

**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

ORDER 04 DENYING LATE-FILED  
PETITION TO INTERVENE

- 1 **NATURE OF PROCEEDING.** On September 14, 2017, Hydro One Limited (Hydro One), acting through an indirect, wholly-owned subsidiary, Olympus Equity LLC, and Avista Corporation (Avista) 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. In other words, the companies sought Commission approval to effect a merger, as required under RCW Chapter 80.12 (Transfers of Property).
- 2 On September 28, 2017, the Commission issued a Notice, setting October 20, 2017, as the date for a first prehearing conference. The Commission's Notice identified October 17, 2017, as the deadline for written petitions to intervene and stated the Commission's preference that such motions be in writing rather than presented orally at the time of the prehearing conference.<sup>1</sup> In Order 02, entered on October 25, 2017, the Commission's designated Presiding Administrative Law Judge (ALJ) granted petitions to intervene filed by the Industrial Customers of Northwest Utilities (ICNU), The Energy Project, Sierra Club, and the joint petition to intervene filed by Northwest Energy Coalition, Renewables Northwest, and the Natural Resources Defense Council (NWEC/RNW/NRDC).
- 3 The Washington and Northern Idaho District Council of Laborers (WNIDCL), a labor union with members in Washington, also had filed a timely petition to intervene. The Presiding ALJ, following argument, found that the interests WNIDCL identified concerned matters that are not within the zone of interests implicated by the Commission's jurisdiction under RCW Chapter 80.12, and that its participation would

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<sup>1</sup> Notice of Prehearing Conference ¶ 6.

not be in the public interest. Order 02 accordingly denied WNIDCL's petition to intervene. WNIDCL filed a petition for interlocutory review. On November 20, 2017, the full Commission entered Order 03 "Accepting Interlocutory Review of Order 02 and Granting Intervention [to WNIDCL]," but placing narrow limits on the scope of WNIDCL's participation.

**Late-Filed Petition to Intervene**

4 On January 9, 2018, nearly three months after the dates for timely written or oral petitions to intervene, two Avista shareholders, Lauren Fink and Chadwick L. Weston asked the Commission to accept their late-filed Petition to Intervene in this proceeding. They refer to themselves in the Petition as "Stockholder Plaintiffs" and state that they are represented by two attorneys with the firm Robbins Geller Rudman & Dowd LLP.<sup>2</sup> David T. Wissbroecker and Eun Jin Lee, attorneys with the indicated firm, filed their notice of appearance in this docket on January 9, 2018.

5 The Petition states that:

The Stockholder Plaintiffs did not file the Petition before the pre-hearing conference because: (i) they were focused on protecting Avista public stockholders' in another forum; and (ii) they required additional time to assess whether intervention in this proceeding was beneficial for Avista public stockholders.<sup>3</sup>

The other forum to which they apparently refer is the Superior Court for the State of Washington, in and for Spokane County, where they filed a series of three class action complaints against Avista's Board of Directors, Hydro One, and Avista's financial advisor, Bank of America Merrill Lynch on September 15, 2017, October 11, 2017, and October 26, 2017.<sup>4</sup>

6 The Petition states further that:

The Stockholder Plaintiffs have a substantial interest in this proceeding. Based on their investigation, they believe: that the Merger will harm the

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<sup>2</sup> According to Robbins Geller Rudman & Dowd LLP's Internet presence at <https://www.rgrdlaw.com/firm.html> the firm is "a leading law firm worldwide . . . [w]ith 200 lawyers in 10 offices nationwide" "who have successfully prosecuted thousands of class action lawsuits" and "recovered tens of billions of dollars on behalf of the Firm's clients."

<sup>3</sup> Petition ¶ 5.

<sup>4</sup> Petition ¶ 7.

stockholder base, and likely the local community; that the Merger consideration is inadequate and undervalues the Company; that the Avista Board of Directors acted disloyally in connection with tilting the sales process in favor of their preferred bidder Hydro One; and that the Avista Board of Directors violated Washington law in connection with the Merger. The Stockholder Plaintiffs, along with the rest of Avista's stockholders, will be impacted by the proposed change of ownership of Avista. The Stockholder Plaintiffs thus have an actual interest in this proceeding. No other party to this proceeding is suited to adequately represent the Stockholder Plaintiffs' interests.<sup>5</sup>

