

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UW 170

In the Matter of

AVION WATER COMPANY, INC,

Advice No. 17-01 (ADV 505), Requests
Approval of Nottingham Bulk Irrigation
Tariff.

ORDER

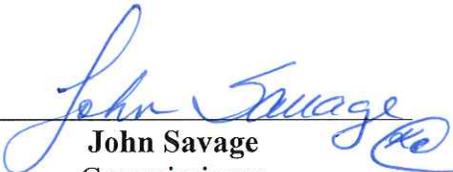
DISPOSITION: STAFF'S ALTERNATIVE RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our March 9, 2017 Special Public Meeting, to adopt Staff's alternative recommendation that Schedule No. 13 be allowed to go into effect, as modified to remove the proposed labor fee. The Staff Report with the alternative recommendation is attached as Appendix A.

Advice No. 17-01 is permanently suspended. Avion Water Company, Inc., shall file a compliance tariff consistent with our decision for service effective April 1, 2017.

Dated this 10 day of March, 2017, at Salem, Oregon.


Lisa D. Hardie
Chair


John Savage
Commissioner




Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 9, 2017**

REGULAR X CONSENT EFFECTIVE DATE April 1, 2017

DATE: February 27, 2017

TO: Public Utility Commission

FROM: Malia Brock

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck

SUBJECT: AVION WATER COMPANY, INC.:
(Docket No. ADV 505/Advice No. 17-01) Establishes a standard irrigation rate for Nottingham Square.

STAFF RECOMMENDATION:

Staff recommends that the Commission deny Avion Water Company, Inc.'s (Avion or Company) request to establish a separate irrigation water rate for Nottingham Square (Nottingham) customers pursuant to the Company's recently-filed Schedule No. 13.

Instead, Staff recommends that the Nottingham customers, if acquired by Avion, take irrigation water service pursuant to Avion's currently filed and approved Schedule No. 2 for service rendered on and after April 1, 2017, subject to the Staff recommendations discussed in this memo.

DISCUSSION:

Issue

Whether the Commission should approve Avion's Advice No. 17-01, that seeks to establish a separate customer class and different rate for irrigation service provided to Nottingham customers (Schedule No. 13).

Applicable Rule or Law

When a water utility seeks to establish new rates or schedules of rates, it must file a request with the Commission pursuant to ORS 757.210 and OAR 860-036-0630. The Commission may, upon written request or its own motion, after reasonable notice,

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conduct a hearing to determine whether the rates contained within the schedule are fair, just and reasonable. The Commission may also suspend the filing for further investigation pursuant to ORS 757.215(1).

In this advice filing, Avion seeks to establish a separate class of customers and an irrigation water rate for Nottingham Square customers that is *different than* the irrigation water rate it charges its current Avion customers. The Commission has the authority to authorize different classifications of service and rate schedules applicable to individual customers or groups of customers pursuant to ORS 757.230(1) based on consideration of the following factors: "the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration."¹ These considerations primarily reflect increased costs to serve a particular customer or class of customers due to their high-level or unique demand on the utility system.

However, the Commission's authority to create separate customers classes is constrained by the following statutes: ORS 757.310(2) prohibits utilities from charging customers different rates for "a like and contemporaneous service under substantially similar circumstances."² Additionally, ORS 757.325(1)³ prohibits service classifications that subject any person or locality to undue or unreasonable preference (or disadvantage).

Analysis

Background

Avion intends to acquire a portion of the former Juniper Utility (Juniper) system from the City of Bend, specifically the Nottingham and Stonegate subdivisions. An Asset Purchase Agreement between Avion and the City of Bend was executed on August 9, 2016, but an amendment has since been made postponing the closing of the sale, likely until a Commission determination is made with regard to this advice filing.⁴

¹ Additional statutory requirements apply if the consideration is based on price competition or a service alternative. See ORS 757.230(1)(a)-(d).

² Or. Op. Atty. Gen. OP-6475 (June 28, 1993); *In Re Portland Gen. Elec. Co.*, Docket No. UE 101/DR 20, Order No. 97-408 (Oct. 17, 1997) (ORS 757.310 prohibits discrimination *within* a customer class).

³ "No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect."

⁴ The purchase of Juniper by Avion does not require Commission approval given that Commission statutes and water division rules apply only to the purchase of public utility water systems, whereas here, the to-be-acquired Juniper system is owned by a municipality and not subject to Commission jurisdiction or approval. Further, the Company did not need to file a financing application because it indicated that it will not take out any financing for the purchase of Juniper, nor will it be issuing debt or other securities to finance the transaction that would require Commission approval.

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If Avion acquires the Nottingham and Stonegate customers from the City of Bend, Avion will provide domestic water service to both neighborhoods and irrigation water service to Nottingham only.⁵ The Juniper system that serves Nottingham and Stonegate domestic customers will be connected to Avion's existing domestic water system. However, the Juniper system that serves the Nottingham irrigation customers will utilize facilities that are separate from Avion's existing irrigation system.

Proposed New Tariff – Schedule No. 13

On January 30, 2017, Avion filed Advice No. 17-01 seeking Commission approval of Schedule No. 13 to establish a new irrigation water rate for Nottingham customers, with a requested effective date of April 1, 2017. Avion currently has an approved irrigation water tariff (Schedule No. 2) for its existing customers, thus, approval of this advice filing would create a separate class of irrigation water customers.

