

Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Enclosed is a date stamped copy of your recent filing of a Notice of Self-Certification or Self-Recertification for your Qualifying Facility (QF). The stamp shows the date your filing was received and the QF Docket No. (i.e., QFYY-MMM-SSS) which the Commission has assigned to your facility. Each Docket Number consists of three parts: (1) The fiscal year the filing was made, preceded by QF (QFYY); (2) the main docket number (MMM); and (3) the sub-docket number (SSS). The sub-docket number, starting with 000 for the initial filing, is increased by one for each new filing to describe one or more changes in ownership or technical aspects of the same facility. Parts (1) and (2) of the docket number remain unchanged regardless of the number of subsequent filings made. In order to facilitate the assignment of docket numbers, subsequent filings for the same facility should reference the previously completed docket number assigned by the Commission for that facility.

Docket No. QF05-192-000 has been assigned to your submittal. This letter acknowledges receipt of your filing but does not constitute a ruling on the merit of the submittal. Please be advised that Commission staff may contact you to request further information on your filing.

By order issued on January 13, 1995, Order No. 575, the Commission streamlined its QF Regulations. To obtain a copy of the QF Regulations or for information or questions related to QFs you can visit the following link:  
<http://www.ferc.gov/industries/electric/gen-info/qual-fac.asp>. Alternatively, from our main Web Site at <http://www.ferc.gov>: Click "Industries", then choose "Electric", then scroll down the page and click "Qualifying Facilities" under the General Information header.

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August 12, 2005

QF05-192-000

Hon. Magalie R. Salas  
Office of the Secretary  
Federal Energy Regulatory Commission  
888 First St. NE  
Washington, DC 20426

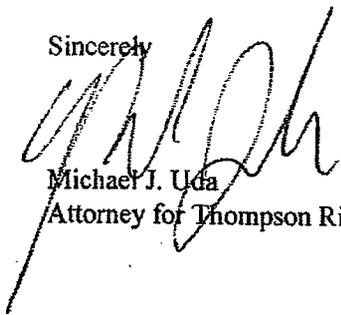
Re: QF Self-Certification for Thompson River Co-Gen, 18 C.F.R. § 292.207

Dear Secretary Salas:

Pursuant to 18 C.F.R. § 292.207, please find enclosed a qualifying facility Self-Certification filing, including a: completed form 556 for Thompson River Co-Gen, LLC, located at 8 First Street, #205, Kalispell, MT, 59901. An original and fourteen (14) copies are enclosed as required by Commission rule.

If you have any questions or concerns, please do not hesitate to call me at (406) 443-2211

Sincerely,

  
Michael J. Uda  
Attorney for Thompson River Co-Gen

c: Mike Underwood  
Barry Bates

**COMPLETED FORM 556 FOR OBTAINING  
SELF-CERTIFICATION OF QUALIFYING FACILITY  
STATUS UNDER PURPA**

**Federal Energy Regulatory Commission  
Qualifying Facility and Federal Rates Branch**

**Certification of Qualifying Facility Status for  
A Proposed Cogeneration Facility**

**Thompson River Co-Gen, LLC  
Thompson Falls, Montana**

**Provided by:**

**DONEY CROWLEY BLOOMQUIST PAYNE & UDA, P.C.  
SUITE 200, DIAMOND BLOCK  
44 W. 6<sup>TH</sup> Ave.  
HELENA, MT**

**Michael J. Uda, Attorney at Law**

**August 12, 2005**

CERTIFICATION OF QUALIFY FACILITY STATUS FOR A PROPOSED  
COGENERATION PRODUCTION FACILITY

THOMPSON RIVER CO-GEN, LLC

PART A: GENERAL INFORMATION

- a. Full name of applicant: Thompson River Co-Gen, LLC. Purpose of instant filing is self-certification.
- b. Full address of applicant: 8 First Street East, #205, Kalispell, MT, 59901
- c. Indicate the owner(s) of the facility: The project is 100% owned by Thompson River Co-Gen, LLC. No electric utility or electric utility holding company owns any interest in Thompson River Co-Gen, LLC. Thompson River Co-Gen, LLC is not engaged in the generation or sale of electric power, nor does it have any ownership or operating interest in any electric facilities other than qualifying facilities.
- d. I certify to the accuracy and authenticity of the information herein provided:

  
Michael Underwood  
Thompson River Co-Gen, LLC

2 Person to whom communications regarding the filed:

Name: Michael Underwood  
Title: Manager  
Thompson River Co-Gen, LLC  
Telephone Number: (303) 534-1119  
Mailing Address 1610 Wynkoop, Suite 100  
Denver, CO 80202  
E-mail: [lmuco@msn.com](mailto:lmuco@msn.com)

3 Location of facility to be certified:

State: Montana  
County: Sanders  
City or Town: Thompson Falls, Montana 59873  
Street Address: 249 Airport Road

- b. Power Sales: Avista Corp  
Interconnection: NorthWestern Energy  
Wheeling: NorthWestern Energy  
Utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service: NorthWestern Energy

- a. Describe the principal components of the facility

Babcock & Wilcox Boiler, 130,000 lbs/hr @850 PSIG, 900°F  
3600 RPM Elliott Steam Turbine  
16.5 MW Elliott Generator  
Transmission Line: Project substation 13Kv / 115 Kv single step-up transformer to interconnect with NorthWestern Energy's 115 Kv line in close proximity to the Project.

