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September 20, 2018

Via Electronic Filing and overnight mail

OREGON PUBLIC UTILITY COMMISSION

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SALEM OR 97308-1088

**RE: Docket No. UM 1897 – In the Matter of
HYRDO ONE LIMITED, Application for Authorization to Exercise Substantial
Influence over the Policies and Actions of AVISTA CORPORATION.**

Attached for filing are the following Exhibits:

UM 1897 Cover Letter, Service List and Certificate of Service

- Exhibits 600 to 604 Muldoon, where Exhibit 601 and Exhibit 604 are highly confidential exhibits.
These two highly confidential exhibits are provided on green papers and mailed to parties who have signed Modified Protective Order No. 17-362 via UPS over-night today.
- Exhibits 700 to 704 Anderson.

/s/ Kay Barnes

PUC- Utility Program

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CERTIFICATE OF SERVICE

UM 1897

I certify that I have, this day, served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-001-0180, to the following parties or attorneys of parties.

Dated this 20th day of September, 2018 at Salem, Oregon



Kay Barnes
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CASE: UM 1897
WITNESS: MATT MULDOON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 600

**Reply Testimony to
Avista and Hydro One Supplemental Testimony**

September 20, 2018

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Qualifications

Q. Are you the same Matt Muldoon whose Witness Qualification Statement was provided as Exhibit Staff/201?

A. Yes.

Q. What is the purpose of your testimony?

A. Staff offers context and analysis in response to elements of the Hydro One Limited (Hydro One or Applicant) and Avista Corporation (Avista or Company) Supplemental Testimony and Exhibits (Supplemental Testimony) filed August 30, 2018. The Supplemental Testimony, and subsequent rounds of party testimony to be filed through October 31, 2018, is offered into the record at the request of the Commission after material changes in leadership and governance occurred at Hydro One, the proposed acquirer of Avista.

Q. Did you prepare exhibits in support of your reply testimony?

A. Yes. I prepared the following exhibits:
Exhibit Staff/601 – Highly Confidential Staff Reply Testimony
Exhibit Staff/602 – Hydro One Key Executives and Directors
Exhibit Staff/603 – News and Other Cited Materials
Exhibit Staff/604 – Highly Confidential responses to Information Requests

Q. Does your testimony recap the history of this proceeding; political developments, including recent elections in the Province of Ontario (Province or Ontario); and Hydro One required Supplemental Reports to the Commission in response to the Bench Request of June 14, 2018 by Administrative Law Judge Patrick Power?

1 A. No. Staff presumes all readers are cognizant of the current filings in the
2 record to date. This Staff/600 testimony is incremental, rather than a
3 summary of prior materials.

4 **Introduction of Key Concerns**

5 **Q. What are your key concerns at this time, post filing of the Stipulation**
6 **and since the major political developments in Ontario have impacted**
7 **Hydro One?**

8 A. First, elements of the departure of 17 persons from Hydro One and its Board
9 of Directors (BOD) appear to reflect a closed-door, negotiated agreement that
10 did not follow the established process for removal of the Hydro One BOD in
11 the Governance Agreement that Hydro One has consistently cited as a major
12 limiting source on Provincial power and influence over Hydro One. For
13 example, Hydro One has repeatedly testified in this docket that the
14 Governance Agreement limits the Province's role to that of an investor in
15 Hydro One only, keeping the Province from acting as a manager of Hydro
16 One per se. In reality, the Province's ability to swiftly and equivocally remove
17 the entire Hydro One Board was alarming to Staff and other parties,
18 especially given assurances of political separation between the Province and
19 Hydro One in the record, and continues to cast a shadow of doubt that
20 processes agreed to, whether in the Governance Agreement or otherwise, will
21 be followed in the face of political interference.

22 Second, Board-level and executive leadership at Hydro One currently
23 remains very much unsettled. This is a significant concern to Staff and forces

1 Staff to recommend that the Commission take no action in this docket at this
2 time, pausing at least until more information can be gained about the new
3 Board, as well as executive management appointments and retention. For
4 example, the Province just recently implemented legislation requiring the
5 establishment of a new executive compensation framework for the Hydro One
6 Board, CEO, and other executives.¹ The legislation also requires the Ontario
7 Energy Board to exclude any compensation paid to the Hydro One CEO and
8 other executives from consumer rates.² As a result, Staff cautions that it is
9 too early to tell if the revised compensation framework (yet to be developed)
10 will be adequate to attract and retain top-notch executive management for the
11 proposed parent of Avista. Corporate culture alignment and vision for the
12 success of Avista — elements that Avista has continually stated are essential
13 to its decision to partner with Hydro One — along with assurances to stand
14 behind the Oregon Stipulated Commitments, are all embodied in executive
15 leadership, which has now in part exited Hydro One with the politics-driven
16 departure of top executives.

17 Although the replacement Hydro One directors might have the same
18 approach for corporate culture and vision for both Hydro One and Avista's
19 small Oregon gas customer segment, it is most certainly too early to predict
20 without an established track record, or any track record, for Staff to review.

¹ See Docket No. UM 1987, Fifth Supplemental Report Hydro One Limited's Response to June 14, 2018 Bench Request at 2, filed Sept. 14, 2018.

² *Id.*

1 Accordingly, the depth and tenure of Hydro One leadership who have actively
2 participated in the Commission's UM 1897 proceeding is now thin. Further,
3 the potential departure of additional Hydro One leaders and docket
4 participants would continue to weaken confidence in an enduring vision
5 inclusive of the Proposed Transaction in Ontario and how it will translate to a
6 net benefit to the small Oregon natural gas segment of Avista customers that
7 the Commission is charged to protect.

8 Third, Provincial leadership and the Hydro One BOD Chair have not
9 yet started to communicate consistently and regularly with credit rating
10 agencies, market analysts, and stakeholders showing Provincial support of
11 the Proposed Transaction. Provincial and BOD communications should,
12 going forward, indicate that a forward looking strategy has been formulated
13 after having performed financial analysis concluding the Province is financially
14 better off with the execution of the Proposed Transaction. Staff has closely
15 watched the market reaction to the events in Ontario and has seen the
16 Proposed Transaction drop from Positive one notch to neutral with regard to
17 credit ratings impact for Avista. Frankly, Staff was looking for more upward lift
18 in ratings than Standard and Poor's (S&P) provided; instead, S&P simply
19 offered an assurance that its current negative credit outlook³ for Hydro One
20 (which dropped following the political events in Ontario) would not apply to
21 Avista, and is restricted to Canadian subsidiaries of Hydro One.

³ Staff clarifies that regular long-view communication with rating agencies is necessary rather than optional. Given such communication, rating agencies may accept that a deviation from long-term strategy is temporary and being corrected.

1 Further, this communication should explicitly state that Provincial
2 leadership sees Hydro One as long-term supportive of Avista. A
3 consequence of the recent shifting of some power and authority to a new
4 BOD Chair who is designated by and responsive to the Province is the need
5 for the Province to communicate a clear long-run vision for Hydro One and its
6 future American subsidiary. Lack of such clear communication by the
7 Province and Board Chair could be harmful to Avista and its ratepayers. As
8 we have seen in some past merger cases, a lack in aligned visions can create
9 an “absentee” owner approach, and as a result, produce reduced credit
10 ratings and more costly than necessary access to capital for the Oregon-
11 regulated utility.

12 Fourth, should the Commission choose not to pause its decision in this
13 docket pending the development of additional information and some stability
14 at Hydro One, the Stipulated Commitments may need to be augmented by
15 the Commission or the parties in order to produce greater protection for
16 Avista. The Governance Commitment in the Stipulation in particular is likely
17 not effective at adequately mitigating political risks in Ontario and one
18 approach will be addressed by Staff witness Rose Anderson in Staff/700.

19 **Q. Is this list of four key concerns exhaustive and complete?**

20 A. No. Staff continues addressing further material concerns in Staff’s discussion
21 of Mr. Scarlett’s testimony and emphasizes that a definitive analysis and
22 conclusion cannot be provided by Staff at this time given the continuously
23 changing events in Ontario and at Hydro One, more of which Staff expects

1 will continue to unfold in the coming months. Thus, the important point to
2 note is that we are in a dynamic moment following material changes. We
3 have new understandings now that we did not have even two weeks ago,
4 such as the fact that the Hydro One CEO and the Chair of the BOD would not
5 be the same person. Instead, the Province has now nominated the new
6 Hydro One Board Chair, splitting off some of the authority from the former
7 Hydro One CEO role, allowing more direct control by the Province over Hydro
8 One.⁴

9 In sum, at this point in time, Staff recommends that the Commission take
10 no action in the docket until more information can be obtained that is
11 necessary for Staff and other parties to analyze the stability of Hydro One as
12 a parent and potential impacts to Avista. At minimum, Staff offers an
13 alternative Governance Commitment in Staff/700, but notes that additional
14 ring-fencing and/or commitments could be necessary pending future
15 developments at Hydro One and in Ontario.

16 **Review of Hydro One Supplemental Testimony**

17 **Q. Please provide Staff's Observations and Commentary on the**
18 **Supplemental Testimony provided by Hydro One and Avista officers,**
19 **executives, directors and experts.**

20 A. Staff first considers the Supplemental Testimony of Paul Dobson.

21 **Q. Please provide a summary of your Key Concerns in this testimony.**

4. See "Hydro One Names Board Chair, Acting CFO" by Nephela Kirong of S&P dated September 7, 2018 and provided in Exhibit Staff/603.

1 A. Paul Dobson, Hydro One Acting Chief Executive Officer (CEO), is now in his
2 sixth month with Hydro One. He came aboard as Chief Financial Officer
3 (CFO) on March 1, 2018, about six months into this proceeding; in other
4 words, he was not part of the team that met the Commission and Staff in the
5 summer of 2017 that was well versed in the needs of Avista and its Oregon-
6 specific customers.

7 Rather, Mr. Dobson was promoted to Acting CEO on July 11, 2018
8 after the sudden departure of former CEO Mayo Schmidt. Mr. Dobson
9 continued in a dual role, until Hydro One promoted Chris Lopez to Acting
10 CFO. Acting CEO Dobson offered his first set of testimony before the
11 Commission at the end of August, namely, his first direct connection with this
12 merger proceeding in Oregon.⁵

13 Mr. Dobson emphasizes that: A) Hydro One remains committed to the
14 merger, and B) the Strategic rationale for the merger remains.⁶

15 Staff cannot yet recommend that the Commission place substantial
16 weight on these assurances. The search for a non-acting Hydro One CEO is
17 ongoing at this time.⁷ The CEO of Hydro One now appears to be slated to be
18 a Director of Hydro One's Board of Directors, but not the Chair.⁸ Other

⁵ See Hydro One/1400 Dobson/2.

⁶ See Hydro One/1400 Dobson/3.

⁷ See "Hydro One Given Six Months to Trim Executive Pay by Rob Ferguson – dated August 15, 2018 and provided in Exhibit Staff/603.

⁸ Staff is basing this premise on the September 7, 2018 unanimous vote of Directors appointing Provincial replacement Interim Chair Thomas Woods as the new Chair of Hydro One's Board of Directors. This seems to imply that the President and CEO of Hydro One will NOT continue to exercise the consolidated influence and control of CEO/President/Chair going forward.

1 hurdles remain to be settled, including the reaction of existing Hydro One
2 executives to pending pay cuts.⁹

3 For example, if executive pay cuts are substantial enough to reflect the
4 relative pay differences between former Hydro One CEO Mayo Schmidt and
5 his executive-level counterpart that earns 90 percent less at the Crown
6 Corporation Ontario Hydro, this dramatic change in executive compensation
7 at Hydro One could equate to a material difference in Hydro One's tool box
8 for attracting and retaining senior management. This could leave new
9 executive management team holes in Hydro One leadership.

10 Staff noted previously that many of the new leaders at Hydro One are
11 unfamiliar with the Oregon Commission at this time. As a result, Staff
12 recommends that Acting CEO Dobson and Commissioners look for an
13 opportunity to interact face-to-face, perhaps in the November 15, 2018 time
14 frame reserved for a hearing and questions from Commissioners. The
15 opportunity for Hydro One leadership and NW commissioners to meet and
16 potentially develop confidence in each other could be integral to forming
17 smooth working relationships.

18 **Q. Please discuss the next testimony you reviewed.**

19 A. Thomas Woods, Hydro One BOD Chair, offers his first testimony before the
20 Commission. The new Hydro One BOD is comprised of persons with
21 financial, legal, and social benefit organizational experience. It appears to be

⁹ See Exhibit Staff/X02 article, "Hydro One Given Six Months to Trim Executive Pay."

1 a diverse BOD. Chair Woods indicates that selecting the new CEO is a top
2 priority for the Hydro One BOD, but timing is still uncertain. He indicates that
3 the selection process, inclusive of search, interviews, and negotiations cannot
4 be rushed.¹⁰

5 Chair Woods is “not aware of” any reason Hydro One would not honor
6 all-Parties’ Stipulated Commitments. Mr. Woods is new to Hydro One and
7 only just recently joined the Hydro One Board as a replacement Acting Chair
8 nominated by the Province of Ontario on August 14, 2018. In light of this,
9 Staff does not yet recommend the Commission give Mr. Wood’s testimony the
10 same weight as to presume full operational knowledge of Hydro One, its
11 finances, and its prospects as a strong parent for Avista at this time. Chair
12 Woods has shared his impressive financial background. This implies that he
13 is aware of a need for definitive supportive messaging from himself and
14 Provincial leadership illuminating a clear path forward for Hydro One and its
15 targeted U.S. acquisition.¹¹

16 Although James Scarlett and Christopher Lopez for Hydro One, and
17 Scott Morris and Mark Thies of Avista, are still part of the core merger team,
18 because a substantial portion of the responsibility for Hydro One governance
19 now resides with Chair Woods, Chair Woods should carry half the
20 responsibility for communicating the vision and efficaciousness of the merger
21 to Oregon Commissioners. All stakeholders will be relying on Chair Woods to

¹⁰ See Hydro One/1500 Woods/13.

¹¹ See Hydro One/1500 Woods/13-14.

1 rapidly convey cost-benefit-risk analysis about the Proposed Transaction
2 back to the Province and ongoing responsibilities to Avista's customers in a
3 handful of states, translating into either Province and Hydro One BOD
4 dynamic support for the Proposed Transaction, or on the other hand, clear
5 reservations regarding the Proposed Transaction.

6 **Q. What did you conclude about Christopher Lopez's testimony?**

7 A. Christopher Lopez, Hydro One Acting CFO, suggests that the benefits of the
8 proposed transaction remain unchanged for Avista ratepayers.¹²

9 Staff's perspective is more nuanced. As mentioned earlier, removal of
10 the Hydro One CEO and BOD was not credit positive by Standard and Poor's
11 and Moody's rating agencies.¹³ This rating could possibly be corrected by
12 statements of Provincial support for the Proposed Transaction, but Staff has
13 not heard anything of this nature to date.

14 **Q. Absent discussions of continuing foreign political influence and**
15 **questions about Avista governance, has Hydro One taken any clear**
16 **steps to improve its worthiness as a parent company, consistent with**
17 **Stipulated Commitments to date?**

18 A. Yes. Hydro One has taken steps to improve its liquidity position guaranteeing
19 that it can meet the obligations in the Stipulated Commitments. Hydro One
20 roughly doubled its credit facilities and short term borrowing capability since

¹² See Hydro One/1800 Lopez/2.

¹³ See Fifth Supplement Report to Hydro One Limited's Response to the June 14, 2018, Bench Request.

1 2016 year end.¹⁴ This financial reserve can be used to meet the Oregon
2 Stipulated Commitments, including financial performance guarantees and
3 hold harmless representations. In other words, albeit the new pressing
4 political and governance concerns, Staff has more confidence that Hydro One
5 could now act quickly if necessary to remedy contingencies that might arise
6 with regard to upholding Hydro One's commitments to Avista as it attempts to
7 grow into a multinational corporation with diverse utility holdings in the U.S. as
8 well as Canada.

9 Staff views this step as a material positive step forward in terms of ability
10 to back up the current commitments. In other words, Stipulated Oregon
11 Commitments are not merely statements of intention, but rather are financial
12 arrangements that have the means to be met at any time, assuming Hydro
13 One chooses to use the reserve to support its Stipulated Commitments. As is
14 usual in finance, having the ability to access liquidity at very controlled cost,
15 arranged in advance of any potential future market downturns, helps ensure
16 that these credit resources actually do not have to be drawn down on. Thus,
17 the Applicant has taken cost effective action (in obtaining Canadian \$4 Billion
18 in credit lines) to guarantee it can meet the Stipulated Commitments as a
19 show of its continued commitment to this merger.

20 Hydro One now has the larger and better structured liquidity to make
21 Hydro One not just a solid counterparty in Ontario, but also in larger markets

¹¹. See the 2016 Hydro One Annual Report, under Liquidity
at <https://www.hydroone.com/investorrelations/Reports/Hydro%20One%20Limited%20Annual%20Report%202016.pdf>

1 beyond Canada.¹⁵ Though there is a lag in recognition of a strong liquidity
2 position (described on Hydro One/800 Lopez/8), Staff suspects this change
3 will likely prove credit positive for both Hydro One and Avista if the Proposed
4 Transaction is completed.

5 **Q. Hydro One and Avista have indicated that they were culturally well**
6 **aligned, is that accurate and continuing?**

7 A. Whether Hydro One and Avista become and remain culturally well aligned is
8 in part dependent on the presence of leadership like that provided to date by
9 Mr. Lopez and Mr. Scarlett. In their possible absence, Staff could not
10 represent that Hydro One will be equally nimble and sharing of a common
11 vision of a positive future with Avista's current management. That common
12 vision was a big driver of the forward movement of the Proposed Transaction,
13 but shared vision cannot be presumed to be as durable now as in April of this
14 year, and it can change at any time in the future. Therefore, the Stipulated
15 Commitments must be robust enough to counteract future political, financial,
16 and governance risks to Avista.

17 **Q. Acting CFO Lopez recommends that one not read too much into**
18 **Hydro One's decline in stock price. Do you concur?**

19 A. Yes. Staff observes the Yahoo Finance stock price for Hydro One Limited
20 (H.TO).

¹⁵ A counterparty is an entity or set of entities who might bear the risk of the other side of a market or financial transaction. When an entity makes a deal or executes a financial transaction with a utility, that counterparty could look for a letter or credit or other financial surety were the utility's credit and reputation uncertain in the mind of that counterparty. This is one way in which exemplary credit and reputation avoid or reduce transactional costs.



Staff sees the Hydro One stock price decline as reflective of increased uncertainty

8 following the removal of the Hydro One BOD and CEO, and Executive VP
 9 Pugliese's departure. Hydro One stock price fell about 10 percent over six
 10 months.

11 **Q. Do investors closely associate corporate capability and anticipated
 12 future performance with the presence of certain senior management?**

13 A. Yes. Corporate communication to investors often suggests that difficult or
 14 new endeavors can be achieved because of a talented management team.
 15 Hydro One has emphasized that the Commission should have confidence in
 16 Hydro One due to the leadership of CEO Schmidt. Consequently, the
 17 removal of management and guidance that was presented as an assuring
 18 reason for confidence in Hydro One's ability to execute on a clear business
 19 plan that not only impacts Oregon customers through acquisition of Avista,
 20 but also serves as a first step for a Hydro One platform for future U.S. utility
 21 acquisitions, increases investor uncertainty. Acting Hydro One CEO Dobson
 22 can try to reassure concerned stakeholders, but by the nature of his position

1 cannot guarantee that policy set now would be the core thinking of the CEO
2 now being sought for by Hydro One.

