

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF Avista Corporation) REGULATORY DIVISION
and Hydro One Limited's Application for)
Authorization of the Proposed Sale and) DOCKET NO. D2017.9.71
Transfer of Avista Corporation) ORDER NO. 7577

PROCEDURAL ORDER

PROCEDURAL HISTORY

1. On September 14, 2017, Avista Corporation and Hydro One Limited (“Parties”) filed an application for authorization of the proposed sale and transfer of Avista Corporation (“Application”) with the Montana Public Service Commission (“Commission”).

2. On September 27, 2017, the Commission issued a Notice of Application and Intervention Deadline, establishing October 19, 2017 as the deadline to intervene with the Application. On October 18, 2017, the Montana Consumer Counsel (“MCC”) filed its Petition for Intervention. On November 9, 2017, the Commission issued a Notice of Staff Action granting intervention to MCC and noticed the attorneys representing the MCC and the Parties.

3. The Commission, through delegation to staff, hereby establishes the Procedural Order (“Order”) to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or staff. Mont. Code Ann. § 69-3-103. Parties may seek reconsideration of this Order within ten (10) days of its service date. Mont. Admin. R. 38.2.4806 (2017).

SCHEDULE

4. This Order shall adhere to the following procedural schedule:
- (a) January 5, 2018: Final day for discovery to the Parties related to the initial testimony.
 - (b) January 17, 2018: Final day for the Parties to respond to discovery. *See also infra* ¶ 10 (establishing “rolling” discovery).
 - (c) February 2, 2018: Final day for intervenor testimony.

- (d) February 14, 2018: Final day for the Commission to identify additional issues.*
- (e) February 15, 2018: Final day for discovery to intervenors.
- (f) March 5, 2018: Final day for intervenors to respond to discovery.
- (g) March 21, 2018: Final day for the Parties to file rebuttal testimony and intervenors to file cross-intervenor response testimony.
- (h) April 4, 2018: Final day for discovery to the Parties and intervenors related to rebuttal and cross-intervenor response testimony.
- (i) April 18, 2018: Final day for the Parties and intervenors to respond to discovery related to rebuttal and cross-intervenor response testimony.
- (j) May 2, 2018: Final day for the Parties and intervenors to file pre-hearing memoranda including identification of data responses to be moved into evidentiary record. *See infra* ¶¶ 21–23.
- (k) May 9, 2018: Final day for the Parties and intervenors to object to data responses identified on May 2, 2018. *Id.*
- (l) May 17, 2018: Hearing commences and continues from day-to-day as necessary.

*If the PSC identifies additional issues it will issue a modified procedural order and schedule, likely changing some of deadlines (e) through (l).

SERVICE AND FILING

5. A party must serve a copy of every pleading, motion, brief, objection, data request or response and other document it files in this proceeding on every other party. Upon e-filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601 Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

INTERVENTION

6. The deadline for intervention in this proceeding was October 19, 2017. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding;

(3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon action of the Commission.

DISCOVERY

7. Parties acknowledge that written interrogatories—data requests and responses—are the primary discovery mechanism in Commission proceedings, and should be utilized in good faith. In addition to the rules adopted by the Commission in Mont. Admin. R. 38.2.3301(1) (2017), the following specific procedures govern discovery in this docket.

8. For data requests, parties must follow these guidelines:

- (a) Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to the Parties, PSC-009 through 016 to the MCC and PSC-017 through 019 again to the Parties).
- (b) At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- (c) For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- (d) The following is an example of an acceptable data request:

PSC-006 RE: Purchased Gas Contracts
Witness Doe, JBD-4:13-15.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

9. For data responses, parties must respond to each numbered data request with a separate page.

10. Parties must respond to data requests within fourteen (14) calendar days of the service date of the data request or by the deadline to respond, whichever is earlier.

11. Objections to data requests must be filed before the deadline to respond, and must be sufficiently specific for the Commission to adequately rule on the merits of the objection. Responding parties need not object if an answer has been provided to a discovery request. Only objections based on discoverability will be considered; objections on admissibility will be overruled. The failure to object to a data request does not waive the right to subsequently object to the admissibility of the information provided in response. The Commission may schedule oral

argument before ruling on an objection. These procedures apply for often encountered objections:

12. If a party objects based on privilege, it must file a privilege log by the deadline to respond with enough information for the Commission to determine whether the privilege applies.

13. If a data request asks for protected information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to data requests.

14. Parties may submit late-filed data requests or responses after the deadlines in this Procedural Order, either by agreement of the parties, or by approval of the Commission upon a showing of good cause by the filing party that addresses why the late-filed document was not timely submitted.

15. If a party fails to adequately answer a data request, the discovering party may move within fourteen (14) calendar days after service of the response for an order compelling an answer. The motion must identify the relief requested. The responding party may file a brief in opposition within fourteen (14) days of service of the motion to compel. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

16. In response to a party's failure to answer a data request, the Commission may: (1) refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

17. In order to promote the efficiency of the administrative process staff attorneys Jeremiah Langston and Zachary Rogala will act as examiners for the limited purpose of disposing of discovery disputes (including objections to data requests and motions to compel) and motions for protective order in this proceeding. Mont. Code Ann. §§ 69-2-101, 69-3-103 (2017); *see also* Mont. Admin. R. 38.2.306, 38.2.1501.

PRE-HEARING MOTIONS, CONFERENCES, AND MEMORANDA

18. Parties must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven (7) calendar days of service of the motion. If the movant wishes to reply, it must

file and serve its reply brief within five (5) calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

19. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Contested issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and responses to data requests that it intends to introduce (other than responses to data requests related to additional issues response testimony); and (5) any special accommodations sought regarding witness sequence or scheduling.

20. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact and any other matters that may expedite the hearing.

21. By May 2, 2018, Parties or Commission staff seeking the admission of a response to a data request must provide the following information in a prehearing memorandum or similar notice: (a) each data response that it intends to offer as evidence; (b) the witness through which it will be offered; and (c) the issue to which the response relates. *See supra* ¶ 4. On May 9, 2018, all participants will be required to state whether it is their intention to permit any identified data responses to be entered into the record, without required formalities or objection, or whether they intend to require that any identified data response be offered only through a witness, subject to further objection and cross-examination. *See In re Mont. Pub. Serv. Comm'n Solicitation of Comments Regarding Decision Making*, Docket 90.7.44, Notice of Comm'n Action 2-3 (Dec. 31, 1992); *See supra* ¶ 4.

22. At the hearing, the Commission in its discretion may admit data requests not identified in any party's pre-hearing memorandum or similar notice consistent with the traditional process of admitting evidence. For example, parties attempting to move this type of data requests will be required to lay sufficient foundation through witnesses to establish relevance.

23. Parties failing to adhere to the procedure outlined in ¶¶ 21-22 waive their ability to admit data responses at hearing without first establishing foundation for each individual data request. Parties may not modify the substance of this Procedural Order except through the approaches proscribed in ¶ 3.

HEARING

24. The Montana Rules of Evidence in effect at the time of the hearing will govern the hearing. *See* Mont. Code Ann. § 2-4-612(2). As each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

25. Prior to the hearing, parties must arrange with the court reporter and Commission staff to consistently mark all proposed exhibits, responses to data requests and pre-filed testimony for reference.

26. Parties must make each person that authored a data request response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

27. When a party seeks to examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff member, unless it shows good cause why copies are not available. A party seeking to introduce a document not previously filed in this proceeding must also provide a copy of the document to the court reporter.

28. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

DONE AND DATED this 27th day of November, 2017, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner
TONY O'DONNELL, Commissioner