- b. Maximum gross and maximum net electric power production:  
12.0 Megawatts maximum gross capacity before parasitic and lumber mill load  
Project is capable of reliably generating in any given month no more than 10 average Megawatts under normal design and operation conditions.

- c. Operation date of the facility: December 2004 to Present

- d. Primary energy input: Coal / Wood Waste

5. Average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and the related percentage of the total average annual hourly energy input to the facility:

Natural gas: 0BTU, 0%  
Oil: 0 BTU, 0%  
Coal: 154 MM BTU/HR @ 94% capacity, 85% of total  
Wood Waste: 27 MM BTU/HR @94% capacity, 15% of total

6. Discuss any particular characteristic of the facility, which the co-generator producer believes might bear on its qualifying status: None

**PART B: DESCRIPTION OF SMALL POWER PRODUCTION FACILITY**

N/A

## PART C: DESCRIPTION OF THE COGENERATION FACILITY

**9.** Describe the system:

TRC is a Topping-Cycle facility in which the steam host, Thompson River Lumber Company, will consume approximately 64MM pounds of useful thermal energy output annually, exclusive of wood chip drying, which is in excess of 5 percent of the total annual energy output. As a coal-based topping cycle facility under Section 292.205, no other efficiency standards apply.

**10.** The proposed facility is not an eligible solar, wind, waster or geothermal facility, and no other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above.



Avista Corp.  
1411 East Mission PO Box 3727  
Spokane, Washington 99220-3727  
Telephone 509-489-0500  
Toll Free 800-727-9170



February 4, 2005

Mark Thompson  
Northwestern Energy  
40 East Broadway  
Butte, MT 59701

Dear Mark,

Thank you for your Memo of January 20, 2005 regarding Thompson River CoGen. Avista is looking forward to discussing the project and the terms and conditions for a power purchase agreement under the Idaho PUC established rate for fueled projects of 10 MW or less. I have included Avista's prototype Power Purchase Agreement for your review. Since it is a generic contract there may be sections that do not pertain to your facility. As we begin our negotiations we will need to customize them to meet the needs of Thompson River Cogen.

I would also appreciate the following information:

- Names and contact information for the designated representatives of Thompson River CoGen. You had indicated during our phone conversations that you would provide the introductions and then Thompson River CoGen would work directly with Avista. Is that still the preferred protocol?
- In your memo you had also offered to provide "an independent engineering report, project description, fuel supply and operational contracts" to Avista. Those would be very helpful. Please indicate how we can obtain those materials.

Please let me know when you or Thompson River personnel would be available to continue our discussions with respect to moving the Thompson River CoGen contract forward.

Sincerely

A handwritten signature in black ink that reads "Dave Miller".

Dave Miller  
Wholesale Power Manager

Enclosure

CC Dick Storro  
Bob Lafferty

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IDAHO PUBLIC  
UTILITIES COMMISSION

THOMPSON RIVER CO-GEN, LLC  
a Colorado Company  
  
Complainant  
  
vs.  
  
AVISTA CORPORATION, dba Avista Utilities  
a Washington Corporation  
  
Respondent

Case No. AVU-E-05-07

EXHIBIT No. 4

to

Direct Testimony of  
L.Underwood, Thompson River Co-Gen, LLC

# THOMPSON RIVER CO-GEN, LLC

285 2ND AVENUE WN · KALISPELL, MT 59901  
TELEPHONE (406) 257-7551 · FACSIMILE (406) 257-7578

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March 11, 2005

Avista Corp.  
Mr. David Miller, Wholesale Power Manager  
1411 East Mission  
Spokane, WA 99220

RE: Thompson River Co-Gen, LLC Request for PURPA Contract

Dear Mr. Miller:

I represent and maintain ownership interest in a small wood-waste / coal fired base-load co-generation facility, Thompson River Co-Gen (TRC) located in Thompson Falls, Montana, approximately 100 miles southwest of Kalispell. TRC is providing this introduction to Avista Corp. to respectfully request a twenty-year qualifying facilities contract under the approved Idaho PUC rate for "Avoided Cost Rates for Fueled Projects Smaller than Ten Megawatts". As previously communicated by NorthWestern Energy ("NorthWestern"), we will ensure firm energy and transmission schedule of 10 MW to the NorthWestern / Avista interconnection at Burke.

The Project is fully constructed and interconnected to NorthWestern's 115 KV system and has began providing test energy to the grid for the last sixty days as final controls and boiler modifications are performed. The Project provides steam to the adjacent Thompson River Lumber Company of Montana. The project will be classified commercial within the next few weeks and TRC is completing its PURPA certification filing with FERC. The project maintains all required permits to burn coal or waste wood and as such, arranged a 20-year coal supply.

I believe that NorthWestern has confirmed the communications with TRC to provide firming services for the Project, which will result in a firm, flat schedule on firm transmission to Burke. The structure will be similar to the services provided for Tiber Montana (a 7 MW hydro facility located north of Great Falls, MT) and delivered to Idaho Power under a QF contract, which has been approved by the IPUC.

In connection with this request, TRC will provide to Avista a complete Project description, Project ownership and operation material, an Independent Engineering review of the Project, and a sample transmission agreement with NorthWestern. TRC appreciates your consideration and looks forward to further meeting with you and your team regarding this issue. Please contact me at your earliest convenience in order to discuss this opportunity further.

