

DECISION MEMORANDUM

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

FROM: BRANDON KARPEN
DEPUTY ATTORNEY GENERAL

DATE: MAY 1, 2018

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. Idaho Forest Group, Clearwater Paper, Idaho Conservation League (ICL), the Community Action Partnership Association of Idaho, and the Washington and Northern Idaho District Council of Laborers intervened as parties. The Commission set deadlines for the parties to file testimony, scheduled a public workshop, and set a technical hearing date of June 27, 2018. *See* Order No. 33950.

On April 4, 2018, the parties engaged in settlement discussions at the Commission Office. On April 13, 2018, the Applicants filed a Motion for Approval of Stipulation notifying the Commission that the parties had reached a full settlement.

PROPOSED SETTLEMENT

The parties represent that the Stipulation and Settlement in whole is in the public interest and is fair, just and reasonable. The parties acknowledge that the Commission is not bound by these representations and that the Commission will independently review the proposed settlement to decide whether to approve it, reject it, or state conditions under which to accept it.

By way of summary, the Stipulation and Settlement proposes to fully resolve the case as follows.¹

The Commission approve the proposed merger of Avista with Hydro One. In supporting the proposal, the parties negotiated and support, and the Applicants agree to the following conditions:

1. Governance and Operational Commitments

All decision-making authority over Avista operations will belong to the Board of Directors of the Avista Corporation, and not to Hydro One. Any change in this authority will require a two-thirds vote of the Avista Board, and approval of local regulatory agencies. Avista will retain all current executive management of Avista, subject to voluntary retirements, and standard business rational.

Following approval or the merger, the Avista Board will consist of nine members: two designated by Hydro One; three independent directors who reside in the Pacific Northwest;² three current members of Avista's current board; and Avista's current CEO will remain and serve as chairman of the board following closing.

Avista will maintain branding, and the Avista headquarters will remain in Spokane. Avista offices will remain in their current territory locations. Avista will maintain or expand capital investments for community economic development. The Company will further maintain its current workforce, with the same compensation and benefits.

2. Rate Commitments

There will be no rate increase because of the merger. Rather, Avista's Idaho customers will receive a \$15.8 million rate credit over a five-year period, or \$3.2 million per year. All costs associated with the transaction will be tracked separately and will not appear on Avista's utility books. Customers will not pay for any transaction or transition cost, including all legal work, advisory fees, acquisition premiums, documentation and materials, executive compensation, and any cost directly related to the transaction. Any technology expenditures required for compatibility within the merged entity will be excluded from rates.

¹ The complete settlement stipulation, the Application and supporting workpapers, testimonies and exhibits are available for public inspection during regular business hours at the Commission offices, and are also available on the Commission's web site at www.puc.idaho.gov.

² The Pacific Northwest is defined as Alaska, Idaho, Montana, Oregon, and Washington State.

3. Regulatory Commitments

Hydro One and its subsidiaries recognize the authority of Idaho, and the Idaho Commission, and have committed to comply, as required, with all applicable Idaho laws and Commission orders. Further, Hydro One and its subsidiaries commit to maintain and make available all books, records, and financial information to the Commission. Avista will maintain separate books and records. Hydro One committed to not use lack of jurisdiction to deny access to any records.

4. Financial Integrity Commitments

Hydro One will provide equity to support Avista's capital structure, and Avista will maintain separate debt to support its utility operations. Avista will maintain its pension funding policy, and Hydro One will not seek to change it. Avista will comply with all Securities Exchange Commission and Sarbanes-Oxley reporting requirements, as required by law.

5. Ring Fencing Provisions

Applicants agree to several provisions aimed at shielding Avista from any negative potential financial issues of Hydro One. These include authority over possible bankruptcy proceedings, a non-consolidation proviso that a bankruptcy court would not order the substantive consolidation of the assets and liabilities of Avista with Hydro One, and that Hydro One would not seek to include Avista in a potential bankruptcy without the consent of two-thirds of Avista's board. Additionally, the Applicants agree that Avista's assets will not be pledged by Avista or any of its affiliates, including Hydro One, for the benefit of any entity besides Avista.

Hydro One agreed to a "hold harmless" provision, under which Hydro One will hold Avista's customers harmless from any business and financial risk exposures associated with Hydro One, and any Hydro One affiliate. The hold harmless provision states that in any proceeding before the Commission involving rates, the rate of return will be determined without regard to unregulated activities. Additionally, Avista will not enter into an inter-company debt transaction, or lend money to Hydro One without prior Commission approval.

