



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Bill Walker, Governor
Chris Hladick, Commissioner
Stephen McAlpine, Chairman

Regulatory Commission of Alaska

Date: November 9, 2017

In reply refer to: Docket U-17-085

Montana Public Service Commission
P.O. Box 202601
Helena, Montana 59620-2601

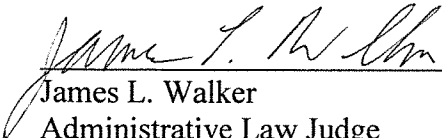
Attention: Brad Johnson, Chairman

Re: MPSC Docket No. D2017.9.71, *IN THE MATTER OF Avista Corporation and Hydro One Limited's Application for Authorization of the Proposed Sale and Transfer of Avista Corporation.*

Dear Chairman Johnson:

The Regulatory Commission of Alaska has issued the attached order rejecting the joint application filed by Hydro One Limited and Avista Corporation for Hydro One Limited to acquire a controlling interest in Alaska Electric Light & Power Company. Rejection was without prejudice to refile a complete application. If you have any questions, please do not hesitate to contact me.

Sincerely,


James L. Walker
Administrative Law Judge
Regulatory Commission of Alaska

direct line: 907.263.2138
email: jim.walker@alaska.gov

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Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

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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 ALASKA)
ELECTRIC LIGHT & POWER COMPANY)

U-17-085
ORDER NO. 2

**ORDER DENYING JOINT MOTION FOR WAIVER,
REJECTING JOINT APPLICATION, AND CLOSING DOCKET**

BY THE COMMISSION:

Summary

We deny the joint motion for waiver of the requirement to file proof of registration to do business in Alaska filed by Hydro One Limited (Hydro One), through its wholly owned subsidiary Olympus Equity LLC (Olympus Equity), and Avista Corporation (Avista). We reject the joint application for authorization to acquire a controlling interest in Alaska Electric Light & Power Company (AEL&P) under 3 AAC 48.648(c)(2). We close this docket.

Background

AEL&P provides electric utility service in the City and Borough of Juneau under Certificate of Public Convenience and Necessity No. 1. AEL&P is a wholly owned subsidiary of Alaska Energy and Resources Company (AERC), which is a wholly owned subsidiary of Avista.¹

¹Order U-13-197(2), *Order Approving Joint Application for Authority to Acquire Controlling Interest in Alaska Electric Light and Power Company*, dated May 30, 2014.

1 Hydro One, acting through Olympus Equity, is in the process of acquiring
2 ownership of Avista. As part of this process, Hydro One, through Olympus Equity, and
3 Avista jointly filed an application for Hydro One to acquire a controlling interest in AEL&P.²
4 Hydro One and Avista also filed a joint motion to waive the requirement that Hydro One
5 and Olympus Equity file proof of registration to do business in Alaska.³

6 We issued public notice of the Application for Controlling Interest and
7 Motion for Waiver with comments due by October 12, 2017. We received 34 comments
8 in response to the public notice,⁴ including eight comments in opposition to the Motion for
9 Waiver.⁵ Hydro One, through Olympus Equity, and Avista filed a reply to the comments
10 in opposition to the Motion for Waiver.⁶

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²*Joint Application for Authorization to Acquire a Controlling Interest in Alaska Electric Light and Power Company*, dated September 14, 2017 (Application for Controlling Interest).

³*Joint Motion for Waiver of Requirement to File Proof of Registration*, dated September 14, 2017 (Motion for Waiver).

⁴Juneau Hydropower Inc. filed two different sets of comments on October 12, 2017.

⁵Correspondence from G. Keiser, filed September 26, 2017; Correspondence from G. Gagne-Hawes, filed October 5, 2017; Correspondence from D. Redmond on behalf of Renewable Juneau, filed October 5, 2017; Correspondence from L. Spengler, filed October 6, 2017; Correspondence from J. Crondahl, filed October 6, 2017; Correspondence from S. Lewis, filed October 7, 2017; Correspondence from L. Stats, filed October 8, 2017; Correspondence from S. Sloss, filed October 9, 2017.

⁶*Applicants' Reply to Oppositions to Motion for Waiver*, filed October 19, 2017 (Reply).