3 **Q. Is Staff implying CFO is not a good background for a utility CEO?**

4 A. No. Staff merely notes that a CEO like PGE's Maria Pope joined PGE as
5 senior VP of Finance, CFO and Treasurer, and then worked as part of a
6 management team for about *a decade* before stepping up to CEO. Jack
7 Davis, Chair of PGE's Board of Directors, emphasized that on top of CEO
8 Pope's capabilities and prior experience, was a track record of success at
9 PGE for nearly ten years and, as a result, a deep understanding of PGE
10 customers' needs and PGE's energy business.¹⁶

11 **Q. How does that relate to the Proposed Transaction?**

12 A. Staff's point is that a corporate culture well attuned to customers, regulators,
13 and operating territory concerns, coupled with a viable growth strategy
14 satisfying investors, takes time to develop and takes time to assimilate into
15 the governing principles guiding executive actions. Staff is suggesting that
16 changes at Hydro One may take more time to complete than the remaining
17 timeline of this merger proceeding. Staff cannot rely on an assessment of
18 what is not yet in place, but rather, should the Commission approve the
19 merger, all must rely on the strength of the Stipulated Commitments
20 themselves and any necessary enhancements thereto that the Commission
21 directs, or the parties propose, to better address future uncertainty.

¹⁶ See "PGE Announces CEO Succession Plan" of July 28, 2017

1 **Q. Why does Staff recommend, at minimum, certain enhancements be**
2 **made to Stipulated Commitments regarding Avista Governance and**
3 **compensation?**

4 A. It is unreasonable to ask the remaining well-meaning executives at Hydro
5 One to guarantee outcomes for Avista personally if they cannot guarantee
6 they will be employed at Hydro One. It is also not reasonable to ask new
7 Provincial leadership in Ontario to guarantee any particular course of action
8 before the new government has assembled information on a variety of new
9 topics and settled people into positions of new responsibilities, and because
10 clearly, the politics and policy direction may shift in Ontario with each election
11 cycle. Rather, Staff suggest that the Stipulated Commitments (modified at
12 minimum to enhance select Avista Governance provisions) themselves must
13 be strong enough per the assessment of the Oregon Commissioners to bear
14 the uncertainties inherent in the transitions in Ontario and at Hydro One if the
15 Proposed Transaction is to produce a net benefit for Oregon natural gas
16 customers, a notably small segment of the Avista family.

17 **Q. What insights did Mr. Scarlett offer in his testimony that Staff**
18 **reviewed?**

19 A. James Scarlett, Executive Vice President (VP) and Chief Legal Officer for
20 Hydro One, now provides continuity since before the former CEO's departure
21 and asserts that the Governance of Hydro One reflected in Section 4.7 of the
22 Governance Agreement still provides for continuity for Hydro One; and while
23 there are provisions to address executive compensation for Hydro One, these

1 provisions do not extend to subsidiaries outside Canada, so the Commission
2 should not be concerned. Mr. Scarlett also provides a summary of pertinent
3 recent events in Ontario.

4 Both Staff and respected rating agencies find that legislating changes
5 through the Hydro One Accountability Act to direct Ontario regulators to
6 restructure Hydro One compensation at this Investor Owned Utility (IOU)
7 downward to be a material, and not necessarily positive, change. Mr. Scarlett
8 summarizes the Hydro One Accountability Act in part as follows:¹⁷

9 *The Hydro One Accountability Act (the "Act")*
10 *addresses concerns about compensation for Hydro One*
11 *executives located in Ontario. It requires the board of*
12 *Hydro One to establish a new compensation framework for*
13 *the Board of Directors, CEO, and other executives in*
14 *consultation with the Province and the other five largest*
15 *shareholders. The Act gives the Management Board of*
16 *Cabinet authority to approve this compensation framework*
17 *and any amendments to it as well as to issue directives*
18 *governing the compensation of the directors, CEO, and*
19 *other executives.*

20 *The Act also amends the Ontario Energy Board Act,*
21 *1998 to require the Ontario Energy Board to exclude any*
22 *amount in respect of compensation paid to the CEO and*
23 *executives from consumer rates for Hydro One or its*
24 *subsidiaries.*

25 Further, Mr. Scarlett represents that "he believes" that the Governance
26 Agreement continues to govern the relationship between the Province of
27 Ontario (Province) and Hydro One. This is an important issue, but his
28 statement is not a guarantee.¹⁸ Prior to the recent elections for Premier in

¹⁷ See Hydro One/1600 Scarlett/10 for greater detail.

¹⁸ See Hydro One/1601 Scarlett/6 General Provision 16.

1 Ontario, Hydro One consistently represented that the Governance Agreement
2 completely separated Ontario from acting in a manager role with respect to
3 Hydro One, specifically that the Province will act only as an investor and not
4 as a manager of Hydro One.¹⁹

5 By contrast, how the Province acted after Premier Ford was elected does
6 not reflect this requirement in the Governance Agreement or the former
7 understanding of Staff and the other parties to this docket. Further, how the
8 Province sees its role with Hydro One can change over time, and in particular,
9 in an election with a change in the governing party of Ontario. In sum, the
10 clear exertion of extraordinary Provincial influence over prescribed process in
11 the Governance Agreement was inconsistent with a strict investor role for the
12 Province.

13 **Q. Does Mr. Scarlett make other representations in his testimony?**

14 A. Mr. Scarlett also represents that he is “not aware” of any further action that
15 the Province intends to take with Hydro One. This offers little assurance to
16 Staff in terms of when to expect stability and continuity at the Hydro One
17 Board and executive management level. Moreover, the new government in
18 Ontario may have other items on its agenda and may simply have not gotten
19 to many things at this juncture beyond setting up a new administration.²⁰

20 **Q. What does Mr. Scarlett think of the Stipulated Commitments in light of**
21 **recent events in Ontario?**

¹⁹ Hydro One 1600 Scarlett/starting at 12.

²⁰ See Hydro One 1600 Scarlett/starting at 12, 13.

1 A. Mr. Scarlett represents that he believes the 115 Stipulated Commitments will
2 protect Avista independence and financial health if the Proposed Transaction
3 is executed.²¹

4 Mr. Scarlett also notes that Avista and Hydro One have identified the
5 funding mechanisms and liquidity that can reassure all U.S. State
6 Commissions and Credit Rating Agencies that the Stipulated Commitments
7 have solid financial underpinning. Mr. Scarlett clarifies in his testimony that
8 the Stipulated Commitments are not now contingent on any Provincial
9 funding.²²

10 **Q. Does Mr. Scarlett introduce any proposed new language for the**
11 **Stipulated Commitments?**

12 A. Yes. Mr. Scarlett offers additional language for consideration appended to
13 Stipulated Condition 5 pertaining to the Avista BOD:

14 *“ ... provided, however, that this exception to clause (ii)*
15 *hereof shall not apply if, at any time a circumstance arises,*
16 *and during the pendency of any such circumstance,*
17 *whereby the Province of Ontario (“Ontario”) exercises its*
18 *rights as a shareholder of Parent, uses legislative authority*
19 *or acts in any other manner whatsoever, that results, or*
20 *would result, in Ontario appointing nominees to the board*
21 *of directors of Parent that constitute, or would constitute a*
22 *majority of the directors of such board).”*

23 The above proposed incremental language is an expansion to the
24 language in Commitment No. 5 (as shown in Hydro One/1600 Scarlett/34).

25 Mr. Scarlett explains that this language attempts to preserve the

²¹ See Hydro One 1600 Scarlett/starting at 14.

²² See Hydro One 1600 Scarlett/starting at 14.

1 independence of the Avista Board of Directors in the event that the Province
2 takes action in the future to control a majority of directors.

3 **Q. Does Staff find the proposed incremental language in Condition 5**
4 **sufficient given recent events?**

5 A. No. Staff prefers an alternative approach to reinforcing Avista governance in
6 Commitment 5 provided in Exhibits Staff/700 Anderson testimony.

7 **Q. Does Executive VP Scarlett assume additional responsibilities in his**
8 **testimony?**

9 A. Yes. Mr. Scarlett adopts the testimony of, and provides the continuity from,
10 former CEO Mayo Schmidt. Exec. VP Scarlett has one of the longer tenures
11 with Hydro One in its transition first to an Investor Owned Utility (IOU) in 2015
12 and then toward becoming an international company able to harmonize the
13 interests of diverse stakeholders.²³

14 Mr. Scarlett also highlights the same three factors that are incremental
15 concerns of Staff after the departure of Former Hydro One CEO Schmidt, the
16 entire Hydro One BOD, and the departure of former Hydro One Exec VP
17 Ferio Pugliese, including:

18 1. The Province's ability to introduce or threaten legislation and achieve
19 swift, direct results, as evidenced by the events that have transpired
20 since the June 2018 elections in Ontario.

21 Staff's Note: As an example, new legislation in Ontario could change
22 Hydro One's policies and governance, impacting how it interacts with

²³ Hydro One had its Initial Public Offering (IPO) on the Toronto Stock Exchange in 2015.

1 Avista, including who Hydro One would appoint to serve on Avista's
2 BOD.

3 2. The passage of the Hydro One Accountability Act, 2018.²⁴

4 Staff's Note: For example, this could set revised expectations to which
5 persons in Hydro One-led companies, including Avista, must aspire to.

6 3. The new government's public promise to reduce rates in Ontario.

7 Staff's Note: Staff is concerned that there could be pressure to defer
8 Avista utility problems or costs to the future, creating intergenerational
9 inequity. There can also be a desire to draw all Avista malleable cash
10 flows toward the focus area of reducing rates in Ontario, rather than
11 Oregon.

12 Also as a mental exercise, were the Province to have difficulty in
13 addressing infrastructure spending overruns or to finding ways to lower
14 ratepayers bills in Ontario, one could envision even well-meaning people
15 being directed to look at Avista and see what might be done to increase
16 cash flows employing a short-term perspective. Thus, the financial ring-
17 fencing must not just address stated process, but also be robust enough
18 to deter and deflect exertion of future Provincial pressure.

19 **Q. Does Staff have additional concerns beyond those expressed by Mr.**
20 **Scarlett?**

21 A. Yes. Staff has additional concerns, including:

²⁴ See Hydro One/1600 Scarlett/starting at page 10.

1 First, as far as Staff can tell, both the Government of Ontario and those
2 recently departing Hydro One, including its BOD, have agreed to restrain
3 criticism to civil discourse in explaining the reasoning behind and
4 circumstances of their departure. In other words, Staff likely does not have
5 the full story and the fully voiced reservations of those departing the Hydro
6 One. Were there keen insights on the mind of the departing CEO Schmidt,
7 they certainly are not public. Those seeking harmony in Ontario are not likely
8 to discuss any material obstacles to continuity of Hydro One's execution of its
9 strategic vision of U.S. acquisitions that was developed prior to the June
10 elections in Ontario. In short, the lack of transparency and access to
11 information is a new and additional concern.

12 As another example, Staff does not fully understand the reasons behind
13 the departure of Ferio Pugliese, former Hydro One Exec. VP of Customer
14 Care and Corporate Affairs. Staff understands that Mr. Pugliese earned a
15 base salary of \$525,000 and a total annual compensation of \$1.95 million in
16 2017 at Hydro One. He is apparently leaving Hydro One for a new position
17 elsewhere, but the public and Staff cannot access the details of his departure.
18 More transparency would help alleviate Staff concerns.

19 Second, Ontario Premier Doug Ford has spoken publically about the new
20 *Interim Chair* of the Hydro One BOD Tom Woods, stating that "He will recruit
21 a new long-term senior management team for the company, a team that will

1 respect the people of Ontario.”²⁵ This appears to be a powerful statement
2 enacting change through a designated Provincial agent. But an effective
3 management team is essential to Hydro One’s success as a multinational
4 utility holding company, including parent of Avista.

5 Staff cannot determine if such a statement is simply rhetoric or actual
6 intent of the new Premier explaining his next steps in mixing up things at
7 Hydro One. As much of the campaign discourse has translated into actions
8 going beyond apparent contractual and procedural norms, one must not
9 dismiss what the Premier says lightly. While this talk is likely intended to
10 please local voters and ratepayers, it literally seems to be saying Mr. Ford
11 intends to replace the current executives at Hydro One with a new, lower-paid
12 team. This could be an incremental action in the future to replacing the CEO
13 Schmidt and the former BOD. The statement states literally that the
14 Premier’s preferred focus for Hydro One is Provincial and not international, in
15 other words, not Oregon natural gas customers. As a result, the augmented
16 Stipulated Commitments, or the Commission’s incremental commitments,
17 must remain effective even should the Province replace current executives
18 having cohesion around a strategic international growth plan to maximize
19 value for shareholders including Ontario (47 percent ownership) with
20 executives selected for a narrower Provincial perspective.²⁶

²⁵ See Exhibit Staff/602 article, “Hydro One Given Six Months to Trim Executive Pay.”

²⁶ For consistency, Staff draws the reference to 47 percent ownership of Hydro One by the Province of Ontario from the Exhibit Staff/602 article, “Hydro One Given Six Months to Trim Executive Pay.”

1 While Staff expected that management would change over time, Staff did
2 not anticipate that the entire Hydro One BOD and potentially Hydro One
3 Management Team would suddenly be replaced, severing continuity and
4 replacing strategic direction. Rather, Staff anticipated modest incremental
5 changes over an extended period of time. Neither have happened.

6 Currently, there is still a core management team, perhaps centered on
7 Mr. Scarlett, which appears to be able to execute Hydro One's strategic plan
8 expressed to the Commission prior to the elections. But Staff cannot know
9 now whether the Province intends to merely reduce the pay of current Hydro
10 One executives, or also intends to replace them with persons more
11 responsive to the Province's needs and desired agenda. Further, Staff is not
12 in the position to know if remaining Hydro One executive management will
13 find the new pay offered sometime in the next six months as enough of a
14 reason to stay. In other words, it is too early to know if Premier Ford's
15 administration has correctly benchmarked utility management pay levels that
16 can attract and retain the level of skilled management that Staff expects for
17 the parent of Avista.²⁷

18 Third, Staff is concerned about the uncertainty about whether formal,
19 established processes for changes at Hydro One will indeed be followed, and
20 therefore can be relied upon for Staff and party analysis. The outcome of the

²⁷ Again please see Exhibit Staff/602 article, "Hydro One Given Six Months to Trim Executive Pay" by Rob Ferguson – Queen's Park Bureau – The Star

1 elections,²⁸ in terms of impact to Hydro One, was surprising because it was
2 not entirely driven by formerly understood expectations. The interjection of
3 new overriding Provincial concerns able to set aside elements of negotiated
4 process (the Governance Agreement) is informative but quite unsettling. .

5 And fourth, much of Hydro One's executive team is new to Hydro One,
6 some starting with Hydro One only 6 months ago. While a solid, seasoned
7 executive team can work through shocks such as a change in some
8 executives, a largely new executive group likely has not yet gelled to a
9 smoothly executing team with a clear sense of purpose and direction. That
10 makes the executives with the longer history essential to Hydro One support
11 for new ventures, ongoing morale, and confidence in leadership.

12 **Q. What testimony did Staff focus on next?**

13 A. Scott Morris, Chief Executive Officer (CEO) of Avista, has to date emphasized
14 the close meeting of minds that he and former Hydro One CEO Mayo
15 Schmidt have had. He has also emphasized that CEO Schmidt was
16 committed to have Avista continue to operate independently, while bringing
17 the benefits of scale and greater access to finance at lower cost, and shared
18 expertise and innovation over time, to Avista's operations in the Northwest.

19 Generally for Staff, a great deal of confidence hinged on CEOs Morris
20 and Schmidt sharing a common positive long-run vision with the financial
21 ability to back it up. As Mr. Morris notes, the departure of CEO Mayo Schmidt

²⁸ For greater detail, Mr. Scarlett summarizes the June 7, 2018, election and aftermath starting on page three of his testimony.

1 calls into question just what about this shared vision the Province has
2 rejected in the wholesale ejection of CEO Schmidt and the entire Hydro One
3 BOD. This remains unsettled to-date.²⁹

4 **Q. Does Mr. Morris' testimony indicate recent events in Ontario were**
5 **anticipated in Avista's thinking and planning?**

6 A. Staff reads in CEO Morris's testimony of August 30, 2018, that Mr. Morris is
7 confident looking forward, presumably based on what he now knows and is
8 aware of. That gets back to the disturbing concept of "surprise." As Mr.
9 Morris notes, the purpose of the Stipulated Commitments is "to ensure the
10 way Avista conducts business will continue for the long run." Staff interjects, "
11 ... despite any surprises".

12 Staff is not appreciative of the lively excitement of "surprise." Historically,
13 Commission approved merger and acquisition controls have mitigated against
14 the negative impacts of "surprise" even to the example of bankruptcy when
15 Enron, the parent to Portland General Electric Company (PGE), turned to
16 non-transparent practices like off-book accounting. Stipulated Commitments
17 must be able to withstand any turmoil at the parent-level, ensuring that it does
18 not bleed down to affect Avista. Staff therefore looks for, at minimum,
19 reinforcement of Stipulated Commitment 5 regarding Avista's governance.

20 **Q. Does Staff recommend the Commission ignore possible rhetoric until**
21 **something materializes into definitive action?**

²⁹ See Avista/1700 Morris/2.

1 A. Yes. Going forward, statements such as Hydro One confidence that the new
2 Hydro One BOD will create a new successful senior management team for
3 Hydro One, must cause Staff to suppose “new” might mean different people
4 not instilled with the common vision formerly shared by CEOs Morris and
5 Schmidt. Therefore, the Stipulated Commitments and particularly those
6 provisions regarding governance of Avista must be clearly effective “to ensure
7 the way Avista conducts business will continue for the long run” even should
8 a new executive team at Hydro One, highly responsive to the Province, be
9 implemented. This is a tall task.

10 **Q. Is Staff recommending the Commission have cautious patience**
11 **before moving toward a decision in this proceeding?**

12 A. Absolutely. As the search for a new Hydro One CEO has just commenced
13 and to Staff’s knowledge, the search committee cannot say what the pay is
14 for that position, Staff suggests that the Commission wait until more
15 information can be known and analyzed before making a decision in this
16 docket. As an alternative, should the Commission seek to approve the
17 merger, it must at minimum look to a stronger Avista governance
18 commitment. Commitment 5 should be effective and durable regardless of
19 who is chosen to lead Hydro One as CEO, who comprises Hydro One’s
20 management team, whether or not CEO Morris remains for the long-run at
21 Avista, and whether the Province formulates different policies and takes or
22 does not take additional like actions or exert extraordinary influence in the
23 future.

1 Clear commitments should leave all participants and stakeholders,
2 including all investors, without doubt of the certain application precluding
3 future challenge or argument. Mr. Morris notes the importance of ensuring
4 that Avista's corporate culture and its way of doing business will continue for
5 the long-term.³⁰

6 **Q. Provincial Leadership appears to be seeking to create harmony**
7 **between Hydro One and its Ontario ratepayers. Is like harmony**
8 **between Avista and the Northwestern U.S. area in which the Company**
9 **operates also an important requirement for a successful merger?**

10 A. Absolutely. Staff also understands that a corporate culture targeting long-run
11 success for a company and its shareholders in harmony with the region in
12 which Avista operates is a critical success factor. Staff must presuppose that
13 Premier Ford's administration has concluded that this harmony was not being
14 achieved by Hydro One in Ontario. Yet a corporate culture is embedded in its
15 executives. Potential removal of all executive management and an entire
16 board of directors can effectively remove much corporate culture. Whether
17 Mr. Ford will install a new and different corporate culture at Hydro One
18 remains unclear.

19 **Q. Are there recent examples where campaign policy platforms in a**
20 **Canadian provincial election changed after further economic analysis**
21 **was performed once a change of government was accomplished?**

³⁰ See Avista/1700 Morris/2.

