely,



Irion A. Sanger

cc: John Lowe, Executive Director REC
Carol Opatrny, Interim Executive Director NIPPC