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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Edward Jewell, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 34223 on December 20, 2018, in Case No. AVU-E-18-13, submits the following comments.

BACKGROUND

On November 29, 2018, Avista Corporation (“Avista”) and Clearwater Paper Corporation (“Clearwater Paper”) jointly applied to the Commission for an order approving a Power Purchase and Sale Agreement (“2018 Agreement”). Clearwater Paper owns and operates four thermal electric generating units with a combined total nameplate capacity of 132.2 mega-volt amps (MVA). Application at 2. The units are qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). *Id.*

Avista has serviced Clearwater's electric service needs while purchasing Clearwater generation from 1992 through June 2013 through two separate agreements: (1) a 10-year Electric Service and Purchase Agreement authorized in 1992 through Order No. 23858, and (2) a 10-year Agreement authorized in 2004 through Order No. 29418. *Id.* at 3. The current Agreement authorized in June 2013 through Order No. 32841 and extended by Commission Order No. 33350 (2013 Agreement) was structured differently than the two previous agreements. The 2013 Agreement allows Clearwater to generate into its own load requirements while purchasing the balance of its electricity needs from Avista. If approved, the parties' 2018 Agreement would supersede the 2013 Agreement.

The Application states, "The underlying foundation of the 2018 Agreement is to allow Clearwater the flexibility to optimize the value of its Generation and the associated REC value, while at the same time ensuring that the 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. Avista and Clearwater Paper have contracted with a third-party buyer, Morgan Stanley Capital Group (MSCG), to purchase bundled RECs from Avista generated by Clearwater Paper. *Id.* The 2018 Agreement is conditioned on the existence of the REC contract with MSCG. *Id.* at 7. If the 2018 Agreement should take effect but then be suspended or terminated, the applicants would revert to the 2013 Agreement. *Id.* at 5.

STAFF REVIEW

Staff reviewed the Company's Application and recommends that the Commission approve the 2018 Agreement. Staff's recommendation is based on a comparison of net benefits between the current 2013 Agreement and the proposed 2018 Agreement, while maintaining adherence to PURPA. Although there are provisions in the contract that are atypical in comparison to other PURPA contracts, Staff believes they are reasonable and fall within flexibility allowed through past Commission orders and Federal Energy Regulatory Commission (FERC) regulations. From its comparison, Staff determined that the 2018 Agreement is functionally the same as the 2013 Agreement resulting in no cost difference to customers and Avista's Idaho customers will see an incremental benefit through shared proceeds from the sale of bundled RECs. Therefore, Staff believes the Agreement is reasonable and in the public interest.

Structure of Agreement

Under the current 2013 Agreement, Clearwater generates into its own load and purchases the balance of its load requirements from Avista under the existing "Extra Large General Service to Clearwater Paper's Facility" Schedule 25P retail rates. Clearwater privately arranges for the sale of its unbundled RECs and retains all proceeds.

The main feature of the proposed 2018 Agreement is that it is structured as if Clearwater is generating into its own load, but it allows Clearwater's generation to be bundled with RECs to create an additional market value that will be shared with Idaho customers. Avista will sell energy bundled with RECs from Clearwater generation to Morgan Stanley. The bundled product will be more valuable and provide a larger profit than Clearwater would receive under the 2013 Agreement. Avista will receive market price for the energy it sells to Morgan Stanley. Staff believes this may provide additional benefits to customers, beyond the additional REC value, because the cost of energy that Avista provides in the transaction will be at market price or less.

Net revenue associated with REC sales will be split between Avista (10%) and Clearwater (90%). The Avista portion will be passed through the Company's Power Cost Adjustment (PCA) Mechanism. As a result, Staff believes the 2018 Agreement will provide benefit to Clearwater and Avista's Idaho customers by sharing the proceeds of REC sales. Idaho receives 100% jurisdictional allocation of the revenue from the sale of Clearwater RECs.

Staff initially was concerned that Section 10(d) of the Agreement would entitle Clearwater to receive 90% of the revenue from sales of RECs *and* energy to MSCG. Avista confirmed that it is the intent of the parties that under Section 10(d) Clearwater will receive 90% of the revenues from REC sales to MSCG only, not 90% of revenues from energy sold to MSCG.

