

Idaho Public Utilities Commission
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OCT 14 2018

Boise, Idaho

ON BEHALF OF AVISTA CORPORATION

DAVID J. MEYER
VICE PRESIDENT AND CHIEF COUNSEL FOR
REGULATORY & GOVERNMENTAL AFFAIRS
P.O. BOX 3727
1411 EAST MISSION AVENUE
SPOKANE, WASHINGTON 99220-3727
TELEPHONE: (509) 495-4316
FACSIMILE: (509) 495-8851
DAVID.MEYER@AVISTACORP.COM

ON BEHALF OF HYDRO ONE LIMITED

ELIZABETH THOMAS, PARTNER
KARI VANDER STOEP, PARTNER
K&L GATES LLP
925 FOURTH AVENUE, SUITE 2900
SEATTLE, WA 981014-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 370-6190
LIZ.THOMAS@KLGATES.COM
KARI.VANDERSTOEP@KLGATES.COM

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)
APPLICATION OF HYDRO ONE LIMITED) CASE NO. AVU-E-17-09
(ACTING THROUGH ITS INDIRECT) CASE NO. AVU-G-17-05
SUBSIDIARY, OLYMPUS EQUITY LLC))
AND)
AVISTA CORPORATION) REBUTTAL TESTIMONY
FOR AN ORDER AUTHORIZING PROPOSED) OF
TRANSACTION) THOMAS D. WOODS

FOR HYDRO ONE LIMITED

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I. INTRODUCTION

Q. Please state your name, business address and present position with Hydro One Limited.

A. My name is Thomas D. (Tom) Woods, and my business address is 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5. I am the Chair of the Board of Directors for Hydro One Limited ("Hydro One").

Q. Have you filed direct, rebuttal, or supplemental testimony in this proceeding?

A. Yes. I filed supplemental testimony on September 24, 2018.

Q. Are you sponsoring any exhibits that accompany your testimony?

A. No.
A table of contents for my testimony is as follows:

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Summary of Testimony

Q. Please summarize your testimony.

A. The Province of Ontario ("Province") exercises limited authority over Hydro One's business affairs and will

1 have no authority over Avista after the merger. As Hydro One's
2 largest shareholder, the Province does have the ability to
3 influence Hydro One's governance, but, other than its
4 authority over executive compensation pursuant to the *Hydro*
5 *One Accountability Act*, the Province does not have management
6 authority over Hydro One.

7

8 **II. PROVINCIAL INFLUENCE OVER HYDRO ONE**

9 **Q. In direct testimony filed on November 6th, Staff**
10 **witness Terri Carlock states on page 10, lines 20-22, that**
11 **"the limits to the influence of the Province of Ontario over**
12 **Hydro One are not clear." Do you have a response to that**
13 **statement?**

14 A. Yes.

15 **Q. What is your response?**

16 A. As a starting point, the Governance Agreement
17 between Hydro One and the Province¹ expressly limits the
18 Province's role with respect to Hydro One to that of an
19 investor, and not a manager, and subsequent to the June
20 election, the Province ratified and reaffirmed its
21 obligations under the Governance Agreement.² Further, in my

¹ See AVU-E-17-09/AVU-G-17-05 - Supplemental Testimony of James Scarlett, Exh. No. 10, Schedule 3 (Sept. 24, 2018) ("Scarlett Supplemental Testimony") (see § 2.1.3 in Governance Agreement).

² See Scarlett Supplemental Testimony, Exh. No. 10, Schedule 1 (§ 16 in July 11, 2018 Letter Agreement).

1 experience to date as Chair of the Hydro One Board of
2 Directors ("Board"), the Province has acted only as an
3 investor in, and not as a manager of, Hydro One, consistent
4 with the Governance Agreement. In fact, I took on the role as
5 a director on that premise and, since becoming a director and
6 then Chair, I have worked with Hydro One's experienced and
7 talented management, and not the Province, on all of Hydro
8 One's strategic business decisions. In short, the new
9 government is looking to the new Board and existing management
10 to run the company, not the other way around.

