

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

IN THE MATTER OF Avista Corporation and)	REGULATORY DIVISION
Hydro One Limited's Application for)	
Authorization of the Proposed Sale and Transfer)	DOCKET NO. D2017.9.71
of Avista Corporation)	ORDER NO. 7577a

FINAL ORDER

PROCEDURAL HISTORY

1. On September 14, 2017, Avista Corporation and Hydro One Limited (“Applicants”) filed an application with the Montana Public Service Commission (“Commission”) for authorization of the proposed sale and transfer of Avista Corporation (“Application”).
2. On September 27, 2017, the Commission issued a Notice of Application and Intervention Deadline, establishing October 19, 2017, as the deadline to intervene with the Application. On November 9, 2017, the Commission issued a Notice of Staff Action granting intervention to the Montana Consumer Counsel (“MCC”).
3. On November 27, 2017, the Commission issued Procedural Order 7577, which established a variety of deadlines for this docket, including a deadline for the Commission to identify additional issues. On April 21, 2018, the Commission issued a Notice of Additional Issues which required the Applicants to supplement their Application with information on whether the transaction, the potential regulatory conditions associated with it, or the finalized depreciation study regarding Avista’s Colstrip generation assets will detrimentally impact Montana-sited resources. The Commission provided a further opportunity for parties to intervene regarding the additional issues, and on March 19, 2018, the Commission granted intervention to the Montana AFL-CIO and the City of Colstrip (“Colstrip”).
4. On May 15, 2018, the Commission received a Notice of Settlement from the Applicants and the City of Colstrip (“Settlement”). Under the terms of the Settlement, Avista has

agreed, among other things, to provide Colstrip with an additional \$1.5 million to the \$3 million already committed to the Applicant's Montana Community Transition Fund. Mem. of Agreement by and among City of Colstrip, Avista Corp. and Hydro One Limited (May 15, 2018).

5. The Commission held a public hearing on May 17, 2018, to receive evidence on the Application and the Settlement. The Commission received a comment of support for the Application from the Montana Chamber of Commerce on May 18, 2018.

6. During a regularly scheduled work session on June 12, 2018, the Commission approved the Application, as discussed below.

LEGAL STANDARD

7. In evaluating sale and transfer applications, the Commission has historically used three standards: the public interest standard, the no-harm to consumers standard, and the net-benefits standard. *In re Babcock & Brown Infrastructure Ltd.*, Docket D2006.6.82, Order 6754c ¶ 35 (Aug. 1, 2007). In examining these standards, the Commission has stated:

It may be impossible to enunciate a general standard that is applicable in all cases. For example, if the Commission were faced with the sale of a public utility that was not providing adequate service, it would be appropriate for the Commission to apply a net benefit standard that assured customers would receive adequate service. In another case, a utility may be providing adequate service but just rates for the potential acquirer may be higher than currently charged. In such a situation, it would be appropriate for the Commission to apply a no-harm to consumers standard.

Id.

8. The Commission has recently applied all three standards in sale and transfer dockets. *In re Gas Natural, Inc.*, Docket D2016.11.91, Order 7534e ¶ 20 (Jul. 20, 2017); *In re Cut Bank Gas Co.*, Docket D2008.3.27, Order 6907b ¶ 20 (Nov. 2, 2009). The Montana Consumer Counsel has requested the Commission again apply all three standards in this proceeding. Hr'g Tr. 19:14–21 (“I would simply urge the commission to once again articulate all three of these standards in its final order in this case, and to recognize again that any or all of these standards could be applied in future merger and acquisition proceedings.”).

9. The Commission acknowledges this Application presents different concerns from a typical sale and transfer application. *See, e.g., In re Mountain Water Co.*, Docket D2016.2.15, Order 7475i ¶¶ 29–38, 48 (May 31, 2016) (for Montana's largest regulated water utility, the

Commission imposed a lower cost of debt within the utility's revenue requirement due to the new upstream owners' lower cost of debt); *In re Babcock & Brown Infrastructure Ltd.*, ¶¶ 144–152 (for Montana's largest regulated utility, the Commission denied Babcock & Brown's application to purchase North Western, in part, over concerns of the proposed acquisition premium and how Babcock & Brown would recover these costs); *In re Gas Natural, Inc.*, ¶ 12 (for a utility with a history of debt management difficulties, the Commission approved the application finding the ultimate acquirer, BlackRock Inc., is “a financially strong enterprise with more than \$5 trillion of assets under management” and “is the largest utility investor in the U.S., with substantial knowledge grading utility operations and regulation and a reputation for supporting sound utility management and financing.”)