1 A. Yes. Staff offers this example to note that the Province could potentially
2 change its policy direction in a positive way for the Proposed Transaction —
3 it's just too early to tell. For grounding on this issue, consider the experience
4 of a newly elected government in British Columbia. In the preceding
5 elections, a key platform idea was dam removal and termination of large
6 hydro projects such as at Site C on the Peace River.³¹ After the election, and
7 after much analysis, the new government in British Columbia found it was not
8 economic, all factors including state of construction considered, to terminate
9 and remove the dams then under construction.

10 Similarly, returning to the days of Hydro One being a Crown Corporation
11 makes for a better sound bite than it does economic policy. First, the
12 Province would need to tax or borrow to generate the funds to repurchase
13 over half of the issued and outstanding shares of common stock. The Market
14 Cap for Hydro One as of September 6, 2018, according to Yahoo Finance is
15 about U.S. \$11.361 Billion.

16 Second, reversion to a Crown Corporation would obliterate billions of
17 dollars of future cash flows to the Province and other shareholders that would
18 no longer be realized from dividends flowing from external holdings. As
19 earlier mentioned, Avista valuation is growing, meaning a possible future sale
20 of Avista would also be expected to create attractive future cash flow into the
21 Province.

³¹ See the article, "In British Columbia, Electricity Rates Become Election Issue" by Gene Laverty – SNL Financial LC (SNL) – Apr. 13, 2017. Note: SNL was purchased by S&P Global Market Intelligence who now archives this article

1 Third, First Nations and unions are now also shareholders of Hydro One,
2 and would see the value of their holdings decline were Hydro One to become
3 a Crown Corporation again.

4 **Q. Are Stipulated Commitments designed to prevent Hydro One from**
5 **becoming a Crown Corporation again?**

6 A. No. Staff does not intrude into Hydro One governance. Rather, the economic
7 impact of the associated costs to Ontario are the deterrent for that possibility
8 and the Stipulated Conditions that provide financial ring-fencing of Avista are
9 also intended to serve as such a deterrent and risk mitigation.

10 **Q. Hydro One testimony indicated that foreign ownership of U.S. utilities**
11 **is a common occurrence. Does Staff have a standard position on**
12 **foreign ownership of Commission-regulated energy utilities?**

13 A. No. Staff does not disagree that many states in the lower 48 U.S. states have
14 foreign ownership of utilities now, or have had such ownership in the past. As
15 an example, PacifiCorp was, at one point in time, owned by Scottish Power
16 P.L.C. (Scottish Power). Scottish Power is now owned by Iberdrola.
17 Iberdrola is a Spanish public multinational electric utility company. However,
18 this fact is not to be interpreted to imply that all foreign parent companies
19 have the same amount of risk to their U.S. utility subsidiaries, or that all
20 foreign parent companies also have a foreign government as a powerful
21 investor due to a majority ownership stake in their stock.

1 **Q. By contrast, is foreign government action to directly control the**
2 **governance of a publicly-traded investor-owned utility (IOU) normal**
3 **and routine?**

4 A. No. Provincial actions resulted in the departure of Hydro One's CEO, its
5 entire BOD, and directly or indirectly, Hydro One Executive Vice President
6 Ferio Pugliese. Removal of CEO and BOD of Hydro One were put into effect
7 as of close of the decision day.

8 Note that when PacifiCorp was purchased by Scottish Power, Scottish
9 power was not owned by a government entity. Rather in that transaction,
10 each PacifiCorp stockholder received one Scottish Power American
11 depository receipt worth \$25.25 for every PacifiCorp share, a premium of
12 about 21.7 percent to a near closing price for PacifiCorp stock.³²

13 **Q. Would review of ring-fencing and commitments in a non-**
14 **consolidation opinion assure that the Stipulated Commitments are**
15 **strong enough to fully protect Avista?**

16 A. Not necessarily. A non-consolidation opinion might not certify that the
17 Stipulated Commitments will be effective under extraordinary influence
18 absent, at minimum, reinforcement of Condition 5 as in Staff's Proposal. This
19 exception would be when the governance Commitments provide for sufficient
20 Avista independence despite any future developments in Ontario and
21 regardless of whether the Commission maintains full visibility into Ontario

³² See "Scottish Power Seen in Deal for PacifiCorp" by Laura M. Holson in the archives of the NY Times – Archive Year 1998.

1 planning and decision making. Essentially, the governance Commitments
2 and ring-fencing Commitments should be effective in the Northwestern United
3 States without the need for State Commissions in the Northwest to heavily
4 engage in proceedings in Ontario.

5 **Q. What does Staff recommend in this regard?**

6 A. Staff recommends the Commission focus on the element of extraordinary
7 influence with respect to governance of Avista. Exercise of extraordinary
8 influence, in addition to departure from established procedure in the
9 Governance Agreement, represents a material change demanding further
10 review of at least Commitment 5. Staff thinks Hydro One and Avista have
11 targeted the appropriate area of concern to start. However, Staff has a
12 somewhat different perspective offered in Staff's Proposal described in
13 Exhibit Staff/700.

14 **Q. Did Staff consider the recent Oncor Merger in forming Staff's /700**
15 **Proposal?**

16 A. Staff did consider the merger of Sempra Energy (Sempra or SRE) and Oncor
17 Electric Delivery Company, LLC (Oncor) in an approximately \$9.45 Billion
18 transaction. SRE's completion of the acquisition of Energy Future Holdings
19 Corp (EFH) with its 80 percent indirect ownership interest in Oncor in March
20 of 2018 created a utility holding company with the largest U.S. customer
21 base. The Public Utility Commission of Texas (TX PUC) strongly rejected
22 suitor after suitor before it finally approved Sempra ownership. The TX PUC
23 wanted to make sure its ring fencing conditions for Oncor (conditions which

1 had shielded it through a contentious parental bankruptcy of EFH) endured,
2 and that Texas-concerns *were the first priority* for Oncor's executive
3 management and BOD.

4 To preserve the TX focus, the TX PUC insisted on a majority
5 independent BOD for Oncor. NextEra Energy, an earlier suitor of Oncor, had
6 called the TX PUC demands a "Deal Killer." Yet, the TX PUC staff and
7 commission were not dissuaded from their position; Staff interprets their
8 testimony and decisions as signaling, "Don't Mess with Texas." And so Texas
9 regulators confidently rejected a variety of deals. By contrast, Sempra
10 embraced the independent BOD concept. It didn't change dividend cash
11 flows. It didn't impair the long-term growth in the value of Oncor. The TX
12 PUC was satisfied that its expectations would be met and that Sempra's
13 focus would be locally responsive.

14 **Q. Does Staff's Proposal just mirror the Oncor merger commitments?**

15 A. No. The Oncor approach merely informed some aspects of Staff's
16 Recommendation. As discussed by Rose Anderson in Exhibit Staff/700,
17 Staff's Proposal is a potential solution to limiting improper influence on Avista,
18 however, Staff's primary recommendation remains for the Commission to wait
19 for further stability of transitions at Hydro One and the Province before a
20 grounded, analytical decision can be made.

21 This governance approach presumes that the Province wants very high
22 probability of success for Hydro One, just as Staff wants very high probability
23 of success for Avista so as to provide safe and reliable utility services at just

1 and reasonable rates *for the long-term*. This long-term approach is highly
2 likely to generate a higher return for Ontario and other Hydro One investors in
3 terms of dividends and enterprise value appreciation over time at relatively
4 low risk compared to proxy investments. Essentially that would be a win-win
5 situation looking far into the future.

6 **Q. Please recap this point.**

7 A. Hydro One and Avista identify the weak Commitment No. 5, but their proposal
8 as shown in Avista/1700 Morris/14 is only triggered by an extraordinary action
9 on the part of the Province. It may not be clear to Staff or the Commission
10 that the Province has taken an extraordinary action in advance of a news
11 release to that effect. This gets back to Staff's concerns that the robustness
12 of the Stipulated Commitments that preserve Avista continuity of independent
13 regional centric action and the resilience in response to an external policy
14 change should not hinge on whether the Province keeps Hydro One, and
15 Hydro One keeps the Commission informed of the Province's actions.

16 Further, we have seen that should an extraordinary Provincial exercise of
17 influence occur, there might be an agreement to bypass expected process
18 and/or maintain a positive public demeanor regardless. Thus, Hydro One's
19 proposed language is problematic.

20 **Q. If Staff's Proposal was accepted by All Parties in this proceeding in**
21 **Oregon, could Staff then recommend that the Commission approve**
22 **the proposed transaction subject to the Stipulated Conditions, with**
23 **amended Condition 5 to incorporate Staff's Proposal?**

1 A. As of the time of publication of this testimony, Staff cannot yet say what
2 provisions of governance will satisfy the five State Commissions, as well as
3 all other stakeholders. However, the Staff's Proposal is a minimum
4 reasonable element for consideration. As events unfold, there may be more
5 viable solutions that allow Ontario and the Northwest US States in which
6 Avista does business to both find confidence that local interests are served
7 well while creating a more valuable aggregate company with lower cost of
8 capital and broader application of deployed resources, but Staff does not
9 have enough information on which to form a definitive analysis and
10 recommendation at this time.

11 Executives at Hydro One, at Avista, and participants in the proceedings
12 before five state commissions have worked hard to identify viable approaches
13 that attempt to mitigate all concerns raised to date. The Stipulated Oregon
14 Commitments are strong and thorough, but again, are carefully designed to
15 mitigate risk of harm to Avista, and cannot under all circumstances, guarantee
16 prevention of harm to Avista. The issue coming to light here is that more
17 circumstances, and more severe circumstances, can arise in the Hydro One
18 context than the parties thought possible based on the record developed in
19 this proceeding.

20 Staff further extends its assessment that other work beyond governance
21 on Stipulated Commitments may need to be considered for all stakeholders
22 that seek positive outcomes for each of Avista, Hydro One, all of their
23 ratepayers, persons who reside in their service territories, and their investors

1 (including the Province) to be satisfied as to the efficacy of the Proposed
2 Transaction.

3 **Q. Is there certainty of success of the Proposed Transaction at this**
4 **time?**

5 A. Staff cautions that success is not a certainty. Successful multifaceted
6 international companies tend to have strong internal controls. Such
7 successful companies also tend to have strong core management teams that
8 have a clear unifying vision that identifies some efforts as compatible and
9 other opportunities as inconsistent with the corporate mission. Such
10 companies know what they do well and why, relying on their core executive
11 management to provide continuity through change. For example, in forming a
12 holding company in UM 1804, Northwest Natural Gas Company had to look at
13 what that Company did well to identify opportunities that it was well poised to
14 execute effectively for its current customers and future acquired customers.

15 **Q. Can the Proposed Transaction succeed absent vocal Provincial**
16 **support?**

17 A. Rating agencies, as well as other entities, may well need to see signs of
18 Provincial commitment to long-term thinking and effective long-term growth
19 strategies for Hydro One before increasing credit ratings. If detected,
20 regulatory and investor support likely translates into credit positive actions by
21 Standard and Poor's and Moody's. Conversely, close management by a
22 government substituting its understandings, goals and timing, for utility

1 executive expertise and judgement likely will not engender positive treatment
2 by the rating agencies.³³

3 Further, developing and maintaining an executive team that works
4 together over time to mesh into a core driver of success is still very much a
5 work in progress at Hydro One. To use a crew analogy, a seasoned
6 coxswain and 8 long-paired oarsman rowing in smooth harmony can race a
7 boat far more efficiently and successfully than a talented group of oarsman
8 new to each other and not consistently rowing together. In this regard, the
9 Provincial Action in replacing the Hydro One CEO and the entire BOD of
10 Hydro One is a material change and a serious setback to Hydro One.
11 Whether it can be overcome remains to be seen. Staff is under no illusion
12 that continued shuffling of management amidst a search for a new CEO
13 should be seen as routine or immaterial.

14 **Q. Is Staff's perspective similar to that of Standard and Poor's (S&P)?**

15 A. Yes. The September 13, 2018, S&P downgrades of Hydro One were driven
16 by S&P concerns regarding Government of Ontario recently implemented
17 legislation which S&P considered a governance deficiency lowering S&P's
18 management and governance assessment of Hydro One and its Canadian
19 subsidiaries.³⁴ While S&P notes that this negative outlook and downgrade
20 would not carry to Avista should the Proposed Transaction be completed, one

³³ Staff bases this understanding in part on the fifth supplemental report in response to Judge Power's June 14, 2018, bench request focusing on the September 13, 2018, S&P Downgrade of Hydro One Ratings while still leaving Hydro One on Negative credit watch.

³⁴ See "S&P Downgrades Hydro One on Ontario Executive Compensation Legislation" by Usman Khalid of S&P Global Market Intelligence on September 14, 2018, provided in Exhibit Staff/603.

1 must remember that we earlier looked to Hydro One to boost Avista credit
2 ratings because, in Oregon, we are looking for a net benefit above the Avista
3 status quo.

4 **Q. What testimony did you examine next?**

5 A. Mark Thies, Senior VP, Chief Financial Officer (CFO) and Treasurer
6 Avista, has been with Avista for a decade. Staff has observed that it seems
7 to take about at least three years to see a full cycle of normal routine
8 challenges within an organization.

9 If that perception is true, Mr. Thies has seen at least three cycles of
10 normal challenges, routinely impacting Avista. Like an experienced driver, he
11 can look forward and make minor corrections needed so that Avista's course
12 is on planned target. His long experience and tenure in place commands
13 more deference than were he newly arrived at Avista.

14 **Q. What ideas did Avista CFO Thies share?**

15 A. Mr. Thies restates that post Proposed Transaction execution has the
16 opportunity to spread costs more broadly (such as in deploying new
17 technology), that best practices can be shared and that benefits of scale can
18 still be realized. Staff notes that this technology, and benefits of scale with
19 relation to the gas business, has not yet been specifically identified.

1 Next, Mr. Thies points out that the merger will achieve two elements of
2 great interest in the Northwest: A) preserve local control of Avista, and B)
3 retention of Avista culture and its way of doing business.³⁵

4 Again, this brings us to a major remaining common point of concern at
5 this time: both of those objectives appear to be compromised based on the
6 events that transpired in Ontario. These priorities were integral to the
7 meeting of minds between CEOs Morris and Schmidt, and could be imperiled
8 by an insufficiently independent Avista BOD. Staff notes that culture is stored
9 in a corporation's executives, and that one cannot broadly swap out all
10 experienced leadership with all new arrivals and guarantee continuity.
11 Ratepayers benefit from effective seasoned management moving in concert
12 with common purpose.

13 **Q. Are there some reasons for Staff to nonetheless have positive**
14 **expectations?**

15 A. Yes. It appears that more Ontario pension fund managers have performed
16 the analysis suggesting that Northwest Investor Owned Utilities (IOU) offer an
17 attractive risk-adjusted alternative to fixed income alternatives. As an
18 example, OMERS, the defined benefit pension plan for municipal employees
19 in Ontario, Canada now has a larger 29.3 percent stake in Puget Sound
20 Energy as of August, 2018.³⁶ Part of this is driven by the generally higher

³⁵ Avista/1900 Thies/2

³⁶ Macquarie Exits Puget Holdings; Begs Question, 'What Is a Long-Term Investment?' by Steve Ernst – Clearing Up – Aug. 10, 2018

1 ROEs in the Northwest than in Canada. An investor or money manager such
2 as OMERS wants to make sure that expected returns on its investments are
3 attractive and that the underlying assets are appreciating nicely in value.
4 Those two goals ideally are accomplished at very low risk, such as through
5 ownership of a Northwest IOU.

6 For example, Fortis Inc. CEO Barry Perry delicately puts it, "So that
7 Canadian business, albeit a very strong business — we're very much a
8 believer in the Canadian business — it does generate less returns for
9 shareholders compared to a typical U.S. utility investment." So, if the bottom
10 line for the Province is the greatest good for the most ratepayers and
11 residents over the longest time, then Avista is a very good investment for the
12 Province because Avista should provide better returns for Hydro One
13 shareholders than a like incremental amount of Hydro One, Inc. or a like risk-
14 adjusted fixed income investment.³⁷

15 **Q. Is Staff in agreement with Mr. Thies on many issues?**

16 A. Yes. Changes to date have not impaired many of the Stipulated
17 Commitments. The weakness is notably centered on governance. Absent
18 Provincial extraordinary action, rectifying imperfections in the Stipulated
19 Commitments to address governance could be the next step for all Parties
20 and the Commission. Staff has identified one approach in Exhibit Staff/700
21 (Staff's Proposal) that may have traction among stakeholders and companies.

³⁷ Fortis CEO Aims to Address Utility Owner's US Stock Valuation Gap by Gene Laverty – S&P
Global Market Intelligence – Jul. 31, 2018

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Conclusion

Q. Please summarize Staff's current position.

A. Staff currently recommends that the Commission take no action in this docket at this time, pausing at least until more information can be gained about the new Hydro One Board, as well as executive management appointments and retention given the material changes that have recently occurred at Hydro One. Staff cautions that it is too early to tell if the revised compensation framework for Hydro One executives now required by Canadian law (and yet to be developed) will be adequate to attract and retain top-notch executive management for the proposed parent of Avista. Further, corporate culture alignment and vision for the success of Avista — elements that Avista has continually stated are essential to its decision to partner with Hydro One — along with assurances to stand behind the Oregon Stipulated Commitments, are all embodied in executive leadership, which has now in part exited Hydro One with the swift and politics-driven departure of top executives.

Alternatively, should the Commission want to begin focusing on commitment revision now, Staff proposes, at minimum, a new approach to Commitment 5 – Avista Governance described in Exhibit Staff/700. This proposed change is designed to help mitigate the risk that the Hydro One Board will take actions that do not operate with a Northwestern U.S., and Oregon-specific, focus for Avista success.

Q. Is the Province clearly supporting the Proposed Transaction and finished with major restructuring of Hydro One?

1 A. No. Whether Premier Ford is satisfied with changes in Hydro One
2 management and its board that he has made to date, along with changes in
3 compensation, or whether there is literally a provincial mandate to replace
4 Hydro One's management team in the near future acting through Hydro One
5 BOD Chair Woods is still unclear today. This could be an augury of further
6 material exertion of extraordinary Provincial influence on Hydro One, or it
7 could be less than precise speech welcoming interim chair Tom Woods into
8 his new role and conversationally marking a campaign promise met.

9 **Q. Is Staff's Proposal regarding Avista Governance necessary?**

10 A. The governance provisions in the Stipulated Commitments should be made
11 stronger before beginning to consider approval of the transaction, in order to
12 increase the independence of Avista, regardless of whether the Province
13 chooses to exert additional future extraordinary influence or not. Consistent
14 with practice to date, Commission Stipulated Commitments, and ring-fencing
15 are supposed to provide risk mitigation certainty, that informed by historic
16 adverse events at the parent and by the political context, a non-consolidation
17 opinion can be issued without overly heroic assumptions.

18 **Q. Should the Commission wait for greater certainty?**

19 A. Yes. Staff suggests that this Commissions and the other state commissions
20 need to have confidence that the governance components of the Stipulated
21 Commitments, and potentially other Commitments, are sufficiently bolstered
22 after the clear material changes discussed in this testimony occurred, in order
23 to ease concerns that the Stipulated Commitments are durable and

1 formidable so as to form the expected certainties for all stakeholders, rating
2 agencies, market analyst and potential market counterparties — specifically
3 that the merger and its Stipulated Commitments can be fully relied upon for
4 the future. That same confidence is likely credit positive and allows investors
5 and regulators to focus on ongoing operational improvements.

6 **Q. Is the Province transitioning into longer-run thinking?**

7 A. It is impossible to tell at this time. A core question not just in this merger, but
8 also looking forward, is whether the Province has the temperament to be a
9 long-run investor, rather than a more broadly controlling owner, similar to a
10 provincial relationship with a Crown Corporation. The former is conducive to
11 the Proposed Transaction and the latter is not.

