



1 sale's approval.”<sup>3</sup> The Applicants agree with Congressman Young's letter that the Snettisham  
2 Hydroelectric Project (“Snettisham”) should be preserved for the benefit of Alaskan utility rate  
3 payers so that it can continue to provide low cost power for Juneau. The Applicants also agree  
4 that Snettisham should remain in local ownership. As discussed below, however, those concerns  
5 are fully addressed by existing protections. Accordingly, the proposed condition is not necessary  
6 or appropriate.

7  
8 Hydro One's proposed acquisition of Avista Corporation has no impact on  
9 existing rights and obligations regarding Snettisham. When the Proposed Transaction closes,  
10 Hydro One will simply replace current institutional and retail investors as the ultimate owner of  
11 Avista. Avista, AERC, and AELP all will continue operating as they do today. The transaction  
12 preserves the *status quo* and over the long term, likely will provide benefits to ratepayers in  
13 Juneau. As it does today, AELP will continue to manage the utility and will continue to have  
14 certain rights and obligations relating to Snettisham. Avista has not inserted itself into AELP  
15 management and neither will Hydro One, because the structure of the merger leaves in place  
16 local control. It is also important that the merger is not predicated on synergies, and instead is  
17 built on the benefits of scale that could flow down to Alaskan ratepayers.

18  
19 After Hydro One's acquisition of Avista Corporation, Snettisham will continue to  
20 serve the people of Juneau and, importantly, the Commission will continue to regulate AELP's  
21 rates and determine what level of rate recovery will be allowed for Snettisham costs. Since the  
22 Proposed Transaction would not alter the *status quo*, there is no need to disrupt the balance that

23  
24 

---

<sup>3</sup> *Id.* at 1.

1 has been struck among the Alaska Industrial Development and Export Authority (“AIDEA”),  
2 AELP, and the City and Borough of Juneau (“CBJ”).

3 Hydro One is not a governmental entity. It used to be a Crown corporation but  
4 that is no longer the case. Private investors hold more than half of Hydro One’s shares. Pursuant  
5 to the Province of Ontario’s governance agreement with Hydro One, it does not hold or exercise  
6 any managerial oversight over Hydro One. Accordingly, following the merger, the Province will  
7 not hold or exercise any managerial oversight or control over AELP.  
8

9 As detailed below, the proposed Snettisham condition is unnecessary and  
10 inappropriate because:

- 11 • Alaska statute and prior Commission orders regarding Snettisham already  
12 ensure that the public interest is fully protected because any disposition of  
13 Snettisham would be subject to prior Commission review and approval.
- 14 • AELP and the CBJ entered into an agreement in 1998 that, in the event of  
15 a proposed transfer of Snettisham, preserves the benefits of Snettisham for  
16 Juneau customers and grants the CBJ a right of first refusal to purchase  
17 Snettisham.
- 18 • The Commission will retain full regulatory oversight of AELP, including  
19 the authority to disallow rate recovery for costs that are not appropriate.  
20

21  
22  
23  
24  
25  
26 APPLICANTS’ JOINT REPLY TO COMMENTS

Docket U-17-097

December 11, 2017

Page 3 of 9

fs\AVISTA\U-17-097\Pleadings

1 **II. Discussion.**

2 **A. Background regarding Snettisham.**

3 Snettisham consists of a 73 MW hydroelectric power plant located approximately  
4 30 miles south of Juneau, approximately 44 miles of transmission lines, and related substation  
5 and other facilities. Snettisham supplies approximately two-thirds of AELP's energy  
6 requirements. Snettisham was owned by the federal government until 1998, when the project  
7 was purchased from the federal Alaska Power Administration by AIDEA.  
8

9 AIDEA's purchase of Snettisham was financed with the proceeds of tax-exempt  
10 revenue bonds issued by AIDEA, with payment on those bonds secured by the revenues of a  
11 Commission-approved power sales agreement between AIDEA and AELP ("PSA").<sup>4</sup> Under the  
12 PSA, AELP is obligated and entitled to purchase the entire generation and transmission  
13 capability of Snettisham on a "take or pay" basis.<sup>5</sup> Snettisham was refinanced in 2015, with  
14 AIDEA's issuance of approximately \$66 million in bonds. Those bonds are not scheduled to be  
15 paid off until 2034.

