

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2
3 **OF OREGON**
4
5 **UM 1897**

In the Matter of

HYDRO ONE LIMITED,

Application for Authorization to Exercise
Substantial Influence over the Policies and
Actions of AVISTA CORPORATION

HYDRO ONE LIMITED’S AND AVISTA
CORPORATION’S RESPONSE TO OREGON
CITIZENS’ UTILITY BOARD WRITTEN
OBJECTION

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8 **I. INTRODUCTION**

9 Pursuant to Administrative Law Judge (“ALJ”) Power’s November 6, 2018 ruling
10 modifying the procedural schedule, Hydro One Limited (“Hydro One”) and Avista Corporation
11 (“Avista”) (collectively “Applicants”) submit this response to Objections of Oregon Citizens’
12 Utility Board (“CUB”) filed on November 27, 2018. While CUB is a party to this proceeding
13 and was a signatory to the all-party Stipulation filed on May 25, 2018 (the “Settlement
14 Stipulation”),¹ CUB did not join the final settlement, the First Amendment to Stipulation,
15 including Appendix A to the First Amendment to Stipulation (the “Revised Stipulated
16 Commitments”), filed by Hydro One, Avista, Oregon Public Utility Commission Staff (“Staff”),
17 the Alliance of Western Energy Consumers (“AWEC”), and Oregon and Southern Idaho District
18 Council of Laborers (“OSIDCL”) (collectively, the “Signatory Parties”) on November 13, 2018.²
19 Contrary to CUB’s objection, Hydro One’s proposed acquisition of Avista (the “Proposed

¹ UM 1897, All-Party Stipulation (May 25, 2018) (hereinafter, “Settlement Stipulation”).

² UM 1897, First Amendment to Stipulation (Nov. 13, 2018), including Appendix A to the First Amendment to Stipulation (the “Revised Stipulated Commitments”).

1 Transaction”) remains in the public interest and will provide a net benefit to Oregon customers,
2 as required by ORS 757.511. The Province of Ontario (the “Province”) cannot exert substantial
3 influence over Avista’s policies and actions. Thus, an affidavit from the Province similar to the
4 affidavits filed by Warren Buffett and Walter Scott, Jr. in connection with the MidAmerican
5 Energy Holding Company’s (MEHC’s) acquisition of Pacific Power & Light dba PacifiCorp
6 (PacifiCorp),³ is unnecessary.

7 II. CUB’S OBJECTION

8 CUB objects to the Proposed Transaction because it believes the Province will, through
9 Hydro One, exercise substantial influence over Avista’s policies and actions. To this end, CUB
10 baselessly asserts that the Province is “incredibly likely” to interfere in the future.⁴ Despite
11 raising no other objections and providing no reasonable explanation for how the Province could
12 circumvent the 118 commitments and Avista’s independent Board of Directors, CUB believes
13 the Proposed Transaction fails to meet the net benefit standard and requests “the [Oregon Public
14 Utilities Commission (the ‘Commission’)] modify the Stipulation to require an affidavit from the
15 Province attesting that it will not attempt to exert substantial influence over the policies and
16 actions of Avista.”⁵ Only with an affidavit from the Province will CUB “potentially be able to
17 support the [P]roposed [T]ransaction.”⁶

18

³ See *In the Matter of MidAmerican Energy Holdings Company Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp*, UM 1209, Order No. 06-082 (Feb. 24, 2006).

⁴ UM 1897, Objections of the Oregon Citizens’ Utility Board at 5 (Nov. 27, 2018) (“[W]e cannot envision any appropriate ring-fencing provisions over Ontario’s authority over Hydro One.”) (hereinafter, “CUB’s Objection”).

⁵ *Id.* at 6.

⁶ *Id.*

1 **III. ARGUMENT**

2 CUB misinterprets ORS 757.511 by focusing on the Province’s ability to influence
3 Hydro One instead of the Province’s alleged ability to exert substantial influence over Avista’s
4 policies and actions. An affidavit is unnecessary because the Province will not have the ability
5 to exercise substantial influence over Avista for several reasons. First, the Province lacks the
6 authority to adopt legislation directly affecting Avista.⁷ Second, the Governance Agreement⁸
7 curtails the powers of the Province. Third, the existing commitments fully protect Avista and
8 Avista’s Board of Directors (the “Avista Board”) from any potential indirect effects of Provincial
9 action. Fourth, in the event of some Provincial action that might somehow affect Avista, the
10 Commission can preclude any such effects through the operation of Revised Stipulated
11 Commitment Nos. 116, 117, and 118.⁹ Fifth, and finally, there are significant differences
12 between the posture of Warren Buffett with respect to PacifiCorp and the posture of the Province
13 with respect to Avista. As a result, Avista is not vulnerable to influence, unlike the situation with
14 PacifiCorp, and a Provincial affidavit is unnecessary.

15 The Settlement Stipulation, including the 115 Stipulation Commitments, filed on May 25,
16 2018, met the net benefits standard as required by ORS 757.511 to the satisfaction of all
17 parties—including CUB—before the events of July 11, 2018 in Ontario. The events of July 11
18 have not changed the nature, quality, or quantity of benefits to Avista’s Oregon customers, and
19 have not altered the assessment of net benefits in any way. As was the case at that time, the
20 commitments still provide millions of dollars in rate credits and program funding, and numerous

⁷ UM 1897 - Hydro One/1600/Scarlett/15, line 2.

⁸ See UM 1897 - Hydro One/803/Schmidt.

