

**Avista Corp.**

1411 East Mission PO Box 3727  
Spokane, Washington 99220-3727  
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Toll Free 800-727-9170



May 30, 2007

**VIA EMAIL AND OVERNIGHT MAIL**

Carole Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive S. W.  
Olympia, Washington 98504

Re: Avista Corporations' Petition for Accounting Order (Residential Exchange Credit)

Dear Ms. Washburn:

Enclosed for filing are the original and three (3) copies of the Petition of Avista Corporation for an Accounting Order Authorizing Deferred Accounting Treatment for Residential and Farm Energy Exchange Benefit Amounts Credited to Customers that Have Not Been Reimbursed by Bonneville Power Administration.

We are also filing this electronically today.

Very truly yours,

A handwritten signature in black ink, appearing to read "David J. Meyer", with a horizontal line extending to the right.

David J. Meyer

Enclosures

**BEFORE THE  
WASHINGTON UTILITIES & TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	
	)	
AVISTA Corporation dba Avista Utilities	)	Docket No. UE-07_____
	)	
For an Accounting Order Authorizing	)	PETITION OF
Deferred Accounting Treatment for	)	AVISTA CORPORATION
Residential and Farm Energy Exchange	)	FOR AN ACCOUNTING ORDER
Benefit Amounts Credited to Customers that	)	
Have not been Reimbursed by Bonneville	)	
Power Administration	)	

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**I. INTRODUCTION**

1           In accordance with WAC 480-07-370(b), Avista Corporation (“Avista” or “Company”) respectfully petitions the Commission for an order that authorizes the deferred accounting treatment detailed in this Petition related to Schedule 59 – Residential and Farm Energy Exchange Benefit.

2           Avista requests that the Commission issue the requested order authorizing the deferred accounting treatment for the amounts credited to customers under Schedule 59 that have not been reimbursed by Bonneville Power Administration (“BPA”). This filing reflects the recent decision by BPA to suspend payments under the Settlement Agreement<sup>1</sup> due to the uncertainties created by the recent decisions by the United States Court of Appeals for the Ninth Circuit (the “Ninth Circuit”).

3           Avista is requesting in this Petition that the Commission approve: (1) deferred accounting treatment for the amounts credited to customers under Schedule 59 that have not been

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<sup>1</sup> Settlement Agreement, Contract No. 00PB-12157 (including the Firm Block Power Sales Agreement), as such agreement is heretofore or hereafter supplemented or amended, between Avista and BPA.

reimbursed by BPA; (2) the monthly booking of carrying charges on that deferral, net of associated deferred taxes, at Avista's approved weighted cost of debt until the deferral is recovered; and (3) the amortization and recovery of the total deferred balance including carrying charges in a future proceeding. The timing and nature of such a Company filing will be influenced by the information that becomes known in the future about BPA resuming the payment of benefits. (The total deferred balance to be amortized might be reduced by any future Residential Exchange benefits received by Avista, but any such reduction will be dependent on future events.)

4           This accounting treatment is necessary for Avista to recover the amounts credited to customers that have not been reimbursed by BPA. These amounts credited to customers, and the associated carrying costs, would not otherwise be recovered absent the Commission approval of the deferral accounting treatment requested herein. The Commission will have before it in a future proceeding, the evidence and arguments necessary to address the rate treatment, and it will be able to rule upon the recovery period in that proceeding.

5           Avista is engaged in the business of providing electric and gas service within the State of Washington as a public service company, and is subject to the regulatory authority of the Commission as to its retail rates, service, facilities and practices. Its full name and mailing address for purposes of this proceeding are:

Avista Corp.  
Attn: David J. Meyer  
VP, Chief Counsel for Regulatory & Governmental Affairs  
1411 E. Mission Ave. MSC 13  
Spokane, WA 99202

Avista's representatives for purposes of this proceeding are:

David J. Meyer, Esq.  
Vice President and Chief Counsel  
Regulatory & Governmental Affairs  
Avista Corp.  
P. O. Box 3727  
1411 E. Mission Avenue, MSC 13  
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Telephone: (509) 495-4316  
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Kelly Norwood  
Vice President  
State and Federal Regulation  
Avista Corp.  
P. O. Box 3727  
1411 E. Mission Avenue, MSC 13  
Spokane, Washington 99220-3727  
Telephone: (509) 495-4267  
Facsimile: (509) 495-8851  
E-mail: [kelly.norwood@avistacorp.com](mailto:kelly.norwood@avistacorp.com)

6 Rules and statutes that may be brought at issue in this Petition include RCW 80.01.040,  
RCW 80.28.020, and WAC 480-07-370(b).

