

ORDER NO. 00-331

ENTERED JUN 23 2000

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UF 4171

In the Matter of the Application of AVISTA)	
CORP., for Authority to Issue and Sell Not More)	ORDER
than 3.7 Million Shares of Common Stock.)	
)	

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On May 1, 2000, the Commission received an application from Avista Corp., (Company), filed pursuant to ORS 757.415 and OAR 860-027-0030, requesting authority to issue and sell not more than 3.7 million shares of common stock.

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 June 6, 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. . .:

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- (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 Corp., for authority to issue up and sell not more than 3.7 million shares of common stock, 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.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 6, 2000**

REGULAR AGENDA____ **CONSENT AGENDA**____ **EFFECTIVE DATE** _____

DATE: May 30, 2000

TO: Bill Warren through Marc Hellman

FROM: Bryan Conway

SUBJECT: UF 4171—Avista Corp.'s Application to Issue and Sell Not More than 3.7 Million Shares of Common Stock

SUMMARY RECOMMENDATION:

I recommend approving the application with conditions.

DISCUSSION:

On May 1, 2000, Avista Corp. (Avista) filed an application under Oregon Revised Statute (ORS) 757.415 and Oregon Administrative Rule 860-27-030 for authority to issue and sell not more than 3.7 million shares of common stock.

Avista projects gross proceeds of \$111 million and total issuance fees are not expected to exceed \$2,775,000 or 2.5% of gross proceeds. The fees include agents' and underwriters' commissions, SEC, accounting, stock exchange listing, and printing and engraving fees. The expenses are reasonable.

Avista states that it plans to use the funds from the issuance and sale of the securities for any or all of the following purposes: (1) Avista's construction, facility improvement, and maintenance programs, (2) retirement or exchange of one or more outstanding stock, bond, or note issuances, (3) to reimburse the treasury for funds previously expended, and (4) for such other purposes, as may be permitted by law. To the extent the company's treasury is refunded, the original expenditures, or their precedents, were made for purposes described by ORS 757.415(1)(a), (b), or (e). To the extent that the obligations are discharged or refunded, those obligations or their precedents were used for purposes described by ORS 757.415(1)(a), (b), or (e).

Avista's authority should be valid without specific termination date as long as it maintains investment-grade bond ratings (or higher) on its senior secured debt by both Standard and Poor's Corporation and Moody's Investors Service, Inc.

Because issuing common stock would tend to strengthen a utilities' capital structure, I am less concerned with this application than I would be with an application to issue debt.

STAFF RECOMMENDATION:

I recommend the Commission approve Avista's application to issue and sell not more than 3.7 million shares of common stock with the following conditions:

1. the per share price of the proposed common stock may not be less than the last reported sale price of the company's stock on the New York Stock Exchange prior to the pricing for such sale by the company, minus an underwriting discount or agency commission;
2. any underwriting discount or agency commission may not be greater than 2.5 percent of the price to the public;
3. Avista should maintain investment-grade bond ratings (or higher) on its senior secured debt by both Standard and Poor's Corporation and Moody's Investors Service, Inc.
4. Avista should also demonstrate that any early debt retirement is cost effective.

I also recommend that Avista file the usual Report of Securities Issued and Disposition of Net Proceeds Statements as soon as possible after each issuance and sale.

CC: John Thornton

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