Sincerely,



Michael Underwood  
Principal, Thompson River Co-Gen, LLC

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COLORADO PUBLIC  
UTILITIES COMMISSION

THOMPSON RIVER CO-GEN, LLC  
a Colorado Company

Complainant

vs.

AVISTA CORPORATION, dba Avista Utilities  
a Washington Corporation

Respondent

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Case No. AVU-E-05-07

EXHIBIT No. 5

to

Direct Testimony of  
L.Underwood, Thompson River Co-Gen, LLC

Avista Corp.  
1411 East Mission PO Box 3727  
Spokane, Washington 99220-3727  
Telephone 509-489-0500  
Toll Free 800-727-9170



March 15, 2005

Mr. Michael Underwood  
Thompson River Co-Gen LLC  
1610 Wynkoop, Ste 100  
Denver, CO 80202

Dear Mr. Underwood,

Thank you for your letter of March 11, 2005 regarding a request for a PURPA contract for Thompson River Co-Gen. Avista looks forward to discussing with you the terms and conditions of a possible power purchase agreement. I will send you a copy of our generic contract for your review. Obviously, we will need to customize the contract to meet the specific needs of your facility.

I am requesting that you send to me the information referenced in your letter. That would include the project description, project ownership and operation material, along with the Independent Engineering Review of the project. This will allow us to determine that your project does qualify for "Avoided Cost Rates for Fueled Projects Smaller than Ten Megawatts" under a contract at the Idaho Utility Commission approved rate.

I will look forward to working with you on this project. I can be reached at 509-495-4110 or at [dave.miller@avistacorp.com](mailto:dave.miller@avistacorp.com).

Sincerely,

A handwritten signature in black ink that reads "Dave Miller".

Dave Miller  
Wholesale Power Manager, Avista Utilities

Enclosure

Cc Lafferty  
Storro

**POWER PURCHASE AGREEMENT  
BETWEEN  
AVISTA CORPORATION  
AND**

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This Power Purchase Agreement is entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by and between \_\_\_\_\_ ("\_\_\_\_\_"), a corporation organized and existing under the laws of the State of \_\_\_\_\_, and AVISTA CORPORATION ("Avista") of Spokane, Washington, a corporation organized and existing under the laws of the State of Washington, hereinafter sometimes referred to collectively as "Parties" and individually as "Party."

**WITNESSETH:**

**WHEREAS** \_\_\_\_ plans to operate a \_\_\_\_ MW electric generating unit(s) ("Facility") at \_\_\_\_\_; and

**WHEREAS**, \_\_\_\_ has obtained from the \_\_\_\_\_ the right and authority to operate the Facility: and

**WHEREAS**, the Facility may produce power from time to time which is in excess to \_\_\_\_\_ needs and which \_\_\_\_\_ desires to sell to Avista, and

**WHEREAS**, the Facility will be connected in a manner such that parallel operation with Avista's electrical system will occur;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

1. **DEFINITIONS.** In addition to words defined elsewhere in this Agreement as signified by initial capitalization, whenever used in this Agreement and exhibits and attachments hereto, the terms below shall have the following meanings:

(a) **"Agreement"**: This **POWER PURCHASE AGREEMENT** including all exhibits, attachments and modifications thereof.

(b) **"Bankrupt"**: With respect to either Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not dismissed within sixty (60) days after it is filed, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

(c) **"Effective Date"**: The date this Agreement becomes effective pursuant to Section 3(a) of this Agreement.

(d) "Facility": The electric generating facility, including all equipment and structures necessary to generate and supply power, as more specifically described in Section 4.

(e) "Forced Outage": Any outage that either fully or partially curtails the electrical output of the Facility caused by mechanical or electrical equipment failure, plant related structural failure, or unscheduled maintenance required to be performed to prevent equipment failure.

(f) "Governmental Authority": Any federal, state or local government, political subdivision thereof or other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity or any arbitrator with authority to bind a Party at law.

(g) "Governmental Rule": Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect of law or regulation.

(h) "Good Industry Practice": Good industry practice as defined in the Interconnection Agreement, which definition is adopted by reference for purposes of this Agreement as though set forth in full herein.

(i) "Interconnection Agreement": The Generation Interconnection Agreement entered as of the effective date of the \_\_\_\_\_, by and between Avista and \_\_\_\_\_.

(j) "Point of Delivery": The location where the Facility is electrically interconnected with Avista's electrical system

(k) "Power Sales": Power transactions in which \_\_\_\_\_ sells to Avista electric power from the Facility.

(l) "Premises": The site owned or operated by \_\_\_\_\_ at which the Facility is located.

## 2. REPRESENTATIONS

(a) \_\_\_\_\_ represents and warrants that it is the sole operator of the Facility, that it has obtained from the \_\_\_\_\_ the right and authority to operate the Facility through the term of this Agreement, that all licenses or permits required for the operation thereof have been or will be obtained in the name of or assigned to \_\_\_\_\_ prior to the Operation Date and that the undersigned is authorized to execute this Agreement in \_\_\_\_\_ behalf. Upon request by Avista, \_\_\_\_\_ shall deliver to Avista certified copies of \_\_\_\_\_ articles of

incorporation and by-laws or articles of partnership as applicable. \_\_\_\_\_ also represents that the Facility is or will be before it commences operation a Qualifying Facility pursuant to law and the rules of the Federal Energy Regulatory Commission.