16 AELP is obligated to pay all principal, interest, and other costs associated with the  
17 Snettisham bonds.<sup>6</sup> In addition, AELP is obligated to operate and maintain Snettisham, pay all  
18 operating and capital costs associated with Snettisham, and reimburse all of AIDEA's  
19 Snettisham-related administrative costs.<sup>7</sup> AIDEA holds Certificate of Public Convenience and  
20 Necessity ("CPCN") No. 549 to provide wholesale electric service from Snettisham to AELP  
21

22 <sup>4</sup> Order No. U-97-245(1) (Jun. 24, 1998), Appendix at 3.

23 <sup>5</sup> *Id.*, Appendix at 2.

24 <sup>6</sup> *Id.*

25 <sup>7</sup> *Id.*

1 under the PSA.<sup>8</sup> Because AIDEA is a certificated public utility, any disposition of Snettisham is  
2 subject to review by the Commission.<sup>9</sup> The Proposed Transaction will not alter any of these  
3 arrangements and obligations.

4 **B. Alaska statute and prior Commission orders regarding Snettisham already**  
5 **ensure that any disposition of Snettisham would be subject to prior**  
6 **Commission review and approval to protect the public interest.**

7 Congressman Young’s letter addressed the option agreement to purchase  
8 Snettisham from AIDEA held by Snettisham Electric Company (“SEC”), raising concerns that “a  
9 foreign governmental entity could ‘hijack’ [Snettisham] . . . and pledge, monetize or refinance  
10 this asset cashing in the equity at the US taxpayer and Alaskan ratepayer expense without  
11 recourse.”<sup>10</sup> SEC is an uncertificated, unregulated subsidiary of Alaska Energy and Resources  
12 Company (“AERC”) that conducts no activity other than holding an option to purchase the  
13 Snettisham assets.<sup>11</sup> If the option to purchase Snettisham from AIDEA were in fact exercised at  
14 some point in the future by SEC (or any entity), the Commission would have ample opportunity  
15 to review the transaction and impose any appropriate conditions because AIDEA is a certificated  
16 utility. The Commission could also reject the transfer if it found that the transfer is not  
17 consistent with the public interest. In its order granting AIDEA a CPCN for its ownership of  
18

19 <sup>8</sup> See Order No. U-98-021(1) (Jul. 16, 1998).

20 <sup>9</sup> *Id.* at 3. While AIDEA is not subject to economic regulation by the Commission due to its  
21 status as a political subdivision, it is subject to Commission authority under AS 42.05.221 —  
22 42.05.281 regarding its CPCN and authorization and obligation to provide public utility service.  
23 See AS 42.05.711(b).

24 <sup>10</sup> Congressman Young Comments at 1.

25 <sup>11</sup> SEC was formed because in order for AIDEA’s Snettisham bonds to be marketable, the  
26 purchase option had to be held by a “bankruptcy-remote” affiliate of AELP, rather than AELP  
itself, while the bonds remain outstanding. Order No. U-97-245(1), Appendix at 5.

APPLICANTS’ JOINT REPLY TO COMMENTS

Docket U-17-097

December 11, 2017

Page 5 of 9

fs\AVISTA\U-17-097\Pleadings

1 Snettisham, the Commission specifically recognized that “[c]ertification of AIDEA will also  
2 provide regulatory review of AIDEA’s disposition of Snettisham.”<sup>12</sup> In fact, the Commission  
3 required AIDEA to obtain a CPCN for Snettisham in large part to ensure that the Commission  
4 would be able to address the concerns raised at the time related to a future disposition of  
5 Snettisham; those concerns were similar to those recently expressed by Congressman Young’s  
6 letter.<sup>13</sup>

7  
8 Thus, any concerns regarding the effects of a potential future transfer of  
9 Snettisham by AIDEA will be addressed by the Commission if and when such a transfer is  
10 proposed in proceedings involving either the transfer of AIDEA’s CPCN or AIDEA’s  
11 discontinuance of wholesale electric service to AELP. The Commission’s review of such a  
12 transfer would be required regardless of whether the Applicants or some other entity, foreign or  
13 domestic, holds a controlling interest in AELP at that time.