The Petition most succinctly expresses the crux of the matter as follows: "The Stockholder Plaintiffs' position in this proceeding is to support results deemed fair and reasonable to Avista stockholders."<sup>6</sup>

7 Finally, the Petition states that granting intervention to the Stockholder Plaintiffs will not prejudice or cause additional burden to existing parties<sup>7</sup> and offers the assurance that they "have no intention of unreasonably broadening the issues, burdening the record, or delaying the proceeding through their intervention."<sup>8</sup>

#### **Responses to Late-Filed Petition to Intervene**

8 On January 10, 2018, the Commission gave notice that it would accept responses to the late-filed Petition to Intervene by close of business on January 18, 2018. Staff filed a letter on January 12, 2018, stating simply that it does not object to the late-filed petition. On January 18, 2018, Hydro One Limited and Avista Corporation jointly filed their Response opposing the Petition.<sup>9</sup> Also on January 18, 2018, Public Counsel and NWEA/RNW/NRDC filed their respective responses opposing the Petition.

9 Avista's response provides useful background concerning Shareholder Plaintiffs' lawsuit in Superior Court in Spokane and three separate actions filed in the U.S. District Court for the Eastern District of Washington. Initially, Fink brought suit on September 15,

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<sup>5</sup> Petition ¶ 8. The Petition fails to identify any specific Washington statute or provision of the Washington Administrative Code allegedly violated by the Avista Board of Directors.

<sup>6</sup> Petition ¶ 9.

<sup>7</sup> Petition ¶ 6.

<sup>8</sup> Petition ¶ 10.

<sup>9</sup> In discussing this joint response further we refer only to Avista for the sake of brevity.

2017, in case no. 17203616-6, in the Superior Court for the State of Washington for Spokane County, nominally on behalf of Avista's shareholders. The suit alleged that the Avista's Directors breached their fiduciary duties in relation to the merger, aided and abetted by Hydro One, Olympus Holding Corp., and Olympus Corp., and sought to enjoin the merger.

10 Fink filed a first amended complaint on October 10, 2017, including new allegations and seeking damages. The amended complaint also added defendant Bank of America Merrill Lynch. Fink filed a second amended complaint on October 26, 2017, adding a second plaintiff, Weston.

11 Avista provided additional background in its response, as follows:

On September 25 and 26, 2017, four different plaintiffs' law firms filed three separate actions in the U.S. District Court for the Eastern District of Washington: (i) *Jenß v. Avista Corp., et al.*, case no. 2:17-cv-333 (E.D. Wash. filed Sept. 25, 2017),<sup>10</sup> (ii) *Samuel v. Avista Corp., et al.*, case no. 2:17-cv-334 (E.D. Wash. filed Sept. 26, 2017), and (iii) *Sharpenter v. Avista Corp., et al.*, case no. 2:17-cv-336 (E.D. Wash. filed Sept. 26, 2017). The suits were substantially similar, each alleging that the proxy statement filed by Avista in connection with the merger omitted material facts necessary to make the statements therein not false or misleading, in violation of federal securities laws. The suits named as defendants Avista and the Avista Directors (Sharpenter also named Hydro One, Olympus Holding Corp., and Olympus Corp. as defendants) and sought to enjoin the merger.<sup>11</sup>

12 Despite four separate actions to enjoin the merger, Avista states that no one sought an injunction to stop Avista's shareholders vote. On November 21, Avista's shareholders voted their shares to approve the transaction with the holders of 98 percent of the shares voting supporting the merger (reflecting the support of holders of 78 percent of all the outstanding shares).<sup>12</sup> Following this vote, the plaintiffs in *Jenß*, *Samuel*, and *Sharpenter* decided not to proceed with their lawsuits and filed stipulations of voluntary dismissal. Fink and Weston, not otherwise involved in these federal cases, filed a motion for consolidation, appointment of a Lead Plaintiff, and Approval of Lead Plaintiff's Selection

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<sup>10</sup> Avista noted that use of the German Eszett, *ß*, reflects the spelling used by the plaintiff in this lawsuit.

<sup>11</sup> Avista Response ¶ 8 (internal citations omitted).

<sup>12</sup> Avista Response ¶ 10.

of Lead Counsel.<sup>13</sup> On December 20, 2017, the Federal Court entered three stipulations, dismissing the *Jenß*, *Samuel*, and *Sharpenter* actions, and dismissed as moot the motion filed by Shareholders Fink and Weston.