Avion filed Schedule No. 13 for two reasons. First, should the transaction close, Avion needs a tariff in place in order to serve the Nottingham irrigation customers because the language in the current Schedule No. 2 would exclude Nottingham customers based on the tariff's applicability to customers "who have water rights adjudicated to their land" (Nottingham customers do not have water rights adjudicated to their land). Second, Avion seeks approval of Schedule No. 13 to create a new class of customers to reflect the costs associated with serving a particular neighborhood or location.

Avion has indicated that the driver of the increased cost to serve Nottingham irrigation customers is the "wheeling" expense it will incur to transport irrigation water from Arnold Irrigation District through a different water company's (Roats) pipes for delivery to the Nottingham neighborhood. Roats and Avion have executed a wheeling agreement by which Avion will pay Roats \$30 per customer, per month to "wheel" water through Roats' system.⁶ Avion has indicated that, in the near term, they have no other means of delivering irrigation water to the Nottingham customers. The Company has expressed that there are no Arnold Irrigation District facilities close to this neighborhood, so Avion's alternative way to serve the Nottingham customers at this point in time would be to construct a new pond, pumping plant, and pipeline, which Avion indicates is not financially reasonable.⁷

Avion's current irrigation tariff (Schedule No. 2) and proposed additional irrigation tariff for Nottingham customers only (Schedule No. 13) is shown below:

⁵ Many Avion customers have separate water lines that separately run potable- and irrigation-quality water to their premises, hence the discussion of "domestic water" and "irrigation water" (irrigation water simply refers to the quality and purpose of the water; it is not a class of customers based on usage).

⁶ See Company Wheeling Agreement.

⁷ Company Response to IR No. 3.

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Current Irrigation Tariff: Schedule No. 2

IRRIGATION BASE AND VARIABLE RATES⁸

Water Delivery Charge Base Rate per Month	\$10.19 per customer premise
Water Delivery Charge Variable Rate per Month	\$7.64 per acre feet of water right adjudicated to the customer's premise

Proposed Additional Irrigation Tariff: Schedule No. 13

FLAT RATE

Bulk Water	Monthly Base Rate	Usage Allowance
	\$36.63	

The Monthly Base Rate of \$36.63 is comprised of the following costs:

Expense	Monthly Cost
Roats Wheeling Fee	\$30 per customer
Labor	\$3.42 per customer
Water Right/ Arnold Irrigation Fees for Water	\$3.21 per customer
Total Cost	\$36.63 per customer

Separate Rate Classification Analysis

1. Framework

Three statutes are applicable to the analysis of whether the creation of a separate class of customers is lawful. ORS 757.230(1) gives the Commission the authority to authorize different classes of customers, specifically, "classifications or schedules of rates applicable to individual customers or groups of customers." The statute does not provide specific criteria that must be met to establish a new classification, but instead provides a list of factors for the Commission to consider: *"the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other*

⁸ The "Delivery Charge" in Schedule No. 2 includes the water right/irrigation district fee. See Company Response to IR No. 8.

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*reasonable consideration.*⁹ The Commission has used the authority under this statute to develop different rates for residential customers, commercial customers, industrial customers, and at times, individual industrial customers.¹⁰

However, this authority is constrained by ORS 757.310, which prohibits a public utility from “charge[ing] a customer a rate or an amount for a service that is different from the rate or amount the public utility charges any other customers for a *like and contemporaneous service* under *substantially similar circumstances.*”¹¹

Likewise, the “undue preferences or prejudices” statute prohibits a public utility from giving an undue or unreasonable preference or advantage to a certain customer based on who the *customer is* or the *customer’s locality*. ORS 757.325.

In administering these statutes, the Commission exercises discretion in determining undue discrimination against a customer or a customer class; the Oregon Court of Appeals has indicated that: “One power the legislature delegated to PUC is the responsibility for determining the circumstances under which a public utility unjustly discriminates against a particular customer . . . We conclude that those terms are delegative, because PUC’s task in administering ORS 757.325 ‘is to complete the general policy decision [of prohibiting a public utility from unjustly discriminating against a particular customer] by specifically applying it * * * to various fact situations.’”¹²

2. Application of ORS 757.230(1) considerations

“The quantity used, the time when used, the purpose for which used”

The considerations of “the quantity used, the time when used, and the purpose for which used” have been interpreted to mean that different usage characteristics of a group of customers can justify a separate rate schedule, for example, *different load profiles*¹³ result in *different capacity (demand) costs* to serve that particular group of customers, or the purpose of the use or “end use” to the extent that the purpose or end use results in *differences in demand* placed on the utility.¹⁴

⁹ Additional statutory requirements apply if the consideration is based on price competition or a service alternative. See ORS 757.230(1)(a)-(d).

¹⁰ See *In Re Portland Gen. Elec. Co.*, Docket No. UE 101/DR 20, Order No. 97-408 (Oct. 17, 1997).

¹¹ Or. Op. Atty. Gen. OP-6475 (June 28, 1993); *In Re Portland Gen. Elec. Co.*, Docket No. UE 101/DR 20, Order No. 97-408 (Oct. 17, 1997) (ORS 757.310 prohibits discrimination *within* a customer class).

