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October 4, 2018

Boise, Idaho

*E-filed at [www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)*

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive SW  
P. O. Box 47250  
Olympia, WA 98504-7250

RE: HYDRO ONE LIMITED and AVISTA CORPORATION  
Docket No. UE-170970  
Our File No. 3293-999/Avista

Dear Commissioners:

The Washington and Northern Idaho District Council of Laborers (“WNIDCL”) submits this letter in lieu of additional testimony to supplement that it previously filed in this matter. WNIDCL continues to support the proposed transaction. It remains supportive of the terms of the settlement reached by all the parties, and supports the new and modified terms proposed by the parties, as reflected in Exhibit CRM-2 to the testimony of Chris McGuire.

Sincerely,



Danielle Franco-Malone

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	September 20, 2018
CASE NO.:	U-170970	WITNESS:	Chris Lopez
REQUESTER:	TEP	RESPONDER:	Adele Pantusa
TYPE:	Data Request	DEPT:	Law
REQUEST NO.:	TEP - 044(H1)	TELEPHONE:	416-345-6310
		EMAIL:	apantusa@hydroone.com

**REQUEST:****RE: Supplemental Testimony of Christopher F. Lopez, Exh CFL-1T at 10:15-12:14.**

Mr. Lopez testifies that the Commission can be certain about the funding of certain listed Community and Low-income Commitments (Commitments 63, 64, 67, 69, 70, 77, and 79) based on the availability of funding through the use of Avista's retained earnings, indicating that "With this approach there is no need for cash to flow from Hydro One to Avista."

- a. Please explain whether there are any factors that would limit the use of retained earnings for funding the listed Commitments.
- b. Please confirm that Hydro One is able to and will make "funds available from other Hydro One affiliates" to fund the Stipulated Commitments listed.
- c. Please state whether, in the event retained earnings are not available at Avista for any reason, there exists any uncertainty, condition or other limitation, on funding the listed Commitments from other Hydro One sources.
- d. Please state whether any electric rate reduction required by the Province of Ontario would impair Hydro One's ability to fund the listed Commitments.

**RESPONSE:**

- a. To the best of our knowledge, we are not aware of any factors that would limit the use of available amounts of Avista's retained earnings for funding of the listed Commitments.
- b. Hydro One could if needed make use of its retained earnings to fund the Stipulated Commitments.
- c. Please see the reply to part b above.
- d. As the Commitments are expected to be funded from the retained earnings of Avista, any electric rate reductions required by the Province of Ontario would not have any bearing on the ability to meet these Commitments.

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	September 21, 2018
CASE NO.:	U-170970	WITNESS:	James Scarlett
REQUESTER:	TEP	RESPONDER:	Adele Pantusa
TYPE:	Data Request	DEPT:	Law
REQUEST NO.:	TEP – 040(H1)	TELEPHONE:	416-345-6310
		EMAIL:	apantusa@hydroone.com

**REQUEST:**

**RE: Supplemental Testimony of James D. Scarlett, Exh. JDS-1T at 3: 1-14.**

Mr. Scarlett testifies, in summary that Premier Ford had two options to implement certain goals for Hydro One announced during the election campaign, either by means of the Governance Agreement, or by means of legislation. Please state:

- a) Whether these two options remain available to the Provincial government for implementing future political, policy, operational, management, or financial changes of any kind for Hydro One and any of its subsidiaries?
- b) Whether the Province, under the Governance Agreement or through legislation, retains the right to replace the entire Hydro One Board of Directors? If so, please explain with specificity.
- c) What options are available to the Province or Provincial government to reduce electric rates through legislation?
- d) Describe any limitations on the legislative authority of the Province to modify or abrogate contracts entered into by Hydro One or any of its subsidiaries, including any contractual obligations under the Settlement Stipulation in this case.
- e) Whether and to what extent the Province or Provincial government has authority in any respect to direct, control, require, or influence the compliance by Hydro One with any of the Commitments under the Settlement Stipulation.

**RESPONSE:**

- a) Yes, these two options remain available to the Provincial government for implementing future political, policy, operational, management, or financial changes of any kind for Hydro One and any of its subsidiaries, other than Avista (assuming the merger is consummated). The Province will not have jurisdiction to directly affect, interact with, or directly interfere with the management and strategic direction of Avista if the merger is consummated. The Province cannot pass laws that apply to Avista.
- b) The Province continues to have the authority through Section 4.7 of the Governance Agreement to call for the replacement of Hydro One's entire Board, with the exception of the CEO, and at the Province's discretion, the Chair.
- c) The Ontario Energy Board ("OEB") is an agent of the Province which regulates natural gas and electricity utilities in Ontario. Among other things, the OEB sets rates and licenses all participants in the Province's electricity and natural gas sectors as set out in

the *Ontario Energy Board Act, 1998*. While the OEB is an independent agency, it is still subject to provincial legislation and government directives.

- d) The Province's legislative authority to modify or abrogate contracts entered into by Hydro One or any of its subsidiaries is limited to those matters over which it has jurisdiction. The Province has no legislative jurisdiction outside the Province of Ontario.
- e) The Governance Agreement (the "Governance Agreement") between Hydro One and Her Majesty The Queen in Right of Ontario (the "Province") dated November 5, 2015, which continues to be of force and effect, requires that the Province act as an investor and not a manager of Hydro One, and the Province's decision-making authority in respect of Hydro One is restricted to that of any other investor with respect to voting its shares in any decisions that are brought forward for shareholder approval. The Province also has the right to nominate 40 percent of the Board of Directors (other than the CEO), but all directors remain subject to an annual vote by all shareholders of Hydro One.

If the merger is consummated, the Province will not have jurisdiction to modify or nullify the Stipulated Commitments and any commitments included in the Commission's order approving the merger. Hydro One is bound by these contractual obligations. Even though the Province is a shareholder of Hydro One, Hydro One is the entity that bears the full legal responsibility for the Stipulated Commitments and any commitments included in the Commission's order approving the merger if the merger is consummated. The Province is not a party to Hydro One's contracts and commitments in this proceeding and no action on the part of the Province is required for Hydro One to fulfill its obligations.

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	9/17/2018
CASE NO.:	U-170970	WITNESS:	James Scarlett
REQUESTER:	TEP	RESPONDER:	Adele Pantusa
TYPE:	Data Request	DEPT:	Law
REQUEST NO.:	TEP – 043(H1)	TELEPHONE:	416-345-6310
		EMAIL:	apantusa@hydroone.com

**REQUEST:**

**RE: Supplemental Testimony of James D. Scarlett, Exh. JDS-1T at 23:14-15.**

Mr. Scarlett testifies that “Hydro One is bound by these contractual obligations.”

- a. Please confirm that this statement refers to the 81 Stipulated Commitments and any conditions included by the Commission.
- b. Please identify the documents constituting the contract, and the parties to the contract.
- c. Please identify the remedies available to the Commission for any breach of the terms of the contract, and the fora in which the Commission is authorized to seek enforcement of the contract.

**RESPONSE:**

- a. Yes this statement refers to the 81 Stipulated Commitments and any conditions included by the Commission.
- b. The documents constituting the contract is the all-parties, all-issues settlement agreement in the merger proceeding (the “Settlement Agreement”) before the Washington Utilities and Transportation Commission (the “Commission”) filed on March 27, 2018. The parties to this Settlement Agreement are: Avista, Hydro One, Commission Staff, the Public Counsel Unit of the Washington Office of Attorney General, The Energy Project, NW Energy Coalition, Renewable Northwest, Natural Resources Defense Council, Sierra Club, the Washington and Northern Idaho District Council of Laborers, the Northwest Industrial Gas Users and the Industrial Customers of Northwest Utilities.
- c. Please refer to Commitment Numbers 30 and 31 for the remedies available to the Commission for any breach of the terms of the contract.

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	9/14/2018
CASE NO.:	U-170970	WITNESS:	James Scarlett
REQUESTER:	TEP	RESPONDER:	Adele Pantusa
TYPE:	Data Request	DEPT:	Law
REQUEST NO.:	TEP – 042(H1)	TELEPHONE:	416-345-6310
		EMAIL:	apantusa@hydroone.com

**REQUEST:**

**RE: Supplemental Testimony of James D. Scarlett, Exh. JDS-1T at 22:21-23:12.**

With regard to the referenced testimony, please state:

- a. Regarding Commitment 30, please state whether there are any limitations of any kind on the Commission's authority to enforce the Commitments of the Settlement Stipulation as against Hydro One Limited, or any Hydro One subsidiary, based upon the phrase "in accordance with their terms" or any other basis. If so, please describe the limitation with specificity.
- b. Does Commitment 31 (Submittal to State Court Jurisdiction) bind Hydro One Limited, or any other Hydro One corporate entity above the level of Olympus Holdings to submit to state court jurisdiction in Washington?
- c. Regarding Commitment 33 (Commitments Binding), please explain the specific import of the phrase "where noted" and identify with specificity any situation where commitments are not binding upon Hydro One Limited, Olympus Holding Corp. or any other Hydro One entity.

**RESPONSE:**

- a. Except as otherwise stated in the Commitments themselves (hence, the language "in accordance with their terms"), there are no limitations on the Commission's authority to enforce the Commitments of the Settlement Stipulation as against Hydro One Limited, or any Hydro One subsidiary.
- b. While Commitment 31 specifically refers to "*Olympus Holding Corp. Olympus Holding Corp., on its own and its subsidiaries' behalf, including Avista*", Hydro One agrees to submit to the jurisdiction of the Washington courts for enforcement of violations of the Commitments in the Settlement Stipulation, as was agreed to in the Oregon Settlement Stipulation.
- c. Each Commitment specifies which entity has agreed to it and be bound by it. For example, if a Commitment reads that "Avista shall....", it means Avista is bound by the Commitment. If a Commitment reads "Hydro One and its subsidiaries shall", then Hydro One and each of its subsidiaries are bound by the Commitment (including Avista once the merger is consummated).

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	9/18/2018
CASE NO.:	U-170970	WITNESS:	John J. Reed
REQUESTER:	TEP	RESPONDER:	Carrie O'Neill
TYPE:	Data Request	DEPT:	Concentric Energy Advisors
REQUEST NO.:	TEP – 038(H1)	TELEPHONE:	508.263.6250
		EMAIL:	coneill@ceadvisors.com

**REQUEST:**

**RE: Supplemental Testimony of John J. Reed, Exh. JJR-1T at 24:14-15.**

Mr. Reed testifies that “the Stipulated Commitments are binding regardless of any actions the Province might take in the future.”

- a) Please list the specific Commitments referred to by Mr. Reed in this statement.
- b) Please list each Hydro One entity that is bound by the specific Commitment listed in item b.

**RESPONSE:**

- a) Mr. Reed is referring to Stipulated Commitments 1 through 81.
- b) As signatories to the Settlement Stipulation, Hydro One and Avista will be bound by the Settlement Stipulation and all of the commitments made in Appendix A to the Settlement Stipulation if the transaction is approved by the Commission as contemplated in the Settlement Agreement and if the transaction closes. Hydro One and Avista have also put forth additional commitments through their supplemental testimony (see Scarlett Testimony) which they will also be bound by if the transaction is approved by the Commission and closes. In addition to Hydro One and Avista being bound by these commitments, all corporate entities existing between Hydro One and Avista will be bound as well, including Olympus Holding Corp. and Olympus Equity LLC.

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	9/18/2018
CASE NO.:	U-170970	WITNESS:	John J. Reed
REQUESTER:	TEP	RESPONDER:	Carrie O'Neill
TYPE:	Data Request	DEPT:	Concentric Energy Advisors
REQUEST NO.:	TEP – 039(H1)	TELEPHONE:	508.263.6250
		EMAIL:	coneill@ceadvisors.com

**REQUEST:**

**RE: Supplemental Testimony of John J. Reed, Exh. JJR-1T at 24: 16-17.**

Regarding a “speculative scenario where the Province took control of Hydro One,” assuming a scenario where the Province takes control where to occur, please state Mr. Reed’s understanding of any limitations, legal or otherwise, that would be faced by Hydro One in taking any action that would be inconsistent with any current obligation of Hydro One under any Commitment in the Settlement Stipulation in this case.

**RESPONSE:**

While Mr. Reed cannot provide a legal opinion on this topic, it is his understanding that the entirety of the Settlement Stipulation would be such a limitation. Mr. Reed does not envision a scenario in which the Province’s actions to take control of the Hydro One Board would provide any basis for Hydro One taking any action that would be inconsistent with the Commitments in the Settlement Stipulation. Please also see the response to TEP\_DR\_038(H1).

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	9/17/2018
CASE NO.:	U-170970	WITNESS:	James Scarlett
REQUESTER:	TEP	RESPONDER:	Adele Pantusa
TYPE:	Data Request	DEPT:	Law
REQUEST NO.:	TEP – 041(H1)	TELEPHONE:	416-345-6310
		EMAIL:	apantusa@hydroone.com

**REQUEST:**

Does the immunity from civil liability created by the Hydro One Accountability Act in any way limit the Washington Commission's enforcement authority with respect to any of the Commitments in the settlement stipulation?

**RESPONSE:**

No.

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Joint Application of  
HYDRO ONE LIMITED (acting through  
its indirect subsidiary, Olympus Equity  
LLC)**

**DOCKET U-170970**

**And**

**AVISTA CORPORATION  
For an Order Authorizing Proposed  
Transaction**

**SUPPLEMENTAL TESTIMONY OF  
SHAWN M. COLLINS (EXH. SMC-2T)**

**DIRECTOR OF  
THE ENERGY PROJECT**

*In Support of Settlement Stipulation and Modified Commitments*

**October 4, 2018**

**LIST OF EXHIBITS FOR SHAWN M. COLLINS (SMC-2T)**

- Exh. SMC-3 Hydro One Response to TEP Data Request No. 44
- Exh. SMC-4 Hydro One Response to TEP Data Request No. 40
- Exh. SMC-5 Hydro One Response to TEP Data Request No. 42
- Exh. SMC-6 Hydro One Response to TEP Data Request No. 43
- Exh. SMC-7 Hydro One Response to TEP Data Request No. 38
- Exh. SMC-8 Hydro One Response to TEP Data Request No. 39
- Exh. SMC-9 Hydro One Response to TEP Data Request No. 41



1 **Q: Have you previously provided testimony in this proceeding?**

2 A: Yes. On April 10, 2018, I provided testimony in support of the Settlement  
3 Stipulation (Settlement), filed as Testimony of Shawn M. Collins, Exh. SMC-1T.  
4 I appeared as a witness on the settlement panel at the Commission's May 22,  
5 2018, evidentiary hearing to review the Settlement. On July 18, 2018, TEP filed  
6 comments in response to the Commission Notice of Intent to Conduct Additional  
7 Process, supporting the Commission's intention to conduct supplemental  
8 proceedings to ensure the record will be fully developed regarding the impact of  
9 the Ontario election, and that the commitments of Avista and Hydro One remain  
10 viable and enforceable.

