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UTILITIES COMMISSION

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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
AVISTA CORPORATION FOR AUTHORITY) **CASE NO. AVU-E-08-3**
TO DEFER COLSTRIP LAWSUIT)
SETTLEMENT PAYMENT)
)
) **COMMENTS OF THE**
) **COMMISSION STAFF**
)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 30591 on July 9, 2008, submits the following comments.

BACKGROUND

On May 22, 2008, Avista Corporation (Avista; Company) filed an Application with the Commission seeking an accounting order deferring the Company's payment of a settlement associated with a lawsuit over damages caused by the operation of the Colstrip Generating Project in Colstrip, Montana. Avista states that it owns a 15 percent interest in Units 3 & 4 of the Colstrip Generating Project.

Avista estimates that its share of the lawsuit settlement payment, absent any recovery from applicable insurance carriers, is \$2,084,443.

Avista claims it could potentially recover approximately \$734,035 under 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. The potential outcome of their efforts is not ascertainable.

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."

Avista requests an "order allowing for the deferral of the settlement payment." 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.

Avista has specifically requested the "authority to defer the Colstrip settlement payment in Account 186 – Miscellaneous Deferred Debits." 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." The Company would apply the typical customer deposit rate to Idaho's share of the deferrals.

STAFF REVIEW

Staff has reviewed the Application of Avista Corporation for an Order Authorizing Deferral of the Colstrip Settlement Payment and recommends approval of the Company's request except for a carrying charge on the deferral. As noted in its filing, the Company is requesting an Order allowing for the deferral of the settlement payment. Avista notes that Colstrip is a low-cost resource that is integral to the Company's resource base. The proposed accounting treatment would provide the Company with the opportunity to recover the costs associated with its ownership share of Colstrip, while customers receive the benefit from this low cost resource. The Company will address the prudence and recovery of the settlement payments in its next

general rate case filing or other future proceeding, as appropriate. Until the next rate case, approval of this request would not change rates currently charged to customers.

Avista requests authority to defer the lease payments in Account 186 – Miscellaneous Deferred Debits. The settlement payment will be allocated to the Washington and Idaho jurisdictions based on the production/transmission allocation of 64.59% to Washington and 35.41% to Idaho, and placed in separate Washington and Idaho 186-accounts. Absent any insurance proceeds, approximately thirty-five percent of the settlement payment of \$2,084,443 (to be paid on or before May 23, 2008) or \$738,101 would be recorded to the Idaho Miscellaneous Deferred Debits account. Any insurance proceeds would also be allocated to the Washington and Idaho jurisdictions based on the same production/transmission allocation, and would reduce the settlement expense. Based on the Company's interpretation of the relevant insurance policies, it anticipates it could potentially recover approximately \$734,035 of the settlement payment, and Idaho's share of this would be approximately \$259,922, making the final settlement expense to be deferred in the Idaho 186 account approximately \$478,179. Avista requests that interest accrue on the Idaho share of the deferrals at the customer deposit rate. As noted above, in the Company's next general rate case it would propose the recovery of the settlement payment.

This generation resource is included in the rates currently charged to its customers. Avista's most recent general rate case, Case No. AVU-E-04-1, included this project in the rate base and expenses upon which Avista's revenue requirement and resulting rates were calculated.

Regulatory assets can be established for expenses that are currently not included in rates, yet are significant enough to warrant deferring until the next general rate case for possible inclusion in rates at that time. Were a company to propose, in a general rate case, that certain expenses from past years be included in the current rates, it would be retroactive ratemaking. In order to be considered in the general rate case, the utility usually must have an accounting Order allowing them to defer the costs for possible future recovery. If a utility defers costs for future recovery in a general rate case, without Commission approval, it would most likely be denied recovery, because to allow recovery would be retroactive ratemaking. Avista's filing appropriately requests such an Order.

In its proposed accounting treatment the Company would accrue interest on the Idaho share of the deferrals at the customer deposit rate. Staff does not support accruing interest on the deferral. Granting the Company deferral of expenses that would likely otherwise be

unrecoverable is sufficient relief to the Company. No law directs the Commission to allow a carrying charge on deferral accounts. The Commission has discretionary authority, affirmed by the Supreme Court, in determining whether to approve a carrying charge on a deferral account. Reference Idaho Power Company v. Idaho State Tax Commission, 141 Idaho 323 and Order No. 30235, page 3 in Case No. IPC-E-06-6.

The Commission may evaluate the appropriateness of a carrying charge when a utility requests 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. In those circumstances, the Commission has an opportunity to evaluate the necessity and anticipated benefit for customers before the Company incurs the expense.

When the Commission has ordered a carrying charge for a deferred expense, the carrying charge has been at the customer deposit rate. The customer deposit rate for 2008 is 5%. Reference Order No. 30469 in Case No. GNR-U-07-1.

STAFF RECOMMENDATION

Staff recommends approval of Avista's Application for an Order Authorizing Deferral of the Colstrip Settlement Payment. The deferred accounting pertains to a settlement payment to be incurred by Avista as a result of the recent settlement of a lawsuit in the State of Montana over alleged damages caused by the Colstrip Generating Project in Colstrip, Montana. The accounting treatment would be as follows:

- Record the deferred settlement payment in Account 186 - Miscellaneous Deferred Debits without interest.
- Record any insurance proceeds in Account 186 – Miscellaneous Deferred Debits, thereby reducing the amount of the settlement payment.
- Record the settlement payment in separate Washington and Idaho accounts based on the production/transmission jurisdictional allocation.
- Delay recovery of the deferred settlement payment until new rates are established in the next general rate case or other future proceeding as appropriate.

Staff recommends that recovery of the settlement payment less any insurance proceeds be reviewed in the Company's next general rate case. Staff emphasizes that the Company is not

currently seeking recovery of these costs and Staff makes no assurances on the level of these costs to be recommended for recovery during the Company's next general rate case.

Respectfully submitted this 30th day of July 2008.



Neil Price
Deputy Attorney General

Technical Staff: Kathy Stockton

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 30TH DAY OF JULY 2008, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-08-03, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY

CERTIFICATE OF SERVICE