

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: BRANDON KARPEN
DEPUTY ATTORNEY GENERAL**

DATE: SEPTEMBER 25, 2017

**SUBJECT : JOINT APPLICATION OF HYDRO ONE LIMITED AND AVISTA
CORPORATION FOR APPROVAL OF MERGER AGREEMENT
CASE NOS. AVU-E-17-09 AND AVU-G-17-05**

On July 19, 2017, Avista announced that it had entered into a merger agreement with Hydro One (“Applicants”). On September 14, 2017, the Applicants filed the above captioned joint application for approval of the merger. Approval of the Application would result in Avista becoming a wholly owned subsidiary of a Hydro One holding company. The Applicants have requested approval by August 14, 2018, and have made the same request in other state jurisdictions.

BACKGROUND

Avista is a public utility engaged in the generation, transmission and distribution of electricity and natural gas. Avista’s service area includes eastern Washington, northern Idaho, and parts of southern and eastern Oregon. Avista’s existing base rates and charges for electric and natural gas services were approved by the Commission in December 2016 for electric service, and December 2015 for gas service. Order Nos. 33682 & 33437. Avista has a pending general rate case now before the Commission. See Case Nos. AVU-E-17-01, AVU-G-17-01.

Hydro One Inc., is an investor owned electric transmission and distribution utility headquartered in Toronto, Ontario, Canada. It provides electric distribution service to over 1.3 million customers, and transmission service to local distribution companies, and large customers in Canada. The Province of Ontario owns a large minority share of the Company’s shares, with

the remainder of shares held by private investors. Hydro One's stock are listed on the Toronto Stock Exchange (TSX: H).

The Companies report that Avista stock will be purchased by Hydro One at \$53 per common share, or \$5.3 billion. Hydro One will finance the transaction through medium and long-term borrowing, and proceeds from a completed issue of \$1.54 billion of convertible unsecured subordinated debentures. After the closing, Avista would be owned by Hydro One, through a series of wholly-owned subsidiaries.

JURISDICTION

The Commission has jurisdiction over this matter pursuant to Idaho Code § 61-328. Section 61-328 prohibits Hydro One from acquiring Avista without the written authorization of this Commission. Before authorizing such a transaction, the Commission must find that: (1) the transaction is consistent with the public interest; (2) the transaction will not cause the cost of or rates for supplying electricity to increase; and (3) that Hydro One has the intent and financial ability to operate and maintain Avista's operations in Idaho. More, the Commission may attach conditions to its authorization, and enter any final Order consistent with its authority under Title 61, Idaho Code.

THE APPLICATION

The Applicants claim that Avista customers will benefit from the merger through scaling that come with joining a larger organization, and avoid the risk of acquisition by another party that may not share Avista's culture and values. Thus, the Applicants state that customers can expect the same or better levels of service and customer satisfaction. Customers will also see financial benefit through retail rate credits upon the closing of the transaction. Finally, the Applicants claim that, overtime, the merger will provide superior innovation, research and development, and efficiencies over a broader customer base infrastructure.

The Proposed Transaction is subject to significant oversight: Avista shareholder approval; the Hart-Scott-Rodino Antitrust Improvements Act, clearance by the Committee on Foreign Investment in the US, approval by each state regulator, FERC, the SEC, and the FCC. No additional approval is required from Canadian authorities. According to the Applicants, the closing of the transaction is expected to occur in the second half of 2018.

Included with the proposed agreement, the Applicants submitted detailed evidence in support, including memorialized agreements relating to "Governance Requirements" (Exhibit A),

"Post Closing Matters," and "Approval Requirements" (Exhibit B). Pointedly, the agreement includes a provision that Avista's Board of Directors will retain authority to review, authorize and approve certain matters related to Avista, without the obligation to obtain authorization or approval from Hydro One. Further, the companies agreed that: 1. Avista's headquarters will remain in Spokane; 2. Avista's branding will remain the same; 3. Avista's office locations in its service areas will remain; 4. There will be no workforce reductions resulting from the merger; 5. Avista's existing management team will remain; 6. Existing compensation and benefit practices will remain; 7. Avista will retain authority to negotiate and enter into agreements with bargaining unit employees; 8. The merged company will maintain or improve safety and reliability standards; and 9. The merged company will maintain Avista's community involvement and support initiatives at levels equal to, or greater than, those prior to the merger.

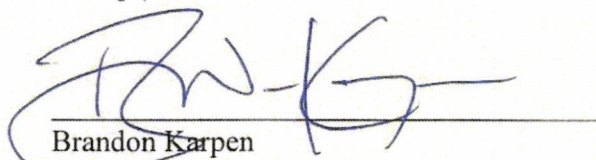
Additionally, the Applicants state that the Avista Board of Directors will be a local board consisting of board members chosen by Avista designees, and who reside in the Pacific Northwest. After closing, the new Avista will be governed by a nine member Board of Directors, with Scott Morris serving as the Chairman of the Board. Applicants estimate that the total annual cost savings to customers on a system basis is approximately \$1.7 million. The Companies are proposing to flow through a rate credit of \$31.5 million over a 10-year period,

STAFF RECOMMENDATION

Staff recommends that the Commission issue a Notice of Application and set a 21-day intervention deadline. Then, direct Staff to confer with the parties about scheduling, discovery, testimony, technical hearings, and other matters that may arise.

COMMISSION DECISION

Does the Commission wish to issue a Notice of Application, establish a 21-day intervention deadline, and direct Staff to confer with the parties about scheduling and other matters?



Brandon Karpen
Deputy Attorney General

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