14  
15  
16  
17 <sup>12</sup> Order No. U-98-021(1) (Jul. 16, 1998) at 3. The Commission also required that the value of  
18 Snettisham for ratemaking purposes be based on the purchase price paid for Snettisham, not the  
19 higher net book value. *Id.* at 4; *id.*, Appendix at 5-6 (citing AS 42.05.441(b) and explaining that  
20 this ratemaking treatment addresses the concern that “if AIDEA, or AEL&P’s affiliate, were to  
21 sell the project at a price higher than [the purchase price] but less than the federal government’s  
22 original cost of the property minus depreciation, the seller would realize a significant gain and  
23 the purchaser may be able to use the higher price for rate making purposes. This could result in a  
24 rate increase so future ratepayers would not enjoy the continued benefit of the federal  
25 government disposing of Snettisham at less than book value.”)

22 <sup>13</sup> *See id.*, Appendix at 3-4 (stating that “Certificating AIDEA will address the concerns  
23 expressed in the comments centering on the sale or disposal of Snettisham by AIDEA. . . . As a  
24 certificated utility, in accordance with AS 42.05.281, AIDEA will not be able to transfer the  
25 certificate without prior approval of the Commission. This provides the Commission the  
26 opportunity to review the transaction to assure that it is in the public interest.”).

APPLICANTS’ JOINT REPLY TO COMMENTS

Docket U-17-097

December 11, 2017

Page 6 of 9

fs\AVISTA\U-17-097\Pleadings

1           **C. An existing agreement between AELP and CBJ preserves Snettisham**  
2           **benefits.**

3           The Applicants agree with Congressman Young’s letter that the benefits of  
4 Snettisham should remain in Alaska. Beyond the statutory and regulatory protections already in  
5 place, AELP and the CBJ also took affirmative measures to protect the public’s interest in  
6 Snettisham. In 1998, AELP and the CBJ entered into an agreement to preserve the Snettisham  
7 benefits for ratepayers within the CBJ, providing for two separate mechanisms to ensure that the  
8 local benefits of Snettisham remain protected.<sup>14</sup>

9           First, as long as AELP ratepayer loads within the CBJ continue to require  
10 Snettisham power, AELP is bound to dedicate Snettisham power to meet those loads.<sup>15</sup> This  
11 provision is independent of whether AIDEA or AELP or its affiliates own Snettisham. If AELP  
12 or an affiliate acquires Snettisham from AIDEA, neither AELP nor the affiliate can sell  
13 Snettisham to any unaffiliated third party unless that third party also agrees to dedicate  
14 Snettisham power to meet ratepayer loads within the CBJ.<sup>16</sup>

15           Second, AELP granted the CBJ a right of first refusal, in the event that AELP or  
16 an affiliate acquires Snettisham from AIDEA and agrees to sell it to a third party.<sup>17</sup> In such  
17 event, the CBJ would have the option to purchase Snettisham under the same terms and  
18 conditions as agreed to by a third party.<sup>18</sup>

19 \_\_\_\_\_  
20  
21 <sup>14</sup> Agreement between the City & Borough of Juneau and Alaska Electric Light and Power,  
executed March 16, 1998. Attached as Exhibit A.

22 <sup>15</sup> *Id.* at 2, Section 3.

23 <sup>16</sup> *Id.*

24 <sup>17</sup> *Id.* at Section 4.

25 <sup>18</sup> *Id.*





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

KEMPEL, 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

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2017, a copy of the foregoing document was served on the following persons in the manner indicated below.

KEMPEL, HUFFMAN AND ELLIS, P.C.

By: /s/ Tina M. Torrey  
Tina M. Torrey, Legal Assistant

Congressman Don Young  
House of Representatives  
2314 Rayburn Building  
Washington, DC 20615  
*Via U.S.P.S. Regular Mail*

and

Pamela Day, Chief of Staff for Congressman Young  
*Via E-mail: pamela.day@mail.house.gov*

APPLICANTS' JOINT REPLY TO COMMENTS

Docket U-17-097

December 11, 2017

Page 9 of 9

fs\AVISTA\U-17-097\Pleadings

## **Exhibit A**

**AGREEMENT BETWEEN**  
**THE CITY & BOROUGH OF JUNEAU**  
**AND**  
**ALASKA ELECTRIC LIGHT AND POWER**

**A. Recitals**

1. The Government of the United States, acting by and through the Alaska Power Administration, built and currently owns the Snettisham Hydroelectric Project ("Snettisham"), which the Government of the United States has decided to sell to the Alaska Industrial Development & Export Authority ("AIDEA").