12 **Q. What does Staff conclude at this time?**

13 A. Staff recommends that the Commission wait for events to unfold further. This
14 careful and patient observation will give the Commission more and better
15 information than Staff's best forward looking projections based on changing
16 information streams. Alternatively, should the Commission want to begin
17 addressing Stipulated Commitments, Staff recommends starting with
18 reinforcement of Condition 5 regarding Avista Governance as proposed in
19 Staff/700.

20 **Q. Does this conclude this portion of your testimony?**

21 A. Yes. Please see Exhibit Staff/601 for further testimony that addresses
22 information provided by Hydro One and Avista subject to Modified Protective
23 Order No. 17-362.

CASE: UM 1897
WITNESS: MATT MULDOON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 601

**Exhibits in Support of
Staff Reply Testimony
to
Hydro One and Avista Supplemental Testimony**

**REDACTED
September 20, 2018**

STAFF EXHIBIT 601

**IS HIGHLY CONFIDENTIAL AND SUBJECT TO MODIFIED
PROTECTIVE ORDER NO. 17-362. YOU MUST HAVE
SIGNED APPENDIX B OF THE MODIFIED PROTECTIVE
ORDER IN DOCKET UM 1897 TO RECEIVE THE HIGHLY
CONFIDENTIAL VERSION OF THIS EXHIBIT.**

CASE: UM 1897
WITNESS: MATT MULDOON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 602

**Hydro One
Executive Leadership and Board of Directors**

**Exhibits in Support of Reply Testimony to
Hydro One and Avista Supplemental Testimony**

September 20, 2018

H1 Senior Leadership Team as of Sep. 11, 2018



Paul Dobson
Acting President & Chief Executive Officer
(CEO)

Effective July 11, 2018, Paul Dobson was appointed **Acting President and Chief Executive Officer** of Hydro One. **Mr. Dobson joined the company as Chief Financial Officer on March 1, 2018**, responsible for finance, treasury, controller, internal audit, technology, and regulation. Prior to joining Hydro One in 2018, Mr. Dobson served as CFO for Direct Energy Ltd. (Direct Energy), Houston, Texas, where he was responsible for overall financial leadership of a \$15 billion revenue business

with three million customers in Canada and the United States. Since 2003, Mr. Dobson has held senior leadership positions in finance, operations, information technology, and customer service across the Centrica Group, the parent company of Direct Energy. Prior to Direct Energy, Mr. Dobson worked at CIBC for 10 years in finance, strategy, and business development roles in both Canada and the United States. Mr. Dobson also brings considerable experience in mergers and acquisitions and integrating acquired companies across North America and in the United Kingdom. Mr. Dobson is a **dual Canadian-U.S. citizen** who holds an honors bachelor's degree from the University of Waterloo as well as an **MBA** from the University of Western Ontario and is a **CPA, CMA**.



Jason Fitzsimmons
Chief Corporate Affairs & Customer Care
Officer (Promoted August 2018)

He now has oversight of the customer service, corporate affairs, marketing, and Indigenous relations functions. With more than 25 years of experience in the electricity sector, Mr. Fitzsimmons is a highly-regarded leader with a proven track record for successfully executing large-scale transformations and building strong relationships with key stakeholders. In his **previous** role as **Vice President, Labor Relations at Hydro One**, Mr. Fitzsimmons played an instrumental role in bringing the company's 400-employee Customer Contact Centre in-house as the company continuously strives to deliver best-in-class customer service. Prior to joining the company, Mr. Fitzsimmons was the Chief Negotiations Officer at the Ontario Hospital Association and also held a number of executive roles at Ontario Power Generation, including Vice President of Human Resources for the nuclear division. He is a Certified Human Resource Executive known for his broad experience in labor management as well as his passion for health and safety in the workplace. He was a prior member of the Advisory Board for Ryerson University's Centre for Labor Management Relations and has served on the Board of Directors for the Electrical Power Sector Construction Association.



Greg Kiraly

Chief Operating Officer (**COO**)

Greg Kiraly was appointed to Hydro One as Chief Operating Officer in **September 2016**. Mr. Kiraly is a seasoned executive having spent more than 30 years in the **utility** sector and has an extensive **background** in energy **transmission** and distribution. He has served in various executive leadership roles across three of the largest investor-owned utilities in the U.S., namely Pacific Gas and Electric (**PG&E**), Commonwealth Edison (**ComEd**), and **Public Service Electric and Gas Company**. Most recently, Mr. Kiraly held the role of Senior Vice-President, Electric Transmission and Distribution with PG&E in San Francisco. Prior to joining PG&E, Mr. Kiraly worked for ComEd in Chicago from 2000-2008, during which time he held senior roles in the areas of distribution system operations, construction and maintenance, and energy delivery. Mr. Kiraly holds a **B.Sc. in Industrial Engineering** from the New Jersey Institute of Technology and a **M.B.A.** from **Seton Hall**. Mr. Kiraly also **completed** the **Advanced Management program from Harvard Business School**.



**Chris Lopez (Promotion Effective Sep. 6)
Acting Chief Financial Officer (CFO)**

Effective **November 14, 2016**, Mr. Lopez was appointed as **Senior Vice President of Finance**, bringing almost 17 years of progressive experience in the utilities industry in Canada and Australia. Prior to joining Hydro One, **Mr. Lopez was the Vice President, Corporate Planning and Mergers & Acquisitions at TransAlta Corporation** from 2011 to 2015. Prior to that, Mr. Lopez was Director of Operations Finance at TransAlta in Calgary from 2007 to 2011, and he held senior financial roles up to and including Country Financial Controller for TransAlta in Australia, from 1999 to 2007. Mr. Lopez worked as a Senior Financial Accountant with Rio Tinto

Iron Ore, in Australia from 1997 to 1999.

Mr. Lopez received a Bachelor of Business degree from Edith Cowan University in 1996, and a Chartered Accountant designation in **Australia** in 1999. He received a graduate diploma in corporate governance and directorships from the Australian Institute of Company Directors in 2007.



Judy McKellar

Exec. VP and Chief Human Resources Officer

Judy McKellar is Executive Vice-President and Chief Human Resources Officer (**CHRO**) at Hydro One, a role she has held **since 2014**. As the CHRO, Judy is accountable for designing, developing, and obtaining Executive and Board approval for the company's overall People Strategy, which ensures that Hydro One has the policies, systems, and programs to attract, engage, and retain a high-performing workforce to deliver its business strategy safely and effectively. In addition to this strategic contribution, Judy oversees the provision, through the staff of the HR and Health Safety & Environment functions, of a wide range of services to managers and, on their behalf, to employees. As a member of the Executive Leadership Team and a direct report to the President and CEO of Hydro One, Judy provides strategic leadership for the organization at large.

Judy has been involved in the Canadian Women's Foundation Economic Advisory Committee and is strongly committed to advancing women's career opportunities. She has been recognized as one of the top 100 Most Powerful Women in Canada. Judy holds an Honor Bachelor of Arts degree from Victoria College, University of Toronto and is currently completing the Directors' Education Program at the Rotman School of Management.



Patrick Meneley
Exec. VP and Chief Corp. Development Officer

Patrick Meneley was **appointed** in **March 2018** to the role of Executive Vice President (**EVP**) and Chief Corporate Development Officer of Hydro One. As EVP, Mr. Meneley is responsible for **leading strategy, innovation, and mergers and acquisitions**. Prior to joining Hydro One in 2018, Mr. Meneley served as EVP, Wholesale Banking at TD Bank Group and Vice Chair and Head of Global Corporate and Investment Banking for TD Securities. Mr.

Meneley spent 15 years building one of the leading corporate and investment banking businesses in Canada along with a profitable and growing franchise in the United States. Mr. Meneley holds a Bachelor of Commerce from the University of British Columbia and a **Masters of Business Administration** from Western University.



James Scarlett
Exec. VP and Chief Legal Officer

James Scarlett was **appointed** in **September 2016** to Executive Vice-President and Chief Legal Officer at Hydro One. Mr. Scarlett was a Senior Partner at Torys LLP. He joined Torys in March 2000 and held a number of leadership roles at the firm, including head of Torys' **Capital Markets** Group, Mining Group, and **International Business Development** strategy. Mr. Scarlett was also a member of the firm's Executive Committee from 2009-2015. He began as an articling student in

1981 at another major Canadian law firm and became an associate in 1983 and a partner in 1988. While at that firm Mr. Scarlett held leadership roles as head of its Corporate Group, Securities Group, and as a member of its Board. He was also seconded to the Ontario **Securities** Commission in 1987 and was appointed as the first Director of Capital markets in 1988, a position he held until his return to private **law** practice in 1990. Mr. Scarlett earned his law degree (**J.D.**) from the University of Toronto in 1981 and his Bachelor of **Commerce** Degree from the University of McGill in 1975.

H1 Board of Directors as of Sep. 11, 2018

Tom Woods (provincial nominee)

Board Chair Since Sep. 7, 2018 (Started as Interim Chair on Aug. 14, 2018)

Mr. Woods is a corporate director. He previously had a 37-year career with CIBC and Wood Gundy, the predecessor firm of CIBC World Markets. He started in Investment **Banking**, advising companies raising financing in the equity and debt capital markets as well as mergers and acquisitions, and later was Head of Canadian Corporate Banking, Chief **Financial** Officer, Chief Risk Officer, and Vice Chairman.

Mr. Woods also serves on the boards of Bank of America Corporation, Alberta Investment Management Corporation, Providence St. Joseph's St. Michael's Health Care (Board Chair) and CIBC Children's Foundation. Previous directorships include TMX Group Inc., DBRS Limited, Jarislowsky Fraser Limited, and Covenant House (Board Chair). Mr. Woods has a Bachelor of Applied Science in **Industrial Engineering** from University of Toronto and an **MBA** from **Harvard** Business School.

Cherie Brant (provincial nominee)

Ms. Brant is a Partner at Dickinson Wright's Toronto **law** office where she has an Indigenous law practice with a focus on commercial real estate, energy and transmission, and **First Nations economic development**. Ms. Brant provides strategic counsel to several First Nations and industry clients seeking to develop projects with First Nations and to understand and address Indigenous rights and interests. As lead counsel, Ms. Brant was instrumental in forming one of the largest First Nations-led limited partnerships in Canada resulting in the Ontario First Nations Sovereign Wealth LP's share purchase of approximately 2.4 percent of Hydro One Limited.

Ms. Brant is **both Mohawk and Ojibway** from the Mohawks of the Bay of Quinte and Wikwemikong Unceded Indian Territory. She also serves on the board of the Anishnawbe Health Foundation and is a member of the Canadian Council for Aboriginal Business, Research Advisory Board, and the Aboriginal Energy Working Group of the Independent Electricity System Operator. Previous directorships include Women's College Hospital and Trillium Gift of Life.

Ms. Brant has a Bachelor of **Environmental Studies**, Urban and Regional Planning Program from the University of Waterloo and a **Juris Doctor** from the University of Toronto. She is a member of the Ontario Bar Association and the Law Society of Upper Canada.

Blair Cowper-Smith (provincial nominee)

Mr. Cowper-Smith is the principal and founder of Erin Park Business Solutions a Canadian advisory and **consulting** firm. Previously, he was Chief Corporate Affairs Officer of Ontario Municipal Employees Retirement System (**OMERS**) and a member of the Senior Executive Team where his responsibilities included regulatory affairs, law, and governance. Prior to joining OMERS he was a Senior Partner at McCarthy Tetrault LLP where his practice focused on mergers and acquisitions, infrastructure, governance and private equity.

Board experience includes numerous advisory assignments, including governance advisory assignments, with boards of directors including OMERS, Stelco, Hammerson, and includes existing or prior director appointments and board committee leadership roles with companies like Porter Airlines, 407 ETR, the Financial Services Regulatory Authority, and Face the Future Foundation. He served until recently on the Public Policy Committee of the Canadian Coalition for Good Governance and on the Securities Advisory Committee of the Ontario Securities Commission. He co-founded The Canadian Council for Public and Private Partnerships which led to a long-term interest in infrastructure policy and delivery of infrastructure based services to Canadians.

Mr. Cowper Smith has a Bachelor of Laws (LLB) and **Master of Laws (LLM)** from Osgoode Hall Law School at York University. He is a member of the Law Society of Upper Canada and holds the director designation through the Institute of Corporate Directors and is a regular faculty presenter for the Directors College.

Anne Giardini, O.C., Q.C.

Ms. Giardini is a corporate director and **Chancellor** of Simon Fraser **University**. She previously had a **20-year career** with **Weyerhaeuser** Company Limited, including as **Canadian President**. Before her tenure as President, she was Vice President and **General Counsel** at Weyerhaeuser where she worked on corporate, legal, policy and strategic matters. Ms. Giardini has been a **newspaper columnist** and is the **author** of two novels.

Ms. Giardini also serves on the boards of Nevsun Resources Ltd., Canada Mortgage & Housing Corporation, **World Wildlife Fund** (Canada), BC Achievement Foundation, TransLink, and the Greater Vancouver Board of Trade. Previous directorships include Thompson Creek **Metals** Company, Inc. and Weyerhaeuser Company Limited.

Ms. Giardini has a BA in **Economics** from Simon Fraser University, a Bachelor of Laws from the University of British Columbia and a **Master of Law** from the University of Cambridge (Trinity Hall). She is licensed to practice law in British Columbia (and formerly in Ontario and Washington State). In 2016, Ms. Giardini was appointed an Officer of the Order of Canada.

David Hay

Mr. Hay is a corporate director. He is former Vice-Chair and Managing Director of CIBC World Markets Inc. with power, utilities, and infrastructure as a major focus. **Formerly**, he was **President** and **Chief Executive Officer** of **New Brunswick Power Corporation**, Managing Director of Delgatie Incorporated, and held senior **investment banking** roles, including Senior Vice-President and Director responsible for mergers and acquisitions with Merrill Lynch Canada, and Managing Director of European mergers and acquisitions with Merrill Lynch International. He spent the early part of his career as a **practicing lawyer** and **taught part-time** at both the University of Toronto and University of New Brunswick.

Mr. Hay also serves on the boards of EPCOR, SHAD (Chair), the Council of Clean and Reliable Energy, and as Chair of the Acquisition Committee of the Beaverbrook Art Gallery. Prior directorships include Toronto Hydro-Electric System Limited (Vice Chair).

Mr. Hay has a **Bachelor of Laws** from Osgoode Hall Law School, York University and a Bachelor of Arts from the University of Toronto (Victoria College). He also holds a professional director designation from the Institute of Corporate Directors (ICD.D).

Timothy Hodgson

Mr. Hodgson is a Managing Partner of Alignvest Capital Management. Prior to that, Mr. Hodgson was Special Advisor to Governor Mark Carney at Bank of Canada. Mr. Hodgson also held various positions in New York, London, Silicon Valley, and Toronto with Goldman Sachs and **served as Chief Executive Officer of Goldman Sachs Canada**. Mr. Hodgson has held roles with Salomon Brothers, Price Waterhouse & Co., and Merrill Lynch Canada.

Mr. Hodgson also serves on the boards of Alignvest Acquisition II Corporation (Chair), PSP Investments, and MEG Energy Corp. Previous directorships include Alignvest Acquisition Corporation, KGS-Alpha Capital Markets L.P., The Global Risk Institute, The Ivey School of Business, The Next36, Bridgeport Health, and CanWest Media Works Inc.

Mr. Hodgson has a Bachelor of Commerce from the University of Manitoba and a **Masters of Business Administration** from The Richard Ivey School of Business at Western University. He is a Chartered Accountant and a member of the Institute of Corporate Directors.

Jessica McDonald

Ms. McDonald is Interim President and **Chief Executive Officer** of **Canada Post Corporation**. **Previous roles** include President and **Chief Executive Officer** of **British Columbia Hydro & Power Authority** and Executive Vice President of HB Global Advisors Corp., as well as a successful practice in mediation and negotiation on major commercial and industrial projects. In addition, Ms. McDonald has held **many positions** with the **B.C. government**, including the most senior public service position in the provincial government as Deputy Minister to the Premier, Cabinet Secretary, and Head of the B.C. Public Service, responsible for overseeing all aspects of government operations.

Ms. McDonald also serves on the boards of Canada Post Corporation, Coeur **Mining** Inc., and Trevali Mining Corporation, and is on the Member Council of Sustainable Development Technology Canada. Previous directorships include Powertech Labs (Chair) and Powerex Corp.

Ms. McDonald has a Bachelor of Arts (**Political Science**) from the University of British Columbia. She is also a member of the Institute of Corporate Directors of Canada.

Russel Robertson (provincial nominee)

Mr. Robertson is a corporate director and former Executive Vice President and Head of Anti-Money Laundering, BMO Financial Group. Mr. Robertson has served as Chief Financial Officer, BMO Financial Group and Executive Vice-President, Business Integration, where he oversaw the integration of Harris **Bank** and M&I Bank, forming BMO Harris Bank. Before joining BMO, he spent over 35 years as a Chartered Professional Accountant holding various senior positions including the positions of Vice-Chair, Deloitte & Touche LLP (Canada) and Canadian Managing Partner, Arthur Andersen LLP (Canada).

Mr. Robertson also serves on the boards of Bausch Health Companies Inc. and Turquoise Hill Resources. Previous directorships include Virtus Investment Partners, Inc.

Mr. Robertson has a Bachelor of Arts (Honors) in **Business Administration** from the Ivey School of Business at the University of Western Ontario. He is a Chartered Professional **Accountant** (FCPA, FCA) and a Fellow of the Institute of Chartered Accountants (Ontario). He is also a member of the Institute of Corporate Directors.

William Sheffield

Mr. Sheffield is a corporate director. He is the **former Chief Executive Officer** of **Sappi** Fine Papers, headquartered in **South Africa**. Previously, he held senior roles with Abitibi-Consolidated, Inc. and Abitibi-Price, Inc. He began his career in the **steel** industry and held General Manager, **Industrial Engineering**, and Cold Mill Operating roles at Stelco, Inc.

Mr. Sheffield also serves on the boards of Houston Wire & Cable Company, Velan, Inc., Burnbrae Farms Ltd., Longview Aviation Capital, and Family Enterprise Xchange. Previous directorships include Canada Post Corporation, Ontario Power Generation, Corby Distilleries, Royal Group Technologies, and SHAD.

Mr. Sheffield has a **Bachelor of Science (Chemistry)** from Carleton University and an **MBA** from McMaster University. He holds a professional director certification from the Institute of Corporate Directors and a similar designation from the National Association of Corporate Directors in the U.S. He also completed the Family Enterprise Advisors Program (FEA) at the University of British Columbia.

Melissa Sonberg

Ms. Sonberg is a corporate director and Adjunct **Professor** and Executive-in-Residence at McGill University's Desautel Faculty of Management. She spent the early part of her career in the **healthcare** industry before joining **Air Canada**, where she held leadership positions in a range of customer facing, operational, and corporate functions. Ms. Sonberg was part of the founding executive team of Aeroplan, now part of AIMIA. Ms. Sonberg held positions of Senior Vice President, Human Resources & Corporate Affairs, and Senior Vice President, Global Brands, Communications and External Affairs at AIMIA.

Ms. Sonberg also serves on the boards of Exchange Income Corporation, MD Financial Holdings, Inc., Canadian Professional Sales Association, Group Touchette, Women in Capital Markets, and Equitas – International Centre for **Human Rights**. Previous directorships include Rideau, Inc., Via Rail Canada, University of Ottawa, International Advisory Board, and the McGill University Health Centre.

Ms. Sonberg has a Bachelor of Science (**Psychology**) from McGill University and a **Masters of Health Administration** from the University of Ottawa. She is a Certified **Human Resource Executive** and holds a professional director certification from the Institute of Corporate Directors.

