Office of the Secretary
Service Date
January 3, 2019

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** **ORDER NO. 34226**

On July 19, 2017, Avista announced that it had entered into a merger agreement with Hydro One ("Applicants"). On September 14, 2017, the Applicants jointly applied to the Idaho Public Utilities Commission for an order approving the proposed merger. The Idaho Commission is one of several regulatory bodies that must approve the proposed merger. If the Idaho Commission and other state commission and regulatory agencies approve the merger, Avista would become a wholly owned subsidiary of a Hydro One holding company.

Having carefully reviewed this extensive record, including the Application, Amended Settlement, testimony, exhibits, briefs, and comments, the Commission now issues this Order denying the Application, and rejecting the proposed Amended Settlement and merger.

BACKGROUND

On October 5, 2017, the Commission issued Notice of the proposal and set an intervention deadline of October 26, 2017. Idaho Forest Group, Clearwater Paper, Idaho Conservation League ("ICL"), the Community Action Partnership Association of Idaho ("CAPAI"), and the Washington and Northern Idaho District Council of Laborers intervened as parties (collectively, "initial intervenors"). Order Nos. 33903, 33914, 33916, 33931, and 33932. Several months later, an unincorporated nonprofit called Avista Customer Group ("ACG"), and the Idaho Department of Water Resources ("IDWR") were granted late intervention. Order Nos. 34109 and 34111.

The parties met several times for settlement negotiations. On April 13, 2018, the Applicants and Commission Staff moved for approval of a Stipulation and Settlement between the Applicants, Commission Staff, and Initial Intervenors. The motion notified the Commission that all parties (other than ACG and IDWR, which had not yet intervened) had signed a Stipulation and Settlement ("Settlement") that fully resolved the case.

On May 16, 2018, the Commission issued notice of the Settlement, and set a June 27, 2018, deadline for interested persons to submit written comments. In June 2018, the Commission held public hearings in Moscow, Sandpoint, and Coeur d'Alene for Avista customers and other

interested persons to testify. The Commission also scheduled a July 23, 2018, technical hearing. *See* Order Nos. 33950, 34061, and 34101. The Applicants, Commission Staff, CAPAI, and ICL filed comments in support of the Settlement.

On June 7, 2018, elections in the Province of Ontario, Canada, resulted in new leadership in the Province. The new leadership quickly fulfilled a campaign promise and, on July 11, 2018, prompted the resignation of Hydro One's Chief Executive Officer ("CEO") and the entire Board of Directors. Avista reported these actions to the Commission one week later, on July 18, 2018. Following Avista's report, the Commission vacated the technical hearing, citing "the number of questions raised by the resignations," as the basis for postponing the technical hearing. *See* Order No. 34111. The technical hearing was ultimately rescheduled for November 26-27, 2018.

Before the technical hearing occurred, in August and September 2018, the Applicants, Commission Staff, Initial Intervenors, ACG, and IDWR engaged in settlement discussions. These discussions resulted in additional terms to the Settlement. *See* First Amendment to Stipulation and Settlement, filed November 16, 2018 ("Amended Settlement"). Applicants, Staff, and the Initial Intervenors signed the Amended Settlement. Additionally, the Applicants, Staff, and intervenor CAPAI filed testimony supporting the Amended Settlement, and none of the Initial Intervenors opposed it. ACG, on the other hand, strongly opposed the Amended Settlement. *See* ACG's November 21, 2018 Response in Opposition to Motion to Admit and Approve First Amendment to Stipulation and Settlement, and supporting Affidavit of Norman M. Semanko. The final remaining party, IDWR, notified the Commission it had reached a separate agreement with Avista concerning Avista's water rights. With that separate agreement related to Avista's water rights, IDWR expressed no concern about the merger. *See* August 10, 2018 Notice to Commission from IDWR Director Gary Spackman, and November 6, 2018 Direct Testimony of Shelley Keen.