6. Resource Planning and Environmental Commitments

Avista will continue to offer renewable power programs in consultation with stakeholders. However, in all resource planning and acquisition efforts, Avista will also evaluate demand-side resources, renewable energy, Power Purchase Agreements, and all other resources consistent with the Commission's resource evaluation rules and policies.

7. Energy Efficiency, Weatherization, and Conservation Commitments

Hydro One will arrange funding of \$5.3 million over a ten-year period to fund energy efficiency, weatherization, conservation, and low-income assistance programs. The funds will be directed by the Energy Efficiency, Weatherization, Conservation, and Low-Income Assistance Committee (“EWCL”). The EWCL is a new committee consisting of Avista, Commission Staff, the Lewiston CAP, ICL, the Idaho Forest Group, and Clearwater Paper. The EWCL will determine if programs should receive this funding to address energy efficiency, weatherization, conservation, and low-income needs in Avista's Idaho service territory.

As part of the proposed settlement, the parties agree that Avista will work with Clearwater and Idaho Forest Group to qualify certain projects for funding under Tariff Schedule 90 (DSM), and submit any non-qualifying portions of those projects to the EWCL to consider for further funding.

Hydro One and Avista will work with the Lewiston CAP to improve the penetration of low-income programs. Avista will also work to fund bill payment assistance for low-income customers, and will continue to offer the Fee Free Payment Program to residential customers.

8. Miscellaneous Commitments

Following closing, there will be a one-time \$7 million contribution to Avista’s charitable foundation. For five-years after the close the transaction, Avista will maintain a \$4 million annual budget for charitable contributions, and will also contribute \$2 each year to Avista's charitable foundation. Avista agrees it will work to distribute these monies across its service territory proportionally across jurisdictions.

For accounting purposes, Hydro One and Avista agree to support a December 31, 2027, depreciation end of life relating to Avista’s ownership in Colstrip Units 3 and 4. The Applicants also agree that they will support accelerated depreciation in Avista's interest in Colstrip Units 3 and 4 in Avista’s pending Federal Tax Revision case, Case No. GNR-U-18-01; Avista’s Application to Change Its Electric and Natural Gas Depreciation Rate, Case Nos. AVU-E-18-03, AVU-G-18-02; and in its 2019 Integrated Resource Plan.³

Finally, the settlement also includes a most favored nations clause that allows the Commission to consider, and adopt in Idaho any commitments the Applicants agree to in other

³ Avista’s 2019 IRP will analyze multiple retirement dates for Colstrip Units 3 and 4, not limited to, the “end of useful life” date determined in AVUE-18-03, AVU-G-18-02.

jurisdictions. This provision applies even if such commitments are agreed to after the Commission enters its order in this docket.

STAFF RECOMMENDATION

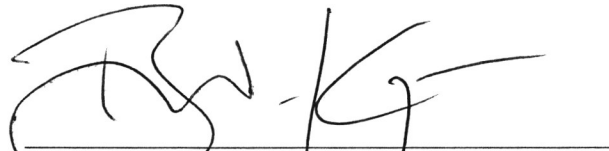
Staff recommends that the Commission issue notice of the proposed settlement, process the proposed settlement by modified procedure, and vacate prefile testimony deadlines, and the technical hearing set for June 27, 2018. Staff further recommends that the Commission conduct three public hearings, and issue an Order that adopts the following schedule:

DATE	ACTIVITY
June 12, 2018	Public Hearing at 1912 Center, 412 E. 3rd St., Moscow, Idaho, 6:00-8:00 PM (PDT)
June 13, 2018	Sandpoint High School, 410 S. Division Ave., Sandpoint, Idaho, 6:00-8:00 PM (PDT)
June 14, 2018	Midtown Meeting Center, 1505 North Fifth St., Coeur D'Alene, Idaho, 6:00-8:00 PM (PDT)
June 20, 2018	Deadline for comments in support of the stipulation
June 27, 2018	Deadline for public comments and reply comments, if any

COMMISSION DECISION

Does the Commission wish to issue notice of the proposed settlement, to process the proposed settlement by modified procedure, and vacate prefile testimony deadlines, and the technical hearing set for June 27, 2018?

Does the Commission wish to conduct public hearings, and adopt the recommended schedule as described above?



Brandon Karpen
Deputy Attorney General