

**ASSEMBLY STANDING COMMITTEE  
COMMITTEE OF THE WHOLE  
THE CITY AND BOROUGH OF JUNEAU, ALASKA**  
February 5, 2018, 5:00 PM.  
Municipal Building - Assembly Chambers

Assembly Work Session - No Public Testimony

**I. ROLL CALL**

**II. APPROVAL OF AGENDA**

**III. APPROVAL OF MINUTES**

A. **January 29, 2018 Committee of the Whole Meeting**

**IV. AGENDA TOPICS**

A. **Proposed Purchase of AVISTA / AEL&P by Hydro One**

**V. ADJOURNMENT**

ADA accommodations available upon request: Please contact the Clerk's office 72 hours prior to any meeting so arrangements can be made to have a sign language interpreter present or an audiotape containing the Assembly's agenda made available. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: [city.clerk@juneau.org](mailto:city.clerk@juneau.org)

**ASSEMBLY STANDING COMMITTEE  
COMMITTEE OF THE WHOLE  
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

January 29, 2018, 6:00 PM.

Municipal Building - Assembly Chambers

Assembly Worksession - No Public Testimony

**I. ROLL CALL**

Deputy Mayor Jerry Nankervis called the meeting to order at 6:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Rob Edwardson, Maria Gladziszewski, Norton Gregory, Loren Jones, Jesse Kiehl, Ken Koelsch, Jerry Nankervis, and Beth Weldon.

Assemblymembers Absent: None.

Staff present: Rorie Watt, City Manager; Amy Mead, Municipal Attorney, Mila Cosgrove, Deputy City Manager; Laurie Sica, Municipal Clerk; Bob Bartholomew, Finance Director; Rob Steedle, Community Development Director; Roger Healy, Engineering and Public Works Director; Beth McKibben, Planning Manager; Michele Elfers, Chief Landscape Architect.

**II. APPROVAL OF AGENDA**

**III. APPROVAL OF MINUTES**

**A. January 3, 2018 Committee of the Whole Minutes**

Hearing no objection, the minutes of the January 3, 2018 Committee of the Whole meeting were approved.

**B. January 18, 2018 Committee of the Whole**

Hearing no objection, the minutes of the January 18, 2018 Committee of the Whole meeting were approved with minor corrections.

**IV. AGENDA TOPICS**

**A. RecycleWorks Update**

Michele Elfers said the Planning Commission reviewed and recommended the sale of the CBJ parcels and the purchase of property in Lemon Creek to facilitate the RecycleWorks project. The Notice of Recommendation from the Planning Commission was provided as additional material to the packet. She will be returning with more information for the Assembly at a future meeting.

**B. Energy Strategy**

Duff Mitchell, Chair of the Juneau Commission on Sustainability (JCOS), provided a presentation to the Assembly. He quoted from CBJ Resolution 2528, "A sustainable community seeks to advance the economic, social, environmental and governmental well-being of the community without compromising the of life of future generations."

He thanked people who have been involved with the project, including Beth McKibben and Tim Felstad on the CBJ staff, and JCOS members Amy Skilbred, Ben Haight, Bob Deering, Clint Gundlefinger, Daryle Weatherall, John Smith, Greg Smith, Haight Bevigny, Sara Truitt, Ed King, Myrna Gardner, Percy Frisby, Mike Levine, Maria Gladziszewski, Kate Troll and Jerry Nankervis.

The JCOS asked the Assembly to adopt the Renewable Energy Strategy by resolution. Juneau is blessed with renewable energy resources, a supportive community and intelligent leaders, and can be a sustainable energy world leader. The strategy is a direction document. A strategy is overarching, and is not a tactical step-by-step plan. Because things change so quickly, we don't want the plan to be too detailed.

Steve Behnke, former Chair of the JCOS, provided an outline of the strategy, which considers the current situation in Juneau, and a direction and guide to achieve goals. He was thankful for the 100's of volunteer hours by commissioners, staff and the public in the involvement through the multi-year process of developing the Climate Action Plan, adopted in 2011, and which continued in 2015 when Stantec was hired as a consultant. A draft energy plan was released in July 2016, followed by 7 public meetings and 120 public comment. The efforts have culminated to this meeting tonight. Statistics on energy use are included in the strategy. Currently electricity makes up 20% and wood makes up 3% of Juneau's energy sources, which are considered renewable. The balance is comprised of a variety of fossil fuels. The strategy envisions a goal of achieving 80% renewable energy use by 2045. The room was full of citizens bearing stickers with the statement "80% Renewable." Renewables have been proven to maintain stable costs over time. Solar and wind in the lower 48 are reducing costs. The goal does not impose requirements upon people but is a direction, a community statement of interest. It is intended to open up policies. He outlined four priority strategies: implement a CBJ energy management plan, reduce dependence on fossil fuels for space heating, reduce dependence on fossil fuels for transportation and support new renewable energy suppliers for Juneau.

Ms. Weldon supported the strategy and expressed concerns about a lack of cost / benefit analysis. Mr. Behnke said the study effort of JCOS did not provide the time or funds for detailed cost analysis, but provided starting points for government, businesses and public private partnerships to use to implement the four strategies. CBJ staff and JCOS can use these for taking further action to provide budget numbers to the Assembly for implementation. Further detailed work could be done with the Assembly's support.

Mr. Kiehl said that one of the criteria for evaluating possible actions was "significant energy savings" and he asked what the threshold for determination was. Mr. Mitchell said there is some subjectivity between reviewers and the committee met with staff to make the determinations. Things evolve, costs and issues change and technology changes, so all will eventually take an updated review. There must be a cost benefit for all decisions.

Mr. Edwardson said this is aspirational and is a collection of practical ideas that may or may not apply depending on the project. The strategy is not binding.

Mayor Koelsch said he would like the resolution to reflect the current baseline and to acknowledge the work currently being done on renewable energy implementation.

Ms. Weldon said she believes in the goal of 80%, expressed concern that some changes to the building code recommended to improve energy usage could tip the balance for what is determined to be "affordable housing." Mr. Behnke said that some building code changes may tip either way - add costs or save people money. Any code changes would be reviewed by the Building Code Advisory Committee and the Assembly.

Ms. Weldon said her only recommended change to the resolution would be to emphasize that the strategy is a guide and is not binding without the provision of cost analysis. Ms. Mead said resolutions are policy documents and there is nothing in the plans that are automatically implemented, all actions have subsequent deliberations before actions are made.

Mr. Nankervis thanked Mr. Mitchell and Mr. Behnke for the presentation, and thanked the public for their comments on this topic.

Mr. Watt said that this statement moves to a stronger position for reduced and renewable energy use. Facilities, fleet, building construction and buying vehicles are under CBJ control. The second step is encouraging energy behavior in private use. The third item is the energy capacity that we have. CBJ has made significant strides and he listed several accomplishments, including the adoption of the LEED ordinance, the ground source heat pump installations, purchase of electric vehicles in the city fleet and the purchase of an electric bus. Every city manager does a balancing act on the costs of providing the programs and services in a monetarily efficient manner. The strategy asks the Assembly to push the needle for renewables through the budget process, through facility upgrades, code updates, and other tools at the Assembly's disposal. The plan is before you and your strength is through passing the budget and ordinances.

*MOTION, by Koelsch, to direct the Municipal Attorney to draft a resolution to adopt the Juneau Renewable Energy Plan.* Hearing no objection, it was so ordered.

#### C. **Meander Way - Mendenhall River Bank Stabilization**

Roger Healy spoke to his memo updating the status of the Meander Bend project, which outlines some issues that have arisen from the NRCS. The NRCS is anxious for a local commitment on this project. They have not identified a funding commitment from Congress but once that is achieved there is a 220 day time frame to complete a project. They wanted a response from Juneau by January 19 and staff requested and received a three week extension. The current FEMA maps were produced in 2015, based on information from 2003, and do not include information gained from the jökulhlaups, which have created a base flood elevation rise on the Mendenhall of 1.4 feet. In addition, through the design process, the NRCS predicted a rise in base flood level above this project by .7 feet if installed. If CBJ moves forward with the NRCS project, CBJ will be tasked with amending the flood insurance rate maps through a FEMA mapping effort. Mr. Watt said CBJ participates in the National Flood Insurance Program and the updates occur for a variety of reasons. The update process is not fixed in time and sooner or later evolves to meet the reality of flood risks.

The Assembly asked several questions and discussed flood elevations and flood plain mapping.

Mr. Nankervis asked about polling the neighborhood regarding an LID with a property owner participation at an amount of \$80,000.

Mr. Kiehl said the Assembly had directed the drafting of an LID ordinance in November. He restated the motion adopted at the November 20, 2017 meeting, "to bring back an LID ordinance that assesses each property at \$80,000." He said the Assembly has held many meetings and has articulated many public purposes. The LID ordinance is likely the only way to get to a decision.

Following discussion, and hearing no objection, the committee tabled the matter pending receipt of information on an LID ordinance or the information on polling.

#### D. **Indemnification - Alaska Department of Transportation Permits**

Ms. Mead referred to her memo in the packet and said there is a new process for CBJ based on an old section of the Charter, which has not been used in the past. The Charter contains a provision that prohibits future appropriations. The practical effect of that is when CBJ contracts with other parties, CBJ can not indemnify them. Indemnification is deemed to be a future appropriation because it is the promise that if there is a lawsuit, or damages to be paid or awarded, that CBJ will pay that for the other party. The State Attorney General in 2005 issued an opinion which stated that the state constitution, which contains a very similar prohibition against future appropriations, cannot indemnify. That has always been the state's position. The same provision is in the federal constitution and the federal government takes the same position. That language is in our Charter, which is our "constitution" - CBJ cannot indemnify. There is a small exception. If the CBJ would be otherwise prohibited from participating in a state or federal contract / lease / program / grant, etc., the Assembly, by ordinance, can authorize the future appropriation. This would allow an agreement and

obligation to be incurred, because it is another Charter prohibition that that CBJ cannot incur an obligation without an appropriation duly made. Putting this all together, an ordinance is needed from the Assembly that authorizes the manager to sign an Alaska Department of Transportation permit for an approach road to finish the Pederson Hill Subdivision. Ordinance 2018-05 has been drafted for this purpose.

*MOTION, by Gladziszewski, to send Ordinance 2018-05 to the Assembly for further consideration.* Hearing no objection, it was so ordered.

#### E. **Essential Public Facilities**

Mr. Watt said this is an ordinance to deem a facility essential if it meets certain characteristics for zoning purposes.

Ms. Mead provided the Assembly with an updated draft of this memo, which provides a definition for essential public facility. It is a difficult definition because it is a facility that is providing a public service characterized by the community reaction to the facility. It is a facility that is "impossible" to site. It was requested that this ordinance contain the same language that is in a conditional use permit with respect to endangering health and safety and complying with the comprehensive plan and recognizing the values of homes and neighborhood harmony. She said she could not add those as the purpose of this is to allow a community to site a facility or use that is deemed by the governing body to be essential public facility providing an essential public service but is the type of facility that no one wants in their "backyard." The two concepts were incompatible and prevented drafting. There was a request to remove that the process that the manager could initiate this process and add in that the Assembly would need to determine by resolution initially that the facility met the definition of an essential public service, followed by the review by the Planning Commission.

Mr. Jones said it seemed that this process could be started following a rejection from the Planning Commission and an appeal process, since it was an assumption to think that the community would object to a specific public facility.

Ms. Mead said these issues would come to the Assembly when the manager is trying to site something somewhere that is not already allowed by code. This process is for those times when the manager has identified a location for a specific use that would not otherwise be allowed there. This issue arose when the manager was trying to locate a sobering center and Bartlett Regional Hospital was discussing moving the sleep off center to a different location. Given the need for a facility close to the proximity of where those persons who would use it might be, there was a review of downtown locations and the current land use code would not have allowed the citing of the facility in the location where the manager determined would be the best location for the facility. If the manager determines a location for a use and the Planning Director states that the use is not allowed in that zoning district, the manager can bring this to the Assembly in the form of a resolution to determine whether the facility meets the definition of an essential public facility, and if so, the planning commission review is initiated. The Planning Commission could say no, if it determined the use would violate health and safety or public welfare, or violate the policies of the Comprehensive Plan. The Planning Commission could also condition the use.

Ms. Mead said this ordinance is only for a public service that the municipality would perform or provide to the public. If it is for an entity that is providing a public service for the CBJ, it would potentially be considered an essential public facility.

Mr. Watt said this is a big tool that should be rarely used. It lets the government do things others can't, but on the other hand, CBJ is doing some things that others won't do. He asked if the Assembly wanted to provide this type of special authority.

Ms. Gladziszewski said if so, the ordinance should be drafted as narrowly as possible. This is a variance to a use, which is not allowed in code. She said this would allow consideration of a use where that use is prohibited, and would only get the project through the first hurdle of allowing it to be

considered at all by the Planning Commission. The Assembly should allow the Planning Commission to condition and apply the same review done for any other permit, which would include neighborhood harmony. She said to do otherwise would give the government extraordinary power.

Mr. Jones expressed his concerns about the Assembly stating in a resolution that an essential public facility meets the conditions of health, safety and public welfare, then if the Planning Commission determines that the facility materially endangers those factors, it gives the Planning Commission the ability to override the Assembly.

Ms. Mead said the difference is the Assembly is making a determination that a facility is an essential public facility. The Planning Commission is reviewing the siting in that specific location will violate health, safety and welfare. She said she modelled the process from Washington State.

Mr. Kiehl asked if it would be possible to handle these type of situations through use of the non-code ordinance process and Ms. Mead said yes. He thought a public hearing before the Planning Commission was a better way, but if the Assembly says, this meet the criteria and then tells the Planning Commission to authorize the use, there could be a perception of unfairness as the Planning Commission is appointed by the Assembly. Kicking it off with an Assembly resolutions seems funny. If starting with the Assembly, perhaps a non-code ordinance is appropriate. Otherwise, allowing the Planning Commission to do its review and letting the Assembly hear an appeal may be better.

Ms. Mead asked if the Assembly wanted the process for the manager to submit an application to the Community Development Director added back in to the ordinance. Or the process clarified that the Assembly is not making a determination in the resolution about where the facility will be cited, only that the proposed use, in a vacuum, is providing a public service the Assembly wishes to provide to the community.

Mr. Kiehl preferred the manager to bring the matter forward.

Mr. Jones said either way, the determination by the Planning Commission was appealable to the Assembly. Under our own rules we can only consider if the Planning Commission complied with their own rules. If, in the appeal process, the Assembly decides that the Planning Commission was correct in their decision, then how could a non-code ordinance be forwarded that would override the Planning Commission action? He thought the matter would need to start with the Assembly with some standing. He spoke about the need to use a hearing officer. He thought the matter would need to start with the Assembly with some public hearings to avoid the appeal process.

Ms. Mead said the model she followed uses a process that the Assembly identifies a public need or service, then it goes through the Planning Commission process with a recommendation about where to site the service, with the manager bringing that recommendation forward. Going back to the manager submitting an application for a Planning Commission process allows for conditions and a check on whether it would materially endanger health and safety. This could be done with a non-code ordinance but those must be done in a uniform and non-arbitrary way. Codifying the process makes it non-arbitrary.

Ms. Gladziszewski said there is a perception that city projects don't have the same standards required of public developers. Allowing a facility to be cited anywhere, and having lower standards was going too far.

Mayor Koelsch said that the Assembly should have this type of pathway forward and if we get into a situation in which the rules are greater than the people that make them, then we have a problem. This is a tool to use sparingly. There has to be a mechanism to take care of our obligations.

Ms. Mead said she understands Ms. Gladziszewski's point and said the purpose of the Table of Permissible Uses (TPU) is to group together uses in zones that are compatible. If something is not compatible with a particular zone, it is not allowed in that zone. Essential Public Facilities are things that the Planning Commission will never be able to find in harmony with the surrounding area. If that

were the case, the TPU could be amended and the use could be allowed in the zone. The condition of harmony could never be met. This is creating a special rule, because the government is trying to provide a service that is important enough to provide that the rules may be "bent." It may help to build in language that makes this an extraordinary process. She said she thought the draft needed to be amended to include language that says it can be sited through a normal Title 49 process, that this is not intended to subvert Title 49.

Mr. Edwardson said he wants to "want" this because he sees a need but is against this because it seems like an ordinance to allow the government to be arbitrary. We need to trust our processes and the people we appoint to put in so much time to make practical decisions.

Mr. Jones said if we really want a facility, the Table of Permissible Uses should be amended so that more facilities could be sited than just the one the government was trying to create. If we think the manager's proposal is so out of line, we can say no. There are many steps, including in a contract for management of services, and all along the decision making process we can say no. We need this in a manner so that it makes it hard for us to make a decision, but he did not want it drafted in a way that the Assembly's decision is second guessed.

Ms. Mead said it seemed that everyone agreed that there be language regarding applicability under "extraordinary circumstances." She asked about a manager application process with review by the Planning Commission or by Assembly resolution then Planning Commission.

There was no specific objection to drafting the ordinance to include the process of the manager application process with review by the Planning Commission.

Mr. Gregory said he did not like the resolution, and through a difficult process, on the topic of siting a campground, a better outcome was arrived at for those campers. He felt this ordinance made it too easy to not dig hard enough for a good solution.

Mr. Edwardson said that his experience is that anyone who has been arbitrary didn't think that they were arbitrary and he agreed with Mr. Gregory and could not support the matter.

Mr. Nankervis asked the committee if it wished to have an essential public facilities ordinance and a majority supported, with Mr. Gregory and Mr. Edwardson objecting.

Mr. Nankervis asked if the committee would like to see the draft ordinance modified and a majority supported.

Ms. Mead re-capped that she understood the manager recommendation would be put back in and she would add limiting language for use in rare occasions. Ms. Gładyszewski said she would like to see the same conditions used that the Planning Commission uses for any facility, and it was agreed to include neighborhood harmony in the draft, which could be amended at a future meeting.

Mr. Kiehl asked about the ability of the CBJ to do performance bonds. Ms. Mead said this ordinance does allow an outside entity to provide the public service, and performance bonds are a tool available to the Planning Commission, the Commission could require the outside entity to post a performance bond.

## **V. ADJOURNMENT**

There being no further business to come before the committee, the meeting was adjourned at 9:15 p.m.

Submitted by Laurie Sica, Municipal Clerk

**From:** [Rorie Watt](#)  
**To:** [Laurie Sica](#); [Beth McEwen](#)  
**Subject:** FW: Hydro One / Avista filing in Alaska  
**Date:** Saturday, January 27, 2018 2:36:39 PM  
**Attachments:** [Alaska Hydro One - Avista filing U-17-097.pdf](#)  
[Exhibit 9 from AK U-17-097.pdf](#)

---

Laurie/Beth –

This email and attachments should be included in the COW packet for 2/5. Thanks.

---

**From:** Connie Hulbert  
**Sent:** Thursday, January 11, 2018 11:36 AM  
**To:** 'Ken Koelsch'; Rorie Watt ([rorie.watt@juneau.org](mailto:rorie.watt@juneau.org)); 'amy.mead@juneau.org'; Bob Bartholomew  
**Subject:** Hydro One / Avista filing in Alaska

Hi folks,

Mr. Gibson was incorrect in his statement that Hydro One and Avista offered up 55 commitments in Washington and none in Juneau. I have attached the 45 page filing that was made in Alaska, with specific items highlighted (*see pages 23-26*). Additionally:

1. A link to the full filing on the RCA website is below.
2. I have copied the most pertinent paragraphs from the RCA filing, and they are shown directly below the link in this email.
3. Also attached is the master list of 55 commitments, which was included as Exhibit 9 in the Alaska application.

Link to entire Alaska filing:

<http://rca.alaska.gov/RCAWeb/Dockets/DocketDetails.aspx?id=2d0b7578-43c9-4fe2-bee5-7b0c21d73aff>

Excerpts:

The proposed rate credits will not apply to AELP customers. Because AELP operates independently from Avista, AELP and its customers generally do not pay the Avista costs from which the merger-related cost savings are derived. For that reason, there are no immediate cost savings to flow through to AELP customers. (Footnote 13 on page 22 of the Alaska filing attached)

The 55 commitments have been expressly made in the context of the WUTC's review of the Proposed Transaction, and relate primarily to the specific relationship between Hydro One, its affiliates, and Avista. However, those commitments reflect that the Proposed Transaction seeks to significantly preserve local control of Avista (and its subsidiaries such as AELP), and their commitment to community involvement and retention of existing employees and management teams. **As applicable and practicable, the 55 commitments will be honored**



**with respect to AELP's operations in Alaska. As indicated earlier, the Proposed Transaction will not alter any aspect of AELP's local management and operations, services, rates, or regulatory oversight by the Commission.** (from page 25 of the Alaska filing attached)

Connie Hulbert  
President and General Manager  
Alaska Electric Light and Power Company  
5601 Tongard Court Juneau, AK 99801  
(907) 463-6313 voice |(907) 463-3304 fax

CONFIDENTIALITY NOTICE: The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or an agent of the intended recipient, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments.

**RECEIVED**

By the Regulatory Commission of Alaska on Nov 21, 2017

STATE OF ALASKATHE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Stephen McAlpine, Chairman  
 Rebecca L. Pauli  
 Robert M. Pickett  
 Norman Rokeberg  
 Janis W. Wilson

In the Matter of the Joint Application Filed by Hydro )  
 One Limited and Avista Corporation for Authority )  
 to Acquire a Controlling Interest in ALASKA )  
 ELECTRIC LIGHT AND POWER COMPANY )  
 \_\_\_\_\_ )

U-17-097

**JOINT APPLICATION FOR AUTHORIZATION TO ACQUIRE A CONTROLLING  
 INTEREST IN ALASKA ELECTRIC LIGHT AND POWER COMPANY**

**I. INTRODUCTION**

Hydro One Limited (“Hydro One”), acting through its indirect, wholly-owned subsidiary Olympus Equity LLC, and Avista Corporation (“Avista”) (collectively, the “Applicants”), jointly submit this application (“Application”) under AS 42.05 for authorization of Hydro One’s acquisition of a controlling interest in Alaska Electric Light and Power Company (“AELP”), which holds Certificate of Public Convenience and Necessity (“CPCN”) No. 1, as more fully described in this Application. After all required approvals are obtained, Avista will be a direct, wholly-owned subsidiary of Olympus Equity LLC and an indirect, wholly-owned subsidiary of Hydro One<sup>1</sup> (collectively, these transactions are referred to herein as the “Proposed Transaction”). The Proposed Transaction will implement an Agreement and Plan

---

<sup>1</sup> See Exhibit 1 (Avista’s current corporate organizational structure and Hydro One’s corporate organizational structure showing the relationship of Hydro One and its primary operating subsidiaries before the Proposed Transaction and its corporate structure after the Proposed Transaction). On Exhibit 1, “CanSub” is shorthand for the full name of “2593958 Ontario Inc.,” an Ontario corporation, which is the owner of Olympus Holding Corp.

of Merger, dated July 19, 2017 (“Merger Agreement”) among Hydro One, two of its wholly-owned subsidiaries, and Avista. A copy of the Merger Agreement is enclosed as Exhibit 2.

