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IDAHO PUBLIC UTILITIES COMMISSION

December 10, 2010

*AVO-E-10-05*

Ms. Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington  
Boise, ID 83702

**RE: Mariah Wind, LLC v. Avista Corporation dba Avista Utilities, Inc.,**

Dear Ms. Jewell:

We are enclosing for filing an original and three (7) copies of the above-referenced **Formal Complaint**.  
An additional copy is enclosed for you to stamp for our records.

Sincerely,

Greg Adams  
Richardson & O'Leary PLLC

encl.

Peter J. Richardson (ISB # 3195)  
Gregory M. Adams (ISB # 7454)  
Richardson & O'Leary, PLLC  
515 N. 27<sup>th</sup> Street  
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UTILITIES COMMISSION

Attorneys for Complainant

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

Mariah Wind, LLC,  
Complainant,

vs.

Avista Corporation dba Avista Utilities, Inc.,  
Defendant.

Case No. AVU-E-10-05

FORMAL COMPLAINT

**INTRODUCTION**

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This is a formal complaint filed by Mariah Wind, LLC ("Mariah Wind") with the Idaho Public Utilities Commission (the "Commission") pursuant to Idaho Administrative Rules 31.01.01.054. Mariah Wind, LLC requested that Avista Corporation, dba Avista Utilities, Inc., ("Avista") execute a standard Public Utility Regulatory Policies Act of 1978 ("PURPA") power purchase agreement ("PPA") for qualifying facilities ("QFs") under 10 average monthly megawatts ("aMW") for Mariah Wind, LLC's 10 MW renewable energy project. Avista rejected Mariah Wind, LLC's attempt to obligate itself to a PPA containing the Commission-approved terms of a standard PURPA PPA at the published avoided cost rates. Avista has unjustifiably refused to negotiate reasonable terms regarding environmental attributes, delay default liquidated

1 damages and security, and wind integration charges for Mariah Wind's off-system project.  
2 Therefore, Mariah Wind respectfully requests that the Commission issue a declaratory judgment  
3 resolving those clauses and ordering Avista to enter into a PPA at the rates in effect on the date  
4 of this filing (errata to Order No. 31025).

5 **PRELIMINARY MATTERS**

6 Copies of all pleadings and other correspondence in this matter should be served upon  
7 counsel for Mariah Wind, LLC at:

8 Peter J. Richardson  
9 Gregory M. Adams  
10 Richardson & O'Leary, PLLC  
11 515 N. 27<sup>th</sup> Street  
12 P.O. Box 7218  
13 Boise, Idaho 83702  
14 Telephone: (208) 938-7901  
15 Fax: (208) 938-7904  
16 [peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
17 [greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

18 **In support of this Complaint, Mariah Wind, LLC alleges as follows:**

19 **IDENTITY OF PARTIES**

20 1. Avista Corporation, dba Avista Utilities, Inc., is a Washington Corporation with  
21 its principal place of business at 1411 E. Mission Ave., Spokane, Washington 99202. Avista is  
22 an electric company and a public utility subject to the jurisdiction and regulation of the Idaho  
23 Public Utilities Commission pursuant to I.C. § 61-129. Avista is subject to the jurisdiction of the  
24 Commission, the Washington Utilities and Transportation Commission, and the Federal Energy  
25 Regulatory Commission ("FERC").

26 2. Mariah Wind, LLC is an Oregon limited liability company. Mariah Wind, LLC's  
27 address is Mariah Wind, LLC, 17971 SE River Road Ste. 229, Milwaukie, Oregon 97267.

1 Mariah Wind, LLC has the rights to develop and dispose of the output of the Mariah Wind, LLC  
2 wind project, which is a qualifying facility under the Public Utility Regulatory Policies Act of  
3 1978.

#### 4 JURISDICTION

5 3. This case involves PURPA's avoided cost provisions and FERC implementing  
6 regulations thereto, which PURPA directs states to implement. *See* 16 U.S.C. § 824a-3 (a)-(g);  
7 *FERC v. Mississippi*, 456 U.S. 742, 751 (1982). In Idaho, the Commission possesses jurisdiction  
8 over complaints regarding rates of public utilities, including PURPA rates. I.C. §§ 61-129, -501.  
9 -502, -503, -612; *see also Afton Energy Inc. v. Idaho Power Co.*, 111 Idaho 925, 929, 729 P.2d  
10 400, 404 (1986). The Commission has jurisdiction to issue declaratory judgments regarding  
11 utility contracts pursuant Idaho's Declaratory Judgment Act, I.C. § 10-1203. *See Utah Power*  
12 *and Light v. Idaho Pub. Utilities Commission*, 112 Idaho 10, 12, 730 P.2d 930, 932 (1986).