11 **II. PURPOSE OF TESTIMONY**

12 **Q: Could you please summarize the purpose of your supplemental testimony?**

13 A: The purpose of my supplemental testimony is to respond to the Supplemental  
14 Testimony of Joint Applicants filed on September 6, 2018, and to provide TEP's  
15 perspective on the impact of the events affecting Hydro One and the proposed  
16 merger transaction subsequent to the Ontario Provincial election. As discussed in  
17 more detail below, TEP continues to recommend approval of the Settlement,  
18 subject to approval of the modified Commitments submitted by TEP and by the  
19 other parties.

1   **Q:   Can you provide a recap of the key elements of the all-party Settlement**  
2           **currently before the Commission that address low-income issues?**

3   **A:**   The Settlement includes a number of important components that provide benefits  
4           for low-income customers:

- 5           •   Commitments to maintain the current Low-Income Rate Assistance  
6                Program (LIRAP) and related pilots (Commitment 66), to maintain the  
7                existing low-income weatherization program (Commitment 70), to  
8                improve penetration of these programs (Commitment 73), and to work  
9                with the advisory groups to address other low-income issues, including  
10              program funding levels. (Commitments 65, 68)
- 11          •   \$4 million of additional funding over a 10-year period for existing low-  
12              income weatherization programs. (Commitment 70)
- 13          •   \$5 million in funding over a 10-year period for new renewables projects to  
14              benefit low-income customers. (Commitment 67)
- 15          •   \$2 million over a 10-year period for replacement of manufactured homes.  
16              (Commitment 69)
- 17          •   A goal that 30 percent of residential program EVSE funds be dedicated to  
18              projects that serve low-income customers. (Commitment 62)
- 19          •   Consumer protection commitments related to AMI including limitations  
20              on remote disconnection and prepayment. (Commitment 72)
- 21          •   A modified security deposit policy eliminating deposits for new customers  
22              and returning some security deposits. (Commitment 71)

- 1           • A commitment to maintain existing levels of community involvement and  
2           support for tribal and low-income organizations. (Commitment 12)
- 3           • A commitment to reach out to tribal communities to encourage  
4           participation in settlement benefits. (Commitment 74)

5           These elements of the settlement are essential components enabling the  
6           transaction to meet the “net benefit” standard. The Energy Project believes it is  
7           important, when evaluating the impact of the Ontario events, to recognize that the  
8           Settlement has both a “no-harm” aspect (e.g., ring-fencing, financial integrity,  
9           local presence) and a “net benefit” aspect (e.g., community and low-income  
10          commitments). Even if the “no harm” components, such as ring-fencing, are  
11          adequate to protect Avista itself from financial harm and undue interference, the  
12          Commission and the parties must also be satisfied that Hydro One and its  
13          subsidiaries above Avista are fully committed and capable of fulfilling their  
14          obligations to provide net benefits to customers, and that the Commission has the  
15          necessary jurisdiction and enforcement authority to address any problems that  
16          might arise involving entities above Avista in the corporate structure.

### 17                   **III. THE IMPACT OF THE ONTARIO ELECTION**

18   **Q: Did The Energy Project have concerns with the impact of the Ontario**  
19   **election on the proposed transaction in this docket?**

20   **A:** Yes. The events surrounding the departure of Hydro One’s CEO Mayo Schmidt,  
21   a witness in this proceeding, and the resignation of the Hydro One Board of  
22   Directors in July 2018 were unsettling. Occurring after TEP and other parties had

1 signed the Settlement in March and testified at the hearing in May, these events  
2 raised concerns for TEP regarding the Provincial government's future ability to  
3 direct or influence Hydro One's compliance with the Settlement. The Energy  
4 Project's concerns focused on two primary areas: (1) potential uncertainty  
5 regarding the Commitments to fund increased renewables (Commitment 67) and  
6 weatherization (Commitment 70) for low-income customers in Washington; and  
7 (2) the sufficiency of the Commitments with regard to Commission jurisdiction  
8 over Hydro One and its subsidiaries, and enforcement of the Settlement and the  
9 81 listed Commitments.

10 **Q: Could you explain The Energy Project's concerns regarding funding of the**  
11 **renewables and weatherization commitments?**

12 A: As originally filed, the commitments regarding low-income renewables and  
13 weatherization provided that funding would be made available over a 10-year  
14 period. The Energy Project's expectation was that Hydro One and Avista would  
15 fund projects as they were approved by the Advisory Groups. However, no  
16 specificity was stated with regard to the timing of the payments. Commitments  
17 67, 70, and 72 provide that Hydro One is ultimately responsible for these  
18 payments. The events following the Ontario election introduced some uncertainty  
19 from TEP's perspective regarding the vulnerability of Hydro One to Provincial  
20 action via legislation or otherwise, that could affect Hydro One's funding of the  
21 low-income commitments, or the timing of the funding.

1 **Q: Has this concern been addressed, and if so, how?**

2 A: The concern has been addressed in two ways. First, the Joint Applicants have  
3 agreed to modification of Commitments 67 and 70 such that the payments will be  
4 made at a minimum on a pro rata basis (one tenth per year) over the 10-year  
5 period. For Commitment 67 this means a minimum payment of \$500,000 per  
6 year, and for Commitment 70 a minimum payment of \$400,000 per year. This  
7 provides additional certainty regarding the timing of the payments that was not  
8 previously included in the Commitments.

9 Under TEP's agreement with Joint Applicants, the following language will  
10 be added to Commitments 67 and 70:

11 Funding will be made available for eligible projects as they are  
12 identified and approved by the Advisory Committee throughout the  
13 10-year timeframe of the commitments; provided, however, that  
14 funding will be made available, at a minimum, on a pro rata basis  
15 over the period (i.e., one-tenth of the total each year), but need not  
16 occur any more frequently than on a pro rata basis over the 10-year  
17 period. Funding commitments may be made at any time during the  
18 10-year period.

19 For example, if no funding is approved by the Advisory Committee  
20 until the third year of the 10-year period, up to [\$1.5 million for  
21 Commitment 67 / \$1.2 million for Commitment 70] must be made  
22 available in the third year. Nothing in this provision shall be  
23 interpreted to preclude payment of funding in installments over time  
24 for large projects that are approved early in the 10-year period. For  
25 example, a \$5 million project could be approved in Year 3 [under  
26 Commitment 67] with \$1.5 million due in Year 3 and \$0.5 million  
27 per year due each year for the next seven years, assuming no funding  
28 had been made available under Commitment 67 in Year 1 or Year  
29 2.

1 For Commitment 70, the words “energy efficiency” will be added before  
2 “Advisory Committee” to clarify which committee is intended.

3 As the language indicates, the modified Commitment allows a “funding  
4 commitment” for a project that exceeds the pro rata amount, with the  
5 understanding that Hydro One is only obligated to provide the “actual funding” in  
6 installments, i.e., on the pro rata schedule. Hydro One is not precluded from  
7 funding on greater than a pro rata basis if it chooses.

8 **Q: Please explain the second way in which Joint Applicants addressed The**  
9 **Energy Project’s funding concerns:**

10 The Joint Applicants also addressed the concern in testimony and discovery  
11 responses. In his September 6 Supplemental Testimony on behalf of Hydro One,  
12 Executive Vice President and Chief Legal Officer James Scarlett addressed how  
13 the Commission can be certain that Hydro One, as Avista’s sole shareholder, will  
14 ensure there is funding for the renewables and weatherization commitments.<sup>1</sup> He  
15 responded by reciting and reaffirming the terms of Commitment 75 as a “firm  
16 commitment to provide the dollar amount specified over the time period specified  
17 and for the time period specified,” and stated that “[t]herefore, Hydro One, as  
18 Avista’s sole shareholder, ultimately bears the cost of these commitments.”<sup>2</sup> Mr.  
19 Scarlett went on to note that funding could be made available from Avista’s  
20 retained earnings to fund the Commitments.<sup>3</sup>

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<sup>1</sup> His testimony also addresses the other financial commitments in the Settlement.

<sup>2</sup> Exh. JDS-1T, at 22:9-10.

<sup>3</sup> *Id.*, at 22:11-20.

1 Christopher Lopez, Senior Vice President of Finance for Hydro One,  
2 addressed this issue in his September 6 Supplemental Testimony. Mr. Lopez  
3 similarly noted that Avista retained earnings would be available to fund the  
4 Commitments and that under this approach “there would be no need for cash to  
5 flow from Hydro One to Avista.”<sup>4</sup> He further testified that Hydro One “remains  
6 financially healthy” and he does not expect that to change.<sup>5</sup> In response to TEP  
7 discovery, Mr. Lopez stated that Hydro One was “not aware of any factors that  
8 would limit the amount of Avista’s retained earnings for funding the listed  
9 Commitments” and that “if needed, [Hydro One] could make use of its retained  
10 earnings to fund the Stipulated Commitments.”<sup>6</sup> Finally, he stated that any  
11 electric rate reductions required by the Province of Ontario “would not have any  
12 bearing on the ability to meet these Commitments” because the Commitments  
13 were expected to be funded from Avista’s retained earnings.<sup>7</sup>

14 **Q: Does The Energy Project have any concerns regarding Commitment 69**  
15 **regarding mobile-home replacement?**

16 A: The general concerns mentioned above apply, however, mobile-home  
17 replacement Commitment 69 currently provides that at least half the funds must  
18 be spent in the first five years and that Avista will begin implementation within 6  
19 months. Because these terms already provide some additional certainty regarding

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<sup>4</sup> Exh. CFL-6T, at 11:10-12:6.

<sup>5</sup> *Id.*, at 12:7-9.

<sup>6</sup> Exh. SMC-3 (Hydro One Response to TEP Data Request No. 44 (a) and (b)).

<sup>7</sup> *Id.* (Hydro One Response to TEP Data Request No 44 (d)).

1 the timing of payments and implementation, TEP did not request modification of  
2 this specific Commitment.

3 **Q: Please explain The Energy Project's concern regarding enforcement and**  
4 **jurisdictional issues.**

5 A: As a result of the events in Ontario, TEP wanted to confirm its understanding of  
6 the Commission's ability to enforce the Commitments with respect to Hydro One  
7 and its subsidiaries. Because Hydro One, the parent, is the entity ultimately  
8 responsible for compliance with many of the Commitments in the Settlement  
9 Stipulation, in particular the low-income commitments, the Commission's  
10 authority vis a vis Hydro One is of critical importance.

11 Upon further review of existing Commitments 30 (Commission  
12 Enforcement of Commitments), Commitment 31 (Submittal to State Court  
13 Jurisdiction for Enforcement of Commission Orders), and Commitment 33  
14 (Commitments Binding), TEP had concerns that the provisions had some  
15 ambiguities or did not clearly include Hydro One Limited or all intermediate  
16 subsidiaries in the chain to Avista. For example, existing Commitment 31  
17 (Submittal to State Court Jurisdiction) does not reference the parent Hydro One  
18 Limited or any entity above Olympus Holding Corp and does not specifically  
19 reference Washington courts.<sup>8</sup>

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<sup>8</sup> An organizational chart for Hydro One Limited was provided in the April 10 Supplemental Testimony of Christopher Lopez, Exh. CFL-5T at 5 (Illustration No. 1).

1 **Q: Please explain how The Energy Project's concerns about enforcement and**  
2 **jurisdiction have been addressed.**

3 A: The Energy Project reviewed the parallel provisions regarding enforcement and  
4 jurisdiction issues in the Oregon settlement (Oregon Commitments 110-112) and  
5 found them to be clearer than the Washington commitments in addressing these  
6 concerns. The Energy Project consulted with Joint Applicants and was able to  
7 reach agreement to incorporate the concepts from the Oregon Commitments into  
8 the Washington Settlement.

9 The modified Commitments state as follows, with the changes shown in  
10 legislative format:

11 **Commitment 30 – Commission Enforcement of Commitments**

12 Hydro One and its subsidiaries, including Avista, understand and agree that  
13 the Commission has authority to enforce these commitments in accordance  
14 with their terms. If there is a violation of the terms of these commitments,  
15 then the offending party may, at the discretion of the Commission, have a  
16 period of thirty (30) calendar days to cure such violation. The scope of this  
17 commitment includes the authority of the Commission to compel the  
18 attendance of witnesses from Olympus Holding Corp. and its affiliates,  
19 including Hydro One, with pertinent information on matters affecting  
20 Avista. Hydro One, Olympus Holding Corp. and its subsidiaries waive their  
21 rights to interpose any legal objection they might otherwise have to the  
22 Commission's jurisdiction to require the appearance of any such witnesses.

23 **Commitment 31 – Submittal to State Court Jurisdiction For Enforcement of**  
24 **Commission Orders**

25  
26 Hydro One, on behalf of itself and its subsidiaries in the post-close corporate  
27 structure between Hydro One and Avista (as those companies in between  
28 may change over time), and Avista ~~Olympus Holding Corp., on its own and~~  
29 its subsidiaries' behalf, including Avista's, will file with the Commission  
30 prior to closing the Proposed Transaction an affidavit affirming that they it  
31 will submit to the jurisdiction of the ~~relevant state~~ Washington courts for  
32 enforcement of the Commission's orders adopting these commitments and

1 subsequent orders affecting Avista, and will agree to the application of  
2 Washington law with respect to such matters.

3 **Commitment 33 – Commitments Binding**

4 Hydro One, its subsidiaries in the post-close corporate structure between  
5 Hydro One and Avista (as those companies in between may change over  
6 time) Olympus Holding Corp. and its subsidiaries, including and Avista,  
7 acknowledge that the commitments being made by them are fully binding  
8 only upon them and their successors in interest and upon their affiliates,  
9 except where specifically noted, and their successors in interest. Hydro One  
10 and Avista are not requesting in this proceeding a determination of the  
11 prudence, just and reasonable character, rate or ratemaking treatment, or  
12 public interest of the investments, expenditures or actions referenced in the  
13 commitments, and the parties in appropriate proceedings may take such  
14 positions regarding the prudence, just and reasonable character, rate or  
15 ratemaking treatment, or public interest of the investments, expenditures or  
16 actions as they deem appropriate.

17 If Hydro One or any other entity in the chain of Avista’s ownership  
18 determines that Avista or any other entity has failed to comply with an  
19 applicable Commitment, the entity making such determinations shall take  
20 all appropriate actions to achieve compliance with the Commitment.