AELP provides regulated electric utility service in the City and Borough of Juneau, Alaska. AELP is a wholly-owned subsidiary of Alaska Energy and Resources Company (“AERC”), an Alaska corporation. AERC is a wholly-owned subsidiary of Avista. In 2014, the Regulatory Commission of Alaska (“Commission” or “RCA”) approved Avista’s acquisition of a controlling interest in AELP (through its acquisition of AERC) in Order No. U-13-197(2) (May 30, 2014). AELP operates relatively independently from AERC and Avista, with its own local employees and experienced management team.

As was explained in Docket U-13-197, Avista is a diversified investor-owned utility providing electric utility service in Washington, Idaho, and Montana, and natural gas utility service in Washington, Idaho, and Oregon. Currently, Avista is a publicly traded company on the New York Stock Exchange, with approximately 70% of its stock held by institutional investors.

Hydro One is a large, well-capitalized investor-owned electric transmission and distribution utility headquartered in Toronto, Ontario, Canada. Through its subsidiaries, Hydro One provides electric distribution service to more than 1.3 million retail end-use customers, as well as electric transmission service to many local distribution utilities and large industrial customers. Olympus Equity LLC is an indirect wholly-owned subsidiary of Hydro One recently formed to facilitate the Proposed Transaction.

Under the Proposed Transaction, Hydro One, acting through Olympus Equity LLC, will acquire all of the outstanding common stock of Avista. When the Proposed

Transaction closes, Hydro One will simply replace current institutional and retail investors as the ultimate owner of Avista. Avista, AERC, and AELP all will continue operating as they do today. AELP's management, employees, operations, facilities, financing, services, rates, and tariffs will not be affected by the Proposed Transaction.

The Applicants respectfully request Commission authorization of Hydro One's acquisition of a controlling interest in AELP. Hydro One is fit, willing, and able to acquire a controlling interest in AELP; AELP will remain fit, willing, and able to provide the electric utility services authorized by its CPCN; and the acquisition is consistent with the public interest. Hydro One has extensive experience owning and operating regulated electric utility systems and has the managerial expertise and financial resources to support, as an ultimate owner, AELP's continued provision of safe and reliable service to customers. The Proposed Transaction is consistent with the public interest because it will add a second large, experienced electric utility company into AELP's upstream ownership structure without altering any aspect of AELP's local management and operations, services, rates, or regulatory oversight by the Commission.

Notices, orders, pleadings, and communications regarding this proceeding should be directed to the following:

For: Hydro One

Elizabeth Thomas, Partner  
Kari Vander Stoep, Partner  
K&L Gates LLP  
925 Fourth Avenue, Suite 2900  
Seattle, WA 98104-1158  
Telephone: (206) 623-7580  
Facsimile: (206) 370-6190  
E-mail: liz.thomas@klgates.com  
E-mail: kari.vanderstoep@klgates.com

James Scarlett  
Executive Vice President &  
Chief Legal Officer  
Hydro One  
483 Bay Street, 8th Floor, South Tower  
Toronto, Ontario, M5G 2P5  
Telephone: (416) 345-1366  
Facsimile: (416) 345-6972  
E-mail: jscarlett@HydroOne.com

JOINT APPLICATION FOR AUTHORIZATION TO ACQUIRE A CONTROLLING  
INTEREST IN ALASKA ELECTRIC LIGHT AND POWER COMPANY

November 21, 2017

Page 3 of 45

For: Avista

David J. Meyer, Esq.  
Vice President and Chief Counsel for  
Regulatory & Governmental Affairs  
Avista Corp.  
P. O. Box 3727  
1411 E. Mission Avenue, MSC 27  
Spokane, Washington 99220-3727  
Telephone: (509) 495-4316  
Facsimile: (509) 495-8851  
E-mail: david.meyer@avistacorp.com

Patrick D. Ehrbar  
Director of Rates  
Avista Corp.  
P. O. Box 3727  
1411 E. Mission Avenue, MSC 27  
Spokane, Washington 99220-3727  
Telephone: (509) 495-8620  
Facsimile: (509) 495-8851  
E-mail: patrick.ehrbar@avistacorp.com

Dean D. Thompson  
Kemppel, Huffman and Ellis, P.C.  
255 East Fireweed Lane, Suite 200  
Anchorage, Alaska 99503  
Telephone: (907) 277-1604  
Facsimile: (907) 276-2493  
E-mail: ddt@khe.com

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	1
II.	THE COMMISSION’S AUTHORITY AND THE APPLICABLE LEGAL STANDARD.....	5
III.	HYDRO ONE PARTIES TO THE MERGER AGREEMENT .....	6
IV.	AVISTA ENTITIES AFFECTED BY THE PROPOSED TRANSACTION .....	16
V.	THE PROPOSED TRANSACTION .....	20
VI.	THE REQUESTED ORDER .....	27
VII.	RESPONSES TO RCA FORM X107 REQUIREMENTS .....	28
VIII.	HYDRO ONE IS FIT, WILLING, AND ABLE; AFTER THE PROPOSED TRANSACTION, AELP WILL REMAIN FIT WILLING AND ABLE TO PROVIDE CERTIFICATED UTILITY SERVICE; AND THE PROPOSED TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST.....	37
IX.	REQUEST FOR APPROVAL.....	42

## **EXHIBITS**

EXHIBIT 1	CORPORATE STRUCTURE – PRE- AND POST-CLOSING
EXHIBIT 2	MERGER AGREEMENT
EXHIBIT 3	HYDRO ONE AND AVISTA OFFICERS AND EXECUTIVES
EXHIBIT 4	HYDRO ONE’S FINANCIAL STATEMENTS (2016 ANNUAL REPORT AND 2016 ANNUAL INFORMATION FORM)
EXHIBIT 5	AVISTA’S FINANCIAL STATEMENTS (FORMS 10K/10Q)
EXHIBIT 6	AELP’S 2016 FINANCIAL STATEMENTS
EXHIBIT 7	AELP EXECUTIVES
EXHIBIT 8	DELEGATION OF AUTHORITY TO AVISTA BOARD OF DIRECTORS
EXHIBIT 9	MASTER LIST OF COMMITMENTS
EXHIBIT 10	ELECTRONIC DOCUMENT ROOM – DOCUMENT LIST
EXHIBIT 11	PROOF OF SIGNATORY AUTHORITY
EXHIBIT 12	CERTIFICATES OF AUTHORITY AND CERTIFICATES OF REGISTRATION
EXHIBIT 13	AERC AND AELP CERTIFICATES OF COMPLIANCE
EXHIBIT 14	PROPOSED PUBLIC NOTICE AND QUOTE FOR PUBLICATION

## **II. THE COMMISSION’S AUTHORITY AND THE APPLICABLE LEGAL STANDARD**

The Commission has authority in this matter pursuant to AS 42.05.281, 3 AAC 48.600-.661, and General Order No. 6 issued in Docket U-77-071 (Jul. 7, 1978). The Commission approves an application for the acquisition of a controlling interest in a certificated Alaska utility when the Commission finds that “the entity seeking to acquire the controlling interest is fit, willing, and able and [that such acquisition] is consistent with the public interest under the criteria set forth in AS 42.05.”<sup>2</sup> The Commission has also stated that in evaluating an

---

<sup>2</sup> Order No. U-13-197(2) at 4 (approving application for Avista to acquire a controlling interest in AELP).

application to acquire a controlling interest, it “must determine only whether the public utility, after the acquisition, will remain fit, willing, and able to provide the utility service authorized by the certificate.”<sup>3</sup> As demonstrated in this Application, the Proposed Transaction satisfies the Commission’s standards for approval.

### **III. HYDRO ONE PARTIES TO THE MERGER AGREEMENT**

If this Application is approved, Hydro One, acting through its indirect, wholly-owned subsidiary Olympus Equity LLC, will acquire all of the outstanding common stock of Avista. Because Avista owns all of the stock of AERC, and AERC owns all of the stock of AELP, the Proposed Transaction will result in Hydro One acquiring a controlling interest in AELP. Three intermediate subsidiaries exist between Avista/Olympus Equity LLC and Can Sub (as illustrated on the second diagram in Exhibit 1). The entities were created for Canadian tax planning purposes and to manage intercorporate funds flows. However, as it relates to AELP, the Proposed Transaction is relatively simple and essentially reflects a change of ownership of Avista. That change in ownership will not alter the direct ownership of AELP by AERC or the direct ownership of AERC by Avista, or any aspect of AELP’s management, operations, facilities, financing, services, rates, or tariffs.

#### **A. Hydro One**

Hydro One is a Province of Ontario corporation and investor-owned electric transmission and distribution utility headquartered in Toronto, Ontario, Canada.<sup>4</sup> Through its subsidiaries, Hydro One provides electric distribution service to more than 1.3 million retail end-

---

<sup>3</sup> *E.g.*, Order No. U-17-032(2)/ U-17-033(2)/ U-17-035(2)/ U-17-036(2)/ U-17-082(2) (Nov. 7, 2017) at 9.

<sup>4</sup> *See* Exhibit 3 for information regarding the corporate officers and executives of Hydro One.

use customers, as well as electric transmission service to many local distribution companies and large industrial customers. Hydro One's common shares are listed on the Toronto Stock Exchange (TSX: H).

The operations of Hydro One originated in 1906 as the Ontario-owned Hydro-Electric Power Commission of Ontario (later renamed Ontario Hydro). In 1999, Ontario Hydro was restructured into five separate entities, including Hydro One Inc. as the successor to its transmission and distribution business, and Ontario Power Generation Inc., as the successor to its generation business. Hydro One Inc., Hydro One's wholly-owned subsidiary, was incorporated on December 1, 1998 under the *Business Corporations Act* (Ontario) as a separate corporation providing transmission and distribution services, with the Province of Ontario as its sole shareholder. Hydro One was incorporated by the Province of Ontario on August 31, 2015, under the *Business Corporations Act* (Ontario). On October 30, 2015, Hydro One's articles of incorporation were amended to authorize the creation of an unlimited number of Series 1 preferred shares and an unlimited number of Series 2 preferred shares, with the Series 1 preferred shares to be issued to the Province. On October 31, 2015, all of the issued and outstanding shares of Hydro One Inc. were acquired by Hydro One from the Province in exchange for the issuance to the Province of common shares and Series 1 preferred shares of Hydro One. On November 4, 2015, the articles of Hydro One were amended to authorize the consolidation of its outstanding common shares such that 595,000,000 common shares of Hydro One were issued and outstanding.

On November 5, 2015, Hydro One completed its initial public offering on the Toronto Stock Exchange by way of a secondary offering of common shares by the Province of



Ontario, with the goal of 60% of the company being held by private investors. The Province of Ontario is a shareholder and pursuant to its governance agreement with Hydro One it does not hold or exercise any managerial oversight over Hydro One. As of July 31, 2017, the Province owned 49.9% of Hydro One's shares with the remainder of shares held by private investors. Based on facts known today and assuming the Proposed Transaction is completed, the Province's level of ownership of Hydro One will decline to below 45%. In addition, the Ontario *Electricity Act, 1998*, restricts the Province from selling voting securities (including common shares of Hydro One) if it would own less than 40% of the outstanding number of voting securities of that class or series after the sale. If as a result of the issuance of additional voting securities of any class or series by Hydro One, the Province would own less than 40% of the outstanding number of voting securities of that class or series, then the Province shall, subject to certain requirements, take steps to acquire as many voting securities of that class or series of voting securities as are necessary to increase the Province's ownership to not less than 40% of the outstanding number of voting securities of that class or series.

In order to assist the Province in meeting its ownership obligations under the *Electricity Act, 1998*, under the governance agreement with the Province, Hydro One has granted the Province a pre-emptive right to subscribe for and purchase up to 45% of any proposed issuance by Hydro One of voting securities or securities that are convertible or exchangeable into voting securities (other than certain specified excluded issuances). Any offered securities not subscribed for and purchased by the Province pursuant to its pre-emptive right may be issued to any other person pursuant to the proposed offering. Accordingly, the requirement of the Province to maintain a 40% ownership interest in Hydro One does not constrain Hydro One's

ability to issue more equity. Hydro One is permitted to issue voting securities or securities that are convertible into or exchangeable for voting securities at any time, provided that it must first give the Province the opportunity to subscribe for the number of securities to which it is entitled pursuant to its pre-emptive right before offering them to others.

Of Hydro One's 15 directors, all are independent of the Province within the meaning of Canadian securities laws, and, with the exception of the President and Chief Executive Officer, all of Hydro One's directors are independent of Hydro One.

Hydro One connects generating facilities operated by Ontario Power Generation ("OPG"), Bruce Power Limited Partnership ("Bruce Power") and a number of other privately-owned companies to its transmission and distribution systems. OPG is a Crown corporation wholly-owned by the Province. OPG is responsible for approximately half of the electricity generation in the Province of Ontario, Canada. Sources of electricity include nuclear, hydroelectric, wind, gas and biomass.

Hydro One purchases power from these generating sources and delivers the power to its retail customers. The costs of these power purchases are a "pass-through" to Hydro One's retail customers, i.e., these customers pay a commodity power cost equal to that paid by Hydro One. Hydro One's wholesale customers and its large-use customers that are market participants purchase commodity directly and do not rely on Hydro One to purchase commodity for them. Therefore, Hydro One has no material exposure to variations in the commodity cost of power.

Since 1998, Hydro One has successfully consolidated and integrated approximately 90 separate local distribution electric utilities with sensitivity and respect for the customers and communities it serves and the numerous employees which have joined Hydro One

through these acquisitions. These customers are part of Hydro One's more than 1.3 million retail end-use customers.

Hydro One is committed to the communities it serves, and has been rated as the top utility in Canada for its corporate citizenship, sustainability, and diversity initiatives. It is one of only four utility companies in Canada to achieve the Sustainable Energy Company designation from the Canadian Electrical Association.

Hydro One has approximately 5,400 full-time employees and 3,300 casual and temporary employees (not including external contractors) with total assets of C\$25 billion, annual revenues over C\$6.5 billion, and with a market capitalization of C\$14 billion. Based on pro forma financial information at March 31, 2017, following the merger, Hydro One's total assets will increase from approximately C\$25.4 billion to approximately C\$34.9 billion.

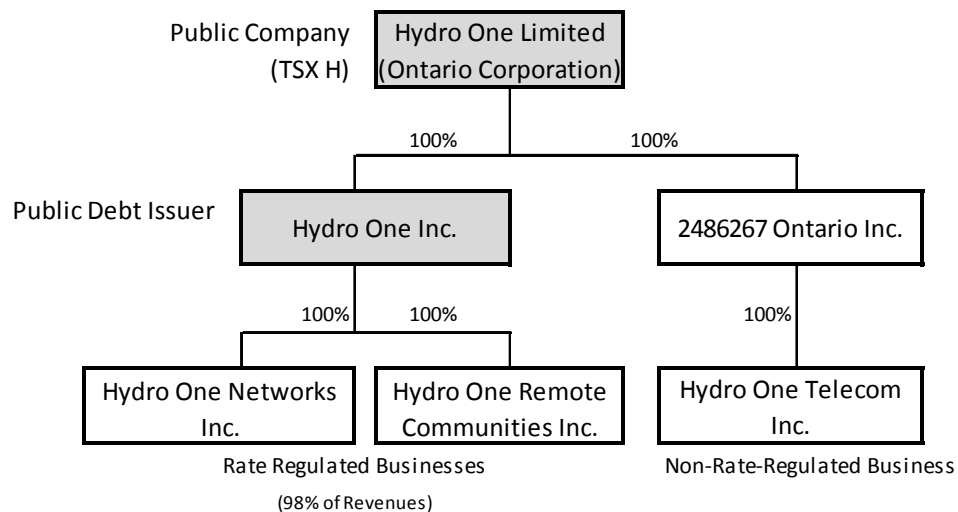
Hydro One is the largest electricity transmission and distribution company in Ontario. Through its wholly-owned subsidiary, Hydro One Inc., Hydro One owns and operates substantially all of Ontario's electricity transmission network with over 30,000 circuit kilometers (km) (approximately 19,000 miles) of high-voltage transmission lines, and approximately 123,000 circuit km (approximately 77,000 miles) of low-voltage distribution network. The pricing and terms and conditions of Hydro One's transmission and distribution operations (approximately 98% of Hydro One's revenues) are regulated by the Ontario Energy Board ("OEB").

Hydro One has three business segments: (i) transmission; (ii) distribution; and (iii) other business. The following corporate organization chart depicts the current relationship of Hydro One and its primary operating subsidiaries (direct and indirect) that are referenced in

this Application. Hydro One Networks Inc. owns and operates the transmission and distribution systems. Hydro One Remote Communities Inc. and Hydro One Telecom Inc. will be briefly explained later.

**Illustration No. 1:**  
**Current Corporate Structure**

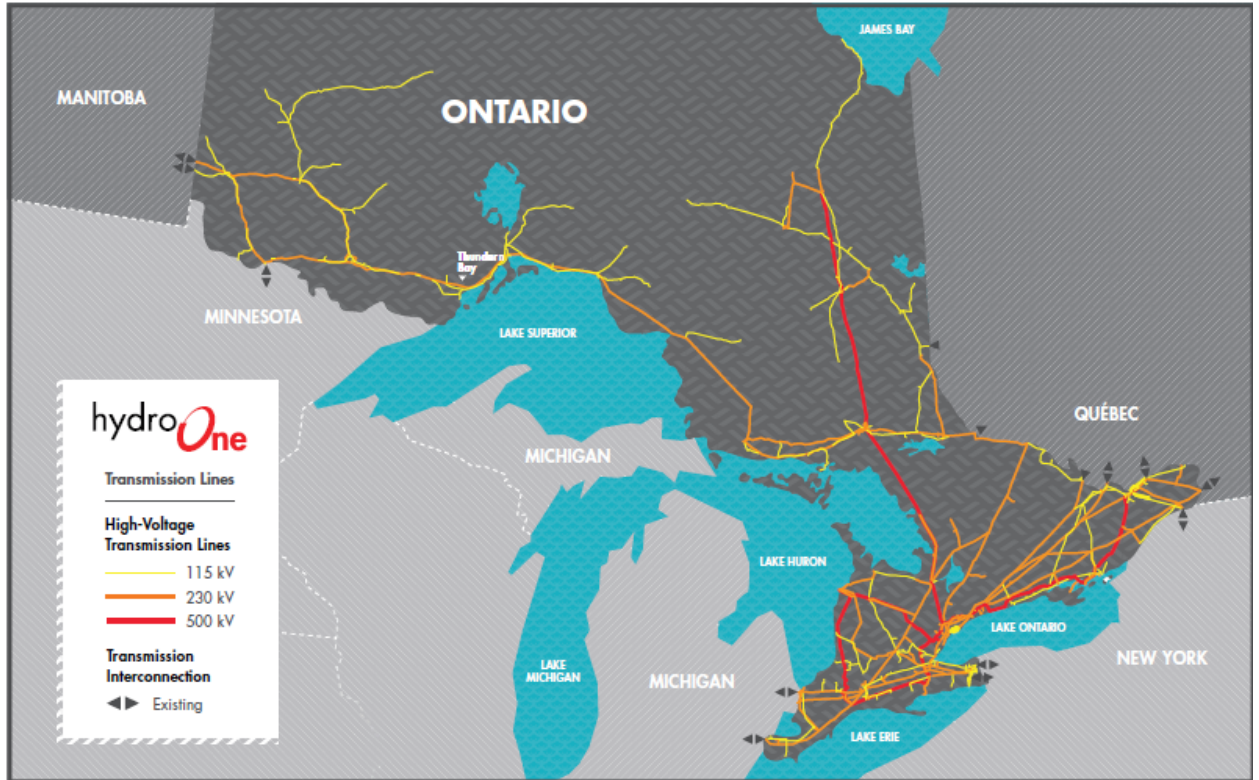
The following is a simplified chart showing the current corporate structure of Hydro One Limited, including its primary (direct and indirect) subsidiaries discussed in the Joint Application.



