

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)
HYDRO ONE LIMITED and)
AVISTA CORPORATION)
For an Order Authorizing Proposed)
Transaction)
_____)

DOCKET NO. UE-170970

**LAUREN FINK AND CHADWICK L. WESTON'S RESPONSE TO THE OPPOSITIONS
TO THEIR PETITION TO INTERVENE**

1. Lauren Fink and Chadwick L. Weston (“Stockholder Plaintiffs”) respectfully submit this brief to address just three main points in response to the following oppositions to their late-filed Petition to Intervene (“Petition”) in the above-captioned proceeding: (i) Hydro One Limited and Avista Corporation’s Opposition (the “Hydro/Avista Opposition”); (ii) Public Counsel’s Opposition (the “Public Counsel Opposition”); and (iii) Northwest Energy Coalition, Renewable Northwest and Natural Resources Defense Counsel’s Opposition (“NWEC/RNW/NRDC Opposition”) (collectively, the “Oppositions”).

2. *First*, the Oppositions confirm that granting the Petition is in the public’s interest.

3. As noted in the Public Counsel Opposition, “[t]he Commission will consider, and the existing parties will likely present evidence on, whether the merger consideration is adequate.” *See* Public Counsel Opposition, ¶11.

4. The Stockholder Plaintiffs believe that they are in a position to assist the Commission in this regard, and “enhance [the Commission’s] understanding and analysis” of the adequacy of the merger consideration from an M&A and shareholder perspective. *See* In re Joint Application of Verizon Commc’ns, Inc. and Frontier Commc’ns Corp. for an Order Declining to Assert Jurisdiction Over, or, in the Alternative Approving the Indirect Transfer of Control of Verizon Northwest, Inc., Docket UT-090842, 2009 WL 2940011, at *3 (Sept. 10, 2009) (“Applying the public interest test, we have more latitude to grant intervention when such action would enhance our understanding and analysis of the matter at hand.”).

5. Moreover, Hydro One Limited (“Hydro One”) and Avista Corporation (“Avista” or the “Company”) will certainly not be taking the position that the merger consideration is inadequate. Thus, to the extent that the Stockholder Plaintiffs can provide a different perspective on this issue, the Stockholder Plaintiffs believe they will be useful to the Commission. *See id.* at *4

(September 10, 2009) (granting petition to intervene noting that the intervenor “could bring a different and perhaps unique perspective”).

6. To be considered in addition and in conjunction to the above, as noted in the Public Counsel Opposition, currently Avista is the party that is purportedly representing its shareholders’ interests in the proceeding. As stated by Public Counsel: “Because Avista represents shareholder interests, allowing the intervention of Ms. Fink and Mr. Weston is unnecessary.” See Public Counsel Opposition, ¶13.

7. However, the Stockholder Plaintiffs believe that Avista is, in fact, *not* representing its shareholders’ interests.¹

8. Indeed, the Stockholder Plaintiffs respectfully disagree with numerous representations and implications in the Hydro/Avista Opposition, including:

(a) that shareholders “overwhelmingly” voted in favor of the merger (Hydro/Avista Opposition, ¶¶10, 26), when as the Stockholder Plaintiffs allege, the shareholder vote was uninformed because the proxy statement soliciting these votes lacked full and fair disclosure; and

(b) that the Stockholder Plaintiffs are “outlier shareholders” who are attempting to receive “extract concessions” from Avista (*id.*, ¶¶24-25), when in fact, the Stockholder Plaintiffs have acted at every level to *preserve* viable damages claims that will benefit all Avista’s stockholders, and there are *no concessions to extract from this proceeding* (and tellingly, Hydro One and Avista were unable to identify exactly what these concessions were supposed to be).

¹ The factual bases for this claim is set forth in the Stockholder Plaintiffs’ complaint in *Fink, et al. v. Morris, et al.*, Case No. 2017-02-03616-6, in the Superior Court for the State of Washington, in and for Spokane County (the “Stockholder Action”).

9. Because the Stockholder Plaintiffs believe that they are in a position to best articulate and demonstrate to the Commission the perspective of Avista's stockholders regarding the Merger – including their perspective on the post-merger impact on the Company after Hydro One completes the merger and effectuates its post-merger plan (information which, in turn, will assist the Commission in its evaluation of whether the merger provides a net benefit to Avista's customers) – the Stockholder Plaintiffs request that their Petition be granted.

10. **Second**, the Oppositions do not identify any realistic concerns with granting the Petition.

11. The fears in the Hydro/Avista Opposition are unwarranted. The Stockholder Plaintiffs will not “adjudicate” their state claims in this forum (and it is not clear how they would be able to do so). The Stockholder Plaintiffs will not seek to “halt the merger” in this forum (and it is not clear how they would be able to do so). Moreover, as Hydro One and Avista note, the Stockholder Plaintiffs have not pursued injunctive relief in the Stockholder Action because the Stockholder Plaintiffs believe that monetary damages, not injunctive relief, are in the best interests of Avista's stockholders.

12. In addition, the concern noted in the Public Counsel Opposition is easily assuaged. The Stockholder Plaintiffs confirm that they have no intention of unreasonably broadening the issues (*i.e.*, they will not seek additional discovery outside the current scope) and confirm that they will participate without any adjustments to the Procedural Schedule in place. Notably, the Hydro/Avista Opposition and the NWEA/RNW/NRDC Opposition do not argue so appear to concede that the Petition, if granted, would not delay this proceeding. For this reason, too, the Stockholder Plaintiffs respectfully request that their Petition be granted.

13. *Third*, the Oppositions misunderstand (and the Stockholder Plaintiffs should have been more clear) that the Stockholder Plaintiffs did not deliberately wait from September 2017 to January 2018 to file the Petition.

14. The Stockholder Plaintiffs were aware that Avista and Hydro One intended to seek approval from the Commission by virtue of that representation in the proxy statement. However, the Stockholder Plaintiffs were not aware of the specific deadline for submitting a petition to intervene in this proceeding. During the period where the notice of the prehearing conference was issued, the Stockholder Plaintiffs were focused on protecting Avista public stockholders' in another forum. *See* Petition, ¶¶4, 7 (Avista and Hydro One filed their application on September 14, 2017, the notice for the pre-hearing conference was filed September 28, 2017, and the pre-hearing conference was on October 20, 2017; the Stockholder Plaintiffs filed their complaints and amended complaints in the Stockholder Action on September 15, 2017, October 11, 2017 and October 26, 2017).

15. On or about December 14, 2017, the Stockholder Plaintiffs first became aware of the pre-hearing conference deadline for submitting their Petition in this proceeding. Subsequently, the Stockholder Plaintiffs took the time to assess whether intervention in this proceeding was appropriate. After making that assessment, the Stockholder Plaintiffs filed their Petition on January 9, 2018.

16. In short, the Stockholder Plaintiffs moved in a reasonably timely manner after learning of the status of this proceeding and they learned of the status of this proceeding after the pre-hearing conference deadline because they were focused on protecting Avista public stockholders in another forum. The Stockholder Plaintiffs respectfully submit that these circumstances constitute good cause for granting them late intervention.

17. WHEREFORE, the Stockholder Plaintiffs respectfully request that their Petition be granted and the Stockholder Plaintiffs be granted Intervenor status, with the right to fully participate in this proceeding.

DATED: January 23, 2018

ROBBINS GELLER RUDMAN
& DOWD LLP
DAVID T. WISSBROECKER
EUN JIN LEE



DAVID T. WISSBROECKER

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
E-mail: dwissbroecker@rgrdlaw.com
elee@rgrdlaw.com