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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)
APPLICATION OF HYDRO ONE LIMITED) **CASE NO. AVU-E-17-09**
AND AVISTA CORPORATION FOR) **AVU-G-17-05**
APPROVAL OF MERGER AGREEMENT)
) **COMMENTS OF THE**
) **COMMISSION STAFF**
) **ON SETTLEMENT**
) **STIPULATION**
)

The Staff of the Idaho Public Utilities Commission submits the following comments in the above captioned matter.

BACKGROUND

On July 19, 2017, Avista announced that it had entered into a merger agreement with Hydro One (Applicants). On September 14, 2017, the Applicants filed the above captioned joint application for approval of the merger. Approval of the Application would result in Avista becoming a wholly owned subsidiary of a Hydro One holding company. Idaho Forest Group, Clearwater Paper, Idaho Conservation League (ICL), the Community Action Partnership Association of Idaho (CAPAI), and the Washington and Northern Idaho District Council of Laborers intervened as parties. On April 4, 2018, the parties engaged in settlement discussions at the Commission Office. On April 13, 2018, the Applicants filed a Motion for Approval of Stipulation notifying the Commission that the parties had reached a full settlement.

The following comments are provided in support of the proposed settlement.

STIPULATION AND SETTLEMENT

1. Governance and Operational Commitments

All decision-making authority over Avista operations will belong to the Board of Directors of the Avista Corporation, and not to Hydro One. Any change in this authority will require a two-thirds vote of the Avista Board, and approval of local regulatory agencies. Avista will retain all current executive management of Avista, subject to voluntary retirements, and standard business rationale.

Following approval of the merger, the Avista Board will consist of nine members: two designated by Hydro One; three independent directors who reside in the Pacific Northwest;¹ three current members of Avista's current board; and Avista's current CEO will remain and serve as chairman of the board following closing.

Avista will maintain branding, and the Avista headquarters will remain in Spokane. Avista offices will remain in their current territory locations. Avista will maintain or expand capital investments for community economic development. The Company will further maintain its current workforce, with the same compensation and benefits.

2. Rate Commitments

There will be no rate increase because of the merger. Rather, Avista's Idaho customers will receive a \$15.8 million rate credit over a five-year period, or \$3.2 million per year. All costs associated with the transaction will be tracked separately and will not appear on Avista's utility books. Customers will not pay for any transaction or transition cost, including all legal work, advisory fees, acquisition premiums, documentation and materials, executive compensation, and any cost directly related to the transaction. Any technology expenditures required for compatibility within the merged entity will be excluded from rates.

¹ The Pacific Northwest is defined as Alaska, Idaho, Montana, Oregon, and Washington State.

3. Regulatory Commitments

Hydro One and its subsidiaries recognize the authority of Idaho, and the Idaho Commission, and have committed to comply, as required, with all applicable Idaho laws and Commission orders. Further, Hydro One and its subsidiaries commit to maintain and make available all books, records, and financial information to the Commission. Avista will maintain separate books and records. Hydro One committed to not use lack of jurisdiction to deny access to any records.

4. Financial Integrity Commitments

Hydro One will provide equity to support Avista's capital structure, and Avista will maintain separate debt to support its utility operations. Avista will maintain its pension funding policy, and Hydro One will not seek to change it. Avista will comply with all Securities Exchange Commission and Sarbanes-Oxley reporting requirements, as required by law.

5. Ring Fencing Provisions

Applicants agree to several provisions aimed at shielding Avista from any negative potential financial issues of Hydro One. These include authority over possible bankruptcy proceedings, a non-consolidation provision that a bankruptcy court would not order the substantive consolidation of the assets and liabilities of Avista with Hydro One, and that Hydro One would not seek to include Avista in a potential bankruptcy without the consent of two-thirds of Avista's board. Additionally, the Applicants agree that Avista's assets will not be pledged by Avista or any of its affiliates, including Hydro One, for the benefit of any entity besides Avista.

Hydro One agreed to a "hold harmless" provision, under which Hydro One will hold Avista's customers harmless from any business and financial risk exposures associated with Hydro One, and any Hydro One affiliate. The hold harmless provision states that in any proceeding before the Commission involving rates, the rate of return will be determined without regard to unregulated activities. Additionally, Avista will not enter into an inter-company debt transaction, or lend money to Hydro One without prior Commission approval.

6. Resource Planning and Environmental Commitments

Avista will continue to offer renewable power programs in consultation with stakeholders. However, in all resource planning and acquisition efforts, Avista will also evaluate demand-side resources, renewable energy, Power Purchase Agreements, and all other resources consistent with the Commission's resource evaluation rules and policies.

7. Energy Efficiency, Weatherization, and Conservation Commitments

Hydro One will arrange funding of \$5.3 million over a ten-year period to fund energy efficiency, weatherization, conservation, and low-income assistance programs. The funds will be directed by the Energy Efficiency, Weatherization, Conservation, and Low-Income Assistance Committee (EWCL). The EWCL is a new committee consisting of Avista, Commission Staff, the Lewiston CAP Agency, ICL, the Idaho Forest Group, and Clearwater Paper. The EWCL will determine if programs should receive this funding to address energy efficiency, weatherization, conservation, and low-income needs in Avista's Idaho service territory.

As part of the proposed settlement, the parties agree that Avista will work with Clearwater and Idaho Forest Group to qualify certain projects for funding under Tariff Schedule 90 (DSM), and submit any non-qualifying portions of those projects to the EWCL to consider for further funding.

Hydro One and Avista will work with the Lewiston CAP Agency to improve the penetration of low-income programs. Avista will also work to fund bill payment assistance for low-income customers, and will continue to offer the Fee Free Payment Program to residential customers.

8. Miscellaneous Commitments

Following closing, there will be a one-time \$7 million contribution to Avista's charitable foundation. For five-years after the close of the transaction, Avista will maintain a \$4 million annual budget for charitable contributions, and will also contribute \$2 million each year to Avista's charitable foundation. Avista agrees it will work to distribute these monies across its service territory proportionally across jurisdictions.

For accounting purposes, Hydro One and Avista agree to support a December 31, 2027, depreciation end of life relating to Avista's ownership in Colstrip Units 3 and 4. The Applicants also agree that they will support accelerated depreciation in Avista's interest in Colstrip Units 3 and 4 in Avista's pending Federal Tax Revision case, Case No. GNR-U-18-01; Avista's Application to Change Its Electric and Natural Gas Depreciation Rate, Case Nos. AVU-E-18-03, AVU-G-18-02; and in its 2019 Integrated Resource Plan.²

² Avista's 2019 IRP will analyze multiple retirement dates for Colstrip Units 3 and 4, not limited to, the "end of useful life" date determined in AVU-E-18-03, AVU-G-18-02.

Finally, the settlement also includes a most favored nations clause that allows the Commission to consider, and adopt in Idaho any commitments the Applicants agree to in other jurisdictions. This provision applies even if such commitments are agreed to after the Commission enters its order in this docket.

STAFF REVIEW

Staff began its investigation as soon as the announcement was made on July 19, 2017, that Avista Corporation had entered a Merger Agreement with Hydro One Limited. Staff was concerned that the assets of the operating utility and its customers be protected. Like with any other sale or merger, Staff's investigation centered on meeting the requirements of Idaho Code § 61-328 to assure the transaction is in the public interest. Section 61-328 requires authorization by order of the Commission before an electric public utility owning, controlling or operating any property located in Idaho used in the generation, transmission, distribution or supply of electric power or energy to the public may merge, sell, lease, assign or transfer, directly or indirectly, such property, or the operation, management or control thereof. Section 61-328 requires that before authorizing such a transaction, the Commission must find: (1) the transaction is consistent with the public interest; (2) the transaction will not cause the cost of rates for supplying electricity to increase; and (3) that Hydro One has the intent and financial ability to operate and maintain Avista's operations in Idaho. Staff believes all three requirements are met and demonstrated in the Stipulation and Settlement.

The investigation included analyzing potential changes to the utility structure, protecting Avista assets, retaining positive operations, assuring customer rates would not increase due to the transaction in fact the merger will result in rate credits reducing customer rates, and obtaining other positive benefits for customers. In addition to its review and analysis of the Application and Proposed merger, Staff analyzed over 300 Production Request Responses requested in this case by the Staff and intervenors. Staff also reviewed simultaneous cases in Washington and Oregon. All customer comments and concerns were considered and evaluated. Staff believes the Stipulation and Settlement between all parties to this case include terms to properly provide necessary protections and benefits to all customers.

