



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

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IDAHO PUBLIC
UTILITIES COMMISSION

July 9, 2018

Transmitted Via Hand Delivery and E-mail

Diane Hanian, Commission Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83702
diane.holt@puc.idaho.gov

Re: Case Nos. AVU-E-17-09 and AVU-G-17-05

Dear Ms. Hanian,

Enclosed for filing with the Commission is the original and 7 copies of *IDWR's Notice of Intent to Consider Conditions; IDWR's Petition to Intervene*.

Please contact me if you have any questions.

Sincerely,

Garrick L. Baxter
Deputy Attorney General

Enclosures

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IDAHO PUBLIC
UTILITIES COMMISSION

LAWRENCE G. WASDEN
ATTORNEY GENERAL

DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division

GARRICK L. BAXTER, ISB #6301
EMMI BLADES, ISB # #8682
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
emmi.blades@idwr.idaho.gov

*Attorneys for the Idaho Department of
Water Resources*

BEFORE THE IDAHO PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE JOINT
APPLICATION OF HYDRO ONE
LIMITED AND AVISTA CORPORATION
FOR APPROVAL OF MERGER
AGREEMENT

CASE NOS. AVU-E-17-09
AVU-G-17-05

**IDWR'S NOTICE OF INTENT TO
CONSIDER CONDITIONS; IDWR'S
PETITION TO INTERVENE**

COMES NOW, Petitioner the Idaho Department of Water Resources ("IDWR"), by and through its undersigned attorneys of record, and hereby (1) provides notice to the Idaho Public Utilities Commission ("Commission") of IDWR's intent to consider appropriate conditions to require as part of any authorization and order issued by the Commission in this matter pursuant to Idaho Code § 42-1701(6); and (2) petitions the Commission for an order granting intervention

IDWR'S NOTICE OF INTENT TO CONSIDER CONDITIONS; IDWR'S PETITION TO INTERVENE – Page 1

to IDWR to become a party pursuant to the Commission's Rules of Procedure ("ROP"), IDAPA 37.01.01.071-075, so that IDWR may participate in the upcoming formal technical hearing currently scheduled for July 23, 2018.

1. The address and name of the Petitioner is:

Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

2. IDWR will be represented by the below counsel of record and effective immediately, all notices, correspondence, pleadings, filings, or other communications should be directed to the following persons at the address listed below:

Garrick L. Baxter
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098
garrick.baxter@idwr.idaho.gov

3. IDWR is an executive agency of the State of Idaho created pursuant to Idaho Code § 42-1701. All the waters of the State of Idaho, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are the property of the State of Idaho. Idaho Code § 42-101. IDWR, through its Director, Gary Spackman, directs and controls the distribution of the water resources of the State of Idaho. Idaho Code § 42-601.
4. Avista operates certain hydroelectric plants within the State of Idaho and holds or claims water rights for power generation purposes at these hydroelectric plants. These include,

but are not limited to water right or claim nos. 95-4518, 95-8003, 95-9115, 95-9119, 96-4565, 96-2179, 96-2180, and 96-2269.

5. IDWR has a direct and substantial interest in this proceeding and pursuant to Idaho Code §§ 61-328 and 42-1701(6) has the authority to participate in these proceedings and should be granted intervention as a matter of law. Idaho Code § 42-1701(6) provides, in relevant part:

(6)(a) Any authorization or order of the Idaho public utilities commission, under the provisions of section 61-328, Idaho Code, approving the sale, assignment or transfer of hydropower water rights used in the generation of electric power shall be issued only upon such conditions as the director of the department of water resources shall require as necessary to prevent any change in use of water under the water rights held for hydropower purposes that would cause injury to any water rights existing on the date of the sale, assignment or transfer. Any such conditions shall ensure that the public interest, as it pertains to the use of water under the hydropower water rights, will not be adversely affected. Conditions, if any, imposed by the director shall be subject to review under section 42-1701A(4), Idaho Code.

Idaho Code § 61-328 provides, in relevant part:

The commission shall include in any authorization or order the conditions required by the director of the department of water resources under section 42-1701(6), Idaho Code. The commission may attach to its authorization and order such other terms and conditions as in its judgment the public convenience and necessity may require.

6. IDWR is in the process of evaluating what conditions should be required pursuant to Idaho Code § 42-1701(6)(a). IDWR hereby provides notice to the Commission of IDWR's intent to consider appropriate conditions to require as part of any authorization and order issued by the Commission in the proceeding pursuant to Idaho Code § 42-1701(6)(a).
7. IDWR also seeks to intervene in this proceeding to make the Commission aware of IDWR's concerns with the proposed merger and its potential impact on Avista's historic

hydropower operations.¹ Pursuant to Idaho Code §§ 42-1701(6) and 61-328, IDWR should be permitted to intervene as a matter of right due to the mandatory duty of the Commission to consider and include any conditions required by the Director.