¹² *Chase Gardens, Inc. v. Oregon Pub. Util. Comm’n*, 131 Or App 602, 607–08 (1994).

¹³ Or. Op. Atty. Gen. OP-6475 (June 28, 1993).

¹⁴ See *Re Incentive Rates for Elec. Serv.*, Oregon Dept. of Justice, Oregon Dept. of Energy, Docket No. UG 23, Order No. 87-402 (Mar. 31, 1987).

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Take for example, the Commission's decision in UE 170, which illustrates how several of the "considerations" play out in practice. In UE 170, the Commission concluded that there were *no service differences* warranting a separate rate classification for Klamath Basin irrigators (Klamath irrigators that had previously been on a separate tariff) versus standard irrigation customers. PacifiCorp (PAC), Staff, and other parties argued that the Klamath irrigators' claimed differences in *average usage* and *end-use of power* were not a valid basis for a separate customer classification. Specifically, PAC argued that no differences in *service characteristics* existed because Klamath irrigation customers, like PAC's regular Schedule 41 irrigation customers, *took service for agricultural pumping, the majority of their usage occurred in the summer, nearly all took service at secondary distribution voltage, and the aggregate load factors were between 12 and 13 percent.*

The Commission agreed with PAC, rejecting the Klamath irrigators' argument that higher average power usage provided a basis for a separate rate classification, explaining that the variance in individual customer usage within each schedule (Klamath irrigators versus standard irrigators) did not demonstrate that the cost of serving each Klamath irrigator was lower than the cost of serving each Schedule 41 customer. The Commission concluded that different rates would discriminate between irrigation customers with substantially similar service characteristics because they would be adopted for a *subgroup of irrigation customers* based solely on geographic location and differences in average customer usage; such a practice would cause similarly sized irrigation customers in Medford (regular) and Klamath (special) to pay different rates—despite no differences in load characteristics—which was discriminatory.¹⁵

Staff believes the Avion and Nottingham customer situation parallels the Klamath illustration in that Avion is requesting to create a subgroup of irrigation customers (a separate class) based on geographic location—different neighborhoods in Bend—and to charge a different rate to those customers based on *service differences*. Despite having different amounts of water delivered to their properties, Staff notes that Avion and Nottingham customers' *quantity of water use and demand on the system* appear similar enough (irrigation of residential properties and "hobby farms" ranging from about five to ten acres) to not justify a separate class. For example, no commercial farm operations occur, which Staff views as an example where a customer's demand on the system to water a few hundred acres would justify a new class. Further, the Klamath example illustrates that a variance in average individual customer usage within a schedule (Klamath irrigators versus standard irrigators) does not suffice to create a separate customer class based on cost of service principles. The average usage between Avion customers and the Nottingham customers is likely different, but this alone is not a reason to create a new class. In fact, Avion indicated that its current

¹⁵ *In re Pacific Power and Light*, UE 170, Order No. 06-172 (Apr. 12, 2006).

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Schedule No. 2 customers have varying amounts of water delivered to their premise for the purpose of watering a small lawn to up to ten acres, yet they are still on *the same* rate schedule—Schedule No. 2. Thus, Staff has not found a demand-based justification for a sub-class of irrigation customers as Schedule No. 13 proposes.

Nonetheless, with regard to these considerations, the Company has indicated in responses to Staff IRs¹⁶ that there are significant differences in quantity used, times when used, and service characteristics that warrant the creation of a separate class for Nottingham customers, which Staff discusses below.

The Quantity Used

For Nottingham, the quantity of irrigation water that a single customer can use is fixed at approximately 1/3 of an acre-foot (average per customer) based on 60 acre-feet of water rights that the City of Bend will transfer to Avion if the purchase closes.¹⁷ Further, Avion believes that Nottingham customers do not have control over their usage; however, the Company cannot confirm this as the HOA and/or company it uses is responsible for delivery of the irrigation water through neighborhood lines to individual homes; only the total delivery of 60 acre-feet is measurable at the at Roats-Avion intertie.¹⁸

For Avion, the quantity of water the customer can use varies based on the amount of adjudicated water right that each customer owns and is controlled by the customer through an on/off control valve and a flow control device at their residence. Additionally, according to the Company, all current Avion customers may sell excess adjudicated water rights or purchase additional rights from the irrigation district.

Although the ability to control the amount of water used could be argued to reflect a difference in quantity used or service, Staff understands such considerations to reflect *the demand* a customer puts on the system—that must be greater than the variance in average individual use (Klamath)—which is not present for customers that have no control over how much they use. Further, should the Commission find the ability to control persuasive to create a separate customer class, Staff would generally expect the rate being charged in Schedule No. 13 to be less, not more, than what current Avion customers receive given that Staff thinks having no control over your own water use and limited additional water use is a lesser service than what Avion customers receive.

¹⁶ Company Response to IR Nos. 7, 11, 15.

¹⁷ Nottingham customers irrigation service is fixed at 1/3 acre feet per customer, with the HOA paying an additional 17 customer equivalents for a total of 180 Nottingham customers.

¹⁸ Company Response to IR No. 18.