21 **Q: In addition to the modified Commitments, were there other ways in which**  
22 **The Energy Project’s concerns regarding enforcement and jurisdiction were**  
23 **addressed?**

24 A: Yes. Hydro One also addressed these issues in testimony and in response to  
25 discovery. In his September 6 Supplemental Testimony, Mr. Scarlett testified that  
26 under Commitments 30, 31, and 33: “Hydro One, as Avista’s sole shareholder,  
27 and/or its subsidiaries, have submitted to the jurisdiction of the Commission and  
28 Washington courts for the enforcement of all of the Stipulated Commitments,

1 including those that require Hydro One funding.”<sup>9</sup> Mr. Scarlett went on to state:

2 [I]f the merger is consummated, the Province will not have jurisdiction to  
3 modify or nullify the 81 Stipulated Commitments and any conditions  
4 included in the Commission’s order approving the merger. *Hydro One is*  
5 *bound by these contractual obligations. Even though the Province is a*  
6 *shareholder of Hydro One, Hydro One is the entity that bears the full legal*  
7 *responsibility for the 81 Stipulated Commitments and any commitments*  
8 *included in the Commission’s order approving the merger if the merger is*  
9 *consummated. The Province is not a party to Hydro One’s contracts and*  
10 *commitments in this proceeding and no action on the part of the Province*  
11 *is required for Hydro One to fulfill its obligations.*<sup>10</sup>

12  
13 This statement was reiterated in response to discovery.<sup>11</sup> Mr. Scarlett stated  
14 additionally that “[t]he Province’s legislative authority to modify or abrogate  
15 contracts entered into by Hydro One or any of its subsidiaries is limited to those  
16 matters over which it has jurisdiction. The Province has no legislative jurisdiction  
17 outside the Province of Ontario.”<sup>12</sup>

18 Regarding Commitment 30, Mr. Scarlett stated in response to discovery  
19 that “[e]xcept as otherwise stated in the Commitments themselves...there are no  
20 limitations on the Commission’s authority to enforce the Commitments of the  
21 Settlement Stipulations as against Hydro One Limited, or any Hydro One  
22 subsidiary.”<sup>13</sup>

23 Regarding Commitment 31 (Submittal to State Court Jurisdiction), Mr.  
24 Scarlett confirmed in response to discovery that “Hydro One agrees to submit to  
25 the jurisdiction of the Washington courts for enforcement of violations of the

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<sup>9</sup> Exh. JDS-1T, at 22:21-23:10.

<sup>10</sup> *Id.*, at 23:12-20. (emphasis added).

<sup>11</sup> Exh. SMC-4 (Hydro One Response to TEP Data Request No. 40 (e)).

<sup>12</sup> *Id.*, (Hydro One Response to TEP Data Request No. 40 (d)).

<sup>13</sup> Exh. SMC-5 (Hydro One Response to TEP Data Request No. 42 (a)).

1 Commitments in the Settlement Stipulation, as was agreed to in the Oregon  
2 Settlement Stipulation.”<sup>14</sup>

3 In response to discovery, Mr. Scarlett reiterated that the Settlement creates  
4 contractual obligations for Hydro One regarding all 81 Commitments,  
5 additionally describing the documents constituting the contract, the contract  
6 parties, and the remedies available to the Commission.<sup>15</sup> Hydro One’s consultant  
7 witness John Reed echoes the binding contractual nature of the Settlement,  
8 stating: “[i]n addition to Hydro One and Avista being bound by these  
9 commitments, all corporate entities existing between Hydro One and Avista will  
10 be bound as well, including Olympus Holding Corp and Olympus Equity LLC.”<sup>16</sup>

11 Mr. Scarlett also stated in response to discovery that the immunity from  
12 civil liability created by the Hydro One Accountability Act in no way limits the  
13 Commission’s enforcement authority with respect to any of the Settlement  
14 Commitments.<sup>17</sup>

15 In summary, modified Commitments 30, 31, and 33, the supplemental  
16 testimony, and the responses to discovery have sufficiently addressed TEP’s  
17 concerns regarding enforcement and jurisdiction.

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<sup>14</sup> Exh. SMC-5 (Hydro One Response to TEP Data Request No. 42 (b)).

<sup>15</sup> Exh. SMC-6 (Hydro One Response to TEP Data Request No. 43 (a)-(c)).

<sup>16</sup> Exh.SMC-7 (Hydro One Response to TEP Data Request No. 38), Exh. SMC-8 (Hydro One Response to TEP Data Request No. 39). In Exh. SMC-8, Mr. Reed states as a non-attorney that in the “speculative scenario” where the Province would take control of Hydro One, he does not envision “any basis for Hydro One taking any action that would be inconsistent with the Commitments in the Settlement Stipulation” and that the Settlement would act as a limitation on any such action.

<sup>17</sup> Exh. SMC-9 (Hydro One Response to TEP Data Request No. 41).

1 **Q: Are there other modified Commitments that you wish to address?**

2 A: The Energy Project is aware that Joint Applicants have also agreed to modified  
3 Commitment 2 (executive management), Commitment 3 (Board of Directors),  
4 and a new Commitment 82 regarding the right to reopen the docket, as well as a  
5 modification of the Delegation of Authority. The Energy Project has reviewed  
6 these changes and supports their adoption.

7 **IV. CONCLUSION**

8 **Q: Does The Energy Project continue to support approval of the Settlement?**

9 A: Yes, on the condition that the modified Commitments discussed in my testimony  
10 are incorporated in the Settlement Stipulation. With this understanding, The Energy  
11 Project believes that the Settlement meets the statutory requirement that the merger  
12 must provide a net benefit to Avista's customers and that it is in the public interest.  
13 The Energy Project recommends that the Settlement, with the modified  
14 Commitments discussed, be approved by the Commission.

15 **Q: Does this conclude your testimony?**

16 A: Yes.

**Exh. WMG-2T  
Docket U-170970  
Witness: Wendy Gerlitz**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Joint Application of  
Hydro One Limited and Avista  
Corporation for an Order Authorizing  
Proposed Transaction**

**DOCKET U-170970**

**SUPPLEMENTAL RESPONSE TESTIMONY (AMENDED) OF**

**Wendy Gerlitz**

**NW ENERGY COALITION, RENEWABLE NORTHWEST, AND  
NATURAL RESOURCES DEFENSE COUNCIL**

***Supplemental Response Testimony (Amended) in Support of Settlement***

**October 4, 2018**

1 **Q: Please state your name and the purpose of this Supplemental Response**

2 **Testimony.**

3 A: My name is Wendy Gerlitz. I am the Policy Director with the NW Energy  
4 Coalition (NWECC). On April 10, 2018, I provided testimony in support of the Settlement  
5 on behalf of NWECC, Renewable Northwest (RNW), and the Natural Resources Defense  
6 Council (NRDC). In this Supplemental Testimony, I am reiterating our support for the  
7 Settlement, with the understanding that the “Updated Terms” filed by the Commission  
8 Staff as Exh. CRM-2 to the Testimony of Chris McGuire will be adopted by the  
9 Commission.

10 **Q: Are you satisfied with the commitment of the new leadership of Hydro One**  
11 **to the proposed transaction?**

12 A: In his Supplemental Testimony, Mr. Paul M. Dobson, the Acting CEO of Hydro  
13 One described Hydro One’s commitment (Exh. PMD 1-T, at 3):

14 **Q. Does Hydro One remain committed to this merger?**

15 A. Yes. We remain committed to the merger and the strategic rationale for the merger  
16 remains.

17  
18 We also understand that the Hydro One Board has passed a resolution affirming the  
19 Settlement. It is important that the new ownership be committed to the transaction and  
20 the commitments that the parties have agreed to regarding renewable energy, energy  
21 efficiency, and support for low-income customers. These commitments are designed to  
22 further the strong statutory and regulatory policies of the State of Washington. We hope  
23 that these commitments, and the policies they support, will be reaffirmed at the hearing  
24 on October 23.

25 **Q. Does this conclude your testimony?**

26 A. Yes.

**Exh. WMG-2T  
Docket U-170970  
Witness: Wendy Gerlitz**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Joint Application of  
Hydro One Limited and Avista  
Corporation for an Order Authorizing  
Proposed Transaction**

**DOCKET U-170970**

**SUPPLEMENTAL RESPONSE TESTIMONY OF**

**Wendy Gerlitz**

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NATURAL RESOURCES DEFENSE COUNCIL**

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**October 4, 2018**

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4 Coalition (NWECC). On April 10, 2018, I provided testimony in support of the Settlement  
5 on behalf of NWECC, Renewable Northwest (RNW), and the Natural Resources Defense  
6 Council (NRDC). In this Supplemental Testimony, I am reiterating our support for the  
7 Settlement, with the understanding that the “Updated Terms” filed by the Commission  
8 Staff as Exh. CRM-2 to the Testimony of Chris McGuire will be adopted by the  
9 Commission.

10 **Q: Are you satisfied with the commitment of the new leadership of Hydro One**  
11 **to the proposed transaction?**

12 A: In his Supplemental Testimony, Mr. Paul M. Dobson, the Acting CEO of Hydro  
13 One described Hydro One’s commitment (Exh. PMD 1-T, at 3):

14 **Q. Does Hydro One remain committed to this merger?**

15 A. Yes. We remain committed to the merger and the strategic rationale for the merger  
16 remains.

17  
18 Our preference would be that the endorsement of the Settlement be more formal, perhaps  
19 by a resolution of the new Board. It is important that the new ownership be committed to  
20 the transaction and the commitments that the parties have agreed to regarding renewable  
21 energy, energy efficiency, and support for low-income customers. These commitments  
22 are designed to further the strong statutory and regulatory policies of the State of  
23 Washington, and we would like it to be clear that the new ownership is committed to  
24 those policies.

25 **Q. Does this conclude your testimony?**

26 A. Yes.

**BEFORE THE WASHINGTON  
UTILITIES & TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of HYDRO ONE LIMITED and AVISTA  
CORPORATION For an Order Authorizing Proposed Transaction.

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DOCKET U-170970

SUPPLEMENTAL TESTIMONY OF J. RANDALL WOOLRIDGE

ON BEHALF OF

PUBLIC COUNSEL

**EXHIBIT JRW-5T**

**October 4, 2018**

SUPPLEMENTAL TESTIMONY OF J. RANDALL WOOLRIDGE

**EXHIBIT JRW-5T**

DOCKET U-170970

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SUPPLEMENTAL TESTIMONY OF J. RANDALL WOOLRIDGE

**EXHIBIT JRW-5T**

DOCKET U-170970

**EXHIBITS LIST**

- |               |                                                        |
|---------------|--------------------------------------------------------|
| Exhibit JRW-6 | Timeline of Major Events in Avista-Hydro One Merger    |
| Exhibit JRW-7 | Hydro One's Response to Public Counsel Data Request 36 |



1           The risks associated with the proposed transaction do not reduce to zero, as  
2 demonstrated by the events in Ontario. I conclude that the Parties' settlement, including  
3 the additional and modified commitments discussed below, provide Avista's customers  
4 with the strongest protections against the transaction's risk. I conclude that the  
5 commitments, including the additions and modifications, provide customers with net  
6 benefits, and Public Counsel recommends that the Commission approve the transaction.

7 **Q: How is your testimony organized?**

8 A: The following is an outline of my testimony:

- 9       • First, I review my initial testimony in this proceeding, and I discuss the "net benefit"  
10       standard in the state of Washington;
- 11       • Second, I provide an overview of my initial testimony and highlight issues discussed  
12       at the May 22nd hearings;
- 13       • Third, I discuss developments following the June elections in Ontario, the changes at  
14       Hydro One, and political risks;
- 15       • Fourth, I review the supplemental testimonies of the Joint Applicants; and
- 16       • Finally, I provide my assessment of the developments and the protections provided in  
17       the Settlement.

18           **II. OVERVIEW OF INITIAL TESTIMONY AND HEARINGS**

19 **Q: Please discuss Public Counsel's initial testimony in this proceeding.**

20 A: Exhibit JRW-6 provides a timeline of events in this matter. The Joint Applicants filed  
21 their Application for Merger with the Commission on September 14, 2017. Following  
22 months of discovery and negotiation, the parties filed the Settlement Stipulation and

1 Agreement (Settlement) on March 27, 2018. On April 22, 2018, Mr. Corey Dahl and I  
2 filed testimony on behalf of Public Counsel in support of the Settlement.<sup>1</sup> Hearings on  
3 the proposed transaction were held on May 22, 2018, in Olympia.

4 In my testimony, I recommended that the Commission accept the Settlement without  
5 condition. My recommendation was based on the agreed upon terms and 81 commitments  
6 provided in the Settlement Stipulation and Agreement. The Settlement followed five  
7 months of discovery and negotiations between Joint Applicants and the Settling Parties.  
8 The Settlement contained significant additions and improvements to the terms and  
9 commitments the Joint Applicants filed in their initial application. The additions and  
10 improvements to the merger terms led me to conclude that the proposed transaction meets  
11 the “net benefit” standard required by statute in the state of Washington.

12 **Q: Please briefly review Washington’s “Net Benefit” standard in utility mergers.**

13 A: The Revised Code of Washington (RCW) section 80.12.020 requires that the Commission  
14 will approve a public service company’s transaction only if it results in a “net benefit” to  
15 ratepayers. It is my understanding that this requires that ratepayers not only be shielded or  
16 compensated for the transactional risk, but also that ratepayers must realize tangible benefits  
17 from the transaction. In my opinion, the merger terms under the Settlement met this  
18 standard by providing “net benefits” to ratepayers relative to, and in consideration of, the  
19 risks associated with the proposed merger.

---

<sup>1</sup> The Parties to this case include Avista and Hydro One as Joint Applicants. The Non-Applicant Parties include Public Counsel; Staff of the Washington Utilities and Transportation Commission (Staff); Northwest Industrial Gas Users (NWIGU); Industrial Customers of Northwest Utilities (ICNU); The Energy Project; NW Energy Coalition (NWECC), Renewable Northwest (RNW), Natural Resources Defense Council (NRDC); Sierra Club; and the Washington and Northern Idaho District Council of Laborers (WNIDCL).

1 **Q: Please describe your testimony at the Olympia hearings on net benefits.**

2 A: At the outset of the hearings, Chairman Danner asked me to describe my thoughts on  
3 the definition of the “net benefit” standard and how to apply it.<sup>2</sup> I explained that I  
4 have seen parties in merger cases over the last decade more specifically identify  
5 benefits to customers rather than simply ensuring that customers are not harmed by a  
6 proposed transaction. That trend continued in this case, where the Parties evaluated  
7 the Joint Applicant’s proposal and negotiated terms that provide net benefits to  
8 customers.<sup>3</sup> Chairman Danner asked me whether the net benefits standard is a  
9 precise, formulaic analysis or whether it requires more judgment. I noted that  
10 merger analysis over the last decade has become more precise and more detailed  
11 regarding the benefits to customers, and I concluded that the analysis does require  
12 judgment.<sup>4</sup> Indeed, a commission’s decision on whether a proposed transaction  
13 provides net benefits does involve “a judgment call at the end.”<sup>5</sup>

14 **Q: Is it still your conclusion that there is a net benefit to the Hydro One – Avista**  
15 **merger?**

16 A: As I stated at the hearings, it is a judgement call. The original Settlement provided an  
17 expanded and modified set of operating/management, financial, and governance/ring-  
18 fencing commitments. The Settling Parties represent a diverse group of interests and  
19 stakeholders. Each Party, including Public Counsel, concluded that the original Settlement  
20 contained commitments that meet Washington’s net benefit standard. Furthermore,

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<sup>2</sup> Woolridge, TR. 256:20 – 259:16.

<sup>3</sup> Woolridge, TR. 257:14 - 258:25; Settlement Testimony of Corey J. Dahl, Exh. CJD-1T at 6-8.

<sup>4</sup> Woolridge, TR. 259:1-16.

<sup>5</sup> Woolridge, TR. 259:15-16.

