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IDAHO PUBLIC
UTILITIES COMMISSION

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Attorneys for Intervenor Avista Customer Group

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT
APPLICATION OF HYDRO ONE
LIMITED AND AVISTA CORPORATION
FOR APPROVAL OF MERGER
AGREEMENT

CASE NOS. AVU-E-17-09
AVU-G-17-05

**AVISTA CUSTOMER GROUP'S
PETITION FOR INTERVENOR
FUNDING**

1 COMES NOW, Intervenor Avista Customer Group (“ACG”), through its counsel, and,
2 pursuant to Idaho Code § 61-617A and Rules 053 and 161 through 165 of the Rules of
3 Procedure of the Idaho Public Utilities Commission (“IPUC”), Idaho Administrative Code
4 (“IDAPA”) 31.01.01, hereby petitions the IPUC for an award of intervenor funding.

5 **A. Background**

6 ACG is an unincorporated nonprofit association, composed of utility ratepayers,
7 taxpayers, and concerned citizens, including electrical and natural gas utility service customers
8 of the Co-Applicant, Avista Corporation. ACG members stand to be impacted by potential
9 cost or rate increases resulting from the proposed merger of Avista Corporation with Hydro
10 One Limited. ACG filed a petition to intervene seeking denial of the application to approve
11 the proposed merger, which petition was granted by the IPUC.

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1 In accordance with IPUC Rule 053(07)(a), the facts upon which this Petition is based
2 are delineated below, along with the relevant statute, rule, order or other controlling law upon
3 which they are based.

4 In accordance with IPUC Rule 053(07)(d), the entities against which this Petition is
5 brought are identified as Co-Applicants Avista Corp. and Hydro One.

6 **B. Award of Costs of Intervention and Cases in Which Intervenors May**
7 **Apply for Funding**

8 The requirements of Idaho Code § 61-617A(2) and IPUC Rule 161 are met because
9 Avista is a regulated electric public utility company that has been involved in the production,
10 transmission and distribution of energy in eastern Washington, northern Idaho, and parts of
11 southern and eastern Oregon since 1889 and reported gross Idaho intrastate annual revenues
12 exceeding Three Million, Five Hundred Thousand Dollars (\$3,500,000) (see *Joint Application*
13 and *Appendices* filed with the IPUC on September 14, 2017, and other financial documents on
14 file in this matter), and Petitioner’s fees and costs do not exceed \$40,000. If the application is
15 approved, Hydro One would also satisfy this requirement, as the owner of Avista.

16 The proposed merger of Avista and Hydro One was denied in the State of Washington
17 (see Washington Utilities and Transportation Commission’s December 5, 2018 decision
18 denying the companies’ *Joint Application for Transfer of Property* on file in this matter), and
19 is currently pending with the IPUC, following the technical hearing held on November 26–27,
20 2018, and the post-hearing briefing filed on December 7, 2018.

21 //

22 //

1 **C. Itemized List of Expenses**

2 In accordance with IPUC Rule 162(01), following is an itemized list of costs and fees.

3	Messenger Service	\$	30.00
4	Photocopies	\$	1,119.15
5	Color Copies	\$	124.00
6	Postage	\$	159.22
7	Legal Fees ¹	\$	<u>22,980.00</u>
8	TOTAL	\$	24,412.37

9 **D. Statement of Proposed Findings and Material Contribution Therefrom**

10 In accordance with IPUC Rule 162(02), the proposed findings and recommendations
11 of ACG can be found in *Avista Customer Group's Petition to Intervene* dated June 27, 2018;
12 *Comments of Avista Customer Group* dated June 27, 2018; *Avista Customer Group's Response*
13 *in Opposition to Motion to Admit and Approved First Amendment to Stipulation and Settlement*
14 dated November 21, 2018; and *Avista Customer Group's Post-Hearing Brief Regarding Idaho*
15 *Code § 61-327* dated December 7, 2018; namely, that the proposed merger between Hydro
16 One and Avista Corp. be denied in its entirety.

17 ACG argued that Idaho Code § 61-327 applies to, and bars, the proposed acquisition.
18 ACG also argued that it cannot be approved under Idaho Code § 61-328 because it is not in the
19 public interest and could result in cost or rate increases to Avista and/or its customers. ACG
20 also provided extensive cross-examination at hearing, thereby contributing materially to the
21 IPUC's ultimate decision in this matter.

¹ Norman M. Semanko's services were billed at a discounted rate of \$200/hour (standard rate is \$350/hour), for a total of 98 hours; associate attorney Christina W. Hardesty's services were billed at \$200/hour, for a total of 2.9 hours; and paralegal Janelle L. Finfrock's services was billed at \$155/hour, for a total of 8 hours.

1 The requirement of Idaho Code § 61-617A(2)(a) is satisfied because said proposed
2 findings and recommendations materially contributed to the decision to be rendered by the
3 IPUC.

4 **E. Statement Showing Costs**

5 The fees and costs ACG seeks to recover are reasonable and, as such, meet the
6 requirements of Idaho Code § 61-617A(2)(b) and IPUC Rule 162(03). Attorney Norman M.
7 Semanko's standard hourly rate is \$350 per hour, and in this case his services were rendered
8 at a discounted rate of \$200 per hour. The firm's costs were charged at its standard rates:
9 photocopies at \$0.15 per page; color copies at \$0.80; messenger rates at \$7.50 to \$40,
10 depending on distance; and postage constitutes actual costs as disbursed.