⁹ See UM 1897, First Amendment to Stipulation, Revised Stipulated Commitments (Nov. 13, 2018).

1 operational and financial guarantees, all which would not exist absent this merger. Indeed, to the
2 extent there has been any change it is that the protections to Avista’s Oregon customers have
3 only strengthened. Thus, CUB’s sole objection is misplaced.

4 Although Hydro One does not believe that an affidavit from the Province is required for
5 all of these reasons, which are described in more detail below, Hydro One did request that the
6 Province consider signing an affidavit. The Province declined for the reasons outlined in a
7 November 29, 2018 letter from Deputy Minister Stephen Rhodes, Ministry of Energy, Northern
8 Development and Mines, which is attached as Appendix A.

9 **A. The applicable test under ORS 757.511 is Provincial influence over Avista,**
10 **not Provincial influence over Hydro One.**

11 CUB’s objection focuses on the Province’s ability to “interfere” with Hydro One instead
12 of the Province’s alleged ability to exert substantial influence over Avista’s policies and
13 actions.¹⁰ For example, CUB states, “the [Province] is inextricably linked to the actions of
14 Hydro One, and that, as the majority shareholder, it can exert substantial influence over the
15 management, compensation, and operations of Hydro One. . . . [W]e cannot envision any
16 appropriate ring-fencing provisions over Ontario’s authority over Hydro One.”¹¹ To be clear, the
17 Province is Hydro One’s largest shareholder¹²—as of October 31, 2018 the Province owned
18 approximately 47.4% of Hydro One’s common shares and it will own less than 43% at the close
19 of the Proposed Transaction¹³—but it is not the “majority shareholder” (i.e., more than 50%

¹⁰ See CUB’s Objection at 5.

¹¹ CUB’s Objection at 4-5.

¹² See UM 1897 - Hydro One/1601/Scarlett/6.

¹³ See UM 1897, Hydro One Limited’s Response to June 2018 Bench Request at 2 (June 19, 2018).

1 ownership). CUB asserts that because the Province can exert substantial influence over Hydro
2 One, an affidavit from the Province attesting that it will not exert substantial influence over
3 Avista is required.¹⁴ But the applicable test under ORS 757.511 is not whether the Province can
4 exert substantial influence over Hydro One but whether the Province can exert substantial
5 influence over Avista,¹⁵ which it cannot. An affidavit is not necessary because the Province
6 cannot exert substantial influence over Avista, as outlined below.

7 **B. Avista is protected from substantial influence from the Province.**

8 After the acquisition of Avista is completed, the Province will not acquire the power to
9 exercise any substantial influence over the policies and actions of Avista because the Province
10 lacks the authority to influence Avista; the Governance Agreement curtails the powers of the
11 Province over Hydro One; the Revised Stipulated Commitments fully protect Avista from any
12 Provincial influence; and Revised Stipulated Commitment Nos. 116, 117, and 118 give the
13 Commission additional tools to protect Avista.

14 *i. The Province lacks authority to influence Avista.*

15 Avista is wholly insulated from Provincial influence because of the limits on the
16 Province’s legal authority and the protections built into the Proposed Transaction. The Province
17 will not have jurisdiction to directly affect, interact with, or directly influence the management
18 and strategic direction of Avista if the merger is consummated. The Province’s legislative

¹⁴ *See id.*

¹⁵ *See* ORS 757.511 (“No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light or power without first securing from the Public Utility Commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015[.]”) (emphasis added). Here, the “public utility” at issue is Avista, not Hydro One.

1 jurisdiction is limited to the Province of Ontario. The Province cannot pass laws that apply to
2 Avista; it can only pass laws that apply to Hydro One.¹⁶ Presumably, the Province recognized
3 this limitation on its authority when it passed the *Hydro One Accountability Act, 2018*¹⁷ in July
4 2018: the definition of “subsidiary” in the *Hydro One Accountability Act, 2018* expressly
5 excludes “a subsidiary incorporated in a jurisdiction outside of Canada.”¹⁸ Moreover, even if the
6 Province declined to put in this exception, they would not have the jurisdiction to enforce this
7 law against Avista and the commitments would continue to mandate that the Avista Board has
8 the right to set Avista’s compensation. *See* Revised Stipulated Commitment No. 4. This serves
9 to further highlight the strength of the protections that have been put in place.

10 Thus the only way in which the Province could conceivably influence Avista would be
11 through Hydro One. Yet that is also impossible. The Province cannot give direction to Hydro
12 One board members; they are all independent of the Province.¹⁹ Moreover, Hydro One’s
13 ownership of Avista will be constrained by the Revised Stipulated Commitments, and the laws of
14 the United States and the five states in which Avista operates (Oregon, Washington, Idaho,
15 Montana, and Alaska).²⁰

16 *ii. The Governance Agreement curtails the powers of the Province.*

17 The Governance Agreement limits the powers available to the Province as a 47%
18 shareholder. For example, Section 4.7 of the Governance Agreement limits the number of the

¹⁶ UM 1897- Hydro One/1600/Scarlett/15, line 2.

¹⁷ *See* UM 1897 - Hydro One/1602/Scarlett.

¹⁸ *Id.*

¹⁹ *See* UM 1897 - Hydro One/803/Schmidt/19, §§ 4.2.2, 4.2.3.

²⁰ *See* Revised Stipulated Commitment Nos. 1, 2, 110, 111, 112, and 114.

