

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON  
UM 1897**

In the Matter of )  
 )  
HYDRO ONE LIMITED, )  
 )  
Application for Authorization to Exercise )  
Substantial Influence over the Policies )  
and Actions of AVISTA )  
CORPORATION. )  
\_\_\_\_\_ )

**SUPPLEMENTAL SUR-REBUTTAL TESTIMONY  
OF BRADLEY G. MULLINS  
ON BEHALF OF  
ALLIANCE OF WESTERN ENERGY CONSUMERS**

**October 18, 2018**

1 **Q. ARE YOU THE SAME WITNESS THAT PREVIOUSLY FILED TESTIMONY IN**  
2 **THIS MATTER?**

3 A. Yes. I have filed Reply Testimony, Joint Settlement Testimony, and Supplemental Reply  
4 Testimony in this matter on behalf of Alliance of Western Energy Consumers, f/k/a Northwest  
5 Industrial Gas Users.

6 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL SUR-REBUTTAL**  
7 **TESTIMONY?**

8 A. I respond to the Supplemental Rebuttal Testimony of Avista Corporation (“Avista”) and Hydro  
9 One Limited (“Hydro One”), the Reply Testimony of Staff of the Public Utility Commission of  
10 Oregon (“Staff”), and the Reply Testimony of the Citizens’ Utility Board (“CUB”) regarding  
11 the Application (“Merger Application”) of Hydro One, acting through its indirect subsidiary  
12 Olympus Equity LLC to exercise substantial influence over the policies and actions of Avista  
13 (the “Merger”).

14 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATION.**

15 A. I recommend that the Public Utility Commission of Oregon (“Commission”) approve the  
16 Merger, subject to the 115 commitments previously agreed to by the Oregon parties  
17 (“Stipulated Commitments”) along with, and as modified by, the additional merger  
18 commitments proposed by Hydro One and Avista (“Supplemental Commitments”).  
19 Notwithstanding the election in the Province of Ontario that led to the early retirement of  
20 Hydro One’s Chief Executive Officer (“CEO”) and the voluntarily resignation of the Hydro  
21 One Board of Directors (“Board”), I believe the Merger, along with the Stipulated  
22 Commitments and Supplemental Commitments, will provide a net benefit to Oregon ratepayers  
23 and satisfies the standard for approval under Oregon law.

1 **Q. DO THE NEW HYDRO ONE BOARD AND ACTING CEO STILL SUPPORT THE**  
2 **MERGER?**

3 A. Yes. In my Supplemental Reply Testimony, my continued support for the Merger was subject  
4 to, among other things, Hydro One demonstrating that it remains committed to the Merger and  
5 the Stipulated Commitments. In the Supplemental Rebuttal Testimony of Hydro One filed on  
6 October 4, 2018, both the acting CEO and the Chair of the Hydro One Board affirmed their  
7 continued support for the Merger.<sup>1</sup>

8 **Q. DID YOU PROPOSE AN ADDITIONAL COMMITMENT IN YOUR**  
9 **SUPPLEMENTAL REPLY TESTIMONY?**

10 A. Yes. The additional commitment I recommended has to do with the composition of the Board.  
11 The Board consists of four Avista designated directors and five Hydro One designated  
12 directors (two executives of Hydro One and three independent directors who are residents of  
13 the Pacific Northwest). If the three Hydro One independent directors resign or are removed,  
14 Hydro One has the ability to appoint Hydro One employees or executives to fill these positions  
15 for up to a 6-month period, giving Hydro One a majority of the Board. I recommended  
16 including a condition that prohibits Hydro One from having a majority of the Board, even on a  
17 temporary basis.

18 **Q. DID HYDRO ONE AND AVISTA ADDRESS THIS CONCERN?**

19 A. Yes. The parties in the Washington Utilities and Transportation Commission (“Washington  
20 Commission”) Merger proceeding, Docket U-170970, agreed to additional commitments in  
21 response to the election in the Province of Ontario as discussed above.<sup>2</sup> All Washington

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<sup>1</sup> Hydro One/2200, Dobson/2; Hydro One/2300, Woods/1.

<sup>2</sup> See *In re the Joint Application of Hydro One Limited and Avista Corporation for an Order Authorizing Proposed Transaction*, WUTC Docket U-170970, Testimony and Exhibit of Chris R. McGuire, Exh. No. CRM-2 (Oct. 4, 2018) (“Docket U-170970”).

