

December 3, 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 Staff Memoranda re Avista and PSE PURPA Compliance Filing for
Consideration in Advance of the December 5, 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 in response to the Staff Memoranda on Avista’s and Puget Sound Energy’s (“PSE”) Public Utility Regulatory Policies Act (“PURPA”) Compliance Filings submitted in Docket Nos. UE-190663 and UE-190665. NIPPC and REC also filed separate comments exclusively on Avista and PSE’s avoided cost prices on November 14, 2019, on Avista’s contracting procedure on November 15, 2019, and on PSE’s contracting procedure on December 3, 2019.

As an initial matter, NIPPC and REC want to thank Avista, PSE and Staff for their constructive discussion as well as the changes that have been made to date. The Commission has relatively few disputed issues to resolve, which are the result the professionalism and collaboration of all parties and Staff’s leadership.

NIPPC and REC are not repeating their early comments, and these comments respond to two key concerns identified in Staff’s Avista Memorandum: 1) Options for qualifying facilities (“QFs”) providing less than all generation power to Avista; and 2) Power Purchase Agreement (“PPA”) as attachment to Schedule 62. NIPPC and REC support Staff’s recommendation to suspend Avista’s filing. Regarding both Avista and PSE, these comments also respond to Staff’s recommendation to approve the energy and capacity prices. Avoided cost prices are the most core issue to PURPA implementation. It is imperative that the Commission take a hard look at the prices set in these initial compliance filings because the prices and the Commission process to address them this first time will set a precedent for how these issues will be addressed in the

future. Staff is correct that accuracy, transparency, simplicity, and consistency are key priorities in setting avoided cost prices. However here, and as addressed in NIPPC and REC's November 15 comments, neither Avista nor PSE have provided accurate, transparent, simple, or consistent avoided cost prices. As such, the Commission should require that PSE make the revisions detailed in NIPPC and REC's November 14 comments, or at a minimum, suspend the filings so that the inputs can be appropriately vetted.

I. Options for QFs Providing Less Than All Generation Power to Avista

Avista proposes that a QF be required to supply all of its output to the utility in order to be eligible for a fixed price contract, or in the alternative to provide "net output" and be paid the "as available" rate.¹ NIPPC and REC opposed this requirement in earlier comments recommending that QFs be allowed to sell part of their net output and still be eligible for published, fixed avoided cost prices.² Notably, a QF can still provide firm output and reserve some of its output for its own or other uses by making a commitment to the utility to provide a specific quantity of power at specified times and by meeting certain minimum delivery requirements. NIPPC, REC, Staff and Avista discussed this issue, and while Staff struggled with the issue. NIPPC and REC appreciate Staff's thoughtful consideration of the issue, and Staff's concern with "the idea that a QF can commit to selling energy and capacity, but only energy and capacity that is available after first meeting local load."³

NIPPC and REC, however, strongly disagree with Avista's proposal to only pay QFs an "as available" rate if the QF decides to consume some generation on-site. NIPPC and REC believe that it is inconsistent with a core legal requirement under PURPA: that a QF have the right to be paid firm avoided cost prices for the net output that it commits to provide to the utility.

Under PURPA, a QF has the right to sell power either "'as available' or pursuant to a legally enforceable obligation."⁴ All QFs must have both of these options, which means that all QFs have the right to sell their output over a specified term, with prices determined at the outset of that term, i.e., at "fixed prices." Under PURPA, each QF:

shall have the option either: (1) To provide energy as the qualifying facility determines such energy to be available for such purchases. . . or (2) To provide

¹ Avista draft Schedule 62 at Section I(1) (Nov. 12, 2019) ("The Standard Power Rate shall apply to customers agreeing to supply *all QF output* to the Company under one of the fixed-year schedules defined below.) (emphasis added) and Section I(3) ("The As-Available Power Rate shall apply to all customers providing QF output to the Company on an as-available basis. For customers electing to reduce deliveries by serving their on-site load, the Company will purchase the *net output*.") (emphasis added).

