

In the matter of the tariff filing of:

AVISTA CORPORATION

For approval of a Standard Power Purchase Agreement for Qualifying Facilities

Docket UE-190663

REPLY COMMENTS OF
AVISTA CORPORATION

Avista Corporation, dba Avista Utilities, (“Avista”) submits the following comments in the above-referenced proceeding in response to the Joint Comments of Northwest & Intermountain Power Producers Coalition (“NIPPC”) and Renewable Energy Coalition (“REC”) submitted on August 17, 2020 (“Joint Comments”). In their Joint Comments, NIPPC and REC identify certain issues that they characterize as significant concerns regarding Avista’s proposed standard form of power purchase agreement for Qualifying Facilities (“QFs”) that are five (5) MWs or smaller (“Standard PPA”). NIPPC and REC also request clarification regarding Environmental Attributes¹ and request that Avista remove any leftover references to security.

As more fully discussed herein, Avista is proposing additional modifications to the Standard PPA in response to NIPPC and REC’s Joint Comments, which are included in the revised Standard PPA attached hereto as Exhibit A. Avista opposes NIPPC and REC’s remaining changes to the Standard PPA. Avista requests that the Commission approve the revised Standard PPA attached hereto as Exhibit A.

I. Background

Avista filed its latest version of the Standard PPA with the Commission on August 7, 2020. Prior to filing the latest version of the Standard PPA, Avista spent a substantial amount of time

¹ Except as otherwise expressly defined herein, all capitalized terms shall have the meaning provided in the Standard PPA.

attempting to resolve NIPPC and REC's issues regarding the Standard PPA. Through that process, Avista made significant concessions in response to NIPPC and REC's issues. As more fully discussed below, Avista is proposing additional revisions to the Standard PPA in an attempt further address NIPPC and REC's issues. Specifically, Avista is proposing to further revise its Standard PPA to: (i) limit the application of the 90-110 performance band in the Standard PPA so that it does not apply to solar or wind QFs, (ii) delete Section 20 of the Standard PPA to resolve any issues with what NIPPC and REC mischaracterize as a "reopener clause", (iii) remove the requirement that QFs provide a legal opinion that they are in compliance with permits; (iv) include NIPPC and REC's requested language in Section 12.1 of the Standard PPA to further clarify that the requirement to have a transmission agreement that provides for firm transmission for the term of the PPA is satisfied if such agreement includes rollover rights, and (v) eliminate as an event of default in Section 17(g) the failure to deliver output for a period of six consecutive calendar months or 180 days in any calendar year. The revised Standard PPA is attached hereto as Exhibit A. A redline of the revised Standard PPA showing these proposed revisions is attached hereto as Exhibit B.

Avista is not able resolve all of NIPPC and REC's. The unresolved issues in the Standard PPA, are: (1) the revised proposed 90-110 performance band, (2) the off-system delivery and payment provisions; (3) the provisions prohibiting changes to the QF, (4) the proposal to allow reasonable cure periods for missing milestone dates such that the term of the Standard PPA could exceed the maximum term permitted by the Commission's rules, and (5) the non-delivery provisions of the Standard PPA. Avista is unable to revise its PPA to resolve these issues because NIPPC and REC's requested changes (i) would harm Avista's customers, (ii) are inconsistent with Commission regulations, or (iii) are inconsistent with standard scheduling practices. Each of these

issues is discussed below. Avista also provides clarification on those issues for which NIPPC and REC requested clarification.

I. Discussion

A. The 90-110 Performance Band

NIPPC and REC argue that the Commission should require the removal of the 90-110 performance band.² In response to NIPPC and REC's concerns regarding the 90-110 performance band, Avista has already made significant concessions on this issue. Those concessions include: (i) exempting very small QFs that are interconnected to Avista's system from the 90-110 performance band requirements so that 90-110 performance band only applies to QFs that are 3 MWs and larger,³ and (2) substantially reducing the impact to a QF when its monthly Net Output is less than 90 percent of its Monthly Net Output Estimate.⁴ Avista is now proposing a further concession in the attached proposed Standard PPA to exempt solar and wind QFs from the 90-110 performance band.⁵

The 90-110 performance band is essential to ensure that those QFs with significant Net Output to be delivered to Avista actually deliver the Net Output that Avista's customers are required to pay for, especially when we are paying large capacity premiums to ensure deliveries meet times of system peak. More fundamentally, ensuring the performance of such QFs may be even more important when Avista enters the Energy Imbalance Market ("EIM").⁶ Simply requiring

² Joint Comments at 3-4, 11-12.

³ Standard PPA at Sections 5.1, 7.3.2, 7.3.3.

⁴ Standard PPA at Section 7.3.3 (requiring the QF to pay the greater of the zero or the Market Energy Price only for the amount of energy that is the difference between 90 percent of the Monthly Net Output Estimate and the same month's actual Net Output delivered to Avista at the Point of Delivery).