Hydro One’s transmission business consists of owning, operating and maintaining its transmission system, which accounts for approximately 98% of Ontario’s transmission capacity. Hydro One’s transmission business is a rate-regulated business that receives revenues from charging transmission rates approved by the OEB. Hydro One’s transmission business accounted for approximately 51% of Hydro One’s total assets on December 31, 2016, and approximately 51% of its total revenues, net of purchased power, in 2016. The following map depicts the transmission network:

**Illustration No. 2:**

**Electric Transmission System Map**



Hydro One's distribution business consists of owning, operating and maintaining its distribution system. Hydro One's distribution system is the largest in Ontario, and principally serves rural communities. Hydro One's distribution business is a rate-regulated business that receives revenues by charging distribution rates that are approved by the OEB. Hydro One's distribution business accounted for approximately 37% of its total assets on December 31, 2016, and approximately 47% of its total revenues, net of purchased power, in 2016. The following map depicts the distribution footprint of Hydro One:

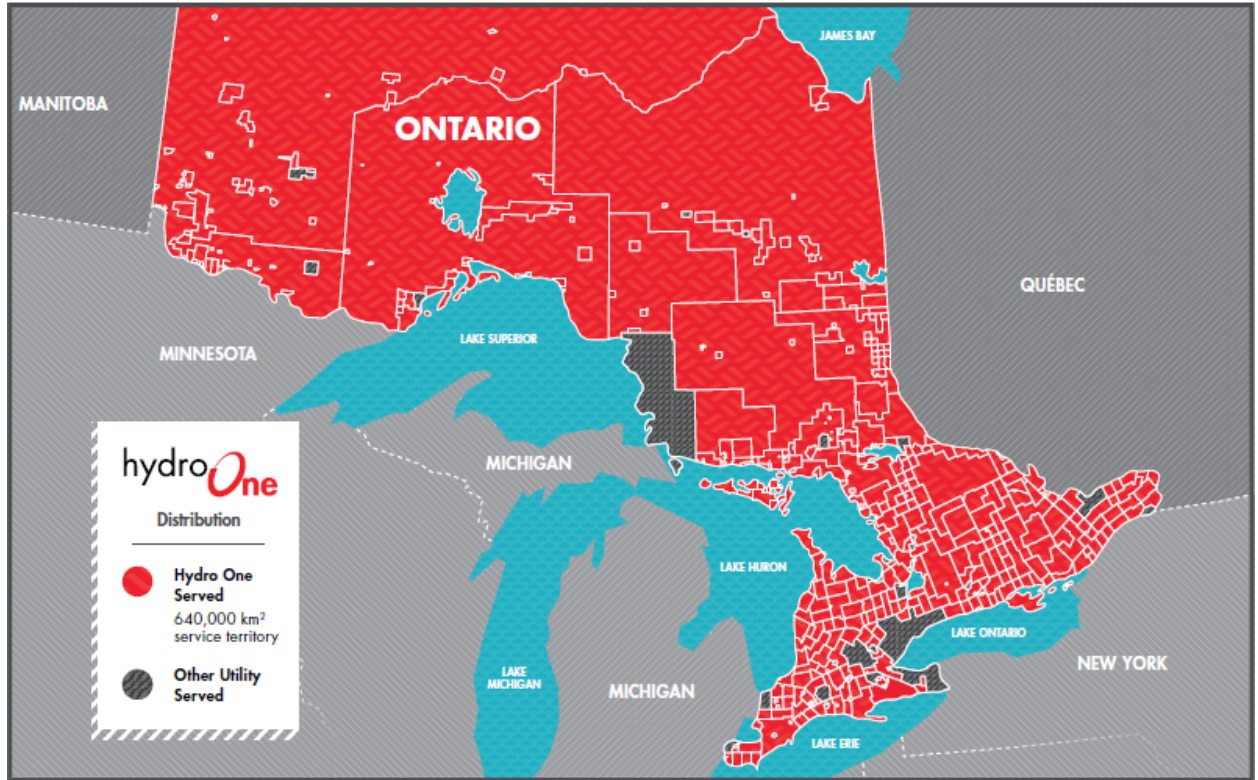
JOINT APPLICATION FOR AUTHORIZATION TO ACQUIRE A CONTROLLING INTEREST IN ALASKA ELECTRIC LIGHT AND POWER COMPANY

November 21, 2017

Page 12 of 45

**Illustration No. 3:**

**Electric Distribution System Map**



Through Hydro One Remote Communities Inc., Hydro One also operates and maintains the generation and distribution assets used to supply electricity to 21 communities across northern Ontario that are not connected to the Province's electricity grid, 15 of which are First Nations reserves.<sup>5</sup>

Hydro One's other business segment consists principally of Hydro One's telecommunications business (Hydro One Telecom Inc.), as well as certain other corporate

<sup>5</sup> The First Nations are the predominant Indigenous group of Canada south of the Arctic. There are currently 634 recognized First Nations governments or bands spread across Canada, roughly half of which are in the provinces of Ontario and British Columbia.

activities.<sup>6</sup> The telecommunications business provides telecommunications support for Hydro One's transmission and distribution businesses. The telecommunications business also offers communications and information technology solutions to organizations with broadband network requirements.

On July 19, 2017, following the announcement of the transaction, Standard and Poors ("S&P") affirmed an 'A' long-term corporate credit rating for Hydro One and revised the outlook to Negative from Stable. It mentioned the negative outlook on Hydro One reflects its view that the Avista acquisition signals a shift in Hydro One's business strategy, which will align the company with its global peers. On July 19, 2017, following the announcement of the transaction, Moody's affirmed the ratings of Hydro One Inc.'s: (i) senior unsecured regular bonds (A3); (ii) senior unsecured medium-note program ((P)A3); and (iii) senior unsecured commercial paper (P-2). At the same time, Moody's changed the outlook on Hydro One Inc. to Negative from Stable. It mentioned that the negative outlook on Hydro One Inc. reflects its view that the probability of extraordinary support from the Province of Ontario will be reduced following the transaction. The rating agency DBRS (originally known as Dominion Bond Rating) rates Hydro One Inc.'s long-term debt at A (High) and its short-term debt at R1 (Low). It expressed its view that, should the merger be financed as contemplated in the announcement, it will have no impact on Hydro One Inc.'s credit profile.

---

<sup>6</sup> Hydro One Telecom Inc. is not regulated by the OEB. It is registered with the Canadian Radio-television and Telecommunications Commission ("CRTC") as a non-dominant, facilities-based telecommunications carrier.

The recent financial statements of Hydro One are included in Exhibit 4, including a copy of Hydro One's 2016 Annual Report and the 2016 Annual Information Form filed with Canadian securities regulators.

**B. Olympus Holding Corp. ("US Parent")**

Olympus Holding Corp. ("US Parent") is a Delaware corporation and an indirect wholly owned subsidiary of Hydro One. US Parent was formed in anticipation of the merger to serve as an intermediate holding company for Avista and its subsidiaries. US Parent has not conducted any business operations except in furtherance of entering into the Merger Agreement, complying with its obligations thereunder and completing the transactions contemplated by the Merger Agreement, including the merger and related financing, and activities incident to its formation.

**C. Olympus Corp. ("Merger Sub")**

Olympus Corp. ("Merger Sub") is a Washington corporation and an indirect, wholly owned subsidiary of Hydro One. Merger Sub was formed solely for the purpose of entering into the Merger Agreement, complying with its obligations thereunder and completing the transactions contemplated by the Merger Agreement, including the merger. Merger Sub has not conducted any business operations except in furtherance of this purpose and activities incident to its formation. Upon completion of the merger, Merger Sub will be merged with and into Avista, and Avista will continue to exist following the merger as a direct, wholly-owned subsidiary of Olympus Equity LLC and a wholly owned, indirect subsidiary of Hydro One.



**D. Olympus Equity LLC**

Olympus Equity LLC is an indirect, wholly-owned subsidiary of Hydro One.<sup>7</sup> Olympus Equity LLC is a Delaware limited liability company formed on August 24, 2017, in anticipation of the completion of the merger to serve as a direct holding company for Avista and its subsidiaries.<sup>8</sup> Olympus Equity LLC has not conducted any business operations except in furtherance of the transactions contemplated by the Merger Agreement, including the merger and related financing, and activities incident to its formation. Upon the completion of the merger, Avista will continue to exist as a direct, wholly owned subsidiary of Olympus Equity LLC. Olympus Equity LLC is a bankruptcy-remote special purpose entity, and will not have debt. Olympus Equity LLC will limit its activities to investing in and attending to its shareholdings in Avista.

**IV. AVISTA ENTITIES AFFECTED BY THE PROPOSED TRANSACTION**

**A. Avista**

Avista is a Washington Corporation headquartered in Spokane, Washington. Through its operating division (not a subsidiary) Avista Utilities, Avista provides electric and natural gas service within a 30,000 square mile area of eastern Washington and northern Idaho.<sup>9</sup> Avista also provides natural gas distribution service in southwestern and northeastern Oregon. Avista serves approximately 378,000 electric and 342,000 natural gas customers as of

---

<sup>7</sup> See Exhibit 1 (organizational structures), page 3.

<sup>8</sup> Olympus Equity LLC is not a party to the Merger Agreement. It was formed after the Merger Agreement to serve as a direct holding company for Avista upon closing of the Proposed Transaction.

<sup>9</sup> See Exhibit 3 for information regarding the corporate officers of Avista.

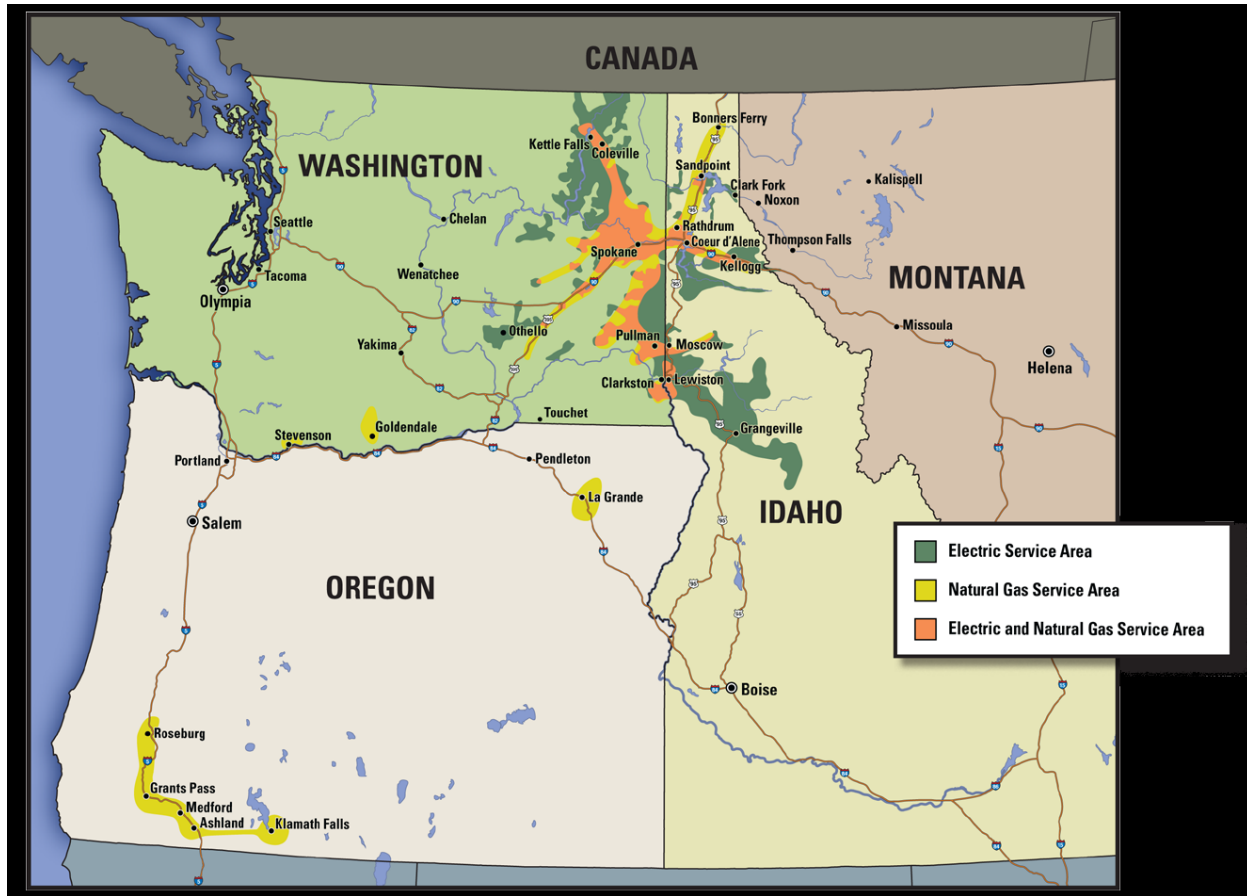
June 30, 2017. Avista also serves approximately 30 retail electric customers in western Montana, many of whom are Avista employees who operate Avista's Noxon Rapids generating facility. In 2014, Avista acquired AELP, which serves electric power to approximately 17,000 customers in the City and Borough of Juneau, Alaska.

Avista operates a vertically-integrated electric system in Washington, Idaho, and western Montana. Avista's owned generating resource portfolio includes a mix of hydroelectric generation projects, base-load coal and base-load natural gas-fired thermal generation facilities, waste wood-fired generation, and natural gas-fired peaking generation. Avista-owned generation facilities have a total capacity of 1,925 MW, which includes 56% hydroelectric and 44% thermal resources. Avista has approximately 18,300 miles of primary and secondary electric distribution lines, and has an electric transmission system of 685 miles of 230 kV lines and 1,534 miles of 115 kV lines.

Avista owns and maintains a total of 7,650 miles of natural gas distribution lines, and is served off of the Williams Northwest and Gas Transmission Northwest ("GTN") pipelines. Avista is also one of the three original developers of the underground storage facility at Jackson Prairie, which is located near Chehalis, Washington.

A map showing Avista's electric and natural gas service area in Washington, Idaho, Montana and Oregon is provided below in Illustration No. 4.

**Illustration No. 4:**



On December 31, 2016, Avista Utilities had total assets (electric and natural gas) of approximately \$5.0 billion (on a system basis), with electric retail revenues of \$760 million (system) and natural gas retail revenues of \$294 million (system). In December 2016, the Utility had 1,742 employees.

Avista's credit ratings, assigned by S&P and Moody's are as follows:

	<b>S&amp;P</b>	<b>Moody's</b>
<b>Corporate Credit Rating</b>	BBB	Baa1
<b>Senior Secured Debt</b>	A-	A2
<b>Outlook</b>	Positive	Stable

The recent financial statements of Avista are included in Exhibit 5, including a copy of Avista's Form 10-K filed with the Securities and Exchange Commission ("SEC") for the fiscal year ending December 31, 2016, and a copy of Avista's Form 10-Q filed with the SEC for the Quarterly period ending June 30, 2017.

#### **B. AERC**

AERC is an Alaska corporation with principal operations in Juneau, Alaska. AERC is a wholly-owned subsidiary of Avista. AERC is not a public utility and is not certificated or regulated by the Commission. AERC owns all of the common stock of AELP. AERC is not a party to the Merger Agreement, and the direct ownership and operation of AERC will not be altered by the Proposed Transaction.

#### **C. AELP**

AELP is an Alaska corporation and a wholly-owned subsidiary of AERC. AELP provides regulated electric utility service to approximately 17,000 customers in and around Juneau, Alaska. AELP operates under RCA CPCN No. 1. AELP is not a party to the Merger Agreement, and the direct ownership and operation of AELP, and the ownership of CPCN No. 1, will not be altered by the Proposed Transaction. AELP's 2016 audited financial statements are included in Exhibit 6. Resumes of AELP's current management team are included in Exhibit 7.

AELP has successfully provided electric utility service in Juneau since 1893. AELP is a vertically integrated utility that owns and operates generation, transmission, and distribution facilities. AELP has experienced management and well-trained technical, operations, and maintenance staff. AELP has excellent service reliability and its electric rates are among the lowest in Alaska.

## **V. THE PROPOSED TRANSACTION**

### **A. Summary of Proposed Transaction**

On July 19, 2017, Hydro One, US Parent, and Merger Sub entered into the Merger Agreement with Avista, which provides for, among other things, the acquisition of Avista by Hydro One through Olympus Equity LLC. The Proposed Transaction was unanimously approved by the Boards of Directors of both companies.

Following the receipt of all approvals and the closing of the Proposed Transaction, Merger Sub will be merged with and into Avista, the separate existence of Merger Sub will cease, Avista will be the surviving corporation, and Avista will be a direct, wholly-owned subsidiary of Olympus Equity LLC and an indirect, wholly-owned subsidiary of Hydro One, through several intermediate Hydro One subsidiaries.<sup>10</sup> At closing, Avista's common stock will be delisted from the NYSE, and Avista will have one shareholder (i.e., Hydro One).

---

<sup>10</sup> See Exhibit 1 (organizational structures), page 3. This structure has been set up to provide segregation between the US rate regulated business and the Ontario rate regulated business, which is held through Hydro One Inc. Upon the closing of the Proposed Transaction, Avista will be a wholly owned subsidiary of Olympus Equity LLC, which is a bankruptcy-remote entity with no debt. Together with the "ring-fencing" provisions addressed in the "55 commitments" discussed in Section V.B below, this structure insulates Avista and its customers from any potential financial weakness at Olympus Equity LLC or other entities up the chain from Olympus Equity LLC. Hydro One has created three intermediate subsidiaries between Avista / Olympus Equity LLC and Can Sub. Those entities are created for Canadian tax planning

Under the terms of the all-cash transaction, Avista shareholders will receive \$53 per common share, representing a 24% premium to Avista's last sale price on July 18, 2017, of \$42.74 per share. The aggregate purchase price is approximately \$5.3 billion, comprised of an equity purchase price of \$3.4 billion and the indirect assumption of approximately \$1.9 billion of debt. Hydro One's financing plan is designed to maintain a strong investment grade balance sheet following completion of the acquisition. Hydro One's regulated utility profile will remain intact with approximately 98% of its earnings generated from rate regulated activities. Hydro One will finance the Proposed Transaction through a combination of medium and long-term borrowings and the net proceeds from its previously completed issue of C\$1.54 billion of convertible unsecured subordinated debentures, which will form the permanent equity component of the financing plan upon conversion at closing of the Proposed Transaction.

The Proposed Transaction is subject to receipt of Avista shareholder approval and certain regulatory and governmental approvals, including the expiration or termination of any applicable waiting period under the HSR Act, clearance of the Proposed Transaction by CFIUS, the approval by each of the WUTC, IPUC, OPUC, MPSC, RCA, FERC, and the FCC; and the satisfaction of other customary closing conditions.<sup>11</sup> No additional approvals are required from

---

purposes and to manage intercorporate funds flows. This corporate structure will not result in any additional costs to be recovered from Avista or AELP customers.

<sup>11</sup> HSR Act (Hart-Scott-Rodino Antitrust Improvements Act of 1976), CFIUS (Committee on Foreign Investment in the United States), WUTC (Washington Utilities and Transportation Commission), IPUC (Idaho Public Utilities Commission), OPUC (Public Utility Commission of Oregon), MPSC (Public Service Commission of the State of Montana), RCA (Regulatory Commission of Alaska), FERC (Federal Energy Regulatory Commission), and FCC (Federal Communications Commission).

Canadian authorities.<sup>12</sup> The closing of the Proposed Transaction is currently expected to occur in the second half of 2018.

**B. Impacts on Avista**

Following closing of the Proposed Transaction, Avista's customers and the communities Avista serves will see little or no change in Avista's operations. Avista will maintain its existing corporate headquarters in Spokane, Washington, and will continue to operate as a standalone utility in Washington, Oregon, Idaho, and Montana. Avista's current management, employees, culture, and way of doing business will be preserved.

The communities Avista serves will see increased charitable contributions and a continuation of the strong support Avista provides in economic development and innovation. To reflect certain immediate savings that the Proposed Transaction will yield for costs that are currently allocated to Avista customers in Washington, Idaho, and Oregon, Avista and Hydro One are proposing to the public utilities commissions in those states specific rate credits for those Avista customers.<sup>13</sup> In addition, over time the merger will provide increased opportunities for innovation, research and development, and efficiencies by extending the use of technology, best practices, and business processes over a broader customer base and a broader set of infrastructure between the two companies.

---

<sup>12</sup> The OEB regulates the rates and practices of certain affiliates of Hydro One. Its approval is not required in order to effectuate this transaction.

<sup>13</sup> The proposed rate credits will not apply to AELP customers. Because AELP operates independently from Avista, AELP and its customers generally do not pay the Avista costs from which the merger-related cost savings are derived. For that reason, there are no immediate cost savings to flow through to AELP customers.

The merger with Hydro One will allow Avista and its customers to benefit from being part of a larger organization (the benefits of scale), while at the same time preserving local control of Avista, its commitment to community involvement, and the retention of Avista's employees and management team, as well as its culture and its way of doing business.

Following the closing of the Proposed Transaction, Avista will be governed by a nine member Board of Directors, with Scott Morris as the Chairman of the Board. Three additional board members will be chosen by Avista. There will be a total of four Board members referred to as Avista designees, and these Avista Board members (Avista designees) will choose their successors. Of the five board members chosen by Hydro One, three of the five will reside in the Pacific Northwest. The remaining two board members will include Mayo Schmidt and one other executive of Hydro One or one of its subsidiaries. Therefore, the Avista Board will be a local board primarily consisting of either board members chosen by Avista, and/or members who reside in the Pacific Northwest. Retaining Avista's employees and management enables the combined company to satisfy its promises to Avista's customers by assuring continuity in its business and operations after the close of the Proposed Transaction.

Details of the agreements between Hydro One and Avista, designed to protect and benefit Avista's customers, were memorialized in Exhibits A ("Governance Requirements") and B ("Post-Closing Matters" and "Approval Requirements") to the Merger Agreement, hereafter collectively referred to as the "Delegation of Authority." The Delegation of Authority is separately enclosed as Exhibit 8. Under the Delegation of Authority, Avista's Board of Directors retains its authority to review, authorize, and approve certain specified matters related to Avista, without any obligation to obtain separate authorization or approval from the Hydro One Board.

JOINT APPLICATION FOR AUTHORIZATION TO ACQUIRE A CONTROLLING  
INTEREST IN ALASKA ELECTRIC LIGHT AND POWER COMPANY

November 21, 2017

Page 23 of 45



The Delegation of Authority and the makeup of the Avista Board of Directors is intended to ensure that Avista's culture and its way of doing business will continue for the long-term. The Proposed Transaction is not designed to target the elimination of jobs, or cost cutting that may lead to a deterioration of customer service, customer satisfaction, safety, reliability, or a deterioration of charitable giving, economic development or innovation in the communities Avista serves.<sup>14</sup>

As part of their Joint Application for approval of the Proposed Transaction submitted to the WUTC, Hydro One and Avista have offered 55 specific commitments in addition to the Delegation of Authority discussed above. The 55 commitments are grouped together into the categories identified below. The master list of all 55 commitments is attached as Exhibit 9 to this instant Application.

- A. Reservation of Certain Authority to the Avista Board of Directors
  - 1. Governance
  - 2. Business Operations
  - 3. Local Presence/Community Involvement
- B. Rate Commitments
- C. Regulatory Commitments

---

<sup>14</sup> On July 19, 2017, S&P affirmed its ratings, including the 'BBB' issuer credit rating, on Avista and revised the outlook to positive from stable. The positive outlook reflects S&P's view of the potential for higher ratings on Avista if the merger is completed as proposed based on its view that Avista will be an important member of the Hydro One group, highly unlikely to be sold and integral to the overall group strategy and operations. In addition, on July 19, 2017, Moody's affirmed the ratings of Avista's (i) issuer rating (Baa1); (ii) multiple seniority medium-term note program ((P)A2); (iii) senior secured medium-term notes (A2); (iv) senior secured first mortgage bonds (A2); (v) senior secured medium-term note program ((P)A2); and (vi) senior unsecured medium-term note program ((P)Baa1) and kept the outlook at stable. Moody's indicated that the stable rating outlook on Avista reflects its view that the merger will not materially affect the credit quality of Avista.

- D. Financial Integrity Commitments
- E. Ring-fencing<sup>15</sup> Commitments
- F. Environmental, Renewable Energy, and Energy Efficiency Commitments
- G. Community and Low-Income Assistance Commitments

The 55 commitments have been expressly made in the context of the WUTC's review of the Proposed Transaction, and relate primarily to the specific relationship between Hydro One, its affiliates, and Avista. However, those commitments reflect that the Proposed Transaction seeks to significantly preserve local control of Avista (and its subsidiaries such as AELP), and their commitment to community involvement and retention of existing employees and management teams. As applicable and practicable, the 55 commitments will be honored with respect to AELP's operations in Alaska. As indicated earlier, the Proposed Transaction will not alter any aspect of AELP's local management and operations, services, rates, or regulatory oversight by the Commission.

### **C. Impacts on AELP**

Some of the benefits of the Proposed Transaction discussed in Section V.B above with respect to Avista will also accrue to AELP, its customers, and the Juneau community. For example, Avista and the Avista Foundation provide charitable contributions and support for economic development and innovation in AELP's service area, and overall increases in that support by Avista will benefit AELP's customers and the Juneau community. In addition, the benefits of scale associated with a combined Hydro One / Avista corporate structure will likely

---

<sup>15</sup> In the context of mergers and acquisitions, "ring-fencing" refers to financial and corporate structuring in a transaction that results in a newly acquired company (in this case, Avista) being isolated from the upstream corporate structure of its new owners (Hydro One and its affiliates).

also benefit AELP and its customers over time through increased opportunities for innovation, research and development, and efficiencies by extending the use of technology, best practices, and business processes over a broader customer base and a broader set of infrastructure. Finally, AELP and its customers will benefit from the organizational culture of local control and management and employee retention embodied in the 55 commitments between Hydro One and Avista discussed earlier, including the Delegation of Authority.

The most significant aspect of the Proposed Transaction as it relates to AELP is that it will add a second large, experienced electric utility company into AELP's upstream ownership structure without altering any aspect of AELP's local management and operations, services, rates, or regulatory oversight by the Commission. In particular:

1. The Proposed Transaction will not alter the direct ownership of AELP by AERC or the direct ownership of AERC by Avista, or any aspect of AELP's management, operations, facilities, financing, services, rates, or tariffs.
2. AELP will continue to operate relatively independently from Avista, under the same experienced management team and employees as existed prior to the Proposed Transaction.
3. Under the Merger Agreement, AELP employee compensation and benefits levels will be maintained for a period of three years and will not be less favorable than the current compensation and benefits, in the aggregate.
4. AELP will not seek to recover in rates any premium associated with the acquisition of Avista stock, or transaction costs, associated with the Proposed Transaction.

5. In Docket U-13-197, Avista and AELP committed to a cost assignment and allocation methodology between the two entities. Avista and AELP reaffirm the methodology with respect to the Proposed Transaction. Specifically, to the extent Avista employees dedicate time and incur costs in the future related to the operation of AELP, those costs will be directly assigned to AELP and will be included in the proposed revenue requirement in future AELP rate cases. However, such costs are expected to be relatively small since AELP will continue to be operated by the existing employees, including the existing management team. All such costs will be subject to review and approval of the RCA. Likewise, should AELP employees dedicate time and incur costs related to Avista utility operations, such costs will be directly assigned to Avista. In the future, should there be a consolidation of certain Avista and AELP utility functions, it may be appropriate for some form of cost allocation to occur between the two utilities.

In summary, the Proposed Transaction will have no negative impacts on AELP's current fitness, willingness, and ability to provide the electric utility service for which it is certificated.

## **VI. THE REQUESTED ORDER**

The Applicants respectfully request that the Commission approve this Application in the form of a final order, in which the Commission: (i) approves the acquisition of a controlling interest in AELP by Hydro One through Olympus Equity LLC, effective upon the closing date of the Proposed Transaction; and (ii) states that no other regulatory approvals by the Commission are required.

The Merger Agreement provides that all regulatory approvals, including the Commission’s approval, must be obtained as a condition of closing. The Applicants respectfully request that the Commission issue a final order in this matter within 180 days, as contemplated by AS 42.05.175(a)(4) and 3 AAC 48.661(d).<sup>16</sup>

The Applicants pledge their full cooperation and assistance to the Commission and its Staff in their review of this Application. The Applicants will, as appropriate, respond to public comments submitted regarding this Application, and will respond to questions from the Commission and its Staff. Hydro One and Avista have created an electronic Document Room containing the documents listed in the Index provided as Exhibit 10. These documents provide foundational information pertaining to both Avista and Hydro One. The Document Room contains documents such as the annual reports of both Avista and Hydro One for 2016 and documents relating to debt and equity issuances. Provisions for access to the electronic Document Room can be arranged by contacting the following representatives of Hydro One: Ben Mayer, K&L Gates, ben.mayer@klgates.com, 206-370-8074; or Dirk Middents, K&L Gates, dirk.middents@klgates.com, 206-370-5705.

## **VII. RESPONSES TO RCA FORM X107 REQUIREMENTS**

### **1. Facts about the utility over which Applicants desire to acquire control:**

- a. Name:** *Alaska Electric Light and Power Company*
- b. Address:** 5601 Tonsgard Court, Juneau, Alaska 99801
- c. Trade Name:** Alaska Electric Light and Power Company

---

<sup>16</sup> 3 AAC 48.661(d) states: “[t]he commission will rule on an application to acquire a controlling interest in a certificated public utility or pipeline carrier within six months after the filing of a complete application.”

**d. Type of Authority:** Electric Utility Service

**2. Facts about the Applicants:**

**1a. Name:** *Hydro One Limited*

**1b. Address:** 438 Bay Street, 8th Floor, South Tower  
Toronto, Ontario, M5G2P5

**1c. Trade Name:** Not applicable.

**1d. Applicant is (check one) an individual ( ), a partnership ( ), a corporation (X), organized under the laws of the Province of Ontario, Canada.**

Hydro One is a public corporation whose common stock is listed and traded on the Toronto Stock Exchange (TSX:H).

**1e. If partnership is checked in “d” above, supply following facts:**

Not applicable.

**1f. If corporation is checked in “d” above, supply following facts:**

**(1) Principal Officers and Executives (Hydro One):**

<u>Names of Principal Officers and Executives</u>	<u>Title of Each</u>
David Denison 483 Bay Street, 8th Floor, South Tower Toronto, Ontario M5G 2P5	Chair
Mayo M. Schmidt 483 Bay Street, 8th Floor, South Tower Toronto, Ontario, M5G 2P5	President and Chief Executive Officer
Gregory K. Kiraly 483 Bay Street, 8th Floor, South Tower Toronto, Ontario, M5G 2P5	Chief Operating Officer
James D. Scarlett 483 Bay Street, 8th Floor, South Tower Toronto, Ontario, M5G 2P5	Executive Vice President and Chief Legal Officer

JOINT APPLICATION FOR AUTHORIZATION TO ACQUIRE A CONTROLLING INTEREST IN ALASKA ELECTRIC LIGHT AND POWER COMPANY

November 21, 2017

Page 29 of 45

Chris Lopez 483 Bay Street, 8th Floor, South Tower Toronto, Ontario, M5G2P5	Senior Vice President of Finance
Paul H. Barry 483 Bay Street, 8th Floor, South Tower Toronto, Ontario, M5G2P5	Executive Vice President, Strategy and Corporate Development
Judy McKellar 483 Bay Street, 8th Floor, South Tower Toronto, Ontario, M5G2P5	Executive Vice President and Chief Human Resources Officer
Ferio Pugliese 483 Bay Street, 8th Floor, South Tower Toronto, Ontario, M5G2P5	Executive Vice President of Customer Care and Corporate Affairs
Maureen Wareham 483 Bay Street, 8th Floor, South Tower Toronto, Ontario, M5G 2P5	Vice President, Corporate Secretary and Chief Ethics Officer

Additional information regarding the officers listed above is set forth on Exhibit 3.

**(2) The name and address of each stockholder owning or holding directly or indirectly, 5% or more of the corporation's (Hydro One's) voting securities, and the percent of the securities held by each as follows:**

<u>Name and Address</u>	<u>Voting Control</u>
Province of Ontario HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, C/O MINISTER OF ENERGY 900 Bay Street, 4th Floor, Hearst Block Toronto, ON M7A2E1	49.85%

CDS & CO.  
100 Adelaide St. W, Suite 300  
Toronto, ON  
M5H1S3

50.11%<sup>17</sup>

- 2a. Name:** *Avista Corporation*
- 2b. Address:** 1411 E. Mission Ave., Spokane, Washington 99202
- 2c. Trade Name:** Not Applicable
- 2d. Applicant is (check one) an individual ( ), a partnership ( ), a corporation (X), organized under the laws of the State of Washington.**

Avista is a publicly traded company whose common stock is listed and traded on the New York Stock Exchange.

- 2e. If partnership is checked in “d” above, supply following facts:**  
Not applicable.

- 2f. If corporation is checked in “d” above, supply following facts:**

**(1) Principal Officers (Avista):**

<u>Names of Principal Officers</u>	<u>Title of Each</u>
Scott L. Morris 1411 E. Mission Avenue Spokane, WA 99202	Chairman of the Board, President Chief Executive Officer

---

<sup>17</sup> The Province of Ontario is the largest shareholder of Hydro One with 49.85%. The balance of Hydro One stock is (1) in the Canadian central securities depository, the Canadian Depository for Securities’ (“CDS”) book-based holding system, a depository that holds on behalf of dealers and financial institutions, who in turn hold for clients (50.11%), and (2) owned by other registered shareholders (0.04%). It is not legal for anyone (other than the Province of Ontario) to own more than 10% of Hydro One under the Ontario Electricity Act of 1998 and Hydro One’s Articles of Incorporation.



Mark T. Thies  
1411 E. Mission Avenue  
Spokane, WA 99202

Sr. Vice President,  
Chief Financial Officer  
and Treasurer

Marian M. Durkin  
1411 E. Mission Avenue  
Spokane, WA 99202

Sr. Vice President,  
General Counsel,  
Corporate Secretary and  
Chief Compliance Officer

Dennis P. Vermillion  
1411 E. Mission Avenue  
Spokane, WA 99202

Sr. Vice President  
and President of  
Avista Utilities

Karen S. Feltes  
1411 E. Mission Avenue  
Spokane, WA 99202

Sr. Vice President  
and Chief Human Resource  
Officer

James M. Kensok  
1411 E. Mission Avenue  
Spokane, WA 99202

Vice President  
and Chief Information  
and Security Officer

Edward D. Schlect  
1411 E. Mission Avenue  
Spokane, WA 99202

Vice President  
and Chief Strategy Officer

David J. Meyer  
1411 E. Mission Avenue  
Spokane, WA 99202

Vice President  
and Chief Counsel for  
Regulatory and  
Governmental Affairs

Ryan L. Krasselt  
1411 E. Mission Avenue  
Spokane, WA 99202

Vice President, Controller  
and Principal Accounting  
Officer

Kevin J. Christie  
1411 E. Mission Avenue  
Spokane, WA 99202

Vice President for Customer  
Solutions

Heather L. Rosentrater  
1411 E. Mission Avenue  
Spokane, WA 99202

Vice President of Energy  
Delivery

Jason R. Thackston  
1411 E. Mission Avenue  
Spokane, WA 99202

Sr. Vice President of Energy  
Resources

Additional information regarding the officers listed above is set forth on Exhibit 3.

**(2) The name and address of each stockholder owning or holding directly or indirectly, 5% or more of the corporation's (Avista's) voting securities, and the percent of the securities held by each as follows:**

<u>Name</u>	<u>Address</u>	<u>Voting Control</u>
Blackrock Inc.	55 E. 52 <sup>nd</sup> Street New York, NY 10055	16.58%
The Vanguard Group, Inc.	100 Vanguard Blvd. Malvern, PA 19355	9.80%

**3. The name and address of each stockholder at present owning or controlling 5% or more of the voting securities of the utility over which the Applicant seeks to acquire control (AELP), and the percent of the securities held by each, is as follows:**

AERC owns 100% of the voting securities of AELP. AERC's address is as follows:

5601 Tonsgard Court  
Juneau, AK 99801

**4. Applicant proposes to acquire 100% of the public utility's voting securities:**

Hydro One, through Olympus Equity LLC, proposes to acquire 100% of the issued and outstanding shares of the common stock of Avista, which owns 100% of the voting securities of AERC, which owns 100% of the voting securities of AELP.

**5. Is the Applicant an officer, director, stockholder, partner, employee, or agent of the holder of any other operating authority issued by the Regulatory Commission of Alaska, or in any way a holder of a financial interest in any of that authority?**

No, neither Applicant.

JOINT APPLICATION FOR AUTHORIZATION TO ACQUIRE A CONTROLLING INTEREST IN ALASKA ELECTRIC LIGHT AND POWER COMPANY

November 21, 2017

Page 33 of 45

**6. If Applicant is presently the holder of another Regulatory Commission of Alaska operating authority, will a transfer application be filed at a later date seeking to merge authorities? Yes ( ) No ( )**

Not applicable.

**7. If the acquisition requested in this Application is authorized, does Applicant plan to transfer control of the authority involved in this Application to another party?**

No, neither Applicant.

**8. Does Applicant propose to change management, personnel or equipment of the utility to be acquired?**

No change in current management, personnel, or equipment of AELP is proposed or currently contemplated in connection in the Merger Agreement.

**9. Is Applicant familiar with the governing statutes and regulations of the Commission?**

Yes, both Applicants.

**10. List other primary business interests of the Applicant.**

Hydro One has three business segments: (i) electric transmission; (ii) electric distribution; and (iii) other business. Hydro One Networks Inc. owns and operates the transmission and distribution systems. Through Hydro One Remote Communities Inc., Hydro One also operates and maintains generation and distribution assets. Hydro One's other business segment consists principally of Hydro One's telecommunications business Hydro One Telecom Inc.), as well as certain other corporate activities. *See* Section III.A of this Application for greater detail.

Olympus Equity LLC is an indirect, wholly-owned subsidiary of Hydro One.<sup>18</sup> Olympus Equity LLC is a Delaware limited liability company formed on August 24, 2017, in anticipation of the completion of the merger to serve as a direct holding company for Avista and its subsidiaries. Olympus Equity LLC has not conducted any business operations except in furtherance of the transactions contemplated by the Merger Agreement, including the merger and related financing, and activities incident to its formation. Upon the completion of the merger, Avista will continue to exist as a direct, wholly owned subsidiary of Olympus Equity LLC. Olympus Equity LLC is a bankruptcy-remote special purpose entity, and will not have debt.

Other than AELP, as of December 31, 2016, Avista has one other reported business segment — Avista Utilities. Avista Utilities is an operating division of Avista that comprises Avista’s regulated utility operations in the Pacific Northwest, including electricity generation, transmission and distribution, and natural gas distribution operations in its regulated jurisdictions in Washington, Idaho, Oregon, and Montana. Avista’s regulated utility operations comprise the vast majority of its equity and income. Other relatively minor businesses conducted through various subsidiaries include sheet metal fabrication, venture fund investments, and real estate investments.

**11. Data on which Applicant relies for approval of Application.**

**a. Statement of financial condition of utility holding the authority.**

Exhibit 6 is the audited financial statement of AELP for 2016.

**b. Statement of financial condition of Applicant.**

---

<sup>18</sup> See Exhibit 1 (organizational structures), page 3.

Exhibit 4 contains Hydro One's 2016 Annual Report and 2016 Annual Information Form filed with Canadian securities regulators.

Olympus Equity LLC was formed for the sole purpose of facilitating the Proposed Transaction and will not be capitalized until the Proposed Transaction is approved and closed.

Exhibit 5 contains Avista's SEC Form 10-K for 2016 and Avista's SEC Form 10-Q for the Quarterly period ending June 30, 2017.

**c. Statement of facts indicating that acquisition of control of utility is in the public interest.**

*See* Section VIII, *infra*.

**d. If Applicant is a corporation:**

**(1) Proof that signatory has proper corporate authority to act on behalf of the corporation.**

*See* Exhibit 11, containing Hydro One Limited By-Law No. 1 and July 19, 2017, Boards of Directors Resolution, and Avista's July 19, 2017, Board of Directors Resolution.

**(2) Foreign corporation: Proof of registration to do business in Alaska.**

*See* Exhibit 12 for Certificates of Authority (for corporations) and Certificates of Registration (for limited liability companies) to transact business in Alaska for Hydro One, Olympus Equity LLC, and Avista (and intermediate subsidiaries).

**(3) Alaska corporation: Proof of good standing with Alaska Department of Commerce and Economic Development (Certification of Compliance).**

Although AERC and AELP are not "Applicants," *see* Exhibit 13 for AERC's and AELP's Certificates of Compliance.

**VIII. HYDRO ONE IS FIT, WILLING, AND ABLE; AFTER THE PROPOSED TRANSACTION, AELP WILL REMAIN FIT WILLING AND ABLE TO PROVIDE CERTIFICATED UTILITY SERVICE; AND THE PROPOSED TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST.**

**A. Hydro One is fit, willing, and able.**

**1. Hydro One, acting through Olympus Equity LLC, is managerially fit, willing, and able to own a controlling interest in AELP.**

As explained earlier in this Application, Hydro One has extensive experience owning and operating regulated electric utility systems and has the managerial expertise and financial resources to support, as an ultimate owner, AELP's provision of safe and reliable service to customers. Through its subsidiaries, Hydro One provides electric distribution service to more than 1.3 million retail end-use customers, as well as electric transmission service to many local distribution utilities and large industrial customers. Exhibit 3 identifies a total of nine officers and executives of Hydro One who collectively have substantial experience managing public utilities and other large businesses. Olympus Equity LLC is an indirect wholly-owned subsidiary of Hydro One recently formed to facilitate the Proposed Transaction.

Under the Proposed Transaction, AELP will continue to be managed and operated by the same AELP employees that manage and operate the utility today, including the experienced existing management team. The Proposed Transaction will not alter AELP's existing management, employees, or operations in Alaska. In addition, AELP will continue to have access to managerial support from Avista, as well as Hydro One. Based on the foregoing, Hydro One is managerially fit, willing, and able to own a controlling interest in AELP.

**2. Hydro One, acting through Olympus Equity LLC, is technically fit, willing, and able to own a controlling interest in AELP.**

Through its subsidiaries, Hydro One successfully operates and maintains extensive regulated electric utility systems. That experience, and Hydro One's experienced management and technical staff make Hydro One technically fit to own a controlling interest in AELP. In addition, the Proposed Transaction will not result in any change in the technical fitness of AELP, the entity that is, and will continue to be, directly responsible for the safe and reliable operation and maintenance of the electric utility facilities in Juneau.

**3. Hydro One, acting through Olympus Equity LLC, is financially fit, willing, and able to own a controlling interest in AELP.**

Hydro One is a large, well-capitalized electric utility company that is financially capable of supporting, as an ultimate owner, AELP's provision of safe and reliable service to customers. Hydro One has a significant asset base and a stable stream of revenues and cash flow. As of year-end 2016, Hydro One had total assets of C\$25 billion, annual revenues of over C\$6.5 billion, and a market capitalization of C\$14 billion. At December 31, 2016, Hydro One had a capital structure of approximately 53% debt and 47% equity. Hydro One had a current ratio of 0.53, funds from operations ("FFO") - to - interest expense ratio of 3.80, and FFO - to - debt ratio of 0.13. Hydro One's short-term liquidity is provided through funds from operations, a C\$1.5 billion commercial paper program (of which approximately C\$1 billion was available at December 31, 2016), and undrawn credit facilities of C\$2.55 billion. Both S&P and Moody's have commented on the adequacy of liquidity for Hydro One and its subsidiaries<sup>19</sup> in determining their credit ratings.

---

<sup>19</sup> Credit Ratings for Hydro One Limited and Hydro One Inc.

As indicated earlier, S&P affirmed an ‘A’ long-term corporate credit rating on both Hydro One and Hydro One Inc. Moody’s affirmed the ratings of Hydro One Inc.’s senior unsecured regular bonds (A3), senior unsecured medium-note program ((P)A3), and senior unsecured commercial paper (P-2). DBRS rates Hydro One Inc.’s long-term debt at A (High) and its short-term debt at R1 (Low), and expressed its view that, should the merger be financed as contemplated in the announcement, it will have no impact on Hydro One Inc.’s credit profile.

**B. After the Proposed Transaction, AELP will remain fit, willing, and able to provide the utility service authorized by its CPCN.**

**1. Managerial Fitness.**

The Proposed Transaction involves only a change in the ultimate parent of AELP. The Applicants do not propose any changes to AELP’s management or personnel as a result of the Proposed Transaction. AELP’s current management team will continue to manage AELP’s certificated utility service after the Proposed Transaction and has extensive experience operating in accordance with the Commission’s governing statutes and regulation. AELP will remain managerially fit to provide its certificated utility service after the Proposed Transaction.

**2. Technical Fitness.**

For many decades, AELP has successfully operated its facilities to provide safe and reliable service at reasonable rates. AELP has experienced, well-trained technical, operations, and maintenance employees. The Proposed Transaction will not result in any change in operating personnel, operating procedures, or operating facilities or equipment. AELP will remain technically fit to provide its certificated utility service after the Proposed Transaction.



### **3. Financial Fitness.**

AELP's audited financial statements are included in Exhibit 6. AELP is a financially sound, well-managed electric utility. The Commission often looks to liquidity ratio and debt ratio to assess the general financial fitness of a public utility. AELP has a liquidity ratio (current assets / current liabilities) of 1.43 (\$11.947 million / \$8.365 million), and a debt ratio (total liabilities / total assets) of 59.3% (\$159.967 million / \$269.683 million). The Proposed Transaction will not affect those ratios or any other aspect of AELP's financial performance or health. AELP will remain financially fit after the Proposed Transaction.

#### **C. The Proposed Transaction is consistent with the public interest.**

##### **1. The Proposed Transaction will add a second large, experienced electric utility company into AELP's ownership structure.**

As it relates to AELP, the Proposed Transaction will simply replace current institutional and retail investors with Hydro One as the ultimate owner of Avista. By adding a second large, experienced electric utility company into AELP's upstream ownership structure, the Proposed Transaction will enhance AELP's long-term and stable ownership by experienced energy infrastructure companies.

##### **2. The Proposed Transaction will not alter the direct ownership, management, or operation of AELP.**

As was explained earlier in this Application, the Proposed Transaction will not alter the direct ownership of AELP by AERC or the direct ownership of AERC by Avista. AELP will continue to operate relatively independently from Avista, under the same experienced AELP management team and employees as existed prior to the Proposed Transaction. AELP

employee compensation and benefit levels will be maintained for a period of three years and will not be less favorable than the current compensation and benefits, in the aggregate.

**3. The Proposed Transaction will not increase AELP rates or revenue requirements.**

AELP will not seek to recover in rates any premium associated with the acquisition of Avista stock, or transaction costs, associated with the Proposed Transaction. In addition, Avista and AELP have reaffirmed the affiliated interest cost assignment and allocation methodology that was reviewed by the Commission in Docket U-13-197 (regarding Avista's acquisition of AERC). As a result, AELP does not expect any change in its affiliated interest costs as a result of the Proposed Transaction.

The Proposed Transaction also will not impair the ability of AELP to raise capital or maintain a reasonable capital structure. The Proposed Transaction will not restrict AELP's access to capital and will not change AELP's capital structure.

**4. The Proposed Transaction will have no effect on regulatory oversight of AELP by the Commission.**

After the closing of the Proposed Transaction, AELP will remain subject to Commission regulation, just as it is today. The Proposed Transaction will in no way alter or limit the regulatory authority of the Commission (or its Staff), or affect their access to local management, the management of Avista, and the books and records of AELP.

**5. The Proposed Transaction will enhance community development, long-term benefits of scale, and local control.**

Through overall increases in charitable contributions and support for economic development and innovation by Avista and the Avista Foundation, the Proposed Transaction will likely increase the level of that funding in Juneau. In addition, the benefits of scale associated

with a combined Hydro One / Avista corporate structure will likely also benefit AELP and its customers over time through increased opportunities for innovation, research and development, and efficiencies by extending the use of technology, best practices, and business processes over a broader customer base and a broader set of infrastructure. Finally, AELP and its customers will benefit from the organizational culture of local control and management and employee retention embodied in the Delegation of Authority and the 55 commitments discussed earlier in this Application.

## **IX. REQUEST FOR APPROVAL**

The Applicants respectfully request approval of the acquisition of control of AELP described in this Application, in the form of a final order as discussed in Section VI, issued by the Commission within 180 days, as provided for by AS 42.05.175(a)(4) and 3 AAC 48.661(d).

By virtue of the signatures below, the Applicants authorize the Commission to arrange for the required publication of notice of this Application under 3 AAC 48.645(a) by publication in newspapers of general circulation in the area of Juneau, Alaska. Avista agrees to pay the cost of such publication. In compliance with 3 AAC 48.648(e), included in Exhibit 14 is a proposed public notice. Also included in Exhibit 14 is a cost quote from the Juneau Empire reflecting that Avista's undersigned counsel has arranged for publication of the notice. The Juneau Empire has been instructed not to publish the notice until directed to do so by Commission Staff. For the Commission's convenience, the Applicants are submitting with this Application a Microsoft Word version of the proposed notice.

RESPECTFULLY SUBMITTED this 21st day of November, 2017.

K&L GATES, LLP  
Attorneys for Hydro One Limited

By: /s/ Dean D. Thompson for  
Elizabeth Thomas  
925 Fourth Avenue, Suite 2900  
Seattle, Washington 98104-1158  
Tel: (206) 623-7580  
Facsimile: (206) 370-6190  
E-mail: liz.thomas@klgates.com

AVISTA CORPORATION

By: /s/ Dean D. Thompson for  
David J. Meyer  
Vice President and Chief Counsel for  
Regulatory and Governmental Affairs  
1411 E. Mission Avenue  
Spokane, Washington 99202  
Tel: (509) 495-4316  
Facsimile: (509) 495-8851  
E-mail: david.meyer@avistacorp.com

KEMPPEL, HUFFMAN AND ELLIS, P.C.  
Attorneys Avista Corporation

By: /s/ Dean D. Thompson  
Dean D. Thompson, ABA 9810049  
255 E. Fireweed Lane, Suite 200  
Anchorage, Alaska 99503  
Tel: (907) 277-1604  
Facsimile: (907) 276-2493  
E-mail: ddt@khe.com

JOINT APPLICATION FOR AUTHORIZATION TO ACQUIRE A CONTROLLING  
INTEREST IN ALASKA ELECTRIC LIGHT AND POWER COMPANY

November 21, 2017

Page 43 of 45

**VERIFICATION**

I, James Scarlett, Executive Vice President & Chief Legal Officer of Hydro One Limited, say on oath or affirm that I have read the foregoing document and believe all statements made in the document are true to the best of my knowledge, information, and belief.

By: \_\_\_\_\_

James Scarlett

Executive Vice President & Chief Legal Officer

SUBSCRIBED AND SWORN TO before me this 21 day of November, 2017.

\_\_\_\_\_  
Notary Public in and for the Province of Ontario

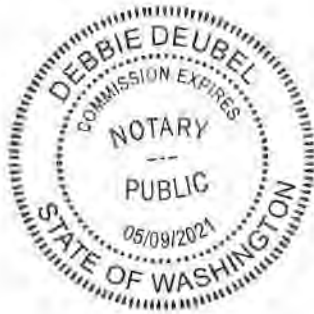
My Commission Expires: N/A

**VERIFICATION**

I, David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs of Avista Corporation, say on oath or affirm that I have read the foregoing document and believe all statements made in the document are true to the best of my knowledge, information, and belief.

By: [Signature]  
David J. Meyer  
Vice President and Chief Counsel for  
Regulatory and Governmental Affairs

SUBSCRIBED AND SWORN TO before me this 21<sup>st</sup> day of November, 2017.



[Signature]  
Notary Public in and for the State of Washington  
My Commission Expires: 05/09/2021

**EXHIBIT 9**  
**MASTER LIST OF COMMITMENTS**

## **MASTER LIST OF COMMITMENTS**

### **A. Reservation of Certain Authority to the Avista Board of Directors [See Direct Testimony of Morris/Schmidt/Christie/Pugliese]**

1. Consistent with and subject to the terms of Exhibits A and B to the Merger Agreement (referred to as “Delegation of Authority”) contained in Appendix 5 of the Joint Application, decision-making authority over commitments 2-15 below is reserved to the Board of Directors of Avista Corporation (“Avista”) and any change to the policies stated in commitments 2-15 requires a two-thirds (2/3) vote of the Avista Board:

#### **Governance**

2. **Executive Management:** Avista will seek to retain all current executive management of Avista, subject to voluntary retirements that may occur. This commitment will not limit Avista’s ability to determine its organizational structure and select and retain personnel best able to meet Avista’s needs over time. The Avista board retains the ability to dismiss executive management of Avista and other Avista personnel for standard corporate reasons (subject to the approval of Hydro One Limited (“Hydro One”) for any hiring, dismissal or replacement of the CEO);
3. **Board of Directors:** After the closing of the Proposed Transaction, Avista’s board will consist of nine (9) members, determined as follows: (i) two (2) directors designated by Hydro One who are executives of Hydro One or any of its subsidiaries; (ii) three (3) directors who are not officers, employees or directors (other than as an independent director of Avista or Olympus Equity LLC) of Hydro One or any of its affiliates and who are residents of the Pacific Northwest region, to be designated by Hydro One (collectively, the directors designated in clauses (i) and (ii) hereof, the “Hydro One Designees”), subject to the provisions of Clause 2 of Exhibit A to the Merger Agreement; (iii) three (3) directors who as of immediately prior to the closing of the Proposed Transaction<sup>1</sup> are members of the Board of Directors of Avista, including the Chairman of Avista’s Board of Directors (if such person is different from the Chief Executive Officer of Avista); and (iv) Avista’s Chief Executive Officer (collectively, the directors designated in clauses (iii) and (iv) hereof, the “Avista Designees”). The initial Chairman of Avista’s post-closing Board of Directors shall be the Chief Executive Officer of Avista as of the time immediately prior to closing for a one year term. If any Avista Designee resigns, retires or otherwise ceases to serve as a director of Avista for any reason, the remaining Avista Designees shall have the sole right to

---

<sup>1</sup> “Proposed Transaction” means the transaction proposed in the Joint Application of Avista and Hydro One filed on September 14, 2017.



nominate a replacement director to fill such vacancy, and such person shall thereafter become an Avista Designee.

The term “Pacific Northwest region” means the Pacific Northwest states in which Avista serves retail electric or natural gas customers, currently Alaska, Idaho, Montana, Oregon and Washington;

### **Business Operations**

4. **Avista’s Brand and Plan for the Operation of the Business:** Avista will maintain Avista’s brand and Avista will establish the plan for the operation of the business and its Subsidiaries;
5. **Capital Investment for Economic Development:** Avista will maintain its existing levels of capital allocations for capital investment in strategic and economic development items, including property acquisitions in the university district, support of local entrepreneurs and seed-stage investments;
6. **Continued Innovation:** Avista will continue development and funding of its and its subsidiaries’ innovation activities;
7. **Union Relationships:** Avista will honor its labor contracts and has the authority to negotiate, enter into, modify, amend, terminate or agree to changes in any collective bargaining agreement or any of Avista’s other material contracts with any labor organizations, union employees or their representatives;
8. **Compensation and Benefits:** Avista will maintain compensation and benefits related practices consistent with the requirements of the Merger Agreement;

### **Local Presence/Community Involvement**

9. **Avista’s Headquarters:** Avista will maintain (a) its headquarters in Spokane, Washington; (b) Avista’s office locations in each of its other service territories, and (c) no less of a significant presence in the immediate location of each of such office locations than what Avista and its subsidiaries maintained immediately prior to completion of the Proposed Transaction;
10. **Local Staffing:** Avista will maintain Avista Utilities’ staffing and presence in the communities in which Avista operates at levels sufficient to maintain the provision of safe and reliable service and cost-effective operations and consistent with pre-acquisition levels;
11. **Community Contributions:** Avista will maintain a \$4,000,000 annual budget for charitable contributions (funded by both Avista and the Avista Foundation).

Additionally, a \$2,000,000 annual contribution will be made to Avista's charitable foundation;<sup>2</sup>

12. **Community Involvement:** Avista will maintain at least Avista's existing levels of community involvement and support initiatives in its service territories;
13. **Economic Development:** Avista will maintain at least Avista's existing levels of economic development, including the ability of Avista to spend operations and maintenance funds<sup>3</sup> to support regional economic development and related strategic opportunities in a manner consistent with Avista's past practices;
14. **Membership Organizations:** Avista will maintain the dues paid by it to various industry trade groups and membership organizations; and
15. **Safety and Reliability Standards and Service Quality Measures:** Avista will maintain Avista's safety and reliability standards and policies and service quality measures in a manner that is substantially comparable to, or better than, those currently maintained.

**B. Rate Commitments [See Direct Testimony of Thies/Ehrbar/Lopez]**

16. **Treatment of Net Cost Savings:** Any net cost savings that Avista may achieve as a result of the Proposed Transaction will be reflected in subsequent rate proceedings, as such savings materialize. To the extent the savings are reflected in base retail rates they will offset the Rate Credit to customers, up to the offsetable portion of the Rate Credit.
17. **Treatment of Transaction Costs:** Avista will not recover the following costs in rates: (i) legal and financial advisory fees associated with the Proposed Transaction; (ii) the acquisition premium; (iii) any senior executive compensation tied to a change of control of Avista; and (iv) any other costs directly related to the Proposed Transaction.

---

<sup>2</sup> Note that Commitment 53 contains an additional commitment relating to charitable contributions; pursuant to that commitment Hydro One will cause Avista to make a one-time contribution of \$7,000,000 to Avista's charitable foundation at or promptly following closing of the Proposed Transaction.

<sup>3</sup> Operations and maintenance funds dedicated to economic development and non-utility strategic opportunities will be recorded below-the-line to a nonoperating account.

18. **Rate Credits:** Avista and Hydro One are proposing to flow through to Avista's retail customers in Washington, Idaho and Oregon a Rate Credit of \$31.5 million over a 10-year period, beginning at the time the merger closes.<sup>4</sup> The Rate Credit consists of two components, and reflects an increased level of savings in years 6-10 as illustrated in the table below.

**Two-Step Rate Credit Proposal**

	<u>Annual Credit Years 1-5</u>	<u>Annual Credit Years 6-10</u>	<u>Total Credit</u>
Total Credit	\$2.65 Million	\$3.65 Million	\$31.50 Million
Offsetable Credit	\$1.70 Million	\$2.70 Million	\$22.00 Million

The Total Rate Credit to customers for the first five years following the closing would be \$2.65 million per year, and the credit would increase to \$3.65 million per year for the last five years of the 10-year period. A portion of the annual total Rate Credit would be offsetable, as indicated in the table above. During the 10-year period the financial benefits will be flowed through to customers either through the separate Rate Credit described above or through a reduction to the underlying cost of service as these benefits are reflected in the test period numbers used for ratemaking. At the time of the close, the \$2.65 million benefit will be provided to customers through a separate Rate Credit, as long as the reduction in costs has not already been reflected in base retail rates for Avista's customers.

To the extent Avista demonstrates in a future rate proceeding that cost savings, or benefits, directly related to the Proposed Transaction are already being flowed through to customers through base retail rates, the separate Rate Credit to customers would be reduced by an amount up to the offsetable Rate Credit amount. The portion of the total Rate Credit that is not offsetable effectively represents acceptance by Hydro One of a lower rate of return during the 10-year period.

---

<sup>4</sup> The AEL&P operations in the City and Borough of Juneau, Alaska, operate substantially independent of Avista Utilities, and these costs, from which the merger-related cost savings are derived, are currently not being charged to AEL&P. Therefore, there are no financial cost savings to flow through to AEL&P customers. For Avista's retail operations in Montana, Avista has approximately 30 retail customers and total retail revenue of approximately \$74,000. Due to the very limited retail operations by Avista in Montana, for administrative efficiency the past practice by the Montana Public Service Commission has been to review the final rates recently filed and approved in the State of Idaho, and approve those for Avista's Montana customers, when a request is made by Avista. The date of the last approved retail rates in Montana for Avista was April 27, 2011. Since that time electric retail rates have increased in the State of Idaho, but Avista has not proposed similar increases for its Montana customers. Because Avista's current retail rates for its Montana customers are already below its cost of service, and for the sake of administrative efficiency, Avista and Hydro One are not proposing to flow through financial benefit to Avista's Montana customers related to the Proposed Transaction. (If a proportionate benefit to Montana customers were to be calculated based on the level of retail revenue, the total annual Rate Credit for all customers combined would be approximately \$190.)

The \$31.5 million represents the "floor" of benefits that will be flowed through to Avista's customers, either through the Rate Credit or through benefits otherwise included in base retail rates. To the extent the identifiable benefits exceed the annual offsetable Rate Credit amounts, these additional benefits will be flowed through to customers in base retail rates in general rate cases as they occur. The increase in total Rate Credits for years 6-10 will provide time for Avista and Hydro One to identify and capture over time an increased level of benefits, directly related to the Proposed Transaction, that can be flowed through to customers. Avista and Hydro One believe additional efficiencies (benefits) will be realized over time from the sharing of best practices, technology and innovation between the two companies. It will take time, however, to identify and capture these benefits. The level of annual net cost savings (and/or net benefits) will be tracked and reported on an annual basis, and compared against the offsetable level of savings.

**C. Regulatory Commitments [See Direct Testimony of Thies/Ehrbar/Lopez]**

19. **State Regulatory Authority and Jurisdiction:** Olympus Holding Corp. and its subsidiaries, including Avista, as appropriate, will comply with all applicable laws, including those pertaining to transfers of property, affiliated interests, and securities and the assumption of obligations and liabilities.
20. **Compliance with Existing Commission Orders:** Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge that all existing orders issued by the Commission with respect to Avista or its predecessor, Washington Water Power Co., will remain in effect, and are not modified or otherwise affected by the Proposed Transaction.
21. **Separate Books and Records:** Avista will maintain separate books and records.
22. **Access to and Maintenance of Books and Records:** Olympus Holding Corp. and its subsidiaries, including Avista, will provide reasonable access to Avista's books and records; access to financial information and filings; audit rights with respect to the documents supporting any costs that may be allocable to Avista; and access to Avista's board minutes, audit reports, and information provided to credit rating agencies pertaining to Avista.

Olympus Holding Corp. and its subsidiaries, including Avista, will maintain the necessary books and records so as to provide an audit trail for all corporate, affiliate, or subsidiary transactions with Avista, or that result in costs that may be allocable to Avista.

The Proposed Transaction will not result in reduced access to the necessary books and records that relate to transactions with Avista, or that result in costs that may be allocable to Avista. Avista will provide Commission Staff and other parties to regulatory proceedings reasonable access to books and records (including those of Olympus Holding Corp. or any affiliate or subsidiary companies) required to

verify or examine transactions with Avista, or that result in costs that may be allocable to Avista.

Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Avista's accounts, books, papers and documents in compliance with all applicable laws. Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Olympus Holding Corp.'s accounts, books, papers and documents pursuant to all applicable laws; provided, that such right to inspection shall be limited to Olympus Holding Corp.'s accounts, books, papers and documents that pertain solely to transactions affecting Avista's regulated utility operations.

Olympus Holding Corp. and its subsidiaries, including Avista, will provide the Commission with access to written information provided by and to credit rating agencies that pertains to Avista. Olympus Holding Corp. and each of its subsidiaries will also provide the Commission with access to written information provided by and to credit rating agencies that pertains to Olympus Holding Corp.'s subsidiaries to the extent such information may affect Avista.

23. **Cost Allocations Related to Corporate Structure and Affiliate Interests:**

Avista agrees to provide cost allocation methodologies used to allocate to Avista any costs related to Olympus Holding Corp. or its other subsidiaries, and commits that there will be no cross-subsidization by Avista customers of unregulated activities.

The cost-allocation methodology provided pursuant to this commitment will be a generic methodology that does not require Commission approval prior to it being proposed for specific application in a general rate case or other proceeding affecting rates.

Avista will bear the burden of proof in any general rate case that any corporate and affiliate cost allocation methodology is reasonable for ratemaking purposes. Neither Avista nor Olympus Holding Corp. or its subsidiaries will contest the Commission's authority to disallow, for retail ratemaking purposes in a general rate case, unreasonable, or misallocated costs from or to Avista or Olympus Holding Corp or its other subsidiaries.

With respect to the ratemaking treatment of affiliate transactions affecting Avista, Avista and Olympus Holding Corp. and its subsidiaries, as applicable, will comply with the Commission's then-existing practice; provided, however, that nothing in this commitment limits Avista from also proposing a different ratemaking treatment for the Commission's consideration, or limit the positions any other party may take with respect to ratemaking treatment.

Avista will notify the Commission of any change in corporate structure that affects Avista's corporate and affiliate cost allocation methodologies. Avista will propose revisions to such cost allocation methodologies to accommodate such changes.

Avista will not take the position that compliance with this provision constitutes approval by the Commission of a particular methodology for corporate and affiliate cost allocation.

24. **Ratemaking Cost of Debt and Equity:** Avista will not advocate for a higher cost of debt or equity capital as compared to what Avista's cost of debt or equity capital would have been absent Hydro One's ownership.

For future ratemaking purposes:

- a. Determination of Avista's debt costs will be no higher than such costs would have been assuming Avista's credit ratings by at least one industry recognized rating agency, including, but not limited to, S&P, Moody's, Fitch or Morningstar, in effect on the day before the Proposed Transaction closes and applying those credit ratings to then-current debt, unless Avista proves that a lower credit rating is caused by circumstances or developments not the result of financial risks or other characteristics of the Proposed Transaction;
  - b. Avista bears the burden to prove prudent in a future general rate case any prepayment premium or increased cost of debt associated with existing Avista debt retired, repaid, or replaced as a part of the Proposed Transaction; and
  - c. Determination of the allowed return on equity in future general rate cases will include selection and use of one or more proxy group(s) of companies engaged in businesses substantially similar to Avista, without any limitation related to Avista's ownership structure.
25. **Avista Capital Structure:** At all times following the closing of the Proposed Transaction, Avista will have a common equity ratio of not less than 44 percent, (as calculated for ratemaking purposes) except to the extent the Commission establishes a lower equity ratio for Avista for ratemaking purposes.
26. **FERC Reporting Requirements:** Avista will continue to meet all the applicable FERC reporting requirements with respect to annual and quarterly reports (e.g., FERC Forms 1, 2, 3q) after closing of the Proposed Transaction.
27. **Participation in National and Regional Forums:** Avista will continue to participate, where appropriate, in national and regional forums regarding transmission issues, pricing policies, siting requirements, and interconnection and integration policies, when necessary to protect the interest of its customers.
28. **Treatment of Confidential Information:** Nothing in these commitments will be interpreted as a waiver of Hydro One's, its subsidiaries', or Avista's rights to request confidential treatment of information that is the subject of any of these commitments.
29. **Commission Enforcement of Commitments:** Hydro One and its subsidiaries, including Avista, understand that the Commission has authority to enforce these

commitments in accordance with their terms. If there is a violation of the terms of these commitments, then the offending party may, at the discretion of the Commission, have a period of thirty (30) calendar days to cure such violation.

The scope of this commitment includes the authority of the Commission to compel the attendance of witnesses from Olympus Holding Corp. and its subsidiaries with pertinent information on matters affecting Avista. Olympus Holding Corp. and its subsidiaries waive their rights to interpose any legal objection they might otherwise have to the Commission's jurisdiction to require the appearance of any such witnesses.

30. **Submittal to State Court Jurisdiction for Enforcement of Commission Orders:** Olympus Holding Corp., on its own and its subsidiaries' behalf, including Avista's, will file with the Commission prior to closing the Proposed Transaction an affidavit affirming that it will submit to the jurisdiction of the relevant state courts for enforcement of the Commission's orders adopting these commitments and subsequent orders affecting Avista.
31. **Annual Report on Commitments:** By May 1, 2019 and each May 1 thereafter through May 1, 2023, Avista will file a report with the Commission regarding the implementation of the commitments as of December 31 of the preceding year. The report will, at a minimum, provide a description of the performance of each of the commitments. If any commitment is not being met, relative to the specific terms of the commitment, the report must provide proposed corrective measures and target dates for completion of such measures. Avista will make publicly available at the Commission non-confidential portions of the report.
32. **Commitments Binding:** Hydro One, Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge that the commitments being made by them are binding only upon them and their affiliates where noted, and their successors in interest. Hydro One and Avista are not requesting in this proceeding a determination of the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the investments, expenditures or actions referenced in the commitments, and the parties in appropriate proceedings may take such positions regarding the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the investments, expenditures or actions as they deem appropriate.

#### **D. Financial Integrity Commitments [See Direct Testimony of Thies/Lopez]**

33. **Capital Structure Support:** Hydro One will provide equity to support Avista's capital structure that is designed to allow Avista access to debt financing under reasonable terms and on a sustainable basis.
34. **Utility-Level Debt and Preferred Stock:** Avista will maintain separate debt and preferred stock, if any, to support its utility operations.

35. **Continued Credit Ratings:** Each of Hydro One and Avista will continue to be rated by at least one nationally recognized statistical “Rating Agency.” Hydro One and Avista will use reasonable best efforts to obtain and maintain a separate credit rating for Avista from at least one Rating Agency within the ninety (90) days following the closing of the Proposed Transaction. If Hydro One and Avista are unable to obtain or maintain the separate rating for Avista, they will make a filing with the Commission explaining the basis for their failure to obtain or maintain such separate credit rating for Avista, and parties to this proceeding will have an opportunity to participate and propose additional commitments.
36. **Restrictions on Upward Dividends and Distributions:**
  - a. If either (i) Avista’s corporate credit/issuer rating as determined by at least one industry recognized rating agency, including, but not limited to, S&P, Moody’s, Fitch, or Morningstar is investment grade or (ii) the ratio of Avista’s EBITDA to Avista’s interest expense is greater than or equal to 3.0, then distributions from Avista to Olympus Equity LLC shall not be limited so long as Avista’s equity ratio is equal to or greater than 44 percent on the date of such Avista distribution after giving effect to such Avista distribution, except to the extent the Commission establishes a lower equity ratio for ratemaking purposes. Both the EBITDA and equity ratio shall be calculated on the same basis that such calculations would be made for ratemaking purposes for regulated utility operations.
  - b. Under any other circumstances, distributions from Avista to Olympus Equity LLC are allowed only with prior Commission approval.
37. **Pension Funding:** Avista will maintain its pension funding policy in accordance with sound actuarial practice.
38. **SEC Reporting Requirements:** Following the closing of the Proposed Transaction, Avista will file required reports with the SEC.
39. **Compliance with the Sarbanes-Oxley Act:** Following the closing of the Proposed Transaction, Avista will comply with applicable requirements of the Sarbanes-Oxley Act.

**E. Ring-Fencing Commitments [See Direct Testimony of Thies/Lopez]**

40. **Independent Directors:** At least one of the nine members of the board of directors of Avista will be an independent director who is not a member, stockholder, director (except as an independent director of Avista or Olympus Equity LLC), officer, or employee of Hydro One or its affiliates. At least one of the members of the board of directors of Olympus Equity LLC will be an independent director who is not a member, stockholder, director (except as an independent director of Olympus Equity LLC or Avista), officer, or employee of Hydro One or its affiliates. The same individual may serve as an independent



director of both Avista and Olympus Equity LLC. The organizational documents for Avista will not permit Avista, without the consent of a two-thirds majority of all its directors, including the affirmative vote of the independent director (or if at that time Avista has more than one independent director, the affirmative vote of at least one of Avista's independent directors), to consent to the institution of bankruptcy proceedings or the inclusion of Avista in bankruptcy proceedings.

41. **Non-Consolidation Opinion:**

- a. Within ninety (90) days of the Proposed Transaction closing, Avista and Olympus Holding Corp. will file a non-consolidation opinion with the Commission which concludes, subject to customary assumptions and exceptions, that the ring-fencing provisions are sufficient that a bankruptcy court would not order the substantive consolidation of the assets and liabilities of Avista with those of Olympus Holding Corp. or its affiliates or subsidiaries (other than Avista and its subsidiaries).
- b. Olympus Holding Corp. must file an affidavit with the Commission stating that neither Olympus Holding Corp. nor any of its subsidiaries, will seek to include Avista in a bankruptcy without the consent of a two-thirds majority of Avista's board of directors including the affirmative vote of Avista's independent director, or, if at that time Avista has more than one independent director, the affirmative vote of at least one of Avista's independent directors.
- c. If the ring-fencing provisions in these commitments are not sufficient to obtain a non-consolidation opinion, Olympus Holding Corp. and Avista agree to promptly undertake the following actions:
  - (i) Notify the Commission of this inability to obtain a non-consolidation opinion.
  - (ii) Propose and implement, upon Commission approval, such additional ring-fencing provisions around Avista as are sufficient to obtain a non-consolidation opinion subject to customary assumptions and exceptions.
  - (iii) Obtain a non-consolidation opinion.

42. **Olympus Equity LLC:** Olympus Holding Corp. indirect subsidiaries will include Olympus Equity LLC between Avista and Olympus LLC 2. See the post-acquisition organizational chart in Appendix 1 of the Joint Application. Following closing of the Proposed Transaction, all of the common stock of Avista will be owned by Olympus Equity LLC, a new Delaware limited liability company, and a wholly-owned subsidiary of Olympus LLC 2. Olympus Equity LLC will be a bankruptcy-remote special purpose entity, and will not have debt.

43. **Restriction on Pledge of Utility Assets:** Avista will agree to prohibitions against loans or pledges of utility assets to Hydro One, Olympus Holding Corp., or any of their subsidiaries or affiliates, without Commission approval.

44. **Hold Harmless; Notice to Lenders; Restriction on Acquisitions and Dispositions:**

- a. Avista will generally hold Avista customers harmless from any business and financial risk exposures associated with Olympus Holding Corp., Hydro One, and Hydro One's other affiliates.
- b. Pursuant to this commitment, Avista and Olympus Holding Corp. will file with the Commission, prior to closing of the Proposed Transaction, a form of notice to prospective lenders describing the ring-fencing provisions included in these commitments stating that these provisions provide no recourse to Avista assets as collateral or security for debt issued by Hydro One or any of its subsidiaries, other than Avista.
- c. In furtherance of this commitment:
  - i. Avista commits that Avista's regulated utility customers will be held harmless from the liabilities of any unregulated activity of Avista or Hydro One and its affiliates. In any proceeding before the Commission involving rates of Avista, the fair rate of return for Avista will be determined without regard to any adverse consequences that are demonstrated to be attributable to unregulated activities. Measures providing for separate financial and accounting treatment will be established for each unregulated activity.
  - ii. Olympus Holding Corp. and Avista will notify the Commission subsequent to Olympus Holding Corp.'s board approval and as soon as practicable following any public announcement of: (1) any acquisition by Olympus Holding Corp. of a regulated or unregulated business that is equivalent to five (5) percent or more of the capitalization of Avista; or (2) the change in effective control or acquisition of any material part of Avista by any other firm, whether by merger, combination, transfer of stock or assets. Notice pursuant to this provision is not and will not be deemed an admission or expansion of the Commission's authority or jurisdiction over any transaction or in any matter or proceeding whatsoever.

Within sixty (60) days following the notice required by this subsection (c)(ii)(2), Avista and Olympus Holding Corp. or its subsidiaries, as appropriate, will seek Commission approval of any sale or transfer of any material part of Avista. The term "material part of Avista" means any sale or transfer of stock representing ten percent (10%) or more of the equity ownership of Avista.

- iii. Neither Avista nor Olympus Holding Corp. will assert in any future proceedings that, by virtue of the Proposed Transaction and the resulting

corporate structure, the Commission is without jurisdiction over any transaction that results in a change of control of Avista.

- d. If and when any subsidiary of Avista becomes a subsidiary of Hydro One or one of its subsidiaries other than Avista, Avista will so advise the Commission within thirty (30) days and will submit to the Commission a written document setting forth Avista's proposed corporate and affiliate cost allocation methodologies.
45. **Olympus LLC 2 and Olympus Equity LLC Sub-entities:** Olympus LLC 2 will not operate or own any business and will limit its activities to investing in and attending to its shareholdings in Olympus Equity LLC, which, in turn, will not operate or own any business and will limit its activities to investing in and attending to its shareholdings in Avista.
46. **No Amendment of Ring-Fencing Provisions:** Olympus Holding Corp. and Avista commit that no material amendments, revisions or modifications will be made to the ring-fencing provisions as specified in these regulatory commitments without prior Commission approval pursuant to a limited re-opener for the sole purpose of addressing the ring-fencing provisions.

**F. Environmental, Renewable Energy, and Energy Efficiency Commitments [See Direct Testimony of Christie/Pugliese]**

47. **Renewable Portfolio Standard Requirements:** Hydro One acknowledges Avista's obligations under applicable renewable portfolio standards, and Avista will continue to comply with such obligations.
48. **Renewable Energy Resources:** Avista will acquire all renewable energy resources required by law and such other renewable energy resources as may from time to time be deemed advisable in accordance with Avista's integrated resource planning process and applicable regulations.
49. **Greenhouse Gas and Carbon Initiatives:** Hydro One acknowledges Avista's Greenhouse Gas and Carbon Initiatives contained in its current Integrated Resource Plan, and Avista will continue to work with interested parties on such initiatives.
50. **Greenhouse Gas Inventory Report:** Avista will report greenhouse gas emissions as required.
51. **Efficiency Goals and Objectives:** Hydro One acknowledges Avista's energy efficiency goals and objectives set forth in Avista's 2017 Integrated Resource Plan and other plans, and Avista will continue its ongoing collaborative efforts to expand and enhance them.
52. **Optional Renewable Power Program:** Avista will continue to offer renewable power programs in consultation with stakeholders.

**G. Community and Low-Income Assistance Commitments [See Direct Testimony of Morris/Schmidt/Christie/Pugliese]**

53. **Community Contributions:** Hydro One will cause Avista to make a one-time \$7,000,000 contribution to Avista's charitable foundation at or promptly following closing.<sup>5</sup>
54. **Low-Income Energy Efficiency Funding:** Avista will continue to work with its advisory groups on the appropriate level of funding for low income energy efficiency programs.
55. **Addressing Other Low-Income Customer Issues:** Avista will continue to work with low-income agencies to address other issues of low-income customers, including funding for bill payment assistance.

---

<sup>5</sup> Note that Commitment 11 contains additional provisions relating to Avista's charitable contributions.

The Case for CBJ Intervention  
in Docket U-17-097 with the  
Regulatory Commission of Alaska

February 2, 2018

by  
Renewable Juneau

This document explains 1) why the CBJ should intervene in the HydroOne case before the Regulatory Commission and 2) the conditions that the CBJ intervention should request.

## **I. Why the CBJ should intervene.**

A corporate merger involving the entity that provides the CBJ with a necessity (electricity) must cause no harm to be in the public interest. The only way to assure such a result is to participate in the process and address the public interest of the CBJ.

Not participating in the process leaves the interests of the CBJ to the care of the RCA, which considers the “public interest” but only if the public defines it. The RCA will not do this for us, nor will HydroOne/Avista. The RCA can only consider and react to the information presented to it in the record. The RCA develops very little information on its own. The Assembly must fill that void to protect the CBJ.

Moreover, the Assembly is required to act in the interests of Juneau and its citizens. The transfer of AEL&P/Avista to HydroOne is an opportunity for the CBJ to fulfill its obligation by requesting conditions that will assure the best outcomes and future for the community. If the Assembly passes on this opportunity (when a foreign-based corporation is taking over the local utility) it will be much harder to argue against any resulting arrangements in the future.

It is important to realize that AEL&P is no longer simply a local business. With its sale to Avista, AEL&P’s obligation shifted to its new owner. With the sale of Avista to HydroOne, AEL&P’s decision making obligations will be to HydroOne. HydroOne’s biggest owner is the province of Ontario. Trusting a foreign-owned and controlled corporation to operate in the best interests of the CBJ is naive. The province could decide to make HydroOne once again a part of the Ontario government whose main obligations are to Ontario residents. These obligations are to provide profits for management, shareholders and Ontario ratepayers.

It is interesting to note that the acquisition is a cash deal. The billions of dollars in cash have come from other utility rate payers. Care must be taken to assure that the CBJ will not just be another source of cash for another acquisition. Having this amount of cash would appear to indicate that rates are too high at the other utilities. Hydro One is paying a 24% premium for Avista. Hydro One obviously will want a return on its investment. Care must be taken so that AEL&P and Juneau does not become a source of cash for the corporate headquarters in Canada and fuel for the next acquisition.

Concessions proposed and adopted can range from environmental standards to social issues to fiscal issues and beyond. Local government has a place at the table to assure that the final terms of a transfer of ownership do not pose long term difficulties and are not at the expense of public interest. This obligation is the community’s alone and not that of the RCA whose role is different.

The CBJ recognizes that it does not have expertise in this area. The CBJ should hire authoritative expertise that understands past settlements around the country and what is

possible in Juneau, especially given conditions of the sale in the other effected states. HydroOne/Avista is lawyered up for this sale. Juneau deserves expertise of its own.

## **II. Specific conditions to specify in the intervention.**

1. The Snettisham hydropower facilities are to remain in public ownership once the bonds are paid off.

Representative Don Young expressed his strong concern in his December 5, 2017 filing with the RCA that the RCA require “conditions that the Snettisham Hydroelectric Facility assets remain in State of Alaska and or local ownership as Congress intended.”

HydroOne/Avista filed a response on December 11 claiming that no such conditions are necessary because “those concerns are fully addressed by existing protections.” If that is in fact true, then HydroOne should have no objections to the RCA imposing iron-clad conditions as Representative Young recommended.

Snettisham was built by the federal government and sold to the state to be a long term asset for Juneau and a means by which electric rates would be low and eventually lower in order to encourage economic development. If local ownership moves beyond local interest and control, we run the risk that the facility will meet the needs of its owners. This is especially true if ownership passes to a foreign country or foreign held management, such as Hydro One. For example, it is possible if not likely that at the next Ontario elections, Hydro One would become a direct agency of the province of Ontario, changing the management structure and plans for its subsidiary organizations.

As an extremely valuable facility, the new owners could seek to monetize its value by lease, mortgage or bonding, thus raising the need for additional rate increases to cover bonded debt. Juneau rates would no longer be at the promised lower rate levels of the original federal intent.

One option available would be for the state to continue to own Snettisham, even after the current bonds are retired. Intervention would allow consideration of this and other as yet unexplored options to protect ratepayer interests.

2. Nondiscriminatory and Open Access Transmission for current and future energy developers.

Requiring AEL&P to provide open access transmission within the CBJ is simply asking AEL&P to provide the service that is provided in the service territories of the 4 other states that Avista operates in. In Alaska, open access transmission is already provided by Chugach Electric and Golden Valley Electric and is being requested by Homer Electric for its service territory.

The practical effect of having AEL&P open up its transmission system is to provide additional economic development for the CBJ, reduced emissions at Kensington Mine, and additional revenues for AEL&P by providing transmission service.

The provision of transmission service does not negatively affect the utility so long as its costs are properly allocated between the utility's functions. Without open access transmission, a utility is able to thwart economic development. A utility that can preclude development (by not providing open access transmission) is hoarding the future benefits for itself and is not acting in the best interests of the community, but for its shareholders.

3. Limited Rate of Return.

AEL&P receives a substantially higher rate of return on equity (new facilities) than any other operation of Hydro One and Avista. CBJ should seek a NO HARM clause so that Juneau will be treated the same as ratepayers in Ontario and Washington by requiring a rate of return equivalent to those other service areas. The risk is that Juneau ratepayers could unfairly subsidize lower rates elsewhere.

4. Snettisham \$50M bond reserve to be held by AIDEA for future avalanche and transmission problems.

There is significant risk in expecting HydroOne shareholders, principally the Ontario government, to pay for a transmission failure. Our legislature is unlikely to pay for repairs of a foreign government owned asset, leaving Juneau ratepayers with an excessive burden in a natural environment prone to avalanche and other geohazards.

5. Integrated Resource Plan every 2 years.

An Integrated Resource Plan (IRP) is a public process under which a utility opens its utility planning process for all stakeholders to view and comment on. Public meetings are often used to explain the plans. The utility will forecast its electric load and indicate how it will meet the utility's future load requirements. Customers can see whether the utility is choosing the least cost resources, or making investment.

Avista is rightfully proud of the Integrated Resource Plan process it conducts every two years in Washington and Idaho for its electric facilities. A copy of the Avista webpage explaining this program is attached (Attachment A; see <https://www.myavista.com/about-us/our-company/integrated-resource-planning>). Juneau should benefit from an equal level of advance planning.

The practical effect is allowing the citizens input into their local utility; input they do not have now. Having the utility prepare and publicly file an IRP allows the community to view (and participate if desired) how the utility is serving its customers' needs in an open, transparent manner. The CBJ is a community that is interested in renewables and greenhouse gas issues. Asking AEL&P to do an IRP is not a burden to the utility; the utility is more than likely doing it on its own now.

The Avista IRPs are filed with regulators in Washington and Idaho as part of a public process to receive approval for new projects prior to build-out. In contrast to the Avista



process down south, there is currently no public input or RCA oversight in the decision-making process for new facilities. Once the investments are made, the utility can come to the RCA and negotiate a rate increase, as AEL&P/Avista did after recently installing a new \$22 million backup generator.

The RCA should stipulate that an IRP process be conducted publicly with clear approval prior to encumbering major expenditures on new facilities in Alaska. The IRP should include the full range of resource options, ranging from traditional power plants to more innovative sources of electricity supply such as power purchases, independent power plants, cogeneration, demand-side management (energy efficiency and load management), and renewable energy sources.

6. Juneau land.

Avista owns vast tracks of non-utility lands (recreation and other) in Juneau under various entities that with the Snettisham infrastructure total over 6000 Juneau acres. By being at the table, CBJ could explore the divestiture of non-utility land assets that may enable development of these resources.

In closing, the CBJ should support an RCA public hearing or having RCA deliberations in Juneau. Over 100 comments on the proposed transfer were sent by Juneau residents to the RCA. This is a major display of public interest, including comments sent by organizations, businesses, and elected officials (see Attachment B). The organizations provided references and documents that not only establish the public interest issues but crystallize the concerns and reasons justifying the concerns.

CBJ should advocate for a public hearing to be held in Juneau so that local people can address the RCA with their concerns. Juneau ratepayers should not have to fly to Anchorage to participate or listen to RCA deliberations on an issue of such widespread concern in the community.

## ATTACHMENT A



## Integrated Resource Planning

Planning is integral to everything we do at Avista, and it is especially important in determining how to meet the future energy needs of our customers. Central to this effort is a process called the Integrated Resource Plan, or IRP. You can think of the IRP as a roadmap for how we will meet the energy needs of our electric and natural gas customers 20 years into the future.

Having a diverse energy mix is the foundation of Avista's ability to provide our customers with clean, reliable power at fair, reasonable rates. Our diversified energy portfolio ensures we have a stable supply of power around the clock, every day of the year, today and into the future.

As a regulated utility, Avista files an electric IRP in odd years with the public utility commissions in Washington and Idaho. In even years, we file a natural gas IRP with the public utility commissions in Washington, Idaho, and Oregon.

An important part of both the electric and natural gas IRP process is public involvement. Two key opportunities for public involvement are through the Technical Advisory Committee, or TAC, and the public comment period.

The TAC is committee of stakeholders who meet to review specific issues and aspects of the IRP. During this approximately 18-month process, the electric IRP TAC and the natural gas TAC each meet six times in Spokane, with each meeting being an intensive, full-day session. To encourage participation in the TACs by a diverse group of representatives, participation can be via conference call.

When the respective IRPs have been drafted, the Washington Utilities and Transportation Commission, Idaho Public Utilities Commission, and Public Utility Commission of Oregon will each hold open comment periods when the public is invited to review the plan and provide comments to the respective agencies.

(Source: <https://www.myavista.com/about-us/our-company/integrated-resource-planning>)

## ATTACHMENT B

List of organizations, businesses, and elected officials that submitted comments to the RCA.

### Elected officials

Congressman Don Young

Rep. Tammie Wilson

Former Senator and Senate Energy Chair, Lesil McGuire

Former legislator and former Assembly member Cathy Munoz

Former Assembly members:

Errol Champion

Jim Powell

Johan Dybdahl

Kate Troll

Karen Crane

Randy Wanamaker

### Organizations and businesses:

Alaska Independent Power Producers Association

Alaska Native Brotherhood Camp 70 Glacier Valley

Alaska Seafood Company

Alaska State Chamber

Coeur Alaska Kensington Gold Mine

Echo Ranch Bible Camp

Juneau Chapter of Interfaith Power and Light

Juneau Building and Construction Trades

Juneau Hydropower

Juneau Chapter of 350.org

Randy's Rib Shack

Renewable Juneau

**RECEIVED**

By the Regulatory Commission of Alaska on Dec 21, 2017

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Stephen McAlpine, Chairman  
Rebecca L. Pauli  
Robert M. Pickett  
Norman Rokeberg  
Janis W. Wilson

In the Matter of the Joint Application Filed by )  
Hydro One Limited and Avista Corporation for )  
Authority to Acquire a Controlling Interest in ) U-17-097  
ALASKA ELECTRIC LIGHT & POWER )  
COMPANY )

**COMMENTS OF JUNEAU HYDROPOWER, INC. ON AVISTA ACQUISITION**

**I. Introduction and Summary**

Juneau Hydropower, Inc. (“JHI”) submits these updated comments on the application of Hydro One Limited (“Hydro One”), Olympus Equity, and Avista Corporation (“Avista”) (together, “Applicants”) seeking the Regulatory Commission of Alaska’s (“RCA”) approval to transfer Avista’s controlling interest in Alaska Electric Light and Power Company (“AELP”) to Hydro One (through Olympus Equity).<sup>1</sup> When they refiled, Applicants chose not to refine their application to respond to concerns expressed by numerous Juneau residents and businesses who demonstrated on the record that the transfer is not in the public interest. Instead, Applicants filed a response to a letter Congressman Don Young filed on December 4, 2017 attempting to deflect Congressman Young’s legitimate concerns that the Snettisham

<sup>1</sup> Joint Application for Authorization to Acquire a Controlling Interest in Alaska Electric Light and Power Company, U-17-097, Nov. 21, 2017 (“Application”). JHI incorporates by reference comments that it filed on Applicants’ original application. Comments of Juneau Hydropower, Inc. on Avista Acquisition, Oct. 12, 2017, U-17-085. (“JHI Initial Comments”)

BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
1100 Connecticut Ave., N.W., Suite 825, Washington, DC 20036-4165  
TELEPHONE (202) 659-5800 • FACSIMILE (202) 659-1027

facilities will fall into foreign ownership if the RCA approves the controlling interest transfer.<sup>2</sup> They indicated that they will respond to the public’s comments after the comment period ends, presumably to have the “last word”.<sup>3</sup>

The Commission should fully investigate the concerns of the public and Congressman Young, and schedule a public hearing in Juneau for ratepayers to have an opportunity to comment on Applicants’ responses to the issues they raise later in the proceeding. The Washington Utilities and Transportation Commission appears to be undertaking such a serious inquiry. Despite objections, it has granted intervention to an industry group (the Industrial Customers of Northwest Utilities), a group seeking to encourage efficiency and protect low-income consumers (the Energy Project), and environmental groups (the Sierra Club, Northwest Energy Coalition, Renewable Northwest, and Natural Resources Defense Council).<sup>4</sup> Issues raised by Alaska consumers merit the same level of inquiry.