1 settlements have been announced in other states (Oregon, Alaska, Montana, and Idaho), and  
2 Settlement Commitment No. 81 provides a “Most Favored Nations” clause, which ensures  
3 that relevant additional commitments will be incorporated into the Settlement in  
4 Washington. All of these factors indicated that the original Settlement provided for a  
5 proposed merger that provided net benefits.

6 However, the recent events in Ontario have tested the original Settlement terms.  
7 The political developments in Ontario and the resulting changes to Hydro One’s board and  
8 management highlight the potential transaction risks for Avista’s ratepayers. In light of  
9 these events, the Settling Parties have negotiated additional terms and modifications to the  
10 original Settlement. These additional terms and modifications provide further benefits that  
11 are necessary in light of the specific risks to this transaction. Therefore, I believe that the  
12 revised Settlement meets the net benefit standard.

13 **III. THE CHANGES AT HYDRO ONE AND THE POLITICAL RISK**  
14 **PRESENTED BY THIS TRANSACTION**

15 **Q: Please review the changes at Hydro One.**

16 A: In Ontario’s June 7, 2018, election, Douglas Ford was elected Premier and his  
17 Progressive Conservative Party gained a majority of the seats in the Provincial  
18 legislature. As a result, Hydro One entered into negotiations with the new government,  
19 and ultimately, on July 11, 2018, agreed to remove its entire Board of Directors. Hydro  
20 One further agreed that CEO Mayo Schmidt would immediately retire. The new  
21 government eventually introduced and passed the *Urgent Priorities Act, 2018*, which  
22 enacted the *Hydro One Accountability Act, 2018*. This Act requires the board of Hydro  
23 One to establish a new compensation framework for the Board of Directors, CEO, and

1 other executives in consultation with the Province and the other five largest shareholders.  
2 The *Hydro One Accountability Act* will not apply to Avista if the merger goes through  
3 since the Act specifically excludes subsidiaries incorporated in a jurisdiction outside  
4 Canada. In addition, the Act does not impact Hydro One's contractual commitment to  
5 acquire Avista or its merger settlements with parties in Washington, Oregon, Idaho,  
6 Montana, and Alaska. On August 14, 2018, Hydro One announced its new Board of  
7 Directors, as selected by the Ad Hoc Nominating Committee and named Paul Dobson as  
8 the acting CEO. On September 19, 2018, the new Board of Directors of Hydro One  
9 approved a resolution in support of its acquisition of Avista.<sup>6</sup>

10 **Q: Did your initial testimony address the issue of political risks associated with Hydro**  
11 **One's purchase of Avista?**

12 A: Yes. I made the following observations:

13 **Q: How can political risks affect the customers of Avista?**

14 A: If the merger is approved, Avista's customers will be exposed to the  
15 political risks associated with Hydro One. The privatization of Hydro One  
16 was not a popular move by the Province of Ontario at the time the decision  
17 was made. The purpose of the privatization was to raise a total of C\$9.0  
18 billion – C\$5.0 billion to pay down the debt of the electric sector and C\$4.0  
19 billion to build new transit lines. In a poll, 60 percent of Ontarians  
20 disapproved of selling a majority of the company, and only 24 percent  
21 approved.<sup>7</sup> More recent polling has indicated 82 percent of Ontarian's  
22 oppose the privatization of Hydro One.<sup>8</sup> If this trend continues, Avista  
23 customers will face the political risks associated with citizens of the  
24 Province of Ontario who may be unhappy with the privatization of Hydro  
25 One. Furthermore, if the citizens of Ontario are unhappy with the

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<sup>6</sup> Exh. JRW-7, Hydro One's Response to Public Counsel Data Request 36.

<sup>7</sup> Adrian Morrow, *Poll Finds Ontarians Unhappy with Hydro One Privatization Plan*, THE GLOBE AND MAIL (Updated May 12, 2018) <https://www.theglobeandmail.com/news/national/poll-finds-ontarians-unhappy-with-hydro-one-privatization-plan/article24183279/>.

<sup>8</sup> Mike Crawley, *How Privatized Power Haunts Ontario Politics*, CBC NEWS (Dec. 9, 2017, 6:00 AM ET) <https://www.cbc.ca/news/canada/toronto/ontario-hydro-bills-privatization-1.4439500>.

1 privatization of Hydro One, it seems they could be especially unhappy with  
2 Hydro One's move to acquire Avista and the associated risks.

3 In addition, with the Province of Ontario as a significant and concerned  
4 investor in Hydro One, Avista customers could face political risks  
5 associated with such matters as energy policy in Ontario, as well as fiscal  
6 matters related to deficit financing of energy and infrastructure projects in  
7 Ontario. Given the investment in Hydro One, Avista customers in  
8 Washington may have to deal with energy and financing issues in Ontario.  
9 A shift in political winds among Hydro One's customers could lead to  
10 sudden and perhaps unexpected changes in the management of the parent  
11 company.<sup>9</sup>

12 **Q: Were political risks also addressed at the Olympia hearings on May 22nd?**

13 A: Yes. At the May 22nd hearing, the Commissioners posed questions to the Joint  
14 Applicants regarding the political issues facing Hydro One. Mr. Schmidt testified that  
15 the Province of Ontario entered into a governance agreement that governs the interactions  
16 between Ontario and Hydro One. Under the contract, according to Mr. Schmidt, the  
17 Province "is a shareholder and is not a manager of the business."<sup>10</sup>

18 Mr. Schmidt also explained in some detail the positions taken by the three major  
19 parties during the elections in Ontario regarding Hydro One.<sup>11</sup> He offered insight  
20 regarding the Progressive Conservative party, which ultimately won the election.<sup>12</sup>  
21 Mr. Schmidt noted that the Province was "not in a position to terminate the CEO."<sup>13</sup> On  
22 changing the Board, Mr. Schmidt testified that it would be a "high bar to change the  
23 entire board and yet an even higher bar to bring back another yet fully independent Board  
24 of Directors."<sup>14</sup>

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<sup>9</sup> Settlement Testimony of J. Randall Woolridge, Exh. JRW-1T at 26-27.

<sup>10</sup> Schmidt, TR. 310:2-6.

<sup>11</sup> Schmidt, TR. 312:23 – 314:11.

<sup>12</sup> Schmidt, TR. 313:23 – 314:6.

<sup>13</sup> Schmidt, TR. 314:24-25.

<sup>14</sup> Schmidt, TR. 317:6-9.

1 Chairman Danner asked, “Is there any scenario under which the Province of  
2 Ontario could undo the privatization of Hydro One or take over basically its – either its  
3 direction, its board of directors, or its management?”<sup>15</sup> Hydro One’s General Counsel,  
4 Jaime Scarlett responded, “The simple answer is: absent a government passing new  
5 legislation to undo a lot of what’s being done, the short answer is no.”<sup>16</sup> Indeed,  
6 Mr. Scarlett stated that changes to the Board would be difficult and that “[i]t would have  
7 to be something dramatic.”<sup>17</sup>

8 Mr. Scarlett also testified as follows: “And the noise – if there is noise in Ontario,  
9 it shouldn’t have a big impact down here.” The recent elections indeed caused “noise”  
10 and resulted in significant changes to Hydro One’s management and corporate  
11 governance. Both Mr. Schmidt and Mr. Scarlett expressed extreme confidence in  
12 Ontario’s political developments and their impact on Hydro One, and yet Mr. Schmidt  
13 and the entire Board of Directors were casualties of these developments.

14 **Q: Have there been other developments regarding the political risks in Ontario?**

15 **A:** Yes. On September 14, Standard & Poor’s (S&P) issued a report titled "Hydro One Ltd.  
16 And Subsidiary Downgraded To 'A-' On Lower Governance Assessment; Ratings Remain  
17 on Credit Watch."<sup>18</sup> S&P lowered its issuer credit ratings on Hydro One and its subsidiary  
18 Hydro One Inc. to 'A-' from 'A'. S&P also lowered the issue-level rating on Hydro One  
19 Inc.'s senior unsecured debt to 'A-'.

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<sup>15</sup> Chairman Danner, TR. 323:9-13.

<sup>16</sup> Scarlett, TR. 323:18-20.

<sup>17</sup> Scarlett, TR. 324:25 – 325:6.

<sup>18</sup> Standard & Poor’s Corporation, HYDRO ONE LTD. AND SUBSIDIARY DOWNGRADED TO 'A-' ON LOWER GOVERNANCE ASSESSMENT; RATINGS REMAIN ON CREDITWATCH (Sept. 13, 2018).

1 In its report, S&P noted the following:

2 The one-notch downgrade reflects our reassessment of HOL's management  
3 and governance structure, which has weakened following the government  
4 of Ontario's decision to exert its influence on the utility's compensation  
5 structure through legislation, potentially promoting the interests and  
6 priorities of one owner above those of other stakeholders.

7 Ontario recently passed the Hydro One Accountability Act that allows the  
8 government to issue directives governing HOL's compensation of the board,  
9 CEO, and other executives. In addition, Ontario also amended the Ontario  
10 Energy Board Act (OEBA) to exclude any amount in respect of  
11 compensation paid to HOL's CEO and executives from consumer rates.  
12 Although the financial impact of the compensation disallowance is minimal,  
13 we think the legislative actions taken reflect a governance deficiency related  
14 to HOL's ownership structure because Ontario is exercising its legislative  
15 authority to lower electricity rates, consistent with the government's election  
16 campaign promises. In our view, the use of this legislative authority to  
17 influence HOL's compensation structure for some executives undermines  
18 the effectiveness of the company's governance structure, and potentially  
19 promotes the interests and priorities of the Ontario government above those  
20 of other stakeholders. We also note that these events followed the recent  
21 resignation of the entire previous board of Hydro One.

22 **IV. JOINT APPLICANT'S SUPPLEMENTAL TESTIMONY**

23 **Q: Please review the Joint Applicants testimony on the developments at Hydro One.**

24 A: The Joint Applicants have provided testimony from six individuals. Those providing  
25 testimony, and the areas they cover, are:

26 Mr. James D. (Jamie) Scarlett, Executive Vice President and Chief Legal Officer  
27 for Hydro One Limited, discusses: (1) the June 7, 2018, election of Premier Doug Ford  
28 and the Progressive Conservative Party, the July 11, 2018, Letter Agreement and the  
29 resignation of Hydro One's Board and retirement of Hydro One's CEO Mayo Schmidt;  
30 (2) the *Hydro One Accountability Act, 2018*; (3) the settlement commitments designed to  
31 protect Avista's independence and financial health from Provincial interference; (4)  
32 Avista's and Hydro One's proposal to add a new commitment and amend its commitment

1 regarding Avista's post-merger board in response to the events after the June 7, 2018,  
2 Ontario election; and (5) his adoption of Mayo Schmidt's previously filed testimony and  
3 exhibits.

4 Mr. Christopher F. Lopez, Senior Vice President of Finance for Hydro One  
5 Limited, summarizes: (1) the recent developments in Ontario; (2) reaffirms that Hydro  
6 One is financially healthy and Avista will benefit from having a parent with strong access  
7 to capital markets; (3) reviews the merger commitments relating to Hydro One's financial  
8 support for Avista; (4) confirms that Hydro One stands by these commitments and  
9 continues to provide the benefits associated with having a financially healthy parent  
10 company; and (5) explains why the Ontario election, the July 11, 2018, Letter Agreement  
11 between the Province of Ontario and Hydro One and subsequent events have no effect on  
12 these commitments and benefits.

13 Mr. Thomas Woods, Interim Chair of the Board of Hydro One, introduces Hydro  
14 One's new board of directors, summarizes how Hydro One's new Board was selected,  
15 and describes the timeline and selection process for Hydro One's new CEO;

16 Mr. Scott Morris, CEO and Chairman of the Board of Avista, reaffirms Avista's  
17 commitment to the Proposed Transaction following the replacement of the Board of  
18 Directors of Hydro One as well as the retirement of Mayo Schmidt, and highlights  
19 specific merger protections that: (1) protect Avista from political interference or  
20 influence by the Province of Ontario; (2) preserve Avista's self-governance; and (3)  
21 protect Avista and its customers from harm. He also indicates that the safeguards  
22 included as part in the Proposed Transaction were designed to withstand the test of time  
23 and changes in Hydro One management.

1           Mr. Mark T. Thies, Senior Vice President and CFO of Avista: (1) reconfirms the  
2 benefits of the transaction from a financial perspective; (2) highlights the financial  
3 safeguards incorporated into the agreed upon commitments in the Settlement, which were  
4 designed to (a) protect and insulate Avista and its customers from a change in  
5 management at Hydro One and/or changes in the political landscape of the Province of  
6 Ontario, and (b) ensure Avista’s ability to continue as a financially sound, stand-alone  
7 utility; and (3) emphasizes that neither Hydro One, nor the Province, can deprive Avista  
8 of its necessary capital and assets and that Hydro One is obligated to provide sufficient  
9 capital to allow Avista to provide safe, reliable, and cost- effective service.

10           Mr. John J. Reed, President and Chief Executive Officer of Concentric Energy  
11 Advisors, Inc., provides an assessment of the reasonableness and sufficiency of the  
12 governance, financial integrity and ring-fencing provisions of the Merger Commitments  
13 in light of the political developments in the Province of Ontario, and changes in Hydro  
14 One’s executive management and board of directors. He compares the corporate  
15 governance, financial integrity, and ring-fencing provisions negotiated in this transaction  
16 to those provided in 40 utility mergers in the U.S., including 11 transactions involving an  
17 acquisition by a foreign utility (10 of which involve a Canadian acquirer). He concludes  
18 that the negotiated Stipulated Commitments in the Settlement, are “beyond industry  
19 norms”, are “more restrictive” and ensure that Avista and its Washington customers are  
20 insulated from risk. In particular, he notes the following:

21           The governance, bankruptcy and financial ring-fencing and other Stipulated  
22 Commitments, coupled with the Commission’s on-going regulatory  
23 oversight of Avista and the laws of the United States in the five states in  
24 which Avista operates (Washington, Oregon, Idaho, Montana, and Alaska)  
25 put parameters around how Avista will be owned and operated post-merger.

1 As I discussed earlier, the Stipulated Commitments are binding regardless  
2 of any actions the Province might take in the future. The Province has no  
3 ability to directly influence Avista. The Province cannot pass laws that  
4 apply to Avista. Further, even in the speculative scenario where the  
5 Province took control of Hydro One and directed the two Hydro One  
6 executives on Avista's post-merger board to pursue initiatives that would  
7 benefit Hydro One and/or Ontario to the detriment of Avista's financial  
8 resources or service, the remaining seven independent or Avista-designated  
9 directors on Avista's post-merger board could override that direction.<sup>19</sup>

10 **Q: Please describe Avista and Hydro One's proposal to add a new commitment and**  
11 **amend a commitment.**

12 A: On behalf of the Joint Applicants, Mr. Scarlett proposes an additional commitment that  
13 aims at insulating compensation at Avista from outside control:

14 Avista Employee Compensation: Any decisions regarding Avista employee  
15 compensation shall be made by the Avista Board consistent with the terms  
16 of the Merger Agreement between Hydro One and Avista, and current  
17 market standards and prevailing practices of relevant U.S. electric and gas  
18 utility benchmarks. The determination of the level of any compensation  
19 (including equity awards) approved by the Avista Board with respect to any  
20 employee in accordance with the foregoing shall not be subject to change  
21 by Hydro One or the Hydro One Board.<sup>20</sup>

22 He also proposes to amend the Delegation of Authority (Appendix 5 of the Joint  
23 Application) in response to the June 7th developments. (The modifications are in red.)

