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IDAHO PUBLIC  
UTILITIES COMMISSION

May 5, 2009

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
Statehouse Mail  
472 W. Washington Street  
Boise, ID 83720-0074

RE: Case No. AVU-E-09-04  
Petition of Avista Corporation for an Order Determining Ownership of RECS and Stay  
of any Requirement to Award RECS to a PURPA Developer

Dear Ms. Jewell:

Please find enclosed for filing with the Commission an original and seven (7) copies of Avista Corporation's Petition for an order determining ownership of RECS, as well as stay of any requirement to award RECS to a PURPA developer. In addition, ten (10) copies of the direct testimony of Clint G. Kalich are being filed in support of this petition, with his workpapers included on the CD that accompanied this filing. Due to their electronic nature, these workpapers are being filed in electronic format only.

Please direct any questions pertaining to the transmittal of this filing to Patrick Ehrbar at 509.495.8620.

Sincerely

A handwritten signature in black ink that reads "Kelly Norwood".

Kelly Norwood  
Vice President, State & Federal Regulation

Enclosures

cc: Service List

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May 2009, true and correct copies of the foregoing (AVU-E-09-04) were delivered to the following persons via overnight delivery (for the Commission) and U.S. Mail for all other participants:

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 IDAHO PUBLIC  
 UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF A PETITION FILED BY	)	
AVISTA CORPORATION FOR AN ORDER	)	CASE NO. AVU-E-09-04
DETERMINING THE OWNERSHIP OF THE	)	
ENVIRONMENTAL ATTRIBUTES ("RECS")	)	
ASSOCIATED WITH A QUALIFYING	)	PETITION FOR AN ORDER
FACILITY UPON PURCHASE BY A UTILITY	)	DETERMINING OWNERSHIP OF
OF THE ENERGY PRODUCED BY A	)	RECS AND STAY OF ANY
QUALIFYING FACILITY	)	REQUIREMENT TO AWARD RECS
_____	)	TO A PURPA DEVELOPER

Pursuant to IPUC Rule of Procedure 101, Avista Corporation ("Avista") hereby petitions the Idaho Public Utilities Commission ("IPUC") to issue an order determining the ownership of the marketable environmental attributes ("Renewable Energy Credits" or "RECs") associated with wholesale sales of energy by a Qualifying Facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA") to a utility within the State of Idaho ("Petition to Determine Ownership of RECs"). Pursuant to IPUC Rule of Procedure 53, Avista further petitions for a stay of any requirement to award RECs to any PURPA developer that has tendered or may tender a PURPA project to Avista, until such time as Avista's Petition to Determine Ownership of RECs is resolved.

Avista's Petition to Determine Ownership of RECs and request for stay are supported by the direct testimony of Clint Kalich, which Avista is filing with this petition.

## BACKGROUND

In response to a petition for declaratory order seeking an interpretation of section 210 of PURPA, the Federal Energy Regulatory Commission (“FERC”) has determined that the ownership of environmental attributes (sometimes referred to as “RECs”) is not controlled by PURPA. *American Ref-Fuel Co., et al.*, 105 FERC ¶ 61,004, P 23 (2003), *order on reh’g*, 107 FERC 61,016, P 12 (2004). FERC further held that “States, in creating RECs, have the power to determine who owns the REC in the initial instance, and how they may be sold or traded[.]” *Id.* Accordingly, the IPUC has the authority to determine the ownership of environmental attributes associated with a wholesale sale of energy by a QF to a utility under PURPA.

In 2004, Idaho Power Company filed a petition for declaratory order from the IPUC “determining ownership of the marketable environmental attributes associated with a PURPA Qualifying Facility when the [utility] enters into a long-term, fixed rate contract for the purchase of the energy produced by that QF.” Idaho Power Company’s Petition for A Declaratory Order filed February 5, 2004 in Case No. IPC-E-04-02. The IPUC denied Idaho Power Company’s petition for a declaratory order because, at that time, the IPUC found that the predicates necessary for a declaratory ruling were not present and, therefore “the issue presented by Idaho Power in its Petition d[id] not present an actual or justiciable controversy in Idaho and [was] not ripe for a declaratory judgment by this Commission.” IPUC Order No. 29480 at 16 (issued April 27, 2004).

As explained in the accompanying testimony of Mr. Kalich, circumstances have substantially changed since Idaho Power Company’s request that the IPUC address the ownership of RECs. Specifically:

- 1) PURPA rates have increased substantially;
- 2) Interest in PURPA contracts has increased;

- 3) States have adopted renewable portfolio standards (“RPS”);
- 4) A robust market for RECs has emerged; and
- 5) The value of RECs has increased dramatically.