In order for Clearwater's generation to be bundled with its RECs to increase market value, the RECs must be coupled with energy at the time it is produced. To accomplish this, the Parties propose the rate structure as shown in Table 1 below:

Table 1: 2018 Agreement

Block 1		Block 2	
Retail Rate		Clearwater Generation Load Rate	
Avista sells energy to Clearwater at \$45.24/MWh		Avista sells energy to Clearwater at \$24.56/MWh	
Clearwater Net Load Purchase		Clearwater Generation and REC Rate	
		Avista buys Clearwater Generation at \$24.50/MWh	

Avista will purchase all of Clearwater's generation bundled with RECs at a rate of \$24.50/MWh. This price is a blend of a five-year IRP-based avoided cost rate and forward market prices.¹ Clearwater will purchase energy from Avista at two rates: the Block 1 Schedule 25P Retail Rate of \$45.24/MWh for its Net Load, and the Block 2 Generation Load Rate of \$24.56/MWh for the load that corresponds to Clearwater's generation amount. The revenue from Clearwater's purchase at the Block 2 Generation Load Rate and Avista's purchase of Clearwater's generation effectively nets to zero because the Generation and REC Rate and Block 2 Generation Load Rate is the same for the same amount of energy (the difference between the Generation and REC purchase price of \$24.50/MWh and the Block 2 Generation Load Rate of \$24.56/MWh is due to Commission fees).² This leaves only the net revenue Avista receives from Clearwater's purchase of energy at the Block 1 energy rate.

When the Joint Petition was filed, the then-current Schedule 25P retail rate was \$44.52/MWh. However, the current retail rate of \$45.24/MWh became effective January 1, 2019, as approved in the most recent general rate case (Case No. AVU-E-17-01). Staff recommends that if the Commission approves the 2018 Agreement, the Company should file an updated Schedule 25P tariff to reflect the change.

¹ Avista described this IRP-based avoided cost rate in supplemental response to production request Staff_PR_03, 05.

² Through Staff PR-06, Avista noted that the small difference between the Block 2 rates is related to revenue-related gross up for Commission fees on the Generation Load Rate Clearwater pays Avista for energy at \$24.56/MWh.

Adherence to PURPA

The contract contains numerous terms that Staff determined to be atypical of Idaho PURPA contracts. Issues of concern include: (1) the sharing of RECs between Avista and Clearwater; (2) the rate structure used to purchase Clearwater generation; and (3) the contract length. Through its review, Staff determined that all the variations from a typical PURPA contract are reasonable and within the parameters of prior Commission orders and FERC regulations.

For IRP-based 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. In this case, the parties have agreed to Clearwater receiving 90% of the REC proceeds and Avista receiving the remaining amounts. Staff believes this is reasonable because Avista will be receiving 10% of bundled REC proceeds. Customers will also receive a share of the benefit through the PCA. This is an incremental benefit to customers compared to the current agreement.

The proposed rate structure using the Generation and REC Rate for Avista's purchase of energy is also atypical. The parties negotiated the Generation and REC rate using an IRP model run as the basis for negotiation (as directed by Commission Order) to arrive at a blend of avoided cost and forward market prices. *See* Order No. 32697 at 2. Staff has determined that this arrangement results in prices approximating Avista's avoided cost. Since the amount of generation Avista purchases from Clearwater and the amount of energy Avista sells back to Clearwater at the Generation and REC rate are essentially equal, the amount of net revenue received by both parties under the generation structure will net to zero regardless of the rate.

The default contract length for IRP-based contracts is two years, yet the proposed Agreement contract term is almost five years beginning February 1, 2019, and ending December 31, 2023.³ In addition, the Parties propose that upon suspension or early termination of the 2018 Agreement, the Parties would revert back to the 2013 Agreement, but would maintain the 2018 contract end date of December 31, 2023 (or until Parties enter into a new agreement). The Commission has recognized that the parties can vary the contract length beyond two years by agreement. Order No. 33357 at 26. Staff believes a longer contract length

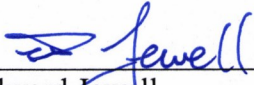
³ The Agreement states that the start date of the contract is December 15, 2018 or such other date set by the Commission Order ("Effective Date")... Through Staff PR-09, the Parties requested a more reasonable date of February 1, 2019.

is reasonable in this case, whether operating under the 2018 Agreement or the 2013 Agreement. Under either contract, the Block 1 Schedule 25P retail rate is the primary rate affecting net revenue the Company receives and it will continue to be updated by Commission Order with every new rate case. Application at 6.

STAFF RECOMMENDATIONS

Staff recommends that the Commission approve the 2018 Agreement. Staff also recommends the Petitioners file an updated Schedule 25P tariff to reflect the changes in the 2018 Agreement.

Respectfully submitted this  day of February 2019.



Edward Jewell
Deputy Attorney General

Technical Staff: Rachelle Farnsworth
Bentley Erdwurm
Yao Yin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 4TH DAY OF FEBRUARY 2019, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-18-13, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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