



**SIERRA  
CLUB**

December 13, 2017

**Via Hand Delivery**

Diane Hanian  
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**Re: Case Nos. AVU-E-17-01/AVU-G-17-01: Post-Hearing Brief of Sierra Club**

Please find enclosed the Post-Hearing Brief of Sierra Club in the above mentioned case. This document was hand delivered and served upon all party representatives for this proceeding via e-mail.

Please do not hesitate to contact me if you have any questions or need other materials. Thank you.

Sincerely,

*/s/ Ana Boyd*

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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 NOTICE OF APPLICATION IN ) IDAHO )	CASE NO. AVU-E-17-01 AVU-G-17-01  POST-HEARING BRIEF OF SIERRA CLUB
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Pursuant to Rule 255 of the Idaho Public Utilities Commission (“Commission”) Rules of Procedure and the direction of Chairman Kjellander at the December 8, 2017 evidentiary hearing in the above-captioned proceeding, Sierra Club hereby submits its post-hearing brief.

**A. Summary of Position**

Sierra Club recommends that the Commission reject Avista’s request to keep in rate base capital costs for SmartBurn pollution controls at Colstrip Units 3 and 4 because Avista failed to demonstrate that those expenditures were prudent. There was no regulatory compliance obligation requiring the expenditures, and to the extent it was a discretionary judgment call, Avista failed to provide an adequate record upon which to judge the prudence of that decision.

During the evidentiary hearing, Avista’s witness Jason Thackston admitted that Avista “do[es]n’t have a compliance deadline associated with SmartBurn,” and that there is no specific unit-applicable emissions limit that Colstrip 3 and 4 are required to meet that necessitated SmartBurn.<sup>1</sup> This now-admitted lack of a compliance obligation conflicts with Avista’s application and prior direct testimony, which claimed repeatedly that the SmartBurn controls were part of a category of capital costs that were “mandatory and compliance projects,”<sup>2</sup>

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<sup>1</sup> Hearing Transcript at p.57, line 1-2; Id. at line 14-17 (Thackston, X).  
<sup>2</sup> Kinney, Di at p.30, line 17-19.

“Environmental Must Do,”<sup>3</sup> and typically “done for compliance with laws, rules and contract requirements that are external to the Company.”<sup>4</sup>

Rather than supporting its initial assertion that the SmartBurn controls were “mandatory,” Avista’s justification shifted in rebuttal testimony to instead claim that the installation of SmartBurn was a “judgement” call that, the Company claimed, would (1) proactively comply with the Regional Haze Rule, and (2) save future capital and O&M expenditures if and when the plant is required to install selective catalytic reduction (“SCR”) controls at some undetermined future date.<sup>5</sup> Even if these justifications were reasonable, which as discussed in more detail below they are not, the Commission should nevertheless reject the capital expenditures from rate base because the record does not contain sufficient information to support these claims.

Avista did not provide any cost-benefit analysis or payback analysis showing how much money would be saved by undergoing the SmartBurn capital expenditure in 2016/2017. Avista did not provide any description or analysis of the risks or rewards of their “proactive” compliance strategy with the Regional Haze Rule. Avista did not provide any analysis of the decision to proceed with the SmartBurn expenditures in 2016/2017 rather than waiting until it had more clarity on what the ultimate compliance obligations for Colstrip would be. If in fact Avista’s assertion that its “judgement” related to the SmartBurn was correct, the Commission should at a minimum require Avista to demonstrate on the record that it undertook a sufficient level of rigorous review to ensure that it was making a reasonable and prudent management decisions on behalf of its customers. As it stands now, such a record does not exist.

To the contrary, Sierra Club provided evidence in this proceeding showing that Avista’s decision to install SmartBurn was not prudent.<sup>6</sup> Both the State of Montana and the U.S. EPA clearly indicated that no compliance obligation necessitating SmartBurn currently exists.<sup>7</sup> When Colstrip is next reviewed under the Reasonable Progress program of the Regional Haze Rule, the installation of SmartBurn will be unlikely to have any material impact on the requirement or timing to install SCR.<sup>8</sup> To date, the SmartBurn controls have had a relatively limited emissions

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<sup>3</sup> Sierra Club Ex. 605 (Capital Project Authorization Form); *see, also* Kinney, Ex. 4, Schedule 3, page 90 of 108.

<sup>4</sup> Kinney, Di at p.30, line 20-22; *see, also* Hearing Transcript at p.58, line 3-16 (Thackston, X).