13 According to Avista, Fink and Weston then stated their intent to file yet another amended complaint after the close of the transaction, which is not expected until the latter half of 2018. Fink and Weston filed a stipulation in their Superior Court suit seeking to stay all proceedings: “until after Plaintiffs’ claims are framed in their operative complaint.” The Superior Court entered the stipulation providing that Shareholders Fink and Weston must file their third amended complaint no later than 30 days after Avista or Hydro One publicly announces that the transaction has closed or the suit will be dismissed with prejudice.<sup>14</sup>

14 Against the backdrop of this procedural history, Avista argues Shareholders Fink and Weston’s late-intervention filed in this proceeding “is best understood as a thinly-veiled attempt to conduct discovery (in another forum) into highly-confidential information in furtherance of their state court action.”<sup>15</sup> According to Avista, data requests it has received already “have sought, among other things, board materials and consultant analyses of a highly confidential nature—materials that Shareholders Fink and West might obtain if granted intervention.”<sup>16</sup> Avista argues that “Shareholders Fink and Weston should conduct their discovery in the proper state court forum, not here at the Commission.”<sup>17</sup>

15 Avista argues more substantively that the Commission should deny Fink and Weston’s late-filed petition to intervene for five reasons. The Commission finds it should focus its attention on two lines of argument presented by Avista.<sup>18</sup> The Company argues that:

- 1) Fink and Weston failed to establish good cause for their late filing, untimely as it is by a matter of nearly three months, and apparently an exercise in forum

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<sup>13</sup> Avista Response ¶ 11.

<sup>14</sup> Avista Response ¶ 12.

<sup>15</sup> Avista Response ¶ 12, n.4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> While we need not, and do not, reach certain other arguments by Avista, such as its argument that Fink and Weston, by their actions in Superior Court, waived their right to enjoin the merger in the forum they identified as having jurisdiction over all of their claims and should not be allowed to seek a denial of the merger application in this forum, we do not mean to suggest these arguments have no merit. *See* Avista Response ¶¶ 27-29.

shopping that followed from developments in judicial proceedings that appear to have cut off the Plaintiffs' opportunities to otherwise block the proposed merger and their opportunities to conduct discovery.<sup>19</sup>

- 2) Fink and Weston do not have a substantial interest in this proceeding because their interests as shareholders are not jurisdictional to the Commission, which in the context of a utility merger in particular focuses on determining whether the transaction results in a net benefit to the utility's customers and adequately protects the utility's customers from harm.<sup>20</sup> Avista argues that the Commission is not the proper forum to adjudicate these shareholders' interests as stated in their Petition.<sup>21</sup>

16 In terms of timeliness, Avista says Petitioners failed to establish good cause for the tardiness of their filing. Avista states that Petitioners "are represented by sophisticated legal counsel" and their stated reason for delay—that "they were focused on protecting Avista public stockholders in another forum"—is belied by the facts.<sup>22</sup> Avista argues four points, as follows:

First, the bulk of the work on their lawsuit occurred before September 15, when the initial complaint in that action was filed. Second, any additional work on the first amended complaint was shared by three law firms and was complete by October 10; there was no activity on their suit between October 10 and October 17, the deadline for a timely motion to intervene in this proceeding. Third, four other plaintiffs' law firms in three other actions had already filed suit to enjoin the merger as of October 2017, undermining any assertion that Shareholders Fink and Weston were providing some unique service to Avista shareholders. Fourth, there has been virtually no activity in Shareholders Fink and Weston's lawsuit since October 10, belying any claim that their nearly three-month delay should be excused. Finally, given their active participation in the shareholder lawsuits and their attention to the transaction generally, it is apparent that Shareholders Fink and Weston knew about this proceeding—indeed, they admit to simply taking "additional time to assess whether intervention in

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<sup>19</sup> See Avista Response ¶¶ 1, 7-12.

<sup>20</sup> See Avista Response ¶¶ 2, 16, 19, 21-23, 27.

<sup>21</sup> See *supra* ¶ 5 ("The Stockholder Plaintiffs' position in this proceeding is to support results deemed fair and reasonable to Avista stockholders.").