² NIPPC and REC Comments at 10-11 (Nov. 14, 2019).

³ Docket No. UE-190663 (Avista), Staff Open Meeting Memoranda at 3 (Dec. 5, 2019).

⁴ 18 C.F.R. 292.304(d).

energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term.⁵

If the QF chooses the first option, which is specifically referred to in the PURPA rules as “purchases *as available*,” then the price is based on the utility’s avoided cost calculated at the time of delivery. The QF has not obligated itself to sell any specific amount of power, and is not considered a firm resource entitled as a matter of law for a firm, fixed price. Thus, the “as available” price is intended for QFs that specifically choose this option.

If the QF chooses to sell pursuant to a legally enforceable obligation, however, it may *choose* to be paid a price based on either the avoided cost at the time of delivery or the avoided costs “calculated at the time the obligation is incurred.”⁶ In other words, its prices will be fixed for the term of the legally enforceable obligation. In the recently decided *Winding Creek* case, the Ninth Circuit reaffirmed that “QFs are guaranteed their choice of this ‘avoided cost’ rate as calculated either at the time of contracting or at the time of delivery.”⁷ The California PUC implemented a program called “the Standard Contract,” which calculates avoided costs based on a formula using six factors, three of which “are impossible to determine at the time of contracting.”⁸ Because these three factors in the Standard Contract calculation are unknown at the time of contracting, the Ninth Circuit found that it fails to give the QFs the option to calculate avoided costs at the time of contracting and therefore is in violation of PURPA.⁹

Avista’s proposal is inconsistent with PURPA because it requires QFs to sell their entire output to be eligible for the price that is “calculated at the time the obligation is incurred.” In other words, only those QFs willing to sell all of their output will be eligible for published, fixed prices.

Avista’s proposal is also inconsistent with the PURPA requirement that, at a minimum, all QFs under 100 kilowatts (“kW”) are entitled to standard prices.¹⁰ Under Avista’s proposal, QFs under 100 kW that choose not to sell all of their output to Avista will no longer be eligible for standard prices.

Avista’s proposal is also inconsistent with the Commission’s newly adopted rules. State commissions can increase the standard rate threshold above 100 kW, and this Commission has elected to increase the size to 5 MWs. The Commission’s rule states: “[q]ualifying facility developers proposing projects with a design capacity of five megawatts or less may choose to receive a purchase price for power that is set forth in such standard tariff.”¹¹ The Commission’s

⁵ 18 C.F.R. 292.304(d).

⁶ *Id.*

⁷ *Winding Creek Solar, LLC v. Peterman*, 932 F.3d 861, 862 (9th Cir. 2019).

⁸ *Id.* at 864.

⁹ *Id.* at 865.

¹⁰ 18 C.F.R. 292.304(c).

¹¹ WAC 480-106-030(3).

rules do not impose a requirement that the QF sell all of its output to the utility nor do they state that there is an exception for QFs that elect to use a portion of their output for other purposes.

Avista's proposal would violate PURPA's requirement that a QF sell its "net output" rather than "supply all QF output to the Company." A QF sells its "its 'net capacity' which is its gross capacity, less station power."¹² Station power for some facilities (like hydroelectric projects) can be small; however, for other facilities (like biomass and cogeneration) can be significant. Under Avista's tariff, it appears that a QF would be required to sell its gross rather than net output.

In fact, Avista's proposal would almost deprive an entire class of QFs that opportunity—cogeneration facilities. Most cogeneration facilities will consume some power on-site. This is because there are other industrial processes on-site that typically use the heat from a cogeneration facility, and where these other uses are present, there is also on-site load for some of the electrical output as well. PURPA was enacted to "encourage the development of [both] cogeneration and small power production facilities."¹³ Therefore, by refusing to offer fixed prices over a specified term to QFs that use consume some generation on-site, Avista is effectively discouraging the development of cogeneration facilities in direct contradiction with the goals of PURPA.

