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IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for the Idaho Conservation League

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

DIRECT TESTIMONY

BENJAMIN J. OTTO

November 14, 2017

1 **Q. Please state your name, affiliation, educational background and professional qualifications.**

2 A. My name is Benjamin J. Otto. I am the Energy Associate for the Idaho Conservation League. I
3 hold a Bachelor of Arts from Prescott College, a Masters of Studies in Environmental Law from
4 Vermont Law School, and a Juris Doctorate from Lewis and Clark Law School. I am a licensed
5 attorney in the state of Idaho.

6 I began my legal career as a Legal Fellow at Advocates for the West, a non-profit law firm
7 in Boise, Idaho. In 2010, I joined the Idaho Conservation League (ICL) as the Energy Associate.
8 My responsibilities include engaging with Idaho's regulated utilities in Integrated Resource
9 Planning, energy efficiency program development, and other processes that impact energy
10 conservation and clean energy. I have represented, but not testified on the behalf of, ICL in many
11 Idaho Public Utilities Commission proceedings over the years including general rate cases and
12 issue specific dockets filed by Avista, Idaho Power, Intermountain Gas, and Rocky Mountain
13 Power. I assist my colleagues at ICL to monitor and influence energy development proposals that
14 may impact Idaho's natural values and communities. As part of my portfolio, I sit on the board
15 of directors for the Northwest Energy Efficiency Alliance, Renewable Northwest, and I am the
16 Chairperson of the Northwest Energy Coalition, all non-profit groups working to advance clean
17 energy in Idaho and across the Northwest.

18 In all of these endeavors, my goal is to ensure Idahoans have access to affordable and
19 reliable energy that protects the quality of life that makes Idaho special – clear air, clean water,
20 healthy natural landscapes, and a stable climate.

21

22 **Q. Please describe the purpose of your testimony.**

23 A. My testimony covers portions of the Settlement filed in this docket that ICL supports and the
24 portions we oppose. ICL intervened in this case and reviewed Avista's Application and

1 Testimony and the subsequent discovery requests and responses of the parties. We participated in
2 the settlement conference held on September 29, 2017 and subsequent telephonic negotiations of
3 the parties, where we raised our concerns that prevent us from joining the Settlement. While ICL
4 supports most provisions in the agreement we did not join because it requires Idahoans to pay
5 for capital spending in the Colstrip power plant that is not required by law, is not justified by a
6 cost-benefit analysis, and will not protect air quality. In developing my testimony, I consulted
7 with the Sierra Club's witness and I agree overall with the analysis presented by Dr. Ezra
8 Hausman. We are filing this separate testimony due to our more expansive interest in this docket.

9

10 **Q. Please describe portions of the Settlement ICL either agrees with or takes no position on.**

11 **A.** ICL agrees with the overall revenue requirement. While we disagree with a specific capital
12 project at the Colstrip plant, we recognize the revenue requirement contained in the Settlement is
13 the result of compromise by all parties. At the conclusion of my testimony, I recommend a
14 method for the Idaho Commission to address our position while preserving the revenue
15 requirement agreed to here.

16 ICL takes no position on the return on equity or capital structure portion of the
17 settlement. We take no position on the individual adjustments to the revenue requirement
18 reflected in paragraphs 8, 9, or 10. We take no position on the Power Cost Adjustment expenses
19 in paragraph 11 or the Fixed Cost Adjustment Mechanism in paragraph 12. We take no position
20 on the cost of service and rate spread in paragraph 13, and look forward to engaging in the cost of
21 service workshop described in paragraph 17. We take no position on the natural gas service and
22 meter placement rules in paragraphs 19 and 20.

23 Regarding rate design, ICL supports the agreement in paragraph 14 to increase the fixed
24 charge by \$0.25 for electric and \$0.75 for gas in recognition that this is a gradual movement that

1 maintains the ability to send effective price signals to encourage customers to conserve energy. I
2 note however that any further changes must begin with a cost of service methodology that is
3 either agreed to by all stakeholders or specifically reviewed and approved by this Commission.