<sup>22</sup> Avista Response ¶¶ 24-25 (quoting Petition to Intervene ¶ 5).

this proceeding was beneficial” *to them*—and could have timely intervened.<sup>23</sup>

17 On the question of substantial interests, Avista argues Fink and Weston’s interests as shareholders have no nexus to a statute within the Commission’s jurisdiction and, specifically, have no connection to the standard for Commission approval of the proposed merger established under RCW 80.12.020(1), which requires a determination that the transaction will result in “a net benefit to the *customers* of the company.”<sup>24</sup> Avista emphasizes that neither Fink nor Weston is an Avista customer and, indeed, neither shareholder appears to live in Washington.<sup>25</sup> Thus, Avista argues, their interests “are not contemplated, let alone protected, by the Washington statute that defines the Commission’s jurisdiction in this proceeding.”<sup>26</sup> Moreover, the Company contends that the Commission’s general jurisdiction over utilities under RCW Chapter 80 to regulate in the public interest and to ensure safe and reliable service to customers<sup>27</sup> at rates that are fair, just, reasonable, and sufficient does not require the Commission to protect the interests of individual shareholders in achieving, in the context of a proposed merger, results that are “fair and reasonable to Avista stockholders,” which is the interest identified in Fink and Weston’s Petition.<sup>28</sup>

18 Public Counsel agrees with Avista that Fink and Weston’s Petition failed to establish good cause sufficient to excuse its tardiness. Public Counsel points out that “other non-statutory parties timely intervened” during the more than 30 days that elapsed between the date of Avista’s filing and the date of the first prehearing conference in this Docket. According to Public Counsel, these parties, no less than Petitioners here, had to evaluate whether their intervention would be beneficial to their members or would benefit the

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<sup>23</sup> Avista Response ¶ 25 (emphasis in original).

<sup>24</sup> Avista Response ¶ 21 (emphasis added).

<sup>25</sup> The Shareholder Plaintiffs’ Petition identifies Melbourne, Florida as Mr. Weston’s mailing address, and West Bloomfield, Michigan as Ms. Fink’s mailing address. Petition ¶ 2.

<sup>26</sup> Avista Response ¶ 21.

<sup>27</sup> Avista distinguishes the Commission’s determination in Order 03 that WNIDCL should be allowed to intervene for the limited “purpose of addressing safety and reliability of service to customers where the union’s members are actually involved in the provision of such service.” Order 03 ¶ 17.

<sup>28</sup> See Avista Response ¶ 22. Avista notes that it is aware of a Louisiana utility merger in which shareholders were allowed to intervene. The shareholders sought timely intervention under Louisiana law that requires the Louisiana Public Service Commission to evaluate “whether the transfer will be fair and reasonable to the majority of all affected public utility shareholders.” Avista Response ¶ 21, n.6 (citing *In re Joint Application of Cleco Power LLC and Cleco Partners L.P. for: (i) Authorization for the Change of Ownership and Control of Cleco Power LLC and (ii) Expedited Treatment*, Order No. U-33434-A at 2, 12, and 48 (April 7, 2016)). Avista points out that “[t]here is no similar requirement under Washington law.” *Id.*

tribunal.<sup>29</sup> Public Counsel argues in addition that allowing Fink and Weston to intervene now, several months into the procedural schedule, “would be prejudicial to the parties and would interfere with the orderly process of this proceeding.”<sup>30</sup>

19 Public Counsel also agrees with Avista that “[t]he ultimate question for the Commission is whether the proposed transaction results in a net benefit to Avista's customers,”<sup>31</sup> and argues that “[t]he remaining issues identified by Ms. Fink and Mr. Weston are better resolved in Superior Court and are beyond the scope of this proceeding.”<sup>32</sup>

20 NWEC/RNW/NRDC’s arguments opposing Fink and Weston’s Petition are similar to those of Avista and Public Counsel. They argue Petitioners failed to show good cause for their untimeliness and that this alone establishes an adequate reason to deny intervention. NWEC/RNW/NRDC argue in addition that Petitioners state only a general interest “to support results deemed fair and reasonable to Avista stockholders.” They state that while the Petition alleges the transaction “will harm the stockholder base, and likely the local community” these alleged “harms are not described except as a ‘belief’”<sup>33</sup> and these Petitioners, being residents of Florida and Michigan, lack standing to raise issues concerning the local community. NWEC/RNW/NRDC conclude that “[t]he 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.”<sup>34</sup>

### **Shareholder Plaintiffs’ Reply**

21 Fink and Weston, on January 23, 2018, filed a reply to the Responses opposing their Petition. The Commission’s procedural rules do not provide for such a filing. Fink and Weston did not seek leave to file a reply. While the Commission has authority under these circumstances simply to reject the filing, we exercise our discretion here to consider their final arguments.

