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March 29, 2018

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Public Utility Commission of Oregon
201 High Street SE
Suite 100
Salem, OR 97301

Re: Docket No. UM 1897- In the Matter of HYDRO ONE LIMITED, Application for Authority to Exercise Substantial Influence over the Policies and Actions of AVISTA CORPORATION

Attention: Oregon Commission Secretary:

Enclosed for filing with the Commission are an original and fifteen copies of pre-filed Rebuttal Testimony and Exhibits of:

- **Mark Thies**, Senior Vice President, Chief Financial Officer and Treasurer of Avista;
- **Kevin Christie**, Vice President of Customer Solutions of Avista;
- **Patrick Ehrbar**, Director of Rates of Avista;
- **Mayo Schmidt**, President and Chief Executive Office of Hydro One;
- **Christopher Lopez**, Senior Vice President, Finance of Hydro One; and
- **Ferio Pugliese**, Executive Vice President, Customer Care and Corporate Affairs of Hydro One.

If you have any questions, please do not hesitate to contact David Meyer on behalf of Avista Corporation at 509-495-4316 or david.meyer@avistacorp.com or Elizabeth Thomas on behalf of Hydro One Limited, at 206-370-7631 or liz.thomas@klgates.com or Kari Vander Stoep on behalf of Hydro One Limited, at 206-370-7804 or kari.vanderstoep@klgates.com.

RESPECTFULLY SUBMITTED this 29th day of March, 2017.

K&L GATES LLP on Behalf of Hydro One Limited and Olympus Equity LLC

BY: _____

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HYDRO ONE/800
Schmidt

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1897

REBUTTAL TESTIMONY OF MAYO M. SCHMIDT
REPRESENTING HYDRO ONE

Revised Commitments; Province's Role in Hydro One; NAFTA; Hydro One's Capabilities

I. INTRODUCTION

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

A. My name is Mayo Schmidt, and my business address is 483 Bay Street, South Tower, 8th Floor Reception, Toronto, Ontario M5G 2P5. I am the President and Chief Executive Officer (CEO), as well as a Director, of both Hydro One Limited ("Hydro One") and Hydro One Inc.

Q. Have you filed direct testimony in this proceeding?

A. Yes. The goals I aimed to achieve in my direct testimony were:

- to describe Hydro One and its affiliates,
- to describe the transaction,
- to explain the reasons for Hydro One's proposed purchase of Avista,
- to describe Avista's operations once the transaction is completed,
- to demonstrate that the transaction will benefit Avista's customers, employees and communities.

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

A. Yes.

Ex. 801: Revised Oregon Merger Commitments

Ex. 802: WUTC Settlement Agreement

Ex. 803: Province of Ontario and Hydro One Limited Governance Agreement ("Governance Agreement")

Ex. 804: Joint Petition for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions, New York Public Service Commission Case 12-M-0192, Order Authorizing

Acquisition (Jun. 26, 2013) ("Fortis Final Order")

Ex. 805: Joint Petition for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions, New York Public Service Commission Case 12-M-0192, Recommended Decision of Administrative Law Judges (May 3, 2013) ("Fortis Recommended Decision")

Ex. 806: Biography for James Scarlett prior to joining Hydro One

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Summary of Testimony

Q. Please provide a summary of your testimony.

A. As explained in detail in my testimony, the Proposed Transaction will provide benefits to Avista's Oregon customers and will serve the public interest. We carefully

reviewed the reply testimony and exhibits filed by all parties. Hydro One and Avista are proposing a set of revisions to our proposed merger commitments addressing some of the concerns raised by the prefiled testimony of Commission Staff, CUB, NWIGU and LiUNA. Exhibit 801 to my testimony is a redline comparison of Hydro One's and Avista's Revised Oregon Merger Commitments against the original set of Oregon commitments filed with the Application (hereinafter, each, a "Revised Oregon Merger Commitment," collectively, the "Revised Oregon Merger Commitments"). I discuss many of the revisions in my testimony below. Hydro One witnesses Ferio Pugliese and Chris Lopez also discuss some of the proposed revisions in their prefiled rebuttal testimony. Overall, the original Oregon merger commitments and the Revised Oregon Merger Commitments make crystal clear that:

- Hydro One will not and cannot strip cash out of Avista;
- Hydro One will provide equity support to Avista;
- The Commission will have transparent access to Avista's books and records and those of Hydro One and its subsidiaries as necessary to ensure compliance with Oregon law;
- Avista's service to its Oregon customers will continue at the highest levels through a new Service Quality Measures Program that is Attachment A to my Exhibit 801;
- Avista will provide robust post-transaction reporting on compliance with the commitments; and
- The Proposed Transaction will provide net benefits to and protect the interests of Avista's Oregon customers.

Other than the concerns that have been addressed by proposed revisions to the merger

commitments, we believe the parties' concerns are misplaced for the reasons detailed below:

- Hydro One, and accordingly Avista, are not exposed to any risk associated with Provincial investment in Hydro One;
- NAFTA has no bearing on this transaction or the Commission's ongoing regulatory authority;
- Hydro One is well qualified to serve as the upstream owner of Avista's gas system, as well as its electric system; and
- Avista's Oregon ratepayers will enjoy "most favored nations" status.

II. MERGER COMMITMENTS AND RATE CREDITS

Q. Did Hydro One and Avista reach an all-party, all-issues settlement in the merger docket at the Washington Utilities and Transportation Commission ("WUTC")?

A. Yes, on Tuesday, March 27, 2018, Avista filed the all-party, all-issues settlement in WUTC Docket U-170970. Exhibit 802 to my testimony is the WUTC Settlement Agreement.

Q. Does the WUTC Settlement Agreement include a revised set of Washington Merger Commitments?

A. Yes. Appendix A to the Settlement Stipulation in Exhibit 802 to my testimony is the Master List of Commitments established in Washington.

Q. How does the treatment of rate credits in the WUTC Settlement Commitments compare to how rate credits are addressed in the Revised Oregon Merger Commitments?

A. The mechanism for the calculation and allocation of rate credits is the same in Washington and Oregon. Hydro One and Avista are proposing the flow through of $4.4

million and $30.7 million in proposed rate credits to Oregon and Washington customers, respectively, over a period of five years. These values are based on a total rate credit of 5% of base revenues, which is then allocated to customers over the five year period. This is a substantial increase over Hydro One's and Avista's original rate credit proposed in Oregon in the Application, which was $2.9 million over 10 years.

Q. Do the Revised Oregon Merger Commitments provide funding for low-income and efficiency programs that is commensurate with the low-income and efficiency funding provided in the WUTC Settlement Commitments?

A. Yes. In Commitment Nos. 56, 57, 58, 61 in the Revised Oregon Merger Commitments (Ex. 801), Hydro One and Avista propose to commit a total of $1,636,683 over 10 years to LIRAP, the Oregon Energy Fund, low income weatherization, and an on-bill repayment program. These are new commitments that were not included in Hydro One's Application. The amount is commensurate with the $12,126,014 dedicated to low-income and efficiency funding in the WUTC Settlement Commitments, based on Avista's four-factor allocation system.

Q. Do the Revised Oregon Merger Commitments apply the rate credit and program funding commitments from the WUTC Settlement Commitments to Oregon on a most-favored nations ("MFN") basis?

A. Yes, as described in my previous two answers. Overall, the rate credit and funding for low-income and efficiency programs provided in the Revised Oregon Merger Commitments represent an increase of two and a half times over what we offered initially in the Application. For Oregon, that increase is from $2.9 million to $6.1 million. This includes not only an increase in the overall rate credit, but also an additional $1.7 million in funds for

low income and energy efficiency programs as discussed by Avista witness Mr. Ehrbar.[1] In total, the increase is from $31.5 million to $74.2 million on a system-wide basis. Hydro One and Avista have been very careful to ensure that the customers in each of Avista's jurisdictions are treated equitably. Please remember that Oregon accounts for less than 10% of Avista's business. As a result, any further financial concessions in Oregon would have a ten-fold impact on an MFN basis across Avista's system. In other words, $1 million more in Oregon financial concessions becomes $10 million more on a system-wide basis.

III. PROVINCE OF ONTARIO'S ROLE AS HYDRO ONE'S LARGEST SHAREHOLDER

Q. Please explain the Governance Agreement between Hydro One and the Province of Ontario. How does it ensure that Ontario does not impact the management of Hydro One despite the fact that Ontario owns more than 40% of Hydro One's shares and is Hydro One's largest shareholder?

A. The Governance Agreement (Ex. 803 to my testimony) between Hydro One and the Province of Ontario is a binding contract that was a pre-requisite for Hydro One's successful Initial Public Offering ("IPO"). The Province of Ontario understood and continues to understand that Hydro One will not succeed and will lose the trust of its investors and financial institutions if the Province of Ontario were to meddle in or insert politics into Hydro One's operations. As a result, the Province willingly entered into the Governance Agreement to provide the investment and financial communities the assurance that Hydro One will operate like any other investor-owned utility, even though the Province will likely continue to own at least 40% of Hydro One's shares for the foreseeable future.

[1] The funding of $1.7 million for low-income and energy efficiency programs, in total, is directly comparable to the level of low-income, energy efficiency, and renewables funding agreed to in the Washington settlement stipulation.

The Governance Agreement establishes that the Hydro One board of directors (the "Board") shall be responsible for the management of or supervising the management of Hydro One's business and affairs. (Governance Agreement ("GA") 2.1.2). The Governance Agreement states that the Province will be involved in Hydro One as an investor and not as a manager. (GA 2.1.3). The Province does not have a role with the Hydro One Board in the processes of appointment, removal, replacement, and compensation relating to executive officers or over related succession planning. Hydro One neither takes direction nor seeks consent for its operations from the government of Ontario, outside of the defined regulatory and oversight authority that the government has over the electricity sector. (GA 2.1.3; 2.2).

Q. What are the Province's rights and limitations as a shareholder?

A. While a 40% or more shareholder of a corporation under most circumstances could control the entire composition of the corporation's board, the Governance Agreement prevents the Province from exercising similar influence with respect to Hydro One. The Governance Agreement establishes a Nominating and Governance Committee with governance responsibilities, including nominating directors and advising the Board regarding its stewardship role in the management of Hydro One. (GA 3.5). The Board will consist of a minimum of 10 and a maximum of 15 members and will be comprised as follows: (i) the CEO will be proposed for election, (ii) the Province will nominate 40% of directors (or its pro-rata share, whichever is less) proposed for election, and (iii) the Nominating and Governance Committee will nominate the remaining directors proposed for election. (GA 3.3.1; 4.1.1). If the Province is diluted below 40%, there will be a minimum 24-month "cure period" before any reduction in its permitted number of nominees occurs. (GA 4.8).

Other than the CEO, each director must be independent of Hydro One and the Province. (GA 4.2.2; 4.2.3). Directors must be high-quality, reputable, experienced leaders with the requisite skills, board experience, time, and motivation for an operation of Hydro One's size and scope. Directors are also chosen in light of Hydro One's core operating principles. (GA 4.2.1). Directors must meet the requirements of corporate and securities laws and any stock exchange on which Hydro One securities are listed. (GA 4.2.4).

Several provisions in the Governance Agreement limit the Province's shareholder rights:

- The Province cannot initiate fundamental changes to Hydro One described in Part XIV of the Business Corporations Act (Ontario) (e.g., amendment to articles, continuance, arrangements, and amalgamations). (GA 2.5). The Province may vote its shares as it sees fit in the event a fundamental change is initiated by another shareholder. (GA 2.5).
- The Province cannot solicit (either on its own or acting with others) any person to exercise rights as a shareholder in a manner that the Province would be prohibited from doing directly. (GA 2.6).

Q. As the CEO of Hydro One, can you attest to the fact that the Province does not involve itself in the management and operations of Hydro One?

A. Just like in the United States, the federal, provincial, and local governments of Canada are governed by the rule of law, and they uphold their contracts. The Governance Agreement may be terminated only with the mutual agreement of both parties. (GA 8.4).

Q. CUB's witnesses contend that the Province of Ontario may make Hydro One a Crown Corporation again, thereby making Avista subject to the control of a

foreign government.[2] In your opinion, what is the likelihood of this happening?

A. This is highly unlikely. The Province theoretically could pass legislation that would start the process of making Hydro One a Crown Corporation again. In order to make Hydro One a Crown Corporation again, however, the Province would have to buy back all of the outstanding stock from private shareholders, which would be a massive financial undertaking. Furthermore, the Governance Agreement would have to be terminated, and it can only be terminated with the mutual agreement of both the Province and Hydro One.

The Province also is unlikely to pursue this course of action because it must be sensitive to how investors and financial markets would react. The Province relies on the private investment market and financial institutions for many reasons, and taking the extreme action of making Hydro One a Crown Corporation again would destroy trust with these constituencies to the detriment of the Province.

Even in the unlikely event that the Province took the steps necessary to convert Hydro One back into a Crown Corporation after this merger is approved, the structure of Avista's board would protect it from inappropriate influence by the Province. Hydro One and Avista, in response to Commission Staff and intervenor testimony, are going to amend Commitment No. 3 as follows to strengthen the independence of the board from Hydro One (*see* Ex. 801):

[2] Jenks-Gehrke, CUB Ex. 100, pages 9 (line 16) - 10 (line 2).

3. **Board of Directors:** After the closing of the Proposed Transaction, Avista's board will consist of nine (9) members, determined as follows: (i) two (2) directors designated by Hydro One who are executives of Hydro One or any of its subsidiaries; (ii) three (3) directors who ~~are not officers, employees or directors (other than as an independent director of Avista or Olympus Equity LLC) of Hydro One or any of its affiliates~~meet the standards for "independent directors" under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Directors") and who are residents of the Pacific Northwest region, to be designated by Hydro One (collectively, the directors designated in clauses (i) and (ii) hereof, the "Hydro One Designees"), subject to the provisions of Clause 2 of Exhibit A to the Merger Agreement; (iii) three (3) directors who as of immediately prior to the closing of the Proposed Transaction[1] are members of the Board of Directors of Avista, including the Chairman of Avista's Board of Directors (if such person is different from the Chief Executive Officer of Avista); and (iv) Avista's Chief Executive Officer (collectively, the directors designated in clauses (iii) and (iv) hereof, the "Avista Designees"). The initial Chairman of Avista's post-closing Board of Directors shall be the Chief Executive Officer of Avista as of the time immediately prior to closing for a one year term. If any Avista Designee resigns, retires or otherwise ceases to serve as a director of Avista for any reason, the remaining Avista Designees shall have the sole right to nominate a replacement director to fill such vacancy, and such person shall thereafter become an Avista Designee.

The term "Pacific Northwest region" means the Pacific Northwest states in which Avista serves retail electric or natural gas customers, currently Alaska, Idaho, Montana, Oregon and Washington;

Hydro One and Avista also propose to amend Commitment No. 1 to establish that Commitment No. 3 cannot be amended without the approval of at least one Avista board member, as well as the Commission (*see* Revised Oregon Merger Commitment No. 1):

1. Consistent with and subject to the terms of Exhibits A and B to the Merger Agreement (referred to as "Delegation of Authority") contained in Appendix 5 of the Joint Application, decision-making authority over commitments 2-15 below is reserved to the Board of Directors of Avista Corporation ("Avista") and ~~any~~not to Hydro One. Any change to the policies stated in commitments 2-15 requires a two-thirds (2/3) vote of the Avista Board~~:~~ including the affirmative vote of at least one (1) Avista Designee, one (1) Hydro One Designee (exclusive of Independent Directors) and two (2) Independent Directors as defined in Commitment 3. Any change at any time to commitments 1, 2, 3, 7, 8, 10 or 15 as well as any change to Commitments 16-55 also requires Commission approval.

Q. Commission Staff Witnesses Mr. Muldoon and Mr. Anderson contend that Hydro One is more vulnerable to political change than is typical for investor-owned utilities because the Province of Ontario is Hydro One's largest shareholder.[3] Do you agree?

A. No. As explained above, Hydro One is not any more vulnerable to political

[3] Muldoon, Commission Staff Ex. 100, page 25 (lines 6-9); *see also*, Anderson, Commission Staff Ex. 500, page 5 (lines 7-10; 21-23) and page 6 (line 1).

change than any other investor-owned utility in Canada, or the United States for that matter, because of the Governance Agreement between Hydro One and the Province. The Governance Agreement establishes that the Province cannot interfere in the management or operations of Hydro One. The only influence it conceivably has is through the selection of 40% of the Hydro One board members. However, those board members must be independent of both the Province and Hydro One, and they must meet the high qualification standards set by Hydro One's Nominating and Governance Committee. As a result, Hydro One is no more subject to the influence of the Province's politicians than any other investor -owned utility is subject to the political influence of elected and appointed officials in the jurisdiction in which it operates.

It is worth noting that investor-owned utilities in Canada and the United States constantly grapple with political change. In Washington State, the State Legislature just spent the 2018 legislative session actively debating whether to adopt a carbon tax. This legislation would have had a huge impact on Avista. Political risk and regulatory challenges exist for every investor-owned utility. Hydro One is not more vulnerable to these risks than another investor-owned utility in Canada and the United States simply because approximately 47% of its stock is currently owned by the Province.[4] The Governance Agreement ensures that Hydro One's vulnerabilities to political changes and new regulatory initiatives are on a level playing field with its fellow utilities in North America.

Q. Staff Witness Anderson and CUB Witnesses Jenks and Gehrke contend a foreign government could have direct control and influence over Avista given that a

[4] Following conversion of the convertible debentures described in the rebuttal testimony of Hydro One witness Chris Lopez, the Province will hold less than 43% of Hydro One's outstanding stock.

large portion of the voting shares of Hydro One are owned by the Province of Ontario. Do you agree with their speculation?[5]

A. These concerns are not supported by the facts. The Governance Agreement between Hydro One and the Province, the structure of Avista's board in the Applicants' proposed revisions to Commitment No. 3 noted above, the proposed ring-fencing commitments described in detail in the rebuttal testimony of Hydro One witness Chris Lopez, and the Commission's continued and undiminished regulatory authority over Avista prevent "a government with political goals [from] using [Avista] corporate assets to serve political needs in Ontario that are unrelated to ratepayer interests in Oregon."[6]

Q. Does the fact that Hydro One held meetings with Glenn Thibeault, Ontario's Minister of Energy, on July 17, 2017, and the then leader of the Opposition and Ontario Progressive Conservative leader Patrick Brown, on July 25, 2017, regarding the transaction suggest that the provincial government in Ontario exerts undue influence over Hydro One?

A. No. As discussed, such influence would be contrary to and prohibited by the Governance Agreement. It is good government relations practice to keep government officials apprised of high profile events at Hydro One. In this case, briefings were held to ensure that Minister Thibeault and Patrick Brown were informed on the merger and to field any questions they might have on the topic. Hydro One also meets with shareholders and potential shareholders in the regular course of its business and is willing to meet with representatives of the Province of Ontario in that vein.

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[5] Anderson, Commission Staff Ex. 500, page 5 (lines 7-10; 21-23) and page 6 (line 1); Jenks-Gehrke, CUB Ex. 100, page 9 (lines 8-15).
[6] Anderson, Commission Staff Ex. 500, page 6 (lines 3-5).

Q. Mr. Muldoon raises a concern that the fact that Hydro One's largest shareholder, the Province of Ontario, also regulates Hydro One, through the independent Ontario Energy Board ("OEB"), makes Hydro One more vulnerable to political change than is typical for investor owned utilities.[7] Do you agree?

A. No. The OEB is an independent energy regulator that regulates electric and gas utilities in Ontario, not just Hydro One. The OEB regulates Hydro One in a manner analogous to the Commission's regulation of Avista. Hydro One is not anymore subject to political change and influence through OEB's regulation than any other Ontario utility. Similarly, given that OEB is an independent body, just like the Commission, Hydro One is not any more subject to political change and influence because the Province appoints the members of the OEB than a utility in the United States that is regulated by a state commission consisting of politically appointed commissioners.

Q. Mr. Muldoon raised concerns that there are risks to this transaction and Hydro One's ownership of Avista posed by Canadian Prime Minister Justin Trudeau's February 8, 2018 announcement that Parliament will revise how electric transmission projects are reviewed at the Canadian federal level through the National Energy Board (NEB).[8] Do you agree?

A. No, this concern is misplaced. The NEB, a federal regulator based in Calgary that is currently undergoing some changes, is not a significant regulator of Hydro One. Rather, the primary regulator of Hydro One is the OEB. The OEB is a stable regulatory body located in Toronto. The majority of Hydro One's electricity infrastructure is subject to OEB

[7] Muldoon, Commission Staff Ex. 100, page 25 (lines 6-9); *see also*, Muldoon, Commission Staff Ex. 200, pages 45 (line 17) - 46 (line 2).
[8] Muldoon, Commission Staff 100, pages 8 (line 18) - 9 (line 1); pages 24 (line 10) - 25 (line 2).

regulation and will not be impacted by the new regulatory bodies the federal government is instituting for the NEB. The only exceptions are Hydro One's 11 international power line interconnection ties to the United States and the new entities that are proposed to replace them, all of which do fall under the jurisdiction of the NEB. These, however, are well-established lines and represent a very minor part of Hydro One's operations, infrastructure, and investments, i.e., 40 KM of transmission lines out of a total of 30,000 KM of high-voltage transmission lines owned by Hydro One. Further, the NEB does not set transmission rates, the OEB does. NEB's jurisdiction is limited to the construction, cooperation, and maintenance of construction projects. And, as stated, Hydro One's transmission lines that fall under NEB's jurisdiction are well established, rather than in the initial permitting stages. Thus, OEB is Hydro One's sole economic regulator, and the changes to NEB do not represent a material risk to Hydro One's operations in Canada or its post-merger ownership of Avista.

Q. Mr. Muldoon cites recent changes to the Province of British Columbia's policies regarding the Site C hydroelectric dam project as an example of how Hydro One is at risk of political influence by the Province of Ontario.[9] Please explain why the Province of British Columbia's actions with respect to Hydropower Site C does not support Commission Staff's premise that Hydro One is vulnerable to political influence from the Province of Ontario.

A. The Site C hydroelectric dam project is distinguishable from this merger for at least two significant reasons. First of all, unlike Hydro One, BC Hydro is a Crown Corporation. As explained throughout this testimony, Hydro One is not, as Hydro One functions independently of the Province of Ontario pursuant to the parties' Governance

[9] Muldoon, Commission Staff Ex. 200, page 58 (lines 1-4).

Agreement, which does not provide the Province a mechanism to pressure Hydro One on commercial decisions. Second, BC Hydro's suspension of the Site C hydroelectric dam project is related to a collateral lawsuit by the West Moberly and Prophet River First Nations of Canada, not any action by the Province of British Columbia. In their suit, the First Nations allege that the Site C project violates their treaty rights and the Canadian Constitution. As part of negotiations related to the First Nations' lawsuit, BC Hydro suspended the project temporarily, but has now resumed the project amid that ongoing lawsuit. For these reasons, Site C has no bearing on this transaction and/or how Avista will operate within the post-merger Hydro One corporate structure.

Q. **Please explain why Ontario Power Generation's ("OPG") cancellation of two natural gas power plants in Mississauga and Oakville, Ontario does not support CUB's premise[10] that Hydro One is vulnerable to political influence from the Province of Ontario.**

A. We would like to point out that the cancellation of gas plants in 2011 was, in fact, the decision of the Ontario government, not OPG. The two gas plants in question were private generators procured by the Government of Ontario and not under the purview of OPG. The decision to cancel these two gas power plants is distinguishable from this transaction and how Hydro One functions today. First, because the government of Ontario was a signatory to the contracts for those two power plants. Thus, it had a direct and indisputable role in the development and construction of those two plants. Second, the government's decision to cancel those two plants predated Hydro One's reorganization into a private corporation. Thus, it also predated the entry of Hydro One and the Province into the Governance

[10] Jenks-Gehrke, CUB Ex. 100, pages 12 (line 4) - 13 (line 12).

Agreement, which as discussed, would prohibit the Province from unilaterally cancelling or controlling any project of Hydro One's. In short, this example in no way relates to today's Hydro One, a commercial, investor-owned utility over which the government can express or exert no operational control.

Q. Does the Province of Ontario own the same number of shares today as it did when the Application was filed?

A. No, it owns fewer. On January 2, 2018, the Province announced the sale of 14,391,012 common shares of Hydro One Limited, representing approximately 2.4% of the outstanding common shares, to OFN Power Holdings LP, a limited partnership wholly-owned by Ontario First Nations Sovereign Wealth LP, which is in turn owned by 129 First Nations in Ontario at a purchase price of $18 per share for a total purchase price of $259,038,216. This transaction fulfills the Province's commitment in its agreement-in-principle with the Chiefs-in-Assembly on behalf of the First Nations in Ontario, which was previously announced on July 12, 2016.

Immediately prior to the closing of the transaction, the Province owned 296,803,660 common shares of Hydro One Limited, representing approximately 49.9% of the common shares of Hydro One Limited. After completing the transaction, the Province owns 282,412,648 common shares of Hydro One Limited, representing approximately 47.4% of the common shares of Hydro One Limited.

Based on facts known today and assuming the Proposed Transaction is completed, the Province's level of ownership of Hydro One will decline to approximately 42%.

Q. Mr. Muldoon contends that the Province of Ontario's decision not to reinvest the proceeds gained from the sale of Hydro One shares of stock back into

Hydro One's utility for ratepayers' benefit demonstrates that the Province will pressure Hydro One to extract funds from Avista for the benefit of government projects and will jeopardize Avista's access to sufficient capital.[11] Is this a fair assumption?

A. No. The stated purpose of the Province's decision to sell the majority of its ownership in Hydro One was to fund an important infrastructure program in Ontario, as well as to lower provincial debt. The Province also wanted to encourage public ownership to drive efficiencies and productivity in Ontario's utility sector.

As part of its decision to make Hydro One a publicly traded company in which it would no longer have a majority ownership interest, the Province and Hydro One also entered into the Governance Agreement that limits the Province's role in Hydro One to that of a shareholder with no authority to dictate the management and operations of Hydro One. The Province's decision to transform Hydro One into a publicly traded company, to reduce its role in Hydro One to that of a shareholder, and to use the proceeds from the sale of more than half of its ownership in Hydro One do not in any way relate to how today's Hydro One board will function as the owner of Avista.

Q. Is Hydro One willing to revise its merger commitments to ensure that Avista will have sufficient access to capital?

A. Revised Oregon Merger Commitment Nos. 32 through 36 commit Hydro One to providing equity capital injections as needed for Avista to maintain its investment level credit rating, and other important commitments related to Avista's credit rating and dividend distribution (*see* Ex. 801):

[11] Muldoon, Commission Staff Ex. 100, pages 4 (line 13) - 5 (line 2).

32. **Capital Structure Support:** Hydro One will provide equity ~~to support Avista's~~ capital ~~structure that is designed to allow~~ injections as needed for maintaining the financial integrity of Avista ~~access to debt financing under reasonable terms and on a sustainable basis~~such that Avista maintains an investment-grade credit rating.

33. **Utility-Level Debt and Preferred Stock:** Avista will maintain separate debt and preferred stock, if any, to support its utility operations.

34. **Continued Credit Ratings:** ~~Each of Hydro One and~~ Avista will continue to be rated by Moody's and at least one other nationally recognized ~~statistical "Rating Agency."~~credit rating agency. Hydro One ~~and Avista~~ will ~~use reasonable best efforts~~continue to ~~obtain and maintain a separate credit rating for Avista from~~be rated by at least one ~~Rating Agency within the ninety (90) days following the closing of the Proposed Transaction. If Hydro One and Avista are unable to obtain or maintain the separate rating for Avista, they will make a filing~~nationally recognized credit rating agency. Avista will provide notice and, if requested, consult with ~~the~~ Commission ~~explaining the basis for their failure to obtain or maintain such separate~~Staff, and Hydro One agrees Avista will do so, in the event that Moody's or another nationally recognized credit rating ~~for~~agency downgrades Avista's credit rating for any reason. If Avista's credit rating drops below investment grade for Moody's or another nationally recognized credit rating agency, Avista will file, and Hydro One agrees Avista will file, a plan with the Commission detailing a range of options to maintain or restore Avista's credit rating, or to explain actions consistent with Avista's customers' best interest. Upon Commission request, Avista will present, and ~~parties to~~ Hydro One agrees Avista will present, this ~~proceeding will have an opportunity~~plan to the Commission, with appropriate provisions in place to ~~participate and propose additional commitments.~~ protect confidential information.

~~35.~~ **Restrictions on Upward Dividends and Distributions:**

a. ~~If~~Except as noted in (b) below, if either (i) Avista's corporate credit/issuer rating as determined by at least one ~~industry~~nationally recognized rating agency~~, including, but not limited~~ that issues ratings with respect to~~, S&P, Moody's, Fitch, or Morningstar~~ Avista is investment grade, or (ii) the ratio of Avista's EBITDA to Avista's interest expense is greater than or equal to 3.0, then distributions from Avista to Olympus Equity LLC shall not be limited so long as Avista's equity ratio is equal to or greater than 44 percent on the date of such Avista distribution after giving effect to such Avista distribution, except to the extent the Commission establishes a lower equity ratio for ratemaking purposes. Both the EBITDA and equity ratio shall be calculated on the same basis that such calculations would be made for ratemaking purposes for regulated utility operations.

b. If Avista's equity ratio is lower than 46 percent, Avista must notify the Commission of its intention to declare a special dividend (defined as a one-time dividend that is paid in addition to Avista's established or expected quarterly dividend) at least 30 days before the intended date of such dividend. Any such dividends from Avista to Olympus Equity LLC are allowed only with prior Commission approval.

~~b.~~c. Under any other circumstances, distributions from Avista to Olympus Equity LLC are allowed only with prior Commission approval.

~~36.~~ **Pension Funding:** Avista will maintain its pension funding policy in accordance with sound actuarial practice~~.~~ and applicable legal requirements. Hydro One will not seek to change Avista's pension funding policy.

Q. Mr. Muldoon contends that there is a risk that the Province of Ontario will pressure Hydro One to raise Avista's rates or not provide Avista the capital support it needs because the Ontario government will want high dividends to fund its infrastructure investment program and to keep electricity rates low for Hydro One customers.[12] Is this possible?

A. No, the simple fact is that the Province cannot do this. In addition, Hydro One is not looking to extract funds from Avista in order to fund government priorities rather than ensure that Avista remains a properly run utility. Furthermore, it must be emphasized that Hydro One's and Avista's merger commitments (which have been further strengthened in the Revised Oregon Merger Commitments presented as Ex. 801 to my testimony) ensure that (i)

[12] Muldoon, Commission Staff Ex. 100, page 8 (lines 10-16).

Avista's post-merger Board of Directors and existing executive leadership will manage Avista -- not Hydro One's Board (*see* Revised Oregon Merger Commitment Nos. 2 and 3), and (ii) the Hydro One Board will not be able to extract funds from Avista that would jeopardize Avista's credit rating, debt-to-equity ratio, or safety and reliability standards (*see* Revised Oregon Merger Commitment Nos. 15, 24, 32, 34, 35, 44). Also, Avista's customers will be protected from such concerns because the Commission's jurisdiction, and that of the other state commissions that regulate Avista, will remain unchanged by the transaction, as affirmed in Revised Oregon Merger Commitment Nos. 18 and 19:

> 18. **State Regulatory Authority and Jurisdiction:** ~~Olympus Holding Corp.~~Hydro One and its subsidiaries, including Avista, as applicable and as appropriate, will comply with all applicable laws, including those pertaining to transfers of property, affiliated interests, and securities and the assumption of obligations and liabilities. As required by and consistent with applicable laws, venue for resolution of proceedings related to these matters will be at the appropriate state utility commission(s). Hydro One and its subsidiaries, including Avista, will make their employees and officers available to testify before the Commission at the Commission's request to provide information relevant to the matters within its jurisdiction.
>
> Hydro One and Avista agree that the Commission would have jurisdiction in any future proceedings regarding any unrecovered liabilities to the State of Oregon that may result from North American Free Trade Agreement ("NAFTA") Chapter Eleven mediations, arbitrations, or any other litigation brought by Hydro One's shareholders under NAFTA. Only the Commission and/or the Oregon Attorney General may initiate such proceeding before the Commission for purposes of this paragraph.
>
> Hydro One, its affiliates, and its subsidiaries all agree to submit to the jurisdiction of the Commission for: (1) all matters related to the Merger and the enforcement of the conditions set forth herein to the extent relevant to operations of Avista in Oregon; and (2) matters relating to affiliate transactions between Avista and Hydro One or its affiliates to the extent relevant to operations of Avista in Oregon. Hydro One will also cause each of its affiliates that supplies goods or services to Avista to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Avista. The Commission's authority over Avista will be unchanged by the Merger.
>
> Avista will, and Hydro One agrees that Avista and other Hydro One affiliates as applicable will, comply with the statutes, regulations, and orders applicable to Avista and its affiliates regarding affiliate transactions. Hydro One will permit the Commission to examine the accounting records of Hydro One and its affiliates that are the basis for charges to Avista's operations in Oregon to determine the reasonableness of allocation factors used by Hydro One to assign those costs and amounts subject to allocation and direct charges.
>
> 19. **Compliance with Existing Commission Orders:** Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge that all existing orders issued by the Commission with respect to Avista or its predecessor, Washington Water Power Co., will remain in effect, and are not modified or otherwise affected by the Proposed Transaction.

Finally, as noted in our Application, Hydro One's first stated purpose for the proposed purchase of Avista is growth; therefore, it would not be logical for Hydro One to endure the regulatory processes of five different jurisdictions and to pay a premium for Avista to then deplete the company of its value.

Q. Mr. Muldoon suggests that the Province of Ontario's Trillium Trust is another example of why the Commission should be concerned that Avista will not have access to capital if acquired by Hydro One.[13] Please explain the Trillium Trust and whether it demonstrates that Avista will have difficulty obtaining access to capital if acquired by Hydro One.

A. The Ontario Trillium Trust was established by the Province of Ontario to support its efforts to invest in transit and transportation infrastructure. Net proceeds from the sale of qualifying provincial assets will be allocated to the Ontario Trillium Trust which, in turn, will be used to fund infrastructure projects. The shares of Hydro One Limited held by the Province of Ontario are considered qualifying provincial assets. The Ontario Trillium Trust, however, is not otherwise associated with Hydro One and has no impact on its governance or access to capital.

Q. Should the Commission be concerned that Avista's safety, reliability, and service quality levels will drop as a result of the merger because of the Province's ownership of Hydro One stock, as suggested by CUB?[14]

A. No, not at all. As provided in Revised Oregon Merger Commitment No. 15 (Ex. 801), the Applicants have committed that Avista will maintain its safety and reliability standards and policies and service quality measures in a manner that is substantially

[13] Muldoon, Commission Staff Ex. 200, pages 46 (line 13) - 47 (line 7).
[14] Jenks-Gehrke, CUB Ex. 100, pages 11 (line 8) - 12 (line 3).

comparable to, or better than, those currently maintained by Avista:

> 15. **Safety and Reliability Standards and Service Quality Measures:** Avista will, and Hydro One agrees Avista will, maintain Avista's safety and reliability standards and policies and service quality measures in a manner that is substantially comparable to, or better than, those currently maintained.
>
> Additionally, Avista and Hydro One commit to providing a Service Quality Measures Program (see Attachment A).

Additionally, Avista and Hydro One commit to providing a Service Quality Measures Program that is Attachment A to Ex. 801 of my testimony.

Revised Oregon Merger Commitment No. 15 requires that Avista continue to make necessary capital investments in order to maintain safety, reliability, and service quality levels. There is no reason for concern that Avista will be required to pay dividends to Hydro One, rather than making the investments necessary to maintain and to enhance its electric and gas distribution businesses. Again, any insinuation that the Province of Ontario would somehow exert pressure on Hydro One to seek increased dividends from Avista is wholly unfounded in light of Hydro One's Governance Agreement, operating history, and Revised Oregon Merger Commitment No. 15.

Q. Mr. Muldoon recommends that Hydro One and Avista adopt a commitment restricting the venue of disputes regarding Avista to Washington and Oregon so as to preclude Hydro One-favoritism in Ontario.[15] Are Hydro One and Avista willing to do this?

A. While Hydro One does not accept the premise for Mr. Muldoon's request, Hydro One and Avista propose Revised Oregon Merger Commitment Nos. 18 (quoted above) and 29 to make crystal clear that Hydro One will submit to the jurisdiction of all of the state regulatory authorities that regulate Avista and the state courts in these jurisdictions for any

[15] Muldoon, Commission Staff Ex. 200, page 58 (lines 8-13).

dispute involving Avista. Here are the proposed revisions for Revised Oregon Merger Commitment No. 29:

~~29.~~ **Submittal to State Court Jurisdiction for Enforcement of Commission Orders:** Hydro One, Olympus Holding Corp., ~~on its own~~ and ~~its subsidiaries' behalf, including Avista's, will~~Avista will jointly file with the Commission prior to closing the Proposed Transaction an affidavit affirming that ~~it~~they will submit to the jurisdiction of the relevant state courts for enforcement of the Commission's orders adopting ~~these~~the commitments made by and binding upon them and their affiliates where noted, and subsequent orders affecting Avista.

Q. Please summarize the concerns raised by CUB witnesses Jenks and Gehrke regarding the acquisition of Avista by Hydro One as it relates to foreign ownership.[16]

A. CUB witnesses Jenks and Gehrke note that the Province of Ontario has been looking for ways to reduce the provincial debt load following the last recession. They contend that the Ontario government could decide at some future time either to sell all its shares in Hydro One or to sell Avista, rather than raising taxes or cutting government spending. On that basis, CUB is concerned that Hydro One may be a short-term investor in Avista, and that once the decision is made to sell Avista, Hydro One will stop making the necessary investments in Avista, causing degradation in reliability and service quality for Oregon customers.

Q. Is there a risk, as suggested by the CUB witnesses, that Avista could be privatized or sold by Hydro One after the merger because the Province of Ontario, as Hydro One's largest shareholder, will seek divestiture of Avista?[17]

A. As explained in my prior answers in this rebuttal testimony, the Governance Agreement prevents the Province of Ontario from requiring the divestiture of Avista. That

[16] Jenks-Gehrke, CUB Ex. 100, pages 9 (line 10) - 10 (line 8).
[17] Jenks-Gehrke, CUB Ex. 100, page 7 (lines 1-12).

decision rests solely with the Hydro One Board. Furthermore, the Commission would have jurisdiction to review any proposed divestiture of Avista by Hydro One. Moreover, Hydro One has no intention of divesting Avista after the significant effort that it will go through to acquire Avista. As explained in more detail in the Oregon Rebuttal Testimony of Christopher Lopez (Ex. 900), Hydro One is a strategic buyer of Avista, as compared with a financial buyer (such as a pension fund) that would seek to flip Avista in five to ten years. Hydro One anticipates significant value from the business line and geographic diversification that Avista brings to Hydro One. That value will not be realized if Avista is divested in the short-term.

IV. NAFTA

Q. CUB Witnesses Jenks and Gehrke contend that NAFTA will allow Avista to avoid the jurisdiction and orders of the Commission because Avista's parent is a Canadian corporation.[18] Is this true?

A. No, it is not true. I understand that in recent cases, intervenors in merger approval proceedings at state utility commissions have raised the issue that NAFTA could impair the jurisdiction of a state utility commission when a Canadian company acquires a U.S. utility.

General concerns about the potential for NAFTA to interfere with the power of United States regulators have also been raised since NAFTA went into effect 24 years ago. But those fears are not supported by law and have not been realized in practice. Specifically, fears that NAFTA would be used by foreign investors to interfere with the normal operations of regulatory bodies in the United States, such as the Commission, have proven to be completely unfounded.

[18] Jenks-Gehrke, CUB Ex. 100, pages 14 (line 17) - 15 (line 3).

NAFTA Chapter 11 cannot affect the scope of the Commission's authority over Avista. NAFTA Chapter 11 only provides for monetary awards or restitution of expropriated property and, therefore, cannot be used to alter or to nullify a Commission decision or regulation.[19] In its review of the Fortis/CH Energy Group merger, the New York Public Service Commission stated the following:

> [A] state regulatory agency acting lawfully within its statutory authority is not liable to a claim of damages under NAFTA unless an entity covered by the treaty can demonstrate that it made its investment in the state pursuant to express commitments made by the agency which were subsequently broken.[20]

I can affirm that the Commission has made no "express commitments" to induce Hydro One's acquisition of Avista stock. As a result, Hydro One enjoys no special procedural or substantive advantages as "an entity covered by [NAFTA]" over any domestic entity to challenge the lawful actions of the Commission.

Furthermore, Hydro One and Avista are willing to add a provision to Revised Oregon Merger Commitment No. 18 (quoted above) confirming that Hydro One and Avista agree that the Commission would have jurisdiction in any future proceedings regarding any unrecovered liabilities to the State of Oregon that may result from NAFTA Chapter Eleven mediations, arbitrations, or any other litigation brought by Hydro One's shareholders under NAFTA. The language in Commitment No. 18 makes clear that both Hydro One and Avista recognize that NAFTA does not curtail the authority of the Commission to promulgate and to enforce relevant rules and regulations, that Hydro One and Avista explicitly recognize that the

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[19] *See* NAFTA Art. 1135(1)(a), (b).

[20] *Joint Petition for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions*, New York Public Service Commission Case 12-M-0192 ("*Fortis*"), Order Authorizing Acquisition at 33 (Jun. 26, 2013) ("*Fortis* Final Order") (attached hereto as Exhibit 804); and Recommended Decision of Administrative Law Judges at 46 (May 3, 2013) ("*Fortis* Recommended Decision") (attached hereto as Exhibit 805).

Commission's authority over Avista's operations will remain unchanged by the merger, that the parties will comply with all applicable laws and regulations, and that they recognize the Commission's jurisdiction over the matters of concern to CUB. Taken together, the established law and precedent regarding NAFTA, particularly when coupled with the express commitments undertaken by the parties in this merger, leaves no reasonable doubt whether the Commission's authority will be encumbered by NAFTA and this merger.

Q. To your knowledge, has NAFTA ever been an issue in an acquisition of a U.S. investor-owned utility by a Canadian energy company?

A. No, it has not. Over the past ten years, U.S. companies have purchased numerous Canadian energy assets and, likewise, Canadian companies have made almost 170 acquisitions of U.S. energy assets.[21] NAFTA has not been an issue in any of these cases.

V. HYDRO ONE'S CAPABILITIES

Q. Mr. Muldoon contends that because Hydro One became a privately owned utility just over two years ago, Hydro One's leadership is not yet prepared to acquire another substantial utility.[22] Do you agree with this assessment?

A. No. Hydro One is well prepared to acquire Avista. Part of the plan to make Hydro One a publicly traded company was to drive efficiencies in the utility and utility sector. Hydro One's executive leadership was thus strengthened to ensure that Hydro One had a team with deep experience in mergers and acquisitions. Hydro One has attracted highly qualified and skilled directors and senior executives to enable that transformational vision.

I joined Hydro One in September 2015. Early in my career, I held a number of key

[21] Based on data compiled by Hydro One's consultant, Concentric Energy Advisors, from SNL.
[22] Muldoon, Commission Staff Ex. 100, page 9 (lines 8-10) and page 23 (lines 14-16).

management positions of increasing responsibility at General Mills, Inc., until I joined ConAgra as President of their Canadian operations and spearheaded ConAgra's expansion into Canada. Prior to joining Hydro One, I worked at Viterra as its President and CEO. During my time there, I led its transformation from a relatively small regional co-operative with a $200 million market capitalization into a publicly-held, $7.5 billion dollar corporation with nearly 7,000 employees and operations around the world. This transformation included the consolidation of Canada's agriculture sector, the acquisition of Agricore United, and the acquisition of ABB (Australia's leading agricultural corporation). In recognition of these accomplishments, I was named "Chief Executive of the Year in 2009" by Canadian Business Magazine.

Hydro One's Chief Operating Officer Greg Kiraly joined Hydro One in September 2016. Mr. Kiraly has spent more than 30 years in the utility sector and has an extensive background in energy transmission and distribution. Prior to joining Hydro One, Mr. Kiraly served as senior vice president of Electric Transmission and Distribution at Pacific Gas and Electric Company (PG&E) in San Francisco, which delivers energy to more than 16 million customers in northern and central California. Since joining PG&E in 2008, Mr. Kiraly led efforts that achieved the lowest employee injury rates ever, seven straight years of record electric reliability, and over $500 million in productivity improvements and efficiency savings. Before PG&E, Mr. Kiraly held executive-level positions in energy delivery at Commonwealth Edison (Exelon) in Chicago and leadership positions in both gas and electric distribution at Public Service Electric and Gas Company in Newark, New Jersey. Mr. Kiraly holds a bachelor's degree in industrial engineering from New Jersey Institute of Technology and a master's of business administration in finance from Seton Hall University. He is also a

graduate of Harvard University's Advanced Management Program.

On January 28, 2018, Hydro One announced that Paul Dobson was joining Hydro One as its Chief Financial Officer (CFO), effective March 1, 2018. Mr. Dobson was most recently CFO for Direct Energy Ltd. (Direct Energy) in Houston, Texas, where he was responsible for the overall financial leadership of a $15 billion revenue business with three million customers in Canada and the U.S. Prior to this CFO role, Mr. Dobson was the COO of Direct Energy with responsibility for Operations, IT, Procurement, and business transformation. Since 2003, Mr. Dobson has held leadership positions in finance, operations, and customer service across the Centrica Group, the parent company of Direct Energy. Prior to his time at Direct Energy, Mr. Dobson worked for CIBC for 10 years in both finance and business development. Throughout his career, Mr. Dobson has gained considerable experience pursuing mergers and acquisitions and integrating acquired companies across North America and in the United Kingdom.

Hydro One's Executive Vice-President, Customer Care and Corporate Affairs, Ferio Pugliese, joined Hydro One in September 2016. Prior to joining Hydro One, Mr. Pugliese held progressively senior leadership roles at WestJet, and in 2013 led the launch and successful operation of the company's regional airline as President of WestJet Encore. WestJet Encore was recognized for having the continent's top on-time performance for regional airlines in 2015. Prior to WestJet, Mr. Pugliese held senior roles in Human Resources and Operations at Catalyst Paper Corporation, western North America's largest producer of mechanical printing paper, and at Casino Rama Resort, a complete entertainment destination and Ontario's only First Nations commercial casino. Mr. Pugliese is highly recognized as a market leader in customer service and brings expertise in building and leading

a winning culture focused on serving its customers and communities. Mr. Pugliese was recognized by Caldwell Partners as one of Canada's Top 40 under 40 in 2007. He holds a Master of Arts degree in Adult Education from Central Michigan University, an Honors Bachelor of Arts degree in Social Science and an Honors Bachelor of Commerce degree from the University of Windsor.

Hydro One's Executive Vice-President and Chief Legal Officer James Scarlett joined Hydro One in September 2016. Prior to joining 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. Mr. Scarlett's legal career prior to joining Hydro One focused heavily on mergers and acquisitions. He has been involved with over 15 mergers and acquisitions worth approximately C$18 billion. Mr. Scarlett has extensive finance experience, having been involved in several nine-figure public offerings. He also has significant experience in public company governance, securities regulatory, and general corporate law. Prior to joining Torys, Mr. Scarlett was a partner at another major Canadian law firm. While at that firm, Mr. Scarlett held leadership roles as head of its Corporate Group and Securities Group, as well as a member of its Board. Mr. Scarlett 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. In 2015, Mr. Scarlett earned his ICD.D (Institute of Corporate Directors) designation. A more detailed summary of Mr.

Scarlett's pre-Hydro One experience is attached as Ex. 806 to my testimony.

On February 21, 2018, Hydro One announced that Patrick Meneley would replace Paul Barry as its Executive Vice President (EVP) and Chief Corporate Development Officer effective March 1, 2018. Mr. Meneley's experience with mergers and acquisitions is deep and wide. Mr. Meneley was most recently EVP, Wholesale Banking at TD Bank Group and Vice Chair and Head of Global Corporate and Investment Banking for TD Securities. In that capacity, he spent 15 years leading TD's North American corporate and investment banking business, which included a large M&A advisory and execution practice. At Hydro One, Mr. Meneley will be responsible for leading strategy, innovation, and mergers and acquisitions.

Effective November 14, 2016, Mr. Lopez was appointed as Senior Vice President of Finance, bringing to Hydro One 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. In this role, Mr. Lopez was accountable for identifying and executing on growth opportunities in the United States, Canada, and Australia. During this time, the company reviewed transactions with a cumulative asset value in excess of C$10 billion and successfully completed a number of transactions, including the launch of TransAlta Renewables Inc., a TSX listed company, with approximately C$2 billion in assets. From 2007 to 2011, Mr. Lopez was Director of Operations Finance at TransAlta in Calgary. 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.

Hydro One's executive leadership team has deep experience leading corporations and

with mergers and acquisitions at those corporations. As the largest distributor in Ontario, Hydro One has been an active consolidator of local distribution companies. In the late 1990s and early 2000s, when significant changes were made to the electricity sector in Ontario, Hydro One acquired 88 individual local distribution companies, which were subsequently integrated into Hydro One's distribution business (with the exception of Hydro One Brampton Networks Inc., which was operated as a stand-alone entity).

More recently, Hydro One acquired Haldimand Hydro in June 2015 and Norfolk Power in August 2014, as well as Woodstock Hydro in October 2015, adding approximately 55,000 customers to its distribution network. A fourth Hydro One acquisition, of Orillia Power Distribution, is currently pending. Through these recent acquisitions, Hydro One will have increased its distribution customer base by approximately 5%.

Furthermore, in October 2016, the Company acquired Great Lakes Power Transmission LP (subsequently renamed Hydro One Sault Ste. Marie LP ("HOSSM")), an electricity transmission company operating along the eastern shore of Lake Superior, north and east of Sault Ste. Marie, Ontario. HOSSM continues to operate 560 km of high and medium voltage transmission lines, stations, and related infrastructure.

Finally, Mr. Muldoon's concern that Avista will be run by a Hydro One leadership team that is not prepared to integrate Avista into the Hydro One corporate structure disregards one of the most important aspects of this transaction: our commitment that Avista will remain as a stand-alone utility that will continue to be operated by Avista's existing management and employees and governed by the Avista Board of Directors, with many from the five states in which Avista operates. *See* Revised Oregon Merger Commitment Nos. 2, 3, 4, 9, 10, 15.

Q. Commission Witness Mr. Muldoon expresses concern that Hydro One is

not prepared to own Avista because Hydro One is only an electric transmission and distribution utility.[23] Is Hydro One prepared to own a gas utility?

A. Yes. As Hydro One was looking for potential U.S. partners, one of its goals was to diversify its business lines into related businesses. Hydro One's diversification strategy includes entering the natural gas utility business. Hydro One is well prepared to own a gas utility.

First, it cannot be stressed enough that a significant feature of our merger agreement with Avista is our commitment that Avista will remain as a stand-alone utility that will continue to be operated by Avista's existing management and employees and governed by the Avista Board of Directors. *See* Revised Oregon Merger Commitment Nos. 2, 3, 4, 9, 10, 15.

Moreover, while Hydro One expects Avista's managers and employees to continue to operate Avista's natural gas utility at the high standards it has always met, it is worth noting that Hydro One's Chief Operating Officer, Greg Kiraly, has significant experience in energy transmission and distribution, in both electricity and gas. He has served in various executive leadership roles across three of the largest investor-owned utilities in the United States, namely Pacific Gas and Electric (PG&E), Commonwealth Edison (ComEd), and Public Service Electric & Gas Company (PSE&G). He spent the first ten years of his career in engineering and leadership roles, responsible for managing gas distribution operations and assets.

In 1986, Mr. Kiraly was hired as an engineer at PSE&G in New Jersey in its gas distribution department. He held various progressive engineering roles designing and building gas distribution assets for several years. The specific assets managed included the

[23] Muldoon, Commission Staff Ex. 100, page 8 (lines 16-18); *see also*, Jenks-Gehrke, CUB Ex. 100, unredacted pages 24 (line 9) - 25 (line 2).

gas distribution network of mains, services, metering and regulating equipment, and associated equipment. He was promoted to district/area manager, where for the next few years he was responsible for the design, engineering, construction, maintenance, and operation of a gas distribution network in northern New Jersey serving several hundred thousand customers. He managed hundreds of managerial and craft employees, along with construction contractors. He also held a business development role for a couple of years marketing natural gas air-conditioning and other natural gas related services. Thereafter, he held roles in PSE&G's electric distribution business. Mr. Kiraly spent the last two years at PSE&G as its corporate safety manager, providing safety policy, direction, and program management for the entire company, including its gas business.

Mr. Kiraly joined PG&E, the primary subsidiary of Pacific Gas & Electric Corporation and California's largest electric and gas utility, in 2008. While at PG&E, Mr. Kiraly was the Vice-President, Energy Delivery from 2008-2010, where he provided leadership oversight of electric and gas maintenance and construction in San Francisco and the adjacent suburbs, and Electric Transmission, Substation, and Project Services throughout PG&E's entire territory. From 2008 to 2009, Mr. Kiraly was responsible for both gas and electric distribution operations for the city of San Francisco and the surrounding suburbs. This included managing gas distribution operations, maintenance, and construction at multiple service centers and responsibility for thousands of employees and contractors, along with a budget in excess of $1 billion. The specific assets managed included the gas distribution network of mains, services, metering and regulating stations, and associated equipment.

Q. CUB's witnesses argue the privatization of Hydro One led to rising

electricity costs in Ontario.[24] Is this true?

A. No, the privatization of Hydro One has not increased electricity costs in Ontario. To the contrary, Hydro One has made significant productivity savings since becoming a private company. As a result of improved management and efficiency programs, we have delivered $114.4 million in productivity savings since our IPO. Rising electricity costs in Ontario are primarily related to generation costs, e.g., global adjustment, which have nothing to do with Hydro One and whether it is a public or private entity.

Q. Is CUB's contention true that Hydro One lacks experience to act as a good corporate citizen since it only recently became a private company?[25]

A. No, Hydro One has a track record of good corporate citizenship. Prior to 2015, Hydro One maintained a strong giving culture, both as a corporation and among its employees.[26] Since becoming a private company in 2015, Hydro One has maintained a strong commitment to charitable giving and customer service.[27] Both prior to and after 2015, Hydro One has filed annual public reports documenting the company's charitable and giving contributions.

VI. APPLICATION OF MERGER COMMITMENTS TO HYDRO ONE

Q. NWIGU Witness Mr. Mullins faults Hydro One for not including Hydro One Limited in most of the commitments that were proposed in the Application.[28] Why did Hydro One and Avista decide not to include Hydro One in every commitment?

A. Hydro One and Avista drafted the commitments in the Application to apply to

[24] Jenks-Gehrke, CUB Ex. 100, page 7 (lines 1-12).
[25] *Id*. at page 9 (lines 1-13).
[26] Schmidt, Hydro One Ex. 200, pages 30 (line 4) - 31 (line 16).
[27] *Id.*
[28] Mullins, NWIGU Ex. 100, page 2 (lines 6-10) and page 18 (lines 13-14).

the companies in the Hydro One/Avista ownership structure that would be responsible for implementing the commitment or complying with the commitment -- Avista, Hydro One, and/or any of the subsidiaries between Hydro One and Avista. As noted in my responses above, a significant feature of our merger agreement with Avista is our commitment that Avista will remain as a stand-alone utility that will continue to be operated by Avista's existing management and employees and governed by the Avista Board of Directors, many of whom will be from the five states in which Avista operates. *See* Revised Oregon Merger Commitment Nos. 2, 3, 4, 9, 10, 15. Hydro One's respect for Avista's management and track record as a well-run utility influenced the companies' approach to drafting the merger commitments. For example, Avista, not Hydro One, has the authority to make Avista's ongoing filings with the Commission. This approach, however, should not be interpreted as Hydro One being unwilling to support Avista or its other subsidiaries in complying with or implementing the commitments.

In order to provide Commission Staff and the other intervenors comfort that Hydro One fully stands behind each of the commitments, Hydro One and Avista propose in Exhibit 801 to my testimony to amend the following commitments to make Hydro One's support clear: Revised Oregon Merger Commitment Nos. 1 (Reservation of Certain Authority to the Avista Board of Directors), 9 (Avista's Headquarters), 15 (Safety and Reliability Standards and Service Quality Measures), 16 (Treatment of Net Cost Savings and Transaction Costs), 18 (State Regulatory Authority and Jurisdiction), 20 (Separate Books and Records), 21 (Access to and Maintenance of Books and Records), 24 (Avista Capital Structure), 29 (Submittal to State Court Jurisdiction for Enforcement of Commission Orders), 30 (Annual Report on Commitments), 34 (Continued Credit Ratings), 36 (Pension Funding), 41 (Non-Consolidation

Opinion), 43 (Restriction on Pledge of Utility Assets), 44 (Hold Harmless; Notice to Lenders; Restriction on Acquisitions and Dispositions), 46 (No Amendment of Ring-Fencing Provisions).

Q. Mr. Muldoon contends that Commitment No. 32 is in need of revision to become a clear, binding Commitment on Hydro One, Avista, and all affiliates.[29] Is this accurate?

A. Original Oregon Merger Commitment No. 32 (now Commitment No. 31 in Ex. 801 to my testimony, the Revised Oregon Merger Commitments) was not amended to address this issue raised by Mr. Muldoon. Rather, Hydro One and Avista carefully reviewed all of the original commitments and amended them where applicable to establish that Hydro One supports Avista and its other subsidiaries in complying with or implementing the commitments.

Q. Is NWIGU Witness Mr. Mullins correct that there is a risk that the Commission will not be able to enforce the merger commitments because Hydro One is located in Canada and there are a number of Hydro One subsidiaries between Avista and Hydro One?[30]

A. No, there is no risk. NWIGU, through its expert Mr. Mullins, asserts that "even if the commitments were financially binding on Hydro One, the ability to enforce them across the Canadian border and through the complex series of Hydro One Subsidiaries is suspect."[31] This contention is unfounded, as there are a myriad of examples of U.S. court judgments being enforced in Canada against Canadian companies. Hydro One is not trying to

[29] Muldoon, Commission Staff Ex. 200, page 64 (lines 16-22).
[30] Mullins, NWIGU Ex. 100, page 2 (lines 6-10).
[31] *Id*.

avoid its responsibilities with respect to the merger commitments. To give additional comfort to the parties, Hydro One and Avista propose the following Revised Oregon Merger Commitments to make clear that Hydro One and its subsidiaries submit to the jurisdiction of the Commission and state courts for all matters involving Avista:

18. **State Regulatory Authority and Jurisdiction:** ~~Olympus Holding Corp.~~Hydro One and its subsidiaries, including Avista, as applicable and as appropriate, will comply with all applicable laws, including those pertaining to transfers of property, affiliated interests, and securities and the assumption of obligations and liabilities. As required by and consistent with applicable laws, venue for resolution of proceedings related to these matters will be at the appropriate state utility commission(s). Hydro One and its subsidiaries, including Avista, will make their employees and officers available to testify before the Commission at the Commission's request to provide information relevant to the matters within its jurisdiction.

Hydro One and Avista agree that the Commission would have jurisdiction in any future proceedings regarding any unrecovered liabilities to the State of Oregon that may result from North American Free Trade Agreement ("NAFTA") Chapter Eleven mediations, arbitrations, or any other litigation brought by Hydro One's shareholders under NAFTA. Only the Commission and/or the Oregon Attorney General may initiate such proceeding before the Commission for purposes of this paragraph.