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Time When Used

For Nottingham, the time when used is determined by the irrigation company hired by the HOA to operate the irrigation system.¹⁹

For Avion, the customer controls time of use through on/off control valves and other devices such as an irrigation timer.²⁰

Staff interprets the “time of use” consideration to also reflect a customer’s demand on the system to the extent that the cost the utility incurs to serve that particular customer is much greater than for others, and thus, a separate class with a different rate may be warranted. Given that the time of use here does not change the cost of the water or the cost to serve the customer, Staff does not believe this consideration is met.

“The existence of price competition or a service alternative”

This consideration will not be discussed at length because it does not apply in the Avion case; it has to do with whether a particular customer has a viable *direct access option* or other service alternative under which it could leave the utility’s system and obtain the same service at a cheaper price.

“The services being provided, the conditions of service”

One example of “a difference in services” is the provision of interruptible service versus firm service by the utility.²¹ This is because a utility can offer interruptible service at a rate discounted from the price of firm service given that the interruptible service allows the utility to avoid making new capacity purchases or incurring new transmission costs; hence, the interruptible service is deemed “lower quality.” However, there is sparse guidance on the meaning of the difference in “service” consideration, so the Commission could interpret it more broadly than just interruptible versus firm service.

In its IR response, Avion states there is a difference in service provided to Avion customers, namely the control the customer can exercise and time of use (discussed above) and the maintenance provided by the Company, i.e., for Nottingham customers, maintenance beyond the mainline is performed by an irrigation company hired by the HOA, whereas for Avion customers, maintenance from the mainline to the customer premise is provided by Avion.

¹⁹ Company Response to IR No. 19.

²⁰ Company Response to IR No. 20.

²¹ Scott Hempling, *Regulating Public Utility Performance* 294 (2013).

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Staff doesn't think the "difference in services" consideration is met because Staff relies on the example of firm versus interruptible service where it is *the utility* (not customers) that exercises control over interruptible service—meaning that the utility can control when to deliver service and or when to interrupt service for the benefit of its system, which is not the case here for Nottingham customers. Additionally, although Avion highlights differences in maintenance services for the Avion versus Nottingham customers, which could be argued as support for a different class, Staff is puzzled by the notion that the customers who receive *no maintenance service* (Nottingham) would *pay more* than customers that receive individual line maintenance service.

"Any other reasonable consideration"

The meaning and scope of "any other reasonable consideration" has been interpreted in different ways over time. It has been construed narrowly based on the legislative history of the statute, in which the other ORS 757.230(1) considerations of "the existence of price competition or a service alternative, the services being provided, and the conditions of service" was not in the initial version of the statute, but was later added for the purpose of *explaining what the general phrase "any other reasonable consideration" meant.*²² Moreover, "the reference to ' . . . any other reasonable consideration . . . ' [has been read] as implying that the legislature has determined that quantity, time, and purpose are reasonable and that any other consideration must similarly be reasonable. Obviously, those reasonable considerations must relate in some way to cost, value or condition of service."²³ However, by contrast, the Commission has noted that its authority to designate customer classes is broad under the statute and that it may consider any "reasonable economic justification" for the creation of separate customer classes (with the caveat that such authority is constrained by the non-discrimination statutes).²⁴

If "any other reasonable consideration" is interpreted narrowly, Staff does not find this consideration met based on the discussions above. If it is to be interpreted broadly, Staff examines below the primary reasons the Company sets forth for establishing a separate class.

²² Or. Op. Atty. Gen. OP-6190 (Nov. 23, 1987) (citing Testimony of Bill Warren, Assistant Commissioner for the Utility Program of the PUC, House Energy and Environment Committee (HB 2144), Exhibit I at 5--7 (March 30, 1987) and other exhibits); *but see, In Re Portland Gen. Elec. Co.*, Docket No. UE 101/DR 20, Order No. 97-408 (Oct. 17, 1997) (agency's authority is broad; the Commission believes "any other reasonable consideration" means any reasonable economic justification in the creation of customer classes).

²³ Or. Op. Atty. Gen. OP-6190 (Nov. 23, 1987).

²⁴ *In Re Portland Gen. Elec. Co.*, Docket No. UE 101/DR 20, Order No. 97-408 (Oct. 17, 1997).

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Wheeling fee

The Company indicates that the primary driver behind its desire to establish a separate tariff with a higher rate for Nottingham customers is the “wheeling fee” that must be paid to Roats to deliver water to the Nottingham customers. However, Staff views this as a distribution-related cost, which in accordance with traditional regulatory principles, would *not* be imposed on one particular *neighborhood* of customers *within* the same customer class, but would be “socialized” across the irrigation class of customers as a whole. Further, a determination of the appropriate percentage of distribution-related costs to assign to a particular customer class is most commonly determined in the context of a rate case when all costs have been examined by Staff. (Avion will file a rate case on April 1, 2017 pursuant to Order No. 13-288).