1 Province’s nominees to the Hydro One Board of Directors (the “Hydro One Board”) to 40% or
2 less depending on its proportionate share of stock ownership. Were it not for the Governance
3 Agreement, a 47% shareholder (such as Mr. Buffett in the MEHC/PacifiCorp merger) would
4 have the ability to remove all directors *and* have the ability to select the entirety of the new
5 Hydro One Board, not just 40% of it. The Governance Agreement also ensures that Hydro One
6 directors are not beholden to the Province. Section 4.2 of the Governance Agreement requires
7 that Hydro One’s directors, including those nominated by the Province, must be entirely
8 independent of the Province and Hydro One. Without the Governance Agreement, a 47%
9 shareholder’s nominees to the Hydro One Board would not have to meet the independence
10 standards contained in Section 4.2. Moreover, an unrestrained 47% shareholder would have
11 been able to both fire the extant CEO and replace him or her with a CEO of the shareholder’s
12 choice and compensation level. In this context, the Governance Agreement clearly restrains the
13 Province, and without those constraints it would not have been required to resort to legislation
14 (i.e., the *Hydro One Accountability Act, 2018*²¹) to achieve its aims. Taken in the proper context,
15 the actions of the Province on July 11 were not the sort of dire event that CUB portrays.

16 In this very context, the Province reiterated its commitment to function as an investor and
17 not as a manager of Hydro One through the reaffirmation of the Governance Agreement set forth
18 in the July 11, 2018 Letter Agreement²² (the “July 2018 Letter Agreement”). Pursuant to Section
19 16 of the July 2018 Letter Agreement, the Province ratified and reaffirmed its commitment to the
20 Governance Agreement:

²¹ See UM 1897 - Hydro One/1602/Scarlett.

²² See UM 1897 - Hydro One/1601/Scarlett/6, § 16.

1 16. Reaffirmation: By entering into this Agreement, the Province ratifies and
2 reaffirms its obligations under the Governance Agreement and agrees that, except
3 as specifically set out in this Agreement with respect to the subject matter hereof,
4 (i) the execution, delivery and effectiveness of this Agreement or any other
5 documents delivered in connection herewith shall not amend, modify or operate
6 as a waiver or forbearance of any right, power, obligation, remedy or provision
7 under the Governance Agreement, and (ii) such agreement shall continue in full
8 force and effect.

9 The Governance Agreement remains in full force and effect, and the Hydro One Board
10 retains the sole authority to make strategic and business decisions for Hydro One. Thus the
11 Province's commitment not to interfere in Hydro One's activities, including its proposed
12 ownership of Avista, has already been established in a document executed by the Province -- the
13 July 2018 Letter Agreement.

14 *iii. The Revised Stipulated Commitments fully protect Avista from any*
15 *Provincial influence.*

16 The merger commitments already protect Avista at least as well as a passive investor
17 affidavit. The governance and financial ring-fencing commitments are robust and fully protect
18 Avista and Oregon customers from any influence by the Province.

19 As a matter of corporate law, structure and governance, Avista operates under the
20 supervision of its board of directors. The Avista Board is and will be independent and free from
21 any improper influence from the Hydro One Board. Seven out of nine Avista directors will be
22 fully independent from Hydro One. *See* Revised Stipulated Commitment No. 5. The Avista
23 Board retains full authority to select and compensate Avista's CEO and senior officers. *See*
24 Revised Stipulated Commitment No. 4. Any concern that the Province could somehow direct the
25 Hydro One CEO to bypass the Avista Board and apply influence directly on Avista's CEO is
26 unfounded.

1 Furthermore, any Provincial “influence” on Avista must flow through the Avista Board
2 and the Province lacks the ability to exert pressure on the Hydro One designees to the Avista
3 Board. Under Revised Stipulated Commitment No. 5, the Avista Board will consist of five
4 Hydro One designees, three of whom must be independent directors that reside in the Pacific
5 Northwest. The Province has no role in selecting Hydro One’s designees on Avista’s Board.
6 Hydro One and Avista recently announced who will serve as the independent directors on the
7 Avista Board. These individuals are well-known residents of the Pacific Northwest whose
8 independence and integrity cannot be doubted.²³

9 The financial firewalls that have been agreed to further prevent any potential misuse of
10 Avista resources. *See* Revised Stipulated Commitment Nos. 43-77.

11 iv. *Revised Stipulated Commitment Nos. 116, 117, and 118 are preventive*
12 *and remedial protections for Avista and Oregon customers from any*
13 *possible Provincial influence.*

14 CUB asserts that the new Revised Stipulated Commitment Nos. 116, 117, and 118 are
15 reactive instead of proactive,²⁴ but this conclusion is wrong. All three commitments are designed
16 to prevent the Province from exercising substantial influence over Avista, from both a preventive
17 standpoint *and* a remedial standpoint. Revised Stipulated Commitment No. 116 requires notice
18 to the Commission when any adopted or enacted government action in Ontario will affect the
19 operations of Avista or Hydro One’s ability to comply with the Revised Stipulated Commitments

²³ *See* UM 1897, Sixth Supplemental Report to Hydro One Limited’s Response to June 14, 2018 Bench Request, Attachment A (Nov. 8, 2018). The Post-Merger Independent Directors will include: Christine Gregoire - former Washington Governor; Kristianne Blake - current lead director on Avista Board of Directors; Donald Burke - current chair of the audit committee on Avista Board of Directors; Scott Maw - Executive Vice President and CFO for Starbucks Coffee Company; Marc Racicot - former Montana Governor and Attorney General.

²⁴ CUB’s Objection at 5.