Hydro One, its affiliates, and its subsidiaries all agree to submit to the jurisdiction of the Commission for: (1) all matters related to the Merger and the enforcement of the conditions set forth herein to the extent relevant to operations of Avista in Oregon; and (2) matters relating to affiliate transactions between Avista and Hydro One or its affiliates to the extent relevant to operations of Avista in Oregon. Hydro One will also cause each of its affiliates that supplies goods or services to Avista to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Avista. The Commission's authority over Avista will be unchanged by the Merger.

Avista will, and Hydro One agrees that Avista and other Hydro One affiliates as applicable will, comply with the statutes, regulations, and orders applicable to Avista and its affiliates regarding affiliate transactions. Hydro One will permit the Commission to examine the accounting records of Hydro One and its affiliates that are the basis for charges to Avista's operations in Oregon to determine the reasonableness of allocation factors used by Hydro One to assign those costs and amounts subject to allocation and direct charges.

29. **Submittal to State Court Jurisdiction for Enforcement of Commission Orders:** Hydro One, Olympus Holding Corp., ~~on its own~~ and ~~its subsidiaries' behalf, including Avista's, will~~Avista will jointly file with the Commission prior to closing the Proposed Transaction an affidavit affirming that ~~it~~they will submit to the jurisdiction of the relevant state courts for enforcement of the Commission's orders adopting ~~these~~the commitments made by and binding upon them and their affiliates where noted, and subsequent orders affecting Avista.

Finally, over the past 10 years there have been approximately 16 purchases of United States utility companies by Canadian companies. I am not aware of any issues regarding the enforceability of the commitments made in those mergers by any of the accompanying

commissions.

VII. AVISTA'S POST-MERGER BOARD OF DIRECTORS

Q. Staff Witness Muldoon contends that Hydro One and the Province will be able to exercise inappropriate control over Avista because Hydro One will choose five of Avista's Board of Directors, post-merger. In addition, Staff Witness Anderson states that ownership of Avista by Hydro One will allow a foreign government to wield substantial influence over the direction of a U.S. company because Hydro One, a corporation in which the Province of Ontario owns a purported 50% ownership stake, will be able to appoint the majority of Avista's Board of Directors.[32] Is there any validity to these contentions?

A. No. First, as mentioned above, the Province now owns 47.4% of Hydro One's stock, not 50%, and will own less than 43% if this merger is approved. Second, as described in my previous responses, the Province may not participate in the management of Hydro One in any way due to the commitments it made as part of the Governance Agreement. The Province functions solely as a shareholder of Hydro One. Although the Province is permitted under the Governance Agreement to nominate 40% of Hydro One's Board members, those Board members must be independent of the Province and Hydro One. As a result, the Province will not be able to exercise any control over Avista. Hydro One's management and Board, and not the Province, will be responsible for selecting five of Avista's nine Board members. Further, in Revised Oregon Merger Commitment No. 3, Hydro One has proposed making a majority of its designated members from the Pacific Northwest to ensure continued local management, and has agreed to have Avista's CEO assume the role of Chairman of

[32] Muldoon, Commission Staff Ex. 100, page 30 (lines 3-7); *see also*, Anderson, Commission Staff Ex. 500, pages 4 (line 20) - 6 (line 5).

Avista's Board. This is reflective of Hydro One's intention to work collaboratively with Avista to find strong local board candidates who will be thoroughly vetted by both companies through the use of a board skills matrix. Hydro One and Avista propose Revised Oregon Merger Commitment Nos. 3, 39, and 40 to further demonstrate the long-term independence of Avista's post-merger board:

> 3. **Board of Directors:** After the closing of the Proposed Transaction, Avista's board will consist of nine (9) members, determined as follows: (i) two (2) directors designated by Hydro One who are executives of Hydro One or any of its subsidiaries; (ii) three (3) directors who ~~are not officers, employees or directors (other than as an independent director of Avista or Olympus Equity LLC) of Hydro One or any of its affiliates~~meet the standards for "independent directors" under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Directors") and who are residents of the Pacific Northwest region, to be designated by Hydro One (collectively, the directors designated in clauses (i) and (ii) hereof, the "Hydro One Designees"), subject to the provisions of Clause 2 of Exhibit A to the Merger Agreement; (iii) three (3) directors who as of immediately prior to the closing of the Proposed Transaction[1] are members of the Board of Directors of Avista, including the Chairman of Avista's Board of Directors (if such person is different from the Chief Executive Officer of Avista); and (iv) Avista's Chief Executive Officer (collectively, the directors designated in clauses (iii) and (iv) hereof, the "Avista Designees"). The initial Chairman of Avista's post-closing Board of Directors shall be the Chief Executive Officer of Avista as of the time immediately prior to closing for a one year term. If any Avista Designee resigns, retires or otherwise ceases to serve as a director of Avista for any reason, the remaining Avista Designees shall have the sole right to nominate a replacement director to fill such vacancy, and such person shall thereafter become an Avista Designee.
>
> The term "Pacific Northwest region" means the Pacific Northwest states in which Avista serves retail electric or natural gas customers, currently Alaska, Idaho, Montana, Oregon and Washington;

~~40.~~39. **Independent Directors:** At least ~~one~~three (3) of the nine members of the board of directors of Avista will ~~be an~~ meet the standards for "independent ~~director who is not a member, stockholder, director (except as an independent director of Avista or Olympus Equity LLC), officer, or employee of Hydro One or its affiliates.~~directors" under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Directors"). At least one of the members of the board of directors of Olympus Equity LLC will ~~be an independent director who is not a member, stockholder, director (except as an independent director of Olympus Equity LLC or Avista), officer, or employee of Hydro One or its affiliates.~~meet the standards for "independent directors" under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Director"). The same individual may serve as an ~~independent director~~Independent Director of both Avista and Olympus Equity LLC. The organizational documents for Avista will not permit Avista, without the consent of a two-thirds majority of all its directors, including the affirmative vote of the ~~independent director~~Independent Director (or if at that time Avista has more than one ~~independent director~~Independent Director, the affirmative vote of at least one of Avista's ~~independent directors~~Independent Directors), to consent to the institution of bankruptcy proceedings or the inclusion of Avista in bankruptcy proceedings. In addition to an affirmative vote of this independent director, the vote of the Golden Share shall also be required for Avista to enter into a voluntary bankruptcy.

40. **Golden Share**. To enter into voluntary bankruptcy shall further require the affirmative vote of a "Golden Share" of Avista stock. The Golden Share shall mean the sole ($1 Par) share of Preferred Stock of Avista as authorized by the Commission. This share of Preferred Stock must be in the custody of an independent third-party, where the third-party has no financial stake, affiliation, relationship, interest, or tie to Avista or any of its affiliates, or any lender to Avista, or any of its affiliates. This requirement does not preclude the third-party from holding an index fund or mutual fund with negligible interests in Avista or any of its affiliates. In matters of voluntary bankruptcy, this share will override all other outstanding shares of all types or classes of stock.

Q. As suggested by Commission Witness Ms. Anderson, are Hydro One and Avista willing to change the composition of Avista's post-merger Board of Directors to ensure that a majority of the members are independent of Hydro One, similar to the board structure adopted in the Sempra - Oncor merger before the Texas Public Utility Commission?[33]

A. As provided in the proposed amendments to Commitment Nos. 3, 39, and 40 (outlined in the previous answer), three of the five members of the Avista Board of Directors who will be selected by Hydro One must be independent of Hydro One and Avista. We believe these commitments will ensure that Avista is managed with the benefit of outside perspectives that are not associated with Hydro One. It is also important to keep in mind that

[33] Anderson, Commission Staff Ex. 500, page 6 (lines 8-18).

in addition to the independence of the three directors, all directors and the CEO must abide by their fiduciary duties and responsibilities to Avista.

Q. Commission Witness Ms. Anderson expressed concern that Hydro One's five designees on the Avista post-merger board will be able to effectively shut out the participation of Avista's four designees due to the quorum and meeting notice requirements applicable to the Avista post-merger Board of Directors.[34] Is this true?

A. No. Pursuant to the corporate by-laws of Avista that will be in place post-merger, all directors will receive notice of meetings of the Board of Directors and would be expected to attend; there will be no mechanism under the by-laws to exclude Avista's four designees from notice of meetings of the Board of Directors in order to "shut out" their participation. As is the case in most corporations, there is a quorum requirement with respect to meetings of the Board of Directors that is intended to ensure a minimum level of participation prior to action being taken by the Board of Directors. The quorum requirement only serves as a limit with respect to the minimum number of directors required for the Board to hold a meeting and to take action, and would not serve to exclude the attendance or participation of additional directors.

Q. Are Hydro One and Avista willing to provide the post-merger Articles of Incorporation and By-laws for Avista?

A. Yes. Avista's Amended and Restated Articles of Incorporation and By-laws are currently being reviewed and amended. However, they are approaching completion, after which, Hydro One and Avista are willing to share these amended documents with Commission Staff, the other intervenors, and the Commission.

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[34] Anderson, Commission Staff Ex. 500, pages 4 (line 20) - 6 (line 5).

VIII. MERGER COMMITMENT NOS. 2 - 15

Q. NWIGU Witness Mr. Mullins and other intervenors raise concerns with Commitment No. 1's provision that Commitment Nos. 2 - 15 can be amended with a two-thirds vote of the post-merger Avista Board.[35] Why did Hydro One and Avista provide that merger Commitment Nos. 2 - 15 could be amended with a two-thirds vote of the Avista post-merger Board of Directors?

A. Commitment Nos. 2 - 15 were taken directly from Hydro One's and Avista's merger agreement. These commitments are sometimes referred to by the management of Hydro One and Avista as a "delegation of authority." In reality, these provisions simply memorialize that the subjects of these commitments are reserved for Avista's Board of Directors going forward, not Hydro One's Board and management. As a result, the merger agreement provided that provisions in the "delegation of authority" could be amended by a two-thirds vote of the Avista post-merger Board of Directors. Hydro One and Avista, when they were negotiating the merger agreement, recognized that circumstances change and there may be a point in time in the future that commitments in the "delegation of authority" should change to reflect the changed circumstances. As a result, the companies felt that the Avista post-merger Board of Directors should have the ability to adapt, but only with a two-thirds vote.

Q. Is Hydro One willing to make amendment of Commitment Nos. 2 - 15 subject to Commission approval to address the concerns of NWIGU Witness Mullins and Commission Witness Ms. Anderson?[36]

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[35] Mullins, NWIGU Ex. 100, pages 18 (line 19) - 19 (line 11); *see also*, Anderson, Commission Staff Ex. 500, pages 6 (line 19) - 9 (line 13).
[36] Mullins, NWIGU Ex. 100, pages 18 (line 20) - 19 (line 11); *see also*, Anderson,

A. In Revised Oregon Merger Commitment No. 1, Hydro One and Avista propose to require Commission approval of any change to Commitment Nos. 1, 2, 3, 7, 8, 10, or 15. In addition, Revised Oregon Merger Commitment No. 1 requires that a two-thirds vote of the Avista post-merger Board of Directors to amend Commitment Nos. 2 - 15 to include the affirmative vote of at least one Avista designee, one Hydro One designee (exclusive of the independent directors), and two of the independent directors:

> 1. Consistent with and subject to the terms of Exhibits A and B to the Merger Agreement (referred to as "Delegation of Authority") contained in Appendix 5 of the Joint Application, decision-making authority over commitments 2-15 below is reserved to the Board of Directors of Avista Corporation ("Avista") and ~~any~~not to Hydro One. Any change to the policies stated in commitments 2-15 requires a two-thirds (2/3) vote of the Avista Board~~:~~ including the affirmative vote of at least one (1) Avista Designee, one (1) Hydro One Designee (exclusive of Independent Directors) and two (2) Independent Directors as defined in Commitment 3. Any change at any time to commitments 1, 2, 3, 7, 8, 10 or 15 as well as any change to Commitments 16-55 also requires Commission approval.

IX. MOST-FAVORED NATIONS COMMITMENT

Q. Why did Hydro One and Avista decide not to include a most-favored nations ("MFN") commitment in the Application?

A. Because Avista's operations in each of its service territories differ in significant ways (Washington -- electric and gas customers; Idaho -- electric and gas customers; Oregon -- only gas customers; Montana -- approximately 30 electric customers who are Avista employees; and Alaska -- just electric customers fully served by AELP), developing a workable MFN commitment is challenging. Hydro One and Avista want to ensure that when the MFN commitment is drafted and applied, it does not result in apples to oranges comparisons across jurisdictions. As a result, Hydro One and Avista did not include an MFN commitment in the Application merger commitments. Hydro One and Avista, however, had no intention of treating Avista's customers in its five jurisdictions differently.

Commission Staff Ex. 500, pages 8 (lines 14-19) - 9 (lines 1-2).

Q. Are Hydro One and Avista willing to add an MFN commitment now as recommended by NWIGU Witness Mr. Mullins?[37] If so, please provide the text of that commitment.

A. Hydro One and Avista have developed Revised Oregon Merger Commitment No. 59 to ensure that Avista's customers in each of the five jurisdictions receive comparable benefits and commitments while also recognizing that some benefits and commitments may be jurisdiction-specific because of the differences in Avista's operations in each of its jurisdictions:

Most Favored Nation [NEW]

59. **Most Favored Nation:**

The Applicants agree that upon the joint request of the Non-Applicant Parties, the Commission shall have an opportunity and the authority to consider and adopt in Oregon any commitments (including conditions) to which the Applicants agree in other jurisdictions, even if such commitments are agreed to after the Commission enters its order in this docket. To facilitate the Commission's consideration and adoption of the commitments from other jurisdictions, the Parties urge the Commission to issue an order accepting this Stipulation as soon as practical, but to reserve in such order the explicit right to re-open to add commitments accepted in another state jurisdiction.

The Applicants further agree that upon the request of any Non-applicant Party prior to Commission's action on this Stipulation, if Applicants agree with any commitments in other jurisdictions, within five days of such a request, Applicants will meet and confer with the Non-applicant Parties to discuss whether such commitments should be added to the existing list of commitments already agreed to by the Parties in this Stipulation.

[37] Mullins, NWIGU Ex. 100, page 21 (lines 18-24).

Process for Consideration:

- Within five calendar days after Applicants file a stipulation with new or amended commitments with a commission in another state jurisdiction, Applicants will send a copy of the stipulation and commitments to the Non-Applicant Parties.

- Within five calendar days after a commission in another state jurisdiction issues an order that accepts a stipulation to which Applicants are a party and imposes new or modified commitments, that order, together with all commitments of any type agreed to by Applicants in such other state, will be filed with the Commission and served on all parties to this docket by the most expeditious means practical.

- Within ten calendar days after the last such filing from the other states ("Final Filing"), the Non-Applicant Parties shall file with the Commission any response they wish to make, including their position as to whether any of the covenants, commitments and conditions from the other jurisdictions (without modification of the language thereof except such non-substantive changes as are necessary to make the commitment or condition applicable to Oregon) should be adopted in Oregon.

- Within five calendar days after any such response filing, the Applicants may file a reply with the Commission. If the 5th calendar day falls on Saturday, Sunday, or a holiday, the next business day will be considered as the 5th day.

- The Parties agree to support in their filings the issuance by the Commission of an order regarding the adoption of such commitments as soon as practical thereafter, recognizing that the Transaction cannot close until final state orders have been issued approving the Transaction.

Limitations on Adjustment:

- The commitment relating to maintenance of Avista's headquarters is not subject to this provision.

- Only commitments relating to gas service may form the basis for adjustments relating to gas service.

- Only commitments relating to electric service may form the basis for adjustments relating to electric service.

- Any commitments relating to support of communities in Montana are not subject to this provision.
- As Avista does not operate as a utility in Alaska, any commitments made in Alaska are not subject to this provision.
- For purposes of financial commitments or commitments having a financial impact, commitments should be proportionate to Avista's corresponding business function in Oregon in relation to its corresponding total company business function. Accordingly, commitments should be allocated among Avista's WA, ID and OR jurisdictions based on the following: 1) Rate Credit is allocated based on base revenues; 2) all other financial commitments are allocated using the Company's jurisdictional "four factor" allocation methodology, routinely employed for purposes of allocating common costs, as discussed in Mr. Ehrbar's testimony in this proceeding.

X. ACCESS TO BOOKS AND RECORDS

Q. Commission Witnesses Muldoon and Gardner raise concerns with the lack of commitments to ensure that Commission Staff have access to the books and records of Hydro One and its affiliates.[38] Will Hydro One and Avista provide revised commitments to address this concern?

A. Yes. In order to provide comfort to Commission Staff and intervenors, Hydro One and Avista propose Revised Oregon Merger Commitment No. 21 to clarify Commission Staff's access to Hydro One's books and records:

21. **Access to and Maintenance of Books and Records:** Hydro One and its affiliates agree that the Commission may have access to all the accounting records of Hydro One and its affiliates that are the bases for charges to Avista, to determine the reasonableness of the costs and the allocation factors used by Hydro One and its affiliates, or its subdivisions to assign costs to Avista and amounts subject to allocation or direct charges. Hydro One and its affiliates agree that they will not raise lack of jurisdiction as a means of denying such access, and agree to cooperate fully with such Commission investigations.

Q. To address the concerns of Commission Witnesses Mr. Muldoon and Ms. Gardner, will Avista keep separate books and records that will be available to Commission Staff for review?[39]

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[38] Muldoon, Commission Staff Ex. 100, page 27 (lines 5-11); *see also*, Gardner, Commission Staff Ex. 300, page 3 (lines 10-13), page 5 (lines 5-13), page 7 (lines 19-28).
[39] Muldoon, Commission Staff Ex. 100, page 27 (lines 5-11); *see also*, Gardner, Commission

A. Yes. Hydro One and Avista propose Revised Oregon Merger Commitment No. 20 as follows to address the concerns raised by Commission Staff:

~~21.~~ **Separate Books and Records:** Avista will maintain ~~separate~~its books and records~~.~~

~~22. **Access to and Maintenance of Books and Records:** Olympus Holding Corp. and its subsidiaries, including Avista, will provide reasonable access to Avista's books and records; access to financial information and filings;~~ (inclusive of audit ~~right~~trails with ~~respect to the documents~~ supporting ~~any costs that may be allocable to Avista; and access to Avista's board minutes, audit reports, and information provided to credit rating agencies pertaining to Avista.~~

~~Olympus Holding Corp. and its subsidiaries, including Avista, will maintain the necessary~~records) separate from Hydro One's books and records ~~so as to provide an audit trail for all corporate, affiliate, or subsidiary transactions~~, with ~~Avista, or that result in costs that may be allocable to Avista.~~

20. ~~The Proposed Transaction will not result in reduced access to the necessary~~ such accounting information and financial books and records ~~that relate to transactions with Avista, or that result in costs that may be allocable to Avista. Avista will provide Commission Staff and other parties to regulatory proceedings reasonable access to~~ kept at Avista's headquarters in Spokane, Washington. Avista's financial books and records ~~(including those of Olympus Holding Corp. or any affiliate or subsidiary companies) required to verify or examine transactions with Avista, or that result in costs that may be allocable to Avista~~and state and federal regulatory filings and documents will continue to be available to the Commission, upon request, at Avista's headquarters in Spokane, Washington.

~~Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Avista's accounts, books, papers and documents in compliance with all applicable laws. Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Olympus Holding Corp.'s accounts, books, papers and documents pursuant to all applicable laws; provided, that such right to inspection shall be limited to Olympus Holding Corp.'s accounts, books, papers and documents that pertain solely to transactions affecting Avista's regulated utility operations.~~

~~Olympus Holding Corp. and its subsidiaries, including Avista, will provide the Commission with access to written information provided by and to credit rating agencies that pertains to Avista. Olympus Holding Corp. and each of its subsidiaries will also provide the Commission with access to written information provided by and to credit rating agencies that pertains to Olympus Holding Corp.'s subsidiaries to the extent such information may affect Avista.~~

Staff Ex. 300, page 3 (lines 14-17).

~~allocable to Avista. Avista will provide Commission Staff and other parties to regulatory proceedings reasonable access to~~ such accounting information and financial books and records kept at Avista's headquarters in Spokane, Washington. Avista's financial books and records ~~(including those of Olympus Holding Corp. or any affiliate or subsidiary companies) required to verify or examine transactions with Avista, or that result in costs that may be allocable to Avista~~and state and federal regulatory filings and documents will continue to be available to the Commission, upon request, at Avista's headquarters in Spokane, Washington.

~~Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Avista's accounts, books, papers and documents in compliance with all applicable laws. Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Olympus Holding Corp.'s accounts, books, papers and documents pursuant to all applicable laws; provided, that such right to inspection shall be limited to Olympus Holding Corp.'s accounts, books, papers and documents that pertain solely to transactions affecting Avista's regulated utility operations.~~

~~Olympus Holding Corp. and its subsidiaries, including Avista, will provide the Commission with access to written information provided by and to credit rating agencies that pertains to Avista. Olympus Holding Corp. and each of its subsidiaries will also provide the Commission with access to written information provided by and to credit rating agencies that pertains to Olympus Holding Corp.'s subsidiaries to the extent such information may affect Avista.~~

XI. RATE CREDIT AND NET BENEFITS

Q. Do the benefits outweigh the risks associated with this transaction as identified in Commission Staff's and intervenors' testimonies?[40]

A. Yes, they do. As discussed throughout our testimony, the risks of this transaction are *de minimis* due to the strong financial position of Hydro One and the robust ring fencing, financial, and other commitments we have made. The benefits described above, together with the rate credit and low-income and efficiency program funding offered in the Revised Oregon Merger Commitments, provide significant benefits to customers.

XII. CONCLUSION

Q. Are there other issues you believe the Commission should address?

A. No. We have carefully considered all the testimony from all the parties. We

[40] Muldoon, Commission Staff Ex. 100, pages 30 (line 21) - 31 (line 7); *see also*, Mullins, NWIGU Ex. 100, pages 12 (line 13) - 22 (line 12).

have proposed adjustments to our commitments to address certain concerns. We believe that approval of the Proposed Transaction will provide Avista's Oregon ratepayers with significant benefits and will also meet the public interest standard.

Q. Does this complete your testimony?

A. Yes it does.

HYDRO ONE/801
Schmidt

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

MAYO M. SCHMIDT
Exhibit No. 801

Revised Oregon Master List of Commitments

PROPOSED REVISED OREGON MASTER LIST OF COMMITMENTS

Introductory Note: With this transaction Avista - unlike most merger targets - will retain control over its own operations through a governance structure that preserves the authority and independence of Avista's board and management. Accordingly, Avista itself will be directly fulfilling the vast bulk of merger commitments. In the revisions proposed below, we have tried to clarify this arrangement, to indicate Hydro One's acceptance of the conditions, and to respond to various issues that were raised in the pre-filed testimony of OPUC Staff and Intervenors.

Reservation of Certain Authority to the Avista Board of Directors ~~**[See Direct Testimony of Morris/Schmidt/Christie/Pugliese]**~~

1. Consistent with and subject to the terms of Exhibits A and B to the Merger Agreement (referred to as "Delegation of Authority") contained in Appendix 5 of the Joint Application, decision-making authority over commitments 2-15 below is reserved to the Board of Directors of Avista Corporation ("Avista") and ~~any~~not to Hydro One. Any change to the policies stated in commitments 2-15 requires a two-thirds (2/3) vote of the Avista Board~~:~~ including the affirmative vote of at least one (1) Avista Designee, one (1) Hydro One Designee (exclusive of Independent Directors) and two (2) Independent Directors as defined in Commitment 3. Any change at any time to commitments 1, 2, 3, 7, 8, 10 or 15 as well as any change to Commitments 16-55 also requires Commission approval.

Governance

2. **Executive Management:** Avista will seek to retain all current executive management of Avista, subject to voluntary retirements that may occur. This commitment will not limit Avista's ability to determine its organizational structure and select and retain personnel best able to meet Avista's needs over time. The Avista board retains the ability to dismiss executive management of Avista and other Avista personnel for standard corporate reasons (subject to the approval of Hydro One Limited ("Hydro One") for any hiring, dismissal or replacement of the CEO);

3. **Board of Directors:** After the closing of the Proposed Transaction, Avista's board will consist of nine (9) members, determined as follows: (i) two (2) directors designated by Hydro One who are executives of Hydro One or any of its subsidiaries; (ii) three (3) directors who ~~are not officers, employees or directors (other than as an independent director of Avista or Olympus Equity LLC) of Hydro One or any of its affiliates~~meet the standards for "independent directors" under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Directors") and who are residents of the Pacific Northwest region, to be designated by Hydro One (collectively, the directors designated in clauses (i) and (ii) hereof, the "Hydro One Designees"), subject to the provisions of Clause 2 of Exhibit A to the Merger Agreement; (iii) three (3) directors who as of immediately prior to the closing of the Proposed Transaction[1] are members of the Board of Directors of Avista, including the Chairman of Avista's Board of Directors (if such person is different from the Chief Executive Officer of Avista); and (iv) Avista's Chief Executive Officer (collectively, the directors designated in clauses (iii) and (iv) hereof, the "Avista Designees"). The initial Chairman of Avista's post-closing Board of Directors shall be the Chief Executive Officer of Avista as of the time immediately prior to closing for a one year term. If any Avista Designee resigns, retires or otherwise ceases to serve as a director of Avista for any reason, the remaining Avista Designees shall have the

[1] "Proposed Transaction" means the transaction proposed in the Joint Application of Avista and Hydro One filed on September 14, 2017.

sole right to nominate a replacement director to fill such vacancy, and such person shall thereafter become an Avista Designee.

The term "Pacific Northwest region" means the Pacific Northwest states in which Avista serves retail electric or natural gas customers, currently Alaska, Idaho, Montana, Oregon and Washington;

Business Operations

4. **Avista's Brand and Plan for the Operation of the Business:** Avista will maintain Avista's brand and Avista will establish the plan for the operation of the business and its Subsidiaries;
5. **Capital Investment for Economic Development:** Avista will maintain its existing levels of capital allocations for capital investment in strategic and economic development items, including property acquisitions in the university district, support of local entrepreneurs and seed-stage investments;
6. **Continued Innovation:** Avista will continue development and funding of its and its subsidiaries' innovation activities;
7. **Union Relationships:** Avista will honor its labor contracts and has the authority to negotiate, enter into, modify, amend, terminate or agree to changes in any collective bargaining agreement or any of Avista's other material contracts with any labor organizations, union employees or their representatives;
8. **Compensation and Benefits:** Avista will maintain compensation and benefits related practices consistent with the requirements of the Merger Agreement;

~~Local Presence/Community Involvement~~

9. **Avista's Headquarters:** Avista will, and Hydro One agrees Avista will, maintain (a) its headquarters in Spokane, Washington; (b) Avista's office locations in each of its other service territories, and (c) no less of a significant presence in the immediate location of each of such office locations than what Avista and its subsidiaries maintained immediately prior to completion of the Proposed Transaction;
10. **Local Staffing**: Avista will maintain Avista Utilities' staffing and presence in the communities in which Avista operates at levels sufficient to maintain the provision of safe and reliable service and cost-effective operations and consistent with pre-acquisition levels;
11. **Community Contributions:** Avista will maintain a $4,000,000 annual budget for charitable contributions (funded by both Avista and the Avista Foundation). Additionally, a $2,000,000 annual contribution will be made to Avista's charitable foundation;[2]
12. **Community Involvement:** Avista will maintain at least Avista's existing levels of community involvement and support initiatives in its service territories;
13. **Economic Development:** Avista will maintain at least Avista's existing levels of economic development, including the ability of Avista to spend operations and maintenance funds[3] to support regional economic development and related strategic opportunities in a manner consistent with Avista's past practices;
14. **Membership Organizations:** Avista will maintain the dues paid by it to various industry trade groups and membership organizations; and

[2] Note that Commitment 53 contains an additional commitment relating to charitable contributions; pursuant to that commitment Hydro One will cause Avista to make a one-time contribution of $7,000,000 to Avista's charitable foundation at or promptly following closing of the Proposed Transaction.

[3] Operations and maintenance funds dedicated to economic development and non-utility strategic opportunities will be recorded below-the-line to a ~~nonoperating~~non-operating account.

15. **Safety and Reliability Standards and Service Quality Measures:** Avista will, and Hydro One agrees Avista will, maintain Avista's safety and reliability standards and policies and service quality measures in a manner that is substantially comparable to, or better than, those currently maintained.

    Additionally, Avista and Hydro One commit to providing a Service Quality Measures Program (see Attachment A).

Rate Commitments ~~**[See Direct Testimony of Thies/Ehrbar/Lopez]**~~

16. **Treatment of Net Cost Savings and Transaction Costs:** Any net cost savings that Avista may achieve as a result of the Proposed Transaction will be reflected in subsequent rate proceedings, as such savings materialize. To the extent the savings are reflected in base retail rates they will offset the Rate Credit to customers, up to the offsetable portion of the Rate Credit.

~~17. **Treatment of Transaction Costs:** Avista will not recover the following costs in rates: (i) legal and financial advisory fees associated with the Proposed Transaction; (ii) the acquisition premium; (iii) any senior executive compensation tied to a change of control of Avista; and (iv) any other costs directly related to the Proposed Transaction.~~

Avista will not, and Hydro One agrees that Avista will not, seek recovery in Avista rates of: (1) any acquisition premium or "goodwill" associated with the Merger; or (2) any transaction costs incurred in connection with the Merger. The categories of transaction costs incurred in connection with consummation of the Merger that will not be recovered from utility customers are: (1) consultant, investment banker, legal, and regulatory support fees, (2) change in control or retention payments, executive severance payments, and the accelerated portion of supplemental executive retirement plan payments, (3) costs associated with the shareholder meetings and a proxy statement related to the Merger approval by Avista shareholders, and (4) costs associated with the imposition of conditions or approval of settlement terms in other state jurisdictions.

Avista will file, and Hydro One agrees Avista will file, a Report of Action within one hundred and twenty (120) days after closing of the Merger. The Report of Action will contain: (1) the closing date of the Merger; (2) the actual total sale price; and (3) the actual accounting entries records in Hydro One's and Avista's books to reflect the Merger. The Merger-related accounting entries in Hydro One's and Avista's books will include: all Transaction Cost accounting entries for Hydro One and Avista; all Merger-related fair value, goodwill, and/or acquisition premium accounting entries for Hydro One and Avista; all Merger-related tax accounting entries for Hydro One and Avista; all Merger-related debt-equity financing accounting entries for Hydro One and Avista; and all set-up cost accounting entries for Hydro One and Avista.

Avista will track and account for Merger-related savings, and transition costs to enable those savings, in its next two base rate cases in which the test year in question includes transition costs. Avista will amortize the transition costs over five years, will not seek recovery in rate proceedings over those five years of any amortized transition costs or corporate costs allocated from Hydro One to Avista in excess of Merger-related savings. "Transition costs" as used in this commitment are incremental non-recurring costs to facilitate the integration of the companies. "Merger-related savings" as used in this commitment refers to the tangible financial benefits achieved as a result of the Merger for the five years after Merger Close that would not have been possible if the individual companies were to continue to operate separately.

Taxes and assessments paid by Avista to the federal government, to states, and to political subdivisions thereof shall be no greater than they would be had Avista not been acquired by Hydro One, based on consistent methodologies before and after the transaction.

~~18.~~17. **Rate Credits:** ~~-~~Avista and Hydro One are proposing to flow through to Avista's retail customers in ~~Washington, Idaho and~~ Oregon a Rate Credit of $~~31.5~~4.4 million over a ~~10~~5-year period, beginning at the time the merger closes~~.~~[4] ~~The Rate Credit consists of two components, and reflects an increased level of savings in years 6-10 as illustrated in the table~~, as shown below~~.~~ :

[4] ~~The AEL&P operations in the City and Borough of Juneau, Alaska, operate substantially independent of Avista Utilities, and these costs, from which the merger-related cost savings are derived, are currently not being charged to AEL&P. Therefore, there are no financial cost savings to flow through to AEL&P customers. For Avista's retail operations in Montana, Avista has approximately 30 retail customers and total retail revenue of approximately $74,000. Due to the very limited retail operations by Avista in Montana, for administrative efficiency the past practice by the Montana Public Service Commission has been to review the final rates recently filed and approved in the State of Idaho, and approve those for Avista's Montana customers, when a request is made by Avista. The date of the last approved retail rates in Montana for Avista was April 27, 2011. Since that time electric retail rates have increased in the State of Idaho, but Avista has not proposed similar increases for its Montana customers. Because Avista's current retail rates for its Montana customers are already below its cost of service, and for the sake of administrative efficiency, Avista and Hydro One are not proposing to flow through financial benefit to Avista's Montana customers related to the Proposed Transaction. (If a proportionate benefit to Montana customers were to be calculated based on the level of retail revenue, the total annual Rate Credit for all customers combined would be approximately $190.)~~

	Rate Credit Proposal	
	Oregon Annual Credit Years 1-5	**Oregon Total Credit**
Total Credit	$884,630	$4.4 Million
Offsetable Credit	$147,585	$737,925

The Total Rate Credit to customers for the ~~first~~ five years following the closing would be $~~2.65 million per year, and the credit would increase to $3.65 million~~884,630 per year ~~for the last five years of the 10-year period.~~ . A portion of the annual total Rate Credit would be offsetable, ~~as indicated~~ in the ~~table above~~amount of $147,585[5]. During the ~~10~~5-year period the financial benefits will be flowed through to customers either through the separate Rate Credit described above or through a reduction to the underlying cost of service as these benefits are reflected in the test period numbers used for ratemaking. At the time of the close, the $~~2.65 million~~884,630 benefit will be provided to customers through a separate Rate Credit, as long as the reduction in costs has not already been reflected in base retail rates for Avista's customers.

~~—~~To the extent Avista demonstrates in a future rate proceeding that cost savings, or benefits, directly related to the Proposed Transaction are already being flowed through to customers through base retail rates, the separate Rate Credit to customers would be reduced by an amount up to the offsetable Rate Credit amount. The portion of the total Rate Credit that is not offsetable effectively represents acceptance by Hydro One of a lower rate of return during the ~~10~~5-year period.

The $~~31.5~~4.4 million represents the "floor" of benefits that will be flowed through to Avista's customers, either through the Rate Credit or through benefits otherwise included in base retail rates. To the extent the identifiable benefits exceed the annual offsetable Rate Credit amounts, these additional benefits will be flowed through to customers in base retail rates in general rate cases as they occur. ~~The increase in total Rate Credits for years 6-10 will provide time for Avista and Hydro One to identify and capture over time an increased level of benefits, directly related to the Proposed Transaction, that can be flowed through to customers.~~ Avista and Hydro One believe additional efficiencies (benefits) will be realized over time from the sharing of best practices, technology and innovation between the two companies. It will take time, however, to identify and capture these benefits. The level of annual net cost savings (and/or net benefits) will be tracked and reported on an annual basis, and compared against the offsetable level of savings.

Regulatory Commitments ~~[See Direct Testimony of Thies/Ehrbar/Lopez]~~

~~19.~~18. **State Regulatory Authority and Jurisdiction:** ~~Olympus Holding Corp.~~Hydro One and its subsidiaries, including Avista, as applicable and as appropriate, will comply with all applicable laws, including those pertaining to transfers of property, affiliated interests, and securities and the assumption of obligations and liabilities. As required by and consistent with applicable laws, venue for resolution of proceedings related to these matters will be at the appropriate state utility commission(s). Hydro One and its subsidiaries, including Avista, will make their employees and officers available to testify before the Commission at the Commission's request to provide information relevant to the matters within its jurisdiction.

[5] The offsetable portion of the Rate Credit was calculated using a pro rata share of the jurisdictional total of the rate credit i.e. Oregon's share of the offsetable Rate Credit was 8.68%, therefor Oregon's share of the $1.7 million offsetable portion is $147,585.

Hydro One and Avista agree that the Commission would have jurisdiction in any future proceedings regarding any unrecovered liabilities to the State of Oregon that may result from North American Free Trade Agreement ("NAFTA") Chapter Eleven mediations, arbitrations, or any other litigation brought by Hydro One's shareholders under NAFTA. Only the Commission and/or the Oregon Attorney General may initiate such proceeding before the Commission for purposes of this paragraph.

Hydro One, its affiliates, and its subsidiaries all agree to submit to the jurisdiction of the Commission for: (1) all matters related to the Merger and the enforcement of the conditions set forth herein to the extent relevant to operations of Avista in Oregon; and (2) matters relating to affiliate transactions between Avista and Hydro One or its affiliates to the extent relevant to operations of Avista in Oregon. Hydro One will also cause each of its affiliates that supplies goods or services to Avista to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Avista. The Commission's authority over Avista will be unchanged by the Merger.

Avista will, and Hydro One agrees that Avista and other Hydro One affiliates as applicable will, comply with the statutes, regulations, and orders applicable to Avista and its affiliates regarding affiliate transactions. Hydro One will permit the Commission to examine the accounting records of Hydro One and its affiliates that are the basis for charges to Avista's operations in Oregon to determine the reasonableness of allocation factors used by Hydro One to assign those costs and amounts subject to allocation and direct charges.

~~20.~~19. **Compliance with Existing Commission Orders:** Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge that all existing orders issued by the Commission with respect to Avista or its predecessor, Washington Water Power Co., will remain in effect, and are not modified or otherwise affected by the Proposed Transaction.

~~21.~~ **Separate Books and Records:** Avista will maintain ~~separate~~its books and records~~.~~

~~22. **Access to and Maintenance of Books and Records:** Olympus Holding Corp. and its subsidiaries, including Avista, will provide reasonable access to Avista's books and records; access to financial information and filings;~~ (inclusive of audit ~~rights~~trails with ~~respect to the documents~~ supporting ~~any costs that may be allocable to Avista; and access to Avista's board minutes, audit reports, and information provided to credit rating agencies pertaining to Avista.~~

~~Olympus Holding Corp. and its subsidiaries, including Avista, will maintain the necessary~~records) separate from Hydro One's books and records ~~so as to provide an audit trail for all corporate, affiliate, or subsidiary transactions,~~ with ~~Avista, or that result in costs that may be allocable to Avista.~~

~~23.~~20. ~~The Proposed Transaction will not result in reduced access to the necessary~~ such accounting information and financial books and records ~~that relate to transactions with Avista, or that result in costs that may be allocable to Avista. Avista will provide Commission Staff and other parties to regulatory proceedings reasonable access to~~ kept at Avista's headquarters in Spokane, Washington. Avista's financial books and records ~~(including those of Olympus Holding Corp. or any affiliate or subsidiary companies) required to verify or examine transactions with Avista, or that result in costs that may be allocable to Avista~~and state and federal regulatory filings and documents will continue to be available to the Commission, upon request, at Avista's headquarters in Spokane, Washington.

~~Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Avista's accounts, books, papers and documents in~~

~~compliance with all applicable laws. Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Olympus Holding Corp.'s accounts, books, papers and documents pursuant to all applicable laws; provided, that such right to inspection shall be limited to Olympus Holding Corp.'s accounts, books, papers and documents that pertain solely to transactions affecting Avista's regulated utility operations.~~

~~Olympus Holding Corp. and its subsidiaries, including Avista, will provide the Commission with access to written information provided by and to credit rating agencies that pertains to Avista. Olympus Holding Corp. and each of its subsidiaries will also provide the Commission with access to written information provided by and to credit rating agencies that pertains to Olympus Holding Corp.'s subsidiaries to the extent such information may affect Avista.~~

21. **Access to and Maintenance of Books and Records:** Hydro One and its affiliates agree that the Commission may have access to all the accounting records of Hydro One and its affiliates that are the bases for charges to Avista, to determine the reasonableness of the costs and the allocation factors used by Hydro One and its affiliates, or its subdivisions to assign costs to Avista and amounts subject to allocation or direct charges. Hydro One and its affiliates agree that they will not raise lack of jurisdiction as a means of denying such access, and agree to cooperate fully with such Commission investigations.

~~24.~~22. **Cost Allocations Related to Corporate Structure and Affiliate Interests:** ~~Avista agrees to provide cost allocation methodologies used to allocate to Avista any costs related to Olympus Holding Corp. or its other subsidiaries, and commits that there will be no cross-subsidization by Avista customers of unregulated activities.~~

~~The~~Avista's Master Services Agreement (MSA), itemizing and explaining corporate cost-allocation ~~methodology provided pursuant~~methods used to ~~this commitment~~set rates will be ~~a generic methodology that does not require Commission approval prior to it being proposed for specific application~~fully described and supported in ~~a~~testimony and work papers in Avista's first general rate case ~~or other proceeding affecting rates.~~

~~Avista will bear the burden of proof in~~ submitted after this application is approved by the Commission. Thereafter, the MSA will be filed along with any general rate case ~~that any corporate and affiliate cost allocation methodology is reasonable for ratemaking purposes. Neither Avista nor Olympus Holding Corp. or its subsidiaries will contest the Commission's authority to disallow, for retail ratemaking purposes in a general rate case, unreasonable, or misallocated costs from or to Avista or Olympus Holding Corp or its other subsidiaries.~~

~~With respect to the ratemaking treatment of affiliate transactions affecting Avista, Avista and Olympus Holding Corp. and its subsidiaries, as applicable, will comply with the Commission's then-existing practice; provided, however, that nothing in this commitment limits Avista from also proposing a different ratemaking treatment for the Commission's consideration, or limit the positions any other party may take with respect to ratemaking treatment.~~

~~Avista will notify~~ filed with the Commission~~ of any change in corporate structure that affects Avista's corporate and affiliate cost allocation methodologies. Avista will propose revisions to such cost allocation methodologies to accommodate such~~. This filing will capture, highlight and explain all changes. Avista will not take the position that compliance with this provision constitutes approval by~~ since the MSA was last provided to the Commission~~ of a particular methodology for corporate and affiliate cost allocation.~~. The entirety of the MSA and its components are subject to review and approval by the Commission in subsequent proceedings before the Commission to confirm that cost drivers, accounting methods, assumptions, and practices result in fair, just and reasonable utility rates.

23. **Ratemaking Cost of Debt and Equity:**

Avista will maintain separate debt and, if outstanding, preferred stock ratings. Avista will maintain its own corporate credit ratings from Moody's and at least one other nationally recognized credit rating agency, so long as those rating agencies are in existence, as well as ratings for each publicly-issued long-term debt and publicly-issued preferred stock (if any) issuance.

Avista will not advocate for a higher cost of debt or equity capital as compared to what Avista's cost of debt or equity capital would have been absent Hydro One's ownership.

For future ratemaking purposes:

a. Determination of Avista's debt costs will be no higher than such costs would have been assuming Avista's credit ratings by at least one industry recognized rating agency, ~~including, but not limited to,~~ S&P~~,~~ or Moody's, ~~Fitch or Morningstar,~~as such ratings were in effect on the day before the Proposed Transaction closes and applying those credit ratings to then-current debt, unless Avista proves that a lower credit rating is caused by circumstances or developments not the result of financial risks or other characteristics of the Proposed Transaction;

b. Avista bears the burden to prove prudent in a future general rate case any pre-payment premium or increased cost of debt associated with existing Avista debt retired, repaid, or replaced as a part of the Proposed Transaction; and

c. Determination of the allowed return on equity in future general rate cases will include selection and use of one or more proxy group(s) of companies engaged in businesses substantially similar to Avista, without any limitation related to Avista's ownership structure.

24. **Avista Capital Structure:** ~~At all times following the closing of the Proposed Transaction, Avista will have a~~ Avista common equity ratio ~~of not~~ must be maintained at a level no less than 44 percent~~, (as calculated for ratemaking purposes) except to the extent~~ of total Avista actual capital structure determined on a preceding or projected thirteen month average. Should Avista's equity component of its capital structure fall below 44 percent in violation of this condition, Avista shall:

a. Within 5 business days: (A) notify the Commission~~ establishes a lower~~; and (B) provide an explanation for why Avista common equity ratio fell below 44 percent.
b. Within 30 days of providing notice, Avista shall provide a plan and timeline ("Compliance Plan") for ~~Avista for ratemaking purposes~~restoring Avista's common equity ratio to 44 percent or above that is subject to Commission review, modification, rejection, or approval.
c. Subsequent to the filing of the Compliance Plan, Avista shall file progress reports every 90 calendar days detailing its efforts to restore its equity component to 44 percent or above, as

described above, in addition to detailing how Avista has met each requirement in the Compliance Plan.

d. Avista agrees to make its officers available to appear before the Commission regarding the violation and/or the Compliance Plan.

If Hydro One and Avista find it reasonably likely that Avista common equity could fall below 44 percent or projected thirteen month average, Avista shall provide a report to Staff with its projections indicating that common equity could fall below 44 percent, and take the steps listed above.

If Avista's common equity component of its capital structure is at or below 46 percent, on a preceding or projected thirteen month average, and the above steps have not been triggered, Avista will provide quarterly projections of the common equity component of its capital structure to Staff, along with supporting work papers.

25. **FERC Reporting Requirements:** Avista will continue to meet all the applicable FERC reporting requirements with respect to annual and quarterly reports (e.g., FERC Forms 1, 2, 3q) after closing of the Proposed Transaction.

26. **Participation in National and Regional Forums:** Avista will continue to participate, where appropriate, in national and regional forums regarding transmission issues, pricing policies, siting requirements, and interconnection and integration policies, when necessary to protect the interest of its customers.

27. **Treatment of Confidential Information:** Nothing in these commitments will be interpreted as a waiver of Hydro One's, its subsidiaries', or Avista's rights to request confidential treatment of information that is the subject of any of these commitments.

28. **Commission Enforcement of Commitments:** Hydro One and its subsidiaries, including Avista, understand that the Commission has authority to enforce these commitments in accordance with their terms. If there is a violation of the terms of these commitments, then the offending party may, at the discretion of the Commission, have a period of thirty (30) calendar days to cure such violation.

    The scope of this commitment includes the authority of the Commission to compel the attendance of witnesses from Olympus Holding Corp. and its subsidiaries with pertinent information on matters affecting Avista. Olympus Holding Corp. and its subsidiaries waive their rights to interpose any legal objection they might otherwise have to the Commission's jurisdiction to require the appearance of any such witnesses.

29. **Submittal to State Court Jurisdiction for Enforcement of Commission Orders:** Hydro One, Olympus Holding Corp., ~~on its own~~ and ~~its subsidiaries' behalf, including Avista's, will~~Avista will jointly file with the Commission prior to closing the Proposed Transaction an affidavit affirming that ~~it~~they will submit to the jurisdiction of the relevant state courts for enforcement of the Commission's orders adopting ~~these~~the commitments made by and binding upon them and their affiliates where noted, and subsequent orders affecting Avista.

30. **Annual Report on Commitments:** By May 1, 2019 and each May 1 thereafter through May 1, 2023, Avista will file, and Hydro One agrees Avista will file, a report with the Commission ~~regarding~~on the ~~implementation~~status of Avista's compliance with each of the ~~commitments as of December 31 of the preceding year~~conditions listed herein. The report will, at a minimum, provide a description of the performance of each of the commitments. This report will require an officer attestation of compliance with the conditions. If any commitment is not being met, ~~relative to the specific terms of the commitment,~~ the report ~~must provide~~shall include proposed corrective measures relative to the specific condition, subject to Commission revision and ~~target dates for completion of such measures.~~appropriate remedy as determined by the Commission. Avista will make publicly available at the Commission non-confidential portions of the report.

Annual affiliated interest reports will contain a complete copy of the corporate organizational and contact information submitted by Hydro One to the Ontario Energy Board in its most recent filing with that entity.

If the Commission, Staff, or any party believes that Avista or Hydro One has violated any of the commitments listed herein, or any conditions included in the Commission's final order approving the application, the Commission shall give Hydro One and Avista written notice of the alleged violation.

a. If the violation is for failure to file any notice or report required by the Conditions, and if Hydro One or Avista, or both provide the notice or report to the Commission within ten business days of the receipt of the written notice, then the Commission shall take no action. Hydro One or Avista may request, for cause, permission for extension of the ten-day period. For any other violation of the Conditions, the Commission must give Hydro One and Avista written notice of the violation. If such failure is corrected within five business days of the written notice, then the Commission shall take no action. Hydro One or Avista may request, for cause, permission for extension of the five-day period.

b. If Hydro One or Avista, or both, fail to file a notice or written report within the time permitted in (a) above, or if Hydro One or Avista, or both, fail to cure, within the time permitted above, a violation that does not relate to the filing of a notice or report, then the Commission may open an investigation, with an opportunity for Hydro One or Avista, or both, to request a hearing, to determine the number and seriousness of the violations. If the Commission determines after the investigation and hearing (if requested) that Hydro One or Avista, or both, violated one or more of the Conditions, then the Commission shall issue an Order stating the level of penalty it will seek. Hydro One or Avista, or both, as appropriate, may appeal such an order under ORS 756.580. If the Commission's order is upheld on appeal, and the order imposes penalties under a statute that further requires the Commission to file a complaint in court, then the Commission may file a complaint in the appropriate court seeking the penalties specified in the order, and Hydro One or Avista, or both, shall file a responsive pleading agreeing to pay the penalties. The Commission shall seek a penalty on only one of Hydro One or Avista for the same violation.

c. The Commission shall not be bound by the process provided in paragraph (b) in the event the Commission determines Avista has violated any of the material conditions more than two times within a rolling 24-month period.

d. Avista or Hydro One, or both, shall have the opportunity to demonstrate to the Commission that the process provided in paragraph (b) should not apply on a case-by-case basis.

31. **Commitments Binding:** Hydro One, Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge that the commitments being made by them are binding only upon them and their affiliates where noted, and their successors in interest. Hydro One and Avista are not requesting in this proceeding a determination of the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the investments, expenditures or actions referenced in the commitments, and the parties in appropriate proceedings may take such positions regarding the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the investments, expenditures or actions as they deem appropriate.

Financial Integrity Commitments ~~[See Direct Testimony of Thies/Lopez]~~

32. **Capital Structure Support:** Hydro One will provide equity ~~to support Avista's~~ capital ~~structure that is designed to allow~~ injections as needed for maintaining the financial integrity of Avista ~~access to debt financing under reasonable terms and on a sustainable basis~~such that Avista maintains an investment-grade credit rating.

33. **Utility-Level Debt and Preferred Stock:** Avista will maintain separate debt and preferred stock, if any, to support its utility operations.

34. **Continued Credit Ratings:** ~~Each of Hydro One and~~ Avista will continue to be rated by Moody's and at least one other nationally recognized ~~statistical "Rating Agency."~~credit rating agency. Hydro One ~~and Avista~~ will ~~use reasonable best efforts~~continue to ~~obtain and maintain a separate credit rating for Avista from~~be rated by at least one ~~Rating Agency within the ninety (90) days following the closing of the Proposed Transaction. If Hydro One and Avista are unable to obtain or maintain the separate rating for Avista, they will make a filing~~nationally recognized credit rating agency. Avista will provide notice and, if requested, consult with ~~the~~ Commission ~~explaining the basis for their failure to obtain or maintain such separate~~Staff, and Hydro One agrees Avista will do so, in the event that Moody's or another nationally recognized credit rating ~~for~~agency downgrades Avista's credit rating for any reason. If Avista's credit rating drops below investment grade for Moody's or another nationally recognized credit rating agency, Avista will file, and Hydro One agrees Avista will file, a plan with the Commission detailing a range of options to maintain or restore Avista's credit rating, or to explain actions consistent with Avista's customers' best interest. Upon Commission request, Avista will present, and ~~parties to~~ Hydro One agrees Avista will present, this ~~proceeding will have an opportunity~~plan to the Commission, with appropriate provisions in place to ~~participate and propose additional commitments.~~ protect confidential information.

35. **Restrictions on Upward Dividends and Distributions:**

    a. ~~If~~Except as noted in (b) below, if either (i) Avista's corporate credit/issuer rating as determined by at least one ~~industry~~nationally recognized rating agency~~, including, but not limited~~ that issues ratings with respect to~~, S&P, Moody's, Fitch, or Morningstar~~ Avista is investment grade, or (ii) the ratio of Avista's EBITDA to Avista's interest expense is greater than or equal to 3.0, then distributions from Avista to Olympus Equity LLC shall not be limited so long as Avista's equity ratio is equal to or greater than 44 percent on the date of such Avista distribution after giving effect to such Avista distribution, except to the extent the Commission establishes a lower equity ratio for ratemaking purposes. Both the EBITDA and equity ratio shall be calculated on the same basis that such calculations would be made for ratemaking purposes for regulated utility operations.

    b. If Avista's equity ratio is lower than 46 percent, Avista must notify the Commission of its intention to declare a special dividend (defined as a one-time dividend that is paid in addition to Avista's established or expected quarterly dividend) at least 30 days before the intended date of such dividend. Any such dividends from Avista to Olympus Equity LLC are allowed only with prior Commission approval.

    ~~b.~~c. Under any other circumstances, distributions from Avista to Olympus Equity LLC are allowed only with prior Commission approval.

36. **Pension Funding:** Avista will maintain its pension funding policy in accordance with sound actuarial practice~~.~~ and applicable legal requirements. Hydro One will not seek to change Avista's pension funding policy.

37. **SEC Reporting Requirements:** Following the closing of the Proposed Transaction, Avista will file required reports with the SEC.

38. **Compliance with the Sarbanes-Oxley Act:** Following the closing of the Proposed Transaction, Avista will comply with applicable requirements of the Sarbanes-Oxley Act.

Ring-Fencing Commitments ~~**[See Direct Testimony of Thies/Lopez]**~~

39. **Independent Directors:** At least ~~one~~three (3) of the nine members of the board of directors of Avista will ~~be an~~ meet the standards for "independent ~~director who is not a member, stockholder, director (except as an independent director of Avista or Olympus Equity LLC), officer, or employee of Hydro One or its affiliates.~~directors" under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Directors"). At least one of the members of the board of directors of Olympus Equity LLC will ~~be an independent director who is not a member, stockholder, director (except as an independent director of Olympus Equity LLC or Avista), officer, or employee of Hydro One or its affiliates.~~meet the standards for "independent directors" under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Director"). The same individual may serve as an ~~independent director~~Independent Director of both Avista and Olympus Equity LLC. The organizational documents for Avista will not permit Avista, without the consent of a two-thirds majority of all its directors, including the affirmative vote of the ~~independent director~~Independent Director (or if at that time Avista has more than one ~~independent director~~Independent Director, the affirmative vote of at least one of Avista's ~~independent directors~~Independent Directors), to consent to the institution of bankruptcy proceedings or the inclusion of Avista in bankruptcy proceedings. In addition to an affirmative vote of this independent director, the vote of the Golden Share shall also be required for Avista to enter into a voluntary bankruptcy.

40. **Golden Share**. To enter into voluntary bankruptcy shall further require the affirmative vote of a "Golden Share" of Avista stock. The Golden Share shall mean the sole ($1 Par) share of Preferred Stock of Avista as authorized by the Commission. This share of Preferred Stock must be in the custody of an independent third-party, where the third-party has no financial stake, affiliation, relationship, interest, or tie to Avista or any of its affiliates, or any lender to Avista, or any of its affiliates. This requirement does not preclude the third-party from holding an index fund or mutual fund with negligible interests in Avista or any of its affiliates. In matters of voluntary bankruptcy, this share will override all other outstanding shares of all types or classes of stock.

~~40.~~41. **Non-Consolidation Opinion:**

a. Within ninety (90) days of the Proposed Transaction closing, Avista and Olympus Holding Corp. will file, and Hydro One agrees they will file, a non-consolidation opinion with the Commission which concludes, subject to customary assumptions and exceptions, that the ring-fencing provisions are sufficient that a bankruptcy court would not order the substantive consolidation of the assets and liabilities of Avista with those of Olympus Holding Corp. or its affiliates or subsidiaries (other than Avista and its subsidiaries).

b. Olympus Holding Corp. must file an affidavit with the Commission stating that neither Olympus Holding Corp. nor any of its subsidiaries, will seek to include Avista in a bankruptcy without the consent of a two-thirds majority of Avista's board of directors including the affirmative vote of Avista's independent director, or, if at that time Avista has more than one independent director, the affirmative vote of at least one of Avista's independent directors.

c. If the ring-fencing provisions in these commitments are not sufficient to obtain a non-consolidation opinion, Olympus Holding Corp. and Avista agree to promptly undertake, and Hydro One agrees to cause them to undertake, the following actions:

(i) Notify the Commission of this inability to obtain a non-consolidation opinion.

(ii) Propose and implement, upon Commission approval, such additional ring-fencing provisions around Avista as are sufficient to obtain a non-consolidation opinion subject to customary assumptions and exceptions.

(iii) Obtain a non-consolidation opinion.

~~41.~~42. **Olympus Equity LLC:** Olympus Holding Corp. indirect subsidiaries will include Olympus Equity LLC between Avista and Olympus LLC 2. See the post-acquisition organizational chart in Appendix 1 of the Joint Application. Following closing of the Proposed Transaction, all of the common stock of Avista will be owned by Olympus Equity LLC, a new Delaware limited liability company, and a wholly-owned subsidiary of Olympus LLC 2. Olympus Equity LLC will be a bankruptcy-remote special purpose entity, and will not have debt.

~~42.~~43. **Restriction on Pledge of Utility Assets:** Avista will agree to, and Hydro One will cause Avista to agree to, prohibitions against loans or pledges of utility assets to Hydro One, Olympus Holding Corp., or any of their subsidiaries or affiliates, without Commission approval.

~~43.~~44. **Hold Harmless; Notice to Lenders; Restriction on Acquisitions and Dispositions:**

a. Hydro One, its affiliates, and subsidiaries including Avista will generally hold Avista customers harmless from any business and financial risk exposures associated with Olympus Holding Corp., Hydro One, and Hydro One's other affiliates.

b. Pursuant to this commitment, Avista ~~and Olympus Holding Corp.~~ will file, and Hydro One agrees Avista will file, with the Commission, prior to closing of the Proposed Transaction, a form of notice to prospective lenders describing the ring-fencing provisions included in these commitments stating that these provisions provide no recourse to Avista assets as collateral or security for debt issued by Hydro One or any of its subsidiaries, other than Avista.

c. In furtherance of this commitment:

i. ~~Avista commits~~Hydro One, its affiliates, and subsidiaries including Avista commit that Avista's regulated utility customers will be held harmless from the liabilities of any unregulated activity of Avista or Hydro One and its affiliates. In any proceeding before the Commission involving rates of Avista, the fair rate of return for Avista will be determined without regard to any adverse consequences that are demonstrated to be attributable to unregulated activities. Measures providing for separate financial and accounting treatment will be established for each unregulated activity.

ii. ~~Olympus Holding Corp.~~Hydro One, its affiliates, and subsidiaries including Avista will notify the Commission subsequent to ~~Olympus Holding Corp.'s~~Hydro One's, its affiliates', or subsidiaries' including Avista's board approval and as soon as practicable following any public announcement of: (1) any acquisition by ~~Olympus Holding Corp.~~ Hydro One, its affiliates, and subsidiaries including Avista of a regulated or unregulated business that is equivalent to five ~~(5)~~ percent or more of ~~the~~Hydro One's capitalization ~~of Avista~~; or (2) the change in effective control or acquisition of any material part of Avista, as required by ~~any other firm, whether by merger, combination, transfer~~ORS 757.511, except that the notice of a change to the upstream ownership of ~~stock~~Avista or ~~assets.~~Olympus Holding Corp. among wholly owned subsidiaries of Hydro One may be provided in either an updated organizational chart included in the annual report filing described in Commitment [31] or in a separate notice filing.. Notice pursuant to this provision is not and will not be deemed an admission or expansion of the Commission's authority or jurisdiction over any transaction or in any matter or proceeding whatsoever.