10. In contrast, Avista has only 32 retail electric customers and Avista rarely comes before the Commission with any applications, including rate increases, due to its small Montana-jurisdictional customer base. *See In re Avista*, Docket D2010.11.107, Order 7130a (Apr. 27, 2011) (Avista's last rate case before this Commission, who prior to then had not been before the Commission since 1986). As a result, a traditional examination of this sale and transfer is not appropriate.¹ Instead, the Commission examines this transaction under the public interest standard focusing on the potential impacts on electric generation as a whole in Montana. *See, e.g., In re Cheyenne Light Fuel and Power Co.*, Consolidated Dockets 20003-EA-04-75 and 30005-GA-04-97, 2004 Wyo. PUC LEXIS 292, *43 (Aug. 26, 2004) (after finding, in part, that there “is no evidence before us that any other utility or its customers in Wyoming would be

¹ The record, as presented to the Commission, likely fails to satisfy the net benefits and no-harm to customers standards. The economies of scale and synergies of management which the Applicants argue support approval are neither identified nor quantified. *See* Application ¶ 25. The only potentially tangible economy of scale identified—Hydro One's \$40 million Move-to-Mobile technology—is not supported by evidence that it can, in fact, be shared with Avista. Hr'g Tr. 87. Additionally, the benefit to Montana customers is *de minimis*. This transaction will not provide Montana customers with short-term rate reduction benefits, as the Applicants state it is cost-prohibitive to commit a total proportional rate credit of \$190 for Montana customers. Appl. App. 8, Commitment 18, Hr'g. Tr. 202. Neither will this Transaction significantly affect the services received by Montana customers, as the Applicants repeatedly state that services will remain essentially the same post-closing. *See generally* Appl. ¶ 18 (“All of these features together with other provisions embedded within the Merger Agreement are designed to ensure that Avista's customers will continue to receive the service they have come to expect from a company that has been a Pacific Northwest presence for more than 100 years.”). Regardless, the intervening parties did not contest these issues and the Commission did not raise these issues through the additional issue process. The Commission accordingly applies the public interest standard to this case and declines to thoroughly examine the no harm to customers and net benefits test in this case. In future sale and transfer applications, the Commission may continue to apply all three standards.

adversely affected or harmed by the transaction,” the Wyoming PUC approved the proposed transaction under the public interest standard).

11. This case presents concerns for Montana’s electric generation. Avista owns a 15 percent share in both Colstrip Units 3 and 4. Dir. Test. Jason Thackson, p. 17, Table 2 (Mar. 6, 2018). In Idaho and Washington, Avista has agreed to an accelerated depreciation schedule for Colstrip Units 3 and 4. *In re Avista Corp.*, Docket U-170970, Settlement Stipulation and Agreement Attach A, p. 1 (Wash. Utils. and Transp. Comm’n Mar. 27, 2018) (“*Avista Washington Settlement*”); *In re Avista Corp.*, Consolidated Dockets AVU-E-18-09 and AVU-G-17-5, Stipulation and Settlement, Ex. A p. 22 (Idaho P.U.C. Apr. 13, 2018) (“*Avista Idaho Settlement*”). Arguably, accelerated depreciation removes an economic incentive for Avista to operate the assets because it limits Avista’s allowable revenue. See Hr’g Tr. 38:11–14 (Mr. Morris acknowledging that accelerated depreciation is “one of many strategies” interested parties have used to facilitate premature retirement of disfavored utility generation assets). As indicated by the different terminal depreciation years for each owner of Colstrip Units 3 and 4 in the table below, Avista’s agreed-to accelerated depreciation potentially creates regulatory and operational risks for the other Colstrip owners as each has diverging economic incentives to operate their respective share of the assets.