Size difference between the two systems

Avion has explained to Staff that there are significant differences between Avion’s irrigation facilities and systems and the Juniper system, specifically the size of the equipment used to serve the Nottingham customers and its sprawling design. By comparison, the Juniper system that currently serves the Nottingham customers uses pumps capable of delivering 2000 gallons per minute (GPM) of water flow, whereas Avion’s system is capable of delivering a maximum of 200 GPM.²⁵

Staff acknowledges that the size and pumping capability of the systems is significantly different but takes the position that, based on Commission policy, such costs would not typically be allocated to and borne by one subset of customers *within* a class. Further the difference in system size and capacity does not reflect the customer’s *demand on the system*, which appears to be the most common situation where a separate class is created. Rather, the Nottingham customers receive a limited quantity of water they cannot control, in other words, the utility does not have to make water purchases to meet Nottingham customer demand at peak times—which could justify a different class.

3. ORS 757.310 and 757.325

Staff completes its analysis by comparing the two sets of customers in light of the two statutes prohibiting discriminatory rates. Avion’s current customers that take service pursuant to Schedule No. 2 receive *irrigation-quality water* from Avion that is sourced from a number of irrigation districts including *Arnold Irrigation District* for residential-irrigation uses (lawns, gardens) and small “hobby farms” (property of approximately 5-10 acres). Similarly, the Nottingham customers receive *irrigation-quality water* from *Arnold Irrigation District* (albeit they are served via a pipe owned by another water company) for residential-irrigation uses (lawns, gardens, common areas). Moreover, if Avion purchases the Nottingham customers, Avion has indicated that those customers

²⁵ Company Response to IR No. 4.

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will be "Avion customers"; in other words, they will not be held as a subsidiary company. Therefore, Staff views the customers at issue to constitute one, clear customer class—Avion customers receiving irrigation water service for residential-irrigation uses.

Because Staff views both Avion and Nottingham customers as members of the same class of customers receiving "like and contemporaneous services under substantially similar circumstances," Staff believes that ORS 757.310(2) prohibits the Nottingham customers from being charged a different rate. Further, if the Commission agrees that they are the same class of customers, allowing some customers *within* that class to be charged a different rate would also violate ORS 757.325 by giving an undue or unreasonable preference to the Avion customers who do not live in the Nottingham neighborhood because they will be charged a lower rate for the same service (Schedule 2 vs. Schedule 13).

By contrast, if the two sets of customers are determined to constitute separate classes, there would be no violation of the statutory prohibition against charging a customer a different rate for a substantially similar service, nor would discriminatory ratemaking be invoked.²⁶

Conclusion

After review of the ORS 757.230 "considerations" that the Commission may take into account, Staff concluded that the creation of a separate class of irrigation customers for the Nottingham neighborhood is not justified. However, Staff recognizes the Commission's discretion in interpreting the meaning of all of the ORS 757.230(1) "considerations," especially "differences in services" and "any other reasonable consideration" for which there are few illustrative cases.

Therefore, Staff thinks the stronger argument for not creating a new customer class in this instance is that the drivers behind the increased costs proposed in the tariff come down to (a) a wheeling fee and (b) a more expensive facility to run, which are not factors warranting a new class. Further, Staff finds it *inconsistent* with Commission ratemaking policy to assign distribution-related costs to a subset of customers *within* a class and such a determination would typically be made in the context of a rate case when all the facts, costs, and comparisons across customers can be made.

Staff Recommendation

Staff recommends that the Commission permanently suspend Schedule No. 13 and require the Nottingham customers to take irrigation service pursuant to Schedule No. 2,

²⁶ "A difference in rates or amounts charged does not constitute a violation of subsection (2) of this section if the difference is based on: (a) a service classification under ORS 757.230." ORS 757.310(2).

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which will require the Company to make a compliance filing with the following language revision to allow for the billing of Nottingham customers: in the "Applicable" section of the tariff, a sentence should be added to indicate that "applies to customers who do not have water rights adjudicated to their land but who receive irrigation service from Avion."

For billing purposes, the Nottingham customers would pay the same rates included in approved Schedule No. 2, with a base rate of \$10.19 and a variable rate that comes out to \$2.54 per month (\$7.64 per acre feet x 1/3 acre feet). The Nottingham HOA will be charged a Variable Rate per month of \$43.18 (\$2.54 X 17 residential equivalents).

Staff's Proposed Revised Schedule No. 2:

IRRIGATION BASE AND VARIABLE RATES

Water Delivery Charge Base Rate per Month	\$10.19 per customer and each customer equivalent
Water Delivery Charge Variable Rate per Month	\$7.64 per acre feet of water
Nottingham Square Variable Rate per Month (for 1/3 acre feet of water)	\$2.55 per month
Nottingham Square HOA Variable Rate per Month (for 17 Nottingham Square Customer Equivalents)	\$43.29 per month

Commission Alternative

Staff points out that the Commission does have an alternative. Based on the Commission's "considerable latitude in establishing customers classes" (but for the statutory limitations on discriminatory rates)²⁷ and differing interpretations of "differences in services" and "any other reasonable consideration," it could find some of the factors presented by the Company compelling enough to warrant a new classification and approve the proposed tariff, with the condition that it be subject to review and revision in Avion's upcoming rate case.

Finally, Staff recognizes the unique circumstances present in this particular case that are unlikely to occur again. The issues presented in this case stem from the pending purchase of water system assets over which the Commission has no jurisdiction. In other words, because the City of Bend is a municipality, the Commission's normal review and approval process for purchase (ORS 757.485) or sale (ORS 757.480(5)) of

²⁷ Or. Op. Atty. Gen. OP-6190 (Nov. 23, 1987).