24 Shareholder shall have the unfettered right to designate, remove and replace  
25 the Shareholder Designees as directors of the Surviving Corporation with  
26 or without cause or notice at its sole discretion, subject to the requirement  
27 that (i) two (2) of such directors are executives of Parent or any of its  
28 Subsidiaries and (ii) three (3) of such directors are Independent Directors  
29 who are residents of the Pacific Northwest Region, while such requirement  
30 is in effect (subject in the case of clause (ii) hereof to Shareholder  
31 determining, in good faith, that it is not able to appoint an Independent  
32 Director who is a resident of the Pacific Northwest Region in a timely  
33 manner, in which case Shareholder may replace any such director with an

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<sup>19</sup> Supplemental Testimony of John J. Reed, Exh. JJR-1T at 24:10-21.

<sup>20</sup> Supplemental Testimony of James D. Scarlett, Exh. JDS-1T at 25:22-25 and 26:1-4.

1 employee of Parent or any of its Subsidiaries on an interim basis, not  
2 exceeding six months, after which time Shareholder shall replace such  
3 interim director with Independent Director who is a resident of the Pacific  
4 Northwest Region); provided, however, that this exception to clause (ii)  
5 hereof shall not apply if, at any time a circumstance arises, and during the  
6 pendency of any such circumstance, whereby the Province of Ontario  
7 (“Ontario”) exercises its rights as a shareholder of Parent, uses legislative  
8 authority or acts in any other manner whatsoever, that results, or would  
9 result, in Ontario appointing nominees to the board of directors of Parent  
10 that constitute, or would constitute a majority of the directors of such  
11 board);<sup>21</sup>

12 The objective of the proposed adjustment to the Delegation of Authority is to ensure  
13 the independence of the Avista board in the event that the Province takes some action in  
14 the future to take control of the Hydro One Board. If triggered, this amendment restricts  
15 Hydro One’s ability to replace any of its three Independent Directors on the Avista board  
16 with a Hydro One executive.

17 **V. ADDITIONAL AGREEMENT OF THE PARTIES REGARDING**  
18 **MERGER COMMITMENTS NECESSARY FOR NET BENEFITS**

19 **Q: Please describe what happened after Avista and Hydro One filed supplemental**  
20 **testimony.**

21 **A:** After Avista and Hydro One filed supplemental testimony in this matter, the Settling  
22 Parties entered into discussions regarding the Joint Applicants’ proposed governance  
23 changes. These discussions led to modifications to seven of the 81 commitments, a new  
24 commitment, and additional modifications to the Delegation of Authority, which are set  
25 out in Commission Staff witness Mr. Chris McGuire’s Exhibit CRM-2.

26 **Q: Please summarize the modifications and the new commitment.**

---

<sup>21</sup> Scarlett, Exh. JDS-1T at 26:16-34 and 27:1-2.

1 A: The agreed-upon modifications include the following:

- 2 1. Commitment #2 (Executive Management) is modified such that the decisions to hire,  
3 fire, or replace the CEO of Avista is to be made by the Board of Directors of Avista  
4 and does not require the approval of the Hydro One Board of Directors;
- 5 2. Commitment #30 (Enforcement of Commitments) strengthens the role of the  
6 Commission with regards to the Enforcement of Commitments;
- 7 3. Commitment #31 (Enforcement of Commitments) provides that courts in the state of  
8 Washington have jurisdiction in the enforcement of commitments;
- 9 4. Commitment #33 (Enforcement of Commitments) insures that the Commitments are  
10 binding to any successor organization;
- 11 5. Commitments #67 and #70 (Low-Income) are modified to improve the timing and  
12 funding of low-income commitments.

13 **Q: Please discuss new Commitment #82.**

14 A: New Commitment #82 permits any party to petition the UTC to reopen the docket for  
15 reconsideration in the event that the Province of Ontario takes action that affects Avista's  
16 operations or its corporate relationship with Hydro One, or that affects Hydro One's  
17 authority or ability to comply with the commitments in the settlement agreement. No party  
18 may object to such a proceeding being commenced.

19 **Q: Please discuss the modifications to the Delegation of Authority.**

20 A: As noted above, the proposed adjustment to the Delegation of Authority is designed to  
21 ensure the independence of the Avista board in the event that the Province takes some  
22 action in the future to take control of the Hydro One Board. In the agreed-upon  
23 modification to this adjustment, a Province-controlled Hydro One Board is further

1 restricted by suspending its ability to appoint an independent director of Avista's Board  
2 with a Hydro One employee or executive, even on an interim basis, under certain  
3 conditions.

4 **Q: What is your conclusion regarding the modifications and additions agreed to by the**  
5 **Parties?**

6 A: The modifications to the initial commitments and the Delegation of Authority, and the  
7 addition of the new commitment, are the result of good-faith negotiations between the  
8 Joint Applicants and the Non-Applicant Parties. They provide for Avista's independence  
9 and insure that Avista can continue to provide safe, reliable electric utility service in the  
10 state of Washington, regardless of any changes that may occur to Hydro One due to  
11 political developments in the Province of Ontario.

12 **VI. CONCLUSION**

13 **Q: What is Public Counsel's recommendation in this matter?**

14 A: Public Counsel recommends that the Commission approve Settlement and the agreed  
15 additions and modifications to the Commitments within the Settlement. Both the  
16 Settlement and the additions and modifications described above allow the proposed  
17 transaction to result in net benefits to Avista's customers. In particular, the  
18 modifications, and new commitment, reduce the transaction risk associated with  
19 developments at Hydro One and in Ontario, while preserving the financial benefits  
20 associated with the merger. Importantly, the risks of this transaction can never be  
21 completely eliminated, but the Commitments contained in the Settlement and modified  
22 by the Parties provide the strongest protections the Parties could derive.

**BEFORE THE WASHINGTON  
UTILITIES & TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of HYDRO ONE LIMITED and AVISTA  
CORPORATION For an Order Authorizing Proposed Transaction.

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DOCKET U-170970

J. RANDALL WOOLRIDGE ON BEHALF OF PUBLIC COUNSEL

**EXHIBIT JRW-6**

Timeline of Major Events in Avista-Hydro One Merger

**October 4, 2018**

## **TIMELINE OF MAJOR EVENTS IN AVISTA-HYDRO ONE MERGER**

**July 19, 2017:** Avista and Hydro One announce agreement for acquisition. Olympus Equity LLC, a subsidiary of Hydro One, will purchase all of Avista's stock to become the sole shareholder.

**September 14, 2017:** The Joint Applicants, Avista and Hydro One, file testimony detailing the transaction, post-merger structure, and initial proposed commitments.

**October 20, 2017:** Pre-hearing conference held and procedural schedule agreed upon. Order entered on October 25.

**February 6, 2018:** First all-party Settlement Conference held in Olympia.

**March 16, 2018:** All-party Settlement Agreement reached, which includes enhanced commitments from Joint Applicants.

**March 27, 2018:** Settlement Stipulation filed with Washington Utilities and Transportation Commission (WUTC).

**April 10, 2018:** Parties file joint and individual testimony in support of the Settlement Agreement.

**April 23, 2018 – May 3, 2018:** Four public comment hearings held in Avista's Washington service territory.

**May 22, 2018:** Evidentiary hearing held in Olympia. Witnesses from all parties testified in support of the Settlement Agreement.

**June 7, 2018:** Ontario's provincial elections are held and Doug Ford's Progressive Conservative party gains a majority in the Legislative Assembly on a platform to remove Hydro One's CEO and Board of Directors, in addition to cutting executive compensation.

**July 11, 2018:** Hydro One releases a letter of agreement with Province that outlines a process to remove all members of the Board of Directors and the retirement of CEO Mayo Schmidt.

**July 12, 2018:** The WUTC issues a Notice of Intent to Conduct Additional Process and seeks comments from Parties about how to conduct the forthcoming proceedings. Parties agree to investigate the impacts of the Provincial election and subsequent leadership changes at Hydro One.

**August 14, 2018:** Hydro One announces new Board of Directors, as selected by the Ad Hoc Nominating Committee. Paul Dobson is named the acting CEO.

**August 15, 2018:** The Province of Ontario proclaims the Hydro One Accountability Act as passed by the Provincial Legislature and it becomes law.

**September 6, 2018:** The Joint Applicants file Supplemental Testimony to describe the status of Hydro One's management and introduce modified commitments.

**September 17, 2018:** Parties convene in Olympia to discuss the status of Hydro One's management, CEO search, and potential amendments to the Settlement Agreement.

**Exh. CRM-1T  
Docket U-170970  
Witness: Chris R. McGuire**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Joint Application of  
Hydro One Limited and Avista  
Corporation for an Order Authorizing  
Proposed Transaction**

**DOCKET U-170970**

**TESTIMONY OF**

**Chris R. McGuire**

**STAFF OF  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

*Commission Staff Consideration of Recent Events in Ontario*

**October 4, 2018**

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## **List of Exhibits**

Exh. CRM-2 List of Updated Terms of the Settlement

1 **I. INTRODUCTION**

2

3 **Q. Please state your name, current position and business address.**

4 A. My name is Chris R. McGuire. I am Assistant Director of Energy Regulation in the  
5 Regulatory Services Division of the Washington Utilities and Transportation  
6 Commission (Commission). My business address is the Richard Hemstad Building, 1300  
7 S. Evergreen Park Drive S.W., Olympia, Washington 98504.

8

9 **Q. Did you submit testimony in this proceeding?**

10 A. I adopted the testimony and exhibits in support of settlement of Staff witness Mr.  
11 Christopher S. Hancock (Exhibits CSH-1T to CSH-7) at the Settlement Hearing held  
12 before the Commission on May 22, 2018. I also testified orally at that hearing.

13

14 **II. SCOPE AND SUMMARY OF TESTIMONY**

15

16 **Q. What is the scope of your testimony in this proceeding?**

17 A. In this testimony I discuss Staff's response to the Province of Ontario's intervention with  
18 respect to the board of directors at Hydro One. In particular, I contemplate whether these  
19 recent politically motivated events in Ontario present new risks to Avista and its  
20 ratepayers that the Settlement Stipulation and associated commitments do not adequately  
21 protect against.

1 **Q. Please summarize your testimony.**

2 A. Staff concludes that Province of Ontario's intervention with respect to the board of  
3 directors at Hydro One does not present material risks to Avista and its ratepayers. Given  
4 1) protective governance agreements, 2) strong settlement commitments, including ring-  
5 fencing provisions, and 3) Commission jurisdiction over decisions regarding Avista,  
6 Avista and its ratepayers are insulated from actions that the Province of Ontario may  
7 take. This is true even if the Province were to gain majority or complete control of Hydro  
8 One.

9 The demonstrated willingness of the Province to exercise powers as laid out in  
10 Hydro One's Governance Agreement is an interesting turn of events, but a willingness to  
11 exercise those powers has little impact on Staff's assessment of the proposed transaction.

12 Nevertheless, over the past several weeks Staff and other parties have engaged the  
13 Applicants in discussions with the goal of strengthening protections in the Settlement  
14 Stipulation. Those discussions resulted in new and revised conditions and a modification  
15 to Clause 2 of the Delegation of Authority. Staff supports these revisions, and remains  
16 fully supportive of the Settlement.

17

18 **Q. Have you prepared any exhibits in support of your testimony?**

19 A. Yes. I have included as Exhibit CRM-2 the list of updated terms of the Settlement  
20 Stipulation, including new and revised commitments, and a modification to Clause 2 of  
21 the Delegation of Authority.

22

23

1           **III. STAFF RESPONSE TO THE OUSTER OF HYDRO ONE’S BOARD**

2  
3           **A. Introduction**

4  
5           **Q. Please briefly describe the salient context of the additional process in this**  
6           **proceeding.**

7           A. This proceeding concerns the acquisition of Avista Corporation (Avista), an investor-  
8           owned public service company subject to the jurisdiction of the Commission. Through  
9           the acquisition of all of the outstanding common stock of Avista, Avista would become  
10          an indirect, wholly-owned subsidiary of Hydro One Limited (Hydro One). The Province  
11          of Ontario, with its ownership of 47.4 percent of Hydro One’s outstanding stock (diluted  
12          to 42.3 percent on closing), is Hydro One’s largest shareholder. As is the case with any  
13          major shareholder, the Province of Ontario has certain authorities with respect to Hydro  
14          One’s board of directors.

15  
16          **Q. Please briefly describe the circumstances that gave rise to the Commission**  
17          **reopening the record and conducting additional process in this proceeding.**

18          A. On July 11, 2018, Hydro One entered into an agreement with the Province of Ontario  
19          whereby the entire board of Hydro One would resign and Hydro One’s CEO, Mayo  
20          Schmidt would retire. The Commission found good cause for extending the time for  
21          additional process and deliberation given that the Province of Ontario has shown an  
22          ability and willingness to disrupt the executive management and board of directors at  
23          Hydro One.

1 **Q. In Staff's view, what is the purpose of additional review of the proposed**  
2 **acquisition?**

3 A. Staff sees the purpose of this additional review as twofold:

- 4 1. To evaluate whether the removal, itself, of the board should be viewed as  
5 a material concern for this transaction; and
- 6 2. To evaluate whether the demonstrated willingness of the Province of  
7 Ontario to interfere in the affairs of Hydro One presents material risks to  
8 Avista and its ratepayers.

9 Staff's review has necessarily included reevaluating the commitments in the  
10 Settlement Stipulation, particularly as they relate to the threat of Provincial interference,  
11 given that Provincial interference has been shown to be a very real possibility.  
12

13 **B. Removal and Replacement of Hydro One's Board of Directors**

14  
15 **Q. Does the removal of Hydro One's board cause Staff to change its view with respect**  
16 **to the acquisition, or to question its support of the settlement?**

17 A. No. If parties, including Staff, were to be concerned about the potential consequences of  
18 the Province of Ontario's ability to force resignation of Hydro One's entire board, those  
19 parties would have objected to this ability prior to entering into the settlement. It has been  
20 clear throughout this proceeding that the Province had such authority and yet all parties,  
21 including Staff, entered into settlement.  
22

1 **Q. Please explain what you mean by your statement “it has been clear throughout this**  
2 **proceeding that the Province had such authority.”**

3 A. The Governance Agreement between Hydro One and Her Majesty the Queen in Right of  
4 Ontario was introduced by the Applicants as part of the record in this proceeding (see  
5 Hydro One Exh. MMS-5). Section 4.7 of that Governance Agreement describes the  
6 procedures the Province must follow if it is to remove the board. That the Province had  
7 the power to effect the removal of the entire board, which it acted on in July, was no new  
8 revelation.