The merger will improve Avista's access to capital. Hydro One is rated "A" by Standard and Poors (S&P) for Hydro One's long-term credit rating. Moody's rating is "A3" for Hydro One senior unsecured regular bonds. Avista's Corporate Credit Rating is "BBB" by S&P and

“Baa1” by Moody’s. Avista is rated “A-” for senior secured debt. The majority of operations for both Avista and Hydro One are generated from rate-regulated operations. Based on credit ratings alone, the risks for both Avista and Hydro One are similar. Hydro One could have lower financing costs with its better ratings.

Commitment numbers 1 - 15 provide utility operating protections by retaining decision making with the Avista Board of Directors. The ownership will change but the management team, employees, and business operations will stay the same. This benefits customers and the communities served by retaining local decision-making authority for business operations and community involvement. Commitment 11 establishes a minimum annual budget for charitable contributions for at least five years. Any contribution payments made are not included in Idaho customer rates but benefits are still received. Commitment 15 provides for the continued development of performance standards and customer guarantees to protect and benefit customers.

Commitment numbers 16 - 19 provide benefits in customer rates. Customer rates will include net cost savings from the merger but all costs related to the merger will be excluded from rates. Avista retail electric and gas customers will receive merger rate credits for five years. The annual credits of approximately \$3.2 Million reduce customer bills from the level they would have been otherwise absent the merger.

Commitment numbers 20 - 51 provide regulatory, financial, and ring-fencing provisions to protect customers from any negative actions that may occur with Hydro One. While many of these commitments specifically spell out existing authorities and protections, others establish new levels of protection for Avista Idaho customers. Idaho law will still be followed with all legal requirements met. The Idaho Public Utilities Commission (IPUC) will retain jurisdiction and all IPUC orders, both existing and future orders, must be followed by Avista and all parent affiliated entities related to or impacting Idaho rate-regulated operations. All reporting and record keeping requirements will continue to be met at the state and federal levels. This includes annual reports, accounting records and requirements, Securities Exchange Commission (SEC) and Sarbanes Oxley requirements. Ring-fencing provisions have been added including the Golden Share and an Independent Director. The Golden Share is an important protection for Avista and its customers in the event of any bankruptcy filings. The name may seem nefarious but the provision is designed to protect Avista in the event of a voluntary Hydro One bankruptcy proceeding. A Golden Share provision is a common merger and acquisition term.

The remaining commitments provide resource and service provisions. Commitment 58 establishes new funding of \$5.3 Million for energy efficiency, weatherization, conservation, and low-income assistance programs. These funds will enhance opportunities beyond current programs to benefit all customers. A new stakeholders committee of customer groups, Staff and Avista will be formed to determine how these funds will be utilized. The Fee Free Payment Program and Service Rules will continue to benefit customers. Meter placement and protection policies and practices will continue to be reviewed to make improvements.

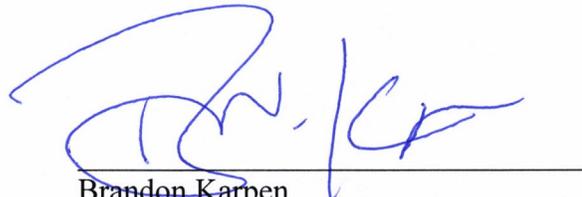
Colstrip Units 3 and 4 are coal plants currently being evaluated for early retirement by many parties in multiple states. The accounting depreciable life, depreciation expense and decommissioning costs will be evaluated in separate cases. See AVU-E-18-03 and AVU-G-18-02.

Commitment 73 is a most favored nations clause. It will allow Idaho parties and ultimately the Idaho Commission to adopt all agreed upon commitments by the Applicants in other states to be adopted in Idaho. This provision applies even after an Idaho order is issued.

STAFF RECOMMENDATION

Staff recommends the Commission find that the Stipulation and Settlement is in the public interest and is fair, just and reasonable. Staff recommends it be adopted in full.

Respectfully submitted this 20th day of June 2018.



Brandon Karpen
Deputy Attorney General

Technical Staff: Terri Carlock

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 20TH DAY OF JUNE 2018, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF ON SETTLEMENT STIPULATION**, IN CASE NOS. AVU-E-17-09/AVU-G-17-05, BY E-MAILING AND MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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