

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	DOCKET UE-230548
AVISTA CORPORATION, d/b/a AVISTA UTILITIES,	ORDER 01
Petitioner,	GRANTING ACCOUNTING PETITION
For an Order Approving Deferral of Certain Costs Associated with Montana Riverbed Lease Agreement	

BACKGROUND

- 1 On June 30, 2023, Avista Corporation d/b/a Avista Utilities (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition (Petition) for an accounting order approving the deferral of costs associated with the Montana Riverbed Lease Agreement.
- 2 In 2006, the State of Montana (the State or Montana) brought an action in Montana District Court (District Court) against Avista Corporation, d/b/a Avista Utilities and PPL Montana (PPL) as owners of hydroelectric dams in the state. The State contends that the dams encroached on state-owned lands consisting of beds and banks of what is considered “navigable waters.” Montana also argues that rent was owing for trespass since the construction of the dams as well as for the term of the Federal Energy Regulatory Commission (FERC) license.
- 3 In 2007, prior to the start of the trial against Avista and PPL, the District Court entered an order which determined that several rivers on which PPL had hydro facilities were “navigable” and therefore those rivers were owned by the State. Accordingly, the only issue for trial was the amount owing for past damages and future rental payments owed by Avista and PPL.
- 4 Prior to trial, Avista reached a settlement with the State. In exchange for Avista agreeing to pay \$4.0 million per year in rent, plus an annual Consumer Price Index adjustment, Montana agreed to dismiss all of its other claims. The settlement contained a Most Favored Nation provision, which provides that should PPL achieve a more favorable outcome at trial, Avista would receive the benefit of that outcome.

5 The case against PPL proceeded to trial in District Court, and the judgment against PPL
was significant. Based on this judgment, had Avista remained in the case, Avista's
ratepayers likely would have been exposed to an additional \$98 million in costs beyond
the agreed-upon level of rent. Thus, the Most Favored Nation provision was not
triggered.

6 The Montana Supreme Court affirmed the District Court's ruling against PPL. PPL
sought review in the U.S. Supreme Court. In 2011, the U.S. Supreme Court accepted
PPL's case.

7 The U.S. Supreme Court ruled that the determination of riverbed title should be made on
a segment-by-segment basis, depending on the facts. Thus the U.S. Supreme Court
reversed the Montana Supreme Court's ruling and remanded the case back to Montana
for further proceedings.¹

8 The case was removed to Federal Court. On August 1, 2018, the Federal Court found that
the U.S. Supreme Court's decision was final as to the non-navigability of certain reaches.
The matter went to trial on January 7, 2022, as to the remaining reaches.²

DICUSSION

9 In 2007, Avista began making annual rent payments in accordance with the settlement
agreements.^{3,4} Obligation to pay the agreed-upon level of rent did not terminate after the
initial 10-year period. The Company was required to make the scheduled rent payment in
2017 and beyond to the State of Montana unless the parties both agreed to an adjusted
amount.

¹ Following remand, Northwestern Energy (Northwestern) was substituted as a party as the
successor-in-interest of the hydropower projects previously owned and operated by PPL.

² As of June 30, 2023, no decision has been made. When there is a final decision, Avista will
again pursue recovery of any overpayments.

³ The Commission approved deferral of lease payments beginning with 2007 payments in Docket
UE-072131. Avista was authorized to defer the lease payment amount in FERC Account 186,
Miscellaneous deferred debits. Avista was also allowed to charge interest at the Company's
weighted cost of debt.

⁴ The Commission approved recovery of both the 2009 lease payment and the amortization of
deferred 2007 and 2008 lease payments to be amortized over eight years in Avista's general rate
case, Docket UE-080416. Ongoing lease payments have been included in the approved revenue
requirement since then.

- 10 The initial agreement provided for the parties to meet to renegotiate the level of payment after the first ten years of the lease. These renegotiations began in 2016. The parties did not agree to an adjusted amount, so Avista agreed to continue making the annual payments under protest, thus the parties established an escrow amount in March 2017. Accordingly, Avista began making its rent payments in escrow rather than the State.⁵
- 11 At the end of the escrow period, Avista would owe the lease amounts agreed to by the parties, as well as added interest. Should the escrow account contain insufficient funds, Avista would have to pay the State directly the difference within thirty days of the escrow disbursement. The approximate amount of the shortfall was \$3.7 million. However, the Company has negotiated the interest payment to be \$1.6 million on a system wide basis.
- 12 On May 4, 2023, Avista received notice of the release of funds for the Montana Riverbed lease payments for the rent years 2016-2020 from the escrow account. The notice identified the additional amount owed by Avista that represents the interest component.
- 13 On June 30, 2023, Avista filed its Petition.
- 14 In its Petition, Avista proposed to record the deferral as a regulatory asset in FERC Account 182.3 *Other regulatory assets*. The Company also proposes to include a carrying cost equal to Avista's cost of debt set in the Company's last general rate case of 4.8 percent.
- 15 We grant Avista's Petition. The Company appropriately proposes to defer \$1.04 million representing Washington customers' share of the interest component of the payment made to Montana in the third quarter of 2023. Avista appropriately proposes to record the deferral as a regulatory asset in FERC Account 182.3, *Other regulatory assets*. The Commission will determine the prudence of these deferred costs in the Company's next general rate case.

⁵ This decision was accompanied by an Escrow Agreement signed by Avista, the State, and the Escrow Agent. Please see the Escrow Agreement dated March 29, 2017, between Avista, the State of Montana, and the Escrow holder, U.S. Bank. (Attachment B)

FINDINGS AND CONCLUSIONS

- 16 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including investor-owned electric and natural gas companies.
- 17 (2) Avista is a public service company regulated by the Commission, providing service as an electric and natural gas company.
- 18 (3) The Commission has jurisdiction over the subject matter of this proceeding and over Avista.
- 19 (4) WAC 480-07-370(3) allows regulated companies to file petitions, including the Petition Avista filed in this Docket.
- 20 (5) Staff has reviewed the Petition in Docket UE-230548.
- 21 (6) Staff recommends the Commission grant the Petition.
- 22 (7) This matter came before the Commission at its regularly scheduled meeting on November 9, 2023.
- 23 (8) After reviewing Avista's Petition filed in Docket UE-230548 and giving due consideration to all relevant matters and for good cause shown, the Commission finds that the Petition should be granted.

ORDER

THE COMMISSION ORDERS:

- 24 (1) Avista Corporation, d/b/a Avista Utilities' Petition is granted.
- 25 (2) This Order shall not affect the Commission's authority over rates, services, accounts, valuations, estimates, or determination of costs on any matters that may come before it. Nor shall this Order granting Petition be construed as an agreement to any estimate, determination of costs, valuation of property claimed or asserted or to the possible recovery of, or return on, the amounts deferred to the regulatory asset.

- 26 (3) Avista Corporation, d/b/a Avista Utilities is authorized to record the deferral in FERC Account 182.3, *Other regulatory assets*, and accrue interest at its current authorized cost of debt of 4.8 percent.
- 27 (4) The Commission retains jurisdiction to effectuate the provisions of this Order.
- 28 The Commissioners, having determined this Order to be consistent with the public interest, directed the Acting Executive Director and Secretary to enter this Order.

DATED at Lacey, Washington, and effective November 9, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KATHY HUNTER
Acting Executive Director and Secretary