

SCOTT WOODBURY
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0320
IDAHO BAR NO. 1895

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UTILITIES COMMISSION

Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
AVISTA CORPORATION DBA AVISTA) CASE NO. AVU-E-07-10
UTILITIES FOR AN ACCOUNTING ORDER)
AUTHORIZING DEFERRAL OF SETTLEMENT)
LEASE PAYMENTS.) COMMENTS OF THE
) COMMISSION STAFF
)
)
)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Application, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on November 21, 2007, submits the following comments.

BACKGROUND

On November 1, 2007, Avista Corporation dba Avista Utilities (Avista; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting an accounting Order authorizing deferral of settlement lease payments. The deferred accounting request pertains to costs to be incurred as a result of the recent settlement of a lawsuit in the State of Montana over the use of the riverbed resulting from the Company's ownership of the Noxon Rapids and Cabinet Gorge hydroelectric projects located on the Clark Fork River.

In October 2003, a lawsuit was originally filed against private owners of hydroelectric dams in Montana, including Avista. In this lawsuit, the State of Montana alleged that the hydroelectric facilities are located on state-owned riverbeds and the owners of the dams have never paid lease payments to the State for occupying such lands. The lawsuit requested lease payments prospectively and also requested damages for trespassing and unjust enrichment for periods of time dating back to the construction of the respective dams in the 1950s.

The Montana State Court previously ruled on several pre-trial motions for summary judgment, finding that, as a matter of law, the Clark Fork River was navigable and the State of Montana owns the riverbeds, that such lands are school trust fund lands, and therefore, the statutes of limitations have not run on the State of Montana's claims for prior damages. This left only the issue of damages to be decided at time of trial, set for October 22, 2007, with the State asserting \$200 million owing by Avista for prior trespass since the dams were constructed, and \$8.4 million owing prospectively on an annual basis.

On October 19, 2007, the Company reached a settlement with the State of Montana resolving this matter. Application, Appendix 2, "Memorandum of Negotiated Settlement Terms." Pursuant to the settlement, Avista has agreed to make lease payments in the initial amount of \$4 million per year beginning February 1, 2008, for the calendar year 2007, and continuing through calendar year 2016, adjusted each year by the Consumer Price Index (CPI), with no payment for prior damage claims. On or before June 30, 2016, Avista and the State of Montana will determine whether the annual lease payments remain consistent with the principles of law as applied to the facts and negotiate an adjusted lease payment for the remaining term of Avista's Federal Energy Regulatory Commission (FERC) license for its hydroelectric facilities on the Clark Fork River, which expires in 2046.

The level of the payments, the start date of the payments, as well as other terms and conditions of settlement, were all integral to the resolution of these claims. The settlement also contains provisions that could reduce the amount of Avista's lease payments as a result of future judicial determinations in related cases or governmental actions. Because of the State's insistence on an initial payment in February 2008 for the year 2007, Avista contends it is necessary to have deferred accounting to address recovery of these costs.

STAFF REVIEW

Staff has reviewed Avista's Application for an Order Authorizing Deferral of Settlement Lease Payments and recommends approval of the Company's request except for a carrying charge on the deferral. As noted in its filing, the Company is requesting an Order allowing for the deferral of lease payments. Avista notes that the Noxon Rapids and Cabinet Gorge hydroelectric projects are the Company's lowest-cost resources and are integral to the Company's resource base. The proposed accounting treatment would provide the Company with the opportunity to recover the costs associated with owning and operating these projects, while customers receive the benefit from these low cost resources. The Company will address the prudence and recovery of the settlement lease payments in its next general rate case, and propose an appropriate amortization period for future recovery of the deferred costs. Until the next rate case, approval of this request would not change rates currently charged to customers.

Avista requests authority to defer the lease payments in Account 186 – Miscellaneous Deferred Debits. The lease payments would be allocated to the Washington and Idaho jurisdictions based on the production/transmission allocation in effect at the time that the deferrals are made and placed in separate Washington and Idaho 186 – Accounts. Approximately thirty-four percent of the first annual payment of \$4 million (due February 2008 for the year 2007) or \$1,366,800 would be recorded to the Idaho Miscellaneous Deferred Debits account. Avista requests that interest accrue on the Idaho share of the deferrals at the customer deposit rate. As noted above, in the Company's next general rate case it would propose the recovery of an amortization of deferred lease payments. The amortization period would begin with the effective date of the new rates established in the next general rate case. Staff in previous cases has suggested amortization of similar items begin immediately upon deferral. However, Staff agrees with the Company's timing of the amortization of the deferred lease payments because it is anticipated that the Company will file a general rate case within the next year. In that rate case, the Company and Staff would also address recovery of the ongoing lease payments.