11 **Q. Do you have concerns that the Province will**
12 **interfere with Hydro One's management in the future?**

13 A. No. Based on my communications with Provincial
14 officials prior to my acceptance of a position on the Hydro
15 One Board, and based on communications and events since that
16 time, I expect that the Province will not intervene in Hydro
17 One management other than participating in a limited manner
18 on certain compensation matters as set forth in the *Hydro One*
19 *Accountability Act*.³

20 **Q. You mentioned communications with Provincial**
21 **officials prior to accepting a position on the Hydro One**
22 **Board. Can you describe the selection process?**

³ See Scarlett Supplemental Testimony, Exh. No. 10, Schedule 2.

1 A. Yes. I was the first person to be named to the new
2 ten-person Hydro One Board. On or around the 4th of July 2018,
3 I received a call from the executive recruiting firm involved
4 in identifying and selecting four directors to be named to
5 the Hydro One Board by the Province pursuant to the Governance
6 Agreement. The firm contacted me based on my business
7 experience and service on other boards. I had not previously
8 met the Premier,⁴ Doug Ford, and to me it was important to
9 meet him and get an understanding of his thinking and plan
10 regarding Hydro One before I decided whether I was willing to
11 serve as a director of the company. I had two meetings with
12 him over the course of three or four days.

13 During the first meeting, I also met the Premier's chief
14 of staff and the head of civil service. That meeting lasted
15 about an hour. I then met Mr. Ford a second time with a
16 broader group. After those meetings I was confident that the
17 Province had no intention of influencing Hydro One beyond the
18 Premier's election promises and – this was very important to
19 me – that the new Hydro One Board would be able to act
20 independently. After about a week and a half, I agreed to
21 accept the Province's appointment to the Board.

⁴ A premier in Canada is the equivalent of a governor in the United States.

1 **Q. Do you know whether your fellow Board members also**
2 **evaluated the Board's ability to act independently?**

3 A. Yes. I am not certain I spoke with each and every
4 one of the other nine, but I do know that several of us talked
5 about the ability to act independently. The other directors
6 all had similar levels of comfort that the Province would not
7 influence the Hydro One Board or business affairs moving
8 forward.

9 **Q. Did you have any interaction with the Premier's**
10 **political party prior to being contacted by the recruiting**
11 **firm?**

12 No. When I was appointed as a director of Hydro One some
13 people made the incorrect assumption that I was affiliated
14 with the Progressive Conservative Party, which is Mr. Ford's
15 party. But I have had no involvement with that party or any
16 other political party in Canada.

17 **Q. You mentioned the *Hydro One Accountability Act*. Do**
18 **you believe the Act could impair Hydro One's ability to**
19 **attract and retain talented executive management?**

20 A. No, for several reasons. First, the Province will
21 not set pay for Hydro One's executives under the *Hydro One*
22 *Accountability Act*. The Act states that the Hydro One Board
23 will establish a new compensation framework for the Board,
24 CEO, and other executives (as defined in the Act) in

1 consultation with the Province and Hydro One's other five
2 largest shareholders, and provides the Management Board of
3 Cabinet with approval rights over the executive compensation
4 framework. Second, the executive search firm that is helping
5 Hydro One's Board identify suitable candidates for the CEO
6 position has reported that they are attracting good
7 candidates. In coordination with the executive search firm,
8 the Board has conducted several interviews and is close to
9 being able to make an offer.

10 Third, other than the authority to approve the
11 compensation framework for certain executive level employees,
12 the Act did not provide the Province with any role in
13 management of Hydro One. Hydro One otherwise has the
14 unfettered ability to operate its business. Section 2.1.3 of
15 the Governance Agreement still provides that the Province is
16 an investor in, and not a manager of, Hydro One. Further, the
17 Province made clear in Section 16 of the July 11, 2018 Letter
18 Agreement between Hydro One and the Province that the
19 Governance Agreement remains in full force and effect:

20 Reaffirmation: By entering into this Agreement, the
21 Province ratifies and reaffirms its obligations
22 under the Governance Agreement and agrees that,
23 except as specifically set out in this Agreement
24 with respect to the subject matter hereof, (i) the
25 execution, delivery and effectiveness of this
26 Agreement or any other documents delivered in
27 connection herewith shall not amend, modify or
28 operate as a waiver or forbearance of any right,

1 power, obligation, remedy or provision under the
2 Governance Agreement, and (ii) such agreement shall
3 continue in full force and effect.⁵

4 **Q. Are you aware of any reason to believe that the**
5 **Hydro One Board might feel beholden to the Province moving**
6 **forward?**

7 A. Certainly not, for several reasons. First, the
8 Board members have a fiduciary duty under Canadian law to act
9 in the best interests of the corporation, which means all of
10 Hydro One's stakeholders and not a single shareholder above
11 all others.