Applicants’ failure to mention concerns raised in U-17-085 illustrates a continuing theme in this and the terminated acquisition dockets: that Applicants refuse to afford the same benefits and opportunities to Alaska that they commit to other states. For example, they have not submitted an interconnection tariff or committed to operate AIDEA’s Snettisham transmission and substation assets in an open access, fair and nondiscriminatory manner as JHI requested in U-17-085 comments.<sup>5</sup> Hydro One and Avista operate transmission facilities

<sup>2</sup> Congressman Young’s Comments were filed December 4, 2017 in U-17-097 (“Young Letter”) and the Applicants’ Joint Reply was filed in U-17-097 on Dec. 11, 2017 (“Joint Comments”).

<sup>3</sup> Joint Comments, p. 1 fn.4 (stating “The Applicants will reply to other comments [besides the Congressman] in this docket following the end of the public comment period.”). JHI reserves its right to file supplemental comments, as appropriate.

<sup>4</sup> See *Prehearing Conference Order; Notice of Hearing*, WUTC U-170970(2), October 25, 2017.

<sup>5</sup> JHI Initial Comments, pp. 7-8.

BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
1100 Connecticut Ave., N.W., Suite 825, Washington, DC 20036-4165  
TELEPHONE (202) 659-5800 • FACSIMILE (202) 659-1027

consistent with FERC open access/nondiscrimination rules in other jurisdictions and have interconnection tariffs in place on a widespread basis. There is no reason to treat Alaska differently.

Applicants claim that the acquisition is in the public interest because 1) Hydro One will “add a second large, experienced electric utility company into AELP’s upstream ownership, without alternating any aspect of AELP’s local management and operations...”<sup>6</sup> and 2) it will “allow Avista and its customers to benefit from being part of a larger organization...while at the same time preserving local control of Avista, [and] its commitment to community involvement...”<sup>7</sup> However, Applicants still have not translated these nebulous public interest representations into binding, specific commitments tailored for Juneau’s needs. They have not agreed to apply the 55 Commitments that they have made to Washington and Oregon to Alaska. They have only paid lip service to managing AELP consistent with affording local control to Juneau.<sup>8</sup> In fact, Hydro One has revealed to the Washington Utilities and Transportation Commission **that it will not flow through any cost savings from the transaction to AELP customers.**<sup>9</sup> Hydro One should not rule out any rate rebates for Alaska, which may be shown to be appropriate as this investigation proceeds.

As the RCA record stands now, the acquisition poses significant strategic and economic risks without bringing any known benefits at all to the community. If the Commission decides to approve the application, it should require AELP to establish reasonable interconnection

---

<sup>6</sup> Application, p. 3

<sup>7</sup> Application, p. 23.

<sup>8</sup> Hydro One has declined to tailor its commitments to Alaska, indicating only that it will follow the Washington and Oregon commitments as “applicable and practicable”. Application, p. 25.

<sup>9</sup> WUTC U-170970 Joint Application for an Order Authorizing Proposed Transaction, dated September 14, 2017, p. 30 fn.13 (emphasis added).

processes and procedures for its pending interconnection arrangement with JHI, with a goal of having an interconnection agreement in place before JHI's FERC license expires. The RCA should impose the following conditions to assure the transfer of control is consistent with the public interest:

- Require that AELP develop a reasonable and non-discriminatory tariff for interconnection for Independent Power Producers ("IPPs") that holds Avista to the commitments it made in U-13-197 when it acquired AELP, that it would provide for joint use and interconnection in a reasonable manner, as required by statute;
- State that the application's approval will not be effective until AELP has a formal interconnection tariff in place;
- Require AELP to make a written submission that sets forth a reasonable process and timeline for negotiating a FERC/PURPA/RCA compliant interconnection agreement with JHI, with a goal of having the agreement in place by September 8, 2018;
- Require that Applicants unconditionally agree that Snettisham Electric Company ("SEC") will not exercise its option to purchase the Snettisham facilities, to keep assets owned by State of Alaska under continuing State control and avoid having a foreign government control strategic transmission assets that are key to maintaining low rates and economic development opportunities in Juneau, among many issues; and
- Require Hydro One to commit to overseeing AELP in a manner that promotes the community values and renewable energy goals established in the City and Borough of Juneau Climate Action Plan and the CBJ Juneau Renewable Energy Strategy.

## **II. Background**

### **A. JHI and Juneau's Energy Needs**

JHI is an independent power producer and FERC Qualifying Facility ("QF") that has been awarded a 50-year FERC license to construct and operate hydroelectric facilities on Sweetheart Lake (in close proximity to the Snettisham Transmission line), culminating JHI's seven years of research, planning, environmental, and design work in full satisfaction of FERC

approval requirements.<sup>10</sup> In 2017, JHI affiliate Juneau District Heating (“JDH”) purchased property from the Alaska Mental Health Trust for \$1.3 million to construct and operate the Juneau District Heating facility, which will use Juneau sea water to provide district heating to a small number of state agencies.<sup>11</sup>

Both JHI and JDH are strongly supported by the City and Borough of Juneau (“CBJ”) because their operations will further the renewable energy goals established in the City and Borough of Juneau Climate Action and Implementation Plan (“Climate Action Plan”) and the CBJ Renewable Energy Strategy.<sup>12</sup> Juneau’s Climate Action Plan has set a goal of reducing Green House Gas (“GHG”) emissions by 25% by 2032.<sup>13</sup> Moreover, the CBJ Juneau’s Sustainability Commission has set a Juneau Renewable Energy Strategy goal of 80% renewable energy by 2045 for all energy sources (to include heating and transportation).<sup>14</sup> Local Juneau investors have invested several million dollars into JHI/JDH energy developments that implement these demonstrated Juneau community values.

Presently, AELP relies on a mixture of generation sources and does not have sufficient hydro or renewable resources to meet electrical demand within the CBJ territorial limits. The State-owned, AELP controlled, Snettisham Hydroelectric Power facility provides part of Juneau’s power, and AELP runs diesel periodically to meet its remaining demand.<sup>15</sup>

<sup>10</sup> *Juneau Hydropower, Inc.*, 156 F.E.R.C. ¶ 62,180, (2016).

<sup>11</sup> Alex McCarty, *Sale of Mental health Trust land final for hydropower heating facility*, JUNEAU EMPIRE (Aug. 25, 2017), <http://juneauempire.com/news/local/2017-08-25/sale-mental-health-trust-land-final-hydropower-heating-facility>.

<sup>12</sup> Letter of support from Mary Becker, Mayor of the City and Borough of Juneau (Mar. 22, 2016), Ex. 1 to JHI Initial Comments.

<sup>13</sup> City and Borough of Juneau Assembly, *Juneau Climate Action and Implementation Plan*, Res. 2593 (Nov. 14, 2011), p. i; available at [http://www.juneau.org/sustain/climate-action-plan/documents/CAP\\_Final\\_Nov\\_14.pdf](http://www.juneau.org/sustain/climate-action-plan/documents/CAP_Final_Nov_14.pdf).

<sup>14</sup> CBJ release, *supra* note 9.

<sup>15</sup> According to AIDEA bond documents, Snettisham provides two thirds of power for the Juneau area. AIDEA Power Revenue Refunding Bonds 2015 Series (Snettisham Project).



BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
1100 Connecticut Ave., N.W., Suite 825, Washington, DC 20036-4165  
TELEPHONE (202) 659-5800 • FACSIMILE (202) 659-1027

1 Additionally, some large interruptible customers are forced to operate on more costly diesel  
2 fuel when AELP does not provide hydropower. Because these interruptible operations cannot  
3 rely on AELP, they must install and operate back up diesel generation to cover periods when  
4 AELP cuts them off from renewable sources of electricity for any reason. Forcing interruptible  
5 customers onto diesel is counter to the emission and renewable energy goals of the Climate  
6 Action Plan and the Juneau Renewable Energy Strategy. Juneau's demand for electricity has  
7 grown and is projected to increase substantially in the future.<sup>16</sup> AELP's November 2017 sales  
8 report shows firm electric sales increased 5.17% over the previous year, an increase of sales of  
9 15,062,052 kWh and interruptible sales increased year to date by another 3,347,856 kWh.<sup>17</sup>  
10 This is significant growth that demonstrates demand for JHI generation.  
11

12 If JHI can interconnect with the Alaska Industrial Development and Export Authority  
13 ("AIDEA") /AELP transmission system, Sweetheart Lake will have the capacity to offer lower  
14 priced hydro power for the Juneau area, displacing current and future diesel generation. JHI  
15 has commitments and plans to serve the Coeur Alaska, Kensington Gold Mine ("Coeur Mine"),  
16 a large industrial electrical load within Juneau but outside AELP's service area that AELP does  
17 not have capacity to serve.<sup>18</sup> JHI needs an interconnection agreement and a rate to wheel  
18 Sweetheart Lake power across the Snettisham transmission facilities AELP operates to reach  
19 the mine.  
20  
21  
22  
23  
24  
25

---

26 <sup>16</sup> See JHI Initial Comments, p. 5.

27 <sup>17</sup> AELP Revision of Cost of Power Adjustment and Purchase of Power from a Small Qualifying Facility, AELP Distribution and Sales Report, TA 464-1, December 15, 2017.

<sup>18</sup> JHI understands that Coeur Mine is filing comments in this docket requesting that the RCA adopt a condition requiring AELP to file an interconnection tariff that would cover JHI's proposed Sweetheart Lake service, if the RCA decides to approve the transfer.

It is remarkable that Applicants did not acknowledge the importance of this issue in their refiled Application, since JHI's service will provide many potential benefits. JHI's planned transmission line will provide energy security to the community, creating an alternate transmission path in case an avalanche takes out a Snettisham transmission facility section. Avalanche damage in the past has left Juneau without power. Potentially, JHI could provide hydropower for AELP's grid as needed or appropriate to meet growing demand and replace reliance on costly back up diesel fuel. Ensuring Snettisham's transmission facilities are used to their maximum efficient potential could lower transmission costs to all users.

**B. Applicants' Failure to Agree to File an Interconnection Tariff or Timetable for Interconnecting with JHI Illustrates That They Are Discriminating Against Alaska Compared to Operations in Other States.**

Avista/AELP has been in interconnection discussions with JHI for a number of years and as early as 2014, formally addressed maintaining a nondiscriminatory interconnection process for Independent Power Producers ("IPPs").<sup>19</sup> Despite this history, AELP still does not have a formal RCA-approved procedure that IPPs can follow to make interconnection arrangements or an interconnection tariff that sets out interconnection terms.

Applicants' failure to agree to file an interconnection tariff in their revised application illustrates that they are treating Alaska in an unfair and discriminatory manner compared to other states. Hydro One and Avista have interconnection tariffs in effect in other jurisdictions that ensure that they operate transmission assets in an open access, fair and nondiscriminatory manner.<sup>20</sup> Consistent with Applicants' claim that adding a large, experienced electric utility

<sup>19</sup> JHI first made an interconnection request on October 12, 2012.

<sup>20</sup> For example, Hydro One appears to aggressively solicit new generating facilities in Canada. See <https://www.hydroone.com/business-services/generators>. It has developed clear procedures to interconnect large and small generators to the transmission system. A generator of JHI's size appears to be able to easily connect through a Feed-in Tariff Program operated by

company into AELP's upstream ownership will aid the public interest,<sup>21</sup> sophisticated, \$25 billion Hydro One could use its experience to help develop an interconnection tariff or agreement. According the U.S. Department of Energy, Alaska Energy Fact Sheet 2015, the total energy production in Alaska is 6.9 TWh.<sup>22</sup> In contrast, in 2016 Ontario exported 21.8 TWh, over three times the total electricity generated in Alaska.<sup>23</sup> Certainly, Hydro One should be required to operate a transmission system in Alaska in the same manner as it operates a much larger scale system in Canada.

Applicants' failure to agree to file the tariff is particularly concerning, in light of representations that Avista made when it acquired controlling interest in AELP. In that case, Senator Lesil McGuire asked the RCA to require Avista to provide written assurances that it would operate AIDEA's Snettisham transmission and substation assets in an open access, fair and nondiscriminatory manner.<sup>24</sup> Senator McGuire's intent was to assure that independent generators like JHI would have fair and non-discriminatory access to unused and underutilized capacity on the State of Alaska owned Snettisham transmission infrastructure.

---

IESO that describes itself as "one of North America's first comprehensive guaranteed pricing structures for renewable electricity production, offering stable prices under long-term contracts." See <https://www.ieso.ca/section-participants/feed-in-tariff-program/overview>.

The RCA should require Hydro One to commit to importing processes that have been used efficiently and effectively in Canada to promote nondiscriminatory AELP system access, as they may be applicable and appropriate.

<sup>21</sup> Application, pp. 40-42.

<sup>22</sup> Available online at:

<https://www.energy.gov/sites/prod/files/2015/05/f22/AKEnergy%20Sector%20Risk%20Profile.pdf>.

<sup>23</sup> See Ontario's Independent Electricity System Operator 2016 data available online at: <http://www.ieso.ca/en/corporate-ieso/media/news-releases/2017/01/ontarios-independent-electricity-system-operator-releases-2016-electricity-data>.

<sup>24</sup> See Comments of Sen. Lesil McGuire, U-13-197, Jan. 2, 2014, pp. 1-2.

BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
1100 Connecticut Ave., N.W., Suite 825, Washington, DC 20036-4165  
TELEPHONE (202) 659-5800 • FACSIMILE (202) 659-1027

Avista refused to provide such written assurances.<sup>25</sup> It maintained that “existing statutes already impose just and reasonable joint use requirements on AELP and the owner of the Snettisham transmission facilities (AIDEA)...” and therefore, written assurances were not necessary.<sup>26</sup> It made specific commitments that AELP would “comply with all joint use requirements that apply to all certificated utilities.”<sup>27</sup>

Despite its assurances to the Commission, Avista/AELP has never provided JHI a planned interconnection process that it would follow, or developed an interconnection tariff or proposed terms for a FERC/PURPA/RCA compliant interconnection agreement. Sen. McGuire expressed her extreme disappointment that neither AELP nor Avista have lived up to the commitments made in the context of the Avista acquisition, in comments filed in U-17-085.<sup>28</sup> She found particularly discouraging that neither AELP nor Avista (which stressed its culture of interest-based collaboration, prudent operations and constructive and transparent regulatory relationships) has taken any steps to adopt a joint use and interconnection tariff.<sup>29</sup> She observed that AELP/Avista’s failure was especially troublesome since JHI has been attempting to pursue an interconnection agreement with AELP for five years to develop additional critical hydroelectric generation infrastructure.<sup>30</sup> Clearly, Avista could have easily given AELP an interconnection tariff from one of its other operating states to adapt and file in Alaska.<sup>31</sup> Alternatively, Avista/AELP could have adapted one of the RCA-approved

<sup>25</sup> Applicant’s Joint Response to Comments, U-13-197, Jan. 17, 2014, p. 2.

<sup>26</sup> *Id.*, pp. 2-3.

<sup>27</sup> *Id.*, p. 2.

<sup>28</sup> Letter of Liesel McGuire to RCA, Oct. 17, 2017, U-17-085, p. 1. JHI incorporates Sen. McGuire’s letter by reference in these comments.

<sup>29</sup> *Id.* p. 1.

<sup>30</sup> *Id.* pp. 1-2.

<sup>31</sup> See e.g. Avista Interconnection Service Tariff for State Jurisdictional Generating Facilities (Larger than 500 kW, but no Larger than 20 MW, available online at: <https://www.myavista.com/about-us/services-and-resources/interconnection>).

interconnection tariffs for its own use. Avista/AELP has not taken any of these steps to put reasonable interconnection practices in place, acting in a manner that risks an appearance of market control and manipulation. As Sen. McGuire noted, AELP's failure to follow through is "unacceptable" and should be cured by requiring AELP to adopt tariffed basis processes if the Commission approves the transfer.<sup>32</sup>

Establishing interconnection processes and procedures on a reasonable timetable is very important to JHI. JHI received its FERC license on September 8, 2016.<sup>33</sup> It will not receive a FERC construction "Notice to Proceed" until it has an interconnection agreement and financing based on the interconnection agreement. If it does not have an interconnection agreement in place within its two-year license term, its license will expire.

Applicants should file a proposed AELP interconnection tariff by January 21, 2018 for comment within this proceeding. If the Commission approves the Application, it should specify that the transfer will not take effect until the tariff is formally in place. Also, Applicants should make a written submission, proposing a reasonable process and timeline for developing interconnection arrangements with JHI with a goal of producing an interconnection agreement by September 8, 2018. In these ways, Applicants can demonstrate that their commitments to local interests and renewable energy are tangible, enforceable and real.

**III. Consistent with Congressman Young's Letter, the RCA Should Require Applicants to Agree That SEC Will Not Exercise its Option to Purchase Snettisham**

JHI agrees with Congressman Don Young that transfer of AELP's option to purchase Snettisham energy infrastructure (through SEC) reflects a "serious breach of public interest

<sup>32</sup> McGuire Comments. p. 2.

<sup>33</sup> JHI's FERC Documents are available online: <https://juneauhydro.com/sweetheart-lake/ferc-documents/>.

BIRCH HORTON BITTNER & CHEROT  
ATTORNEYS AT LAW  
1100 Connecticut Ave., N.W., Suite 825, Washington, DC 20036-4165  
TELEPHONE (202) 659-5800 • FACSIMILE (202) 659-1027

and congressional intent.” It would allow the assets to be operated, sold, collateralized or otherwise used for profit enhancement by the Canadian provincial government, with no recourse for Alaskans who may be harmed by the consequences.<sup>34</sup> Applicants’ claims that protections are currently in place to address potential alien ownership harms are wrong.<sup>35</sup> If the Commission considers approving the transfer, it should adopt a condition requiring that SEC not exercise its option to purchase Snettisham facilities, to avoid very substantial risks to the public interest.<sup>36</sup>

Applicants urge the RCA to avoid investigating the issues, claiming that the RCA can deal with them later when AIDEA applies to transfer its Snettisham certificate to SEC.<sup>37</sup> But putting off an inquiry urged on a widespread basis, not only by Alaska’s Congressman but also numerous Juneau residents and businesses, will leave legitimate public interest concerns in limbo. Congressman Young and the public are looking to the RCA to prevent foreign ownership risks that arise directly from this transaction. The RCA is the only state agency with authority to take any necessary action.

---

<sup>34</sup> Young Letter, Dec. 4, 2017.

<sup>35</sup> Applicants make three claims in an effort to deflect RCA investigation of alien ownership issues: 1) that the RCA can investigate these issues later, when AIDEA applies to transfer its Snettisham certificate to SEC; 2) that an existing agreement between AEL&P and the CBJ preserves Snettisham benefits for the community; and 3) that the RCA will retain full regulatory oversight over AELP if Snettisham is transferred to a Hydro One-controlled entity. Joint Comments, pp. 5-8.

<sup>36</sup> Congressman Young asked that the RCA require divestiture of Snettisham assets. The Commission has required a public utility to divest assets as a condition of an acquisition. For example, in Bench Order No. 1 for U-83-055/U-83-076, issued Dec. 5, 1984, p. 2, the APUC required Pacific Telecom, Inc. (“PTI”) to divest an interest in Inletvisions, Ltd, a subsidiary of Multivisions, a cable company that it proposed to acquire. PTI, along with Alascom, Inc., was also acquiring controlling interest in Glacier State Telephone Company and Juneau Douglas Telephone Company. Here, the RCA could require Applicants to agree that SEC will not exercise its option to purchase the Snettisham assets and divestiture of the assets later would not be required.

<sup>37</sup> Joint Comments, p. 5.

Postponing the inquiry will not make resolution of the underlying issues any easier and is not in the public interest. By the time alien ownership of Snettisham progresses to the AIDEA certificate transfer stage, it will be a done deal. The RCA will find it much more complicated to reject the transfer application once a sister state agency has already entered a purchase agreement. If the RCA agrees with Congressman Young and consumers that transfer of Snettisham to a foreign government creates serious and substantial risks to the public interest, it should state so now, for a number of reasons.

First, there is no guarantee that the RCA will be able to stop or condition the transfer, or maintain jurisdiction over SEC, once SEC exercises its purchase option. As Margo Waring pointed out in her U-17-085 comments, the RCA could lose jurisdiction over SEC based on international law provisions.<sup>38</sup> Under Chapter 11 of NAFTA, investors in a company based in a foreign country can file a claim against a host country to protect foreign investors' expectation of a stable and predictable regulatory environment.<sup>39</sup> Such a claim could arise, for example, if a state commission imposed regulatory requirements that were less favorable to utility interests than policies in place earlier. In such a case, the U.S. government would defend against the claim, and state law could be preempted. The state PUC could lose authority to enforce commitments related to rates, interconnection or other consumer protections. Ms. Waring attached comments filed at the Maryland Commission, where a public interest group opposed a Canadian company's acquisition of a utility based on just these grounds.

JHI is not an expert in international law, but believes that the legal issues Ms. Waring raises are serious and warrant further analysis in this case. Ms. Waring's comments illustrate

<sup>38</sup> Comments of Margo Waring, U-17-085, Nov. 6, 2017.

<sup>39</sup> *Id.*, at Ex. 1 (attaching comments in a similar case before the Maryland Public Service Commission).

that it is too risky to put off addressing issues as important as Congressman Young raises. The Commission cannot predict the circumstances that may pertain at that time, or the extent of its jurisdiction. For example, the RCA's review powers could be limited in a future legislative sunset review.

Applicants' attempts to minimize Hydro One's foreign connection and foreign government influence are misleading and do not match reality. Hydro One is not only an alien corporation, but the Province of Ontario remains the controlling shareholder. Provincial law mandates continued government control. Hydro One says in its own application that "[a]s of July 31, 2017, the Province owned 49.9% of Hydro One's shares..." and that by law the Province must maintain at least 40% ownership.<sup>40</sup> It acknowledges that it is not legal for anyone (other than the Province of Ontario) to own more than 10% of Hydro One under the Ontario Electricity Act of 1998 and Hydro One's Articles of Incorporation.<sup>41</sup> As long as these provisions remain in effect, the Canadian government will always be the dominant owner and Hydro One will always be foreign government-controlled utility.