Within sixty (60) days following the notice required by this subsection (c)(ii)(2), Avista and Olympus Holding Corp. or its ~~subsidiaries~~affiliates, as appropriate, will seek Commission approval of any sale or transfer of any material part of Avista~~.~~, or of any transaction or series of transactions, regardless of size, that would result in a person or entity, other than a wholly owned subsidiary of Hydro One, directly or indirectly, acquiring a controlling

interest in Avista or Olympus Holding Corp. The term "material part of Avista" means any sale or transfer of stock, or other change in ownership, representing ten percent (10%) or more of the equity ownership of Avista.

iii. Neither Avista nor ~~Olympus Holding Corp.~~Hydro One will assert in any future proceedings that, by virtue of the Proposed Transaction and the resulting corporate structure, the Commission is without jurisdiction over any transaction that results in a change of control of Avista.

d. If and when any subsidiary of Avista becomes a subsidiary of Hydro One or one of its subsidiaries other than Avista, Avista and Hydro One will so advise the Commission within thirty (30) days and will submit to the Commission a written document setting forth Avista's proposed corporate and affiliate cost allocation methodologies.

~~44.~~45. **Olympus LLC 2 and Olympus Equity LLC Sub-entities:** Olympus LLC 2 will not operate or own any business and will limit its activities to investing in and attending to its shareholdings in Olympus Equity LLC, which, in turn, will not operate or own any business and will limit its activities to investing in and attending to its shareholdings in Avista.

~~45.~~46. **No Amendment of Ring-Fencing Provisions:** Hydro One, Olympus Holding Corp. and Avista commit that no material amendments, revisions or modifications will be made to the ring-fencing provisions as specified in these regulatory commitments without prior Commission approval pursuant to a limited re-opener for the sole purpose of addressing the ring-fencing provisions.

Environmental, Renewable Energy, and Energy Efficiency Commitments ~~**[See Direct Testimony of Christie/Pugliese]**~~

~~46.~~47. **Renewable Portfolio Standard Requirements:** Hydro One acknowledges Avista's obligations under applicable renewable portfolio standards, and Avista will continue to comply with such obligations. [Not Applicable To Oregon]

~~47.~~48. **Renewable Energy Resources:** Avista will acquire all renewable energy resources required by law and such other renewable energy resources as may from time to time be deemed advisable in accordance with Avista's integrated resource planning process and applicable regulations. [Not Applicable To Oregon]

~~48.~~49. **Greenhouse Gas and Carbon Initiatives:** Hydro One acknowledges Avista's Greenhouse Gas and Carbon Initiatives contained in its current Integrated Resource Plan, and Avista will continue to work with interested parties on such initiatives.

~~49.~~50. **Greenhouse Gas Inventory Report:** Avista will report greenhouse gas emissions as required.

~~50.~~51. **Efficiency Goals and Objectives:** Hydro One acknowledges Avista's energy efficiency goals and objectives set forth in Avista's 2017 Integrated Resource Plan and other plans, and Avista will continue its ongoing collaborative efforts to expand and enhance them.

~~51.~~52. **Optional Renewable Power Program:** Avista will continue to offer renewable power programs in consultation with stakeholders. [Not Applicable To Oregon]

Community and Low-Income Assistance Commitments ~~**[See Direct Testimony of Morris/Schmidt/Christie/Pugliese]**~~

~~52.~~53. **Community Contributions:** Hydro One will cause Avista to make a one-time $7,000,000 contribution to Avista's charitable foundation at or promptly following closing.[6]

[6] Note that Commitment 11 contains additional provisions relating to Avista's charitable contributions.

~~53.~~54. **Low-Income Energy Efficiency Funding:** Avista will continue to work with its advisory groups on the appropriate level of funding for low income energy efficiency programs.

~~54.~~55. **Addressing Other Low-Income Customer Issues:** Avista will continue to work with low-income agencies to address other issues of low-income customers, including funding for bill payment assistance.

56. **Low-Income Rate Assistance Program:** Hydro One and Avista commit to continue Avista's LIRAP program. Hydro One will arrange additional funding of $[ ] over a 10-year period[7], for LIRAP in Oregon. The Community Action Agencies will administer the funds consistent with Avista tariff schedule 493.[8] Throughout this Commitment List, any commitment that states Hydro One will arrange funding is not contingent on Hydro One's ability to arrange funding, particularly from outside sources, but is a firm commitment to provide the dollar amount specified over the time period and for the purposes specified. To the extent Avista has retained earnings that are available for payment of dividends to Olympus Equity LLC consistent with the ring fencing provisions of this Commitment List, such retained earnings may be used. Funds available from other Hydro One affiliates may be used without limitation.

57. **Funding for Oregon Energy Fund (OEF):** Hydro One will arrange funding of $[ ] over 10 years to be given to the Oregon Energy Fund, for the purpose of funding programs that benefit Avista customers in Oregon, consistent with the OEF's mission.[9] The funds will be paid into a separate account to be managed and disbursed by Avista at the direction of Oregon Energy Fund (OEF). Eligible costs will include reasonable administration costs required for disbursement.

58. **Low Income Weatherization:** Hydro One will arrange additional funding of $[ ] over 10 years to fund low income weatherization for Avista customers in Oregon. The Community Action Agencies and Avista will work together to design the program, and it will be administered through the Avista Oregon Low Income Energy Efficiency Program ("AIOLEE") program.[10] For both existing funding and the new Hydro One funding, 20 percent of the funds may be used for "direct" project coordination costs and 10 percent for "indirect" general overhead costs of administering the weatherization program.

Most Favored Nation [NEW]

59. **Most Favored Nation:**[11]

The Applicants agree that upon the joint request of the Non-Applicant Parties, the Commission shall have an opportunity and the authority to consider and adopt in Oregon any commitments (including conditions) to which the Applicants agree in other jurisdictions, even if such commitments are agreed to after the Commission enters its order in this docket. To facilitate the Commission's consideration and adoption of the commitments from other jurisdictions, the Parties urge the Commission to issue an order accepting this Stipulation as soon as practical, but to reserve in such order the explicit right to re-open to add commitments accepted in another state jurisdiction.

[7] For Commitments 56, 57, and 58, Hydro One and Avista propose to commit a total of $1,626,995 over 10 years to LIRAP, OEF, and low income weatherization. Hydro One and Avista look forward to working with the parties to determine how to allocate the funds between these three commitments.

[8] The current annual funding levels for LIRAP are approximately $230,000.

[9] At present Avista does not currently provide funding to the Oregon Energy Fund.

[10] The current annual funding levels for AIOLEE are approximately $200,000.

[11] This MFN provision is drafted for purposes of inclusion in a Settlement Stipulation that would be presented for Commission approval.

The Applicants further agree that upon the request of any Non-applicant Party prior to Commission's action on this Stipulation, if Applicants agree with any commitments in other jurisdictions, within five days of such a request, Applicants will meet and confer with the Non-applicant Parties to discuss whether such commitments should be added to the existing list of commitments already agreed to by the Parties in this Stipulation.

Process for Consideration:

- Within five calendar days after Applicants file a stipulation with new or amended commitments with a commission in another state jurisdiction, Applicants will send a copy of the stipulation and commitments to the Non-Applicant Parties.

- Within five calendar days after a commission in another state jurisdiction issues an order that accepts a stipulation to which Applicants are a party and imposes new or modified commitments, that order, together with all commitments of any type agreed to by Applicants in such other state, will be filed with the Commission and served on all parties to this docket by the most expeditious means practical.

- Within ten calendar days after the last such filing from the other states ("Final Filing"), the Non-Applicant Parties shall file with the Commission any response they wish to make, including their position as to whether any of the covenants, commitments and conditions from the other jurisdictions (without modification of the language thereof except such non-substantive changes as are necessary to make the commitment or condition applicable to Oregon) should be adopted in Oregon.

- Within five calendar days after any such response filing, the Applicants may file a reply with the Commission. If the 5th calendar day falls on Saturday, Sunday, or a holiday, the next business day will be considered as the 5th day.

- The Parties agree to support in their filings the issuance by the Commission of an order regarding the adoption of such commitments as soon as practical thereafter, recognizing that the Transaction cannot close until final state orders have been issued approving the Transaction.

Limitations on Adjustment:

- The commitment relating to maintenance of Avista's headquarters is not subject to this provision.

- Only commitments relating to gas service may form the basis for adjustments relating to gas service.

- Only commitments relating to electric service may form the basis for adjustments relating to electric service.

- Any commitments relating to support of communities in Montana are not subject to this provision.

- As Avista does not operate as a utility in Alaska, any commitments made in Alaska are not subject to this provision.

- For purposes of financial commitments or commitments having a financial impact, commitments should be proportionate to Avista's corresponding business function in

Oregon in relation to its corresponding total company business function. Accordingly, commitments should be allocated among Avista's WA, ID and OR jurisdictions based on the following: 1) Rate Credit is allocated based on base revenues; 2) all other financial commitments are allocated using the Company's jurisdictional "four factor" allocation methodology, routinely employed for purposes of allocating common costs, as discussed in Mr. Ehrbar's testimony in this proceeding.

Miscellaneous

60. **Contract Labor Issues:** Avista agrees to resolve all issues in this proceeding that pertain to the LiUNA-District Council-District Council on terms set forth in Attachment B.

61. **On Bill Repayment:** Hydro One will arrange funding of the approximately $100,000 (system basis) initial investment in software upgrades and $5,000 in administrative costs to implement an on-bill repayment program. Under no circumstance, will the rate payer population be responsible for any default related to the OBRP[12].

[12] OBRP is a pass-through billing service for energy efficiency loans, where Avista would collect loan payments on customers' bills then transmit the sum monthly to the third-party lender. Only non-profit lenders would be eligible, offering low rates for energy efficiency loans. The lender has no ability to shut off power (due to non-payment) and all lending activity is managed separate from the utility, where the lender:

- Provides all capital, bears full risk
- Manages delinquent files and collections off-bill
- Handles loans/balances separate from utility financial systems
- Meets consumer lending regulatory requirements.

AVISTA/HYDRO ONE
Attachment A
(UM 1897 Avista / Hydro One Merger)
March 14, 2018

Avista Oregon Service Quality Measures Program

Customer Service Measures

1. The level of Customer satisfaction with telephone service, as provided by the Company's Contact Center, will be at least 90 percent, where:
    a. The measure of Customer satisfaction is based on Customers who respond to Avista's quarterly survey of Customer satisfaction, known as the Voice of the Customer, as conducted by its independent survey contractor;
    b. The measure of satisfaction is based on Customers participating in the survey who report the level of their satisfaction as either "satisfied" or "very satisfied"; and
    c. The measure of satisfaction is based on the statistically-significant survey results for both electric and natural gas service for Avista's entire service territory for the calendar year, and will also separately be reported for Oregon customers only.

2. The level of Customer satisfaction with the Company's field services will be at least 90 percent, where:
    a. The measure of Customer satisfaction is based on Customers who respond to Avista's quarterly survey of Customer satisfaction, known as the Voice of the Customer, as conducted by its independent survey contractor;
    b. The measure of satisfaction is based on Customers participating in the survey who report the level of their satisfaction as either "satisfied" or "very satisfied"; and
    c. The measure of satisfaction is based on the statistically-significant survey results for both electric and natural gas service for Avista's entire service territory for the calendar year, and will also separately be reported for Oregon customers only.

3. The number of complaints filed with the Public Utility Commission of Oregon by Avista's natural gas customers will not exceed the rate of 0.4 complaints per 1,000 customers for the calendar year.

4. The percentage of customer calls answered by a live representative within 60 seconds will be at least 80 percent for the calendar year, where:
    a. The measure of response time is based on results from the Company's Contact Center, and is initiated when the customer requests to speak to a customer service representative; and
    b. Response time is based on the combined results for both electric and natural gas customers for Avista's entire service territory.

5. The Company's average response time to a natural gas system emergency in Oregon will not exceed 55 minutes for the calendar year, where:
    a. Response time is measured from the time of the customer call to the arrival of a field service technician; and
    b. "Natural gas system emergency" is defined as an event when there is a natural gas explosion or fire, fire in the vicinity of natural gas facilities, police or fire are standing by, leaks identified in the field as "Grade 1", high or low gas pressure problems identified by alarms or customer calls, natural gas system emergency alarms, carbon monoxide calls, natural gas odor calls, runaway furnace calls, or delayed ignition calls.

Customer Service Guarantees

1. The Company will keep mutually agreed upon appointments for natural gas service, scheduled in the time windows of either 8:00 a.m. – 12:00 p.m. or 12:00 p.m. – 5:00 p.m., except for the following instances:
    a. When the Customer or Applicant cancels the appointment;
    b. The Customer or Applicant fails to keep the appointment; or
    c. The Company reschedules the appointment with at least 24 hours notice.

2. The Company will provide a cost estimate to the Customer or Applicant for new natural gas supply within 10 business days upon receipt of all the necessary information from the Customer or Applicant.

3. The Company will respond to most billing inquiries at the time of the initial contact, and for those inquires that require further investigation, the company will investigate and respond to the Customer within 10 business days.

4. The Company will investigate Customer-reported problems with a meter, or conduct a meter test, and report the results to the Customer within 20 business days from the date of the report or request.

CUSTOMER SERVICE GUARANTEE CREDITS

For failure to meet a Customer Service Guarantee for service provided to an electric Customer, the Company will apply a $50 credit to the Customer's account. For failure to meet a Customer Service Guarantee for service provided to an Applicant, the Company will mail a check for $50 to the Applicant. Avista will timely provide the qualifying customer credit or applicant check without any requirement on the part of the customer or applicant to either apply for, or request the applicable credit or check.

Tracking of the Company's performance on the Customer Service Guarantees, including the application of customer credits, will begin on January 1, 2019.

ANNUAL REPORT

The Company will include the results of its Service Quality Measures Program in an annual report to be filed with the Public Utility Commission of Oregon on or before April 30th of each year.

CUSTOMER REPORT CARD

Within 90 days of filing its Annual Service Quality Measures Report, the Company will send a Service Quality Measures Program Report Card to its Customers, which will include the following:

a. Results for each of the Company's Customer Service Measures, compared with the respective performance benchmarks;
b. Results for each of the Customer Service Guarantees, compared with the respective benchmarks, and including the number of events for each measure where a credit was provided, and the total dollar amount of the credits paid for each measure; and
c. Performance highlights for the year.
d. The company will issue its first Report Card to customers on or before July 31, 2020.

AVISTA/HYDRO ONE
Attachment B

1) On a prospective basis, and for a period of 10 years ending March 7, 2028, Avista will require the use of LiUNA-District Council members for the type of work that is ordinarily and customarily performed by LiUNA-District Council on natural gas replacement and all natural gas work. This will not apply to work performed under contracts already in effect as of March 7, 2018. This agreement will not apply to (a) atmospheric corrosion; (b) locating; and (c) leak survey. This agreement will also not apply to work performed where signatory contractors are not available (unavailability is typically due to locations being in remote areas), or choose not to bid on projects; provided that work performed in such areas will be paid at equivalent wages and benefits.

2) On a prospective basis, and for a period of 10 years ending March 7, 2028, Avista will require the use of LiUNA-District Council members for all flagging work, unless otherwise performed by Avista employees represented by IBEW Local 77. This will not apply to work performed under contracts already in effect as of March 7, 2018.

3) LiUNA-District Council will provide for signatory contractors laborers that are qualified pursuant to applicable OSHA 1910 regulations and all other applicable training. In addition LiUNA-District Council will provide LiUNA-District Council members knowledgeable in the DOT Title 49 Code of Federal Regulations, Part 192, and all applicable state pipeline safety regulations. Contractors shall be required to provide proof of compliance with this requirement to Avista.

4) On a prospective basis, Avista will require contractors to utilize NWLETT for required training, if applicable courses are offered by NWLETT and are reasonably accessible in the locality where the work is to be performed.

5) Avista will meet and confer with LiUNA-District Council to discuss possible involvement in all future hydroelectric projects that are within the sphere of LiUNA-District Council's expertise.

6) Avista will encourage contractors to utilize union labor, including, without limitation and as applicable, members of the Laborers', Pipefitters and Steamfitters, and IBEW, on Avista projects as part of its bidding solicitation process on all other construction work, including but not limited to capital work on hydro facilities, and will evaluate the use of such members in the staffing plans of bidding contractors as an element of Avista's bid evaluation process.

7) Avista will continue to prioritize the hiring of qualified contractor personnel through the bidding process, by requiring analysis of not only the price proposals submitted by contractors, but a variety of other factors, including minimum staffing requirements as applicable, training programs, documented qualification programs, safety track records, OSHA 300 reportables, and other safety records as appropriate. Review of these components is intended to verify that the contractor is able to supply a sufficient workforce to meet Avista's needs, and that their personnel are appropriately trained, qualified and able to safely and reliably perform work for Avista.

8) Work covered by these commitments does not include work that is customarily performed by Avista employees represented by IBEW Local 77 but that is contracted out pursuant to IBEW Local 77's collective bargaining agreement with Avista. It also does not include any work that is performed by Avista employees, regardless of the type of work involved.

9) Avista will meet and confer with LiUNA-District Council at least six months prior to March 7, 2028 to discuss extending or modifying the terms set forth herein.

HYDRO ONE/802
Schmidt

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

MAYO M. SCHMIDT
Exhibit No. 802

WUTC Settlement Stipulation

Avista Corp.
1411 East Mission P.O. Box 3727
Spokane, Washington 99220-0500
Telephone 509-489-0500
Toll Free 800-727-9170

AVISTA Corp.

March 27, 2018

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S. W.
P.O. Box 47250
Olympia, Washington 98504-7250
Attention: Mr. Steven King, Executive Director and Secretary

RE: Settlement Stipulation and Motion of Hydro One and Avista Corporation for Order Approving Settlement Stipulation and Agreement in Docket U-170970

Avista Corporation hereby submits an original and ten (10) copies of the Settlement Stipulation in the above referenced docket. Also enclosed are an original and ten (10) copies of the Motion for an Order Approving the Settlement Stipulation and Agreement.

A service list is attached, with the parties on the service list receiving a complete copy of this filing by overnight mail.

If you have any questions, please do not hesitate to contact David Meyer on behalf of Avista Corporation at 509-495-4316 or david.meyer@avistacorp.com or Liz Thomas on behalf of Hydro One Limited, at 206-370-7631 or liz.thomas@klgates.com.

RESPECTFULLY SUBMITTED this 27th day of March, 2018.

K&L GATES, LLP

BY: _____
Elizabeth Thomas, WSBA No. 11544
Kari Vander Stoep, WSBA No. 35923
Partner
K&L Gates LLP
On Behalf of Hydro One Limited
Olympus Equity LLC
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Liz.thomas@klgates.com

AVISTA CORPORATION

By: _____
David J. Meyer, WSBA No. 8717
Chief Counsel for Regulatory and
Governmental Affairs
Avista Corporation
1411 E. Mission Ave., MSC-27
Spokane, WA 99220-3727
David.meyer@avistacorp.com

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of HYDRO ONE LIMITED (acting through its indirect subsidiary, Olympus Equity LLC	)	DOCKET NO. U-170970
and AVISTA CORPORATION	)	MOTION FOR AN ORDER APPROVING SETTLEMENT STIPULATION AND AGREEMENT
For an Order Authorizing Proposed Transaction	)	

Come now, Hydro One Limited ("Hydro One"), acting through Olympus Equity LLC an indirect, wholly-owned subsidiary, and Avista Corporation ("Avista") (sometimes hereafter jointly referred to as "Joint Applicants" or the "Companies"), and respectfully move the Commission for an Order approving the Settlement Stipulation and Agreement (hereafter "Settlement") filed herewith. The Settlement is entered into by and among all parties in this case: Hydro One, Avista, the Staff of the Washington Utilities and Transportation Commission ("Staff"), the Public Counsel Unit of the Washington Office of Attorney General ("Public Counsel"), Northwest Industrial Gas Users ("NWIGU"), Industrial Customers of Northwest Utilities ("ICNU"), The Energy Project, Northwest Energy Coalition ("NWEC"), Renewable Northwest ("RNW"), Natural Resources Defense Council ("NRDC"), Sierra Club, and Washington and Northern Idaho District Council of Laborers ("WNIDCL"), jointly referred to herein as "Parties" and individually as a "Party."

This Motion is based on the following:

1. Representatives of all Parties appeared at Settlement Conferences held on February 6, 2018, and February 23, 2018, which were held for the purpose of narrowing or resolving the contested issues in this proceeding. Subsequent discussions led to a Settlement of all known issues.

2. On March 16, 2018, Commission Staff, on behalf of the Parties, filed with the Commission a letter advising that a settlement-in-principle had been reached in this proceeding.

3. On March 27, 2018, the Parties filed with the Commission the Settlement (attached to this Joint Motion). This Settlement, if approved, would resolve all issues in these proceedings.

4. The Parties will file testimony in support of the Settlement on or before April 10, 2018, and the Parties request that the Settlement be approved as a fair resolution of all issues, as being in the public interest, and without change or modification.

5. The Parties request that the remaining procedural schedule be suspended in this docket, except for the hearing date of May 22, 2018, at which time testimony would be heard in support of the Settlement, as well as the previously scheduled dates for receipt of testimony from the public.

6. In the event that the Commission should reject the Settlement, or materially modify it in ways unacceptable to the Parties, the Parties request that a prehearing conference immediately be convened to establish a schedule for the litigation of unresolved matters in these dockets.

WHEREFORE, the Parties respectfully request an Order approving the Settlement, in the form attached.

Entered into this 27th day of March, 2018.

Avista:

By: _____
David J. Meyer
VP, Chief Counsel for Regulatory
and Governmental Affairs

Hydro One:

By: _____
Elizabeth Thomas
Partner, K&L Gates LLP
Attorney for Hydro One

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of HYDRO ONE LIMITED (acting through its indirect subsidiary, Olympus Equity LLC) **and** **AVISTA CORPORATION** **For an Order Authorizing Proposed Transaction**	Docket No. U-170970 SETTLEMENT STIPULATION AND AGREEMENT

I. PARTIES

1. This Settlement Stipulation and Agreement is entered into by and among the following parties in this case: Hydro One Limited ("Hydro One"), acting through Olympus Equity LLC an indirect, wholly-owned subsidiary, and Avista Corporation ("Avista") (sometimes hereafter jointly referred to as "Joint Applicants" or the "Companies"), the Staff of the Washington Utilities and Transportation Commission ("Staff"), the Public Counsel Unit of the Washington Office of Attorney General ("Public Counsel"), Northwest Industrial Gas Users ("NWIGU"), Industrial Customers of Northwest Utilities ("ICNU"), The Energy Project, Northwest Energy Coalition ("NWEC"), Renewable Northwest ("RNW"), Natural Resources Defense Council ("NRDC"), Sierra Club, and Washington and Northern Idaho District Council of Laborers ("WNIDCL"), jointly referred to herein as "Parties" and individually as a "Party."

2. Accordingly, this represents a "full settlement" under WAC 480-07-730(1). The Parties, representing all who have intervened or appeared in these dockets, agree that this

Settlement Stipulation (hereinafter "Settlement" and/or "Stipulation") is in the public interest and should be accepted by the Commission as a full resolution of the issues in these dockets.

3. The Parties understand this Settlement is subject to review and disposition by the Washington Utilities and Transportation Commission ("Commission").

II. RECITALS

4. On September 14, 2017, the Joint Applicants filed with the Commission a Joint Application For An Order authorizing Proposed Transaction whereby Olympus Equity LLC would acquire all of the outstanding common stock of Avista, and Avista would thereafter become a direct, wholly-owned subsidiary of Olympus Equity LLC and an indirect, wholly-owned subsidiary of Hydro One (the combination of these transactions is hereafter "Proposed Transaction").[1]

5. The Commission convened a prehearing conference in this proceeding at Olympia, Washington on October 20, 2017, before Administrative Law Judge Dennis J. Moss. At the prehearing conference, the Commission granted the petitions to intervene by ICNU, NWIGU, The Energy Project, NWEC, RNW, NRDC, and the Sierra Club. The Commission, in Order 03, subsequently granted intervention status to WNIDCL.

6. In accordance with the procedural schedule adopted at the prehearing conference (Order 02), all Parties attended the scheduled settlement conference held in Olympia, Washington, on February 6, 2018. An additional settlement conference was held in Olympia on February 23,

[1] On July 19, 2017, Avista, a Washington corporation, Hydro One, a Province of Ontario corporation, Olympus Holding Corp. (also referred to hereafter as "US Parent"), a Delaware corporation, and Olympus Corp. ("Merger Sub"), a Washington corporation and an indirect, wholly-owned subsidiary of US Parent, entered into an Agreement and Plan of Merger. Following all approvals, at the effective time on the closing date, Merger Sub will be merged with and into Avista, and the separate existence of Merger Sub shall thereupon cease, and Avista will be the surviving corporation and will become a direct, wholly-owned subsidiary of Olympus Equity LLC and an indirect, wholly-owned subsidiary of Hydro One.

2018. Based on these discussions and related correspondence, the Parties have reached an agreement on proposed commitments (attached as Appendix A to this Settlement Stipulation) that provide a basis upon which the Parties recommend Commission approval of the Proposed Transaction in Washington.

III. TERMS OF THE SETTLEMENT STIPULATION

7. Appendix A to this Stipulation contains the complete list of commitments that the Joint Applicants agree to make upon consummation of the Proposed Transaction (hereinafter referred to as "Commitments"). By virtue of executing this Stipulation, the Joint Applicants agree to perform all of the Commitments set forth in Appendix A according to the provisions of each Commitment as set forth therein.

8. The effective date of the Commitments set forth in Appendix A to this Stipulation shall be the date of the closing of the Proposed Transaction, provided that the date of the Commission's final order in this matter is the effective date for Commitments requiring Hydro One or its subsidiaries, including Avista, to take action before the closing of the Proposed Transaction.

9. In the process of obtaining approval of the Proposed Transaction in other states, the Commitments may be expanded or modified as a result of regulatory decisions or settlements. The Parties agree that the Commission shall have an opportunity and the authority to consider and adopt in Washington any commitments or conditions with which the Joint Applicants agree in other jurisdictions, even if such commitments and conditions are agreed to after the Commission enters its order in this docket. To facilitate the Commission's consideration and adoption of the commitments and conditions from other jurisdictions, the Parties recommend that the Commission issue an order approving this Stipulation as soon as practical, but reserve in such order the explicit

right to re-open the Commitments set forth in Appendix A in order to reflect commitments and conditions accepted in another state jurisdiction. Commitment 81 (Most Favored Nation) in Appendix A sets forth the process and limitations for addressing changes to commitments agreed to in other jurisdictions.

10. The Parties agree that with the Commitments set forth in Appendix A, the Proposed Transaction meets the net benefit and public interest standards under RCW 80.01.040(3), RCW 80.12.020 and WAC 480-143-170 required for approval in Washington. RCW 80.12.020 provides that Commission approval must be predicated on a finding that the Proposed Transaction would provide a "net benefit" to customers:

> **Order required to sell, merge, etc.—Exemption.**
>
> (1) No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it to do so. The commission shall not approve any transaction under this section that would result in a person, directly or indirectly, acquiring a controlling interest in a gas or electrical company without a finding that the transaction would provide a net benefit to the customers of the company.

Moreover, RCW 80.01.040(3) directs the Commission to "[r]egulate in the public interest," and WAC 480-143-170 reiterates that requirement:

> **Application in the Public Interest** – If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.

11. As described in the Commitments to this stipulation and in the Joint Testimony to follow, the evidence demonstrates that the Proposed Transaction is in the public interest and should be approved by the Commission. Furthermore, the Proposed Transaction will provide "net

benefits" for Avista's customers in Washington, as reflected in the proposed Commitments (attached as Appendix A to this Settlement Stipulation).

12. The Parties agree that, due to tax-related changes made by the Tax Cuts and Jobs Act, H.R. 1 of the 115th Congress, which shall be more fully described in testimony supporting this Stipulation, the Post-Closing Corporate Structure set forth on page 2 of Appendix 1 to the Joint Application should be simplified to eliminate Olympus 1 LLC and Olympus 2 LLC. Accordingly, the Post-Closing Corporate Structure should be as set forth in Appendix B to this Settlement Stipulation. The Parties recognize, however, that parallel changes must be made in the dockets on the Proposed Transaction that are pending in Oregon, Idaho, Montana and Alaska. If one or more of such parallel changes cannot be made, the Parties agree that the Post-Closing Corporate Structure set forth on page 2 of Appendix 1 to the Joint Application is also acceptable. Additionally, if the Tax Cuts and Jobs Act is repealed or amended such that further changes to the Post-Closing Corporate Structure are necessary, the Joint Applicants will propose a revised corporate structure, subject to Commission approval.

13. The Joint Applicants acknowledge that the Commission's approval of the Stipulation, the Commitments, or the Joint Application shall not bind the Commission in other proceedings with respect to the determination of prudence, just and reasonable character, rate or ratemaking treatment, or public interest of services, accounts, costs, investments, any particular construction project, expenditures, or actions referenced in the Commitments.

14. The Parties therefore agree to support this Stipulation as a settlement of all issues in this proceeding and to recommend approval of the Proposed Transaction in this proceeding subject to the agreed-upon Commitments. The Parties understand that this Stipulation is not binding on the Commission in ruling on the Joint Application.

15. The Parties agree that this Stipulation represents a compromise in the positions of the Parties. As such, conduct, statements, and documents disclosed in the negotiation of this Stipulation shall not be admissible as evidence in this or any other proceeding. By executing this Stipulation, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of this Stipulation, nor shall any Party be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding, except those proceedings involving the enforcement or implementation of the terms of this Stipulation.

16. The Parties shall cooperate in submitting this Stipulation promptly to the Commission for acceptance, and shall cooperate in developing supporting testimony required by WAC 480-07-740(2). The Parties agree to support the Stipulation throughout this proceeding, provide one or more witnesses each to sponsor such Stipulation as well as legal representatives to support the Stipulation at a Commission hearing (if necessary), and recommend that the Commission issue an order adopting the Commitments referenced herein. In the event the Commission rejects this Stipulation or accepts this Stipulation upon conditions not contained herein, the provisions of WAC 480-07-750(2) shall apply.

17. Each Party retains the right to provide information to the public about this Settlement Stipulation, after this Settlement Stipulation is filed with the Commission. Each Party shall provide to each other Party a copy of each public announcement, news release or similar communication (hereafter "public communication") that the issuing Party intends to make regarding this Settlement Stipulation, as soon as practicable in advance of publication (hereafter "disclosure requirement"). The disclosure requirement shall not apply to a Party that has provided

a copy of a public communication addressing the Settlement Stipulation to other Parties prior to filing the Settlement Stipulation.

18. This Stipulation is entered into by each Party as of the date entered below. Subject to Paragraph 19, the obligations of the Parties under this Stipulation are effective as of the date it has been fully executed by all Parties.

19. The obligations of the Joint Applicants under this Stipulation, with the exception of paragraphs 14 through 18, are subject to the Commission's approval of the Joint Application in this docket on terms and conditions acceptable to the Joint Applicants, in their sole discretion.

20. The Parties may execute this Stipulation in counterparts, which together will constitute one agreement. A signed signature page sent by email is as effective as an original document.

DATED: March 27, 2018

HYDRO ONE LIMITED

By: _____
Elizabeth Thomas, Partner, K&L Gates LLP
Kari Vander Stoep, Partner, K&L Gates LLP
On Behalf of Hydro One Limited and
Olympus Equity LLC

AVISTA CORPORATION

By: _____
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Chief Counsel for Regulatory and
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STAFF OF THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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Assistant Attorney General

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NORTHWEST INDUSTRIAL GAS USERS

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Chad M. Stokes
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INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

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Tyler C. Pepple
Davison Van Cleve, P.C.

THE ENERGY PROJECT

By: _____
Simon J. ffitch
Attorney at Law

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

By: _____
Jeffrey D. Goltz
Cascadia Law Group
On Behalf of NWEC/RNW/NRDC

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By David Meyer on ffitch's email authorization

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MASTER LIST OF COMMITMENTS IN WASHINGTON

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A. Reservation of Certain Authority to the Avista Board of Directors

1. **Authority Reserved:** Consistent with and subject to the terms of Exhibits A and B to the Merger Agreement (referred to as "Delegation of Authority") contained in Appendix 5 of the Joint Application, decision-making authority over commitments 2-15 below is reserved to the Board of Directors of Avista Corporation ("Avista") and any change to the policies stated in commitments 2-15 requires a two-thirds (2/3) vote of the Avista Board, provided that Avista must obtain approval for such changes from all regulatory bodies with jurisdiction over the Commitments before such changes can go into effect, and provide written notice to all parties to Docket U-170970 of such request for approval:

Governance

2. **Executive Management:** Avista will seek to retain all current executive management of Avista, subject to voluntary retirements that may occur. This commitment will not limit Avista's ability to determine its organizational structure and select and retain personnel best able to meet Avista's needs over time. The Avista board retains the ability to dismiss executive management of Avista and other Avista personnel for standard corporate reasons (subject to the approval of Hydro One Limited ("Hydro One") for any hiring, dismissal or replacement of the CEO);

3. **Board of Directors:** After the closing of the Proposed Transaction, Avista's board will consist of nine (9) members, determined as follows: (i) two (2) directors designated by Hydro One who are executives of Hydro One or any of its subsidiaries; (ii) three (3) directors who meet the standards for "independent directors" - under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Directors") and who are residents of the Pacific Northwest region, to be designated by Hydro One (collectively, the directors designated in clauses (i) and (ii) hereof, the "Hydro One Designees"), subject to the provisions of Clause 2 of Exhibit A to the Merger Agreement; (iii) three (3) directors who as of immediately prior to the closing of the Proposed Transaction[1] are members of the Board of Directors of Avista, including the Chairman of Avista's Board of Directors (if such person is different from the Chief Executive Officer of Avista); and (iv) Avista's Chief Executive Officer (collectively, the directors designated in clauses (iii) and (iv) hereof, the "Avista Designees"). The initial Chairman of Avista's post-closing Board of Directors shall be the Chief Executive Officer of Avista as of the time immediately prior to closing for a one year term. If any Avista Designee resigns, retires or otherwise ceases to serve as a director of Avista for any reason, the remaining Avista

[1] "Proposed Transaction" means the transaction proposed in the Joint Application of Avista and Hydro One filed on September 14, 2017.

Designees shall have the sole right to nominate a replacement director to fill such vacancy, and such person shall thereafter become an Avista Designee.

The term "Pacific Northwest region" means the Pacific Northwest states in which Avista serves retail electric or natural gas customers, currently Alaska, Idaho, Montana, Oregon and Washington;

Business Operations

4. **Avista's Brand and Plan for the Operation of the Business:** Avista will maintain Avista's brand and Avista will establish the plan for the operation of the business and its Subsidiaries;

5. **Capital Investment for Economic Development:** Avista will maintain its existing levels of capital allocations for capital investment in strategic and economic development items, including property acquisitions in the university district, support of local entrepreneurs and seed-stage investments;

6. **Continued Innovation:** Avista will continue development and funding of its and its subsidiaries' innovation activities;

7. **Union Relationships:** Avista will honor its labor contracts and has the authority to negotiate, enter into, modify, amend, terminate or agree to changes in any collective bargaining agreement or any of Avista's other material contracts with any labor organizations, union employees or their representatives;

8. **Compensation and Benefits:** Avista will maintain compensation and benefits related practices consistent with the requirements of the Merger Agreement;

Local Presence/Community Involvement

9. **Avista's Headquarters:** Avista will maintain (a) its headquarters in Spokane, Washington; (b) Avista's office locations in each of its other service territories, and (c) no less of a significant presence in the immediate location of each of such office locations than what Avista and its subsidiaries maintained immediately prior to completion of the Proposed Transaction;

10. **Local Staffing:** Avista will maintain Avista Utilities' staffing and presence in the communities in which Avista operates at levels sufficient to maintain the provision of safe and reliable service and cost-effective operations and consistent with pre-acquisition levels;

11. **Community Contributions:** For five years after the close of the Proposed Transaction, Avista will maintain a $4,000,000 annual budget for charitable contributions (funded by both Avista and the Avista Foundation) and additionally a $2,000,000 annual contribution will be made to Avista's charitable foundation. No approval from any regulatory bodies with jurisdiction over the Commitments is required for any changes to this commitment from and after the sixth year

following closing; however any such changes will continue to require a two-thirds (2/3) vote of the Avista Board;[2]

12. **Community Involvement:** Avista will maintain at least Avista's existing levels of community involvement and support initiatives in its service territories; including involvement with tribes and low-income service agencies and support initiatives;

13. **Economic Development:** Avista will maintain at least Avista's existing levels of economic development, including the ability of Avista to spend operations and maintenance funds[3] to support regional economic development and related strategic opportunities in a manner consistent with Avista's past practices;

14. **Membership Organizations:** Avista will maintain the dues paid by it to various industry trade groups and membership organizations; and

15. **Safety and Reliability Standards and Service Quality Measures:** Avista will maintain Avista's safety and reliability standards and policies and service quality measures in a manner that is substantially comparable to, or better than, those currently maintained.

    Avista will not seek to remove or reduce existing penalty provisions associated with its safety, reliability, or service quality measures for 10 years after the merger.

    If the 5-year rolling average of SAIFI or SAIDI in Washington exceeds 107.5% of the average of their respective scores from 2013 to 2017 (excluding Major Event Days (MEDs), consistent with Avista's service quality program, tariff schedule 85), Hydro One and Avista commit to increase the rate credit for Washington electric customers by $250,000 per year. This increased rate credit will persist until the 5-year rolling average is less than the threshold stated above.

B. Rate Commitments

16. **Treatment of Net Cost Savings:** Any net cost savings that Avista may achieve as a result of the Proposed Transaction will be reflected in subsequent rate proceedings, as such savings materialize. To the extent the savings are reflected in base retail rates they will offset the Rate Credit to customers, up to the offsetable portion of the Rate Credit.

[2] Note that Commitment 64 contains an additional commitment relating to charitable contributions; pursuant to that commitment Hydro One will cause Avista to make a one-time contribution of $7,000,000 to Avista's charitable foundation at or promptly following closing of the Proposed Transaction.

[3] Operations and maintenance funds dedicated to economic development and non-utility strategic opportunities will be recorded below-the-line to a nonoperating account.

17. **Pre-Transaction Test Year:** The parties agree to the following provisions for ratemaking purposes.

    a. If Avista files for a rate case between the conclusion of Dockets UE-170485 and UG-170486 and December 31, 2018, Avista will present a normalized test year using the most recent 12-month period available.

    b. If Avista files for a rate case between January 1, 2019, and April 30, 2019, Avista must use a normalized test year of October 1, 2017 – September 30, 2018.

    c. If Avista files for a rate case between May 1, 2019, and April 30, 2021, Avista must present two normalized test years, (1) October 1, 2017 – September 30, 2018 for informational purposes, and (2) the most recent 12-month period available.

18. **Treatment of Transaction Costs:**

    a. Costs associated with the Proposed Transaction will be separately tracked as non-utility costs with no charges, either allocated or direct, to be recovered from Avista customers. After the consummation of the Proposed Transaction, any remaining transaction costs or other costs of Olympus Holding Corp. or Hydro One will not appear on Avista's utility books, i.e. such costs will be recorded as non-utility. Avista shall furnish the Commission with journal entries and supporting detail showing the nature and amount of all costs of the Proposed Transaction (including but not limited to management time, BOD time, in-house and outside counsel time, any consultants engaged, etc.) since the Proposed Transaction was first contemplated, as well as the accounts charged, within 120 days of a Commission order in this docket.

    b. Avista will exclude from Avista general rate cases, or any other method of cost recovery, all costs related to the Proposed Transaction including but not limited to: (i) all legal work from in-house counsel and outside counsel; (ii) any financial advisory fees associated with the Proposed Transaction; (iii) the acquisition premium; (iv) costs related to M&A consulting and advice (v) preparation of and materials for presentations relating to the Proposed Transaction (vi) any senior executive compensation or any Avista board of director time tied to a change of control of Avista; (vii) any other costs directly related to the Proposed Transaction.

19. **Rate Credits:** Avista and Hydro One are proposing to flow through to Avista's retail customers in Washington a Rate Credit of approximately $30.7 million[4] over

[4] The exact agreed-upon figure is $30,715,050, which is equal to 5% of the Washington base revenue as of 02/01/18. Washington electric base revenue is $492,134,000, and Washington natural gas base revenue (including natural gas costs – Schedules 150/155) is $122,167,000. Five percent of those revenues are $24,606,700 (electric) and $6,108,350 (natural gas).

a 5-year period, beginning at the time the merger closes. For customers on Schedule 25, the credit will be spread by allocating 1/3 of the total Schedule 25 credit monies to the first two energy blocks and 2/3 of the total credit monies to the third block.

The Total Rate Credit to customers for the five years following the closing will be approximately $6.1 million[5] per year. A portion of the annual total Rate Credit will be offsetable, in the amount of $1.02 million[6]. During the 5-year period the financial benefits will be flowed through to customers either through the separate Rate Credit described above or through a reduction to the underlying cost of service as these benefits are reflected in the test period numbers used for ratemaking. At the time of the close, the $6.1 million benefit will be provided to customers through a separate Rate Credit, as long as the reduction in costs (of up to $1.02 million annually) has not already been reflected in base retail rates for Avista's customers.

To the extent Avista demonstrates in a future rate proceeding that cost savings, or benefits, directly related to the Proposed Transaction are already being flowed through to customers through base retail rates, the separate Rate Credit to customers would be reduced by an amount up to the offsetable Rate Credit amount. The portion of the total Rate Credit that is not offsetable effectively represents acceptance by Hydro One of a lower rate of return during the 5-year period.

The $30.7 million represents the "floor" of benefits that will be flowed through to Avista's customers, either through the Rate Credit or through benefits otherwise included in base retail rates. To the extent the identifiable benefits exceed the annual offsetable Rate Credit amounts, these additional benefits will be flowed through to customers in base retail rates in general rate cases as they occur. Avista and Hydro One believe additional efficiencies (benefits) will be realized over time from the sharing of best practices, technology and innovation between the two companies. It will take time, however, to identify and capture these benefits. The level of annual net cost savings (and/or net benefits) will be tracked and reported on an annual basis, and compared against the offsetable level of savings.

Any application of offsetable savings will be reviewed by the Commission before the offset is applied, and Avista bears the burden of proof to prove that savings have materialized and the offset to rate credits should apply.

[5] The exact amount agreed upon is $6,143,010 per year. The annual Washington electric Rate Credit for each of the five years is $4,921,340. The annual Washington natural gas Rate Credit for each of the five years is $1,221,670.

[6] The offsetable portion of the Rate Credit is calculated using a pro rata share of the jurisdictional total of the rate credit (i.e. Washington's share of the offsetable Rate Credit is 60.29%, therefore Washington's share of the $1.7 million offsetable portion is $1.02 million).

C. Regulatory Commitments

20. **State Regulatory Authority and Jurisdiction:** Olympus Holding Corp. and its subsidiaries, including Avista, as appropriate, will comply with all applicable laws, including those pertaining to transfers of property (Chapter 80.12), affiliated interests (Chapter 80.16), and securities and the assumption of obligations and liabilities (Chapter 80.08).

21. **Compliance with Existing Commission Orders:** Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge that all existing orders issued by the Commission with respect to Avista or its predecessor, Washington Water Power Co., will remain in effect, and are not modified or otherwise affected by the Proposed Transaction.

    Olympus Holding Corp. and its subsidiaries, including Avista, will comply with all applicable future Commission orders that remain in force.

22. **Separate Books and Records:** Avista will maintain separate books and records from its affiliates.

23. **Access to and Maintenance of Books and Records:** Olympus Holding Corp. and its subsidiaries, including Avista, will provide reasonable access to Avista's books and records; access to financial information and filings; access rights with respect to the documents supporting any costs that may be allocable to Avista; and access to Avista's board minutes, audit reports, and information provided to credit rating agencies pertaining to Avista.

    Hydro One, Olympus Holding Corp. and its subsidiaries, including Avista, will maintain the necessary books and records so as to provide documents relating to all corporate, affiliate, or subsidiary transactions with Avista, or that result in costs that may be allocable to Avista.

    The Proposed Transaction will not result in reduced access to the necessary books and records that relate to transactions with Avista, or that result in costs that may be allocable to Avista. Avista will provide Commission Staff and other parties to regulatory proceedings reasonable access to books and records (including those of Olympus Holding Corp. or any affiliate or subsidiary companies) required to verify or examine transactions with Avista, or that result in costs that may be allocable to Avista.

    Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Avista's accounts, books, papers and documents in compliance with all applicable laws. Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Olympus Holding Corp.'s accounts, books, papers and documents pursuant to all applicable laws; provided, that such right to inspection shall be limited to Olympus Holding Corp.'s accounts, books, papers and documents that pertain solely to transactions affecting Avista's regulated utility operations.

Olympus Holding Corp. and its subsidiaries, including Avista, will provide the Commission with access to written information provided by and to credit rating agencies that pertains to Avista. Olympus Holding Corp. and each of its subsidiaries will also provide the Commission with access to written information provided by and to credit rating agencies that pertains to Olympus Holding Corp.'s subsidiaries to the extent such information may affect Avista.

Hydro One and its affiliates agree that the Commission may have access to all the accounting records of Hydro One and its affiliates that are the bases for charges to Avista, to determine the reasonableness of the costs and the allocation factors used by Hydro One and its affiliates, or its subdivisions to assign costs to Avista and amounts subject to allocation or direct charges. Hydro One and its affiliates agree that they will not raise lack of jurisdiction as a means of denying such access, and agree to cooperate fully with such Commission investigations.

24. **Cost Allocations Related to Corporate Structure and Affiliate Interests:** Avista agrees to provide cost allocation methodologies used to allocate to Avista any costs related to Olympus Holding Corp. or its other subsidiaries, and commits that there will be no cross-subsidization by Avista customers of unregulated activities.

The cost-allocation methodology provided pursuant to this commitment will be a generic methodology that does not require Commission approval prior to it being proposed for specific application in a general rate case or other proceeding affecting rates.

Avista will bear the burden of proof in any general rate case that any corporate and affiliate cost allocation methodology is reasonable for ratemaking purposes. Neither Avista nor Olympus Holding Corp. or its subsidiaries will contest the Commission's authority to disallow, for retail ratemaking purposes in a general rate case, unreasonable, or misallocated costs from or to Avista or Olympus Holding Corp or its other subsidiaries.

With respect to the ratemaking treatment of affiliate transactions affecting Avista, Hydro One, and Olympus Holding Corp. and its subsidiaries, as applicable, will comply with the Commission's then-existing practice; provided, however, that nothing in this commitment limits Avista from also proposing a different ratemaking treatment for the Commission's consideration, or limit the positions any other party may take with respect to ratemaking treatment.

Avista will notify the Commission of any change in corporate structure that affects Avista's corporate and affiliate cost allocation methodologies. Avista will propose revisions to such cost allocation methodologies to accommodate such changes. Avista will not take the position that compliance with this provision constitutes approval by the Commission of a particular methodology for corporate and affiliate cost allocation.

25. **Ratemaking Cost of Debt and Equity:** Avista will not advocate for a higher cost of debt or equity capital as compared to what Avista's cost of debt or equity capital would have been absent Hydro One's ownership.

For future ratemaking purposes:

a. Determination of Avista's debt costs will be no higher than such costs would have been assuming Avista's credit ratings by at least one industry recognized rating agency, including, but not limited to, S&P, Moody's, Fitch or Morningstar, as such ratings in effect on the day before the Proposed Transaction closes and applying those credit ratings to then-current debt, unless Avista proves that a lower credit rating is caused by circumstances or developments not the result of financial risks or other characteristics of the Proposed Transaction;

b. Avista bears the burden to prove prudent in a future general rate case any pre-payment premium or increased cost of debt associated with existing Avista debt retired, repaid, or replaced as a part of the Proposed Transaction; and

c. Determination of the allowed return on equity in future general rate cases will include selection and use of one or more proxy group(s) of companies engaged in businesses substantially similar to Avista, without any limitation related to Avista's ownership structure.

26. **Avista Capital Structure:** At all times following the closing of the Proposed Transaction, Avista's actual common equity ratio will be maintained at a level no less than 44 percent. This commitment does not restrict the Commission from ordering a hypothetical capital structure.

27. **FERC Reporting Requirements:** Avista will continue to meet all the applicable FERC reporting requirements with respect to annual and quarterly reports (e.g., FERC Forms 1, 2, 3q) after closing of the Proposed Transaction.

28. **Participation in National and Regional Forums:** Avista will continue to participate, where appropriate, in national and regional forums regarding transmission issues, pricing policies, siting requirements, and interconnection and integration policies, when necessary to protect the interest of its customers.

29. **Treatment of Confidential Information:** Nothing in these commitments will be interpreted as a waiver of Hydro One's, its subsidiaries', or Avista's rights to request confidential treatment of information that is the subject of any of these commitments.

30. **Commission Enforcement of Commitments:** Hydro One and its subsidiaries, including Avista, understand that the Commission has authority to enforce these commitments in accordance with their terms. If there is a violation of the terms of these commitments, then the offending party may, at the discretion of the Commission, have a period of thirty (30) calendar days to cure such violation.

The scope of this commitment includes the authority of the Commission to compel the attendance of witnesses from Olympus Holding Corp. and its affiliates, including Hydro One, with pertinent information on matters affecting Avista. Olympus Holding Corp. and its subsidiaries waive their rights to interpose any legal objection they might otherwise have to the Commission's jurisdiction to require the appearance of any such witnesses.

31. **Submittal to State Court Jurisdiction for Enforcement of Commission Orders:** Olympus Holding Corp., on its own and its subsidiaries' behalf, including Avista's, will file with the Commission prior to closing the Proposed Transaction an affidavit affirming that it will submit to the jurisdiction of the relevant state courts for enforcement of the Commission's orders adopting these commitments and subsequent orders affecting Avista.

32. **Annual Report on Commitments:** By May 1, 2019 and each May 1 thereafter through May 1, 2029, Avista will file a report with the Commission regarding the status of compliance with each of the commitments as of December 31 of the preceding year. The report will, at a minimum, provide a description of the performance of each of the commitments, will be filed in Docket U-170970 and served to all parties to the docket. If any commitment is not being met, relative to the specific terms of the commitment, the report must provide proposed corrective measures and target dates for completion of such measures. Avista will make publicly available at the Commission non-confidential portions of the report.

33. **Commitments Binding:** Hydro One, Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge that the commitments being made by them are binding only upon them and their affiliates where noted, and their successors in interest. Hydro One and Avista are not requesting in this proceeding a determination of the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the investments, expenditures or actions referenced in the commitments, and the parties in appropriate proceedings may take such positions regarding the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the investments, expenditures or actions as they deem appropriate.

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

D. Financial Integrity Commitments

34. **Capital Structure Support:** Hydro One will provide equity to support Avista's capital structure that is designed to allow Avista access to debt financing under reasonable terms and on a sustainable basis.

35. **Utility-Level Debt and Preferred Stock:** Avista will maintain separate debt and preferred stock, if any, to support its utility operations.

36. **Continued Credit Ratings:** Each of Hydro One and Avista will continue to be rated by at least one nationally recognized statistical "Rating Agency." Hydro One and Avista will use reasonable best efforts to obtain and maintain a separate credit rating for Avista from at least one Rating Agency within the ninety (90) days following the closing of the Proposed Transaction. If Hydro One and Avista are unable to obtain or maintain the separate rating for Avista, they will make a filing with the Commission explaining the basis for their failure to obtain or maintain such separate credit rating for Avista, and parties to this proceeding will have an opportunity to participate and propose additional commitments.

37. **Credit Ratings Notification:** Hydro One and Avista agree to notify the Commission within two business days of any downgrade of Avista's credit rating to a non-investment grade status by S&P, Moody's, or any other such ratings agency that issues such ratings with respect to Avista.

38. **Restrictions on Upward Dividends and Distributions:**

    a. If either (i) Avista's corporate credit/issuer rating as determined by both Moody's and S&P, or their successors, is investment grade, or (ii) the ratio of Avista's EBITDA to Avista's interest expense is greater than or equal to 3.0, then distributions from Avista to Olympus Equity LLC shall not be limited so long as Avista's equity ratio is equal to or greater than 44 percent on the date of such Avista distribution after giving effect to such Avista distribution, except to the extent the Commission establishes a lower equity ratio for ratemaking purposes. Both the EBITDA and equity ratio shall be calculated on the same basis that such calculations would be made for ratemaking purposes for regulated utility operations.

    b. Under any other circumstances, distributions from Avista to Olympus Equity LLC are allowed only with prior Commission approval.

    c. If Avista does not have an investment-grade rating from both Moody's and S&P, or from one of these entities, or its successor, if only one issues ratings with respect to Avista, and the ratio of EBITDA to Avista's interest expense is less than 3.0, no dividend distribution to Olympus Equity LLC or its successors will occur.

39. **Pension Funding:** Avista will maintain its pension funding policy in accordance with sound actuarial practice. Hydro One will not seek to change Avista's pension funding policy.

40. **SEC Reporting Requirements:** Following the closing of the Proposed Transaction, Avista will file required reports with the SEC.

41. **Compliance with the Sarbanes-Oxley Act:** Following the closing of the Proposed Transaction, Avista will comply with applicable requirements of the Sarbanes-Oxley Act.

E. Ring-Fencing Commitments

42. **Golden Share:** Entering into voluntary bankruptcy shall require the affirmative vote of a "Golden Share" of Avista stock. The Golden Share shall mean the sole share of Preferred Stock of Avista as authorized by the Commission. This share of Preferred Stock must be in the custody of an independent third-party, where the third-party has no financial stake, affiliation, relationship, interest, or tie to Avista or any of its affiliates, or any lender to Avista, or any of its affiliates. This requirement does not preclude the third-party from holding an index fund or mutual fund with negligible interests in Avista or any of its affiliates. In matters of voluntary bankruptcy, this Golden Share will override all other outstanding shares of all types or classes of stock.

43. **Independent Directors:** At least one of the nine members of the board of directors of Avista will be an independent director who is not a member, stockholder, director (except as an independent director of Avista or Olympus Equity LLC), officer, or employee of Hydro One or its affiliates. At least one of the members of the board of directors of Olympus Equity LLC will be an independent director who is not a member, stockholder, director (except as an independent director of Olympus Equity LLC or Avista), officer, or employee of Hydro One or its affiliates. The same individual may serve as an independent director of both Avista and Olympus Equity LLC. The organizational documents for Avista will not permit Avista, without the consent of a two-thirds majority of all its directors, including the affirmative vote of the independent director at Avista (or if at that time Avista has more than one independent director, the affirmative vote of at least one of Avista's independent directors), to consent to the institution of bankruptcy proceedings or the inclusion of Avista in bankruptcy proceedings. In addition to an affirmative vote of this independent director, the vote of the Golden Share shall also be required for Avista to enter into a voluntary bankruptcy.

44. **Non-Consolidation Opinion:**

a. Within ninety (90) days of the Proposed Transaction closing, Avista and Olympus Holding Corp. will file a non-consolidation opinion with the Commission which concludes, subject to customary assumptions and exceptions, that the ring-fencing provisions are sufficient that a bankruptcy court would not order the substantive consolidation of the assets and liabilities of Avista with those of Olympus Holding Corp. or its affiliates or subsidiaries (other than Avista and its subsidiaries).

b. Hydro One and Olympus Holding Corp. must file an affidavit with the Commission stating that neither Hydro One, Olympus Holding Corp. nor any of their subsidiaries, will seek to include Avista in a bankruptcy without the

consent of a two-thirds majority of Avista's board of directors including the affirmative vote of Avista's independent director, or, if at that time Avista has more than one independent director, the affirmative vote of at least one of Avista's independent directors.

c. If the ring-fencing provisions in these commitments are not sufficient to obtain a non-consolidation opinion, Olympus Holding Corp. and Avista agree to promptly undertake the following actions:

i. Notify the Commission of this inability to obtain a non-consolidation opinion.

ii. Propose and implement, upon Commission approval, such additional ring-fencing provisions around Avista as are sufficient to obtain a non-consolidation opinion subject to customary assumptions and exceptions.

iii. Obtain a non-consolidation opinion.

45. **Olympus Equity LLC:** Olympus Holding Corp.'s indirect subsidiaries will include Olympus Equity LLC and Avista. See the post-acquisition organizational chart in Appendix B to the Settlement Stipulation. Following closing of the Proposed Transaction, all of the common stock of Avista will be owned by Olympus Equity LLC, a new Delaware limited liability company. Olympus Equity LLC will be a bankruptcy-remote special purpose entity, and will not have debt.

46. **Restriction on Pledge of Utility Assets:** Avista agrees to prohibitions against loans or pledges of utility assets to Hydro One, Olympus Holding Corp., or any of their subsidiaries or affiliates, without Commission approval. In addition, the Applicants agree that Avista's assets will not be pledged by Avista or any of its affiliates, including Hydro One and Olympus Holding Corp. and any of their subsidiaries or affiliates, for the benefit of any entity other than Avista.

47. **Hold Harmless; Notice to Lenders; Restriction on Acquisitions and Dispositions:**

a. Avista will hold Avista customers harmless from any business and financial risk exposures associated with Olympus Holding Corp., Hydro One, and Hydro One's other affiliates.

b. Pursuant to this commitment, Avista and Olympus Holding Corp. will file with the Commission, prior to closing of the Proposed Transaction, a form of notice to prospective lenders describing the ring-fencing provisions included in these commitments stating that these provisions provide no recourse to Avista assets as collateral or security for debt issued by Hydro One or any of its subsidiaries, other than Avista.

c. In furtherance of this commitment:

i. Avista commits that Avista's regulated utility customers will be held harmless from the liabilities of any unregulated activity of Avista or Hydro One and its affiliates. In any proceeding before the Commission involving rates of Avista, the fair rate of return for Avista will be determined without regard to any adverse consequences that are demonstrated to be attributable to unregulated activities. Measures providing for separate financial and accounting treatment will be established for each unregulated activity.

ii. Olympus Holding Corp. and Avista will notify the Commission subsequent to Olympus Holding Corp.'s board approval and as soon as practicable following any public announcement of: (1) any acquisition by Olympus Holding Corp. of a regulated or unregulated business that is equivalent to five (5) percent or more of the capitalization of Avista; or (2) any change in control or ownership of Avista, except that the notice of a change to the upstream ownership of Avista or Olympus Holding Corp. among wholly owned subsidiaries of Hydro One may be provided in either an updated organizational chart included in the annual report filing described in Commitment 32 or in a separate notice filing. Notice pursuant to this provision is not and will not be deemed an admission or expansion of the Commission's authority or jurisdiction over any transaction or in any matter or proceeding whatsoever.