## II. BACKGROUND

7 Schedule 59 reflects a pass through of the benefits provided to Avista for its residential  
and small farm customers received under the Settlement Agreement. These benefits have been  
in the form of monthly payments from BPA to Avista. Avista received the most recent payment  
under the Settlement Agreement of \$1,181,612 in April 2007 for Washington customers. As  
discussed above, BPA has notified Avista that further payments have been suspended.

8 In the Ninth Circuit's recent opinions of May 3, 2007, in *Golden Northwest Aluminum v.*  
*Bonneville Power Administration*, No. 03-73426 ("*Golden Northwest*"), and *Portland General*  
*Electric Company v. Bonneville Power Administration*, No. 01-70003 ("*PGE*"), the Ninth Court  
concluded that certain BPA actions in entering residential exchange settlements with the region's  
investor owned utilities were not in accordance with the law. On May 21, 2007, BPA notified  
the region's investor-owned utilities that BPA concluded that the uncertainty created by the  
Ninth Circuit's decisions means that BPA must immediately suspend payments (including  
conservation and renewable discounts and any other credits) under the challenged BPA  
agreements pending final decisions by the Ninth Circuit in the outstanding Ninth Circuit  
challenges. Attached as Exhibit A to this Petition is a copy of BPA's letter notifying the  
Company of the suspension of payments.

9           The credit under Schedule 59 had been determined based on the expected Settlement Agreement benefits to be received from BPA over a future time period. The credit is an average for the twelve-month time period ending October 31, each year based on the payments from BPA expected to be received on a monthly basis. The difference between the amount credited to customers and the amount received from BPA is tracked using various balance sheets accounts. Due to timing differences between the Schedule 59 credit and receipt of payments from BPA, at any point in time there may be (i) moneys received from BPA that have not yet been passed through to customers or (ii) Company moneys that have been credited to customers but payments have not yet been received from BPA. The level of the credit has been designed such that, over the total time period that the credit was expected to be in effect, customers would receive all Settlement Agreement benefits received from BPA.

10           As of April 30, 2007, the Company has credited customers eligible for Schedule 59 \$1,639,474 more than received by Avista from BPA. Coincident with the filing of this petition, and due to the uncertainties created by the decisions of the Ninth Circuit and BPA's letter notifying the Company of the suspension of payments, the Company filed a tariff revision to discontinue paying the Schedule 59 credits effective June 22, 2007. The Company requested the tariff be effective at an earlier date on less than statutory notice. Assuming a mid-June effective date, it is estimated that the Company will have credited such customers approximately \$3.4 million more than the Settlement Agreement benefits received from BPA. In light of BPA's suspension of payments under the Settlement Agreement, this \$3.4 million amount credited to customers by Avista will have been funded by the Company. This Petition seeks deferred accounting treatment for all the amounts credited to customers under Schedule 59 that have not been reimbursed by BPA.

11           The current credit became effective November 1, 2006. Because Avista experiences higher electric consumption in the winter months, it has a receivable balance at the end of winter,

which, absent the suspension by BPA, would then reverse during the lower load summer period. Termination of the BPA credit before the end of their contract year has caused the over-refunded situation.

12           Going forward, the Company expects to join other investor owned utilities in seeking rehearing of the Ninth Circuit decisions. It is not possible at this time to predict the outcome of such rehearing requests or how any BPA Residential Exchange benefits will be determined and paid by BPA to Avista for the benefit of its residential and small farm customers.

### **III. PROPOSED ACCOUNTING TREATMENT**

13           The Company proposes in this Petition to (1) defer the Schedule 59 Settlement Agreement benefits credited to customers that have not been reimbursed by BPA, as a regulatory asset in other regulatory assets account 182.3, (2) accrue in a separate 182.3 account, monthly carrying charges on such deferred amounts, net of associated deferred taxes, at Avista's weighted average cost of debt for the period, currently 7.825%, until the deferral is recovered; and (3) amortize the total deferred balance including carrying charges in regulatory credits account 407.4, over a time period to be determined in a future proceeding of the Company. As discussed in this petition, the amounts credited to customers under Schedule 59 that have not been reimbursed by BPA might be reduced by future Residential Exchange benefits received by Avista, but any such reduction will be dependent on future events.

### **IV. COMPANY'S REQUEST**

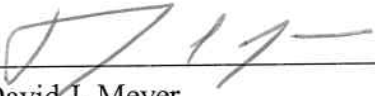
14           Based on the foregoing, Avista respectfully requests that the Commission issue an Accounting Order approving the Company's requested accounting treatment as follows:

(1) Authorizing Avista to utilize deferred accounting treatment for the amounts credited to customers under Schedule 59 that have not been reimbursed by BPA;

(2) Authorizing Avista to book monthly carrying charges on that deferral, net of associated deferred taxes, at Avista's approved weighted average cost of debt until the deferral is recovered; and

(3) Authorizing Avista to amortize and recover the total deferred balance including carrying charges over a time period to be determined in a future proceeding of the Company. The timing and nature of such a Company filing will be influenced by the information that becomes known in the future about BPA resuming the payment of benefits.

DATED this 30th day of May 2007



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David J. Meyer  
VP, Chief Counsel for  
Regulatory & Governmental Affairs

Exhibit A





## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

POWER SERVICES

May 21, 2007

In reply refer to: PS-6

Mr. Kelly Norwood, Vice President  
State and Federal Regulation  
Avista  
201 W. River Drive  
Spokane, WA 99201

Dear Mr. Norwood:

As we have recently informed you or your representatives, the law provides that a Federal Certifying Officer is personally responsible and accountable for certifying the legality of a proposed payment, and is personally accountable for making a payment prohibited by law. *See* 31 U.S.C. § 3528; Principles of Federal Appropriations, Second Edition, Volume II, 9-88 – 9-145. In the Ninth Circuit Court of Appeal's (Court) recent May 3, 2007, *PGE* and *Golden Northwest Aluminum* decisions, the Court concluded that certain Bonneville Power Administration (BPA) actions in entering residential exchange settlements in 2000 with your company and other Investor Owned Utilities were "not in accordance with law." This quite understandably raised substantial question whether the BPA Certifying Officer could certify additional payments under the settlement agreements; indeed, the Court has asked for briefing as to the effect of its rulings on pending challenges to other outstanding settlement agreements.

We have concluded that this uncertainty created by the Court's decisions means that we must at this time suspend payments. You have acknowledged that BPA is, thus, currently prevented by reasons beyond its control from continuing payment pending final decisions by the Ninth Circuit in the outstanding Ninth Circuit challenges, and that in light of this uncertainty created by the Court's decisions you agree not to assert BPA is in breach of contract as a result of the suspension. Accordingly, BPA is immediately suspending payments (including conservation and renewable discounts and any other credits) under the challenged BPA agreements pending final decisions by the Ninth Circuit in the outstanding Ninth Circuit challenges. Such temporary suspension and acknowledgement shall not constitute an admission or waiver of, and is subject to, any statutory, contractual and other rights and obligations of the parties that may exist, so the suspension is without prejudice to the issue of whether the suspended amounts must at some later point be paid (or credited). BPA's suspension in no way affects the continued existence of the settlement agreements.

We very much regret that it is necessary for us to suspend payments at this time, since we understand that this will rapidly result in large and, for some, severe rate consequences for your

residential and small farm customers. We have spent considerable effort seeking to find means to continue the payments to allow more time for the parties to find a way to address the issues raised by the Court, but without success.

BPA currently anticipates that such suspension will continue at least until any petitions for rehearing on the Court's decisions are finally resolved. We believe the Court's decisions on the settlements are in error, and we are exploring all potential viable avenues for rehearing, including by the full Court if possible. BPA agrees that this suspension is only an interim measure and does not represent a final action by the Administrator, and it will not assert otherwise. BPA agrees it will inform you of its final decision regarding the suspended and any remaining payments (and credits) within a reasonable period of time after the decisions by the Ninth Circuit are final in the outstanding Ninth Circuit challenges.

In the interim we will be consulting with key stakeholders informally as to any ideas for finding a way to resolve these issues consistent with the Court's decision. This is made more challenging by the fact that the Court has not ruled yet on the significant 2001 and 2004 amendments to the contracts that the Court did rule on. We want to resolve this issue as quickly as possible, but also recognize that any work now may be undone by further rulings from the Court.

This is a most vexing problem, and we look forward to working with you and others in the Pacific Northwest region to find a resolution that best serves the interest of all Northwest citizens.

Sincerely,



Mark O. Gendron  
Vice President, Requirements Marketing

cc:  
Larry LaBolle

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that I have served Avista Corporation's Petition for an Accounting Order, by mailing a copy thereof, postage prepaid, to the following:


Ms. Carole J. Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, WA 98504-7250

Sally Johnston  
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Dated at Spokane, Washington this 30th day of May 2007.

  
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Patty Olsness  
Coordinator