1 and the confirmation of any parties' right to petition the Commission to consider whether the
2 Commission should amend its final order approving the merger in order to address the
3 government action. This commitment provides the Commission the opportunity to amend its
4 final order in this proceeding, including strengthening any of the Revised Stipulated
5 Commitments or adding new commitments.

6 Revised Stipulated Commitment No. 117 addresses the possibility of the Province
7 attempting to exercise substantial influence over the policies and actions of Avista. It ensures
8 that all Avista Board members (post-closing of the Proposed Transaction) are aware of the fact
9 that the Province is prohibited from attempting to exercise any substantial influence over the
10 policies and actions of Avista. Furthermore, Avista Board directors are required to submit
11 annual affidavits attesting that they will notify the Commission immediately if they have any
12 reason to believe that the Province is attempting to exercise substantial influence over the
13 policies and actions of Avista. Upon such notice, the Commission may amend its final order.
14 Hydro One's authority to replace an independent director on the Avista Board with an employee
15 or executive on an interim six-month basis is suspended for the pendency of the Commission's
16 proceeding amending its final order, and Hydro One and Avista may not oppose the proceeding.
17 Accordingly, Revised Stipulated Commitment No. 117 is, in fact, proactive: it ensures that all
18 board members are aware of the fact that the Province is prohibited from attempting to exercise
19 any substantial influence over the policies and actions of Avista.

20 As noted in the Signatory Parties' Joint Brief in Support of First Amendment to
21 Stipulation, Revised Commitment No. 118 "goes one step further than 116 and 117 by putting in
22 place a proactive measure to ensure that the Commission and Parties remain informed about

1 actions by the Province to exert substantial influence or control over Hydro One (as opposed to
2 Avista specifically).”²⁵ It requires a board resolution at Hydro One providing that in event the
3 Hydro One Board is informed or becomes aware of a proposal or steps being taken to amend,
4 effectively modify, or eliminate the Governance Agreement between Hydro One and the
5 Province, the Hydro One Board will notify the Commission and provide the Commission
6 reasonably available information. Upon notice under Revised Stipulated Commitment No. 118,
7 like in Revised Stipulated Commitment Nos. 116 and 117, the Commission may amend its final
8 order, strengthening the Revised Stipulated Commitments or adding new commitments, and
9 neither Hydro One nor Avista will oppose any such proceeding. Again, Revised Stipulated
10 Commitment No. 118 relates to the Province’s potential influence over Hydro One, not Avista.
11 Under ORS 757.511, CUB should be concerned with the Province’s potential influence over
12 Avista, not Hydro One. Regardless, Revised Stipulated Commitment No. 118 demonstrates
13 Hydro One’s willingness to proactively inform and work with the Commission on any issues
14 regarding the Governance Agreement between Hydro One and the Province.

15 The annual affirmations from Avista directors required under Revised Stipulated
16 Commitment No. 117 and the annual confirmation from Hydro One’s Chair regarding the
17 absence of proposed amendments to the Governance Agreement as required by Revised
18 Stipulated Commitment No. 118 are both “health checks” to assure the Commission that the
19 system is operating as contemplated and can serve as a deterrent as any effort to change the
20 system will be proactively announced.

²⁵ UM 1897, Joint Brief in Support of First Amendment to Stipulation at 5 (Nov. 13, 2018) (emphasis added).

1 **C. There are significant differences between the posture of Warren Buffet to**
2 **MEHC and PacifiCorp, and the posture of the Province to Hydro One and**
3 **Avista.**

4 A similar affidavit from the Province is unnecessary for the Hydro One and Avista
5 merger because the ownership and corporate structure of the MEHC and PacifiCorp merger is
6 markedly different than the ownership and corporate structure of the Hydro One and Avista
7 merger. As a result, Avista is not vulnerable to influence unlike the situation with PacifiCorp.
8 Appendix B summarizes key differences between the Proposed Transaction and the MEHC and
9 PacifiCorp merger.

10 On July 25, 2005, MEHC filed an application to acquire PacifiCorp from
11 ScottishPower.²⁶ The Commission approved the transaction on February 24, 2006.²⁷ MEHC
12 purchased PacifiCorp for approximately \$9.4 billion.²⁸ The Commission approved the
13 transaction despite concerns regarding potential influence of MEHC's primary investor,
14 Berkshire Hathaway, and two of MEHC's shareholders who owned more than 5% of its voting
15 shares: Warren Buffett and Walter Scott. Upon repeal of the Public Utility Holding Company
16 Act of 1935 (PUHCA), Berkshire Hathaway would own 83.75% of MEHC's voting shares and
17 Mr. Scott would own 9.93%.²⁹ At the time of the acquisition, both Mr. Buffett and Mr. Scott

²⁶ See UM 1209 - *In the Matter of MidAmerican Energy Holdings Company Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp*, UM-1209 (July 25, 2005); see also, *Amended Application, In the Matter of MidAmerican Energy Holdings Company Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp*, UM-1209 (Dec. 23, 2005) (hereinafter, "UM 1209 - Amended App.").

²⁷ See UM 1209 - Order No. 06-082 (Feb. 24, 2006).

²⁸ *Id.* at 3.

²⁹ UM 1209 - Amended App. at 1-2.