The Commission ultimately scheduled and held a technical hearing at the Commission's office in Boise, Idaho on November 26-27, 2018. *See* Order Nos. 34148 and 34179. The Commission heard testimony from fifteen witnesses and reviewed numerous exhibits resulting in four volumes and over twelve-hundred pages of hearing transcripts. Additionally, the Applicants, Staff, and ACG filed post-hearing legal briefs regarding the applicability of Idaho Code § 61-327, a statute that prohibits the transfer of electric utility property in certain situations. Finally, the Commission received approximately 650 written comments from customers and other interested persons, most of whom opposed the merger.

THE APPLICATION

Avista is an investor-owned Washington Corporation and public utility engaged in the production, transmission, and distribution of electric power and distribution of natural gas to customers in eastern Washington, northern Idaho, and parts of southern and eastern Oregon. Avista serves approximately 378,000 electric customers in Washington, Idaho, and Montana, and approximately 342,000 natural gas customers in Washington, Idaho, and Oregon. Alaska Energy and Resources Company, an Avista subsidiary, provides retail electric service in the city and borough of Juneau through its subsidiary Alaska Electric Light and Power Company.

Hydro One was a Crown Corporation owned by the Province of Ontario, until November 2015, when it was partially privatized. It is now an investor-owned electric transmission and distribution utility headquartered in Toronto, Ontario, Canada. The Province continues to own 47 percent of the outstanding shares. Under provincial law and Hydro One's Articles of Incorporation, no other shareholder can own more than 10 percent of the common shares. Beyond the status of largest shareholder, the Province also maintains a unique governance agreement with Hydro One. Practically speaking, no one other than the Province can have a substantial influence on corporate affairs.

As previously noted, in July 2018 the Province prompted the resignation of the Hydro One Board and CEO. On August 14, 2018, Hydro One announced its new ten-member Board of Directors, four of whom were selected by the Province. Hydro One named an acting CEO, but has yet to announce a new permanent CEO. However, the Province will play a direct role in the CEO's compensation package, and recent news reports indicate that the Province is also playing a role in selecting candidates.

As proposed, Avista would be acquired by Hydro One through an Idaho holding company, Olympus Equity LLC, which would acquire all of the outstanding common stock of Avista. Avista would become a wholly owned subsidiary of Olympus Equity LLC. Olympus Equity would be a bankruptcy remote entity[1] in place purely to own Avista and relay Avista dividends to Hydro One.

To accomplish the merger, Avista and Hydro One require approvals from the state regulatory commissions in Idaho, Oregon, Montana, Alaska, and Washington. Alaska approved the proposed merger on June 4, 2018. Montana approved the proposed merger on July 10, 2018.

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[1] A bankruptcy remote entity is a special entity formed to hold a defined asset and to protect that asset from being administered as property of a bankruptcy estate.

Washington denied the merger application on December 5, 2018. The Applicants requested reconsideration in Washington on December 17, 2018.

In addition to state regulatory approval, the Applicants must also obtain approval from several federal entities. The Federal Energy Regulatory Commission approved the proposed transaction on January 16, 2018. The 30-day waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 expired on April 5, 2018, meaning that the parties have received antitrust clearance for the proposed merger. Hydro One and Avista received the Federal Communications Commission's consent on May 4, 2018. The Committee on Foreign Investment in the United States completed its review of the proposed merger on May 18, 2018, and raised no national security concerns about the transaction.

PUBLIC COMMENTS

In recognition of the importance of this case and the public interest expressed, the Commission held three public hearings in northern Idaho and accepted testimony and comments from hundreds of members of the public. Almost everyone who testified or commented opposed the merger. Given the number of people who testified and commented, and the broad scope of their testimonies and comments, it is impractical for us to enumerate every concern or thought expressed. However, the general nature of the public testimony and comments expressed concern over foreign ownership, foreign government control of the company, increased rates, and negative service quality impacts.

THE AMENDED SETTLEMENT

The Amended Settlement proposes the Commission approve the merger, and incorporates Company commitments, rate commitments, regulatory commitments, resource-planning commitments, spending commitments, and ring fencing provisions aimed at protecting and benefiting Avista customers. By way of summary,[2] the Amended Settlement states:

- All decision-making authority over Avista operations would belong to the Avista Board of Directors. The Board would consist of nine members, the majority of which would be designated by Hydro One, with certain conditions regarding independence of some appointments.

