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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF AVISTA CORPORATION DBA AVISTA UTILITIES FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR ELECTRIC AND NATURAL GAS SERVICE IN IDAHO	)	**CASE NO. AVU-E-17-01** **AVU-G-17-01** **IDAHO CONSERVATION LEAGUE** **POST-HEARING BRIEF**

The Idaho Conservation League (ICL) was not a party to Avista's 2016 rate case, AVU-E-16-03. The present docket, AVU-E-17-01 is ICL's first foray into examining Avista's spending on the Smartburn projects on Colstrip Units 4 and 3 in 2016 and 2017 respectively. We did not join the settlement in the present case because the agreement presumes the Smartburn projects were prudent investments and recoverable in rates. ICL's review of the record and the unrebutted testimony of ICL and Sierra Club witnesses establish that the Smartburn projects are not legally required, do not economically benefit Idahoans, and do not meaningfully improve air quality.

At the Technical Hearing, Avista failed to show that the Smartburn emission controls were necessary to comply with the Regional Haze Rule of the Clean Air Act or any other applicable regulation. Moreover, Avista failed to establish in the record or at hearing the Smartburn projects were prudently incurred optional expenses.

Because Avista did not carry its burden of proof, ICL respectfully requests the Commission issue a final order applying the following conditions:

1) Find the expenses for the Smartburn projects were not prudently incurred;
2) Remove the cost of the Smartburn projects from Avista's rate base going forward;
3) Require Avista to provide transparent analysis for any future capital spending at Colstrip; and
4) Direct Avista to rigorously review and challenge Colstrip projects proposed by the plant operator, Talen.

Standard of Review

While not controlling law, the Commission's Annual Report contains the simplest articulation of the standard of review: "If the utility has met its burden of proof in demonstrating that the additional expense it incurred was 1) necessary to serve customers and 2) prudently incurred, the Commission must allow the utility to recover that expense."[1] Avista has not met this burden.

Recent Commission Orders granting Certificates of Public Convenience and Necessity, such as the order granting Idaho Power's request for pollution controls at Jim Bridger, are analogous to Avista's request here to include the Colstrip Smartburn projects in rate base. When approving Idaho Power's request for pollution controls, the Commission found the Company faced an enforceable legal mandate to install controls or shutter the plant within two to three years.[2] The Commission reviewed the record and decided the short-term need to install controls

[1] See Idaho Public Utilities Commission 2017 Annual Report at 17.
[2] Order No 32929 at 10.

or shutter the plant outweighed the potential for other options to meet customer's needs.[3] Finally the Commission concluded the pollution controls were "presently the least-cost, least-risk alternative to both reduce environmental effects and allow reliable electric service to continue."[4]

The Commission also stated "the public interest is the paramount consideration" when allowing utilities to include projects in rate base.[5] While ICL challenged the project considered in *Order No. 32929*, we agree the public interest is served when the Commission finds a project was necessary pursuant to a legal obligation, or need to serve customers, and prudently incurred because lower cost and lower risk alternatives were considered but found unavailable. The Commission should make a particularly careful inquiry here because the record demonstrates the remaining useful life of Colstrip is highly uncertain for both Avista and the plant co-owners. By carefully scrutinizing capital investments now, the Commission protects the public interest by limiting the total cost of Colstrip to be recovered, when the inevitable decision to close the plant arrives.

As explained in our testimony and unrebutted at hearing, Avista faced no legal obligation to install the Smartburn projects in 2016 or 2017. Avista provides no evidence that installing the Smartburn projects in 2016 or 2017 was necessary to maintain reliability. Avista admits repeatedly they considered the next major pollution control requirement to be in the mid-2020's at the soonest. Avista, also, does not explain in this record why installing Smartburn more than a decade before a speculated future obligation to a different project is presently the least-cost, least-risk alternative. Because Avista had ample time and opportunity to consider other available

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[3] Id.
[4] Id.
[5] Id.

options while maintaining reliable electric service, the Commission should find the Smartburn projects were not prudent.

Argument

I. The Smartburn emission controls were not "mandatory and compliance" items to ensure Colstrip Units 3 and 4 provide reliable service in the short-term.

Avista did not provide any evidence or legal analysis proving that the Smartburn technology was necessary for Units 3 and 4 to meet compliance requirements under the Regional Haze Rule of the Clean Air Act. Indeed, Avista's Senior Vice President of Energy Resources, Jason R. Thackston's rebuttal testimony states Avista "*proactively* decided to install Smartburn in an effort to manage *future* regulatory obligation…"[6]. At hearing, in response to an inquiry from Commissioner Raper, Mr. Thackston described the decision as "a judgment call to ease future compliance". In other words, Avista's decision to install Smartburn was based on speculation regarding future legal obligations.