<sup>5</sup> Hearing Transcript at p.58, line21 – p.59, line 4 (Thackston, X).

<sup>6</sup> Hausman, Di. at p.5-27.

<sup>7</sup> Ex. 611 at p.2-7 (Montana DEQ 5-Year Progress Report); Ex. 610 at p. 3 of 5 (Federal Register Notice of Final Montana FIP).

<sup>8</sup> Hausman, Di. at p.25.

reductions impact.<sup>9</sup> Finally, even if SmartBurn would reduce the costs of SCR – an assertion for which there is no supporting evidence in the record – such savings would only be achieved if Colstrip actually installed SCR. Given the increasing likelihood that Colstrip will not operate as long as Avista currently assumes,<sup>10</sup> it is speculative at best to assume that the Colstrip owners would agree to take on the huge capital expense to install SCR if the plant only has a few more years to operate.

Based on both the lack of evidence in the record supporting Avista’s decision to install SmartBurn on Colstrip and the evidence provided by Sierra Club and Idaho Conservation League showing that the decision was imprudent, the Commission should not require Avista’s Idaho customers to bear the costs of those expenditures.

**B. Avista Misinterpreted the Impact of the Regional Haze Glide Path on Colstrip’s Future Compliance Obligations; SmartBurn is Unlikely to Affect Colstrip’s Future Compliance Obligations.**

Sierra Club requested briefing in this proceeding primarily to correct some of the Company’s misinterpretations of how the Clean Air Act’s Regional Haze Rule operates. The rule’s various programs can be confusing; therefore, Mr. Thackston’s misunderstanding of the rule is understandable. Nevertheless, Mr. Thackston was incorrect when he implied that the installation of SmartBurn potentially defers the need to install SCR because of the “glide path.”<sup>11</sup> Staying on the glide path is only one of the obligations the State of Montana is required to meet under the Regional Haze Rule. Regardless of whether or not Montana is on or off the glide path, Colstrip - as the largest contributor to emissions in the state – will be required to undergo a unit-specific analysis of potential emissions controls during the Reasonable Progress program of the Regional Haze Rule. That unit-specific analysis does not – and cannot – consider whether Montana itself is on the glide path. Rather, the four factors that will determine Colstrip’s requirement are enumerated by statute and regulation.

Specifically, under the Reasonable Progress requirements, states are required to report in five-year intervals that they are making progress toward achieving natural visibility conditions

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<sup>9</sup> Hausman, Di. at p.22-25 (see actual emissions data in Figure 1 showing that post-SmartBurn NOx emissions at Colstrip 3 and 4 moved from 0.16 lbs/mmbtu to 0.15 lbs/mmbtu).

<sup>10</sup> In response to questions from Commissioner Raper, Mr. Thackston testified that Avista’s current IRP projects that Colstrip will be available through the twenty-year horizon of the 2017 IRP. Hearing Transcript at p.70, line 24 – p.71, line 1 (Thackston, Com.).

<sup>11</sup> See Hearing Transcript at p.71, line 24 – p.72. line 2 (Thackston, Com.)

by 2064. In developing these “reasonable progress goals” and the emission reductions needed to meet them, the state must develop a long-term strategy for emission sources that considers four factors: (1) the costs of compliance, (2) the time necessary for compliance, (3) the energy and non-air quality environmental impacts of compliance, and (4) the remaining useful life of any potentially affected sources.<sup>12</sup>

EPA has repeatedly found that getting below the Regional Haze Rule’s glide path, known as the “Uniform Rate of Progress” or “URP” does not create a safe harbor. States must still consider the statutory factors required by the Regional Haze Rule in determining what specific pollution controls would be reasonable.<sup>13</sup> This means that Montana will still be required to submit a long-term strategy that addresses the reasonable progress goals. Colstrip is by far the largest single source of emissions in Montana. If Montana is *not* meeting the glide path during its next review period, the state would be obligated to identify additional sources of emissions reductions for review. In other words, getting off the glide path means Montana would have to “think outside the box” for ideas of how to get back to natural visibility conditions. However, staying on the glide path does not mean that Montana can ignore a reasonable progress analysis for sources that clearly contribute to pollution in the state.

