

**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

OPPOSITION OF NVEC, RNW,  
AND NRDC TO LATE-FILED  
PETITION TO INTERVENE BY  
LAUREN FINK AND CHADWICK  
WESTON

**I. INTRODUCTION**

1           Intervenors Northwest Energy Coalition, Renewable Northwest, and Natural Resources  
Defense Council (collectively NVEC/RNW/NRDC) oppose the late-filed Petition to Intervene  
by Lauren Fink and Chadwick L. Weston (Stockholder Petitioners<sup>1</sup>).

2           As stated by the Commission in its 2008 case involving Puget Sound Energy, “[a]s with  
much other utility regulation, the goal in reviewing proposed changes in ownership is to balance  
the interests of customers, shareholders (*i.e.*, owners) and the broader public.”<sup>2</sup> This balance  
among customers, shareholders, and the public must now be effected through the implementation  
of the “net benefit” test in RCW 80.12.020. Accordingly, much of this case will involve  
determining what that relatively new provision in the utilities code requires of the Commission  
or, more broadly, authorizes the Commission to do. Consistent with the legislative history of

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<sup>1</sup> The Petitioners refer to themselves as “Stockholder Plaintiffs,” presumably because that is what they called themselves in unrelated litigation relating to the proposed Avista/Hydro One transaction. But they are not plaintiffs in any sense of the word in this proceeding, nor would they be if their petition were to be granted. We assume the false moniker is a function of the cut and paste function in Microsoft Word.

<sup>2</sup> *In the Matter of the Joint Application of Puget Holdings, LLC, and Puget Sound Energy, Inc.*, UTC Dkt. No. U-072375¶118 (Dec. 30, 2008).

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that provision,<sup>3</sup> we expect the focus of the hearing in this proceeding will be on what the benefits to the customers and the public are necessary or appropriate given the substantial benefits to existing shareholders arising out of the transaction.<sup>4</sup>

3           The Stockholder Petitioners do not purport to add anything to this conversation. The Commission should deny their petition to intervene for at least two reasons.

## II. ARGUMENT

### A. The Stockholder Petitioners Have Not Demonstrated “Good Cause” Why a Late Petition Is “In the Interests of Justice.”

4           RCW 34.05.443(1) permits the Commission to grant a petition to intervene if the petitioner qualifies under “any provision of law” and “is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.” The Commission requires petitions to be filed by the time of the prehearing conference, but allows late-filed petitions “only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition to intervene.”

5           The Stockholder Petitioners make two points as their showing of good cause. First, they were focused on another forum and required additional time to assess whether intervention in this proceeding was beneficial for Avista public stockholders.” Petition ¶5. Second, they

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<sup>3</sup> See Hearings before the Senate Committee on Environment, Water & Energy on SB 5055, TVW Tape starting at 10:21 (Jan. 21, 2009) (statement of Sen. Lisa Brown, prime sponsor).

<sup>4</sup> See Testimony of Scott L. Morris, Exh. SLM-1T, at 7:3-5 (“Avista shareholders will receive \$53 per common share, representing a twenty-four (24%) premium to Avista’s last sale price of \$42.74 per share on July 18, 2017.”).

contend they have a “substantial interest” in the proceeding. *Id.* ¶6. Neither of these constitutes a basis for “good cause.”

6           The Notice of Prehearing Conference was served on October 25, 2017. The Stockholder Petitioners filed their Petition on January 9, 2017. If the Stockholder Petitioners needed 76 days to conduct their assessment of the impact of the proposed transaction on Avista stockholders, it is not apparent from their Petition. They simply state that they “believe” that the transaction “will harm the stockholder base” and “likely the local community” and that the consideration in the transaction is inadequate. Petition ¶8. An assessment of that depth certainly could have been done well before January 9. Indeed, the Stockholder Plaintiffs stated that they filed several class action lawsuits, the first on September 15, 2017, one day after the Joint Application was filed. They must have made some “assessment” before filing that lawsuit, and filing of a three-page petition based on that assessment should not have taken over two months. On this ground alone, the petition should be denied.

**B. The Commission Should Not Permit Intervention of Two Individual Stockholders Making Such General Allegations of Interest and Harm**

7           There are just two petitioners. They imply they own stock in Avista Corporation, but they do not specifically allege that, let alone allege how much stock they own. That information at least would inform some aspect of their interest.

8           Instead, they allege a general interest, which they repeatedly term a “substantial interest” (Petition ¶¶6,8), and state their “position in this proceeding is to support results deemed fair and

reasonable to Avista stockholders.” Petition ¶9. They allege that the transaction “will harm the stockholder base, and likely the local community.” *Id.* ¶8. The harms are not described except as a “belief” (*id.*), and even if they were specific about harms to the local community, given that these two stockholders reside in Florida and Michigan, they would not have standing to raise such issues.

9           The Commission should be reluctant to find that it is “in the interest of justice” to permit two individuals to intervene in a Commission proceeding based on such imprecise interests and such a vague position. Indeed, in other contexts, the Legislature has determined that individuals, or even small groups of individuals, should not be allowed to file complaints in certain Commission proceedings. *See* RCW 80.04.110(1)(b). Instead, the Commission has considered such individual views in public comment hearings, and there will be one in this proceeding as well. The Commission should adhere to that policy here and not set a precedent for allowing individuals with limited articulated interests in as full parties in complicated Commission proceedings.

### III. CONCLUSION

10           Therefore, the Commission should deny the petition of the Stockholder Petitioners. This is not to say that stockholders should never be allowed to intervene in a Commission proceeding. In an appropriate case, it may be worthwhile for the Commission to permit a sufficient number, or organized group, of stockholders articulating specific interests and raising issues within the ambit of what the Commission may resolve. However, the two stockholders before the

Commission in this case have simply not articulated in a timely way any interests or positions that would make their participation “in the interests of justice.”

11 Dated this 18<sup>th</sup> day of January, 2018.



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