Mr. Thackston claimed during the Technical Hearing that speculatively installing the Smartburn projects in 2016 and 2017 was necessary to meet the "glide path" toward future Regional Haze Rule regulations. During cross-examination, Mr. Thackston stated that he was not an expert in interpreting and evaluating the rule to determine the compliance requirements for Colstrip Units 3 and 4. Indeed, his educational and professional background does not identify any credentials that would indicate Mr. Thackston could reliably speculate about future compliance requirements of the Regional Haze Rule. In contrast, both Mr. Otto and Mr. Hausman gave unrebutted testimony that Avista faced no legal requirement to install Smartburn

[6] Rebuttal Testimony of Jason R. Thackston at 8-9 (emphasis added).

controls from the time Avista made the decision to install Smartburn in 2012 through the actual installation of Smartburn in 2016 and 2017.

Further Mr. Otto's unrebutted testimony explained any future controls would stem from Montana's next State Implementation Plan due in 2021. It is in this yet to be developed plan where Montana will consider the glide path of current air quality, sources of pollutants, and requirements for additional Colstrip controls at some future date in the ensuing ten-year period. On the record and at hearing Avista did not adequately explain why pre-compliance several years before an as yet unknown obligation is necessary to ensure reliable service to customers today.

II. Avista did not establish that installing the Smartburn projects at Colstrip Units 3 and 4 in 2017 and 2016, respectively, was a prudent investment.

While not mandatory, Avista argues that installing Smartburn projects was prudent for three reasons, none of which are persuasive.

First, Avista argues that installing Smartburn projects now could reduce the costs of future Selective Catalytic Reduction (SCR) controls. But, Avista failed to provide any cost-benefit analysis to justify this pre-compliance strategy. As explained above, Avista has no credible knowledge today of the exact timing and pollution limits in the Montana State Implementation Plan to be developed by 2021. And Avista did not point to anything in the record that assesses a range of compliance options, dates, and alternatives necessary to make an informed judgment about an optional activity to meet an uncertain future. Avista provided no evidence of the potential cost of an SCR with or without the Smartburn project. Instead of evidence, Avista provided unsupported assertions of future cost savings. The Commission should require more proof before permitting Avista to collect on speculative capital investments.

Second, Avista argues that installing the Smartburn projects in 2016 and 2017 aligned with previously scheduled outages. But nothing required the Colstrip owners to act in these years. From the time Avista approved the installation of Smartburn (sometime in 2012) until now Avista has consistently expected EPA to mandate the next major pollution controls on Units 3 and 4 no sooner than the mid-2020's.[7] In addition, according to Mr. Thackston, plant owners meet at least every other month to review capital projects and that, throughout the year, projects may be added or subtracted as appropriate.[8] In addition, Avista's Director of Power Supply, Scott Kinney, testified that every two out of three years, there are planned outages at Colstrip for higher capital program activities.[9] Therefore, over a 10-year period before the first possible compliance dates in the mid-2020's (as projected by Avista), there will be dozens of meetings to consider the prudency of the projects and at least 6 scheduled outages to align with. Avista provides no evidence that aligning the optional Smartburn projects with outages in 2016 or 2017 was necessary or prudent to maintain reliable service.

Third, Avista argues that opting to install Smartburn now provides necessary information to design SCR controls that might be required in the future. But Avista provides no evidence or analysis explaining why it was necessary to begin collecting this boiler operation data in 2016 and 2017, when Avista projected no need for SCR or other control technology until the mid-2020's. In addition, during the Technical Hearing Mr. Thackston indicated that co-owning utility, Puget Sound Energy, had prior experience installing, calibrating, and operating Smartburn technology at Colstrip Units 1 and 2, and that other utilities have experience with the Smartburn technology. Avista did not explain why these existing sources of information were inadequate to inform future SCR designs. Furthermore, if Avista needed to collect boiler

[7] Rebuttal Testimony of Jason R. Thackston at 9-10.
[8] Id. at 15, lines 14-18.
[9] Direct Testimony of Scott J. Kinney at 30, lines 7-9.

operation data to prepare for the design and installation of possible controls in the mid-2020's, it's unclear why it was necessary to install Smartburn at both units rather than at just one. The Commission should reject Avista's undocumented assertions about the prudency of the optional Smartburn projects.

Conclusion

The Commission must not include in rate base any items that Avista does not meet its burden to establish are necessary and prudent. Here, Avista did not establish the Smartburn projects are necessary to meet a legal obligation or to maintain reliable service. Furthermore, Avista did not establish the optional Smartburn projects are "presently the least-cost, least-risk alternative to both reduce environmental effects and allow reliable electric service to continue." Accordingly, ICL respectfully requests the Commission issue a final order that:

1) Finds the expenses for the Smartburn projects were not prudently incurred;
2) Removes the cost of the Smartburn projects from Avista's rate base going forward;
3) Requires Avista to provide transparent analysis for any future capital spending at Colstrip; and
4) Directs Avista to rigorously review and challenge Colstrip projects proposed by the plant operator, Talen.

Respectfully submitted this 13th day of December 2017,

Matthew Nykiel
Attorney for Idaho Conservation League

CERTIFICATE OF SERVICE

I certify that on the 13th day of December 2017, I caused to be delivered true and correct copies of the foregoing ICL POST-HEARING BRIEF to the following via the service method noted:

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