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[2] This summary highlights provisions of the Amended Settlement. The Commission fully reviewed the entire Amended Settlement, and the summary of some of its terms does not imply others were of less importance. The full terms of the Amended Settlement can be viewed at the Commissions website: https://www.puc.idaho.gov/

- Avista would maintain its Spokane offices, workforce, compensation, and branding.
- There would be no rate increase because of the merger. Rather, Avista's Idaho customers would receive a $15.8 million rate credit over a five-year period, or $3.2 million per year.
- Hydro One and its subsidiaries recognize the authority of Idaho, and the Idaho Commission, and have committed to comply, as required, with Idaho laws and Commission orders.
- Hydro One and Avista would maintain independent finances.
- Several ring fencing provisions were included in an effort to shield Avista from Hydro One liabilities, including bankruptcy proceedings. Other ring fencing provisions include a "hold harmless" provision, under which Hydro One would hold Avista's customers financially harmless from any business, financial, or environmental risks attributable to Hydro One, and a provision to protect Avista's assets.
- Going forward, in all resource planning, Avista would evaluate demand-side resources, renewable energy, and Purchase Power Agreements consistent with Commission resource evaluation rules and policies.
- Hydro One agreed to fund $5.3 million for energy efficiency, weatherization, conservation, and low-income assistance programs over ten years. A newly created "Energy Efficiency, Weatherization, Conservation and Low-Income Assistance Committee" would direct the funds, and would consist of interested stakeholders.
- Hydro One would fund a one-time $7 million contribution to Avista's charitable foundation. For five-years after the close of the transaction, Avista would maintain a $4 million annual budget for charitable contributions, and would contribute $2 million each year to Avista's charitable foundation.
- For accounting purposes, Hydro One and Avista would support a December 31, 2027, depreciation end of life relating to Avista's ownership in Colstrip Units 3 and 4.
- The parties also agreed to the subordination of certain water rights.

FINDINGS AND DISCUSSION

Avista is an electric utility subject to the Commission's regulation under the Public Utilities Law. Idaho Code §§ 61-119 and 61-129. The Company's rates, charges, classifications and contracts for electric service in the State of Idaho are subject to the Commission's jurisdiction. This

Commission has jurisdiction over this matter pursuant to the provisions of Idaho Code §§ 61-327 and -328.

Rules 271-277 of the Idaho Public Utilities Commission Rules of Procedure (IDAPA 31.01.01.271-277) describe the Commission's process for considering a settlement stipulation. When a settlement is presented, the Commission prescribes the procedures by which the Commission will consider it. In this case, the Commission received hundreds of comments, convened several public hearings, and held a technical hearing. IDAPA 31.01.01.274. Proponents of a proposed settlement must show the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. IDAPA 31.01.01.275. The Commission is not bound by settlement agreements. Rather, the Commission "will independently review any settlement proposed to it." IDAPA 31.01.01.276.

In deciding whether the Amended Settlement is just, fair, reasonable, and in the public interest as required by Rules 274 and 275, our inquiry is guided, and constrained, by Idaho Code §§ 61-327, 328. These statutes limit an electric utility's ability to sell assets in certain situations. Section 61-327 prohibits a utility from transferring assets to certain entities. If § 61-327 does not bar the transaction, then the Commission can only approve the transaction if it finds that the transaction passes the public interest and no-harm tests set forth in § 61-328. In this case, we find the Applicants have failed to carry their burden under Idaho Code § 61-327.