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utility property or assets is not invoked. The fact that Avion may execute the purchase regardless of the Commission's position, and the Nottingham customers they will acquire cannot currently be served by Avion system assets or by any other route or cheaper method, could be a circumstance under which the Commission could exercise its discretion with the "considerations" to create a new class.

The Company has explained that there are no Arnold Irrigation District facilities close to the Nottingham neighborhood, so "wheeling" water to these customers is the most cost effective method of delivery at this time. Avion has reviewed alternative ways of serving the Nottingham customers, which would require the construction of a new pond, pumping plant, and pipeline that does not appear financially reasonable to customers at this time. Additionally, billing for irrigation service begins April 1, 2017 and Avion does not have a currently approved tariff by which the Nottingham customers can take service because the language of the current tariff applies to customers who have "adjudicated water rights" delivered to their premise. Therefore, the Commission could, pursuant to its discretion within the considerations, establish the Nottingham customers as a different class of customers that would take pursuant to Schedule No. 13, and condition such approval upon Staff's review of the reasonableness of the wheeling expense and service route alternatives during Avion's rate case.

Should the Commission chose to approve Schedule No. 13, Staff recommends that the labor fee be removed from the tariff as the Company has not demonstrated the total labor costs they will incur to provide irrigation service to Nottingham customers will result in an increase in total labor costs as determined in their last rate case. Therefore, the total flat rate allowed in Schedule No.13 would be \$33.21 per month.

Staff's Proposed Revised Schedule No. 13:

IRRIGATION FLAT RATE	
Bulk Water	Monthly Base Rate
Nottingham Square Residential	\$33.21
Nottingham Square HOA (17 Residential Equivalents)	\$564.57

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PROPOSED COMMISSION MOTION:

Permanently suspend Schedule No. 13, Avion's proposed schedule to establish separate rates for irrigation water service to Nottingham customers; order that Nottingham customers, if acquired, take irrigation service on and after April 1, 2017 pursuant to Avion's currently filed and approved Schedule No. 2 and that Avion file a compliance filing that includes Staff's recommended language revisions and table to Schedule 2.

Avion.ADV.505

3. Regarding the Roats wheeling fee listed in Avion's Advice Filing 17-01, please list and briefly describe any other methods of serving Nottingham irrigation customers that were considered by Avion. For each alternative method, please provide a brief discussion of why that method was rejected in favor of Roats wheeling the irrigation water.

There are no Arnold irrigation facilities close to this neighborhood. The only way to serve the community would be to construct a new pond, pumping plant, and pipeline near the existing facilities. By inspection this alternative is not fiscally or physically possible (need for thousands of feet of easements through existing neighborhoods, etc.). There may be some other options but they will require multiple party negotiations and the recent spotted frog lawsuit has complicated matters.

4. Please provide the calculations used to arrive at the \$30 per month per customer wheeling fee and explain why that cost should only be born my Nottingham customers receiving irrigation water and not other Avion customers that also receive irrigation water.

Avion does not possess any information regarding Roats' price model, however it is my understanding that the cost was obtained by using a percentage of the total amount pumped. I believe that is fair as you have to pump all the water using a straight line percentage seems as good a method as any. It is not recommended to run these type of electric motors at reduced capacity as they are air cooled and doing so really shortens their lifespan.

The plant that serves the irrigation customers in the old Juniper Utility is several orders of magnitude bigger than any plant that Avion possesses for irrigation plant (see attached Exhibit B). The awkward design and sprawling nature of the entire system (Juniper Utility) mean it requires much more power, maintenance, and monitoring than any other system Avion owns. Avion's irrigation plants are capable of putting out a couple of hundred of gallons per minute versus the Juniper system which can put out approximately 2000gpm. As pipe sizes do not double in size going from 4" to 8" (12.57 sq inches vs 50.26 sq inches respectively) , costs do not increase linearly. For example: 200gpm means moving 1,670lbs of water per minute; 2000gpm means moving 16,700lbs of water per minute. All of Avion's other irrigation plants are close to the same design and functionality, meaning their costs are somewhat equivalent. In short, the design, size, volume, and the way the water is delivered through the Juniper system justifies the separate and different irrigation charge.

7. The OPUC establishes service classes under ORS 757.230 which states:

"The Public Utility Commission shall provide for a comprehensive classification of service for each public utility, and such classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration."

Please compare and contrast Avion's current irrigation service (Schedule No. 2), with the irrigation service in the proposed Schedule No. 13. Please describe in detail how the irrigation services differ and why Avion believes those differences meet the ORS 757.230 requirements for establishing a new class of service for the Nottingham irrigation customers. Please include in your response:

- a. Who the water is purchased from;
- b. Any other water systems used in the delivery;
- c. Actual method used (ditch/pipeline or combination) to deliver the water;
- d. What location the water is delivered to for each;
- e. How the water is measured for each, including whether they are metered;
- f. The customer's ability to control the amount of water they receive; and
- g. A diagram of the system with components clearly labeled.