1 were MEHC board members, Mr. Buffett was chair of the Berkshire Hathaway board, and Mr.
2 Scott was a Berkshire Hathaway board member.³⁰

3 In response to these concerns, Mr. Buffett and Mr. Scott filed affidavits with MEHC's
4 amended application filed on December 23, 2005 agreeing not to:

5 directly or indirectly exercise control over PacifiCorp, that they will recuse
6 themselves from voting as MEHC or Berkshire Hathaway directors on MEHC
7 and Berkshire Hathaway matters concerning PacifiCorp activities and operations,
8 and that future transfer of their MEHC and Berkshire Hathaway shares will
9 require an agreement by the transferee to abide by the limitations just recited, as
10 applicable, regarding the power to exercise substantial influence over PacifiCorp
11 if, to their knowledge, the transferee would own 4% or more of the voting
12 interests of MEHC or Berkshire Hathaway after such transfer.³¹

13 In the MEHC and PacifiCorp merger, Mr. Buffett and Mr. Scott were MEHC board
14 members.³² Here, the Province is not a Hydro One Board member. When PUHCA was repealed
15 and Berkshire Hathaway converted zero coupon convertible preferred stock, Berkshire Hathaway
16 had the ability to appoint nine out of ten members of MEHC's board of directors.³³ There is no
17 indication that Berkshire Hathaway's appointees to the MEHC board had to be independent of
18 Berkshire Hathaway. If the Commission wanted Berkshire Hathaway's appointees to the MEHC
19 board to be independent, the Commission would have had to include that requirement in its order
20 approving the merger. Absent such a restriction, even if MEHC happened to have some
21 Berkshire Hathaway designees who were independent, MEHC is free to replace them with non-
22 independent designees.

³⁰ See UM 1209 - Amended App., Ex. 1, Affidavit of Walter Scott, Jr.; Ex. 2, Affidavit of Warren E. Buffett.

³¹ *Id.* at 2.

³² See UM 1209 - Amended App., Ex. 1, Affidavit of Walter Scott, Jr.; Ex. 2, Affidavit of Warren E. Buffett.

³³ UM 1209 - PPL/400/Goodman/20.

1 In comparison, the Province can appoint 40% of Hydro One’s board of directors.³⁴ Of
2 the ten new Hydro One Board members, the Province appointed four members. Hydro One’s
3 five largest shareholders other than the Province participated in an Ad Hoc Nominating
4 Committee and nominated the six other board members.³⁵ Unlike Berkshire Hathaway’s
5 appointees to the MEHC board, all of the Province’s nominees on the Hydro One Board must be
6 independent of Hydro One and the Province.³⁶ Lastly, Gregory Abel, MEHC’s president and
7 chief operating officer, was appointed chairman of the PacifiCorp Board of Directors when the
8 transaction closed.³⁷ Here, the initial Chairman of Avista’s post-closing Board of Directors shall
9 be the chief executive officer of Avista at the time immediately prior to closing for a one year
10 term.³⁸

11 There are also significant differences in the ownership structures. Unlike Berkshire
12 Hathaway, which owns 83.75% of MEHC’s stock, the Province currently only owns
13 approximately 47% of Hydro One’s stock and will own less than 43% after the close of the
14 Proposed Transaction.³⁹ Furthermore, Berkshire Hathaway manages MEHC while the Province
15 is an investor in Hydro One. The Governance Agreement states that the Province will be
16 involved in Hydro One as an investor in Hydro One and not as a manager.⁴⁰ Pursuant to the
17 Governance Agreement, the Hydro One Board—not its shareholders (inclusive of the

³⁴ See UM 1897 - Hydro One/803/Schmidt/18, § 4.1.1(b).

³⁵ See UM 1897 - Hydro One/1500/Woods/2.

³⁶ *Id.* at 6; see also, UM 1897 - Hydro One/803/Schmidt/19, §§ 4.2.2, 4.2.3.

³⁷ UM 1209 - PPL/100/Abel/1-2.

³⁸ See UM 1897 - Revised Stipulated Commitment No. 5.

³⁹ See UM 1897, Hydro One Limited’s Response to June 2018 Bench Request at 2 (June 19, 2018).

⁴⁰ See UM 1897 - Hydro One/803/Schmidt/12, § 2.1.3; see also, UM 1897 - Hydro One/2300/Woods/3-4.

1 Province)—makes strategic and business decisions for Hydro One. All of Hydro One’s strategic
2 business decisions—for example, decisions relating to negotiating, entering into and completing
3 merger transactions—are made by the Hydro One Board, not the Province. Berkshire Hathaway,
4 on the other hand, directly manages MEHC. Berkshire Hathaway also financed the
5 MEHC/PacifiCorp transaction, while the Province will play absolutely no role in the financing of
6 the Hydro One/Avista transaction.⁴¹

7 As evidenced in the tables in Appendix C, the structure of PacifiCorp post-close also
8 differs from the structure of Avista post-close. PacifiCorp became an indirect wholly-owned
9 subsidiary of MEHC, through PacifiCorp’s new direct parent company, PPW Holdings LLC.
10 Avista, on the other hand, will be a separate indirect subsidiary of Hydro One, through Avista’s
11 new parent company, Olympus Equity LLC. Olympus Holding Corp. will reside above Olympus
12 Equity LLC as the holding company for U.S. purposes.⁴²

13 IV. CONCLUSION

14 The Proposed Transaction meets the requirements of ORS 757.511, provides a net
15 benefit, and is in the public interest. There is no credible or realistic prospect of the Province
16 exercising substantial influence over Avista policies or actions and CUB’s sole objection to the
17 merger is therefore baseless. Hydro One and Avista urge the Commission to approve Hydro

⁴¹ *See id.* at 8 (“MEHC expects to fund the transaction with the proceeds from an investment by Berkshire Hathaway of approximately \$3.4 billion in zero coupon non-voting convertible preferred stock of MEHC and the issuance by MEHC to third parties of approximately \$1.7 billion of long-term senior notes, preferred stock, or other securities with equity characteristics. However the transaction is not conditioned on such financing and if funds were not available from third parties, Berkshire Hathaway is expected to provide any required funding.”) (emphasis added).