1 Discussion

2 Motion for Waiver

3 Our *Application for Authorization to Acquire a Controlling Interest in a*
4 *Regulated Public Utility* form requires foreign corporations⁷ seeking to acquire a
5 controlling interest in a certificated public utility to file proof of registration to do business
6 in Alaska.⁸ Hydro One, a corporation organized under the laws of Ontario, Canada, and
7 Olympus Equity, a limited liability company organized under the laws of Delaware, seek
8 a waiver of this requirement under 3 AAC 48.805.⁹ They assert that after Hydro One
9 acquires Avista, a corporation organized under the laws of Washington, all business in
10 Alaska will be conducted by Alaska corporations AEL&P and AERC. They further assert
11 that AEL&P and AERC will remain subsidiaries of Avista, which is a foreign corporation
12 registered to do business in Alaska.¹⁰ They cite to orders in four dockets where we have
13 granted similar waivers and assert that their circumstance is similar to the foreign parent
14 companies in those dockets.¹¹

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18 ⁷As defined by AS 10.06.990(22), a foreign corporation is one organized under
19 laws other than the laws of Alaska. This includes Hydro One, which was not created or
20 organized under the laws of the United States or another state, and is therefore also an
21 alien as defined by AS 10.06.990(3)(B). As defined by AS 10.50.990(7), a foreign limited
22 liability company is one organized under the law of a state other than Alaska, and includes
23 Olympus Equity which is organized as a limited liability company under the laws of
24 another state (Delaware).

25 ⁸APUC Form X107 at 5 (Paragraph 4.b). Available on our website at
26 <http://rca.alaska.gov/RCAWeb/RCALibrary/FormsLibrary.aspx>.

⁹Motion for Waiver at 2.

¹⁰Motion for Waiver at 1-3.

¹¹Motion for Waiver at 3-4.

1 Opposition to the Motion for Waiver was generally based on the ground that
2 Hydro One is a foreign corporation.¹² We interpret these comments to use the term
3 “foreign” in the colloquial rather than legal sense, and that in legal terms the basis for
4 concern is that Hydro One is an alien corporation that is, a corporation organized under
5 the laws of another country. One opponent noted that registration of foreign corporations
6 provided the public with additional information.¹³

7 In reply, Hydro One, through Olympus Equity, and Avista point out that
8 several opponents to the Motion for Waiver misunderstood that motion to be a request
9 for permission to conduct business in Alaska without a business license. They assert that
10 all business conducted in Alaska would be by AEL&P and AERC, both of which have
11 Alaska business licenses. They further assert that the general opposition to the Motion
12 for Waiver is not a reasonable basis for denial because AEL&P and AERC are currently
13 owned by a foreign corporation, Avista.¹⁴

14 A foreign corporation, including an alien corporation, may obtain a certificate
15 of authority to transact business in Alaska issued by the Commissioner of the Alaska
16 Department of Commerce, Community, and Economic Development.¹⁵ Hydro One and
17 Olympus Equity have not claimed that they cannot register for a certificate of authority,
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20 ¹²Correspondence from G. Keiser, filed September 26, 2017; Correspondence
21 from G. Gagne-Hawes, filed October 5, 2017; Correspondence from L. Spengler, filed
22 October 6, 2017; Correspondence from J. Crondahl, filed October 6, 2017;
23 Correspondence from S. Lewis, filed October 7, 2017; Correspondence from L. Stats,
24 filed October 8, 2017; Correspondence from S. Sloss, filed October 9, 2017

25 ¹³Correspondence from D. Redmond on behalf of Renewable Juneau, filed
26 October 5, 2017.

¹⁴Reply at 2-4.

¹⁵AS 10.06.705; AS 10.06.990(10).

1 and the process for doing so does not appear overly burdensome.¹⁶ Registration for a
2 certificate of authority requires the entity to designate a registered agent located in Alaska
3 for the purposes set out in AS 10.06.763 and AS 10.50.365, including service of process
4 on the entity. In addition, an applicant corporation must provide the information required
5 by AS 10.06.730, and an applicant limited liability company must provide the information
6 required by AS 10.50.615, which includes some information our APUC Form X107 does
7 not require. Further, registration eliminates ambiguity about the identity of an entity by
8 preventing a domestic entity and a foreign entity from having the same or similar names.¹⁷
9 We find that there is a legitimate public interest served by enforcing the proof of
10 registration to transact business requirement of APUC Form X107.

11 Hydro One cites to four dockets where we have waived the proof of
12 registration requirement of APUC Form X107.¹⁸ Three of these four dockets (U-13-016,
13 U-11-065, and U-04-069) involved the same entity, the ultimate parent of Securus
14 Technologies, Inc. (Securus), which is a provider of prison telephone services
15 (technically, private pay telephone and intrastate interexchange services) was a Delaware
16 corporation. Prison telephone providers periodically compete for contracts with the State
17 of Alaska Department of Corrections to retain the right to offer public utility services. On
18 the other hand, once Hydro One and Olympus Equity acquire a controlling interest in
19 AEL&P, that control, and the right to offer public utility services through AEL&P, continues
20 indefinitely. Also, unlike Securus, AEL&P is subject to full economic regulation.
21 Therefore, the applicants here are not similarly situated to Securus.

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23 ¹⁶See AS 10.06.730; AS 10.50.615 (The application forms for both foreign
24 corporation and foreign limited liability company certificate of authority are posted at:
<https://www.commerce.alaska.gov/web/cbpl/Corporations/CorpFormsFees/FormsbyEvent.aspx>).

25 ¹⁷AS 10.06.720; AS 10.50.620.