2. Alaska Electric Light And Power Company ("AELP") purchases electric power from Snettisham for resale to customers within the City & Borough of Juneau ("CBJ"), for whom Snettisham represents the primary source of electric power.

3. AIDEA will finance its purchase of Snettisham by issuing bonds that will be secured by AELP's take-or-pay commitment to purchase Snettisham power from AIDEA and pay the costs of AIDEA's Snettisham debt, including in potential circumstances in which Snettisham is not producing power.

4. AELP's Snettisham power purchase commitment to AIDEA and the Bond Trustee is set forth in a Power Sales Agreement ("PSA") and other documents related to the financing of AIDEA's proposed purchase of Snettisham.

5. The PSA requires the approval of the Alaska Public Utilities Commission ("APUC"), and AELP has requested that the CBJ adopt a resolution asking the APUC to grant such approval.

**B. Agreement**

1. CBJ support. The CBJ will promptly express to the APUC its support for approval of the PSA, and take such other steps as AELP or AIDEA may reasonably request to help assure AIDEA's ability to complete successfully the acquisition of Snettisham.

2. Ratemaking treatment of Snettisham power costs. So long as the PSA and the APUC's authority over AELP retail ratemaking both remain in effect, AELP as the purchaser of Snettisham power under the PSA will request that the APUC continue to treat as "purchased power expense" for retail ratemaking purposes all of AELP's costs of buying Snettisham power. If AELP purchases Snettisham and the APUC continues to regulate AELP's retail rates, then for ratemaking purposes AELP will seek to have the APUC treat Snettisham in the same manner as other generating resources that AELP owns.

3. Preservation of Snettisham benefits. So long as AELP ratepayer loads within the CBJ continue to require Snettisham power, AELP will dedicate Snettisham power to meet those loads. If AELP or an affiliate acquires Snettisham from AIDEA, then neither AELP nor the affiliate will thereafter sell Snettisham to any unaffiliated third party unless that third party also agrees to dedicate Snettisham power to meet ratepayer loads within the CBJ.

4. CBJ's right of first refusal. If AELP or an affiliate, having acquired Snettisham from AIDEA, ever agrees to sell Snettisham to any unaffiliated third party, then the CBJ shall have a right of first refusal to purchase Snettisham instead, under the same terms and conditions (including any assumption of risks and any refunding of outstanding debt) as

agreed to by such third party; provided that (a) such right shall be exercised within ninety (90) days, and the CBJ's purchase of Snettisham shall be completed within eighteen (18) months, of notification to the CBJ of a proposed sale of Snettisham to such third party, unless AELP and the CBJ agree to extend these deadlines; and (b) the CBJ's exercise of such right is consistent with then-existing Snettisham debt and AELP's then-existing obligations; provided further, that AELP shall consult with the CBJ from time to time with respect to AELP's plans regarding ownership of Snettisham.

5. Enforcement. This Agreement may be enforced only by the parties, and only through binding arbitration in accordance with rules of the American Arbitration Association. Each party shall bear its own costs in any such arbitration, unless the arbitration panel orders otherwise. The parties shall use their reasonable best efforts and shall cooperate in good faith to agree upon such procedures as may be necessary to allow the arbitration to proceed with promptness and efficiency.

C. Effectiveness

1. This Agreement shall become effective on the first date when (a) the Agreement has been executed by both parties, and (b) the CBJ has adopted for purposes of Alaska Statutes 44.88 a resolution substantially in the form of Attachment A hereto.

2. This Agreement shall cease to be effective if AIDEA has not acquired Snettisham on or before August 20, 1998, the deadline for this transaction established by Federal statute.

3. This Agreement shall be governed by the laws of the State of Alaska.

Monday March 16 version

ALASKA ELECTRIC LIGHT AND POWER

William A. Corbus  
William A. Corbus, President

Date: March 16, 1998

CITY AND BOROUGH OF JUNEAU, ALASKA

Donna B. Pierce  
Donna B. Pierce  
Acting City Manager

Date: March 16, 1998