9 The fact that the Province effected this removal (albeit without the need to  
10 formally invoke the procedures in Section 4.7 of the Governance Agreement) was  
11 unexpected, however, and spurred Staff to reexamine the relationship between the  
12 Province and Hydro One. Staff’s conclusion is that the Province did not exercise power  
13 beyond those powers Staff already understood the Province to possess.

14

15 **Q. Do the Province’s powers with respect to Hydro One’s board pose too much risk to**  
16 **Avista?**

17 A. No. Although the Province can force the removal of the entire Hydro board, and has, it  
18 only has authority to nominate 40 percent of the board’s new directors. The remaining  
19 directors must be independent of Hydro One and the Province.

20 Moreover, and most significantly, even if the Province legislated additional  
21 authority for itself over Hydro One, whatever power the Province may exercise over  
22 Hydro One or its board of directors does not extend to Avista’s board of directors due to  
23 the construction of the Avista board. We are tasked with assessing whether Avista or its

1 ratepayers are negatively affected by the Province's limited authority over the Hydro One  
2 board, or by the fact that the board was indeed replaced, and Staff's conclusion is that  
3 they are not.

4  
5 **Q. Does Staff have any reason to believe that the new board is incompetent or may be**  
6 **unduly influenced by the Province?**

7 A. No. The new board of directors appears entirely competent to Staff. Further, the process  
8 by which a new board is selected does not allow for the Province to take control of the  
9 board or to have executive authority over the composition of the new board.

10 Moreover, again, the actions of the Province are with respect to Hydro One's  
11 board and not Avista's board. The Province, effectively, has zero control over Avista's  
12 board of directors.

13  
14 **Q. You assert that Avista's board of directors is entirely shielded from Provincial**  
15 **influence. Please explain how that is the case given that Hydro One would be the**  
16 **sole owner of Avista, and the Province is the largest shareholder of Hydro One.**

17 A. As mentioned above, although the Province may force the resignation of the entire Hydro  
18 One board, the Province may only nominate 40 percent of the new board members. A  
19 single shareholder cannot enact an agenda with a minority of the board votes.

20 Even if the Province were to control 100 percent of Hydro One's board, and even  
21 if the Province were to attempt to infect Avista's board of directors (and with the  
22 assumption that the Province were a bad actor or had malicious intent), the governance  
23 documents with respect to Avista's board of directors deprives the Province of an ability

1 to do harm. Under the proposed arrangement, Hydro One will nominate its own  
2 employees for only two of Avista's nine board members while Avista will nominate four  
3 of the nine. The remaining three must be independent consistent with New York Stock  
4 Exchange guidelines. Further, as discussed in Section IV, below, amendments to the  
5 Delegation of Authority create a failsafe mechanism protecting Avista in the event of a  
6 Provincial takeover of the Hydro One board – if the Province were to gain control of  
7 Hydro One, Hydro One would automatically lose its ability to replace, even temporarily,  
8 any of the independent board members with its own executives or employees.

9 In short, both Hydro One's and Avista's governance agreements, independently,  
10 provide substantial insulation from Provincial influence on business operations. The  
11 Province would not have any direct control over Avista, and the two governance  
12 agreements in combination protect Avista from the effects of any influence the Province  
13 may be able to exercise over Hydro One.

14  
15 **C. Provincial Meddling, More Generally**

16  
17 **Q. In Section III(a), above, you mention another purpose of this additional review is to**  
18 **evaluate whether the demonstrated willingness of the Province of Ontario to**  
19 **interfere at all in the affairs of Hydro One creates a new, material risk to Avista and**  
20 **its ratepayers. Please describe what you mean.**

21 **A.** To Staff, the most interesting part of the recent Provincial interference is not that the  
22 board was replaced, it's that the Province interfered at all. During discussions between

1 the Applicants and the Commissioners at the Settlement Hearing, the likelihood of  
2 Provincial interference was represented by the Applicants as exceedingly remote.

3 If support for this transaction had rested on taking that representation at face  
4 value, then recent intervention by the Province would have eroded that support.

5 Therefore, it's important to give parties a chance to revisit their support in light of these  
6 changed circumstances, given that Provincial interference now cannot be represented or  
7 accepted as a non-existent risk.

8  
9 **Q. Does Staff view the risk of Provincial influence on Hydro One as a material risk to**  
10 **Avista and its ratepayers?**

11 A. No. Avista and its ratepayers are shielded from the risk of Provincial interference by  
12 numerous layers of protections. Those protections have been solidified through 1) power-  
13 limiting governance agreements, 2) commitments developed and agreed to through this  
14 proceeding, and 3) Commission jurisdiction over Avista's Washington operations.

15  
16 **Q. Please comment on the protections afforded by power-limiting governance**  
17 **agreements.**

18 A. I discuss these protections in more detail, above. In summary, Hydro One's Governance  
19 Agreement limits Provincial control of Hydro One's board, while Avista's governance  
20 documents prevent Hydro One control of Avista's board. The combination of the two  
21 governance documents provides substantial protection of Avista's board from Provincial  
22 interference.

1 **Q. Please describe how commitments developed and agreed to through this proceeding**  
2 **protect Avista and its ratepayers from Provincial influence.**

3 A. First, I should note, the commitments developed through settlement negotiations largely  
4 pertain to the relationship between Avista and Hydro One, and do not specifically  
5 contemplate protection from Provincial influence.

6 In order for the Province to have any meaningful degree of influence over Hydro  
7 One's relationship with Avista, the Province would need to first gain control of Hydro  
8 One. So, for the sake of considering whether the Settlement Stipulation and agreed-upon  
9 commitments protect Avista and its ratepayers from Provincial influence, let us assume  
10 for the moment that the Province manages to wrest complete control from Hydro One.

11 The Settlement Stipulation was negotiated, in part, to address the risk associated  
12 with having a single shareholder and, more to the point, the risk that that shareholder  
13 sacrifices Avista's financial and operational health for its own profit. So, in a very real  
14 sense the settlement has already contemplated a bad actor. As a result, it does not matter  
15 whether the Province wrests control from Hydro One. The protections embedded in the  
16 settlement remain very strong regardless of who controls Hydro One, and regardless of  
17 how malevolent that entity is.

18 Regardless of who owns and controls Hydro One, the settlement establishes  
19 Avista as a functionally independent, ring-fenced company with independent  
20 management and diverse board of directors. Staff remains very confident that the  
21 combination of Avista's diverse board of directors (only two of which would be Hydro  
22 One executives) and commitments established through settlement provide ample  
23 protection from a potential bad actor and promote the ongoing financial integrity of the

1 company. The parties negotiated those commitments very thoughtfully and deliberately,  
2 and the recent actions of the Province do not erode Staff's assessment of the strength of  
3 those commitments.

4  
5 **Q. Please briefly summarize the commitments that insulate Avista from potentially**  
6 **detrimental interference from Hydro One.**

7 A. The Governance Commitments seek to maintain Avista's current executive management  
8 and ensure a diverse board of directors, with Hydro One's control of the board limited to  
9 two of its own employees. The Business Operations Commitments seek to maintain  
10 Avista's current control of its own operations. The Regulatory Commitments ensure that  
11 Avista and its holding company will comply with all applicable laws and all existing  
12 Commission orders. The Financial Integrity Commitments ensure that earnings cannot  
13 flow upward to the parent company (i.e., the shareholder) unless Avista remains  
14 financially healthy, as demonstrated by a number of objective measures. The Ring-  
15 Fencing commitments ensure that Avista is shielded from financial risks of the parent  
16 company, including bankruptcy, and prohibit Avista from making loans to the parent or  
17 pledging assets to the parent.

18  
19 **Q. Are these Commitments legally enforceable?**

20 A. Yes. Should the Commission adopt the Settlement Stipulation, the Commission's final  
21 order can be enforced in the Washington courts. As discussed below, the revised  
22 regulatory commitments provide that Hydro One as well as Avista and its direct parent,  
23 are subject to the jurisdiction of Washington courts for purposes of enforcement of the

1 Commission's order. In addition, noncompliance with the Commission's order is subject  
2 to administrative penalties at the Commission. Penalties are not recoverable from  
3 ratepayers and must be borne by the shareholders or, in this case, shareholder.  
4

5 **Q. Please explain how Commission jurisdiction over Avista protects the company and**  
6 **its ratepayers from potentially detrimental actions on the part of the parent**  
7 **company.**

8 A. Besides the power-limiting governance agreements discussed above, and besides the  
9 protective provisions of the Settlement Stipulation and commitments discussed above,  
10 decisions regarding Avista's operations in the State of Washington will remain subject to  
11 the Commission's jurisdiction. This means that the Commission will continue to evaluate  
12 the prudence of business decisions, will continue to audit any proposal to increase Avista  
13 rates and will only approve rates that are fair, just, reasonable, and sufficient under  
14 Washington law. Additionally, as discussed in Section IV below, the amendment to  
15 Commitment 31 makes it explicit that Hydro One and its subsidiaries must submit to the  
16 jurisdiction of Washington State for the enforcement of Commission orders.

17 In short, the Commission provides a legally enforceable line of defense against  
18 action, including by Hydro One, that is counter to the interests of Avista and its  
19 ratepayers.  
20  
21  
22

1                   **IV.    AMENDMENT TO THE PROPOSED GOVERNANCE**

2                                   **AGREEMENT AND NEW COMMITMENTS**

3  
4   **Q.    Have the Applicants made any additional commitments in response to recent events**  
5           **in Ontario?**

6    A.    Yes, in supplemental testimony, the Applicants proposed a modification to the  
7           Delegation of Authority and a new commitment regarding compensation of Avista  
8           employees. In addition, the parties have negotiated new or revised commitments to be  
9           incorporated into the Settlement Stipulation. Attached to my testimony as Exh. CRM-2 is  
10          a document prepared by the Applicants that contains the new provisions to which the  
11          Applicants have agreed.

12  
13 **Q.    Can you please discuss the Applicants' proposed revisions to the Delegation of**  
14           **Authority?**

15    A.    Yes. Hydro One witness Mr. James Scarlett provides proposed language to include in the  
16           Delegation of Authority.<sup>1</sup> The purpose of this revision, as Mr. Scarlett describes, is to  
17           protect the independence of the Avista board in the event that the Province takes control  
18           of a majority of the Hydro One board.

19  
20 **Q.    Have there been further revisions to the Delegation of Authority language discussed**  
21           **in Mr. Scarlett's testimony?**

---

<sup>1</sup> Scarlett, Exh. JDS-1T, at 26:29 - 27:2.

1 A. Yes. The parties have negotiated strengthening language that is consistent with the spirit  
2 of the Applicants' proposal to further safeguard the independence of Avista's board of  
3 directors. The new language is contained in Exh. CRM-2.

4

5 **Q. How do the revisions to the Delegation of Authority in the Applicants' supplemental**  
6 **testimony together with the subsequently negotiated revisions protect the**  
7 **independence of Avista's board?**

8 A. The risk this amendment is attempting to address is as follows: Given the ability of  
9 Hydro One to replace its five designees, and given the ability of Hydro One to replace the  
10 three independent designees with its own executives or employees during a six-month  
11 period in the event suitable independent directors cannot be identified, there is risk that a  
12 bad actor could for a limited amount of time control five of Avista's nine board members.

13 The revised language restricts Hydro One's designation of directors during this  
14 six-month period to only four of its own executives or employees. This means that at no  
15 time would Hydro One employees or executives hold a majority of seats on the Avista  
16 board. In addition, with this amendment, if the Province were to gain control of Hydro  
17 One, Hydro One would automatically lose its ability to replace, even temporarily, any of  
18 the independent board members with its own executives or employees.

19

20 **Q. Does Staff support this amendment?**

21 A. Yes, although Staff believes the risk this amendment aims to protect against is  
22 astronomically small. Including additional protections from a governmental body that has

1 shown a willingness to interfere in Hydro One if nothing else provides for peace of mind  
2 given that events previously deemed as unlikely have nevertheless come to pass.

3  
4 **Q. Do any of the parties oppose this amendment?**

5 A. Not to my knowledge.  
6

7 **Q. Can you please discuss the new commitments that the Applicants have proposed?**

8 A. Yes. As presented by Hydro One witness Mr. James Scarlett, the Applicants proposed an  
9 additional merger commitment in supplemental testimony.<sup>2</sup> This commitment explicitly  
10 grants Avista's board authority with respect to employee compensation at Avista,  
11 including equity awards.

12 The purpose of this new commitment is to make it abundantly clear that although  
13 the Province has passed legislation affecting compensation at Hydro One, that new  
14 compensation framework does not extend to Avista. Avista's board of directors has sole  
15 authority over compensation at Avista. This commitment has since been incorporated into  
16 Commitment 2.

17  
18 **Q. Does Staff support this new commitment?**

19 A. Yes. Staff does not understand the Province or Hydro One to have any authority over  
20 employee compensation at Avista, save for Hydro One's two votes on Avista's board, but  
21 there is no harm in making the authority of Avista's board crystal clear in this matter.

---

<sup>2</sup> Scarlett Testimony, Exh. JDS-1T, 25:22 – 26:4.

1 Therefore, Staff supports including this commitment in an amended Settlement  
2 Stipulation.

3  
4 **Q. What other new or revised commitments have the Applicants agreed to?**

5 A. They have agreed to revise commitments related to executive management (Commitment  
6 2), the board of directors (Commitment 3), regulatory commitments (Commitments 30,  
7 31, and 33), and low income programs (Commitments 67 and 70), and they have agreed  
8 to a new commitment regarding reporting and reassessing the protections (New  
9 Commitment 82).

10  
11 **Q. Please describe the revisions to the regulatory commitments.**

12 A. The changes incorporate some aspects of regulatory commitments that the Applicants  
13 made in Oregon, in the spirit of the most-favored-nation commitment (Commitment 81)  
14 that the Applicants made in Washington.

15 Most notably, the amendment to Commitment 31, Submittal to State Court  
16 Jurisdiction for Enforcement of Commission Orders, makes explicit the fact that Hydro  
17 One must submit to the jurisdiction of Washington State. Previously Commitment 31  
18 referred only to Olympus Holding Corp. and its subsidiaries. This amendment is intended  
19 to recognize that Hydro One is responsible for fulfilling certain obligations pursuant to  
20 the Settlement Stipulation and associated commitments, and those obligations are legally  
21 enforceable in the state of Washington.

1 **Q. Can you please discuss New Commitment 82?**

2 A. Yes. This commitment requires Hydro One to report any legislation or other action in  
3 Canada that would affect Avista and sets out the process for a party to petition the  
4 Commission to change the Commission's order in this proceeding. The commitment  
5 reads as follows:

6 In the event of the enactment or adoption of any legislation, rule, policy, or  
7 directive by government at any level or by any governmental entity or official in  
8 Canada (a "Legislative Action") that affects Avista's operations because of  
9 Avista's corporate relationship with Hydro One, or affects Hydro One's  
10 compliance with any commitment in this stipulation, any of the parties to this  
11 proceeding may petition the Commission at any time for a re-hearing that re-  
12 opens the record in Docket U-170970 to consider whether the Commission should  
13 change its final order, and neither Hydro One nor any of its subsidiaries, including  
14 Avista, will oppose initiation of such a proceeding.

