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Idaho Public Utilities Commission  
Office of the Secretary  
RECEIVED  
JAN 30 2006  
Boise, Idaho

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

THOMPSON RIVER CO-GEN, a	)	
Colorado Company,	)	
	)	
Complainant,	)	
	)	CASE NO. AVU-E-05-07
vs.	)	
	)	SECOND AMENDED ANSWER OF
AVISTA CORPORATION, a Washington	)	AVISTA CORPORATION
Corporation,	)	
	)	
Respondent.	)	
	)	

Avista Corporation ("Avista") answers the Complaint of Thompson River Co-Gen, LLC,  
(hereinafter "TRC") as follows:

I.

SPECIFIC RESPONSES TO TRC'S COMPLAINT

1. With respect to allegation 1 of TRC's Complaint, Avista admits that a facility owned by TRC is located at Thompson Falls, Montana, and such facility may be operated as a cogeneration facility in conjunction with a neighboring lumber mill owned by Thompson River Lumber Company.

2. With respect to allegation 2 of TRC's Complaint, Avista admits that TRC has filed a notice of self-certification with the Federal Energy Regulatory Commission ("FERC"), the contents of which are a matter of public record.

3. With respect to allegation 3 of TRC's Complaint, Avista denies the same.
4. With respect to allegation 4 of TRC's Complaint, Avista denies the same.
5. With respect to allegation 5 of TRC's Complaint, Avista is without sufficient information to form an opinion, and therefore denies the same.
6. With respect to allegation 6 of TRC's Complaint, Avista admits the same.
7. With respect to allegation 7 of TRC's Complaint, Avista admits the same.
8. With respect to allegation 8 of TRC's Complaint, Avista admits the same.
9. With respect to allegation 9 of TRC's Complaint, Avista admits the same.
10. With respect to allegation 10 of TRC's Complaint, Avista admits that TRC has contended that it has a right to a contract with Avista at the published avoided cost rates applicable to ten megawatt or less projects.
11. With respect to allegation 11 of TRC's Complaint, Avista admits the same.
12. With respect to allegation 12 of TRC's Complaint, Avista admits that it believes that TRC's project does not qualify for the published avoided cost rates applicable to ten megawatt or less projects.
13. With respect to allegation 13 of TRC's Complaint, Avista denies the same.
14. With respect to allegation 14 of TRC's Complaint, Avista denies that it has disregarded orders of this Commission. Avista also denies TRC's characterization of prior orders of the Commission.
15. With respect to allegation 15 of TRC's Complaint, Avista denies the same.
16. With respect to allegation 16 of TRC's Complaint, Avista denies the same.
17. With respect to allegation 17 of TRC's Complaint, Avista is without sufficient information to form an opinion, and therefore denies the same.

18. With respect to allegation 18 of TRC's Complaint, Avista denies the same.
19. With respect to allegation 19 of TRC's Complaint, Avista denies the same.
20. With respect to allegation 20 of TRC's Complaint, Avista admits that TRC and Avista disagree about the qualification of TRC for published avoided cost rates applicable to ten megawatt or less projects.
21. With respect to allegation 21 of TRC's Complaint, Avista restates its answer to allegation 20.
22. With respect to allegation 22 of TRC's Complaint, Avista admits that it informed TRC the week of August 22, 2005 of its understanding based upon the facts that TRC's project did not qualify for published avoided cost rates applicable to ten megawatt or less projects.
23. With respect to allegation 23 of TRC's Complaint, Avista restates its answer to allegation 20, but denies giving specific advice to TRC as to how a resolution of disputed issues might be accomplished.
24. Avista denies all allegations or portions thereof, not admitted herein.

## II.

### AFFIRMATIVE DEFENSES

#### General Allegations of all Affirmative Defenses

1. In 2002 and 2003, TRC filed for approval with the Federal Energy Regulatory Commission ("FERC") a power sales contract under which TRC agreed to sell power to NorthWestern Energy ("NorthWestern") for a duration of ten years with an option to extend for five years, from its project near Thompson Falls, Montana. The power would be sold to NorthWestern at approximately \$40.00 per megawatt hour for the first 13 megawatts for each

hour and the Mid-Columbia index price minus \$3.00 per megawatt for amounts in excess of 13 megawatts for each hour. The project was characterized as a 16 megawatt project.

2. In January, 2005, Avista received a communication from Mr. Mark Thompson, known to be an employee or representative of NorthWestern, a utility that provides retail electric service in Montana, to the effect that NorthWestern was assisting TRC in its efforts to sell power from the TRC facility to a party other than NorthWestern. Mr. Thompson represented that he was acting as a consultant for TRC. In more recent discussions, TRC has been represented by persons other than Mr. Thompson.