1 parties continue to support the Merger in Washington. One of those additional commitments  
2 addressed my concern, and Avista and Hydro One have added additional language to Oregon  
3 Stipulated Commitment Number 5 that addresses my concern.<sup>3</sup> The end result of this change is  
4 that Hydro One and Avista are required to consult with each other in their selection of the  
5 independent director designees, and the total number of Hydro One executives or employees  
6 on the Avista board is limited to four out of nine so that Hydro One is prohibited from ever  
7 having a majority of the Board.

8 **Q. DID HYDRO ONE AND AVISTA PROPOSE OTHER NEW COMMITMENTS IN**  
9 **OREGON?**

10 A. Yes. Hydro One and Avista proposed new Commitment 116, which requires Hydro One to  
11 notify the Commission if certain government actions or inactions may affect Avista operations.  
12 This provision also allows any party to petition the Commission to reopen the docket to  
13 consider whether the Commission should modify its final order in light of any government  
14 action that impacts Avista, affects Avista operations because of its corporate relationship with  
15 Hydro One, or affects Hydro One's compliance with any approved merger commitment.

16 **Q. WAS THIS SAME COMMITMENT AGREED TO IN WASHINGTON?**

17 A. Yes. New Oregon Commitment 116 mirrors a new commitment agreed to by the parties in  
18 Washington.<sup>4</sup>

19 **Q. ARE THERE OTHER CHANGES TO THE STIPULATED COMMITMENTS?**

20 A. Yes. Hydro One also revised Stipulated Commitment Number 4 to make clear that the Avista  
21 Board will make all decisions regarding the compensation of Avista employees.

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<sup>3</sup> Hydro One/2500, Lopez/12-13.

<sup>4</sup> See Docket U-170970, Testimony and Exhibit of Chris R. McGuire, Exh. No. CRM-2 (Oct. 4, 2018).

1 **Q. WHAT CONCERN WAS THIS LANGUAGE INTENDED TO ADDRESS?**

2 A. This revision to Stipulated Commitment Number 4 is intended to prevent Hydro One from  
3 exerting inappropriate influence or control over Avista and its operations by making decisions  
4 about the compensation of Avista employees.<sup>5</sup>

5 **Q. HOW DO YOU RESPOND TO THE CONCERNS RAISED BY STAFF AND CUB?**

6 A. Staff and CUB raise a number of valid concerns about the Merger in light of the recent  
7 political events in the Province of Ontario. I share their concerns that the politics in the  
8 Province of Ontario might have some influence over Avista's utility operations in the  
9 Northwest, but I believe the Stipulated Commitments and Supplemental Commitments provide  
10 sufficient protection for Oregon ratepayers. If the new Hydro One Board or acting CEO were  
11 neutral, unsupportive, or even hostile towards the Merger, I would probably determine that  
12 transaction was too risky and did not meet the standard for approval under Oregon law. But  
13 that is not the case. The new Hydro One Board and acting CEO have expressed their support  
14 for the Merger. Accordingly, I have no reason to doubt that the Board and acting or permanent  
15 CEO will act in accordance with their fiduciary duty with respect to the Merger and the future  
16 operations of Avista.

17 **Q. WHAT IS AWEC'S RECOMMENDATION?**

18 A. AWEC recommends the Commission approve the Merger, subject to the Stipulated  
19 Commitments and Supplemental Commitments. These commitments, coupled with the  
20 Commission's general jurisdiction over Avista's utility services and operations, provide  
21 sufficient protections for Oregon ratepayers against the political risks associated with Hydro

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<sup>5</sup> Hydro One/2500, Lopez/14.

1 One's relationship with the Province of Ontario. As noted previously, the Commission has  
2 wide discretion to craft appropriate remedies to ensure that Avista continues to provide safe  
3 and reliable services and that its rates are fair, just, and reasonable. Accordingly, I continue to  
4 believe that the Merger meets the standard for approval under ORS 757.511, and I continue to  
5 support the Settlement Stipulation, subject to the Stipulated Commitments and Supplemental  
6 Commitments.

7 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL SUR-REBUTTAL TESTIMONY?**

8 A. Yes.