

DECISION MEMORANDUM

**TO: COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSIONER KEMPTON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL**

DATE: JULY 2, 2008

**SUBJECT: AVISTA'S APPLICATION FOR AUTHORIZATION TO DEFER
COLSTRIP LAWSUIT SETTLEMENT PAYMENT; CASE NO. AVU-E-08-
03**

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 Generation 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.

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 hazard a guess as to the possible outcome.

Avista asserts that the settlement terms represent a favorable resolution of this matter because it (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.*

STAFF RECOMMENDATION

Staff recommends that the Company's Application be processed through Modified Procedure with a 21-day comment period. Staff believes that this should allow sufficient time for interested parties to review the Company's Application and file their comments with the Commission. IDAPA 31.01.01.201-.204.

COMMISSION DECISION

Does the Commission wish to process Avista's Application through Modified Procedure pursuant to Commission Rules of Procedure 201 through 204? Does the Commission approve of a comment period of 21 days?



Neil Price
Deputy Attorney General

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