A. OVERVIEW OF IDAHO CODE § 61-327.

Idaho Code § 61-327 provides:

> **61-327. Electric Utility Property — Acquisition by Certain Public Agencies Prohibited.** No title to or interest in any public utility (as such term is defined in chapter 1, title 61, Idaho Code) property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall be transferred or transferable to, or acquired by, directly or indirectly, by any means or device whatsoever, any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, organized or existing under the laws of any other state; or any person, firm, association, corporation or organization acting as trustee, nominee, agent or representative for, or in concert or arrangement with, any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized or existing under the laws of this state or any other state, whose issued capital stock, or other evidence of ownership, membership or other interest therein, or in the property thereof, is owned or controlled, directly or indirectly,

> by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized under the laws of any other state, not coming under or within the definition of an electric public utility or electrical corporation as contained in chapter 1, title 61, Idaho Code, and subject to the jurisdiction, regulation and control of the public utilities commission of the state of Idaho under the public utilities law of this state; provided, nothing herein shall prohibit the transfer of any such property by a public utility to a cooperative electrical corporation organized under the laws of another state, which has among its members mutual nonprofit or cooperative electrical corporations organized under the laws of the state of Idaho and doing business in this state, if such public utility has obtained authorization from the public utilities commission of the state of Idaho pursuant to section 61-328, Idaho Code.

In summary, § 61-327 bars the transfer of generation, transmission, or distribution and supply assets of Idaho regulated utilities to certain defined entities. Specifically, § 61-327 prohibits a utility from transferring assets to four kinds of transferees: 1) A "government ... or political unit existing under the laws of any other state;" 2) "any organization acting as ... representative for, or in concert ... with, any such government ...;" 3) "any company ... whose issued capital stock, or other evidence of ownership ... is owned or controlled, directly or indirectly, by any ... governmental or political unit;" and 4) "any ... organization or corporation organized under the laws of any other state, not coming within the definition of an electric public utility or electrical corporation...."

Because this statute pertains to the sale or transfer of ownership interest in electric facilities in Idaho, it applies to the merger in this case.

In interpreting this statute, we are guided by Idaho Code § 73-113, which states:

1) The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent.

2) If a statute is capable of more than one (1) conflicting construction, the reasonableness of the proposed interpretations shall be considered, and the statute must be construed as a whole. Interpretations which would render the statute a nullity, or which would lead to absurd results, are disfavored.

3) Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the

succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

B. THE PROPOSED TRANSFER

As an initial matter, Idaho Code § 61-327 is triggered because Avista proposes to transfer an interest in its Idaho-based generation, transmission, and distribution property. The Applicants proposal to transfer all Avista stock to a Hydro One entity is a *de facto* transfer of Avista and its assets. In this case, the Applicants propose to transfer full ownership of Avista—a public utility that owns Idaho-based generation, transmission, or distribution property—to a Hydro One entity. Hydro One will become the sole shareholder of Avista and Avista's interest in its property would persist only as a Hydro One subsidiary.

The threshold question this Commission must answer is whether Avista is transferring its assets to a transferee prohibited under § 61-327. This Commission's statutory duty to consider whether the proposed merger would be just, fair, reasonable, in the public interest and otherwise in accordance with Idaho law and regulatory policy demands that we address the documented, contractual and ongoing control that the Province of Ontario exerts over Hydro One. We cannot approve the proposal if Avista's transfer to Hydro One amounts to a transfer to "any organization acting as … representative for, or in concert … with, any such government …;" or "any company … whose issued capital stock, or other evidence of ownership … is owned or controlled, directly or indirectly, by any … governmental or political unit." *Id.*

As explained in greater detail below, we find § 61-327 bars the transaction because Hydro One is a prohibited transferee.

1. Hydro One is directly and indirectly subject to the control and ownership interest of the Province of Ontario.

Hydro One was a Crown Corporation wholly owned by the Province until November 2015. As previously stated, the Province remains its largest shareholder—owning 47 percent of the outstanding shares. Pursuant to provincial law and Hydro One's Articles of Incorporation, no other shareholder may own any more than ten percent of the outstanding shares. These provisions operate to ensure that no other single shareholder can secure a significant or controlling influence in Hydro One greater than the Province. Moreover, the 2015 governance agreement and the 2018 letter agreement between Hydro One and the Province spell out how Hydro One will be governed, including the special role the provincial government serves over Hydro One. The Applicants

asserted through testimony and briefing that the Province is merely a shareholder, and not a manager of Hydro One. However, the events that began in June 2018 and continue to present day, prove otherwise.