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<sup>29</sup> In Order 02, the Commission found that The Energy Project and the Industrial Customers of Northwest Utilities, representing Avista customers, “established a substantial interest in this proceeding and that their participation will be in the public interest.” Order 02 ¶ 6. Over objections, the Commission also determined that intervention by Sierra Club, the NWEC/RNW/NRDC “would be in the public interest.” *Id.* ¶ 7.

<sup>30</sup> Public Counsel Response ¶ 10.

<sup>31</sup> *Id.* ¶ 11.

<sup>32</sup> *Id.* ¶ 12.

<sup>33</sup> NWEC/RNW/NRDC Response ¶ 8 (quoting Petition ¶ 8).

<sup>34</sup> *Id.* ¶ 9.

22 Petitioners argue Public Counsel’s statement in its Response that “[t]he Commission will consider, and the existing parties will likely present evidence on, whether the merger consideration is adequate”<sup>35</sup> supports granting their intervention because:

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” [sic] of the adequacy of the merger consideration from an M&A and shareholder perspective.<sup>36</sup>

First, the statement on which Petitioners’ rely was made by Public Counsel, not the Commission. We frankly have no idea in what sense Public Counsel made this suggestion. What we do know is that the Commission most definitely will not consider “the adequacy of the merger consideration from an M&A and shareholder perspective” so we have no need for the “Stockholder Plaintiffs” assistance in this connection. As Avista and Public Counsel argue above, and as we discuss below, the issue Petitioners identify is not within the Commission’s jurisdiction to consider and it will not be considered in this proceeding. The adequacy of the consideration Fink and Weston, and other shareholders, receive for their shares, is a matter for the courts to the extent there is any legitimate basis to question it.

23 Second, Petitioners make clear that their purpose in seeking intervention is “to *preserve* viable damages claims that will benefit all Avista’s stockholders.”<sup>37</sup> Indeed, Petitioners state that they “will not seek to ‘halt the merger’ in this forum” and “believe that monetary damages, not injunctive relief, are in the best interests of Avista’s stockholders.”<sup>38</sup> The Commission has no authority to grant monetary relief to Petitioners, or others. It would be completely inappropriate for the Commission to attempt to identify “viable damages claims” that Petitioners might pursue in another forum where such relief might be available.

24 Finally, Petitioners argue that the Commission should not reject their Petition for failure to demonstrate good cause for its significantly belated timing relative to the dates established by Commission’s Notice of Prehearing Conference because:

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<sup>35</sup> Reply ¶ 3.

<sup>36</sup> *Id.* ¶ 4.

<sup>37</sup> *Id.* ¶ 8 (emphasis in original).

<sup>38</sup> *Id.* ¶ 11.

[T]he 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.<sup>39</sup>

It is abundantly clear from Petitioners' reply, however, that they were not diligent with respect to meeting the requirements for seeking intervention in this proceeding. They admit they knew Avista and Hydro One would seek Commission approval because there was a representation to this effect in the proxy statement filed with the SEC on September 14, 2017, the same day Avista and Hydro One filed their application initiating this docket.

25 Petitioners say they “were not aware of the specific deadline for submitting a petition to intervene in this proceeding.”<sup>40</sup> Yet, all other persons taking an interest in the application filed timely petitions to intervene by October 17, 2017, and participated in the Commission’s first prehearing conference on October 20, 2017. Shareholder Plaintiffs’ alleged lack of awareness of the deadline for submitting a petition to intervene in this proceeding and their failure to appear at the first prehearing conference can only be explained by their failure to monitor the docket using the Commission’s internet presence where all filed documents, Commission notices, and other official documents are readily accessible to the public, and their failure to become acquainted with the Commission’s procedural rules including WAC 480-07-355 (Parties—Intervention).

26 Petitioners state they “first became aware of the . . . deadline for submitting” petitions to intervene on December 14, 2017.<sup>41</sup> They then “took the time to assess whether intervention in this proceeding was appropriate.”<sup>42</sup> They filed their Petition approximately three weeks later, on January 9, 2018. This seems to us an inordinate delay for which Petitioners, who are represented by counsel, have failed to establish good cause.

