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AVISTA Corp.

January 4, 2011

Via Email and Overnight Mail
Jean Jewell
Idaho Public Utilities Commission
472 W. Washington Street
Boise, ID 93702
Email: jean.jewell@puc.idaho.gov

Re: Mariah Wind, LLC v. Avista Corporation, IPUC Case No. AVU-E-10-05
Avista Corporation' Answer

Dear Ms. Jewell:

Please find enclosed for filing an original and seven copies of Avista Corporation's Answer to the complaint filed by Mariah Wind, LLC in the above-referenced docket. Please let me know if you have any questions regarding this filing.

Sincerely,

Michael G. Andrea
Senior Counsel

Enclosures

cc: Peter Richardson
Gregory M. Adams

MICHAEL G. ANDREA (ISB No. 8308)
Avista Corporation
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Spokane, WA 99202
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

MARIAH WIND, LLC, Complainant, v. Avista Corporation dba Avista Utilities, Inc., Defendant	CASE NO. AVA-E-10-05 ANSWER

Avista Corporation, by and through its attorney, Michael G. Andrea, hereby answers the complaint ("Complaint") of Mariah Wind, LLC ("Mariah") in the above-captioned matter.

I. Introduction.

1. In its Complaint, Mariah requests that the Commission declare that Avista is in violation of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and that the Commission order Avista to "execute a standard PURPA power purchase agreement with Mariah Wind, LLC containing Avista's avoided cost rates on file for QFs under 10 aMW in Order No. 31025, and the terms deemed reasonable by the Commission for the disputed clauses described in [Mariah's] Complaint." Complaint, Prayer ¶¶ 1, 2.

2. Mariah alleges, among other things, that Avista has rejected Mariah's attempt to obligate itself to a power purchase agreement containing Commission-approved terms of a standard PURPA power purchase agreement and has refused to negotiate reasonable terms

regarding (i) environmental attributes, (ii) delay default liquidated damages and security, and (iii) wind integration charges. *E.g.*, Complaint, Introduction.

3. Mariah contacted Avista on October 8, 2010, to request a power purchase agreement for a proposed wind project. On October 14, 2010, Avista provided Mariah a draft power purchase agreement that was clearly marked as a Draft (the Draft power purchase agreement Avista provided to Mariah is attached hereto as Attachment 1). Mariah unilaterally changed material terms of the draft power purchase agreement, including terms regarding environmental attributes, delay liquidated damages and security, and wind integration charges. Mariah also took the liberty of removing the Draft stamp (the resulting power purchase agreement is referred to as the "Mariah PPA", which is attached hereto as Attachment 2). On or around November 16, 2010, Mariah returned the Mariah PPA executed by Mariah along with a letter detailing certain issues with the draft power purchase agreement ("November 16 Letter"). (The November 16 Letter is attached hereto as Attachment 3.) At no time prior to Avista's receipt of the executed Mariah PPA did Mariah make any attempt to negotiate with Avista the terms of the draft power purchase agreement.

4. In a letter dated November 24, 2010, Avista rejected the Mariah PPA, but made clear that Avista stood ready to engage in the necessary discussions to negotiate in good faith a mutually acceptable power purchase agreement with Mariah ("November 24 Letter"). (The November 24 Letter is attached hereto as Attachment 4.) On December 9, 2010, Avista engaged in a brief discussion with Mariah regarding the terms of the Mariah PPA at which time Avista indicated that it was not willing to accept certain terms demanded by Mariah, but Avista was willing to negotiate in good faith. Following that brief discussion, Mariah filed its Complaint alleging, among other things, that Avista has negotiated in bad faith and has violated PURPA,

FERC's implementing regulations, and the Commission's orders. Complaint, ¶ 32, Prayer ¶ 1. Mariah alleges that Avista has violated PURPA by, in its view, unjustifiably (a) refusing to disclaim ownership of environmental attributes in a power purchase agreement that will contain published avoided cost rates, (b) insisting on delay liquidated damages and delay security amount of $45 per kW nameplate capacity, and (c) requiring Mariah to pay 50 percent of the standard wind integration charge. Complaint, ¶¶ 19-22, 27-29.

5. With regard to Mariah's specific allegations, the Commission has not specifically ruled on the issue of ownership of environmental attributes with regard to PURPA projects and, therefore, the disclaimer of rights to such environmental attributes requested by Mariah is not required. Second, delay liquidated damages and security of $45 per kW nameplate capacity is consistent with power purchase agreements executed by other developers and approved by the Commission. *E.g.*, Order No. 32144 (approving agreement between Idaho Power Company and wind developer containing $45 per kW delay liquidated damages). Finally, the Commission approved a wind integration charge in Order No. 30500. Avista's reduction of the standard wind integration charge by 50 percent due to Mariah's circumstances is consistent both with that Commission order and the purposes of the wind integration charge. Mariah's allegations are without merit. Moreover, Avista takes exception to Mariah's allegations that Avista negotiated in bad faith.

II. Answer

6. Avista hereby provides the following answer to the allegations in Mariah's Complaint. Except as expressly admitted herein, Avista denies all material allegations of the Complaint.

7. Avista admits the allegations of paragraph 1 of the Complaint.

8. Avista lacks sufficient information or knowledge regarding the allegations contained in paragraph 2 of the Complaint and, therefore, neither admits nor denies those allegations.

9. Paragraphs 3, 4, and 5 of the Complaint contain conclusions of law that require no response and, therefore, Avista neither admits nor denies those allegations.

10. Avista lacks sufficient information or knowledge regarding the allegations contained in paragraphs 6, 7, 8, and 9 of the Complaint and, therefore, neither admits nor denies those allegations.

11. Avista admits the allegations of paragraph 10 of the Complaint.

12. The Complaint does not contain a paragraph 11.

13. Avista denies the allegations of paragraph 12 of the Complaint.

14. In response to paragraph 13 of the Complaint, the documents in Case No. GNR-E-10-04 referenced in the Complaint speak for themselves.

15. Paragraph 14 of the Complaint contains conclusions of law that require no response and, therefore, Avista neither admits nor denies those allegations. Avista lacks sufficient information or knowledge regarding the remaining allegations contained in paragraph 14 of the Complaint and, therefore, neither admits nor denies those allegations.

16. Paragraph 15 of the Complaint contains conclusions of law that require no response and, therefore, Avista neither admits nor denies those allegations. To the extent a response is required Avista denies the allegations contained in paragraph 15 of the Complaint.

17. In response to paragraph 16 of the Complaint, the documents referenced in paragraph 16 of the Complaint speak for themselves.

18. Avista admits the allegations of paragraphs 17, 18, and 19 of the Complaint.

19. In response to paragraph 20 of the Complaint, Avista admits that it refused to agree to waive ownership of environmental attributes as unilaterally proposed by Mariah in the Mariah PPA. In response to the remaining allegations in Paragraph 20 of the Complaint, the Idaho Power Company and Rocky Mountain Power PURPA PPAs referenced in paragraph 20 of the Complaint speak for themselves.

20. In response to paragraph 21 of the Complaint, Avista admits that, in the brief discussion it had with Mariah, it would not agree to delay liquidated damages and security clauses containing damages and security amounts less than $45 per kW. To the extent implied by paragraph 21 of the Complaint, Avista denies that its proposed delay liquidated damages and security amounts are not reasonable.

21. In response to paragraph 22 of the Complaint, Avista admits that, in the brief discussion it had with Mariah, it agreed to reduce its standard wind integration charge by 50% because Avista understands that Mariah will schedule energy to Avista's electrical system on an hourly firm basis. The remaining allegations of paragraph 22 of the Complaint either contain conclusions of law for which no response is required or Avista lacks sufficient information or knowledge and, therefore, Avista neither admits nor denies those allegations.

22. Paragraph 23 of the Complaint contains conclusions of law that require no response and, therefore, Avista neither admits nor denies those allegations. To the extent a response is required the documents referenced in paragraph 23 of the Complaint speak for themselves.

23. Avista lacks sufficient information or knowledge regarding the allegations contained in paragraph 24 of the Complaint and, therefore, neither admits nor denies those allegations.

24. In response to paragraph 25 of the Complaint, Avista incorporates its responses to paragraphs 1-24 of the Complaint.

25. Paragraph s 26-32 of the Complaint contains conclusions of law that require no response and, therefore, Avista neither admits nor denies those allegations. To the extent any response is required, Avista denies the allegations in paragraphs 27, 28, and 29 that Avista's actions are unjustifiable or unreasonable and takes particular exception to the allegation in paragraph 32 of the Complaint that Avista negotiated in bad faith, which it also denies.

26. In response to the Prayer for Relief contained in the Complaint, Avista denies that Mariah is entitled to the relief prayed for.

WHEREFORE, Avista respectfully requests that the Commission issue an order denying the relief sought by Mariah in its Prayer for Relief.

Respectfully submitted this 4th day of January 2011.

Michael G. Andrea
Attorney for Avista Corporation

ATTACHMENT 1

POWER PURCHASE AGREEMENT

BETWEEN

AND

AVISTA CORPORATION

TABLE OF CONTENTS

POWER PURCHASE AGREEMENT

This Agreement is made by and between Avista Corporation, a Washington corporation ("Avista"), and _____ a _____ ("Seller"). Avista and Seller are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seller will design, construct, own, operate and maintain a ___ megawatt electric power generating facility ("Facility") at _____ as more fully described in Exhibit G;

WHEREAS, Seller will operate the Facility as a Qualifying Facility, as defined by the Public Utility Regulatory Policies Act of 1978 ("PURPA"); and

WHEREAS, Seller will deliver and sell, and Avista will purchase, electric energy generated from the Facility subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows.

1. DEFINITIONS

Except as otherwise defined in this Agreement, whenever used in this Agreement and exhibits hereto, the following terms shall have the following meanings:

1.1 **"Agreement"** means this Power Purchase Agreement, including all exhibits, and any written amendments.

1.2 **"Alternate Point of Delivery"** shall have the meaning provided in Section 12.3 of this Agreement.

1.3 **"Avoided Cost Rates" or "Base PURPA rate"** shall have the meaning provided in Section 8.2 of this Agreement.

1.4 **"aMW"** means average megawatt(s). An average megawatt is calculated by dividing the total generation in MWh over a given period of time (e.g., a calendar month) by the number of hours in that period of time.

1.5 **"Ancillary Services"** means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the electrical systems in accordance with Prudent Utility Practices and any existing or future WECC requirements.

1.6 **"Availability Factor"** shall equal the ratio of the availability of all turbines (the "Numerator") as compared to the planned availability adjusted for Force Majeure and Schedule

Outages (the "Denominator"). The Numerator shall be calculated by taking the number of hours for which each turbine is available multiplied by its nameplate capacity rating and summing these resulting values for all turbines in the Facility. The Denominator shall be calculated as the nameplate capacity rating for each turbine multiplied by the result of the total number of hours in the Calendar Month less Scheduled Outage hours during the Calendar Month less Force Majeure hours during the Calendar Month for each turbine and summing these resulting values for all turbines in the Facility. Accordingly the formula that will be applied to calculate the Availability Factor is:

$$\text{Availability Factor} = \frac{\Sigma(\text{nameplate capacity for each turbine} * \text{number of hours such turbine was available during the Calendar Month})}{\Sigma[\text{nameplate capacity for each turbine (total hours in the Calendar Month - Force Majeure hours – Scheduled Outage hours)}]}$$

A sample calculation is attached as Exhibit H to this Agreement for illustrative purposes only.

1.7 **"Balancing Authority Area"** means an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Balancing Authority Areas and contributing to frequency regulation of the interconnection. A Balancing Authority Area must be certified by the applicable reliability council (such as WECC or other reliability council).

1.8 **"Business Day"** means every day other than a Saturday or Sunday or a national holiday. National holidays shall be those holidays observed NERC.

1.9 "Commercial Operation" means the Facility is fully operational and reliable, is a Qualified Facility and Seller has fulfilled all of the conditions required by Section 4.2 of the Agreement.

1.10 **"Commercial Operation Date"** means the day following the date that the Facility first achieves Commercial Operation.

1.11 **"Commission"** means the Idaho Public Utilities Commission, or its successor.

1.12 **"Delay Liquidated Damages"** means the damages payable to Avista due to Seller's failure to achieve Commercial Operation by the Scheduled Operation Date as set out in Sections 4.3 and 4.4 of this Agreement.

1.13 **"Delay Period"** means all hours within a given calendar month for all months and partial months past the Scheduled Operation Date until Seller's Facility achieves Commercial Operation.

1.14 **"Delay Price"** means the positive difference, if any, of the Market Energy Price minus the Net Avoided Cost Rate applicable for the Delay Period as specified in Section 8.2 of

this Agreement. If this calculation results in a value less than 0, the result of this calculation will be 0.

1.15 **"Deliverable Net Output"** means Net Output less any applicable Losses and other applicable adjustments associated with the transmission of energy from the Point of Interconnection to the Point of Delivery or to an Alternate Point of Delivery, if any.

1.16 **"Effective Date"** shall have the meaning provided in Section 4 of this Agreement.

1.17 **"Excess Energy"** shall have the meaning provided in Section 8.3 of this Agreement.

1.18 **"Facility"** means the electric energy generating facilities, including all equipment and structures necessary to generate and supply electric energy, more particularly described in Exhibit C.

1.19 **"Facility Service Power"** means the electric energy generated and used by the Facility during its operation to operate equipment that is auxiliary to primary generation equipment including, but not limited to, pumping, generator excitation, cooling or other operations related to the production of electric energy by the Facility.

1.20 **"Force Majeure"** shall have the meaning provided in Section 13 of this Agreement.

1.21 **"FERC"** means the Federal Energy Regulatory Commission, or its successor.

1.22 **"Independent Engineering Certification"** means certifications detailed in Section 3.4 provided by a professional engineer registered in Idaho or the state in which the Facility is located, who has no direct or indirect, legal, or equitable ownership interest in the Facility.

1.23 **"Initial Capacity Determination"** shall have the meaning provided in Section 3.5 of this Agreement.

1.24 **"Initial Expected Energy"** shall have the meaning provided in Section 3.6 of this Agreement.

1.25 **"Interconnection Agreement"** means, as applicable, the agreement between Seller and Avista or Seller and a Transmitting Entity that is providing interconnection service which governs how the Net Output is delivered to Avista's or the Transmitting Entity's electrical system at the Point of Interconnection during the Term of this Agreement.

1.26 **"Interconnection Facilities"** means, if applicable, all facilities required to connect the Facility to the Point of Interconnection, including connection, transformation,

switching, relaying and safety equipment. Interconnection Facilities shall also include all telemetry, metering, cellular telephone, and/or communication equipment required under this Agreement regardless of location.

1.27 **"Losses"** means the loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the Point of Interconnection and the Point of Delivery.

1.28 **"MW"** means megawatt. One thousand kilowatts equals one megawatt.

1.29 **"MWh"** means megawatt-hour. One thousand kilowatt-hours equals one megawatt-hour.

1.30 **"MAG Shortfall"** shall have the meaning provided in Section 5.2 of this Agreement.

1.31 **"Market Energy Price"** means the monthly weighted average, based on daily on- and off-peak Net Output, of the daily On- and Off-Peak Dow Jones Mid-Columbia Firm Index (Dow Jones Mid-C Firm Index) prices for firm energy.

1.32 **"Mechanical Availability Guaranty" or "MAG"** shall have the meaning provided in Section 5.1 of this Agreement.

1.33 **"Nameplate Capacity Rating"** means the maximum generating capacity of the Facility, as determined by the manufacturer, and expressed in kilowatts (kW).

1.34 **"NERC"** means the North American Electric Reliability Corporation or its successor.

1.35 **"Net Avoided Cost Rates" or "Net PURPA rate"** shall have the meaning provided in Section 8.2 of this Agreement.

1.36 **"Net Output"** means the electric power generated by the Facility less Facility Service Power that is delivered to the Point of Interconnection, expressed in kilowatt-hours.

1.37 **"Off-Peak"** means all hours other than On-Peak hours.

1.38 **"On-Peak"** means the hours ending 0700 through 2200 Pacific Prevailing time, Monday through Sunday, excluding national holidays.

1.39 **"Operating Year"** means each 12-month period from January 1 through December 31.

1.40 **"Point of Delivery"** means the location, as specified in Exhibit C of this Agreement, where the electric energy produced by the Facility is delivered to Avista's electrical system.

1.41 **"Point of Interconnection"** means the high voltage side of Seller's step-up transformer at the point of interconnection between Seller's Facility and the Transmitting Entity's electric system, which is commonly referred to as the "busbar."

1.42 **"Prudent Utility Practices"** means the practices, methods, and acts commonly and ordinarily used in electrical engineering and operations by a significant portion of the electric power generation and transmission industry, in the exercise of reasonable judgment in the light of the facts known or that should have been known at the time a decision was made, that would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

1.43 **"Qualifying Facility"** or **"QF"** means a generating facility which meets the requirements for "QF" status under PURPA and part 292 of FERC's Regulations, 18 C.F.R. Part 292, and which has obtained certification of its QF status.

1.44 **"Scheduled Operation Date"** means the date specified in Section 3.1 when Seller anticipates achieving the Commercial Operation.

1.45 **"Scheduled Outage"** means any outage which is scheduled by the Seller to remove electrical or mechanical equipment from service for repair, replacement, maintenance, safety or any other reason, and which thereby limits the generating capability of the Facility to less than the Initial Capacity Determination.

1.46 **"Start-Up Testing"** means the start-up tests required by the factory and/or Avista that prove that the Facility is reliably producing electric energy.

1.47 **"Term"** shall have the meaning provided in Section 4.1 of this Agreement.

1.48 **"Test Energy"** shall be the energy generated during Start-Up Testing and shall have the meaning provided in Section 8.4 of this Agreement.

1.49 **"Transmitting Entity"** means any entity or entities that provide transmission and/or interconnection service to deliver electric energy from the Facility to Avista's electrical system at the Point of Delivery, if applicable.

1.50 **"Transmission Agreement"** means any agreement(s) entered into between Seller and a Transmitting Entity under which the Transmitting Entity shall provide firm transmission and any necessary Ancillary Services to facilitate deliveries hereunder from the Facility to Point of Delivery for the Term of this Agreement. The Transmission Agreement(s) is attached hereto as Exhibit D.

1.51 **"WECC"** means the Western Electricity Coordinating Council or its successor.

1.52 **"Wind Energy Forecasting"** shall have the meaning provided in Section 6 of this Agreement.

1.53 **"Wind Integration Charge"** shall mean a wind integration charge up to the wind integration charge authorized by the Commission in Order No. 30500, or any replacement wind integration charge authorized by the Commission. The Wind Integration Charge applicable to this Agreement is specified in Exhibit E.

2. WARRANTIES

2.1 **No Warranty by Avista.** Avista makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review Seller's design, specifications, equipment or Facility shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC and/or WECC reliability standard associated with the Facility or the delivery of electric energy from the Facility to the Point of Delivery.

2.2 **Seller's Warranty.** Seller warrants and represents that: (a) Seller has investigated and determined that it is capable of performing and will perform the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; (b) all professionals and experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller; (c) Seller will comply with all applicable laws and regulations and shall obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Facility; and (d) the Facility is, and during the Term of this Agreement will remain, a Qualifying Facility as that term is used in 18 C.F.R Part 292. Seller's failure to maintain Qualifying Facility status will be a material breach of this Agreement. Avista reserves the right to review the Seller's Qualifying Facility status and associated support and compliance documents at anytime during the Term of this Agreement.

3. CONDITIONS PRIOR TO COMMERCIAL OPERATION

3.1. **Time is of the Essence.** Time is of the essence in the performance of this Agreement and Seller understands and agrees that Avista is relying on Seller to meet the requirements of Section 4.2 on or before _____ (the "Scheduled Operation Date"). Seller understands and agrees that Avista's acceptance of deliveries of energy from Seller is contingent upon Seller fully satisfying each of the requirements in Section 4.2 of this Agreement prior to the Commercial Operation Date.

3.2 **Licenses, Permits and Approvals.** Prior to Commercial Operation, Seller shall submit to Avista written proof that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state, tribal or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 C.F.R. § 292.207, tribal, state and local business licenses, environmental permits, easements, leases and all required approvals by the Commission. Avista and Seller shall cooperate in petitioning the Commission for any required approvals.

3.3 Opinion of Counsel. Prior to Commercial Operation, Seller shall submit to Avista an opinion letter signed by an attorney admitted to practice and in good standing in the state where the Facility is located providing an opinion that Seller's licenses, permits and approvals as set forth in Section 3.2 above are legally and validly issued, are held in the name of the Seller, and based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of such opinion letter. The opinion letter will be in a form acceptable to Avista and will acknowledge that the attorney rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of the form shall not be unreasonably withheld.

3.4 Independent Engineering Certifications. Prior to Commercial Operation, Seller shall submit to Avista applicable Independent Engineering Certifications for (a) Construction Adequacy for a Qualifying Facility, and (b) Operations and Maintenance Policy for a Qualifying Facility as described in Commission Order No. 21690. Each Independent Engineering Certification shall be signed by a licensed professional engineer in good standing submitted in a form acceptable to Avista and will acknowledge that the licensed professional engineer rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of such forms shall not be unreasonably withheld.

3.5 Initial Capacity Determination. Seller shall design and operate the Facility in a manner such that under normal design conditions the Net Output does not exceed 10 aMW in any Calendar Month. Prior to Commercial Operation, Seller shall submit to Avista the maximum hourly generation capability of the Facility ("Initial Capacity Determination"). Such Initial Capacity Determination shall be determined either by use of the Nameplate Capacity Rating or such other means acceptable to Avista and shall be documented and submitted to Avista by Seller. Such documentation shall include the information listed in Exhibit I. Upon receipt of Seller's Initial Capacity Determination, Avista will review such determination within a reasonable time and, if acceptable to Avista, Avista shall issue to Seller its written approval of the Initial Capacity Determination. If the Initial Capacity Determination submitted by Seller is not acceptable to Avista, Avista will promptly notify Seller that Avista will not accept its Initial Capacity Determination. In such event, Avista shall engage, at Seller's sole expense, an independent qualified consultant to determine the Initial Capacity Determination. During the Term of this Agreement, Seller shall not cause the capacity of the Facility to be greater than the Initial Capacity Determination by any means, including by addition, upgrade, or replacement of any wind turbine or turbines.

3.6 Initial Expected Energy. Upon execution of this Agreement, Seller shall submit estimates of the energy, in MWh, the Seller expects the Facility to generate for each month of the first twelve months following Commercial Operation ("Initial Expected Energy"). Initial Expected Energy shall be attached to this Agreement as Exhibit F.

3.7 Interconnection Agreement. Prior to Commercial Operation, Seller shall provide Avista a copy of its Interconnection Agreement.

3.8 **Ancillary Services**. In the event that the Facility is located outside of Avista's Balancing Authority Area, Seller shall be responsible at its sole expense for obtaining any and all necessary Ancillary Services required to deliver Deliverable Net Output to the Point of Delivery consistent with applicable scheduling protocols. Seller shall demonstrate its compliance with this Section prior to Commercial Operation.

3.9 **Security**. Prior to Commercial Operation, Seller shall submit to Avista evidence of compliance with Section 9, Security.

3.10 **Start-Up Testing**. Avista agrees to take all Test Energy generated by the Facility during Start-Up Testing and delivered to the Point of Delivery, consistent with Section 8.4 of this Agreement. Prior to Commercial Operation, Seller shall submit to Avista evidence of completed Start-Up Testing.

3.11 **Network Resource Designation**. Prior to Commercial Operation, Seller shall, if requested by Avista, provide to Avista all data required by Avista to enable the Facility to be designated by Avista as a network resource.

3.12 **Written Acceptance**. Prior to Commercial Operation, Seller shall request and obtain from Avista written confirmation that all conditions to acceptance of electric energy have been fulfilled. Avista shall use reasonable commercial efforts to promptly provide Seller written confirmation that all conditions to acceptance of electric energy have been fulfilled or provide notice that such conditions have not been fulfilled.

4. TERM OF AGREEMENT AND COMMERCIAL OPERATION DATE

4.1 This Agreement shall be effective on the date last signed below or such other date set by Commission order (the "Effective Date") and shall continue for twenty years after the Commercial Operation Date (the "Term"), unless otherwise terminated as provided herein.

4.2 The Commercial Operation Date may occur only upon or after:

(a) all of the requirements in Section 3 of this Agreement are satisfied;

(b) Commission approval of this Agreement in a form acceptable to Avista has been received;

(c) Seller has demonstrated to Avista's satisfaction that the Facility is complete and able to provide energy in a consistent, reliable, and safe manner;

(d) Seller has requested in writing a Commercial Operation Date from Avista; and

(e) Seller has received written confirmation from Avista of the Commercial Operation Date, which confirmation will not be unreasonably withheld by Avista.

4.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Operation Date. If the Commercial Operation Date occurs after the Scheduled Operation Date, Seller shall pay Avista Delay Liquidated Damages. Delay Liquidated Damages will be calculated monthly as follows:

> Delay Liquidated Damages are equal to Initial Expected Energy as provided in Exhibit F multiplied by the Delay Period for the month multiplied by the calendar month's Delay Price. Accordingly, Delay Liquidated Damages shall be calculated using the following formula:

Delay Liquidated Damages = Initial Expected Energy * Delay Period * Delay Price

4.4 Delay Liquidated Damages will be calculated pursuant to Section 4.3 for a maximum of 120 days past the Scheduled Operation Date. If the Facility fails to achieve Commercial Operation within 120 days of the Scheduled Operation Date, Seller shall pay Avista, in addition to the Delay Liquidated Damages calculated under Section 4.3, Delay Liquidated Damages calculated as follows:

> $45 multiplied by the Initial Capacity Determination with the Initial Capacity Determination Amount being measured in kilowatts.

Upon execution of this Agreement, Seller shall post liquid security ("Delay Security") in the form of cash, letter of credit, or other form acceptable to Avista equal to or exceeding $45 multiplied by the Initial Capacity Determination with the Initial Capacity Determination being measured in kilowatts.

Failure of the Facility to achieve Commercial Operation within 120 days of the Scheduled Operation Date shall constitute a material breach of this Agreement and, therefore, Avista may, at its sole option, terminate this Agreement.

4.5 Seller shall pay Avista any Delay Liquidated Damages within five business days of when Avista presents any Delay Liquidated Damages billings to Seller or the 15th of the month, whichever is later. Seller's failure to pay Delay Liquidated Damages within the specified time will be a material breach of this Agreement.

4.6 The Parties agree that Avista will incur substantial damages if the Facility fails to achieve Commercial Operation by the Scheduled Operation Date and that the damages Avista would incur due to such delay would be difficult or impossible to predict or calculate with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages and are not a penalty.

4.7 The Parties agree that this Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with PURPA and other applicable law. This Agreement shall become finally effective upon the Commission's approval of all terms and provisions herein without change or condition and declaration that all

payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

5. MECHANICAL AVAILABILITY GUARANTEE

5.1 Seller guarantees that the Facility will maintain a monthly minimum Availability Factor of 85% ("Mechanical Availability Guarantee" or "MAG"). After the Commercial Operation Date, Seller must demonstrate its compliance with this Mechanical Availability Guarantee monthly during the Term of the Agreement.

5.2 **Liquidated Damages for MAG Shortfall.** If the average Availability Factor of the turbines in any given calendar month falls below 0.85, the resulting shortfall shall be expressed in MWh as the "MAG Shortfall." In such circumstances, the MAG Shortfall shall be calculated by Seller in accordance with the following formula:

$$\text{MAG Shortfall} = \frac{((0.85 - \text{Availability Factor}) * \text{Net Output})}{\text{Availability Factor}}$$

5.3 If a positive MAG Shortfall occurs in any given calendar month, Avista, in its sole discretion, may require Seller to pay to Avista liquidated damages equal to the greater of (1) the product of the MAG Shortfall for that Calendar Month multiplied by (the Delay Price, or (2) the product of the MAG Shortfall multiplied by $15; *provided, however*, for the first Calendar Month in which Commercial Operation occurs the MAG Shortfall shall be prorated on the basis of the number of days in the period from the Commercial Operation Date through to the end of such Calendar Month. Each Party agrees and acknowledges that (a) the damages that Avista would incur due to the Facility's failure to achieve the MAG would be difficult or impossible to predict with certainty and (b) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages and are not a penalty.

5.4 Seller shall pay Avista any liquidated damages required by Section 5.3 within five business days of when Avista presents any billings for such liquidated damages to Seller or the 15th of the month, whichever is later. Seller's failure to pay Delay Liquidated Damages within the specified time will be a material breach of this Agreement.

5.5 Upon Avista's request, Seller shall provide documentation and supporting data in a form acceptable to Avista demonstrating its compliance with this Section.

6. WIND ENERGY FORECASTING

6.1 Avista, in its sole discretion, may perform wind energy forecasting ("Wind Energy Forecasting"). In the event that Avista chooses to perform Wind Energy Forecasting, Avista may pass the cost of such Wind Energy Forecasting on to the Seller in a manner consistent with the Commission's policy stated in Order No. 30500 issued in Case No. AVU-E-07-02.

6.2 In the event that Avista chooses to conduct Wind Energy Forecasting, the Seller shall provide Avista and/or its consultant, at Seller's sole expense, any and all data from the Facility necessary to perform such Wind Energy Forecasting, including but not limited to system control and data acquisition information.

6.3 In the event that Avista chooses to conduct Wind Energy Forecasting, Avista shall provide Seller with written notice of its intent to conduct such Wind Energy Forecasting.

7. SCHEDULING

7.1 Seller is responsible for supplying day(s)-ahead energy pre-schedules for each hour. Seller shall submit energy pre-schedules for the next Business Day by email, or by other mutually agreed upon means, to Avista no later than 5:30 am on the Business Day immediately preceding the day on which energy deliveries are to be made; *provided, however*, that for estimates of deliveries on weekends and holidays (as defined by NERC), Seller and Avista shall follow scheduling procedures in accordance with then current WECC standard scheduling practices with regard to multiple day scheduling.

7.2 Seller shall create an electronic tag (e.g., e-Tag) that reflects the day-ahead hourly estimate no later than 2:00 pm on the Business Day immediately preceding the day on which energy deliveries are to be made; *provided, however*, that for estimates of deliveries on weekends and holidays (as defined by NERC), Seller and Avista shall follow scheduling procedures in accordance with then current WECC standard scheduling practices with regard to multiple day scheduling.

7.3 The day-ahead estimate shall be provided for preschedule purposes and shall not restrict Seller's right to submit revised hour-ahead schedules as provided herein.

7.4 At least ninety minutes prior to the start of each delivery hour during the delivery Business Day, Seller shall provide Avista with an updated electronic tag that reflects the firm schedule for that delivery hour. Seller shall pay any energy imbalance charges or penalties imposed by the Transmission Entity on the delivery of the Deliverable Net Output to the Point of Delivery.

7.5 Email contact information with regard to pre-scheduling and telephone contact information with regard to generation level changes, interruptions or outages are specified in Exhibit A, Communication and Reporting.

7.6 Should circumstances change in the WECC or WECC sub-region, within which Avista operates its electric system, dictate that scheduling protocols or timing of schedule notifications need to conform, then the Parties agree to negotiate in good faith to a mutually agreed modification of this Section 7 as necessary.

8. PURCHASE PRICES AND PAYMENT

8.1 Except when either Party's performance is excused as provided herein, for the Term of this Agreement, Seller shall deliver all Deliverable Net Output from the Facility to Avista at the Point of Delivery or, if applicable, an Alternate Point of Delivery. For all Deliverable Net Output delivered to Avista at the Point of Delivery or an Alternate Point of Delivery, Avista shall pay the applicable rate specified in Sections 8.2, 8.3, and 8.4 of this Agreement.

8.2 Deliverable Net Output Equal to or Less Than the Initial Capacity Determination. For all Deliverable Net Output delivered to Avista at the Point of Delivery or at an Alternate Point of Delivery for each hour that is not Test Energy or Excess Energy, Avista shall pay the applicable avoided cost rate based upon the On-Peak or Off-Peak Avoided Cost Rates For Non-Fueled Projects Smaller Than Ten Average Megawatts - Non-Levelized in effect on the Effective Date ("Avoided Cost Rates" or "Base PURPA rate"), less the Wind Integration Charge plus the Wind Integration Credit, as specified in Exhibit E ("Net Avoided Cost Rates" or "Net PURPA rate"). The Net Avoided Cost Rates to be paid under this section are specified on page 4 of Exhibit E.

8.3 Excess Energy. Excess Energy is Deliverable Net Output, expressed in MWh, which Seller delivers to Avista at the Point of Delivery or at an Alternate Point of Delivery that exceeds 10 aMW for that Calendar Month. Avista will take all Excess Energy, but Avista will not pay for any Excess Energy.

8.4 Test Energy. Test Energy is Deliverable Net Output produced by the Facility during Start-Up Testing and delivered to Avista at the Point of Delivery. Seller shall sell all Test Energy produced by the Facility to Avista and Avista shall purchase at 50 percent of the Market Energy Price or 50 percent of the applicable Avoided Cost Rate specified in Exhibit E, whichever is less, all such Test Energy that is delivered to the Point of Delivery or an Alternate Point of Delivery.

8.5 Payments to Seller. Avista shall prepare and submit to Seller monthly statements during the Term of the Agreement based upon Deliverable Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the 15th day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

8.6 Payments to Avista and Right of Set Off. If Seller is obligated to make any payment or refund to Avista, Seller agrees that Avista may set off such payment or refund amount against any current or future payments due Seller under this Agreement. If Avista does not elect to set off, or if no current or future payment is owed by Avista, Avista shall submit an invoice to Seller for such payments. Seller shall pay Avista no later than the 15th day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

8.7 Interest. In addition to the remedies set forth in Section 17 of this Agreement, any amounts owing after the due date specified in Sections 8.5 and 8.6 will be subject to interest in the amount of one and one half percent (1.5%) per month, not to exceed the maximum rate allowed by the law, multiplied by the unpaid balance.

8.8 Wire Transfer. All payments shall be made by ACH or wire transfer in accordance with further agreement of the Parties.

9. SECURITY

9.1 Insurance. Prior to operating the Facility, Seller, at its own cost, shall obtain and maintain the following insurance in force over the term of this Agreement and shall provide certificates of all insurance policies. All insurance policies required to fulfill the requirements of this Section 9 shall include language requiring that any notice of cancellation or notice of change in policy terms be sent to Avista by the insurance carrier(s) at least sixty days prior to any change or termination of the policies.

9.1.1 General Liability. Seller shall carry commercial general liability insurance for bodily injury and property damage with a minimum limit equal to $2,000,000 for each occurrence. The deductible shall not exceed the Seller's financial ability to cover claims and shall not be greater than prevailing practices for similar operations in the State of Idaho.

9.1.2 Property. Seller shall carry all-risk property insurance for repair or replacement of the Facility. The limit of property insurance shall be sufficient to restore operations in the event of reasonably foreseeable losses from natural, operational, mechanical and human-caused perils. The deductible shall not exceed the Seller's financial ability to fund the cost of losses and shall not be greater than prevailing practices for similar operations in the State of Idaho.

9.1.3 Qualifying Insurance. The insurance coverage required by this Section 9 shall be obtained from an insurance company reasonably acceptable to Avista and shall include an endorsement naming Avista as an additional insured and loss payee as applicable.

9.1.4 Notice of Loss or Lapse of Insurance by Seller. If the insurance coverage required by this Section 9 is lost or lapses for any reason, Seller will immediately notify Avista in writing of such loss or lapse. Such notice shall advise Avista of (i) the reason for such loss or lapse and (ii) the steps Seller is taking to replace or reinstate coverage. Notice provided by the insurer required by Section 9.1 shall not satisfy the notice requirement of this Section and Seller's failure to provide the notice required by this Section and/or to promptly replace or reinstate coverage will constitute a material breach of this Agreement.

9.2 Ongoing Security for Performance. For the Term of this Agreement, Seller will provide Avista with the following:

9.2.1 Insurance. Upon Avista's request, Seller shall provide Avista evidence of compliance with the provisions of Section 9.1. If Seller fails to comply, such failure will be a material breach and may only be cured by Seller promptly supplying evidence that the required insurance coverage has been replaced or reinstated.

9.2.2 Engineer's Certification. Every three years after the Commercial Operation Date, Seller will supply Avista with a Certification of Ongoing Operations and Maintenance from a Registered Professional Engineer licensed in the State of Idaho the state in which the Facility is located, which certification shall be in the form specified in Exhibit B. Seller's failure to supply the certificate required by this Section 9.2.2 will be a material breach that may only be cured by Seller promptly providing the required certificate.

9.3 Licenses and Permits. During the Term of this Agreement, Seller shall maintain compliance with all permits and licenses described in Section 3.2 of this Agreement. In addition, Seller will obtain, and supply Avista with copies of, any new or additional permits or licenses that may be required for Seller's operations. At least every fifth year after the Commercial Operation Date, Seller will update the documentation described in Section 3.2. If at any time Seller fails to maintain compliance with the permits and licenses described in Section 3.2 or this Section, or to provide documentation required by this Section, such failure will be a material breach of this Agreement that may only be cured by Seller submitting to Avista evidence of compliance.

10. CURTAILMENT, INTERRUPTION OR REDUCTION OF DELIVERY

Avista may require Seller to curtail, interrupt or reduce delivery of Deliverable Net Output if, in accordance with Section 11.2, Avista determines that curtailment, interruption or reduction is necessary because of a Force Majeure event or to protect persons or property from injury or damage, or because of emergencies, necessary system maintenance, system modification or special operating circumstances. Avista shall use commercially reasonable efforts to keep any period of curtailment, interruption, or reduction to a minimum. In order not to interfere unreasonably with Seller operations, Avista shall, to the extent practical, give Seller reasonable prior notice of any curtailment, interruption, or reduction, the reason for its occurrence and its probable duration. Seller understands and agrees that Avista may not be able to provide notice to Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Avista in emergency circumstances, real-time operations of the electric system, and/or unplanned events.

11. OPERATION

11.1 Communications and Reporting. Avista and the Seller shall maintain appropriate operating communications through the Communicating and Reporting Guidelines specified in Exhibit A.

11.2 Excuse From Acceptance of Delivery of Energy.

11.2.1 Avista may curtail, interrupt, reduce or suspend delivery, receipt or acceptance of Deliverable Net Output if Avista, in its sole discretion, reasonably determines that such curtailment, interruption, reduction or suspension is necessary, consistent with Prudent Utility Practice, and that the failure to do so may:

(a) endanger any person or property, or Avista's electric system, or any electric system with which Avista's system is interconnected;

(b) cause, or contribute to, an imminent significant disruption of electric service to Avista's or another utility's customers; or

(c) interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to, Avista's electric system or other property of Avista.

11.2.2 Avista shall promptly notify Seller of the reasons for any such curtailment, interruption, reduction or suspension provided for in Section 11.2. Avista shall use reasonable efforts to limit the duration of any such curtailment, interruption, reduction or suspension. Any curtailment, interruption, reduction or suspension provided for in Section 11.2 shall not count against Seller in the calculation of the MAG under Section 5 of this Agreement.

11.3 Scheduled Outage. On or before December 15 prior to each calendar year, Seller shall submit a written proposal of Scheduled Outages for the upcoming calendar year. Such written proposal of Scheduled Outages shall contain the percentage of hours in each calendar month where the Facility is expected to be on Scheduled Outage. Seller may update the annual Scheduled Outages proposal periodically. The Seller in no instance may change Scheduled Outages for the current or following 2 calendar months. Avista and Seller shall mutually agree as to the acceptability of the proposal and any updates or changes to the proposal. The Parties' determination as to the acceptability of Seller's timetable for Scheduled Outages shall take into consideration Prudent Utility Practices, Avista's system requirements and Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed Scheduled Outages. The Parties shall cooperate in determining mutually acceptable times for Scheduled Outages.

11.4 Seller's Risk. Seller shall design, construct, own, operate and maintain the Facility at its own risk and expense in compliance with all applicable laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of any governmental authority.

11.5 Avista's Right to Inspect. Seller shall permit Avista to inspect and audit the Facility, any related production, delivery and scheduling documentation or the operation, use or

maintenance of the Facility at any reasonable time and upon reasonable notice. Seller shall provide Avista reasonable advance notice of any Facility test or inspection performed by or at the direction of Seller.

11.6 **Seller Obligations in Accordance with Prudent Utility Practices.** Seller shall own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow reliable generation and delivery of Deliverable Net Output to Avista for the full Term of the Agreement, in accordance with Prudent Utility Practices.

12.0 INTERCONNECTION AND TRANSMISSION

12.1 If Seller is interconnecting its Facility to Avista's electrical system, Seller shall design, construct, install, own, operate and maintain all Interconnection Facilities so as to allow safe, reliable generation and delivery of electric energy to Avista for the full term of the Agreement. If applicable, prior to the commencement of the first delivery of Deliverable Net Output, Seller and Avista shall execute an Interconnection Agreement. If Seller is interconnecting its Facility with a Transmitting Entity other than Avista, Seller shall make all necessary arrangements and pay all costs to interconnect its Facility with the electrical system of such Transmitting Entity.

12.2 If Seller is not interconnecting its Facility to Avista's electrical system, Seller shall, arrange for and pay for all costs associated with transmission, losses, and Ancillary Services and shall provide Avista with copies of all executed Transmission Agreements in a form reasonably satisfactory to Avista, providing for the firm transmission of Deliverable Net Output from the Facility to the Point of Delivery for the Term of this Agreement. Seller shall not consent to any modification of any firm Transmission Agreement without Avista's advance written approval, which approval shall not be unreasonably withheld.

12.3 In the event that Seller is required to curtail, interrupt or reduce delivery of Deliverable Net Output to the Point of Delivery, Seller shall arrange at its own expense to deliver Deliverable Net Output to a secondary point of delivery ("Alternate Point of Delivery"), and Avista shall use reasonable commercial efforts to accept Deliverable Net Output at such Alternate Point of Delivery.

12.5 The termination, cancellation or expiration of any Transmission Agreement required to deliver electric energy to Avista under this Agreement shall constitute a material breach of this Agreement, and Avista may terminate the Agreement by giving Seller written notice of such termination which shall be effective upon written notice of such termination, cancellation or expiration of the applicable Transmission Agreement.

12.6 Seller shall be responsible for any and all costs and expenses related to transmission of the Deliverable Net Output to the Point of Delivery under this Agreement, including but not limited to Ancillary Services and any costs or expenses incurred by Avista resulting from the Transmission Agreements including, but not limited to, any charges, reimbursable expenses or other amounts payable by Avista to any Transmitting Entity. Seller shall defend, indemnify and hold harmless, Avista from all claims, losses, harm, liabilities,

damages, costs, and expenses including, but not limited to, reasonable attorneys' fees, arising out of any act or omission of Seller in connection with the Transmission Agreements, including, but not limited to, any breach of or default under any of the Transmission Agreements by Seller.

13. FORCE MAJEURE

13.1 As used in this Agreement, "Force Majeure" means any cause beyond the control of the Seller or Avista which, despite the exercise of due diligence, such party is unable to prevent or overcome. Neither Party shall be liable to the other Party, or be considered to be in breach of or default under this Agreement, for delay in performance due to a cause or condition beyond such Party's reasonable control which despite the exercise of reasonable due diligence, such Party is unable to prevent or overcome ("Force Majeure"), including but not limited to:

(a) fire, flood, earthquake, volcanic activity; court order and act of civil, military or governmental authority; strike, lockout and other labor dispute; riot, insurrection, sabotage or war; unanticipated electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected; serial defects in wind turbine equipment resulting in a prolonged outage based on maintenance protocols as directed by the manufacturer; or

(b) an 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.

Notwithstanding anything to the contrary in this Agreement, changes in weather conditions that do not cause substantial physical damage to the Facility that prevents the operation of all or part of the Facility, including changes in wind speed or other wind conditions, shall not constitute Force Majeure under this Agreement. Also, notwithstanding anything to the contrary in this Agreement, equipment or mechanical breakdowns or failures of the Facility shall not constitute Force Majeure, unless such equipment or mechanical breakdown or failure is caused by an event that is itself Force Majeure.

13.2 In the event of a Force Majeure event, the time for performance shall be extended by a period of time reasonably necessary to overcome such delay. Avista shall not be required to pay for Deliverable Net Output which, as a result of any Force Majeure event, is not delivered.

13.3 Nothing contained in this Section shall require any Party to settle any strike, lockout or other labor dispute.

13.4 In the event of a Force Majeure event, the delayed Party shall provide the other Party notice by telephone or email as soon as reasonably practicable and written notice within fourteen days after the occurrence of the Force Majeure event. Such notice shall include the particulars of the occurrence. The suspension of performance shall be of no greater scope and no longer duration than is required by the Force Majeure and the delayed Party shall use its best efforts to remedy its inability to perform.

13.5 Force Majeure shall include any unforeseen electrical disturbance that prevents any electric energy deliveries from occurring at the Point of Delivery or Alternate Point of Delivery.

14. INDEMNITY

14.1 Each Party shall defend, indemnify and hold harmless, the other Party, its directors, officers, employees, and agents (as the "Indemnitee") from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) to the extent arising from or attributable to the performance or non-performance of that Party's (as the "Indemnitor") obligations under this Agreement, including but not limited to, damage to tangible property and bodily injury or death suffered by any person (including employees of Seller or Avista or the public), provided that:

(a) No Indemnitee shall be indemnified for any loss, liability, injury, or damage resulting from its sole negligence, gross negligence, fraud or willful misconduct; and

(b) The Indemnitor shall be entitled, at its option, to assume and control the defense and any settlement of such suit.

Each indemnity set forth in this Section is a continuing obligation, separate and independent of the other obligations of each Party and shall survive the expiration or termination of this Agreement.

14.2 SELLER 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.

14.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, SAVINGS OR REVENUE, LOSS OF THE USE OF EQUIPMENT, COST OF CAPITAL, OR COST OF TEMPORARY EQUIPMENT OR SERVICES, WHETHER BASED IN WHOLE OR IN PART IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY.

15. ASSIGNMENT

15.1 Seller shall not assign its rights or delegate its duties under this Agreement without the prior written consent of Avista, which consent shall not be unreasonably withheld. 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.

15.2 Seller shall have the right, subject to the obligation to provide security specified in Section 9, without Avista's consent, but with a thirty days prior written notice to Avista, to make collateral assignments of its rights under this Agreement to satisfy the requirements of any development, construction, or other reasonable long term financing. A collateral assignment shall not constitute a delegation of Seller's obligations under this Agreement, and this Agreement shall not bind the collateral assignee. Any collateral assignee succeeding to any portion of the ownership interest of Seller shall be considered Seller's successor in interest and shall thereafter be bound by this Agreement.

16. NO UNSPECIFIED THIRD PARTY BENEFICIARIES

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 15.

17. DEFAULT AND TERMINATION

17.1 In addition to any other breach or failure to perform under this Agreement, including without limitation failure to deliver Deliverable Net Output when scheduled or in the amounts required by this Agreement that is not otherwise excused under this Agreement, each of the following events shall constitute a Default:

(a) Seller abandons the Facility;

(b) The Facility ceases to be a Qualifying Facility;

(c) A Party becomes insolvent (e.g., is unable to meet its obligations as they become due or its liabilities exceed its assets);

(d) Seller makes a general assignment of substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws;

(e) Seller has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed or stayed within sixty days after it is filed;

(f) Seller is in default under any Agreement related to this Agreement; or

(g) Termination, cancellation or expiration of any Transmission Agreement required for Seller to deliver electric energy to Avista under this Agreement.

17.2 Notice and Opportunity to Cure. In the event of a Default, the non-Defaulting Party shall give written notice to the Defaulting Party of a Default in accordance with Section 30. Except as provided in Section 17.1(e), if the Defaulting Party has not cured the breach within thirty days after receipt of such written notice, the non-Defaulting Party may, at its option, terminate this Agreement and/or pursue any remedy available to it in law or equity; provided that, if a Default occurs under Sections 4.4, 4.5, 12.5, 17.1(a), and/or 17.1(g), Avista may immediately terminate this Agreement without opportunity to cure, and such termination shall become effective upon written notice of Default.

17.3 Additional Rights and Remedies. Any right or remedy afforded to either Party under this Agreement on account of a Default by the other Party is in addition to, and not in lieu of, all other rights or remedies available to such Party under any other provisions of this Agreement, by law or otherwise on account of the Default.

17.4 Damages. If this Agreement is terminated as a result of Seller's Default after the Commercial Operation Date, Seller shall pay Avista, in addition to other damages, the positive difference, if any, between the purchase price specified in Section 8.2 and the cost to replace the Deliverable Net Output for twelve months beginning on the date of the original Default, plus all associated transmission costs to Avista to acquire such replacement Deliverable Net Output.

18. DISPUTE RESOLUTION

Each Party shall strive to resolve any and all differences during the term of the Agreement through meetings and discussions. If a dispute cannot be resolved within a reasonable time, not to exceed thirty days, each Party shall escalate the unresolved dispute to a senior officer designated by each Party. If the senior officers are not able to resolve the dispute within ten Business Days of escalation then either Party may either agree to mediate or arbitrate the dispute or request a hearing before the Commission.

19. RELEASE BY SELLER

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

19.1 Electric disturbance or fluctuation that migrates, directly or indirectly, from Avista's electric system to the Facility;

19.2 Interruption, suspension or curtailment of electric service to the Facility or any other premises owned, possessed, controlled or served by Seller, which interruption, suspension or curtailment is caused or contributed to by the Facility or the interconnection of the Facility with any electric system;

19.3 Disconnection, interruption, suspension or curtailment by Avista pursuant to terms of this Agreement or the Interconnection Agreement; or

19.4 Disconnection, interruption, suspension or curtailment of transmission service by a Transmitting Entity or any unforeseen cost or increase in costs to Seller imposed by a Transmitting Entity.

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

The duties, obligations and liabilities of the Parties under this Agreement 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. 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 promptly take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may be reasonably 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 of such Party's right to assert or rely upon any such provision or right in that or any subsequent instance; rather, the same shall be and remain in full force and effect.

24. AMENDMENT

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 and subsequently approved by the Commission.

25. CHOICE OF LAWS AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho without reference to its choice of law provisions. Venue for any litigation arising

out of or related to this Agreement shall lie in the District Court of the Fourth Judicial District of Idaho in and for the County of Ada.

26. HEADINGS

The Section headings in this Agreement are for convenience only and shall not be considered part of or used in the interpretation of this Agreement.

27. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if the invalid or unenforceable provision were omitted.

28. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed as an original, and together shall constitute one and the same document.

29. TAXES

Seller shall pay before delinquency all taxes and other governmental charges which, if failed to be paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

30. NOTICES

Unless otherwise specified, all written notices or other communications required by or provided under this Agreement shall be mailed or delivered to the following addresses, and shall be considered delivered when deposited in the US Mail, postage prepaid, by certified or registered mail or delivered in person:

to Avista:	Director, Power Supply Avista Corporation P.O. Box 3727 Spokane, WA 99220
to Seller:	[Insert]

Either Party may change its designated representative to receive notice and/or address specified above by giving the other Party written notice of such change.

31. SURVIVAL

Rights and obligations which, by their nature, should survive termination or expiration of this Agreement, will remain in effect until satisfied, including without limitation, all outstanding financial obligations, and the provisions of Section 14 (Indemnity) and Section 18 (Dispute Resolution).

32. ENTIRE AGREEMENT

This Agreement, including the following exhibits which are attached and incorporated by reference herein, constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous oral or written agreements between the Parties with respect to the subject matter hereof.

Exhibit A	Communications and Reporting
Exhibit B	Independent Engineering Certifications for Construction Adequacy for a Qualifying Facility and Operations and Maintenance Policy
Exhibit C	Facility and Point of Delivery
Exhibit D	Transmission Agreement
Exhibit E	Rates
Exhibit F	Initial Expected Energy
Exhibit G	Project Description
Exhibit H	Sample Availability Factor Calculation
Exhibit I	Initial Capacity Determination Documentation

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

SELLER	**AVISTA CORPORATION**
By:_____	By:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date: _____

Exhibit A

Communication and Reporting

(1) Email communications between Seller and Avista shall be submitted to:

Avista: kim.mattern@avistacorp.com; or
dale.hubbard@avistacorp.com

Seller: _____
Alternate: _____

(2) All oral communications relating to electric energy scheduling, generation level changes, interruptions or outages between Seller and Avista will be communicated on a recorded line as follows:

(a) Pre-Schedule (5:30 am to 12:00 noon on Business Days):

Avista Pre-Scheduler: (509) 495-4911
Alternate Phone: (509) 495-4073

Seller: _____
Alternate Phone: _____

(b) Real-Time Schedule (available 24 hours a day)

Avista Real-Time Scheduler: (509) 495-8534

Seller: _____
Alternate Phone: _____

(3) Either Party may change its contact information upon written notice to the other Party.

Exhibit B

Independent Engineering Certification for Construction Adequacy for a Qualifying Facility

1. I, _____ am a licensed professional engineer registered to practice and in good standing in the State of _____. I have substantial experience in the design, construction and operation of electric power plants of the same type as _____ (Title of QF) sited at _____ in _____ County, State of _____ (the "Facility").

2. I have reviewed and/or supervised the review of the construction in progress and of the completed Facility and it is my professional opinion that said Facility has been designed and built according to appropriate plans and specifications bearing the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" and with the stamp of the certifying licensed professional engineer of the design, and that the Facility was built to commercially acceptable standards for this type of facility.

3. I have no economic relationship to the designer or owner of said Facility and have made my analysis of the plans and specifications independently.

4. I hereby CERTIFY that the above statements are complete, true, and accurate to the best of my knowledge and I therefore set my hand and seal below.

Signed and Sealed

DATE: _____

SIGNATURE: _____

PRINTED NAME: _____

Independent Engineering Certification for
Operations and Maintenance Policy for a Qualifying Facility

1. I, _____ am a licensed professional engineer registered to practice and in good standing in the State of _____. I have substantial experience in the design, construction and operation of electric power plants of the same type as _____ (Title of QF) sited at _____ in _____ County, State of _____ (the "Facility").

2. I have reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M Policy") for the Facility and it is my professional opinion that, provided said Facility has been designed and built to appropriate standards, adherence to said O&M Policy will result in the Facility's producing at or near the design electrical output, efficiency, and capacity factor for twenty years, barring unforeseeable Force Majeure.

3. I have no economic relationship to the designer or owner of said Facility and have made my analysis of the plans and specifications independently.

4. I have supplied the owner of the Plant with at least one copy of said O&M Policy bearing my Stamp and the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" on each sheet thereof.

5. I hereby CERTIFY that the above statements are complete, true, and accurate to the best of my knowledge and I therefore set my hand and seal below.

Signed and Sealed

DATE: _____

SIGNATURE: _____

PRINTED NAME: _____

Exhibit C

Facility and Point of Delivery

Description of the Facility:

Seller's Facility is described as_____ [project name] and consists of:

Location:

Seller's Facility is located:

Point of Delivery:

The Point of Delivery between the Transmitting Entity and Avista's system will be: _____

Exhibit D

Transmission Agreement

Exhibit E, Page 1

Rates

Avoided Cost Rates For Non-Fueled Projects Smaller Than Ten Average Megawatts - Non-Levelized

Exhibit F

Initial Expected Energy

Exhibit G

Project Description

Exhibit H

Sample Availability Factor Calculation

Exhibit I

Initial Capacity Determination Documentation

POWER PURCHASE AGREEMENT

BETWEEN

Mariah Wind, LLC

AND

AVISTA CORPORATION

TABLE OF CONTENTS

POWER PURCHASE AGREEMENT

This Agreement is made by and between Avista Corporation, a Washington corporation ("Avista"), and Mariah Wind LLC a Oregon LLC ("Seller"). Avista and Seller are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seller will design, construct, own, operate and maintain a 10 megawatt electric power generating facility ("Facility") at Lexington, OR as more fully described in Exhibit G;

WHEREAS, Seller will operate the Facility as a Qualifying Facility, as defined by the Public Utility Regulatory Policies Act of 1978 ("PURPA"); and

WHEREAS, Seller will deliver and sell, and Avista will purchase, electric energy generated from the Facility subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows.

1 DEFINITIONS

Except as otherwise defined in this Agreement, whenever used in this Agreement and exhibits hereto, the following terms shall have the following meanings:

1.1 "Agreement" means this Power Purchase Agreement, including all exhibits, and any written amendments.

1.2 "Alternate Point of Delivery" shall have the meaning provided in Section 12.3 of this Agreement.

1.3 "Avoided Cost Rates" or "Base PURPA rate" shall have the meaning provided in Section 8.2 of this Agreement.

1.4 "aMW" means average megawatt(s). An average megawatt is calculated by dividing the total generation in MWh over a given period of time (e.g., a calendar month) by the number of hours in that period of time.

1.5 "Ancillary Services" means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the electrical systems in accordance with Prudent Utility Practices and any existing or future WECC requirements.

1.6 **"Availability Factor"** shall equal the ratio of the availability of all turbines (the "Numerator") as compared to the planned availability adjusted for Force Majeure and Schedule Outages (the "Denominator"). The Numerator shall be calculated by taking the number of hours for which each turbine is available multiplied by its nameplate capacity rating and summing these resulting values for all turbines in the Facility. The Denominator shall be calculated as the nameplate capacity rating for each turbine multiplied by the result of the total number of hours in the Calendar Month less Scheduled Outage hours during the Calendar Month less Force Majeure hours during the Calendar Month for each turbine and summing these resulting values for all turbines in the Facility. Accordingly the formula that will be applied to calculate the Availability Factor is:

$$\text{Availability Factor} = \frac{\text{(nameplate capacity for each turbine * number of hours such turbine was available during the Calendar Month}}{\text{[nameplate capacity for each turbine (total hours in the Calendar Month - Force Majeure hours – Scheduled Outage hours)]}}$$

A sample calculation is attached as Exhibit H to this Agreement for illustrative purposes only.

1.7 **"Balancing Authority Area"** means an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Balancing Authority Areas and contributing to frequency regulation of the interconnection. A Balancing Authority Area must be certified by the applicable reliability council (such as WECC or other reliability council).

1.8 **"Business Day"** means every day other than a Saturday or Sunday or a national holiday. National holidays shall be those holidays observed NERC.

1.9 **"Commercial Operation"** means the Facility is fully operational and reliable, is a Qualified Facility and Seller has fulfilled all of the conditions required by Section 4.2 of the Agreement.

1.10 **"Commercial Operation Date"** means the day following the date that the Facility first achieves Commercial Operation.

1.11 **"Commission"** means the Idaho Public Utilities Commission, or its successor.

1.12 **"Delay Liquidated Damages"** means the damages payable to Avista due to Seller's failure to achieve Commercial Operation by the Scheduled Operation Date as set out in Sections 4.3 and 4.4 of this Agreement.

1.13 **"Delay Period"** means all hours within a given calendar month for all months and partial months past the Scheduled Operation Date until Seller's Facility achieves Commercial Operation.

1.14 "Delay Price" means the positive difference, if any, of the Market Energy Price minus the Net Avoided Cost Rate applicable for the Delay Period as specified in Section 8.2 of this Agreement. If this calculation results in a value less than 0, the result of this calculation will be 0.

1.15 "Deliverable Net Output" means Net Output less any applicable Losses and other applicable adjustments associated with the transmission of energy from the Point of Interconnection to the Point of Delivery or to an Alternate Point of Delivery, if any.

1.16 "Effective Date" shall have the meaning provided in Section 4 of this Agreement.

1.17 "Excess Energy" shall have the meaning provided in Section 8.3 of this Agreement.

1.18 "Facility" means the electric energy generating facilities, including all equipment and structures necessary to generate and supply electric energy, more particularly described in Exhibit C.

1.19 "Facility Service Power" means the electric energy generated and used by the Facility during its operation to operate equipment that is auxiliary to primary generation equipment including, but not limited to, pumping, generator excitation, cooling or other operations related to the production of electric energy by the Facility.

1.20 "Force Majeure" shall have the meaning provided in Section 13 of this Agreement.

1.21 "FERC" means the Federal Energy Regulatory Commission, or its successor.

1.22 "Independent Engineering Certification" means certifications detailed in Section 3.4 provided by a professional engineer registered in Idaho or the state in which the Facility is located, who has no direct or indirect, legal, or equitable ownership interest in the Facility.

1.23 "Initial Capacity Determination" shall have the meaning provided in Section 3.5 of this Agreement.

1.24 "Initial Expected Energy" shall have the meaning provided in Section 3.6 of this Agreement.

1.25 "Interconnection Agreement" means, as applicable, the agreement between Seller and Avista or Seller and a Transmitting Entity that is providing interconnection service which governs how the Net Output is delivered to Avista's or the Transmitting Entity's electrical system at the Point of Interconnection during the Term of this Agreement.

1.26 "Interconnection Facilities" means, if applicable, all facilities required to connect the Facility to the Point of Interconnection, including connection, transformation, switching, relaying and safety equipment. Interconnection Facilities shall also include all telemetry, metering, cellular telephone, and/or communication equipment required under this Agreement regardless of location.

1.27 "Losses" means the loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the Point of Interconnection and the Point of Delivery.

1.28 "MW" means megawatt. One thousand kilowatts equals one megawatt.

1.29 "MWh" means megawatt-hour. One thousand kilowatt-hours equals one megawatt-hour.

1.30 "MAG Shortfall" shall have the meaning provided in Section 5.2 of this Agreement.

1.31 "Market Energy Price" means the monthly weighted average, based on daily on- and off-peak Net Output, of the daily On- and Off-Peak Dow Jones Mid-Columbia Firm Index (Dow Jones Mid-C Firm Index) prices for firm energy.

1.32 "Mechanical Availability Guaranty" or "MAG" shall have the meaning provided in Section 5.1 of this Agreement.

1.33 "Nameplate Capacity Rating" means the maximum generating capacity of the Facility, as determined by the manufacturer, and expressed in kilowatts (kW).

1.34 "NERC" means the North American Electric Reliability Corporation or its successor.

1.35 "Net Avoided Cost Rates" or "Net PURPA rate" shall have the meaning provided in Section 8.2 of this Agreement.

1.36 "Net Output" means the electric power generated by the Facility less Facility Service Power that is delivered to the Point of Interconnection, expressed in kilowatt-hours.

1.37 "Off-Peak" means all hours other than On-Peak hours.

1.38 "On-Peak" means the hours ending 0700 through 2200 Pacific Prevailing time, Monday through Sunday, excluding national holidays.

1.39 "Operating Year" means each 12-month period from January 1 through December 31.

1.40 "Point of Delivery" means the location, as specified in Exhibit C of this Agreement, where the electric energy produced by the Facility is delivered to Avista's electrical system.

1.41 "Point of Interconnection" means the high voltage side of Seller's step-up transformer at the point of interconnection between Seller's Facility and the Transmitting Entity's electric system, which is commonly referred to as the "busbar."

1.42 "Prudent Utility Practices" means the practices, methods, and acts commonly and ordinarily used in electrical engineering and operations by a significant portion of the electric power generation and transmission industry, in the exercise of reasonable judgment in the light of the facts known or that should have been known at the time a decision was made, that would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

1.43 "Qualifying Facility" or **"QF"** means a generating facility which meets the requirements for "QF" status under PURPA and part 292 of FERC's Regulations, 18 C.F.R. Part 292, and which has obtained certification of its QF status.

