

ORDER NO. 24-352

ENTERED Oct 16 2024

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2318

In the Matter of

AVISTA CORPORATION, dba AVISTA
UTILITIES,

Application for Authorization to Defer
Certain Costs Associated with Energy
Efficiency Services to Natural Gas
Transport Customers.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on October 15, 2024, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:

Alison Lackey
Chief Administrative Law Judge



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.

ITEM NO. CA4

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 15, 2024**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** _____ **N/A**

DATE: September 25, 2024

TO: Public Utility Commission

FROM: Kathy Zarate

THROUGH: Caroline Moore, Scott Gibens, and Michelle Scala **SIGNED**

SUBJECT: AVISTA UTILITIES:
(Docket No. UM 2318)
Requests authorization of Deferred Accounting of Costs Associated with Energy Efficiency Services for Natural Gas Transport Customers

STAFF RECOMMENDATION:

Staff recommends the Commission approve Avista Utilities' (Avista, AVA, or Company) request for the authorization of deferred accounting for costs associated with Energy Efficiency Services for Natural Gas Transport Customers, for the 12-month period beginning on March 11, 2024.

DISCUSSION:

Issue

Whether the Commission should approve the Company's request for authorization of deferred accounting of costs associated with Climate Protection Program-related energy efficiency services for Natural Gas Transport Customers for the 12-month period beginning March 11, 2024.

Applicable Law

In accordance with ORS 757.259 and OAR 860-027-0300, Avista Corporation, dba Avista Utilities (Avista or Company), hereby submits for electronic filing an Application for authorization of deferred accounting for all costs associated with energy efficiency services provided to Natural Gas Transport Customers. The services provided are directly attributable to the Climate Protection Program (CPP).

Docket No. UM 2318
September 25, 2024
Page 2

Pursuant to ORS 757.259(2)(e) and OAR 860-027-0300, the Company hereby applies to the Public Utility Commission of Oregon for an order authorizing deferred accounting treatment for all costs associated with the Company's compliance with the Climate Protection Program (CPP) with respect to acquiring energy efficiency services for Natural Gas Transport Customers.

The Company respectfully requested that the deferral be effective for the 12-month period commencing on March 11, 2024.

Analysis

Background

On December 16, 2021, the Oregon Department of Environmental Quality (ODEQ) adopted the CPP, which are administrative rules that set GHG reduction targets.¹ The CPP sets a declining limit, or cap, on greenhouse gas emissions from fossil fuels used throughout the state of Oregon, including diesel, gasoline, natural gas and propane, used in transportation, residential, commercial and industrial settings (the program is not inclusive of fossil fuel used in electric generation).²

The CPP also regulates site-specific greenhouse gas emissions at large stationary sources, such as emissions from industrial processes.

The Company is a "covered fuel supplier" under the CPP and is the point of regulation for the emissions associated with natural gas used by its sales and transport customers.

Transport customers purchase the commodity they use directly from marketers and suppliers and have historically only paid Avista for delivery via the distribution system. Covered entities' emissions are reported annually through the existing ODEQ greenhouse gas reporting program and compliance will be demonstrated by each covered entity at the end of each three-year compliance period.

The Company can work to reduce natural gas usage through efficiency measures, introduce renewable and low carbon alternative fuels, trade for additional compliance instruments with other covered entities, or purchase a limited amount of Community Climate Investments (CCIs).³

On September 13, 2022, Avista's filed an application seeking authorization of deferred accounting for CPP costs related to energy efficiency measures for Natural Gas

¹ OAR 340-271-0010 – 9000.

² OAR 340-271-0110.

³ OAR 340-271-0450.

Docket No. UM 2318
September 25, 2024
Page 3

Transport Customers, for the 12-month period beginning on September 13, 2022. On April 21, 2023, the Commission approved Avista's request per Order No. 23-145.

However, the rules were invalidated by the Oregon Appeals Court (Court) on December 23, 2023, as the Court found that the rules did not comply with ORS 468A.315(1). Avista was one of the petitioners in the suit challenging the CPP administrative rules.⁴

Nevertheless, in January 22, 2024, ODEQ issued notice that it accepted the Court's decision, and it will begin the process to reinstate the CPP in the first quarter of 2024, anticipating the rulemaking process will take about 12 months.

In the first reauthorization request in docket UM 2254, the Company again asked for these costs associated with the CPP program be deferred. Staff proposed that the Commission approve the deferral request up to the date the Court invalidated DEQ's CPP rules. The Commission adopted Staff's recommendation in Order No. 24-228, issued on July 10, 2024.