4 ICL strongly supports the collaboration on increasing the low-income weatherization
5 funding contained in paragraph 18. We have reviewed the evidence in this docket, as well as
6 information provided through Avista's energy efficiency programs. The low income
7 weatherization program is cost effective, the backlog of eligible participants is overwhelming, the
8 Community Partnership Associations serving north Idaho are well run, and helping Avista's low-
9 income customers conserve energy benefits all Idahoans by reducing the risks of unpaid or
10 under-collected bills.

11 ICL strongly supports the exploration of Service Quality and Performance Metrics
12 contained in paragraph 21. As a participant in many utility planning efforts and Public Utilities
13 Commission dockets I observe that performance metrics related to the actions we want utilities to
14 take, here improving service quality, are a more precise and powerful motivator than the
15 traditional model of rate base and cost of service regulation.

16

17 **Q. Please describe the portions of the Settlement you oppose.**

18 **A.** ICL opposes the two-year stay-out contained in Paragraph 6 for two reasons.

19 First, Avista Witness Karen Schuh testifies the Company will receive an updated
20 depreciation study "towards the end of 2017".¹ The results of this depreciation study will lead to
21 changes to the appropriate annual revenue requirement Idahoans should pay. While I do not
22 know now if the revenue requirement will rise or fall, I do know that the appropriate revenue
23 requirement will be different than what Avista filed in this case and upon which the parties

¹ Schuh, Di at 9, ln 20 – 22.
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1 reached a settlement. Because this depreciation study will be complete in 2017, I do not support a
2 provision that limits the ability to reduce base rates before 2020.

3 Second, Hydro One is acquiring Avista and the two companies are asking this
4 Commission to approve the deal before August 14, 2018.² This new corporate structure could
5 change the risk profile that informs the return on equity and capital structure as well as the cost
6 of service upon which this Settlement is based. More specifically, I assume that Avista is pursuing
7 the acquisition by Hydro One as a means to maintain adequate service while reducing costs to
8 Idahoans. The Company's Application in the acquisition docket describes the possibility of rate
9 credits to pass any savings onto customers. Customers appreciate simple bills, and another line
10 item credit adds to the current complexity even further. A better course of action is to adjust base
11 rates to reflect any costs or benefits from the acquisition. Accordingly, I oppose a provision that
12 limits the ability to adjust base rates until 2020.

13 In general, I see value in the rate stability provided by multiyear rate plans. However, in
14 this case the nearly completed depreciation study and the pending acquisition by Hydro One
15 both prevent me from supporting a provision that limits base rate adjustments until 2020.

16

17 **Q. What else about the Settlement does ICL oppose?**

18 **A.** ICL opposes the Settlement because it inappropriately allows Avista to collect from Idahoans
19 the cost of the Smartburn projects at Colstrip. Avista alleges the Smartburn projects are required
20 to reduce the emission of nitrous oxides (NOx) from Colstrip to comply with the Regional Haze
21 Rule of the Clean Air Act.³ To be clear, ICL supports pollution controls that improve air quality.
22 However, based on our review of the record, and the analysis of Dr. Hausman, I conclude this

² See Order No. 33903.

³ Avista Response to Sierra Club PR 3-6(d)
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1 specific control is not legally required, does not economically benefit Idahoans, and is not
2 effective at improving air quality.

3
4 **Q. Avista alleges the Smartburn projects are required to comply with the Regional Haze Rule of**
5 **the Clean Air Act. Do you agree?**

6 A. No. The Regional Haze Rule requires states to develop 10-year Implementation Plans and 5-
7 year Progress Reports to ensure steady progress to improve air quality. Neither the current 10-
8 year plan nor 5-year report applicable in Montana, where Colstrip is located, requires the
9 Smartburn projects.

