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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Stephen McAlpine, Chairman  
Paul F. Lisankie  
Rebecca L. Pauli  
Robert M. Pickett  
Janis W. Wilson

In the Matter of the Joint Application Filed by Hydro )  
One Limited and Avista Corporation for Authority )  
for Hydro One Limited to Acquire a Controlling )  
Interest in ALASKA ELECTRIC LIGHT & POWER )  
COMPANY )

U-17-097  
ORDER NO. 8

ORDER ACCEPTING STIPULATION IN PART

BY THE COMMISSION:

Summary

We accept in part the stipulation resolving disputed issues filed by Hydro One Limited (Hydro One), Avista Corporation (Avista), and the City and Borough of Juneau (CBJ).

Background

Alaska Electric Light & Power Company (AEL&P) provides electric utility service within the CBJ under Certificate of Public Convenience and Necessity (Certificate) No. 1. AEL&P is a wholly owned subsidiary of Alaska Energy and Resources Company (AERC), which is a wholly owned subsidiary of Avista.<sup>1</sup>

Hydro One is in the process of acquiring Avista. Hydro One and Avista filed a joint application for Hydro One to acquire an indirect controlling interest in AEL&P

<sup>1</sup>Order U-13-197(2), *Order Approving Joint Application for Authority to Acquire Controlling Interest in Alaska Electric Light and Power Company*, dated May 30, 2014.

1 through its acquisition of Avista.<sup>2</sup> We issued public notice of the Application, with  
2 comments due December 21, 2017. We received over 100 comments in response to the  
3 public notice. Hydro One and Avista filed replies to these comments.<sup>3</sup> We scheduled a  
4 consumer input conference in Juneau on the Application and addressed the scope of this  
5 proceeding.<sup>4</sup> More than 100 people attended our Juneau consumer input conference,  
6 where we received oral comments from 23 persons and oral responses from Hydro One  
7 and Avista.<sup>5</sup> We have received an additional 30 written comments.

8 The CBJ filed a petition to intervene as a party in this proceeding, which we  
9 granted.<sup>6</sup> We adopted the procedural schedule proposed by the parties, which included  
10 a public hearing beginning April 30, 2018, and granted the CBJ's motion to hold the public  
11 hearing in Juneau.<sup>7</sup> Hydro One and Avista filed direct testimony.<sup>8</sup> Hydro One, Avista,  
12 and the CBJ filed a stipulation resolving the issues disputed between the parties and

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13 <sup>2</sup>*Joint Application for Authorization to Acquire a Controlling Interest in Alaska*  
14 *Electric Light and Power Company*, filed November 21, 2017 (Application).

15 <sup>3</sup>*Applicants' Joint Reply to Comments*, filed December 11, 2017; *Applicants' Joint*  
16 *Reply to Comments*, filed February 6, 2018.

17 <sup>4</sup>Order U-17-097(2), *Order Scheduling Public Conference, Addressing Scope of*  
18 *Proceeding, and Redesignating Commission Panel*, dated February 9, 2018 (Order U-17-  
19 097(2)).

20 <sup>5</sup>Tr. 2-93.

21 <sup>6</sup>Order U-17-097(3), *Order Denying Motion to Strike, Granting Petition to*  
22 *Intervene, Scheduling Prehearing Conference, and Establishing Deadline for Filing*  
23 *Petitions to Intervene*, dated March 9, 2018 (Order U-17-093(3)), at 3-5.

24 <sup>7</sup>Order U-17-097(5), *Order Confirming Procedural Schedule and Extending*  
25 *Statutory Timeline with Consent of Parties*, dated March 27, 2018 (Order U-17-097(5));  
26 Order U-17-097(6), *Order Granting Unopposed Motion to Hold Hearing in Juneau,*  
*Alaska*, dated April 5, 2018 (Order U-17-097(6)).

<sup>8</sup>*Prefiled Direct Testimony of Dennis P. Vermillion*, filed March 23, 2018; *Prefiled*  
*Direct Testimony of Mark T. Thies*, filed March 23, 2018; *Prefiled Direct Testimony of*  
*Mayo M. Schmidt Representing Hydro One*, filed March 23, 2018; *Prefiled Direct*  
*Testimony of Christopher F. Lopez Representing Hydro One*, filed March 23, 2018.

1 requested that we vacate the April 30 hearing.<sup>9</sup> We gave notice of our decision to partially  
2 accept the Stipulation and required the parties to inform us if they intended to withdraw  
3 from it.<sup>10</sup> Hydro One, Avista, and the CBJ notified us that they do not intend to withdraw  
4 from the Stipulation based upon our notice decision and asked us to issue a final order  
5 as soon as possible.<sup>11</sup> We vacated the April 30 hearing.<sup>12</sup>

## 6 Discussion

### 7 Stipulation

8 Parties may stipulate to the disposition of a proceeding or to the disposition  
9 of any outstanding issues in a proceeding.<sup>13</sup> If all parties join in a stipulation, we can  
10 terminate the proceeding if we do not find that the public interest requires the proceeding  
11 to continue.<sup>14</sup> Further, if we accept a stipulation, the parties are bound by its terms.<sup>15</sup>

12 Hydro One, Avista, and the CBJ filed the Stipulation that they agree  
13 resolves all disputed issues in this proceeding. The parties agree that the Stipulation has  
14 no precedential value and that they will not use the Stipulation in any other proceeding  
15 as substantive evidence. The parties assert that the validity and enforceability of the  
16 agreements in the Stipulation are conditioned on our acceptance of the Stipulation in its  
17 entirety and without the imposition of additional conditions.<sup>16</sup>

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18 <sup>9</sup>*Stipulation Resolving Disputed Issues*, filed April 3, 2018 (Stipulation).