12 Second, the Hydro One Board comprises a distinguished
13 panel of highly successful individuals with extensive
14 experience serving as board members for large corporations.
15 The directors' résumés and experiences speak for themselves
16 and demonstrate that none of them (including myself) will be
17 beholden to the Province, or any other shareholder for that
18 matter.

19 Third, as evidenced by their résumés, each new director
20 has a number of opportunities outside of Hydro One. For that
21 reason, no single director will be motivated to act in a
22 particular way, whether at the behest of the Province or
23 another shareholder, for fear of losing her or his Board

⁵ See Scarlett Supplemental Testimony, Exh. No. 10, Schedule 1.

1 position—especially if doing so would be contrary to Hydro
2 One’s best interests and the Board member’s fiduciary
3 responsibilities, and reflect poorly on the director’s
4 reputation.

5 Fourth, the Governance Agreement prevents the selection
6 of Hydro One Board members that would be beholden to the
7 Province. Each director is independent of Hydro One and the
8 Province.

9

10 **III. PROVINCIAL INFLUENCE OVER AVISTA**

11 **Q. Do you know whether or how the Province influences**
12 **the appointment of the independent members of Avista’s Board?**⁶

13 A. The Province will have no role in selecting any of
14 the independent directors to the post-merger Avista Board and
15 will have no influence over the post-merger operations of
16 Avista.

17 On November 7, 2018, Hydro One and Avista announced the
18 selection of the five independent directors to serve on the
19 post-merger Avista Board.⁷ It is a formidable group of
20 independent directors, all with connections to the U.S.

⁶ See AVU-E-17-09/AVU-G-17-05 - Direct Testimony of Terri Carlock, pg. 16, lines 4-9 (“As is appropriate for a parent company, Hydro One will appoint the majority of Avista’s Board of Directors. While some of these directors will be independent under the SEC’s definition of that term, it is unknown how the Province of Ontario influences those appointments.”).

⁷ See AVU-E-17-09, AVU-G-17-05, Rebuttal Testimony of Scott L. Morris, Exh. No. 16, Schedule 1 (Nov. 14, 2018).

1 Pacific Northwest, and none of whom were selected by the
2 Province or have any relationship with or to the Province.
3 Indeed, a number of them serve on the current Avista Board
4 and will continue to serve Avista with the utmost integrity
5 and business acumen.

6 **Q. Are you aware of any other measures that ensure the**
7 **Province will not influence Avista?**

8 A. Yes.

9 **Q. What are those measures?**

10 A. The ring-fencing, governance, and financial
11 commitments made by Hydro One and Avista protect Avista's
12 independence and financial strength and ensure that the
13 Province cannot and will not interfere with Avista's
14 management, strategic direction, and financial health. These
15 commitments are detailed in the rebuttal testimonies of James
16 Scarlett and Chris Lopez filed on November 14, 2018.

17 **Q. Earlier you discussed the *Hydro One Accountability***
18 **Act and the Province's role in setting Hydro One executive**
19 **compensation under the Act. Can you confirm that the Act will**
20 **not apply to Avista if the merger is approved?**

21 A. Yes, I can. The Act does not apply to Avista, as it
22 expressly excludes Hydro One subsidiaries "incorporated in a
23 jurisdiction outside of Canada." In addition, Hydro One and
24 Avista have agreed to revise Commitment No. 2 to give the

1 post-merger Avista Board sole responsibility for setting
2 compensation levels for Avista's employees and executives.

3 **Q. Could the Province amend the Hydro One**
4 **Accountability Act to apply to Avista, thereby nullifying the**
5 **revised commitment?**

6 A. No. The Province cannot pass laws that apply
7 directly to Avista. The scope of Provincial legislative
8 authority is limited to the Province of Ontario. Rather, if
9 the merger closes, Hydro One's ownership of Avista will be
10 constrained by the commitments, the Commission's approval
11 order, and the laws of the United States and the five states
12 in which Avista operates.

13 **Q. Does this conclude your rebuttal testimony?**

14 A. Yes it does.