

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF AVISTA CORPORATION FOR ) CASE NO. AVU-E-08-03**  
**AUTHORITY TO DEFER COLSTRIP )**  
**LAWSUIT SETTLEMENT PAYMENT ) ORDER NO. 30638**  
**)**

---

On May 22, 2008, Avista Corporation (“Avista” or “Company”) filed an Application with the Idaho Public Utilities Commission (“Commission”) seeking an accounting order authorizing the Company to defer payment of its portion of a lawsuit settlement payment originating from litigation involving the Colstrip Generating Project in Colstrip, Montana. Pursuant to *Idaho Code* § 61-524, the Commission is empowered to establish a system of accounts to be kept by public utilities subject to its jurisdiction. On July 9, 2008, the Commission issued a Notice of Application and Modified Procedure. The Commission Staff was the only party to submit comments regarding Avista’s Application.

**THE APPLICATION**

In May 2003, various parties (all of which are residents or businesses of Colstrip, Montana) filed a consolidated complaint against the owners of the Colstrip Generating Project (Colstrip) in Montana District Court. Avista states that it owns a 15 percent interest in Units 3 & 4 of the Colstrip Generating Project. The plaintiffs alleged damages to buildings as a result of rising groundwater, as well as damages from contaminated waters leaking from the holding ponds of Colstrip. The plaintiffs sought compensatory and punitive damages for abatement, unjust enrichment, trespass, property diminution, and emotional distress.

Avista estimates that its share of the lawsuit settlement payment, absent any recovery from applicable insurance carriers, is \$2,084,443. Avista claims that it could potentially recover approximately \$734,035 under the relevant insurance policies and thereby reduce its out-of-pocket expense to approximately \$1,350,408. The defendant, Colstrip Generating Project, is currently seeking indemnification from its insurance carriers. Avista does not speculate as to the possible outcome.

Avista asserts that the settlement represents a favorable resolution of this matter because the settlement: (1) offers a final resolution of more than five years of disputed litigation; (2) represents a substantial reduction of Avista’s potential exposure for “excessive compensatory

and punitive damages”; (3) facilitates Avista’s negotiation with the Montana Department of Environmental Quality concerning appropriate remediation efforts at the Colstrip facility; and (4) assists the defendants in limiting any future claims by providing them with “rights of first refusal with respect to plaintiffs’ properties.” Application at 3.

Avista requests an “order allowing for the deferral of the settlement payment.” *Id.* at 4. The Company states that it will more fully “address the prudence and recovery of the settlement payment, and propose a method of recovery of the settlement payment[,]” minus “any reimbursement from insurance carriers,” in its next general rate case, or any other proceeding the Commission deems appropriate. *Id.*

The Company specifically requests the “authority to defer the Colstrip settlement payment in Account 186 - Miscellaneous Deferred Debits.” *Id.* The Company states that the “settlement payment will be allocated to the Washington and Idaho jurisdictions based on the current Production/Transmission allocation of 64.59% to Washington and 35.41 % to Idaho, and placed in separate Washington and Idaho 186-accounts.” *Id.* The Company would apply the typical customer deposit rate to Idaho’s share of the deferrals. *Id.*

#### COMMENTS

Staff reviewed Avista’s Application for an order authorizing a deferral of the Colstrip Lawsuit Settlement Payment and recommends that the Company be permitted to defer its share of the settlement payment. Staff believes that the Application is appropriate because absent an accounting order the Company would most likely not be allowed recovery for past expenses in its next general rate case. However, Staff does not support Avista’s request for a carrying charge on the Idaho share of the deferrals.

Staff notes that approving the Company’s request for a deferral “would not change rates currently charged to customers.” Staff Comments at 3. The deferral amount would be diverted into Account 186 – Miscellaneous Deferred Debits and allocated to the Idaho and Washington jurisdictions at the production/transmission allocation percentage of 64.59% for Washington and 35.41% for Idaho. *Id.* The Idaho jurisdictional share of the \$2,084,443 settlement payment would be approximately \$738,101, less any insurance proceeds. *Id.* Avista estimates that it could recover approximately \$259,922 under relevant insurance policies, lowering the Idaho total to approximately \$478,179. *Id.* Avista included the Colstrip project in

the rate base and expenses upon which Avista's revenue requirement and resulting rates were calculated. *Id.*; see also Case No. AVU-E-04-01.