As stated above the plant required to deliver the volume of water to all of Juniper Utility, as it has to, to work, is massive. This meets the volume requirement as the entire plant has to be operated to deliver water to all Juniper customers. You cannot run the plant and deliver water to just a portion of the properties. The conditions of service requirement is met because there is no way to differentiate the customers as they have no individual services, no water rights adjudicated to their property, therefore requiring the costs to be evenly amongst all the participants. The unfortunate side effect of this is that Avion and Roats are different companies and have different abilities, costs, and rates causing an inherent difference in rate structure.

- a) The water is purchased from Arnold Irrigation District (AID)
- b) Roats Water Company will be operating the plant that delivers water from AID to the Juniper Utility irrigation system.
- c) The water from Roats is delivered by pipe and then piped to the neighborhood.
- d) Unknown as the delivery for water to individual properties and common areas is not Avion's responsibility.
- e) There is no measuring system in place other than the headgate from AID and the meter at the Roats connection. Nor is there a way to install one without redesigning the whole system.
- f) Unknown as it is not Avion's responsibility.
- g) See Attached. The components cannot be clearly labeled as the only available maps are inadequate for that purpose.

8. Regarding the \$3.21 water right charges per customer, please provide a copy of all agreements between Avion, Roats, and the Arnold Irrigation District for delivery of irrigation water to the Nottingham customers; please provide the same information as it applies to the water right charges for current Avion irrigation customers. Please provide the calculation and factors used to derive the \$3.21.

There is no agreement between Roats, Arnold, and Avion. The sale will trigger the water right to be transferred. The rules and statutes regarding surface water use, as regulated by OWRD, control the rights and responsibilities of each party.

Cost of AID water (60 acres based on historical use) = \$6,938.41

See attached Exhibit D.

180 residential equivalents (163 residents plus 17 for the HOA)

12 months = 1 year

$\$6,938.41/180/12 = \3.21 per customer per month

Please remember irrigation service starts on April 1st, not on January 1st.

Current Arnold customers pay the same amount per acre adjudicated to their land provided Arnold does not have any additional charges, such as additional headgate maintenance etc. All of the other Districts have a different cost per Acre much as all utilities have different costs.

11. Please explain the differences in the irrigation water rights in relation to the proposed Nottingham customers and the current Avion customers. Please include in your response who owns the water rights for the proposed Nottingham customers and current Avion customers and why Avion believes water right ownership creates a separate class of irrigation customers.

Currently the City of Bend owns the water right for Juniper Utility. Upon sale the water right will transfer to Roats. After the transfer to Roats the water right will be split so 60 acres will be assigned to Avion. The Nottingham customers do not own any water rights nor are there any water rights adjudicated to any specific property in Juniper Utility. The right is currently assigned to various quarter sections (surveying term) in which the Juniper Utility neighborhoods make up a small part.

Water right ownership creates a separate class of customer because each of our existing customers has a discrete service which has a flow control in it. Each customer is, in effect a single entity who can increase or decrease the amount they want delivered and therefore increase or decrease their costs. Avion can therefore treat each individual customer individually as opposed to Nottingham where it is all or nothing. This is definite difference in conditions of service.

In short I am testifying, as a registered professional engineer in the State of Oregon, that the tariff meet the requirements for a new class of customer, as provided in ORS 757.230. By any reasonable man's standard the peculiar conditions and construction of Juniper Utility require a new class of irrigation customer.

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15. Regarding the Company's response to Staff IR 3 (OPUC's ability to establish service classes under ORS 757.230), please supplement your response to provide answers to the following for current *Avion* irrigation customers:
- Who the water is purchased from;
 - Any other water systems used in the delivery;
 - Actual method used (ditch/pipeline or combination) to deliver the water;
 - What location the water is delivered to for each;
 - How the water is measured for each, including whether they are metered;
 - The customer's ability to control the amount of water they receive; and
 - A diagram of the system with components clearly labeled.

Please also include in your response to question 15. f., how current *Avion* irrigation customers would use a flow control device to use less irrigation water in order to reduce irrigation charges on their bill to a level below the amount they would pay if they used their full adjudicated monthly water amount.

- The water is purchased from the Districts listed in our current schedule No. 2.
- There are no other water systems involved in our current deliveries to our existing irrigation customers.
- See attached Exhibit B for a list of systems and how water is delivered to the system by the irrigation companies. All of our systems listed are separate and are piped and pressurized by a booster plant from the pond or canal (typical booster plant and irrigation service shown in previous submission).
- The water is delivered to a service generally located on or near the customer's property, it varies by system and by individual customer. Some systems have the domestic meter and irrigation flow control in the same meter box while others are separate but near each other while others are separate and nowhere near each other.
- The water is measured by a flow control (see Exhibit C). The flow control is how irrigation water rights are measured. The irrigation companies provide *Avion* a conversion chart from acre-feet owned to flow control size (see Exhibit D). I am not aware of the exact formula used to calculate this.