Prior to June 2018, Hydro One's then CEO, Mayo Schmidt, declared that the governance agreement would "ensure that Hydro One's business and operations are completely independent from the government of the Province of Ontario." Tr. 563-64. Contrary to all assertions made by both Hydro One and Avista to this Commission, in June 2018 the Province caused the resignation of the entire Hydro One Board of Directors and the removal of the Mr. Schmidt. These events caused a downgrade in Hydro One's credit rating and significant delays and cost increases in the regulatory proceedings surrounding this merger. Further, the Province executed management-level control by altering the structure of the Board, modifying contractual compensation packages, and participating in additional oversight ordinarily reserved to the Board of Directors and other executive officers. Tr. 793. The Premier continues to promise publicly a 12 percent reduction in rates to Hydro One's consumers. Tr. 335-337.

We find that the language of the controlling statute, when given its plain, usual and ordinary meaning is clear and leads us to the conclusion that Hydro One is both indirectly and directly controlled by the ownership interest of and deference to the Province of Ontario. Merriam-Webster defines "in concert" as an "agreement in design or plan," and "arrangement" as "an informal agreement or settlement especially on personal, social, or political matters." The Merriam-Webster Dictionary (New Edition 2016). "Control" amounts to "the direct and indirect power to govern the management and policies of a person or entity, whether through ownership of voting securities, by contract, or by otherwise; the power or authority to manage, direct, or oversee." Black's Law Dictionary (10th ed. 2014). Hydro One is a party to both a governance agreement and a letter agreement with the Province. The Applicants testified that these agreements protect Hydro One's independence. However, Hydro One Board members disregarded provisions of the governance agreement intended to protect the utility's shareholders when they stepped down under political pressure. Tr. 791-793.

It is beyond dispute that the Province's control of Hydro One also led to a restructuring of the Board of Directors, from fourteen to ten Board members, and removal and yet-to-occur replacement of the CEO. Additionally, the retention of the Hydro One CEO requires a two-thirds percent vote of the Board. Tr. 58-59. Because the Province of Ontario controls the appointment of

40 percent of the Board, Provincial appointees can replace the CEO annually. *See* Tr. 15. This further evidences the control and influence the Province has over the Company at any given time. Further, the Premier of the provincial government has publicly declared that Hydro One is not a private corporation. Tr. 800-802.

We recognize that the parties have proposed significant ring fencing to protect Avista's property and its customers. However, no provision can change Hydro One's status as Avista's proposed owner or the authority imposed on Hydro One by the Province of Ontario. Even the newly seated Chair of the Board of Directors, Thomas Woods, admitted the governance agreement does not prevent the Province from making further attempts to manage Hydro One. Tr. 110-111.

It is abundantly clear that the Province does not have to own 51 percent of Hydro One in order to effectively control the company. Based on the recent events surrounding the Province's intrusions into Hydro One corporate affairs, any other conclusion would be unreasonable and ignorant in light of the uncontested facts and evidence. Consequently, we find that Hydro One has acted in concert with the Province of Ontario, formally and informally, directly and indirectly.

2. The provincial government of Ontario is the government of another state.

While Idaho Code § 61-327 prohibits a public utility from transferring an interest in Idaho-based assets to the government of "any other state," the statute does not define what constitutes "any other state." A standard dictionary definition of "state" broadly refers to "the political system of a body of people who are politically organized; a system of rules by which jurisdiction and authority are exercised over such a body of people." Black's Law Dictionary (10th ed. 2014). Thus, a plain reading of the statute would naturally include not only other states within the United States, but also territories, foreign nations, and Canadian provinces. Idaho case law supports this clear and unambiguous reading. *See Idaho Power Co. v. State of Idaho*, 104 Idaho 575, 589 ("[Section] 327 provides generally that property in this state used in the generation or transmission of electricity shall not be transferred in any manner to out-of-state organizations, governmental entities, *or any entity not subject to regulation by the PUC.*") (emphasis added).