26 ¹⁸Motion for Waiver at 3-4; Reply at 4-5.

1 The remaining docket cited to by Hydro One, U-06-005, involved New Edge
2 Network, Inc., d/b/a New Edge Networks (New Edge), whose ultimate parent was a
3 Delaware corporation. As a competitive intrastate interexchange telephone carrier, New
4 Edge was only required to be registered, not hold a certificate of public convenience and
5 necessity. On the other hand, AEL&P is required to hold a certificate of public
6 convenience and necessity. Again, unlike New Edge, AEL&P is subject to full economic
7 regulation. Therefore, the applicants here are not similarly situated to New Edge.

8 Because none of the cited dockets involved either an alien ultimate parent
9 or an economically regulated public utility, they are factually distinguishable and not
10 precedential. In addition, we had no occasion to closely examine the issue in those
11 dockets since no objections to the requests for waiver of the proof of registration
12 requirement were raised.¹⁹ In this docket, objections to the Motion for Waiver have been
13 filed and these objections prompted us to examine the issue more closely.

14 Hydro One and Olympus Equity²⁰ assert as the primary premise in their
15 Motion for Waiver that they will not transact business in Alaska except as the indirect
16 owners of AEL&P and AERC. However, the requirement to register for purposes of APUC
17 Form X107 is a public utility regulatory requirement and is not conditioned on an
18 independent legal obligation to register under Alaska business organizations law.

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20 ¹⁹See Dockets U-13-016, U-11-065, U-06-005, and U-04-069.

21 ²⁰Olympus Equity also observes that it is not a foreign corporation, but rather a
22 foreign limited liability company. For purposes of the APUC Form X107, this is a
23 distinction without difference. Both corporations and limited liability companies have a
24 separate existence, and insulate their owners from direct liability for acts of the entity.
25 Foreign limited liability companies, created by statute in 1994, are not directly addressed
26 by APUC Form X107, which was last revised in 1993, merely because they were not a
recognized form of business in Alaska when the form was adopted. The same is true of
foreign limited liability partnerships (which must file a statement of foreign qualification
under AS 32.06.921) because limited liability partnerships were not created by statute
until 2000.

1 Consequently, it is unnecessary for us to determine if Hydro One and Olympus Equity will
2 be transacting business in Alaska for the purposes of AS 10.06.705 or AS 10.50.720.

3 Because the burden of registration is minor when weighed against the
4 benefit to the public from the additional safeguards afforded by registration and the
5 availability of additional information not otherwise provided under our regulations, we do
6 not find good cause to waive the APUC Form X107 requirement that Hydro One and
7 Olympus Equity include proof of registration to do business in Alaska as part of their
8 application to acquire a controlling interest in AEL&P. Therefore, we deny the Motion for
9 Waiver.

10 Application for Controlling Interest

11 An application is generally considered complete when filed with us unless
12 rejected within fifteen business days under 3 AAC 48.650.²¹ An exception to this rule
13 occurs when an application is accompanied with a request for the waiver of an application
14 filing requirement and the waiver request is denied.²² When a waiver request is denied,
15 the application “is rejected without prejudice to refile”²³

16 The Application for Controlling Interest was accompanied by a request for
17 waiver of one of the APUC Form X107 filing requirements. For the reasons discussed
18 above, we deny the Motion for Waiver. Therefore, the Application for Controlling Interest
19 is rejected without prejudice to refile.

20 Final Order

21 This order constitutes the final decision in this proceeding. This decision
22 may be appealed within thirty days of this order in accordance with AS 22.10.020(d) and
23 Alaska Rule of Appellate Procedure 602(a)(2). In addition to the appellate rights afforded

24 ²¹3 AAC 48.648(b)(1).
25 ²²3 AAC 48.648(b)(2).
26 ²³3 AAC 48.648(c)(2).

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

1 by AS 22.10.020(d), a party has the right to file a petition for reconsideration in
2 accordance with 3 AAC 48.105. If such a petition is filed, the time period for filing an
3 appeal is tolled and then recalculated in accordance with Alaska Rule of Appellate
4 Procedure 602(a)(2).

5 Docket Closure

6 No substantive or procedural matters remain in this proceeding.
7 Accordingly, we close this docket.

8 **ORDER**

9 THE COMMISSION FURTHER ORDERS:

10 1. The *Joint Motion for Waiver of Requirement to File Proof of Registration*,
11 filed by Hydro One Limited through Olympus Equity LLC and Avista Corporation on
12 September 14, 2017, is denied.

13 2. The *Joint Application for Authorization to Acquire a Controlling Interest*
14 *in Alaska Electric Light and Power Company*, filed by Hydro One Limited through
15 Olympus Equity LLC and Avista Corporation on September 14, 2017, is rejected.

16 3. Docket U-17-085 is closed.

17 DATED AND EFFECTIVE at Anchorage, Alaska, this 8th day of November, 2017.

18 BY DIRECTION OF THE COMMISSION



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