CASE: UM 1897
WITNESS: MATT MULDOON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 603

**Security Markets and General News
(News Investors are Seeing)**

**Exhibits in Support of Reply Testimony to
Hydro One and Avista Supplemental Testimony**

September 20, 2018

1

News and Cited Materials

2 **Hydro One Announces New Board of Directors**

3 Co. Press Release – S&P Global Market Intelligence – Aug. 14, 2018

4 **Hydro One** Limited ("Hydro One"), Ontario's largest electricity transmission and
5 distribution company, today **announced a new Board of Directors**, featuring an
6 experienced, diverse and highly-regarded group of leaders who will be responsible
7 for overseeing the company's continued transformation as a customer-focused,
8 efficient and well-managed utility.

9 "This highly-qualified board has strong governance and industry experience and
10 brings with them significant electricity, business and capital markets expertise," said
11 Paul Dobson, Acting President and Chief Executive Officer and Chief Financial
12 Officer, Hydro One Limited. "Their oversight will help us to build on the positive
13 momentum the Company has achieved since being privatized in 2015."

14 The orderly transition to a new board was accomplished when former board
15 members stepped down and new directors were appointed effective Tuesday,
16 August 14. Six directors were identified and nominated by Hydro One's ad hoc
17 nominating committee, comprised of four of the five largest shareholders excluding
18 the Province of Ontario, and four directors were chosen by the Province, Hydro
19 One's largest shareholder, in accordance with the Governance Agreement.

20 "We are pleased to welcome these experienced and well-regarded directors to
21 help us build on Hydro One's focus on the customer and commitment to deliver
22 greater value for customers, communities and shareholders," said Dobson. "During
23 this transition, employees at all levels remain focused on providing our customers
24 with safe, reliable power and exceptional customer service."

25 The new Hydro One directors are:

- 26 1. Cherie Brant
- 27 2. Blair Cowper-Smith
- 28 3. Anne Giardini
- 29 4. David Hay
- 30 5. Timothy Hodgson
- 31 6. Jessica McDonald
- 32 7. Russel Robertson
- 33 8. William Sheffield
- 34 9. Melissa Sonberg
- 35 10. Tom Woods

36 Mr. **Woods** has agreed to act as **interim Chair of the Board** until the new
37 directors can convene and complete a process to select a permanent Chair.

1 **About Hydro One:**

2 We are Ontario's largest electricity transmission and distribution provider with
3 more than 1.3 million valued customers, over C\$25 billion in assets and 2017
4 annual revenues of nearly C\$6 billion. Our team of over 7,400 skilled and
5 dedicated regular and non-regular employees proudly and safely serves
6 suburban, rural and remote communities across Ontario through our 30,000
7 circuit km of high-voltage transmission and 123,000 circuit km of primary
8 distribution networks. Hydro One is committed to the communities we serve,
9 and has been rated as the top utility in Canada for its corporate citizenship,
10 sustainability, and diversity initiatives. We are one of only six utility companies
11 in Canada to achieve the Sustainable Electricity Company designation from the
12 Canadian Electricity Association. We also provide advanced broadband
13 telecommunications services on a wholesale basis utilizing our extensive fibre
14 optic network through Hydro One Telecom Inc. Hydro One Limited's common
15 shares are listed on the Toronto Stock Exchange (TSX: H). For more
16 information about everything Hydro One, please visit www.HydroOne.com.

17 **Forward-Looking Statements and Information:**

18 This press release may contain "forward-looking information" within the
19 meaning of applicable securities laws. Words such as "expect," "anticipate,"
20 "intend," "attempt," "may," "plan," "will", "can", "believe," "seek," "estimate," and
21 variations of such words and similar expressions are intended to identify such
22 forward-looking information. These statements are not guarantees of future
23 performance or actions and involve assumptions and risks and uncertainties
24 that are difficult to predict. Therefore, actual outcomes and results may differ
25 materially from what is expressed, implied or forecasted in such forward-looking
26 information. Some of the factors that could cause actual results or outcomes to
27 differ materially from the results expressed, implied or forecasted by such
28 forward-looking information, including some of the assumptions used in making
29 such statements, are discussed more fully in Hydro One's filings with the
30 securities regulatory authorities in Canada, which are available on SEDAR at
31 www.sedar.com. Hydro One does not intend, and it disclaims any obligation, to
32 update any forward-looking information, except as required by law.

1 **Hydro One Given Six Months to Trim Executive Pay**

2 by Rob Ferguson – Queen’s Park Bureau – The Star – Aug. 15, 2018

3 [http://www.msn.com/en-ca/news/msn/hydro-one-given-six-months-to-trim-](http://www.msn.com/en-ca/news/msn/hydro-one-given-six-months-to-trim-executive-pay/ar-BBLZhfW)
4 [executive-pay/ar-BBLZhfW](http://www.msn.com/en-ca/news/msn/hydro-one-given-six-months-to-trim-executive-pay/ar-BBLZhfW)

5 Rob Ferguson is a Toronto-based reporter covering Ontario politics

6 The **new chair of the board** at **Hydro One** is **set to clean house and cut pay**
7 **in the executive suite** following the July ouster of CEO Mayo Schmidt, **says**
8 **Premier Doug Ford.**

9 Ford, who mockingly nicknamed Schmidt “the six-million-dollar man” during the
10 spring election campaign, told reporters Wednesday that **Hydro One has been**
11 **given six months** to trim “**generous pay packages**” at the **former Crown**
12 **corporation still owned 47 per cent by Ontario taxpayers.**

13 Leading the **new board is interim chair Tom Woods**, a veteran investment
14 banker with 37 years at CIBC who rose to chief financial officer and vice-chairman.

15 **“He will recruit a new long-term senior management team for the**
16 **company, a team that will respect the people of Ontario,”** Ford said.

17 The development comes as **Hydro One searches for a new chief executive**
18 **without firm salary guidelines in place.** Neither Ford nor **Energy Minister Greg**
19 **Rickford** would say how low pay packets should go.

20 “We are sending a clear message to the entire energy sector that, for our
21 government, respect for the people, **respect for the ratepayers comes first,**” said
22 Rickford.

23 Critics have warned government meddling in pay levels for a publicly traded
24 company like Hydro One will send a chill through the business community, and
25 make it hard to attract and retain top talent. The company issued the same caution
26 in its latest securities findings.

27 **So far, only one of Schmidt’s key team** – customer care and corporate affairs
28 executive vice-president **Ferio Pugliese**, formerly of WestJet – **is leaving Hydro**
29 **One for a new position elsewhere.** In 2017, company filings show **he was paid a**
30 **base salary of \$525,000 with** short-term and long-term **incentives** boosting his
31 **annual compensation to \$1.95 million.**

32 His departure was announced Tuesday in a Hydro One conference call with
33 investment industry analysts after the company’s new board was appointed and the
34 latest quarterly earnings of \$200 million released, up from \$117 million in the same
35 period last year.

36 **Under new legislation passed earlier this summer**, which **came into effect**
37 **this week**, the **provincial government retains the power to control board, CEO**
38 **and senior executive salaries until the end of 2022.** Any changes in executive
39 pay at Hydro One require 30 days public notice.

1 "These measures are practical responses to the excesses that we saw under
2 the previous government," said Rickford.

3 **Ford promised to cut hydro rates 12 per cent** but has **not yet made** a
4 substantial **dent in customers' bills**.

5 The **uncertainty** at Hydro One **extends beyond wages** as the company's
6 **\$6.7-billion takeover of** U.S. energy firm **Avista** Corp., which operates in western
7 states and Alaska, remains **in limbo** amid concerns from regulators about turnover
8 in senior leadership in the Toronto executive suite.

9 **Rickford declined to comment** on the hazy future of the **deal**, which **if**
10 **aborted will result in Hydro One paying a kill fee of \$103 million** (U.S.).

11 "There's no space for political commentary," he told reporters, adding the new
12 board will "make responsible business decisions to that end."

13
14 –
15

16 **Hydro One Names Board Chair, Acting CFO** 17 **by Nephele Kirong – Sep. 7, 2018**

18 **Hydro One** Ltd. has **named Chris Lopez** as **acting CFO, effective Sept. 6**.

19 Lopez most recently served as senior vice president of finance at the electricity
20 transmission and distribution company, according to a Sept. 7 news release.

21 The **Hydro One board** also announced the appointment of **Tom Woods** as
22 **new chair, following a unanimous vote**.

23 Woods, who spent his entire career at CIBC and held various executive roles,
24 had served as interim chair of the Hydro One board since Aug. 14.

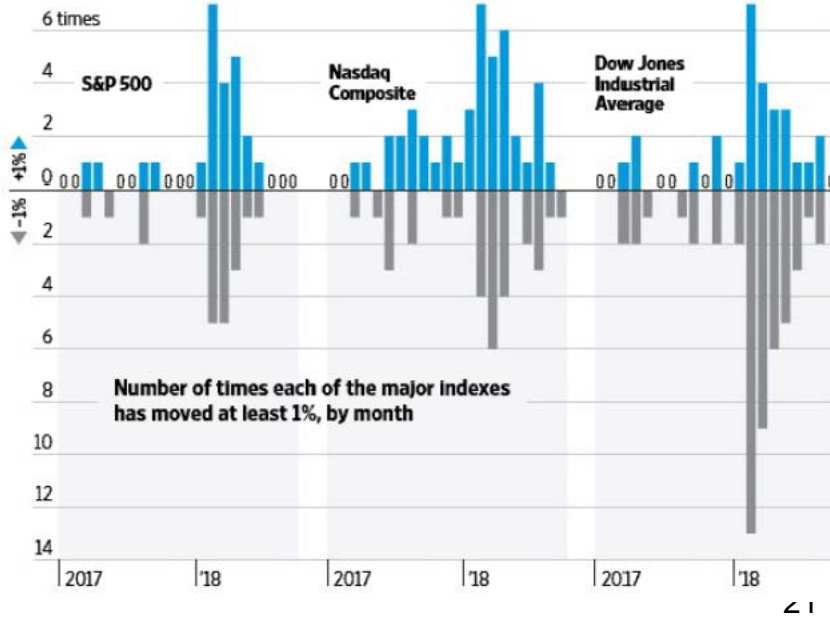
25 Pressured by the the Ontario government, Hydro One on July 11 announced
26 the retirement of then-CEO Mayo Schmidt and the replacement of the board. Hydro
27 One is controlled by the provincial government.

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Lack of Volatility Sign of Investor Caution

by Amrith Ramkumar – WSJ – Sep. 12, 2018

Stock indexes have returned to relative calm in recent weeks, a period in which the most closely watched volatility index stayed quiet and the S&P 500 hasn't moved more than 1% from its previous close.



Moves by major U.S. stock indexes have been subdued recently, a signal that investors are waiting for new catalysts before making big changes to their portfolios.

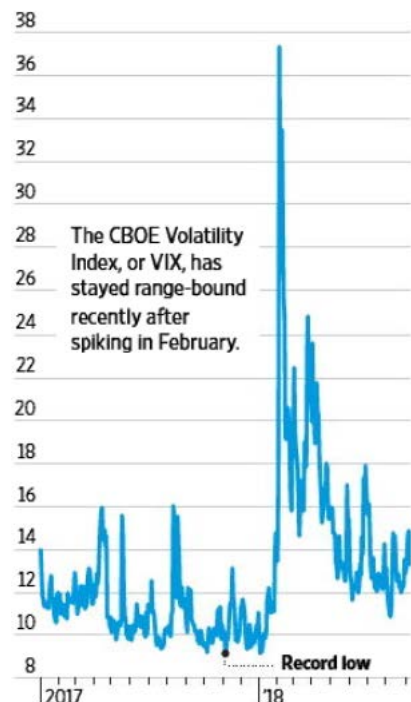
The **S&P 500 has gone 54 trading days without a move of 1% in either direction**, the longest such streak since January and just the fifth time the benchmark index has moved less than 1%

on 50 consecutive sessions in the past five years, according to Dow Jones Market Data.

It last moved at least 1% on June 25, falling 1.4% as trade fears gripped global markets. The Dow Jones Industrial Average and Nasdaq Composite have also been relatively calm recently, though certain sectors have at times been volatile.

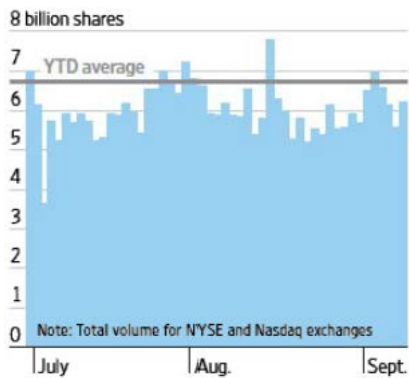
Although trade barbs have intensified lately, with **President Trump** on Friday threatening **tariffs** on an additional \$267 billion in Chinese goods, analysts say the **market has grown more comfortable with** the rhetoric and is **now waiting** for a resolution.

At the same time, investors also appear more confident that the U.S. economy can withstand gradually rising inflation and interest rates, with major indexes hardly budging after Friday's wage-growth figure matched the strongest monthly reading since 2009.



1 Analysts say investor comfort with the major issues dictating market
2 moves shows many are looking for changes to that backdrop before adjusting
3 their portfolios, a sign that the recent quiet period could continue as the third
4 quarter comes to an end.

Trading volumes have generally been below average in recent weeks even as traders returned from the Labor Day holiday.



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“The markets look like they’re a little bit more in a **‘wait-and-see’** mode where they’re used to a lot of the positioning,” said Shawn Cruz, manager of trader strategy at TD Ameritrade. “It’s in stark contrast to what happened earlier in the year.”

Quiet summer trading has also continued into September, with **lower-than-average trading volumes also contributing to the recent tranquility**, analysts say. Roughly 6 billion shares on average have been traded daily on New York Stock Exchange and Nasdaq exchanges since the start of July, compared with the year-to date average of 6.7 billion, according

18 to Dow Jones Market Data.

19 And even though certain sectors have been volatile in recent weeks,
20 other groups have often picked up the slack to stabilize the broader market.

21 The S& P 500 information-technology sector fell for four consecutive
22 sessions to start September, including a 1.5% drop Sept. 5, but other groups
23 including **telecommunications** shares, industrial stocks **and** the **utilities**
24 sector **rose** to largely offset the losses. Some analysts view that trend as a
25 sign of strength because previous dips in the market’s best-performing sector
26 have often spread and sparked broader volatility.

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The S&P 500 hasn’t moved more than 1% in either direction in more than 50 days, one of the longest streaks in recent years.



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Instead, Wall Street’s **“fear gauge,”** the **Cboe Volatility Index**, has **largely been flat** since spiking as stocks tumbled in February.

The VIX, which is based on the price of S&P 500 options, is still near last year’s historic low.

It also was low the last time the S&P 500 went this long without a 1% move, in January.

That streak of 94 days was the longest since December 1995, as the S& P 500 surged before tumbling during February’s bout of volatility.

With **corporate profits** already **growing at** their **quickest pace in years**, some analysts

1 think it will take a similar wave of selling or unexpected shift in economic or
2 earnings data to jolt markets out of their recent lull.

3 Others think the key lies in ongoing trade discussions with China and the
4 European Union.

5 Months of rhetoric between the world's two largest economies have some
6 investors generally ignoring day-to-day headlines.

7 While stocks climbed after President Trump said the U.S. and Mexico had
8 reached a trade agreement Aug. 27, the gains were contained as analysts
9 looked ahead to progress with Canada, China and the EU.

10 Recent meetings between the U.S. and Canada have yielded little
11 progress, but some investors say the most important trade talks are with
12 China.

13 Growth in the world's largest consumer of a wide range of products and
14 commodities already has shown signs of slowing, so analysts are largely
15 shaking off rhetoric and keeping an eye on planned November meetings
16 between Mr. Trump and Chinese leader Xi Jinping.

17 The two sides have laid out a path to end their fight by then, a broader
18 goal that has taken attention away from the continuing threats.

19 "Markets are starting to look past that and **waiting to see what actually**
20 **gets done**," Mr. Cruz said.

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24 **WUTC Sets Date for Avista Merger Hearing Prompted by Hydro One Shake-Up**
25 by Rick Adair – Clearing Up – Aug. 10, 2018

26 The **Washington UTC** on Aug. 3 **set Oct. 23** as the **hearing date for**
27 **additional** consideration of the **proposed merger of Avista with** Toronto-based
28 **Hydro One**, and **established** a **schedule for testimony and discovery**.

29 This unusual process comes on the heels of a July 11 management shake-up
30 at Hydro One following the election of a new government in Ontario, which is the
31 utility's biggest shareholder and after an all-party settlement in the WUTC
32 proceeding had been reached in March.

33 The follow-on schedule includes opportunities in advance of the hearing for
34 utility and stakeholder comment in September and October for additional testimony.

35 The **next milestone** stemming from the Hydro One shake-up is **Aug. 15**, the
36 deadline for an ad hoc committee to select six **replacement** members of the utility's
37 **board of directors**, which will select the new CEO.

1 **Macquarie Exits Puget Holdings; Begs Question,**
2 **‘What Is a Long-Term Investment?’**

3 by Steve Ernst – Clearing Up – Aug. 10, 2018

4 **Macquarie** Infrastructure Partners, the **majority shareholder in Puget Sound**
5 **Energy’s parent company** and architect of the utility’s 2009 sale, has **sold its**
6 **shares** in the utility’s holding company. **OMERS**, the **defined benefit pension plan**
7 **for municipal employees in Ontario, Canada, and** the **Dutch pension fund**
8 **manager PGGM** will **now have 23.9 percent and 10 percent positions in Puget**
9 **Holdings, respectively. In addition, a pair of Canadian pension funds** have
10 **also increased their stakes in PGE.**

11 Puget Sound Energy announced Aug. 8 that **three Macquarie funds that once**
12 **owned 51 percent of the utility** have **sold** their **positions to** a pair of existing
13 **owners, with the remainder going to Canadian and Dutch pension funds.**

14 The **two new investors – OMERS**, the **defined benefit pension plan for**
15 **municipal employees in Ontario, Canada, and the Dutch pension fund manager**
16 **PGGM – will now have 23.9 percent and 10 percent positions, respectively, in**
17 **Puget Holdings, the holding company that controls Puget Sound Energy.**

18 **Alberta Investment Management Corp. and the British Columbia**
19 **Investment Management Corp. increased their stakes in PSE** by 6 percent and 4
20 percent **to 13.6 percent and 20.9 percent, respectively.**

21 **Canada Pension Plan Investment Board** will **now** be the **largest**
22 **shareholder in the utility** with a **31.6 percent stake.**

23 Macquarie sold a 10 percent stake in PSE to the Canadian pension fund in
24 2009, and in 2017, acquired a portion of FSS Infrastructure Trust’s 3.7 percent share
25 in Puget Holdings. Macquarie held a 44 percent stake in Puget Holdings before
26 divesting.

27 Bloomberg reported in June 2017 that Macquarie hired an investment bank to
28 sell its stake in PSE, which was reportedly worth as much as \$4.5 billion.

29 **Macquarie Infrastructure led the group of pension funds that took PSE**
30 **private in 2009** in a deal valued at about \$7.4 billion. At that time, PSE needed to
31 raise some \$3.4 billion over the next five years to support projected capital spending
32 need of \$5.7 billion.

33 Backed by a consortium of pension funds, the **deal was touted** as a **way to**
34 **give PSE easier access to capital**, with the **benefit** of having “**patient capital**” that
35 invests in utility companies **expecting** relatively **stable long- term returns**,
36 according to the Washington UTC order approving the sale.

37 **Christopher Leslie**, then **chief executive of Macquarie Infrastructure, at** the
38 **time said PSE** was just the kind of company it likes to invest in, and **planned to**
39 **hold it for the long term.**

1 “The mandate from our investors is to find well-run businesses that are stable
2 and predictable and can put large amounts of capital to use over a period of years,”
3 Leslie said in an interview.