(b) Each Party represents and warrants to the other:

1) it has all authorizations from Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to the time at which any performance by it requiring such authorizations becomes due;

2) the execution, delivery and performance of this Agreement are within its statutory and corporate or partnership powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract to which it is a party or by which it or any of its properties may be affected or bound, or any Governmental Rule applicable to it;

3) this Agreement constitutes a legal, valid and binding obligation of the Party enforceable against it in accordance with its terms, and the Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

4) no Bankruptcy is pending against it, being contemplated by it, or to its knowledge threatened against it; and

5) there are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority that could reasonably be expected to have a material adverse effect on its ability to perform this Agreement.

### 3. TERM OF AGREEMENT

(a) This Agreement shall terminate at 2400 hours on \_\_\_\_\_, unless terminated earlier by terms and conditions contained herein, and shall be effective on the latest of the following: the date of execution of the Agreement by both Parties or the date of approval from the Idaho Public Utilities Commission and/or acceptance by the Washington Utilities and Transportation Commission ("Effective Date"). The obligations to purchase and sell power pursuant to this Agreement shall commence \_\_\_\_\_ and shall terminate at 2400 hours on \_\_\_\_\_

(b) Avista shall timely file this Agreement for approval by the Idaho Public Utilities Commission ("IPUC"), and if required to do so with the Washington Utilities and Transportation Commission ("WUTC"). In the event that either the IPUC or the WUTC disapproves the Agreement or approves it upon conditions, which are unacceptable to Avista or \_\_\_\_\_, the Agreement will terminate upon the date of such disapproval or conditional approval.

(c) All obligations required to be performed by the Parties are preserved regardless of the termination or expiration of this Agreement where so required by terms and conditions of this Agreement.

4. DESCRIPTION OF FACILITY AND PREMISES

The Facility and Premises are specifically described as follows:

5. POWER SALES

(a) \_\_\_\_\_ shall sell and deliver and Avista shall purchase and receive at the Point of Delivery the Power Sales. Power Sales shall be deemed to be the total amount of power generated and delivered to Avista up to \_\_\_ MW. A power meter currently located at the Point of Delivery at \_\_\_\_\_ expense shall register the total Power generated on an hourly basis. \_\_\_\_\_ shall deliver to Avista at all times all the power output from the Facility less the amount \_\_\_\_\_ needs for its operation of its own facilities.

(b) The power meter will record power, which flows from the Facility to Avista. Avista and \_\_\_\_\_ both shall have the right to read and receive readings from the power meter. Power deliveries in any month shall be calculated based on information from meter readings with the date adjustment made by prorating metered amounts to the number of days in such month. Actual monthly energy deliveries shall be determined from the record developed. Avista shall own and maintain all meters used to determine the billing hereunder and the meter(s) shall be located as specified in the Interconnection Agreement. Such meter(s) shall be tested and inspected in accordance with Avista's meter testing program as filed with the Washington Utilities and Transportation Commission and/or the Idaho Public Utilities Commission. If requested by \_\_\_\_\_, Avista shall provide copies of applicable test and calibration records and calculations. Avista shall permit a representative of \_\_\_\_\_ to be present at all times the meters are being tested. Additionally, Avista shall test any or all of such meters as may be reasonably be required by \_\_\_\_\_. Reasonable costs for such requested test shall be paid by \_\_\_\_\_ unless any of the meters is found to be inaccurate in which case Avista shall pay for such test.

(c) Adjustments shall be made in meter readings and billings for errors in a meter reading or billing discovered within twelve (12) months of the error. Avista shall permit representatives of \_\_\_\_\_ to inspect all of Avista's records relating to the delivery of electrical energy to and purchase of electrical energy by Avista hereunder.

6. OPERATION OF FACILITY

(a) \_\_\_\_\_ shall construct, operate and maintain the facility in compliance with Qualifying Facility status and all equipment needed to generate and deliver electric power in accordance with applicable laws and regulations and in accordance with Good Industry Practice. .

\_\_\_\_\_ shall construct, operate and maintain said Facility and equipment at its own risk and expense. Avista shall construct, operate and maintain its interconnection facilities, and that portion of its system that is interconnected to the Facility, and all equipment needed to receive and transmit electric power in accordance with applicable laws and regulations and in accordance with Good Industry Practice. Avista shall construct, operate and maintain said interconnection facilities and system and associated equipment at its own risk and expense.

(b) Interconnection of electrical systems under this Agreement shall be governed by Section 3 of the Interconnection Agreement (Interconnection Service and Service Standards), Section 4. of the Interconnection Agreement (Construction of Interconnection Facilities), and Section 5 of the Interconnection Agreement (Operation and Maintenance) which sections are adopted by reference for purposes of this Agreement as though set forth in full herein. Nothing herein is intended to amend or alter the Interconnection Agreement as it may be amended or superceded.

(c) Exhibit A, herein, shall govern communications between \_\_\_\_\_ and Avista for purposes of this Agreement.

7. PAYMENTS

(a) For each month during the term of this Agreement, so long as there are Power Sales made and/or payments due hereunder, Avista shall prepare, as adjusted as required herein, an itemized explanation of the payment due including the losses returned, if any, the amounts of Power Sales to Avista for which payment is due, the appropriate rates, and any adjustments to the payment due to the provisions herein. Avista may offset against such payments any amounts owed to Avista by \_\_\_\_\_ under section 7(b). Avista shall pay \_\_\_\_\_ on or before the 15th day after the date of the delivery of the bill for power delivered during the previous calendar month. Where such 15th day falls on a Saturday, Sunday or holiday, the payment shall be due on the next following business day.