8. Because of IDWR's statutory right to participate in these proceedings, IDWR may commence its participation at any time. IDWR's request to intervene, therefore is timely. Moreover, a petition to intervene is timely filed if it is "filed at least fourteen (14) days before the date set for hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice." ROP 73. The Commission's *Order No. 33903* (Oct. 5, 2017) set a deadline of October 26, 2017, to petition to intervene for the purpose of participating at hearing, and *Order No. 33950* set a formal technical hearing for June 27, 2018. That case schedule was subsequently vacated and replaced with a new, amended schedule, which did not include a formal hearing date, prehearing conference date, or deadline for intervention. *Notice of Proposed Settlement; Notice of Modified Procedure; Notice of Public Hearings; Notice of Amended Schedule; Order No. 34061* (May 16, 2018). A formal technical hearing date was subsequently approved by the Commission to address the concerns and issues raised by the public. *Notice of Technical Hearing* (July 3, 2018). This Petition to Intervene is filed more than 14 days before the formal technical hearing, which is currently scheduled for July 23, 2018, and is thus timely under ROP 73. IDWR's intervention will not unduly broaden the issues in

¹ Avista has contacted IDWR and has suggested Idaho Code § 42-1701 does not apply to this proceeding. IDWR is filing this petition to intervene out of an abundance of caution, as IDWR believes that the issue of Avista's historical hydropower subordination is an issue of public concern and directly relates to the Commission's public interest considerations.

this matter. The issues of concern for IDWR are narrow and focus specifically on the public interest issues related to Avista's hydropower operations.

9. In the event that the Commission determines IDWR's petition to intervene is untimely, the Commission should conditionally grant the petition for good cause pursuant to ROP 73. IDWR was only recently made aware of this proceeding when asked by the Commission staff to provide the conditions it would require pursuant to Idaho Code § 42-1701(6). As the Commission must make specific findings with regards to the public interest, the Department has information relevant to this issue.

For the foregoing reasons, IDWR's Petition to Intervene should be granted to allow IDWR to intervene in this matter and participate in the July 23 technical hearing.

DATED this 9TH day of July 2018.

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division



GARRICK L. BAXTER
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9TH day of July 2018, I served a true and correct copy of the foregoing document on the following by the method(s) indicated.

AVISTA CORPORATION

David Meyer
Vice President and Chief Counsel of
Regulatory & Governmental Affairs
Avista Corporation
P.O. Box 3727
Spokane, WA 99220-3727
David.meyer@avistacorp.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Patrick Ehrbar
Director of Rates
State & Federal Regulation
Avista Corporation
patrick.ehrbar@avistacorp.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

HYDRO ONE LIMITED

Elisabeth Thomas
Kari Vander Stoep
Dirk Middents
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
liz.thomas@klgates.com
kari.vanderstoep@klgates.com
dirk.middents@klgates.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

James Scarlett
Executive Vice President & Chief
Legal Officer
Hydro One Limited
jscarlett@hydroone.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

COMMISSION STAFF

Brandon Karpen
Deputy Attorney General
Idaho Public Utilities Commission
472 W. Washington
P.O. Box 83720
Boise, ID 83720-0074
brandon.karpen@puc.idaho.gov

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

IDAHO FOREST GROUP, LLC

Ronald Williams
Williams Bradbury, PC
P.O. Box 388
Boise, ID 87301
ron@williamsbradbury.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Larry A. Crowley, Director
The Energy Strategies Institute, Inc.
5549 S. Cliffsedge Ave.
Boise, ID 83716
crowleyla@aol.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Dean J. Miller
deanjmiller@cableone.net

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

CLEARWATER PAPER CORPORATION

Peter J. Richardson
Richardson Adams, PLLC
515 N. 27th St.
Boise, ID 83702
peter@richardsonadams.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Dr. Don Reading
6070 Hill Road
Boise, ID 83703
dreading@mindspring.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

carol.hauen@clearwaterpaper.com

- Email

marv@malewallen.com

- Email

john.jacobs@clearwaterpaper.com

- Email

david.wren@clearwaterpaper.com

- Email

nathan.smith@clearwaterpaper.com

- Email

COMMUNITY ACTION PARTNERSHIP ASSOCIATION OF IDAHO

Brady M. Purdy
Attorney at Law
2019 N. 17th St.
Boise, ID 83702
bmpurdy@hotmail.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

IDAHO CONSERVATION LEAGUE

Benjamin J. Otto
Idaho Conservation League
710 N. 6th St.
Boise, ID 83702
botto@idahoconservation.org

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

WASHINGTON AND NORTHERN IDAHO DISTRICT COUNCIL OF LABORERS

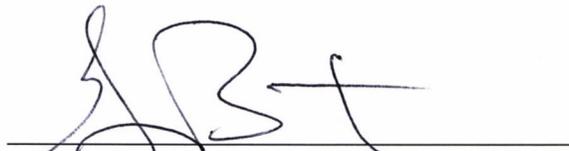
Danielle Franco-Malone
Schwerin Campbell Barnard
Iglitzin & Lavitt LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119-3971
franco@workerlaw.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

AVISTA CUSTOMER GROUP

Norman M. Semanko
Parsons Behle & Latimer
800 West Main Street, Ste. 1300
Boise, Idaho 83702
nsemanko@parsonsbehle.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



Garrick L. Baxter