

## DECISION MEMORANDUM

**TO:** COMMISSIONER KJELLANDER  
COMMISSIONER RAPER  
COMMISSIONER ANDERSON  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL

**FROM:** BRANDON KARPEN  
DEPUTY ATTORNEY GENERAL

**DATE:** JULY 9, 2018

**SUBJECT:** PETITION OF "AVISTA CUSTOMER GROUP" FOR INTERVENTION  
IN THE AVISTA-HYDRO ONE MERGER;  
CASE NOS. AVU-E-17-09, AVU-G-17-05.

On July 19, 2017, Avista announced that it had entered into a merger agreement with Hydro One. 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.

On October 5, 2017, the Commission issued an Order providing notice of the filing and setting a deadline for interventions of October 26, 2017. Order No. 33903. The Commission granted timely-filed motions to intervene from 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 (WNIDCL). Order Nos. 33914, 33916, 33931, and 33932. On December 20, 2017, the Commission scheduled a Technical Hearing date of June 27, 2018. Order No. 33950.

After settlement discussions amongst the parties, on April 13, 2018, the Applicants filed a Motion for Approval of Stipulation notifying the Commission that all parties had reached a full settlement, and requested that the settlement be processed by modified procedure. The Commission granted that request, vacated the technical hearing, and issued notice of proposed settlement and a comment deadline of June 20, 2018, and a reply deadline of June 27, 2018. Order No. 34061. Commission Staff, CAPAI, and the Idaho Conservation League filed timely comments in support of the Stipulation.

After receiving ample public input on the proposed merger, on June 22, 2018, Commission Staff recommended that the Commission reschedule the technical hearing to address concerns and issues raised by the public. The Commission likewise scheduled a public hearing confined to those issues.

On June 27, 2018, a late motion to intervene was filed by the “Avista Customer Group (ACG),” which identified itself as “an unincorporated nonprofit association, composed of utility ratepayers, taxpayers and concerned citizens.” The group also filed untimely comments opposing the proposed settlement. The group claimed its intervention was timely because it is at least fourteen days before the scheduled hearing. Petition to Intervene at 2-3.

#### **LATE PETITIONS TO INTERVENE**

Commission Rules provide that a petitioner seeking intervention must state its “direct and substantial interest . . . in the proceeding.” IDAPA 31.01.01.072. Petitions to intervene that are not timely filed “must state a substantial reason for delay.” IDAPA 31.01.01.073. “The Commission may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons.” *Id.* Also, “Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition.” *Id.*

#### **ACG’S PETITION FOR INTERVENTION**

ACG stated it is “is an unincorporated nonprofit association, composed of utility ratepayers, taxpayers and concerned citizens, including electrical and natural gas utility service customers of the Co-Applicant, Avista Corporation.” Petition at 2. ACG explained that its members “stand to be impacted by potential cost or rate increases resulting from the proposed merger.” *Id.* As a result, ACG stated that it has a direct and substantial interest in the merger docket. *Id.* ACG ignored Commission Order No. 33903, and claimed its petition is timely because is it more than fourteen days before the upcoming technical hearing.

Alternatively, ACG stated that if the Commission determined that its petition is untimely, it should be granted nonetheless, “for good cause.” *Id.* at 3. ACG stated that its late petition was filed because its group “was only recently formed, in response to the proposed merger and settlement.” *Id.* According to ACG, “[n]o other party can adequately represent the interests of ACG,” and that its “participation will assist the Commission with its duty to independently review the settlement proposal....” *Id.* ACG concluded that its “intervention

would not disrupt the proceedings, prejudice the existing parties, or unduly broaden the issues; and there is good cause for granting intervention.” *Id.* at 4.

On July 6, 2018, Avista filed a response to the proposed ACG intervention. Avista raised several concerns with the proposed intervention. Primarily, Avista questioned whether ACG satisfied the requirement of Rule 74, as there is no clear answer of whom the ACG purports to represent, if they are Avista customers or even Idaho residents. Response at 1-2. Further, Avista submitted that the ACG’s self-described status description indicates that the group “will, in fact, unduly broaden the issues.” *Id.* at 2.

Nonetheless, noting the extent of issues with ACG’s intervention, the Applicants “do not object to the proposed intervention, so long as the issues are not unduly broadened beyond what was set forth in the ACG Comments filed on June 27, 2018.” *Id.* at 3.

Applicants also filed a motion for leave to file reply comments to ACG’s written comments. Included with the motion are the proposed comments in response to ACG’s written comments. Applicants claimed that good cause exists for the Commission to allow the Applicants’ reply to ACG, and that the “Reply Comments squarely address the ACG Comments,” and that “[t]he creation of a better record will be served by entertaining these comments, further answering the expressed concerns of the ACG.” Motion at 2-3.

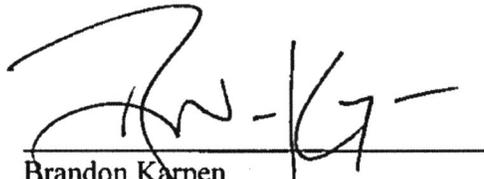
### COMMISSION DECISION

Does the Commission wish to find that ACG has timely intervened?

If not, does the Commission wish to find that ACG has shown good cause for its late petition, identified direct and substantial interest in this case, and that its intervention will not unduly broaden the issues, and thus grant the late petition to intervene and accept ACG’s comments?

Does the Commission wish to grant Avista’s motion to reply to ACG’s comments?

If the Commission grants ACG’s request to intervene, does the Commission wish to add any conditions to that intervention? (Limitations on discovery, witnesses, participation at the technical hearing?)

  
Brandon Karpen  
Deputy Attorney General