⁴² *See* UM 1897 - Joint Parties/100/8.

1 One's Application for an Order Authorizing Hydro One Limited to Exercise Substantial
2 Influence over the Policies and Actions of Avista.

3 Respectfully submitted this 4th day of December, 2018.

4

HYDRO ONE LIMITED

AVISTA CORPORATION



By: _____
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On Behalf of Hydro One Limited and
Olympus Equity LLC

By:  _____
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5

APPENDIX A

Ministry of Energy,
Northern Development
and Mines

Ministère de l'Énergie,
du Développement du Nord
et des Mines



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November 29, 2018

Tom Woods
Chair, Hydro One Ltd.
483 Bay Street,
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Dear Mr. Woods,

Re: Proceeding before the Public Utility Commission of Oregon regarding the proposed acquisition of Avista Corporation ("Avista") by Hydro One Limited ("Hydro One") – Request for Affidavit from the Province of Ontario

I am sending this in response to email correspondence I received from you on November 6, 2018. I understand that Hydro One is requesting that the Province of Ontario, as represented by the Minister of Energy, Northern Development and Mines ("Province"), provide a sworn affidavit to be filed in support of the ongoing proceedings before the Public Utility Commission of Oregon ("OPUC") related to the proposed acquisition of Avista by Hydro One ("OPUC Proceedings"). A draft copy of the proposed affidavit, as well as a briefing note on this matter, was included in your email to me.

I understand that the purpose of the proposed affidavit would be to provide assurance that the Province will not exercise any substantial influence over the policies and actions of Avista after the company has been acquired by Hydro One. You advised that there may be a concern amongst the parties to the OPUC Proceeding regarding the Province's potential influence over Avista after it has been acquired by Hydro One.

I understand that Hydro One has already indicated to OPUC that there are a number of factors that mitigate against the risk that the Province might be able to exercise a substantial influence over Avista after the transaction is completed. First, the rights that the Province might normally be able to exercise as the largest shareholder of Hydro One are significantly limited by the terms of the Governance Agreement. Moreover, all of the directors on Hydro One's Board (and all of Hydro One's subsidiary boards) are independent of the Province and there are no provincial nominees or representatives among the corporation's senior management team. Finally, Hydro One has already made a series of governance and ring-fencing settlement commitments that are intended to insulate Avista's business operations after Avista has been acquired by Hydro One.

I also understand that Avista and Hydro One have proposed a series of further stipulated commitments that would facilitate immediate intervention by the OPUC in the event that (1) Avista's CEO or any other member of the Avista board believes the Province is directly or indirectly exercising substantial influence over Avista's policies or actions; or, (2) the Hydro One Board or any member thereof becomes aware of a proposal to amend, effectively modify, or eliminate the Governance Agreement. I have been advised that these additional stipulations should provide the OPUC with direct avenues for any regulatory action it considers appropriate should either of these circumstances arise.

In light of the factors set out above, the affidavit Hydro One has requested from the Province does not appear to be necessary for the purposes of the OPUC Proceedings. The evidence already provided by Hydro One should be sufficient to address any concerns that the parties to the OPUC Proceeding may have with respect to the Province's relationship with Hydro One. In addition, as you know, there are significant restrictions on the legal authority of government officials to bind the future exercise of legislative and regulatory powers and any affidavit would need to be carefully tailored with these restrictions in mind. We are of the view that it would be preferable that Hydro One not offer to provide any such affidavit to OPUC.

I want to reiterate the Ministry's commitment to supporting Hydro One in its efforts to complete the Avista acquisition.

Should you have any further questions, please feel free to contact me.

Sincerely,



Stephen Rhodes
Deputy Minister, Energy
Ministry of Energy, Northern Development and Mines (ENDM)

cc: Nina Chiarelli – Chief of Staff, Minister of ENDM
Carolyn Calwell – ADM, Strategic, Network and Agency Policy Division, ENDM
Maud Murray – Legal Director, Energy

