

Benjamin J. Otto (ISB No. 8292)
710 N 6th Street
Boise, ID 83701
Ph: (208) 345-6933 x 12
Fax: (208) 344-0344
botto@idahoconservation.org

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for the Idaho Conservation League

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)	CASE NO. AVU-E-17-09
APPLICATION OF HYDRO ONE)	AVU-G-17-05
LIMITED AND AVISTA)	
CORPORATION FOR APPROVAL OF)	IDAHO CONSERVATION LEAGUE
MERGER AGREEMENT)	COMMENTS

The Idaho Conservation League (ICL) recommends the Idaho Public Utilities Commission approve this merger agreement. ICL, alongside the PUC Staff, Clearwater Paper, and Idaho Forest Group, reviewed the filings in the case and participated in the settlement negotiations that resulted in the merger agreement. Based on this engagement, ICL believes this merger meets the criteria in Idaho Code 61-328.

- 1) The transaction is in the public interest because it maintains local oversight of the utilities while delivering immediate benefits to customers, as well as additional commitments by utility shareholders to further invest in local communities;
- 2) Because of the monthly rate credits and other protections, the costs and rates for service will not increase due to this transaction;
- 3) Hydro One, as the acquiring entity, has made specific commitments that establish a bona fide intent and ability to continue to operate and maintain Avista service to Idahoans.

This merger agreement combines two utilities - each primary owned by private shareholders - into a single utility owned primary by private shareholders, Hydro One. Importantly the utilities make specific commitments in the merger agreement to ensure the Idaho Commission retains the same ability and authority to oversee Avista in Idaho regardless of which shareholders own the utility. Because the utilities have made specific commitments to meet the criteria in Idaho Code 61-328, and because the utilities promise to make substantial investments in energy conservation for Idahoans, ICL recommends the Commission approve this merger.

The Commission and Idaho Stakeholders Retain Full Oversight of Avista

As Avista customers and Idahoans, ICL and our individual members have a strong interest in retaining oversight of Avista utilities. We have consistently used the tools and forum offered by the PUC to engage with Avista to achieve our members goals – ensure reliable, affordable service that protects Idaho’s air and water quality. ICL intervened in this merger docket to ensure that Idahoans retain full authority to review Avista’s rates, conservation programs, and plans for clean energy options.

ICL notes the merger agreement includes specific commitments to ensure Idaho retains oversight authority:

- *Commitment 20, 30, 31* – submission to Idaho Commission and State Court jurisdiction for disputes and enforcement of orders.
- *Commitment 21* – agree to comply with existing Commission orders.
- *Commitment 22, 23, and 24* – promises to make accounting details available and transparent.

Another aspect of retaining local influence is whether Avista managers and executives maintain a local connection to the communities they serve. ICL notes the merger agreement contains specific commitments to retain a local connection with Avista, including:

- *Commitment 9 and 10* – Avista will maintain the same headquarters and local offices, as well as the local staffing levels necessary to maintain service quality.
- *Commitment 1, 2, 3, and 4* – the majority of the seats of the Avista Board will be residents of the northwest region and have authority to manage the utility; Avista will strive to maintain executive managers; these local leaders will maintain the brand and establish the plan of operations for Avista.
- *Commitments 5, 12, 13, and 14* – Avista will maintain current levels of local economic development and community engagement.

ICL acknowledges the public comments that express concerns about losing oversight of Avista’s rates, services, and local engagement as a result of this merger. As Idahoans and Avista customers, ICL shares these concerns. At the same time, we acknowledge that as private companies Avista and Hydro One have the right to pursue economic decisions as long as they comply with Idaho law. The commitments in the merger agreement, and the authority and ability

for the Idaho Commission to exercise continuing oversight of Avista, effectively address this concern.

The Merger Delivers Immediate Benefits to Idahoans.

Before approving the merger agreement, the Idaho Commission must find the transaction is in the public interest and not cause rates to increase. Idaho Code 61-328(3). This merger agreement includes specific commitments that will produce immediate benefits for customers and ensure continued access to affordable capital for the utilities.

- *Commitment 16 and 19* – promise to pass on cost savings to customers including an immediate \$15.3 million over five years in credits on month energy bills.
- *Commitment 15* – promise to maintain service quality metrics and performance as determined in concert with the Idaho PUC Staff.
- *Commitments 25, 34, and 38* – promise to maintain current costs of debt and equity included in rates, enable Avista to access capital on reasonable terms, and limit the return of earnings to shareholders.

The merger agreement also includes specific commitments to make long-term investments in Idaho communities. These commitments ensure the transaction is in the longer-term public interest.

- *Commitment 11 and 61* - \$20 million over five years of community donations through the Avista Foundation, including an effort to apportion awards in Idaho according to our share of the overall service territory.
- *Commitment 58* - \$5.3 million over 10 years for new investments in energy conservation, weatherization, and low-income needs as determined by a group of Idaho stakeholders. ICL, as a party to this merger is a member of this stakeholder group. We envision inviting additional stakeholders to join this effort to ensure the resulting investments benefit local communities.
- *Commitment 55* – convene an Idaho stakeholders group to explore opportunities for beneficial transportation electrification. Idaho currently imports 100 % of our vehicle fuels and has some of the highest gasoline prices in the country. ICL strongly supports electrifying transportation as an opportunity to invest in our local communities by redirecting fuel dollars to locally produced fuel sources.