15 Hydro One will report to the Commission any such Legislative Action in Canada  
16 that, in Hydro One's reasonable judgement, affects Avista's operations because of  
17 Avista's corporate relationship with Hydro One, or affects Hydro One's  
18 compliance with any commitment in this stipulation, as soon as practicable after it  
19 is publicly announced as being effective by the government or governmental  
20 entity or official.

21 Nothing in this Commitment 82 shall be interpreted to limit the positions or  
22 arguments that Avista or Hydro One may take or advance in any such proceeding,  
23 including the right to argue that a petition presents insufficient grounds or  
24 evidence. Prior to filing a petition with the Commission under this Commitment  
25 82, a party must provide Hydro One and Avista at least 30 days advance written  
26 notice and an opportunity to meet and confer about resolutions other than filing  
27 with the Commission under this commitment. Nothing in this commitment is  
28 intended to restrict the rights of the parties to petition the Commission concerning  
29 its order(s) in this docket, or to limit the authority of the Commission.  
30

31 **Q. What is the purpose of this additional commitment?**

32 A. The purpose of this commitment is to protect against the risk of governmental actions in  
33 Canada that would affect Avista. First, it ensures that the Commission is notified if a  
34 governmental body in Canada passes legislation or otherwise enacts an agenda that  
35 affects Avista's operations or compromises Hydro One's compliance with the settlement

1 commitments. Second, the commitment ensures that upon such governmental action, any  
2 party to this proceeding may petition the Commission for a re-hearing that re-opens the  
3 record in Docket U-170970 to consider whether the Commission should change its final  
4 order.

5 Effectively, this commitment demonstrates an understanding among all settling  
6 parties that the Commission can reconsider its decision on this matter if Avista or its  
7 ratepayers are negatively affected by actions on the part of governmental bodies in  
8 Canada. And it ensures that the Commission and the parties will receive information that  
9 such an action has occurred.

10  
11 **Q. Does Staff support these new and revised commitments?**

12 A. Yes.

13  
14 **Q. Do any of the other parties oppose these new and revised commitments?**

15 A. Not to my knowledge.

16  
17 **Q. Does Staff continue to support the settlement and the underlying transaction?**

18 A. Yes, it does.

19  
20 **Q. Does this conclude your testimony?**

21 A. Yes.

**BEFORE THE WASHINGTON  
UTILITIES & TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of HYDRO ONE LIMITED and AVISTA  
CORPORATION For an Order Authorizing Proposed Transaction.

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DOCKET U-170970

J. RANDALL WOOLRIDGE ON BEHALF OF PUBLIC COUNSEL

**EXHIBIT JRW-7**

Hydro One's Response to Public Counsel Data Request 36

**October 4, 2018**

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	September 19, 2018
CASE NO.:	U-170970	WITNESS:	Thomas Woods
REQUESTER:	Public Counsel	RESPONDER:	Adele Pantusa
TYPE:	Data Request	DEPT:	Law
REQUEST NO.:	PC – 036(H1)	TELEPHONE:	416.345.6310
		EMAIL:	apantusa@hydroone.com

**REQUEST:**

**RE: Supplemental Testimony of Thomas D. Woods, Exh. TDW-1T.**

Please respond to the following and provide a detailed explanation:

- a. Does the newly approved Hydro One Board of Directors, as presented in Mr. Woods' Testimony, commit to the Hydro One-Avista merger and all of the Settlement conditions?
- b. Does Mr. Woods, in his role as Chair of the Board of Directors, commit to the Hydro One-Avista merger and all of the Settlement conditions?

**RESPONSE:**

- a. and b.

On September 19, 2018, the Hydro One Board of Directors passed a resolution acknowledging and affirming, for and on behalf of Hydro One: (i) Hydro One's obligations under the Merger Agreement and with respect to the merger-related commitments to be performed by Hydro One and/or its subsidiaries if the Proposed Transaction is consummated pursuant to the Merger Agreement; and (ii) Hydro One's intention to consummate the Merger; in each case in accordance with the terms of, and subject to the conditions set out in, the Merger Agreement and the merger-related commitments.

**Exh. CRM-2  
Docket U-170970  
Witness: Chris R. McGuire**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Joint Application of  
Hydro One Limited and Avista  
Corporation for an Order Authorizing  
Proposed Transaction**

**DOCKET U-170970**

**EXHIBIT TO  
TESTIMONY OF**

**Chris R. McGuire**

**STAFF OF  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

*List of Updated Terms of the Settlement*

**October 4, 2018**

**Docket U-170970 – Avista / Hydro One Merger - UPDATED TERMS**

(Revised October 4, 2018)

Avista and Hydro One believe that the following modifications to certain provisions and the new Commitment 82 fully resolve the issues discussed in the September 17, 2018 meeting and in subsequent communications among parties to this docket, and the companies agree to these modifications and the parties may so represent in their testimony to be filed on October 4, 2018.

**MODIFICATIONS TO COMMITMENTS 2 AND 3**

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); Any decision to hire, dismiss or replace the Chief Executive Officer of Avista shall be within the discretion of the Avista Board of Directors, and shall not require any approval of Hydro One or any of its affiliates (other than Avista), notwithstanding anything to the contrary in the merger agreement, and its exhibits and attachments, between Hydro One and Avista.~~

Avista Employee Compensation: Any decisions regarding Avista employee compensation shall be made by the Avista Board consistent with the terms of the Merger Agreement between Hydro One and Avista, and current market standards and prevailing practices of relevant U.S. electric and gas utility benchmarks. The determination of the level of any compensation (including equity awards) approved by the Avista Board with respect to any employee in accordance with the foregoing shall not be subject to change by Hydro One or the Hydro One Board.

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 meet the standards for "independent directors" - under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Directors") 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 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"). Avista and Hydro One shall consult with each other prior to the designation of any Independent Directors. 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 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;

## **MODIFICATIONS TO COMMITMENTS 30, 31 and 33 (INCORPORATING CONCEPTS FROM OREGON COMMITMENTS 110-112)**

### **Commitment 30 – Commission Enforcement of Commitments**

Hydro One and its subsidiaries, including Avista, understand and agree 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 affiliates, including Hydro One, with pertinent information on matters affecting Avista. Hydro One, 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.

### **Commitment 31 – Submittal to State Court Jurisdiction For Enforcement of Commission Orders**

Hydro One, on behalf of itself and its subsidiaries in the post-close corporate structure between Hydro One and Avista (as those companies in between may change over time), and Avista ~~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 they ~~it~~ will submit to the jurisdiction of ~~the relevant state~~ Washington courts for enforcement of the

Commission's orders adopting these commitments and subsequent orders affecting Avista, and will agree to the application of Washington law with respect to such matters.

### **Commitment 33 – Commitments Binding**

Hydro One, its subsidiaries in the post-close corporate structure between Hydro One and Avista (as those companies in between may change over time) ~~Olympus Holding Corp. and its subsidiaries, including and~~ Avista, acknowledge that the commitments being made by them are fully binding ~~only~~ upon them and their successors in interest and upon their affiliates, ~~except~~ where specifically 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.

If Hydro One or any other entity in the chain of Avista's ownership determines that Avista or any other entity has failed to comply with an applicable Commitment, the entity making such determinations shall take all appropriate actions to achieve compliance with the Commitment.

### **MODIFICATION TO COMMITMENTS 67 AND 70 (TIMING OF FUNDING FOR CERTAIN LOW-INCOME PROGRAMS).**

*The following language will be added to Commitments 67<sup>1</sup> and 70<sup>2</sup>. For Commitment 70, add the words "energy efficiency" before "Advisory Committee".*

---

<sup>1</sup> Commitment 67 provides, "Funding for Low-Income Participation in New Renewables: Hydro One will arrange funding totaling \$5,000,000 over a period of up to ten (10) years for the purpose of funding one or more renewable generation project(s) to benefit Avista's low-income customers. The types of projects that may be funded include, but are not limited to, on site renewable energy installations such as photovoltaic equipment, community solar projects, and other renewable energy equipment, in which the benefits will be directed to Avista's low-income customers. The funds will be paid into a separate account to be managed and disbursed by Avista at the direction of its Energy Assistance Advisory Group (which includes third-party advisors such as The Energy Project, Public Counsel, Commission Staff, and low-income agencies as well as Avista). The Energy Assistance Advisory Group will determine the project selection (which includes design and implementation). Eligible costs may include project construction, consulting costs, and reasonable administration costs required for the coordination of renewable energy projects.

<sup>2</sup> Commitment 70 provides,

Low Income Weatherization: Avista commits and Hydro One agrees that Avista commits, to continue Avista's existing weatherization programs, described in Schedules 90 and 190.

Funding will be made available for eligible projects as they are identified and approved by the Advisory Committee throughout the 10 year timeframe of the commitments; provided, however, that funding will be made available, at a minimum, on a pro rata basis over the period (i.e., one-tenth of the total each year), but need not occur any more frequently than on a pro rata basis over the 10 year period. Funding commitments may be made at any time during the 10 year period.

For example, if no funding is approved by the Advisory Committee until the third year of the 10-year period, up to [\$1.5 million for Commitment 67 / \$1.2 million for Commitment 70] must be made available in the third year. Nothing in this provision shall be interpreted to preclude payment of funding in installments over time for large projects that are approved early in the 10-year period. For example, a \$5 million project could be approved in Year 3 [under Commitment 67] with \$1.5 million due in Year 3 and \$0.5 million per year due each year for the next seven years, assuming no funding had been made available under Commitment 67 in Year 1 or Year 2.

## **NEW COMMITMENT 82**

In the event of the enactment or adoption of any legislation, rule, policy, or directive by government at any level or by any governmental entity or official in Canada (a “Legislative Action”) that affects Avista’s operations because of Avista’s corporate relationship with Hydro One, or affects Hydro One’s compliance with any commitment in this stipulation, any of the parties to this proceeding may petition the Commission at any time for a re-hearing that re-opens the record in Docket U-170970 to consider whether the Commission should change its final order, and neither Hydro One nor any of its subsidiaries, including Avista, will oppose initiation of such a proceeding. Hydro One will report to the Commission any such Legislative Action in Canada that, in Hydro One’s reasonable judgement, affects Avista’s operations because of Avista’s corporate relationship with Hydro One, or affects Hydro One’s compliance with any commitment in this stipulation, as soon as practicable after it is publicly announced as being effective by the government or governmental entity or official. Nothing in this Commitment 82 shall be interpreted to limit the positions or arguments that Avista or Hydro One may take or advance in any such proceeding, including the right to argue that a

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Hydro One will arrange funding of \$4,000,000 over 10 years to fund low income weatherization in Washington. This funding is over and above existing funding for low-income weatherization.

For both existing funding and the new Hydro One funding, 20 percent of the funds may be used for “direct” project coordination costs and 10 percent for “indirect” general overhead costs of administering the weatherization program.

petition presents insufficient grounds or evidence. Prior to filing a petition with the Commission under this Commitment 82, a party must provide Hydro One and Avista at least 30 days advance written notice and an opportunity to meet and confer about resolutions other than filing with the Commission under this commitment. Nothing in this commitment is intended to restrict the rights of the parties to petition the Commission concerning its order(s) in this docket, or to limit the authority of the Commission.

## **MODIFICATION TO DELEGATION OF AUTHORITY, CLAUSE 2**

Shareholder shall have the unfettered right to designate, remove and replace the Shareholder Designees as directors of the Surviving Corporation with or without cause or notice at its sole discretion, subject to the requirement that (i) two (2) of such directors are executives of Parent or any of its Subsidiaries and (ii) three (3) of such directors are Independent Directors who are residents of the Pacific Northwest Region, while such requirement is in effect (subject in the case of clause (ii) hereof to Shareholder determining, in good faith, that it is not able to appoint an Independent Director who is a resident of the Pacific Northwest Region in a timely manner, in which case Shareholder may replace any such director with any person, including an employee or executive of Parent or any of its Subsidiaries, on an interim basis, not exceeding six months, provided that Shareholder Designees who are employees or executives of Parent or any of its Subsidiaries shall in no case constitute a majority of the directors of the Surviving Corporation, after which time Shareholder shall replace any such interim director with an Independent Director who is a resident of the Pacific Northwest Region); If, at any time a circumstance arises, and during the pendency of any such circumstance, whereby the Province of Ontario ("Ontario") exercises its rights as a shareholder of Parent, uses legislative authority or acts in any other manner whatsoever, that results, or would result, in Ontario appointing nominees to the board of directors of Parent that constitute, or would constitute a majority of the directors of such board, then Parent's authority to replace an Independent Director with an employee or executive on an interim basis is suspended for the pendency of such circumstance.

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of )  
HYDRO ONE LIMITED (acting through its ) DOCKET U-170970  
indirect subsidiary, Olympus Equity LLC) )  
)

And )  
)

AVISTA CORPORATION )  
For an Order Authorizing Proposed )  
Transaction. )  
\_\_\_\_\_ )

**RESPONSE TESTIMONY OF DR. MARC M. HELLMAN**

**ON BEHALF OF THE**

**ALLIANCE OF WESTERN ENERGY CONSUMERS**

**October 4, 2018**

**TABLE OF CONTENTS TO THE  
SUPPLEMENTAL RESPONSE TESTIMONY OF DR. MARC M. HELLMAN**

I. INTRODUCTION AND SUMMARY ..... 1  
II. ANALYSIS OF RECENT EVENTS..... 2  
III. CONTINUED SUPPORT FOR MERGER ..... 6

**EXHIBITS**

Exhibit MMH-3 – Hydro One Responses to AWEC Data Requests 108 and 110

1 **I. INTRODUCTION AND SUMMARY**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. Dr. Marc M. Hellman. My business address is 2760 Eagle Eye Ave. NW, Salem,  
4 Oregon, 97304.

5 **Q. ARE YOU THE SAME WITNESS WHO PREVIOUSLY PROVIDED**  
6 **TESTIMONY IN THIS DOCKET ON BEHALF OF AWEC?**

7 A. Yes.

8 **Q. WHAT IS THE PURPOSE OF THIS SUPPLEMENTAL TESTIMONY?**

9 A. The purpose of this supplemental testimony is to: a) provide analysis and thoughts on the  
10 recent events impacting Hydro One’s executive management; and b) express AWEC’s  
11 continued support for the settlement terms presented to the Washington Utilities and  
12 Transportation Commission (“Commission”) and admitted into evidence at its May 22,  
13 2018, Settlement Hearing, as supplemented through additional commitments the  
14 Applicants have made in their supplemental testimony and through discussions with the  
15 parties in this case.

16 **Q. DID YOU PREPARE ANY EXHIBITS TO YOUR TESTIMONY?**

17 A. Yes. AWEC Exhibit MMH-3 attached to this testimony contains copies of Hydro One  
18 responses to AWEC Data Requests 108 and 110.

