Office of the Secretary
Service Date
February 27, 2019

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF AVISTA AND CLEARWATER PAPER FOR APPROVAL OF A POWER PURCHASE AND SALE AGREEMENT	)))))	**CASE NO. AVU-E-18-13** **ORDER NO. 34252**

On November 29, 2018, Avista Corporation ("Avista" or "Company") filed an Application seeking approval of a Power Purchase and Sale Agreement ("2018 Agreement") between Avista and the Clearwater Paper Corporation ("Clearwater"). Clearwater owns and operates four thermal electric generating units rated at 132.2 MW. *See* Application at 2. The units are cogeneration qualifying facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). *Id.*

BACKGROUND

A. Public Utility Regulatory Policies Act of 1978.

Under PURPA, electric utilities must purchase electric energy from QFs at rates approved by this Commission. 16 U.S.C. § 824a-3; *Idaho Power Co. v. Idaho PUC*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013). The purchase or "avoided cost" rate shall not exceed the "'incremental cost' to the purchasing utility of power which, but for the purchase of power from the QF, such utility would either generate itself or purchase from another source." Order No. 32697 at 7, *citing Rosebud Enterprises v. Idaho PUC*, 128 Idaho 624, 917 P.2d 781 (1996); 18 C.F.R. § 292.101(b)(6) (defining "avoided cost"). The Commission has established two methods of calculating avoided cost, depending on whether the QF's output is under or over the project eligibility cap: (1) the surrogate avoided resource ("SAR") methodology, which establishes published avoided cost rates for QFs under the applicable project eligibility cap, and (2) the integrated resource plan ("IRP") methodology for QFs over the applicable project eligibility cap. *See* Order No. 32697 at 7-8.

The project eligibility cap for cogeneration facilities, such as Clearwater's, is 10 average megawatts ("aMW"). Order No. 32697 at 14. The Facility is therefore eligible for IRP methodology rates. The Commission has found that the IRP methodology "recognizes the individual generation characteristics of each project by assessing when the QF is capable of

delivering its resources against when the utility is most in need of such resources. We find that the resultant pricing is reflective of the value of the QF energy being delivered by the utility." Order No. 32697 at 20. While SAR rates are strictly fixed, IRP rates are negotiable. "The avoided cost rates for purchases from QFs larger than the eligibility cap . . . must be individually negotiated by the QF and the public utility. In a negotiated contract, the utility's avoided cost is the starting point for rate negotiations." Order No. 32176 at 1.

B. Renewable Energy Credits ("RECs").

The Commission has stated, "PURPA does not control RECs – RECs are controlled by the state. RECs exist outside the confines of PURPA." Order No. 32697 at 45. Furthermore, the Commission has acknowledged that avoided cost rates "are not intended to compensate the QF for [RECs]." Order Nos. 32697 at 45, 32580 at 3, 29840 at 9. Although PURPA and RECs are separate legal frameworks, both are often involved in the same transaction. The Commission has found that splitting RECs 50/50 between the QF and the utility is presumptively reasonable for IRP methodology avoided cost rates. Order No. 32697 at 46. Under the SAR methodology, RECs are assigned solely to the QF. *Id.*

C. Previous Agreements Between Clearwater and Avista.

On January 1, 1992, Avista and Clearwater entered into a 10-year Electric Service and Purchase Agreement, which was approved by Commission Order No. 23858. On July 1, 2003, Avista and Clearwater entered into a 10-year Power Purchase and Sale Agreement, which was approved by Commission Order No. 29418. On July 1, 2013, Avista and Clearwater Paper entered into an Electric Service Agreement ("2013 Agreement"), which was approved by Commission Order No. 32841. The 2013 Agreement was for a 5-year term, which was extended to June 30, 2021, by Commission Order No. 33350. Upon the effective date of the 2018 Agreement, the 2013 Agreement will be superseded in its entirety by the 2018 Agreement. *Id.*

THE APPLICATION

The parties stated that the "underlying foundation of the 2018 Agreement is to allow Clearwater the flexibility to optimize the value of its [g]eneration and the associated REC value, while at the same time ensuring that . . . Avista and its customers are held 'neutral' as to whether Clearwater generates into its own load or sells its full energy requirements to Avista." Application at 4. To capture the value of the bundled RECs while maintaining ratepayer neutrality compared to the previous agreement, the parties created a new compensation structure.

Under the 2013 Agreement, Clearwater generated into its own load and purchased the remainder of its electricity from Avista at the Schedule 25P rates for Extra Large General Service to Clearwater Paper's Facility – Idaho. Generating into its own load does not allow Clearwater Paper to sell bundled RECs because the electricity and the environmental attributes are separated. Under the 2018 Agreement, Clearwater will sell the electricity it generates and the corresponding RECs to Avista at a rate of $24.50 per MWh. Avista conducted an IRP model run and blended price forecasts to arrive at this rate. Avista will also sell to Clearwater an equivalent amount of energy as Clearwater produces at the rate of $24.56 per MWh, which is the $24.50 per MWh rate adjusted for Commission fees. Avista refers to this rate as the Block 2 PURPA rate. Because Avista will buy and sell an equivalent amount of energy at near equivalent prices, the 2018 Agreement will provide the same benefit to Clearwater as allowing Clearwater to generate into its own load.