Importantly for ICL and our members, the merger agreement includes specific commitments to address the outstanding liability of Colstrip and plan for a reliable, affordable clean energy future. ICL notes the commitments in the merger agreement create a pathway to address this transition and the Commission and others have opportunities to engage in specific resource decisions along this pathway.

- *Commitment 69* – promise to support 2027 as the end of life for depreciation purposes in three subsequent dockets that will focus on the plant costs, the options to recoup this costs, and the integrated resource plan to consider replacement options. ICL supports this commitment because it creates a predictable pathway to resolve this issue.
- *Commitment 52, 53, and 71* – improvements to the Integrated Resource Planning process to ensure accurate data on clean energy options, include power purchase agreements as a resource options, and focus on the transmission impacts of retiring Colstrip. ICL supports these commitments because they will help create a more accurate and robust assessment of clean energy replacement options.

The primary reason ICL supports this merger agreement is because of the direct benefits to Idahoans. The rate credits deliver immediate benefits to all Avista customers. Idaho stakeholders will guide the future investments to ensure long-term benefits to customers. And the pathway for a clean, affordable energy future provides Idahoans with a means to resolve a major outstanding liability in the Colstrip plant. As a package, the merger agreement serves the public interest and will not cause rates to increase.

The Merger Agreement Demonstrates Hydro One Intends and is Able to Maintain Service

The final criteria the Commission must consider is whether the acquiring entity has the “bona fide intent and financial ability to operate and maintain said property in the public interest.” Idaho Code 61-328 (3). ICL interprets this prong to include operational and planning efforts covered by the commitments noted above, along with additional commitments to “ring fence” Avista from Hydro One. ICL notes the merger agreement includes specific commitments to prevent Hydro One from draining the finances of Avista.

- *Commitment 42* – creating a “Golden Share”, a sophisticated legal tool that limits the ability of shareholders to force a company into involuntary bankruptcy by providing a neutral, third party trustee with voting powers regarding bankruptcy filing.

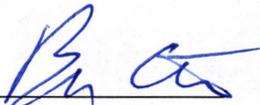
- *Commitment 44* - providing a non-consolidation opinion that shows the corporate structure insulates Avista from implications of a possible Hydro One bankruptcy.
- *Commitment 46* – promise by Hydro One not to use Avista assets to acquire loans or benefits for Hydro One.
- *Commitment 47* – promise by Hydro One to “hold Avista customers harmless from any business and financial risk exposure” associated with Hydro One and its affiliates.
- Commitments 50 and 51 – requiring Commission approval before issuing any debt or lending between the utilities.

ICL acknowledges that establishing bona fide intent for future actions can be difficult. In our experience engaging with the utilities in this docket, ICL has the distinct impression the companies fully intend to meet these commitments. Tangibly, the utilities made specific legal, financial, and reporting commitments that enable this Commission to monitor and enforce the utilities’ intent and ability to maintain service for Idahoans.

Conclusion

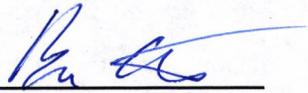
It is an important event to have one of Idaho’s major utilities acquired by a company new to our region. As Idahoans and Avista customers, ICL engaged in this docket to ensure broad public benefits and continue to promote our member’s interest in an affordable, reliable, and clean energy future. Based on our review of the case, negotiations with the parties, and the specific commitments by the utilities ICL recommends Commission approve this settlement.

Respectfully submitted this 20th day of June 2018,


Benjamin J. Otto
Idaho Conservation League

CERTIFICATE OF SERVICE

I certify that on the 20th day of June 2018, I delivered true and correct copies of the foregoing COMMENTS to the following via the service method noted:


Benjamin J. Otto

Hand delivery:

Diane Hanian
Commission Secretary (Original and seven copies provided)
Idaho Public Utilities Commission
427 W. Washington St.
Boise, ID 83702-5983

Electronic Mail only:

Avista
David J. Meyer, Esq.
Patrick Ehrbar
Avista Corporation
David.meyer@avistacorp.com
Patrick.ehrbar@avistacorp.com

Clearwater Paper
Peter J. Richardson
Richardson & Adams, PLLC
peter@richardsonadams.com

Dr. Don Reading
dreading@mindspring.com

Hydro One
James Scarlett
Hydro One
jscarlett@hydroone.com

Community Action Partnership Association
Brad M Purdy
Attorney At Law
bmpurdy@hotmail.com

Elizabeth Thomas, Partner
Kari VanderStoep, Partner
K&L Gates, LLP.
Liz.thomas@klgates.com
Kari.vanderstoep@klgates.com
Dirk.middents@klgates.com

*Washington and Northern Idaho District
Council of Laborers*
Danielle Franco-Malone
Schwerin Campbell Barnard Iglitzin & Lavitt
LLP.
franco@workerlaw.com

Idaho Forest Group
Ronald L. Williams
Williams Bradbury, P.C.
ron@williamsbrandbury.com

Dean J. Miller
deanjmiller@cableone.net

Larry A Crowley
The Energy Strategies Institute, Inc.
crowleyla@aol.com