As mentioned above, Staff does not support "Avista's proposed accounting treatment" that would allow the Company to "accrue interest on the Idaho share of the deferrals at the customer deposit rate." *Id.* at 3. Staff believes that "granting the Company deferral of expenses that would likely otherwise be unrecoverable is sufficient relief to the Company." *Id.* at 3-4.

Thus, Staff recommended that the Commission authorize the following:

1. Deferral of the settlement payment into Account 186 - Miscellaneous Deferred Debits without interest;
2. Recording any insurance proceeds received by the Company in Account 186- Miscellaneous Deferred Debits, reducing the total amount of the settlement payment;
3. Recording the amounts in Account 186 - Miscellaneous Deferred Debits according to the aforementioned Idaho and Washington production/transmission jurisdictional allocation; and
4. Delaying any recovery for the amount of the deferral until the next general rate case or other proceeding as the Commission deems appropriate.

### **CONCLUSIONS OF LAW**

Avista Corporation is an electric corporation within the definition of *Idaho Code* § 61-119, and a public utility within the definition of *Idaho Code* § 61-129. The Idaho Public Utilities Commission has jurisdiction over this matter pursuant to *Idaho Code* § 61-524 and IDAPA 31.01.01.052.

### **COMMISSION FINDINGS**

The Commission has reviewed and considered the filings in Case No. AVU-E-08-03, including Staff's comments. Avista's Application seeks an accounting order authorizing the Company to defer payment of its portion of a lawsuit settlement payment and to institute a carrying charge on Idaho's jurisdictional share of the settlement payment.

The Commission finds that a deferral of Avista's share of the lawsuit settlement payment is appropriate because it preserves for a future decision whether Avista is entitled to a recovery of the deferred amount. Without a deferral the Company could not later bring this issue before the Commission.

“The treatment of regulatory assets (i.e., whether or not rates of return or carrying charges are allowed on them) is subject to the discretion of the IPUC.” *Idaho Power Company v. Idaho State Tax Comm’n*, 141 Idaho 316, 323, 109 P.3d 170, 177 (2005). A carrying charge on deferred accounts may be warranted in cases where the utility sought “an order authorizing deferred accounting in advance of the expenditure, or the deferral account is related to implementation of a program the Commission has ordered.” Order No. 30235. Additionally, the “Commission must allow a just, fair and reasonable allowance for funds used during construction or similar account to be accumulated, computed in accordance with generally accepted accounting principles.” *Idaho Code* § 61-502A.

The Commission finds that Avista’s decision to enter into the April 2008 Colstrip Lawsuit Settlement Agreement was not preceded by an Application for an Order authorizing deferred accounting treatment, nor was it in response to a Commission Order instructing the Company to enter into said agreement. The settlement agreement does not relate to funds used during construction. Thus, in accordance with its judicially affirmed discretionary authority over carrying charges, the Commission finds that a carrying charge on the deferral of the Idaho jurisdictional share of the lawsuit settlement payment is not warranted.

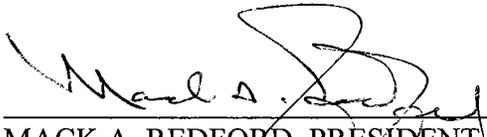
### **ORDER**

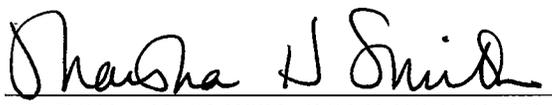
IT IS HEREBY ORDERED that the Application of Avista Corporation seeking an accounting order authorizing the Company to defer its portion of a lawsuit settlement payment originating from litigation involving the Colstrip Generating Project in Colstrip, Montana is granted.

IT IS FURTHER ORDERED that Avista Corporation’s request to institute a carrying charge on the Idaho jurisdictional share of the deferral amount is denied.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

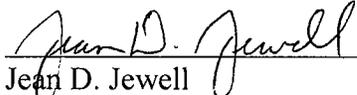
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 12<sup>th</sup>  
day of September 2008.

  
MACK A. REDFORD, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
JIM D. KEMPTON, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

O:AVU-E-08-03\_np2