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- f) Existing customers can sell their entire water right or a portion of their right to reduce or remove the expense associated with receiving irrigation water. They can purchase more, if available from the district they are in. To receive less irrigation the customer needs to contact the district they are in before the yearly assessment is due, the irrigation district then contacts us with their new allocation. Irrigation rights work on the yearly assessment on how those charges work and when they are applied are completely up to each district, Avion has no say or control of that aspect of their operations, it is just the way it is if you want to have irrigation water from a district. We then send out a crew to change the flow control to the new size. The customer is billed the lower assessment based on when they make the deal with the irrigation company, not when we change the flow control. Since the lower amount due to that customer will reduce the amount of water delivered to the pond or canal it is in our interest to get it changed quick otherwise the pumping plant may outrun the amount being delivered causing the system to go dry and our customers to call us and the PUC (bad).
- g) See attached Exhibit E for a map showing the locations of all our different irrigation plants. The system (Dobbins) shown in detail and is typical of all our systems.

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18. Please indicate whether or not individual Nottingham irrigation customers have the ability to control the timing of their water delivery and use. If so, please describe how Nottingham customers control the timing of their irrigation water delivery and use.

I assume they control how and when their water is delivered through the irrigation company employed by the HOA. I have no idea the mechanism for them to do so as is not part of the service we will be providing. I also not aware if it is even possible for them to do so.

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19. Please indicate whether or not the Nottingham HOA has the ability to control the timing of its irrigation water delivery and use. If so, please describe how Nottingham HOA controls the timing of its irrigation water delivery and use.

The only way for them to control the delivery of water is through their irrigation company. The timing of the use is partially under the influence of the availability of the districts water. Surface water use is based mainly on snow pack run off and if there is a low snow year it will mean reduced availability of water. Other than the controls the HOA has through its irrigation company the only other option is to shut down the entire line into Nottingham, since there are no discrete services.

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20. Please indicate whether or not current individual Avion irrigation customers have the ability to control the timing of their water delivery and use. If so, please describe how Avion customers control the timing of their irrigation water delivery and use.

Other than the physical limitations of the availability of surface water discussed in question 19 our existing irrigation customers all have discrete services that have the ability to be shut off. Most if not all have installed sprinkler systems with automated controls that regulate when, where and how much water they use (up to the limit the flow control imposes). A few just have hose bibs from which they hook up a hose and manual sprinkler.

BULK WATER DELIVERY AGREEMENT

This Bulk Water Delivery Agreement (this "Agreement") dated effective as of February 2, 2017 is entered into by and among AVION WATER COMPANY, INC., an Oregon corporation ("Avion"), and ROATS WATER SYSTEM, INC., an Oregon corporation ("Roats").

RECITALS

A. Avion and Roats are both licensed by the Oregon Public Utility Commission ("PUC") as a public water utility.

B. Avion has requested and Roats has agreed to provide Avion with bulk water delivery under the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Agreements.** Roats covenants and agrees to provide Avion with bulk water delivery during the term of this Agreement at a location and at such times as reasonably requested by Avion. In consideration for the foregoing, Avion shall pay Roats an amount equal to \$30 per month for each residential equivalent; provided, however that Avion and Roats acknowledge and agree that such amount may be adjusted by the PUC in its sole and absolute discretion. Roats will provide an invoice to Avion on or before the 10th day of each month for prior month. Payment will be due upon receipt of invoice from Roats.

2. **Term; Termination.** This Agreement shall commence as of the date of this Agreement and shall continue in effect for a period of one (1) year. Thereafter, this Agreement shall automatically renew for successive (1) year periods unless either party gives the other at least ninety (90) days prior written notice of its intent not to renew this Agreement. Notwithstanding anything contained herein, either party may terminate this Agreement in its sole, absolute and unreviewable discretion, with or without cause, upon ninety (90) days prior written notice.

3. **Miscellaneous.**

(a) **Time of Essence.** Time is of the essence with respect to all dates and time periods in this Agreement.

(b) **Binding Effect.** This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.

(c) **Amendment.** This Agreement may be amended only by a written document signed by the party against whom enforcement is sought.

(d) **Notices.** All notices or other communications required or permitted by this Agreement:

(1) must be in writing;

(2) must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties; and

(3) are considered delivered:

(A) upon actual receipt if delivered personally or by fax or an overnight delivery service; and

(B) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

To Avion:

Avion Water Company, Inc.
60813 Parrell Road
Bend, Oregon 97702
Attn: President

To Roats:

Roats Water System, Inc.
61147 Hamilton Lane
Bend, Oregon 97702
Attention: President

(e) **Severability.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

(f) **Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.

(g) **Remedies.** The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

(h) **Governing Law.** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.

(i) **Venue.** Any action or proceeding arising out of this Agreement will be litigated in courts located in Deschutes County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Deschutes County, Oregon.

(j) **Attorney's Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

(k) **Entire Agreement.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

(1) Signatures. This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, a party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.

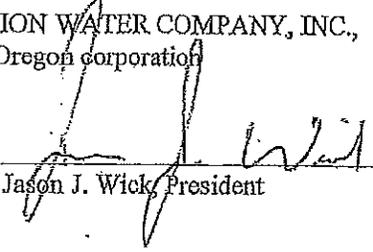
IN WITNESS WHEREOF, the undersigned have entered into this Agreement effective as of the date first set forth above.

AVION:

ROATS:

AVION WATER COMPANY, INC.,
an Oregon corporation

ROATS WATER SYSTEM, INC.,
an Oregon corporation

By: 
Jason J. Wick, President

By: 
Name: W.S. ROATS
Title: PRESIDENT