It would be highly unlikely – and most likely illegal - for Montana to ignore Colstrip Units 3 and 4 in its long-term strategy. That means Montana will still need to apply the four statutory factors, listed above, necessary to determine whether emissions controls, such as SCR, are reasonable to install on Colstrip Units 3 and 4. Nothing about installing SmartBurn in 2016-2017 affects those factors. As noted by EPA in the 2012 Montana FIP,<sup>14</sup> Colstrip Units 3 and 4 will be evaluated in a future compliance period. That review will occur whether or not SmartBurn is installed, and the outcome of that review is unlikely to be tipped one way or the other by the installation of SmartBurn in 2016-2017.

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<sup>12</sup> See 42 U.S.C. § 7491(g)(1); 40 C.F.R. § 51.308(f)(2)(i).

<sup>13</sup> See, e.g., Final RHR Revision, 81 Fed. Reg. 3078, 3093 (Jan. 10, 2017) (“The URP is not a safe harbor, however, and states may not subsequently reject control measures that they have already determined are reasonable”); Final Arkansas FIP, 81 Fed. Reg. 66332, 66361 (Sept. 27, 2016) (“the CAA and Regional Haze regulations are clear that an evaluation of the four statutory factors is required, and this requirement applies regardless of the Class I area’s position on the glidepath”); Texas FIP, 79 Fed. Reg. 74,818, 74,834 (Dec. 16, 2014) (“the URP does not establish a ‘safe harbor’ for the state in setting its progress goals”).

<sup>14</sup> Ex. 610 at p.3 of 5.

### **C. Sierra Club Included Actual Data from EPA Reporting Showing the Small Change to NOx Emissions Rates.**

During the evidentiary hearing, Chairman Kjellander and Mr. Thackston had a brief exchange regarding the availability of emissions data from Colstrip.<sup>15</sup> Mr. Thackston correctly testified that such data is reported to EPA and is available to the public. In fact, Dr. Hausman accessed this data and included a summary in his direct testimony on page 24 in Figure 1.<sup>16</sup> The charts included in Dr. Hausman's testimony show NOx emissions from both before and after the installation of SmartBurn on Colstrip Units 3 and 4. The data indicate that for both Units 3 and 4, the average annual NOx emissions went from about 0.16 lbs NOx/mmbtu before SmartBurn to about 0.15 lbs NOx/mmbtu after SmartBurn.<sup>17</sup> Dr. Hausman also noted that achieving a rate of 0.15 lbs NOx/mmbtu is consistent with general industry experience when installing SmartBurn without SCR.

Mr. Thackston asserted for the first time during the hearing that the magnitude of NOx emissions would instead be closer to a 26 percent annual reduction of tons of NOx.<sup>18</sup> Sierra Club has tried and failed to verify those numbers based on the actual emissions data available from EPA. It is possible that those numbers are instead estimates of reductions that, for whatever reason, Colstrip has thus far failed to achieve. It is also possible that the decrease in average annual tons of emissions is instead a function of an expected reduction in the operation of Colstrip rather than something that is attributable to the SmartBurn controls. Regardless of the basis for Mr. Thackston's statement, Sierra Club recommends that the Commission rely on the actual data provided in the record that has been subjected to both rebuttal testimony and cross examination.

### **D. Conclusion**

The testimony provided by Sierra Club and Idaho Conservation League included substantially more detail on the issues under review by the Commission in this proceeding. For the sake of brevity, Sierra Club does not reiterate all of those points here. Instead, this brief attempts to provide a concise summary of Sierra Club's position with respect to the imprudent

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<sup>15</sup> Hearing Transcript at p.74, line 13 – p.75, line 12 (Thackston, Com.).

<sup>16</sup> Hausman Di. at p.24. (Dr. Hausman included a citation to the EPA data base. The dataset for NOx at Colstrip is available through the Acid Rain Program.)

<sup>17</sup> Id. at p.23, line 1-4.

<sup>18</sup> Hearing Transcript at p.74, line 2 (Thackston, Com.) and p.80, line 3-9 (Thackston, Di.).

capital expenditures made at Colstrip and to correct certain topics raised during the evidentiary hearing. Sierra Club appreciates the opportunity to present its case to the Commission.

Dated this 13<sup>th</sup> day of December, 2017.

Respectfully submitted,

/s/ Travis Ritchie

Travis Ritchie

*Attorney for Sierra Club*

## CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of December 2017, I delivered true and correct copies of the foregoing POST-HEARING BRIEF OF SIERRA CLUB upon all parties of record in this proceeding via the method of service noted. This document was served upon parties via email.

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Dated this 13<sup>th</sup> day of December, 2017.

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