10 The Regional Haze Rule is intended to address visibility impacts from air pollution. This
11 program stems from the 1990 amendments to the Clean Air Act signed into law by President
12 George H.W. Bush. One of the primary goals of the Clean Air Act is the “prevention of any
13 future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal
14 Areas which impairment results from manmade pollution.”⁴ Class I Federal Areas include places
15 like Idaho’s iconic Sawtooths and the Selway-Bitterroot Wilderness straddling the Idaho-
16 Montana border.⁵ The Regional Haze Rule is not about climate change; it ensures people can
17 clearly see the landscapes that make Idaho a special place to live.

18 To implement the Clean Air Act, in 1999 the Environmental Protection Agency
19 promulgated the Regional Haze Rule. The Rule requires states to make “reasonable progress”
20 toward eliminating human-caused visibility impairment in protected areas by 2064.⁶ This is a
21 long-term proposition with widespread implications. So, the Rule establishes a process whereby
22 states determine the baseline visibility conditions, establish interim goals to measure reasonable

⁴ 42 U.S.C. § 7491(a)(1).

⁵ 40 C.F.R. § 81.410.

⁶ 40 C.F.R. § 51.308(d)(1), (d)(3).

1 progress as part of a long-term strategy, evaluate all manmade sources of haze-causing pollution,
2 and implement the best available retrofit technology (BART) for the oldest and dirtiest sources of
3 haze-causing pollutants, like the nitrous oxides at issue here.⁷ States use this process to develop
4 State Implementation Plans and submit them for approval by the Environmental Protection
5 Agency.

6 The State Implementation Plan covers a ten-year period during which states require
7 specific sources to install pollution controls, continuously monitor air quality, and submit
8 periodic reports to ensure reasonable progress towards the long-term goal of restoring natural
9 visibility. The first state plans were due in 2007 and covered the first 10-year compliance period,
10 2008-2018.⁸ On September 18, 2012, the Environmental Protection Agency issued a Federal
11 Implementation Plan because Montana, where Colstrip is located, refused to submit a state plan.⁹
12 Recall that these plans include a specific “best available retrofit technology” applied to the oldest
13 and dirtiest sources of pollution, as well as other controls that will ensure reasonable progress
14 towards the long-term goal.

15 Importantly, the Smartburn projects that Avista asks Idahoans to pay for are not part of
16 the best available retrofit technology portion of Montana’s first 10-year Implementation Plan
17 because Colstrip Units 3 and 4 were built after 1977. Further, the “reasonable progress” portion
18 of the plan specifically did not require additional pollution controls on Colstrip Units 3 and 4
19 before the end of the compliance period in 2018.¹⁰ I am not aware of any state law in Montana
20 requiring the installation of the Smartburn project at Colstrip Units 3 or 4, nor does federal law
21 mandate these projects before 2018.

⁷ 42 U.S.C. § 7491(b)(2); 40 C.F.R. § 51.308(d), (e).

⁸ 82 Fed. Reg. 3078, 3080 (Jan. 10, 2017).

⁹ 77 Fed. Reg. 57864 (Sep. 18, 2012).

¹⁰ 77 Fed. Reg. 57864, 57902.

1 As the first compliance period was ending in 2018, states were facing the prospect of
2 submitting new implementation plans to cover the 2018-2028 compliance period. In May of
3 2016, the Environmental Protection Agency proposed to revise the Regional Haze Rule to give
4 states more time to develop the second round of state plans and streamline some portions of the
5 Rule. The EPA finalized this proposal in January of 2017 allowing states until June 30, 2021 to
6 submit state plans covering the period of 2018-2028.¹¹ Since Montana's second State
7 Implementation Plan is not yet developed, it cannot be the source of any legal requirement to
8 install the Smartburn controls at Colstrip.

