

AVISTA CORP
Form S-8 POS
February 26, 2015

As filed with the Securities and Exchange Commission on February 26, 2015
Registration No. 333-33790

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8/A
POST-EFFECTIVE AMENDMENT NO. 1
to
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

AVISTA CORPORATION
(Exact name of Registrant as specified in its charter)

	4931 (Primary Standard Industrial Classification Number)	
Washington (State or other jurisdiction of incorporation or organization)	1411 East Mission Avenue Spokane, Washington 99202 (509) 489-0500	91-0462470 (I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number,
including area code, of Registrant's principal executive offices)

MARIAN M. DURKIN

J. ANTHONY TERRELL

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Senior Vice President, General Counsel and
Chief Compliance Officer
Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202
(509) 489-0500

Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway
New York, New York 10036
(212) 858-1000

(Name and address, including zip code, and telephone number,
including area code, of agents for service)

THE INVESTMENT AND EMPLOYEE STOCK OWNERSHIP PLAN OF AVISTA CORPORATION
(Full Title of Plan)

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EXPLANATORY NOTE

This registration statement originally registered (1) 1,500,000 shares of Common Stock, without par value, of Avista Corporation (of which 376,299 remain unsold) and (2) Preferred Stock Purchase Rights appurtenant to shares of Common Stock to be issued under the Shareholder Rights Plan of Avista Corporation. Inasmuch as such Stockholder Rights Plan and all rights outstanding thereunder have expired, no such rights remain registered under its registration statement.

Part I

The information required by Part I to be contained in the Section 10(a) prospectus (the “Prospectus”) is omitted from the Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the “Securities Act”) and the note to Part I of Form S-8.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

A. Documents Incorporated by Reference

Avista Corporation (“Avista”, the “Company” or the “Registrant”) and its Investment and Employee Stock Purchase Plan (the “Plan”), respectively, are incorporating by reference into the registration statement:

• Avista’s most recent Annual Report on Form 10-K filed with the SEC pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”);

• all other documents filed by Avista with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of our most recent Annual Report and prior to the termination of the offering;

• Avista’s description of Common Stock contained in Post-Effective Amendment No. 1 on Form 10/A, filed by Avista with the SEC on February 26, 2015, to Avista’s registration statement on Form 10, filed by Avista with the SEC in September 1952, and any amendments to such description made by subsequent amendment of such registration statement on Form 10; and

• the Plan’s most recent Annual Report on Form 11-K filed with the SEC pursuant to the Exchange Act;

and all of those documents are deemed to be a part of the registration statement from the date of filing such documents; it being understood that documents, or portions of documents, that are “furnished” but not “filed”, in accordance with SEC rules, will not be deemed to be incorporated by reference. The documents incorporated into this registration statement by reference are called the “Incorporated Documents”. Any statement contained in an Incorporated Document may be modified or superseded by a statement in this registration statement (if such Incorporated Document was filed prior to the date of the registration statement) or in any subsequently filed Incorporated Document. The Incorporated Documents as of the date of this registration statement are:

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Avista's Annual Report on Form 10-K for the year ended December 31, 2014;
Avista's description of Common Stock contained in Post-Effective Amendment No. 1 on Form 10/A, filed on February 26, 2015, to Avista's registration statement on Form 10 filed in September 1952; and
the Plan's Annual Report on Form 11-K for the year ended December 31, 2013.

B. Experts

The consolidated financial statements incorporated in the registration statement by reference from Avista's Annual Report on Form 10-K for the year ended December 31, 2014, and the effectiveness of Avista's internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports which are incorporated herein by reference. Such consolidated financial statements have been so incorporated in reliance upon the reports of such firm given upon its authority as an expert in accounting and auditing. The financial statements and supplemental schedule incorporated in the registration statement by reference from the Plan's Annual Report on Form 11-K for the year ended December 31, 2013 have been audited by CliftonLarsonAllen LLP, an independent registered accounting firm, as stated in its report which is incorporated herein by reference. Such financial statements and supplemental schedule have been so incorporated in reliance upon the report of such firm given upon its authority as an expert in accounting and auditing.

C. Legal Matters

The legality of the shares of Common Stock offered under the Plan was passed upon for Avista by Marian M. Durkin, Esq., a Senior Vice President and the General Counsel and Chief Compliance Officer of Avista, and by Pillsbury Winthrop Shaw Pittman LLP, counsel to Avista. In giving its opinion, Pillsbury Winthrop Shaw Pittman LLP relied upon the opinion of Marian M. Durkin, Esq.

Item 4. Description of Securities.

The Company's Common Stock, which is registered under Section 12(b) of the Securities Act of 1934, as amended, and is listed on the New York Stock Exchange, is described in Post-Effective Amendment No. 1 on Form 10/A, filed with the SEC on February 26, 2015, to the Company's Application for the Registration of Securities on a National Securities Exchange on Form 10, filed with said Commission in September 1952, and such description, and any subsequent amendments thereto, are incorporated by reference into the registration statement.

Item 5. Interests of Named Experts and Counsel.

A. Interests of Named Experts

Not applicable.

B. Interests of Named Counsel

Interests in the Registrant of Marian M. Durkin, Esq. are disclosed in the Registrant's proxy statement filed under Section 14 of the Exchange Act and incorporated herein by reference.

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Item 6. Indemnification of Directors and Officers.