Within sixty (60) days following the notice required by this subsection (c)(ii)(2), Avista and Olympus Holding Corp. or its affiliates, as appropriate, will seek Commission approval of any sale or transfer of any material part of Avista, or of any transaction or series of transactions, regardless of size, that would result in a person or entity, other than a wholly owned subsidiary of Hydro One, directly or indirectly, acquiring a controlling interest in Avista or Olympus Holding Corp. The term "material part of Avista" means any sale or transfer of stock representing ten percent (10%) or more of the equity ownership of Avista.

iii. Neither Avista nor Olympus Holding Corp. will assert in any future proceedings that, by virtue of the Proposed Transaction and the resulting corporate structure, the Commission is without jurisdiction over any transaction that results in a change of control of Avista.

d. If and when any subsidiary of Avista becomes a subsidiary of Hydro One or one of its subsidiaries other than Avista, Avista will so advise the Commission within thirty (30) days and will submit to the Commission a written document setting forth Avista's proposed corporate and affiliate cost allocation methodologies.

48. **Olympus Holding Corp. and Olympus Equity LLC Sub-entities:** Olympus Holding Corp. will not operate or own any business and will limit its activities to investing in and attending to its shareholdings in Olympus Equity LLC, which, in turn, will not operate or own any business and will limit its activities to investing in and attending to its shareholdings in Avista.

49. **No Amendment of Ring-Fencing Provisions:** Hydro One, Olympus Holding Corp. and Avista commit that no material amendments, revisions or modifications will be made to the ring-fencing provisions as specified in these regulatory commitments without prior Commission approval pursuant to a limited re-opener for the sole purpose of addressing the ring-fencing provisions.

50. **No Inter Company Debt:** Avista will notify the Commission before entering into any inter-company debt transactions with Olympus Holding Corp., Hydro One, or any of their subsidiaries or affiliates.

51. **No Inter Company Lending:** Without prior Commission approval, Avista will not lend money to Olympus Holding Corp., Hydro One, or any of their subsidiaries or affiliates.

F. Environmental, Renewable Energy, and Energy Efficiency Commitments

52. **Renewable Portfolio Standard Requirements:** Hydro One acknowledges Avista's obligations under applicable renewable portfolio standards, and Avista will continue to comply with such obligations.

Avista will acquire all renewable energy resources required by law and such other renewable energy resources as may from time to time be deemed advisable in accordance with Avista's integrated resource planning ("IRP") process and applicable regulations.

53. **Renewable Energy Resources:**

Avista's non-fossil fueled generation resources constitute more than 50% of its generation portfolio, and Avista exceeds the renewable energy standards currently applicable to the company under RCW 19.285.040(2).

Avista makes the following renewable energy commitments. Both commitments are made only to the extent resources are reasonably commercially available and are (1) necessary to meet load and (2) consistent with the lowest reasonable cost resource portfolio pursuant to Avista's established IRP and pursuant to the Commission's resource evaluation and acquisition rules and policies.

a. Avista will commit to initiating a Request for Proposal with the intent of acquiring additional eligible renewable energy resources as part of this process above and beyond the current renewable energy standards in law. Avista will commit to obtain approximately 50 aMW of expected energy from new eligible renewable resources by 2022. The aMW obtained under this commitment may

be used to satisfy any increase that may be caused by changes to the renewable energy standards in law after the date an Order approving this merger has been entered.

b. Avista will commit to obtain at least 90 aMW of expected energy from new eligible renewables resources to become operational approximately within a year of the timeframe that Colstrip 3 and 4 go offline.

"Resources" is understood to include Power Purchase Agreements ("PPAs"). Nothing in either commitment prohibits Avista from retaining or selling renewable energy credits associated with such resources that are surplus to Avista's needs to meet Washington Renewable Portfolio Standards targets.

Communications with customers shall accurately reflect the environmental attributes associated with power delivered to such customers. Hydro One and Avista acknowledge that Avista retains the burden of proof to demonstrate the prudence of any resource acquisition.

The utility should work with an independent third-party consultant, with expertise in renewable energy resources, to ensure that the utility has up-to-date resource cost and performance assumptions, as well as the appropriate learning curves

54. **Greenhouse Gas and Carbon Initiatives:** Hydro One acknowledges Avista's Greenhouse Gas and Carbon Initiatives contained in its current Integrated Resource Plan, and Avista will continue to work with interested parties on such initiatives.

55. **Cost of Greenhouse Gas Emissions:** Unless it conflicts with any instructions contained in the Commission's acknowledgement letter in response to Avista's current integrated resource plan (IRP), beginning with the next IRP, Avista commits to modeling a range of potential costs for greenhouse gas emissions, and will work with its IRP Advisory Group to determine the appropriate values to model.

56. **Greenhouse Gas Inventory Report:** Avista will report greenhouse gas emissions as required.

57. **Efficiency Goals and Objectives:** Hydro One acknowledges Avista's energy efficiency goals and objectives set forth in Avista's 2017 Integrated Resource Plan and other plans, and Avista will continue its ongoing collaborative efforts to expand and enhance them.

58. **Optional Renewable Power Program:** Avista will continue to offer renewable power programs in consultation with stakeholders.

59. **Energy Imbalance Market ("EIM"):** Avista is currently refreshing its EIM analysis and will release it publicly by the end of 2018. Avista commits to hold

workshops with the Commission and interested stakeholders to review the analysis and discuss the prudent next steps.

60. **Regulatory Integrated Resource Planning (IRP) Sideboards:** Avista commits to calculating a variable generation resource's contribution to capacity in terms of that resource's contribution to resource adequacy and that resource's ability to reduce the loss of load probability in some or all hours or days utilizing the Effective Load Carrying Capability ("ELCC") methodology or an appropriate approximation.

61. **Industrial Customers' Self Direct Conservation:** Avista shall provide a one-time self-direct option for a large conservation project. The project shall have a capital cost of at least $15 million but no more than $30 million and must be commenced within five years of closing of the merger. After applying available incentive funding through Avista's Schedule 91, Avista shall finance the remaining capital cost of the project. The customer that pursues the conservation project shall repay the financed portion of the project, including a carrying charge equal to Avista's rate of return, through its Schedule 91 charges until full amortization. In the event that the customer defaults or ceases operations prior to full amortization of the Avista-financed amount, the remaining balance will be recovered through Schedule 25 contributions to Schedule 91 until such time as the remaining balance is fully amortized. No other customers will be impacted financially from this commitment and all customers will benefit from the increased energy efficiency acquisition.

62. **Transport Electrification:** Avista commits and Hydro One agrees that Avista commits, to expanding access to transportation electrification for all customers. As part of the long-term electric vehicle supply equipment (EVSE) program that Avista is developing following the completion of its pilot under UE-160082, the Joint Applicants commit to setting internal goals and objectives for Avista, in coordination with the Joint Utility Electric Vehicle Stakeholder Group, that do the following:

- Significantly increase outreach and education to customers about the benefits of electric vehicle ownership and use.

- Ensure engagement with low-income customers and organizations that serve low-income customers fully enables participation by these customers and addresses historical issues of participation.

- Significantly increase EVSE program components that serve and benefit low-income residential customers, with a goal of 30% of residential program funds being dedicated to projects that serve low-income customers.

- Overcome barriers for EVSE siting with small business customers.

- Implement incentives that minimize or fully eliminate the cost of EVSE for customers.

63. **Professional Home Energy Audit:** Avista commits to provide home energy audits to 2,000 homes at $300 per home, over a 10-year period, in Washington. Hydro One will arrange total funding of $600,000 for this commitment. With more robust data available after the installation of AMI, Hydro One and Avista agree to revisit this commitment to determine if the number of homes served could be expanded.

G. Community and Low-Income Assistance Commitments

64. **Community Contributions:** Hydro One will cause Avista to make a one-time $7,000,000 contribution to Avista's charitable foundation at or promptly following closing.[7]

65. **Low-Income Energy Efficiency Funding:** Avista will continue to work with its advisory groups on the appropriate level of funding for low income energy efficiency programs.

66. **Low-Income Rate Assistance Program (LIRAP):** Hydro One and Avista commit to continue Avista's LIRAP and related pilot programs.

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

68. **Addressing Other Low-Income Customer Issues:** Avista will continue to work with low-income agencies to address other issues of low-income customers, including funding for bill payment assistance.

[7] Note that Commitment 11 contains additional provisions relating to Avista's charitable contributions.

69. **Replacement of Manufactured Homes:** Hydro One will arrange funding of $2,000,000 over a 10-year period in Washington to replace manufactured homes.

At least half of the funds must be spent in the first five years. The demand side management ("DSM") advisory group and Avista will work together to design the program, and Avista will begin implementing the program within six months of the date that the Proposed Transaction closes. The program will prioritize replacement of homes manufactured before 1976.

To the extent any funds are not used over the 10-year period, these funds will be redirected for additional funding for low-income weatherization programs.

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

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

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

71. **Security Deposits:** Avista commits and Hydro One agrees that Avista commits to eliminate security deposits for new Avista residential customers and to return existing security deposits to customers who have a deposit held longer than 6 months. After two years from Commission approval of the Proposed Transaction, any party may request the Commission to modify or remove this commitment if it determines that application of this commitment has an unreasonable impact on Avista's uncollectible debt.

72. **AMI Consumer Protection:** Avista commits and Hydro One agrees that Avista commits to discussing implementation of prepayment billing and remote disconnect at the Commission's upcoming AMI workshops, and agree not to implement prepayment until authorized by the Commission after conclusion of the AMI workshop, and related AMI dockets. Avista agrees to track the benefits of remote disconnection/reconnection identified in its AMI business case, starting with the AMI technology data collected from customers already equipped with an AMI meter. In addition, Avista commits that, it will not remotely disconnect customers for non-payment when the National Weather Service for that particular region has forecasted a daily high temperature of 38 degrees or less or a daily high temperature of 100 degrees or more. If, however, the Commission adopts a rule prescribing a temperature threshold for remote disconnection that is inconsistent with this commitment, the rule will supersede this commitment.

73. **Improve Penetration of Low-Income Programs:** Hydro One and Avista will undertake a targeted effort with a goal of improving the penetration rate of low-

income programs with a focus on underserved, vulnerable, and high energy burden households. This commitment will include expanding marketing, outreach, and data analysis.

74. **Tribal Communities:** In implementing these conditions, Avista will reach out to tribal communities to encourage participation of members of such communities in receiving the benefits of this settlement.

H. Miscellaneous Commitments

75. **Sources of Funds for Hydro One Commitments:** Throughout this list of merger commitments, any commitment that states Hydro One will arrange funding is not contingent on Hydro One's ability to arrange funding, particularly from outside sources, but is a firm commitment to provide the dollar amount specified over the time period specified and for the purposes specified. To the extent Avista has retained earnings that are available for payment of dividends to Olympus Equity LLC consistent with the ring fencing provisions of this list of merger commitments, such retained earnings may be used. Funds available from other Hydro One affiliates may be used without limitation. Avista will not seek cost recovery for any of the commitments funded or arranged by Hydro One in this list of merger commitments. Hydro One will not seek cost recovery for such funds from ratepayers in Ontario.

76. **Colstrip Depreciation:** Hydro One and Avista agree to a depreciation schedule for Colstrip Units 3 and 4 that assumes a remaining useful life of those units through December 31, 2027. Existing undepreciated balance ($114.2 Million) will be recovered as follows:

- $16.7 Million – unprotected Excess DFIT/Deferral of January – April 2018 tax credit.
- $45.3 Million – through an annual depreciation expense of approximately $4.533 million (WA Share), which is the current level of annual depreciation expense presently being recovered from ratepayers (i.e., no increase to rates)
- $52.2 Million – regulatory asset offset by the amortization of protected Excess DFIT, i.e. over 36 years

See Attachment A to Appendix A (Master List of Commitments in Washington) to the Settlement Stipulation, "Colstrip Commitment Summary and Description", which is incorporated herein by reference.

77. **Montana Community Transition Fund:** Hydro One and Avista will arrange funding of $3.0 Million towards a Colstrip community transition fund.

This commitment is not intended as a "cap" of the amount that Avista/Hydro One may ultimately contribute to help the Colstrip community transition from coal-fired generation.

78. **Colstrip Transmission Planning:** Avista will work with the other Path 8 (MT-to-NW) owners (Northwestern Energy and BPA) to resolve questions surrounding the ability of new generation to use the Colstrip line once Colstrip Units 1 and 2 retire, and also when Units 3 and 4 retire.

At least one year prior to any closure of Colstrip Units 3 and 4, Avista will develop a transition plan for its Colstrip transmission assets. Avista will hold at least one workshop with Commission Staff and stakeholders to determine the transition plan's impacts to Washington ratepayers.

Avista will work with stakeholders and Commission Staff and file this transition plan with the Commission. In developing this transition plan, to the extent practicable, Avista should participate in 1) the workshops on this topic that PSE and the Commission will be holding in 2018 (per the PSE GRC settlement), and 2) the BPA/Governor Bullock Transmission Task Force that commenced work on December 8, 2017, and will work through the middle of 2018.

Hydro One agrees Avista will conduct the activities described in the foregoing paragraphs.

79. **On Bill Repayment:** Hydro One will arrange funding of the approximately $100,000 initial investment in software upgrades and $5,000 in administrative costs. The option for repayment of the customer's share of the cost of a replacement manufactured home (funded by third-party financial institutions) will be included in the OBRP.[8] Under no circumstance, will the ratepayer population be responsible for any default related to the OBRP.

80. **Contract Labor:**

a. On a prospective basis, and for a period of 10 years ending March 7, 2028, Avista will require the use of WNIDCL members for the type of work that is ordinarily and customarily performed by WNIDCL on natural gas replacement and all natural gas work. This will not apply to work performed under contracts

[8] OBRP is a pass-through billing service for energy efficiency loans, where Avista would collect loan payments on customers' bills then transmit the sum monthly to the third-party lender. Only non-profit lenders would be eligible, offering low rates for energy efficiency loans. The lender has no ability to shut off power (due to non-payment) and all lending activity is managed separate from the utility, where the lender:

- Provides all capital, bears full risk
- Manages delinquent files and collections off-bill
- Handles loans/balances separate from utility financial systems
- Meets consumer lending regulatory requirements.

already in effect as of March 7, 2018. This agreement will not apply to (a) atmospheric corrosion; (b) locating; and (c) leak survey. This agreement will also not apply to work performed where signatory contractors are not available (unavailability is typically due to locations being in remote areas), or choose not to bid on projects; provided that work performed in such areas will be paid at equivalent wages and benefits.

b. On a prospective basis, and for a period of 10 years ending March 7, 2028, Avista will require the use of WNIDCL members for all flagging work, unless otherwise performed by Avista employees represented by IBEW Local 77. This will not apply to work performed under contracts already in effect as of March 7, 2018.

c. WNIDCL will provide for signatory contractors laborers that are qualified pursuant to applicable OSHA 1910 regulations and all other applicable training. In addition, WNIDCL will provide WNIDCL members knowledgeable in the DOT Title 49 Code of Federal Regulations, Part 192, and all applicable state pipeline safety regulations. Contractors shall be required to provide proof of compliance with this requirement to Avista.

d. On a prospective basis, Avista will require contractors to utilize NWLETT for required training, if applicable courses are offered by NWLETT and are reasonably accessible in the locality where the work is to be performed.

e. Avista will meet and confer with WNIDCL to discuss possible involvement in all future hydroelectric projects that are within the sphere of WNIDCL's expertise.

f. Avista will encourage contractors to utilize union labor, including, without limitation and as applicable, members of the Laborers', Pipefitters and Steamfitters, and IBEW, on Avista projects as part of its bidding solicitation process on all other construction work, including but not limited to capital work on hydro facilities, and will evaluate the use of such members in the staffing plans of bidding contractors as an element of Avista's bid evaluation process.

g. Avista will continue to prioritize the hiring of qualified contractor personnel through the bidding process, by requiring analysis of not only the price proposals submitted by contractors, but a variety of other factors, including minimum staffing requirements as applicable, training programs, documented qualification programs, safety track records, OSHA 300 reportables, and other safety records as appropriate. Review of these components is intended to verify that the contractor is able to supply a sufficient workforce to meet Avista's needs, and that their personnel are appropriately trained, qualified and able to safely and reliably perform work for Avista.

h. Work covered by these commitments does not include work that is customarily performed by Avista employees represented by IBEW Local 77 but that is contracted out pursuant to IBEW Local 77's collective bargaining agreement with Avista. It also does not include any work that is performed by Avista employees, regardless of the type of work involved.

i. Avista will meet and confer with WNIDCL at least six months prior to March 7, 2028 to discuss extending or modifying the terms set forth herein.

81. **Most Favored Nations:** The Applicants agree that upon the joint request of the Non-Applicant Parties, or a request of less than all Non-Applicant Parties which is unopposed by any Non-Applicant, the Commission shall have an opportunity and the authority to consider and adopt in Washington any commitments to which the Applicants agree in other jurisdictions, even if such commitments are agreed to after the Commission enters its order in this docket. To facilitate the Commission's consideration and adoption of the commitments from other jurisdictions, the Parties recommend that the Commission issue an order accepting this Stipulation as soon as practical, but to reserve in such order the explicit right to re-open to add commitments accepted in another state jurisdiction.

The Applicants further agree that upon the request of any Non-Applicant Party prior to the Commission's action on this Stipulation, if Applicants agree with any commitments in other jurisdictions, within five days of such a request, Applicants will meet and confer with the Non-Applicant Parties to discuss whether such commitments should be added to the existing list of commitments already agreed to by the Parties in this Stipulation.

Process for Consideration:

- Within five calendar days after Applicants file a stipulation with new or amended commitments with a commission in another state jurisdiction, Applicants will send a copy of the stipulation and commitments to the Non-Applicant Parties.

- Within five calendar days after a commission in another state jurisdiction issues an order that accepts a stipulation to which Applicants are a party and imposes new or modified commitments, that order, together with all commitments of any type agreed to by Applicants in such other state, will be filed with the Commission and served on all parties to this docket by the most expeditious means practical.

- Within ten calendar days after the last such filing from the other states ("Final Filing"), the Non-Applicant Parties may file with the Commission any response they wish to make, including their position as to whether any of the covenants, commitments and conditions from the other jurisdictions (without modification of the language thereof except such non-substantive changes as are necessary to make the commitment or condition applicable to Washington) should be adopted in Washington.

- Within five calendar days after any such response filing, the Applicants may file a reply with the Commission.

- If any of the dates above fall on Saturday, Sunday, or a holiday, the next business day will be considered as the due date.

- The Parties agree to support in their filings the issuance by the Commission of an order regarding the adoption of such commitments as soon as practical thereafter, recognizing that the Proposed Transaction cannot close until final state orders have been issued approving the Proposed Transaction.

Limitations on Adjustment:

- Only commitments specific to gas service may form the basis for adjustments specific to gas service.

- Only commitments specific to electric service may form the basis for adjustments specific to electric service.

- Any commitments relating to support of communities in Montana are not subject to this provision.

- As Avista does not operate as a utility in Alaska, any commitments made in Alaska are not subject to this provision.

- For purposes of financial commitments or commitments having a financial impact, commitments should be proportionate to Avista's corresponding business function in Washington in relation to its corresponding total company business function. Accordingly, commitments should be allocated among Avista's WA, ID and OR jurisdictions based on the following: 1) Rate Credit is allocated based on base revenues; 2) all other financial commitments are allocated using the Company's jurisdictional "four factor" allocation methodology, routinely employed for purposes of allocating common costs, as discussed in Mr. Ehrbar's testimony in this proceeding. For purposes of this provision, "financial commitments or commitments having a financial impact" do not include ring fencing provisions.

Merger Commitment No. 76 (Colstrip)

Summary and Description

Avista owns a 15% share of two coal-fired generation facilities located in Colstrip, Montana, known as Colstrip Units 3 & 4, which have a combined capacity of about 1,480 MW. These two facilities were placed in service in 1984 and 1986. No decommissioning date has been established for these assets. Current rates include depreciation expense on Colstrip Units 3 & 4 with assumed remaining useful lives of these units through December 31, 2034 and December 31, 2036, respectively.

The Parties acknowledge that there presently is no plan to close Colstrip Units 3 & 4 by a specific date, nor has Avista agreed to do so. The parties to the Settlement Stipulation in this docket (the "Parties") agree, however, to a depreciation schedule for Colstrip Units 3 & 4 that assumes a remaining useful life of those units through December 31, 2027. The Parties agree to set depreciation rates for Colstrip Units 3 & 4 at amounts that will yield an annual depreciation expense of approximately $4.533 million (WA Share)[1] for the remaining depreciable lives of those units, which is the current level of annual depreciation expense.

The Parties agree to adopt a depreciable balance of Colstrip Units 3 & 4 of $114.2 million. This includes the currently recognized unrecovered plant balance, as well as estimated asset retirement obligations previously not included in rates[2]. Nothing in this Settlement will preclude Avista from seeking recovery of additional future asset retirement costs, based on a showing of prudency in future general rate cases.

The $114.2 million balance will be recovered as follows:

- $16.7 million (WA share) of "temporary" tax credits. These tax credits were described in Bench Request No. 9 in Avista's current general rate case (Docket Nos. UE-170485 and UG-170486).[3]

- $45.3 million, through an annual depreciation expense of approximately $4.533 million (WA Share), which is the current level of annual depreciation expense.

- $52.2 million, through the amortization of a Regulatory Asset (FERC Account No. 183.3) (approximately $1.5 million per year – WA share), offset entirely by the amortization of protected Excess DFIT. The amortization schedule of the Regulatory Asset will be structured to match the amortization schedule of protected Excess DFIT, so that the amortization of protected Excess DFIT covers the remaining depreciable balance.

[1] Annual depreciation expense is approximately $6.937 million on system-basis.
[2] The asset retirement obligations are currently estimated at approximately $42.7 million (WA share). These costs include decommissioning and remediation costs.
[3] The tax credits were the result of H.R.1 – Tax Cuts and Jobs Act signed into law in December 2017.

Nothing in this Settlement will preclude Avista from seeking recovery of routine future capital maintenance costs incurred in the normal course of business beyond January 1, 2018 not intended to extend operational life, based on a showing of prudency in future general rate cases.

The Regulatory Asset[4], net of accumulated deferred federal income taxes, will be included in rate base and will earn Avista's rate of return.

Beginning October 1, 2018, Avista will include the $1.5 million Colstrip amortization costs, in customers' base rates, but which would be offset by the electric Rate Credit of $4.9 million, thereby reducing customers' rates approximately $3.4 million. The incremental rate reduction on October 1, 2018 would be spread to customers on a uniform percent of base revenue basis, and on an equal percentage to the volumetric blocks in each schedule (the Rate Credit would be spread in accordance with Commitment No. 19 "Rate Credit" for Schedule 25). Avista would effectuate this through a compliance filing of its base tariffs and electric Rate Schedule 73 (for the Rate Credit).

A summary of the Colstrip costs and offsetting tax credits follows:

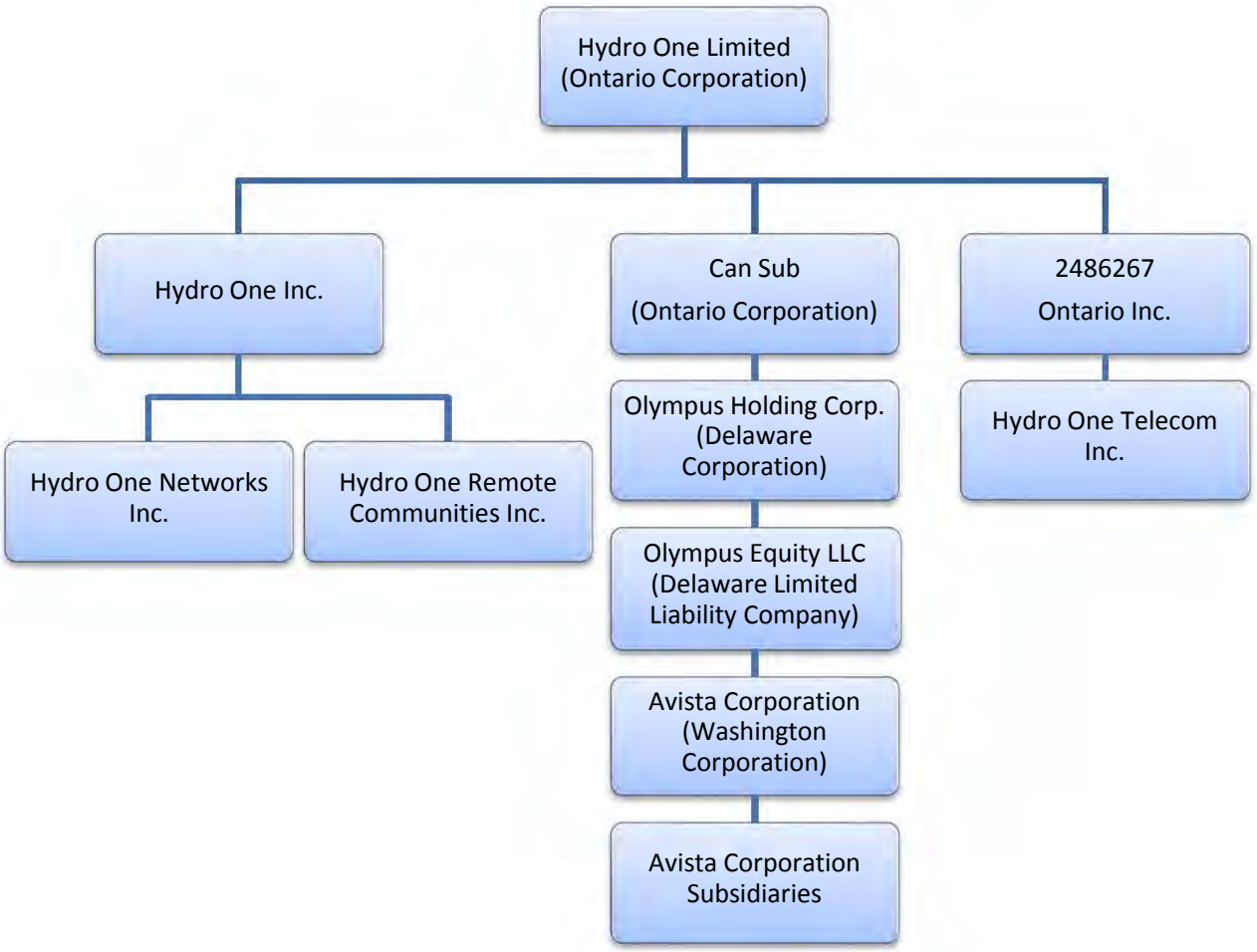
Summary of Colstrip Costs (WA Share)

	Total Amount	Amortization Period (Years)	Annual Amount
Net Book Value of Colstrip Units 3 & 4, including transmission assets, at December 31, 2017	$ 71,506,933		
Estimated asset retirement obligations	42,738,900		
Undepreciated Balances:	114,245,833		
Future depreciation expense recovered January 1, 2018 - December 31, 2027	(45,334,922)		
Temporary Tax Credits	(16,700,000)		
Net Colstrip Costs Recorded as Regulatory Asset	$ 52,210,911	36	$ 1,450,303
Electric Rate Credit	$ (24,606,700)	5	$ (4,921,340)
Net Impact to Customers Beginning October 1, 2018			$ (3,471,037)

[4] The Colstrip accounts included as rate base include the following: FERC Account No. 101.0 – Plant Cost, FERC Account No. 108.0 – Accumulated Depreciation, FERC Account No. 182.3 – Regulatory Asset ARO, FERC Account No. 182.3 – Regulatory Asset Colstrip, FERC Account No. 230.0 – Colstrip ARO, and FERC Account No. 242.0 – Colstrip Accounts Payable.

Appendix B to Settlement Stipulation in U-170970

Revised Post-Closing Corporate Structure



BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of HYDRO ONE LIMITED (acting through its indirect subsidiary, Olympus Equity LLC) **and** **AVISTA CORPORATION** **For an Order Authorizing Proposed Transaction**	Docket No. U-170970 SETTLEMENT STIPULATION AND AGREEMENT

I. PARTIES

1. This Settlement Stipulation and Agreement is entered into by and among the following parties in this case: Hydro One Limited ("Hydro One"), acting through Olympus Equity LLC an indirect, wholly-owned subsidiary, and Avista Corporation ("Avista") (sometimes hereafter jointly referred to as "Joint Applicants" or the "Companies"), the Staff of the Washington Utilities and Transportation Commission ("Staff"), the Public Counsel Unit of the Washington Office of Attorney General ("Public Counsel"), Northwest Industrial Gas Users ("NWIGU"), Industrial Customers of Northwest Utilities ("ICNU"), The Energy Project, Northwest Energy Coalition ("NWEC"), Renewable Northwest ("RNW"), Natural Resources Defense Council ("NRDC"), Sierra Club, and Washington and Northern Idaho District Council of Laborers ("WNIDCL"), jointly referred to herein as "Parties" and individually as a "Party."

2. Accordingly, this represents a "full settlement" under WAC 480-07-730(1). The Parties, representing all who have intervened or appeared in these dockets, agree that this

Settlement Stipulation (hereinafter "Settlement" and/or "Stipulation") is in the public interest and should be accepted by the Commission as a full resolution of the issues in these dockets.

3. The Parties understand this Settlement is subject to review and disposition by the Washington Utilities and Transportation Commission ("Commission").

II. RECITALS

4. On September 14, 2017, the Joint Applicants filed with the Commission a Joint Application For An Order authorizing Proposed Transaction whereby Olympus Equity LLC would acquire all of the outstanding common stock of Avista, and Avista would thereafter become a direct, wholly-owned subsidiary of Olympus Equity LLC and an indirect, wholly-owned subsidiary of Hydro One (the combination of these transactions is hereafter "Proposed Transaction").[1]

5. The Commission convened a prehearing conference in this proceeding at Olympia, Washington on October 20, 2017, before Administrative Law Judge Dennis J. Moss. At the prehearing conference, the Commission granted the petitions to intervene by ICNU, NWIGU, The Energy Project, NWEC, RNW, NRDC, and the Sierra Club. The Commission, in Order 03, subsequently granted intervention status to WNIDCL.

6. In accordance with the procedural schedule adopted at the prehearing conference (Order 02), all Parties attended the scheduled settlement conference held in Olympia, Washington, on February 6, 2018. An additional settlement conference was held in Olympia on February 23,

[1] On July 19, 2017, Avista, a Washington corporation, Hydro One, a Province of Ontario corporation, Olympus Holding Corp. (also referred to hereafter as "US Parent"), a Delaware corporation, and Olympus Corp. ("Merger Sub"), a Washington corporation and an indirect, wholly-owned subsidiary of US Parent, entered into an Agreement and Plan of Merger. Following all approvals, at the effective time on the closing date, Merger Sub will be merged with and into Avista, and the separate existence of Merger Sub shall thereupon cease, and Avista will be the surviving corporation and will become a direct, wholly-owned subsidiary of Olympus Equity LLC and an indirect, wholly-owned subsidiary of Hydro One.

2018. Based on these discussions and related correspondence, the Parties have reached an agreement on proposed commitments (attached as Appendix A to this Settlement Stipulation) that provide a basis upon which the Parties recommend Commission approval of the Proposed Transaction in Washington.

III. TERMS OF THE SETTLEMENT STIPULATION

7. Appendix A to this Stipulation contains the complete list of commitments that the Joint Applicants agree to make upon consummation of the Proposed Transaction (hereinafter referred to as "Commitments"). By virtue of executing this Stipulation, the Joint Applicants agree to perform all of the Commitments set forth in Appendix A according to the provisions of each Commitment as set forth therein.

8. The effective date of the Commitments set forth in Appendix A to this Stipulation shall be the date of the closing of the Proposed Transaction, provided that the date of the Commission's final order in this matter is the effective date for Commitments requiring Hydro One or its subsidiaries, including Avista, to take action before the closing of the Proposed Transaction.

9. In the process of obtaining approval of the Proposed Transaction in other states, the Commitments may be expanded or modified as a result of regulatory decisions or settlements. The Parties agree that the Commission shall have an opportunity and the authority to consider and adopt in Washington any commitments or conditions with which the Joint Applicants agree in other jurisdictions, even if such commitments and conditions are agreed to after the Commission enters its order in this docket. To facilitate the Commission's consideration and adoption of the commitments and conditions from other jurisdictions, the Parties recommend that the Commission issue an order approving this Stipulation as soon as practical, but reserve in such order the explicit

right to re-open the Commitments set forth in Appendix A in order to reflect commitments and conditions accepted in another state jurisdiction. Commitment 81 (Most Favored Nation) in Appendix A sets forth the process and limitations for addressing changes to commitments agreed to in other jurisdictions.

10. The Parties agree that with the Commitments set forth in Appendix A, the Proposed Transaction meets the net benefit and public interest standards under RCW 80.01.040(3), RCW 80.12.020 and WAC 480-143-170 required for approval in Washington. RCW 80.12.020 provides that Commission approval must be predicated on a finding that the Proposed Transaction would provide a "net benefit" to customers:

> **Order required to sell, merge, etc.—Exemption.**
>
> (1) No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it to do so. The commission shall not approve any transaction under this section that would result in a person, directly or indirectly, acquiring a controlling interest in a gas or electrical company without a finding that the transaction would provide a net benefit to the customers of the company.

Moreover, RCW 80.01.040(3) directs the Commission to "[r]egulate in the public interest," and WAC 480-143-170 reiterates that requirement:

> **Application in the Public Interest** – If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.

11. As described in the Commitments to this stipulation and in the Joint Testimony to follow, the evidence demonstrates that the Proposed Transaction is in the public interest and should be approved by the Commission. Furthermore, the Proposed Transaction will provide "net

benefits" for Avista's customers in Washington, as reflected in the proposed Commitments (attached as Appendix A to this Settlement Stipulation).

12. The Parties agree that, due to tax-related changes made by the Tax Cuts and Jobs Act, H.R. 1 of the 115th Congress, which shall be more fully described in testimony supporting this Stipulation, the Post-Closing Corporate Structure set forth on page 2 of Appendix 1 to the Joint Application should be simplified to eliminate Olympus 1 LLC and Olympus 2 LLC. Accordingly, the Post-Closing Corporate Structure should be as set forth in Appendix B to this Settlement Stipulation. The Parties recognize, however, that parallel changes must be made in the dockets on the Proposed Transaction that are pending in Oregon, Idaho, Montana and Alaska. If one or more of such parallel changes cannot be made, the Parties agree that the Post-Closing Corporate Structure set forth on page 2 of Appendix 1 to the Joint Application is also acceptable. Additionally, if the Tax Cuts and Jobs Act is repealed or amended such that further changes to the Post-Closing Corporate Structure are necessary, the Joint Applicants will propose a revised corporate structure, subject to Commission approval.

13. The Joint Applicants acknowledge that the Commission's approval of the Stipulation, the Commitments, or the Joint Application shall not bind the Commission in other proceedings with respect to the determination of prudence, just and reasonable character, rate or ratemaking treatment, or public interest of services, accounts, costs, investments, any particular construction project, expenditures, or actions referenced in the Commitments.

14. The Parties therefore agree to support this Stipulation as a settlement of all issues in this proceeding and to recommend approval of the Proposed Transaction in this proceeding subject to the agreed-upon Commitments. The Parties understand that this Stipulation is not binding on the Commission in ruling on the Joint Application.

15. The Parties agree that this Stipulation represents a compromise in the positions of the Parties. As such, conduct, statements, and documents disclosed in the negotiation of this Stipulation shall not be admissible as evidence in this or any other proceeding. By executing this Stipulation, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of this Stipulation, nor shall any Party be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding, except those proceedings involving the enforcement or implementation of the terms of this Stipulation.

16. The Parties shall cooperate in submitting this Stipulation promptly to the Commission for acceptance, and shall cooperate in developing supporting testimony required by WAC 480-07-740(2). The Parties agree to support the Stipulation throughout this proceeding, provide one or more witnesses each to sponsor such Stipulation as well as legal representatives to support the Stipulation at a Commission hearing (if necessary), and recommend that the Commission issue an order adopting the Commitments referenced herein. In the event the Commission rejects this Stipulation or accepts this Stipulation upon conditions not contained herein, the provisions of WAC 480-07-750(2) shall apply.

17. Each Party retains the right to provide information to the public about this Settlement Stipulation, after this Settlement Stipulation is filed with the Commission. Each Party shall provide to each other Party a copy of each public announcement, news release or similar communication (hereafter "public communication") that the issuing Party intends to make regarding this Settlement Stipulation, as soon as practicable in advance of publication (hereafter "disclosure requirement"). The disclosure requirement shall not apply to a Party that has provided

a copy of a public communication addressing the Settlement Stipulation to other Parties prior to filing the Settlement Stipulation.

18. This Stipulation is entered into by each Party as of the date entered below. Subject to Paragraph 19, the obligations of the Parties under this Stipulation are effective as of the date it has been fully executed by all Parties.

19. The obligations of the Joint Applicants under this Stipulation, with the exception of paragraphs 14 through 18, are subject to the Commission's approval of the Joint Application in this docket on terms and conditions acceptable to the Joint Applicants, in their sole discretion.

20. The Parties may execute this Stipulation in counterparts, which together will constitute one agreement. A signed signature page sent by email is as effective as an original document.

DATED: March 27, 2018

HYDRO ONE LIMITED

By: _____
Elizabeth Thomas, Partner, K&L Gates LLP
Kari Vander Stoep, Partner, K&L Gates LLP
On Behalf of Hydro One Limited and
Olympus Equity LLC

AVISTA CORPORATION

By: _____
David J. Meyer
Chief Counsel for Regulatory and
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STAFF OF THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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THE ENERGY PROJECT

By: _____
Simon J. ffitch
Attorney at Law

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By David Meyer on ffitch's email authorization

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MASTER LIST OF COMMITMENTS IN WASHINGTON

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A. Reservation of Certain Authority to the Avista Board of Directors

1. **Authority Reserved:** Consistent with and subject to the terms of Exhibits A and B to the Merger Agreement (referred to as "Delegation of Authority") contained in Appendix 5 of the Joint Application, decision-making authority over commitments 2-15 below is reserved to the Board of Directors of Avista Corporation ("Avista") and any change to the policies stated in commitments 2-15 requires a two-thirds (2/3) vote of the Avista Board, provided that Avista must obtain approval for such changes from all regulatory bodies with jurisdiction over the Commitments before such changes can go into effect, and provide written notice to all parties to Docket U-170970 of such request for approval:

Governance

2. **Executive Management:** Avista will seek to retain all current executive management of Avista, subject to voluntary retirements that may occur. This commitment will not limit Avista's ability to determine its organizational structure and select and retain personnel best able to meet Avista's needs over time. The Avista board retains the ability to dismiss executive management of Avista and other Avista personnel for standard corporate reasons (subject to the approval of Hydro One Limited ("Hydro One") for any hiring, dismissal or replacement of the CEO);

3. **Board of Directors:** After the closing of the Proposed Transaction, Avista's board will consist of nine (9) members, determined as follows: (i) two (2) directors designated by Hydro One who are executives of Hydro One or any of its subsidiaries; (ii) three (3) directors who meet the standards for "independent directors" - under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Directors") and who are residents of the Pacific Northwest region, to be designated by Hydro One (collectively, the directors designated in clauses (i) and (ii) hereof, the "Hydro One Designees"), subject to the provisions of Clause 2 of Exhibit A to the Merger Agreement; (iii) three (3) directors who as of immediately prior to the closing of the Proposed Transaction[1] are members of the Board of Directors of Avista, including the Chairman of Avista's Board of Directors (if such person is different from the Chief Executive Officer of Avista); and (iv) Avista's Chief Executive Officer (collectively, the directors designated in clauses (iii) and (iv) hereof, the "Avista Designees"). The initial Chairman of Avista's post-closing Board of Directors shall be the Chief Executive Officer of Avista as of the time immediately prior to closing for a one year term. If any Avista Designee resigns, retires or otherwise ceases to serve as a director of Avista for any reason, the remaining Avista

[1] "Proposed Transaction" means the transaction proposed in the Joint Application of Avista and Hydro One filed on September 14, 2017.

Designees shall have the sole right to nominate a replacement director to fill such vacancy, and such person shall thereafter become an Avista Designee.

The term "Pacific Northwest region" means the Pacific Northwest states in which Avista serves retail electric or natural gas customers, currently Alaska, Idaho, Montana, Oregon and Washington;

Business Operations

4. **Avista's Brand and Plan for the Operation of the Business:** Avista will maintain Avista's brand and Avista will establish the plan for the operation of the business and its Subsidiaries;

5. **Capital Investment for Economic Development:** Avista will maintain its existing levels of capital allocations for capital investment in strategic and economic development items, including property acquisitions in the university district, support of local entrepreneurs and seed-stage investments;

6. **Continued Innovation:** Avista will continue development and funding of its and its subsidiaries' innovation activities;

7. **Union Relationships:** Avista will honor its labor contracts and has the authority to negotiate, enter into, modify, amend, terminate or agree to changes in any collective bargaining agreement or any of Avista's other material contracts with any labor organizations, union employees or their representatives;

8. **Compensation and Benefits:** Avista will maintain compensation and benefits related practices consistent with the requirements of the Merger Agreement;

Local Presence/Community Involvement

9. **Avista's Headquarters:** Avista will maintain (a) its headquarters in Spokane, Washington; (b) Avista's office locations in each of its other service territories, and (c) no less of a significant presence in the immediate location of each of such office locations than what Avista and its subsidiaries maintained immediately prior to completion of the Proposed Transaction;

10. **Local Staffing:** Avista will maintain Avista Utilities' staffing and presence in the communities in which Avista operates at levels sufficient to maintain the provision of safe and reliable service and cost-effective operations and consistent with pre-acquisition levels;

11. **Community Contributions:** For five years after the close of the Proposed Transaction, Avista will maintain a $4,000,000 annual budget for charitable contributions (funded by both Avista and the Avista Foundation) and additionally a $2,000,000 annual contribution will be made to Avista's charitable foundation. No approval from any regulatory bodies with jurisdiction over the Commitments is required for any changes to this commitment from and after the sixth year

following closing; however any such changes will continue to require a two-thirds (2/3) vote of the Avista Board;[2]

12. **Community Involvement:** Avista will maintain at least Avista's existing levels of community involvement and support initiatives in its service territories; including involvement with tribes and low-income service agencies and support initiatives;

13. **Economic Development:** Avista will maintain at least Avista's existing levels of economic development, including the ability of Avista to spend operations and maintenance funds[3] to support regional economic development and related strategic opportunities in a manner consistent with Avista's past practices;

14. **Membership Organizations:** Avista will maintain the dues paid by it to various industry trade groups and membership organizations; and

15. **Safety and Reliability Standards and Service Quality Measures:** Avista will maintain Avista's safety and reliability standards and policies and service quality measures in a manner that is substantially comparable to, or better than, those currently maintained.

    Avista will not seek to remove or reduce existing penalty provisions associated with its safety, reliability, or service quality measures for 10 years after the merger.

    If the 5-year rolling average of SAIFI or SAIDI in Washington exceeds 107.5% of the average of their respective scores from 2013 to 2017 (excluding Major Event Days (MEDs), consistent with Avista's service quality program, tariff schedule 85), Hydro One and Avista commit to increase the rate credit for Washington electric customers by $250,000 per year. This increased rate credit will persist until the 5-year rolling average is less than the threshold stated above.

B. Rate Commitments

16. **Treatment of Net Cost Savings:** Any net cost savings that Avista may achieve as a result of the Proposed Transaction will be reflected in subsequent rate proceedings, as such savings materialize. To the extent the savings are reflected in base retail rates they will offset the Rate Credit to customers, up to the offsetable portion of the Rate Credit.

[2] Note that Commitment 64 contains an additional commitment relating to charitable contributions; pursuant to that commitment Hydro One will cause Avista to make a one-time contribution of $7,000,000 to Avista's charitable foundation at or promptly following closing of the Proposed Transaction.

[3] Operations and maintenance funds dedicated to economic development and non-utility strategic opportunities will be recorded below-the-line to a nonoperating account.

17. **Pre-Transaction Test Year:** The parties agree to the following provisions for ratemaking purposes.

a. If Avista files for a rate case between the conclusion of Dockets UE-170485 and UG-170486 and December 31, 2018, Avista will present a normalized test year using the most recent 12-month period available.

b. If Avista files for a rate case between January 1, 2019, and April 30, 2019, Avista must use a normalized test year of October 1, 2017 – September 30, 2018.

c. If Avista files for a rate case between May 1, 2019, and April 30, 2021, Avista must present two normalized test years, (1) October 1, 2017 – September 30, 2018 for informational purposes, and (2) the most recent 12-month period available.

18. **Treatment of Transaction Costs:**

a. Costs associated with the Proposed Transaction will be separately tracked as non-utility costs with no charges, either allocated or direct, to be recovered from Avista customers. After the consummation of the Proposed Transaction, any remaining transaction costs or other costs of Olympus Holding Corp. or Hydro One will not appear on Avista's utility books, i.e. such costs will be recorded as non-utility. Avista shall furnish the Commission with journal entries and supporting detail showing the nature and amount of all costs of the Proposed Transaction (including but not limited to management time, BOD time, in-house and outside counsel time, any consultants engaged, etc.) since the Proposed Transaction was first contemplated, as well as the accounts charged, within 120 days of a Commission order in this docket.

b. Avista will exclude from Avista general rate cases, or any other method of cost recovery, all costs related to the Proposed Transaction including but not limited to: (i) all legal work from in-house counsel and outside counsel; (ii) any financial advisory fees associated with the Proposed Transaction; (iii) the acquisition premium; (iv) costs related to M&A consulting and advice (v) preparation of and materials for presentations relating to the Proposed Transaction (vi) any senior executive compensation or any Avista board of director time tied to a change of control of Avista; (vii) any other costs directly related to the Proposed Transaction.

19. **Rate Credits:** Avista and Hydro One are proposing to flow through to Avista's retail customers in Washington a Rate Credit of approximately $30.7 million[4] over

[4] The exact agreed-upon figure is $30,715,050, which is equal to 5% of the Washington base revenue as of 02/01/18. Washington electric base revenue is $492,134,000, and Washington natural gas base revenue (including natural gas costs – Schedules 150/155) is $122,167,000. Five percent of those revenues are $24,606,700 (electric) and $6,108,350 (natural gas).

a 5-year period, beginning at the time the merger closes. For customers on Schedule 25, the credit will be spread by allocating 1/3 of the total Schedule 25 credit monies to the first two energy blocks and 2/3 of the total credit monies to the third block.

The Total Rate Credit to customers for the five years following the closing will be approximately $6.1 million[5] per year. A portion of the annual total Rate Credit will be offsetable, in the amount of $1.02 million[6]. During the 5-year period the financial benefits will be flowed through to customers either through the separate Rate Credit described above or through a reduction to the underlying cost of service as these benefits are reflected in the test period numbers used for ratemaking. At the time of the close, the $6.1 million benefit will be provided to customers through a separate Rate Credit, as long as the reduction in costs (of up to $1.02 million annually) has not already been reflected in base retail rates for Avista's customers.

To the extent Avista demonstrates in a future rate proceeding that cost savings, or benefits, directly related to the Proposed Transaction are already being flowed through to customers through base retail rates, the separate Rate Credit to customers would be reduced by an amount up to the offsetable Rate Credit amount. The portion of the total Rate Credit that is not offsetable effectively represents acceptance by Hydro One of a lower rate of return during the 5-year period.

The $30.7 million represents the "floor" of benefits that will be flowed through to Avista's customers, either through the Rate Credit or through benefits otherwise included in base retail rates. To the extent the identifiable benefits exceed the annual offsetable Rate Credit amounts, these additional benefits will be flowed through to customers in base retail rates in general rate cases as they occur. Avista and Hydro One believe additional efficiencies (benefits) will be realized over time from the sharing of best practices, technology and innovation between the two companies. It will take time, however, to identify and capture these benefits. The level of annual net cost savings (and/or net benefits) will be tracked and reported on an annual basis, and compared against the offsetable level of savings.

Any application of offsetable savings will be reviewed by the Commission before the offset is applied, and Avista bears the burden of proof to prove that savings have materialized and the offset to rate credits should apply.

[5] The exact amount agreed upon is $6,143,010 per year. The annual Washington electric Rate Credit for each of the five years is $4,921,340. The annual Washington natural gas Rate Credit for each of the five years is $1,221,670.

[6] The offsetable portion of the Rate Credit is calculated using a pro rata share of the jurisdictional total of the rate credit (i.e. Washington's share of the offsetable Rate Credit is 60.29%, therefore Washington's share of the $1.7 million offsetable portion is $1.02 million).

C. Regulatory Commitments

20. **State Regulatory Authority and Jurisdiction:** Olympus Holding Corp. and its subsidiaries, including Avista, as appropriate, will comply with all applicable laws, including those pertaining to transfers of property (Chapter 80.12), affiliated interests (Chapter 80.16), and securities and the assumption of obligations and liabilities (Chapter 80.08).

21. **Compliance with Existing Commission Orders:** Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge that all existing orders issued by the Commission with respect to Avista or its predecessor, Washington Water Power Co., will remain in effect, and are not modified or otherwise affected by the Proposed Transaction.

    Olympus Holding Corp. and its subsidiaries, including Avista, will comply with all applicable future Commission orders that remain in force.

22. **Separate Books and Records:** Avista will maintain separate books and records from its affiliates.

23. **Access to and Maintenance of Books and Records:** Olympus Holding Corp. and its subsidiaries, including Avista, will provide reasonable access to Avista's books and records; access to financial information and filings; access rights with respect to the documents supporting any costs that may be allocable to Avista; and access to Avista's board minutes, audit reports, and information provided to credit rating agencies pertaining to Avista.

    Hydro One, Olympus Holding Corp. and its subsidiaries, including Avista, will maintain the necessary books and records so as to provide documents relating to all corporate, affiliate, or subsidiary transactions with Avista, or that result in costs that may be allocable to Avista.

    The Proposed Transaction will not result in reduced access to the necessary books and records that relate to transactions with Avista, or that result in costs that may be allocable to Avista. Avista will provide Commission Staff and other parties to regulatory proceedings reasonable access to books and records (including those of Olympus Holding Corp. or any affiliate or subsidiary companies) required to verify or examine transactions with Avista, or that result in costs that may be allocable to Avista.

    Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Avista's accounts, books, papers and documents in compliance with all applicable laws. Nothing in the Proposed Transaction will limit or affect the Commission's rights with respect to inspection of Olympus Holding Corp.'s accounts, books, papers and documents pursuant to all applicable laws; provided, that such right to inspection shall be limited to Olympus Holding Corp.'s accounts, books, papers and documents that pertain solely to transactions affecting Avista's regulated utility operations.

Olympus Holding Corp. and its subsidiaries, including Avista, will provide the Commission with access to written information provided by and to credit rating agencies that pertains to Avista. Olympus Holding Corp. and each of its subsidiaries will also provide the Commission with access to written information provided by and to credit rating agencies that pertains to Olympus Holding Corp.'s subsidiaries to the extent such information may affect Avista.

Hydro One and its affiliates agree that the Commission may have access to all the accounting records of Hydro One and its affiliates that are the bases for charges to Avista, to determine the reasonableness of the costs and the allocation factors used by Hydro One and its affiliates, or its subdivisions to assign costs to Avista and amounts subject to allocation or direct charges. Hydro One and its affiliates agree that they will not raise lack of jurisdiction as a means of denying such access, and agree to cooperate fully with such Commission investigations.

24. **Cost Allocations Related to Corporate Structure and Affiliate Interests:** Avista agrees to provide cost allocation methodologies used to allocate to Avista any costs related to Olympus Holding Corp. or its other subsidiaries, and commits that there will be no cross-subsidization by Avista customers of unregulated activities.

The cost-allocation methodology provided pursuant to this commitment will be a generic methodology that does not require Commission approval prior to it being proposed for specific application in a general rate case or other proceeding affecting rates.

Avista will bear the burden of proof in any general rate case that any corporate and affiliate cost allocation methodology is reasonable for ratemaking purposes. Neither Avista nor Olympus Holding Corp. or its subsidiaries will contest the Commission's authority to disallow, for retail ratemaking purposes in a general rate case, unreasonable, or misallocated costs from or to Avista or Olympus Holding Corp or its other subsidiaries.

With respect to the ratemaking treatment of affiliate transactions affecting Avista, Hydro One, and Olympus Holding Corp. and its subsidiaries, as applicable, will comply with the Commission's then-existing practice; provided, however, that nothing in this commitment limits Avista from also proposing a different ratemaking treatment for the Commission's consideration, or limit the positions any other party may take with respect to ratemaking treatment.

Avista will notify the Commission of any change in corporate structure that affects Avista's corporate and affiliate cost allocation methodologies. Avista will propose revisions to such cost allocation methodologies to accommodate such changes. Avista will not take the position that compliance with this provision constitutes approval by the Commission of a particular methodology for corporate and affiliate cost allocation.

25. **Ratemaking Cost of Debt and Equity:** Avista will not advocate for a higher cost of debt or equity capital as compared to what Avista's cost of debt or equity capital would have been absent Hydro One's ownership.

For future ratemaking purposes:

a. Determination of Avista's debt costs will be no higher than such costs would have been assuming Avista's credit ratings by at least one industry recognized rating agency, including, but not limited to, S&P, Moody's, Fitch or Morningstar, as such ratings in effect on the day before the Proposed Transaction closes and applying those credit ratings to then-current debt, unless Avista proves that a lower credit rating is caused by circumstances or developments not the result of financial risks or other characteristics of the Proposed Transaction;

b. Avista bears the burden to prove prudent in a future general rate case any pre-payment premium or increased cost of debt associated with existing Avista debt retired, repaid, or replaced as a part of the Proposed Transaction; and

c. Determination of the allowed return on equity in future general rate cases will include selection and use of one or more proxy group(s) of companies engaged in businesses substantially similar to Avista, without any limitation related to Avista's ownership structure.

26. **Avista Capital Structure:** At all times following the closing of the Proposed Transaction, Avista's actual common equity ratio will be maintained at a level no less than 44 percent. This commitment does not restrict the Commission from ordering a hypothetical capital structure.

27. **FERC Reporting Requirements:** Avista will continue to meet all the applicable FERC reporting requirements with respect to annual and quarterly reports (e.g., FERC Forms 1, 2, 3q) after closing of the Proposed Transaction.

28. **Participation in National and Regional Forums:** Avista will continue to participate, where appropriate, in national and regional forums regarding transmission issues, pricing policies, siting requirements, and interconnection and integration policies, when necessary to protect the interest of its customers.

29. **Treatment of Confidential Information:** Nothing in these commitments will be interpreted as a waiver of Hydro One's, its subsidiaries', or Avista's rights to request confidential treatment of information that is the subject of any of these commitments.

30. **Commission Enforcement of Commitments:** Hydro One and its subsidiaries, including Avista, understand that the Commission has authority to enforce these commitments in accordance with their terms. If there is a violation of the terms of these commitments, then the offending party may, at the discretion of the Commission, have a period of thirty (30) calendar days to cure such violation.

The scope of this commitment includes the authority of the Commission to compel the attendance of witnesses from Olympus Holding Corp. and its affiliates, including Hydro One, with pertinent information on matters affecting Avista. Olympus Holding Corp. and its subsidiaries waive their rights to interpose any legal objection they might otherwise have to the Commission's jurisdiction to require the appearance of any such witnesses.

31. **Submittal to State Court Jurisdiction for Enforcement of Commission Orders:** Olympus Holding Corp., on its own and its subsidiaries' behalf, including Avista's, will file with the Commission prior to closing the Proposed Transaction an affidavit affirming that it will submit to the jurisdiction of the relevant state courts for enforcement of the Commission's orders adopting these commitments and subsequent orders affecting Avista.

32. **Annual Report on Commitments:** By May 1, 2019 and each May 1 thereafter through May 1, 2029, Avista will file a report with the Commission regarding the status of compliance with each of the commitments as of December 31 of the preceding year. The report will, at a minimum, provide a description of the performance of each of the commitments, will be filed in Docket U-170970 and served to all parties to the docket. If any commitment is not being met, relative to the specific terms of the commitment, the report must provide proposed corrective measures and target dates for completion of such measures. Avista will make publicly available at the Commission non-confidential portions of the report.

33. **Commitments Binding:** Hydro One, Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge that the commitments being made by them are binding only upon them and their affiliates where noted, and their successors in interest. Hydro One and Avista are not requesting in this proceeding a determination of the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the investments, expenditures or actions referenced in the commitments, and the parties in appropriate proceedings may take such positions regarding the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the investments, expenditures or actions as they deem appropriate.

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

D. Financial Integrity Commitments

34. **Capital Structure Support:** Hydro One will provide equity to support Avista's capital structure that is designed to allow Avista access to debt financing under reasonable terms and on a sustainable basis.

35. **Utility-Level Debt and Preferred Stock:** Avista will maintain separate debt and preferred stock, if any, to support its utility operations.

36. **Continued Credit Ratings:** Each of Hydro One and Avista will continue to be rated by at least one nationally recognized statistical "Rating Agency." Hydro One and Avista will use reasonable best efforts to obtain and maintain a separate credit rating for Avista from at least one Rating Agency within the ninety (90) days following the closing of the Proposed Transaction. If Hydro One and Avista are unable to obtain or maintain the separate rating for Avista, they will make a filing with the Commission explaining the basis for their failure to obtain or maintain such separate credit rating for Avista, and parties to this proceeding will have an opportunity to participate and propose additional commitments.

37. **Credit Ratings Notification:** Hydro One and Avista agree to notify the Commission within two business days of any downgrade of Avista's credit rating to a non-investment grade status by S&P, Moody's, or any other such ratings agency that issues such ratings with respect to Avista.

38. **Restrictions on Upward Dividends and Distributions:**

    a. If either (i) Avista's corporate credit/issuer rating as determined by both Moody's and S&P, or their successors, is investment grade, or (ii) the ratio of Avista's EBITDA to Avista's interest expense is greater than or equal to 3.0, then distributions from Avista to Olympus Equity LLC shall not be limited so long as Avista's equity ratio is equal to or greater than 44 percent on the date of such Avista distribution after giving effect to such Avista distribution, except to the extent the Commission establishes a lower equity ratio for ratemaking purposes. Both the EBITDA and equity ratio shall be calculated on the same basis that such calculations would be made for ratemaking purposes for regulated utility operations.

    b. Under any other circumstances, distributions from Avista to Olympus Equity LLC are allowed only with prior Commission approval.

    c. If Avista does not have an investment-grade rating from both Moody's and S&P, or from one of these entities, or its successor, if only one issues ratings with respect to Avista, and the ratio of EBITDA to Avista's interest expense is less than 3.0, no dividend distribution to Olympus Equity LLC or its successors will occur.

39. **Pension Funding:** Avista will maintain its pension funding policy in accordance with sound actuarial practice. Hydro One will not seek to change Avista's pension funding policy.

40. **SEC Reporting Requirements:** Following the closing of the Proposed Transaction, Avista will file required reports with the SEC.

41. **Compliance with the Sarbanes-Oxley Act:** Following the closing of the Proposed Transaction, Avista will comply with applicable requirements of the Sarbanes-Oxley Act.

E. Ring-Fencing Commitments

42. **Golden Share:** Entering into voluntary bankruptcy shall require the affirmative vote of a "Golden Share" of Avista stock. The Golden Share shall mean the sole share of Preferred Stock of Avista as authorized by the Commission. This share of Preferred Stock must be in the custody of an independent third-party, where the third-party has no financial stake, affiliation, relationship, interest, or tie to Avista or any of its affiliates, or any lender to Avista, or any of its affiliates. This requirement does not preclude the third-party from holding an index fund or mutual fund with negligible interests in Avista or any of its affiliates. In matters of voluntary bankruptcy, this Golden Share will override all other outstanding shares of all types or classes of stock.