9 However, because Colstrip is a source of haze-causing pollution, Montana is required to
10 include these units in the overall assessment of "reasonable progress" towards the long-term goal.
11 The Clean Air Act requires states to submit progress reports every five years to ensure they are
12 meeting "reasonable progress goals" as part of a long-term strategy to achieve the overall goal of
13 protecting visibility.¹² Put more simply, the 5-year Progress Report ensures the state is on track to
14 comply with the 10-year Implementation Plan. The Montana Department of Environmental
15 Quality "Regional Haze 5-Year Progress Report" of August 2017 concluded that nothing is
16 required from Colstrip Units 3 and 4 in order to ensure reasonable progress along the current 10-
17 year Implementation Plan.¹³

18 Montana's 5-year Progress Report does say that even though the current 10-year
19 Implementation Plan did not mandate controls for all sources, some facilities have installed
20 controls anyway, including at Colstrip Units 3 and 4.¹⁴ Again, neither the 10-year
21 Implementation Plan nor the 5-year Progress Report mandated any pollution controls at Colstrip

¹¹ 82 Fed. Reg. 3078, 3080.

¹² 42 U.S.C. § 7491(b)(2).

¹³ See Regional Haze 5-Year Progress Report, August 2017, at p. 2-7 (available at: https://deq.mt.gov/Portals/112/Public/PublicComment/Documents/RegionalHaze_ProgressReport_8-2017.pdf).

¹⁴ *Id* at p. 2-8.

1 Units 3 and 4. Avista’s testimony in this docket does not explain why the Company agreed to
2 voluntarily spend millions of dollars for non-mandatory pollution controls.

3 Dr. Hausman’s testimony includes Avista’s Response to Sierra Club Production Request
4 3-6. There, Avista speculates about the possibility of Montana requiring a more expensive and
5 effective control technology, Selective Catalytic Reduction (SCR), when developing the next 10-
6 year Implementation Plan. Based on this speculation about future actions, Avista claims
7 installing the Smartburn controls now could reduce NOx emissions and optimize the use of any
8 future SCR installation. The trouble with this attempted justification is that Montana’s next 10-
9 year Implementation Plan is not due until 2021 and this Plan might or might not require
10 additional controls at Colstrip anytime during the compliance window that extends to 2028.
11 Guessing about the type and timing of future controls is a highly risky strategy. Further, Avista
12 did not provide any cost-benefit analysis to justify this pre-compliance strategy. And as Dr.
13 Hausman explains, the Smartburn project is not meaningfully reducing NOx emissions and
14 unlikely to optimize any future SCR controls. Idahoans should not be required to foot the bill for
15 Avista’s speculative pre-compliance strategy.

16

17 **Q. Please explain further why the Smartburn projects Avista is asking for Idahoans to pay for
18 now will not reduce the risk of future controls in subsequent 10-year Implementation Plans?**

19 **A.** I can only speak to the legal process Montana must undergo when developing the next 10-year
20 Implementation Plan. Regardless of any controls installed at Colstrip now, when developing the
21 next 10-year State Implementation Plan Montana must compare the current trend of visibility
22 improvements attributable to pollution controls against a uniform rate of visibility improvement
23 necessary to restore natural conditions.¹⁵ Colloquially known as the “glide path”, this portion of

¹⁵ 40 C.F.R. § 51.308(d)(1)(i)(B).
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1 the Rule ensures states are using the 5-year Progress Reports and 10-year Implementation Plans
2 to make incremental progress to reduce human-caused pollution towards the ultimate goal of
3 restoring natural visibility by 2064. Avista has not provided any evidence the Smartburn projects
4 currently installed will impact Montana's assessment of whether air quality is on the glide path
5 towards restoring natural visibility.