19 <sup>10</sup>*U-17-097 Notice of Commission Decision to Partially Accept Stipulation*, dated  
20 April 10, 2018 (Notice of Commission Decision).

21 <sup>11</sup>*Joint Notice of Non-Withdrawal and Joint Request to Accept Unrejected Portions  
of Stipulation*, filed April 12, 2018 (Joint Notice of Non-Withdrawal).

22 <sup>12</sup>Order U-17-097(7), *Order Vacating Public Hearing*, dated April 25, 2018.

23 <sup>13</sup>3 AAC 48.166.

24 <sup>14</sup>3 AAC 48.090(d)(2).

25 <sup>15</sup>3 AAC 48.166.

26 <sup>16</sup>Stipulation at 2, 7.

1 We reviewed the Stipulation. We have concerns about two parts of the  
2 agreement between the parties.

3 Snettisham Option Agreement

4 The Snettisham Hydroelectric Project (Project) is owned by Alaska  
5 Industrial Development and Export Authority (AIDEA), an agency of the State. AIDEA  
6 sells electric energy produced by the Project to AEL&P pursuant to Certificate No. 549.  
7 In issuing Certificate No. 549 to AIDEA, the Alaska Public Utilities Commission, our  
8 predecessor agency, held that any disposition of the Project by AIDEA will require  
9 regulatory review.<sup>17</sup>

10 Section II.D of the Stipulation relates to the Snettisham Option Agreement  
11 between the AIDEA and Snettisham Electric Company (SEC), an affiliate of AEL&P which  
12 is wholly owned by AERC.<sup>18</sup> The Snettisham Option Agreement is dated August 18,  
13 1998, and gives SEC certain limited rights to purchase the Project from AIDEA. The  
14 Snettisham Option Agreement is Exhibit D to the wholesale power sales agreement  
15 between AIDEA and AEL&P approved in Order U-97-245(1).<sup>19</sup>

16 For the reasons addressed in Order U-17-097(2), ownership of the Project  
17 is not within the scope of this proceeding.<sup>20</sup> We granted the CBJ party status in this  
18 proceeding specifically based upon the CBJ's agreement to not broaden the issues in this

19 <sup>17</sup>Order U-98-021(1), *Order Denying Petition and Approving Application with*  
20 *Conditions*, dated July 16, 1998, at 3-4.

21 <sup>18</sup>Stipulation at 4-5.

22 <sup>19</sup>Order U-97-245(1), *Order Approving Power Sales Agreement, Subject to*  
23 *Conditions; Approving Application and Related Hatchery Electric Service Agreement,*  
24 *Subject to Conditions; and Requiring Filing*, dated June 24, 1998 (Order U-97-245(1)). At  
the time Order U-97-245(1) was issued, the terms of the power sales agreement and  
exhibits had not been finalized. See Letter Order No. L9800671, dated November 2,  
1998, for the approved final versions of the agreement and exhibits.

25 <sup>20</sup>Order U-17-097(2) at 4-8.

1 proceeding. We also reminded the CBJ that issues related to any possible transfer of the  
2 Project were not within the scope of this proceeding.<sup>21</sup>

3 We are disappointed that the parties, including the CBJ, included terms in  
4 the Stipulation addressing possible transfers of Project ownership despite our previous  
5 holdings on this issue. We do not reject Section II.D of the Stipulation because we find  
6 that section to be a private agreement between Hydro One, Avista, and the CBJ, which  
7 does not affect our regulatory authority over any transfer of Project ownership.

8 AEL&P Interconnection Process

9 Section II.E of the Stipulation is an agreement between Hydro One, Avista,  
10 and the CBJ to seek our approval of proposed tariff rules governing AEL&P's  
11 interconnection review process applicable to proposed generators having a nameplate  
12 capacity of 5,000 kVA or greater. Exhibit 2 to the Stipulation includes proposed new  
13 Tariff Sheet Nos. 23.1, 23.2, and 23.3, setting out these proposed interconnection  
14 process rules. The parties asked that these tariff sheets be approved effective the date  
15 Hydro One closes its purchase of Avista.<sup>22</sup>

16 New and revised tariffs must be filed in the manner provided by our  
17 regulations.<sup>23</sup> Tariff sheets not filed in conformance with our regulations may be  
18 rejected.<sup>24</sup> Tariff filings must be made under a consecutively numbered tariff advice letter  
19 and must include the information required by 3 AAC 48.270(a).<sup>25</sup> New or revised tariffs

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22 <sup>21</sup>Order U-17-097(3) at 5.