As a result of the increase in PURPA rates and other changes, the rates that Avista’s customers are required to pay for energy from wind QF resources are substantially higher than the avoided costs associated with a similar project that is developed, owned, and operated by Avista or the contract price that Avista would expect to pay for renewable energy acquired through a competitive process. Transferring the environmental attributes associated with a QF to the utility purchasing the energy produced by that QF would reduce this disparity. Accordingly, IPUC action is now necessary to ensure that “[t]he rates for [purchases of electric energy] from QFs [are] just and reasonable to the ratepayers of the utility, in the public interest, and [do] not discriminate against cogenerators or small power producers [and do] not exceed the incremental cost to the electric utility of alternative electric energy. . . .” *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, 117 FERC ¶ 61,078, P 23 (2006) (“Order No. 688”), *order on reh’g*, 119 FERC ¶ 61,305 (2007 (“Order No. 688-A”)); *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,314, P 37 (2008).

#### **AVISTA’S INTEREST AND FACTS IN SUPPORT OF AVISTA’S PETITION FOR AN ORDER DETERMINING OWNERSHIP OF RECS AND REQUEST FOR STAY**

Avista is a utility engaged in, among other things, the business of generating, transmitting, and distributing electric power to wholesale and retail customers in the State of Idaho and in the State of Washington. Some states have adopted requirements that utilities serve a percentage of their customers’ load from renewable energy resources or purchase equivalent RECs. For example, the State of Washington has adopted renewable portfolio standards (“RPS”) that require utilities, including Avista, to meet certain targets by 2012, 2016 and 2020. *See* RCW

19.285.010 *et. seq.* Utilities can meet such targets either by using eligible renewable resources or by acquiring equivalent renewable energy credits. RCW 19.285.040.

Over the next 10 years, the majority of resources Avista expects to acquire are renewable and conservation resources. Avista has already begun implementing this strategy. Specifically, in 2008, Avista acquired the development rights for a 50 MW wind project in its service territory near Reardan, Washington. Avista is also pursuing the rights to develop other renewable energy projects.

The Northwest Power and Conservation Council estimates for wind generation project development, construction and operation result in an avoided cost of \$64 per MWh when levelized over 20 years. These costs are similar to those used by Avista in its long-term planning documents. In contrast, the current avoided cost rate in the State of Idaho that Avista is required to pay for energy generated by PURPA wind projects is \$84.30.<sup>1</sup> If the environmental attributes generated by a PURPA project are not transferred to the utility with the energy, the disparity between the costs is further increased.

For the reasons stated herein, and in the accompanying testimony of Mr. Kalich, Avista submits that there is a justiciable issue in the State of Idaho regarding the ownership of environmental attributes associated with PURPA projects. Avista respectfully requests that the IPUC grant Avista's Petition to Determine Ownership of RECs and issue an order declaring that, in the State of Idaho, ownership of the RECs associated with PURPA projects will be assigned to the utilities that purchase the energy from such projects. Avista further requests that such declaration apply to all PURPA contracts executed on or after the date of this petition.

Avista is currently negotiating new PURPA contracts for five proposed projects. If each of these contracts are executed at the present rates, and the RECs associated with such projects

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<sup>1</sup> The 2010 levelized rate is \$90.64 which is reduced by 7% for wind integration.

are not transferred to Avista with the sale of energy, Avista's customers will overpay by approximately \$310 million over the expected 20-year lives of these contracts.<sup>2</sup> Allowing PURPA developers to retain and market separately the environmental attributes associated with their projects may also negatively impact Avista's ability to acquire cost-effective renewable resources in a competitive acquisition process, as explained by Mr. Kalich. As a result, a stay of any requirement to award RECs to a developer that has tendered or that may tender a PURPA project to Avista until such time as a final order is issued that fully resolves the issues raised in Avista's Petition to Determine Ownership of RECs is necessary to protect Avista's customers from substantial overpayment for PURPA resources. Avista respectfully requests that the IPUC grant expedited treatment of Avista's request for a stay given the existing interest expressed by PURPA developers in tendering projects to Avista.

### **SERVICE AND COMMUNICATIONS**

The following persons should be included on the official service list in this proceeding, and should be served with all communications concerning this proceeding:

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Vice President and Chief Counsel of  
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### **CONCLUSION**

WHEREFORE, based on the foregoing, Avista hereby respectfully requests that the IPUC grant Avista's Petition to Determine Ownership of RECs and issue an order declaring that

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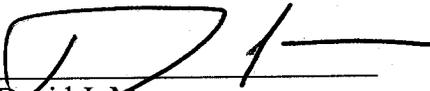
<sup>2</sup> Assuming each project generates 10 average megawatts of power.

the ownership of environmental attributes associated with PURPA projects will be assigned to the utilities that purchase the energy from such projects.

Avista further requests that the IPUC grant Avista's request for expedited treatment of Avista's request for a stay and issue an order staying any requirement to award RECs to PURPA developers until a final order resolving the issues raised in Avista's Petition to Determine Ownership of RECs is issued.

Avista does not believe that an evidentiary hearing is necessary to consider the issues presented by this petition and requests that the matter be processed under modified procedure.

Respectfully submitted this 5<sup>th</sup> day of May 2009.

  
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David J. Meyer  
Attorney for Avista Corporation