



July 23, 2012

**Via Electronic Submission**

Mr. David Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”  
Comments of Avista Corporation**

Dear Mr. Stawick:

On May 23, 2012, the Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”) (the CFTC and SEC collectively the “Commissions”) filed their joint final rule, joint interim final rule, interpretations entitled “Further Definition of ‘Swap Dealer,’ ‘Security-Based Swap Dealer,’ ‘Major Swap Participant,’ ‘Major Security-Based Swap Participant’ and ‘Eligible Contract Participant’” (“Joint Rule”). 77 Fed. Reg. 30596 (May 23, 2012). The Joint Rule includes a de minimis exception that caps an entity’s dealing activity involving swaps. The Joint Rule sets the general de minimis threshold at \$8 billion for the phase-in period. However, with regard to swaps in which the counterparty is a special entity, the Joint Rule sets a notational standard of \$25 million over the prior 12 months in order to qualify for the de minimis exception. 77 Fed. Reg. 30596, at 30744-45 (setting out section 1.3(ggg)(4)(i) of the CFTC regulation). Avista Corporation (“Avista”) is concerned that, to the extent that the \$25 million de minimis threshold applies to utility special entities, the Joint Rule will create substantial issues and severely limit the number of counterparties with whom Avista can engage in certain transactions.

Avista is an investor owned utility that provides electric distribution and transmission in parts of eastern Washington and northern Idaho and gas distribution service in parts of Oregon, Washington, and Idaho. Avista supplies retail electric service to 360,000 customers and retail gas service to 321,000. Avista also engages in wholesale purchases and sales of electricity and natural gas as an integral part of energy resources management and Avista’s load-serving obligation.

In hedging, mitigating or managing Avista’s commercial risks of operations and load-serving obligations, Avista enters into energy transactions, including certain swaps to reduce exposure to commodity market price fluctuations and stabilize retail utility rates for its customers. The energy markets in the Pacific Northwest in which Avista participates has a

Mr. David Stawick, Secretary

July 23, 2012

Page 2

limited number of market participants and includes a proportionately large number of municipal utilities and also includes Bonneville Power Administration (“BPA”), all of whom are likely “special entities” as defined by the Joint Rule. Swap dealing activity with such special entities will create substantial issues for Avista and, because of the relatively low \$25 million de minimis threshold, Avista may be required to substantially limit or even to cease certain business activities with such special entities.

On July 12, 2012, the American Public Power Association, Large Public Power Council, American Public Gas Association, Transmission Access Policy Study Group, and BPA (“Joint Petitioners”), filed a petition for rulemaking to amend section 1.3(ggg)(4) of the CFTC’s regulation (“Petition”).<sup>1</sup> Specifically the petitioners request that section 1.3(ggg)(4) of the Joint Rule be amended so that the \$25 million de minimis threshold will not apply to “‘utility operations related swaps’ to which the counterparty is a ‘utility special entity’.” Petition at 2-3. Avista agrees with the Joint Petitioners that section 1.3(ggg)(4) should be amended so that the \$25 million de minimis threshold does not apply to utility special entities.

In comments submitted by the Edison Electric Institute (“EEI”) on February 22, 2011, EEI cautioned that setting the de minimis threshold too low (specifically referencing the then proposed \$100 million threshold and \$25 million threshold for special entities) “likely will capture many entities ‘for which registration would not be warranted from a regulatory point of view in light of the limited nature of their dealing activities.’”<sup>2</sup> Avista appreciates the modification of the previously proposed \$100 million de minimis threshold to an interim level of \$8 billion. However, given the significant number of utility special entities that are often Avista’s counterparties in the Pacific Northwest, retention of the \$25 million de minimis threshold for special entities significantly undermines the positive movement to a more workable general de minimis threshold of \$8 billion.

As noted in the Petition, if dealing activity in swaps with utility special entities is subject to a \$25 million de minimis cap, market participants, like Avista, that do not intend to register as a “swap dealer” will be forced to limit their swap dealing activity with utilities that are special entities. *See* Petition at 10. The special entity \$25 million de minimis threshold will therefore reduce the number of counterparties available to Avista and other regional utilities for swap transactions. This could lead to a reduction of the number of potential counterparties in the regional market and less competitive pricing that could impede the ability to hedge, manage, and mitigate commercial risks related to a load-serving obligation.

Avista appreciates the opportunity to comment on the Joint Rule and Avista commends the Commissions for their work to implement the Dodd-Frank Act. The adoption in the Joint Rule of an \$8 billion de minimis threshold for the phase-in period is a substantial improvement in the rulemaking. However, the retention of the \$25 million de minimis threshold for special entities will significantly impact Avista’s ability to engage in certain transactions with its utility

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<sup>1</sup> The Petition is attached hereto as Attachment A.

<sup>2</sup> EEI’s Comments on Definitions of Swap Dealer and Major Swap Participant submitted February 22, 2011 (“EEI Comments”) at 10-11. The EEI Comments are available at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27918&SearchText=>

Mr. David Stawick, Secretary

July 23, 2012

Page 3

special entity counterparts. Avista therefore respectfully submits that the Joint Rule should, as advocated by the Joint Petitioners in the Petition, be amended to exclude “utility operations related swaps’ to which the counterparty is a ‘utility special entity’.”.

Respectfully submitted,

AVISTA CORPORATION

/s/ Patrice K. Gorton

Patrice Gorton

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Avista Corporation