43. **Independent Directors:** At least one of the nine members of the board of directors of Avista will be an independent director who is not a member, stockholder, director (except as an independent director of Avista or Olympus Equity LLC), officer, or employee of Hydro One or its affiliates. At least one of the members of the board of directors of Olympus Equity LLC will be an independent director who is not a member, stockholder, director (except as an independent director of Olympus Equity LLC or Avista), officer, or employee of Hydro One or its affiliates. The same individual may serve as an independent director of both Avista and Olympus Equity LLC. The organizational documents for Avista will not permit Avista, without the consent of a two-thirds majority of all its directors, including the affirmative vote of the independent director at Avista (or if at that time Avista has more than one independent director, the affirmative vote of at least one of Avista's independent directors), to consent to the institution of bankruptcy proceedings or the inclusion of Avista in bankruptcy proceedings. In addition to an affirmative vote of this independent director, the vote of the Golden Share shall also be required for Avista to enter into a voluntary bankruptcy.

44. **Non-Consolidation Opinion:**

a. Within ninety (90) days of the Proposed Transaction closing, Avista and Olympus Holding Corp. will file a non-consolidation opinion with the Commission which concludes, subject to customary assumptions and exceptions, that the ring-fencing provisions are sufficient that a bankruptcy court would not order the substantive consolidation of the assets and liabilities of Avista with those of Olympus Holding Corp. or its affiliates or subsidiaries (other than Avista and its subsidiaries).

b. Hydro One and Olympus Holding Corp. must file an affidavit with the Commission stating that neither Hydro One, Olympus Holding Corp. nor any of their subsidiaries, will seek to include Avista in a bankruptcy without the

consent of a two-thirds majority of Avista's board of directors including the affirmative vote of Avista's independent director, or, if at that time Avista has more than one independent director, the affirmative vote of at least one of Avista's independent directors.

c. If the ring-fencing provisions in these commitments are not sufficient to obtain a non-consolidation opinion, Olympus Holding Corp. and Avista agree to promptly undertake the following actions:

i. Notify the Commission of this inability to obtain a non-consolidation opinion.

ii. Propose and implement, upon Commission approval, such additional ring-fencing provisions around Avista as are sufficient to obtain a non-consolidation opinion subject to customary assumptions and exceptions.

iii. Obtain a non-consolidation opinion.

45. **Olympus Equity LLC:** Olympus Holding Corp.'s indirect subsidiaries will include Olympus Equity LLC and Avista. See the post-acquisition organizational chart in Appendix B to the Settlement Stipulation. Following closing of the Proposed Transaction, all of the common stock of Avista will be owned by Olympus Equity LLC, a new Delaware limited liability company. Olympus Equity LLC will be a bankruptcy-remote special purpose entity, and will not have debt.

46. **Restriction on Pledge of Utility Assets:** Avista agrees to prohibitions against loans or pledges of utility assets to Hydro One, Olympus Holding Corp., or any of their subsidiaries or affiliates, without Commission approval. In addition, the Applicants agree that Avista's assets will not be pledged by Avista or any of its affiliates, including Hydro One and Olympus Holding Corp. and any of their subsidiaries or affiliates, for the benefit of any entity other than Avista.

47. **Hold Harmless; Notice to Lenders; Restriction on Acquisitions and Dispositions:**

a. Avista will hold Avista customers harmless from any business and financial risk exposures associated with Olympus Holding Corp., Hydro One, and Hydro One's other affiliates.

b. Pursuant to this commitment, Avista and Olympus Holding Corp. will file with the Commission, prior to closing of the Proposed Transaction, a form of notice to prospective lenders describing the ring-fencing provisions included in these commitments stating that these provisions provide no recourse to Avista assets as collateral or security for debt issued by Hydro One or any of its subsidiaries, other than Avista.

c. In furtherance of this commitment:

i. Avista commits that Avista's regulated utility customers will be held harmless from the liabilities of any unregulated activity of Avista or Hydro One and its affiliates. In any proceeding before the Commission involving rates of Avista, the fair rate of return for Avista will be determined without regard to any adverse consequences that are demonstrated to be attributable to unregulated activities. Measures providing for separate financial and accounting treatment will be established for each unregulated activity.

ii. Olympus Holding Corp. and Avista will notify the Commission subsequent to Olympus Holding Corp.'s board approval and as soon as practicable following any public announcement of: (1) any acquisition by Olympus Holding Corp. of a regulated or unregulated business that is equivalent to five (5) percent or more of the capitalization of Avista; or (2) any change in control or ownership of Avista, except that the notice of a change to the upstream ownership of Avista or Olympus Holding Corp. among wholly owned subsidiaries of Hydro One may be provided in either an updated organizational chart included in the annual report filing described in Commitment 32 or in a separate notice filing. Notice pursuant to this provision is not and will not be deemed an admission or expansion of the Commission's authority or jurisdiction over any transaction or in any matter or proceeding whatsoever.

Within sixty (60) days following the notice required by this subsection (c)(ii)(2), Avista and Olympus Holding Corp. or its affiliates, as appropriate, will seek Commission approval of any sale or transfer of any material part of Avista, or of any transaction or series of transactions, regardless of size, that would result in a person or entity, other than a wholly owned subsidiary of Hydro One, directly or indirectly, acquiring a controlling interest in Avista or Olympus Holding Corp. The term "material part of Avista" means any sale or transfer of stock representing ten percent (10%) or more of the equity ownership of Avista.

iii. Neither Avista nor Olympus Holding Corp. will assert in any future proceedings that, by virtue of the Proposed Transaction and the resulting corporate structure, the Commission is without jurisdiction over any transaction that results in a change of control of Avista.

d. If and when any subsidiary of Avista becomes a subsidiary of Hydro One or one of its subsidiaries other than Avista, Avista will so advise the Commission within thirty (30) days and will submit to the Commission a written document setting forth Avista's proposed corporate and affiliate cost allocation methodologies.

48. **Olympus Holding Corp. and Olympus Equity LLC Sub-entities:** Olympus Holding Corp. will not operate or own any business and will limit its activities to investing in and attending to its shareholdings in Olympus Equity LLC, which, in turn, will not operate or own any business and will limit its activities to investing in and attending to its shareholdings in Avista.

49. **No Amendment of Ring-Fencing Provisions:** Hydro One, Olympus Holding Corp. and Avista commit that no material amendments, revisions or modifications will be made to the ring-fencing provisions as specified in these regulatory commitments without prior Commission approval pursuant to a limited re-opener for the sole purpose of addressing the ring-fencing provisions.

50. **No Inter Company Debt:** Avista will notify the Commission before entering into any inter-company debt transactions with Olympus Holding Corp., Hydro One, or any of their subsidiaries or affiliates.

51. **No Inter Company Lending:** Without prior Commission approval, Avista will not lend money to Olympus Holding Corp., Hydro One, or any of their subsidiaries or affiliates.

F. Environmental, Renewable Energy, and Energy Efficiency Commitments

52. **Renewable Portfolio Standard Requirements:** Hydro One acknowledges Avista's obligations under applicable renewable portfolio standards, and Avista will continue to comply with such obligations.

Avista will acquire all renewable energy resources required by law and such other renewable energy resources as may from time to time be deemed advisable in accordance with Avista's integrated resource planning ("IRP") process and applicable regulations.

53. **Renewable Energy Resources:**

Avista's non-fossil fueled generation resources constitute more than 50% of its generation portfolio, and Avista exceeds the renewable energy standards currently applicable to the company under RCW 19.285.040(2).

Avista makes the following renewable energy commitments. Both commitments are made only to the extent resources are reasonably commercially available and are (1) necessary to meet load and (2) consistent with the lowest reasonable cost resource portfolio pursuant to Avista's established IRP and pursuant to the Commission's resource evaluation and acquisition rules and policies.

a. Avista will commit to initiating a Request for Proposal with the intent of acquiring additional eligible renewable energy resources as part of this process above and beyond the current renewable energy standards in law. Avista will commit to obtain approximately 50 aMW of expected energy from new eligible renewable resources by 2022. The aMW obtained under this commitment may

be used to satisfy any increase that may be caused by changes to the renewable energy standards in law after the date an Order approving this merger has been entered.

b. Avista will commit to obtain at least 90 aMW of expected energy from new eligible renewables resources to become operational approximately within a year of the timeframe that Colstrip 3 and 4 go offline.

"Resources" is understood to include Power Purchase Agreements ("PPAs"). Nothing in either commitment prohibits Avista from retaining or selling renewable energy credits associated with such resources that are surplus to Avista's needs to meet Washington Renewable Portfolio Standards targets.

Communications with customers shall accurately reflect the environmental attributes associated with power delivered to such customers. Hydro One and Avista acknowledge that Avista retains the burden of proof to demonstrate the prudence of any resource acquisition.

The utility should work with an independent third-party consultant, with expertise in renewable energy resources, to ensure that the utility has up-to-date resource cost and performance assumptions, as well as the appropriate learning curves

54. **Greenhouse Gas and Carbon Initiatives:** Hydro One acknowledges Avista's Greenhouse Gas and Carbon Initiatives contained in its current Integrated Resource Plan, and Avista will continue to work with interested parties on such initiatives.

55. **Cost of Greenhouse Gas Emissions:** Unless it conflicts with any instructions contained in the Commission's acknowledgement letter in response to Avista's current integrated resource plan (IRP), beginning with the next IRP, Avista commits to modeling a range of potential costs for greenhouse gas emissions, and will work with its IRP Advisory Group to determine the appropriate values to model.

56. **Greenhouse Gas Inventory Report:** Avista will report greenhouse gas emissions as required.

57. **Efficiency Goals and Objectives:** Hydro One acknowledges Avista's energy efficiency goals and objectives set forth in Avista's 2017 Integrated Resource Plan and other plans, and Avista will continue its ongoing collaborative efforts to expand and enhance them.

58. **Optional Renewable Power Program:** Avista will continue to offer renewable power programs in consultation with stakeholders.

59. **Energy Imbalance Market ("EIM"):** Avista is currently refreshing its EIM analysis and will release it publicly by the end of 2018. Avista commits to hold

workshops with the Commission and interested stakeholders to review the analysis and discuss the prudent next steps.

60. **Regulatory Integrated Resource Planning (IRP) Sideboards:** Avista commits to calculating a variable generation resource's contribution to capacity in terms of that resource's contribution to resource adequacy and that resource's ability to reduce the loss of load probability in some or all hours or days utilizing the Effective Load Carrying Capability ("ELCC") methodology or an appropriate approximation.

61. **Industrial Customers' Self Direct Conservation:** Avista shall provide a one-time self-direct option for a large conservation project. The project shall have a capital cost of at least $15 million but no more than $30 million and must be commenced within five years of closing of the merger. After applying available incentive funding through Avista's Schedule 91, Avista shall finance the remaining capital cost of the project. The customer that pursues the conservation project shall repay the financed portion of the project, including a carrying charge equal to Avista's rate of return, through its Schedule 91 charges until full amortization. In the event that the customer defaults or ceases operations prior to full amortization of the Avista-financed amount, the remaining balance will be recovered through Schedule 25 contributions to Schedule 91 until such time as the remaining balance is fully amortized. No other customers will be impacted financially from this commitment and all customers will benefit from the increased energy efficiency acquisition.

62. **Transport Electrification:** Avista commits and Hydro One agrees that Avista commits, to expanding access to transportation electrification for all customers. As part of the long-term electric vehicle supply equipment (EVSE) program that Avista is developing following the completion of its pilot under UE-160082, the Joint Applicants commit to setting internal goals and objectives for Avista, in coordination with the Joint Utility Electric Vehicle Stakeholder Group, that do the following:

- Significantly increase outreach and education to customers about the benefits of electric vehicle ownership and use.

- Ensure engagement with low-income customers and organizations that serve low-income customers fully enables participation by these customers and addresses historical issues of participation.

- Significantly increase EVSE program components that serve and benefit low-income residential customers, with a goal of 30% of residential program funds being dedicated to projects that serve low-income customers.

- Overcome barriers for EVSE siting with small business customers.

- Implement incentives that minimize or fully eliminate the cost of EVSE for customers.

63. **Professional Home Energy Audit:** Avista commits to provide home energy audits to 2,000 homes at $300 per home, over a 10-year period, in Washington. Hydro One will arrange total funding of $600,000 for this commitment. With more robust data available after the installation of AMI, Hydro One and Avista agree to revisit this commitment to determine if the number of homes served could be expanded.

G. Community and Low-Income Assistance Commitments

64. **Community Contributions:** Hydro One will cause Avista to make a one-time $7,000,000 contribution to Avista's charitable foundation at or promptly following closing.[7]

65. **Low-Income Energy Efficiency Funding:** Avista will continue to work with its advisory groups on the appropriate level of funding for low income energy efficiency programs.

66. **Low-Income Rate Assistance Program (LIRAP):** Hydro One and Avista commit to continue Avista's LIRAP and related pilot programs.

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

68. **Addressing Other Low-Income Customer Issues:** Avista will continue to work with low-income agencies to address other issues of low-income customers, including funding for bill payment assistance.

[7] Note that Commitment 11 contains additional provisions relating to Avista's charitable contributions.

69. **Replacement of Manufactured Homes:** Hydro One will arrange funding of $2,000,000 over a 10-year period in Washington to replace manufactured homes.

At least half of the funds must be spent in the first five years. The demand side management ("DSM") advisory group and Avista will work together to design the program, and Avista will begin implementing the program within six months of the date that the Proposed Transaction closes. The program will prioritize replacement of homes manufactured before 1976.

To the extent any funds are not used over the 10-year period, these funds will be redirected for additional funding for low-income weatherization programs.

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

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

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

71. **Security Deposits:** Avista commits and Hydro One agrees that Avista commits to eliminate security deposits for new Avista residential customers and to return existing security deposits to customers who have a deposit held longer than 6 months. After two years from Commission approval of the Proposed Transaction, any party may request the Commission to modify or remove this commitment if it determines that application of this commitment has an unreasonable impact on Avista's uncollectible debt.

72. **AMI Consumer Protection:** Avista commits and Hydro One agrees that Avista commits to discussing implementation of prepayment billing and remote disconnect at the Commission's upcoming AMI workshops, and agree not to implement prepayment until authorized by the Commission after conclusion of the AMI workshop, and related AMI dockets. Avista agrees to track the benefits of remote disconnection/reconnection identified in its AMI business case, starting with the AMI technology data collected from customers already equipped with an AMI meter. In addition, Avista commits that, it will not remotely disconnect customers for non-payment when the National Weather Service for that particular region has forecasted a daily high temperature of 38 degrees or less or a daily high temperature of 100 degrees or more. If, however, the Commission adopts a rule prescribing a temperature threshold for remote disconnection that is inconsistent with this commitment, the rule will supersede this commitment.

73. **Improve Penetration of Low-Income Programs:** Hydro One and Avista will undertake a targeted effort with a goal of improving the penetration rate of low-

income programs with a focus on underserved, vulnerable, and high energy burden households. This commitment will include expanding marketing, outreach, and data analysis.

74. **Tribal Communities:** In implementing these conditions, Avista will reach out to tribal communities to encourage participation of members of such communities in receiving the benefits of this settlement.

H. Miscellaneous Commitments

75. **Sources of Funds for Hydro One Commitments:** Throughout this list of merger commitments, any commitment that states Hydro One will arrange funding is not contingent on Hydro One's ability to arrange funding, particularly from outside sources, but is a firm commitment to provide the dollar amount specified over the time period specified and for the purposes specified. To the extent Avista has retained earnings that are available for payment of dividends to Olympus Equity LLC consistent with the ring fencing provisions of this list of merger commitments, such retained earnings may be used. Funds available from other Hydro One affiliates may be used without limitation. Avista will not seek cost recovery for any of the commitments funded or arranged by Hydro One in this list of merger commitments. Hydro One will not seek cost recovery for such funds from ratepayers in Ontario.

76. **Colstrip Depreciation:** Hydro One and Avista agree to a depreciation schedule for Colstrip Units 3 and 4 that assumes a remaining useful life of those units through December 31, 2027. Existing undepreciated balance ($114.2 Million) will be recovered as follows:

- $16.7 Million – unprotected Excess DFIT/Deferral of January – April 2018 tax credit.
- $45.3 Million – through an annual depreciation expense of approximately $4.533 million (WA Share), which is the current level of annual depreciation expense presently being recovered from ratepayers (i.e., no increase to rates)
- $52.2 Million – regulatory asset offset by the amortization of protected Excess DFIT, i.e. over 36 years

See Attachment A to Appendix A (Master List of Commitments in Washington) to the Settlement Stipulation, "Colstrip Commitment Summary and Description", which is incorporated herein by reference.

77. **Montana Community Transition Fund:** Hydro One and Avista will arrange funding of $3.0 Million towards a Colstrip community transition fund.

This commitment is not intended as a "cap" of the amount that Avista/Hydro One may ultimately contribute to help the Colstrip community transition from coal-fired generation.

78. **Colstrip Transmission Planning:** Avista will work with the other Path 8 (MT-to-NW) owners (Northwestern Energy and BPA) to resolve questions surrounding the ability of new generation to use the Colstrip line once Colstrip Units 1 and 2 retire, and also when Units 3 and 4 retire.

At least one year prior to any closure of Colstrip Units 3 and 4, Avista will develop a transition plan for its Colstrip transmission assets. Avista will hold at least one workshop with Commission Staff and stakeholders to determine the transition plan's impacts to Washington ratepayers.

Avista will work with stakeholders and Commission Staff and file this transition plan with the Commission. In developing this transition plan, to the extent practicable, Avista should participate in 1) the workshops on this topic that PSE and the Commission will be holding in 2018 (per the PSE GRC settlement), and 2) the BPA/Governor Bullock Transmission Task Force that commenced work on December 8, 2017, and will work through the middle of 2018.

Hydro One agrees Avista will conduct the activities described in the foregoing paragraphs.

79. **On Bill Repayment:** Hydro One will arrange funding of the approximately $100,000 initial investment in software upgrades and $5,000 in administrative costs. The option for repayment of the customer's share of the cost of a replacement manufactured home (funded by third-party financial institutions) will be included in the OBRP.[8] Under no circumstance, will the ratepayer population be responsible for any default related to the OBRP.

80. **Contract Labor:**

a. On a prospective basis, and for a period of 10 years ending March 7, 2028, Avista will require the use of WNIDCL members for the type of work that is ordinarily and customarily performed by WNIDCL on natural gas replacement and all natural gas work. This will not apply to work performed under contracts

[8] OBRP is a pass-through billing service for energy efficiency loans, where Avista would collect loan payments on customers' bills then transmit the sum monthly to the third-party lender. Only non-profit lenders would be eligible, offering low rates for energy efficiency loans. The lender has no ability to shut off power (due to non-payment) and all lending activity is managed separate from the utility, where the lender:

- Provides all capital, bears full risk
- Manages delinquent files and collections off-bill
- Handles loans/balances separate from utility financial systems
- Meets consumer lending regulatory requirements.

already in effect as of March 7, 2018. This agreement will not apply to (a) atmospheric corrosion; (b) locating; and (c) leak survey. This agreement will also not apply to work performed where signatory contractors are not available (unavailability is typically due to locations being in remote areas), or choose not to bid on projects; provided that work performed in such areas will be paid at equivalent wages and benefits.

b. On a prospective basis, and for a period of 10 years ending March 7, 2028, Avista will require the use of WNIDCL members for all flagging work, unless otherwise performed by Avista employees represented by IBEW Local 77. This will not apply to work performed under contracts already in effect as of March 7, 2018.

c. WNIDCL will provide for signatory contractors laborers that are qualified pursuant to applicable OSHA 1910 regulations and all other applicable training. In addition, WNIDCL will provide WNIDCL members knowledgeable in the DOT Title 49 Code of Federal Regulations, Part 192, and all applicable state pipeline safety regulations. Contractors shall be required to provide proof of compliance with this requirement to Avista.

d. On a prospective basis, Avista will require contractors to utilize NWLETT for required training, if applicable courses are offered by NWLETT and are reasonably accessible in the locality where the work is to be performed.

e. Avista will meet and confer with WNIDCL to discuss possible involvement in all future hydroelectric projects that are within the sphere of WNIDCL's expertise.

f. Avista will encourage contractors to utilize union labor, including, without limitation and as applicable, members of the Laborers', Pipefitters and Steamfitters, and IBEW, on Avista projects as part of its bidding solicitation process on all other construction work, including but not limited to capital work on hydro facilities, and will evaluate the use of such members in the staffing plans of bidding contractors as an element of Avista's bid evaluation process.

g. Avista will continue to prioritize the hiring of qualified contractor personnel through the bidding process, by requiring analysis of not only the price proposals submitted by contractors, but a variety of other factors, including minimum staffing requirements as applicable, training programs, documented qualification programs, safety track records, OSHA 300 reportables, and other safety records as appropriate. Review of these components is intended to verify that the contractor is able to supply a sufficient workforce to meet Avista's needs, and that their personnel are appropriately trained, qualified and able to safely and reliably perform work for Avista.

h. Work covered by these commitments does not include work that is customarily performed by Avista employees represented by IBEW Local 77 but that is contracted out pursuant to IBEW Local 77's collective bargaining agreement with Avista. It also does not include any work that is performed by Avista employees, regardless of the type of work involved.

i. Avista will meet and confer with WNIDCL at least six months prior to March 7, 2028 to discuss extending or modifying the terms set forth herein.

81. **Most Favored Nations:** The Applicants agree that upon the joint request of the Non-Applicant Parties, or a request of less than all Non-Applicant Parties which is unopposed by any Non-Applicant, the Commission shall have an opportunity and the authority to consider and adopt in Washington any commitments to which the Applicants agree in other jurisdictions, even if such commitments are agreed to after the Commission enters its order in this docket. To facilitate the Commission's consideration and adoption of the commitments from other jurisdictions, the Parties recommend that the Commission issue an order accepting this Stipulation as soon as practical, but to reserve in such order the explicit right to re-open to add commitments accepted in another state jurisdiction.

The Applicants further agree that upon the request of any Non-Applicant Party prior to the Commission's action on this Stipulation, if Applicants agree with any commitments in other jurisdictions, within five days of such a request, Applicants will meet and confer with the Non-Applicant Parties to discuss whether such commitments should be added to the existing list of commitments already agreed to by the Parties in this Stipulation.

Process for Consideration:

- Within five calendar days after Applicants file a stipulation with new or amended commitments with a commission in another state jurisdiction, Applicants will send a copy of the stipulation and commitments to the Non-Applicant Parties.

- Within five calendar days after a commission in another state jurisdiction issues an order that accepts a stipulation to which Applicants are a party and imposes new or modified commitments, that order, together with all commitments of any type agreed to by Applicants in such other state, will be filed with the Commission and served on all parties to this docket by the most expeditious means practical.

- Within ten calendar days after the last such filing from the other states ("Final Filing"), the Non-Applicant Parties may file with the Commission any response they wish to make, including their position as to whether any of the covenants, commitments and conditions from the other jurisdictions (without modification of the language thereof except such non-substantive changes as are necessary to make the commitment or condition applicable to Washington) should be adopted in Washington.

- Within five calendar days after any such response filing, the Applicants may file a reply with the Commission.

- If any of the dates above fall on Saturday, Sunday, or a holiday, the next business day will be considered as the due date.

- The Parties agree to support in their filings the issuance by the Commission of an order regarding the adoption of such commitments as soon as practical thereafter, recognizing that the Proposed Transaction cannot close until final state orders have been issued approving the Proposed Transaction.

Limitations on Adjustment:

- Only commitments specific to gas service may form the basis for adjustments specific to gas service.

- Only commitments specific to electric service may form the basis for adjustments specific to electric service.

- Any commitments relating to support of communities in Montana are not subject to this provision.

- As Avista does not operate as a utility in Alaska, any commitments made in Alaska are not subject to this provision.

- For purposes of financial commitments or commitments having a financial impact, commitments should be proportionate to Avista's corresponding business function in Washington in relation to its corresponding total company business function. Accordingly, commitments should be allocated among Avista's WA, ID and OR jurisdictions based on the following: 1) Rate Credit is allocated based on base revenues; 2) all other financial commitments are allocated using the Company's jurisdictional "four factor" allocation methodology, routinely employed for purposes of allocating common costs, as discussed in Mr. Ehrbar's testimony in this proceeding. For purposes of this provision, "financial commitments or commitments having a financial impact" do not include ring fencing provisions.

Merger Commitment No. 76 (Colstrip)

Summary and Description

Avista owns a 15% share of two coal-fired generation facilities located in Colstrip, Montana, known as Colstrip Units 3 & 4, which have a combined capacity of about 1,480 MW. These two facilities were placed in service in 1984 and 1986. No decommissioning date has been established for these assets. Current rates include depreciation expense on Colstrip Units 3 & 4 with assumed remaining useful lives of these units through December 31, 2034 and December 31, 2036, respectively.

The Parties acknowledge that there presently is no plan to close Colstrip Units 3 & 4 by a specific date, nor has Avista agreed to do so. The parties to the Settlement Stipulation in this docket (the "Parties") agree, however, to a depreciation schedule for Colstrip Units 3 & 4 that assumes a remaining useful life of those units through December 31, 2027. The Parties agree to set depreciation rates for Colstrip Units 3 & 4 at amounts that will yield an annual depreciation expense of approximately $4.533 million (WA Share)[1] for the remaining depreciable lives of those units, which is the current level of annual depreciation expense.

The Parties agree to adopt a depreciable balance of Colstrip Units 3 & 4 of $114.2 million. This includes the currently recognized unrecovered plant balance, as well as estimated asset retirement obligations previously not included in rates[2]. Nothing in this Settlement will preclude Avista from seeking recovery of additional future asset retirement costs, based on a showing of prudency in future general rate cases.

The $114.2 million balance will be recovered as follows:

- $16.7 million (WA share) of "temporary" tax credits. These tax credits were described in Bench Request No. 9 in Avista's current general rate case (Docket Nos. UE-170485 and UG-170486).[3]

- $45.3 million, through an annual depreciation expense of approximately $4.533 million (WA Share), which is the current level of annual depreciation expense.

- $52.2 million, through the amortization of a Regulatory Asset (FERC Account No. 183.3) (approximately $1.5 million per year – WA share), offset entirely by the amortization of protected Excess DFIT. The amortization schedule of the Regulatory Asset will be structured to match the amortization schedule of protected Excess DFIT, so that the amortization of protected Excess DFIT covers the remaining depreciable balance.

[1] Annual depreciation expense is approximately $6.937 million on system-basis.
[2] The asset retirement obligations are currently estimated at approximately $42.7 million (WA share). These costs include decommissioning and remediation costs.
[3] The tax credits were the result of H.R.1 – Tax Cuts and Jobs Act signed into law in December 2017.

Nothing in this Settlement will preclude Avista from seeking recovery of routine future capital maintenance costs incurred in the normal course of business beyond January 1, 2018 not intended to extend operational life, based on a showing of prudency in future general rate cases.

The Regulatory Asset[4], net of accumulated deferred federal income taxes, will be included in rate base and will earn Avista's rate of return.

Beginning October 1, 2018, Avista will include the $1.5 million Colstrip amortization costs, in customers' base rates, but which would be offset by the electric Rate Credit of $4.9 million, thereby reducing customers' rates approximately $3.4 million. The incremental rate reduction on October 1, 2018 would be spread to customers on a uniform percent of base revenue basis, and on an equal percentage to the volumetric blocks in each schedule (the Rate Credit would be spread in accordance with Commitment No. 19 "Rate Credit" for Schedule 25). Avista would effectuate this through a compliance filing of its base tariffs and electric Rate Schedule 73 (for the Rate Credit).

A summary of the Colstrip costs and offsetting tax credits follows:

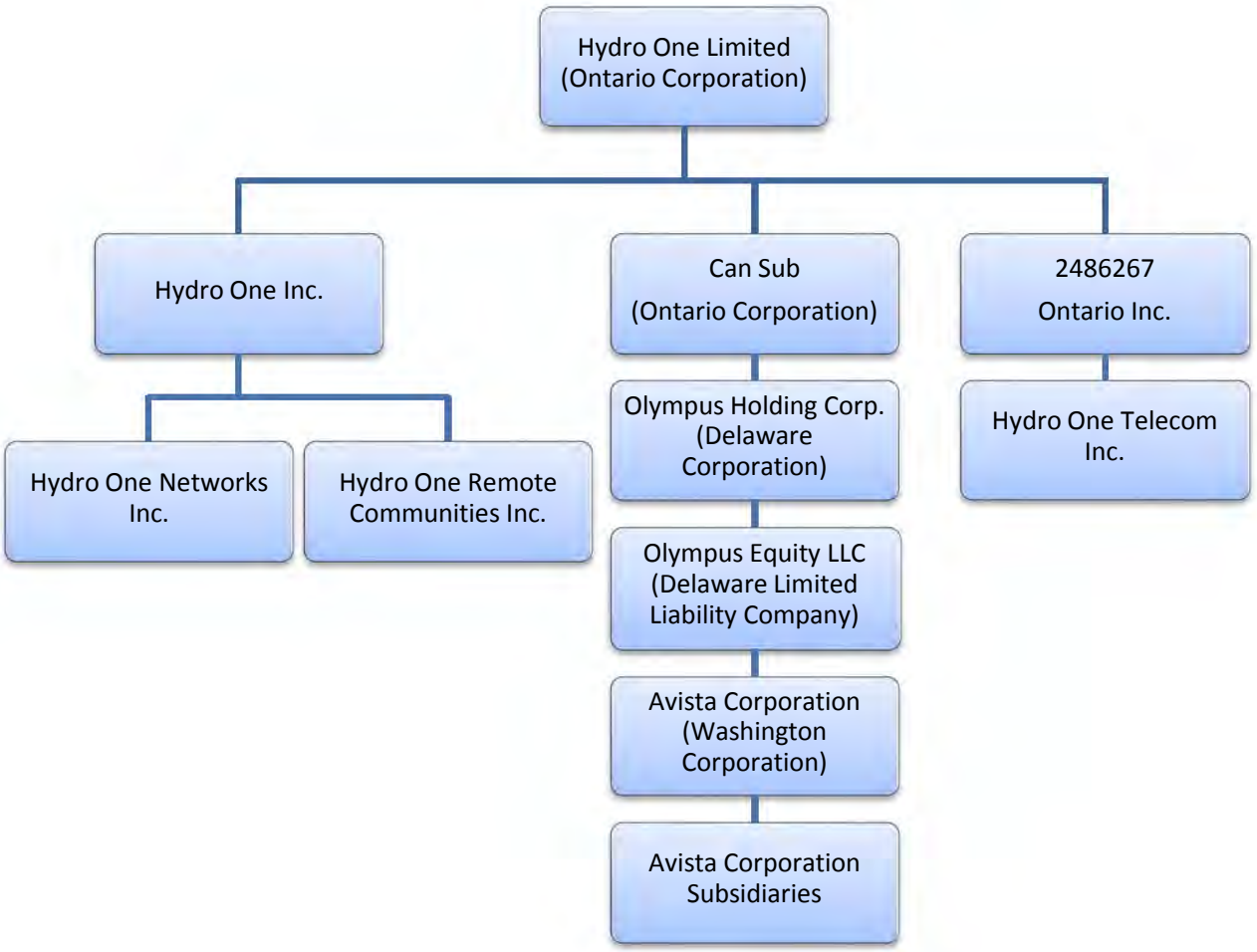
Summary of Colstrip Costs (WA Share)

	Total Amount	Amortization Period (Years)	Annual Amount
Net Book Value of Colstrip Units 3 & 4, including transmission assets, at December 31, 2017	$ 71,506,933		
Estimated asset retirement obligations	42,738,900		
Undepreciated Balances:	114,245,833		
Future depreciation expense recovered January 1, 2018 - December 31, 2027	(45,334,922)		
Temporary Tax Credits	(16,700,000)		
Net Colstrip Costs Recorded as Regulatory Asset	$ 52,210,911	36	$ 1,450,303
Electric Rate Credit	$ (24,606,700)	5	$ (4,921,340)
Net Impact to Customers Beginning October 1, 2018			$ (3,471,037)

[4] The Colstrip accounts included as rate base include the following: FERC Account No. 101.0 – Plant Cost, FERC Account No. 108.0 – Accumulated Depreciation, FERC Account No. 182.3 – Regulatory Asset ARO, FERC Account No. 182.3 – Regulatory Asset Colstrip, FERC Account No. 230.0 – Colstrip ARO, and FERC Account No. 242.0 – Colstrip Accounts Payable.

Appendix B to Settlement Stipulation in U-170970

Revised Post-Closing Corporate Structure



Certificate of Service
Docket U-170970

I certify that I have this day served the attached Settlement Stipulation and Agreement and Motion on behalf of Hydro One Limited and Avista upon all parties of record listed by email below:

DATED at Spokane, Washington, March 27, 2018.

/s/ Paul Kimball
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HYDRO ONE/803
Schmidt

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

MAYO M. SCHMIDT
Exhibit No. 803

Governance Agreement between Hydro One and the Province of Ontario

HYDRO ONE LIMITED

GOVERNANCE AGREEMENT

Dated as of November 5, 2015

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GOVERNANCE AGREEMENT

THIS AGREEMENT is made as of the 5th day of November, 2015

B E T W E E N:

HYDRO ONE LIMITED a corporation incorporated under the laws of the Province of Ontario

("**Hydro One**")

– and –

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

(the "**Province**"), as represented by the Minister of Energy

RECITALS:

A. The Province has determined that in order to strengthen the long-term performance of Hydro One and generate value for Ontarians it is desirable to broaden the ownership of Hydro One pursuant to the Offering.

B. The Province and Hydro One wish to establish the governance structure for Hydro One given the Province's position as a significant and responsible shareholder of Hydro One.

C. In the Prospectus, the Province has stated that it intends to sell additional common shares of Hydro One over time. Pursuant to the *Electricity Act, 1998* (Ontario), the Minister of Energy on behalf of the Province has the authority to dispose of its interest in Hydro One and enter into any agreement the Minister considers necessary or incidental to the disposition of any such interest. However, under the *Electricity Act, 1998* (Ontario) (i) the Province is not permitted to sell Voting Securities if as a result the Province would own less than 40% of any class or series of Voting Securities and (ii) if as a result of the issuance of additional Voting Securities by Hydro One, the Province owns less than 40 per cent of the outstanding number of Voting Securities of any class or series, the Province is required to take steps to increase its ownership (subject to the Lieutenant Governor in Council determining the manner by which, and the time by or within which, the Voting Securities shall be acquired) to not less than 40 per cent of the outstanding number of Voting Securities of that class or series, in accordance with the provisions of that statute.

D. Given the Province's stated intention about future sales by it of common shares of Hydro One, the Province is prepared to commit not to acquire previously issued Voting Securities in the future if the Province would, after that acquisition, own more than 45% of any class or series of Voting Securities.

E. Given the Province's ownership obligations with respect to Voting Securities in accordance with the *Electricity Act, 1998* (Ontario), Hydro One is prepared to provide the

Province with a pre-emptive right to acquire up to 45% of certain new issuances of Voting Securities by Hydro One.

F. Hydro One and the Province wish to enter into this Agreement to give effect to the matters set out in the Recitals and to govern the Province's relationship with Hydro One in its capacity as a holder of Voting Securities.

In consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties agree as follows.

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement:

1.1.1 "**Ad Hoc Nominating Committee**" has the meaning given to that term in Section 4.7.2;

1.1.2 "**Agreement**" means this Governance Agreement and all Schedules attached to this agreement, in each case as they may be amended, supplemented or replaced from time to time in accordance with this Agreement;

1.1.3 "**Annual Confirmation Meeting**" means the first meeting of Directors after each annual meeting of Shareholders;

1.1.4 "**Arbitration Rules**" has the meaning given to that term in Section 7.1;

1.1.5 "**Articles**" means the articles of incorporation of Hydro One, as amended from time to time;

1.1.6 "**Board**" means the board of directors of Hydro One;

1.1.7 "**Board Diversity Policy**" means the policy on board diversity approved by the Board and in effect on the date of this Agreement, as it may be amended from time to time in accordance with Section 2.4.2;

1.1.8 "**Business Day**" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day identified as a "holiday" under Section 88 of the *Legislation Act*, 2006 (Ontario);

1.1.9 "**Chair**" means the chair of the Board;

1.1.10 "**CEO**" means the Chief Executive Officer of Hydro One;

1.1.11 "**Circular Deadline**" has the meaning given to that term in Section 4.3.3;

1.1.12 "**Constating Documents**" means Hydro One's articles of incorporation, certificate of incorporation, by-laws, or similar organizational documents, as the same may be amended from time to time;

1.1.13 "**Contested Meeting**" means a meeting of Shareholders for the purposes of electing Directors where the number of candidates for election as a Director validly nominated exceeds the number of Directors to be elected at that meeting;

1.1.14 "**Director**" means a director of Hydro One;

1.1.15 "**DRIP**" means any dividend re-investment arrangement established by Hydro One from time to time that is on terms (including as to discount rate) consistent with dividend re-investment arrangements of other publicly-traded utilities in Canada and that does not include a cash purchase option.

1.1.16 "**EA**" means the *Electricity Act, 1998* (Ontario);

1.1.17 "**Effective Date**" means the date the Offering is completed;

1.1.18 "**Excluded Issuance**" means the issuance of Voting Securities: (i) pursuant to employee or director compensation plans existing on the date hereof or plans adopted after the date hereof that comply with the rules of the TSX and, if required, have been approved by the TSX; (ii) pursuant to a DRIP; (iii) pursuant to a rights offering that is open to all Shareholders; or (iv) pursuant to any business combination, take-over bid, arrangement, asset purchase transaction or other acquisition of assets or securities of a third party;

1.1.19 "**Expected Departing Directors**" has the meaning given to that term in Section 4.3.1;

1.1.20 "**FAA**" means the *Financial Administration Act* (Ontario);

1.1.21 "**Governance Principles**" has the meaning given to that term in Section 2.1;

1.1.22 "**Governmental Authority**" means any federal, national, supranational, state, provincial or local government, any court, tribunal, arbitrator, authority, agency, commission, official, any Canadian or Provincial minister or the Crown or foreign equivalent or any non-governmental self-regulatory agency or other instrumentality of any government that, in each case, has jurisdiction over the matter in question;

1.1.23 "**Hydro One**" means Hydro One Limited;

1.1.24 "**Hydro One Entity**" means any Person controlled directly or indirectly by Hydro One where "control" has the meaning given to that term in the take-over bid rules under Ontario securities Laws;

1.1.25 "**Hydro One Ombudsman**" means the ombudsman for Hydro One appointed by the Board pursuant to Section 48.3 of the EA;

1.1.26 "**Hydro One's Governance Standards**" has the meaning given to that term in Section 2.4.2;

1.1.27 "**Law**" means all laws, statutes, rules, regulations, ordinances, judgments, orders, writs, directives, decisions, rulings, decrees, awards and other pronouncements having the effect of law in Canada or in Ontario, or, as applicable, any foreign country or any other domestic or any foreign province, state, county, city or other political subdivision or of any Governmental Authority;

1.1.28 "**Majority Voting Policy**" means the majority voting policy of Hydro One approved by the Board and in effect on the date of this Agreement, as it may be amended from time to time in accordance with Sections 2.4.1 and 2.4.2;

1.1.29 "**material information**" means a "material fact" or a "material change" (as each of those terms is defined under applicable securities Laws);

1.1.30 "**Nominating and Governance Committee**" has the meaning given to that term in Section 3.5;

1.1.31 "**Nomination Deadline**" has the meaning given to that term in Section 4.3.3;

1.1.32 "**Nomination Notice**" has the meaning given to that term in Section 4.3.3;

1.1.33 "**OBCA**" means the *Business Corporations Act* (Ontario);

1.1.34 "**OEB**" means the Ontario Energy Board continued as a non-share capital corporation under the OEB Act;

1.1.35 "**OEB Act**" means the *Ontario Energy Board Act, 1998* (Ontario);

1.1.36 "**Offer**" has the meaning given to that term in Section 6.1;

1.1.37 "**Offered Securities**" has the meaning given to that term in Section 6.1;

1.1.38 "**Offering**" means the initial public offering of common shares of Hydro One described in the Prospectus;

1.1.39 "**Offering Outside Date**" has the meaning given to that term in Section 6.2;

1.1.40 "**Official or Employee of the Province**" has the meaning given to that term in Schedule "A" to this Agreement;

1.1.41 "**Ordinary Board Resolution**" means a resolution of the Board passed by at least a majority of the votes cast at a meeting of the Directors, or consented to in writing by all of the Directors;

1.1.42 "**Party**" means a party to this Agreement and "**Parties**" means all of the parties to this Agreement;

1.1.43 "**Person**" means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, Governmental Authority, trust, trustee, executor, administrator, or other legal personal representative;

1.1.44 "**Proposed Offering**" has the meaning given to that term in Section 6.1;

1.1.45 "**Prospectus**" means the prospectus of Hydro One dated October 29, 2015;

1.1.46 "**Province**" has the meaning given to that term in the Recitals;

1.1.47 "**Provincial Nominee**" means any Director nominated by the Province to serve as a Director pursuant to the terms of this Agreement who has been duly elected or appointed to the Board;

1.1.48 "**Provincial Representative**" means the Minister of Energy or any other Person(s) designated from time to time in accordance with Section 8.9 by the Minister of Energy as representing the Province for the particular matter or matters under this Agreement stated in the relevant designation, provided that the Minister of Energy may designate no more than one Person for a particular matter;

1.1.49 "**Public Accounts**" has the same meaning as that term has when used in the FAA;

1.1.50 "**Public Entity**" has the meaning given to the term "public entity" in the FAA;

1.1.51 "**Recitals**" means the recitals to this Agreement;

1.1.52 "**Registration Rights Agreement**" means the registration rights agreement dated the date of this Agreement between the Province and Hydro One;

1.1.53 "**Removal Meeting**" has the meaning given to that term in Section 4.7.1;

1.1.54 "**Removal Notice**" has the meaning given to that term in Section 4.7.1;

1.1.55 "**Response**" has the meaning given to that term in Section 6.2;

1.1.56 "**Shareholder**" means a holder of Voting Securities;

1.1.57 "**Skills Matrix**" means the matrix of expertise, skills, experience and perspectives applied in recruiting and retaining Directors with a balance of expertise, skills, experience and perspectives, taking into consideration Hydro One's mandate, risk profile, operations and ownership structure, approved by the Board and in effect on the date of this Agreement, as it may be amended from time to time in accordance with Section 2.4.2;

1.1.58 "**Specified Provincial Entities**" means each organization referred to in Sections 6 and 7 of Schedule "A" to this Agreement.

1.1.59 "**Special Board Resolution**" means a resolution of the Board passed by at least two-thirds of the votes cast at a meeting of the Directors, or consented to in writing by all of the Directors;

1.1.60 "**TSX**" means Toronto Stock Exchange;

1.1.61 "**Voting Security**" means a voting security of Hydro One where "voting security" has the meaning given to the term "voting security" in the EA; and

1.1.62 "**Voting Security Threshold**" has the meaning given to that term in Section 4.8.1.

1.2 Schedules

The following schedules are attached to this Agreement:

Schedule "A"	–	Official or Employee of the Province
Schedule "B"	–	Form of Confidentiality Agreement
Schedule "C"	–	Hydro One's Governance Standards
Schedule "D"	–	Rules of Procedure for Arbitration

1.3 Interpretation

Unless otherwise expressly provided in this Agreement or the context requires a different interpretation, the following rules of interpretation shall apply:

1.3.1 The table of contents and headings and references to them set forth in this Agreement are for convenience of reference purposes only, do not constitute a part of this Agreement and do not affect and are not intended to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof.

1.3.2 All references in this Agreement to Sections, Articles, or Schedules, shall be deemed to refer to Sections, Articles or Schedules of this Agreement, as applicable.

1.3.3 All references in this Agreement to specific Sections, Articles, Schedules, and other divisions of this Agreement followed by a number are references to the whole

of the Section, Article, Schedule or other division of this Agreement, as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.

1.3.4 The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.

1.3.5 Any reference in this Agreement to each of the masculine, feminine and neuter genders shall be deemed to include all other genders.

1.3.6 Any reference to the singular in this Agreement shall also include the plural and vice versa, as the context may require.

1.3.7 References in this Agreement to any Party or other Person (other than a Provincial Representative) shall include references to its respective successors resulting from any amalgamation, merger, arrangement or other reorganization of such Party or other Person.

1.3.8 All amounts in this Agreement are stated and are to be paid in Canadian currency.

1.3.9 Unless specified otherwise, reference in this Agreement to a statute or statutory provision refers to that statute or statutory provision as it may be amended, replaced or re-enacted from time to time, or to any restated or successor statute or statutory provision of comparable effect. A reference in this Agreement to a statute includes a reference to all rules, regulations, by-laws and other instruments made under that statute.

1.3.10 Any reference to a number of days shall refer to calendar days unless Business Days are specified.

1.3.11 In construing this Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

1.3.12 Where this Agreement states that an obligation shall be performed “no later than” or “within” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.

1.3.13 Where this Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

1.3.14 Any reference to time of day or date means the local time or date in Toronto, Ontario unless otherwise specified.

1.3.15 References containing terms such as:

(a) "hereof", "herein", "hereto", "hereinafter", "hereunder" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole;

(b) "include", "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "include without limitation", "includes without limitation" and "including without limitation"; and

(c) "in its sole discretion" shall be deemed to be "in its sole and absolute discretion".

1.3.16 Where an amount is to be determined under this Agreement by rounding to the nearest whole number, any half shall be rounded up to the next whole number.

1.3.17 Unless otherwise provided in this Agreement, any action to be taken by the Province, including the performance of any obligation or the exercise of any right, shall be undertaken by a Provincial Representative. Any action taken by a Provincial Representative shall bind the Province under this Agreement with respect to the matter or matters for which the Minister of Energy has designated that Provincial Representative at the relevant time and Hydro One shall be entitled to rely on any action taken by a Provincial Representative without any further enquiry into the Provincial Representative's authority to take the particular action.

ARTICLE 2
GOVERNANCE PRINCIPLES AND GOVERNANCE STANDARDS

2.1 Governance Principles

The business and affairs of Hydro One shall be managed and operated in accordance with the following principles (collectively, the "**Governance Principles**"):

2.1.1 Hydro One shall maintain, and act in accordance with, corporate governance policies, procedures and practices that are consistent with the best practices of leading Canadian publicly listed companies, having regard to Hydro One's ownership structure and this Agreement.

2.1.2 The Board shall be responsible for the management of or supervising the management of the business and affairs of Hydro One, including for those matters described in Section 2.3.

2.1.3 The Province shall, with respect to its ownership interest in Hydro One, engage in the business and affairs of Hydro One and the Hydro One Entities as an investor and not as a manager.

2.2 Interpretation of Governance Principles

2.2.1 For clarity, the Governance Principles:

(a) are fundamental to Hydro One and the Province entering into this Agreement, and compliance with the Governance Principles is essential to the management and operation of Hydro One;

(b) are obligations of Hydro One and the Province;

(c) are subject to applicable Laws and the other provisions of this Agreement; and

(d) do not restrict the Province in any way (i) in relation to the regulation of Hydro One or any Hydro One Entity, including by the OEB or other body appointed by or responsible to the Province, or (ii) in relation to system planning by the Independent Electricity System Operator, or (iii) in relation to the enforcement of Ontario Laws applicable to Hydro One or any Hydro One Entity or the enactment, promulgation or amendment of such Laws or (iv) in respect of any communication regarding Hydro One or any Hydro One Entity by an individual in his or her capacity as a member of the Legislative Assembly of Ontario, if made in the Legislative Assembly of Ontario or in another public forum in relation to the enforcement, promulgation or enactment of Ontario Laws or in relation to Ontario regulatory policy; and, for further clarity, communications by a member of the Legislative Assembly of Ontario who is not a member of the governing party at the relevant time are not communications by the Province.

2.2.2 With respect to its ownership interest in Hydro One, the Province intends to achieve its policy objectives through legislation and regulation as it would with respect to any other utility operating in Ontario. For clarity, neither the Governance Principles nor that intention restrict the exercise by the Province of its rights as a Shareholder, including its right to vote any Voting Securities in the sole interest and sole discretion of the Province, except as expressly provided for in this Agreement.

2.3 Role of the Board

Subject to applicable Law, including the OBCA, those matters for which the Board is responsible and in respect of which it has full authority (whether directly, by delegation or by supervision) include specifically:

(a) corporate governance;

(b) the appointment, termination, supervision and compensation of the CEO, Chief Financial Officer and other senior officers of Hydro One;

(c) remuneration of directors;

(d) strategic planning and direction;

(e) risk management;

(f) capital structure;

(g) dividend and distribution policy;

(h) financial management and reporting;

(i) approval of the annual business plan and budget of Hydro One;

(j) disclosure under applicable securities and other Laws and other public communication; and

(k) any other matter that from time to time ordinarily is supervised by the board of directors of a corporation with publicly traded securities.

2.4 Governance Standards

2.4.1 Hydro One shall maintain in effect at all times a majority voting policy in respect of the election of Directors that requires a Director nominee who receives a greater number of votes "withheld" than votes "for" at a meeting of Shareholders to elect Directors to tender his or her resignation to the Board promptly following the conclusion of that meeting. The parties acknowledge that the Majority Voting Policy in effect on the date of this Agreement satisfies this requirement. Hydro One may amend the Majority Voting Policy only in accordance with Section 2.4.2 and to the extent consistent with the requirements of majority voting policies required by the TSX or other applicable Laws, even where Hydro One is exempt from those requirements by reason of the Province's ownership interest and provided that the amended Majority Voting Policy complies with the first sentence of this Section 2.4.1 or will have substantially the same effect.

2.4.2 Hydro One has established the governance policies, procedures and practices listed in Schedule "C" attached to this Agreement (collectively, "**Hydro One's Governance Standards**"), which include the mandate for the Hydro One Ombudsman, the Skills Matrix, the Board Diversity Policy and the Majority Voting Policy. No amendment, supplement or addition to Hydro One's Governance Standards shall be effective unless approved by a Special Board Resolution, except to the extent required by any applicable Laws.

2.5 Restriction on Province Initiating a Fundamental Change

The Province shall not requisition a meeting of Shareholders to consider a fundamental change (as described in Part XIV of the OBCA) in respect of Hydro One. The Province may, however, at any meeting of Shareholders vote its Voting Securities in its sole interest and sole discretion on any proposal or resolution relating to such a proposed fundamental change.

2.6 Restriction on Province Acting Jointly or in Concert

The Province shall not act jointly or in concert with any Person in connection with the exercise by that other Person of that Person's rights as a Shareholder or take any steps, directly or indirectly, to solicit any other Person to exercise that Person's rights as a Shareholder in a manner if the Province would be prohibited under this Agreement from directly exercising its own rights as a Shareholder in that manner. For clarity, a Person's rights as a Shareholder include for this purpose the right to requisition a meeting of Shareholders, to nominate someone for election as a Director and to vote any Voting Securities, but nothing in this Section 2.6 shall restrict the Province from soliciting proxies to vote another Person's shares in a particular manner, if the Province would have been entitled to vote its own Voting Securities in that manner under this Agreement. For greater certainty, any pension plan or related pension fund which the Province or any Public Entity establishes, sponsors, administers or contributes to, whether in whole or in part and whether before or after the Effective Date, shall not be treated as a joint actor of the Province for purposes of this Section 2.6, except to the extent that the Province solicits the administering entity or governing body of the pension plan or related pension fund to take a particular action or step.

2.7 Acquisition by the Province of Additional Voting Securities

2.7.1 The Province shall not, directly or indirectly, acquire beneficial ownership or control or direction over previously issued Voting Securities if after the acquisition the Province would have beneficial ownership or exercise control or direction over greater than 45% of any class or series of Voting Securities. For clarity, the foregoing restriction does not require the Province to sell or otherwise dispose of any Voting Securities it owns on the Effective Date or that it acquires after that date in accordance with this Agreement nor does it restrict the Province from acquiring Voting Securities on an issuance by Hydro One pursuant to Article 6 or otherwise.

2.7.2 For purposes of Section 2.7.1, beneficial ownership of or control or direction over the following Voting Securities shall not be taken into account:

(a) Voting Securities acquired by the Province as a result of the enforcement by the Province of any security interest securing payment of debt obligations owing by third parties to the Province;

(b) Voting Securities acquired by Ontario Power Generation Inc. for the purposes of fulfilling obligations it may have under employee compensation arrangements to deliver Voting Securities to its employees; or

(c) Voting Securities acquired pursuant to the Ontario Nuclear Funds Agreement; and

(d) Voting Securities acquired by, on behalf of, or by the trustee for, the Ontario Retirement Pension Plan contemplated by the *Ontario Retirement Pension Plan Act*, 2015.

2.7.3 For clarity, for purposes of Section 2.7.1, the Province does not have beneficial ownership of or exercise control or direction over Voting Securities that are investments on behalf of the Province or a Public Entity:

(a) made by a third party investment manager with discretionary authority (subject to any retained discretion in order for the Province or the Public Entity to fulfil its fiduciary duties);

(b) made by an investment fund or other pooled investment vehicle in which the Province or a Public Entity has directly or indirectly invested and which is managed by a third party investment manager; or

(c) made as a passive investment,

and in each case made under a bona fide investment program and independently of, and not coordinated with, the Province's policy objectives relating to its ownership of Voting Securities pursuant to the EA.

2.8 TSX Listing

Hydro One shall maintain a listing of its common shares on the TSX, subject to continuing to meet the listing requirements of the TSX.

2.9 Obligations of Hydro One

Any obligations of the Board, the Nominating and Governance Committee, the Chair or any other representative of Hydro One provided for in this Agreement are deemed to be obligations of Hydro One and Hydro One shall ensure those obligations are complied with.

2.10 Governance of Subsidiaries

2.10.1 Subject to applicable Laws, the board of directors of each of Hydro One Inc. and Hydro One Networks Inc. shall be constituted to have the same members as the Board unless the Board determines otherwise.

2.10.2 Hydro One shall cause each of its wholly-owned Hydro One Entities, and shall use all commercially reasonable efforts to cause each of its other Hydro One Entities, to manage and operate its business and affairs on a basis that permits Hydro One to comply with its obligations under Sections 2.1.1 and 2.1.2.

2.10.3 Hydro One shall use its best efforts to cause each of its wholly-owned Hydro One Entities, and shall use all commercially reasonable efforts to cause each of its

other Hydro One Entities, to manage its business and affairs on a basis that facilitates and is consistent with the Province complying with its obligations under Section 2.1.3.

2.10.4 Hydro One shall cause each of its wholly-owned Hydro One Entities to, and shall use all commercially reasonable efforts to cause each of its other Hydro One Entities to, comply with their respective obligations under the EA and the OEB Act.

2.11 By-Laws

2.11.1 If Hydro One cannot perform its obligations under or comply with this Agreement without being in breach of the by-laws of Hydro One, then Hydro One shall, as soon as reasonably practical after determining that is the case and to the extent permitted by applicable Law:

(a) amend the by-laws to permit Hydro One to perform its obligations under and comply with the terms of this Agreement without breaching the by-laws; and

(b) submit the amendment to the Shareholders for approval at the next meeting of Shareholders.

2.11.2 To the extent that the requirements of this Agreement are in addition to or more onerous than the requirements of the by-laws of Hydro One, but do not otherwise require Hydro One to amend its by-laws in accordance with Section 2.11.1, Hydro One shall comply with the terms of this Agreement as well as the by-laws.

ARTICLE 3
GOVERNANCE STRUCTURE

3.1 Number of Directors

3.1.1 The number of Directors shall be a minimum of 10 and a maximum of 15. Hydro One's Articles shall at all times provide for this minimum and maximum number of Directors.

3.1.2 Until the first annual meeting of Shareholders after the date of this Agreement, the number of Directors of Hydro One shall be 15.

3.1.3 The number of Directors to be elected at the first and each subsequent annual meeting of Shareholders after the date of this Agreement shall be the number of Directors determined from time to time by the Board, subject to Section 3.1.1, the Articles and the OBCA.

3.1.4 If the Board increases the number of Directors between annual meetings of the Shareholders, any vacancies created by the increase shall be filled in accordance with Section 4.4.

3.2 Appointment of Chair

3.2.1 The appointment of a new Chair at any time must be approved by a Special Board Resolution.

3.2.2 The Chair shall be nominated and confirmed annually by a Special Board Resolution at the Annual Confirmation Meeting. If the Board does not confirm the Chair at the Annual Confirmation Meeting by a Special Board Resolution, the Board shall remove the Chair as soon as practicable and appoint a replacement Chair in accordance with this Section 3.2.

3.2.3 The Chair must be a Director.

3.2.4 The CEO shall not be the Chair.

3.2.5 The Parties acknowledge and confirm that the current Chair, as set forth in the Prospectus, has been nominated and confirmed as required by this Section 3.2 until the next Annual Confirmation Meeting.

3.2.6 Nothing in this Section 3.2 limits the ability of the Board, by Ordinary Board Resolution, to remove the Chair between Annual Confirmation Meetings.

3.3 Appointment of CEO

3.3.1 The appointment of a new CEO at any time must be approved by a Special Board Resolution.

3.3.2 The CEO must be confirmed annually by a Special Board Resolution at the Annual Confirmation Meeting. If the Board does not confirm the CEO at the Annual Confirmation Meeting by a Special Board Resolution, the Board shall remove the CEO as soon as practicable and appoint a replacement CEO in accordance with this Section 3.3.

3.3.3 Hydro One shall ensure that it is a term of the CEO's employment arrangements that she or he shall resign as a Director at such time that she or he ceases to be CEO.

3.3.4 The Parties acknowledge and confirm that the current CEO, as set forth in the Prospectus, has been appointed and confirmed as required by this Section 3.3 until the next Annual Confirmation Meeting.

3.3.5 Nothing in this Section 3.3 limits the ability of the Board, by Ordinary Board Resolution, to remove the CEO between Annual Confirmation Meetings.

3.4 Advance Notice for Special Board Resolution

Notwithstanding anything to the contrary in the by-laws of Hydro One, Hydro One shall notify the Directors not less than 10 days in advance of a meeting at which a resolution is to be considered that must be approved by Special Board Resolution, provided that (i) the foregoing

notice requirement does not apply to confirmation of the Chair and CEO at the Annual Confirmation Meeting, and (ii) a Director may in any manner waive notice, provided that his or her attendance at a meeting shall be treated as a waiver of any notice of that meeting required by this Section 3.4 except where such Director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called. Hydro One shall include in the notice a copy of the proposed resolution and details regarding the matter to be considered for approval.

3.5 Nominating and Governance Committee

The Board shall maintain a committee (the "**Nominating and Governance Committee**") that has the responsibilities and obligations contemplated by this Agreement to be responsibilities and obligations of the Nominating and Governance Committee. All references in this Agreement to the Nominating and Governance Committee shall mean whichever committee has those responsibilities and obligations at the relevant time, regardless of what other responsibilities and obligations that committee may have and regardless of the name or designation of that committee in the Hydro One Governance Standards. For clarity, initially the Nominating and Governance Committee is designated in Hydro One's Governance Standards as the "Nominating, Corporate Governance, Public Policy & Regulatory Committee".

ARTICLE 4
ELECTION AND APPOINTMENT OF DIRECTORS

4.1 Nomination of Directors

4.1.1 Subject to Section 4.7, at any meeting of Shareholders at which Directors are to be elected, Hydro One shall propose nominees for election as Directors as follows:

(a) The CEO shall be nominated.

(b) Subject to Section 4.8, the Province shall be entitled to nominate the number of nominees that is equal to 40% of the number of Directors to be elected (rounded to the nearest whole number). Each nominee of the Province must meet the qualifications set out in Section 4.2 and any Director nominee of the Province must be confirmed in accordance with Section 4.3, as applicable.

(c) The Directors not nominated pursuant to Section 4.1.1(a) or 4.1.1(b) shall be nominated by the Nominating and Governance Committee. Each nominee of the Nominating and Governance Committee must meet the qualifications set out in Section 4.2 and any Director nominee of the Nominating and Governance Committee must be confirmed in accordance with Section 4.3, as applicable.

4.1.2 In respect of any meeting of Shareholders at which Directors are to be elected, Hydro One shall take all actions necessary and advisable to ensure that (i) proxies are solicited by or on behalf of Hydro One in favour of the election of the Director nominees nominated in accordance with Section 4.1.1 and (ii) every such nominee is endorsed and recommended in the applicable management information

circular and other proxy solicitation materials provided by or on behalf of Hydro One to Shareholders. Hydro One shall take all other commercially reasonable actions necessary to permit the election or appointment to the Board of such nominees.

4.1.3 Subject to Sections 4.5, 4.6.1 and 4.7.6, in respect of any meeting of Shareholders at which Directors are to be elected, the Province shall vote in favour of the Director nominees nominated in accordance with Section 4.1.1.

4.2 Qualification of Director Nominees

4.2.1 Each Director nominee must be an individual of high quality and integrity who has:

(a) significant experience and expertise in business or that is applicable to business,

(b) served in a senior executive or leadership position,

(c) broad exposure to and understanding of the Canadian or international business community,

(d) skills for directing the management of a company, and

(e) motivation and availability,

in each case to the extent requisite for a business of the complexity, size and scale of the business of Hydro One and on a basis consistent with the highest standards for directors of leading Canadian publicly listed companies.

4.2.2 Other than the CEO, each Director nominee shall be independent of Hydro One within the meaning of Ontario securities Laws governing the disclosure of corporate governance practices.

4.2.3 Other than the CEO, each Director nominee (including, for clarity, a nominee of the Province), shall be independent of the Province. For these purposes, a Director nominee shall be independent of the Province if:

(a) he or she is independent of Hydro One within the meaning of Ontario securities Laws governing the disclosure of corporate governance practices, where the Province and each Specified Provincial Entity is deemed to be a "parent" of Hydro One under that definition but excluding, in the case only of the Directors named in the Prospectus, any prior relationship referred to in those Ontario securities Laws where the relationship ended before August 31, 2015;

(b) he or she is not a current Official or Employee of the Province; and

(c) he or she has not been an Official or Employee of the Province for at least three years prior to the date of his or her nomination to the Board but excluding, in the

case only of the Directors named in the Prospectus, where the relationship ended before August 31, 2015.

4.2.4 Each Director nominee shall meet the requirements of applicable securities and other Laws and any exchange on which Voting Securities are listed.

4.2.5 No Director nominee may be proposed by the Province or the Nominating and Governance Committee to replace an incumbent Director if, taking into account the selection criteria identified pursuant to Section 4.3.1 and any other proposed Director nominees to replace incumbent Directors who have already been confirmed pursuant to Section 4.3, the Board would not collectively satisfy the Skills Matrix, Board Diversity Policy or any other policy relating to the composition of the Board forming part of Hydro One's Governance Standards. For clarity, notwithstanding the previous sentence, the Parties acknowledge that the Skills Matrix, Board Diversity Policy and other policies referred to in the previous sentence may include goals that the Board expressly intends to strive to meet over time (referred to here as "aspirational goals"). Nothing in this Section 4.2.5 shall prevent a Director nominee from being proposed who does not meet aspirational goals, provided his or her nomination would not prevent the Board from collectively satisfying any requirement of those policies that is then applicable or be reasonably likely to prevent the Board from satisfying any aspirational goal over the period of time if any, contemplated for that aspirational goal by the relevant policy.

4.2.6 The majority of the Board must at all times be resident Canadians (as defined in the OBCA). Neither the Province nor the Nominating and Governance Committee will nominate any Person for election or appointment as a Director if as a result of that nominee being elected or appointed as a Director, this requirement would not be met.

4.2.7 Notwithstanding this Section 4.2, each Director named in the Prospectus is qualified to be a director of Hydro One on the Effective Date whether or not he or she satisfies the qualifications set out in this Section 4.2 on that date. The Provincial Nominees on the Effective Date are those who have been identified as such in the Prospectus.

4.2.8 If the Province or the Nominating and Governance Committee nominates any individual who is an incumbent Director for election as a Director at an annual meeting of Shareholders held after the Effective Date, that individual shall not be subject to confirmation pursuant to Section 4.3.4 as satisfying the qualifications set out in this Section 4.2, except to the extent there has been a material change in that individual's circumstances since the Effective Date or his or her most recent confirmation pursuant to Section 4.3.4, as applicable, that would affect whether he or she satisfies the qualifications set out in this Section 4.2. For clarity, in determining whether there has been a material change in an individual's circumstances for this purpose, changes in the duration of an individual's term as a Director and in an individual's age shall be taken into account. The Province or the Nominating and Governance Committee, as applicable, shall promptly notify the other upon becoming aware of any such material change in circumstances regarding any incumbent Director.

4.3 Identification and Confirmation of Director Nominees

4.3.1 Each year following the annual meeting of Shareholders, the Province and representatives of the Nominating and Governance Committee shall meet to discuss which Directors each does not expect to re-nominate in the next one to five years (whether due to resignation or retirement or otherwise), with an emphasis on those Directors, if any, that each previously nominated that each does not expect to nominate for election at the next annual meeting of Shareholders ("**Expected Departing Directors**"). In this discussion the Province and representatives of the Nominating and Governance Committee shall consider the impact on the Board of not re-nominating the Expected Departing Directors and identify the selection criteria for nominees to replace those Expected Departing Directors, to ensure that the Board will collectively comply with this Agreement and collectively satisfy the Skills Matrix, Board Diversity Policy and any other policy relating to the composition of the Board forming part of Hydro One's Governance Standards. The representatives of the Nominating and Governance Committee shall also at this meeting recommend to the Province individuals whom the Nominating and Governance Committee has previously identified as potential candidates for nomination to the Board, provided that the Province shall have no obligation to nominate any of the recommended individuals as one of its Director nominees. This initial meeting between the Province and representatives of the Nominating and Governance Committee would be expected to occur within 60 days following each annual meeting of Shareholders.

4.3.2 Following the initial meeting between the Province and representatives of the Nominating and Governance Committee contemplated in Section 4.3.1, each of the Province and the Nominating and Governance Committee shall separately consider their respective Expected Departing Directors and their proposed Director nominees to replace those Directors. The Province and representatives of the Nominating and Governance Committee shall meet to discuss further their Expected Departing Directors and proposed replacement nominees under consideration. These subsequent meetings between the Province and representatives of the Nominating and Governance Committee would be expected to occur within 120 days following each annual meeting of Shareholders.

4.3.3 As soon as practicable following the discussions between the Province and representatives of the Nominating and Governance Committee referenced in Sections 4.3.1 and 4.3.2, each of the Province and the Nominating and Governance Committee shall provide one or more notices (each being a "**Nomination Notice**") setting out its proposed Director nominees, along with (i) sufficient background information about any nominee who is not an incumbent Director or (ii) in the case of an incumbent Director whose circumstances have materially changed as described in Section 4.2.8, sufficient information about the material change, so as in either case to allow the other to assess whether that nominee satisfies the qualifications set out in Section 4.2. Each of the Province and the Nominating and Governance Committee shall, in any event, deliver its Nomination Notice to the other at least 60 days (the "**Nomination Deadline**") prior to the date by which proxy solicitation materials must be mailed for purposes of the next annual meeting of Shareholders (the "**Circular Deadline**"). Hydro One shall notify

the Province of the Nomination Deadline at least 20 days prior to the Nomination Deadline.

4.3.4 If the Province or the Nominating and Governance Committee has received a Nomination Notice from the other of a Director nominee (i) who is not an incumbent Director or (ii) who is an incumbent Director whose circumstances have materially changed as described in Section 4.2.8, in either case prior to the Nomination Deadline, the Province or the Nominating and Governance Committee, as the case may be, shall have ten Business Days to confirm or reject that Director nominee, acting reasonably, but may reject that nominee only on the grounds that the nominee does not satisfy the qualifications for Directors set out in Section 4.2 or, in the case of a nominee whose circumstances have materially changed as contemplated in Section 4.2.8, the nominee as a consequence of the change no longer satisfies such qualifications. Any Director nominee who is not rejected by the Nominating and Governance Committee or the Province, as the case may be, within ten Business Days of receiving a Nomination Notice of such nominee's nomination shall be proposed by Hydro One for election as a Director in accordance with Section 4.1.1.

4.3.5 If any Director nominee of the Province or the Nominating and Governance Committee is rejected pursuant to Section 4.3.4, the Province or the Nominating and Governance Committee, as the case may be, shall be entitled to deliver one or more Nomination Notices nominating a replacement Director nominee until a nominee is confirmed by the other in accordance with Section 4.3.4.

4.3.6 If notwithstanding the expectations of the Province and the Nominating and Governance Committee regarding Expected Departing Directors, there is any Expected Departing Director: (i) for whom no replacement nominee has been confirmed in accordance with Section 4.3.4 prior to the Circular Deadline and (ii) who has not resigned, that Director shall be re-nominated in accordance with Section 4.1.1.

4.3.7 The Province and the Nominating and Governance Committee shall use commercially reasonable efforts to cause Director nominees to be confirmed prior to the Circular Deadline. If insufficient Director nominees of either the Province or the Nominating and Governance Committee are confirmed by the Circular Deadline and Section 4.3.6 does not apply, the Province and the Nominating and Governance Committee shall, acting reasonably, consider and implement alternatives to ensure that applicable Law and the provisions of Section 4.1.1 with respect to the number of Directors each is entitled to nominate are complied with in respect of the applicable annual meeting of Shareholders. These alternatives may include reducing the number of directors to be elected at that annual meeting of Shareholders or delaying the date of that annual meeting of Shareholders until Section 4.1.1 may be complied with.

4.3.8 The parties, acting reasonably, shall apply a process that is as substantially equivalent to the process provided for in this Section 4.3 as is practicable in the circumstances, with respect to any meeting of Shareholders to elect Directors other than an annual meeting of Shareholders.

4.3.9 If there is any dispute with respect to the process for nominating Directors provided for in this Section 4.3, either the Province or the Nominating and Governance Committee may request that ADR Chambers Canada appoint a single arbitrator with expertise in corporate governance matters to adjudicate the dispute. The arbitration proceedings will be conducted in accordance with Article 7.

4.4 Replacement Board Nominees in case of Vacancies

4.4.1 If one or more vacancies occurs on the Board:

(a) if the vacancy is caused by (i) a Provincial Nominee ceasing to serve as a Director or (ii) an increase in the number of Directors such that, pursuant to Section 4.1.1(b), the Province would be entitled to nominate an additional Director at the next meeting of Shareholders at which Directors are to be elected, then the Province shall nominate an individual to fill the vacancy, provided that the nominee shall be subject to confirmation by the Nominating and Governance Committee in accordance with a process that is as substantially equivalent to the process provided for in Section 4.3 as is practicable in the circumstances, as applied by the Parties, acting reasonably, and so that the vacancy can be filled within 90 days of the vacancy occurring;

(b) if the vacancy is created by the CEO ceasing to serve in that office, the vacancy shall be filled by the replacement CEO appointed in accordance with Section 3.3; and

(c) otherwise, the Nominating and Governance Committee shall nominate an individual to fill the vacancy, provided that the nominee shall be subject to confirmation by the Province in accordance with a process that is as substantially equivalent to the process provided for in Section 4.3 as is practicable in the circumstances, as applied by the Parties acting reasonably and so that the vacancy can be filled within 90 days of the vacancy occurring.

4.4.2 If:

(a) the replacement nominee to fill a vacancy as described in Section 4.4.1(a) or Section 4.4.1(c) has been confirmed as provided for in that Section; or

(b) upon the approval of the CEO's replacement pursuant to Section 3.3,

then in either such case, the Board shall appoint that replacement as a Director to fill the applicable vacancy.

4.5 Province's Voting Rights at Contested Shareholders Meetings

Notwithstanding Section 4.1.3, the Province may vote its Voting Securities or withhold from voting its Voting Securities in favour of any Director nominee (including for clarity the Provincial Nominees) at any Contested Meeting, at its sole discretion, except that the Province shall vote its Voting Securities in favour of the election of the CEO as a Director. The Province

shall not, however, nominate for election at any Contested Meeting or Removal Meeting any directors except in accordance with Section 4.1 or Section 4.7.3, as the case may be. For clarity, subsequent to any Contested Meeting, the provisions of this Agreement will continue to apply with respect to all future Director nominations.

4.6 Province's Right to Withhold Votes for Directors

4.6.1 Notwithstanding Section 4.1.3 but subject to Section 4.7.6, at any meeting of Shareholders at which Directors are to be elected, the Province may choose to withhold from voting in favour of any Director nominee with the exception of the CEO and, at the sole discretion of the Province, the Chair, provided that the Province shall do so only if it withholds from voting in favour of all Director nominees with the exception of the CEO and, at the sole discretion of the Province, the Chair. In the case of any annual meeting of Shareholders, the Province shall notify Hydro One in advance of the Circular Deadline of its intent to withhold from voting in favour of all Director nominees with the exception of the CEO and, at the sole discretion of the Province, the Chair.

4.6.2 If after a Shareholders meeting to elect Directors where the Province withholds from voting in favour of Director nominees in accordance with Section 4.6.1, one or more Directors elected at the Shareholders meeting tender their resignations as Directors pursuant to the Majority Voting Policy, the Board shall take whatever actions it determines are appropriate in the circumstances in accordance with the Majority Voting Policy, including:

(a) accepting Director resignations in a sequential manner and only after a replacement Director for the resigning Director has been identified and confirmed pursuant to Section 4.4;

(b) accepting some but not all Director resignations until sufficient replacement Directors for the resigning Directors have been identified and confirmed pursuant to Section 4.4;

(c) calling a Shareholders meeting for the election of Directors and accepting Director resignations only upon the election of replacement Directors at the Shareholders meeting;

(d) not accepting the Director resignations until Director nominees are elected at the next annual meeting of Shareholders; or

(e) rejecting the Director resignations.

4.7 Province's Right to Replace Directors

4.7.1 Notwithstanding any other provision of this Agreement, the Province may at any time provide Hydro One with a notice (a "**Removal Notice**") setting out its intention to request Hydro One to hold a Shareholders meeting for the purposes of removing all of the Directors then in office, including the Provincial Nominees, with the

exception of the CEO and, at the Province's sole discretion, the Chair (a "**Removal Meeting**").

4.7.2 Upon the Province delivering a Removal Notice to Hydro One, the Chair (whether or not the Province proposes to remove him or her) shall coordinate the establishment of a committee comprising:

(a) one representative of each of the five largest beneficial owners of Voting Securities known to Hydro One, excluding the Province, willing to provide representatives to serve on the committee or if fewer than five such beneficial owners of Voting Securities are willing to provide representatives to serve on the committee, then one representative of each of the beneficial owners of Voting Securities, but a minimum of three, willing to do so**,** or

(b) if at least three such beneficial owners of Voting Securities are not willing to provide representatives to serve on the committee within 30 days of the Province delivering a Removal Notice, then the individuals that the Province proposes to nominate as replacement Directors pursuant to Section 4.1.1

(in either case, the "**Ad Hoc Nominating Committee**"). In addition to supporting the establishment of the Ad Hoc Nominating Committee, the Chair shall assist the Ad Hoc Nominating Committee in carrying out its duties in an impartial manner.

4.7.3 The Province and the Ad Hoc Nominating Committee, acting reasonably, shall identify and confirm the replacement Director nominees to be nominated at the Removal Meeting to replace the incumbent Directors in accordance with Section 4.1.1 and a process that is as substantially equivalent to the process provided for in Section 4.3 as is practicable in the circumstances, as applied by the Province, Hydro One and the Ad Hoc Nominating Committee, acting reasonably, with the Ad Hoc Nominating Committee taking the place of the Nominating and Governance Committee, provided that none of the Director nominees determined pursuant to this Section 4.7 may be Directors other than the Chair if the Province elects pursuant to Section 4.7.1 not to vote for the removal of the Chair.

4.7.4 Hydro One shall call the Removal Meeting forthwith upon all the Director nominees being confirmed pursuant to Section 4.7.3, and shall hold the Removal Meeting within 60 days after all the Director nominees being confirmed pursuant to Section 4.7.3. From the time the Province delivers a Removal Notice until the Removal Meeting, the Directors then in office shall, in exercising their fiduciary duty with a view the best interests of Hydro One, take into account the Province's intention to cause a new Board to be constituted at the Removal Meeting and the desirability that the actions of the current Board not interfere with ability of any new Board to exercise its responsibility to oversee the business and affairs of Hydro One after the Removal Meeting in accordance with the Governance Principles, including with respect to each of the matters referred to in Section 2.3.

4.7.5 Hydro One shall cause the proxy solicitation materials, including the meeting circular, for the Removal Meeting, to contain information customary for Director nominees about the replacement Director nominees identified and confirmed pursuant to Section 4.7.3. Hydro One shall take all other commercially reasonable actions necessary to conduct the Removal Meeting and to permit the election or appointment to the Board of the replacement Director nominees, if a resolution is passed at the meeting to remove some or all of the Directors.

4.7.6 At the Removal Meeting, the Province shall vote in favour of removing the current Directors with the exception of the CEO and, if the Province elects pursuant to Section 4.7 not to vote for removal of the Chair, the Chair and shall vote in favour of replacement Director nominees determined pursuant to this Section 4.7.

4.7.7 For clarity, subsequent to any Removal Meeting, the provisions of this Agreement, including Section 4.3, will continue to apply with respect to all future Director nominations.

4.8 Province Below 40% of Voting Securities

If the Province:

4.8.1 ceases to own Voting Securities to which are attached 40% of the votes that may be cast on the election of Directors at a meeting of Shareholders (the "**Voting Security Threshold**"); and

4.8.2 the Province does not subsequently acquire Voting Securities so that it meets the Voting Security Threshold prior to the next Nomination Deadline following the second anniversary of the first date on which the Province ceased to own Voting Securities sufficient to meet the Voting Security Threshold;

then commencing on that next Nomination Deadline until the Province again owns Voting Securities sufficient to meet the Voting Security Threshold, the number of Directors that the Province shall be entitled to nominate pursuant to Section 4.1.1(b) and pursuant to any other provision of this Agreement that refers to that Section to determine how many Directors the Province may nominate, shall be proportionate to the number of votes that the Province may cast on the election of Directors at a meeting of Shareholders out of the total number of votes that may be cast. The number of Directors that the Province is entitled to nominate pursuant to this calculation shall be rounded to the nearest whole number and based on the Province's ownership of Voting Securities as of (i) in the case of a nomination for an upcoming annual meeting of Shareholders, the Nomination Deadline for that meeting and (ii) in all other cases, the Nomination Deadline prior to the most recent annual meeting of Shareholders.

ARTICLE 5
CONFIDENTIALITY OF INFORMATION PROVIDED

5.1 Confidentiality Agreement

The Parties shall enter into and comply with a confidentiality agreement in the form attached as Schedule "B" to this Agreement.

ARTICLE 6
PRE-EMPTIVE RIGHT

6.1 Offer to Subscribe for Common Shares

If Hydro One proposes to issue any Voting Securities or any securities that are convertible into or exchangeable for Voting Securities (the "**Offered Securities**"), whether pursuant to a public offering or a private placement or otherwise but excluding an Excluded Issuance (a "**Proposed Offering**"), Hydro One shall offer (the "**Offer**") to the Province the right to subscribe for and purchase up to 45% of the number or principal amount, as applicable, of the Offered Securities, in accordance with this Article 6 and subject to applicable Laws and to the rules of any stock exchange on which Hydro One's securities are listed. If applicable Laws or rules of a stock exchange require Hydro One to obtain shareholder or other approvals to issue Offered Securities in accordance with this Article 6, Hydro One shall use all commercially reasonable efforts to obtain those approvals.

6.2 Delivery of the Offer

Hydro One shall notify the Province as soon as reasonably practicable that it is contemplating a Proposed Offering and shall deliver an Offer in any event not later than 30 days prior to the date that Hydro One enters into an agreement to issue Offered Securities (including a bid letter in connection with a "bought deal" offering). The Offer shall be in writing and, subject to Section 6.3, shall contain the terms and conditions of the Offered Securities, including the price at which the Offered Securities are to be issued, the number of Offered Securities which the Province is entitled to purchase pursuant to this Article 6, the proposed outside date (the "**Offering Outside Date**") for completing the Proposed Offering, which date shall not be more than 60 days after the date of the Offer, and any other details of the Proposed Offering. The Offer must also state that (i) if the Province wishes to purchase Offered Securities pursuant to this Article 6, it shall do so by giving written notice (the "**Response**") of the exercise of that right to Hydro One, and (ii) if Province wishes to subscribe for a number of Offered Securities less than the number to which it is entitled pursuant to this Article 6, it may do so. For clarity, the Offer may be contingent upon Hydro One determining to proceed with the Proposed Offering in its sole discretion. Notwithstanding that an Offer may be contingent, the Province acknowledges that the fact that Hydro One is contemplating the Proposed Offering may constitute material information regarding Hydro One, and that the requirements of securities Laws, as well as of the Confidentiality Agreement and internal controls referred to therein, may restrict disclosure of the information and trading in securities of Hydro One by those with knowledge of that information.

6.3 Offer Price and Number of Securities if Public Offering

If the Offer is being delivered in connection with a proposed best-efforts or fully underwritten public offering (including an offering proposed on a "bought deal" basis) through an agent or underwriter, the Offer may include a range for the size of the Proposed Offering (expressed in number of Offered Securities or aggregate dollar value of the Proposed Offering), rather than a fixed number of Offered Securities and may state that the actual price per Offered Security shall be the offering price to be agreed upon by Hydro One in the agency agreement, bid letter or underwriting agreement, as the case may be, relating to the issuance.

6.4 Province's Response

The Offer shall specify a deadline by which the Province must deliver the Response to Hydro One, which deadline shall be no earlier than ten Business Days after the Province receives the Offer. The Province shall be deemed to have declined the Offer if it does not deliver a Response by that deadline. In the Response, the Province must specify the number of Offered Securities that it wishes to purchase. If the Offer was delivered in connection with a proposed best-efforts or fully underwritten public offering (including an offering proposed on a "bought deal" basis) through an agent or underwriter, the Response may specify the maximum price or a range of prices per Offered Security at which the Province will exercise its right to subscribe for or purchase Offered Securities under the Offer (provided that the Response may specify more than one maximum price per Offered Security together with the corresponding maximum number of Offered Securities to be subscribed for or purchased at each maximum price). Any Response delivered by the Province to Hydro One will be irrevocable and will be a legally binding obligation of the Province to subscribe for and purchase the Offered Securities specified therein, provided that if the Proposed Offering is not completed by the Offering Outside Date, the Offer will be deemed to be automatically revoked.

6.5 Offered Securities Not Subscribed For

Any Offered Securities not subscribed for and purchased by the Province pursuant to a Proposed Offering may be issued to any other person pursuant to the Proposed Offering.

6.6 Purchase of Offered Securities

The completion of any purchase of Offered Securities by the Province pursuant to a Proposed Offering shall be on the same terms and on the same date as the completion of that Proposed Offering, unless otherwise agreed by the Province.

6.7 Subsequent Offerings

If Hydro One proposes to issue Voting Securities or securities convertible into or exchangeable for Voting Securities otherwise than pursuant to the Proposed Offering and not later than the Offering Outside Date for the Proposed Offering, Hydro One shall again comply with this Article 6. If Hydro One is continuing in good faith to contemplate a Proposed Offering after the Offering Outside Date for that Proposed Offering, Hydro One may deliver further Offers that have the effect of extending the Offering Outside Date for that Proposed Offering, provided that

(i) the extended Offering Outside Date for that Proposed Offering occurs no later than four months after the original Offering Outside Date for that Proposed Offering, and (ii) after the Offering Outside Date for any particular Proposed Offering (including all permitted extensions, if any were effected, of that Offering Outside Date), Hydro One shall not deliver any Offer for any further Proposed Offering for a minimum of 90 days after that Offering Outside Date.

6.8 No Obligation to Subscribe

The Province shall have no obligation to subscribe for any Offered Securities, except for the Offered Securities specified in any Response delivered by the Province to Hydro One.

ARTICLE 7
DISPUTE RESOLUTION

7.1 Arbitration

Each Party acknowledges and agrees that any dispute arising out of or in connection with this Agreement shall be resolved solely by arbitration in accordance with the arbitration rules set out in Schedule "D" (the "**Arbitration Rules**"). For greater certainty, the Province may not seek, nor is the Province entitled to obtain, status as a "complainant" for the purpose of commencing an oppression remedy proceeding or derivative claim proceeding in court, as described in Section 8.6.2(a) or 8.6.2(b), but the Province is otherwise entitled to assert such claims by way of arbitration in respect of any dispute arising out of or in connection with this Agreement.

7.2 Location of Arbitration

The place of arbitration shall be at Toronto, Ontario unless the Parties otherwise agree.

7.3 Laws of Ontario

The law to be applied in connection with the arbitration shall be the law of Ontario, including its conflict of law rules.

7.4 Arbitration Act, 1991

The provisions of the *Arbitration Act*, 1991 (Ontario) shall apply to the extent that they are not inconsistent with this Article or with the Arbitration Rules.

ARTICLE 8
GENERAL PROVISIONS

8.1 Financial Obligations of the Province

Pursuant to the FAA, any payment required to be made by the Province pursuant to this Agreement is subject to there being sufficient appropriation by the Legislative Assembly of Ontario for the fiscal year in which the payment is to be made or the payment having been charged to an appropriation for a previous year.

8.2 Effective Date

This Agreement shall become effective on the Effective Date.

8.3 Amendments to this Agreement

This Agreement may be amended only by an instrument in writing executed by each of the Parties. If there are changes in circumstances in the future that impact the original purpose and intention of the parties in entering into this Agreement, the Parties shall cooperate in good faith to amend this Agreement to reflect those changes in circumstances.

8.4 Term

This Agreement may be terminated only with the mutual agreement of both Parties.

8.5 Termination Not to Affect Rights or Obligations

A termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the termination, which rights and obligations shall survive the termination.

8.6 No Third Party Rights

8.6.1 Notwithstanding any possible inferences to the contrary:

(a) the Parties intend that the provisions of this Agreement shall not create any right or cause of action in or on behalf of any Person who is not a Party to this Agreement (including without limitation, any Shareholder, creditor, Director or officer of Hydro One); and

(b) no Person other than the Parties shall be entitled to enforce the provisions of this Agreement in any legal proceeding in any forum.

8.6.2 For clarity, Section 8.6.1 does not preclude, and is not intended to preclude, any Shareholder or other stakeholder of Hydro One from obtaining status as a complainant:

(a) for the purpose of applying to court for leave under the procedure known as the "derivative action", that is provided for under section 246 of the OBCA to bring an action in the name and on behalf of Hydro One to enforce the rights of Hydro One under this Agreement; or

(b) for the purpose of pursuing the proceeding known as an "oppression proceeding" in relation to this Agreement under Section 248 of the OBCA.

Hydro One irrevocably agrees not to raise any objection on the basis of Section 8.6.1 it might now or hereafter have to any Shareholder or other stakeholder of Hydro One obtaining status as a complainant for the purpose described in Sections 8.6.2(a) or 8.6.2(b).

However, for clarity, Hydro One reserves absolutely its right otherwise to contest (on any grounds whatsoever that it considers to be appropriate) any application to the court by any Shareholder for leave to bring a derivative action or to pursue an oppression proceeding.

8.7 Representations and Warranties of Hydro One

Hydro One represents and warrants that this Agreement and the performance by Hydro One of its obligations under this Agreement: (i) has been duly authorized, executed and delivered by it, and is a valid and binding obligation of Hydro One, enforceable against Hydro One in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether the enforceability is considered in a proceeding in equity or at Law); and (ii) does not and will not violate any Law, the Constating Documents or any provision of any agreement or other instrument to which Hydro One or any of its properties or assets is bound, or result in a breach of or constitute (with due notice or lapse of time or both) a default under any such agreement or other instrument, or conflict with any such agreement or other instrument so as to prevent Hydro One from either performing its obligations under, or complying with, both this Agreement and any such agreement or other instrument.

8.8 Representations and Warranties of the Province

8.8.1 The Province represents and warrants that this Agreement and the performance by the Province of its obligations under this Agreement:

(a) has been duly authorized, executed and delivered by the Province, and is a valid and binding obligation of the Province, enforceable against the Province in accordance with its terms, subject to:

(i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, reorganization, moratorium, winding-up, arrangement, fraudulent preference and conveyance and other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at Law);

(ii) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;

(iii) statutory limitations of general application respecting the enforceability of claims against the Province or its property;

(iv) section 11.3 of the FAA;

(v) the Province's powers to retain amounts for which Hydro One is indebted to the Province under this Agreement or otherwise, by way of deduction or set off out of any money owing by the Province to Hydro One under this Agreement, pursuant to section 43 of the FAA; and

(b) does not and will not violate any Laws of any province of Canada or the Laws of Canada or any provision of any agreement or other instrument to which the Province or any of its properties or assets is bound, or conflict with or constitute (with due notice or lapse of time or both) a default under any such agreement or other instrument.

8.9 Notices, Designations and Other Communications

Any notice, designation or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by prepaid first class mail, by facsimile or other means of electronic communication or by delivery by hand as hereafter provided. Any such notice, designation or other communication, if mailed by prepaid first class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fourth Business Day after the post marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received on the Business Day it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Section. Any designation of a Provincial Representative shall be signed by the Minister of Energy and shall state the name, address and fax number of the Provincial Representative and the particular matter or matters under this Agreement to which the designation relates. Any such designation shall remain in full force and effect with respect to such Provincial Representative and in respect of such matter or matters until subsequently amended or revoked by the Minister of Energy. In the event of a general discontinuance of postal service due to strike, lock out or otherwise, notices, designations or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with this Section. Notices, designations and other communications shall be addressed as follows:

(a) if to Hydro One:

Hydro One Limited
483 Bay Street
South Tower, Suite 800
Toronto, Ontario M5G 2P5

Attention: General Counsel
Fax: 416-345-6056

With a copy (which shall not constitute notice) to:

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, ON M5X 1B8

Attention: Steve Smith / Michael Innes
Fax: 416-862-6666

(b) if to the Province:

5th Floor
56 Wellesley Street West
Toronto, ON M7A 2E7

Attention: Legal Director, Legal Services Branch serving the Minister of Energy
Fax: 416-325-1781

With a copy (which shall not constitute notice) to:

Torys LLP
79 Wellington Street West, Suite 3000
Box 270, TD South Tower
Toronto, ON M5K 1N2

Attention: Sharon Geraghty
Fax: 416-865-8138

with a copy to the applicable Provincial Representative (to the extent one has been designated by the Minister of Energy under this Section 8.9 but only in respect of the matter or matters in respect of which such Provincial Representative has been so designated).

8.10 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision. The Parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic and substantive effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

8.11 Waiver

Except as expressly provided in this Agreement, no waiver of any provision or of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give such waiver and, unless otherwise provided in such written

waiver, shall be limited to the specific provision or breach waived. No waiver by any Party hereto of any provisions or of any breach of any term, covenant, representation or warranty contained in this Agreement, in one or more instances, shall be deemed to be or construed as a further or continuing waiver of that or any other provision (whether or not similar) or of any breach of that or any other term, covenant, representation or warranty contained in this Agreement.

8.12 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein.

8.13 Further Assurances

Each of the Parties shall, with reasonable diligence, provide such further documents and instruments to the other Party and do all such things and provide all such reasonable assurances as may be required or as are reasonably desirable to effect the purpose of this Agreement and carry out its provisions.

8.14 Enurement; Assignment

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and legal personal representatives. This Agreement may not be assigned by either Party except with the prior written consent of the other Party.

8.15 Counterparts

This Agreement may be signed in counterparts and each such counterpart shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF the Parties have executed this Agreement.

HYDRO ONE LIMITED

By: *"Mayo Schmidt"*

Name: Mayo Schmidt

Title: President and Chief Executive Officer

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF ENERGY

By: *"Bob Chiarelli"*

Bob Chiarelli

[Signature page to Governance Agreement]

SCHEDULE "A"

Official Or Employee Of The Province

Each of the following individuals is an "Official or Employee of the Province":

1. A public servant as defined by the *Public Service of Ontario Act, 2006* ("**PSOA**") who is employed under Part III of the PSOA in a ministry of the Government of Ontario.

2. The Secretary of the Cabinet.

3. A deputy minister of the Government of Ontario.

4. A member of the Executive Council or an employee of a minister's office.

5. A member of the Legislative Assembly of Ontario or an employee of a member's office.

6. A director or an officer or employee, of the following organizations:

   (a) The Ontario Financing Authority;

   (b) The Independent Electricity System Operator;

   (c) Ontario Power Generation Inc.;

   (d) Electrical Safety Authority;

   (e) Ontario Electricity Financial Corporation;

   (f) Infrastructure Ontario; or

   (g) A Subsidiary of, or a Person controlled by, any organization listed in sub-paragraphs (a) to (f).

7. A member, officer or employee of the Ontario Energy Board.

8. A person who was previously a Director or a director of any Hydro One Entity or Person controlled by Hydro One, other than a person who is a Director on the date of this Agreement.

9. An officer or employee of Hydro One, or any Hydro One Entity or Person controlled by Hydro One, other than the chief executive officer of Hydro One.

SCHEDULE "B"

Form of Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made as of the 5th day of November, 2015

B E T W E E N:

HYDRO ONE LIMITED, a corporation incorporated under the laws of the Province of Ontario

– and –

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

(the "**Province**"), as represented by the Minister of Energy.

Hydro One Limited and its subsidiaries (the "**Company**") expect to provide the Province, pursuant to the governance agreement dated as of the date hereof between the Province and Hydro One Limited (the "**Governance Agreement**") and the registration rights agreement dated as of the date hereof between the Province and Hydro One Limited (the "**Registration Rights Agreement**"), with Company Confidential Information (as defined in Section 2 below) from time to time. The Governance Agreement requires the parties to enter into this confidentiality agreement (this "**Agreement**") governing the use and disclosure by the Province of the Company Confidential Information and by the Company of the Province Confidential Information (as defined in Section 14 below).

Confidentiality Obligations in favour of the Company:

In consideration of the Company providing, or causing to be provided, the Company Confidential Information to the Province and/or its Representatives (as defined below in Section 1) from time to time as required by the Governance Agreement and the Registration Rights Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties agree to the following:

1. In this Agreement, "**Representatives**" of the Province means, collectively, any persons appointed pursuant to the *Executive Council Act* (Ontario) and the Province's directors, officers, officials, employees, public servants as defined by the *Public Service of Ontario Act, 2006* (Ontario), managers, agents, representatives, lawyers, accountants, consultants and financial and other advisors, provided that such persons or entities shall only be considered Representatives if such persons or entities have received Company Confidential Information.

2. In this Agreement, "**Company Confidential Information**" means all information and material of, or relating to, the Company and its Representatives (as defined below in Section 13), whether in oral, written, graphic, electronic or any other form or medium, including without limitation information and material concerning the Company's past,

present or future customers, suppliers, technology, business, policy decisions, affairs, financial conditions, assets, liabilities, operations, plans, potential financings or transactions or other activities that is furnished to the Province or its Representatives pursuant to the Governance Agreement and/or the Registration Rights Agreement on or after the date of this Agreement. For the purposes of this definition, "**Company Confidential Information**" includes the portion of any plans, proposals, reports, analyses, notes, compilations, studies, forecasts or other documents prepared by the Province or its Representatives that are based on, contain, incorporate or otherwise reflect Company Confidential Information.

3. Notwithstanding Section 2, the following will not constitute "**Company Confidential Information**" under this Agreement:

   (a) for the avoidance of doubt (i) information that the Province or its Representatives receive or obtain solely pursuant to any Applicable Law (as defined in Section 8 below) and (ii) information that the Province or its Representatives receive or obtain other than pursuant to the Governance Agreement and/or the Registration Rights Agreement.

   (b) information that the Province or its Representatives receive or obtain from a third person who is not known by the Province to be prohibited from transmitting the information to the Province or its Representatives by a contractual, legal or fiduciary obligation not to disclose such information;

   (c) information that has been publicly disclosed by the Company (including, for greater certainty, information publicly disclosed through regulatory filings or processes), or that is or becomes publicly available through no fault of the Province or its Representatives in breach of this Agreement or other contractual, legal or fiduciary obligation not to disclose such information;

   (d) information that was independently developed by the Province or its Representatives without any reference to the Company Confidential Information; and

   (e) information that the Company agrees in writing is not Company Confidential Information for the purposes of this Agreement.

4. The Province and its Representatives shall only use Company Confidential Information in connection with the Province's exercise or enforcement of its rights under the Governance Agreement and the Registration Rights Agreement and in connection with evaluating, overseeing and determining how to manage its investment in Hydro One Limited, including whether to dispose of, return or acquire additional interests in Hydro One Limited and exercising its rights as a shareholder (including board representation rights), in each case in accordance with the Governance Agreement, the Registration Rights Agreement and Applicable Law (the "**Purpose**").

5. The Province and the Company acknowledge that the Province and certain of its Representatives are subject to the *Freedom of Information and Protection of Privacy Act*

(Ontario), as amended or supplemented from time to time (**"FIPPA**"), and that FIPPA applies to and governs all records (as such term is defined in FIPPA) in the custody or control of the Province and those Representatives, including Company Confidential Information described in this Agreement. Subject to the obligations of the Province under Section 11 of this Agreement, the Province's obligations pursuant to this Agreement to maintain such information in confidence are subject to any requirement the Province and its Representatives have under Applicable Law to disclose information, including records that must be disclosed by the Province and its Representatives under FIPPA. The provisions of this Section 5 shall survive termination of this Agreement and shall prevail over any other provisions of this Agreement to the contrary.

6. The Province acknowledges and agrees that the Company may not be able to furnish or disclose any information about an identifiable individual or other information that is subject to Applicable Law relating to the collection, use, storage and/or disclosure of information about an identifiable individual, including the *Personal Information Protection and Electronic Documents Act* (Canada) and *Personal Health Information Protection Act, 2004* (Ontario), whether or not such information is confidential, (collectively, "**Personal Information**") to the Province or any of its Representatives unless consents to the disclosure of such Personal Information have been obtained from the relevant individual(s) as required, or the Company is otherwise authorized by Applicable Law to disclose such information. If any Personal Information is disclosed to the Province and/or its Representatives, the Province and its Representatives shall, subject to their obligations under Applicable Law, (i) use the Personal Information only in connection with the Purpose, (ii) limit disclosure of the Personal Information to what is authorized by the Company or required by Applicable Law, (iii) promptly refer any persons looking for access to their Personal Information to the Company, (iv) use appropriate security measures to protect the Personal Information, and (v) comply with Applicable Law relating to the privacy of the Personal Information.

7. The Province acknowledges and agrees that pursuant to the provisions of the Company's Electricity Distribution Licenses issued by the Ontario Energy Board, the Company may not be able to furnish or disclose any information regarding a consumer, retailer, wholesaler or generator, whether or not such information is confidential, (collectively, "**Customer Information**") to the Province or any of its Representatives unless consent to the disclosure of such Customer Information has been obtained, or the Company is otherwise authorized by its Electricity Distribution License or Applicable Law to disclose such information. If any Customer Information is disclosed to the Province and/or its Representatives, the Province and its Representatives shall, subject to their obligations under Applicable Law, (i) limit the use of the Customer Information to the Purpose, (ii) limit disclosure of the Customer Information to what is authorized by the Company or required by Applicable Law, (iii) promptly refer any persons looking for access to their Customer Information to the Company, (iv) use appropriate security measures to protect the Customer Information, and (v) comply with Applicable Law relating to the protection of the Customer Information.

8. The Province agrees that all Company Confidential Information shall be held and treated by the Province and its Representatives in confidence and shall not be disclosed by the

Province or its Representatives in any manner whatsoever, in whole or in part, except as expressly provided in this Agreement, as required by FIPPA or by any law, statute, rule, regulation, ordinance, judgment, code, guideline, order, writ, directive, decision, ruling, decree, award or other pronouncement or instrumentality of any federal, provincial or municipal government, parliament or legislature, or of any regulatory authority, agency, commission, tribunal, board or department of any such government, parliament or legislature, or of any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances (collectively, "**Applicable Law**"), or with the Company's prior written consent.

9. The Province also agrees (i) to use the same means to protect the confidentiality of the Company Confidential Information that the Province would use to protect its own confidential and proprietary information (but in any event, no less than reasonable means), (ii) to disclose Company Confidential Information only to its Representatives who need to know the Company Confidential Information for the Purpose, who are informed by the Province of the confidential nature of the Company Confidential Information and who agree to be bound by the terms of this Agreement, (iii) to take all necessary steps to require that its Representatives comply with and are bound by the terms and conditions of this Agreement, and (iv) to be responsible for any breach by its Representatives of any terms of this Agreement applicable to the Province's Representatives (as if the Province's Representatives were parties to and bound by those provisions of this Agreement). The provisions of clause (iv) of this Section 9 shall survive termination of this Agreement.

10. The Province acknowledges that certain of the Company Confidential Information that it receives or obtains may be information, including records prepared by or for counsel for use in giving legal advice or in contemplation of or for use in litigation, to which solicitor-client privilege and/or litigation privilege attaches (collectively, "**Privileged Information**"). The Province acknowledges and agrees that access to the Privileged Information is not intended and should not be interpreted as a waiver of any privilege in respect of Privileged Information or of any right to assert or claim privilege in respect of Privileged Information. To the extent there is any waiver of privilege, it is intended to be a limited waiver in favour of the Province, solely for the purposes and on the terms set out in this Agreement.

11. In the event that the Province or any of its Representatives are required by Applicable Law, by oral questions, interrogatories, requests for information or documents, subpoena, criminal or civil investigative demand, legislative committee or officer, or similar process to disclose any Company Confidential Information, the Province or such Representative, as the case may be, shall, to the extent permitted by Applicable Law, provide the Company with prompt written notice of such requirement so that the Company may seek a protective order or other appropriate remedy, if available, or waive compliance with the provisions of this Agreement. The Province shall thereafter cooperate with the Company to prevent such disclosure (including cooperating in obtaining a protective order or other appropriate remedy). Where a request is made to the Province or its Representatives for access to information subject to this Agreement under FIPPA, the Province or its Representatives shall provide the Company with notice of the request, and the

opportunity to make submissions to the Province or its Representatives about disclosure of the records, in accordance with section 28 of FIPPA. In the event that the Company is unable to obtain a protective order or other remedy, the Province or such Representative, as the case may be, may disclose only that portion of the Company Confidential Information which the Province or such Representative is advised by counsel (internal or external) as being required to disclose under FIPPA or by other Applicable Law. The Province or such Representative, as the case may be, shall use reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to any Company Confidential Information so disclosed. The parties acknowledge, however, that Province cannot require any person who receives information under FIPPA to maintain such information in confidence. The provisions of this Section 11 shall survive termination of this Agreement.

12. The Company Confidential Information provided by the Company to the Province and/or its Representatives shall at all times remain the property of the Company or its Representatives (as defined below in Section 13), as applicable, and by making Company Confidential Information available to the Province, neither the Company nor its Representatives shall be deemed to be granting any license or other right under or with respect to any trade secret, patent, copyright, trademark, or other proprietary or intellectual property right. The provisions of this Section 12 shall survive termination of this Agreement.

Confidentiality Obligations in favour of the Province:

In consideration of the Province providing, or causing to be provided, the Province Confidential Information (as defined below) to the Company and its Representatives (as defined below) from time to time in connection with the Purpose for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties agree to the following:

13. In this Agreement, "**Representatives**" of the Company means, collectively, the Company's directors, officers, employees, managers, agents, representatives, lawyers, accountants, consultants, and financial and other advisors, provided that such persons or entities shall only be considered Representatives if such persons or entities have received Province Confidential Information.

14. In this Agreement, "**Province Confidential Information**" means all information and material of, or relating to, the Province and its Representatives, whether in oral, written, graphic, electronic or any other form or medium, including without limitation information and material concerning the Province's past, present or future policy decisions, business, affairs, financial conditions, operations, plans, potential transactions or potential purchases or sales of shares of Hydro One Limited or other activities that is furnished to the Company or its Representatives pursuant to the Governance Agreement and/or the Registration Rights Agreement on or after the date of this Agreement in connection with the Purpose. For the purposes of this definition, "**Province Confidential Information**" includes the portion of any plans, proposals, reports, analyses, notes, compilations, studies, forecasts or other documents prepared by the Company or its

Representatives that are based on, contain, incorporate or otherwise reflect Province Confidential Information.

15. Notwithstanding Section 14, the following will not constitute "**Province Confidential Information**" under this Agreement:

    (a) for the avoidance of doubt (i) information that the Company or its Representatives receive or obtain solely pursuant to any Applicable Law and (ii) information that the Company or its Representatives receive or obtain other than pursuant to the Governance Agreement and/or the Registration Rights Agreement.

    (b) information that the Company or its Representatives receive or obtain from a third person who is not known by the Company to be prohibited from transmitting the information to the Company or its Representatives by a contractual, legal or fiduciary obligation not to disclose such information;

    (c) information that has been publicly disclosed by the Province (including, for greater certainty, information publicly disclosed through regulatory filings or processes), or that is or becomes publicly available through no fault of the Company or its Representatives in breach of this Agreement or other contractual, legal or fiduciary obligation not to disclose such information;

    (d) information that was independently developed by the Company or its Representatives without reference to the Province Confidential Information; and

    (e) information that the Province agrees in writing is not Province Confidential Information for the purposes of this Agreement.

16. The Company acknowledges and agrees that the Province may not be able to furnish or disclose Personal Information to the Company or any of its Representatives unless consents to the disclosure of such Personal Information have been obtained from the relevant individual(s) as required, or the Province is otherwise authorized by Applicable Law to disclose such information. If any Personal Information is disclosed to the Company and/or its Representatives, the Company and its Representatives shall, subject to their obligations under Applicable Law, (i) use the Personal Information only in connection with the Purpose, (ii) limit disclosure of the Personal Information to what is authorized by the Province or required by Applicable Law, (iii) promptly refer any persons looking for access to their Personal Information to the Province, (iv) use appropriate security measures to protect the Personal Information, and (v) comply with Applicable Law relating to the privacy of the Personal Information.

17. The Company agrees that all Province Confidential Information shall be held and treated by the Company and its Representatives in confidence and shall not be disclosed by the Company or its Representatives in any manner whatsoever, in whole or in part, except as expressly provided in this Agreement, as required by Applicable Law or by the

requirements of any stock exchange on which securities of the Company are listed or with the Province's prior written consent.

18. The Company also agrees (i) to use the same means to protect the confidentiality of the Province Confidential Information that the Company would use to protect its own confidential and proprietary information (but in any event, no less than reasonable means), (ii) to disclose Province Confidential Information only to its Representatives who need to know the Province Confidential Information in connection with the Purpose, who are informed by the Company of the confidential nature of the Province Confidential Information and who agree to be bound by the terms of this Agreement, (iii) to take all necessary steps to require that its Representatives comply with and are bound by the terms and conditions of this Agreement, and (iv) to be responsible for any breach by its Representatives of any terms of this Agreement applicable to the Company's Representatives (as if the Company's Representatives were parties to and bound by those provisions of this Agreement). The provisions of clause (iv) of this Section 18 shall survive termination of this Agreement.

19. The Company acknowledges that certain of the Province Confidential Information that it receives or obtains may be Privileged Information. The Company acknowledges and agrees that access to the Privileged Information is not intended and should not be interpreted as a waiver of any privilege in respect of Privileged Information or of any right to assert or claim privilege in respect of Privileged Information. To the extent there is any waiver of privilege, it is intended to be a limited waiver in favour of the Company, solely for the purposes and on the terms set out in this Agreement.

20. In the event that the Company or any of its Representatives are required by the requirements of any stock exchange on which securities of the Company are listed, by Applicable Law, by oral questions, interrogatories, requests for information or documents, subpoena, criminal or civil investigative demand, legislative committee or officer, or similar process to disclose any Province Confidential Information, the Company or such Representative, as the case may be, shall, to the extent permitted by Applicable Law, provide the Province with prompt written notice of such requirement so that the Province may seek a protective order or other appropriate remedy, if available, or waive compliance with the provisions of this Agreement. The Company shall thereafter cooperate with the Province to prevent such disclosure (including cooperating in obtaining a protective order or other appropriate remedy). The parties acknowledge that the Company is subject to applicable securities law and the requirements of the Toronto Stock Exchange and New York Stock Exchange which mandate immediate disclosure of material information concerning the Company such that it may not always be practicable to provide prompt written notice of the requirement to disclose Province Confidential Information, to the extent Province Confidential Information would constitute material information concerning the Company. In the event the Province is unable to obtain a protective order or other remedy, the Company or such Representative, as the case may be, may disclose only that portion of the Province Confidential Information which the Company or such Representative is advised by counsel as being required to disclose by Applicable Law or the requirements of any stock exchange on which securities of the Company are listed. The Company or such Representative, as the case may be, shall use

reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to any Province Confidential Information so disclosed. The parties acknowledge, however, that the Company cannot require any securities regulator or stock exchange who receives information to maintain such information in confidence. The provisions of this Section 20 shall survive termination of this Agreement.

21. The Province Confidential Information provided by the Province to the Company and/or its Representatives shall at all times remain the property of the Province or its Representatives, as applicable, and by making Province Confidential Information available to the Company, neither the Province nor its Representatives shall be deemed to be granting any license or other right under or with respect to any trade secret, patent, copyright, trademark, or other proprietary or intellectual property right. The provisions of this Section 21 shall survive termination of this Agreement.

General Provisions:

22. Each party acknowledges that it is aware (and that it will advise its respective Representatives) that applicable securities laws in Canada or elsewhere prohibit any person with material non-public information about an issuer (which would include both Hydro One Limited and Hydro One Inc.) from purchasing or selling securities of such issuer, or subject to certain limited exceptions, from communicating such information to any other person. The Province has instituted reasonable internal controls to restrict (a) the disclosure of material non-public information about the Company and (b) trading in the securities of the Company by the Province and its Representatives. The Province has provided a copy of such internal controls to Hydro One Limited and Hydro One Inc. on or prior to the date of this Agreement.

23. The parties acknowledge that any information that the Province receives pursuant to section 1.0.25 of the *Financial Administration Act* (Ontario) (the "**FAA**") shall be dealt with in accordance with the provisions of the FAA.

24. The Company agrees to notify the Province of any information requests made by the Auditor General of Ontario pursuant to its rights under the *Auditor General Act* (Ontario) in relation to the audit of the Public Accounts (prepared pursuant to the FAA) and to advise the Assistant Deputy Minister and Provincial Controller, Treasury Board Secretariat (or any successor office thereto) as soon as reasonably practicable of the anticipated timing and planned approach to meet such requests.

25. Except as otherwise specified in this Agreement, this Agreement shall terminate on the second anniversary of the last to occur of the following: (i) the Governance Agreement no longer being in effect; and (ii) the Registration Rights Agreement no longer being in effect. The obligations of the Company and the Province under this Agreement shall survive termination of this Agreement with respect to that Province Confidential Information and Company Confidential Information, as the case may be, that pertains to those matters identified by the Province or the Company, as the case may be, to the other in writing at the time of termination of this Agreement.

26. This Agreement may not be amended except with the written consent of all parties hereto. There are no understandings, representations, warranties, terms, conditions, undertakings or collateral or other agreements, express, implied or statutory, among the parties with respect to the subject matter of this Agreement other than as expressly set forth in this Agreement, the Governance Agreement and the Registration Rights Agreement. If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect any other provision hereof and all other provisions hereof shall continue in full force and effect.

27. It is understood and agreed that no failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by a duly authorized representative of the party which expressly waives any such right, power or privilege.

28. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

29. This Agreement may be executed in counterparts, each of which will be deemed to be an original and both of which taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the agreement by such party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date set forth above.

HYDRO ONE LIMITED

By: _____

Name: Mayo Schmidt

Title: President and Chief Executive Officer

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name: Bob Chiarelli

Title: Minister of Energy

SCHEDULE "C"

Hydro One Governance Standards

1. Skills Matrix
2. Board Diversity Policy
3. Majority Voting Policy
4. Stakeholder engagement policy
5. Corporate disclosure policy
6. Corporate governance guidelines
7. Mandate for the Hydro One Ombudsman
8. Mandates of the Board and its committees
9. Position descriptions for the CEO, the Chair, the Directors and the committee chairs
10. Code of business conduct
11. Whistleblower policy
12. Executive share ownership guidelines & anti-hedging policy
13. Compensation recoupment policy

SCHEDULE "D"

Rules of Procedure for Arbitration

The following rules and procedures shall apply with respect to any matter to be arbitrated by the Parties under the terms of the Agreement.

1. INITIATION OF ARBITRATION PROCEDURES

(a) If a Party to this Agreement wishes to have any matter under this Agreement arbitrated, it shall give notice to the other Party specifying particulars of the matter or matters in dispute and request that ADR Chambers Canada appoint a single arbitrator who need not be a member of ADR Chambers Canada and who satisfies the requirements of Section 1(b) of this Schedule "D" (the "**Arbitrator**").

(b) The individual selected as Arbitrator shall be reasonably qualified by education and/or experience to decide the matter in dispute.

2. SUBMISSION OF WRITTEN STATEMENTS

(a) Within 15 Business Days of the appointment of the Arbitrator, the Party initiating the arbitration (the "**Claimant**") shall send the other Party (the "**Respondent**") a Notice of Arbitration setting out in sufficient detail the facts and any contentions of law on which it relies, and the relief that it claims.

(b) Within 15 Business Days of the receipt of the Notice of Arbitration, the Respondent shall send the Claimant an Answer to the Notice of Arbitration stating in sufficient detail which of the facts and contentions of law in the Notice of Arbitration it admits or denies, on what grounds, and on what other facts and contentions of law he relies.

(c) Within 15 Business Days of receipt of the Answer, the Claimant may send the Respondent a Reply.

(d) Each Notice of Arbitration, Answer and Reply shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the Party concerned relies and which have not previously been submitted by any Party.

(e) After submission of all the pleadings, the Arbitrator will give directions for the further conduct of the arbitration.

3. MEETINGS AND HEARINGS

(a) The arbitration shall be heard in Toronto. Ontario or in such other place as the Claimant and the Respondent shall agree upon in writing. The arbitration shall be conducted in English unless otherwise agreed by the Parties and the Arbitrator.

Subject to any adjournments which the Arbitrator allows, the final hearing will be continued on successive working days until it is concluded.

(b) All meetings and hearings will be in private and shall be confidential unless the Parties otherwise agree.

(c) Any Party may be represented at any meetings or hearings by legal counsel

(d) Each Party may examine, cross-examine and re-examine, as appropriate, all witnesses at the arbitration.

4. THE DECISION

(a) The Arbitrator will make a decision in writing and, unless the Parties otherwise agree, will set out reasons for decision in the decision.

(b) The Arbitrator will deliver the decision to the Parties as soon as practicable after the conclusion of the final hearing, but in any event no later than 60 days thereafter, unless that time period is extended for a fixed period by the Arbitrator on written notice to each Party because of illness or other cause beyond the Arbitrator's control.

(c) The provisions of this Agreement and the Arbitration Rules requiring the determination of certain disputes of arbitration shall not operate to prevent recourse to the court by any Party as permitted by the *Arbitration Act*, 1991 (Ontario) with respect to injunctions, receiving orders and orders regarding the detention, preservation and inspection of property, or whenever enforcement of an award by the sole arbitrator reasonably requires access to any remedy which an arbitrator has no power to award or enforce, provided that any such recourse to the court and any remedy of the arbitrator shall, in the case of remedies against the Province, be subject to the *Proceeding Against the Crown Act* (Ontario). In all other respects an award by the Arbitrator shall be final and binding upon the Parties and there shall be no appeal from that award on any questions of fact, mixed law and fact, or law provided that the Arbitrator has followed the Arbitration Rules in good faith and has proceeded in accordance with the principles of natural justice.

5. JURISDICTION AND POWERS OF THE ARBITRATOR

(a) By submitting to arbitration under these Arbitration Rules, the Parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers, to be exercised at the Arbitrator's discretion subject only to these Arbitration Rules and the relevant law with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.

(b) Without limiting the jurisdiction of the Arbitrator at law, the Parties agree that the Arbitrator shall have jurisdiction to:

(i) determine any question of law arising in the arbitration;

(ii) determine any question as to the Arbitrator's jurisdiction;

(iii) determine any question of good faith, dishonesty or fraud arising in the dispute;

(iv) order any Party to provide further details of that Party's case, in fact or in law;

(v) proceed with the arbitration notwithstanding the failure or refusal of any Party to comply with these Arbitration Rules or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that party notice that the Arbitrator intends to do so;

(vi) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;

(vii) make one or more interim awards;

(viii) hold meetings and hearings, and make a decision (including a final decision) in Ontario (or elsewhere with the concurrence of the Parties thereto);

(ix) order the Parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents, except privileged documents, or classes of documents in their possession or power which the Arbitrator determines to be relevant;

(x) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the Parties;

(xi) make interim orders to secure all or part of any amount in dispute in the arbitration;

(xii) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis;

(xiii) include, as part of any award, the payment of interest at the rate determined by the Arbitrator from an appropriate date as determined by the Arbitrator; and

(xiv) make any other order that the Arbitrator determines is just and reasonable in determining the matters in dispute.

6. ARBITRATION ACT, 1991

The rules and procedures of the *Arbitration Act*, 1991 (Ontario) shall apply to any arbitration conducted hereunder except to the extent that they are modified by the express provisions of these Arbitration Rules.