These hydroelectric projects are included in the rates currently charged to its customers. Avista's most recent general rate case, Case No. AVU-E-04-1, included these projects in the rate base and expenses upon which Avista's revenue requirement and resulting rates were calculated.

Regulatory assets can be established for expenses that are currently not included in rates, yet are significant enough to warrant deferring until the next general rate case for possible inclusion in rates at that time. Were a company to propose, in a general rate case, that certain expenses from past years be included in the current rates, it would be retroactive ratemaking. In order to be considered in the general rate case, the utility usually must have an accounting Order allowing them to defer the costs for possible future recovery. If a utility defers costs for future recovery in a general rate case, without Commission approval, it would most likely be denied recovery, because to allow recovery would be retroactive ratemaking. Avista's filing appropriately requests such an Order.

In its proposed accounting treatment the Company would accrue interest on the Idaho share of the deferrals at the customer deposit rate. Staff does not support accruing interest on the deferral. Granting the Company deferral of expenses that would likely otherwise be unrecoverable is sufficient relief to the Company. No law directs the Commission to allow a carrying charge on deferral accounts. The Commission has discretionary authority, affirmed by the Supreme Court, in determining whether to approve a carrying charge on a deferral account. Reference *Idaho Power Company v. Idaho State Tax Commission*, 141 Idaho 323 and Order No. 30235, page 3 in Case No. IPC-E-06-6.

The Commission evaluates the appropriateness of a carrying charge where a utility requests an Order authorizing deferred accounting in advance of the expenditure, or the deferral account is related to implementation of a program the Commission has ordered. In those circumstances, the Commission has an opportunity to evaluate the necessity and anticipated benefit for customers before the Company incurs the expense.

When the Commission has ordered a carrying charge for a deferred expense, the carrying charge has been at the customer deposit rate. The customer deposit rate for 2007 and 2008 is 5%. Reference Order No. 30200 in Case No. GNR-U-06-3 and Order No. 30469 in Case No. GNR-U-07-1.

STAFF RECOMMENDATION

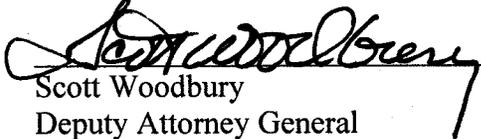
Staff recommends approval of Avista's Application for an Order Authorizing Deferral of Settlement Lease Payments. The deferred accounting pertains to costs to be incurred by Avista as a result of the recent settlement of a lawsuit in the State of Montana over use of the riverbed

resulting from the Company's ownership of the Noxon Rapids and Cabinet Gorge hydroelectric projects located on the Clark Fork River. The accounting treatment would be as follows:

- Record the deferred lease payments in Account 186 – Miscellaneous Deferred Debits without interest.
- Record the lease payments in separate Washington and Idaho accounts based on the production/transmission jurisdictional allocation in effect at the time that the deferrals are made.
- Delay amortization of the deferred cost until new rates are established in the next general rate case.

Staff recommends that recovery of an amortization of deferred lease payments be reviewed in the Company's next general rate case. Staff emphasizes that the Company is not currently seeking recovery of these costs and Staff makes no assurances on the level of these costs to be recommended for recovery during the Company's next general rate case.

Dated at Boise, Idaho, this ^{18th} day of December 2007.


Scott Woodbury
Deputy Attorney General

Technical Staff: Patricia Harms

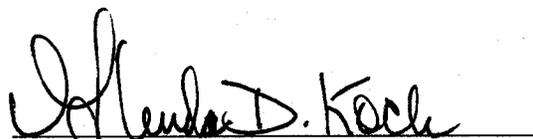
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 18TH DAY OF DECEMBER 2007, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-07-10, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

DAVID J. MEYER
VICE PRESIDENT AND CHIEF COUNSEL
AVISTA CORPORATION
PO BOX 3727
SPOKANE WA 99220
E-MAIL: david.meyer@avistacorp.com

KELLY NORWOOD
VICE PRESIDENT – STATE & FED. REG.
AVISTA UTILITIES
PO BOX 3727
SPOKANE WA 99220
E-MAIL: kelly.norwood@avistacorp.com


SECRETARY