4 **But nine years after taking PSE private, Macquarie has divested itself of**
5 **the utility.** As one attorney familiar with the sale said to Clearing Up, “**In the utility**
6 **world, 10 years is a blink of the eye, and medium term is like 15 to 25 years –**
7 **long term is more like 30 to 50 years.**”

8 The sale is part of an asset sell-off by Macquarie funds established in 2006 and
9 2008 that are now paying out to investors, according to published reports.

10 **When WUTC was reviewing the proposed sale, intervenors argued** that the
11 **deal was a leveraged buyout and worried the consortium – specifically**
12 **Macquarie – would sell its investment after turning a profit.**

13 In testimony, **executives at Macquarie said** there was a specific liquidation
14 date for the funds, but “there was a high likelihood that Macquarie would continue to
15 manage the vehicle that holds the portion of the PSE investment,” and remain “a
16 **long-term owner.**”

17 The **sale likely won’t have any material impact on PSE. But it may have**
18 **ramifications for Hydro One’s proposed \$3.5 billion acquisition of Avista.**

19 “I think the broader question is what does long-term mean? What is a
20 sustainable utility investment?” the attorney familiar with WUTC proceeding told
21 Clearing Up. “I think those are the questions WUTC be asking in the Avista case.”

22 **Kimberly Harris, president and CEO of PSE,** said in a press release that the
23 investments in PSE reflect “confidence in the future of the region” and “the
24 dedication and skills of our 3,100 local employees.

25 “Our **investors share our values** and our commitment to serving our
26 customers and ensuring our community remains a great place to live,” she
27 continued. “We are delighted to be welcoming **OMERS and PGGM,** who are **long-**
28 **term** and experienced regulated utility investors, and we also recognize the strong
29 support and positive contributions made by Macquarie to PSE since 2009.”

30 **WUTC** is expected to **review** the **transaction in a filing to be made in early**
31 **September.**

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2 **Hydro One Receives Regulatory Decision**
3 **for Acquisition of Orillia Power Distribution**

4 **Co. Press Release – S&P Global Market Intelligence – Aug 24, 2018**

5 Hydro One Inc. ("**Hydro One**") received a decision today from the **Ontario**
6 **Energy Board ("OEB") upholding its decision to deny Hydro One's proposed**
7 **acquisition of Orillia Power Distribution Corporation ("OPDC") from the City of**
8 **Orillia, Ontario.**

9 "**Hydro One is disappointed** by this decision," said Patrick Meneley, Executive
10 Vice President and Chief Corporate Development Officer, Hydro One. "We will
11 continue to work with the City of Orillia to seek a transaction that is in the interests of
12 all stakeholders." A copy of the decision is available on the OEB's website.

13 On August 15, 2016, Hydro One announced the agreement to acquire OPDC
14 for \$26.35 million and the assumption of approximately \$14.9 million of debt and
15 regulatory liabilities for a **total transaction value of \$41.3 million.**

16 **About Hydro One Inc.**

17 Hydro One Inc. is a fully owned subsidiary of Hydro One Limited, Ontario's largest electricity
18 transmission and distribution provider with more than 1.3 million valued customers, \$25 billion in
19 assets and 2017 annual revenues of nearly \$6 billion. Our team of over 7,400 skilled and
20 dedicated regular and non-regular employees proudly and safely serves suburban, rural and
21 remote communities across Ontario through our 30,000 circuit km of high-voltage transmission
22 and 123,000 circuit km of primary distribution networks. Hydro One is committed to the
23 communities we serve, and has been rated as the top utility in Canada for its corporate
24 citizenship, sustainability, and diversity initiatives. We are one of only six utility companies in
25 Canada to achieve the Sustainable Energy Company designation from the Canadian Electricity
26 Association. We also provide advanced broadband telecommunications services on a
27 wholesale basis utilizing our extensive fibre optic network. Hydro One Limited's common
28 shares are listed on the Toronto Stock Exchange (TSX: H).

29 **Forward-Looking Statements and Information**

30 This press release may contain "forward-looking information" within the meaning of applicable
31 securities laws. Words such as "expect," "anticipate," "intend," "attempt," "may," "plan," "will",
32 "can", "believe," "seek," "estimate," and variations of such words and similar expressions are
33 intended to identify such forward-looking information. These statements are not guarantees of
34 future performance or actions and involve assumptions and risks and uncertainties that are
35 difficult to predict. Therefore, actual outcomes and results may differ materially from what is
36 expressed, implied or forecasted in such forward-looking information. Some of the factors that
37 could cause actual results or outcomes to differ materially from the results expressed, implied or
38 forecasted by such forward-looking information, including some of the assumptions used in
39 making such statements, are discussed more fully in Hydro One's filings with the securities
40 regulatory authorities in Canada, which are available on SEDAR at www.sedar.com. Hydro One
41 does not intend, and it disclaims any obligation, to update any forward-looking information,
42 except as required by law.

43 Omar Javed, VP Investor Relations investor.relations@hydroone.com, 416-345-5943

44 Jay Armitage, Dir., Corp. Communications media.relations@hydroone.com 416-345-6868

Ontario's Halt to Renewables Contracts to Impact US\$367M of Large Projects by Anna Duquitan – S&P Global Market Intelligence – Update Aug. 21, 2018

Ten large renewable energy projects with an estimated total cost of US\$367 million are **among dozens** under **contracts** that the government of **Ontario** has **pledged to cancel**.

On July 13, the newly seated provincial government of Ontario announced plans to cancel 758 renewable energy contracts as a way to lower consumer electricity rates. The contracts to be ended are those with projects that have yet to achieve key development milestones, according to a statement from the province's Ministry of Energy.

Owners of Ontario renewable projects with long-term IESO contracts by capacity (MW)

Ultimate parent	Owned planned capacity (MW)	Owned estimated project costs (\$000)*
Invenergy LLC	57.8	131,025
RES Group	44.9	160,680
Boralex Inc.	32.3	98,280
Sky Solar Holdings Ltd.	11.8	28,224
Hydromega Services Inc.	7.0	19,600
NCC Development LP	6.4	131,025
Walpole Island First Nation	5.3	98,280
Peterborough Utilities Group	2.8	15,650
Curve Lake Economic Development Corp.	2.7	15,650
City of Orillia	1.5	8,400
Shaman Power Corp.	1.5	8,400
CIM Group LP	1.4	3,864

As of July 17, 2018.

* Maximum estimated construction costs.

Sources: S&P Global Market Intelligence; government of Ontario

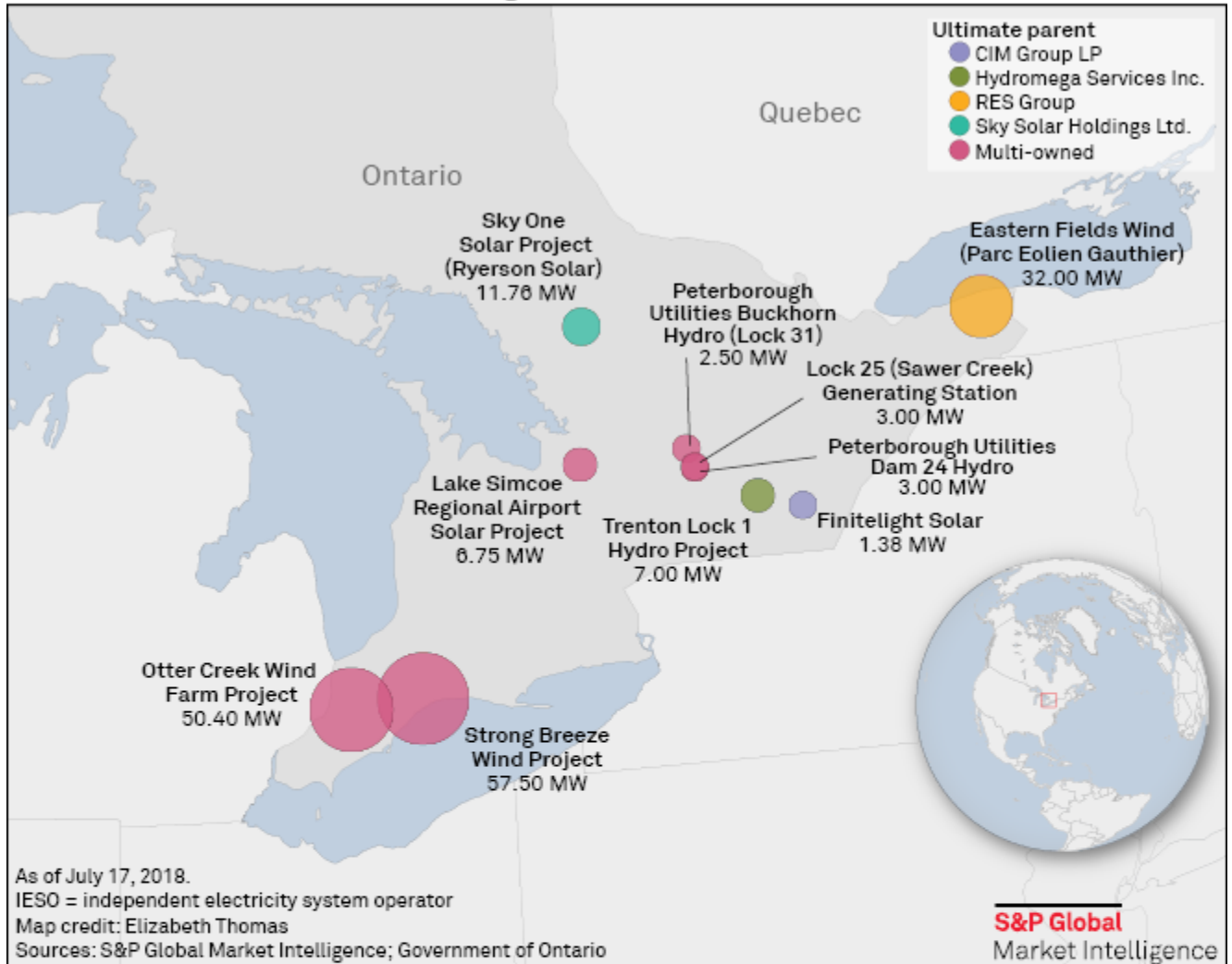
By **winding down** the contracts under its **Large Renewable Procurement**, or **LRP**, and **Feed-in-Tariff programs**, the **Ontario Independent Electricity System Operator**, the agency that contracts with project developers, said it would **avoid C\$790 million in spending**.

The 10 projects under the LRP program affected by the initiative consist of hydro, solar and wind facilities with a combined capacity of 175.3 MW. The **projects**, which are **still in the early development phase**, have a total estimated project cost of US\$367 million, according to S&P Global Market

Intelligence. Expected in-service years for the projects range from 2019 to 2024. The contracts were awarded in 2016.

Individual projects in the Feed-In Tariff program are 500 kW or smaller.

Ontario renewable projects with long-term IESO contracts



Ontario renewable projects with long-term IESO contracts

Power plant	Project phase number	Ultimate parent	Planned capacity (MW)	Development status	Estimated project costs (\$000)*	Year in service
Strong Breeze Wind Project	1	Multi-owned	57.5	Early development	112,125	2019
Otter Creek Wind Farm Project	1	Multi-owned	50.4	Early development	98,280	2019
Eastern Fields Wind (Parc Eolien Gauthier)	1	RES Group	32.0	Early development	62,400	2019
Sky One Solar Project (Ryerson Solar)	1	Sky Solar Holdings Ltd.	11.8	Early development	28,224	2019
Trenton Lock 1 Hydro Project	1	Hydromega Services Inc.	7.0	Early development	19,600	NA
Lake Simcoe Regional Airport Solar Project	1	Multi-owned	6.8	Early development	18,900	2019
Peterborough Utilities Dam 24 Hydro	1	Multi-owned	3.0	Early development	8,400	2024
Lock 25 (Sawer Creek) Generating Station	1	Multi-owned	3.0	Early development	8,400	2024
Peterborough Utilities Buckhorn Hydro (Lock 31)	1	Multi-owned	2.5	Early development	7,250	NA
Finitelight Solar	1	CIM Group LP	1.4	Early development	3,864	2019

As of July 17, 2018.

NA = not available

* Maximum estimated construction costs.

Sources: S&P Global Market Intelligence; government of Ontario

1 Invenergy LLC owns 57.8 MW of the affected LRP capacity, or almost a third of
2 the total, with an attributable project cost estimated at about US\$131 million.

3 **Invenergy** is the **majority owner** of the 6.8-MW **Lake Simcoe** Regional **Airport**
4 **Solar Project** and the 57.5-MW **Strong Breeze Wind Project**, which is the largest
5 project in the program affected by the contract terminations.

6 **RES Group** has the second-largest affected planned capacity, 44.9 MW, and
7 the highest attributable project cost, at about US\$161 million. It is the **sole owner of**
8 the 32.0-MW **Eastern Fields Wind** (Parc Eolien Gauthier) **project**.

9 **Boralex** Inc. owns 32.3 MW of the affected LRP capacity estimated to cost
10 approximately US\$98 million. The company holds a **majority stake** in the 50.4-MW
11 **Otter Creek Wind Farm Project**, with RES Group and the Walpole Island First
12 Nation also holding ownership interests.

13 The **government** said it **plans to pass legislation that would shield**
14 **consumers from any costs related to the cancellation**, but **did not give details**
15 **of how project proponents might be compensated**

16

1 **Puget Sound Energy Welcomes New Investment**

2 Co. Press Release – **S&P Global Market Intelligence** – Aug. 8, 2018

3 New investment is a vote of confidence in the region and PSE's commitment to
4 customers;

5 **No change in local operations, employment or regulatory oversight**

6 Puget Sound Energy (PSE) announced today it is welcoming **increased**
7 **investment from two existing shareholders and** the addition of **two new**
8 **investors** to the group of public- and private-sector pension and retirement fund
9 managers with stakes in the utility.

10 **Alberta Investment Management Corporation (AIMCo)**, on behalf of certain
11 of its clients, **and the British Columbia Investment Management Corporation**
12 **(BCI) are increasing positions** they've held since 2009 by 6 percent and 4 percent
13 **to 13.6 percent and 20.9 percent, respectively.** The **two new investors,**
14 **OMERS**, the **defined benefit pension plan for municipal employees in Ontario,**
15 **Canada,** and **Dutch pension fund manager PGGM** will have **23.9 percent and 10**
16 **percent positions, respectively.** **Canada Pension Plan Investment Board**
17 **(CPPIB)**, an investor since 2009, **continues** its **31.6 percent position.**

18 AIMCo, BCI, OMERS and PGGM are acquiring the non-controlling, 44 percent
19 interest held by Macquarie Infrastructure Partners (MIP) funds. The funds, which
20 include investments other than PSE, are nearing the end of their terms as was
21 anticipated when the 2009 investment was made.

22 "An investment in PSE reflects confidence in the future of our region and the
23 dedication and skills of our 3,100 local employees," **said Kimberly Harris, PSE**
24 **president and chief executive officer.** **"Our investors share our values** and our
25 commitment to serving our customers and ensuring our community remains a great
26 place to live. We are delighted to be welcoming OMERS and PGGM who are **long-**
27 **term** and experienced regulated utility **investors**, and we also recognize the strong
28 support and positive contributions made by Macquarie to PSE since 2009."

29 "Investing in a utility means investing in the region it serves," said Ben Hawkins,
30 senior vice president, Infrastructure and Timber of AIMCo. "We are proud of the
31 partnership we have had with PSE for almost a decade and look forward to having
32 an increased role in their future."

33 "PSE is a well-managed, quality core infrastructure company that continues to
34 be a strong fit for the long-term investment objectives of our pension plan and
35 accident fund clients," said Lincoln Webb, BCI's senior vice president, infrastructure
36 and renewable resources. "BCI looks forward to continuing and strengthening our
37 long-standing relationship with Puget Sound Energy to ensure that it continues to
38 provide essential electric and gas services to customers in Washington State."

39 "We are proud to announce our investment in Puget Sound Energy, and we
40 support PSE's commitment to its customers and to the community," said Ralph Berg,
41 OMERS Infrastructure's executive vice president and global head. "The utility's

1 focus on reliability, service and enabling a better energy future aligns with what its
2 customers want – and with our principles as patient, long-term investors in high-
3 quality infrastructure assets on behalf of OMERS members,” added Michael Ryder,
4 senior managing director, Americas, for OMERS Infrastructure.

5 “PGGM invests long-term pension capital in companies that are actively
6 involved in the transition to a low carbon energy future,” notes Erik van de Brake,
7 head of Infrastructure at PGGM. “We are pleased to join PSE as a new investor.”

8 Today’s announcement will not impact the utility’s customers or employees,
9 with all operations and leadership continuing to be local. The change in investors is
10 **subject to** customary conditions, including the approval of the **state Utilities and**
11 **Transportation Commission (UTC)**. PSE plans to file for approval of the
12 transaction with the UTC in early September. In addition, PSE will continue to be
13 state and federally regulated and will continue meeting all applicable Securities and
14 Exchange Commission (SEC) disclosure requirements.

15 Since 2009, PSE and its investors have made continuous improvements and
16 investments on behalf of customers and local communities. (See also our fact
17 sheet.)

- 18 1. Kept energy costs reasonable, with monthly electric bills below those of the
19 area’s two largest public utilities and natural gas bills the same as in 2003.
- 20 2. Continuously upgraded our natural gas and electric system to better deliver
21 safe, dependable service to our 1.5 million residential and business
22 customers. This includes investments of more than \$5 billion in projects that
23 are part of the critical infrastructure that serves our communities.
- 24 3. Maintained local employment, headquarters and leadership.
- 25 4. Committed to reducing our carbon footprint by 50 percent by 2040.
- 26 5. Brought more clean energy to the Northwest with the expansion of the Wild
27 Horse Wind Facility, construction of the Lower Snake River Wind Facility, and
28 upgrades and modernization of our Baker River and Snoqualmie River
29 hydroelectric facilities.
- 30 6. Improved customer service with new web and mobile tools for account
31 management, bill payment and outage information.
- 32 7. Helped our residential and business customers lower their bills through
33 energy efficiency programs that cut electricity consumption by more than 21
34 billion kilowatt hours – that’s enough to power every home and business we
35 serve for a full year.
- 36 8. Achieved first-quartile national electric utility rankings for employee safety
37 each year since 2012.

1 **S&P Downgrades Hydro One**
2 **on Ontario Executive Compensation Legislation**
3 **by Usman Khalid – S&P Global Market Intelligence – Sep. 14, 2018**

4 **S&P** Global Ratings on Sept. 13 **downgraded Hydro One Ltd.** and its
5 **subsidiary Hydro One Inc.'s** issuer credit **ratings to A- from A**, reflecting the
6 impact of **recent legislation by** the **government of Ontario regarding executive**
7 **compensation.**

8 The provincial government recently implemented legislation **requiring Hydro**
9 **One Ltd.'s board** of directors to **establish a new executive compensation**
10 **framework** for the board, CEO and other executives **within six months.** The policy
11 **also amends** the **Ontario Energy Board Act, requiring** the **Ontario Energy**
12 **Board to exclude** any **compensation paid** to the **CEO** and **other executives from**
13 **consumer rates.**

14 **In S&P Global Ratings' view,** the **legislation** has **weakened Hydro One**
15 **Ltd.'s management** and **governance structure,** as a **result** of the **government's**
16 **decision to exert** its **influence** on the **utility's compensation structure,** which
17 could **potentially promote** the **interests** and **priorities** of **one owner above those**
18 **of other stakeholders.**

19 The rating agency **also downgraded** the **issue level rating on Hydro One**
20 **Inc.'s senior unsecured debt to A- from A,** and **lowered** the **rating** on its
21 **commercial paper program by one notch to A-2** on the **global scale,** and to **A-1**
22 **(Low) from A-1 (MID)** on the **Canadian National Scale.** **All ratings remain on**
23 **CreditWatch with negative implications.**

24 This S&P Global Market Intelligence news article may contain information about
25 credit ratings issued by S&P Global Ratings, a separately managed division of S&P
26 Global. Descriptions in this news article were not prepared by S&P Global Ratings.