(b) If \_\_\_\_\_ is obligated to make any payment to Avista under the terms of this Agreement, Avista shall bill \_\_\_\_\_ for such payments. \_\_\_\_\_ shall pay Avista on or before the 15th day after the date of the delivery of the bill. Where such 15th day falls on a Saturday,

Sunday, or holiday, the payment shall be due on the next following business day. \_\_\_\_\_ may offset against such payments any amounts owed to \_\_\_\_\_ by Avista.

(c) Any payments by Avista to \_\_\_\_\_ or by \_\_\_\_\_ to Avista, if not paid in full within the limitations set forth in Section 7(a) and 7(b) shall be late. Notwithstanding the remedies for such an event of default pursuant to Section 15, the late-paying Party shall be assessed a charge for late payment equal to the lesser of one and one-half percent (1.5%) per whole or partial month, or the maximum rate allowed by the laws of the State of Idaho per whole or partial month multiplied by the overdue amount. Each Party shall have the right to offset any amounts due it against any present or future payments due by the other Party.

(d) Avista shall pay \_\_\_\_\_ monthly for Power Sales at the rates set forth in Exhibit B. Avista shall accept Power sales only where the Project retains Qualifying Facility status from the Federal Energy Regulatory Commission.

#### 8. METERING

(a) Avista shall be responsible for any meter readings required by this Agreement.

(b) Adjustments shall be made in meter readings and billings for errors in a meter reading billing discovered within twelve (12) months of the error. Power Sales in any year shall be assumed to equal the Power Sales meter reading taken in that year, net of the reading from the previous year and there will be no prorations or date adjustments made to the Power Sales meter readings.

#### 9. FORCED OUTAGE AND FORCE MAJEURE

(a) Neither Party shall be liable to the other Party for, or be considered to be in breach of or default under this Agreement, on account of any delay in performance due to any of the following events, which event or circumstance was not anticipated as of the Effective Date ("Force Majeure"):

(1) Any cause or condition beyond such Party's reasonable control which is not the result of such Party's negligence and such Party is unable to overcome by the exercise of reasonable diligence, including but not limited to: fire, flood, earthquake, volcanic activity, wind, drought and other acts of the elements; court order and act of civil, military or governmental authority; strike lockout and other labor dispute; riot, insurrection, sabotage or war; federal, state, or other governmental laws, orders, decrees, restraints, or regulations; Forced Outage; breakdown of or damage to facilities or

equipment; electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected; any interruption of transmission service required for the performance of this Agreement that is excused by reason of Force Majeure or uncontrollable forces under a Party's contract with a transmission service provider; and, any act or omission of any person or entity other than such Party, and Party's contractors or suppliers of any tier or anyone acting on behalf of such Party; or

(2) Any action taken by such Party which is, in the sole judgment of such Party, necessary or prudent to protect the operation, performance, integrity, reliability or stability of such Party's electric system or any electric system with which such Party's electric system is interconnected, whether such actions occur automatically or manually.

(b) In the event of any Force Majeure occurrence, the time for performance thereby delayed shall be extended by a period of time reasonably necessary to compensate for such delay. Nothing contained in this paragraph shall require any Party to settle any strike, lockout or other labor dispute. In the event of a Force Majeure occurrence, which will affect performance under this Agreement, the nonperforming Party shall provide the other Party written notice within seven (7) days after the occurrence of the Force Majeure event. Such notice shall include the particulars of the occurrence, assurances that suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure and that best efforts are being used to remedy its inability to perform. The nonperforming Party shall remedy the Force Majeure occurrence with all reasonable dispatch. The performing Party shall not be required to perform or resume performance of its obligations to the nonperforming Party corresponding to the obligations of the performing Party excused by the Force Majeure occurrence.

(c) Force Majeure does not include changes in the ownership, occupancy, or operation of the Facility or Avista if such changes occur because of normal business occurrences which include but are not limited to: changes in business economic cycles; recessions; bankruptcies; tax law changes; sales of businesses; closure of businesses; changes in production levels; and, changes in system operations.

(d) Force Majeure does not excuse any Party from making payments of money due under this Agreement.

**10. INDEMNITY**

(a) \_\_\_\_\_ Duty to Indemnify. Subject to the provisions of Section 11, \_\_\_\_\_ shall indemnify, hold harmless and defend Avista, and its officers, directors, employees, affiliates,

managers, members, trustees, shareholders, agents, contractors, subcontractors, affiliates' employees, invitees and successors, from and against any and all third party claims, demands, suits, obligations, payments, liabilities, costs, losses, judgments, damages and expenses (including the reasonable costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements, and compromises relating thereto, reasonable attorneys' and expert fees and reasonable disbursements in connection therewith) for damage to property, injury to any person or entity, or death of any individual, including Avista's employees and affiliates' employees, \_\_\_\_\_ employees, or any other third parties, to the extent caused wholly or in part by any act or omission, negligent or otherwise, by \_\_\_\_\_ or its officers, directors, employees, agents, contractors, subcontractors and invitees arising out of or connected with \_\_\_\_\_ performance or breach of this Agreement, or the exercise by \_\_\_\_\_ of its rights hereunder; *provided, however*, that the provisions of this Section shall not apply if any such injury, death or damage is held to have been caused by the negligence or intentional wrongdoing of Avista, its agents or employees. In furtherance of the foregoing indemnification and not by way of limitation thereof, \_\_\_\_\_ hereby waives any defense it otherwise might have under applicable workers' compensation laws.

