

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES,

Respondent.

DOCKET U-170970

PREHEARING CONFERENCE
ORDER; NOTICE OF HEARING
(Set for May 22, 2017)

- 1 **NATURE OF PROCEEDING.** On September 14, 2017, Hydro One Limited (“Hydro One”), acting through Olympus Equity LLC an indirect, wholly-owned subsidiary, and Avista Corporation (“Avista”) (sometimes hereafter jointly referred to as “Joint Applicants” or the “companies”) filed their Joint Application for an Order Authorizing Proposed Transaction whereby Olympus Equity LLC would acquire all of the outstanding common stock of Avista, and Avista would become a direct, wholly-owned subsidiary of Olympus Equity LLC and an indirect, wholly-owned subsidiary of Hydro One.
- 2 Hydro One, operating through its principal subsidiary, Hydro One Inc., is an investor-owned electric transmission and distribution utility headquartered in Toronto, Ontario, Canada. Hydro One provides electric distribution service to more than 1.3 million retail end-use customers, as well as electric transmission service to many local distribution companies and large industrial customers. Avista is an investor-owned utility providing electric generation, transmission, and distribution services to approximately 378,000 retail customers in Washington, Idaho and Montana, and the distribution of natural gas to approximately 342,000 retail customers in Washington, Idaho and Oregon. Avista is a public service company subject to the Commission’s jurisdiction. Commission authorization is necessary under RCW 80.12.020 for Avista to sell, lease, assign or otherwise dispose of, or merge, or consolidate, any of its franchises, properties or facilities with any other public service company. Under RCW 80.12.040, Commission authorization is necessary before another public service company can, directly or indirectly, purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of Avista. The Commission has jurisdiction over transactions such as this one where “the control of a plainly jurisdictional public utility

changes through a corporate transaction for the transfer of the whole or a controlling interest in the company.”¹

3 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington, on October 20, 2017, before Administrative Law Judge Dennis J. Moss.

4 **APPEARANCES.** David Meyer represents Avista. Lisa W. Gafken, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Unit of the Office of the Washington Attorney General (Public Counsel). Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Staff).² Simon J. ffitich, Attorney at Law, Bainbridge Island, Washington, represents The Energy Project. Travis Ritchie, Staff Attorney, Oakland, California, represents Sierra Club. Chad M. Stokes and Tommy A. Brooks, Cable Huston LLP, Portland, Oregon, represent Northwest Industrial Gas Users (NWIGU). Tyler Pepple, Davison Van Cleve, P.C., Portland, Oregon, represents the Industrial Customers of Northwest Utilities (ICNU). Jeffrey D. Goltz, Cascadia Law Group, Olympia, Washington, represents the NW Energy Coalition, Renewable Northwest, and Natural Resources Defense Council (NVEC/RNW/NRDC). Contact information for the parties’ representatives is attached as Appendix A to this order.

5 **PETITIONS FOR INTERVENTION.** The following organizations filed timely petitions to intervene:

The Energy Project	ICNU
Sierra Club	NVEC/RNW/NRDC
NVEC/RNW/NRDC	Washington and Northern Idaho District Council of Laborers (WNIDCL)

¹ See *In the Matter of the Application of PacifiCorp and Scottish Power plc*, Docket No. UE-981672, Second Supplemental Order at 9 (March 1999).

² In formal proceedings such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

6 Absent objections to the petitions to intervene filed by The Energy Project and ICNU, the
Commission finds that these petitioners established a substantial interest in this
proceeding and that their participation will be in the public interest. Accordingly, the
Commission grants these petitions.

7 Staff objected to intervention by Sierra Club, the NWEA/RNW/NRDC, and WNIDCL.
The Presiding Administrative Law Judge, following argument, found that the Sierra
Club's and NWEA/RNW/NRDC's participation would be in the public interest and
granted their petitions.

8 WNIDCL, a labor union with members in Washington, stated that its interest in this
proceeding concerns the proposed merger's affect on approximately 100 WNIDCL
members who perform work for construction contractors who, in turn, work on the Avista
system. The union's petition states that WNIDCL "and its signatory construction
contractors are parties to collective bargaining agreements with respect to the rates of
pay, benefit packages, and employment conditions for certain construction workers
employed on Avista projects." The petition states, in addition, that WNIDCL's
participation would be in the public interest because the union "can provide relevant and
necessary information related to the proceeding, including wage rates, training
requirements, construction standards, local employment impacts, and workforce
development investments." Finally, the union represents that its "participation will not
unreasonably broaden the issues or burden the record in this proceeding."