3. TRC initially represented to Avista that the project was a 13 megawatt facility and that power generated by the project in excess of the combination of the 10 megawatt amount proposed for delivery to Avista, station service load, power to serve the Thompson River Lumber Company load, and transmission losses associated with delivery of power to Avista in the state of Idaho, would be sold to NorthWestern. Also, as part of the proposed sale of PURPA power to Avista, Mr. Thompson indicated that electric energy output from TRC's project would be "firmed-up" by power from NorthWestern's system.

4. On March 11, 2005, Mr. Michael Underwood, a principle of TRC, furnished a letter to Avista, expressing interest in obtaining a contract for the sale of power to Avista at avoided cost rates applicable to fueled 10 megawatt or less projects.

5. On May 12, 2005, in a meeting with Avista, TRC proposed the following set of energy sales arrangements:

"TRC proposes wholesale electricity contracts with Avista Corp and NorthWestern

- 20 year PURPA (Qualifying Facility) contract with Avista Corp. (76% of TRC Output.)
- 10 MW firm, base-load contract, delivered by NorthWestern, as scheduling agent.

- 20 year PPA with NorthWestern for Surplus Energy (18% of TRC Output).
- NorthWestern is the Scheduling Agent and Transmission Provider;
- NorthWestern firms, shapes and delivers energy to Avista Corp.;
- NorthWestern purchases excess energy.

#### Thermal and Electric Sales to Thompson River Lumber

- TRC has a 45-year agreement with Thompson River Lumber (TRL) to provide the mills electric requirements. Average busbar netback of \$40.00 per MWH. (6% of TRC Output)."

6. In a response to a Compliance Order issued by FERC on May 31, 2005, TRC filed with FERC an updated market analysis dated July 22, 2005 (FERC Docket No. ER02-298-003). In its filing TRC represented to FERC that it operated in the Montana market, that its contract to sell to NorthWestern was for a period of ten years, and that its project would be a twelve megawatt name-plate wood and coal-fired plant. TRC further represented that NorthWestern would resell that power to its own default customers.

7. In August 2005, TRC represented to Avista that TRC's contract with NorthWestern was subject to various amendments. Via an email from Mark Thompson on September 19, 2005, NorthWestern represented that the TRC contract with NorthWestern is no longer in effect having terminated under its own terms in May 2004, because of the failure of the facility to achieve certain milestones. However, upon due diligence, Avista has been unable to discover on file with FERC any filing that reports amendments to the TRC contract with NorthWestern or reports a termination or withdrawal of TRC's FERC approved market rate based tariff or sale obligation under the Federal Power Act. As a result, Avista is uncertain of the legal relationship and obligations owed by TRC to NorthWestern, except that based upon the public record, TRC has committed to sell the output of its project to NorthWestern, pursuant to a contract that is subject to the jurisdiction of FERC. Avista has not received assurances that TRC's power, that is currently being used by NorthWestern to serve its retail customers, can now

be sold to retail customers in Idaho at a higher price than that stated in TRC's contract with Northwestern.

8. Avista reasonably determined that TRC qualified for avoided costs applicable to larger than 10 megawatt facilities. Therefore, in July 2005, Avista provided TRC with a draft term sheet, including proposed pricing based upon Avista's Integrated Resource Plan. In early August 2005, Avista prepared and extended a written draft contract for consideration to TRC, in which the purchase rates were again based upon Avista's Integrated Resource Plan.

9. Avista's draft contract excluded the long-term firming and shaping service that Mark Thompson had proposed to be provided by NorthWestern. Avista's draft contract instead proposed that NorthWestern provide an hourly schedule firming and near-term balancing service.

10. In response to Avista's draft contract, TRC produced and delivered to Avista its own contract draft. In addition to proposing that the contract rates be based upon the "fueled" published avoided cost rates applicable to ten megawatt or less projects, various other material changes from Avista's draft were proposed. There are many issues unresolved between the Parties. Among the more serious issues are the following:

- a) TRC would not give contract assurances to Avista that any contract obligation to deliver power to NorthWestern had ceased or would cease;
- b) TRC would not agree to Avista's proposals for insurance and second lien provisions;
- c) TRC would not agree to transmitting its power to alternative delivery points in the event that the transmission lines near Burke, Idaho that connect NorthWestern's electric system in Montana with Avista's system in Idaho are unavailable

to transmit power from Montana to Idaho due to planned or unplanned operational reasons;

d) TRC desired to be compensated by Avista for the output of its project at those times that Avista was unable to receive the output from the project due to planned or unplanned operational problems with the transmission lines near Burke, Idaho;

e) TRC would not agree to undertake proceedings before the Idaho Public Utilities Commission to have all costs of the purchase contract attributed to Avista's retail rates in Idaho, in the event that such costs were not approved to be a part of Avista's retail rates in the state of Washington;

f) TRC would not agree that water would not be appropriated from the Clark Fork River for use at its project in violation of Avista's down-stream Montana water rights for the Noxon Dam;

g) TRC requires that Avista provide notice and allows Thompson River Co-Gen a period of time in which to cure its default prior to Avista exercising its right to terminate the agreement for failure to operate the Facility in accordance with certain minimum criteria;

h) TRC would not agree to an Avista right to terminate the agreement for failure to maintain a firm transmission path to a primary delivery point; and

i) TRC limited its liability for losses that it might owe to third party transmission providers to 4%, which would have the effect of displacing part of its liability for transmission losses to Avista's customers.

11. In addition, at various times, TRC represented that the output of TRC's project would be an average ten megawatts or less after subtracting station service, a sale of power to the

Thompson River Lumber Company (a separately owned neighboring company) and transmission losses associated with delivery of power to Avista's system in Idaho. However, the "net output" rule of FERC defines net output of a PURPA project to be determined at a point prior to the interconnection with loads that are not associated with the production of the power. TRC's offer fails to provide for the measurement of net power output prior to the delivery point at which TRC serves the load of the Thompson River Lumber Company. The determination of qualification of a project for filed rates for projects ten MW and less should be made on a consistent basis that utilizes the FERC "net output" standard. The failure of TRC to appropriately measure the "net output" as required by FERC would allow its project, in effect, to produce greater than ten megawatts, even if measured on an average monthly basis, while claiming an entitlement to be paid for its power as though it were a ten megawatt or less project.

#### **First Affirmative Defense**

TRC's project is a larger than ten megawatt facility, and therefore is not entitled to avoided cost rates applicable to ten megawatt and less projects.

#### **Second Affirmative Defense**

The output of TRC's project is committed by contract and/or FERC tariff to the sale to a retail serving utility in Montana. Therefore, TRC is not ready or able to commit to supply power to a retail serving utility in Idaho.

#### **Third Affirmative Defense**

TRC fails to account for sales to Thompson River Lumber Company and/or NorthWestern when determining the net output of its project. Therefore, even if measured on an average monthly basis, the output of its project will likely exceed ten average megawatts when measured at the appropriate point.



**III.**

**COMMUNICATIONS**

Communications respecting this matter should be addressed to::

**David J. Meyer**

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and Governmental Affairs

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**Kelly O. Norwood**

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**IV.**

**CONCLUSION**

For the foregoing reasons, Avista respectfully requests the Commission to dismiss  
TRC's complaint, herein.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of January, 2006.

**AVISTA CORPORATION**

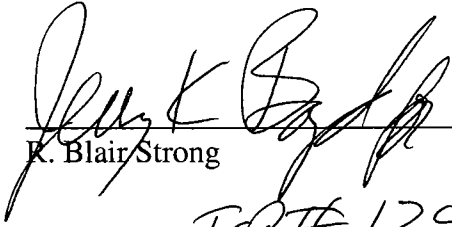
A handwritten signature in black ink, appearing to read "David J. Meyer", is written over a horizontal line.

**David J. Meyer**  
Vice President, Chief Counsel For  
Regulatory and Governmental Affairs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30<sup>th</sup> day of January, 2006, served the foregoing SECOND AMENDED ANSWER OF AVISTA CORPORATION upon all parties of record in this proceeding, by mailing a copy thereof, property addressed with postage prepaid, to:

Jean Jewell Commission Secretary Idaho Public Utilities Commission 572 West Washington Boise, ID 83702 Email: <a href="mailto:jjewell@puc.state.id.us">jjewell@puc.state.id.us</a>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Electronic Mail
Scott Woodbury Idaho Public Utilities Commission 472 West Washington Boise, ID 83702 Email: <a href="mailto:swoodbury@puc.state.id.us">swoodbury@puc.state.id.us</a>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Electronic Mail
Peter J. Richardson Richardson & O'Leary PLLC 515 N. 27th Street Boise, ID 83702 Email: <a href="mailto:peter@richardsonanddoleary.com">peter@richardsonanddoleary.com</a>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Electronic Mail
Mike Uda Doney, Crowley, Bloomquist, Payne & Uda P.C. 44 West 6th Avenue, Suite 200 Helena, MT 59601 Email: <a href="mailto:muda@doneylaw.com">muda@doneylaw.com</a>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Electronic Mail

  
R. Blair Strong

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