Owner	Colstrip Unit 3		Colstrip Unit 4	
	Ownership Percentage	Current Terminal Depreciation Year	Ownership Percentage	Current Terminal Depreciation Year
Avista ²	15%	2027	15%	2027
Puget Sound Energy	25%	2027	25%	2027
PacifiCorp	10%	2046	10%	2046
Portland General Electric	20%	2030	20%	2030
Northwestern Energy, LLC	0%	No ownership	30%	2043
Talen Energy, LLC	30%	Not a rate-regulated entity	0%	No ownership

² Avista’s ownership in Colstrip Units 3 and 4 is updated to reflect the changes proposed in the Idaho and Washington merger dockets. This does not reflect an endorsement by the Montana Commission of a terminal depreciation year of 2027.

Dir. Test. Jason Thackson, p. 17, Table 2 (Mar. 6, 2018); Hr'g Tr. 35:16–36:5, 40:6–41:2, 48:19–49:7, 122:21–124:16 (noting that operation, including closure, of Colstrip depends on the six owners).

12. Accordingly, the Commission applies the public interest standard with a focus on the potential impact on Montana electric generation.

FINDINGS OF FACT

13. This transaction involves the sale and transfer of Avista Corporation to Hydro One Limited.

14. Seller Avista is a publicly-traded electric and natural gas utility that provides electric generation, transmission, and distribution services to over 378,000 customers throughout Washington, Idaho, and Montana, as well as natural gas distribution to 342,000 customers throughout Washington, Oregon, and Idaho. Additionally, Alaska Electric Light & Power, a wholly-owned indirect subsidiary of Avista, provides electric generation, transmission, and distribution service to approximately 17,000 customers in Juneau, Alaska. Appl. ¶ 2. Avista's operations are primarily within the Western Interconnection power grid.

15. In Montana, Avista serves 32 retail electric customers in western Montana. Of these customers, 14 are Avista-owned structures or facilities, nine are Avista employees living in Avista-owned housing, and the remaining are small commercial customers with one non-Avista employee residential customer. *Id.* ¶ 3. Additionally, Avista owns a 15 percent share of Colstrip Units 3 and 4, each a 778 MW nameplate coal-fired generating facility, and Noxon Rapids, a 569.5 MW nameplate capacity hydroelectric generating facility.

16. Purchaser Hydro One Limited is a publicly traded Ontario Corporation, with two primary operating subsidiaries. The first, Hydro One Inc., offers rate-regulated services which comprise 98 percent of the company's operating revenue, while Hydro One Telecom Inc. provides non-rate regulated services which includes the majority of the remaining 2 percent of the company's operating revenue. *Id.* ¶ 17, Appendix 1:1. Hydro One Inc. is an investor-owned electric transmission and distribution utility that provides service to more than 1.3 million retail customers in Ontario, Canada. *Id.* ¶ 2. Hydro One's operations are located exclusively within the Eastern Interconnection power grid.

17. The aggregate purchase price of the transaction is approximately \$5.3 billion, comprised of a \$3.4 billion equity purchase, and the assumption of \$1.9 billion of Avista's debt. *Id.* If the transaction is approved, Avista will become a wholly-owned indirect subsidiary of Hydro One Limited—through its Ontario Corporation “Can Sub,” its Delaware Corporation “Olympus Holding Corp.,” and its Delaware Limited Liability Company “Olympus Equity LLC.” Supp. Test. Lopez, at 4. Upon closing, the New York Stock Exchange will delist Avista's common stock, and Hydro One will become Avista's sole shareholder. Appl. ¶ 16.

Depreciation of Colstrip Units 3 and 4

18. In this proceeding, Applicants have committed that the depreciation of Colstrip Units 3 and 4 will not deviate from the existing schedule as currently approved by the Commission. Suppl. Direct Test. Jason Thackston 2:20–4:24 (Mar. 27, 2018). Avista's most recent depreciation study bolsters this commitment by indicating a respective 2034 and 2036 end-of-life date for Colstrip Units 3 and 4. Suppl. Direct Test. Patrick Ehrbar 5:13–24 (Mar. 6, 2018). These commitments and the depreciation study are in tension with Applicant's settlements before the Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission. *Avista Washington Settlement Attach. A*, p. 1; *Avista Idaho Settlement Ex. A*, p. 22. In those jurisdictions, the Applicants have agreed to accelerate the end-of-useful life date to 2027 for both Units. These settlements continue the recent trend of utilities settling with interest groups to accelerate depreciation for ratemaking purposes of Colstrip Units 3 and 4. *See, e.g., In re Puget Sound Energy*, Consolidated Dockets UE-170033 and UG-170034, Order 08 ¶¶ 95–145 (Wash. Utils. and Transp. Comm'n Dec. 5, 2017) (establishing a 2027 accelerated depreciation date for Puget Sound Energy's ownership interests in Colstrip Units 3 and 4, where the utility had suggested 2035 as the more appropriate end-of-life date).

