

**BEFORE THE 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**  
)  
)  
)  
)  
)

) **ORDER NO. 30158**  
)  
)  
)  
)  
)  
)

On August 30, 2005, Thompson River Co-Gen, LLC (Thompson River; TRC) filed a Complaint against Avista Corporation dba Avista Utilities (Avista; Company) with the Idaho Public Utilities Commission (Commission). TRC is a cogeneration facility located in Thompson Falls, Montana. TRC represents itself to be a self-certified qualifying facility (QF) as defined by the Public Utility Regulatory Policies Act of 1978 (PURPA) and the implementing regulations of the Federal Energy Regulatory Commission (FERC). TRC requested an Order requiring Avista to immediately complete the purchase of TRC's energy at the published non-levelized rate for fueled projects that under normal and average design conditions generate no more than 10 aMW in any given month.

On March 13, 2006, the Commission was apprised by Staff that pursuant to settlement discussions Avista and Thompson River had reached an agreement in principle on the substantive terms of a power purchase contract. A scheduled technical hearing was vacated.

On August 31, 2006, Avista and Thompson River filed a Joint Petition in Case No. AVU-E-05-7 requesting approval of a negotiated 20-year Power Purchase and Sale Agreement (Agreement) dated August 25, 2006.

TRC is a Montana corporation that operates a thermal wood waste/coal generation facility power plant located at Thompson Falls, Montana. The TRC facility is capable of generating up to approximately 13 MW of energy. Avista will be the sole purchaser of TRC's Net Delivered Output. Agreement ¶ 6.1. The maximum annual amount of electric power that Avista is obligated to purchase under the Agreement is 105,000 MWh (11.99 aMW per year).

Agreement ¶ 6.2. TRC has entered into an interconnection agreement with Northwestern Energy to provide firm transmission of power to Avista's Burke substation in Idaho.

For all Net Delivered Output received by Avista that is not Surplus Energy, Avista shall pay \$58.50 per MW hour. Agreement ¶ 11.1. Surplus Energy is energy that falls outside the 90/110 percent band established in Commission Order No. 29632. Agreement ¶ 1.27. For all Surplus Energy, Avista shall pay the current month's Market Energy Cost per MW hour or the Net Delivered Output purchase price, whichever is lower. Agreement ¶ 11.2. The power purchase rates are negotiated as a reasonable compromise to resolve their dispute and do not represent a levelized rate calculated from published avoided cost rates.

On September 7, 2006, the Commission issued Notices of Contract Filing and Modified Procedure in Case No. AVU-E-05-7. The deadline for filing written comments was October 6, 2006. Timely comments were filed by Thompson River Lumber Company of Montana, Inc. (the steam host), Women's Voices for the Earth, the NW Energy Coalition, Commission Staff and interested parties from Montana and Idaho. Reply comments by TRC were also filed with the Commission.

*Thompson River Lumber Company of Montana, Inc.*

Thompson River Lumber (TRL) notes that its contractual relationship with TRC has not been finalized. TRL is the owner of the adjacent lumber mill and leases the project site to TRC (Lease Agreement). TRL apprises the Commission that it is also party to a Power and Steam Supply Agreement (PSSA) whereby TRC is to provide the lumber mill with electricity and steam. The maximum amount of electricity TRC is obligated to deliver to TRL is 2 MWh during any hour or 15 million kWh during any year. Accord Agreement ¶ 1.14 – Definition – Net Available Output. TRL in filing comments also apprises Avista of its intent to preserve its rights to receive continued power and steam, and lease payments should Avista exercise its Agreement ¶ 7.4 step-in rights.

*Women's Voices for the Earth*

Women's Voices for the Earth is an environment health advocacy organization based in Missoula, Montana with staff in Bozeman, Montana and Boise, Idaho. It works to reduce and where possible, eliminate persistent toxic pollution which disproportionately affects women and children's health. It is very concerned about the impacts of the TRC project on the environmental and public health of the Thompson River area. The proposed plant will burn

predominantly coal that will add to the local and regional mercury contamination. Particulate pollution from TRC is also a serious concern. For these and other reasons cited in its comments it opposes approval of the Agreement.