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<sup>39</sup> *Id.* ¶ 16.

<sup>40</sup> *Id.* ¶ 14.

<sup>41</sup> *Id.* ¶ 15.

<sup>42</sup> *Id.*

**Commission Determination**

27 Washington’s Administrative Procedure Act provides that a presiding officer may grant a petition to intervene “upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.”<sup>43</sup> The Commission’s procedural rules governing adjudicative proceedings provide that the Commission “may grant a petition to intervene if the petitioner has a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest.”<sup>44</sup>

28 WAC 480-07-355(1) states that:

(a) The commission strongly prefers written petitions to intervene from any person who seeks to appear and participate as a party in a proceeding before the commission other than the original parties, commission staff, and public counsel. Written petitions to intervene should be filed at least three business days before the initial hearing date or prehearing conference date, whichever occurs first. A person may petition orally for leave to intervene at the time of the initial hearing or prehearing conference, whichever occurs first, unless the commission requires written petitions to intervene in a notice prior to the first hearing or prehearing date.

(b) *Late-filed petition to intervene.* The commission may grant a petition to intervene made after the initial hearing or prehearing conference, whichever occurs first, only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition to intervene.

29 In addition to the other reasons discussed below, we deny Fink and Weston’s Petition for its failure to establish good cause for being late by a matter of several months. Petitioners’ admitted lack of diligence relative to this proceeding, despite the fact that Petitioners knew or should have known of its pendency as early as September 2017, does not support a determination of good cause for failure to file timely. Indeed, Petitioners delay and its stated reasons for delay are antithetical to such a determination. Moreover, considering that Fink and Weston’s Petition was filed months after the deadline for such petitions and well into the period during which other parties have conducted discovery,

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<sup>43</sup> RCW 35.04.443(1).

<sup>44</sup> WAC 480-07-355(3).

framed their positions, prepared for settlement negotiations that begin on February 9, 2018, and perhaps even drafting their respective prefiled testimonies, we find to grant it at this time might impair the orderly and prompt conduct of these proceedings and could be prejudicial to other parties.

- 30 Turning to the substance of Fink and Weston’s Petition, the Commission applies a "zone of interest test" to determine whether a party seeking intervention has a substantial interest.<sup>45</sup> Such an interest can be found to exist only when there is a nexus between the petitioner’s stated purpose in seeking to intervene and an interest protected by a Washington statute within the Commission’s jurisdiction.<sup>46</sup> In this case, the Commission is required to determine under RCW Chapter 80.12 (Transfers of Property) whether the proposed transaction, if consummated, will result in “net benefits” to customers.<sup>47</sup> Whether the transaction is beneficial for Avista’s public stockholders is not a concern identified in RCW Chapter 80.12 or any other Washington statute within the Commission’s jurisdiction and, hence, is not a matter that is within the Commission’s authority to consider or address.<sup>48</sup> In other words, Fink and Weston have failed to establish that their interests as shareholders are within the zone of interest identified by the Commission’s governing authority. Thus, Fink and Weston have not demonstrated that they have a substantial interest in this proceeding.
- 31 Nor have Fink and Weston shown that their participation would be in the public interest. Indeed, their Petition asserts, but does not offer any reason or argument supporting, that their participation would be in the public interest. Instead, they conflate the two separate grounds for intervention in Commission proceedings, arguing their participation would be in the public interest because they claim to have a substantial interest.<sup>49</sup>
- 32 For the reasons discussed, we determine that Fink and Weston’s late-filed Petition to Intervene should be denied.

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<sup>45</sup> *In Re Joint Application of Verizon Communications, Inc. and Frontier Communications Corporation 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, Order 05 ¶ 14 (September 10, 2009).

<sup>46</sup> *Id.*

<sup>47</sup> RCW 80.12.020.

<sup>48</sup> It is at least noteworthy in this connection that shareholders representing 98 percent of the shares voting, or 78 percent of all shares outstanding, supported the merger. As Avista argues “Avista’s shareholders have made their position on the merger clear—they are overwhelmingly in favor of it.” Avista Response ¶ 10.

<sup>49</sup> *See* Petition ¶ 6.

**ORDER**

33 THE COMMISSION ORDERS THAT Lauren Fink and Chadwick L. Weston's Petition to Intervene is DENIED.

Dated at Olympia, Washington, and effective January 25, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner