

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Stephen A. McAlpine, Chairman
Rebecca L. Pauli
Robert M. Pickett
Paul F. Lisankie
Janis W. Wilson

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

Docket U-17-097

APPLICANTS' JOINT RESPONSE TO PETITION FOR FORMAL PROCEEDINGS

I. INTRODUCTION.

Hydro One Limited (“Hydro One”) and Avista Corporation (“Avista”) (each an “Applicant,” and collectively, the “Applicants”) submit this joint response to the Petition for Formal Proceedings (the “Petition”) filed by the City and Borough of Juneau (“CBJ”) on February 22, 2018. The CBJ’s petition to intervene is premature because this docket is presently a nonhearing matter, as no evidentiary hearing has been scheduled. This docket is already a “formal proceeding” under 3 AAC 48.070. Most controlling interest applications are adjudicated based on the written record, without an evidentiary hearing. An evidentiary hearing is not necessary for the Commission to reasonably adjudicate the Applicants’ November 21, 2017, application for Hydro One to acquire a controlling interest in Alaska Electric Light and Power Company (“AELP”) (“Application”), and scheduling an evidentiary hearing now would cause unnecessary administrative and logistical burdens. Accordingly, the Regulatory Commission of Alaska (the “Commission”) should deny the Petition.

1 Scheduling an evidentiary hearing is unnecessary because:

2 1. The Application, written public comments, Applicants’ December 11, 2017, and
3 February 5, 2018, Joint Replies to Comments, and additional comments provided at the
4 February 27, 2018, public conference provide an adequate record for adjudication of the Application.

5 2. The Commission has already determined that two of the main issues raised by the
6 CBJ’s Petition — possible future transfer of Snettisham ownership and a possible open access
7 transmission tariff (“OATT”) and interconnection tariff — are beyond the scope of this proceeding.
8 Order No. U-17-097(2) (Feb. 9, 2018) at pages 4-9.

9 3. The CBJ’s critique of Hydro One is based on misplaced arguments regarding its
10 status as a foreign corporation. As detailed below, the Applicants have already fully responded to
11 these arguments.
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13 4. The CBJ fails to acknowledge or analyze the robust ring-fencing commitments to
14 which Avista and Hydro One have committed. As has been previously explained, these ring-fencing
15 and other commitments fully protect AELP ratepayers.
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17 **II. THE CBJ’S PETITION TO INTERVENE IS PREMATURE.**

18 As an initial matter, the CBJ’s Petition incorrectly confuses instituting a “formal proceeding”
19 under 3 AAC 48.070 with *scheduling an evidentiary hearing* in a formal proceeding. The CBJ
20 implies that the Commission is required by 3 AAC 48.070 to schedule an evidentiary hearing for any
21 controlling interest application and, thereby, is required to consider petitions to intervene in
22 controlling interest dockets. That is not the case.

23 The cited regulation, 3 AAC 48.070, merely states that any application required by AS 42.05
24 or AS 42.06 “will be docketed and considered in a formal proceeding.” The immediately preceding
25 regulation, 3 AAC 48.060, requires that “formal proceedings” be assigned a docket number (“U,”
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1 “P,” “R,” or “I” dockets), as contrasted against “informal complaints” (“C” proceedings), and
2 unsuspended tariff filings. Thus, the “formal proceeding” requirement referenced in 3 AAC 48.070
3 merely requires that all applications be adjudicated in a “U” or “P” docket, as applicable. It does not
4 require the scheduling of an evidentiary hearing or consideration of petitions to intervene.

5 All applications (including controlling interest applications) are in fact docketed as formal
6 proceedings, but most applications are adjudicated without an evidentiary hearing. For example, the
7 recent *GCI Liberty*¹ controlling interest application was adjudicated based on the written record
8 without an evidentiary hearing, as was the 2014 approval of Avista’s application to acquire a
9 controlling interest in AELP. In fact, the vast majority of controlling interest applications are
10 adjudicated based on the application filings, public comments, and replies, without an evidentiary
11 hearing.²

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14 ¹ 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).

15 ² Over the last ten years, the following controlling interest application dockets were adjudicated
16 without an evidentiary hearing: Order No. U-17-040(3) (SCRS Acquisition Corporation acquisition
17 of Securus Technologies); U-17-001(3) (Devore acquisition of Bush-Tell); Order No. P-17-002(3)
18 (Harvest acquisition of CIPL); Order No. U-16-112(3) (Corix acquisition of Fairbanks Sewer and
19 Water); Order No. U-16-108(2) (CenturyLink acquisition of Level 3 Communications); Order
20 No. U-16-090(2) (Windstream Holdings acquisition of Earthlink Business); Order No. U-15-090(2)
21 (AIDEA acquisition of Fairbanks Natural Gas); Order No. U-14-119(2) (Northern Utility acquisition
22 of Oasis Water); U-14-110(3) (Eller acquisition of Tanana Power Company); Order
23 No. U-14-100(2) (United Utilities acquisition of Yukon Telephone Company); Order No.
24 P-14-022(2) (Miller Energy acquisition of Nutaaq); Order No. P-14-014(2) *et al.* (Harvest
25 acquisitions of NorthStar, Milne Point, and Endicott); Order No. P-14-009(2) (Tesoro Logistics
26 Pipelines, LLC acquisition of Tesoro Alaska Pipeline Corporation); Order No. P-14-008(2) (Cook
27 Inlet Energy acquisition of Anchor Point); U-13-016(2) (Securus Investment Holdings and Connect
28 Acquisition Corp acquiring Securus Technologies); Order No. U-12-146(3) (Holmberg and Adkins
acquisition of Aniak Light and Power); Order No. U-12-136(2) (Earthlink Business Holdings
acquisition of Earthlink Business); Order No. U-12-097(2) (British Columbia Investment
Management Corporation acquisition of Fairbanks Sewer and Water); U-12-052(2) (Doyon Holding
acquisition of controlling interest in three certificated Doyon subsidiaries); Order No. P-12-020(2)
(Hilcorp acquisition of CIPL); Order No. P-12-007(2) *et al.* (Hilcorp acquisition of Marathon’s
controlling interests in CIGGS, KKPL, BPL, and KNPL); U-11-112/113(2) (Waste Connections
acquisition of Alaska Waste); U-11-065(2) (Securus Holdings and Connect Acq. Corp acquisition of

1 Under 3 AAC 48.110(a), petitions to intervene “will be considered only in those cases that
2 are to be decided upon an evidentiary record after notice and hearing.” The intervention regulation
3 states nothing about “formal proceedings.” That regulation also clarifies that the Commission “does
4 not grant formal intervention, as such, in nonhearing matters”³ For example, in Order
5 No. U-05-004(2) (regarding GCI’s application for authorization to provide competitive local
6 exchange service in the study areas of five other local exchange carriers), the Commission cited
7 3 AAC 48.110(a) and held: “We have yet to schedule a hearing in this proceeding. Therefore we
8 will not grant any of the Petitioners party status at this time.”⁴ Instead of formal intervention as a
9 party, in nonhearing matters an interested person may file public comments by the due date set in the
10 Commission’s notice of utility application and provide oral comments at any scheduled consumer
11 input conference. This docket has not been scheduled for an evidentiary hearing. Accordingly, this
12 docket is a nonhearing matter. Thus, the CBJ’s petition to intervene is premature and need not be
13 considered unless and until the Commission decides to convert this docket into a hearing matter.
14

15 **III. AN EVIDENTIARY HEARING IS UNNECESSARY.**

16 Not only is this docket currently a nonhearing matter, but scheduling an evidentiary hearing
17 with intervenors is unnecessary and inappropriate under the circumstances of this case. Through the
18 filings, extensive written public comments, and public conference in this docket, this matter already
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20 Securus Tech); Order No. P-11-015(2) *et al.* (Hilcorp acquisition of Union’s interests in KKPL,
21 CIPL, CIGGS); Order No. U-10-047(2) (Midtown Estates Property Owners Association denied
22 application to acquire controlling interest in Midtown Estates Water Utility); Order
23 No. U-08-054/055(4) (ACS acquisition of Alaska Fiber Star); U-07-143(6) *et al.* (TelAlaska
24 acquisition of Interior Telephone, Mukluk Telephone, Eyecom, Alyeska Cable, and TelAlaska Long
25 Distance); U-07-140(5) *et al.* (GCI acquisition of United Utilities, United-KUC, and UNICOM);
26 Order No. U-07-047(2) (Kranich acquisition of South Central Utilities); Order No. U-07-003(3)
(Water Systems Services acquisition of ALPAT).

27 ³ 3 AAC 48.110(a).

28 ⁴ Order No. U-05-004(2) (Nov. 14, 2005) at 4-5.

1 has a significant and adequate record for decision regarding the Application. In addition, as in any
2 application docket, the Commission or Commission Staff can obtain from the Applicants any
3 supplemental information or documentation that it determines is necessary for the Commission to
4 reasonably review and adjudicate the Application.⁵ Given the relatively narrow standard of approval
5 for controlling interest applications (as compared to certificate of public convenience and necessity
6 (“CPCN”) applications),⁶ and the extensive written record already compiled in this docket, there is
7 an adequate record for adjudication of the Application without an evidentiary hearing.
8

9 Moreover, absent a compelling need for an evidentiary hearing, scheduling a multiple-party
10 hearing now would create administrative and logistical burdens, as well as unnecessary costs, which
11 would outweigh any marginal benefits of a hearing. In order to comply with the statutory timeline in
12 this docket, the Commission will issue a final order by May 18, 2018.⁷ It would be very difficult to
13 conduct all of the procedures that a multiple-party evidentiary hearing would require by that date:
14 prefiled testimony, discovery, an evidentiary hearing, and a reasonable post-hearing Commission
15 adjudication period. Although conducting such procedures on an extremely expedited basis might
16 conceivably be possible, it is not necessary in this case and the burden and cost of such expedited
17 procedures would outweigh any benefits of a hearing.
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21 ⁵ As stated in the Application, the Applicants pledge their full cooperation and assistance to the
22 Commission and its Staff in their review of the Application and have offered to provide access to
the electronic Data Room referenced in Exhibit 10 of the Application. *See* Application at 25-26.

23 ⁶ *See* Applicants’ February 5, 2018, Joint Reply to Comments, Section II, at 5-7. Note that the CBJ,
24 like other commenters, incorrectly characterizes the Application as involving the “transfer” of a
“Certificate.” CBJ Petition at 11 (“... before the Certificate can be transferred”).

25 ⁷ *See* Order No. U-17-097(1) (Dec. 8, 2017) at 2 & n.5 (“The 180th day falls on Sunday,
26 May 20, 2018; therefore, the commission will issue a final order by Friday, May 18, 2018”); Order
No. U-17-097(2) at 3.

1 **IV. THE CBJ'S CRITICISMS OF AND CONCERNS ABOUT HYDRO ONE HAVE**
2 **ALREADY BEEN ADDRESSED.**

3 The CBJ's primary consideration appears to be Hydro One's status as a foreign corporation.
4 Applicants fully addressed this concern through the detailed discussion set forth in Part III of their
5 February 5, 2018, Joint Reply to Comments in this docket. To summarize, Hydro One's acquisition
6 of Avista will have no impact whatsoever upon the Commission's regulatory authority over AELP.
7 The mere fact that Hydro One is an Ontario corporation partially owned by the Province of Ontario
8 does not suggest that Hydro One's ownership of AELP's parent company will somehow be
9 deleterious or detrimental to AELP's ratepayers. However, CBJ's depth of analysis does not exceed
10 this limited, cursory scope.

11 **A. The Preservation of Local Autonomy.**

12 Hydro One is an experienced electric utility market participant. The company currently
13 owns, manages, and operates a C\$25 billion operation, offering electric distribution services to more
14 than 1.3 million retail end-use customers, as well as electric transmission service to many local
15 distribution utilities and large industrial customers. Despite its experience and expertise, Hydro
16 One's relationship with AELP will be as an ultimate parent company. The proposed transaction
17 contemplates that Hydro One, acting under the aegis of Olympus Equity, LLC, would acquire all of
18 the outstanding common stock of Avista, thereby replacing the current, non-utility institutional and
19 retail investors as Avista's ultimate owner. As has been explained extensively in prior pleadings, the
20 proposed transaction does not involve a sale of AELP's assets to Hydro One, and Hydro One is not
21 seeking to be a certificated Alaska electric utility. In other words, Avista and AELP will continue
22 their autonomous operations by retaining sole responsibility for the ownership, management, and
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1 maintenance of Juneau’s electric utility facilities.⁸ Hydro One’s role will be to serve as an upstream
2 owner of AELP who does not interfere in AELP’s daily operations or management.

3 **B. Hydro One is Independent of the Canadian Government.**

4 Despite many misconceptions to the contrary, Hydro One is a *former*, not present, Canadian
5 Crown corporation. The Province of Ontario owns approximately 47% of the outstanding common
6 shares of Hydro One. Private investors currently own more than half of the outstanding shares.
7 Following the completion of the proposed transaction, the Province’s ownership level would
8 decrease to less than 43%.

9
10 Hydro One’s responsibilities to the Crown are limited to its public reporting requirements
11 under the *Auditor General Act* (Ontario), which are themselves restricted to information and
12 records related to audited and unaudited financial statements that have already been divulged to the
13 public. Accordingly, the Province does not exercise managerial oversight over Hydro One.⁹ This
14 lack of managerial control will extend to Avista and AELP following the completion of the proposed
15 transaction. The management of and oversight over AELP will continue to reside with AELP and
16 the Commission, respectively.

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18 **C. Potential Impacts to Alaskan Ratepayers.**

19 The rates of AELP ratepayers will not be adversely affected by the proposed transaction.¹⁰
20 As the Applicants have already explained in this docket, the increases in electricity rates in Ontario
21 have not been the fault of Hydro One, but are “directly tied to [the] policy choices [of] the Ontario
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⁸ February 5, 2018, Joint Reply to Comments at 9-11.

25 ⁹ *Id.* 12.

26 ¹⁰ *Id.*, Section IV, at 21-24.

1 government.”¹¹ Since AELP’s ratepayers’ electric service will continue to derive from AELP itself,
2 such ratepayers will not experience increased rates. Indeed, AELP will remain a stand-alone utility
3 operating under the regulatory oversight of the Commission. Hydro One’s upstream ownership will
4 not harm AELP’s maintenance, planning, or design of its system. Even if Hydro One were to
5 directly engage in the management of AELP, which it certainly will not, its experience operating an
6 electric utility in harsh North American climates would enhance, not impair, the sound and effective
7 operation of AELP.

8
9 Finally, and most importantly, not only will Hydro One prevent the saddling of ratepayers
10 with unnecessary costs, but it also will not allocate revenues from U.S. operations to Canadian
11 ratepayers.¹² As to the first pledge, Hydro One follows sound asset management practices and
12 condition-based principles in determining the assets that need to be replaced in order to both
13 maintain asset performance and to minimize the costs to ratepayers. Such reliability standards have
14 allowed Hydro One simultaneously to improve reliability and to limit rate increases. As to the
15 second pledge, AELP and Avista will not exist as the indirect subsidiaries of the Hydro One
16 company that serves Ontario’s ratepayers. In other words, Avista’s and AELP’s parent company
17 will not be an Ontario-based operating utility, but will instead be a Delaware corporation. Under this
18 corporate structure, the United States-based operational revenues will be neither allocable nor
19 attributable to the operating utility in Ontario.
20

21 **D. Ring-Fencing Commitments Exist Under the Proposed Transaction.**

22 CBJ argues that another potential harm to Alaska’s ratepayers is the lack of clarity as to
23 “whether substantial additional funds could be extracted from Avista [and AELP] that are more than
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25 ¹¹ *Id.* at 15 (quoting Fraser Institute Report at 18).

26 ¹² *Id.* at 24.

1 the current dividends that are paid to satisfy Avista’s investors today.”¹³ To alleviate this concern,
2 the CBJ proposed “that the Commission utilize ring-fencing to assure that AELP can operate on a
3 stand-alone basis; [*sic*] isolated from and protected against any negative financial impacts of the
4 parent’s investment activities.”¹⁴

5 It is clear that the CBJ was not aware of the numerous ring-fencing commitments to which
6 Hydro One and Avista have already pledged.¹⁵ Commitments Nos. 43 and 44 are particularly
7 focused on the protection of Avista’s customers and subsidiaries. Commitment No. 43 requires
8 commission approval prior to Avista’s loan or pledge of its or its subsidiaries’ assets. Commitment
9 No. 44 explicitly protects Avista’s customers (and by extension, AELP’s customers) from any
10 business and financial risk exposures associated with Olympus Holding Corp., Hydro One, and
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12 ¹³ CBJ Petition at 6.

13 ¹⁴ *Id.*

14 ¹⁵ See Application, Exhibit 9. Ring-Fencing commitments include the following:

- 15 ▪ Separate Books and Records - Commitment No. 21;
- 16 ▪ Access to and Maintenance of Books and Records - Commitment No. 22;
- 17 ▪ Corporate Structure - Cost Allocation - Commitment No. 23;
- 18 ▪ Ratemaking Cost of Debt and Equity - Commitment No. 24;
- 19 ▪ Avista Capital Structure - Commitment No. 25;
- 20 ▪ Utility-Level Debt, Preferred Stock and Ratings - Commitment No. 34;
- 21 ▪ Continued Credit Ratings - Commitment No. 35;
- 22 ▪ Restrictions on Upward Dividends and Distributions - Commitment No. 36;
- 23 ▪ Independent Directors - Commitment No. 40;
- 24 ▪ Non-Consolidation Opinion - Commitment No. 41;
- 25 ▪ Restriction on Pledge of Utility Assets - Commitment No. 43;
- 26 ▪ Hold Harmless; Notice to Lenders; Restriction on Acquisitions and Dispositions -
27 Commitment No. 44;
- 28 ▪ Olympus LLC 2 and Olympus Equity LLC Sub-Entities - Commitment No. 45; and
- No Amendment of Ring-Fencing Provisions - Commitment No. 46.

1 Hydro One’s affiliates. Additionally, Commitment No. 42 places a Delaware limited liability
2 company, Olympus Equity, LLC, between Avista and the Hydro One Olympus subsidiaries as a
3 protective financial mechanism. Olympus Equity, LLC will exist as a bankruptcy-remote, special-
4 purpose entity that will not carry any debt. These describe just a few of the many ring-fencing
5 commitments made by Hydro One and Avista. These commitments have not been “developed in a
6 vacuum,”¹⁶ but rather were composed over a long-period during which the interrelationships of the
7 subsidiaries of Hydro One and Avista were reviewed. These commitments serve as a bulwark for
8 AELP’s protection from the financial vagaries of the modern market. These commitments
9 demonstrate that Hydro One is dedicated to the long-term financial health and stability of the
10 companies in which it invests.

12 **V. CONCLUSION.**

13 Through their Application and Joint Replies to Comments, the Applicants have already
14 demonstrated that the proposed transaction is consistent with the public interest. Moreover, the sorts
15 of protections the CBJ seeks for AELP would have been fully considered when Avista acquired
16 AELP, and whatever was required then remains in place. Finally, the Applicants are prepared to
17 extend the spirit and effect of their Avista commitments, as applicable in these circumstances.
18 Indeed, the merger of Hydro One and Avista would produce benefits to AELP’s ratepayers. The
19 CBJ Petition has not raised any issues whose resolution would benefit from an evidentiary hearing.
20 The Commission already has an extensive and adequate record upon which to adjudicate the
21 Application. The Applicants therefore encourage the Commission to deny the CBJ’s request for an
22 evidentiary hearing.
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26 ¹⁶ CBJ Petition at 6.

RESPECTFULLY SUBMITTED this 1st day of March, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2018, a copy of the foregoing document was served by electronic mail on the following persons.

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