(b) Avista's Duty to Indemnify. Subject to the provisions of Section 11, Avista shall indemnify, hold harmless and defend \_\_\_\_\_, its parent and its officers, directors, employees, affiliates, managers, members, trustees, shareholders, agents, contractors, subcontractors, invitees and successors, from and against any and all third party claims, demands, suits, obligations, payments, liabilities, costs, losses, judgments, damages and expenses (including the reasonable costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements, and compromises relating thereto, reasonable attorneys' and expert fees and reasonable disbursements in connection therewith) for damage to property, injury to any entity or person, or death of any individual, including \_\_\_\_\_ employees and affiliates' employees, Avista's employees, or any other third parties, to the extent caused wholly or in part by any act or omission, negligent or otherwise, by Avista or its officers, directors, employees, agents, contractors, subcontractors and invitees arising out of or connected with Avista's performance or breach of this Agreement, or the exercise by Avista of its rights hereunder; *provided, however*, that the provisions of this Section shall not apply if any such injury, death or damage is held to have been caused by the negligence or intentional wrongdoing of \_\_\_\_\_, its agents or employees.

In furtherance of the foregoing indemnification and not by way of limitation thereof, Avista hereby waives any defense it otherwise might have under applicable workers' compensation laws.

(c) **Notice.** Any Party seeking indemnification under this Agreement shall give the other Party notice of such claim as soon as practicable but in any event on or before the thirtieth (30<sup>th</sup>) day after the Party's actual knowledge of such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount (estimated if necessary) of the claim that has been, or may be sustained by, said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim for which indemnification is sought under this Agreement without the prior consent of the other Party; *provided, however*, said consent shall not be unreasonably withheld or delayed. Each Party's indemnification obligation will survive expiration, cancellation or early termination of this Agreement.

(d) **Workers Compensation.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, \_\_\_\_\_ AND AVISTA EACH WAIVE ANY IMMUNITY UNDER EXISTING WORKER'S COMPENSATION LAW APPLICABLE TO THE JURISDICTION WHERE THE FACILITY IS LOCATED AS NECESSARY TO INDEMNIFY AND HOLD HARMLESS THE OTHER FROM SUCH LOSS, TO THE EXTENT SET FORTH IN SECTIONS (a) AND (b), ABOVE.

(e) **Acknowledgment to Negotiation.** \_\_\_\_\_ AND AVISTA SPECIFICALLY WARRANT THAT THE TERMS AND CONDITIONS OF THE FOREGOING INDEMNITY PROVISIONS ARE THE SUBJECT OF MUTUAL NEGOTIATION BY THE PARTIES, AND ARE SPECIFICALLY AND EXPRESSLY AGREED TO IN CONSIDERATION OF THE MUTUAL BENEFITS DERIVED UNDER THE TERMS OF THE AGREEMENT.

## 11. **LIMITATION OF LIABILITY**

(a) **Limitation of Liability.** With respect to claims by and between the Parties under this Agreement, the measure of damages at law or in equity in any action or proceeding shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived and neither Party shall be liable in statute, contract, in tort (including negligence), strict liability, warranty or under any other legal theory or otherwise to the other Party, its agents, representatives, and/or assigns, for any special, incidental, punitive, exemplary or consequential loss or damage whatsoever, including, but not limited to, loss of profits or revenue for work not performed, for loss of use of or under-utilization of the other Party's facilities, loss of use of revenues, attorneys' fees, litigation costs, or loss of anticipated profits, resulting from either Party's performance or non-performance of an obligation imposed on it by this Agreement, without regard to the cause or causes related thereto, including the negligence of any Party. The Parties expressly acknowledge and agree that this limitation shall apply to any claims for indemnification under Section 10 of this Agreement. The provisions of this section shall survive the termination or expiration of this Agreement.

(b) **Limitation of Liability for WIS Parties.** Notwithstanding the provisions of Section 10, if both Avista and \_\_\_\_\_ are parties to the Western Interconnected Systems Limitation of Liability (WIS) Agreement, then the WIS Agreement shall control their liabilities with respect to damages to the Facility, the Interconnection Facilities, or Avista's Electric System.

## 12. **INSURANCE**

(a) **General Liability.** The Parties agree to maintain, at their own cost and expense, general liability, worker's compensation, and other forms of insurance relating to their operations for the life of this Agreement in the manner, and amounts, at a minimum, as set forth below.