Parties and ratepayers also will benefit from Avista selling bundled RECs under the new agreement. Bundled RECs generally command a higher price than unbundled RECs. Avista has agreed to sell the bundled RECs to Morgan Stanley Capital Group ("MSCG") at $9.00 per REC (equivalent to 1 MWh of energy produced) for scheduled deliveries, and $4.50 per REC for unscheduled deliveries. MSCG will buy the corresponding amount of energy from Avista at market price, determined by the Powerdex Mid-Columbia hourly price per MWh. Net revenue from REC sales will be split between Avista (10%) and Clearwater (90%). Avista will pass its portion of net revenue to customers through Avista's Power Cost Adjustment ("PCA") mechanism. Idaho will receive 100% jurisdictional allocation of the revenue from the sale of Clearwater RECs by Avista.

THE COMMENTS

Staff filed the only comments, and recommended the Commission approve the Application. Staff's recommendation was based on a comparison of net benefits between the 2013 Agreement and the 2018 Agreement. Staff determined the 2018 Agreement is functionally the same as the 2013 Agreement and that Idaho customers will see an incremental benefit from the 2018 Agreement because Idaho customers will share in the proceeds from the sale of bundled RECs through the PCA.

Staff also determined that the 2018 Agreement complies with PURPA. Staff noted that parts of the Agreement deviate from the baseline PURPA implementation in Idaho, but that each

deviation is within the parameters of prior Commission orders. Atypical PURPA provisions identified by Staff include the REC split, the contract length, and the Block 2 rate. In each instance, the Commission has stated that parties may agree to terms that differ from the presumptively reasonable terms.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503. In addition, the Commission has authority under PURPA and Federal Energy Regulatory Commission ("FERC") regulations to implement PURPA in Idaho, including the authority to set project eligibility caps at 100 kW or above, set the length of PURPA contracts, establish pricing methodologies, and dictate other terms of contracts between utilities and QFs. The Commission may implement PURPA on either a programmatic or case-by-case basis. *FERC v. Mississippi*, 456 U.S. 742, 760 (1982). The Commission may enter any final order consistent with its authority under Title 61 and PURPA.

The Commission has reviewed the record, including the Application, the 2018 Agreement, and the comments of Commission Staff. Based on our review, we find it reasonable to approve the 2018 Agreement. The 2018 Agreement is at least ratepayer neutral, and at best provides an incremental benefit to Idaho customers compared to the 2013 Agreement, which we found to be just and reasonable and in the public interest.

We also agree with Commission Staff that all deviations in the contract from the presumptive requirements we have established under PURPA are permissible and reasonable. For IRP methodology contracts, the default is that parties split RECs 50/50. However, the Commission has recognized that the parties may allocate the RECs differently by agreement. Order No. 32697 at page 46. Similarly, the default contract length for IRP methodology contracts is two years, but the Commission has recognized that the parties can vary the length beyond two years by agreement. Order No. 33357 at 26. We approve these individually negotiated contract provisions based on the specific facts of this case, and our approval here does nothing to alter the PURPA implementation framework in the state of Idaho.

The two blocks of prices for Clearwater's purchase of energy is also atypical. We find this arrangement results in prices that are just and reasonable, in the public interest, and are non-discriminatory. Therefore, we find that the rates that Clearwater pays Avista for its electricity comply with 18 CFR § 292.305. Likewise, we find that the rates to be paid by Avista for Clearwater's generation comply with 18 CFR § 292.304 and Idaho Commission Orders implementing the federal regulation. The parties negotiated an avoided cost rate using an IRP model run as the basis for negotiation, as directed by Commission Order. *See* Order No. 32697 at 2. We further note that 18 C.F.R. § 292.301 states that nothing in FERC's regulations limits the authority of an electric utility and a QF to agree to rates or terms that differ from the rates or terms otherwise required by FERC's regulations. In sum, we find that the 2018 Agreement, as an individually negotiated contract, does not run afoul of this Commission's implementation of PURPA. Therefore, the 2018 Agreement is approved.

ORDER

IT IS HEREBY ORDERED that the 2018 Agreement between Avista and Clearwater is approved, effective on the date of this order as set forth below.

IT IS FURTHER ORDERED that Avista payments for purchases of energy and capacity under the 2018 Agreement will be directly assigned to the Idaho jurisdiction and excluded from the system PCA calculation.

IT IS FURTHER ORDERED that any monthly difference between the actual Clearwater power purchase expense and the amount embedded in the development of base retail rates developed in a general rate case will be tracked at 100% through the PCA, and that any change in Clearwater's retail revenue, based on kilowatt-hour sales equivalent to the level of Clearwater generation, will also be tracked at 100% similar to the accounting treatment under the 2003 and 2013 Agreements.

IT IS FURTHER ORDERED that Avista file a revised Schedule 25P, substantially in the form of that included in Exhibit B to the 2018 Agreement.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th day of February 2019.

PAUL KJELLANDER, PRESIDENT

KRISTINE RAPER, COMMISSIONER

ERIC ANDERSON, COMMISSIONER

ATTEST:

Diane M. Hanian
Commission Secretary

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