HYDRO ONE/804
Schmidt

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

MAYO M. SCHMIDT
Exhibit No. 804

***Joint Petition for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions*, New York Public Service Commission Case 12-M-0192, Order Authorizing Acquisition (June 26, 2013)**

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-M-0192 - Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

ORDER AUTHORIZING ACQUISITION SUBJECT TO CONDITIONS

(Issued and Effective June 26, 2013)

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on June 13, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
James L. Larocca
Gregg C. Sayre

CASE 12-M-0192 - Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

ORDER AUTHORIZING ACQUISITION
SUBJECT TO CONDITIONS

(Issued and Effective June 26, 2013)

BY THE COMMISSION:

INTRODUCTION

By this order, we authorize the acquisition of CH Energy Group Inc. (CHEG), the parent company of Central Hudson Gas & Electric Corporation (Central Hudson), by Fortis Inc. (Fortis). In doing so, we adopt, with modifications, the terms of a Joint Proposal submitted for our consideration on January 28, 2013, by the Department of Public Service trial staff (Staff); Fortis; CHEG; the Utility Intervention Unit of the Department of State (UIU); Multiple Intervenors (MI); and the Counties of Dutchess, Orange and Ulster. Those terms ensure significant, tangible benefits for Central Hudson's customers including $9.25 million in guaranteed rate savings, a $35 million fund to be used for deferral write-offs and/or future rate mitigation, a $5 million Community Benefit Fund for low-

income customer programs and economic development, a rate freeze, and an earnings sharing mechanism more favorable to ratepayers. They also establish comprehensive financial safeguards, corporate governance requirements, service quality and performance mechanisms, and other measures that will minimize any risk associated with the transaction. With certain other requirements we will add to the terms originally proposed, we find that, on balance, the acquisition will provide a significant net public benefit, and will serve the public interest as required by Public Service Law (PSL) §70.

BACKGROUND AND PROCEDURAL HISTORY

On February 20, 2012, CHEG entered into an Agreement and Plan of Merger (Merger Agreement) with Fortis, a Canadian holding company; FortisUS Inc. (FortisUS), a wholly-owned subsidiary of Fortis; and Cascade Acquisition Sub Inc. (Cascade), a wholly-owned subsidiary of FortisUS. Under the terms of the Merger Agreement, CHEG would merge with Cascade, with CHEG as the surviving entity.

Central Hudson, a regulated utility serving about 301,000 electric customers and 75,000 natural gas customers, 85% of them residential, in eight counties in the mid-Hudson region, is a wholly owned subsidiary of CHEG. As a result, consummation of the proposed merger would make Central Hudson an indirect, wholly-owned subsidiary of Fortis.

Under PSL §70, the transfer of ownership of all or any part of the franchise, works or system of any gas or electric corporation is prohibited without the consent of the Commission. That consent may be given only if the Commission determines that the proposed acquisition, with such terms and conditions as the Commission may fix and impose, "is in the public interest." Consequently, on April 20, 2012, Fortis, FortisUS, Cascade, CHEG

and Central Hudson sought such consent by filing the petition that is the subject of this proceeding.

Subsequent to the filing, the matter was assigned to Administrative Law Judges, and a Notice of Proposed Rulemaking was published.[1] On May 16, 2012, the judges conducted an initial procedural conference. Participants at the conference in addition to Petitioners and Staff were UIU, MI, the International Brotherhood of Electrical Workers Local 320 (IBEW Local 320), the Retail Energy Supply Association (RESA), Empire State Development Corporation; and the County of Dutchess. All were admitted as parties to the proceeding, as were Hess Corporation, the County of Orange, the County of Ulster, the Joint Task Force of the Town and Village of Athens (Athens), the Public Utility Law Project of New York, Inc. (PULP), and, as a group, Accent Energy Midwest Gas, LLC, Accent Energy Midwest II, LLC, IGS Energy, Inc., and Interstate Gas Supply, Inc.

Following eight months of litigation, during which testimony was filed by Staff and PULP, and comments were submitted by Athens, Dutchess County, ESD, IBEW Local 320, MI, and UIU, Petitioners filed a notice of settlement negotiations in December 2012. Discussions pursuant to that notice led to the Joint Proposal we are now considering.

In a January 29, 2013, ruling, the judges established a schedule for statements in support of, or opposition to, the Joint Proposal. Statements expressing general support for the Joint Proposal were filed by Petitioners, Staff, MI and UIU. The Counties of Dutchess, Orange, and Ulster expressed support

[1] *New York State Register*, May 23, 2012, p. 15.

limited to specific provisions of the Joint Proposal.[2] Statements opposing adoption of the Joint Proposal in its present form were filed by PULP, RESA, the New York State Energy Marketers Coalition, and IBEW Local 320. Reply statements were filed by Petitioners, Staff, IBEW Local 320, MI, PULP, and RESA.

In their January 29, 2013, ruling, the judges also required that any party advocating an evidentiary hearing on the Joint Proposal must specify in its initial comments a material issue of fact that could not be resolved without the cross-examination of witnesses. No party's initial comments attempted to make such a showing and, accordingly, no evidentiary hearing was held.

On April 24, 2013, the Secretary issued a notice announcing the preparation of a Recommended Decision (RD) and a schedule for the filing of exceptions. The RD was filed by the judges on May 3, 2013. It recommended that the Joint Proposal not be approved and that the petition to authorize the merger transaction be denied. Exceptions to the RD were subsequently

[2] The signatures of the Counties were accompanied by disclaimers stating that they were affixed for the purpose of expressing support for specific provisions of the Joint Proposal, and that the Counties took no position on the balance of the document. In general, the Counties stated support for provisions calling for a rate freeze, the crediting of synergy savings, and the payment of positive benefits including the Community Benefit Fund and write-down of regulatory assets. The Counties participated as parties, and signed the Joint Proposal, through their county executives. Subsequent to execution of the Joint Proposal, the Ulster County legislature, by resolution, and a majority of the members of the Dutchess County legislature, by letter, opposed approval of the proposal, while Orange County Executive Edward Diana submitted comments supporting it fully.

filed by Staff, Petitioners, MI, UIU, PULP, and Citizens for Local Power and the Consortium in Opposition to the Acquisition.[3]

PUBLIC COMMENTS

On February 21, 2013, public statement hearings concerning the Joint Proposal were held in Kingston and Poughkeepsie. Approximately 40 people attended the hearings, 17 of whom provided comments on the record. Commenters included Central Hudson customers from throughout the utility's service territory, as well as New York State Assembly Member Kevin Cahill and Town of Rosendale Council Member Manna Jo Greene.

The original notice of public statement hearings called for all comments to be submitted by March 21, 2013. After receiving numerous requests for additional time from public officials and others, the Secretary extended the deadline through May 1, 2013. During the extension period, additional public statement hearings were held on April 17, 2013, in Poughkeepsie and April 18, 2013, in Kingston. Approximately 130 people attended the hearings and 47 provided comments. Speakers included Assembly Member Frank Skartados, Dutchess County Legislators Richard Perkins and Joel Tyner, Rosendale Council Member Greene, Rosendale Supervisor Jeanne Walsh, Woodstock Town Council Member Jay Wenk, and a representative from the office of State Senator Cecilia Tkaczyk. All speakers at all of the public statement hearings opposed the merger. Through June 12, 2013, over 500 comments opposing the merger were received by the Commission by mail, e-mail, telephone, and posting to the Commission's website. In addition, 913 individuals had signed a

[3] These last two parties were admitted on May 1, 2013. Although some members of the groups had previously submitted comments, the organizations themselves had not participated in the proceeding prior to their admission. These parties have participated jointly in the proceeding and are referred to herein as CLP/COA.

petition posted on the SignOn.org website expressing opposition to the merger.[4]

Commenters opposed to the merger included Senator Tkaczyk and Senator Terry Gipson; Assembly Members Cahill, Didi Barrett, and James Skoufis; City of Beacon Mayor Randy Casale; Town of Woodstock Supervisor Jeremy Wilber; 13 members of the Dutchess County Legislature, by joint letter; Dutchess County Legislature Assistant Majority Leader Angela Flesland, individually; and former Member of Congress Maurice D. Hinchey. All of these past and present public officials urged the Commission to disapprove the proposed merger transaction, as did resolutions adopted by the Ulster County Legislature; the City of Newburgh; the Towns of Esopus, Marbletown, Newburgh, New Paltz, Olive, Rosendale, and Woodstock; the Village of Red Hook, and the Rosendale Environmental Commission. The Economic Development Committee of the Town of Red Hook also opposed the merger, as did AARP, the Sierra Club, the Dutchess County Central Labor Council, and the Hudson Valley Area Labor Federation.

Opponents of the merger expressed varying degrees of concern about the potential for long-run negative consequences not only for Central Hudson ratepayers, but also for the economic well-being of the utility's Mid-Hudson service territory if the transaction were consummated. The themes evoked most frequently in the comments derived from the perception that the transaction would replace a well-regarded, highly capable and locally engaged utility with a foreign entity of unproven quality having no inherent ties to the service

[4] The SignOn.Org website allows petition signers to cause e-mails to be sent to the Secretary memorializing their signatures, and many individuals availed themselves of that option. The numbers cited above do not include those e-mails.

territory and financial objectives that may conflict with the interests of ratepayers.

This perceived potential for a divergence of interests between a distant holding company and the local community served by its utility subsidiary was a source of concern for nearly all of the commenters, many of whom expressed a general uneasiness with the prospect of foreign ownership of critical infrastructure necessary to provide essential electric and gas services. Some saw this as a continuation of a disturbing trend toward more and more foreign ownership of U.S. businesses, and expressed concern that domestic control over vital industries was being lost.

Others had more specific concerns. Many commenters described Central Hudson as having been very proactive in promoting energy efficiency and renewable energy. They suggested that there was no language in the Joint Proposal that would ensure a comparable environmental responsiveness from the merged companies. In a similar vein, many commenters noted Central Hudson's record of community involvement and support for local economic development. They questioned whether that level of commitment would extend beyond the funding expressly provided in the Joint Proposal, which they characterized as a purely short-term benefit.

For other commenters, the issue was primarily economic. They viewed the putative financial benefits of the Joint Proposal for ratepayers as meager and transitory, while the financial risks would be substantial and persistent. Assembly Member Cahill, for example, argued that the proposed merger transaction makes no financial sense. Fortis, he suggested, could not make a profit and still maintain current levels of service for Central Hudson ratepayers. Ultimately, he contended, customers would be forced to provide that profit

through either increased rates or decreased service reliability and safety.

Following issuance of the notice announcing the preparation of an RD, and before the RD itself was issued, we began to receive comments supporting the merger. The first such comment, posted on April 24, came from Charles S. North, President and CEO of the Dutchess County Regional Chamber of Commerce. Mr. North stated that after meeting with Central Hudson officials and learning the facts of the transaction, he strongly supported it. Fortis's commitments to provide $50 million in benefits and to maintain Central Hudson as a standalone entity are a win/win for customers, he said. In Mr. North's opinion, Central Hudson will benefit from the resources of a larger organization and has done right by its customers in agreeing to the merger.

Within a week we had received approximately 274 comments urging that the merger be approved. Through June 13, 2013, that number had grown to over 400. Nearly half of those supportive comments came from Central Hudson employees. Many others came from Central Hudson customers and from businesses and business organizations including the Edison Electric Institute, the Hudson Valley Economic Development Corporation, the Putnam County Economic Development Corporation, the Westchester County Office of Economic Development, the Dutchess County Economic Development Corporation, the Council of Industry of Southeastern New York, the New Paltz Regional Chamber of Commerce, the Sullivan County Partnership for Economic Development, the Greater Newburgh Partnership, the Orange County Industrial Development Authority, and the Orange County Partnership. Supporters of the merger emphasize the value of the positive benefits provided for in the Joint Proposal and the commitments of Fortis to operate Central Hudson as a stand-alone

entity, maintaining local jobs and keeping its headquarters in the community. The economic development organizations stress particularly the importance of the proposed $5 million Community Benefit Fund (described below).

Supplemental comments were filed on May 1, 2013 by Citizens for Local Power and Consortium in Opposition to the Acquisition, jointly (CLP/COA); Joint Proposal signatory MI; opponent IBEW Local 320; and Petitioners. CLP/COA expounded in detail on the benefits and detriments of the merger as proposed, to show that it not only would fail the Commission's positive net benefits test but would be affirmatively harmful and, in that respect, compares unfavorably with all the major energy company mergers the Commission has approved since 1999. CLP/COA said the Joint Proposal satisfies neither the statutory public interest standard, nor the criteria in the Settlement Guidelines such as conformity with state policies and consensus among adversarial parties. It charged Fortis with disingenuousness or indifference regarding values the Commission should uphold in the pursuit of objectives such as environmental protection, economic development, utility infrastructure improvements, and development of sustainable energy resources.

For the most part, MI's comments repeated its criticism of previously raised objections to the Joint Proposal and emphasized the potential loss of $49.5 million in positive benefits to ratepayers if the proposal were rejected. MI also argued that less weight should be given to comments from entities that did not participate fully in the process leading to the Joint Proposal, particularly those of the legislatures of Dutchess and Ulster Counties whose county executives were signatories to the proposal.

IBEW Local 320 repeated its previously stated concerns about Central Hudson's outsourcing policies and their impact on

union jobs and service quality, and contended that they had not been alleviated. The Joint Proposal should not be approved, it said, unless provision is made for a needed infusion of internal workers. The local also asserted that the "vast majority" of employees who had responded with comments supporting the merger were not represented by the union.

Petitioners' additional comments contended that the record demonstrates that the Joint Proposal will produce benefits that greatly exceed any risks presented by the merger. They cited comments by Staff in support of the Joint Proposal stating Staff's view that the criteria for approval of the merger under PSL §70, as established in previous Commission decisions, have been met or exceeded, and that the transaction compares favorably with those previously approved.

Petitioners also argued that comments received in opposition to the merger, mainly from non-parties, have generally been misinformed, are contradicted by the terms of the Joint Proposal and/or the comments of the signatories, and have added nothing of significance to the record. For many of the most frequently raised criticisms of the merger, Petitioners provided information tending to refute the allegations, for example, with respect to concerns about foreign ownership of Central Hudson, NAFTA, environmental issues, infrastructure investment, financial risks, and so forth. Petitioners concluded that the Joint Proposal:

> is a compelling path forward that assures the continuation and enhancement of Central Hudson consistent with its past performance as a well-run, low-cost utility that is extraordinarily sensitive to local needs and Commission requirements.[5]

[5] Additional Comments of Petitioners, p. 47.

Subsequent to the issuance of the RD, the parties' and commenters' positions continued to evolve. By letter to the Secretary dated May 23, 2013, IBEW Local 320 reported that it had reached an agreement with Petitioners and that it now fully supports the merger. That support was echoed in letters from the president of the New York State AFL-CIO and from the Utility Workers Council of the IBEW. Assembly Member Skoufis, previously opposed to the merger, also submitted a letter stating that he was now convinced that the transaction should be approved. Letters of support also were sent by State Senators Larkin and Maziarz, and Assembly Member Lalor.

All of the comments received have been included in the official record and have been fully reviewed and considered in the preparation of this order.

THE JOINT PROPOSAL'S TERMS

The Joint Proposal expresses the agreement of the signatory parties that the proposed acquisition of Central Hudson by Fortis is in the public interest for purposes of PSL §70, and should be approved, subject to the terms described in the proposal. Broadly speaking, those terms are intended to perform two functions: the mitigation of potential risks that might arise from consummation of the merger transaction, and the securing of incremental public benefits to ensure a net positive outcome from the transaction.[6]

A. Risk Mitigation

1. Corporate Structure, Governance and Financial

[6] The points noted here are simply highlights of the Joint Proposal, provided as a convenience to the reader. For a complete statement of its terms, one should rely on the proposal itself, which accompanies this order as the Attachment and constitutes a part of the order.

Protections

a. Goodwill and Acquisition Costs

To the extent that the consideration paid by Fortis for the stock of CHEG exceeds the book value of CHEG's assets, an accounting asset, goodwill, will be created. As we have made clear in previous orders, neither the cost of acquiring, nor the cost of carrying, that asset should be borne by utility customers, and the existence of goodwill should not adversely affect ratepayers. The Joint Proposal includes provisions intended to ensure that this will be the case for Central Hudson customers. It bars goodwill associated with the merger transaction from being recorded on the books of Central Hudson, to the extent permitted by U.S. Generally Accepted Accounting Principles (U.S. GAAP). If those accounting rules require goodwill to be "pushed down" to Central Hudson for financial reporting purposes, the Joint Proposal precludes it from being reflected in the regulated accounts of Central Hudson on which rates are based. In addition, if either Fortis or FortisUS is obligated to record an impairment of the goodwill created by the transaction, the Commission must be notified within five days. Finally, the Joint Proposal requires Central Hudson to submit to Staff a schedule of all external legal, financial advisory, and similar costs incurred to achieve the merger in order to permit the Commission to ensure that they cannot be recovered in rates.

b. Credit Quality and Dividend Restrictions

The Joint Proposal incorporates an array of conditions designed to protect the credit quality of Central Hudson. First, to permit the Commission to adequately monitor the impact of the transaction on Central Hudson's finances, the Joint Proposal establishes a continuing requirement that copies of all presentations made by Central Hudson, Fortis or any Fortis affiliate be provided to Staff within ten business days. Both

Fortis and Central Hudson are required to be registered with at least two major nationally and internationally recognized rating agencies, to maintain separate debt instruments, and to be separately rated by at least two rating agencies. In addition, neither Fortis nor Central Hudson will be permitted to enter into any debt instrument containing cross-default provisions that could affect Central Hudson.[7]

To mitigate the risk of an increase in Central Hudson's financing costs, the Joint Proposal requires that Fortis and Central Hudson support the objective of maintaining an "A" credit rating for the utility, unless the Commission modifies its financial integrity policies. Also, to ensure that Central Hudson maintains the common equity capitalization on which rates are based, the Joint Proposal would bar Central Hudson from paying dividends if its average common equity ratio for the 13 months prior to the proposed dividend were more than 200 basis points below the ratio used in setting rates.[8]

The Joint Proposal would also continue dividend restrictions originally imposed as part of a Restructuring Settlement Agreement (RSA) approved by the Commission in 1998.[9]

---

[7] A cross-default provision is one that can trigger default on a debt obligation based on a default on a different debt obligation. For example, a provision in a Central Hudson debt instrument permitting acceleration of the due date for repayment in the event of a default by Fortis on one of its bonds would be a cross-default provision prohibited under the terms of the Joint Proposal.

[8] In response to a question posed by the judges, the signatory parties clarified their intention that this provision would bar a dividend not only when Central Hudson's trailing 13-month average equity ratio was already below the 200 basis point threshold, but also when the payment of the dividend would itself cause the average to drop below the threshold.

[9] Case 96-E-0909, *Central Hudson Gas & Electric Corp.*, Order Adopting Terms of Settlement Subject to Modifications and Conditions (issued February 19, 1998).

Among other things, the RSA stipulates that if Central Hudson's senior debt rating is downgraded below 'BBB+' by more than one credit rating agency and the downgrade is because of the performance of, or concerns about, the financial condition of its parent or an affiliate, dividends will be limited to a rate of not more than 75% of the average annual income available for dividends, on a two-year rolling average basis. In the event that the debt rating is placed on 'Credit Watch' for a rating below 'BBB' by more than one credit rating agency, dividends are limited to 50% of the average net income, and if there is a downgrade below 'BBB-' by more than one credit rating agency, no dividends are allowed to be paid until such time as the rating has been restored to 'BBB-' or higher.

In addition to continuing the RSA limitations, the Joint Proposal includes a new provision that would insulate Central Hudson ratepayers from the effects of a downgrade to Fortis's credit rating. If within three years of the merger Central Hudson's credit rating were downgraded as a direct result of a Fortis downgrade, the higher debt cost resulting from the downgrade would not be reflected in Central Hudson's cost of capital used to set rates. Ratepayers would be held harmless for the financial impact of the Fortis downgrade.

The Joint Proposal also would bar Central Hudson from providing financial support to Fortis or its other affiliates except as permitted by the Joint Proposal, the RSA or a Commission order. It would also require that Central Hudson's banking and other financial arrangements be kept separate from those of other Fortis affiliates.

Finally, the Joint Proposal would authorize Central Hudson to deregister from the United States Securities and Exchange Commission (SEC) and rely more on the private market

under SEC Rule 144A to issue debt.[10] Our order issued last year in Case 12-M-0172 would be amended to permit such private financing.[11]

c. Money Pooling

Money pools enable affiliated companies to make their excess cash on hand available as a quick, low-cost source of short-term funding for other pool participants. The Joint Proposal would permit Central Hudson to participate in such pooling arrangements, but only with Fortis, FortisUS and other entities that are regulated utilities operating in the United States, provided that Fortis and FortisUS may participate only as lenders and may not receive loans or fund transfers, directly or indirectly. Cross-default provisions affecting Central Hudson would be prohibited.

d. Special Class of Preferred Stock

The Joint Proposal would require the creation of special class of Central Hudson preferred stock to be held by a trustee approved by the Commission. Without the consent of the holder of this "golden share," Central Hudson would be precluded from entering into voluntary bankruptcy. This is identical to a provision included in our order approving the acquisition of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation by Iberdrola.[12] The Joint Proposal states

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[10] Rule 144A is a safe harbor exemption from the registration requirements of the Securities Act of 1933 that allows companies to sell securities in the private market to qualified institutional buyers in a more timely fashion with fewer disclosures and filing requirements.

[11] Case 12-M-0172, *Central Hudson Gas & Electric Corp.*, Order Authorizing Issuance of Securities (issued September 14, 2012).

[12] Case 07-M-0906, *Iberdrola, S.A. et al. - Acquisition Petition*, Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009)(*Iberdrola* order), pp. 43-44.

that Commission approval is intended to include "all [other] Commission authorization necessary for Central Hudson to establish [this special class of preferred stock]."[13] This authorization includes the consent and approval required under PSL §108 for an amendment of the Company's certificate of incorporation to establish the special class of stock.

With the golden share in place, Central Hudson would be permitted to demonstrate in future rate cases that its stand-alone capital structure should be used for setting rates. That demonstration would be made by submitting current written evaluations from at least two rating agencies supporting the evaluation of Central Hudson as a separate company, without material adjustments based on risks related to the capital structure and ratings of Fortis. If such evaluations were not available, Central Hudson would have the burden of providing comparable evidence to support the stand-alone assumption.

e. Financial Transparency and Reporting

The Joint Proposal incorporates a number of provisions intended to ensure that the Commission and its Staff have ready access to the financial data and other information necessary to continue our regulatory oversight of Central Hudson. It provides that Central Hudson will continue to use the standards of U.S. GAAP for its financial accounting and financial reports. If that accounting method were replaced for publicly-traded entities, the change would apply to Central Hudson. Central Hudson would also be required to continue to satisfy all of the Commission's reporting requirements for jurisdictional companies of its size and nature.

Central Hudson would also continue to comply with the provisions of sections 302 through 404 of the Sarbanes-Oxley Act

[13] Joint Proposal, p. 11, ¶4.

(SOX) as if Central Hudson were still bound directly by the provisions of SOX, even though it would be a subsidiary of a foreign holding company. This would include annual attestation audits by independent auditors with respect to Central Hudson's financial statements and internal controls over financial reporting.

The Joint Proposal would also require that Staff be given ready access to any books and records of Fortis and its affiliates that Staff might deem necessary to determine whether the rates and charges of Central Hudson are just and reasonable. That access must include, but is not limited to, all information supporting the underlying costs and the basis for any factor that determines the allocation of those costs. Central Hudson would also be required annually to file the financial statements, including balance sheets, income statements, and cash flow statements of Fortis and its major regulated and unregulated energy company subsidiaries in the United States, and to provide, to the extent available from a recognized financial reporting information service, the "as reported" quarterly and annual balance sheets, income statements and statements of cash flows of Fortis in U.S. dollars with the underlying currency translation assumptions. All required financial filings would be in English and in U.S. dollars or, if that were not practicable, with the underlying currency translation assumptions.

f. Affiliate Standards

The RSA that we approved when Central Hudson was reorganized as a subsidiary of CHEG included a set of standards addressing transactions, conflicts of interest, cost allocations, and information sharing among Central Hudson and its affiliates. The Joint Proposal would update and revise those standards and apply them to Fortis. Central Hudson would

be barred from entering into transactions with affiliates that were not in compliance with the transaction standards; would be prohibited from sharing operating (*i.e.*, non-management) employees with affiliates; and would be required to give 180 days' prior notice and obtain Commission approval before initiating any material shared services initiatives or establishing a shared services organization that would provide material services to Central Hudson.[14] Current cost allocation guidelines would be continued, but would be subject to revision if intercompany transactions grew beyond a defined level.

g. Follow-On Merger Savings

The Joint Proposal includes a condition that would ensure Central Hudson customers an appropriate share of any savings resulting from future mergers or acquisitions by Fortis until new rates are set. This condition is identical to follow-on merger savings provisions that have been adopted as a condition to the approval of other recent mergers.

h. Corporate Governance and Operational Provisions

The Joint Proposal contains a number of provisions intended to address concerns that the responsiveness of Central Hudson to the community it serves might be diminished if the utility becomes a subsidiary of a foreign holding company. The provisions specify that the headquarters of Central Hudson would remain within the service territory.[15] A new board of directors would be appointed within one year with a majority of directors

[14] "Material" is defined as services individually or collectively having a value greater than 5% of Central Hudson's net income on an after tax basis.

[15] In response to a question from the judges, the signatory parties clarified that "headquarters" means the place where all senior officers and their support staff, legal, administrative, accounting, operating supervision, and other head office functions are located.

who are independent, and at least one independent director would be required to live within the service territory.[16] At least 50% of Central Hudson's officers would also be required to live within the territory.

In addition, the Joint Proposal specifies that Central Hudson is to be governed, managed and operated on a stand-alone basis post-merger. Local management would continue to make decisions concerning staffing levels, and current employees, both management and non-management, would be retained for two years after closing of the merger. Within 30 days after each of the first two anniversary dates of the merger closing, Central Hudson would be required to file a report with the Secretary comparing the level of union and management employees on that date to the levels on the merger closing date. The collective bargaining process would be continued. The Central Hudson Board would continue to be responsible for management oversight, including capital and operating budgets, dividend policy, debt, and equity requirements. The Board would also have an audit committee, with a majority of members who are independent, and it would continue to be responsible for the financial integrity and effectiveness of internal controls. Finally, to maintain an active corporate and charitable presence in the service territory, Central Hudson would agree to maintain its 2011 level of community involvement through 2017.

[16] The signatory parties agreed in response to a question from the judges that an independent director is one who receives no consulting, advisory or other compensation from Central Hudson or an affiliate or subsidiary of Central Hudson. A director who is an officer, employee or consultant of Central Hudson, FortisUS, Fortis, or any other Fortis affiliate would not be considered independent.

2. Performance

To mitigate the risk that pressure to demonstrate the profitability of the merger transaction might lead to deferred investment in utility plant, reduced maintenance levels and other cost-cutting measures that could eventually have a negative impact on Central Hudson's provision of safe and reliable service, the Joint Proposal includes a broad range of performance-related mechanisms, some of which are more stringent than those currently applicable to Central Hudson. All of these performance mechanisms would continue until modified by the Commission in a subsequent proceeding. The Joint Proposal also incorporates provisions mandating specific levels of expenditures for important safety, maintenance, and infrastructure development activities.

a. Performance Mechanisms

i. Service Quality

Under the terms of the Joint Proposal, the Service Quality Performance Mechanism included in Central Hudson's current rate plan would be continued with two changes. First, the target for the PSC complaint rate would be made more stringent, with the allowed number of complaints reduced from 1.7 per year per 100,000 customers to 1.1. Second, the maximum negative revenue adjustment (NRA) imposed as a result of failure to meet defined targets would be doubled from $1.9 million annually to $3.8 million. During a period of dividend restriction under the financial provisions of the Joint Proposal, the maximum NRA would be increased even further, to $5.7 million, and it would rise again, to $7.6 million, if

performance targets were missed three times in any five-year period.[17]

ii. Electric Reliability

The Joint Proposal would maintain the electric reliability standards included in Central Hudson's current rate plan. As with the service quality performance mechanism, potential NRAs would be doubled immediately, tripled in the event of a dividend restriction, and quadrupled if targets were missed in three of any five calendar years. In addition, Attachment II to the Joint Proposal defines uniform reporting requirements that are intended to aid our monitoring of Central Hudson's performance and to contribute to consistency of reporting among utilities.

iii. Gas Safety

As with electric reliability, the gas safety performance targets in Central Hudson's current rate plan would be continued, with potential NRAs immediately doubled, tripled in the event of a dividend restriction and quadrupled if targets are missed in three of five calendar years. In addition, the Joint Proposal would establish a new metric for compliance with certain pipeline safety regulations set forth in 17 NYCRR Parts 255 and 261, with potential NRAs of up to 100 basis

[17] In response to a question from the judges, the signatories clarified that this was what was intended by the phrase "if targets are missed for three years within the next five year period," in section IV.B.2 of the Joint Proposal.

points.[18] The provision is essentially the same as those we have adopted for Corning Natural Gas and National Grid.[19]

iv. Leak-Prone Pipe

The Joint Proposal would increase required annual expenditures for the replacement of leak-prone pipe, as determined through a risk-based analysis, from $6.0 million to $7.7 million, as recommended by Staff. The provision is intended to drive down active leaks, reduce leakage rates on the distribution system and lower overtime and operating and maintenance costs. If Central Hudson fails to expend the required amount, one-half of the revenue requirement equivalent of the shortfall would be deferred for ratepayer benefit.

b. Expenditure Requirements

i. Right-of-Way Tree Trimming

The Joint Proposal would continue to budget expenditures for right-of-way tree trimming through June 30, 2014 at the level established in Central Hudson's current rate plan for the year ending June 30, 2013. At the end of the one-year extension, actual expenditures would be compared to the budget. Any shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

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[18] The Joint Proposal states that all gas safety targets for calendar year 2013 remain effective until modified by a Commission order; however, the new safety violation metric has a calendar year 2014 target. We will require that the calendar year 2014 target for the New Safety Violation Metric remain in effect until modified by the Commission.

[19] Case 11-G-0280, *Corning Natural Gas Corp.*, Order Adopting Terms of Joint Proposal and Establishing a Multi-Year Rate Plan (issued April 20, 2012), p. 21; Cases 12-E-0201 and 12-G-0202, *Niagara Mohawk Power Corp. d/b/a National Grid - Electric and Gas Rates*, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued March 15, 2013), pp. 13-14.

ii. Stray Voltage Testing

The Joint Proposal would establish targeted expenditures for the year ending June 30, 2014, of $2.023 million for stray voltage testing and $350,000 for stray voltage mitigation. If Central Hudson's expenditures fell short of either of the targets, the shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

iii. Infrastructure Investment

The Joint Proposal would continue the net plant reconciliation mechanism included in Central Hudson's current rate plan with new targets established for the year ending June 30, 2014. Actual net plant in service as of that date would be compared to the targets and the revenue requirement impact of any difference would be calculated using the methodology described in Attachment IV to the Joint Proposal.[20] If the difference were negative, Central Hudson would be required to defer the revenue requirement impact for the benefit of ratepayers with carrying charges at the pre-tax rate of return. If the difference were positive, no deferral would be permitted.

B. Incremental Benefits

While the provisions of the Joint Proposal discussed above are intended to be beneficial to ratepayers, their primary purpose is to reduce the potential for negative impacts from the merger. Consequently, to ensure a net positive outcome for ratepayers, the Joint Proposal includes a number of provisions that are designed to generate incremental benefits that would not be realized in the absence of the merger.

[20] The signatory parties confirmed that references to "Attachment III" on page 34 of the Joint Proposal should read "Attachment IV."

1. Rate Freeze

The Joint Proposal provides that Central Hudson rates currently scheduled to remain in effect through June 30, 2013, would continue through June 30, 2014 - a one-year rate freeze.

2. Earnings Sharing

Central Hudson's current rate plan specifies that when the utility's earned return on equity exceeds 10.5%, ratepayers receive 50% of the excess up to an earned return of 11.0%; 80% of the excess between 11.0% and 11.5%; and 90% of the excess over 11.5%. Under the terms of the Joint Proposal, the 50% and 90% sharing thresholds would be lowered, and the 80% sharing level would be eliminated. Ratepayers would be credited with 50% of earnings between 10.0% and 10.5%, and 90% in excess of 10.5%. In addition, Central Hudson would be required to apply 50% of its share of earnings exceeding 10.5% to write down certain deferred expenses that would otherwise be recovered in rates, provided that doing so would not reduce the actual earned return below 10.5%.

3. Synergy Savings

The signatories to the Joint Proposal agree that the merger transaction will generate synergy savings of at least $1.85 million annually, and Central Hudson would guarantee this amount for five years, for a total of $9.25 million. The savings would begin to accrue in the month following closing of the merger transaction and would be available for rate mitigation at the start of the first rate year in the next rate case filed by Central Hudson.

4. Deferral Write-Offs and Future Rate Mitigation

The Joint Proposal specifies that upon closing of the merger, Fortis will provide Central Hudson $35 million which will be recorded as a regulatory liability, to be used to write

down storm restoration expenses for which deferral and recovery from ratepayers has been requested in three pending petitions to the Commission, including most notably one for Superstorm Sandy.[21] The total deferral requested in those petitions is $29.7 million, of which $11.1 million has been denied, with petitions for rehearing pending. The total deferral authorized will, therefore, be less than $35 million. The Joint Proposal provides that the unused portion of the $35 million will be reserved for the benefit of ratepayers as a regulatory liability with carrying charges at the pre-tax rate of return, subject to future disposition by the Commission.

5. Community Benefit Fund

In addition to the $35 million for deferral write-offs and rate mitigation, Fortis would be required to provide Central Hudson $5 million for a Community Benefit Fund to be used for low-income customer and economic development programs.

a. Low-Income Program Enhancements

The Joint Proposal specifies that $500,000 from the Community Benefit Fund would be used to supplement funds currently provided in rates for programs targeted to low-income customers. Currently, Central Hudson provides a bill credit of

[21] The three cases involve storm restoration costs associated with Hurricane Irene in August 2011, a major snowstorm in October 2011, and Superstorm Sandy in October 2012. In Case 11-E-0651, *Central Hudson Gas & Electric Corp.- Storm Restoration Expenses for the Rate Year Ended June 30, 2012*, we approved deferral of $8.9 million in expenses associated with Irene. Central Hudson had sought deferral of $11.4 million. A petition for rehearing is pending. In Case 12-M-0204, *Central Hudson Gas & Electric Corp.- Costs Associated with the October 29, 2011 Snow Storm*, we denied recovery of $8.6 million associated with the snowstorm. A petition for rehearing is pending. In Case 13-E-0048, *Central Hudson Gas & Electric Corp.- Deferred Incremental Costs*, Central Hudson seeks deferral of $9.7 million in costs associated with Superstorm Sandy. The case is pending.

$11.00 per month for all customers who are Home Energy Assistance Program (HEAP) recipients. Under the Joint Proposal, within 30 days after an order in this case, Central Hudson would implement a new schedule of discounts providing credits of $17.50 per month for HEAP-participant heating customers receiving only electric or only gas service, and $23.00 for those receiving both. Non-heating customers would receive credits of $5.50 for one service, or $11.00 for both, provided that customers currently receiving an $11.00 credit for a single service would continue to receive that amount. Central Hudson would also be required to waive reconnection fees for participants in its low-income programs up to a total of $50,000. If the total cost of the programs exceeded the amount allowed in rates plus the $500,000 from the Community Benefit Fund, the shortfall would be made up from funds previously deferred for the benefit of the low-income programs, with any excess deferred as a regulatory asset. Central Hudson would be required to continue to refer participants in its low-income programs to the New York Energy Research and Development Authority's EmPower New York program for energy efficiency services. Finally, the Joint Proposal establishes a schedule for quarterly reporting on low-income programs to the Commission, and specifies the data to be provided.

b. Economic Development

The Joint Proposal provides for $5 million dollars to be allocated by Central Hudson for the support of economic development programs. The $5 million would consist of $4.5 million from the Community Benefit Fund and $500,000 from Central Hudson's existing Competition Education Fund. Within 15 days after an order in this case, Central Hudson would file a proposal with the Commission for modification of its existing economic development programs and would request expedited

consideration. The modifications would provide for Central Hudson to continue to administer its programs pursuant to existing Commission authorizations with input from the counties in its service territory. They would also establish a criterion that applicants for project funding that do not have participation from Empire State Development, a county industrial development agency, a county community college, or a local municipal resolution would seek a letter of support from the county where the project would be located. Central Hudson would also agree to seek county participation in economic development grant award notifications and announcements, and would meet twice a year with representatives of all the counties in its service territory.

6. State Infrastructure Enhancements

The Joint Proposal would commit Central Hudson to continue to support the New York State Transmission Assessment and Reliability Study, the Energy Highway, and economically justified gas expansion. Fortis would agree to provide equity support to the extent required by Central Hudson for projects that receive regulatory approval and proceed to construction.

7. Gas Expansion Pilot Program

Central Hudson would commit to continue its existing gas marketing expansion campaign during the rate freeze period and would continue to provide information and assistance to customers who are seeking or considering gas service. Where adequate financial commitments and reasonable franchise conditions can be secured, it would pursue expansion of gas facilities to areas not currently served and would seek expedited Commission approval for such expansion. Within 90 days of an order in this case, Central Hudson would initiate a modified gas service request tracking system retaining sufficient data to demonstrate why service was or was not

initiated. In addition, by July 1, 2013, or as part of a new franchise filing, Central Hudson would propose a limited pilot expansion program designed to test a number of innovative measures to facilitate gas service expansion.[22]

8. Retail Access

For the stated purpose of supporting the Commission's retail market development initiatives, the Joint Proposal would require Central Hudson within 90 days following the closing of the merger transaction to include a total bill comparison on all retail access residential bills using consolidated billing. The comparison would be generated using an existing Central Hudson program that has already been implemented. In addition, within 60 days after the issuance of an order in this case, Central Hudson would be required to file a proposal to provide payment-troubled customers -- those subject to service termination -- with similar bill comparison information. The cost of implementing these initiatives would be paid from Central Hudson's existing Competition Education Fund. If the balance in the fund were inadequate, Central Hudson would be permitted to defer the excess cost. Central Hudson would report quarterly to Staff on the progress of its bill comparison efforts.

DISCUSSION OF EXCEPTIONS TO THE RECOMMENDED DECISION

In the RD issued May 3, 2013, the judges concluded that the transaction as formulated in the JP would not provide net benefits sufficient to justify Commission approval. Briefs on exceptions were filed May 17 by Petitioners, Staff, CLP/COA, MI, PULP, and UIU; and briefs opposing exceptions were filed on or about May 24 by all those parties except UIU. Our consideration of the RD, the exceptions, and the other comments

[22] Given the timing of this order, we will extend this deadline to September 1, 2013.

and filings that we have received leads us to reject the RD's ultimate conclusion, while accepting most of its reasoning, as explained below.

Overall Balance of Interests

The judges evaluated the proposed transaction in accordance with the analytic approach that we stated in our *Iberdrola* decision and recapitulate in the concluding section of this order. That is, the judges compared the transaction's inherent benefits with any offsetting risks or detriments, mitigated insofar as possible, to determine whether the merger would provide net positive benefits or could be made to do so through the addition of monetary positive benefit adjustments. On exceptions, Petitioners argue that the RD misdefined and misapplied the Iberdrola criteria. We disagree, although our ultimate conclusion approving the merger differs from the judges'.

We conclude that Petitioners' exceptions in this regard are moot, for reasons which nevertheless merit further comment. First, of course, is that we are approving the transaction, obviating whatever concerns the parties may have as to precisely what route the judges followed in arriving at their recommendation to the contrary.

More significantly, there is little fundamental difference between our reasoning and the judges'. While the RD attached considerable weight to public comments in which customers subjectively seemed to devalue the economic benefits of the transaction, the judges disagreed with nearly all the other contentions raised in opposition to the merger, namely that: its economic benefits would not materialize, it would create NAFTA issues, its low-income provisions were inadequate, foreign ownership would be objectionable, the financial risks

would be unacceptable, and environmental values would be impaired.

The judges accepted the opponents' views in only two respects: that the transaction would create uncertainty for employees, and that the community's sense of attachment to an independent Central Hudson outweighed the merger's benefits. However, even these two limited reservations on the judges' part were closely tied to circumstances that either have changed or that we view differently than did the judges: the unionized and non-unionized workforce have withdrawn their opposition to the merger, and we do not observe the monolithic opposition among the general public that the judges found so unusual. Moreover, the RD's entire balancing of all the proposal's benefits and detriments was expressly hedged with an acknowledgement by the judges that their analysis was unavoidably qualitative and, therefore, that other observers, such as the Commission, might reasonably reach a contrary result.

For all these reasons, we think the RD is *sui generis* and, contrary to the Petitioners' exceptions, cannot usefully be criticized as a violation of general principles relevant to a §70 public interest determination.

Our only remaining concern about the exceptions is Petitioners' argument that the essence of the *Iberdrola* test is a comparison of economic benefits among various approved mergers on a per capita basis. We disagree with this exception. The RD properly concluded that such comparisons are problematic because of significant differences among the mergers themselves, and because a quantitative comparison does not capture possible changes in Commission policy over time. Nor do we agree with Petitioners' argument that the RD should have considered the alleged financial and managerial superiority of Fortis as compared with acquiring parent companies in other mergers.

While the characteristics of an acquiring company may well be highly relevant in a given case, no two cases are identical; each presents detriments and benefits to be weighed against each other, not necessarily in comparison with other transactions.

In summary, the RD reflects a valid definition and understanding of the relevant standard of review under the *Iberdrola* precedent. Nevertheless, based on our own weighing of the merger's benefits, detriments, and mitigation measures, we conclude that approval would satisfy the public interest criterion of PSL §70 for the reasons cited in the RD and herein.

Economic Benefits

The RD found that the $9.25 million in guaranteed rate savings, the $35 million payment by Fortis to Central Hudson to establish a regulatory liability for the benefit of ratepayers, and $5 million to be provided by Fortis to establish a Community Benefit Fund are tangible monetary benefits that will be realized only as a result of the merger. In contrast, it concluded that the one-year rate freeze should not be credited with providing any significant ratepayer value, because rates could not be raised until nearly the end of the freeze year even if Central Hudson filed for such an increase immediately. Petitioners take exception to the latter conclusion, pointing out that the rate freeze would preclude Central Hudson from recovering $8.7 million in carrying charges related to capital investments made during the year.

PULP, on exceptions, argues that the $35 million regulatory liability is not as concrete a benefit as the RD found. It says that, normally, deferral petitions are subject to strict scrutiny and must satisfy well-established Commission criteria before they are allowed. Here, PULP says, Central Hudson is being permitted to treat untested storm recovery expense claims as if they were sure to be approved, and to treat

the offset of those unproven claims as though they were benefits of the merger.

PULP's arguments are simply wrong. As we explained above, Central Hudson will be permitted to offset the $35 million regulatory liability only against storm expenses that have been fully reviewed and approved by the Commission. Orders have now been issued in proceedings on two of the petitions cited in the Joint Proposal involving deferral requests totaling $20 million for Hurricane Irene and the October 2011 snowstorm. The orders rejected deferral of $11.1 million, over 55% of the amounts claimed. The $35 million fund established pursuant to the Joint Proposal will be used only to eliminate or reduce amounts that would be recovered from ratepayers under normal ratemaking standards. It is a real, monetary benefit.

As to the rate freeze, the issue is essentially moot. While it may provide some quantifiable benefit to ratepayers, as Petitioners allege, that benefit is not necessary for our decision. We find that the well-defined, tangible economic benefits are more than adequate to provide a net positive benefit to ratepayers.

Jobs

Both Petitioners and Staff take exception to the RD's conclusion that even after consideration of the job retention provisions of the Joint Proposal, workforce uncertainty remained an unmitigated risk of the merger. Petitioners contend that the preservation of pre-merger contract rights and the two-year no-layoff period provided by the Joint Proposal actually enhance employee security. Staff adds that the Joint Proposal's requirement for Central Hudson to file employee level information with the Commission for two years, combined with increased disincentives for failure to meet performance targets and a requirement of Commission approval for the transfer of

functions to a shared services affiliate, minimizes the likelihood of post-acquisition downsizing.

We find this issue to be substantially less of a concern than it was at the time of the RD. Since the issuance of the RD, IBEW Local 320 has reached an agreement with Petitioners that will provide even greater job security to union employees than is offered by the Joint Proposal. As a result, IBEW Local 320 now fully supports the merger. Moreover, since the RD, we have received nearly 200 comments from non-union employees of Central Hudson expressing support for the merger. Given this level of support from throughout the organization, we find no basis for concluding that the merger can be expected to have a detrimental impact on jobs at Central Hudson.

NAFTA

The RD addressed a contention first put forward by PULP that the North American Free Trade Agreement (NAFTA) could threaten our ability to regulate Central Hudson. The threat allegedly arises from the treaty's anti-expropriation provisions which allow foreign investors from NAFTA member states to seek compensation for government actions that are "tantamount to expropriation" without compensation. The RD thoroughly analyzed cases cited by PULP and by other commenters and concluded that those cases suggested that:

> a state regulatory agency acting lawfully within its statutory authority is not liable to a claim of damages under NAFTA unless an entity covered by the treaty can demonstrate that it made its investment in the state pursuant to express commitments made by the agency which were subsequently broken.[23]

As the RD noted, none of the Petitioners has been assured of any particular regulatory treatment by the Commission.

[23] RD, p. 46.

On exceptions, PULP reiterates its claim that NAFTA will be a threat if the acquisition is approved, and PULP is joined in this contention by CLP/COA. Each argues that regardless of the current state of the case law, the existence of NAFTA presents a risk that our future regulation of Central Hudson may be compromised by a fear of expropriation claims. CLP/COA adds that the judges must have perceived some risk as they suggested in the RD that we might condition approval of the acquisition on Petitioners' certification that they have been promised no particular future regulatory treatment.

PULP and CLP/COA present no new legal authority or other information to discredit the judges' conclusion that NAFTA presents no risk to our regulatory jurisdiction. Their arguments are speculative, at best.

Furthermore, the RD did not recommend that we condition approval of the merger on a certification that Petitioners have received no express promise of particular regulatory treatment. It said, rather, that we could do so if we were concerned that there might be some doubt on that point. We have no such concern. The RD correctly stated that no such express assurances have been given. We find that the rights afforded Fortis under NAFTA do not present a credible risk to the public interest such as would require the imposition of any specific conditions on the merger beyond those provided for in the Joint Proposal.

Low-Income Programs

The RD found that the Joint Proposal's provisions for enhancing programs aimed at low-income customers are reasonably well suited to that purpose and quantitatively significant. It did not, however, consider the enhancements to be a benefit of the merger, because they could have been obtained without the transaction, such as through a rate case.

UIU, on exceptions, finds the latter conclusion troubling. It says that the increase in the monthly discount for combination gas and electric customers provided for in the Joint Proposal is unprecedented, both in percentage and dollar terms, and with respect to the source of the funds to pay for it. An increase in funding for low-income programs coming from shareholders rather than ratepayers has never been achieved before, UIU asserts. Even assuming such a result could be obtained in a rate case, UIU adds, that could not happen for at least a year. According to UIU, causing the poorest of Central Hudson's customers to forgo the increased monthly discount provided in the Joint Proposal for an additional year is clearly not in the public interest.

PULP, by contrast, reiterates its view that the provisions for low-income customers are inadequate. It argues that further steps must be taken to reduce the level of service terminations on the Central Hudson system, which place an additional burden on already economically stressed customers. Central Hudson's rate structure should generally be made more equitable, PULP argues, with added low-income protections, and collection efforts showing deference to the needs of economically vulnerable consumers.

We agree with UIU that the low-income customer discount enhancements specified in the Joint Proposal are unique and should have been considered an additional benefit of the merger. While it is true that such changes could, in theory, have been achieved through a rate case, it is unlikely that they would have been so advantageous to customers in both size and funding source; and in any case, they would not have been achieved for a year, and perhaps longer. It may be reasonable to argue that measures included in a Joint Proposal involving a utility acquisition, if they merely reflect established

Commission policy routinely implemented in rate cases, result from the policy rather than from the transaction under consideration. Here, however, the low-income program enhancements go well beyond what might be considered normal, incremental progress that could be expected in a rate case.

PULP reiterates arguments made previously that were adequately addressed in the RD. For now, we are satisfied that low-income programs for Central Hudson customers will be significantly improved when the terms of the Joint Proposal are implemented.

Foreign Ownership

In response to comments arguing that the merger would be contrary to the public interest because it would result in ownership of Central Hudson by a foreign company, the RD concluded that foreign ownership is not objectionable *per se*, but that it could complicate our oversight of Central Hudson.

On exceptions, MI argues that this conclusion is inconsistent with the RD's finding that the Joint Proposal's regulatory safeguards would mitigate such risks to the fullest extent possible. Petitioners add that there were no disputes between them and Staff over the production of documents and information, assurance of cooperation from Fortis, maintenance of transparency, or other issues related to facilitating the regulatory process. The provisions of the Joint Proposal addressing these matters were agreed to by Staff and many were, in fact, substantially similar to those in the RSA under which CHEG and Central Hudson are currently operating.

We agree with the RD that foreign ownership of Central Hudson is not inherently objectionable, but we do not agree that it will necessarily complicate our regulatory oversight. One clarification is required, however, to ensure that the provisions of the Joint Proposal negotiated by Staff are

interpreted consistently by all parties in a manner that will ensure the level of cooperation and access to information we expect from the parent companies of regulated utilities. Acceptance of the terms of this order will confirm that Petitioners understand and agree that the Commission and the Department of Public Service Staff shall have access to the books and records of Petitioners and all of their affiliates to the extent such information and materials are relevant to the Commission's exercise of authority under the PSL or any other applicable statute. Our authority to review such books and records is vital to ensuring that ratepayers are protected under the new organization. Therefore our approval of this acquisition as in the public interest is conditional upon the affirmation of this legal authority.

Community Values

As the RD explained, the judges were troubled by the prospect that the merger would impair a unique affinity that Central Hudson has built with its community in a small, closely knit service territory. In assessing the transaction's benefits and detriments pursuant to the analytic framework defined in our *Iberdrola* decision, they counted the supposed erosion of this community relationship as a detriment. Other than CLP/COA, all parties except.

The judges found that local public opposition to the merger was relevant in primarily two respects. First, they noted that effective management of the utility company depends on a collaborative relationship between the company and its customers, especially at a time like the present when regulators are attempting to help utilities develop new services requiring customer acceptance and cooperation. As a few examples, we would cite our efforts on behalf of initiatives such as improved emergency response efforts, energy efficiency programs, retail

access by energy services companies, smart grid technology and time-of-use pricing, electric and gas infrastructure upgrades and expansion, and increased reliance on distributed generation and demand response.

We agree with the judges that any deterioration in customer relations because of the merger would be detrimental insofar as it might impede management performance in these areas. However, as the *Iberdrola* analysis recognizes, the weighing of benefits and detriments is a qualitative exercise; and risks or detriments, once identified, may be at least partly counterbalanced by mitigating circumstances or directives. One mitigating factor in this instance is that we expect Central Hudson's commitments to the State's environmental and energy policy objectives will continue unabated by the merger.

Another mitigating factor is that Petitioners have justified the merger partly on the basis of their representations that "Fortis operates a stand-alone business model whereby the holding company provides financial support for the utility operations ..., but has only minimal and infrequent involvement in the day-to-day management of those operations. ... Fortis believes that, where an acquired utility is fundamentally sound and well-managed, it should be allowed to continue operating as a locally managed company that is responsive to local regulatory requirements ...."[24] We expect this "federal" governance model will minimize any change experienced by customers in their interactions with Central Hudson.

In addition to customers' future dealings with Central Hudson, the judges' second concern about negative community opinion was that it diminishes the value of the transaction's

[24] Petitioners' initial statement supporting the Joint Proposal, pp. 4-5.

benefits insofar as customers prize preservation of the corporate *status quo* more highly than the economic benefits offered in the Joint Proposal. We disagree with the merger proponents' exceptions to this aspect of the RD; contrary to their objections, it was not error for the judges to rely on public opinion merely because opinions are difficult to measure or may be misinformed. These infirmities certainly add to the difficulty of quantitatively analyzing a transaction's net benefits, but they do not nullify the relevance of customer preferences.

Financial Safeguards

The RD enumerated the many conditions included in the Joint Proposal that are designed to protect the financial integrity of Central Hudson in the event that it becomes a subsidiary of Fortis. It concluded that those conditions are reasonably designed to mitigate the concerns to which they are addressed.

On exceptions, PULP argues that any hope these financial protection provisions will perform as intended is unwarranted. PULP says a bankruptcy court has concluded that an independent director cannot be bound to vote against a voluntary bankruptcy filing, and this allegedly means that the "golden share" holder appointed pursuant to the Joint Proposal cannot be relied on to protect utility customers. PULP also speculates that there may be other "cross-border" complications that could

defeat the financial protection provisions required by the Joint Proposal.[25]

PULP's arguments are unpersuasive. The bankruptcy ruling it refers to was addressing the obligations of an independent member of the board of directors. It stated that a director has an inherent fiduciary responsibility to protect the interests of shareholders. A director cannot be relied upon to vote against a voluntary bankruptcy if that is the best course of action available. The holder of the "golden share" to be appointed under the terms of the Joint Proposal, by contrast, will have no such conflict. It will represent a special class of preferred stock whose only interest is in avoiding voluntary bankruptcy. There are no other fiduciary responsibilities for this trustee to balance. PULP's remaining contentions regarding other potential "cross-border" complications are not sufficiently concrete to be given significant weight in our decision.

CLP/COA also criticizes the RD's conclusions concerning financial protections. First, it contends, in essence, that Fortis is engaged in numerous ventures which may present risks that cannot now be foreseen and addressed by the Joint Proposal. Second, CLP/COA argues that the lower credit rating of Fortis makes a future downgrade for Central Hudson likely, but the Joint Proposal provides protection for ratepayers from the cost of such a downgrade for only three years. Finally, CLP/COA maintains that the accounting goodwill created by the proposed merger is too great to be sustained. It

[25] PULP also suggests that Fortis's own investment guidelines state that the company will oppose proposals for golden shares when they arise, and suggests that this implies that Fortis will attempt to negate the requirement in this case, perhaps using NAFTA. Petitioners point out, however, that the documents cited by PULP pertained to an unrelated company named "Fortis," not Fortis Inc. of Canada.

says the goodwill will inevitably be impaired and ratepayers cannot be fully insulated from the effect of the resulting write-down or write-off.

Staff responds that Fortis's ventures are not overly risky. Over 90% of its investments are in low-risk North American regulated utilities. It points out that even if Fortis suffers losses in its other businesses, the Joint Proposal includes provisions that would prevent Central Hudson from being used as a source of cash. These provisions, one of which is continued from the RSA and one of which is new, limit or preclude the payment of dividends by Central Hudson to its parent if Central Hudson's credit rating or equity ratio falls below defined levels.

As to the time limitation on the automatic protection of ratepayers from the effects of a Fortis downgrade, Staff points out that this provision is new and is the product of lessons learned from previous mergers. It says that in combination with the dividend restriction, the provision ensures adequate protection for ratepayers.

With respect to goodwill, Staff states that it was keenly aware of the issue and recognized the risk. It says that a significant portion of the positive benefit adjustments negotiated as part of the Joint Proposal were intended to compensate for that risk.

Petitioners respond that CLP/COA itself acknowledges that the financial protection provisions of the Joint Proposal are as comprehensive, and even stronger, than analogous conditions we have imposed in other recent mergers. Petitioners contend that CLP/COA has failed to demonstrate why these provisions will not perform their intended functions, and they point out that Standard & Poor's has concluded that the "ring fencing" set forth in the Joint Proposal could enable the rating

agency to differentiate the ratings of Central Hudson from those of Fortis.

Furthermore, Petitioners argue, far from being inevitable as CLP/COA alleges, neither a credit downgrade nor an impairment of goodwill is likely for Fortis. They say that Fortis's level of goodwill after acquiring CHEG will be substantially lower than that of Iberdrola after its acquisition of Energy East. Petitioners note that Standard & Poor's and Dominion Bond Rating Services affirmed Fortis's existing credit ratings after announcement of the merger agreement. In any event, they say, the ring fencing provisions of the Joint Proposal ensure that the risk of any goodwill impairment will be borne by shareholders of Fortis, not the ratepayers of Central Hudson.

With the addition of one further condition described below, we conclude the financial safeguards provided for in the Joint Proposal are adequate to protect Central Hudson's ratepayers from any fluctuations in the fortunes of the utility's parent company. Dividend restrictions combined with money pooling limitations and the ban on cross-default provisions will preclude Central Hudson from being used as a cash or credit source for Fortis's other ventures. The "golden share" requirement will prevent the placement of Central Hudson in voluntary bankruptcy. Goodwill accounting requirements will preclude the effects of any impairment that may occur from being reflected in utility rates. The automatic exclusion from rates of any credit cost increase attributable to a downgrade of Fortis's credit will be in place for only three years, but protection for ratepayers does not end with its expiration. Under our normal rate-setting standards, we have, and intend to exercise, the authority to exclude from rates any credit costs incurred by Central Hudson that are attributable to its parent

and are in excess of the cost of credit that would be incurred by the utility standing alone.

Based on our experience with previous mergers, we will add to these safeguards a further provision concerning tax liabilities. During discovery, Fortis informed Staff that, post merger, Central Hudson's United States federal and New York State income tax returns would be filed as part of the consolidated tax returns of FortisUS, the holding company for Fortis's United States subsidiaries. Such consolidated tax returns join the regulated and competitive market affiliates of Fortis and could expose New York ratepayers to tax liabilities that are the responsibility of the non-regulated or out-of-state subsidiaries of Fortis. To prevent this risk, we will require that Petitioners commit that Fortis will indemnify Central Hudson for any tax obligations Central Hudson incurs that it would not have incurred if it had filed on a stand-alone basis.

Fortis also informed Staff that it expects that the staff of Central Hudson will prepare the consolidated returns and that tax elections and filing positions related to the return will be determined by Central Hudson management, with input provided by Fortis where required as it may relate to the nature of the business activities of FortisUS Inc. and the non-regulated businesses of CHEG.[26] We will require that an Income Tax Preparation and Sharing Agreement be adopted and used to formalize this relationship, protect Central Hudson's customers, and allocate tax benefits and obligations among the companies participating in the consolidated income tax returns. The agreement is to be submitted as a compliance filing in this proceeding within 90 days following the closing of the merger

[26] Responses to Staff Interrogatories DPS-M278 (Staff's DPS-M78) and DPS-M316 (Staff's DPS-M116), which were provided in Staff Policy Panel Exhibit__ (PP-1).

transaction. It must provide for full Staff access to all income tax records of subsidiaries that join in the consolidated tax return with Central Hudson, and must also define the contractual mechanism for implementing the income tax indemnification requirement defined above.

The financial safeguards defined in the Joint Proposal, with the one addition we have made, are strong and comprehensive. They are fully adequate to protect the interests of Central Hudson's ratepayers.

Environment and Infrastructure

In the RD, the judges rejected concerns raised by commenters that Fortis might reverse policies of Central Hudson to promote alternative and green energy within its service territory. The RD found such concerns misplaced, reasoning that, because of the differing roles of Central Hudson as a distribution utility and Fortis as an owner of other subsidiaries in the generation business, Fortis's past performance in other settings had little bearing on Central Hudson's future conduct as a Fortis affiliate subject to our regulatory supervision. CLP/COA excepts, expressing strong misgivings about Fortis's record in matters involving utility infrastructure and environmental impacts, and Petitioners contest CLP/COA's allegations in response.

The exception is denied. First, we decline to evaluate claims regarding the highly impassioned and localized disputes noted by CLP/COA, because they already have been adjudicated in other jurisdictions and because our investigative abilities and resources are better employed in deciding questions material to cases pending before us.