APPENDIX B

Appendix B - Differences between MEHC/PacifiCorp and Hydro One/Avista mergers

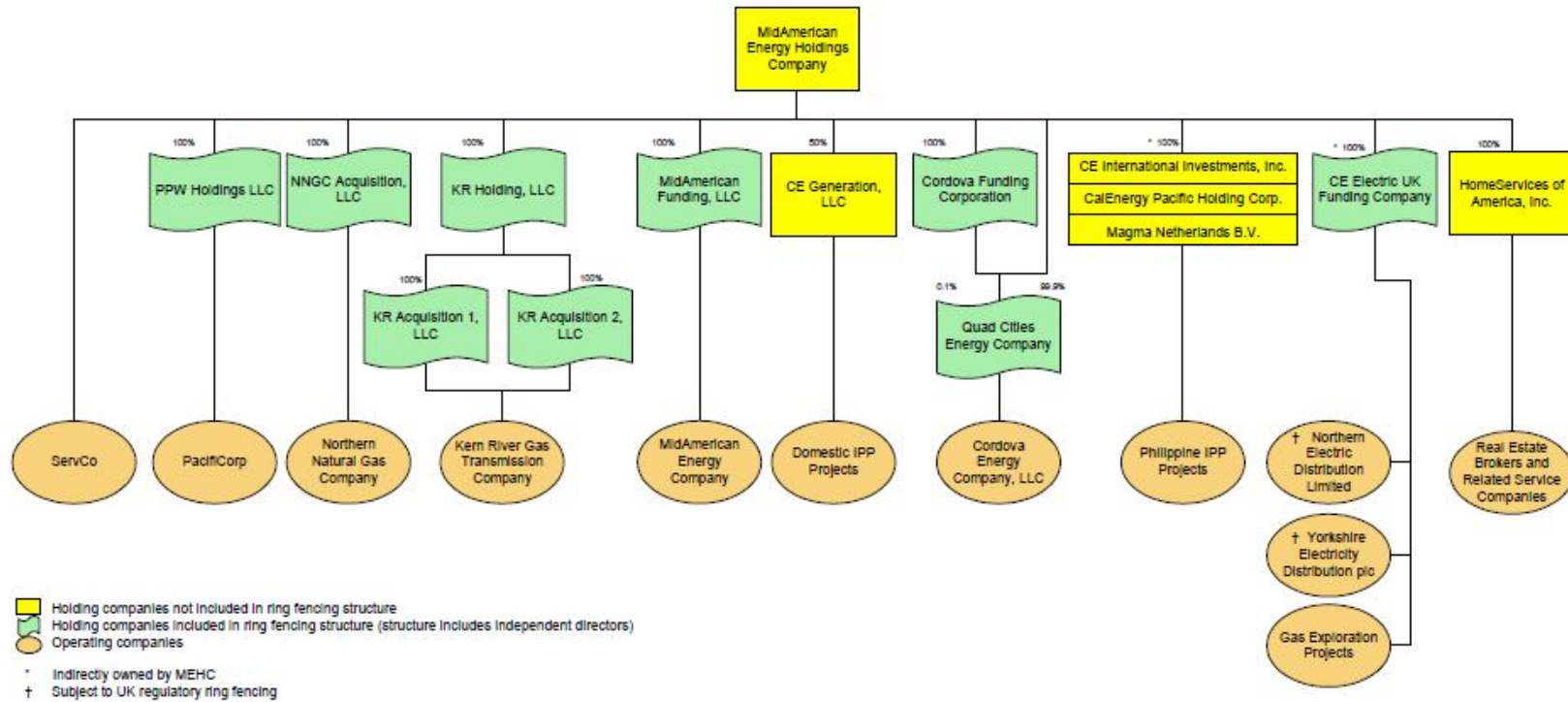
| | MEHC/PacifiCorp | Hydro One/Avista |
|---------------------------|---|--|
| Relationship | Warren Buffett and Walter Scott are members of MEHC board. Warren Buffett chairs Berkshire Hathaway’s Board of Directors. Walter Scott also serves on Berkshire Hathaway Board of Directors. <i>See</i> UM 1209, Amended App., Ex. 1, Affidavit of Walter Scott, Jr.; Ex. 2, Affidavit of Warren E. Buffett. | The Province is not a member of the Hydro One board. |
| Board appointments | Once PUHCA is repealed and Berkshire Hathaway converts zero coupon convertible preferred stock, Berkshire Hathaway will have ability to appoint nine out of ten members of MEHC’s board of directors. <i>See</i> UM 1209 - PPL/400/Goodman/20. There is no indication that Berkshire Hathaway’s nominees to the MEHC board have to be independent of Berkshire Hathaway. | The Province can appoint 40% of Hydro One’s board of directors. Of the ten new board members, the Province appointed four members. Hydro One’s five largest shareholders other than the Province participated in an Ad Hoc Nominating Committee and nominated the six other board members. <i>See</i> UM 1897 - Hydro One/1600/Scarlett/7-8. All of the Province’s nominees on the Hydro One board must be independent of Hydro One and the Province. <i>See</i> UM 1897 - Hydro One/803/Schmidt/19, §§ 4.2.2, 4.2.3. |
| Board Chair | After the MEHC/PacifiCorp transaction closed, Gregory Abel, MEHC’s president and chief operating officer, would serve as chairman of the PacifiCorp Board of Directors. <i>See</i> UM 1209 - PPL/100/Abel/1-2. | Unlike the MEHC /PacifiCorp merger, the initial Chairman of Avista’s post-closing Board of Directors shall be the chief executive officer of Avista at the time immediately prior to closing for a one year term. <i>See</i> UM 1897, Revised Stipulated Commitment No. 5. |
| Ownership | Once PUHCA is repealed and Berkshire Hathaway converts zero coupon convertible preferred stock, Berkshire Hathaway will own 83.75% of MEHC voting shares. <i>See</i> UM 1209, Amended App. at 1-2. | The Province is Hydro One’s largest shareholder. <i>See</i> UM 1897 - Hydro One/1601/Scarlett/6. Unlike Berkshire Hathaway that owns 83.75% of MEHC’s stock, the Province only owns 47% of Hydro One’s stock and its ownership will decline to less than 43% after the close of the Proposed Transaction. <i>See</i> UM |