(1) Workers' Compensation Insurance in accordance with all applicable state, federal and maritime law, including Employer's Liability Insurance in the amount of \$2,000,000 per occurrence;

(2) For Facilities with a capacity of greater than 5 MW, Commercial General Liability Insurance, including Contractual Liability Coverage for liabilities assumed under this Agreement, and Personal Injury Coverage in the minimum amount of \$5,000,000 per occurrence



- (c) **Policy Request.** At a Party's request, in addition to the foregoing certifications, the other Party shall deliver to the first Party a copy of applicable sections of each insurance policy.
- (d) **Inspection.** Each Party shall have the right to inspect the original policies of insurance applicable to this Agreement at the other Party's place of business during regular business hours.
- (e) **"Claims Made" Insurance.** If any insurance is written on a "claims made" basis, the respective Party shall maintain the coverage for a minimum of seven years after the termination of this Agreement.
- (f) **Waiver of Subrogation.** To the extent permitted by the insurer and commercially reasonable, each Party shall obtain waivers of subrogation in favor of the other Party from any insurer providing coverage that is required to be maintained under this Section 12, except for the coverage required under Section 12(a). A Party shall not be required to obtain a waiver of subrogation if the other Party is not able to obtain a waiver of subrogation from its insurance carrier.
- (g) **Minimum Limits Update.** At the end of every fifth year following the Effective Date of the Agreement, the minimum coverage limits for the liability insurance may be adjusted by Avista at its sole option. Avista shall give at least thirty (30) days notice of its election to increase the minimum coverage limits.

### **13. ARBITRATION**

Each Party shall strive to resolve any and all differences during the term of the Agreement. If a dispute cannot be resolved, each Party shall use arbitration before requesting a hearing before the Idaho Public Utility Commission (or WUTC). The Idaho Public Utilities Commission (or WUTC) shall have jurisdiction to address any dispute that arises under or in regard to this Agreement. The arbitration shall be conducted pursuant to the Uniform Arbitration Act, Title 7, Chapter 9 of the Idaho Code (or Washington code), as the same may have been or may be amended.

### **14. ASSIGNMENT.**

Neither Party shall not voluntarily assign its rights or delegate its duties under this Agreement, or any part of such rights or duties, except as security for initial construction of the Facility, without the written consent of the other Party. Such consent shall not unreasonably be withheld. Further, no assignment by either Party shall relieve or release it to the extent of any of its obligations hereunder. Subject to the foregoing restrictions on assignments, this Agreement

shall be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors, heirs and assigns.

**15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES**

Except as specifically provided in this Agreement, there are no third party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, and their respective successors, heirs and assigns permitted under Section 14.

**16. NO TRANSMISSION RIGHTS**

Nothing in this Agreement shall be construed as granting any right of access, or any other rights, to Avista's transmission system.

**17. DEFAULT**

(a) An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) business days after delivery of written notice;
- (2) any representation or warranty made by such Party herein is false or misleading in any material respects when made or when deemed made or repeated;
- (3) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) business days after delivery of written notice;
- (4) such Party becomes Bankrupt; or
- (5) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) In the Event of Default, the following shall apply:

(1) The non-defaulting Party shall give written notice to the Defaulting Party of the Event of Default in accordance with this Agreement.

(2) Except for an Event of Default that arises from failure to make money payments or from a Party becoming bankrupt, if, after 30 days following receipt of such notice, the Defaulting Party has not taken the steps necessary to cure the event of default, the non-defaulting Party may, at its option, terminate this Agreement; *provided, however*, that except for the failure to pay sums which are due and payable, if the defaulting Party, within such 30-day period, commences and thereafter proceeds with all due diligence to cure such default, such 30-day period shall be extended up to six (6) months after written notice to the defaulting Party, as may be necessary to cure the event of default with all due diligence. For an Event of Default that arises from the failure to make money payments, the non-defaulting Party may, at its option, terminate this Agreement if the Defaulting Party shall have failed to cure the failure to pay within three (3) business days following receipt of notice of such failure. For an Event of Default that arises from a Party becoming bankrupt, the non-defaulting Party may, at its option, immediately terminate this Agreement upon notice to the Defaulting Party.

(3) Upon the Event of Default and an expiration of any period to cure granted herein, the non-defaulting Party may, but has no obligation, to terminate this Agreement effective upon notice to the Defaulting Party and may exercise all other rights and remedies available to the non-defaulting Party under applicable law. Whether or not the non-defaulting Party elects to terminate this Agreement, it may, in addition to other remedies provided for herein, pursue such remedies as are available at law or in equity including suspension of its performance so long as the Event of Default is continuing and has not been cured.

(c) Any right or remedy afforded to either Party under any provision of this Agreement on account of the breach or default by the other Party is in addition to, and not in lieu of, all other rights or remedies afforded to such Party under any other provisions of this Agreement, by law or otherwise on account of the breach or default.

**18. RELEASE BY AVISTA**

Avista releases \_\_\_\_\_ from any and all claims, losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:

- (a) Delay described in Section 9;
- (c) Disconnection, interruption, suspension or curtailment by \_\_\_\_\_ pursuant to terms of this Agreement.

19. **RELEASE BY \_\_\_\_\_**

\_\_\_\_\_ releases Avista from any and all claims, losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:

- (a) Delay described in Section 9;
- (b) Disconnection, interruption, suspension or curtailment by Avista pursuant to terms of this Agreement.

20. **GOVERNMENTAL AUTHORITY**

This Agreement 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. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of Governmental Authorities that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

21. **SEVERAL OBLIGATIONS**

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement. Further, neither Party shall have any rights, power or authority to enter into any agreement or undertaking for or on behalf of, to act as to be an agent or representative of, or to otherwise bind the other Party.