CASE: UM 1897
WITNESS: MATT MULDOON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 604

**Responses to Highly Confidential
Data Requests (DR)
Exhibits in Support of
Staff Reply Testimony
to
Hydro One and Avista Supplemental Testimony**

**REDACTED
September 20, 2018**

STAFF EXHIBIT 604

SELECT PORTIONS OF

HIGHLY CONFIDENTIAL

RESPONSES BY HYDRO ONE AND AVISTA TO

THE OREGON CITIZENS' UTILITY BOARD (CUB)

AND STAFF DATA REQUESTS (DR)

ARE SUBJECT TO MODIFIED

PROTECTIVE ORDER NO. 17-362. YOU MUST HAVE

SIGNED APPENDIX B OF THE MODIFIED PROTECTIVE

ORDER IN DOCKET UM 1897 TO RECEIVE THE HIGHLY

CONFIDENTIAL VERSION OF THIS EXHIBIT.

CASE: UM 1897
WITNESS: ROSE ANDERSON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 700

**Reply Testimony to
Avista and Hydro One Supplemental Testimony**

September 20, 2018

1 **Q. Please state your name, occupation, and business address.**

2 A. My name is Rose Anderson. I am a Senior Utility Analyst employed in the
3 Energy Resources and Planning Division of the Public Utility Commission of
4 Oregon (OPUC). My business address is 201 High Street SE, Suite 100,
5 Salem, Oregon 97301.

6 **Q. Have you previously provided testimony in this case?**

7 A. Yes, I provided Exhibits 500-511 in Staff's Reply Testimony filed on February
8 12, 2018.

9 **Q. What is the purpose of your testimony?**

10 A. The purpose of my testimony is to reexamine the Stipulated Commitment 5
11 offered by Hydro One Limited (Hydro One or Applicant) and Avista
12 Corporation (Avista or Company), and included in the All-party Stipulation of
13 May 25, 2018, in light of recent changes in the management and Board of
14 Directors of Hydro One. I also discuss the changes to Commitment 5
15 proposed in the in Supplemental Testimony of Avista and Hydro One.

16 **Q. Did you prepare exhibits in support of your reply testimony?**

17 A. Yes. I prepared the following exhibits:
18 Exhibit Staff/701 – Avista reply to Staff DR 290
19 Exhibit Staff/702 – New York Stock Exchange Rules
20 Exhibit Staff/703 – Corporate structure of EPCOR acquisition of AZ-American
21 Exhibit Staff/704 – Relevant Items from "Exhibit SMF-3 – 26 Commitments
22 Public Interest Chart" in the 27 Oncor/Sempra Merger
23 Application

24 **Q. How is your testimony organized?**

25 A. My testimony is organized as follows:

26 Issue 1. Governance and Changes in Hydro One Control 2

ISSUE 1. GOVERNANCE AND CHANGES IN HYDRO ONE CONTROL

Q. What is the current, pre-merger design of Avista's Board of Directors (Avista Board or Avista BOD)?

A. Avista's Board of Directors currently consists of eleven members. Nine of the Board members are independent, as that term is defined by the New York Stock Exchange's (NYSE) Listed Company Manual.^{1,2} Board members are currently nominated by a Governance Committee consisting of four independent directors.^{3,4,5,6,7} The Governance Committee may also recommend that Directors be removed from the Board.⁸ The Board acts and makes decisions today based on a simple majority vote of a quorum.⁹

Q. What will the post-merger Avista Board look like, according to the commitments reached in the stipulation of May 25, 2018 (Stipulated Commitments)?

¹ Exhibit Staff/701, Anderson/1. Avista reply to Staff DR 290.

² Exhibit Staff/702, Anderson/4. NYSE Listed Company Manual.

³ Avista Corp. Corporate Governance Guidelines. Revised November 2016. <http://investor.avistacorp.com/corporate-governance/guidelines>. Accessed on September 19, 2018.

⁴ Avista Corp. Board Committees. <http://investor.avistacorp.com/corporate-governance/committee-composition>. Accessed on September 19, 2018.

⁵ Avista Corp. Corporate Governance/Nominating Committee Charter. Revised November 2016. <http://investor.avistacorp.com/static-files/d76d5f80-69bc-412b-8584-6c06b764c966>. Accessed on September 19, 2018.

⁶ Avista Corp. Corporate Governance Guidelines. Revised November 2016. <http://investor.avistacorp.com/corporate-governance/guidelines>. Accessed on September 19, 2018.

⁷ Exhibit Staff/701, Anderson/1. Avista reply to Staff DR 290.

⁸ Avista Corp. Corporate Governance/Nominating Committee Charter. Revised November 2016. <http://investor.avistacorp.com/static-files/d76d5f80-69bc-412b-8584-6c06b764c966>. Accessed on September 19, 2018.

⁹ Avista Corp. Bylaws of Avista Corporation. (Article III. Section 7.). As Amended May 13, 2011. <https://www.sec.gov/Archives/edgar/data/104918/000119312511212343/dex3ii.htm>. Accessed September 19, 2018.

1 A. After the close of the proposed merger, Avista's Board membership will drop
2 to nine directors from eleven. Five Board members will be designated by
3 Hydro One and four will be designated by Avista. Of the five Hydro One
4 designees, two will be executives of Hydro One or any of Hydro One's
5 subsidiaries, and three will be Independent Directors. "Independent
6 Directors" are defined as directors that meet the standards of an independent
7 director in the NYSE's Listed Company Manual. Of the four Avista
8 designees, two will be executives of Avista and two will be Independent
9 Directors.¹⁰

10 **Q. What is the current state of Hydro One's Board of Directors (Hydro**
11 **One Board or Hydro One BOD)?**

12 A. In July 2018, Hydro One reached an agreement with the Province of Ontario
13 for the replacement of the Board of Directors of Hydro One and the retirement
14 of Mayo Schmidt as CEO of Hydro One.¹¹ On August 14, 2018, Hydro One
15 announced its entirely new 10-member Board of Directors, consistent with the
16 Letter Agreement between the Province and Hydro One of July 11, 2018.¹²
17 This dramatic change, and the retirement of Hydro One's CEO, were the
18 result of campaign promises made by the newly elected Premier, Doug Ford,
19 to remove the CEO and Board of Hydro One if he was elected.¹³

¹⁰ UM 1826 Stipulation filed May 25, 2018.

¹¹ Hydro One. First Supplemental Report to Hydro One Limited's Response to June 14, 2018 Bench Request. Docket No. UM 1897. July 18, 2018.

¹² Hydro One/1601, Scarlett/1-8.

¹³ Hydro One/1600, Scarlett/3-7.

1 **Q. What concerns has Staff previously expressed about the proposed**
2 **Avista Board of Directors post-close of the proposed merger?**

3 A. Staff has expressed the concern that Avista could be adversely affected by
4 the political influence of the Province on Hydro One, and Hydro One will have
5 the power to appoint a majority of seats on the new Avista Board. The
6 Province plans to own between 40 percent and 45 percent of voting securities
7 in Hydro One, and the Province is authorized to nominate 40 percent of Hydro
8 One's Board members, as well as call a meeting to remove the Hydro One
9 Directors entirely at any time pursuant to the Governance Agreement with the
10 Province of Ontario.¹⁴

11 Staff is concerned about foreign government control of a large portion of
12 the voting shares of Hydro One and, as we have now seen unfold, the ability
13 to remove the Board of Hydro One in one fell swoop. Recent events indicate
14 that the Province has also influenced Hydro One's CEO to retire even though
15 the Province is not granted the power to remove the CEO of Hydro One in the
16 Governance Agreement. Through these various channels, it appears that
17 decisions of Avista's parent company that affect Avista could be influenced by
18 changing foreign political agendas.

19 **Q. Why do recent changes at Hydro One indicate the need for a stronger**
20 **governance commitment?**

21 A. The recent Letter Agreement is an example of the exceptional influence of the
22 Province on Hydro One. Hydro One's Board of Directors has resigned and its

¹⁴ Exhibit Staff/509, Anderson/24-25.

1 CEO has retired in response to the campaign promise of the current Premier,
2 Doug Ford, to oust the Board and CEO of Hydro One.

3 Staff's concern is that, because of the substantial power of the Province
4 over Hydro One, the Hydro One Board of Directors is likely to be highly
5 motivated to act in ways that please the Province of Ontario, should they
6 hope to retain their employment. For example, as demonstrated by recent
7 events, the CEO offered to retire based on threats—because he lacked the
8 support of the Province—not, to Staff's understanding, because of any
9 express legal authority (for example, terms of the Governance Agreement or
10 newly-passed legislation) of the Province to replace the CEO.¹⁵ We can see
11 that the influence of the Province on the Hydro One Board could, and has,
12 affected executive management-levels of Hydro One such as the CEO, and
13 especially because the Board is responsible for approving the hiring, firing,
14 and compensation of the executive management.

15 Recent events demonstrate that Hydro One's proposed acquisition of
16 Avista is unlike any other merger of a foreign utility with a U.S. utility that the
17 Oregon commission has reviewed in the past.

18 Under the current Stipulated Commitments on governance in the
19 Stipulation in UM 1897, Hydro One will appoint the majority of Avista's Board
20 members. The Province of Ontario has shown a willingness to exert influence
21 on Hydro One's Board of Directors and its CEO. As a result, it is not

¹⁵ Hydro One/1600, Scarlett/Page 9.

1 unreasonable that the majority of the post-merger Avista Board of Directors
2 could be Hydro One appointees that have agreed to Provincial goals, rather
3 than Oregon goals.

4 Even though three out of five Hydro One designees must be
5 Independent Directors per the governance commitment in the Stipulation,
6 they are still likely to be influenced by Hydro One because of Hydro One's
7 power to remove them from the Board at any time with or without cause:

8 "Hydro One shall have the unfettered right to designate,
9 remove and replace the Hydro One designees as directors
10 of the Avista Board with or without cause or notice at its
11 sole discretion"¹⁶

12 Likewise, the Province has the ability to completely replace the Board of
13 Hydro One, with the exception of Hydro One's CEO, at its sole discretion:

14 "... the Province may at any time provide Hydro One with a notice (a
15 "Removal Notice") setting out its intention to request Hydro One to hold
16 a Shareholders meeting for the purposes of removing all of the Directors
17 then in office, including the Provincial Nominees, *with the exception of*
18 *the CEO* and, at the Province's sole discretion, the Chair (a "Removal
19 Meeting")."¹⁷

20 While there have been foreign purchasers of U.S. utilities in recent years,
21 the 40% provincial ownership, coupled with the ability to remove the Board of
22 Hydro One at any time at the Province's sole discretion, makes this
23 acquisition unlike most other mergers. Recent events emphasize that the
24 governance commitment for the proposed merger of Hydro One and Avista
25 should be especially robust.

¹⁶ UM 1826 Stipulation filed May 25, 2018. Commitment 5.

¹⁷ Exhibit Staff/509, Anderson/24-25 (emphasis added).

1 **Q. Please reflect on the Testimony of John J. Reed, which describes the**
2 **acquisition of Arizona-American, a U.S. water utility, by a Canadian**
3 **water utility.**

4 A. Mr. Reed points out that in the mergers of EPCOR Utilities, Inc. (a Canadian
5 company whose sole shareholder is the City of Edmonton, Alberta) with
6 several U.S. utilities, each merger was approved by the Arizona Public
7 Service Commission without any governance commitments.

8 The comparison provided in Mr. Reed's testimony is not a good parallel
9 to this case for several reasons. First, the magnitude of the transaction is
10 different. When EPCOR USA (a subsidiary of EPCOR) acquired Arizona-
11 American, it expected to pay about \$470 million.¹⁸ Other EPCOR acquisitions
12 of U.S. water utilities ranged in price from \$2.5 million¹⁹ to \$35 million. Each
13 of these utilities was valued at only a small fraction of the value of Avista.
14 Because Avista is a much larger utility with more ratepayer dollars and
15 service obligations at stake, robust governance requirements are justified.

16 Additionally, the governance structure of the EPCOR acquisition of
17 Arizona-American was different. EPCOR's U.S. subsidiary, EPCOR USA,
18 was governed by an independent Board of Directors different from the
19 EPCOR Board.²⁰²¹ For Hydro One's acquisition of Avista to be similar,

¹⁸ Arizona-American Water Company. Application Before the Arizona Corporation Commission. Docket No. W-01303A-11. March 2, 2011.

¹⁹ <https://www.epcor.com/about/news-announcements/Pages/2015-03-24-Willow-Valley.aspx>

²⁰ Application. DOCKET NO. W-01303A-11-0101.
<http://docket.images.azcc.gov/0000123760.pdf>. Accessed September 19, 2019.

²¹ Exhibit Staff/703, Anderson/1. Chart of corporate structure of EPCOR acquisition of Arizona-American.

1 Olympus Holding Corp and/or Olympus Equity would need to have entirely
2 independent Boards. In the UM 1897 Stipulated Commitments, only one of
3 Olympus Equity's board members is required to be independent, and there is
4 no such requirement for Olympus Holding Corp.

5 In summary, the acquisitions by EPCOR had lower stakes and a different
6 governance structure that make them a poor comparison for a model for
7 governance in the acquisition of Avista by Hydro One.

8 **Q. What does Staff recommend as modifications to the governance**
9 **commitment, different from Mr. Scarlett's recent proposal, given the**
10 **demonstrated power of the Province to remove the Board and its**
11 **potential influence on the executive management of Hydro One?**

12 A. Staff proposes that the Governance Commitment could be updated to
13 mitigate provincial influence by creating a post-merger Board that is similar to
14 the highly independent Board that Avista has today. This would include the
15 creation of an independent Governance Committee responsible for appointing
16 all Independent Directors. To accomplish this, the five independent board
17 members of Avista's post-merger Board would form an independent
18 Governance Committee solely responsible for:

19 1) Appointing Independent Directors, and

20 2) Recommending Independent Directors for removal from the Board.

21 The creation of this Governance Committee would result in a majority of
22 Board members that are:

1 a) Independent Directors appointed by an independent Governance
2 Committee, and

3 b) Not subject to removal by either Hydro One or Avista.

4 Thus, the influence of Hydro One on Avista's Board would be mitigated to
5 some extent. Avista and Hydro One would have the ability to remove and
6 replace two directors each, for a total of four directors that could be removed
7 and replaced at will by the respective company. As a result, the majority of
8 the Avista post-merger Board would be appointed or recommended for
9 removal only by an independent Governance Committee. This is more similar
10 to the structure of Avista's current Board where, in alignment with the rules of
11 the NYSE, the Governance Committee consists entirely of independent
12 directors.²²

13 By way of background, companies that are traded on the New York
14 Stock Exchange are encouraged to have a majority independent board and
15 must have an entirely independent Governance Committee responsible for
16 selecting new board members, akin to what Staff proposes above.²³ Post-
17 merger, Avista should similarly have a majority independent Board of
18 Directors, with the Independent Directors selected by an independent
19 Governance Committee.

20 By contrast, under the Stipulated Commitments, three of the
21 Independent Directors may be selected or removed by Hydro One, while two

²² Exhibit Staff/701, Anderson/1. Avista response to Staff DR 209.

²³ Exhibit Staff/702, Anderson/1,4. NYSE Listed Company Manual.

1 Independent Directors are selected by Avista. Staff's proposal would result in
2 an Avista post-merger Board that provides a better check on Avista's
3 executive management that is more removed from influence by Hydro One,
4 the Province of Ontario, and even Avista. Commitment 5 amended in this
5 manner could read:

6 **5. Avista Board of Directors (BOD)**

7 Avista and Hydro One agree that after closing of the Proposed
8 Transaction, Avista will have a separate board of directors from Hydro
9 One that consists of nine (9) members, determined as follows:

10
11 **Two Hydro One Designated Directors:**

12 Two executives of Hydro One or any of its subsidiaries, and

13
14 **Two Avista Designated Directors:**

15 Two directors who as of immediately prior to the closing of the
16 Proposed Transaction are members of the Board of Directors of
17 Avista, including the Chairman of Avista's Pre-Merger Board of
18 Directors (if such person is different from the Chief Executive
19 Officer of Avista), and

20
21 Avista's Chief Executive Officer. The initial Chairman of Avista's
22 post-closing Board of Directors shall be the Chief Executive
23 Officer of Avista as of the time immediately prior to closing for a
24 one year term.

25
26 **Five Independent Directors:**

27 Five Directors independent of Avista, Hydro One, or any
28 subsidiaries of Avista or Hydro One. Independent Directors shall
29 be designated by a Governance Committee consisting entirely
30 of independent directors.

31
32 If any Independent Director resigns, retires or otherwise ceases to
33 serve as a director of Avista for any reason, members of the
34 Governance Committee shall have the sole right to nominate a
35 replacement Independent Director to fill such vacancy. The
36 Governance Committee shall have the sole right to recommend the
37 removal of an Independent Director from the Board. The Governance
38 Committee shall consist entirely of Independent Directors.

39 Avista shall have the sole right to designate, remove, and replace the
40 Avista designees as directors of the Avista Board at its sole discretion.

1 Hydro One shall have the sole right to designate, remove, and replace
2 the Hydro One designees as directors of the Avista Board at its sole
3 discretion.
4

5 In Staff Exhibit/600, the above proposal is referred to as the Staff Proposal.

6 **Q. Why is an independent Governance Committee important to Staff?**

7 A. The currently stipulated governance structure in Commitment 5 would allow
8 Hydro One to remove and replace the majority of Avista's Board of Directors
9 with or without cause. An independent Governance Committee would
10 mitigate Hydro One's uneven influence over the Board (and directly or
11 indirectly, the influence of Province); although Staff notes, only mitigate, not
12 eliminate. Given the demonstrated willingness and, more concerning, *the*
13 *ability* of the Province to change the leadership of Hydro One for political
14 reasons in ways not anticipated by established agreements, it is clear that
15 under the Stipulated Commitment 5, Avista's Board composition may be
16 improperly influenced by a parent company that is subject to influence by the
17 Province of Ontario.

18 In light of new evidence of the extent and probability of Provincial
19 influence, and in order to better protect the duties of Avista to its Oregon
20 customers—providing safe and reliable service to at reasonable rates—the
21 post-merger Board of Directors of Avista should be more thoroughly protected
22 from provincial influence by a more robust governance commitment.

23 **Q. At this time, what have Avista and Hydro One recommended as an**
24 **amendment to the governance commitment in their Supplemental**
25 **Testimony?**

1 A. In testimony filed on August 30, 2018, Avista and Hydro One recommended
2 modifying the commitment that allows Hydro One to temporarily appoint
3 additional Hydro One employees as board members. The change would
4 prevent Hydro One from temporarily appointing additional Avista board
5 members during any time when the Province of Ontario appoints a majority of
6 the Hydro One Board of Directors.

7 **Q. Is this language sufficient to protect against Provincial influence?**

8 A. No. While Staff appreciates the added clarification provided by the Hydro
9 One proposed amendment to Stipulated Commitment 5, the language will not
10 adequately mitigate the risk of Provincial influence and interference. The
11 power of the Province to completely remove the Board of Directors, and
12 evidentially the CEO, of Hydro One at any time for any reason remains of
13 significant concern to Staff because it is an extraordinary power that gives the
14 Province substantial influence on the direction of Hydro One, and indirectly
15 Avista.

16 **Q. Does Staff believe the Oncor Sempra merger is a good point of**
17 **comparison for this merger application with regard to governance**
18 **examples?**

19 A. It serves as a good example of the importance of an independent Board for
20 the acquired utility. Sempra (the acquirer) accepted terms requiring several
21 governance commitments in its proceeding to acquire Oncor before the Texas
22 Public Utility Commission.²⁴ The commitments in the Oncor-Sempra

²⁴ Staff/704, Anderson 1-3.