23 <sup>22</sup>Stipulation at 5.

24 <sup>23</sup>AS 42.05.411(b); AS 42.05.361(a).

25 <sup>24</sup>AS 42.05.361(c).

26 <sup>25</sup>3 AAC 48.220(c).

1 must be noticed to the public.<sup>26</sup> The Stipulation did not conform with these requirements.  
2 We may waive our tariff form and filing regulations for good cause.<sup>27</sup> The Stipulation did  
3 not include a waiver request or information on which we could find good cause to grant a  
4 waiver on our own motion. Therefore, we reject Section II.E of the Stipulation and the  
5 proposed tariff sheets in Exhibit 2 because they were not filed in conformance with our  
6 tariff form and filing regulations.

7 The three parties to the Stipulation ask us to approve the proposed AEL&P  
8 interconnection process tariff rules effective on the date Hydro One closes its acquisition  
9 of Avista, anticipated to be before September 30, 2018.<sup>28</sup> We have not substantively  
10 reviewed the proposed AEL&P interconnection process tariff filing, but note that we have  
11 received comments suggesting that the existing AEL&P interconnection process is not  
12 reasonable or proper.<sup>29</sup> If a complete interconnection process tariff filing was received  
13 from AEL&P, and if suspension of that tariff filing was required to investigate the  
14 reasonableness and propriety of the filing,<sup>30</sup> resolution of the tariff filing could take  
15 substantially longer than the timeline requested in the Stipulation.<sup>31</sup>

16 In two orders, we informed the parties, and reminded the CBJ, that we  
17 would not be addressing AEL&P's adoption of an interconnection tariff in this  
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19 <sup>26</sup>AS 42.05.411(a).

20 <sup>27</sup>3 AAC 48.805(a).

21 <sup>28</sup>Stipulation at 5; Application, Exhibit 2 at 44 (End Date).

22 <sup>29</sup>See Correspondence from the Honorable T. Wilson, filed December 21, 2017;  
23 *Comments of Juneau Hydropower, Inc. on Avista Acquisition*, filed December 21, 2017;  
24 Correspondence from T.B. Clemmer, Esq., on behalf of the Alaska Independent Power  
25 Producers Association, filed December 21, 2017.

24 <sup>30</sup>AS 42.05.421(a).

25 <sup>31</sup>AS 42.05.175(b), (f)(3) (270-day suspension plus 90-day extension).

1 proceeding.<sup>32</sup> We are disappointed that the parties chose to expend their time and our  
2 resources by including this issue in the Stipulation. For the reasons discussed in Order  
3 U-17-097(2), we strongly suggest that any future effort at addressing interconnection  
4 issues in the AEL&P service territory include AIDEA as owner of the Project.

5 Accept Stipulation in Part

6 Section V.B of the Stipulation states in part that: “If the Commission does  
7 not accept this Stipulation in its entirety or imposes additional conditions, any Party may  
8 withdraw from the Stipulation.”<sup>33</sup> We gave Hydro One, Avista, and the CBJ notice of our  
9 intention to reject part of the Stipulation, and required any party desiring to withdraw under  
10 Section V.B to notify us in writing of its withdrawal.<sup>34</sup> Hydro One, Avista, and the CBJ  
11 jointly informed us that they would not be withdrawing based upon our decision to not  
12 accept the Stipulation in its entirety. These parties did ask us to accept the remainder of  
13 the Stipulation by May 3, 2018, and to vacate the public hearing scheduled to begin  
14 April 30, 2018.<sup>35</sup>

15 We have reviewed the Stipulation. For the reasons discussed above, we  
16 do not accept Section II.E of the Stipulation, and we do not approve the proposed tariff  
17 sheets attached as Exhibit 2 to the Stipulation. We accept the remainder of the Stipulation  
18 as resolving all disputed issues between Hydro One, Avista, and the CBJ. The Stipulation  
19 does not fully address the matters that we must consider in our review of the Application,<sup>36</sup>  
20 and therefore, we do not approve the Application with this order. A further order will be  
21 issued.

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23 <sup>32</sup>Order U-17-097(2) at 8-9; Order U-17-097(3) at 4-5.

24 <sup>33</sup>Stipulation at 7.

25 <sup>34</sup>Notice of Commission Decision.

26 <sup>35</sup>Joint Notice of Non-Withdrawal.

<sup>36</sup>AS 42.05.241.

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**ORDER**

THE COMMISSION FURTHER ORDERS that the *Stipulation Resolving Disputed Issues*, filed by Hydro One Limited, Avista Corporation, and the City and Borough of Juneau on April 3, 2018, is accepted in part as discussed in the body of this order.

DATED AND EFFECTIVE at Anchorage, Alaska, this 1st day of May, 2018.

BY DIRECTION OF THE COMMISSION