1.44 "Scheduled Operation Date" means the date specified in Section 3.1 when Seller anticipates achieving the Commercial Operation.

1.45 "Scheduled Outage" means any outage which is scheduled by the Seller to remove electrical or mechanical equipment from service for repair, replacement, maintenance, safety or any other reason, and which thereby limits the generating capability of the Facility to less than the Initial Capacity Determination.

1.46 "Start-Up Testing" means the start-up tests required by the factory and/or Avista that prove that the Facility is reliably producing electric energy.

1.47 "Term" shall have the meaning provided in Section 4.1 of this Agreement.

1.48 "Test Energy" shall be the energy generated during Start-Up Testing and shall have the meaning provided in Section 8.4 of this Agreement.

1.49 "Transmitting Entity" means any entity or entities that provide transmission and/or interconnection service to deliver electric energy from the Facility to Avista's electrical system at the Point of Delivery, if applicable.

1.50 "Transmission Agreement" means any agreement(s) entered into between Seller and a Transmitting Entity under which the Transmitting Entity shall provide firm transmission and any necessary Ancillary Services to facilitate deliveries hereunder from the Facility to Point of Delivery for the Term of this Agreement. The Transmission Agreement(s) is attached hereto as Exhibit D.

1.51 "WECC" means the Western Electricity Coordinating Council or its successor.

1.52 **"Wind Energy Forecasting"** shall have the meaning provided in Section 6 of this Agreement.

1.53 **"Wind Integration Charge"** shall mean a wind integration charge up to the wind integration charge authorized by the Commission in Order No. 30500, or any replacement wind integration charge authorized by the Commission. The Wind Integration Charge applicable to this Agreement is specified in Exhibit E.

2. WARRANTIES

2.1 **No Warranty by Avista.** Avista makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review Seller's design, specifications, equipment or Facility shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC and/or WECC reliability standard associated with the Facility or the delivery of electric energy from the Facility to the Point of Delivery.

2.2 **Seller's Warranty.** Seller warrants and represents that: (a) Seller has investigated and determined that it is capable of performing and will perform the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; (b) all professionals and experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller; (c) Seller will comply with all applicable laws and regulations and shall obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Facility; and (d) the Facility is, and during the Term of this Agreement will remain, a Qualifying Facility as that term is used in 18 C.F.R Part 292. Seller's failure to maintain Qualifying Facility status will be a material breach of this Agreement. Avista reserves the right to review the Seller's Qualifying Facility status and associated support and compliance documents at anytime during the Term of this Agreement.

3. CONDITIONS PRIOR TO COMMERCIAL OPERATION

3.1. **Time is of the Essence.** Time is of the essence in the performance of this Agreement and Seller understands and agrees that Avista is relying on Seller to meet the requirements of Section 4.2 on or before Dec 31,2012 (the "Scheduled Operation Date").

Seller understands and agrees that Avista's acceptance of deliveries of energy from Seller is contingent upon Seller fully satisfying each of the requirements in Section 4.2 of this Agreement prior to the Commercial Operation Date.

3.2 **Licenses, Permits and Approvals.** Prior to Commercial Operation, Seller shall submit to Avista written proof that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state, tribal or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 C.F.R. § 292.207, tribal, state and local business licenses, environmental permits, easements, leases and all required approvals by the Commission. Avista and Seller shall cooperate in petitioning the Commission for any required approvals.

3.3 **Opinion of Counsel.** Prior to Commercial Operation, Seller shall submit to Avista an opinion letter signed by an attorney admitted to practice and in good standing in the state where the Facility is located providing an opinion that Seller's licenses, permits and approvals as set forth in Section 3.2 above are legally and validly issued, are held in the name of the Seller, and based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of such opinion letter. The opinion letter will be in a form acceptable to Avista and will acknowledge that the attorney rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of the form shall not be unreasonably withheld.

3.4 **Independent Engineering Certifications.** Prior to Commercial Operation, Seller shall submit to Avista applicable Independent Engineering Certifications for (a) Construction Adequacy for a Qualifying Facility, and (b) Operations and Maintenance Policy for a Qualifying Facility as described in Commission Order No. 21690. Each Independent Engineering Certification shall be signed by a licensed professional engineer in good standing submitted in a form acceptable to Avista and will acknowledge that the licensed professional engineer rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of such forms shall not be unreasonably withheld.

3.5 **Initial Capacity Determination.** Seller shall design and operate the Facility in a manner such that under normal design conditions the Net Output does not exceed 10 aMW in any Calendar Month. Prior to Commercial Operation, Seller shall submit to Avista the maximum hourly generation capability of the Facility ("Initial Capacity Determination"). Such Initial Capacity Determination shall be determined either by use of the Nameplate Capacity Rating or such other means acceptable to Avista and shall be documented and submitted to Avista by Seller. Such documentation shall include the information listed in Exhibit I. Upon receipt of Seller's Initial Capacity Determination, Avista will review such determination within a reasonable time and, if acceptable to Avista, Avista shall issue to Seller its written approval of the Initial Capacity Determination. If the Initial Capacity Determination submitted by Seller is not acceptable to Avista, Avista will promptly notify Seller that Avista will not accept its Initial Capacity Determination. In such event, Avista shall engage, at Seller's sole expense, an independent qualified consultant to determine the Initial Capacity Determination. During the Term of this Agreement, Seller shall not cause the capacity of the Facility to be greater than the Initial Capacity Determination by any means, including by addition, upgrade, or replacement of any wind turbine or turbines.

3.6 Initial Expected Energy. Upon execution of this Agreement, Seller shall submit estimates of the energy, in MWh, the Seller expects the Facility to generate for each month of the first twelve months following Commercial Operation ("Initial Expected Energy"). Initial Expected Energy shall be attached to this Agreement as Exhibit F.

3.7 Interconnection Agreement. Prior to Commercial Operation, Seller shall provide Avista a copy of its Interconnection Agreement.

38 Ancillary Services. In the event that the Facility is located outside of Avista's Balancing Authority Area, Seller shall be responsible at its sole expense for obtaining any and all necessary Ancillary Services required to deliver Deliverable Net Output to the Point of Delivery consistent with applicable scheduling protocols. Seller shall demonstrate its compliance with this Section prior to Commercial Operation.

3.9 Security. Prior to Commercial Operation, Seller shall submit to Avista evidence of compliance with Section 9, Security.

3.10 Start-Up Testing. Avista agrees to take all Test Energy generated by the Facility during Start-Up Testing and delivered to the Point of Delivery, consistent with Section 8.4 of this Agreement. Prior to Commercial Operation, Seller shall submit to Avista evidence of completed Start-Up Testing.

3.11 Network Resource Designation. Prior to Commercial Operation, Seller shall, if requested by Avista, provide to Avista all data required by Avista to enable the Facility to be designated by Avista as a network resource.

3.12 Written Acceptance. Prior to Commercial Operation, Seller shall request and obtain from Avista written confirmation that all conditions to acceptance of electric energy have been fulfilled. Avista shall use reasonable commercial efforts to promptly provide Seller written confirmation that all conditions to acceptance of electric energy have been fulfilled or provide notice that such conditions have not been fulfilled.

4. TERM OF AGREEMENT AND COMMERCIAL OPERATION DATE

41 This Agreement shall be effective on the date last signed below or such other date set by Commission order (the "Effective Date") and shall continue for twenty years after the Commercial Operation Date (the "Term"), unless otherwise terminated as provided herein.

42 The Commercial Operation Date may occur only upon or after:

(a) all of the requirements in Section 3 of this Agreement are satisfied;

(b) Commission approval of this Agreement in a form acceptable to Avista has been received;

(c) Seller has demonstrated to Avista's satisfaction that the Facility is complete and able to provide energy in a consistent, reliable, and safe manner;

(d) Seller has requested in writing a Commercial Operation Date from Avista; and

(e) Seller has received written confirmation from Avista of the Commercial Operation Date, which confirmation will not be unreasonably withheld by Avista.

4.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Operation Date. If the Commercial Operation Date occurs after the Scheduled Operation Date, Seller shall pay Avista Delay Liquidated Damages. Delay Liquidated Damages will be calculated monthly as follows:

Delay Liquidated Damages are equal to Initial Expected Energy as provided in Exhibit F multiplied by the Delay Period for the month multiplied by the calendar month's Delay Price. Accordingly, Delay Liquidated Damages shall be calculated using the following formula:

Delay Liquidated Damages = Initial Expected Energy * Delay Period * Delay Price

4.4 Delay Liquidated Damages will be calculated pursuant to Section 4.3 for a maximum of 120 days past the Scheduled Operation Date. If the Facility fails to achieve Commercial Operation within 120 days of the Scheduled Operation Date, Seller shall pay Avista, in addition to the Delay Liquidated Damages calculated under Section 4.3, Delay Liquidated Damages calculated as follows:

The dollar amount deemed reasonable by the Commission multiplied by the Initial Capacity Determination with the Initial Capacity Determination Amount being measured in kilowatts.

Upon Commission approval of this Agreement and Avista's approval of the Initial Capacity Determination in accordance with section 3.5, Seller shall post liquid security ("Delay Security") in the form of cash, letter of credit, or other form acceptable to Avista equal to or exceeding the dollar amount deemed reasonable by the Commission multiplied by the Initial Capacity Determination with the Initial Capacity Determination being measured in kilowatts.

Failure of the Facility to achieve Commercial Operation within 120 days of the Scheduled Operation Date shall constitute a material breach of this Agreement and, therefore, Avista may, at its sole option, terminate this Agreement.

4.5 Seller shall pay Avista any Delay Liquidated Damages within five business days of when Avista presents any Delay Liquidated Damages billings to Seller or the 15th of the month, whichever is later. Seller's failure to pay Delay Liquidated Damages within the specified time will be a material breach of this Agreement.

4.6 The Parties agree that Avista will incur substantial damages if the Facility fails to achieve Commercial Operation by the Scheduled Operation Date and that the damages Avista

would incur due to such delay would be difficult or impossible to predict or calculate with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages and are not a penalty.

4.7 The Parties agree that this Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with PURPA and other applicable law. This Agreement shall become finally effective upon the Commission's approval of all terms and provisions herein without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

5. MECHANICAL AVAILABILITY GUARANTEE

5.1 Seller guarantees that the Facility will maintain a monthly minimum Availability Factor of 85% ("Mechanical Availability Guarantee" or "MAG"). After the Commercial Operation Date, Seller must demonstrate its compliance with this Mechanical Availability Guarantee monthly during the Term of the Agreement.

52 **Liquidated Damages for MAG Shortfall.** If the average Availability Factor of the turbines in any given calendar month falls below 0.85, the resulting shortfall shall be expressed in MWh as the "MAG Shortfall." In such circumstances, the MAG Shortfall shall be calculated by Seller in accordance with the following formula:

$$\text{MAG Shortfall} = \frac{((0.85 - \text{Availability Factor}) * \text{Net Output})}{\text{Availability Factor}}$$

5.3 If a positive MAG Shortfall occurs in any given calendar month, Avista, in its sole discretion, may require Seller to pay to Avista liquidated damages equal to the greater of (1) the product of the MAG Shortfall for that Calendar Month multiplied by (the Delay Price, or (2) the product of the MAG Shortfall multiplied by $1.50; *provided, however*, for the first Calendar Month in which Commercial Operation occurs the MAG Shortfall shall be prorated on the basis of the number of days in the period from the Commercial Operation Date through to the end of such Calendar Month. Each Party agrees and acknowledges that (a) the damages that Avista would incur due to the Facility's failure to achieve the MAG would be difficult or impossible to predict with certainty and (b) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages and are not a penalty.

5.4 Seller shall pay Avista any liquidated damages required by Section 5.3 within five business days of when Avista presents any billings for such liquidated damages to Seller or the 15th of the month, whichever is later. Seller's failure to pay Delay Liquidated Damages within the specified time will be a material breach of this Agreement.

55 Upon Avista's request, Seller shall provide documentation and supporting data in a form acceptable to Avista demonstrating its compliance with this Section.

6. WIND ENERGY FORECASTING

61 Avista, in its sole discretion, may perform wind energy forecasting ("Wind Energy Forecasting"). In the event that Avista chooses to perform Wind Energy Forecasting, Avista may pass the cost of such Wind Energy Forecasting on to the Seller in a manner consistent with the Commission's policy stated in Order No. 30500 issued in Case No. AVU-E-07-02.

6.2 In the event that Avista chooses to conduct Wind Energy Forecasting, the Seller shall provide Avista and/or its consultant, at Seller's sole expense, any and all data from the Facility necessary to perform such Wind Energy Forecasting, including but not limited to system control and data acquisition information.

6.3 In the event that Avista chooses to conduct Wind Energy Forecasting, Avista shall provide Seller with written notice of its intent to conduct such Wind Energy Forecasting.

7. SCHEDULING

7.1 Seller is responsible for supplying day(s)-ahead energy pre-schedules for each hour. Seller shall submit energy pre-schedules for the next Business Day by email, or by other mutually agreed upon means, to Avista no later than 5:30 am on the Business Day immediately preceding the day on which energy deliveries are to be made; *provided, however*, that for estimates of deliveries on weekends and holidays (as defined by NERC), Seller and Avista shall follow scheduling procedures in accordance with then current WECC standard scheduling practices with regard to multiple day scheduling.

7.2 Seller shall create an electronic tag (e.g., e-Tag) that reflects the day-ahead hourly estimate no later than 2:00 pm on the Business Day immediately preceding the day on which energy deliveries are to be made; *provided, however*, that for estimates of deliveries on weekends and holidays (as defined by NERC), Seller and Avista shall follow scheduling procedures in accordance with then current WECC standard scheduling practices with regard to multiple day scheduling.

73 The day-ahead estimate shall be provided for preschedule purposes and shall not restrict Seller's right to submit revised hour-ahead schedules as provided herein.

74 At least ninety minutes prior to the start of each delivery hour during the delivery Business Day, Seller shall provide Avista with an updated electronic tag that reflects the firm schedule for that delivery hour. Seller shall pay any energy imbalance charges or penalties imposed by the Transmission Entity on the delivery of the Deliverable Net Output to the Point of Delivery.

7.5 Email contact information with regard to pre-scheduling and telephone contact information with regard to generation level changes, interruptions or outages are specified in Exhibit A, Communication and Reporting.

7.6 Should circumstances change in the WECC or WECC sub-region, within which Avista operates its electric system, dictate that scheduling protocols or timing of schedule notifications need to conform, then the Parties agree to negotiate in good faith to a mutually agreed modification of this Section 7 as necessary.

8. PURCHASE PRICES AND PAYMENT

8.1 Except when either Party's performance is excused as provided herein, for the Term of this Agreement, Seller shall deliver all Deliverable Net Output from the Facility to Avista at the Point of Delivery or, if applicable, an Alternate Point of Delivery. For all Deliverable Net Output delivered to Avista at the Point of Delivery or an Alternate Point of Delivery, Avista shall pay the applicable rate specified in Sections 8.2, 8.3, and 8.4 of this Agreement.

8.2 **Deliverable Net Output Equal to or Less Than the Initial Capacity Determination.** For all Deliverable Net Output delivered to Avista at the Point of Delivery or at an Alternate Point of Delivery for each hour that is not Test Energy or Excess Energy, Avista shall pay the applicable avoided cost rate based upon the On-Peak or Off-Peak Avoided Cost Rates For Non-Fueled Projects Smaller Than Ten Average Megawatts - Non-Levelized in effect on the Effective Date ("Avoided Cost Rates" or "Base PURPA rate"), less the Wind Integration Charge plus the Wind Integration Credit, as specified in Exhibit E ("Net Avoided Cost Rates" or "Net PURPA rate"). The Net Avoided Cost Rates to be paid under this section are specified on page 4 of Exhibit E.