The Applicants defend a much more narrow reading of the statute. The Applicants contend that "any other state" means "any other state of the United States," and excludes any consideration of foreign provinces or alien nations. *See* Tr. at 138-141, and Applicant's Brief at 9-10. We

disagree. The Applicants' narrow concept of state would yield the absurd result of prohibiting purchases by entities owned by other states of the United States, while allowing such transactions if the entity is owned by a foreign country. We find that the plain language used by the legislature, when read in context and given its ordinary meaning, includes foreign entities such as the province of Ontario within the meaning of "state."

Consequently, we cannot approve the proposed transfer of Avista's assets to Hydro One. The proposal amounts to a transfer of Idaho-based utility generation, transmission, distribution and supply assets to an organization acting in concert with, and controlled by, a government of another state. Hydro One is not purely a private, publicly traded corporation. Rather, the management of Hydro One is subject to the Province's political pressure, legislative power, and special governance agreements. The prohibitions of Idaho Code § 61-327 cannot be nullified with generous settlement terms and robust ring-fencing provisions.

We continue to recognize that, "[w]ith the increased globalization of economies and cultures, the concept of an 'American' company is becoming more obscure. Today's increasingly competitive markets require businesses to search far and wide for materials, labor, and business opportunities. Large businesses whose stock is publicly traded in this country are often owned, at least in part, by foreign interests. Similarly, U.S. corporations and individuals often engage in the acquisition of or partnership with foreign businesses." Order No. 28213. In this instance, it is Hydro One's lack of independence from the governmental entity that dictates our decision to reject the proposed merger between Hydro One and Avista. The burden to establish that the proposal complies with Idaho law rests with the Applicants. IDAPA 31.01.01.275. We find the Applicants have failed to establish that the proposed settlement is in accordance with Idaho Code § 61-327. Our decision is supported by substantial and competent evidence compiled through a vigorous and thorough effort by all parties to present a complete record for our review.

C. Idaho Code § 61-328

Because we have determined Idaho Code § 61-327 is dispositive of the proposed transaction, we do not decide whether Idaho Code § 61-328 might also bar the proposal. Section 61-328, in summary, precludes the Commission from approving a transaction unless: (a) the transaction is consistent with the public interest; (b) the transaction will not increase the cost of and rates for supply service; and (c) the transferee has the bona fide intent and financial ability to operate and maintain the property in the public service. While we do not base our decision here on

these public interest standards, it would be reasonable and fair to consider the same and similar facts that dictated our decision under § 61-327. Any evaluation of the public interest would, undeniably, take into account the provincial politics and circumstances under which Hydro One's CEO and entire Board of Directors resigned.

This Commission remains concerned about the outer limits of the Province's power over Hydro One. We are not convinced that the Province shares Hydro One's philosophy that the Company be independent. We also note that the testimony provided by Hydro One witnesses was constructed in furtherance of an approved settlement agreement. Attempts to solicit more detail at hearing about the Province's intrusions on Hydro One management were met with less than persuasive responses. Furthermore, Hydro One lacks that authority to make commitments that would bind the Province.

Our decision to reject the proposed transaction and Amended Settlement does not hinge on these considerations. However, we offer them as a caution to the parties. To be clear, in any analysis of Idaho Code § 61-328, this Commission would strictly scrutinize the facts and evidence, through additional hearings and testimony if needed, to assess whether the proposed transaction ultimately could satisfy Idaho Code § 61-328.

INTERVENOR FUNDING

Intervenor funding is available under Idaho Code § 61-617A and Rules 161-165. Idaho Code § 61-617A(1) states it is the "policy of [Idaho] to encourage participation at all stages of all proceedings before this Commission so that all affected customers receive full and fair representation in those proceedings." The statute authorizes the Commission to order any regulated utility with intrastate annual revenues exceeding $3.5 million to pay all or a portion of the costs of one or more parties. Idaho Code § 61-617A(2).

Intervenor funding costs include legal fees, witness fees, and transportation and other expenses so long as the total funding for all intervening parties does not exceed $40,000 in any proceeding. *Id.* The Commission must consider the following factors when deciding whether to award intervenor funding:

1) That the participation of the intervenor has materially contributed to the Commission's decision;

2) That the costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor;

3) The recommendation made by the intervenor differs materially from the testimony and exhibits of the Commission Staff; and

4) The testimony and participation of the intervenor addressed issues of concern to the general body of customers.