1 settlement included a majority independent Board, a majority independent
2 Nominating Committee, and language precluding individuals involved with
3 any of Sempra's "competitive affiliates" in Texas from serving on the Oncor
4 Board of Directors.

5 The potential for provincial influence over Hydro One and Avista is a
6 substantial uncertainty that requires a robust governance structure at
7 minimum. An independent Governance Committee responsible for selecting
8 the majority of Avista's Board can do some to help protect against future
9 provincial influence that may not coincide with Oregon ratepayer interests.

10 **Q. In summary, what does Staff recommend regarding the proposed**
11 **governance structure for Avista post-merger?**

12 A. Staff recommends the modification to Stipulated Commitment 5 proposed
13 above at minimum. The amended commitment requires the independent
14 members of Avista's Board to be selected or recommended for removal by an
15 independent Governance Committee.

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

17 A. Yes.

CASE: UM 1897
WITNESS: ROSE ANDERSON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 701

**Exhibits in Support
Of Reply Testimony**

September 20, 2018

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

JURISDICTION:	OREGON	DATE PREPARED:	04/23/2018
CASE NO.:	UM 1897	WITNESS:	Mark Thies
REQUESTER:	PUC Staff	RESPONDER:	Sue Fleming
TYPE:	Data Request	DEPT:	Executive
REQUEST NO.:	Staff – 290(AVA)	TELEPHONE:	509-495-4140
		EMAIL:	sue.fleming@hydroone.com

REQUEST:

Please describe Avista’s current Board of Directors as it exists today, including:

- a. How many directors sit on it;
- b. Names and titles of those directors;
- c. The number of “independent directors” that currently sit on the board as that term is defined by the NYSE; and
- d. Who selects said independent directors.

RESPONSE:

- a. There are 11 current board members.
- b. **Erik J. Anderson** – CEO, Westriver Capital
Kristianne Blake – President, Kristianne Gates Blake, P.S.
Donald C. Burke – CPA
Rebecca A. Klein – Principal, Klein Energy, LLC
Scott H. Maw – EVP & CFT, Starbucks Coffee Co.
Scott L. Morris – Chairman & CEO, Avista
Marc F. Racicot – Retired
Heidi B. Stanley – Co-Owner and Chair, Empire Bolt and Screw
R. John Taylor – Chairman & CEO, Green Leaf Alliance
Dennis P. Vermillion – President, Avista
Janet D. Widmann – President & CEO, Kids Care Dental
- c. There are 9 “independent directors”
- d. The Governance Committee identifies nominees for the Board. Shareholders elect the Board members.

CASE: UM 1897
WITNESS: ROSE ANDERSON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 702

**Exhibits in Support
Of Reply Testimony**

September 20, 2018

303A.01 Independent Directors

Listed companies must have a majority of independent directors.

Commentary: Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.

Amended: November 25, 2009 (NYSE-2009-89).

303A.02 Independence Tests

In order to tighten the definition of "independent director" for purposes of these standards:

(a)(i) No director qualifies as "independent" unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).

(ii) In addition, in affirmatively determining the independence of any director who will serve on the compensation committee of the listed company's board of directors, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the listed company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to:

(A) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the listed company to such director; and

(B) whether such director is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.

Commentary: It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director's relationship to a listed company (references to "listed company" would include any parent or subsidiary in a consolidated group with the listed company). Accordingly, it is best that boards making "independence" determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director's relationship with the listed company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.

When considering the sources of a director's compensation in determining his independence for purposes of compensation committee service, the board should consider whether the director receives compensation from any person or entity that would impair his ability to make independent judgments about the listed company's executive compensation. Similarly, when considering any affiliate relationship a director has with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company, in determining his independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the listed company or its senior management, or creates a direct relationship

between the director and members of senior management, in each case of a nature that would impair his ability to make independent judgments about the listed company's executive compensation.

Disclosure Requirement: The listed company must comply with the disclosure requirements set forth in Item 407(a) of Regulation S-K.

(b) In addition, a director is not independent if:

(i) The director is, or has been within the last three years, an employee of the listed company, or an immediate family member is, or has been within the last three years, an executive officer, ¹ of the listed company.

Commentary: Employment as an interim Chairman or CEO or other executive officer shall not disqualify a director from being considered independent following that employment.

(ii) The director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than \$120,000 in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service).

Commentary: Compensation received by a director for former service as an interim Chairman or CEO or other executive officer need not be considered in determining independence under this test. Compensation received by an immediate family member for service as an employee of the listed company (other than an executive officer) need not be considered in determining independence under this test.

(iii) (A) The director is a current partner or employee of a firm that is the listed company's internal or external auditor; **(B)** the director has an immediate family member who is a current partner of such a firm; **(C)** the director has an immediate family member who is a current employee of such a firm and personally works on the listed company's audit; or **(D)** the director or an immediate family member was within the last three years a partner or employee of such a firm and personally worked on the listed company's audit within that time.

(iv) The director or an immediate family member is, or has been with the last three years, employed as an executive officer of another company where any of the listed company's present executive officers at the same time serves or served on that company's compensation committee.

(v) The director is a current employee, or an immediate family member is a current executive officer, of a company that has made payments to, or received payments from, the listed company for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues.

Commentary: In applying the test in Section 303A.02(b)(v), both the payments and the consolidated gross revenues to be measured shall be those reported in the last completed fiscal year of such other company. The look-back provision for this test applies solely to the financial relationship between the listed company and the director or immediate family member's current employer; a listed company need not consider former employment of the director or immediate family member.

Disclosure Requirement: Contributions to tax exempt organizations shall not be considered payments for purposes of Section 303A.02(b)(v), provided however that a listed company shall disclose either on or through its website or in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the listed company's annual report on Form 10-K filed with the SEC, any such contributions made by the listed company to any tax exempt

organization in which any independent director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year from the listed company to the organization exceeded the greater of \$1 million, or 2% of such tax exempt organization's consolidated gross revenues. If this disclosure is made on or through the listed company's website, the listed company must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address. Listed company boards are reminded of their obligations to consider the materiality of any such relationship in accordance with Section 303A.02(a) above.

General Commentary to Section 303A.02(b): An "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look-back provisions in Section 303A.02(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become incapacitated.

In addition, references to the "listed company" or "company" include any parent or subsidiary in a consolidated group with the listed company or such other company as is relevant to any determination under the independent standards set forth in this Section 303A.02(b).

Amended: November 25, 2009 (NYSE-2009-89); January 11, 2013 (NYSE-2012-49).

¹ For purposes of Section 303A, the term "executive officer" has the same meaning specified for the term "officer" in Rule 16a-1(f) under the Securities Exchange Act of 1934.

303A.03 Executive Sessions

To empower non-management directors to serve as a more effective check on management, the non-management directors of each listed company must meet at regularly scheduled executive sessions without management.

Commentary: To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. "Non-management" directors are all those who are not executive officers, and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason.

Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative inference from attaching to the calling of executive sessions. A non-management director must preside over each executive session, although the same director is not required to preside at all executive sessions.

While this Section 303A.03 refers to meetings of non-management directors, listed companies may instead choose to hold regular executive sessions of independent directors only. An independent director must preside over each executive session of the independent directors, although the same director is not required to preside at all executive sessions of the independent directors.

If a listed company chooses to hold regular meetings of all non-management directors, such listed company should hold an executive session including only independent directors at least once a year.

Disclosure Requirements: If one director is chosen to preside at all of these executive sessions, his or her name must be disclosed either on or through the listed company's website or in its annual proxy statement or, if the listed company does not file an annual proxy statement, in its annual report on Form 10-K filed with the SEC. If this disclosure is made on or through the listed company's website, the listed company must disclose that fact in its

annual proxy statement or annual report, as applicable, and provide the website address. Alternatively, if the same individual is not the presiding director at every meeting, a listed company must disclose the procedure by which a presiding director is selected for each executive session. For example, a listed company may wish to rotate the presiding position among the chairs of board committees.

In order that all interested parties (not just shareholders) may be able to make their concerns known to the non-management or independent directors, a listed company must also disclose a method for such parties to communicate directly with the presiding director or with those directors as a group either on or through the listed company's website or in its annual proxy statement or, if the listed company does not file an annual proxy statement, in its annual report on Form 10-K filed with the SEC. If this disclosure is made on or through the listed company's website, the listed company must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address. Companies may, if they wish, utilize for this purpose the same procedures they have established to comply with the requirement of Rule 10A-3 (b)(3) under the Exchange Act regarding complaints to the audit committee, as applied to listed companies through Section 303A.06.

Amended: November 25, 2009 (NYSE-2009-89).

303A.04 Nominating/Corporate Governance Committee

(a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.

(b) The nominating/corporate governance committee must have a written charter that addresses:

(i) the committee's purpose and responsibilities - which, at minimum, must be to: identify individuals qualified to become board members, consistent with criteria approved by the board, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; develop and recommend to the board a set of corporate governance guidelines applicable to the corporation; and oversee the evaluation of the board and management; and

(ii) an annual performance evaluation of the committee.

Commentary: **A nominating/corporate governance committee is central to the effective functioning of the board. New director and board committee nominations are among a board's most important functions. Placing this responsibility in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees.** The committee is also responsible for taking a leadership role in shaping the corporate governance of a corporation.

If a listed company is legally required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

The nominating/corporate governance committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board. In addition, the charter should give the nominating/corporate governance committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms.

Boards may allocate the responsibilities of the nominating/corporate governance committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a committee charter.

Website Posting Requirement: A listed company must make its nominating/corporate governance committee charter available on or through its website. If any function of the nominating/corporate governance committee has been delegated to another committee, the charter of that committee must also be made available on or through the listed company's website.

Disclosure Requirements: A listed company must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10-K filed with the SEC that its nominating/corporate governance committee charter is available on or through its website and provide the website address.

Amended: November 25, 2009 (NYSE-2009-89).

CASE: UM 1897
WITNESS: ROSE ANDERSON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 703

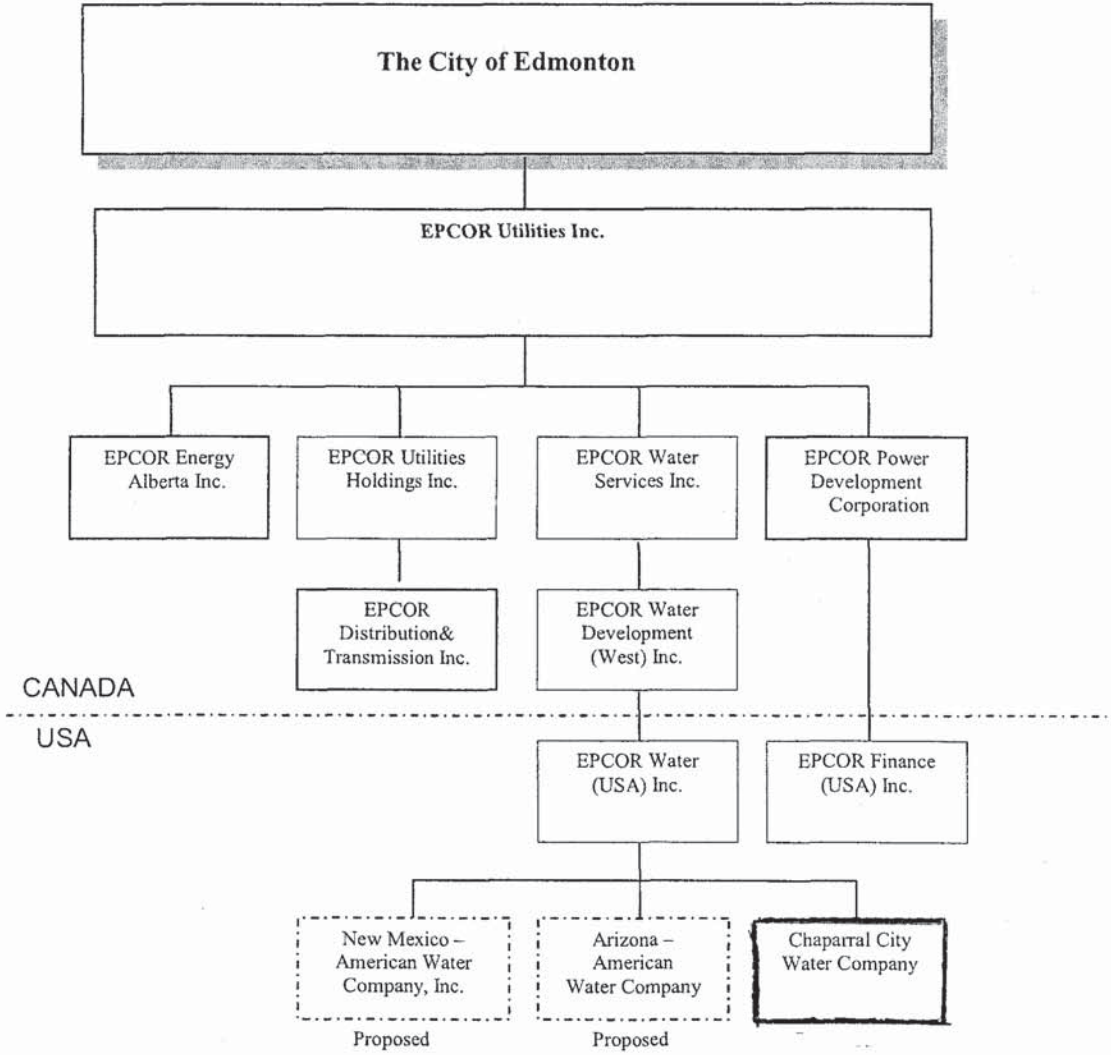
**Exhibits in Support
Of Reply Testimony**

September 20, 2018

EXHIBIT A

Staff/703
Anderson/1

EPCOR Utilities Inc.
Corporate Organization
Chart



CASE: UM 1897
WITNESS: ROSE ANDERSON

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 704

**Exhibits in Support
Of Reply Testimony**

September 20, 2018

Relevant items from “Exhibit SMF-3 – Commitments Public Interest Chart” in the Oncor/Sempra merger application filed with Public Utility Commission of Texas on 10/5/2017

Sempra Energy Regulatory Commitments	Public Interest
<p>1. <u>Separate Board Commitment</u></p> <p>At closing and thereafter, Oncor Electric Delivery Company LLC (“Oncor”) will have a separate board of directors. If, at closing or thereafter, Sempra Energy (“Parent”) has competitive affiliates in Texas, the Oncor board of directors will not include any employees of Parent competitive affiliates in Texas, any members from the boards of directors of Parent’s competitive affiliates in Texas, or any individuals with direct responsibility for the management or strategies of such competitive affiliates.</p>	<p>The separate board commitment ensures that Oncor will be governed by its own board, rather than by the board of Sempra or some intermediate holding company. Oncor’s separate board will make decisions that promote Oncor’s financial well-being, and will act in the best interest of Oncor consistent with the approved ring-fence and Delaware law.</p>
<p>2. <u>Independent Board Commitment</u></p> <p>Oncor will have a board of directors comprised of at least thirteen (13) directors. Oncor Electric Delivery Holdings Company LLC (“Oncor Holdings”) will have a board of directors comprised of at least ten (10) directors. <u>A majority of the Oncor Holdings’ board members and Oncor’s board members will qualify as “independent”</u> in all material respects in accordance with the rules and regulations of the New York Stock Exchange (“NYSE”) (which are set forth in Section 303A of the NYSE Listed Company Manual), from Parent and its subsidiaries. To the extent Parent has any competitive affiliates in Texas, Oncor Holdings’ and Oncor’s boards of directors would not include any employees of Parent’s competitive affiliates in Texas or any members from the boards of directors of Parent’s competitive affiliates in Texas.</p> <p>a) <u>The Oncor Board shall have seven (7) Independent/Disinterested Directors, two (2) directors who will be current or former officers of Oncor, two (2) directors who</u></p>	<p><u>The presence of a majority of independent directors on each of the Oncor Holdings and Oncor boards helps ensure that the interests of Oncor and its customers will be protected, regardless of Oncor’s affiliation with Sempra or any of its affiliates in the future. In addition, an independent board helps avoid potential conflicts of interest. The independent board will provide vigilant oversight of Oncor to mitigate managerial opportunism and promote stakeholder value.</u></p> <p>The independent board is a key part of the commitment to continue the ring-fence structure, especially with the budget control and dividend restrictions remaining in place.</p>

<p><u>will be designated by Parent</u>, and two (2) directors who will be designated by the Minority Members (as that term is defined in the Oncor LLC Agreement).</p> <p>b) <u>The Oncor Holdings Board shall have six (6) Independent/Disinterested Directors, two (2) directors who will be current or former officers of Oncor Holdings, and two (2) directors who will be designated by Parent.</u></p> <p>c) The duties of the Board members of Oncor Holdings and Oncor will be to act in the best interests of Oncor consistent with the approved ring-fence and Delaware Law.</p>	
<p>3. <u>Independence of Board Commitment</u></p> <p>Oncor Holdings' and Oncor's Boards cannot be overruled by the board of Parent or any of its subsidiaries on dividend policy, debt issuance, capital expenditures, management and service fees, and appointment or removal of board members, provided that such actions may also require the additional approval of Oncor Holdings' Board.</p> <p>a) The appointment or removal of the Chief Executive Officer or the Chief Financial Officer of Oncor shall require a majority vote of Oncor board of directors, which vote must include the unanimous vote of the Parent directors.</p> <p>b) Neither Oncor Holdings nor Oncor nor any of their subsidiaries may without the prior written consent of Parent: (1) enter into or authorize any material transactions with a third party outside ordinary course of business nor enter into any contract, or other similar agreement to effectuate such material transactions; or (2) institute an Oncor bankruptcy filing.</p> <p>c) <u>Only the Oncor Holdings Nominating Committee can replace or remove any of the Independent/Disinterested Directors on the Oncor or Oncor Holdings Boards.</u> If the Oncor Holdings Nominating Committee is required to fill a vacancy of an</p>	<p><u>The ring-fencing of Oncor is enhanced by a number of commitments related to the independence of the Oncor board. In particular, the explicitly stated duties of the boards, the specific actions requiring a majority of the independent/disinterested directors, the limitations on parent or affiliate interference, and the restrictions on affiliated individuals serving on the Oncor Board all work in tandem to ensure the separation.</u> Please also refer to the public interest explanation for Commitment No. 2.</p>

Independent Director on either the Oncor Holdings or Oncor Boards, the Nominating Committee will nominate a new director who is Disinterested. "Disinterested Directors" must: (1) be independent from Parent and its subsidiaries and affiliated entities in all material respects in accordance with the rules and regulations of the NYSE; and (2) have no material relationship with Parent or its subsidiaries or affiliated entities currently or within the previous ten years. Former officers of Oncor who otherwise meet these qualifications qualify as "Disinterested Directors."

- d) The Independent/Disinterested Directors may make recommendations to the Oncor Holdings Nominating Committee for any new Disinterested Directors. **The Oncor Holdings Nominating Committee will always have a majority of Independent/Disinterested Directors.** The appointment of new disinterested directors to either the Oncor Holdings or Oncor Boards shall be subject to the approval by a majority vote of Independent/Disinterested Directors
- e) A majority vote of the Independent and/or Disinterested Directors must approve an annual budget if the aggregate amount of such capital and operating and maintenance expenditures in such annual budget is more than a 10% decrease from the capital and operating and maintenance budget for the immediately prior fiscal year.
- f) The Independent and/or Disinterested Directors have the right to approve any amendments or changes to the key provisions of LLC Agreements relating to: (1) the Independent Board; (2) the rights and powers of Independent/Disinterested Directors; (3) removal of Directors; and (4) Delaware as controlling law. Changes to the key provisions of the LLC Agreements shall be subject to Commission approval.