8.3 **Excess Energy.** Excess Energy is Deliverable Net Output, expressed in MWh, which Seller delivers to Avista at the Point of Delivery or at an Alternate Point of Delivery that exceeds 10 aMW for that Calendar Month. Avista will take all Excess Energy, but Avista will not pay for any Excess Energy.

8.4 **Test Energy.** Test Energy is Deliverable Net Output produced by the Facility during Start-Up Testing and delivered to Avista at the Point of Delivery. Seller shall sell all Test Energy produced by the Facility to Avista and Avista shall purchase at 50 percent of the Market Energy Price or 50 percent of the applicable Avoided Cost Rate specified in Exhibit E, whichever is less, all such Test Energy that is delivered to the Point of Delivery or an Alternate Point of Delivery.

8.5 **Payments to Seller.** Avista shall prepare and submit to Seller monthly statements during the Term of the Agreement based upon Deliverable Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the 15th

day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

8.6 Payments to Avista and Right of Set Off. If Seller is obligated to make any payment or refund to Avista, Seller agrees that Avista may set off such payment or refund amount against any current or future payments due Seller under this Agreement. If Avista does not elect to set off, or if no current or future payment is owed by Avista, Avista shall submit an invoice to Seller for such payments. Seller shall pay Avista no later than the 15th day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

8.7 Interest. In addition to the remedies set forth in Section 17 of this Agreement, any amounts owing after the due date specified in Sections 8.5 and 8.6 will be subject to interest in the amount of one and one half percent (1.5%) per month, not to exceed the maximum rate allowed by the law, multiplied by the unpaid balance.

8.8 Wire Transfer. All payments shall be made by ACH or wire transfer in accordance with further agreement of the Parties.

8.9 Environmental Attributes. The avoided cost rates contained in Exhibit E of this Agreement compensate Seller only for the value of the energy and capacity provided by the facility. The avoided cost rates do not include any compensation to Seller for any environmental attributes associated with the facility. Avista waives any claim to ownership of Environmental Attributes, and waives any claim that such ownership passes to Avita pursuant energy and capacity sales made under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs), and Tradable Renewable Certificates (TRCs) directly associated with the production of energy from the Seller's Facility.

9. SECURITY

9.1 Insurance. Prior to operating the Facility, Seller, at its own cost, shall obtain and maintain the following insurance in force over the term of this Agreement and shall provide certificates of all insurance policies. All insurance policies required to fulfill the requirements of this Section 9 shall include language requiring that any notice of cancellation or notice of change in policy terms be sent to Avista by the insurance carrier(s) at least sixty days prior to any change or termination of the policies.

9.1.1 General Liability. Seller shall carry commercial general liability insurance for bodily injury and property damage with a minimum limit equal to $1,000,000 for each occurrence. The deductible shall not exceed the Seller's financial ability to cover claims and shall not be greater than prevailing practices for similar operations in the State of Idaho.

9.1.2 Property. Seller shall carry all-risk property insurance for repair or replacement of the Facility. The limit of property insurance shall be sufficient to restore operations in the event of reasonably foreseeable losses from natural, operational, mechanical and human-caused perils. The deductible shall not exceed the Seller's financial ability to fund the cost of losses and shall not be greater than prevailing practices for similar operations in the State of Idaho.

9.1.3 Qualifying Insurance. The insurance coverage required by this Section 9 shall be obtained from an insurance company reasonably acceptable to Avista and shall include an endorsement naming Avista as an additional insured and loss payee as applicable.

9.1.4 Notice of Loss or Lapse of Insurance by Seller. If the insurance coverage required by this Section 9 is lost or lapses for any reason, Seller will immediately notify Avista in writing of such loss or lapse. Such notice shall advise Avista of (i) the reason for such loss or lapse and (ii) the steps Seller is taking to replace or reinstate coverage. Notice provided by the insurer required by Section 9.1 shall not satisfy the notice requirement of this Section and Seller's failure to provide the notice required by this Section and/or to promptly replace or reinstate coverage will constitute a material breach of this Agreement.

9.2 Ongoing Security for Performance. For the Term of this Agreement, Seller will provide Avista with the following:

9.2.1 Insurance. Upon Avista's request, Seller shall provide Avista evidence of compliance with the provisions of Section 9.1. If Seller fails to comply, such failure will be a material breach and may only be cured by Seller promptly supplying evidence that the required insurance coverage has been replaced or reinstated.

9.2.2 Engineer's Certification. Every three years after the Commercial Operation Date, Seller will supply Avista with a Certification of Ongoing Operations and Maintenance from a Registered Professional Engineer licensed in the State of Idaho the state in which the Facility is located, which certification shall be in the form specified in Exhibit B. Seller's failure to supply the certificate required by this Section 9.2.2 will be a material breach that may only be cured by Seller promptly providing the required certificate.

9.3 Licenses and Permits. During the Term of this Agreement, Seller shall maintain compliance with all permits and licenses described in Section 3.2 of this Agreement. In addition, Seller will obtain, and supply Avista with copies of, any new or additional permits or licenses that may be required for Seller's operations. At least every fifth year after the Commercial Operation Date, Seller will update the documentation described in Section 3.2. If at any time Seller fails to maintain compliance with the permits and licenses described in Section 3.2 or this Section, or to provide documentation required by this Section, such failure will be a material

breach of this Agreement that may only be cured by Seller submitting to Avista evidence of compliance.

10. CURTAILMENT, INTERRUPTION OR REDUCTION OF DELIVERY

Avista may require Seller to curtail, interrupt or reduce delivery of Deliverable Net Output if, in accordance with Section 11.2, Avista determines that curtailment, interruption or reduction is necessary because of a Force Majeure event or to protect persons or property from injury or damage, or because of emergencies, necessary system maintenance, system modification or special operating circumstances. Avista shall use commercially reasonable efforts to keep any period of curtailment, interruption, or reduction to a minimum. In order not to interfere unreasonably with Seller operations, Avista shall, to the extent practical, give Seller reasonable prior notice of any curtailment, interruption, or reduction, the reason for its occurrence and its probable duration. Seller understands and agrees that Avista may not be able to provide notice to Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Avista in emergency circumstances, real-time operations of the electric system, and/or unplanned events.

11. OPERATION

11.1 Communications and Reporting. Avista and the Seller shall maintain appropriate operating communications through the Communicating and Reporting Guidelines specified in Exhibit A.

11.2 Excuse From Acceptance of Delivery of Energy.

11.2.1 Avista may curtail, interrupt, reduce or suspend delivery, receipt or acceptance of Deliverable Net Output if Avista, in its sole discretion, reasonably determines that such curtailment, interruption, reduction or suspension is necessary, consistent with Prudent Utility Practice, and that the failure to do so may:

(a) endanger any person or property, or Avista' s electric system, or any electric system with which Avista's system is interconnected;

(b) cause, or contribute to, an imminent significant disruption of electric service to Avista's or another utility's customers; or

(c) interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to, Avista' s electric system or other property of Avista.

11.2.2 Avista shall promptly notify Seller of the reasons for any such curtailment, interruption, reduction or suspension provided for in Section 11.2. Avista shall use reasonable efforts to limit the duration of any such curtailment, interruption, reduction or suspension. Any curtailment, interruption, reduction or suspension provided for in Section 11.2 shall not count against Seller in the calculation of the MAG under Section 5 of this Agreement.

11.3 Scheduled Outage. On or before December 15 prior to each calendar year, Seller shall submit a written proposal of Scheduled Outages for the upcoming calendar year. Such written proposal of Scheduled Outages shall contain the percentage of hours in each calendar month where the Facility is expected to be on Scheduled Outage. Seller may update the annual Scheduled Outages proposal periodically. The Seller in no instance may change Scheduled

Outages for the current or following 2 calendar months. Avista and Seller shall mutually agree as to the acceptability of the proposal and any updates or changes to the proposal. The Parties' determination as to the acceptability of Seller's timetable for Scheduled Outages shall take into consideration Prudent Utility Practices, Avista's system requirements and Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed Scheduled Outages. The Parties shall cooperate in determining mutually acceptable times for Scheduled Outages.

11.4 Seller's Risk. Seller shall design, construct, own, operate and maintain the Facility at its own risk and expense in compliance with all applicable laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of any governmental authority.

11.5 Avista's Right to Inspect. Seller shall permit Avista to inspect and audit the Facility, any related production, delivery and scheduling documentation or the operation, use or maintenance of the Facility at any reasonable time and upon reasonable notice. Seller shall provide Avista reasonable advance notice of any Facility test or inspection performed by or at the direction of Seller.

11.6 Seller Obligations in Accordance with Prudent Utility Practices. Seller shall own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow reliable generation and delivery of Deliverable Net Output to Avista for the full Term of the Agreement, in accordance with Prudent Utility Practices.

12.0 INTERCONNECTION AND TRANSMISSION

12.1 If Seller is interconnecting its Facility to Avista's electrical system, Seller shall design, construct, install, own, operate and maintain all Interconnection Facilities so as to allow safe, reliable generation and delivery of electric energy to Avista for the full term of the Agreement. If applicable, prior to the commencement of the first delivery of Deliverable Net Output, Seller and Avista shall execute an Interconnection Agreement. If Seller is interconnecting its Facility with a Transmitting Entity other than Avista, Seller shall make all necessary arrangements and pay all costs to interconnect its Facility with the electrical system of such Transmitting Entity.

12.2 If Seller is not interconnecting its Facility to Avista's electrical system, Seller shall, arrange for and pay for all costs associated with transmission, losses, and Ancillary Services and shall provide Avista with copies of all executed Transmission Agreements in a form reasonably satisfactory to Avista, providing for the firm transmission of Deliverable Net Output from the Facility to the Point of Delivery for the Term of this Agreement. Seller shall not consent to any modification of any firm Transmission Agreement without Avista's advance written approval, which approval shall not be unreasonably withheld.

12.3 In the event that Seller is required to curtail, interrupt or reduce delivery of Deliverable Net Output to the Point of Delivery, Seller shall arrange at its own expense to deliver

Deliver

able Net Output to a secondary point of delivery ("Alternate Point of Delivery"), and Avista shall use reasonable commercial efforts to accept Deliverable Net Output at such Alternate Point of Delivery.

12.5 The termination, cancellation or expiration of any Transmission Agreement required to deliver electric energy to Avista under this Agreement shall constitute a material breach of this Agreement, and Avista may terminate the Agreement by giving Seller written notice of such termination which shall be effective upon written notice of such termination, cancellation or expiration of the applicable Transmission Agreement.

12.6 Seller shall be responsible for any and all costs and expenses related to transmission of the Deliverable Net Output to the Point of Delivery under this Agreement, including but not limited to Ancillary Services and any costs or expenses incurred by Avista resulting from the Transmission Agreements including, but not limited to, any charges, reimbursable expenses or other amounts payable by Avista to any Transmitting Entity. Seller shall defend, indemnify and hold harmless, Avista from all claims, losses, harm, liabilities, damages, costs, and expenses including, but not limited to, reasonable attorneys' fees, arising out of any act or omission of Seller in connection with the Transmission Agreements, including, but not limited to, any breach of or default under any of the Transmission Agreements by Seller.

13. FORCE MAJEURE

13.1 As used in this Agreement, "Force Majeure" means any cause beyond the control of the Seller or Avista which, despite the exercise of due diligence, such party is unable to prevent or overcome. Neither Party shall be liable to the other Party, or be considered to be in breach of or default under this Agreement, for delay in performance due to a cause or condition beyond such Party's reasonable control which despite the exercise of reasonable due diligence, such Party is unable to prevent or overcome ("Force Majeure"), including but not limited to:

(a) fire, flood, earthquake, volcanic activity; court order and act of civil, military or governmental authority; strike, lockout and other labor dispute; riot, insurrection, sabotage or war; unanticipated electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected; serial defects in wind turbine equipment resulting in a prolonged outage based on maintenance protocols as directed by the manufacturer; or

(b) an 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.

Notwithstanding anything to the contrary in this Agreement, changes in weather conditions that do not cause substantial physical damage to the Facility that prevents the operation of all or part of the Facility, including changes in wind speed or other wind conditions, shall not constitute Force Majeure under this Agreement. Also, notwithstanding anything to the contrary in this

Agreement, equipment or mechanical breakdowns or failures of the Facility shall not constitute Force Majeure, unless such equipment or mechanical breakdown or failure is caused by an event that is itself Force Majeure.

13.2 In the event of a Force Majeure event, the time for performance shall be extended by a period of time reasonably necessary to overcome such delay. Avista shall not be required to pay for Deliverable Net Output which, as a result of any Force Majeure event, is not delivered.

13.3 Nothing contained in this Section shall require any Party to settle any strike, lockout or other labor dispute.

13.4 In the event of a Force Majeure event, the delayed Party shall provide the other Party notice by telephone or email as soon as reasonably practicable and written notice within fourteen days after the occurrence of the Force Majeure event. Such notice shall include the particulars of the occurrence. The suspension of performance shall be of no greater scope and no longer duration than is required by the Force Majeure and the delayed Party shall use its best efforts to remedy its inability to perform.

13.5 Force Majeure shall include any unforeseen electrical disturbance that prevents any electric energy deliveries from occurring at the Point of Delivery or Alternate Point of Delivery.

14. INDEMNITY

14.1 Each Party shall defend, indemnify and hold harmless, the other Party, its directors, officers, employees, and agents (as the "Indemnitee") from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) to the extent arising from or attributable to the performance or non-performance of that Party's (as the "Indemnitor") obligations under this Agreement, including but not limited to, damage to tangible property and bodily injury or death suffered by any person (including employees of Seller or Avista or the public), provided that:

(a) No Indemnitee shall be indemnified for any loss, liability, injury, or damage resulting from its sole negligence, gross negligence, fraud or willful misconduct; and

(b) The Indemnitor shall be entitled, at its option, to assume and control the defense and any settlement of such suit.

Each indemnity set forth in this Section is a continuing obligation, separate and independent of the other obligations of each Party and shall survive the expiration or termination of this Agreement.

14.2 SELLER 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.

14.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, SAVINGS OR REVENUE, LOSS OF THE USE OF EQUIPMENT, COST OF CAPITAL, OR COST OF TEMPORARY EQUIPMENT OR SERVICES, WHETHER BASED IN WHOLE OR IN PART IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY.

15. ASSIGNMENT

15.1 Seller shall not assign its rights or delegate its duties under this Agreement without the prior written consent of Avista, which consent shall not be unreasonably withheld. 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.

15.2 Seller shall have the right, subject to the obligation to provide security specified in Section 9, without Avista's consent, but with a thirty days prior written notice to Avista, to make collateral assignments of its rights under this Agreement to satisfy the requirements of any development, construction, or other reasonable long term financing. A collateral assignment shall not constitute a delegation of Seller's obligations under this Agreement, and this Agreement shall not bind the collateral assignee. Any collateral assignee succeeding to any portion of the ownership interest of Seller shall be considered Seller's successor in interest and shall thereafter be bound by this Agreement.

16. NO UNSPECIFIED THIRD PARTY BENEFICIARIES

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 15.

17. DEFAULT AND TERMINATION

17.1 In addition to any other breach or failure to perform under this Agreement, including without limitation failure to deliver Deliverable Net Output when scheduled or in the amounts required by this Agreement that is not otherwise excused under this Agreement, each of the following events shall constitute a Default:

(a) Seller abandons the Facility;

(b) The Facility ceases to be a Qualifying Facility;

(c) A Party becomes insolvent (e.g., is unable to meet its obligations as they become due or its liabilities exceed its assets);

(d) Seller makes a general assignment of substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws;

(e) Seller has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed or stayed within sixty days after it is filed;

(f) Seller is in default under any Agreement related to this Agreement; or

(g) Termination, cancellation or expiration of any Transmission Agreement required for Seller to deliver electric energy to Avista under this Agreement.

