

ORDER NO. 00-173

ENTERED MAR 27 2000

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UF 4168

In the Matter of the Application of Avista                     )  
Corporation for Authority to Issue Securities.                 )                 ORDER

**DISPOSITION: APPLICATION APPROVED WITH CONDITIONS**

On February 18, 2000, the Commission received an application from Avista Corporation (Company), filed pursuant to ORS 757.415 and OAR 860-027-0030, requesting authority to issue preferred or common stock through March 31, 2009.

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 March 17, 2000, 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.

**Applicable Law**

ORS 757.415(1) provides that:

A public utility may issue [stocks and bonds, notes, and other evidences of indebtedness] for the following purposes and no others. . .:

- (a) The acquisition of property, or the construction, completion, extension or improvements of its facilities.

- (b) The improvement or maintenance of its service.
- (c) The discharge or lawful refunding of its obligations.
- (d) The reimbursement of money actually expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such public utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection  
...
- (e) \*\*\*\*\*

When an application involves refunding of obligations, the applicant must show that the original borrowings were made for a permissible purpose. *Avion Water Company, Inc.*, UF 3903, Order No. 83-244 at 3; *Pacific Power & Light Co.*, UF 3749, Order No. 81-745 at 5.

ORS 757.415(2) provides that:

[The applicant] shall secure from the commission. . .an order. . .stating:

- (a) The amount of the issue and the purposes to which the proceeds are to be applied; and
- (b) In the opinion of the commission, the [proceeds] reasonably [are] required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will not impair its ability to perform that service; and
- (c) Except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The Commission believes that the proposed transaction is reasonably required for the purposes stated, is compatible with the public interest, and is consistent with the proper performance of the Company's public utility service. The proposed transaction will not impair the Company's ability to perform that service. The purposes of the proposed issuance are not, in whole or part, reasonably chargeable to operating expenses or to income.

For ratemaking purposes, the Commission reserves judgment on the reasonableness of the Company's capital costs and capital structure. In its next rate proceeding, the Company will be required to show that its capital costs and structure are just and reasonable. *See* ORS 757.210.

### CONCLUSIONS

1. The Company is a public utility subject to the Commission's jurisdiction.
2. The Company's application meets the requirements of ORS 757.415.
3. The application should be granted.

### ORDER

IT IS ORDERED that the application of Avista Corporation for authority to issue preferred or common stock through March 31, 2009, is granted, subject to the conditions stated in Appendix A.

Made, entered, and effective \_\_\_\_\_.

BY THE COMMISSION:

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**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.

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: March 17, 2000**

**REGULAR AGENDA** \_\_\_\_\_ **CONSENT AGENDA**   X   **EFFECTIVE DATE**

**DATE:** March 9, 2000

**TO:** Bill Warren through Marc Hellman

**FROM:** Bryan Conway

**SUBJECT:** UF 4168—Avista Corporation's Application for Authority to Issue Securities

**SUMMARY RECOMMENDATION:**

I recommend approving the application subject to Avista Corporation filing a supplemental application with specific details as to the company's plans, closer to the time of issuance.

**DISCUSSION:**

On February 18, 2000, Avista Corporation (Avista) filed an application under Oregon Revised Statute (ORS) 757.415 and OAR 860-027-030 for authority to issue preferred or common stock through March 31, 2009.

The new shares are anticipated as part of Avista's Rights Agreement<sup>1</sup>, a plan intended to prevent a takeover of the company without the board of directors' approval. The Rights Agreement essentially thwarts a hostile takeover by issuing new stock to all stockholders except the suitor. This results in severe financial disincentives and a reduction of voting power. Hostile is essentially defined as not working in conjunction with the board of directors and upper management. The actual mechanics of the Rights Agreement begin with a security called a right.

A right is an inactive<sup>2</sup> security entitling the owner to purchase preferred or common stock, as declared by the board of directors. Avista's board of directors has declared that each common share of stock shall bear a right. The rights become exercisable for all but the hostile suitor in the event of an imminent, or threat of an imminent, hostile takeover. The board could then issue preferred or common stock to all the rights holders except the hostile

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1 A Shareholder Rights Agreement is more commonly known as a "poison pill defense."

2 Formally, a right is called inchoate before it becomes activated.

suitor, thereby depleting his/her percentage ownership in the company and devaluing the amount of common stock he/she has already purchased. The potential financial loss and reduction of voting power is potent enough to deter a suitor from ever attempting a hostile takeover. Alternatively, the board can redeem the rights for \$0.01 each and allow a takeover to proceed.

Avista does not provide enough information on the proposed transaction for Staff to approve the application without further review. However, Avista states that it intends to use the proceeds from issuing preferred or common stock for the improvement or maintenance of utility service. These purposes are permitted under ORS 757.415. Because of the lack of detailed information, I recommend Avista file a supplemental application with specific details closer to the time of issuance.

Staff does not encourage the utilities to establish rights agreements because Oregon already has a statute concerning takeovers, ORS 757.511.<sup>3</sup> However, Avista's application states that its plan is in the spirit of ORS 757.511 and allegedly provides the mechanics for an orderly takeover in addition to the regulatory approval required by Oregon law. The Commission has previously granted Cascade Natural Gas Co. and Idaho Power Co. substantially similar authority.

#### **STAFF RECOMMENDATION:**

I recommend the Commission approve Avista's application conditional on the applicant filing a supplemental application with specific details as to the company's plans, closer to the time of issuance. That supplemental application would indicate whether common or preferred stock is to be issued, the issuances' proposed gross proceeds, net proceeds, costs, expenses, the financial impact on the company and other pertinent information.

CC: John Thornton

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<sup>3</sup> ORS 757.511 (1) reads, "No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light, or power without first securing from the commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015 (1), (2), or (3)."