*NW Energy Coalition*

The NW Energy Coalition (NVEC) believes a more thorough examination and public discussion is appropriate prior to final Commission action. NVEC requests a public hearing. Issues identified by NVEC are (1) TRC's status as a self-certified PURPA QF; (2) the capacity levels attributed to the project; (3) the rates as proposed in the Agreement; and (4) questions about the environmental integrity of the TRC plant and its fuel source and related environmental attributes in so far as it may impact the plant's future operations. NVEC also cites for Commission consideration the relevance of Governor Risch's direction to Idaho DEQ to opt out of the U.S. EPA's mercury trading program under the Clean Air Mercury Rule. Is it in Idaho's best interest, it queries, for Idaho's regulated utilities to import power from out of state if the power is generated under conditions that have been challenged in Idaho?

*Commission Staff*

Staff recommends that the Avista/TRC Agreement be approved with an effective date of August 25, 2006. Staff notes that the contract purchase rate (\$58.50/MWh for all generation (Net Delivered Output) that is not surplus energy) is a negotiated rate that is less than the published non-fueled levelized avoided cost rate for a 20-year contract (\$61.60/MWh for a 2006 online date), but greater than the IRP based rate calculated by the Company (\$49.00/MWh). The power purchase rate, Staff notes, was negotiated as a compromise to resolve the contract dispute between the parties. The primary disagreement was whether the TRC project capacity exceeded 10 MW, thus making it ineligible to receive the published rates. TRC contended that while capable of generating more than 10 MW at times, the facility would never be consistently operated over this capacity. Avista alleged that because the facility had a demonstrated ability to generate at a capacity of approximately 13 MW, the facility did not qualify for published avoided cost rates.

Staff recommends that the Commission authorize deferral and recovery of power purchase costs by Avista in accordance with Commission approved jurisdictional allocations and PCA methodology, declaring that the prices to be paid for TRC's energy and capacity are just

and reasonable, in the public interest, and that the cost incurred by Avista for purchasing capacity and energy from TRC are legitimate expenses.

*Other Comments*

The remaining comments received oppose the Agreement. They address environmental and health concerns, the TRC project developer's breach of faith and promise with the Thompson Falls community, the bait and switch tactics of TRC with Montana regulators, and Governor Kempthorne's two year moratorium on the building and permitting of coal-fired power plants in Idaho.

*TRC – Reply Comments*

TRC in reply comments states that it was “dismayed to see a flurry of baseless, inflammatory and extra-jurisdictional comments” regarding its project. Comments on the potential environmental, social, health and economic effects (collectively societal impacts) of the project, it contends, are beyond the scope of this Commission's jurisdiction. *Citing* Idaho Power Case No. IPC-E-01-42 (Garnet), Order No. 28932, page 3 (2002). The TRC plant is located in Montana, it states, not Idaho. TRC also reminds the Commission that it is a body of limited jurisdiction. Reference *WWP v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122 (1979).

TRC does not agree that its facility is somehow environmentally deficient. TRC states that it has received an air quality permit under the specific and rigorous protocols and jurisdiction of the Montana Department of Environmental Quality. TRC states that it remains committed to being an environmentally conscious member of the community.

TRC contends that “avoided cost rates are not at issue in this docket.” A “belief” by NWEA that there should be a “public discussion of the rates” is hardly, it states, a “reason for the protest, comment or support” as required by Commission Rule of Procedure 203.

TRC maintains that its QF status is not at issue in this case. Avista and Staff, it states, have reviewed the proposed operating characteristics of the facility. Avista has physically inspected the project location and steam host facility. TRC maintains that its cogeneration facility meets the FERC fuel use criteria and efficiency standards set forth in 18 C.F.R. § 292.205(a)(1). The FERC, not the Idaho Commission, it contends maintains jurisdiction of PURPA qualification. Furthermore, it notes that the Power Purchase Agreement provides that

TRC's failure to maintain QF status is a material breach and default under the Agreement. Agreement ¶ 3.2 Qualifying Facility Status.

Addressing the further concerns of some commenters, TRC maintains that the securing of all required permits by TRC although required by Agreement (¶ 4.1) prior to commercial operation, is not a prerequisite to the execution and approval of a PURPA Power Purchase Agreement.

TRC also provides clarifying comments on its relationship to the thermal host, Thompson River Lumber (TRL).

### **COMMISSION FINDINGS**

A negotiated Power Purchase and Sale Agreement has been tendered for Commission approval by Thompson River Co-Gen, LLC and Avista. The Commission has reviewed and considered the filings of record in Case No. AVU-E-05-7 including the underlying Agreement and the comments and recommendations of Thompson River Lumber, Women's Voices for the Earth, the NW Energy Coalition, Commission Staff, the public and TRC.

