



RICHARDSON & O'LEARY, PLLC

ATTORNEYS AT LAW

Tel: 208-938-7900 Fax: 208-938-7904

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

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IDAHO PUBLIC
UTILITIES COMMISSION

December 10, 2010

AVU-E-10-06

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

RE: Orem Family Wind, LLC v. Avista Corporation dba Avista Utilities, Inc.

Dear Ms. Jewell:

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

Sincerely,

Greg Adams
Richardson & O'Leary PLLC

encl.

Peter J. Richardson (ISB # 3195)
Gregory M. Adams (ISB # 7454)
Richardson & O'Leary, PLLC
515 N. 27th Street
P.O. Box 7218
Boise, Idaho 83702
Telephone: (208) 938-7901
Fax: (208) 938-7904
peter@richardsonandoleary.com
greg@richardsonandoleary.com

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Complainant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

Orem Family Wind, LLC,
Complainant,

vs.

Avista Corporation dba Avista Utilities, Inc.,
Defendant.

Case No. AVU-E-10-06

FORMAL COMPLAINT

INTRODUCTION

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

1 environmental attributes, delay default liquidated damages and security, and wind integration
2 charges for Orem Family Wind's off-system project. Therefore, Orem Family Wind respectfully
3 requests that the Commission issue a declaratory judgment resolving those clauses and ordering
4 Avista to enter into a PPA at the rates in effect on the date of this filing (errata to Order No.
5 31025).

6 PRELIMINARY MATTERS

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

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

19 **In support of this Complaint, Orem Family Wind, LLC alleges as follows:**

20 IDENTITY OF PARTIES

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

1 *see also American Ref-Fuel Co., et al.*, 105 FERC ¶ 61,004 (2003), *order aff'd on reh'g*, 107
2 FERC ¶ 61,016 (2004).

3 5. FERC rules provide QFs with the option of selling electricity and capacity to a
4 utility based on the utility's "avoided costs" at the time the QF incurs a legally enforceable
5 obligation to deliver energy or capacity over a specified term. *See* 18 C.F.R. § 292.304(d)(2)(ii).
6 Thus, "a QF, by committing itself to sell to an electric utility, also commits the electric utility to
7 buy from the QF; these commitments result either in contracts or in non-contractual, but binding,
8 legally enforceable obligations." *JD Wind 1, LLC*, "Notice of Intent Not to Act and Declaratory
9 Order," 129 FERC ¶ 61,148, at p. 10-11 (November 19, 2009).

10 **FACTUAL BACKGROUND**

11 6. Orem Family Wind, or its agents and predecessors, have been actively engaged in
12 the development of the Orem Family Wind, LLC wind project since 2005. The project will have
13 a nameplate capacity rating of 10 MW, and will be located on ranch land in Morrow County,
14 Oregon.

15 7. Orem Family Wind's project has been developed in tandem with a 10-MW wind
16 project located on neighboring land, and that neighboring project is owned and operated by
17 Mariah Wind, LLC.

18 8. Orem Family Wind, or its agents and predecessors, have made substantial
19 investments in development of the Orem Family Wind project. Development activities have
20 included conducting wind studies, environmental studies, acoustic studies, and archeological
21 studies.

1 9. Orem Family Wind and Mariah Wind, LLC, are in the process of securing shared
2 interconnection and transmission through Columbia Basin Electric Co-operative and Bonneville
3 Power Administration to Avista's Lewiston Substation.

4 10. Orem Family Wind has been in contact with Avista regarding the sale of its
5 output through a PURPA PPA containing published avoided cost rates.

6 11. On November 22, 2010, Orem Family Wind obligated itself to a 20-year PPA, by
7 sending to Avista a PPA containing the Commission-approved terms of a standard PURPA PPA
8 at the published avoided cost rates, executed by Orem Family Wind.

9 12. Orem Family Wind's November 22nd PPA contained identical terms to those in a
10 draft PPA provided by Avista to Mariah Wind, LLC, except that Orem Family Wind's PPA
11 contained, modified terms regarding ownership of environmental attributes, delay liquidated
12 damages and security, the mechanical availability guarantee, insurance, as well as applicable
13 rates and the wind integration charge. The submitted PPA also contained an accompanying letter
14 describind the basis for the modified terms.

15 13. Avista rejected Orem Family Wind's signed PPA.

16 14. Subsequently, Orem Family Wind expressed willingness to agree to Avista's
17 terms regarding the mechanical availability guarantee and insurance.

18 15. But Avista has refused to agree to Orem Family Wind's terms regarding
19 ownership of environmental attributes, delay liquidated damages and security, and the wind
20 integration charge.

21 16. Avista refused to agree to a term similar to those in Idaho Power Company and
22 Rocky Mountain Power PURPA PPAs whereby the utility waives ownership of environmental

1 attributes in contracts containing the published avoided cost rates calculated to compensate the
2 QF only for the energy and capacity delivered.

3 17. Additionally, Avista stated it would not agree to delay liquidated damages and
4 security clauses containing damages and security amounts less than \$45/kw, in response to Orem
5 Family Wind's statements that it would obligate itself only to an amount reasonably calculated to
6 offset Avista's actual damages, as determined by the Commission.

7 18. Finally, Avista insisted on charging Orem Family Wind 50% of its standard wind
8 integration charge of \$6.50/MWh, despite that Orem Family Wind will pay Bonneville Power
9 Administration for wind integration services and will therefore provide a firm energy delivery
10 to Avista's system entitling it to Avista's full, published, avoided cost rates.

11 19. Through Orem Family Wind's PPA submitted November 22, 2010, and
12 subsequent communications, Orem Family Wind has agreed to all material terms of the draft
13 PPA distributed by Avista except for clauses discussed in paragraphs 15-18.

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

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Respectfully submitted this 10th day of December, 2010.

RICHARDSON AND O'LEARY, PLLC



Peter J. Richardson (ISB No: 3195)

Gregory M. Adams (ISB No. 7454)

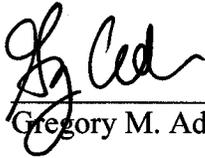
Attorneys for Complainant

CERTIFICATE OF SERVICE

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

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

By



Gregory M. Adams