

SCOTT WOODBURY  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0320  
IDAHO BAR NO. 1895

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IDAHO PUBLIC  
UTILITIES COMMISSION

Street Address for Express Mail:  
472 W. WASHINGTON  
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>THOMPSON RIVER CO-GEN, LLC, a Colorado</b>	)	
<b>Company,</b>	)	<b>CASE NO. AVU-E-05-7</b>
	)	
<b>COMPLAINANT,</b>	)	
	)	<b>COMMENTS OF THE</b>
<b>vs.</b>	)	<b>COMMISSION STAFF</b>
	)	
<b>AVISTA CORPORATION dba AVISTA</b>	)	
<b>UTILITIES, a Washington Corporation,</b>	)	
	)	
<b>RESPONDENT.</b>	)	

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**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Contract Filing, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on September 7, 2006, submits the following comments.

**BACKGROUND**

Beginning in January 2005, Avista Utilities (Avista; Company) and Thompson River Co-gen, LLC (Thompson River; TRC) began communications regarding a possible sale of power from TRC to Avista. 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).

After months of discussions, the parties found themselves unable to reach agreement on a power purchase and sale agreement. On August 30, 2005, TRC filed a Complaint against Avista with the Idaho Public Utilities Commission (Commission). 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.

After the Complaint was filed, settlement discussions ensued. On March 13, 2006, the Commission was apprised by Staff that 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.

## **ANALYSIS**

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 power. Avista will be the sole purchaser of TRC's generation except in exceptional circumstances where transmission is not available from the Facility to Avista's service territory. The maximum annual amount of energy that Avista is obligated to purchase under the Agreement is 105,000 MWh (11.99 aMW per year). The facility is located outside of Avista's service territory in Montana; consequently, TRC has entered into an interconnection agreement with NorthWestern Energy to provide firm transmission of power to Avista's Burke substation in Idaho.

Although the parties were in dispute over numerous contractual issues, the primary disagreement seemed to be whether the TRC project capacity exceeded 10 MW, thus making it ineligible for the published avoided cost rates. TRC contended that the facility, while capable of generating more than 10 MW at times, would never be consistently operated over this capacity. Consequently, TRC contended that it was eligible for the published avoided cost rate for non-

fueled projects. The current non-fueled levelized rate for Avista for a 20-year contract is \$61.66 per MWh for a 2006 online date.

Avista, on the other hand, alleged that the facility already had demonstrated its ability to generate consistently at a capacity of approximately 13 MW. Because the project had a capacity greater than 10 MW, Avista believed TRC did not qualify for published avoided cost rates and that the Company was obligated to offer a rate for energy purchases that was determined in accordance with the IRP methodology adopted in Case No. IPC-E-95-9, Order No. 26576. Under that methodology, a project-specific rate is computed by the utility's power supply model using assumptions and data consistent with the utility's Integrated Resource Plan. Using that methodology, Avista computed a 20-year levelized rate of approximately \$49 per MWh.

Under the negotiated terms of the Agreement, Avista has agreed to pay \$58.50 per MWh for all generation (Net Delivered Output) that is not Surplus Energy. Surplus Energy is energy that falls outside of the 90-110 percent band established in Commission Order No. 29632 (*U.S. Geothermal et al v. Idaho Power*). For all Surplus Energy, Avista shall pay the current month's Market Energy Cost per MWh or \$58.50 per MWh, whichever is less. The \$58.50 rate is fixed for the life of the Agreement and therefore does not escalate.

The power purchase rate was negotiated as a compromise to resolve the contract dispute between the parties. Staff believes that the negotiated rate is reasonable, and represents a fair compromise. The rate is less than the published avoided cost rate, but greater than the rate computed by the Company under the IRP-based methodology.

Because the mutually negotiated rates do not represent a levelized rate calculated from published avoided cost rates, the parties have also agreed that there shall be no overpayment obligation. Normally, contracts containing levelized rates require posting of liquid security or other things in lieu of liquid security to mitigate the overpayment liability. Overpayment liability occurs under a levelized contract when a utility pays more than the actual value of the power in the early years of the contract, and less in the later years. Given the nature of the negotiated rate, Staff believes it is reasonable to agree that no overpayment liability shall be incurred.

Other terms of the Agreement represent a settlement of "other potential issues of dispute." Staff has reviewed the Agreement and believes that the contract terms are reasonable,

within the scope of items Staff believes should be negotiable, and not in violation of any prior Commission orders.

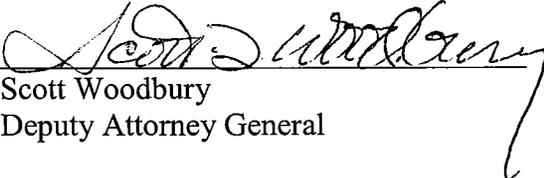
The contract operation date of the TRC project will be established once the contract is approved. Avista may, however, terminate the Agreement should the operation date not be achieved on or before October 31, 2007.

## RECOMMENDATION

Staff recommends that the 20-year Power Purchase and Sale Agreement between Thompson River Co-gen, LLC and Avista be approved with an effective date of August 25, 2006. Further, Staff concurs with the request of Avista and TRC that the following provisions be included in the Commission's Order:

- (1) approving the Agreement as a settlement of all known existing disputes between the Parties raised in this case; and
- (2) authorizing deferral and recovery of TRC's power purchase costs in accordance with Commission approved jurisdictional allocation and Power Cost Adjustment ("PCA") methodology, and declaring that prices to be paid for 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; and
- (3) approving the Agreement as satisfaction of the entirety of Avista obligations under PURPA with regard to the Facility.

Dated at Boise, Idaho, this 6<sup>th</sup> day of October 2006.

  
Scott Woodbury  
Deputy Attorney General

Technical Staff: Rick Sterling

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 6<sup>th</sup> DAY OF OCTOBER 2006, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-05-7, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

DAVID J. MEYER  
SR VP AND GENERAL COUNSEL  
AVISTA CORPORATION  
PO BOX 3727  
SPOKANE WA 99220-3727  
E-mail [dmeyer@avistacorp.com](mailto:dmeyer@avistacorp.com)

KELLY NORWOOD  
VICE PRESIDENT – STATE & FED. REG.  
AVISTA UTILITIES  
PO BOX 3727  
SPOKANE WA 99220-3727  
E-mail [Kelly.norwood@avistacorp.com](mailto:Kelly.norwood@avistacorp.com)

PETER J. RICHARDSON  
RICHARDSON & O'LEARY PLLC  
515 N 27<sup>TH</sup> ST  
BOISE ID 83702  
E-mail [peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)

MIKE UDA  
DONEY CROWLEY BLUMQUIST,  
PAYNE & UDA  
SUITE 200  
DIAMOND BLOCK  
HELENA MT 59601  
E-mail [muda@doneylaw.com](mailto:muda@doneylaw.com)

  
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SECRETARY