#### 13 APPLICABLE LAWS AND REGULATIONS

14 4. Section 210 of PURPA requires electric utilities to purchase power produced by  
15 small power producers that obtain QF status under section 201. 16 U.S.C. § 824a-3(a)(2). The  
16 PURPA avoided cost rates must compensate the QF for the full costs the utility avoids by  
17 purchasing its energy, capacity, and, if transferred, the QF's environmental attributes. *See*  
18 *California Public Utilities Commission*, 133 FERC ¶ 61,059 (Oct. 21, 2010) (order denying  
19 rehearing) (approving of a PURPA implementation whereby certain QFs receive a *higher*  
20 avoided cost rate for providing environmental attributes in addition to their energy and capacity);  
21 *see also American Ref-Fuel Co., et al.*, 105 FERC ¶ 61,004 (2003), *order aff'd on reh'g*, 107  
22 FERC ¶ 61,016 (2004).



1           12.     On October 8, 2010, Mariah Wind sent to Avista all of the project-specific  
2 information requested by Avista for a standard PURPA PPA.

3           13.     Without prior notice to Mariah Wind, after the close of business on Friday,  
4 November 5, 2010, Avista filed a joint petition and motion, with Rocky Mountain Power and  
5 Idaho Power Company, initiating Commission Case No. GNR-E-10-04, which requested the  
6 Commission immediately lower the eligibility cap for published rates from 10 aMW to 100  
7 kilowatts (“kw”) of nameplate capacity.

8           14.     If granted, Avista’s requested immediate reduction in the eligibility cap  
9 availability would preclude Mariah Wind from obtaining the published rates, and would negate  
10 the cost-effectiveness of a PPA with Avista.

11          15.     On November 16, 2010, Mariah Wind obligated itself to a 20-year PPA, by  
12 sending to Avista a PPA containing the Commission-approved terms of a standard PURPA PPA  
13 at the published avoided cost rates, executed by Mariah Wind.

14          16.     Mariah Wind’s November 16<sup>th</sup> PPA contained identical terms to those in a draft  
15 PPA provided by Avista, except that Mariah Wind’s PPA contained modified terms regarding  
16 ownership of environmental attributes, delay liquidated damages and security, the mechanical  
17 availability guarantee, insurance, as well as applicable rates and the wind integration charge.  
18 The submitted PPA also contained an accompanying letter describing the basis for the modified  
19 terms.

20          17.     Avista rejected Mariah Wind’s signed PPA.

21          18.     Subsequently, Mariah Wind expressed willingness to agree to Avista’s terms  
22 regarding the mechanical availability guarantee and insurance.

1           19.     But Avista has refused to agree to Mariah Wind's terms regarding ownership of  
2 environmental attributes, delay liquidated damages and security, and the wind integration charge.

3           20.     Avista refused to agree to a term similar to those in Idaho Power Company and  
4 Rocky Mountain Power PURPA PPAs whereby the utility waives ownership of environmental  
5 attributes in contracts containing the published avoided cost rates calculated to compensate the  
6 QF only for the energy and capacity delivered.

7           21.     Additionally, Avista stated it would not agree to delay liquidated damages and  
8 security clauses containing damages and security amounts less than \$45/kw, in response to  
9 Mariah Wind's statements that it would obligate itself only to an amount reasonably calculated to  
10 offset Avista's actual damages, as determined by the Commission.

11          22.     Finally, Avista insisted on charging Mariah Wind 50% of its standard wind  
12 integration charge of \$6.50/MWh, despite that Mariah Wind will pay Bonneville Power  
13 Administration for wind integration services and will therefore provide a firm energy delivery  
14 to Avista's system entitling it to Avista's full, published, avoided cost rates.

15          23.     Through Mariah Wind's PPA submitted November 16, 2010, and subsequent  
16 communications, Mariah Wind has agreed to all material terms of the draft PPA distributed by  
17 Avista except for clauses discussed in paragraphs 19-22.

18          24.     Mariah Wind still intends to obligate itself to all terms of the draft PPA  
19 distributed by Avista with the exception of the modified terms regarding Mariah Wind's  
20 ownership of environmental attributes, reasonable delay liquidated damages and security as  
21 determined by the Commission, and the current, published, avoided cost rates without a  
22 \$3.25/MWh reduction for wind integration.





Respectfully submitted this 10<sup>th</sup> day of December, 2010.

RICHARDSON AND O'LEARY, PLLC

A handwritten signature in black ink, appearing to read "P.J. Richardson", written over a horizontal line.

Peter J. Richardson (ISB No: 3195)  
Gregory M. Adams (ISB No. 7454)  
Attorneys for Complainant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10<sup>th</sup> day of December, 2010, a true and correct copy of the within and foregoing **FORMAL COMPLAINT BY MARIAH WIND, LLC** was served by **HAND DELIVERY**, to:

Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 West Washington  
Boise, Idaho 83702  
Jean.jewell@puc.idaho.gov

By

  
\_\_\_\_\_  
Gregory M. Adams