Id. To obtain an award of intervenor funding, an intervenor must further comply with Rules 161-165. IDAPA 31.01.01.161-165. The petition must contain an itemized list of expenses broken down into categories, a statement explaining why the costs constitute a significant financial hardship, and a statement showing the class of customer on whose behalf the intervenor participated. Rule 162; IDAPA 31.01.01.162.

Here, the Commission received three timely intervenor-funding petitions: ACG, for $24,412.37; CAPAI, for $17,045; and ICL, for $12,950. CAPAI and ICL provided detailed breakdowns of the time their legal staff spent on the case. ACG summarized the work its lawyer completed.

In considering the requests, the Commission reviewed the Petitions, and the record of proceedings. Consistent with the policy expressed in Idaho Code § 61-617A, we encourage intervenors to participate in cases and decisions before us. Based on their testimony and participation in this matter, we find that the Petitions for Intervenor Funding filed by ACG, CAPAI, and ICL generally comport with the procedural and technical requirements set forth in Rules 161-165 of the Commission's Rules of Procedure. We thus find that the intervenors have satisfied the criteria for an intervenor funding award under Idaho Code § 61-617A.

We find that ACG, CAPAI, and ICL all materially contributed to our decision in this matter by addressing issues important to our consideration. CAPAI and ICL added perspectives from environmental and low-income groups and represented their respective interests through two settlement agreements. ACG represented the interest of customers who opposed the merger, and provided valuable perspective regarding Idaho Code § 61-327. We note that the intervenors participated in scheduled negotiations, prepared and evaluated discovery. However, ACG became a party to the case nearly four months after CAPAI and ICL began participating. All intervenors were present and actively participated at the technical hearing. Each intervenor's position materially differed from the Applicants and Staff evidence and positions. We also find that the intervenors addressed issues relevant to all consumers, provided us with a more complete framework in which to evaluate the case and render a decision in the public interest. We further

find that the intervenors would suffer financial hardship without access to some intervenor funding. CAPAI and ICL provided detailed breakdowns of the time spent on their particular portion of this case, billing 70 and 74 hours respectively. ACG provided a more generic breakdown that included 98 hours of attorney time. Notably, CAPAI and ICL participated in this case since its inception, nearly four months longer than ACG. Accordingly, we feel it is appropriate to adjust ACG's time. The less than detailed billing provided by ACG makes an adjustment more difficult. However, we find that a downward adjustment of 24 hours (from 98 hours to 74 hours) is appropriate considering the time allocations claimed by the other intervenors.

Finally, while we recognize the value of the contributions of the intervenors, we are limited to a cumulative award of $40,000. Therefore, in the interest of fairness, with acknowledgment of the substantial value their participation added to the record and our deliberation and ultimate decision, we find that, after ACG's adjustment, the intervenors contributed to a substantially similar degree, which leads us to an approximately equal distribution of intervenor funds. Accordingly, we find it appropriate to grant the Petitions and award intervenor funding as follows: $15,813.87 to ACG; $13,744.02 to CAPAI; and $10,442.11 to ICL. These awards shall be chargeable to the residential and small commercial classes. Idaho Code § 61-617A(3).

ORDER

IT IS HEREBY ORDERED that the Motion to Admit and Approve First Amendment to Stipulation and Settlement is denied. The proposed transaction is not in accordance with Idaho Code § 61-327. Accordingly, the Joint Application for an Order Authorizing Proposed Transaction is also denied.

IT IS FURTHER ORDERED that the intervenor-funding petitions of the ACG, CAPAI, and ICL are granted in part. Avista shall promptly pay $15,813.87 to ACG, $13,744.02 to CAPAI, and $10,442.11 to ICL, chargeable to the residential and small commercial classes.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See* Idaho Code § 61-626.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3rd day of January 2019.

PAUL KJELLANDER, PRESIDENT

KRISTINE RAPER, COMMISSIONER

ERIC ANDERSON, COMMISSIONER

ATTEST:

Diane M. Hanian
Commission Secretary

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