We find the environmental and health issues raised by parties objecting to approval of the Agreement to be issues beyond this Commission's statutory jurisdiction and issues more appropriately raised in Montana, the project situs state. The water rights and air permits required for TRC's operation in Montana are obtained in government processes open to the public. Public comments and participation help to inform decision makers. Commenters in this case have noted their involvement and participation in TRC hearings and public meetings. Persons aggrieved by a decision in Montana should explore their administrative and statutory alternatives for relief.

Also beyond this Commission's statutory jurisdiction are issues related to TRC's PURPA QF self-certification at FERC. Challenges to certification can be made at the FERC. A notice of self-certification is simply a notice by the owner of the facility that it believes that it satisfies the requirements for QF status. If a purchasing utility or someone else wishes to challenge a self-certified facility's QF status, it may do so at FERC in the context of a petition for declaratory order. We note also that TRC's QF status is a continuing condition of purchase. Reference Agreement ¶ 3.2. Failure to maintain its QF status is an instance of breach or default.

Despite TRC's contention to the contrary, at issue in this proceeding are the purchase rates for the QF power. The contract rates are not the published avoided cost rates that we have previously approved but are negotiated rates. Pursuant to Agreement, the TRC facility is

designed and is to be operated in a manner such that the hourly scheduled amount of Net Delivered Output does not exceed 13 MW in any hour. The Net Delivered Output is exclusive of any amount contractually delivered to the steam host, Thompson River Lumber. The maximum annual amount of electric power that Avista is obligated to purchase under the Agreement is 105,000 MWh (11.99 aMW per year). Agreement ¶ 6.2. The contract is for a 20-year term. The Commission finds that the Agreement submitted in this case contains acceptable contract provisions and comports with the terms and conditions of Order Nos. 29632 and 29682 in Case Nos. IPC-E-04-8; 04-10 (i.e., 90/110 performance band). We find the negotiated contract rates to be less than the published avoided cost rates and the result of an arms-length negotiation settling contested issues. We find in this instance that it was of apparent value to TRC to deliver and to Avista to purchase greater than 10 aMW. The parties in resolving their contract differences have negotiated a mutually acceptable rate that is along the price continuum between published avoided cost rates and an IRP based calculation. Based on the filings of record, we find the resultant contract rates to be just and reasonable and in the public interest. Reference 18 C.F.R. § 292.304.

The Commission has considered the NW Energy Coalition's request for a hearing or public discussion. We find that a hearing is not required. Avista is not engaging in a voluntary purchase of energy from TRC. Avista is not sidestepping the Idaho moratorium on construction and permitting of coal-fired power plants in Idaho. The purchase is mandated by federal law. The Commission finds the record adequate and sufficient and we find it reasonable and in the public interest to issue an Order approving the submitted Agreement based on the written positions of the parties and commenters and without further notice, procedure or hearing. Reference IDAPA 31.01.01.204. We find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes. We further find it reasonable to authorize deferral and recovery of TRC power purchase costs by Avista in accordance with Commission approved jurisdictional allocations and Power Cost Adjustment (PCA) methodology.

## **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over Avista Corporation dba Avista Utilities, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA).

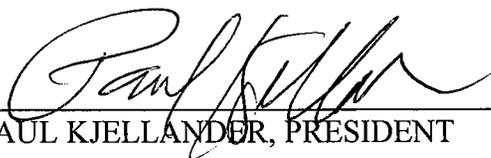
The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations for the purchase of energy from qualified facilities and to implement FERC rules. 18 C.F.R. Part 292 (2003).

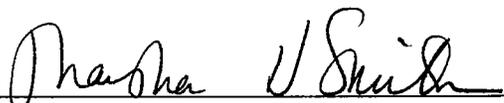
## **ORDER**

In consideration of the foregoing, IT IS HEREBY ORDERED and the Commission does hereby approve the August 25, 2006 Power Purchase and Sale Agreement between Avista Corporation dba Avista Utilities and Thompson River Co-Gen, LLC.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

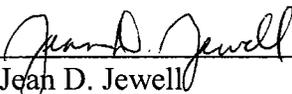
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27<sup>th</sup>  
day of October 2006.

  
\_\_\_\_\_  
PAUL KJELLANDER, PRESIDENT

  
\_\_\_\_\_  
MARSHA H. SMITH, COMMISSIONER

  
\_\_\_\_\_  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Jean D. Jewell  
Commission Secretary

bls/O:AVU-E-05-07\_sw2