19. Under traditional ratemaking practices, depreciation schedules reflect the useful remaining life of the assets. 18 CFR § 101, FERC Uniform System of Accounts, No. 22 Depreciation Accounting (“Utilities must use a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property.”); James Bonbright, *Principles of Public Utility Rates* 270 (Albert Danielsen & David Kamerschen ed., 1988) (“Under a systematic and consistently applied program of rate regulation this procedure of capital-cost amortization through annual charges to revenue account is by no means one of mere bookkeeping. Instead, it is designed to afford a company an adequate

opportunity to recoup from ratepayers its investments in fixed assets during their estimated useful-service lives.”).

20. The record evidence in this docket, however, indicates that the accelerated depreciation adopted by Washington and Idaho for Colstrip Unit 3 and 4 does not reflect the remaining useful life of these assets and is not consistent with traditional ratemaking principles. *See* Suppl. Dir. Test. Ehrbar 5:13–18 (“The present depreciable life for Colstrip Units 3 and 4 is 50 years. With Colstrip Unit 3 placed in service in 1984 and Colstrip Unit 4 placed in service in 1986, these depreciable lives extend to 2034 and 2036, respectively.”), Ex. 9, p. 57 (summarizing the composite remaining useful life for CU3 as 16.8 years and CU4 as 18.7 years); DR PSC-024 (“A depreciation schedule’s implied remaining useful life of a power plant is a reflection of the estimated remaining useful life of a piece of plant for accounting purposes (e.g., the period over which to amortize the cost of the investment).”); Hr’g Tr. 131:2–9 (Acknowledging that the 2027 depreciation date was the result of an all-party settlement agreement and that “all other things being equal, in isolation, the depreciation rate for Colstrip would be 2034 and 2036 for Units 3 and 4 respectively, just as it has been.”).

21. Accordingly, the Commission declines to endorse any depreciation schedule for Colstrip Units 3 and 4. This issue will be addressed, as necessary, in future rate cases or other contested case proceedings before the Commission. To allow the Commission’s complete understanding of the Applicants’ plans for Colstrip Units 3 and 4, Applicants must provide the Commission with its integrated resource plans concerning its Montana generating resources when those plans became available.

22. The Applicants have assured the Commission that the accelerated depreciation adopted in other jurisdictions will not result in an early or different retirement date for Colstrip Units 3 and 4. *See* Second Supp. Test. Jason Thackston 3:21–4:2 (Apr. 17, 2018) (“the Joint Applicants did not in Washington nor in Idaho, as a part of the merger process, commit to anything that would cause an early shutdown of the Colstrip units.”); Hr’g Tr. 27:20–28:19 (Mr. Morris, Avista’s Chairman and CEO, testifying that closure of Colstrip Units 3 and 4 will require approval of the six owners and will be subject to future regulatory proceedings), 36:11–22 (Mr. Morris stating accelerated depreciation, for ratemaking purposes, will not impact on the closure date of the plant), 51:6–52:3 (Mr. Morris stating “whether the plant’s been fully depreciated or not on the books has, really, nothing to do with its use and useful life.”), 56:24–

57:4 (Mr. Morris assuring the Commission that “nothing within the context of the merger . . . would accelerate the closure of the Colstrip plant”), 109:21–110:7 (Mr. Schmidt, Hydro One’s CEO and President, providing the same assurances to the Commission). The Commission approves this Application because of these representations from the Applicants. The Commission expects the Applicants to offer consistent representations before it and tribunals in other jurisdictions in future proceedings.

Commitments

23. To further support the Application, the Applicants list commitments to address common utility merger concerns. These commitments are an attempt to ameliorate various risks raised by the transaction. Specifically, they include commitments related to reservation of certain authority to the Avista Board of Directors; governance; business operations; local presence/community involvement; rate commitments; regulatory commitments; financial integrity commitments; ring-fencing commitments; environmental, renewable energy, and energy efficiency commitments; and community and low-income assistance commitments. Appl. App. 8.