Article Seventh of Avista's Restated Articles of Incorporation (the "Articles") provides, in part, as follows:

"The Corporation shall, to the full extent permitted by applicable law, as from time to time in effect, indemnify any person made a party to, or otherwise involved in, any proceeding by reason of the fact that he or she is or was a Director of the Corporation against judgments, penalties, fines, settlements and reasonable expenses actually incurred by a him or her in connection with any such proceeding. The Corporation shall pay any reasonable expenses incurred by a Director in connection with any such proceeding in advance of the final determination thereof upon receipt from such Director of such undertakings for repayment as may be required by applicable law and a written affirmation by such Director that he or she has met the standard of conduct necessary for indemnification, but without any prior determination, which would otherwise be required by Washington law, that such standard of conduct has been met. The Corporation may enter into agreements with each Director obligating the Corporation to make such indemnification and advances of expenses as are contemplated herein. Notwithstanding the foregoing, the Corporation shall not make any indemnification or advance which is prohibited by applicable law. The rights to indemnity and advancement of expenses granted herein shall continue as to any person who has ceased to be a Director and shall inure to the benefit of the heirs, executors and administrators of such a person."

Avista has entered into indemnification agreements with each director as contemplated in Article Seventh of the Articles.

Reference is made to Revised Code of Washington 23B.08.510, which sets forth the extent to which indemnification is permitted under the laws of the State of Washington.

Article IX of Avista's Bylaws contains an indemnification provision similar to that contained in the Articles and, in addition, provides in part as follows:

"Section 2. Liability Insurance. The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the laws of the State of Washington."

Insurance is maintained on a regular basis (and not specifically in connection with this offering) against liabilities arising on the part of directors and officers out of their performance in such capacities or arising on the part of the Registrant out of its foregoing indemnification provisions, subject to certain exclusions and to the policy limits.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Reference is made to the Exhibit Index on page II-8 hereof.

Item 9. Undertakings.

The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement: (i) to include any prospectus required by section 10(a)(3) of the Securities Act; (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; provided, however, that clauses (1)(i) and (1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (5) That, insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable; and that in the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted against the Registrant by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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POWER OF ATTORNEY

Each director and/or officer of the Registrant whose signature appears below hereby appoints each of Scott L. Morris, Mark T. Thies and each Agent for Service named in this amendment to the registration statement, severally, as his or her attorney-in-fact to sign in his or her name and behalf, in any and all capacities indicated below, and to file with the Securities and Exchange Commission, any and all amendments, including post-effective amendments, to the Registration Statement.

SIGNATURES

The Registrant

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this amendment to the registration statement to be signed on behalf of the Registrant by the undersigned, thereunto duly authorized, in the City of Spokane and State of Washington on the 26th day of February, 2015.

AVISTA CORPORATION

By: /s/ Mark T. Thies
 Mark T. Thies
 Senior Vice President,
 Chief Financial Officer and Treasurer

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Pursuant to the requirements of the Securities Act, this amendment to the registration statement has been signed by the following persons in the capacities with respect to the Registrant and on the date indicated.

Signature	Title	Date
/s/ Scott L. Morris Scott L. Morris Chairman of the Board, President and Chief Executive Officer	Principal Executive Officer	
/s/ Mark T. Thies Mark T. Thies Senior Vice President, Chief Financial Officer and Treasurer	Principal Financial Officer	
/s/ Christy M. Burmeister-Smith Christy M. Burmeister-Smith Vice President, Controller and Principal Accounting Officer	Principal Accounting Officer	
/s/ Erik J. Anderson Erik J. Anderson		
/s/ Kristianne Blake Kristianne Blake		
/s/ Donald C. Burke Donald C. Burke		February 26, 2015
/s/ John F. Kelly John F. Kelly		
/s/ Rebecca A. Klein Rebecca A. Klein	Director	
/s/ Marc F. Racicot Marc F. Racicot		
/s/ Heidi B. Stanley Heidi B. Stanley		
/s/ R. John Taylor R. John Taylor		
/s/ Janet D. Widmann Janet D. Widmann		

The Plan

Pursuant to the requirements of the Securities Act, the Senior Vice President, Human Resources and Corporate Secretary of the Registrant, who is a member of the Administrative Committee responsible for the administration of The Investment and Employee Stock Ownership Plan of Avista Corporation, has duly caused this amendment to the registration statement to be signed on behalf of the Plan by the undersigned, thereunto duly authorized, in the City of Spokane and State of Washington on the 26th day of February, 2015.

THE INVESTMENT AND EMPLOYEE STOCK
OWNERSHIP PLAN OF AVISTA CORPORATION

By: /s/ Karen S. Feltes
 Karen S. Feltes
 Senior Vice President, Human Resources, and
 Corporate Secretary of Avista Corporation

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EXHIBIT INDEX

Exhibit	Description
4(a)	Restated Articles of Incorporation of Avista Corporation as amended June 6, 2012 (filed with Form 10-Q for the quarter ended June 30, 2012 as Exhibit 3.1 and incorporated herein by reference).
4(b)	Bylaws of Avista Corporation, as amended February 7, 2014 (filed with Form 10-Q filed August 8, 2014 as Exhibit 3.2 and incorporated herein by reference).
4(c)(1)	The Investment and Employee Stock Ownership Plan of Avista Corporation.
4(c)(2)	First Amendment to The Investment and Employee Stock Ownership Plan of Avista Corporation.
4(c)(3)	Second Amendment to The Investment and Employee Stock Ownership Plan of Avista Corporation.
5(a)	Opinion and Consent of Marian M. Durkin, Esq.
5(b)	Opinion and Consent of Pillsbury Winthrop Shaw Pittman LLP.
5(c)	Determination letter of Internal Revenue Service.
23(a)	Consent of Marian M. Durkin, Esq. (contained in Exhibit 5(a)).
23(b)	Consent of Pillsbury Winthrop Shaw Pittman LLP (contained in Exhibit 5(b)).
23(c)	Consent of Deloitte & Touche LLP.
23(d)	Consent of CliftonLarsonAllen LLP.
24	Power of Attorney (contained on Page II-6).

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