

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of  
HYDRO ONE LIMITED (acting through  
its indirect subsidiary, Olympus Equity  
LLC)

and

AVISTA CORPORATION

For an Order Authorizing Proposed  
Transaction

DOCKET U-170970

ORDER 06

DENYING MOTION TO REOPEN  
RECORD

**MEMORANDUM**

- 1 **PROCEEDINGS.** On September 14, 2017, Avista Corporation and Hydro One Limited (acting through Olympus Equity LLC, an indirect, wholly-owned subsidiary), filed their Joint Application for an Order Authorizing Proposed Transaction. If approved, Olympus Equity LLC would acquire all of the outstanding common stock of Avista Corporation (Avista), which would become a direct, wholly-owned subsidiary of Olympus Equity LLC. Avista would be an indirect, wholly-owned subsidiary of Hydro One Limited (Hydro One).<sup>1</sup> Avista’s shareholders approved the transaction on November 1, 2017. The Joint Application is subject to the Commission’s review under RCW 80.12.020, RCW 80.01.040(3), and WAC 480-143-170.
  
- 2 Avista filed a Settlement Stipulation on behalf of all parties on March 27, 2018, that would resolve all issues in this proceeding, if approved, and filed a motion asking the Commission to enter an Order Approving Settlement Stipulation and Agreement. The Commission suspended the procedural schedule by notice given on March 28, 2018, preserving only the previously noticed hearing date, May 22, 2018, for purposes of a settlement hearing, and the dates for public comment hearings in Avista’s service

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<sup>1</sup> We refer to Avista and Hydro One collectively in this Order, as “Joint Applicants” or “Companies.”

territory on April 23, April 24, May 2, and May 3, 2018, in Spokane, Colville, Othello, and Colfax, Washington, respectively.

- 3 The Commission convened its evidentiary hearing concerning the transaction and the proposed Settlement Stipulation on May 22, 2018, as previously scheduled. This provided an opportunity for the Commission to develop a record including pre-filed testimonies and exhibits, and allowed the Commissioners an opportunity to question witnesses about the settlement and, more broadly, the proposed transaction. The Commission initiated its deliberations shortly after the hearing. These confidential, internal discussions continued during June and into early July, 2018.
- 4 Following the provincial elections in Ontario on June 7, 2018, and the assumption of power by a new Majority party on June 29, 2018, the Commission learned from media reports on July 11, 2018, of the immediate retirement of Hydro One's Chief Executive Officer, Mayo Schmidt, and of the subsequent resignations of the entire Hydro One board of directors. It was not immediately clear how these sudden and unexpected developments might bear on the Commission's ongoing consideration of the proposed transaction. The Commission gave notice on July 12, 2018, of its intention to conduct additional process and required Hydro One and Avista to file comments, including any recommendations they might have with respect to what specific process should be conducted.
- 5 The Commission found it necessary to invoke the "for cause" provision of RCW 80.12.030(2) and gave notice that it would extend the time allowed for it to enter an order in this proceeding until December 14, 2018.<sup>2</sup> The Commission, on August 3, 2018,

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<sup>2</sup> The Commission's Notice noted that:

Avista and Hydro One state in their comments that Hydro One and Avista also acknowledge that:

Given recent events in Ontario, additional time may be necessary to understand the implications of those events to Avista. We also acknowledge that additional, or modified commitments related to Avista governance may be necessary to alleviate any lingering concerns that the province of Ontario could affect Avista and its operations. We remain open to addressing those concerns in a manner that satisfies your and our needs.

Staff, Public Counsel, and The Energy Project agree that the record would benefit from such additional time and process as the Commission deems appropriate and required to understand fully the implications of these "events in Ontario." Public Counsel proposes specific process options including further testimony from the Joint Applicants, response testimony, and further hearings.

issued its Notice of Procedural Schedule for the Conduct of Additional Process, including a hearing date of October 23, 2018. The Commission gave notice that it was reopening the record to receive additional evidence from the parties and additional written comments from members of the public.

6 Joint Applicants filed supplemental testimony on September 6, 2018, sponsored by two Avista executives and three Hydro One executives, the new Chairman of the Hydro One Board of Directors, and one outside consultant.<sup>3</sup> Staff and a number of the Intervenors filed response testimony on October 4, 2018.<sup>4</sup> Following an email exchange with the Presiding Administrative Law Judge concerning process matters, Joint Applicants elected not to file rebuttal testimony. The Commission convened a hearing on October 23, 2018, to receive the evidence and to allow for examination of the witnesses by the presiding officers. The Commission closed the record at the conclusion of the hearing, as provided under WAC 480-07-830.

7 **MOTION TO REOPEN THE RECORD.** Joint Applicants filed a motion on November 14, 2018, asking the Commission to enter an order that would reopen the record for the limited purpose of admitting as a bench exhibit “a copy of a News Release, dated November 7, 2018, identifying seven of the nine board member who would serve on Avista’s Board of Directors, if the merger is approved.”<sup>5</sup> The News Release, attached to the motion and proposed for admission into the record, was represented to include information about the proposed board members “including their names, professional histories, connection to the Pacific Northwest Region, as well as their independent status.”<sup>6</sup>

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<sup>3</sup> Mr. Morris, Avista’s CEO and Chairman of the Board, and Mr. Theis, Avista’s Senior Vice President, Chief Financial Officer, and Treasurer filed testimony for their company. Hydro One filed testimony by its Acting CEO, Mr. Dobson, its newly appointed CFO, Mr. Lopez, and its Executive Vice President and Chief Legal Officer, Mr. Scarlett. Mr. Woods, the newly appointed Chairman of Hydro One’s Board of Directors also filed testimony. Finally for Hydro One, Mr. Reed, Concentric Energy Advisors, filed testimony as an industry expert.

<sup>4</sup> Mr. McGuire, Assistant Director of Energy Regulation, testified for the Commission. Ms. Gerlitz testified for NWEA, et al., Mr. Woolridge testified for Public Counsel, Mr. Hellman testified for AWEC, and Mr. Collins testified for The Energy Project each filed testimony. Sierra Club and WNIDCL filed letters in lieu of supplemental testimony.

<sup>5</sup> “Motion for Leave To Reopen the Record” at 1.

<sup>6</sup> *Id.*

8 WAC 480-07-830(3) establishes the standard for considering a motion to reopen the record prior to entry of a final order, stating as follows:

(3) Required Showing: The commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause. A motion to reopen the record must include the evidence the party proposes to add to the record and must demonstrate that the evidence meets this standard.

9 The Joint Applicant’s motion makes no representation that the evidence they propose for admission “is essential to a decision.” Nor do we find on examination that the information included in the News Release will assist the Commission in any material way. The Commission concludes the Joint Applicant’s motion should be denied.

**THE COMMISSION ORDERS THAT:**

10 (1) Avista Corporation and Hydro One Limited’s joint Motion for Leave To Reopen the Record is **DENIED**.

DATED at Olympia, Washington, and effective December 5, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Chief Judge