NIPPC and REC appreciate Staff's statement that, on this issue, "[s]taff is exploring with Avista and other stakeholders other approaches to handling of this complexity."¹⁴ NIPPC and REC look forward to further exploring this issue with Avista; however, in the interim, the Commission should remove Avista's requirement that the QF sell all of its net output.

II. PPA as an Attachment to Schedule 62

NIPPC and REC agree with Staff that additional analysis and vetting of Avista's PPA is required. It is NIPPC and REC's preference that the terms and conditions in Avista's PPA be addressed in early 2020. Staff recommends suspending Avista's filing to address these issues. NIPPC and REC support this proposal. NIPPC and REC oppose any scenario that would allow Avista's PPA to become effective without being fully reviewed and vetted by stakeholders and the Commission.

¹² New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities, Order 688 at n. 41 (Oct. 20, 2006).

¹³ *FERC v. Miss.*, 456 U.S. 742 at 750 (1982).

¹⁴ Docket No. UE-190663 (Avista), Staff Open Meeting Memoranda at 3.

III. Avoided Cost Prices: Capacity and Energy

Avista and PSE's avoided costs prices are not accurate, transparent, simple, or consistent. Staff notes that these are key priorities, but does not state whether it believes the prices meet those criteria. Neither Avista nor PSE have provided adequate support for their proposed prices. NIPPC and REC are not repeating all their prior arguments regarding Avista and PSE avoided cost prices, but want to emphasize that they still strongly oppose the prices, especially the energy price forecasts and the low capacity contributions attributed to wind and solar. As described in detail in NIPPC and REC's November 14, 2019 comments filed in these dockets, PSE and Avista's Mid-C energy market forecasts inappropriately and without explanation underestimate market prices relative to their prior market forecasts, the forecasts of other entities, and actual Mid-C prices. Further, neither Avista nor PSE has provided sufficient justification for their capacity contribution values, especially in light of competing values for other Northwest utilities and market research.

Avista and PSE's energy price forecasts are low and their methodology and inputs are opaque. Staff notes that both Avista and PSE's forecasts "project[] significantly lower prices" and a concern that the impact of the Clean Energy Transformation Act "is hard to ascertain."¹⁵ Staff does not propose any fixes, but instead does not dispute the reasonableness of the forecasts because there is an "absence of better information," and simply "encourages [Avista] to include a synopsis of its forecasting inputs and procedures in its next avoided cost update."¹⁶ NIPPC and REC agree that this information would be helpful and agree with Staff that it should be provided in the future. However, the Commission should also correct the prices now because the prices are the most core issue to PURPA implementation, and this first approval will set up the precedent for how filings will go in the future. As such, the Commission should direct the utilities to use their forecasts from their most recently acknowledged integrated resource plans or suspend the tariffs until the forecasts can be properly vetted.

In terms of the capacity contribution for wind and solar, since NIPPC and REC's comments were filed, neither Staff nor PSE or Avista have provided data-based justification for the low numbers. It is simply not realistic that a wind or solar facilities will provide zero capacity value to Avista.

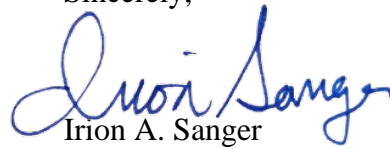
¹⁵ *Id.* at 3; Docket No. UE-190665 (PSE), Staff Open Meeting Memoranda at 2 (Dec. 5, 2019).

¹⁶ Docket No. UE-190663 (Avista), Staff Open Meeting Memoranda at 3; Docket No. UE-190665 (PSE), Staff Open Meeting Memoranda at 2.

IV. Conclusion

For the reasons stated in these and earlier comments, NIPPC and REC recommend that the Commission approve PSE's and Avista's filings, with specific changes.

Sincerely,



Irion A. Sanger

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