17.2 Notice and Opportunity to Cure. In the event of a Default, the non-Defaulting Party shall give written notice to the Defaulting Party of a Default in accordance with Section 30. Except as provided in Section 17.1(e), if the Defaulting Party has not cured the breach within thirty days after receipt of such written notice, the non-Defaulting Party may, at its option, terminate this Agreement and/or pursue any remedy available to it in law or equity; provided that, if a Default occurs under Sections 4.4,4.5, 12.5, 17.1(a), and/or 17.1(g), Avista may immediately terminate this Agreement without opportunity to cure, and such termination shall become effective upon written notice of Default.

17.3 Additional Rights and Remedies. Any right or remedy afforded to either Party under this Agreement on account of a Default by the other Party is in addition to, and not in lieu of, all other rights or remedies available to such Party under any other provisions of this Agreement, by law or otherwise on account of the Default.

17.4 Damages. If this Agreement is terminated as a result of Seller's Default after the Commercial Operation Date, Seller shall pay Avista, in addition to other damages, the positive difference, if any, between the purchase price specified in Section 8.2 and the cost to replace the Deliverable Net Output for twelve months beginning on the date of the original Default, plus all associated transmission costs to Avista to acquire such replacement Deliverable Net Output.

18. DISPUTE RESOLUTION

Each Party shall strive to resolve any and all differences during the term of the Agreement through meetings and discussions. If a dispute cannot be resolved within a reasonable time, not to exceed thirty days, each Party shall escalate the unresolved dispute to a senior officer designated by each Party. If the senior officers are not able to resolve the dispute within ten Business Days of escalation then either Party may either agree to mediate or arbitrate the dispute or request a hearing before the Commission.

19. RELEASE BY SELLER

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

19.1 Electric disturbance or fluctuation that migrates, directly or indirectly, from Avista's electric system to the Facility;

19.2 Interruption, suspension or curtailment of electric service to the Facility or any other premises owned, possessed, controlled or served by Seller, which interruption, suspension or curtailment is caused or contributed to by the Facility or the interconnection of the Facility with any electric system;

19.3 Disconnection, interruption, suspension or curtailment by Avista pursuant to terms of this Agreement or the Interconnection Agreement; or

19.4 Disconnection, interruption, suspension or curtailment of transmission service by a Transmitting Entity or any unforeseen cost or increase in costs to Seller imposed by a Transmitting Entity.

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

The duties, obligations and liabilities of the Parties under this Agreement 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. 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 promptly take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may be reasonably 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 of such Party's right to assert or rely upon any such provision or right in that or any subsequent instance; rather, the same shall be and remain in full force and effect.

24. AMENDMENT

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 and subsequently approved by the Commission.

25. CHOICE OF LAWS AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho without reference to its choice of law provisions. Venue for any litigation arising out of or related to this Agreement shall lie in the District Court of the Fourth Judicial District of Idaho in and for the County of Ada.

26. HEADINGS

The Section headings in this Agreement are for convenience only and shall not be considered part of or used in the interpretation of this Agreement.

27. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if the invalid or unenforceable provision were omitted.

28. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed as an original, and together shall constitute one and the same document.

29. TAXES

Seller shall pay before delinquency all taxes and other governmental charges which, if failed to be paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

30. NOTICES

Unless otherwise specified, all written notices or other communications required by or provided under this Agreement shall be mailed or delivered to the following addresses, and shall be considered delivered when deposited in the US Mail, postage prepaid, by certified or registered mail or delivered in person:

to Avista:	Director, Power Supply Avista Corporation P.O. Box 3727 Spokane, WA 99220
To Seller:	Christopher K. Mason Mariah Wind, LLC PO Box 605 Victor, ID 83455

Either Party may change its designated representative to receive notice and/or address specified above by giving the other Party written notice of such change.

31. SURVIVAL

Rights and obligations which, by their nature, should survive termination or expiration of this Agreement, will remain in effect until satisfied, including without limitation, all outstanding financial obligations, and the provisions of Section 14 (Indemnity) and Section 18 (Dispute Resolution).

32. ENTIRE AGREEMENT

This Agreement, including the following exhibits which are attached and incorporated by reference herein, constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous oral or written agreements between the Parties with respect to the subject matter hereof.

Exhibit A	Communications and Reporting
Exhibit B	Independent Engineering Certifications for Construction Adequacy for a Qualifying Facility and Operations and Maintenance Policy
Exhibit C	Facility and Point of Delivery
Exhibit D	Transmission Agreement
Exhibit E	Rates
Exhibit F	Initial Expected Energy
Exhibit G	Project Description
Exhibit H	Sample Availability Factor Calculation
Exhibit I	Initial Capacity Determination Documentation

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

SELLER	**AVISTA CORPORATION**
By: Christopher K Mason	By: _____
Printed Name: Christopher K. Mason	Printed Name:
Title: General Manager/Member	Title:
Date: Nov 16, 2010	Date:

Exhibit A

Communication and Reporting

(1) Email communications between Seller and Avista shall be submitted to:

Avista: kim.mattern@avistacorp.com; or
dale.hubbard@avistacorp.com

Seller: chris.mason@mariahwindllc.com
Alternate:

(2) All oral communications relating to electric energy scheduling, generation level changes, interruptions or outages between Seller and Avista will be communicated on a recorded line as follows:

(a) Pre-Schedule (5:30 am to 12:00 noon on Business Days):

Avista Pre-Scheduler: (509) 495-4911
Alternate Phone: (509) 495-4073

Seller: 406-579-2136
Alternate Phone:

(b) Real-Time Schedule (available 24 hours a day)

Avista Real-Time Scheduler: (509) 495-8534

Seller: 406-579-2136
Alternate Phone:

(3) Either Party may change its contact information upon written notice to the other Party.

Exhibit B

Independent Engineering Certification for Construction Adequacy for a Qualifying Facility

1. I, _____ am a licensed professional engineer registered to practice and in good standing in the State of _____. I have substantial experience in the design, construction and operation of electric power plants of the same type as (Title of QF) sited at _____ in _____ County, State of _____ (the "Facility").

2. I have reviewed and/or supervised the review of the construction in progress and of the completed Facility and it is my professional opinion that said Facility has been designed and built according to appropriate plans and specifications bearing the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" and with the stamp of the certifying licensed professional engineer of the design, and that the Facility was built to commercially acceptable standards for this type of facility.

3. I have no economic relationship to the designer or owner of said Facility and have made my analysis of the plans and specifications independently.

4. I hereby CERTIFY that the above statements are complete, true, and accurate to the best of my knowledge and I therefore set my hand and seal below.

Signed and Sealed

DATE: _____

SIGNATURE: _

PRINTED NAME:

Independent Engineering Certification for
Operations and Maintenance Policy for a Qualifying Facility

1. I, _____ am a licensed professional engineer registered to practice and in good standing in the State of _____. I have substantial experience in the design, construction and operation of electric power plants of the same type as
(Title of QF) sited at
in _____County, State of _____ (the "Facility").

2. I have reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M Policy") for the Facility and it is my professional opinion that, provided said Facility has been designed and built to appropriate standards, adherence to said O&M Policy will result in the Facility's producing at or near the design electrical output, efficiency, and capacity factor for twenty years, barring unforeseeable Force Majeure.

3. I have no economic relationship to the designer or owner of said Facility and have made my analysis of the plans and specifications independently.

4. I have supplied the owner of the Plant with at least one copy of said O&M Policy bearing my Stamp and the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" on each sheet thereof.

5. I hereby CERTIFY that the above statements are complete, true, and accurate to the best of my knowledge and I therefore set my hand and seal below.

Signed and Sealed

DATE:_____

SIGNATURE: __

PRINTED NAME:

Exhibit C

Facility and Point of Delivery

Description of the Facility:

As a wind generating facility utilizing a renewable fuel source, the facility will be a qualifying facility as defined in 18 C.F.R. § 292.203(a) and (c).

Seller's Facility is described as Mariah wind, LLC and consists of 4 Clipper C105 2.5MW wind turbines. These are variable speed turbines with synchronous permanent magnet generators. The total nameplate capacity is 10 MW. The station service requirements will be minimal, consisting of the substation housing and equipment, and lighting. The total expected station and line losses are 6.35% (approx. 3% station losses, and 3.35% line losses from Mariah to Lewiston). Thus, the net amount of power to be delivered to the Company's electric system will not exceed 9.365 MW at any given moment.

The project will interconnect to a 69 kilovolt line on Columbia Basin Electric Cooperative's system at the project site, and then will be delivered to Bonneville Power Administration's (BPA's) system at Ione Substation. BPA will provide transmission from Ione to Lewiston via Boardman.

Seller and Avista may mutually agree to substitution, any time prior to the Commercial Operation Date, a different manufacturer and/or model wind turbine provided that the aggregate nameplate rating of the Facility does not exceed 10 MW.

If the Seller wishes to substitute different wind turbines, the Seller shall provide detailed specifications of the proposed substitute wind turbines to Avista. Avista will then review this detailed information and either accept or reject the Seller's proposed substitute wind turbines. Avista acceptance of the substitute wind turbines will be required by both confirmations that the interconnection is able to accommodate the substitute wind turbines and that the substitute wind turbines are acceptable under this Agreement. Only after Avista's acceptance of the substitute wind turbines shall the Seller be allowed to install the substitute wind turbines, which acceptance shall not be unreasonably withheld.

The technical description of the project is below:

Energy source: Wind.

Number of rotating generators: 4.

Number and nameplate rating of static conversion devices: 0.

Total nameplate rating: 10 MW.

Type of turbine: Clipper Liberty 2.5MW Wind Turbine.

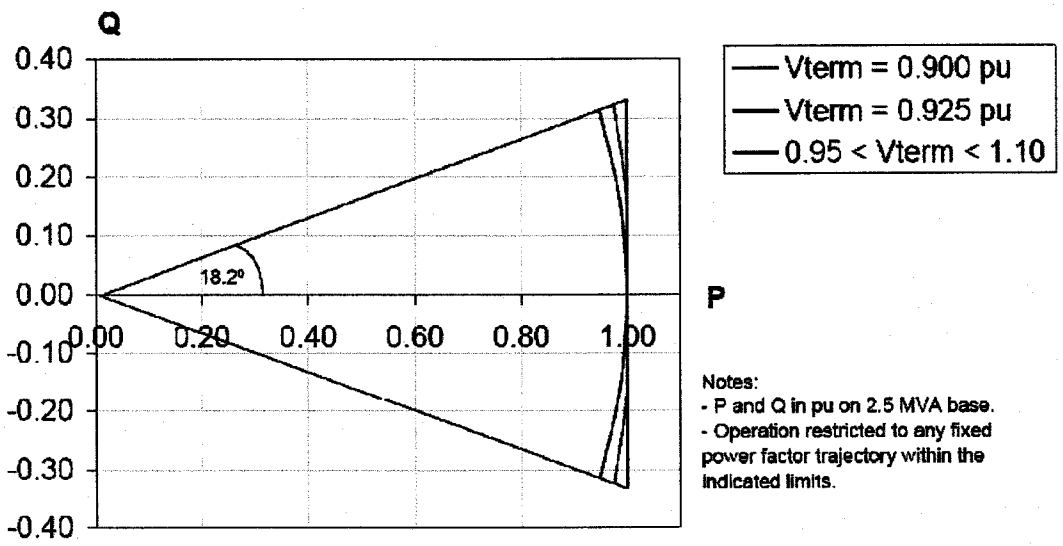
Turbine auxiliary consumption depends to turbine state and outside ambient temp. For example liberty machine will consume kw of as low as 11.3kW when offline and the ambient is above 30C. The same machine could consume kw of as high as 27.5kw when offline at with ambient temperature being below -5C. The kvar consumption is around 17kvar per turbine which depends to turbine state and ambient temp as mentioned above. Contact Clipper to get further information on the turbine auxiliary consumption at various turbine states and ambient conditions.

Generator Data, Synchronous Machines.

Clipper Liberty Wind Turbine is a type 4 wind turbine. Clipper Liberty series wind turbine is an inverter based wind turbine with 4 permanent synchronous AC generators. The generators are fully decoupled from the grid through power electronic inverters. The output voltage of the inverters is at 690VAC three phase, connected through a power distribution panel and breaker to a pad mount transformer (2750kVA). The 690VAC connection of the pad mount transformer is Y solidly grounded.

The liberty turbines can be set to operate at fixed power factor values (0.95 leading to 0.95 lagging). Below is the reactive capability curve of the machine.

Clipper Windpower 2.5 MW Liberty Series WTG
Reactive Capability Curve



- Complex power, kVA: 2500kVA
- Active power, kW: 2500 kW
- Terminal voltage, kV: 0.69kV

Clipper turbine is a type 4 with full power conversions in which the generators are decoupled from the grid. The individual generator parameters do not affect the turbine interaction with the grid. It is mainly the GCUs (Generator control units or power electronic inverters) govern the turbine interaction with the grid. For the transient stability analysis and short circuit studies that requires generator parameters as inputs to the model, Clipper recommends using the following values for Clipper's generator parameters.

Clipper WTG / generator's parameters		
Voltage	690	

	V	
No of Poles	N/A	
Sub-transient reactance (saturated), X"d	∞	
Ratio of reactance to resistance (X/R)	1.0	
Natural Impedance (X and R) if any resistance limiting neutral is used	∞	
Transient reactance, X'd	∞	
Synchronous reactance, Xd	∞	
Sub-transient time constant, T"d	∞	
DC time constant, Tdc	∞	
Positive sub-	∞	

transient reactance, X1		
Negative sub-transient reactance, X2	∞	
Zero-sequence sub-transient reactance, X0	∞	

Location:

Seller's Facility is located:

Five miles NE of Lexington, Oregon – Morrow County

Between Baseline Lane and Beach Lane

T1N R26E section 28: E half of SW quarter

Point of Delivery:

The Point of Delivery between the Transmitting Entity and Avista's system will be:

Hatwai Substation, Lewiston, ID

Exhibit D

Transmission Agreement

Mariah Wind is a registered transmission customer with BPA. A transmission request has been placed with BPA Transmission Services for transmission from the Ione Substation to Hatwai via Boardman. Mariah Wind is placed in the transmission queue and will provide Avista with the Transmission and Interconnection Agreements prior to commercial operation in accordance with sections 3.7 and 3.8 of the PPA

Exhibit E, Page 1

Rates

Seller Has Selected the Non-Levelized Avoided Cost Rates For Non-Fueled Projects Smaller Than Ten Average Megawatts

Payments according to the rate schedule set forth below will be adjusted to account for heavy and light load hours of the day and for monthly seasonality price adjustments according to orders approved by the Commission and in effect for Avista on the date of execution of this Agreement.

AVISTA
AVOIDED COST RATES FOR NON-FUELED PROJECTS
SMALLER THAN TEN MEGAWATTS
March 15, 2010
$/MWh

LEVELIZE							NON•LEVELIZED	
CONTRACT LENGTH (YEARS)	ON-LINE YEAR						CONTRACT YEAR	NON-LEVELEZED RATES
	2010	2011	2012	2013	2014	2015		
1	56.94	60.32	64.06	67.60	7141	75.50	2010	56.94
2	58.56	62.11	65.76	69.43	73.37	76.53	2011	60.32
3	60.25	63.80	67.49	71.29	74.74	77,71	2012	64.06
4	61.87	65.47	69.25	72.73	75.94	78.80	2013	67.60
5	63.47	67.16	70.70	73.98	77.07	79.87	2014	71.41
6	65.09	68.60	71.97	75.15	78.16	80.93	2015	75.50
7	66.50	69.87	73.15	76.26	79.21	82.01	2016	77.85
8	67.76	71.05	74.26	17.31	80.27	83.10	2017	80.16
9	68.92	72.16	75.31	78.36	81.34	84.20	2018	82.68
10	70.02	73.20	76.35	79.40	82.40	85.30	2019	85.15
11	71.05	74.22	77.37	80.44	83.46	86.40	2020	87.71
12	72.05	75.23	78.38	81.47	84.51	87.45	2021	90.73
13	73.03	76.21	79.37	82.48	85.52	88.47	2022	93.88
14	73.99	77 18	80.36	83.46	86.50	89.46	2023	97.15
15	74.93	78,13	81.30	84.40	87.45	90.42	2024	100.55
16	75.84	79.04	82.21	85.31	88.37	91.35	2025	104.08
17	76.72	79.92	83.09	86.20	89.26	92.29	2026	107.09
18	77.57	80.76	83.94	87.05	90.16	93.21	2027	110.18
19	78.39	81.58	84.76	87.91	91.04	94.11	2028	113.37
20	79.17	82.37	85.58	88.75	91.89	94.99	2029	116.67
							2030	120.06
							2031	124.62
							2032	128.62
							2033	132.76
							2034	137.04
							2035	141.48

Exhibit F

Initial Expected Energy

Mariah Wind expects the following to be the schedule of monthly power deliveries in a the first year following Commercial Operation

January	620.41 MWh
February	408.89 MWh
March	556.64 MWh
April	557.10 MWh
May	514.17 MWh
June	550.92 MWh
July	482.82 MWh
August	502.16 MWh
September	425.05 MWh
October	384.74 MWh
November	584.52 MWh
December	529.98 MWh
Total	6,117.40 MWh

Mariah Wind, LLC estimates that the **minimum** annual delivery will be 4,282.18 MWh and the maximum will be 7,035.01 MWh.

