

WUTC Commission members: regarding Docket U-170970

Per the National Environmental Policy Act of 1970 (NEPA), I invoked the process of Coordination to compel you to follow federal law in regards to the acquisition of Avista by Hydro One of Ontario. I filed my request with the WA State Attorney General's Office in Spokane on July 23rd.

In your correspondence you explained that the Avista transaction does not involve federal lands or projects or processes subject to the federal laws I cited. You also mentioned that the Federal Energy Regulatory Commission (FERC) had already approved the proposed transaction.

NEPA also applies to FERC and they did not follow the Coordination Process either. **FERC is the lead agency in carrying out the provisions of NEPA.** In your own words you say that FERC had already approved the transaction and yet NEPA says Coordination applies whenever a process is **permitted** by a Federal Agency, in this case the **permitting** of the Avista/Hydro One action to move forward.

#### NEPA applies where a process

- Involves work performed by the Federal Government
- IS Funded by Federal Funds, in whole or part
- **IS OR may be licensed or permitted by a Federal Agency**

NEPA:

Under Title 42 USC Section

4331(a)&(b): <https://www.law.cornell.edu/uscode/text/42/4331>

a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that **it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions**

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**under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.**

**(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the (that) end, that the Nation may— (bullet points repeating aforementioned aspects).**

**So, by Federal Law:**

- **Government policy is to cooperate with State and Local Governments**
- **For coordination of Plans, Functions, Programs, Actions and Resources**
- **In a manner of serving the general welfare and to reach a harmonious relationship between man and nature**
- **And has a continuous responsibility to use all practicable means to the fullest extent possible to effect the policy of COORDINATION !**

**42 U.S. Code § 4332 -**

**<https://www.law.cornell.edu/uscode/text/42/4332> Cooperation of agencies; reports; availability of information; recommendations; international and national COORDINATION of efforts.**

- **“The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter ...**

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**42 U.S. Code § 4333 –**

**<https://www.law.cornell.edu/uscode/text/42/4333> Conformity of administrative procedures to national environmental policy**

- All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any **deficiencies or inconsistencies** therein **which prohibit full compliance with the purposes and provisions of this chapter** and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter. **(to not coordinate per our request is an inconsistency and a deficiency in this matter at hand).**

#### 40 Code of Federal Regulations

1500.2 <https://www.gpo.gov/fdsys/pkg/CFR-2001-title40-vol28/pdf/CFR-2001-title40-vol28-sec1500-2.pdf>

- **Policy: Federal agencies SHALL, to the fullest extent possible,**
- (d) **“Encourage and facilitate public involvement in decisions which affect the quality of the human environment.”**
- (e) **“Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of the actions upon the quality of the human environment.”** <https://definedterm.com/a/definition/126334>

**Human environment:**

**Is Defined as an environment which includes:**

**Ecological, Aesthetic, Historic, Cultural, Economic, Social, and Health elements of life in the community.**

<https://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap55.htm> **(I) “sustainability” and “sustainable” mean to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations;)**

- **1500.1 Purpose:** “The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, **sets goals**(section 101), and provides means (section 102) **for carrying out the policy.**
- **Section 102(2)** contains

**“ACTION FORCING** provisions to make sure that federal agencies **act according to the letter and spirit of the Act.**

The regulations that follow implement section 102(2). Their purpose is to tell federal agencies **what they must do** to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.”

#### Specific Federal Agency Regulations

- **Federal Energy Regulatory Commission (FERC)**
- On December 26, 2006 the FERC issued a Final Rule (Order 687) and regulations establishing the process by which the FERC will exercise its new responsibilities under section 313 of EAct 2005. We note that nothing in EAct 2005 or the Commission’s regulations preempt existing agency timelines mandated by federal law or regulation. Specifically, the FERC is now required to:
- **Act as the lead agency for purposes of complying with the National Environmental Policy Act;**
- DOE adopts the regulations for implementing NEPA published by CEQ at 40 CFR parts 1500 through 1508.

#### Securities and Exchange Commission

- **§200.552 NEPA planning.**
- Where it is reasonably foreseeable by the Commission that it may be required to act on a matter specified in §200.551 and that matter is likely to involve major Federal action significantly affecting the quality of the **human environment**, the Commission shall:
- (a) **Advise the relevant persons as to information respecting the environment, if any, which may later be required to be submitted for Commission consideration should Commission action become necessary; (the relevant persons in this case certainly include the local elected officials but none of us were directly contacted by the UTC or FERC).**
- (b) Consult on any environmental factors involved with individuals, organizations, **and state and local authorities** interested in the planned action; and
- (c) Begin implementing the procedures set forth in §§200.553 and 200.554 as soon as possible, Provided, That such procedures are not inconsistent with the Commission's authority under the Federal securities laws.

As you can see by the preceding I am simply following Federal Law by invoking coordination in the matter of the Hydro One purchase of Avista.

I am Spokane County Treasurer where Avista is headquartered and whose residents are largely served by Avista.

The outreach to local elected officials has been wanting since I know of very few elected officials who are aware of the ramifications to their constituents if the merger takes place.

If electrical rates climb as they have in Ontario this would create a huge hardship on residents and businesses in the area. This would have a negative effect on our **local economy** and tax base. We can only speculate on future rates since there has been no Cost Sharing Agreement published.

I believe the control of our dams, assets, and rates by a foreign entity is a question of national security.

In light of the preceding I reiterate I have a fiduciary authority of trust to protect the tax base of Spokane County and I am acting within my duties of Spokane County Treasurer to insist you **Coordinate** with me and other Avista Customers and residents of Counties who are likely to be negatively affected by the acquisition of Avista by Hydro One of Ontario. This merger cannot take place without both federal and state approval because of the regulatory control the federal government has created.

As the elected Treasurer of Spokane County, Washington I have advised you that I am invoking Coordination for discussions of the adverse impact the requested action will have on the public.

It is in the public interest that you work cooperatively with me rather than have to go to court to ask that you be mandated to do so. Each time an agency's failure to coordinate has gone to court, the decision is in favor of Coordination to resolve issues.

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