

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 266

In the Matter of)
)
AVION WATER COMPANY, INC.) ORDER
)
Affiliated Interest Application with David L.)
Nelsen.)

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On May 7, 2007, Avion Water Company, Inc. (Avion) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.015, ORS 757.495 and OAR 860-036-0730, requesting approval of an affiliated interest agreement between Avion and David L. Nelson. A description of the filing is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its Public Meeting on July 10, 2007, the Commission adopted Staff's recommendation.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility," and Avion is a public utility subject to the Commission's jurisdiction.

Affiliation

An affiliated interest relationship exists, as defined under ORS 757.015.

Applicable Law

ORS 757.495 requires public utilities to seek approval of contracts with affiliated interests within 90 days after execution of the contract.

ORS 757.495(3) requires the Commission to approve the contract if the Commission finds that the contract is fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all the financial

aspects of the contract for ratemaking purposes. The Commission may reserve that issue for a subsequent proceeding.

CONCLUSIONS

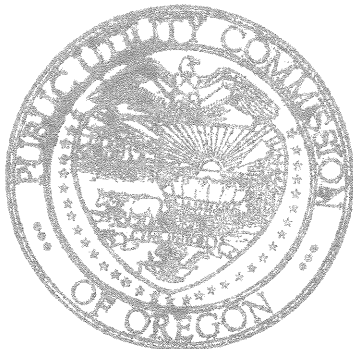
1. The Company is a public utility subject to the jurisdiction of the Commission.
2. An affiliated interest relationship exists.
3. The agreement is fair, reasonable, and not contrary to the public interest.
4. The application should be granted, as modified herein, including certain conditions and reporting requirements.

ORDER

IT IS ORDERED that the application of Avion Water Company, Inc., to enter into an affiliated interest agreement with David L. Nelson is approved, subject to the recommended conditions stated in Appendix A.

Made, entered, and effective JUL 16 2007.

BY THE COMMISSION:



Becky L. Beier
Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 10, 2007

REGULAR _____ CONSENT X EFFECTIVE DATE _____ NA _____

DATE: June 27, 2007

TO: Public Utility Commission

FROM: Marion Anderson 

THROUGH: ^{li}Lee Sparling, ^mMarc Hellman, and ^mMichael Dougherty

SUBJECT: AVION WATER COMPANY, INC.: (Docket No. UI 266) Affiliated interest application with David L. Nelsen.

STAFF RECOMMENDATION:

The Commission should approve the application of Avion Water Company, Inc. (Avion or the Company) for an affiliated interest agreement with David L. Nelsen under the following conditions:

1. Avion shall provide the Commission access to all books of account, as well as all documents, data, and records that pertain to any transactions with affiliates.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. Avion shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the agreement terms that alter the intent and extent of activities under the agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate format) in this docket.

DISCUSSION:

This application was filed on May 7, 2007, pursuant to ORS 757.015, 757.495 and OAR 860-036-0730. David L. Nelsen has a 5 percent common stock ownership position in Avion. Additionally, Mr. Nelsen serves as a Director of the Company. In response to a data request, Avion stated "Mr. Nelsen, as a minority shareholder, is

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bound by a buy-sell agreement for his stock, which is customary in closely held, non public corporations....Mr. Nelsen's compensation is based on the difference between the company's appraised value and the value formulated by the buy-sell agreement." Avion will be submitting a rate filing in the near future and this agreement will be revisited by Staff at that time to determine reasonableness in rates.

The following issues were investigated:

- Scope of the Agreement
- Transfer Pricing
- Determination of Public Interest Compliance
- Records Availability, Audit Provisions, and Reporting Requirements

Scope of the Agreement

The proposed 2007 disbursement to Mr. Nelsen is as follows under the draft corporate January 22, 2007 meeting minutes. The health plan allowance is a salary offset and that total as fully income taxable falls under the Company's SEP plan.

Salary	\$39,381
Retirement contribution	3,938
Health and dental insurance	<u>12,970</u>
Total	\$56,289

The 2006 meeting minutes were also submitted for review.

The previous five year history for the same type disbursements to Mr. Nelsen is:

2002	\$0
2003	0
2004	0
2005	32,051
2006	42,089

Mr. Nelsen is not an Avion employee and is not otherwise employed. Staff requested any documentation demonstrating Mr. Nelsen's involvement in the Company's operation. No documentation was submitted by Avion. However, Jan Wick, the principal Avion stockholder states that Mr. Nelsen is regularly consulted on business matters by telephone and e-mail. Staff is willing to accept the assertion for purposes of this application.

Transfer Pricing

Directors' (with the exception of Directors who are also paid as officers of the utility) fees and payments are costs that are routinely reviewed and recommended for

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allowance in rates by Staff. However, no valid authoritative data was found to assess the appropriateness of the salary, retirement, and benefit remuneration to a director. As a result, water utility Staff assigned to Avion's rate case will examine this in more detail and attempt to gather sufficient data from cohort companies. The following tabular comparison is made to evaluate financial materiality as a proxy:

	<u>2005</u>	<u>2006</u>
(1) David L. Nelsen's Wages, benefits, and retirement contributions	32,051	42,089
(2) Avion's utility operating expenses	2,986,072	3,250,837
(3) (1) percentage of (2)	1.1%	1.3%

Both years show that this agreement is immaterial.

Determination of Public Interest Compliance

This agreement is presumed fair and not unreasonable and therefore not demonstrably contrary to ratepayer interest. However, as previously mentioned, Staff will rigorously review these costs during Avion's rate application for reasonableness in rates.

Records Availability, Audit Provisions, and Reporting Requirements

Staff Recommendation Condition No. 1 affords necessary access to any relevant records.

PROPOSED COMMISSION MOTION:

The remuneration granted David L. Nelsen by Avion Water Company, Inc. be approved with the three Staff recommended conditions.

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