6 Important to deciding the prudence of Avista's spending millions of dollars on a risky
7 pre-compliance strategy, Montana, when developing the next 10-year Implementation Plan due
8 in 2021, must apply a four-factor test to major sources of pollution like Colstrip: (1) the costs of
9 compliance, (2) the time necessary for compliance, (3) the energy and non-air quality
10 environmental impacts of compliance, and (4) the remaining useful life of any potentially
11 affected sources.¹⁶ The Environmental Protection Agency has made clear that regardless of
12 currently installed pollution controls, and regardless of whether overall air quality is on the glide
13 path towards natural conditions, the state must conduct the four-factor test above when
14 developing the next 10-year Implementation Plan.¹⁷ As the largest source of haze-causing
15 pollution in the state, it is nearly certain Montana will consider additional controls at Colstrip.
16 But Montana has not made any determination yet as to the type and timing of additional controls
17 at Colstrip. And Avista has not provided any evidence that the Smartburn projects will influence
18 the outcome of the four-factor test described above. Further, as Dr. Hausman explains, the
19 Smartburn projects are unlikely to optimize future SCR controls. Simply put, the record in this
20 docket does not support the prudence of Avista's speculative spending on the Smartburn
21 projects.

¹⁶ 42 U.S.C. § 7491(g)(1); 40 C.F.R. § 51.308(f)(2)(i).

¹⁷ 82 Fed. Reg. 3078, 3093; *See also* Final Arkansas FIP, 81 Fed. Reg. 66332, 66361 (Sept. 27, 2016),
Texas FIP, 79 Fed. Reg. 74,818, 74,834 (Dec. 16, 2014).

1 **Q. Are the Smartburn projects improving air quality now?**

2 **A.** I don't believe so. I have reviewed the testimony of Dr. Hausman, which includes actual
3 emissions data from the Colstrip plant. That data indicates the projects are not achieving their
4 intended purpose of meaningfully reducing NOx emissions. Again, the Idaho Conservation
5 League supports effective pollution controls. The Smartburn projects are not effective.

6
7 **Q. Please summarize why you oppose requiring Idahoans to pay for the Smartburn Projects**
8 **Avista had already installed and included in the rate base.**

9 **A.** In summary, the current 10-year Implementation Plan and 5-Year Progress Reports do not
10 require controls at Colstrip Units 3 or 4. Avista provides no evidence the projects are necessary to
11 ensure Montana air quality remains on the glide path of reasonable progress towards the overall
12 goal of restoring natural visibility by 2064. Avista provides no evidence the projects will affect the
13 results of the four-factor test Montana will conduct when developing the next 10-year
14 Implementation Plan due in 2021. Finally, as Dr. Hausman explains the projects are not
15 meaningfully reducing pollution from Colstrip or effective at addressing the type and timing of
16 additional controls.

17
18 **Q. At the beginning of your testimony, you stated ICL supports the overall revenue**
19 **requirement in the Settlement, but you oppose the use of this revenue to cover the Smartburn**
20 **projects. What should the Commission do here?**

21 **A.** I acknowledge the overall revenue requirement is the product of compromise by all parties and
22 any adjustment necessitates recalculating rates. Instead of adjusting the revenue, I recommend
23 the Commission find the Smartburn projects imprudent and order the Company to remove the
24 cost from Avista's rate base going forward. I recommend the Commission direct Avista to

1 provide transparent and complete analysis for any future capital spending at Colstrip. And, I
2 recommend the Commission order Avista to adopt a more rigorous approach to reviewing and
3 challenging Colstrip projects proposed by the plant operator Talen. Under Rule of Procedure
4 276, the Commission may apply the above recommendations as conditions on the approval of
5 this Settlement.

6 Again, the Idaho Conservation League supports pollution controls that improve air
7 quality. The Smartburn projects do not do so. Idahoans should not pay for them.

8

9 **Q. Does this conclude your direct testimony?**

10 **A. Yes.**

CERTIFICATE OF SERVICE

I certify that on the 14th day of November 2017, I caused to be delivered true and correct copies of the foregoing TESTIMONY OF BENJAMIN J. OTTO to the following via the service method noted:

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