9 The Presiding Administrative Law Judge, following argument, found that the interests
WNIDCL identified concern matters that are not within the zone of interests implicated
by the Commission's jurisdiction under RCW Chapter 80.12, or otherwise. The
Commission has no legal authority relative to the terms of collective bargaining
agreements that govern the rates of pay, benefit packages, and employment conditions for
construction workers who may work for contractors who undertake projects for Avista.
Thus, WNIDCL failed to establish a substantial interest that would support its
participation in this proceeding. Based on the Commission's experience in prior, similar
cases (*i.e.*, transfers of property subject to RCW Chapter 80.12) its is unlikely that
information concerning wage rates, training requirements, construction standards, local
employment impacts, and workforce development investments will be more than
tangentially, if at all, relevant to any issue that might bear on the Commission's
determinations in this proceeding. It therefore does not appear that WNIDCL's
participation would be in the public interest. Moreover, it seems likely that WNIDCL
participation would include efforts to broaden the issues into the areas the union states are
its concerns, but which are not issues the Commission considers in cases such as this one.

In this sense, WNIDCL's participation could require expenditures of resources by the parties and the tribunal that are unnecessary and burdensome. This would be contrary to the public interest. The Presiding Officer, for these reasons, denied WNIDCL's petition to intervene.

- 10 **PROTECTIVE ORDER.** On, September 28, 2017, the Commission entered Order 01, Protective Order with "Highly Confidential" Provisions.
- 11 **DISCOVERY.** The parties may continue to conduct discovery under the Commission's discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters to the Commission for formal resolution. Each party will serve data requests and responses to data requests on all parties simultaneously to promote efficiency in the discovery process.
- 12 **PROCEDURAL SCHEDULE.** The parties agreed on a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B.
- 13 **DOCUMENT FILING REQUIREMENTS.** Parties must file all pleadings, motions, briefs, and other prefiled materials in compliance with all of the following requirements:
- (a) Parties must submit electronic copies in native Microsoft format (Word, Excel, etc.) and searchable Adobe Acrobat (.pdf) of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable), unless the Commission orders otherwise. If any of the documents contain information that is designated as confidential, the party must also file an electronic copy in Adobe Acrobat (.pdf) of the redacted version of each such document. Parties must comply with WAC 480-07-140(5) in organizing and identifying electronic files. Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by email to records@utc.wa.gov.
 - (b) Parties must file **an original and five** paper copies (with original signatures, if applicable) of the documents with the Commission by 5 p.m. on the first business day following the filing deadline as provided in WAC 480-07-145(6). The documents must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. All hard copy filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250.

(c) Parties must electronically serve the other parties and **provide courtesy electronic copies of filings to the presiding administrative law judge** (dmoss@utc.wa.gov) by 5:00 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

- 14 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **noon on May 16, 2017**. The Commission requires electronic copies in native format, if available, searchable Adobe Acrobat (.pdf), and **one original and five** paper copies of the exhibits. If any of the exhibits contain information that is designated as confidential or highly confidential, the party must also file one electronic copy in Adobe Acrobat (.pdf) and one paper copy of the redacted version of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits. The paper copies of the exhibits also must be organized into sets that are tabbed and labeled.
- 15 **EXHIBIT LISTS.** Each party must file a list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits, as well as cross-examination exhibits. The parties must file and serve their exhibit lists by **noon on May 16, 2017**.
- 16 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judge and the other parties by **noon on May 16, 2017**.
- 17 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter beginning on **May 22, 2017, beginning at 9 a.m.**, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The hearing is scheduled to continue on May 23, 2017, at 9 a.m., as necessary.
- 18 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. Parties may also contract for the services of a private mediator to facilitate their discussion. If the parties wish to consider using these dispute resolution alternatives,

please contact Gregory J. Kopta, Director, Administrative Law Division
(gkopta@utc.wa.gov or 360-664-1355).

- 19 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective October 25, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Senior Review Judge

APPENDIX A PARTIES' CONTACT INFORMATION ³			
PARTY	CONTACT	PHONE	E-MAIL
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³ This information is supplied for the parties' convenience to facilitate their exchange of communications. The Commission's Records Center maintains an official Master Service List. Each party is required to have one individual designated on the Official Service List with full contact information to receive official service of documents.

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**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET U-170790**

EVENT	DATE
Applicants' Filing	9/14/2017
Settlement Conference #1	2/6/2018
Staff, Public Counsel, and Intervenor Response Testimony and Exhibits	3/15/2018
Public Comment Hearing(s)	TBD
Joint Applicants Rebuttal Testimony and Exhibits; Staff, Public Counsel, and Intervenor Cross-Answering Testimony and Exhibits	4/25/2018
Discovery Deadline – Last Day to Issue Data Requests	5/2/2018
Cross-Examination Exhibits, Witness Lists, and Time Estimates	5/16/2018
Evidentiary Hearing	5/22-23/2018
Post-Hearing Briefs	6/28/2018
Statutory Deadline (subject to 4 month extension)	8/14/2018