

DECISION MEMORANDUM

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

FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL

DATE: AUGUST 6, 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 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 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."

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. *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-04-1.

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 recommends that the Commission authorize the following:

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

COMMISSION DECISION

Does the Commission wish to approve Avista’s Application for 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? Does the Commission wish to approve Avista’s request to institute a carrying charge on Idaho’s jurisdictional share of the deferral amount?


Neil Price
Deputy Attorney General