Hydro One serves now as a defacto "crown" corporation that can execute Ontario government policy. Any change in political party control can negate or alter unenforceable commitments made to the RCA and the Juneau community. Congressman Young's concern that a foreign government entity could "hijack" the public asset initially built to produce low cost power and pledge, monetize or refinance the asset cashing in the equity at the US tax payer and Alaskan ratepayer expense without recourse, is completely valid.

The risk that Hydro One could raise rates in dereliction of Congressional intent is real.

---

<sup>40</sup> Application, p 8.

<sup>41</sup> *Id.* p. 31, fn. 17.



The RCA has not protected consumers against the prospects of significantly higher rates under Canadian ownership of AELP, as Applicants assert.<sup>42</sup> While the RCA set the plant value of Snettisham for ratemaking purposes at its original cost (when the State acquired it), it did not address Hydro One's myriad other opportunities for rolling higher recoverable costs into Snettisham rates. There is no prohibition against Hydro One rolling in higher costs of financing, taxes or other means of monetizing the asset.

Applicants are also wrong that AELP's Agreement with the CBJ protects ratepayers' interests. While it is true that the CBJ will have a Right of First Refusal to acquire Snettisham if AEL&P or an affiliate proposes to sell the assets to an unaffiliated third party, CBJ will probably never be able to exercise that right. CBJ would have to commit to the same terms and conditions as the third party, and also make this commitment within 90 days. Quite likely, CBJ may not be able to raise the same level of financing, or, as a public body, make such a major financial commitment, within a 90 day period. Any protection offered by CBJ's ROFR is a Barmecidal feast and illusory.

In short, Applicants have attempted to identify protections that mitigate known transaction risks, but none provides the safety that Applicants assert. The RCA should attach as a condition of any approval that SEC agree not to exercise its right to purchase Snettisham under the AIDEA agreement. If Applicants genuinely want to respect local interests and control, they should defer to the overwhelming sentiment of Juneau residents that an asset so strategically important not fall into foreign hands. Hydro One is solely a transmission and distribution company now. Refraining from entering the generation business is consistent with its product lines and service competencies.

---

<sup>42</sup> Joint Comments, p. 6, fn. 12.

**IV. To Translate its Public Interest Representations into Action, Hydro One Should Commit AELP to Operation Consistent with Juneau’s Energy Plans and Use its Expertise to Aid AELP In Developing an Interconnection Tariff and Planned Interconnection Process**

In its public interest statement, Hydro One claims that AELP will benefit from “a second large, experienced electric utility company in AELP’s upstream ownership structure”<sup>43</sup> and it also promises to maintain local control and a commitment to community involvement and interests.<sup>44</sup> Hydro One should translate these public interest representations into firm, tangible and enforceable commitments that serve Juneau’s growing and unmet electrical demand needs. In that way, it can make binding commitments to Alaska, similar to commitments it has made in other states (Environmental, Renewable Energy, and Energy Efficiency Commitments).<sup>45</sup>

As a successor to an Ontario utility originally founded on hydro resources—but now solely in the Ontario transmission and distribution business—Hydro One has the experience and motivation to oversee AELP’s interconnection and access processes to promote efficient incorporation of hydro power for the community benefit of Juneau. Hydro One is a successor to Ontario Hydro, a company founded over a hundred years ago to power the city from an innovative dam on the Niagara River. Hydro One has a strong track record of eliminating coal generation, moving to a clean mix of hydroelectric, natural gas, wind, solar and nuclear facilities, and safely delivering electricity to customers in collaboration with IESO.

Hydro One and Avista operate their transmission operations under FERC rules that require them to provide non-discriminatory and open access to Ontario and Lower 48

<sup>43</sup> Application, p. 40.

<sup>44</sup> Application, p. 25.

<sup>45</sup> Application, Appendix 8, p. 12, Environmental, Renewable Energy, and Energy Efficiency Commitments (Commitments 47-52 of the 55 Commitments).

renewable energy providers. They provide non-discriminatory interconnection as part of their normal and customary business operations. In fact, of all the Canadian provinces that export power to the U.S., Ontario has been more proactive in meeting FERC requirements.<sup>46</sup> Ontario passed the Energy Competition Act of 1998 which separated Ontario Hydro into five distinct corporations and established Hydro One as a separate transmission corporation. Separating the generation and transmission businesses prevented the energy utility from having the incentive and ability to discriminate.

Juneau consumers want more renewable power incorporated into energy delivery. As a condition of transfer, Hydro One should make a corporate commitment to manage AELP in a manner that will satisfy the Climate Action Plan and Juneau Renewable Energy Strategy. Hydro One should encourage incorporating more renewable generation resources and should plan for any transmission and distribution investments necessary to bring renewable resource based power to Juneau energy loads. It should establish a process for Juneau community involvement in making its strategic decisions impacting AELP's service area.

**V. Attaching Conditions is Necessary to Make Hydro One/Avista's Public Interest Representations Binding; the RCA's Hands-Off Approach in the Last Acquisition Case Did Not Work**

In U-13-197, the RCA refrained from imposing a condition requiring Avista to provide nondiscriminatory interconnection with IPPs, in response to Senator McGuire's request.<sup>47</sup> The RCA relied on Avista's representations and specific commitments that AELP would "comply

<sup>46</sup> GRINSPUN, RICARDO, and YASMINE SHAMSIE, eds. *Whose Canada?: Continental Integration, Fortress North America, and the Corporate Agenda*. McGill-Queen's University Press, 2007. Available online at: <http://www.jstor.org/stable/j.ctt7zm5n>

<sup>47</sup> Order Approving Joint Application for Authority to Acquire Controlling Interest in Alaska Electric Light and Power Company, U-13-197(2), May 30, 2014, p. 9. ("Avista Approval Order").

with all joint use requirements that apply to all certificated utilities” and the RCA noted AELP’s interconnection obligations under statute, and refrained from imposing specific conditions reflecting those already-existing obligations.<sup>48</sup>

The RCA’s hands-off approach with Avista did not work. The issue of whether AELP is operating Snettisham facilities consistent with nondiscrimination joint use and interconnection requirements is unresolved. The matter is particularly important here because AIDEA—the State government—owns the asset. The State has special obligations not to discriminate where the assets employed are state owned, independent of any RCA statute. The RCA should impose specific conditions, rather than assume Hydro One’s generalized claims will be sufficient to satisfy the Juneau community’s local interests.

## **VI. Conclusion**

Hydro One has made nebulous claims that its acquisition is in the public interest without providing any evidence that the acquisition will bring actual benefits to Juneau ratepayers. The Commission does not have a basis for approving the application unless Hydro One demonstrates that its public interest representations are real. Hydro One has made tangible and binding commitments to other states, including the acquisition will lower costs, and has refused to make parallel commitments for Alaska. As it stands now, the transfer risks adding many more corporate affiliate layers on top of AELP (as well as cost that will be difficult to discern through affiliated interest investigations), without providing actual benefits.

The RCA should include the following conditions if it approves the transfer:

- Require that AELP develop a reasonable and non-discriminatory tariff for interconnection with IPPs that holds Avista to the commitments it made in U-13-197 when it acquired AELP, specifically that it would provide for joint use and interconnection in a reasonable manner, as required by statute;

---

<sup>48</sup>Avista Approval Order, p.9

- State that the application's approval will not be effective until AELP has a formal interconnection tariff in place; and
- Require AELP to make a written submission that proposes a reasonable process and timeline for negotiating a FERC/PURPA/RCA compliant interconnection agreement with JHI, with a goal of having the agreement in place by September 8, 2018,
- Require that Applicants unconditionally agree that SEC will not to exercise its option to purchase the Snettisham facilities to keep the assets in State of Alaska control and avoid having a foreign government control strategic transmission assets that are key to maintaining low rates and economic development opportunity in Juneau, among many issues; and
- Require Hydro One to commit to overseeing AELP in a manner that promotes the community values and renewable energy goals established in the City and Borough of Juneau Climate Action Plan and the CBJ Juneau Renewable Energy Strategy.

Dated the 21<sup>st</sup> day of December, 2017.

By: /s/ Elisabeth H. Ross  
 Elisabeth H. Ross, ABA No. 7811129  
 Birch, Horton, Bittner & Cherot, P.C.  
 1100 Connecticut Avenue NW, Suite 825  
 Washington, DC 20036  
 (202) 659-5800 (Phone)  
 (202) 659-1027 (Fax)  
[eross@dc.bhb.com](mailto:eross@dc.bhb.com)

*Attorneys for Juneau Hydropower, Inc.*

BIRCH HORTON BITTNER & CHEROT  
 ATTORNEYS AT LAW  
 1100 Connecticut Ave., N.W., Suite 825, Washington, DC 20036-4165  
 TELEPHONE (202) 659-5800 • FACSIMILE (202) 659-1027

BIRCH HORTON BITTNER & CHEROT

ATTORNEYS AT LAW

1100 Connecticut Ave., N.W., Suite 825, Washington, DC 20036-4165  
TELEPHONE (202) 659-5800 • FACSIMILE (202) 659-1027

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of December, 2017, a true and correct copy of the foregoing **COMMENTS OF JUNEAU HYDROPOWER, INC ON AVISTA ACQUISITION** and this **CERTIFICATE OF SERVICE**, was served by electronic mail on the following:

Kari Vander Stoep  
K&L Gates LLP  
Email: kari.vanderstoep@klgates.com

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

Patrick Ehrbar, Director of Rates  
Avista Corp  
Email: patrick.ehrbar@avistacorp.com

Elizabeth Thomas, Partner  
K&L Gates, LLP  
Email: liz.thomas@klgates.com

David Meyer  
Vice President and Chief Counsel  
Regulatory and Governmental Affairs  
Email: david.meyer@avistacorp.com

Dean Thompson, Esq.  
Kemppel Huffman & Ellis PC  
Email: ddt@khe.com

By: /s/ Elisabeth H. Ross  
Elisabeth H. Ross

G:\101798\3\00113653.DOCX

**RECEIVED**

By the Regulatory Commission of Alaska on Dec 20, 2017

October 17, 2017

Regulatory Commission of Alaska  
701 W. Eighth Avenue, Suite 300  
Anchorage, AK 99501-3469

Re: Docket U-17-085 Public Comments New Docket U-17-097 Public Comments

Commissioners:

On January 1, 2014, while I was serving as the Chair of the Rules Committee of the Alaska State Senate, I wrote to you to express my interest in seeing the Commission take appropriate steps to ensure open, non-discriminatory and equal access to state-owned transmission infrastructure for Independent Power Producers (IPPs) pursuing the development of renewable energy in Alaska. My comments were submitted in docket U-13-197, which was opened to review Avista Corporation's (Avista) proposed acquisition of Alaska Energy and Resources Company (AERC), the then-owner of Alaska Electric Light and Power Company (AELP).

Specifically, in the context of the Commission's review of the proposed Avista acquisition of AELP, I asked that the Commission secure written assurance from Avista that, if the acquisition was approved, it would manage the State of Alaska-AIDEA assets (the Snettisham Transmission Line and the Juneau Thane Switchyard) "based on the principle of 'open access' and 'full utilization' in a fair and non-discriminatory manner." Senator McGuire Comments, p. 2 (January 1, 2014) (attached).

In its Order approving Avista's acquisition of AELP, the Commission declined my request to require such written assurances from Avista, primarily based on Avista's acknowledgement in its response to my comments that, were the acquisition approved, it would be obligated to comply with the AS 42.05.311 and .321 joint use and interconnection requirements. [U-13-197(2) at 9 (May 30, 2014)] Moreover, in addressing Avista's "Managerial Fitness" for operating AELP, the Commission referred to Avista's long-experience serving customers in Washington, Idaho and Oregon, and how AELP would benefit from Avista's culture of "interest-based collaboration, prudent operations, and constructive and transparent regulatory relationships." [*Id.*]

It has been over three years and nine months since I submitted my comments in U-13-197, and, sadly, neither AELP nor Avista have lived-up to the commitments made in the context of those proceedings. This is particularly discouraging when you consider the fact that in the three years since the Commission approved Avista's acquisition of AELP, neither AELP nor Avista, which stressed its culture of "interest-based collaboration, prudent operations, and *constructive and transparent regulatory relationships*," have taken any steps to adopt a joint use and interconnection tariff. [*Id.*] This failure is especially troublesome given the fact that Juneau Hydropower, Inc. (Juneau Hydro), an IPP pursuing development of additional, critical

hydroelectric generating infrastructure in Southeast Alaska, has been pursuing an interconnect agreement with AELP since at least 2012.


Here we are again in docket U-17-085 considering Hydro One Limited's ("Hydro One") application to acquire Avista, and the issue of whether Avista/AELP is operating its transmission infrastructure consistent with Alaska's nondiscriminatory joint use and interconnection requirements is unresolved. In my view, this is unacceptable, and, if the Commission decides to approve this acquisition, the Commission must condition that approval on Hydro One taking the necessary steps to establish the "constructive and transparent regulatory relationship" we expected following Avista's acquisition of AELP. Specifically, the Commission should direct Hydro One to develop the tariff-based processes that it and AELP use at their operations elsewhere in North America to promote nondiscriminatory system access. Such proposed joint use and interconnection tariff should be submitted for Commission review and approval in the context of this docket with a deadline of no later than November 15, 2017, to ensure adequate time for public review and comment.

The Commission allowed Avista/AELP adequate time to live-up to the commitments offered in the context of U-13-197 to establish "*constructive and transparent regulatory relationships*." Mandating specific action here is appropriate and will advance the public's interest in ensuring open, non-discriminatory and equal access to state-owned transmission infrastructure to promote the development of renewable energy in Alaska.

I would be happy to address any questions the Commission might have in regard to these comments, or those I first submitted in January of 2014.

Sincerely,

Lesil McGuire

Signature:   
Lesil McGuire (Oct 17, 2017)

Email: lesil.mcguireak@gmail.com



**Juneau & Vicinity Building and Construction Trades Council, Inc.**

813 W. 12th Street  
Juneau, AK 99801  
Phone (907) 586-3050  
Fax (907) 586-9614

*Affiliates: CARPENTERS LOCAL 1281, ELECTRICAL WORKERS (IBEW) LOCAL 1547, HEAT/FROST INSULATORS LOCAL 97, IRONWORKERS LOCAL 751, LABORERS LOCAL 942, OPERATING ENGINEERS LOCAL 302, PAINTERS LOCAL 1140, PILEDRIVERS & DIVERS LOCAL 2520, PLUMBERS & PIPEFITTERS LOCAL 262, SHEETMETAL WORKERS LOCAL 23, SPRINKLERFITTERS LOCAL 669, TEAMSTERS LOCAL 959*

Steve McAlpine, Chairman  
Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501

rca.mail@alaska.gov

RE: Comments on Hydro One acquisition of Avista and Alaska Electric Light & Power (AEL&P).  
U-17-097

Dear Chairman McAlpine,

We are writing to you to submit comments on the Hydro One acquisition of Avista and AEL&P.

The Snettisham Hydropower Facility was initiated by Governor Bill Egan and Senator Ernest Gruening in 1960 when they held hearings in Juneau. They built a record to create public support for the project. Many Juneau citizens spoke in support of the project and these leaders were successful in getting Congress to authorize the project. Subsequently Juneau citizens led by former Senator Bill Ray helped pass Alaska legislative resolutions to get Congress to fund and have the US Army Corp build the Snettisham project. The leaders at the time were successful initiating the project because it would provide long term, low cost, hydropower and of course in our opinion good local jobs. Juneau would have some of the lowest electrical prices in America and good construction and maintenance jobs. And we feel that we have enjoyed good local jobs and lower cost electricity over the years. Our concern is that the sale of this asset would change this compact and the Snettisham facility would no longer benefit the rate payers, the state and local government and its people. The RCA has broad authority to condition the sale of AEL&P so that the right, title and interest of the Snettisham facilities remain a benefit or control of the State of Alaska, local government and the Juneau rate payers.

The Federal Government built and paid for the Snettisham facility. The Federal Government then transferred the facility to the State of Alaska. They in turn sold the facility below construction cost and market value with the intent to keep utility rates low for Juneau. The State then leased the facility to AEL&P with an option to buy the property for \$1 after the bond was paid in full. The City of Juneau was supposed to have a transfer of ownership option if the sale was not in the best interest of the community. Apparently, the State and City of Juneau were out lawyered and the option to buy ownership by Juneau was circumvented. If the current sale is allowed, our fear is the rates can rise at unprecedented levels if the new owners leverage their equity by refinancing. We are additionally concerned that the sale of the facility to a Canadian company that is mostly owned by a Canadian Government entity, the future construction and maintenance jobs may be impacted.

Under this sale, as it is currently structured, Juneau loses its right to purchase the Snettisham asset. AEL&P was able to get around this provision by selling the utility in a way that circumvents the original intent to allow the CBJ to intervene. The option for CBJ to purchase the Snettisham under the current sale proposal is not allowed and a significant safeguard does not exist if the sale is detrimental to our community. Therefore, the RCA should use its authority to provide tangible and enforceable safeguards to protect the public interest from potential profiteering and unfettered rate hiking off what is currently a public asset.

As a condition of approval, Hydro One and Avista must provide non-discriminatory and open access to energy developers. Because this sale is not subject to jurisdiction under the FERC, we believe the RCA has broad authority and should demand as a condition of this sale that Hydro One must offer the same open access and non-discriminatory transmission access to Alaska energy developers as if they are under the jurisdiction of the FERC. We ask the RCA to set a precedent that if a utility takes over an Alaskan utility that it must treat Alaskan energy developers equally as if they were operating under the US Federal Energy Regulatory Commission jurisdiction with regards to transmission. The sophistication of multi-national and multi-state utilities requires adequate public interest protections. We ask that RCA protect Alaska energy developers from market manipulation and undue market restrictions. This would allow for utility rate competition and job enhancement.

Juneau has an opportunity to privately develop a world class district heating system that would employ high technology heat pumps and distribute low cost heating to downtown Juneau. These systems take large amounts of electricity. As part of this development the companies will construct a new hydro power project and transmission lines to mining operations. The markets exist and these new hydropower, district energy, and new transmission lines will be built, and jobs will be created, if the developer can achieve a transmission agreement with Hydro One/Avista/AELP. The RCA can assist Juneau in this matter by conditioning that Hydro One must provide a nondiscriminatory and open access transmission agreement to local developer Juneau Hydropower, Inc. as a condition of its purchase authorization.

State of Alaska revenues are down, and the capital budgets are diminished or eliminated and are no longer producing family wage construction jobs in Alaska. The RCA has a role to play to protect the ratepayer, but also ensure that local economies are protected from unscrupulous negative influences. If conditions are placed on acquiring utilities to ensure that public policy goals are there to protect Alaskans. We request that the RCA develop policies to condition this sale that protect development of our resources, aide in creation of jobs and the better the standard of living and quality of life for Alaskans. The RCA can take steps and conditions in utility takeover dockets to ensure that multi-state and multi-national utilities do not overwhelm and control market power in a discriminatory and anticompetitive manner. We respectfully request that the RCA take appropriate action to develop policy that protects Alaskans and our economy.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Corey Baxter". The signature is fluid and cursive, with the first name "Corey" and last name "Baxter" clearly distinguishable.

Juneau Building Trades  
Corey Baxter, Secretary/Treasurer



City and Borough of Juneau  
City & Borough Manager's Office  
155 South Seward Street  
Juneau, Alaska 99801  
Telephone: 586-5240 | Facsimile: 586-5385

TO: Mayor & Borough Assembly  
DATE: January 22, 2018  
FROM: Duncan Rorie Watt, City Manager  
RE: RCA Process regarding Proposed Purchase of AEL&P/Avista by HydroOne

### **Policy Goals and Objectives not yet confirmed by Assembly:**

While there has been substantial public comment to both the RCA and to the Borough Assembly, the Assembly has not yet articulated specific policy goals or objectives that it would desire to achieve through participating in the RCA process. In order to decide if/how to become involved, the Assembly should first identify goals and objectives. Following is a list of some ideas articulated by the public with a few of my own *italicized comments*:

- A. **Lower Rates/Provide Financial Benefit to Rate Payers** – *Paradoxically, lower rates may not necessarily be in CBJ citizen's best interests as lower rates could result in less funding going towards maintenance of the electric utility infrastructure. The normal RCA process (including RAPA) is likely sufficient for rate setting.*
- B. **Limited Rate of Return** – *Determining a reasonable rate of return on investment is the essential duty of the RCA. Similar to A, a limited rate of return may have unintended consequences.*
- C. **Public Hearing on Transfer Case in Juneau** – *CBJ should request a public hearing in Juneau on the transfer.*
- D. **Request Open Access to Transmission from other Energy Developers** – *This question gets directly at the terms of cooperation (or not) between two private companies – AELP and Juneau Hydropower. In my opinion, the terms of cooperation is a business decision between two private entities, I do not recommend CBJ getting between the companies.*
- E. **Commit to a level of participation in implementing CBJ's Renewable Energy Strategy** – *The Assembly has not yet adopted the RES.*
- F. **Snettisham Ownership** – *Snettisham was constructed with federal dollars for Juneau citizens. The question of long term ownership should be an open question. However, Juneau rate payers will obtain maximum financial benefit by having one manager of all of the power generation facilities. Changing the ownership dynamic of Snettisham could cause unintended consequences.*
- G. **Requirement of an Integrated Resource Plan (IRP)** – *There is significant local desire for participation in energy planning. Some citizens would like to have a stake in energy infrastructure planning. Sitka's experience of building power generation capacity that exceeds demand (at least in the short run) should be viewed as a cautionary example.*

### **Next Steps**

The RCA review of the proposed transfer is on a tight time frame with a statutory time line of May 20, 2018. If the CBJ desires to take action, it must decide a path forward and begin at once. If the CBJ determines that taking ownership of the utility is not the desired action, the Assembly should consider what issues are of concern to the community and determine how best to advocate for those interests. The CBJ could choose to attempt to negotiate with AVISTA/Hydro One, Intervene, comment to the RCA, or request that RAPA become involved. All approaches have pro's and con's. A starting point for this discussion would be to determine our goals and objectives and by reviewing the transfer filings and determining if the governance and operational outline (including Exhibit 9 - Master List of Commitments) provided by Hydro One is sufficient, or if additional protections are needed.