A 12 X 24 table showing predicted generation (MW and Capacity factor) is attached.

Exhibit G

Project Description

Reference Exhibit B

Exhibit H

Sample Availability Factor Calculation

To be provided by Avista.

Exhibit I

Initial Capacity Determination Documentation

RICHARDSON & O'LEARY, PLLC
ATTORNEYS AT LAW

Peter Richardson

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P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

November 16, 2010

Via Certified U.S. Mail and Electronic Mail

Michael G. Andrea
Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202
michael.andrea@avistacorp.com

Re: Mariah Wind LLC Request for PURPA Power Purchase Agreement

Dear Mr. Andrea:

I write on behalf of my client, Mariah Wind LLC, regarding its request for a power purchase agreement (PPA) for its off-system wind energy facility which is a qualifying facility (QF) under the Public Utilities Regulatory Policy Act of 1978 (PURPA). The facility will generate under 10 average monthly megawatts (aMW) for delivery to Avista's system in its Idaho service territory, and is therefore entitled to a long term PPA containing the published avoided cost rates and the applicable terms approved by the Idaho Public Utility Commission (Commission).

The project's manager, Chris Mason, has taken substantial steps in the development of this project, and has been in contact with Clint Kalitch and Steve Silkworth to request a PPA with Avista for the sale of the project's output. By letter to Mr. Silkworth dated October 8, 2010, Mr. Mason formally requested a contract of duration of twenty (20) years at the non-levelized rates in the avoided cost rate schedule on file with the Commission (errata to Idaho Public Utilities Commission Order No. 30125). Mr. Mason expressed intent to obligate the Mariah Wind LLC QF to a contract containing the standard terms and conditions for QFs under 10 aMW as set forth in Avista's Schedule 62. His letter contained all information necessary for Avista to complete a standard PURPA contract. In response, Mr. Silkworth provided Mr. Mason with a draft PPA for off-system PURPA projects, and indicated to Mr. Mason that Avista would own the renewable energy credits (RECs) generated by the project.

Mr. Mason has completed the Avista PPA with all requested projects specifics. Mr. Mason will forward a signed original of the PPA to Avista, and I have enclosed a copy herein. Mr. Mason is agreeable to the terms of the draft PPA provided by Mr. Silkworth, with the few notable exceptions where Avista's draft PPA was inconsistent with applicable legal requirements and Commission orders, as discussed below. We have inserted the terms acceptable to Mariah Wind in the enclosed PPA. Other than the terms discussed below, the enclosed PPA contains the same terms as those in

the draft PPA provided by Mr. Silkworth. By signing and submitting the enclosed PPA, Mr. Mason intends to obligate Mariah Wind to the enclosed PPA on this date.

Environmental Attributes

Mariah Wind inserted a clause in section 8.9, whereby Avista waives any claim to ownership of the environmental attributes (including RECs) associated with this project. As you are aware, no provision of Idaho law provides investor-owned utilities in Idaho with RECs associated with PURPA projects, and the Commission has never held that it has authority or jurisdiction to render a decision that the RECs pass to the purchasing utility under a PURPA PPA in Idaho. The Federal Energy Regulatory Commission has repeatedly held that RECs do not pass to the purchasing utility pursuant to a PURPA PPA, unless a provision of state law provides otherwise. *See American Ref-Fuel Co., et al.*, 105 FERC ¶ 61,004, ¶¶ 21-22 (2003), *order aff'd on reh'g*, 107 FERC ¶ 61,016, ¶¶ 14-15 (2004) ("The avoided cost rates, in short, are not intended to compensate the QF for more than capacity and energy."); *see also California Public Utilities Commission*, 133 FERC ¶ 61,059 (Oct. 21, 2010) (order on rehearing) (stating that California could require utilities to pay a higher avoided cost rate to QFs providing not only energy and capacity, but also an environmental attribute that helped the utility avoid the cost of environmental compliance.).

Simply put, the avoided cost rates Avista will pay Mariah Wind under the current gas SAR methodology compensate Mariah Wind only for the value of the energy and capacity from the project, not for any environmental attributes associated with the project. Avista would obtain a wind fall by paying only for energy and capacity, but also obtaining the RECs for no additional payment.

Indeed, Idaho Power's Commission-approved PURPA PPAs for projects under 10 average MWs recognize these legal principles by expressly disavowing ownership of the RECs. Section 8.9 inserted into the enclosed PPA contains language similar to that in Idaho Power PURPA PPAs that have been approved by the Idaho Commission.

Delay Default Liquidated Damages Security

Section 4.4 of the draft PPA provided by Mr. Silkworth contained a delay default liquidated damages provision requiring a minimum damage amount of $45 per kilowatt (kw) of nameplate capacity for a 120-day delay in bringing the project online. This is over and above any difference in the contract price and the market price during that delay period. Avista's draft PPA also required the QF to post that $45/kw amount at the time of execution of the PPA. This provision would be punitive and unenforceable.

In Order No. 30608, the Commission stated that a delay default liquidated damages security must be a "fair and reasonable offset of a regulated utility's estimated increase in power supply costs attributable to the PURPA supplier's failure to meet its contractually scheduled operation date." The Commission's statement is consistent with Idaho law, which clearly prohibits use of liquidated damages provisions when damages are easily estimated, or when such provisions are punitive or designed to deter a breach of the contract. *See Magic Valley Truck Brokers, Inc. v.*

Meyer, 133 Idaho 110, 117, 982 P.2d 945, 952 (Ct. App. 1999); I.C. § 28-2-718(1). Avista's actual damages caused by a QF's delay in achieving its online date would not be difficult to calculate, and the amount of $45/kw is far in excess of the costs of replacement power or administrative expenses Avista may incur. A $45/kw liquidated damages clause is simply not legal in Idaho and would be rejected by Idaho courts. And requiring a QF to post an unreasonably high delay default security frustrates PURPA's mandatory purchase provisions.

Accordingly, Mariah Wind will not agree to a $45/kw delay security, unless the Commission orders that amount is reasonable. Mariah Wind intends to obligate itself at this time only to a PPA requiring it to post an amount deemed reasonable by the Commission. The language addressing the amount and timing of the posting of a security in the enclosed PPA reflects Mariah Wind's intent.

Mechanical Availability Guarantee (MAG)

Section 5.3 of Avista's draft PPA contained a minimum liquidated damages amount for a MAG shortfall of $15/MWh, but this amount is ten times as high as the minimum amount in Idaho Power's wind QF PPAs, which require 15 mills/kwh. I assume this was a typo in the draft PPA, and we have changed the amount in the enclosed PPA to $1.50/MWh. Additionally, the draft PPA did not contain a sample MAG calculation in Exhibit H, and you can append that attachment to the signed PPA.

Insurance

Section 9.1.1 of the draft PPA would have required Mariah Wind to maintain general liability insurance with a minimum amount of $2,000,000. I assume this too was a typo because Idaho Power's PURPA PPAs only require a minimum insurance amount of $1,000,000, which is consistent with Commission orders. The enclosed PPA contains the $1,000,000 amount.

Rates and Wind Integration Charge

Exhibit E of the draft PPA did not include the adjusted avoided cost rates to account for seasonality and daily load shape adjustments, or describe the wind integration charge applicable to this agreement. Mariah Wind has included the avoided cost rate schedule approved in Commission Order No. 31025, and intends to obligate itself to that rate schedule with the appropriate adjustments for seasonality and daily load shape approved by the Commission for Avista. However, Mariah Wind will purchase balancing services from BPA and deliver a firm product to Avista. Therefore, because Avista will need to perform no wind balancing services, Avista should not reduce the avoided cost rates in Exhibit E for any wind integration charges.

Conclusion

As you know, on Friday, November 5, 2010, Avista filed a joint petition and joint motion requesting that the Commission immediately reduce the eligibility cap for published avoided cost rates from 10 aMW to 100 kw. To do so without notifying Mariah Wind was inappropriate

because Mariah Wind has attempted to obligate itself to a PPA for a project that would be fatally impacted by the substantive relief requested by Avista. Mariah Wind remains committed, however, to entering into a PPA with Avista. The Commission took no action on Idaho Power's joint motion and joint petition at its Decision Meeting on November 9. It now appears the Commission may not act on the joint motion and joint petition at least until its next regularly schedule Decision Meeting on November 22, 2010. Therefore, as you know, Avista remains bound by the existing PURPA rules, regulations and IPUC implementing orders, including its obligation to enter into PURPA PPAs containing the avoided cost rates published in Order No. 31025. My hope is that Avista will counter sign the enclosed PPA and file it for Commission approval prior to the time that the Commission may rule on the joint motion to reduce the eligibility cap.

Very truly yours,

Peter J. Richardson
Attorney for Mariah Wind LLC

cc: Chris Mason, General Manager, Mariah Wind LLC

Enclosure:

Mariah Wind PURPA PPA

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

AVISTA Corp.

November 24, 2010

Via Email and Regular Mail
Peter Richardson
Richardson & O'Leary, PLLC
515 N. 27th St.
Boise, ID 83702
Email: peter@richardsonandoleary.com

Re: Draft PURPA Contract
Avista Corporation's Response to November 16, 2010 Letter

Dear Mr. Richardson:

On November 22, 2010, I received your letter dated November 16, 2010 ("November 16 Letter"), in which you indicated that your client, Mariah Wind LLC ("Mariah"), had signed and returned to Avista Corporation ("Avista") a certain power purchase agreement ("Mariah PPA"). A copy of the PPA executed by Mariah was enclosed. I understand that Steve Silkworth also received a signed copy of the Mariah PPA from your client on November 18, 2010.[1]

As you note in your November 16 Letter, Mariah contacted Avista on October 8, 2010 to request a power purchase agreement for a proposed wind project pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The proposed facility would interconnect to a third-party transmission provider, but the output from that facility would be delivered to Avista's electrical system at a point of delivery in Idaho.

On October 14, 2010, Avista sent you a draft power purchase agreement ("Draft PPA"). The header of each page of the Draft PPA was clearly marked with a Draft Stamp as follows

Draft
Off-System Wind PURPA
Not Approved by Any Party

Avista did not receive any correspondence or communications from Mariah between October 14, 2010 and Avista's receipt of Mariah's letter and PPA on November 18, 2010.

Mariah has provided much of the missing facility-specific information with the Mariah PPA. Avista is reviewing that information.

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[1] Although you indicated in your November 16 Letter that such letter and Mariah PPA was sent to me both by certified mail and via email, I did not receive any electronic copies of the November 16 Letter or the Mariah PPA.

Mariah has unilaterally modified material terms of the Draft PPA. Neither Mariah, nor you on behalf of Mariah, has discussed any of those changes with Avista nor has Avista consented to such modifications. Finally, Mariah took the liberty of removing the Draft Stamp from the Draft PPA and executing the resulting Mariah PPA. Avista is reviewing the changes made unilaterally by Mariah. At this time, however, Avista is not able to accept Mariah's unilateral changes to the Draft PPA.

The following includes a brief response to some of the issues that you raised in your November 16 Letter.

I. Environmental Attributes.

In your November 16 Letter, you noted that Mariah inserted a provision under which Avista waives any claim to ownership of environmental attributes associated with the subject project. No such provision was included in the Draft PPA.

It is Avista's position that the issue of ownership of environmental attributes associated with PURPA Qualifying Facilities is currently unsettled in Idaho. As you know, the Idaho Public Utility Commission recently opened a generic docket in which Avista anticipates that the issue of environmental attributes, as well as other PURPA issues, will be addressed. However, because the issue is not yet settled, Avista cannot waive any claim to ownership to environmental attributes.

II. Delay Liquidated Damages

Mariah unilaterally and substantially modified section 4.4 of the Draft PPA regarding delay liquidated damages. In your November 16 Letter, you suggest that the liquidated damages provision in the Draft PPA was punitive and unenforceable. Avista disagrees and believes that the proposed delay liquidated damages provisions in the Draft PPA are fair and reasonable.

A delay in the commercial operation of a proposed Qualifying Facility causes substantial monetary damages to the utility. For example, a proposed Qualifying Facility is included in the utility's long-term load and resource plan. If the Qualifying Facility does not achieve commercial operation when expected or does not achieve commercial operation at all, the utility may well be required to take steps, at substantial cost, to replace the contract and the output that the Qualifying Facility was expected to provide. Such damages can be substantial and difficult to quantify or calculate and, therefore, liquidated damages are appropriate. The liquidated damages provisions in the Draft PPA are not punitive.

III. Mechanical Availability Guarantee

Avista does not understand your objection with regard to the Mechanical Availability Guarantee. You state: "Section 5.3 of Avista's draft PPA contained a minimum liquidated damages amount for a MAG shortfall of $15/MWh, but this amount is ten times as high as the

minimum amount in Idaho Power's wind QF PPAs, which require 15 mills/kwh." The $15/MWh included in Avista's Draft PPA is equivalent to 15 mills/kWh QF PPAs. It is not at all clear what the basis is for your claim that Avista's MAG is ten times as high as Idaho Power's.

IV. Insurance

With regard to insurance, Avista does require that QFs maintain general liability insurance with a minimum of $2,000,000. While Idaho Power's insurance requirements may be instructive, they do not necessarily establish any standard or policy. Several factors, such as risk policy and self-insured limits may account for the difference in the insurance requirements.

V. Rates and Wind Integration Charge

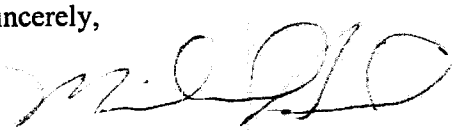
First, you note that Avista's Draft PPA did not include the avoided cost rates. That is because the avoided cost rates that will apply will be such rates as are in effect at the time that the parties reach a mutually agreed upon power purchase agreement and such agreement is executed by the parties. The appropriate avoided cost rates will be included in any final power purchase agreement reached by the parties.

With regard to wind integration charges, Avista recognizes that Mariah will deliver, at Mariah's cost, energy on a firm hourly basis to Avista's electrical system. Under such circumstances, Avista believes that a discount to the normal wind integration charge may be appropriate. Avista does not, however, agree that the wind integration charge should be eliminated. Avista is prepared to engage in discussions to negotiate an appropriate wind integration charge.

VI. Conclusion

Avista stands ready to engage in the necessary discussions to negotiate in good faith a mutually acceptable power purchase agreement with Mariah. Avista is not, however, prepared to accept Mariah's unilateral changes to the Draft PPA. The starting point for any such discussions will be Avista's Draft PPA. Please feel free to contact me to discuss.

Sincerely,



Michael G. Andrea

cc: Bob Lafferty
Steve Silkworth
Scott Woodbury

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January 2011, true and correct copies of the foregoing Answer were delivered to the following persons via E-mail and postage prepaid regular or overnight mail.

Jean Jewell
Idaho Public Utilities Commission
472 W. Washington St.
Boise, ID 83702
Email: jean.jewell@puc.idaho.gov

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Michael G. Andrea