⁵ Standard PPA at Section 5.1, 7.7.2, 7.3.3.

⁶ Notably, Avista is not applying the 90-110 performance band to QFs that are directly interconnected to its system and are smaller than 3 MWs in large part because those QFs will not be implicated in the EIM. QFs larger than 3 MWs will be implicated by the EIM.

an annual forecast, as NIPPC and REC propose,⁷ provides no ability for Avista to incentivize those QFs that are subject to the 90-110 performance band to perform in a manner that is consistent with the avoided cost rate that those QFs are paid. As NIPPC and REC acknowledge, “[t]here is no penalty for the forecasting requirement”.⁸

NIPPC and REC appear to generally make two arguments against the 90-110 performance band: (1) that Idaho is the only regional state that imposes the 90-110 performance band on QFs,⁹ (2) that the 90-110 performance band is “conceptually similar to the Texas ‘firm power’ rule”.¹⁰ These arguments are misleading and, more fundamentally, are without merit. Ultimately, what NIPPC and REC are requesting is a form of PPA that does not require any accountability on the part of the QF.

As a threshold matter, that Idaho is the only regional state that currently applies the 90-110 performance band provides no basis for rejecting the 90-110 performance band. NIPPC and REC attempt to discredit the 90-110 performance band as “part of an overall PURPA regulatory structure in Idaho that has ended viable project development.”¹¹ As evidence of this, NIPPC and REC point to the small number of QFs that Avista has PPAs with in Idaho.¹² NIPPC and REC provide no other evidence to support their conclusion that there is “no new PURPA development [in Idaho], in part because of the 90-110 Performance Band.”¹³ More fundamentally, NIPPC and REC’s list of hydro QFs with contracts with Avista is incomplete. Notably, the City of Cove, Oregon, elected to wheel the output of its small hydro facility to Avista’s system in Idaho in order

⁷ Joint Comments at 11-12.

⁸ *Id.* at 12.

⁹ Joint Comments at 6.

¹⁰ Joint Comments at 4-5,

¹¹ Joint Comments at 6.

¹² Joint Comments at 6-7.

¹³ *See* Joint Comments at 6-7.

to take advantage of Idaho's PURPA structure.¹⁴ The fact that at least one QF actually wheeled out of Oregon (the jurisdiction NIPPC and REC appear to favor) to deliver to Avista in Idaho is inconsistent with NIPPC and REC's assertions that Idaho's regulatory structure has not ended QF development. Not surprisingly, NIPPC and REC fail to mention the City of Cove in their Joint Comments.

Notably, in condemning Idaho's PURPA regulatory structure, NIPPC and REC make no mention of the number of QFs that other Idaho utilities, including Idaho Power Company, have entered into power purchase contracts with since Idaho adopted the 90-110 performance band. A cursory review of the contracts that Idaho Power Company has filed with the Idaho Public Utilities Commission demonstrates that, contrary to NIPPC and REC's assertions, there has been substantial PURPA development in Idaho since the introduction of the 90-110 performance band.¹⁵ The Idaho PURPA regulatory structure has not "ended viable project development" as NIPPC and REC assert.

Contrary to NIPPC and REC's assertions, the 90-110 performance band is also not conceptually similar to the Texas rule that required QFs that were unable to deliver firm power to receive an as-available avoided cost rate. In *JD Wind I, LLC*,¹⁶ the Federal Energy Regulatory Commission ("FERC") issued a notice of intent not to act and declaratory order. In that Order, FERC indicated that a Texas rule that a legally enforceable obligation ("LEO") is only available

¹⁴ The PPA between Avista and the City of Cover was filed in IPUC Case No. AVU-E-18-05.

¹⁵ All PPAs with QFs are filed with, and approved by the IPUC and, therefore, are available on the IPUC's website. Idaho Power has entered into numerous new and renewed PPA's with QFs that are subject to the 90-110 performance band. Examples of Idaho Power's PPA's with QFs subject to the 90-110 performance band include PPAs with: New Energy One, LLC (IPC-E-10-16), Yellowstone Power, Inc. (IPC-E-10-22), MC6 Hydro, LLC (IPC-E-18-09), Pico Energy, LLC (IPC-E-19-39), the College of Southern Idaho for Pristine Springs 1 and Pristine Springs (IPC-E-20-04 and IPC-E-20-05, respectively), and Lateral 10 Ventures, LLC (IPC-E-20-03).

¹⁶ *JD Wind I, LLC*, 129 FERC ¶ 61,148 (2009), *reh'g denied*, 130 FERC ¶ 61,127 (2010) (additional subsequent history discussed in footnote 19 below).

to sellers of firm power was inconsistent with PURPA and FERC's regulations.¹⁷ The 90-110 performance band is not, as NIPPC and REC assert, "conceptually similar"¹⁸ to the Texas rule that a LEO was only available to sellers of firm power. The 90-110 performance band does not prohibit any QF from obtaining a LEO nor does it prevent any QF from obtaining the avoided cost rate established at the time the LEO is established. The 90-110 performance band merely ensures that QFs deliver the product that they are being paid for. NIPPC and REC's attempt to mischaracterize the 90-110 performance band as conceptually similar to the Texas firm power rule is without merit and misleading.¹⁹

In sum, the 90-110 performance band is essential to ensure that QFs, especially those that receive significant premiums for supplying their generation during peak periods, are accountable to deliver the product that Avista's customers are paying for. Avista has made several concessions to revise the 90-110 to make sure that it only applies to those QFs that contribute substantial output, to make it easier for those QFs to comply with the requirement, to reduce the burden of a failure to meet the 90 percent requirement, and to exempt small wind and solar from the requirement. Avista can, with reservation, accept the wind/solar exemption because these resources are not expected to provide significant deliveries during on-peak periods, and capacity payments are small relative to other generation sources.

¹⁷ *JD Wind 1, LLC*, 129 FERC at P 23.

¹⁸ Joint Comments at 4-5.

¹⁹ Notably, the FERC order that NIPPC and REC rely on was a Notice of Intent Not to Act and Petition for Declaratory Order issued in *JD Wind 1, LLC*. Such orders are not binding, but rather are informal guidance documents more akin to an advisory opinion. NIPPC and REC make no mention of this fact in the Joint Comments. More troubling than the fact that NIPPC and REC failed to disclose the nature of FERC's order in *JD Wind 1, LLC*, NIPPC and REC also do not make any reference to the subsequent Fifth Circuit opinion, *Exelon Wind 1, L.L.C. v. Nelson*, 766 F.3d 380, 400 (5th Cir. 2014) ("*Exelon Wind 1*"). In Order No. 872, FERC revised its regulations, in part, to address the Fifth Circuit's decision in *Exelon Wind 1*. *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, 172 FERC ¶ 61,041, at PP 34, 689 (2020), *reh'g pending*, ("Order No. 872). NIPPC and REC's failure to disclose in their Joint Comments the nature of the FERC order in *JD Wind 1, LLC*, upon which it relies, and failure to even cite the subsequent Fifth Circuit opinion is misleading.

It is not surprising that these concessions are not sufficient to satisfy NIPPC and REC. NIPPC and REC prefer a terms that provide little or no QF accountability such as a mechanical availability guarantee (“MAG”) or a simple forecast.²⁰ A MAG or forecast is insufficient to ensure that those QFs with substantial output provide the product for which they are being paid to provide. Accordingly, Avista requests that the Commission approve the revised Standard PPA attached hereto with Avista’s proposed revised 90-110 performance band.

B. Avista’s Proposed Standard PPA Does Not Have a Contract Reopener Clause; The Standard PPA Merely States that it is Subject to the Rules, Regulations, and Requirements of Governmental Entities with Jurisdiction.

NIPPC and REC object to standard language that simply states that the Standard PPA “is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over the Facility, this Agreement, the Parties or either of them.”²¹ According to NIPPC and REC this is a reopener because, for example, in their view if the WUTC issued an order approving a lower avoided cost price, this clause would allow Avista to argue that it has the right to reopen the executed contract and change the price to match the new WUTC order.

NIPPC and REC’s concerns are unwarranted and Avista disagrees with their characterization of this standard clause as a reopener clause. Nevertheless, in order to resolve this issue, Avista proposes to delete Section 20 of the Standard PPA in its entirety in the revised Standard PPA.

²⁰ Joint Comments at 5-6, 11-12.

²¹ Joint Comments at 12-17.

C. Avista’s Standard PPA Includes Appropriate Off-System Delivery Provisions

Avista’s Standard PPA includes several provisions that are only applicable to off-system QFs—that is QFs that interconnect to a third-party transmission system and wheel their output to Avista’s system.²² NIPPC and REC incorrectly assert that Avista’s Standard PPA does not include a monthly settlement provision.²³ NIPPC and REC also propose changes to Avista’s Standard PPA so that Avista would be required to purchase the Net Output measured at the Point of Interconnection even though, for off-system QFs, there will be losses between the Point of Interconnection and the Point of Delivery on Avista’s system.²⁴ NIPPC and REC also assert that the Commission should require changes to the scheduling mechanics in the Standard PPA.²⁵ Finally, NIPPC and REC request changes to the Standard PPA to clarify that the required term of the transmission agreement can be satisfied with renewal rights.²⁶ These issues are discussed in turn below.

1. Avista Revised its Standard PPA to Allow Monthly Settlement as Requested by NIPPC and REC.

NIPPC and REC assert that the Standard PPA does not contain an express monthly settlement provision. That is incorrect. Scheduling errors ultimately result in Surplus Energy. Surplus Energy is expressly defined in the Standard PPA, in relevant part, as: “any electric energy that is scheduled by Seller and delivered to the Point of delivery *in any month* in excess of the Net Output generated by the Facility *in such month*.”²⁷ In their Joint Comments NIPPC and REC

²² Standard PPA at Section 6.1 (stating that Section 6 only applies to QFs that are not directly interconnected to Avista’s system).

²³ Joint Comments at 18-19.

²⁴ Joint Comments at 20.

²⁵ Joint Comments at 21-23.

²⁶ Joint Comments at 23-24.

²⁷ Standard PPA at Section 1.46 (defining “Surplus Energy”) (emphasis added).

propose to delete this definition of “Surplus Energy” and, thereby, propose to delete the express provision that they are requesting.²⁸

2. Avista’s Customers Should Not Pay Avoided Cost Rates for Non-QF Energy

NIPPC and REC object to the definition of “Losses” in the Standard PPA because that definition, along with the definition of Net Output, “would reduce the amount of Net Output for which the QF is paid full avoided costs by the amount of transmission losses between the Point of Interconnection and the Point of Delivery to Avista’s system.”²⁹ NIPPC and REC assert that QFs are entitled to be paid for the Net Output measured at the point of interconnection so long as it secures loss service from the transmission provider to ensure that over the course of a month it delivers the quantity of Net Output measured at the Point of Interconnection.³⁰

NIPPC and REC’s statement that a QF can deliver precisely the same quantity of Net Output, as measured at the point of interconnection, to the Point of Delivery by simply procuring loss service from the transmission provider is demonstrably incorrect.³¹ To the extent that a QF interconnects to a third-party transmission system, it will need to procure third-party transmission to deliver its Net Output to the Point of Delivery on Avista’s system. Under these circumstances, there will be Losses between the Point of Interconnection and the Point of Delivery. Under these circumstances, Net Output at the Point of Delivery will always be less than the Net Output measured at the Point of Interconnection.

The transmission provider can make up Losses so that the amount of energy delivered to Avista’s system at the Point of Delivery is the same as the amount of Net Output of the QF

²⁸ Joint Comments at Attachment A (deleting the defined term “Surplus Energy”).

²⁹ Joint Comments at 20.

³⁰ *Id.*

³¹ *See id.* at 20.

measured at the Point of Interconnection. However, to the extent the transmission provider provides make up energy to cover Losses, that make up energy is NOT Net Output because it is not “generated by the Facility”—it is generated by other (generally non-QF) resources. It necessarily follows that, to the extent there are Losses between the Point of Interconnection and the Point of Delivery, the amount of Net Output at the Point of Delivery will ALWAYS be equal to the Net Output at the Point of Interconnection *minus* Losses. Total energy delivered to the Point of Delivery may equal Net Output at the Point of Interconnection, but that is only because energy provided by the transmission provider from other sources makes up for Losses. Under these circumstances the total energy delivered to the Point of Delivery is equal to Net Output *plus* make up energy provided by the transmission provider from other sources.

Contrary to NIPPC and REC’s assertions, avoided cost rates are only paid for Net Output, not energy provided by the transmission provider from other sources to make up for Losses. The cases cited by NIPPC and REC do not support their argument.³² These cases are generally completely off point.³³

To the extent that the cases cited by NIPPC and REC are applicable at all, they support Avista’s position, not NIPPC and REC’s position. For example, in the Joint Comments NIPPC and REC cite Order No. 671 to support their position, but that order does not address transmission losses. To the extent Order No. 671 is applicable at all, it makes clear:

³² See *id.* at 20 n.41 (citing a laundry list of cases that NIPPC and REC cite to support the proposition that FERC rules establish that QFs are entitled to be paid avoided costs for net output measured at the point of interconnection so long as it is able to deliver that amount of power to the utility). None of the cited cases support that proposition.

³³ See *e.g.*, *Am. Ref-Fuel Co.*, 54 FER ¶ 61,287 (1991) (discussing how to measure net output to determine whether a particular resource satisfies the 80 MW size limitation generally applicable to QFs other than co-gen); *Conn. Valley Elec. Co., Inc. v. Wheelabrator Claremont Co., L.P., et al.*, 82 FER ¶ 61,116, *reh’g denied*, 83 FER ¶ 61,136 (1998), *aff’d*, 208 F.3d 1037 (D.C. Cir. 2000) (“*Wheelabrator*”) (same); *So. Cal. Edison Co. v. FERC*, 443 F.3d 94 (D.C. Cir. 2006) (discussing net output in the context of whether net output includes power consumed for certain loads and noting that FERC cautioned that “allowing a [QF] to sell the gross output at one utility’s avoided cost rates while the [QF] purchases the auxiliary power at another utility’s retail rates may very well result in an economic distortion”).

What electric utilities are required to purchase is the “electric energy from such facilities” which the Commission interprets to mean electric energy produced by the QF and not non-QF electric energy which the QF has purchased or has produced itself through a process that does not satisfy the technical requirements for QF status.³⁴

Energy that is purchased from the transmission provider to make up for Losses is non-QF electric energy which the QF purchases through a process that does not satisfy the technical requirements of QF status and, therefore, is not part of the Net Output for which the QF is to receive an avoided cost rate.³⁵

Also, *So. Cal. Edison* analyzed whether net output included certain loads (in that case whether the power used by a geothermal facility for brine extraction and reinjection) (whether such loads were auxiliary load served by facility service power) that would be subtracted from net output or not. Losses were not at issue and the court, therefore, did not analyze losses. Nevertheless, in *So. Cal. Edison*, the court noted that FERC has cautioned that:

Allowing [a QF] to sell the gross output at one utility’s avoided cost rates while the [QF] purchases the auxiliary power at another utility’s retail rates may very well result in an economic distortion.³⁶

So. Cal. Edison does not expressly address whether Losses should or should not be included in Net Output at the Point of Delivery. However, to the extent that *So. Cal. Edison* addresses how net output is determined, the reasoning in that case does not support NIPPC and REC’s argument. For the same reasons a QF cannot sell power that a QF purchases from another utility for auxiliary power as net output, QFs cannot sell make up power purchased from the transmission provider to make up for Losses as Net Output.

³⁴ *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, 114 FERC ¶ 61,102, at P 101 (Order No. 671”), *clarified*, 114 FERC ¶ 61,128 (2006), *order on reh’g*, 115 FERC ¶ 61,225 (2006) (“Order No. 671-A”) (quoting 16 U.S.C. 824a-1(a)(2)).

³⁵ *See id.*

³⁶ *So. Cal. Edison Co. v. FERC*, 443 F.3d at 96

Finally, it is noteworthy that NIPPC and REC did not cite FERC's order in *PáTu Wind Farm, LLC v. Portland General Electric Company*³⁷-- a case that was discussed by the parties in their informal discussions. In *PáTu*, the Commission made clear that net output of a QF is net of losses by defining the entire net output that the utility is required to accept to be net of losses:

As discussed below, the Commission partially grants the Complaint by ordering Portland General to accept PáTu's *entire* net output (all energy less onsite uses and losses) delivered to the Portland General balancing authority area³⁸

This FERC order directly addresses the issue of whether Net Output at the Point of Delivery should include Losses and makes clear that the net output that a utility is required to accept is "all energy less onsite uses and losses".³⁹ In fact, the Commission expressly approved a contractual provision that is functionally the same as the provisions in the Standard PPA that NIPPC and REC object to here:

Section 1.18 of the [Portland General] Standard Contract defines "Net Output" as "*all* energy . . . produced by [PáTu]" less onsite uses and losses, and Section 4.1 of the Standard Contract states that PáTu shall sell its "entire Net Output delivered from the Facility at the Point of Delivery." This language, expressly providing for the sale to Portland General of the net output produced by PáTu and delivered to Portland General at its Troutdale substation, is consistent with section 292.303(a) of the Commission's regulations that requires each electric utility to purchase "any energy and capacity which is made available from a [QF]."⁴⁰

Even though this case is directly on point with the issue that NIPPC and REC raise in their Joint Comments, NIPPC and REC make no mention of this case in their Joint Comments.

In sum, NIPPC and REC's position that QFs should be able to sell, at an avoided cost rate, a quantity of energy to the utility equal to the Net Output measured at the Point of Interconnection where there are Losses due to transmission necessary to deliver Net Output to the utility's system

³⁷ *Patu Wind Farm, LLC v. Portland General Electric Company*, 150 FERC ¶ 61,032, *reh'g denied*, 151 FERC ¶ 61,223 (2015) ("*PáTu*").

³⁸ *PáTu*, 150 FERC at P 49 (underlining added).

³⁹ *Id.*

⁴⁰ *Id.* at P 51 (underlining added, internal footnote omitted). *See also* Joint Comments at 20.

is both inconsistent with PURPA—which requires the utility to purchase only electric energy produced by the QF—and FERC precedent.⁴¹ NIPPC and REC’s position should be summarily rejected.

3. The “Scheduling Mechanics” in the Standard PPA are Current Standard Scheduling Practices.

NIPPC and REC assert that Section 6 of the Standard PPA “includes outdated and unreasonable provisions regarding scheduling mechanics.”⁴² Accordingly, NIPPC and REC seek revisions to those provisions that would, if adopted, authorize the use of, among other methods, Open Access Same Time Information System (“OASIS”) for scheduling.⁴³ NIPPC and REC would also eliminate the requirement to provide an updated electronic tag (e-Tag) to revise the day-ahead estimate 90 minutes prior to the start of each deliver hour.⁴⁴ NIPPC and REC’s requested changes demonstrate a complete lack of understanding of scheduling and, therefore, should be rejected.

NIPPC and REC’s comments contain several misstatements and misunderstandings. First, NIPPC and REC request that Section 6.2 of Avista’s Standard PPA be revised to state that the requirement to submit energy preschedules may be satisfied by Seller submitting energy preschedules “by use of the Seller’s transmitting Entity(ies) open access same time information system or other electronic mechanisms authorized by the Federal Energy Regulatory Commission. . . .”⁴⁵ NIPPC and REC also insert language suggesting that scheduling is performed with the transmission function.⁴⁶ These requested change demonstrate a fundamental misunderstanding

⁴¹ *E.g.*, Order No. 671 at P 101 (stating that utilities are required to purchase “electric energy produced by the QF and not non-QF electric energy which the QF has purchased or has produced itself through a process that does not satisfy the technical requirements for QF status.”); *PaTu*, 150 FERC at P 49 (clearly defining the net output that utilities must accept as energy less onsite uses *and losses*).

⁴² Joint Comments at 21.

⁴³ Joint Comments at 22 (indicating requested revisions to Section 6.2 of the Standard PPA).

⁴⁴ Joint Comments at 22 (indicating requested revisions to Section 6.4 of the Standard PPA).

⁴⁵ Joint comments at 22.

⁴⁶ Joint Comments at 22 (requesting a revision to Section 6.4 to state that updating schedules is to be done “in accordance with the requirements of the Transmitting Entity”).

about the power supply and transmission functions. In short, OASIS is used by the transmission function and is generally used to reserve interconnection and transmission service—it is not used to schedule energy. Energy is scheduled using e-Tags and is performed through the power supply function—not the transmission function—in accordance with standard WECC scheduling practices.

Second, contrary to NIPPC and REC’s assertions, Section 6 of the Standard PPA does reflect current scheduling practices. In fact, Section 6 is consistent with standard WECC scheduling practices. NIPPC and REC’s request to eliminate the requirement that day-ahead schedules be revised at least 90 minutes prior to each delivery hour and to instead allow QFs to update their day-ahead schedule “prior to the start of each delivery hour, or sub-hourly scheduling increment, during the delivery Business Day. . . .” The request to revise the Standard PPA to allow QFs to revise their day-ahead schedules any time prior to the delivery hour or sub-hourly scheduling increment is unreasonable and commercially unworkable. Final schedules need to be confirmed at least 57.5 minutes prior to the active hour. The power supply function needs to get updated schedules at least 90 minutes prior to the delivery hour in order to allow time for the merchant function to make any necessary transactions to accommodate such changes.

It is apparent from NIPPC and REC’s Joint Comments that NIPPC and REC do not understand standard WECC scheduling practices or the separation of functions within a vertically integrated utility, such as Avista. Avista is willing to further engage with NIPPC and REC to assist in their understanding of these fundamental concepts. In any event, NIPPC and REC’s Joint Comments regarding scheduling practices, and their requested modifications to Section 6 of the Standard PPA, should be rejected.

4. Term of the Transmission Agreement

NIPPC and REC are concerned about language in the Standard PPA requiring a transmission agreement to have a term as long as the term of the PPA is inconsistent with standard industry practice to secure only a five-year transmission agreement. NIPPC and REC are incorrect. Standard industry practice—and indeed FERC requirements—dictate that a transmission agreement with a five-year term includes rollover rights. This is common knowledge in the industry and is unambiguous.

The Standard PPA states that the QF must have a transmission agreement “providing for the firm transmission of Net Output from the Facility to the Point of Delivery for the Term of this Agreement.” A transmission agreement for firm transmission with at least a five-year term—which would include rollover rights—clearly satisfies this requirement since such a transmission agreement would provide for the firm transmission of Net Output from the Facility to the Point of Delivery for the Term of the PPA.

NIPPC and REC request that Avista insert language into Section 12.1 of the Standard PPA to expressly state that the requirement to have a transmission agreement for the term of the PPA can be satisfied with a transmission agreement that includes renewal rights that extend its term for the entire term of the PPA. While this requested language is, as explained above, unnecessary, Avista is willing to insert this surplus language to resolve this issue. Avista has included NIPPC and REC’s requested language in the revised Standard PPA attached hereto as Exhibit A.

D. QF’s Should Not be Able to Make Material Changes or Upgrades to Their Facilities

NIPPC and REC assert that Avista’s Standard PPA should allow QFs to increase their facility size both before and after commercial operation to (i) accommodate what NIPPC and REC assert are normal changes that occur prior to commercial operations, and (ii) accommodate

upgrades to QF size up to 5 MW.⁴⁷ Avista is prepared to discuss changes to the Standard PPA to accommodate nominal non-material changes that may occur during the development of a QF. NIPPC and REC's request to allow QFs to materially modify the size of their facilities after commercial operation in order to take advantage of advantageous outdated avoided cost rates by expanding existing facilities rather than developing a new QF would materially harm Avista's customers and, therefore, should be rejected.

As noted above, Avista is open to discussing a reasonable modification to its Standard PPA to allow non-material changes to a QF during development in a manner that protects its customers from QFs taking advantage of such provision to materially increase the size of a QF. It is not clear to Avista how to accomplish this in the Standard PPA. For example, one idea that was considered, and rejected, is to limit changes to those changes that would not require a change to the QF's interconnection agreement. However, there is nothing to stop a QF from overstating its size in the interconnection process.⁴⁸ Accordingly, such a provision will merely incentivize QFs to request interconnection service for a facility up to five MWs even if it only plans to initially install, for example, one MW. The QF in this example can then add up to four additional MWs to its QF to take advantage of avoided cost rates put in place (potentially several years earlier) for the original one MW facility. Any provision that allows non-material changes to the QF size during development will need to protect Avista's customers from such gaming.

QFs should not be able to upgrade their facilities to take advantage of stale avoided cost rates for material size changes, especially after commercial operation. NIPPC and REC assert that QFs should be able to increase nameplate capacity up to the standard contract threshold (currently

⁴⁷ Joint Comments at 24-28.

⁴⁸ In fact, Order No. 845 expressly provides the ability for other interconnection customers to use surplus interconnection service.

5 MWs) and continue to receive the standard prices in the original contract.⁴⁹ Allowing QFs to expand after commercial operation would merely establish a further put option in favor of QFs that could materially harm Avista's customers. If the avoided cost rate decreases at any time during the 15-year term of the standard PPA, or if Avista's need for capacity changes during that term such that a new QF would receive a smaller capacity payment, the QF can simply elect to expand its facility (rather than develop a new facility) to take advantage of the avoided cost rates that were established for its facility potentially years earlier. If, on the other hand, the avoided cost rate increases and the developer wants to take advantage of those increased rates, it can simply develop a new QF rather than expand the old one.

There is nothing in PURPA or FERC regulations regarding PURPA that allows QFs to expand over time to take advantage of avoided cost rates that were put into place for a particular QF. Allowing QFs to game PURPA to take advantage of higher stale avoided cost rates could result in Avista's customers overpaying for output from expansions to QFs. If QFs want to expand their facilities, the Net Output from such expansions should be entitled only to receive a new avoided cost rate.⁵⁰ Because NIPPC and REC's proposal to allow QFs to expand after commercial operation to take advantage of stale avoided cost rates could materially harm Avista's customers, this proposal should be rejected.

⁴⁹ Joint Comments at 26.

⁵⁰ It is worth noting that the avoided cost rate may be higher or lower at the time of the expansion. In any event, the QF should receive the applicable avoided cost rate at the time of the expansion, not the avoided cost rate that was put into place for the original QF. In practice, as noted above, if the avoided cost rate increases and the QF is only entitled to the original lower avoided cost rate, the developer will simply develop a new QF rather than expand the existing QF. In other words, QFs already have the ability to take advantage of any upside potential, what they are looking to do is create a put option to avoid any downside potential in the event avoided cost rates decrease. Effectively, what this means is QFs are seeking yet another way to make utility customers overpay for their output.

E. NIPPC and REC’s Request for a Cure Period Would Violate the Commission’s Regulations.

NIPPC and REC request revisions to Avista’s Standard PPA to provide a cure period for missing milestone dates, including the commercial operation date. NIPPC and REC’s request to allow a cure period when the QF fails to achieve commercial operation within three years of the date the PPA was executed would violate the Commission’s regulations.

The Commission’s regulations dictate that, for new QFs that are 5 MW or smaller:

The utility's standard rates for purchases must offer fixed rates to a new qualifying facility for a term of fifteen years beginning on the date of contract execution or a legally enforceable obligation, but not less than twelve years from the commercial operation date of the qualifying facility.⁵¹

In other words, the maximum term for a PPA with such QF that authorized by the Commission’s regulations is 15 years. The QF must achieve commercial operation within three years of execution of the PPA so that there is “not less than twelve years from the commercial operation date of the qualifying facility.”⁵² Section 4.2 of Avista’s Standard PPA incorporates this requirement stating:

In the event that the Seller fails to achieve the milestones set forth in Exhibit J, including achieving the Commercial Operation Date of the Facility within three (3) years of the Effective date, Avista may terminate this Agreement by providing Seller written notice of termination.

In sum, if the QF may elect any Commercial Operation Date it wants, so long as it achieves the Commercial Operation Date within three years of the effective date of the PPA. If the QF elects a Commercial Operation Date that is three years from the effective date of the PPA, and the QF is unable to achieve the Commercial Operation Date within that period, any cure period for such failure would either (i) reduce the period of time from commercial operation date to the end of the term to less than the 12 years required by the Commission’s regulations, or (ii) extend the term of

⁵¹ WAC 480-106-050(4)(i).

⁵² *See id.*

the PPA beyond the maximum 15-year term authorized by the Commission's regulations. Therefore, under these circumstances, there can be no cure period for the failure to achieve the Commercial Operation Date within three years of the effective date of the PPA regardless of the cause of such failure because any such cure period would necessarily violate the Commission's regulations.

NIPPC and REC request modifications to the Standard PPA to state that a failure to achieve a milestone shall not constitute a default if such failure is caused by Avista or is the result of an Event of Force Majeure. This language unnecessary.

NIPPC's request to insert language to state that if a failure to achieve a milestone is due to force majeure such failure shall not constitute a default is unnecessary. Section 13 of the PPA already includes a force majeure provision that fully and completely addresses NIPPC and REC's concern:

Except as expressly provided in Section 13.6, neither Party shall be liable to the other Party, or be considered to be in breach of or default under this Agreement, for delay in performance due to a cause or condition beyond such Party's reasonable control which despite the exercise of reasonable due diligence, such Party is unable to prevent or overcome ("Force Majeure"). . . .

This standard force majeure provision makes clear that if there is a delay in performance due to Force Majeure, the QF shall not be considered in breach or default. No further revisions to the Standard PPA are necessary to address NIPPC's concern.⁵³

⁵³ Although no change is required to address NIPPC and REC's concern, upon review of Section 4.2 and the Force Majeure provision, Avista realized that there is some ambiguity as to whether the Force Majeure provision would allow Avista to terminate the PPA if the QF fails to achieve the Commercial Operation Date within three years of the Effective Date of the PPA. As noted above, Avista needs to be able to terminate the PPA under these circumstances regardless of the cause of the QF's failure to achieve such Commercial Operation Date to prevent a violation of the Commission's regulations. Accordingly, Avista has revised Section 13.6 of its Standard PPA to clarify that force majeure will not relieve the QF from a failure to achieve the Commercial Operation Date within three years of the effective date and such failure will allow Avista to terminate the PPA in order to ensure that Avista does not violate the Commission's regulations.

Further, NIPPC and REC request language that states that QFs are not in default if Avista causes the QF fails to achieve a milestone. That language is unnecessary. There are not many ways that Avista could cause a QF to miss a milestone—QFs are generally responsible for their own development. To the extent that NIPPC and REC are concerned about the interconnection process, that process is a separate process that is subject to its own set of rules. To the extent that NIPPC and REC are concerned that Avista might not act in good faith, NIPPC and REC can seek an appropriate remedy from the Commission if Avista is not acting in good faith. NIPPC and REC's requested revisions are unnecessary.

F. Avista has Removed the Requirement for a Legal Opinion

Although NIPPC and REC engaged in informal discussions prior to filing the Joint Comments, this issue about QFs providing a legal opinion was raised for the first time in the Joint Comments. Had this issue been raised, Avista would have revised its Standard PPA to address this issue. In any event, Avista has revised the Section 3.2 of the Standard PPA to delete the requirement that QFs provide a legal opinion. As revised, Section 3.2 is now a representation by the Seller that licenses, permits and approvals (including, but not limited to, evidence of compliance with Subpart B, 18 C.F.R. § 292.207, tribal, state and local business licenses, environmental permits, easements, leases and all other required approvals) are legally and validly issued, are held in the name of the Seller, and Seller is in substantial compliance with said permits.

G. Avista Has Revised its Standard PPA to State that Section 17.1(g) Does Not Apply to Seasonal Projects

NIPPC and REC are concerned about section 17(g) of the Standard PPA that allows Avista to terminate the PPA if the QF fails to deliver output for a period of six consecutive months or a

total of 180 calendar days in any calendar year. Avista has deleted section 17(g) in the Standard PPA to address NIPPC and REC's concern.

H. Additional Clarification Issues

A. Environmental Attributes.

Under the Standard PPA, Avista is to calculate the amount of Environmental Attributes that Avista shall own and that will be owned by the QF by determining the percentage of the applicable Avoided Cost Rates over the Term (or, if applicable, for the period from the Commercial Operation Date through the end of the Term) that is based on the avoided capacity costs of an eligible renewable resource as defined in RCW 19.285.030. This percentage is to be stated in Exhibit B to the Standard PPA.

NIPPC and REC do not object to this methodology. However, NIPPC and REC do request clarification that the percentage of the applicable Avoided Cost Rates is determined at the time of contract execution (or other legally enforceable obligation and not avoided cost rates in any period after contract execution). In response to NIPPC and REC's request, Avista clarifies that the percentage of applicable Avoided Cost Rates is determined and is stated in Exhibit B of the PPA at the outset of the PPA. This percentage will not change over time.

B. Security Language

NIPPC and REC note that there is a reference to security in the Title to Section 9 and Exhibit I. This reference is a carryover from a prior draft that assumed that Avista's published avoided cost rates would include a levelized published avoided cost rate option. To the extent a levelized rate is used, security is required to protect Avista's customers. At this time, Avista's published avoided cost rates do not include a levelized rate option and, therefore, no security is required. Avista has removed the leftover references to security as requested by NIPPC and REC.

IV. CONCLUSION

Avista respectfully requests the Commission approve its standard PPA as set forth in Exhibit

A.

Dated this 4 day of September 2020.

Respectfully submitted,

AVISTA CORPORATION

/s/ Michael G. Andrea

Michael G. Andrea