In a subsequent filing by Cascade, Docket No. UM 2257(1) a similar issue arose related to deferral requests for CPP-related costs that included a time period over which the CPP rules continued to not be in effect having been invalidated by the Court. In the Staff review of that filing, Staff considered the issue further and recommended a different approach which is to support the deferral request. The reasoning is provided below and is taken from the Staff memo adopted by the Commission in Order No. 24-292, issued on August 28, 2024.

Because the Court of Appeals ruled the CPP rules invalid, Staff considered whether it was appropriate for Cascade to defer CPP costs incurred after December 20, 2023. Staff believes that there are compelling reasons to allow the Company to continue to track costs incurred after the CPP was invalidated and before the successor rules to the CPP go into effect. First, Staff notes that DEQ plans to pick the CPP back up as if there was no delay in implementation and believes that certain actions taken after the CPP was invalidated on December 20, 2023, may allow the Company to more cost effectively comply with the successor rules to the CPP. Second, the Company clarified to Staff that some costs were committed to prior to when the CPP was invalidated, but not incurred until after the CPP was invalidated. While Staff makes no determination about the prudence of these costs or any other costs at this time, Staff believes that it is reasonable to track these costs for later ratemaking.

⁴ Docket No. UM 2254.

Docket No. UM 2318
September 25, 2024
Page 4

In making this recommendation, Staff notes that a new set of rules to succeed the CPP is expected to go into effect January 1, 2025. Staff also highlights that many of the costs that the Company sought to defer in its application, such as the purchase of CCIs, were not needed or incurred during the deferral period, and other costs, such as EE investments, have broad benefits that the Company should pursue even without a deferral. Staff's recommendation to allow the Company to track costs incurred after December 20, 2023, should not be interpreted as determining that any particular cost incurred post-invalidation will be determined prudent.

In this filing, dated March 12, 2024, the Company makes two requests. First, the Company asks for approval to defer costs associated with complying with the CPP with respect to energy efficiency services provided to Natural Gas Transport Customers (which is essentially a reauthorization request of UM 2254); and the second request is to move all of the recorded deferral costs in UM 2254 into this deferral filing.⁵

With respect to the first request, Staff believes that similar circumstances arise here as in the Cascade example cited above. Avista is continuing a program already in existence and started prior to any Court ruling. With respect to the second request, Staff supports Avista's reasoning that moving the recorded expenditures will result in administrative ease.

Reason for Deferral

Under ORS 757.259(2)(e), deferral of utility expenses or revenues is allowed when it will appropriately match the costs borne and benefits received by customers.

Proposed Accounting

The Company records CPP compliance costs to FERC Account 182.3 (Other Regulatory Assets), crediting FERC Account 407.4 (Regulatory Credits).

Estimate of Amounts

The current CPP Deferral balance from which the Company is requesting to transfer all costs already recorded in support of providing energy efficiency services for transport customers is approximately \$266,847.

This amount includes both monthly distributions to Energy Trust for services rendered to transport customers, as well as approximately \$16,847 (included into \$266,847) expended as the transport customers' allocation for a third-party study to verify non-energy impacts (NEIs) for transport customers' avoided costs.

⁵ Docket No. UM 2318.

Docket No. UM 2318
September 25, 2024
Page 5

Information Related to Future Amortization

- Earnings review – Cost recovery for costs associated with the costs of compliance with the Climate Protection Plan will be subject to an earnings review in accordance with ORS 757.259(5).
- Prudence Review – A prudence review will be performed by the OPUC Staff no later than the proceeding to authorize amortization of the costs associated with the costs of compliance with the CPP.
- Sharing – No Sharing mechanism.
- Rate Spread/Design – The rate spread/rate design will be determined during the proceeding to authorize amortization of the costs associated with the deferral.
- Three Percent Test (ORS 757.259(6)) – Amortization of the deferred costs will be subject to a three percent test in accordance with ORS 757.259(7) or possible six percent test in accordance with ORS 757.259(8) and with Commission authorization. These tests limit aggregated deferral amortizations during a 12-month period to no more than three or six percent of the utility's gross revenues for the preceding year.

Conclusion

After Staff's review of Avista's application requesting authorization to defer, because the application meets the requirements of ORS 757.259 and OAR 860-027-0300, Staff recommends Avista's application be approved.

The Company has reviewed this memo and agrees with or expresses no objections to Staff's recommendation.

PROPOSED COMMISSION MOTION:

Approve Avista's application for authorization to use deferred accounting for Climate Protection Program (CPP) related costs, associated with energy efficiency programs for Natural Gas Transport Customers, for the 12-month period beginning on March 11, 2024.

Direct Avista to move to this docket any remaining costs previously deferred under Docket No. UM 2254.