24. Concurrent to this Application, the Applicants have submitted settlement agreements in other jurisdictions where regulatory approval is required, which include revised commitments. *See, e.g., Avista Washington Settlement* p. 25; *Avista Idaho Settlement*, Ex. A p. 23; *In re Avista Corp.*, Docket UM 1897, Stipulation, App. A pp. 46–47 (Or. P.U.C. May 25, 2018). The Commission adopts language similar to the most favored nations language used in these other jurisdictions. Specifically, the Commission reserves the right, on its own motion, to incorporate any heightened commitments established in other jurisdictions that are relevant to Montana. In the event of a conflict between such commitments approved in the State of Montana and those approved in other jurisdictions, the commitments that the Commission determines are more favorable to the public interest shall govern, where appropriate. The Applicants must supplement this Application with the final list of commitments determined in other jurisdictions.

CONCLUSIONS OF LAW

25. The Commission has provided sufficient notice of this proceeding, and an opportunity for interested persons to be heard. Mont. Code Ann. § 69–3–104 (2017); Mont. Admin. R. 38.2.1801 (2018).

26. The Commission has the full power of supervision, regulation, and control of public utilities. Mont. Code Ann. § 39–3–102.

27. Generally, the Commission’s broad authority includes the power to do all things necessary and convenient in the exercise of its powers. Mont. Code Ann. § 69–3–103(1).

28. Specifically, this broad authority includes the authority to approve, condition, or deny public utility sales, mergers, and acquisitions. *In re Babcock & Brown Infrastructure Ltd.*, ¶ 35; *In re Gas Natural, Inc.*, ¶ 17.

29. The Commission concludes that the transaction is in the public interest.

ORDER

30. The Applicants request for Hydro One Limited to purchase Avista Corporation, including the Settlement between the City of Colstrip and the Applicants, is APPROVED.

31. The Commission reserves the right, on its own motion, to incorporate any heightened commitments established in other jurisdictions that are relevant to Montana customers. In the event of a conflict between such commitments approved in the State of Montana and those approved in other jurisdictions, the commitments that the Commission determines are more favorable to the public interest shall govern, where appropriate.

32. The Applicants must supplement this Application with the final list of commitments determined in other jurisdictions.

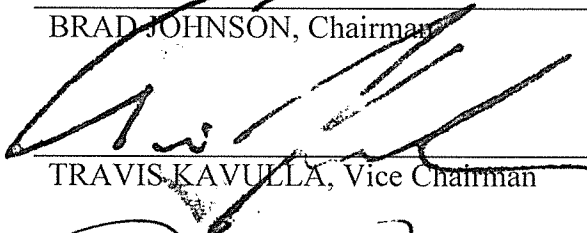
33. The Applicants must provide the Commission with its integrated resource plans concerning its Montana generating resources when those plans became available.

DONE AND DATED the 12th day of June, 2018, by a vote of 4-1, with Commissioner O’Donnell dissenting.

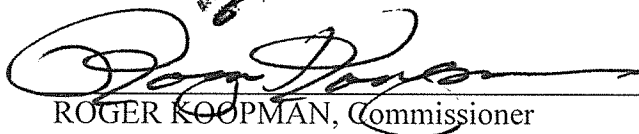
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



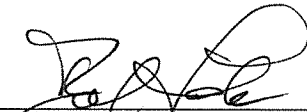
BRAD JOHNSON, Chairman



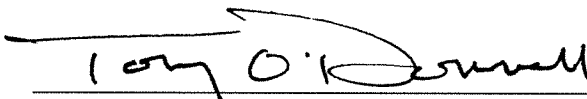
TRAVIS KAVULLA, Vice Chairman



ROGER KOOPMAN, Commissioner

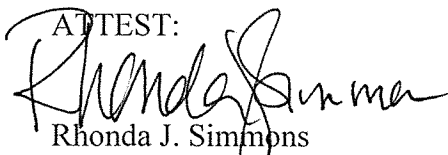


BOB LAKE, Commissioner



TONY O'DONNELL, Commissioner, Dissenting

ATTEST:



Rhonda J. Simmons
Commission Secretary

(Seal)



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Final Order issued on July 10, 2018 in Docket D2017.9.71 was served upon the following,

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Dated: July 10, 2018

/s/Sydney Kessel

Sydney Kessel, Administrative Assistant