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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 179

In the Matter of the Application of Avista Utilities)
for Approval of a General Services Agreement) ORDER
Covering Telecommunications Leasing and)
Associated Services with Avista Fiber, Inc., an)
Affiliated Interest.)

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On July 15, 1999, the Commission received an application from Avista Utilities (Company), filed pursuant to ORS 757.480 and ORS 757.495, requesting authority to engage in certain affiliated interest transactions with Avista Fiber, Inc.

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 September 7, 1999, the Commission adopted Staff's recommendation to approve the application with conditions. Staff's recommendation is attached as Appendix A and is incorporated by reference.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility" as anyone providing heat, light, water or power service to the public in Oregon. The Company is a public utility subject to the Commission's jurisdiction.

Affiliation

An affiliated interest relationship exists 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. The intent of the statute is to protect ratepayers from the abuses which may arise from less than arm's length transactions. *Portland General Electric*

Company, UF 3739, Order No. 81-737 at 6. Failure to file within the 90-day time limit may preclude the utility from recovering costs incurred under the contract. *See* ORS 757.495.

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.

Ratepayers should not be harmed by approval of this application.

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.

ORDER

IT IS ORDERED that the application of Avista Utilities for authority to engage in certain affiliated interest transactions with Avista Fiber, Inc., is granted subject to the conditions stated in Appendix A.

Made, entered, and effective _____.

BY THE COMMISSION:

Vikie Bailey-Goggins
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 of 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. A party may appeal this order pursuant to ORS 756.580.

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Appendix

ITEM NO. CA 1

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: SEPTEMBER 7, 1999**

REGULAR AGENDA__ CONSENT AGENDA X EFFECTIVE DATE_____

DATE: August 23, 1999

TO: Bill Warren through Marc Hellman and Mike Myers

FROM: Marion Anderson

SUBJECT: UI 179 – Avista Utilities Application for Approval of a General Services Agreement covering Telecommunications Leasing and Associated Services with Avista Fiber, Inc., an Affiliated Interest

SUMMARY RECOMMENDATION:

I recommend approval with conditions.

DISCUSSION:

Avista Capital, a wholly owned subsidiary of Avista Utilities, wholly owns Avista Fiber, Inc. This establishes the affiliated interest relationship under ORS 757.015. This general services filing was made under ORS 757.495 on July 15, 1999.

Avista Utilities transports its internet service and performs system control functions over the provisions made under this contract. The charges for these services first appeared as a \$6,371 1998 allocation to Oregon operations.

PERTINENT ISSUES:

I have investigated the following issues to determine if the agreement is fair and reasonable, and not contrary to the public interest.

ORDER NO. 99-542

1. Scope of Services

The contract covers the leasing of fiber optic telecommunications facilities. Specifically, one point-to-point DS3 circuit (i.e. a circuit capable of carrying full-motion video and audio) and ten strands of single mode fiber optic cable (dark fiber) between the Avista Utilities facilities located at East 41 Mission Avenue, Spokane, WA and the US Bank Building at West 422 Riverside, Suite 1528, Spokane, WA. Avista Fiber provided all the installation requirements. Avista Utilities assumes complete control and all legal responsibility for the distribution of signals over this network.

2. Transfer Pricing Methods and Cost Allocations

A bid was solicited and received from U S WEST for the services provided. However, no dark fiber was available. Avista Fiber priced its offer equal to U S WEST with the inclusion of dark fiber.

3. Determination of Public Interest Compliance

The U S WEST price comparison is sufficient to satisfy the lower of cost or market issue, particularly given the complexity of the unbundling issue and the no-cost dark fiber addition.

4. Records Availability, Audit Procedures and Reporting Requirements

I believe that Detailed Recommendation Condition 1 affords the Commission adequate access to records and provides for the auditing of transactions between Avista Utilities and Avista Fiber, Inc.

CONCLUSIONS:

Based on an investigation and review of this application, my conclusions are as follows:

1. Avista Utilities is a regulated gas company subject to the jurisdiction of the Public Utility Commission of Oregon.
2. An affiliated interest relationship exists between Avista Utilities and Avista Fiber, Inc.
3. The application appears to be fair and reasonable and not contrary to the public interest.

DETAILED RECOMMENDATION:

Based on the preceding discussion and conclusions, I recommend that this application presenting the telecommunications services contract between Avista Utilities and Avista Fiber, Inc., be approved with the following conditions:

ORDER NO. 99-542

1. Avista Utilities shall provide the Commission access to all books of account, as well as all documents, data and records of Avista Utilities and Avista Fiber, Inc., that pertain to transactions between the two.
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. Avista Utilities 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.
4. Avista Utilities shall maintain records to show, upon Commission request, the cost of Avista Fiber, Inc.'s provisions to Avista Utilities under this contract. The return component used in that calculation shall be Avista Utilities' currently authorized Oregon overall rate of return multiplied by the portion of Avista Energy, Inc.'s net assets employed in those provisions.

cc: Lee Sparling