22. **IMPLEMENTATION**

Each Party shall take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

23. **NON-WAIVER**

The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

24. **ENTIRE AGREEMENT and AMENDMENT**

This Agreement together with its exhibits constitutes the entire agreement of the Parties hereto and supersedes and replaces any prior agreements or understandings between said Parties, entered into for the same or similar purposes, with the exception of interconnection and/or transmission service agreements that \_\_\_\_\_ may have entered into with Avista respecting the providing of transmission services. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

25. **CHOICE OF LAWS AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho/Washington. Any action at law or in equity to enforce the terms and conditions of this Agreement shall be brought in Idaho/Washington.

26. **COMPLIANCE WITH LAWS**

Both Parties shall comply with all applicable laws and regulations of governmental agencies having jurisdiction over the Facility and the operations of the Parties. \_\_\_\_\_ shall obtain all required approvals or authorization from governmental agencies having jurisdiction over the sale of electric power from the Facility.

27. **CONFIDENTIALITY**

(a) **Definition.** "Confidential Information" shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list concept, policy

or compilation relating to the present or planned business of a Party, which is designated in good faith as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection or otherwise, except that the real-time in-plant data, shall be considered Confidential Information without the need for designation. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this Agreement.

(b) **General Obligations.**

1) Each Party will hold in confidence any and Confidential Information unless: (i) compelled to disclose such information by judicial or administrative process or other provisions of law or as otherwise provided for in this Agreement; or (ii) to meet obligations imposed by FERC or by a state or other federal entity or by membership in NERC or WECC (including other transmission providers). Information required to be disclosed under (i) or (ii) above, does not, by itself, cause any information provided by Generating Company to Avista to lose its confidentiality. To the extent it is necessary for either Party to release or disclose such information to a third party in order to perform that Party's obligations herein, such Party shall advise said third party of the confidentiality provisions of this Agreement and use its best efforts to require said third party to agree in writing to comply with such provisions. Avista will develop and file with FERC standards of conduct relating to the sharing of market related Confidential Information with and by Avista employees.

2) During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Section 27, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

3) Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination.

(c) **Excluded Information.** Confidential Information shall not include information that the receiving Party can demonstrate: (i) is generally available to the public other than as a result of disclosure by the receiving Party; (ii) was in the lawful possession of the receiving Party on a non-confidential basis prior to receiving it from the disclosing Party; (iii) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving party, after due inquiry was under no obligation to the disclosing party to keep such information confidential;

(iv) was independently developed by the receiving party without reference to Confidential Information of the disclosing party; (v) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (vi) is required, in accordance with Section (d) of this Agreement, to be disclosed by any federal or state government or agency or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

(d) **Subpoena.** If a court or a government agency or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. The notifying Party shall have no obligation to oppose or object to any attempt to obtain such production except to the extent requested to do so by the disclosing Party and at the disclosing Party's expense. If either Party desires to object or oppose such production, it must do so at its own expense. The disclosing Party may request a protective order to prevent any Confidential Information from being made public. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use reasonable effort to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

(e) **Use in Arbitration.** Each Party may utilize information or documentation furnished by the disclosing Party in any dispute resolution proceeding or in an administrative agency or court of competent jurisdiction addressing any dispute arising under this Agreement, subject to a confidentiality agreement with all participants (including, if applicable, any arbitrator) or a protective order.

(f) **Breach.** The Parties agree that monetary damages by themselves will be inadequate to compensate a Party for the other Party's Breach of its obligations under this Section 27. Each Party accordingly agrees that the other Party is entitled to equitable relief, by way of injunction or otherwise, if it breaches or threatens to breach its obligations under this Section 27.

28. **NOTICES**

All written notices required by this Agreement shall be mailed or delivered as follows:

To Avista: Vice President, Energy Resources  
Avista Corporation  
P.O. Box 3727  
Spokane, Washington 99220-3727

To

Changes in persons or addresses for submittal of written notices by a Party to this Agreement shall be made in writing to the other Party and delivered in accordance with this Section 28. Any verbal notice required hereby which affects the payments to be made hereunder shall be confirmed in writing as promptly as practicable after the verbal notice is given.

29. **EXHIBITS**

This Power Purchase Agreement includes the following exhibits, which are attached and incorporated by reference herein:

Exhibit A	Communications
Exhibit B	Payment Schedule

30. **ADMINISTRATION FEE**

\_\_\_\_\_ shall pay Avista \_\_\_\_ hundred dollars (\$\_\_\_\_) per month for an administration fee during the duration of the Agreement. The amount of such fee reflects the actual costs of reading the meter and billing the account. Payment shall be made pursuant to Section 7.

In WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the first date herein-above set forth:

AVISTA CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Type Name)

\_\_\_\_\_  
(Type Name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit B**

**Avoided Cost Rates For PURPA (QF) Projects**

**Non-Levelized**

<u>Season:</u>	<u>Jul - Feb</u>	<u>Mar - Jun</u>
Multiplier	1.08	0.84

**Exhibit A**

**Communications**

**A-1. Verbal Communications** All communications between \_\_\_ and Avista referred to in Section 6 shall be done verbally by notifying the following parties:

Avista

System Operator: (509) 495-4105

Alternate Phone Number: (509) 495-2506 ext. 2506.

Business Phone:

Alternate Phone Number:

**A-2.** \_\_\_\_\_ shall notify Avista's system operator whenever the Facility is brought on line, or taken off line.

**A-3.** Changes in persons or phone numbers for verbal communications by a Party to this Agreement may be made verbally to the other Party in accordance with this Exhibit but shall be confirmed in writing pursuant to Section 27.