19 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

20 A. AWEC continues to support Hydro One’s acquisition of Avista. This support is  
21 contingent upon the Commission’s adoption of the commitments contained in the initial  
22 All-Party Settlement, the additional commitment related to Avista employee  
23 compensation the Applicants proposed in their supplemental testimony (discussed

1 below), and the other language provisions the Applicants have agreed to through further  
2 discussions with the parties to this case. These other commitments can be found in Staff  
3 Exhibit CRM-2.

## 4 II. ANALYSIS OF RECENT EVENTS

5 **Q. PLEASE DESCRIBE YOUR THOUGHTS ON THE RECENT EVENTS THAT**  
6 **TRIGGERED FURTHER COMMISSION REVIEW OF HYDRO ONE'S**  
7 **PROPOSED PURCHASE OF AVISTA.**

8 A. As noted in the testimony of Hydro One witness James D. Scarlett, Exhibit JDS-1T, a  
9 new Premier of Ontario was elected, Doug Ford, whose campaign included a promise to  
10 take certain actions affecting Hydro One. As a consequence of Doug Ford's victory in  
11 the election, the Hydro One CEO and Board of Directors resigned and have been  
12 replaced. The new Board will essentially be confirmed at Hydro One's 2019 annual  
13 shareholder meeting. A new acting CEO is in place pending the selection of a permanent  
14 CEO.

15 **Q. ARE THERE OTHER ACTIONS DOUG FORD CAMPAIGNED ON THAT**  
16 **AFFECT HYDRO ONE AS WELL?**

17 A. Yes. Doug Ford also campaigned on significantly reducing the salaries of the Hydro One  
18 CEO and executives as well as reducing the rates charged to Hydro One customers (at  
19 least those residing in Canada.)

20 **Q. DID THE PROVINCE FOLLOW ITS GOVERNANCE AGREEMENT AND THE**  
21 **STEPS SPECIFIED THEREIN WHEN IT REMOVED THE ENTIRE BOARD?**

22 A. Not precisely. The steps are discussed and provided in Exhibit JDS-1T, pages three  
23 through five. Pages five through seven explain that an agreement was reached where the

1 entire Hydro One Board resigned without going through the steps laid out in Section 4.7  
2 of the Governance Agreement.

3 **Q. DID THE PROVINCE’S ACTIONS RAISE ADDITIONAL CONCERNS FOR**  
4 **AWEC?**

5 A. To some extent, yes. AWEC always understood that the true “independence” of Hydro  
6 One as a new privately-owned company was questionable. However, AWEC may not  
7 have fully appreciated the degree of control the Province continues to exert over Hydro  
8 One. It appears that the threat of legislation and the ability to take unilateral action to  
9 remove the entire Board can cause Hydro One leadership to enter into voluntary  
10 agreements to do so, as desired by the Province.

11 **Q. GIVEN THESE RECENT EVENTS, HAS HYDRO ONE PROPOSED**  
12 **ADDITIONAL COMMITMENTS TO ENSURE AVISTA HAS ADDITIONAL**  
13 **PROTECTION FROM THE POLITICAL VAGARIES OF THE PROVINCE?**

14 A. Yes. Exhibit JDS-1T, beginning on page 25, includes a new commitment to ensure that  
15 compensation for Avista employees is market-based and set exclusively by the Avista  
16 Board. In response to AWEC Data Request 110, attached as Exhibit MMH-3, Hydro  
17 One confirmed that this commitment extended to the Avista CEO.

18 **Q. WHAT PROTECTION DOES THIS NEW COMMITMENT PROVIDE?**

19 A. Having the ability to offer market compensation provides Avista a greater likelihood to  
20 find the best candidates to fill executive positions. It is possible to find excellent staff at  
21 less than market pay rates, but Avista is much more likely to get more qualified  
22 candidates to consider at market-based rates. This is standard demand and supply  
23 economics. To better ensure that Avista has well-qualified and high-performing

1 executive management, for the benefit of both its investors and customers, offering  
2 market pay is a key principle.

3 **Q. DID THE APPLICANTS MAKE ANY OTHER PROPOSALS IN RESPONSE TO**  
4 **THE RECENT EVENTS IN ONTARIO?**

5 A. Yes. They originally proposed to modify the Delegation of Authority between Hydro  
6 One and Avista with respect to the composition of the Avista Board of Directors.  
7 Specifically, the Delegation of Authority (and Commitment 3 in the Stipulation) provides  
8 that the Avista Board will be composed of nine members, four of which are designated by  
9 Avista, two of which are executives of Hydro One or its subsidiaries, and three of which  
10 are independent directors from the Pacific Northwest. Avista always has the ability to  
11 replace the four Avista directors, but Hydro One has the exclusive ability to replace the  
12 independent directors. Further, Hydro One has the ability to fill the independent  
13 directors' seats with its own executives for a six-month period while it identifies  
14 permanent replacements. This raises the possibility that all three independent directors  
15 could resign or be removed simultaneously and replaced with Hydro One executives,  
16 meaning that such executives would fill five of the nine Avista Board seats. The  
17 Applicants have proposed to eliminate Hydro One's ability to replace the independent  
18 directors with its own executives for this six-month period if Ontario takes some action  
19 that would result in the Province appointing a majority of the Hydro One Board of  
20 Directors.

1 **Q. WHAT WAS THE APPLICANTS' RATIONALE FOR PROPOSING THIS**  
2 **CHANGE TO THE DELEGATION OF AUTHORITY?**

3 A. Mr. Scarlett testifies that this change "is designed to protect the independence of the  
4 Avista board in the event that the Province takes some action in the future to control a  
5 majority of the Hydro One Board."<sup>1/</sup>

6 **Q. ARE THE RECENT EVENTS IN ONTARIO AN EXAMPLE OF THE**  
7 **PROVINCE TAKING AN ACTION TO CONTROL A MAJORITY OF THE**  
8 **HYDRO ONE BOARD?**

9 A. Not according to Hydro One. In response to AWEC Data Request 108, a copy of which  
10 is included Exhibit MMH-3, Hydro One confirmed that, despite forcing the entire Hydro  
11 One Board to resign, Ontario does not control a majority of the new Hydro One board  
12 because it is only allowed to nominate 40% of the directors under the Governance  
13 Agreement between Ontario and Hydro One. Consequently, the only circumstances in  
14 which Hydro One's proposed changes to the Delegation of Authority between it and  
15 Avista would come into effect is if Ontario and Hydro One mutually agreed to modify the  
16 Governance Agreement or if Ontario unilaterally passed legislation to modify this  
17 agreement.

18 **Q. WOULD IT BE REASONABLE TO CONCLUDE THAT ONTARIO**  
19 **CURRENTLY EXERCISES EFFECTIVE CONTROL OVER HYDRO ONE**  
20 **DESPITE ONLY HAVING THE ABILITY TO NOMINATE 40% OF THE**  
21 **HYDRO ONE DIRECTORS?**

22 A. Yes. While the previous Board resigned in lieu of being removed, Section 4.7 of the  
23 Governance Agreement (Exh. MMS-5) continues to give Ontario the unilateral right to  
24 remove the entire Hydro One Board anytime the Province wants. Therefore, it would

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<sup>1/</sup> Exh. JDS-1T at 27:4-6.

1 seem that one could reasonably conclude that a majority of Hydro One Directors could  
2 not be installed over Ontario's objections, giving the Province effective control of Hydro  
3 One. I would note, however, that Hydro One's response to AWEC Data Request 108,  
4 subpart c, indicates that it does not agree with this position.

5 **Q. DESPITE THIS DISAGREEMENT, HAVE THE APPLICANTS AGREED TO**  
6 **ADDRESS THIS CONCERN ANYWAY?**

7 A. Yes. As shown in Staff Exhibit CRM-2 at page 5, the Applicants have agreed to further  
8 modifications to the Delegation of Authority. These modifications ensure that employees  
9 or executives of Hydro One or its subsidiaries cannot fill a majority of the Avista Board  
10 at any time and under any circumstances. AWEC supports this addition to the Delegation  
11 of Authority because it further insulates Avista from potential interference from Ontario.

### 12 III. CONTINUED SUPPORT FOR MERGER

13 **Q. GIVEN THE ADDITIONAL COMMITMENTS THE APPLICANTS HAVE**  
14 **MADE, DOES AWEC CONTINUE TO SUPPORT THE MERGER?**

15 A. Yes. While the recent events in Ontario have illuminated the degree of control the  
16 Province continues to exercise over Hydro One, AWEC does not consider these events to  
17 be an intervening circumstance that materially impacts the transaction with respect to  
18 Avista's customers, particularly with the additional commitments the Applicants have  
19 made.

20 As noted above, at least with respect to AWEC, the possibility that the Hydro One  
21 CEO might change, or that the Province might influence activities at Hydro One, was  
22 anticipated. An owner with forty-percent-plus voting-rights ownership of a company,  
23 even without the rights the Province possesses, has the ability to exercise significant

1 influence on a company if the large owner decides to take an active role in company  
2 management or direction. In this instant case, the largest shareholder is a political entity  
3 that is responsive to its voters.

4 There are risks with all mergers and new ownership. That is the basis for the  
5 ring-fencing, rate credits and all of the other commitments: to address and mitigate risks,  
6 and to provide benefits to Avista's customers, in part, to offset risks that cannot be fully  
7 mitigated. Typically, we do not see the risks come to fruition for several years, if ever,  
8 but that is not the case here, as the risks have been observed even before the transaction is  
9 closed. Yet, even if the Commission determines that the entity with ultimate control over  
10 Avista is Hydro One or is Ontario, the ring-fencing and governance commitments in the  
11 All-Party Settlement are no less effective. For instance, Avista must continue to adhere  
12 to the safety and reliability metrics the Applicants have agreed to (Commitment 15); the  
13 Applicants cannot flow transaction costs through to customers (Commitment 18); Avista  
14 must maintain separate books and records (Commitment 22) and is prohibited from cross-  
15 subsidizing other affiliates of Hydro One (Commitment 24); and it is prohibited from  
16 reducing the equity level in its capital structure below 44% (Commitment 26). Further,  
17 the Commission continues to have ultimate regulatory authority over Avista. Thus, even  
18 if Ontario attempted to take an action through Hydro One that is against the public  
19 interest and would harm Avista's customers, the Commission continues to have its  
20 statutory authority to protect Avista's customers, including the ability to require remedial  
21 action as needed. In other words, even if one were to conclude that it is really Ontario  
22 that will be Avista's ultimate parent, that does not change the protections in the All-Party

1 Settlement, as supplemented through additional discussion with the Applicants, as they  
2 relate to Avista and its customers.

3 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

4 A. Yes.

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of )  
HYDRO ONE LIMITED (acting through its ) DOCKET U-170970  
indirect subsidiary, Olympus Equity LLC) )  
And )  
AVISTA CORPORATION )  
For an Order Authorizing Proposed )  
Transaction. )  
\_\_\_\_\_ )

**EXHIBIT MMH-3  
HYDRO ONE RESPONSES TO AWEC DATA REQUESTS 108 AND 110**

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	9/17/2018
CASE NO.:	U-170970	WITNESS:	James Scarlett
REQUESTER:	AWEC	RESPONDER:	Adele Pantusa
TYPE:	Data Request	DEPT:	Law
REQUEST NO.:	AWEC – 108(H1)	TELEPHONE:	416-345-6310
		EMAIL:	apantusa@hydroone.com

**REQUEST:**

Reference the proposed modification to the Delegation of Authority between Avista and Hydro One, provided at Exh. JDS-1T, pages 26-27.

- a. Is it Hydro One's position that a majority of its new Board of directors was appointed by Ontario?
- b. If the answer to subpart a is "no," please explain how it would be possible for Ontario to appoint a majority of the Hydro One Board given that Section 4.1.1(b) of the Governance Agreement authorizes the Province to nominate only 40% of the directors.
- c. If the answer to subpart a is "no," does Hydro One believe that, as a practical matter, a majority of the Board could be elected over Ontario's objections given that the Province has the authority under Section 4.7 of the Governance Agreement to remove the entire Board? Please explain your answer.

**RESPONSE:**

- a. No.
- b. Section 4.1.1(b) of the Governance Agreement dated November 5, 2015 (the "Governance Agreement") between Hydro One and Her Majesty The Queen In Right of Ontario (the "Province") entitles the Province to nominate the number of director nominees that is equal to 40% of the number of directors to be elected (rounded to the nearest whole number). Other than an amendment to the Governance Agreement by mutual agreement of the parties, circumventing Section 4.1.1(b) of the Governance agreement would require legislative action by the Province.
- c. Yes, it is possible for a majority of the Board to be elected over Ontario's objections. The Province is required under the Governance Agreement to vote in favor of all director nominees of Hydro One. This obligation is subject, however, to the Province's overriding right to withhold from voting or otherwise seek a shareholder meeting to remove and replace the entire Board, including in each case its own director nominees but excluding the CEO and, at the Province's discretion, the Board Chair. Even if the Province were to remove the entire Board (other than the CEO) pursuant to its rights under section 4.7 of the Governance Agreement, the Governance Agreement provides that, following the Province's exercise of this right, the replacement Board is to be nominated by the Province and an Ad Hoc Nominating Committee comprised of representatives from Hydro One's five largest minority shareholders (excluding the Province). The Province

can nominate 40% of the directors; the Ad Hoc Nominating Committee can nominate 60%. All director nominees must meet the qualifications set forth in Section 4.2 of the Governance Agreement. We also note that in Section 16 of the July 11, 2018 Letter Agreement (Exhibit JDS-2 to Mr. Scarlett's Supplemental Testimony filed on September 6, 2018), the Province reaffirmed its commitment to the Governance Agreement.

**HYDRO ONE LIMITED  
RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	September 24, 2018
CASE NO.:	U-170970	WITNESS:	James Scarlett
REQUESTER:	AWEC	RESPONDER:	Adele Pantusa
TYPE:	Data Request	DEPT:	Law
REQUEST NO.:	AWEC – 110(H1)	TELEPHONE:	416-345-6310
		EMAIL:	apantusa@hydroone.com

**REQUEST:**

Please confirm that the additional commitment regarding Avista employee compensation, provided at JDS-1T pages 25-26, applies to Avista’s CEO.

**RESPONSE:**

Confirmed.

The Merger Agreement between Hydro One and Avista included Schedule I titled the “Delegation of Authority Matters” (the “Delegation of Authority”). The Delegation of Authority establishes the matters over which Avista’s post-merger Board of Directors will have exclusive authority and those matters over which Olympus Equity (an indirect subsidiary of Hydro One) will have authority as Avista’s sole shareholder.

In addition to the commitment proposed at pages 25-26 of JDS-1T, Avista and Hydro One have amended the Delegation of Authority (original attached as Appendix 5 to the Joint Application) between them such that the Avista Board will have the exclusive authority to “maintain or make changes to director, officer or employee compensation or any aspects thereof, such as amount, mix, form, timing etc., in each case that are consistent with current market standards and prevailing practices of relevant U.S. electric and gas utility benchmarks.” Please see Schedule I in AWEC\_DR\_110(H1) Attachment A, which contains the amended versions of Schedules I, II, and III in the current draft of the revised Delegation of Authority to be adopted by Hydro One and Avista at closing.