

Agenda Date: January 10, 2008
Item Number: A1

Docket: UE-072131
Company: Avista Corporation d/b/a/ Avista Utilities

Staff: Danny Kermode, Regulatory Analyst

Recommendation

Issue an order granting Avista Corporation's accounting petition in Docket UE-072131 requesting deferred accounting treatment for Avista's Clark Fork Project lease payments until the effective date of the new rates established in its next general rate case.

Background

On November 2, 2007, Avista Corporation d/b/a/ Avista Utilities (Avista or company) filed an accounting petition for authorization to defer the costs the company will incur as a result of the settlement of a lawsuit with the State of Montana (Montana) regarding lease payments for the use of Montana's Clark Fork River riverbeds.

Avista owns and operates the Clark Fork Hydroelectric Project (Clark Fork Project). The project consists of the Cabinet Gorge (231 MW) and the Noxon Rapids (466 MW) hydroelectric developments. Both developments are located along the lower Clark Fork River. The Cabinet Gorge dam and powerhouse are located on the lower Clark Fork River in northeastern Idaho, but most of its reservoir is located in Montana. In contrast, the Noxon Rapids development resides entirely in Montana.

In October 2003, a lawsuit was filed against the private owners of hydroelectric projects in Montana. The defendants included PacifiCorp, Pennsylvania Power and Light - Montana LLC (PPL) and Avista.¹ The lawsuit asked for Avista prospective lease payments of \$8,416,510 annually along with past damages of \$200,374,752. On October 19, 2007, Avista and Montana reached a settlement that provides for annual lease payments of \$4,000,000, beginning with calendar year 2007, and no payments for prior damage claims.² Lease payments after 2007 will be adjusted upward for changes in the annual average Consumer Price Index. The settlement provides that the lease term will be no less than the remaining term of Avista's Federal Energy Regulatory Commission (FERC) license that expires in 2046.

As part of the settlement, Avista and Montana agree to meet no later than June 2016 to determine if the annual payment amounts are still "consistent with the principles of law as applied to the facts" and will negotiate a new adjusted annual payment for the remaining term of the FERC license.³ In addition, the settlement agreement contains a provision that could potentially reduce the amount of the annual payment. The settlement contains a so-called "Most Favored Nations

¹ PacifiCorp settled in June 2007, whereas PPL Montana is continuing in litigation.

² *Background of Settlement of Claims*, October 31, 2007, Petition Appendix 1, pages 8-9.

³ *Memorandum of Negotiated Settlement Terms*, October 19, 2007, Petition Appendix 2, page 1.

Clause,” whereas if PPL receives a more “favorable determination,” the Avista lease payment will be adjusted by the amount necessary to reflect the more favorable terms.⁴

Discussion

Company Request

In its petition, the company requests authority to defer lease payments associated with the Clark Fork Project settlement agreement. The company also requests authority to accrue and defer monthly interest charges on the cumulative deferred lease payment balance.

Specifically, the company requests authority to defer the negotiated 2007 lease payment (payable in February 2008) along with any other future lease payments to Account 186, *Miscellaneous deferred debits*, until the effective date of any new rates established in the company’s next general rate case. The company proposes to allocate the lease payments between Washington and Idaho based on the Production / Transmission allocation factor in effect at the time of the deferrals. Based on the current Production / Transmission factor, the company would allocate to Washington 64.83% of the 2007 payment or \$2,633,200.

In addition to deferring future payments, the company requests authority to accrue interest on the Washington portion of the deferral at Avista’s weighted cost of debt semi-annually. The company proposes using the same methodology it uses for its Energy Recovery Mechanism to calculate interest, including the computation of the related weighted cost of debt.⁵ The interest would be computed monthly on the cumulative deferred balance, net of related deferred tax benefit.

The company proposes that recovery of the deferred lease payments and related accrued interest would be deferred until the effective date of rates established in its next general rate case. Amortization, if allowed, would begin with the effective date of the new rates established in the next general rate case.⁶

Staff Analysis

The company is requesting a departure from accounting required in the FERC uniform system of accounts, which requires the company to expense operating lease payments in the year or period that the payment became payable. Since the commission’s rules require electric utilities in Washington to use the FERC uniform system of accounts, the company must seek commission approval to account for the lease payments differently from the method provided in the uniform system of accounts.⁷ The company filing appears to be consistent with WAC 480-07-370(1)(b) in requesting authority to defer the Clark Fork lease payments.

⁴ *Memorandum of Negotiated Settlement Terms*, October 19, 2007, Petition Appendix 2, page 1-2.

⁵ Settlement Stipulation, Docket UE-011595, June 18, 2002.

⁶ The company will address recovery of the ongoing lease payments in its next general rate case.

⁷ WAC 480-100-203, *Accounting system requirements*.

If Avista's request is approved, there will be no impact on current rates. The proposed accounting treatment does not provide for the recovery of the deferred amounts, rather it merely allows the company to postpone the recognition of the lease payments until its next general rate case. In the company's next general rate filing the commission will decide whether the deferred lease payments were prudent and if they were, whether the payments will be allowed in rates. If the company did not apply for deferral of the lease payments at this time, it would, in all likelihood, be prohibited from recovering the lease payments in any future rate proceeding, consistent with the prohibitions against retroactive ratemaking.

The Clark Fork Project lease expense incurred by the company is a material amount and the company has filed a timely request for its deferral. Staff believes it is in the public interest to allow the company's deferral request. In addition, the company's request for the accrual of interest on the deferred amount recognizing the cost of invested capital and is consistent with prior commission orders. The proposed deferral provides Avista with the opportunity to request recovery of the deferred amount in its next rate filing while not affecting customers' current rates. The deferral preserves the company's ability to present its case for recovery of the newly-incurred expense while protecting the rate payer from shouldering the impact without due process.

Conclusion

Staff has reviewed the filing, associated documentation, and previous commission accounting petition orders, and considered the company's reasons for deviating from established accounting criteria. Staff recommends the commission issue an order granting Avista Corporation's accounting petition in Docket UE-072131 requesting deferred accounting treatment for Avista's Clark Fork lease payments until the effective date of any new rates established in its next general rate case.