11 **F. Explanation of Cost Statement and Statement of Financial Hardship**

12 ACG's funding, as an unincorporated nonprofit association, comes predominantly from
13 individuals, most of whose contributions are unpredictable, sporadic and limited in amount.
14 ACG has incurred reasonable, but still considerable, expenses participating in this important
15 proceeding. Even with intervenor funding, participation in this IPUC case constitutes a
16 significant hardship because ACG has incurred expenses during the course of the proceeding,
17 not if and when intervenor funding may later become available.

18 The fees and costs identified above constitute a significant financial hardship for ACG,
19 and the requirements of Idaho Code § 61-617A(2)(b) and IPUC Rule 162(04) are met.

20 **G. Statement of Difference**

21 IPUC Staff, Terri Carlock ("Staff"), provided valuable input in her direct testimony
22 regarding the proposed merger underlying this litigation, see *Direct Testimony of Terri Carlock*
23 dated November 6, 2018. Although Staff's direct testimony in this case agreed with ACG's

1 contention that Idaho Code § 61-327 may provide a total bar to the proposed merger, Staff's
2 post-hearing briefing ultimately concluded that the transaction was not barred under the statute.
3 Staff also contended that most of the public interest and rate concerns with the proposed merger
4 under Idaho Code § 61-328 were adequately addressed in the proposed settlement.

5 ACG respectively disagreed, arguing that Idaho Code § 61-327 applies to and bars the
6 proposed acquisition of Avista by Hydro One, and that it also failed to meet the requirements
7 of Idaho Code § 61-328. Such results are unchanged by Staff's contention that there would be
8 no impact to cause customer rates increase were the merger to go forward, or by the recent
9 formation of Olympus Equity in Idaho. Compare *Direct Testimony of Terri Carlock* dated
10 November 6, 2018 and *Commission Staff's Post-Hearing Brief Regarding Idaho Code § 61-*
11 *327* dated December 7, 2018, with *Avista Customer Group's Petition to Intervene* dated
12 June 27, 2018, *Comments of Avista Customer Group* dated June 27, 2018, *Avista Customer*
13 *Group's Response in Opposition to Motion to Admit and Approved First Amendment to*
14 *Stipulation and Settlement* dated November 21, 2018, and *Avista Customer Group's Post-*
15 *Hearing Brief Regarding Idaho Code § 61-327* dated December 7, 2018.

16 Of course, all other intervenors in this matter supported the merger application and
17 proposed settlement. ACG did not. The requirements of Idaho Code § 61-617A(2)(c) and
18 IPUC 162(05) are met by the clear difference between ACG's proposed findings from those of
19 Staff and the other parties.

20 **H. Statement of Recommendation: ACG Addressed Issues of Concern to the**
21 **General Body of Users and Consumers**

22 ACG's position addressed issues of concern to the general body of utility users and
23 consumers. As noted previously, ACG is an unincorporated nonprofit association, composed

1 of utility ratepayers, taxpayers and concerned citizens, including electrical and natural gas
2 utility service customers of Avista Corp. ACG's position against the proposed merger is
3 because it is barred under Idaho Code § 61-327; it is not in the public interest for Avista to be
4 owned and/or controlled, directly or indirectly, by Hydro One and/or the Province of Ontario,
5 and said transaction could result in higher rates for Avista and its customers, particularly given
6 the control over Hydro One and its wholly owned subsidiaries, as demonstrated by the Province
7 of Ontario. All of these are issues of concern to Avista users and customers. As such the
8 requirements of Idaho Code § 61-617A(2)(d) and IPUC Rule 162(06) have been met.

9 **I. Statement of Showing Class of Customer**

10 To the extent ACG represents a specific Avista Corp. customer class, it is the residential
11 class. IPUC Rule 162(07).

12 **J. Awards**

13 The specific requirements of Idaho Code § 61-617A(2)–(5) and IPUC Rule 165(01)(a)–
14 (e) have been met as indicated above.

15 The award of intervenor funding is requested to be paid within twenty-eight (28) days
16 of the order of the IPUC awarding intervenor funding. IPUC Rule 165(02).

17 The award of intervenor funding paid by Avista and/or Hydro One will be an allowable
18 business expense in the next rate case and shall be chargeable to the class of customers
19 represented by the intervenors. IPUC Rule 165(03).

20 This Petition is permitted, as ACG is not in direct competition with Avista Corp. or
21 Hydro One and thus payment of ACG's expenses are not prohibited by Idaho Code § 61-
22 617A(5).

1 WHEREFORE, Petitioner ACG, pursuant to Idaho Code § 61-617A(5) and IPUC Rule
2 053-07(c), includes the following prayer for relief:
3 1. For an award of intervenor funding to ACG in the amount of \$ 24,412.37 against
4 Co-Applicants Avista Corp. and/or Hydro One as follows:
5 2. That such award of intervenor funding be paid within twenty-eight (28) days of
6 the order of the IPUC awarding intervenor funding;
7 3. That such award of intervenor funding be an allowable business expense in its
8 next rate case and be chargeable to the class of customers represented by the intervenors; and
9 4. For such other and further relief as the IPUC may determine to be just and
10 proper.

DATED this 19th day of December, 2018.

PARSONS BEHLE & LATIMER

By: 

Norman M. Semanko

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on this 19th day of December, 2018 by the following method:

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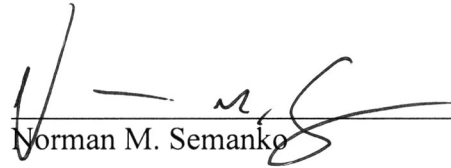
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