| | MEHC/PacifiCorp | Hydro One/Avista |
|--|--|---|
| | | 1897, Hydro One Limited’s Response to June 2018 Bench Request at 2 (June 19, 2018). |
| Post-Close Structure | PacifiCorp will be an indirect wholly-owned subsidiary of MEHC, through PacifiCorp’s new direct parent company, PPW Holdings LLC. <i>See</i> UM 1209, Amended App. at 9. | Avista will be a separate indirect subsidiary of Hydro One, through Avista’s new parent company, Olympus Equity LLC. Olympus Holding Corp. will reside above Olympus Equity LLC as the holding company for U.S. purposes. <i>See</i> UM 1897 - Joint Parties/100/8. |
| How will acquisition be financed? | The acquisition is being financed by Berkshire Hathaway: “MEHC expects to fund the transaction with the proceeds from an investment by Berkshire Hathaway of approximately \$3.4 billion in zero coupon non-voting convertible preferred stock of MEHC and the issuance by MEHC to third parties of approximately \$1.7 billion of long-term senior notes, preferred stock, or other securities with equity characteristics. However the transaction is not conditioned on such financing and if funds were not available from third parties, Berkshire Hathaway is expected to provide any required funding.” <i>See</i> UM 1209 - PPL/400/Goodman/8. | The Province has no role in financing the acquisition. |
| Management vs. Investor | Berkshire Hathaway manages MEHC: “[T]he prior approval of Berkshire Hathaway, as the holder of convertible preferred stock, is required for MEHC to undertake certain fundamental transactions (<u>e.g.</u> , the PacifiCorp acquisition). The prior approval of Berkshire Hathaway is not required for transactions undertaken directly by MEHC subsidiaries.” <i>See</i> UM 1209 - PPL/400/Goodman/18-19. | The Governance Agreement states that the Province will be involved in Hydro One as an investor and not as a manager. <i>See</i> UM 1897 - Hydro One/803/Schmidt/12, § 2.1.3; <i>see also</i> , UM 1897 - Hydro One/2300/Woods/3-4. |

APPENDIX C

MEHC and PacifiCorp Post-Closing Corporate Structure¹

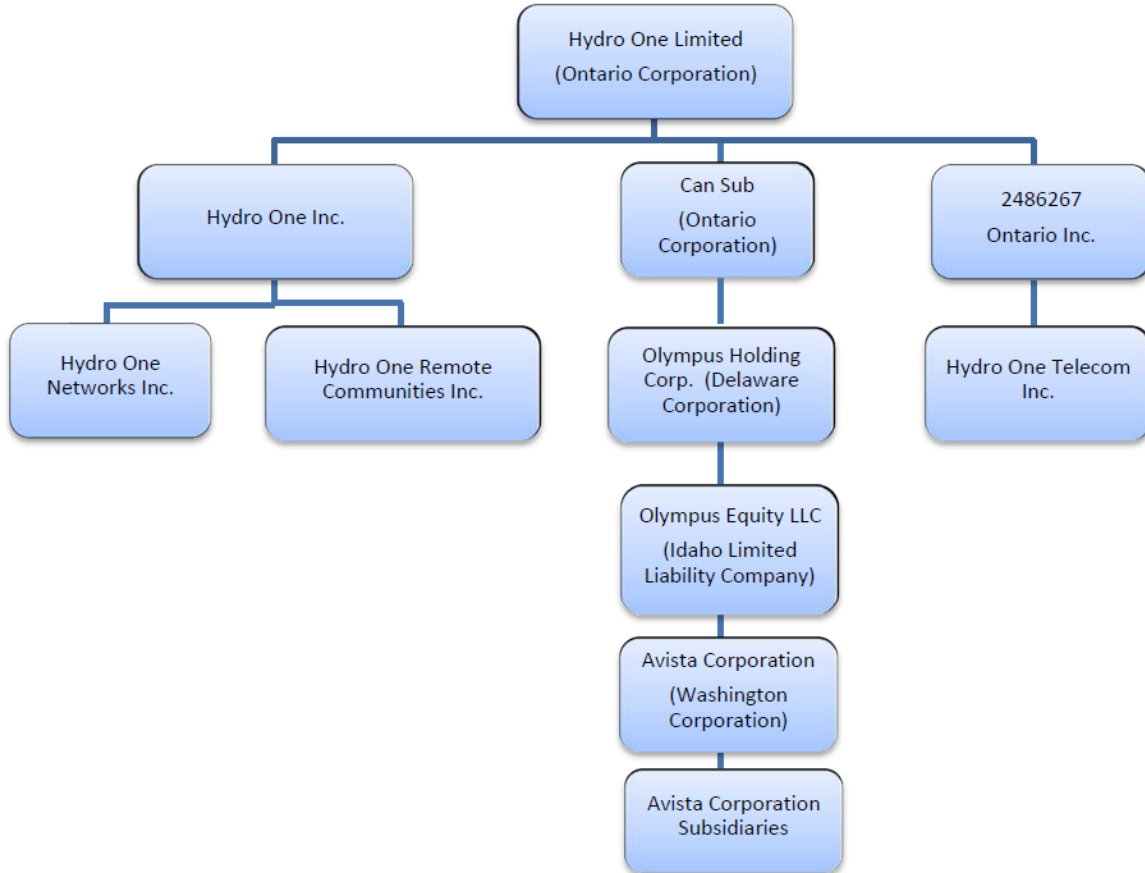
Simplified MEHC Organizational Structure – Post PacifiCorp Acquisition



¹ UM 1209, PPL, Goodman Ex. 402.

Hydro One and Avista Post-Closing Corporate Structure²

Revised Post-Closing Corporate Structure



² UM 1897, Hydro One Motion to Admit Pre-Filed Testimony and Exhibits, Declaration of Christopher F. Lopez at 2 (Dec. 3, 2018).