Another, related consideration is that, as the judges observed, Central Hudson's scope of activity as an energy distribution company differs significantly from that of Fortis

as an energy producer. CLP/COA responds that Central Hudson's distribution system should and will evolve as dictated by environmental and energy policy objectives, and we agree. But the fact remains that, regardless of Central Hudson's corporate structure, the distribution system will continue to be designed, maintained, and operated by Central Hudson under New York's jurisdiction and regulations, in furtherance of the State's policies as adopted from time to time.

Moreover, CLP/COA's concerns presuppose that Fortis's corporate outlook will contradict and supersede Central Hudson's. We find this assumption simplistic in several respects. First, as noted, the two firms are in different lines of business. Second, the supposition that Fortis would override Central Hudson's fundamental orientation toward environmental issues overlooks Petitioners' representations, which we deem binding upon them, that Fortis's decentralized model of corporate control will afford latitude to local management in case of differences between subsidiary and parent in terms of policy orientation or priorities.

Central Hudson has a long-standing history of proven commitment to environmentally positive policies and practices. For example, the company supports about 1,323 net-metered residential or business customers using renewable generation (predominantly 14 megawatts of solar photovoltaic capacity) in its service territory, with another 148 systems pending. A major reason for this relatively large amount of installed solar PV capacity, which offsets an estimated 5,600 tons of greenhouse gas emissions annually, is that Central Hudson has been one of New York's most cooperative utilities in facilitating interconnection for customers that install renewable energy.

Central Hudson's level of support for renewable energy reflects not simply internal corporate culture but also the

conditions in which the company operates. Thus, Central Hudson's relatively early embrace of farsighted environmental policies has been partly a response to the State's financial incentive programs and partly a response to the high degree of environmental awareness that prevails among its customers. Regardless of corporate structure, we expect Central Hudson's orientation in that respect will continue to comport with state policies and customer preferences in its service territory, and therefore that the subsidiary will continue actively supporting expanded use of environmentally sound energy resources.

Of course we also will exercise our legal authority as necessary to reinforce the company's performance of its obligations under New York laws and regulations and we will monitor Central Hudson's responses to policy guidance, if any, from Fortis.

Retail Access

The Joint Proposal would call for Central Hudson to include, within 90 days following the closing of the merger transaction, a total bill comparison on all retail access residential bills using consolidated billing. The comparison would be generated using an existing Central Hudson program that has already been implemented. Within 60 days after the issuance of this order, Central Hudson would also be required to file a proposal to provide payment-troubled customers -- those subject to service termination -- with similar bill comparison information.

The RD noted that the Joint Proposal expressly recognized that its provisions might have to be modified based on the outcome of the Commission's *Retail Energy Markets* case.[27]

[27] Cases 12-M-0476, *et al.*, *Residential and Small Non-residential Retail Energy Markets*.

It recommended, therefore, that the Joint Proposal be modified to defer implementation of both the publication of bill comparisons on the consolidated bills of residential retail access customers and the provision of bill comparison information to payment-troubled customers until 30 days following an order in that proceeding. RESA takes exception to this recommendation; it argues that establishing a fixed implementation period for these measures is premature, given that the outcome of the generic proceeding remains uncertain as to how bill comparisons should be presented, or even whether they should be used at all.

Staff and Petitioners also except to the RD, but their objection is exactly the opposite of RESA's. They contend that Central Hudson is capable of providing the required bill comparisons now and that postponing implementation until completion of the *Retail Energy Markets* case will merely engender needless delay.

We agree with RESA that mandating an implementation plan before the nature of the plan to be implemented is fully defined would be unwise and potentially an inefficient use of resources. Therefore, we will depart from the Joint Proposal's terms and instead require that bill comparisons on consolidated bills and bill comparison information for payment-troubled customers be implemented in conformance with the requirements of the order in the *Retail Energy Markets* case, when issued. To the extent that Central Hudson has the capability to provide such bill comparisons more quickly or effectively than other utilities, that capability can be taken into account in that order.

PETITIONERS' ENHANCEMENTS

Following the exchange of briefs on exceptions and opposing exceptions, on May 30, 2013, Petitioners filed a letter in which they proposed "final enhancements" to the terms of the transaction beyond the terms included in the Joint Proposal. These enhancements are:

1. Petitioners propose an extension of the freeze on delivery rates for an additional year beyond that provided in the Joint Proposal, to June 30, 2015. While Petitioners do not undertake to quantify the value of this additional one-year rate freeze, they note that, over the prior seven years, Central Hudson's delivery rates increased by an average of $23 million per year. They also state that Central Hudson is committed to spending $215 million on capital improvements to its system by mid-2015. This willingness to make such a capital investment without an increase in rates to provide a return on that investment is a demonstration, they say, of Fortis's strong commitment to the State of New York.

2. Petitioners offer to extend the Joint Proposal's "no lay-off" commitment for both union and non-union employees of Central Hudson from two years to four years.

3. Petitioners offer to extend, from five years to ten, their commitment to maintain Central Hudson's level of community support.

4. Petitioners commit that the new board of directors of Central Hudson will include two independent directors who reside within Central Hudson's service territory, rather

than the one independent director meeting such qualifications proposed in the Joint Proposal.[28]

Multiple Intervenors, PULP, and CLP/COA all filed comments, on June 5 or June 6, 2013, responding to Petitioners' offers of these enhancements. MI asserts that Petitioners' offer represents "meaningful enhancements to the customer benefits and protections embodied in the Joint Proposal." MI further characterizes the enhancements as "entirely one-sided," in that they supplement previously offered benefits and protections for customers without any reduction or subtraction of such benefits. Consequently, MI argues that the enhancements offer should be evaluated very favorably, and it urges us to adopt the Joint Proposal with the enhancements. According to MI, the most compelling enhancement is the proposal to extend the delivery rate freeze for an additional year, through June 30, 2015. Although MI admits that the benefit is not quantifiable, it asserts that the benefit "almost certainly is material."

PULP and CLP/COA similarly single out the one-year extension of the rate freeze in responding to Petitioners' enhancements. Both PULP and CLP/COA argue that the additional year is not a benefit. Instead, they say, the offer undoubtedly reflects a situation in which Central Hudson is overearning and seeking to extend rates that are too high. Both point out that Central Hudson's rates were set based upon an allowed return on equity (ROE) of 10%, a level that would likely be considered too

[28] The Petitioners' May 30, 2013, letter containing the proposed enhancements to the terms of the transaction stated that the second director would "reside, do business or work within Central Hudson's service territory." Petitioners clarified that this was in error and that the language should be as in the Joint Proposal where the independent director is required to reside in the service territory, and we will so require.

high in light of the current interest rate environment. They point to recently filed Staff testimony in the pending Consolidated Edison rate case, in which Staff recommends an ROE of 8.7%,[29] as well as two recent Commission orders, one approving an ROE of 9.3% for Niagara Mohawk[30] and another requiring National Fuel Gas to show cause why its rates should not be lowered and made temporary in light of projected overearnings by that utility.[31] PULP argues that the average increase in rates over the last seven years is not particularly indicative of further trends, due to lower interest costs, cost cutting, high earnings, or other factors which call into question the reasonableness of current rates and ROEs. Both PULP and CLP/COA urge us to reject the Joint Proposal, the additional enhancements, and the proposed acquisition.

We agree with MI that these enhancements can only be regarded as improvements to the Joint Proposal, as they provide additional benefits not previously proposed. The additional year of a rate freeze represents only a commitment on the part of Central Hudson not to file for a rate increase to take effect prior to July 1, 2015. In no way does it represent a guarantee that we would not institute a proceeding to lower rates if such an action appeared to be warranted at any time during the next two years. Consequently, the assertions by PULP and CLP/COA that this promise by Central Hudson would entitle it to overearn during the period are inaccurate and unfounded. Our experience

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[29] Cases 13-E-0030, *et al., Consolidated Edison - Electric, Gas and Steam Rates*, testimony of DPS Staff witness Craig E. Henry, prefiled May 31, 2013.

[30] Case 12-E-0201, *Niagara Mohawk Power Corp. - Rates*, Order Approving Joint Proposal (issued March 15, 2013).

[31] Case 13-G-0136, *National Fuel Gas Distribution Corp. – Rates*, Order Instituting Proceeding and to Show Cause (issued April 19, 2013).

leads us to conclude that Central Hudson's expenses and capital investments during the next two years, even taking into consideration a more current cost of capital, would likely entitle it to some rate relief, such that Central Hudson's forgoing a rate increase has value for consumers. Consequently, we will accept the offered enhancements and add them as additional conditions to our approval of the acquisition.

We accept these enhancements with two caveats with respect to future rate-setting for Central Hudson, one clarification, and one modification. First, our ordering of the workforce commitments does not lessen our right and obligation to closely examine Central Hudson's labor budget in future rate proceedings and does not preclude an adjustment to workforce estimates to ensure that rates are set at proper levels.

Second, we note that our ordering of the extra year of the rate freeze does not reflect our acceptance of Petitioners' statement that Central Hudson "will spend $215 on capital expenditures" between July 1, 2013 and June 30, 2015. We appreciate the expression of commitment to the utility's infrastructure in the service territory and adopt it as a floor subject to consultation with Staff as to overall spending levels and priorities. We will require Central Hudson to develop its capital expenditure plan in greater detail in coordination with Staff.

Further, we clarify that the extension of the rate freeze we are accepting applies to all of the terms and conditions of Central Hudson's current rate plan as modified by the requirements of this order. Those terms and conditions will remain in effect until changed by subsequent Commission order.

Also, the Joint Proposal requires Central Hudson to file a report with the Secretary within 30 days after the first two anniversary dates of the merger's closing, comparing the

numbers of union and management employees on the anniversary date with those on the date on which the merger closed. With our adoption of Petitioners' enhancements, we will require this filing for the first four years after the merger's closing.

In addition, the Joint Proposal provides targets for tree trimming expenditures, stray voltage testing and mitigation costs, and net plant only for one year. Extension of the rate freeze will require that targets be established for the second year. Therefore, we will require Central Hudson to define such targets in cooperation with Staff. Within 20 days following issuance of this order, Central Hudson will submit its capital investment plan and proposed targets for the second year of the rate freeze to the Director, Office of Gas, Electric, and Water for review. Forty-five days after that submission Central Hudson and Staff will file their respective or joint recommendations concerning the tree trimming expenditure, stray voltage testing and mitigation cost, and net plant targets with the Secretary for a final Commission determination.

MOTION FOR EVIDENTIARY HEARINGS

Shortly before the RD was issued, CLP/COA was admitted as a party to the proceeding, and it filed a motion requesting evidentiary hearings. The RD was issued before responses opposing the motion were due.[32] Nevertheless, the judges reviewed the motion standing alone and recommended that we deny it.

From a procedural standpoint, considering fairness and efficiency, the judges found the motion inconsistent with the rule that parties joining a proceeding already underway must

[32] CLP/COA intervened and filed its motion May 1, 2013, with opposing responses due May 8. The RD was issued May 3.

accept the record as developed prior to their intervention,[33] inasmuch as all previous intervenors had to meet a much earlier deadline for identifying issues allegedly requiring evidentiary hearings.[34] Moreover, the judges observed, the pre-filed testimony and exhibits could be incorporated into the record (as advocated by CLP/COA) without evidentiary hearings.[35] Meanwhile, in terms of substantive issues, the judges found "no factual questions that could be clarified by confrontation of witnesses and could materially affect the Commission's decision."[36]

In addition to the CLP/COA motion, public comments submitted to us or published in the news media likewise express support for hearings.[37] Responses opposing the motion have been filed by Petitioners, Staff, and MI. PULP and IBEW have filed responses stating that they do not oppose the motion but proposing that it be held in abeyance pending our determination at this time whether outstanding or newly identified issues create a need for hearings. (Parties opposing the motion oppose the PULP and IBEW recommendation as well.)[38]

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[33] 16 NYCRR 4.3(c)(2).

[34] The RD cites only a February 8, 2013 deadline for identifying evidentiary issues. (RD, p. 4.) However, as we explain here, the judges adopted that deadline after the Joint Proposal was filed, thereby extending similar deadlines previously set for October 5, 2012 and then November 16, 2012.

[35] RD, p. 4.

[36] RD, p. 5.

[37] *E.g.*, letters dated May 10, 2013 from Assembly Member Kevin A. Cahill to Chairman Brown; May 6, 2013 from U.S. Representative Sean Patrick Maloney to Chairman Brown; and April 30, 2013 from Shayne R. Gallo, Mayor, City of Kingston, to Acting Secretary Cohen.

[38] IBEW's response antedates its decision to support the merger proposal, possibly implying that IBEW has abandoned its conditional support of additional hearings.

Having now had an opportunity to consider not only the motion as presented to the judges but also the subsequent responses and public comments on this question, we agree with the judges that our decision regarding the merger should be based on the documentary evidence and public comments already in the record without additional hearings.

As Petitioners suggest, a useful approach is to examine (1) whether the movants cite reasons for introducing the motion as late in the proceedings as they did; (2) whether granting the motion would prejudice other parties or the public interest; and, if so, (3) whether such prejudice would be outweighed by the hearings' evidentiary value. Regarding the last point, no party claims that evidentiary hearings are statutorily required in this case; therefore the hearing process already conducted suffices legally if the resulting record constitutes substantial evidence and provides a rational basis for decision.

On the first question, that of timing, those opposing the motion are correct that there is no discernible reason for its submittal as late as May 1, 2013. There can be no serious claim that the merger proposal was esoteric or came as a surprise late in the proceeding, having been public knowledge since it was first announced on February 21, 2012; nor, for example, does CLP/COA allege a belated discovery of new facts or issues. The present merger petition was filed on April 20, 2012, followed by a May 16, 2012 procedural conference open to all interested persons. The judges initially set an October 5, 2012 deadline "for all parties to file any statements of material factual issues they believe the [parties'] comments or testimony raise and warrant consideration in an evidentiary

hearing."[39] They later extended that deadline to November 16, 2012, as part of a general rescheduling designed to provide Staff and intervenors six additional weeks for discovery and testimony.[40] Then, after the Joint Proposal was negotiated and filed, the judges issued yet another, similar invitation whereby "any party who contends that an evidentiary hearing on the Joint Proposal is necessary must demonstrate [by February 8, 2013] that a material issue of fact exists that cannot be resolved without the cross-examination of witnesses."[41]

During the entire period from the initial April 2012 filing until CLP/COA's actual intervention in May 2013, intervention was freely authorized for every interested applicant without opposition, so that CLP/COA's absence can only be deemed voluntary. Thus it was procedurally appropriate for the judges to rely on 16 NYCRR 4.3(c)(2) in concluding that CLP/COA was subject to the several deadlines it had missed for requesting an evidentiary hearing, wholly apart from the judges' substantive finding that CLP/COA had failed to identify reasons for a hearing.

Given the lack of a justification for the late filing of CLP/COA's motion, technically it becomes unnecessary to reach the second question, whether the delay occasioned by extending the proceeding at this stage would prejudice the parties or the public interest. Nevertheless, we find that it would. As the judges stated when granting additional time (over Petitioners' objections) for preparation of Staff and intervenor cases:

In scheduling administrative proceedings, the

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[39] Case 12-M-0192, Ruling on Schedule and Procedure (issued June 29, 1012), p. 1.

[40] Case 12-M-0192, Ruling on Motion for Reconsideration (issued July 31, 2012), p. 1.

[41] Case 12-M-0192, Ruling on Schedule and Content of Comments on Joint Proposal (issued January 29, 2013), p. 2.

> primary concern is fairness. To the extent possible, a schedule should be adopted that does not prejudice the interests of any party. Here, Petitioners have an interest in seeing their petition determined by the Commission within a commercially reasonable time.[42]

Not only does that analysis remain valid at the present stage; but we now are met with the additional consideration that CLP/COA's proposed modification of the procedural schedule to accommodate hearings would be unfair to other parties that made efforts, including timely intervention, to comply with the schedule previously adopted. Such unfairness in turn would disserve the public interest by undermining the Commission's, judges', and parties' interest in securing compliance with schedules established in future proceedings.

Finally, the third question enumerated above is whether an otherwise prejudicial delay can be justified by the value the evidentiary hearings would add to the record. CLP/COA and others advocating a hearing have not satisfied that criterion. Typically in our proceedings, the reasons for an evidentiary hearing are that it enables parties to elicit information that could not be obtained through discovery, or to test the accuracy or cogency of facts and opinions presented by opposing parties through their witnesses.

The parties that intervened earlier than CLP/COA did not identify issues even arguably suitable for such procedures despite three formal invitations to do so, as described above. Those currently seeking hearings likewise have not shown that cross-examination might enhance the record regarding material

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[42] Case 12-M-0192, Ruling on Motion for Reconsideration (issued July 31, 2012), pp. 4-5, citing Case 08-E-0077, *Entergy Corporation, et al. - Reorganization*, Ruling on Discovery, Process, Schedule and Scope of Issues (issued August 14, 2008), p. 31.

issues. Nor can they explain why the procedures actually used in this case have been less effective than confrontation of witnesses.

Thus, for example, CLP/COA says cross-examination is needed "to ensure clarity [and] accuracy and to probe credibility,"[43] begging the question what material fact is unclear or unverified or raises an issue of credibility. Similarly, elected officials' public comments argue that a determination of the public interest under PSL §70 requires a factual basis;[44] that "full and informed public input is vital";[45] or that we must examine "[e]ach and every fact and estimate" regarding Petitioners' "financial health, commitments to customer service, labor contract continuation limitations, and promises of ratepayer relief."[46] Each of these premises, while unexceptionable on its face, stops short of explaining why a decision should not be based on the record already compiled through months of discovery, preparation of adversarial testimony and exhibits by Staff and intervenors, and a subsequent Joint Proposal negotiated over an additional two months in discussions open to all interested parties.

The CLP/COA motion and other comments also attempt to characterize this case as a deviation from established procedures, insofar as the case has included no evidentiary hearings even though the merger proposal is momentous. This objection not only lacks a supporting legal theory, but also does not describe our practices accurately. To generalize about our merger proceedings, or indeed any Commission cases where hearings are merely discretionary, the most that accurately can

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[43] CLP/COA motion, p. 5.

[44] Gallo letter, *supra*, p. 1.

[45] Maloney letter, *supra*.

[46] Cahill letter, *supra*, p. 1.

be said is that the procedures adopted are tailored to the nature of the facts and issues to be determined.[47] For example, among the merger cases cited by CLP/COA to show that evidentiary hearings are customary, three differed from this case in that each included establishment of a detailed rate plan,[48] and the fourth differed in that the parties did not negotiate a Joint Proposal.[49] And in none of the other cases was the evidentiary hearing proposed belatedly as here.

In summary, the judges were correct that to grant the motion for hearings would be improper because of the circumstances in which CLP/COA intervened, would be prejudicial and contrary to the public interest, and would not enhance the record on any material issue requiring a decision.

CONCLUSION

The acquisition of CHEG by Fortis, subject to the terms of the Joint Proposal as modified, clarified and

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[47] A typical criterion in choosing between evidentiary hearings and other procedures is whether the issues are factual. As the judges in another proceeding explained: "we are not excluding issues from consideration in the hearing process, ... instead, we are distinguishing between contested factual matters requiring adjudication and legal or policy matters, for which no facts are in dispute, and which are appropriately addressed by argument." Case 10-T-0139, *Champlain Hudson Power Express Inc. - Transmission Siting*, Ruling on Issues (issued May 8, 2012), p. 3, n. 7.

[48] Case 01-M-0075, *Niagara Mohawk Power Corp., National Grid PLC, et al. - Merger*, Opinion and Order Authorizing Merger and Adopting Rate Plan (issued December 3, 2001); Case 01-E-0359, *N.Y.S. Electric & Gas Corp. - Price Protection Plan*, Order Adopting Provisions Of Joint Proposal With Modifications (issued February 27, 2002); Case 06-M-0878, *National Grid PLC and KeySpan Corp. - Stock Acquisition*, Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations (issued September 17, 2007).

[49] Case 07-M-0906, *Iberdrola S.A., Energy East Corp., et al. - Acquisition*.

supplemented in our discussion above, provides substantial benefits and minimal risks. We approve it as being in the public interest within the meaning of PSL §70.[50]

As the RD explained, the clearest articulation of the public interest analysis in a case such as this can be found in our decision approving the acquisition of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation by Iberdrola.[51] It starts by requiring Petitioners to make a three-part showing: that the transaction would provide customers positive net benefits, after considering (1) the expected benefits properly attributable to the transaction, offset by (2) any risks or detriments that would remain after applying (3) reasonable mitigation measures.

Once we have gauged the net benefits by comparing the transaction's intrinsic benefits versus its detriments and risks, we can assess whether the achievement of net positive benefits requires that the intrinsic benefits be supplemented with monetized benefits (sometimes described as "positive benefit adjustments" or PBAs). Then, if necessary, we establish a quantified PBA requirement, "as an exercise of informed judgment because there is no mathematical formula on which to base such a decision."[52]

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[50] In adopting the Joint Proposal's terms, we neither reject nor adopt the terms stated in §§VI.A. through F. of the Joint Proposal ("Other Provisions"), as they concern only the parties' mutual obligations. Nothing in the Joint Proposal would preclude reliance on our order adopting the Joint Proposal's terms, as precedent in other cases. See Cases 06-G-1185 and 06-G-1186, *KeySpan Energy Delivery - Rates*, Order Adopting Gas Rate Plans (issued December 21, 2007), pp. 58-60.

[51] RD pp. 57-58.

[52] *Iberdrola* order, p. 136.

In this instance, the elements we called for in *Iberdrola* are combined in a Joint Proposal whose terms include the basic merger transaction, measures to mitigate the transaction's risks or detriments, and supplemental, monetized benefits. In reviewing the proposed benefits achievable only through approval of the transaction and the Joint Proposal, we find them sufficiently significant, and the risks sufficiently minimized, to produce a net positive benefit for ratepayers that justifies approval of the transaction.

As we have discussed, the benefits include $9.25 million in guaranteed rate savings, a $35 million fund to be used for deferral write-offs and/or future rate mitigation, a $5 million Community Benefit Fund for low-income customer programs and economic development, and an earnings sharing mechanism more favorable to ratepayers than the present formula. As for any offsetting risks or detriments, we find that they have been minimized sufficiently, because the Joint Proposal's terms as modified and adopted establish comprehensive financial safeguards, corporate governance requirements, employee retention requirements, service quality and performance mechanisms, and other risk mitigation measures. Those provisions together with Fortis's "federal" business model and an extension of Central Hudson's current level of community involvement will ensure the continuation of Central Hudson's role in its service territory as a responsive and responsible corporate citizen.

Based on these considerations, we find that the proposed transaction provides a clear net benefit to Central Hudson's ratepayers, and that the transaction therefore is in the public interest as required by PSL §70.

Finally, we are conditioning our approval of the transaction on Petitioners' providing the "enhancements"

outlined above, namely: an extension of the originally proposed rate freeze through June 30, 2015; job security provisions extended to four years as compared with the two years originally proposed; continuation of Central Hudson's level of involvement in community programs for ten years, rather than the five originally proposed; and a provision that Central Hudson's Board of Directors will include two independent directors residing in the service territory, rather than one as originally proposed.

In summary, we approve the merger transaction because it will serve the public interest as required by PSL §70; and we adopt Petitioners' proposed enhancements, because they provide other advantages additional to those enumerated in the Joint Proposal. Therefore, the motion is denied.

The Commission orders:

1. In accordance with the foregoing discussion, and subject to the determinations and understandings set forth above, the terms of the Joint Proposal dated January 25, 2013, which was filed in this proceeding on January 28, 2013, are adopted in their entirety except as otherwise noted, and are incorporated as part of this order.

2. Fortis Inc. and CH Energy Group, Inc., on behalf of themselves and their subsidiaries that are parties to the petition initiating this proceeding, must submit a written statement of complete and unconditional acceptance of this order and its terms and conditions, signed and acknowledged by duly authorized officers before the earlier of the closing date of the proposed acquisition or July 8, 2013. These statements must be filed with the Secretary and served contemporaneously on all active parties in this proceeding. In the absence of such acceptance, our approval of the proposed acquisition is rescinded.

3. Within 90 days following the closing of the merger, Fortis Inc. shall file with the Secretary a Tax Preparation and Sharing Agreement incorporating the provisions described in this order.

4. Pursuant to PSL §108, Central Hudson Gas & Electric Corporation is authorized to amend its Certificate of Incorporation to provide for the establishment of a class of preferred stock having one share subordinate to any existing preferred stock, as defined by the terms of the Joint Proposal that we are adopting by this order. Such share of stock shall have voting rights only with respect to Central Hudson Gas & Electric Corporation's right to commence any voluntary bankruptcy without the consent of the holder of that share of stock.

5. As described in the body of this order, within 20 days following the issuance of this order, Central Hudson Gas & Electric Corporation shall file with the Secretary its capital investment plan and proposed targets for tree trimming expenditures, stray voltage testing and mitigation costs, and net plant for the year ending June 30, 2015. Forty-five days after that submission, Central Hudson and Staff shall file their respective or joint recommendations concerning the tree trimming expenditure, stray voltage testing and mitigation costs, and net plant targets with the Secretary for a final Commission determination.

6. The motion for evidentiary hearings filed by Citizens for Local Power and the Consortium in Opposition to the Acquisition is denied.

7. The Secretary in his sole discretion may extend any deadlines established by this order.

8. This proceeding is continued but shall be closed by the Secretary as soon as the compliance filings have been completed, unless he finds good cause to continue it further.

By the Commission,

(SIGNED) JEFFREY C. COHEN
Acting Secretary

Public Service Commission
State of New York

Joint Petition of Fortis Inc., FortisUS Inc., Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.	:	Case 12-M-0192

Joint Proposal for Commission Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions

Dated: January 25, 2013

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Public Service Commission
State of New York

Joint Petition of Fortis Inc., FortisUS Inc., Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.	:	Case 12-M-0192

Joint Proposal for Commission Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions

I. INTRODUCTION

This proposal ("Joint Proposal") for the complete resolution of the Joint Petition in this proceeding is submitted jointly to the New York State Public Service Commission ("Commission") by Cascade Acquisition Sub Inc. ("Cascade"), CH Energy Group, Inc. ("CHEG"), Central Hudson Gas & Electric Corporation ("Central Hudson"), Department of Public Service Staff ("Staff"), Department of State Utility Intervention Unit ("UIU"), Dutchess County New York, Fortis Inc. ("Fortis"), FortisUS Inc. ("FortisUS"), Multiple Intervenors, Orange County New York, and Ulster County New York. The supporting parties are referred to herein collectively as the "Signatories."

II. PROCEDURAL SUMMARY

Subsequent to the April 20, 2012 filing of the Joint Petition, direct testimony and exhibits, formal proceedings have

included an on-the-record technical conference, two administrative conferences, scheduling and procedural rulings by the Presiding Administrative Law Judges, and extensive discovery. Twelve parties, including Staff, have been admitted. On October 12, 2012, in accordance with the procedural schedule, eight parties filed their initial positions. Staff filed corrected testimony on November 5, 2012. Petitioners submitted their reply comments and rebuttal testimony and Staff filed their rebuttal testimony on November 27, 2012. Staff also filed sur-rebuttal testimony on December 4, 2012. Three parties filed their lists of Disputed Issues of Material Fact on December 4, 2012.

Pursuant to a Notice of Potential Settlement filed by Petitioners on December 12, 2012, a series of settlement discussions commenced on December 17, 2012 and continued on December 18, 19 and 20 and January 2,3,4,7,8 and 11, 2013. Following these discussions, drafts of this Joint Proposal and the Signatories' comments thereon were exchanged, and this Joint Proposal was executed by the Signatories.

III. APPROVAL OF TRANSACTION

The Signatories recommend that the Commission approve the indirect transfer to Fortis of the ownership of Central Hudson through the acquisition and related transactions described in

the Joint Petition, subject to the terms described herein.[1] The Signatories have concluded that these terms establish that the upstream transfer of the equity interests in Central Hudson is "in the public interest" pursuant to Public Service Law ("PSL") Section 70, and should be approved.

IV. TERMS OF COMMISSION APPROVAL

A. Corporate Structure and Financial Protections

1) Goodwill and Acquisition Cost Conditions

a) Cascade, CHEG, Central Hudson, Fortis and FortisUS (referred to collectively herein as "Petitioners") agree that the Goodwill and transaction costs of this acquisition will be excluded from the rate base, expenses, and capitalization in the determination of rates and earned returns of Central Hudson for New York State regulatory accounting and reporting purposes.

b) If, at any time after the closing of this acquisition, as a result of any impairment analysis by Fortis, FortisUS, CHEG or Central Hudson, either Fortis or FortisUS makes a book entry reflecting

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[1] Pursuant to the February 20, 2012 Agreement and Plan of Merger, the acquisition will be accomplished by the merger of Cascade with and into CHEG, with CHEG as the surviving corporation that will be wholly-owned by Fortis. Central Hudson and its sister unregulated affiliates (Griffith Energy Services, Inc. and Central Hudson Enterprises Corporation) will continue to be wholly-owned subsidiaries of CHEG and, therefore, indirect, wholly-owned subsidiaries of Fortis.

impairment of the Goodwill from this acquisition, Central Hudson must submit the impairment analysis to the Commission within five business days after the entry has been made.

c) To the extent permissible under U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), no goodwill or transaction costs associated with this acquisition will be reflected on the books maintained by Central Hudson after the closing of the acquisition of CHEG by FortisUS and Fortis. Should changes in U.S. GAAP require that the goodwill associated with the acquisition be "pushed down" and therefore reflected in the accounts of Central Hudson, the goodwill will not be reflected in the regulated accounts of Central Hudson for purposes of determining rate base, setting rates, establishing capital structure or other regulatory accounting and reporting purposes.

d) Central Hudson will provide a final schedule of the external costs to achieve the merger following consummation of the transaction as a demonstration that there will be no recovery requested in Central Hudson rates, or recognition in the determination of rate base of any legal and financial advisory fees,

or other external costs associated with Fortis' acquisition of CHEG, and indirectly, Central Hudson.

2) Credit Quality and Dividend Restriction Conditions

a) After the closing of this transaction, copies of all presentations made to credit rating agencies by Central Hudson, Fortis or any Fortis affiliate in the line between Central Hudson and Fortis that present or discuss the finances and credit of Central Hudson or CHEG, will be provided to Staff within ten business days of the presentation on a continuing basis. These presentations will be subject to the confidentiality and privilege provisions of sections VI.B 32 and 33 of the Restructuring Settlement Agreement ("RSA") approved by the Commission in Case 96-E-0909, In the Matter of Central Hudson Gas & Electric Corporation's Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12, Order Adopting Terms of Settlement Subject to Modifications and Conditions (issued on February 19, 1998).

b) To the extent not already in place, Fortis and Central Hudson must register with at least two major nationally and internationally recognized bond rating agencies, such as Dominion Bond Rating

Services ("DBRS"), Fitch Ratings ("Fitch"), Moody's Investor Services ("Moody's") and Standard & Poor's ("S&P"). Consistent with section VI.B 20 of the RSA, Central Hudson will continue to maintain separate debt instruments and its own corporate and debt credit ratings with at least two of these nationally recognized credit rating agencies. Neither Fortis nor Central Hudson will enter into any credit or debt instrument containing cross default provisions that would affect Central Hudson.

c) Fortis and Central Hudson will continue to support the objective of maintaining an "A" credit rating for Central Hudson, unless and until the Commission modifies its financial integrity policies. In so doing, Fortis and Central Hudson will maintain the equity capitalization ratio of Central Hudson at the level used by the Commission in establishing Central Hudson's rates as follows. At each month end, Central Hudson and Fortis agree to maintain a minimum common equity ratio ("MER") (measured using a trailing 13-month average) in relation to the equity ratio used to set rates. The MER is defined as no less than 200 basis points below the equity ratio used to set rates. In the event that the MER

is not met, no dividends are payable until such time the MER is restored.

d) In the event the Commission establishes rates for Central Hudson on a basis that does not recognize Central Hudson's actual equity capitalization, or deems or imputes for ratemaking purposes an equity capitalization below Central Hudson's actual equity capitalization, Central Hudson shall be free to dividend its excess equity capitalization to match that recognized or deemed by the Commission in establishing Central Hudson's rates.

e) If, as a direct result of a downgrade of Fortis Inc.'s debt within three years following the closing of this transaction, Central Hudson is downgraded to either S&P's or Fitch's BBB category (BBB+ or lower), or the equivalent for Moody's (Baa1 or lower) or DBRS's (BBB(high) or lower), and Central Hudson incurs increased costs of debt, the incremental cost of debt incurred by Central Hudson in comparison to the cost of debt which would otherwise have been incurred by Central Hudson under its pre-downgrade credit rating will not be reflected in Central Hudson's cost of capital or the

determination of Central Hudson's rates in subsequent rate cases.

If such a downgrade occurs in the time discussed and debt is issued, then in subsequent rate cases Mergent Bond Record data (or the equivalent, if Mergent data is not available) for the relevant month(s) of issue will be used to quantify the adjustment needed to avoid reflecting the higher interest rate expense. For each one-notch downgrade to Central Hudson, one-third of the difference between A and Baa Public Utility Bond yield averages will be used to adjust the interest rate allowed in rate cases. The differential will only apply for each credit rating agency which downgrades Central Hudson's debt due to a Fortis downgrade. For instance, if Central Hudson is rated by two credit rating agencies and only one downgrades them due to a Fortis downgrade, then only 50% of the one-notch yield difference per Mergent Bond Record data will be used to calculate the interest rate adjustment in subsequent rate cases.

f) Central Hudson will continue to comply with any and all sections of the RSA with respect to restrictions

on the payment of common dividends related to credit ratings.

g) Central Hudson will not lend to, guarantee or financially support Fortis or any of its affiliates, or any subsidiary or other joint venture of Central Hudson, except as is consistent with section VI.B 23 of the RSA or permitted by the Money Pooling Conditions referred to below. Furthermore, Central Hudson will not engage in, provide financial support to or guarantee any non-regulated businesses, except as authorized in the RSA or by Commission order.

h) Central Hudson shall maintain banking, committed credit facilities and cash management arrangements which are separate from other affiliates.

i) In addition to the special class of preferred stock referred to in item 4, below, Central Hudson's financing authorization in Case 12-M-0172, Order Authorizing Issuance of Securities, issued and effective September 14, 2012 ("Financing Order") is amended to authorize Central Hudson to use private financing as an alternative to public debt offerings. This authorization supersedes Ordering Clause 5 in the Financing Order. Private financings are subject to the conditions and requirements

described in the other Ordering Clauses in the Financing Order and, Central Hudson's proposal to address Ordering Clause 6 in the Financing Order, as was filed with the Commission on November 9, 2012, is accepted and approved by the Commission's adoption of this Joint Proposal.

3) Money Pooling Conditions

a) Central Hudson may participate in a money pool only if all other participants, with the exception of Fortis and FortisUS, are regulated utilities operating within the United States, in which case Central Hudson may participate as either a borrower or a lender. Fortis and FortisUS may participate only as lenders in money pools involving Central Hudson. Central Hudson may not participate in any money pool in which any participant directly or indirectly loans or transfers funds to Fortis or FortisUS.

b) Neither Fortis nor FortisUS, nor any of their affiliates may, at closing of the approved acquisition of Central Hudson, have any cross default provision that affects Central Hudson in any manner. Neither Fortis nor FortisUS, nor any of their affiliates may enter into any cross default

provision following the closing that affects Central Hudson in any manner. Notwithstanding the foregoing, to the extent that any cross default provision that might affect Central Hudson already exists, Fortis and FortisUS must use their best efforts to eliminate that cross default provision within six months after closing. If any cross default provision remains in effect at the end of that period, Fortis and FortisUS must obtain indemnification from an investment grade entity, at a cost not borne by Central Hudson's ratepayers, which fully protects Central Hudson from the effects of any cross default provision.

4) Special Class of Preferred Stock Conditions

a) Central Hudson must modify its corporate by-laws as necessary to establish a voting right in order to prevent a bankruptcy, liquidation, receivership, or similar proceedings ("bankruptcy") of Central Hudson from being caused by a bankruptcy of Fortis, FortisUS, or any other affiliate. The Commission's approval of this Joint Proposal will represent all Commission authorization necessary for Central Hudson to establish a class of preferred stock having one share (the "golden share"), subordinate

to any existing preferred stock, and to issue that share of stock to a party who shall protect the interests of New York and be independent of the parent company and its subsidiaries. Such share of stock shall have voting rights only with respect to Central Hudson's right to commence any voluntary bankruptcy without the consent of the holder of that share of stock. Central Hudson shall notify the Commission of the identity and qualifications of the party to whom the share is issued and the Commission may, to the extent that such party is not reasonably qualified to hold such share in the Commission's opinion, require that the share be reissued to a different party within three months of receipt of such notification. If Central Hudson has failed to propose a shareholder that is approved by the Commission within six months after the closing of the acquisition, the Commission will appoint a shareholder of its own selection. In the event that Central Hudson is unable to meet this condition despite good faith efforts to do so, it must petition for relief from this condition, explaining why the condition is impossible to meet and how it proposes to meet an underlying requirement that a

bankruptcy involving Fortis, FortisUS, or any other affiliate does not result in its voluntary inclusion in such a bankruptcy.

b) In any rate proceeding in which use of Central Hudson's capital structure is requested, Central Hudson will submit the most current written evaluations from at least two rating agencies addressing Central Hudson's credit profile. These credit reports shall be relied upon to the extent that they provide written evidence that supports the evaluation of Central Hudson and the treatment of Central Hudson's capital structure by the Commission primarily as a separate company, without material adjustments to the rating based on risks related to the capital structure and ratings of its ultimate parent. This evidence, together with the golden share would provide sufficient proof that the use of Central Hudson's capital structure should be used for rate making purposes. In the event written evaluations from at least two rating agencies do not provide such evidence or are not available, Central Hudson shall have the opportunity to meet its burden of proof through other means. Central Hudson's capital structure will continue to be reviewed in

relation to the level of risk of Central Hudson at that time.

5) Financial Transparency and Reporting Conditions

a) Central Hudson must continue to use the standards of Generally Accepted Accounting Principles applicable to publicly-traded entities ("Public GAAP," "U.S. GAAP," or simply "GAAP") for its financial accounting and financial reports. Central Hudson will, for purposes of its financial accounting and financial reporting, continue to use the generally accepted accounting principles which include, but are not limited to the determinations by the Financial Accounting Standards Board ("FASB"), or any successor entity, for U.S. publicly accountable enterprises ("U.S. GAAP" or simply "GAAP"). Any future changes in U.S. GAAP, including any decision to replace U.S. GAAP with International Financial Reporting Standards ("IFRS"), will be applied by Central Hudson. In the event of future changes to accounting standards, recovery by Central Hudson for the incremental costs incurred in making such changes will be addressed in a future rate proceeding.

b) Central Hudson must continue to satisfy all Commission reporting requirements that currently apply to it; provided however, that nothing in this provision is intended to preclude Central Hudson from requesting relief from any such reporting provision and, further, that nothing herein is intended to require Central Hudson to continue to make reports in the future that utilities have been generally or generically excused by the Commission from making.

c) After the closing of this acquisition, Central Hudson shall continue to comply with the provisions of sections 302 through 404 of the Sarbanes-Oxley Act ("SOX") as if Central Hudson were still bound directly by the provisions of SOX, with the understanding that no filings with the Securities and Exchange Commission will be required. Specifically, Central Hudson's periodic statutory financial reports must continue to include certifications provided by its officers concerning compliance with SOX requirements, including certifications on internal controls, as if still bound by the provisions of SOX.

d) Central Hudson shall remain subject to annual attestation audits by independent auditors with respect to its financial statements and internal controls over financial reporting.

e) Subject to the confidentiality and privilege provisions of sections VI.B 32 and 33 of the RSA, Fortis and Central Hudson will provide Staff access pursuant to section VI.B 30 of the RSA to the books and records and Standards Pertaining To Transactions, Conflicts Of Interest, Cost Allocations And Sharing Of Information Between Central Hudson Gas And Electric Corporation And Affiliates ("Standards"), including, but not limited to, tax returns, of Fortis and FortisUS to the extent necessary to determine whether the rates and charges of Central Hudson are just and reasonable and provide Staff the opportunity to ensure that costs are allocated equitably among affiliates in accordance with the RSA, Standards and Central Hudson code of conduct and that intercompany transactions involving Central Hudson are priced reasonably in accordance with the RSA, Standards and Central Hudson code of conduct. Subject to the confidentiality and privilege provisions of sections

VI.B 32 and 33 of the RSA, that access must include, but not be limited to, all information supporting the underlying costs and the basis for any factor that determines the allocation of those costs.

f) Commencing for the year in which the closing takes place, Central Hudson must file annually with the Commission Fortis financial statements, including balance sheets, income statements, and cash flow statements for Fortis, Inc. and its major regulated and unregulated energy company subsidiaries in the United States. U.S. business entities with annual revenues less than ten percent of total Fortis revenues may be aggregated, provided that each entity included is fully identified. Aggregated U.S. business entities shall be identified as either regulated or unregulated. To satisfy this filing requirement, Fortis Inc.'s U.S. GAAP Canadian dollar denominated quarterly and annual Financial Reports, including Management Discussion and Analysis, which have been filed publically with Canadian securities regulators, will be filed by Central Hudson with the Commission. Additionally, Central Hudson will provide to the Commission, to the extent available from a recognized financial reporting information

service such as SNL Financial or Bloomberg, Fortis Inc.'s "as reported" quarterly and annual Balance Sheet, Income Statement and Statement of Cash Flows in U.S. dollars with the underlying currency translation assumptions.

g) All information required by the financial transparency and reporting requirements in subparagraphs (a) through (f) above must be provided in English and in U.S. dollars, with the exception of Financial Reports and Management Discussion and Analysis referred to in subparagraph (f), and books and records and Canadian tax returns that statutorily require Canadian dollar reporting. In such cases, foreign exchange for U.S. dollar translation will be provided as described in subparagraphs (a) through (f) above and, shall be publicly available subject to the confidentiality and privilege provisions of sections VI.B 32 and 33 of the RSA.

6) Affiliate Transactions, Cost Allocations, and Code of Conduct

a) Fortis shall be subject to the rules, practices, and procedures in the RSA, Standards, and code of

conduct governing relations among CHEG and Central Hudson in the same manner as they apply to CHEG.

b) Central Hudson will not enter into transactions with affiliates that are not in compliance with the RSA guidelines regarding affiliate transactions, including the updated Standards set forth in Attachment I. Central Hudson will also not enter into transactions with affiliates on terms less favorable to Central Hudson than specified in the RSA, including the updated Standards.

c) Central Hudson shall provide 180 days notice to the Commission prior to the commencement of any planned material (i.e., individually or collectively exceeding greater than 5% of Central Hudson net income on an after tax basis) shared services initiatives, and prior to establishment of a services organization that would provide material (i.e., individually or collectively exceeding greater than 5% of Central Hudson net income on an after tax basis) services to Central Hudson. Further, any such noticed shared service initiative would require Commission approval.

d) At or prior to the time of Central Hudson's next base rate filing it will consolidate the RSA,

Standards and codes of conduct into one comprehensive document and file the consolidated document with the Commission. The intention of this requirement is to organize the provisions into an integrated document without altering the effect and content of the provisions.

7) Follow-On Merger Savings

a) In the event that Fortis completes any additional mergers or acquisitions within the United States before the Commission adopts an order approving new rates for Central Hudson, Fortis must share the follow-on merger savings that are reasonably applicable to Central Hudson and its customers between shareholders and ratepayers, on a 50/50 basis, to the extent the portions of such savings realized by Fortis are material (*i.e.*, 5 percent or more of Central Hudson net income on an after-tax basis). Central Hudson must submit, within 90 days of the follow-on merger closing, a comprehensive and detailed proposal to share the follow-on merger savings, to begin on the closing date of the follow-on merger. In addition, the proposal must include an allocation method for sharing the synergy savings and efficiency gains among corporate entities that

addresses the time period from the receipt of the synergy savings by Central Hudson until the Commission approves new rates. The ratepayer share shall be set aside in a deferral account for future Commission disposition.

8) Corporate Governance and Operational Provisions

a) No later than one year after the closing of Fortis's acquisition of CHEG, Fortis shall appoint a board of directors for Central Hudson, the majority of whom will be independent (as defined in the Standards, see Attachment I), with the majority of such independent directors being resident in the State of New York, with emphasis on selecting candidates who reside, conduct business or work within the Central Hudson service territory. At least one independent director of Central Hudson shall be a resident of the service territory. Except with respect to the initial appointment of the board of directors for Central Hudson within one year following the closing, nothing in this Joint Proposal is intended to restrict the rights of Fortis to take any action before the Commission, or otherwise, regarding the appointment of directors meeting the above residency criteria at any time, as it sees fit.

b) Subject to the right of Central Hudson to petition the Commission for approval to relocate its corporate headquarters outside of Central Hudson's service territory, the corporate headquarters of Central Hudson shall remain within Central Hudson's service territory. Complete books and records of Central Hudson shall be maintained at Central Hudson's corporate headquarters.

c) At least 50% of Central Hudson's officers shall reside within Central Hudson's service territory.

d) Central Hudson shall be governed, managed and operated in the fashion described in Petitioners' testimony. Specifically, the Signatories agree that:

i) The board of directors of Central Hudson will be responsible for management oversight generally, including the approval of annual capital and operating budgets; establishment of dividend policy; and determination of debt and equity requirements. The Central Hudson board of directors will have an audit committee, the majority of whom will also be independent. The responsibility of this committee will include the oversight of the ongoing financial

integrity and effectiveness of internal controls of Central Hudson.

ii) Central Hudson's local management will continue to make decisions regarding staffing levels and hiring practices; will continue to negotiate future collective bargaining agreements; will continue to be the direct contact and decision making authority in regulatory matters; and, will continue to represent Central Hudson in all future regulatory matters.

iii) To provide continuity in the management and staffing of Central Hudson, and ensure that the necessary human resources are maintained to continue the delivery of safe, reliable service to customers, the current employees of Central Hudson (union and management) will be retained for a period of two years following the closing under their respective current conditions of employment. Central Hudson reserves the right to take disciplinary and any other actions it determines necessary or appropriate within its existing labor agreement and employee relations practices. Central Hudson also agrees to maintain for two years after the closing the

level of operating employees, as defined in the Standards, that is recognized in rates and to file a report with the Secretary of the Commission within 30 days after the first two anniversary dates of the merger's closing comparing the level of union and management employees on the anniversary to date to the levels on the date upon which the merger closed.

iv) To ensure the continued active corporate and charitable presence of Central Hudson in its service territory, Central Hudson shall maintain its community involvement at not less than current (2011) levels for five years after the closing of the acquisition (2013 through 2017).

B. PERFORMANCE MECHANISMS

1) Customer Service

The following targets and effective dates will apply:

Measure	Value	Effective
PSC Complaint Rate	1.1 - 1.6	7/1/13
CSI	85 - 82, etc. structure per the current rate plan	7/1/13
Keeping Scheduled Appointments	$20 paid to customer for missed appt. per current rate plan	7/1/13

These targets will continue to apply unless and until changed by Commission Order.

2) Negative Revenue Adjustments ("NRAs")

The NRAs shown in the following table have been doubled from those in the current rate plan.[2] The NRAs in the current rate plan shall be tripled if targets are missed during a dividend restriction and quadrupled if targets are missed for three years within the next five year period.

Central Hudson Service Quality Performance Mechanism

Customer Satisfaction Index	Negative Revenue Adjustment
85% or higher	None
84% ≤ CSI < 85%	$475,000
83% ≤ CSI < 84%	$950,000
82% ≤ CSI < 83%	$1,425,000
< 82%	$1,900,000
Total Amount at Risk	**$1,900,000**

[2] The Commission's Order Establishing Rate Plan, issued June 18, 2010, in Cases 09-E-0588 and 09-G-0589, set forth electric and gas rate plans for Central Hudson for the period July 1, 2010 through June 30, 2013.

PSC Annual Complaint Rate	Negative Revenue Adjustment
<1.1	None
1.1	$950,000
1.2	$1,140,000
1.3	$1,330,000
1.4	$1,520,000
1.5	$1,710,000
1.6 or higher	$1,900,000
Total Amount at Risk	**$1,900,000**

3) Electric Reliability

The electric service annual metrics for System Average Frequency Index (SAIFI) target of 1.45 and Customer Average Duration Index (CAIDI) target of 2.50 continue through 2013.

Electric Reliability Reporting requirements, quarterly meeting requirements, revenue adjustment source, and exclusions are defined in Attachment II.

All Electric Reliability NRAs of the current rate plan shall be doubled. In addition, the NRAs of the current rate plan shall be tripled if targets are missed during a dividend restriction and quadrupled if targets are missed for three years within the next five year period. All electric reliability targets

for calendar year 2013 remain in effect until modified by a Commission order in a subsequent Central Hudson electric rate case.

4) Gas Safety Metrics

Emergency Response Time

The gas emergency response time metrics of 75% response within 30 minutes and 90% response within 45 minutes will be continued.

Gas Leak Backlog

The calendar year 2013 leak backlog target is 260 at year-end. The calendar year 2013 repairable leaks backlog target is 20 at year-end.

Damage Prevention

The calendar year 2013 total damages per 1,000 one call tickets target is 2.40. The calendar year 2013 mismarks per 1,000 one call tickets target is 0.50. The calendar year 2013 Company and Company Contractor damages per 1,000 one call tickets target is 0.25.

New Parts 255 and 261 Violation Metric

Central Hudson will incur a negative revenue adjustment for instances of noncompliance (violations) of certain pipeline safety regulations set forth in 16 NYCRR Parts 255 and 261, as identified during Staff's annual field and record audits. Attachment III sets

forth a list of identified high risk and other risk pipeline safety regulations pertaining to this metric. Central Hudson will be assessed a negative revenue adjustment for each high risk or other risk violation, up to a combined maximum of 100 basis points per calendar year as follows:

High Risk Violation	Occurrences	Basis Points Per Violation
Calendar Year 2013	1-30	1/4
	31+	1/2
Calendar Year 2014	1-25	1/2
	26+	1

Other Risk Violation	Occurrences	Basis Points Per Violation
Calendar Year 2013	1-30	1/9
	31+	1/3
Calendar Year 2014	1-25	1/9
	26+	1/3

This metric will be effective as of the start of the Commission Order in this case, but will then be measured on calendar years, as identified above. With respect to violations, only documentation or actions performed, or required to be performed, on or after

the date of the Commission Order in this case will constitute an occurrence under the metric.

At the conclusion of each audit, Staff and Central Hudson will have a compliance meeting where Staff will present its findings to Central Hudson. Central Hudson will have five business days from the date the audit findings are presented to cure any identified document deficiency. Only official Central Hudson records, as defined in Central Hudson's Operating and Maintenance plan, will be considered by Staff as a cure to a document deficiency. Staff will submit its final audit report to the Secretary of the Commission under Case 12-M-0192. If Central Hudson disputes any of Staff's final audit results, Central Hudson may appeal Staff's finding[s] to the Commission. Central Hudson will not incur a negative revenue adjustment on the contested finding until such time as the Commission has issued a final decision on the contested findings. Central Hudson does not waive its right to seek an appeal of any Commission determination regarding a violation under applicable law.

If an alleged high risk or other risk violation set forth in Attachment III is the subject of a separate

penalty proceeding by the Commission under PSL 25, that instance will not constitute an occurrence under this performance metric.

Negative Revenue Adjustments

Other than the Parts 255 and 261 metric, all Gas Safety NRAs of the current rate plan shall be doubled. In addition, the NRAs of the current rate plan shall be tripled if targets are missed during a dividend restriction and quadrupled if targets are missed for three years within the next five year period.

Continuation

All gas safety targets for calendar year 2013 remain in effect until modified by a Commission order in a subsequent Central Hudson gas rate case.

5) Infrastructure Enhancement for Leak-prone Pipe

A minimum capital budget of $7.7 million is established for the replacement of leak-prone pipe over calendar year 2014. The pipe to be removed from service shall be identified and ranked using a risk-based methodology. If actual expenditures fall short of $7.7 million, Central Hudson will defer for ratepayer benefit the revenue requirement equivalent of the shortfall multiplied by 0.5. Central Hudson shall maintain the minimum pipe replacement level

beyond 2014 at $7.7 million, until changed by the Commission.

C. RATE FREEZE PROVISIONS

The Commission's Order Establishing Rate Plan, issued June 18, 2010, in Cases 09-E-0588 and 09-G-0589, set forth electric and gas rate plans for Central Hudson for the period July 1, 2010 through June 30, 2013. The July 1, 2013 rate reductions for S.C. 11 gas customers (see Section IX, Part B, and Appendix M, Sheet 4 of 5 of the current rate plan) will go into effect as provided in the current rate plan. In the period between July 1, 2013 and June 30, 2014 (Rate Freeze Period), the provisions of the current rate plan applicable to "rate year 3", except as modified in this Joint Proposal, are continued.

1) Earnings Sharing and Calculations of Earned Rates of Return

The Earnings Sharing Provision in Section VI.D of the current Commission-approved rate plan will be modified as of July 1, 2013, to read:

> Actual regulatory earnings in excess of *10.00%* and up to *10.50%* will be shared equally between ratepayers and shareholders. Actual regulatory earnings in excess of *10.50%* will be shared 90/10 (ratepayer/shareholder). These earnings sharing percentages shall be maintained until the effective date of the succeeding Commission rate order.

The Company will defer for the future benefit of ratepayers fifty percent of its share of any actual earnings in excess of *10.50%* to reduce the deferred debit undercollections of MGP Site Investigation & Remediation Costs, interest costs on variable rate, interest costs on new issuances of long term debt, property tax, and stray voltage expense; provided, however, that such reduction in deferred debit deferrals will be further limited so as not to cause the resulting actual earnings to decrease below a 10.50% return on equity.

In calculating earned rates of return for regulatory purposes, the $35 million of combined write-offs of deferred regulatory assets and future rate mitigation funds, and the one-time funding of $5 million for economic development and low income purposes referred to in this Joint Proposal shall be included and not "normalized out" for purposes of determining actual expenses for the rate year in which those benefits are booked by Central Hudson.

2) Distribution and Transmission Right-of-Way Tree Trimming and SIR Costs

At the end of Rate Freeze Period, the actual total expenditures for distribution ROW tree trimming will be compared to $11.397 million and any under-spending will be deferred as of the end of Rate Freeze Period. Carrying charges at the Pre-Tax Rate of Return ("PTROR") will be applied by the Company to the amount

deferred from the end of Rate Freeze Period until the effective date of the succeeding Commission rate order.

At the end of Rate Freeze Period, the actual total expenditures for transmission ROW tree trimming will be compared to $1.711 million and any under-spending will be deferred as of the end of Rate Freeze Period. Carrying charges at the PTROR will be applied by the Company to the amount deferred from the end of Rate Freeze Period until the effective date of the succeeding Commission rate order. In addition, the deferral for Manufactured Gas Plant ("MGP") Site Investigation and Remediation ("SIR") Costs authorized in Paragraph V.A.1 of the current rate plan will be modified as of July 1, 2013 to apply to all Environmental SIR costs incurred by Central Hudson during the period from July 1, 2013 to June 30, 2014. This modification does not limit Staff or the Commission's authority to review the prudence of any SIR costs.

3) Stray Voltage Testing

Actual Stray Voltage Testing expenditures, excluding mitigation costs, will be compared to $2.023 million for the twelve months ending June 30, 2014. Any

under-spending as of June 30, 2014, exclusive of expenditures for actual mitigation costs, will be deferred for future return to customers with carrying charges at the PTROR.

Actual mitigation costs in the twelve months ending June 30, 2014 will be compared to $350,000. The differences between $350,000 and actual mitigation expenditures will be deferred for future recovery by the Company, or return to customers, with carrying charges at the PTROR.

D. NET PLANT TARGETS

The net plant targets for the twelve month period ending June 30, 2014 of $919.3 million for Electric and $252.2 million for Gas, with associated annual depreciation expenses of $32.7 million and $9.0 million, respectively, will be established.

The actual average electric and gas net plant balances at the end of the twelve month period ending June 30, 2014 will be calculated using the calculation methods described in Attachment III. The net plant targets shown in Attachment III limit total Common Software construction expenditures, including Legacy Replacements, in the Rate Freeze Period to $5.0 million.

Reconciliations

The actual electric and gas net plant will be compared to the electric and gas net plant target for the twelve month period ending June 30, 2014, and the revenue requirement difference (i.e., return and depreciation as described in Attachment IV) will be determined.

Deferral For the Benefit of Ratepayers

If, at the end of the twelve month period ending June 30, 2014, the revenue requirement difference from net plant additions is negative, Central Hudson will defer the revenue requirement impact for the benefit of customers. If, at the end of the twelve month period ending June 30, 2014, the revenue requirement impact is positive, no deferral will be made. Carrying charges at the PTROR will be applied by the Company to the amount deferred from the end of the twelve month period ending June 30, 2014 until addressed by the Commission in a Central Hudson rate order.

E. LOW INCOME

The Signatories agree that the existing funding for low income programs available currently in rates will be supplemented with $500,000 from the Community Benefit Fund being made available by the Petitioners as a result of this transaction. In addition, the Signatories agree

to the following modifications to existing low income programs:

1. Central Hudson's current low income program is made up of two components: the Enhanced Powerful Opportunities Program ("EPOP"), which is a targeted program open to selected participants, and a broad-based bill discount program that provides a monthly bill credit to all customers that are Home Energy Assistance Program ("HEAP") recipients.
2. The EPOP program and its associated funding will remain unchanged.
3. The bill discount program currently provides a monthly bill credit of $11.00 to all customers who are HEAP recipients. Data provided by Central Hudson reflect that the program has 8,641 participants as of the twelve months ended November 30, 2012, and projected annual spending of $1,140,612 ($11 x 12 x 8,641).
4. Within 30 days of a Commission order in this proceeding, Central Hudson will modify its current discount program, which provides dual-service customers with one discount, by implementing the following discount levels for single and dual service bill discount program participants:

	Electric only	Gas only	Both Elec. & Gas
Heating	$17.50	$17.50	$23.00
Non-heating	$5.50	$5.50	$11.00

5. In order to ensure that no current participant faces a reduction in current benefit levels, any single service non-heating customer currently receiving a bill discount of $11.00 will continue receiving such benefit at the $11.00 level, instead of the $5.50 level specified above.
6. The total cost of the bill discount program is expected to be $1,662,672. Actual expenditures may vary based on HEAP participation levels.
7. Central Hudson will waive service reconnection fees, no more than one time per customer until new rates go into effect, for customers participating in either the EPOP or bill discount programs. Funding for reconnection fee waivers is limited to $50,000 until new rates go into effect. Central Hudson may grant waivers to individual customers more than once during this period, on a case-by-case basis and for good cause shown, provided that the program funding allocation for such waivers is not exceeded. Upon notice to Staff and the UIU, Central Hudson will be

permitted, first, to limit the waiver to (50) percent of the total reconnection fee, if the cost of waived reconnection fees is projected to exceed the annual allocation, and, second to suspend the waiver program if the budget limit is reached.

8. A sum of $500,000 of the total costs of the low-income bill discount and reconnection fee waiver programs is to be supplied from the Community Benefit Fund. To the extent that actual expenditures exceed the rate allowance in current rates of $1,531,200, plus $500,000 from the Community Benefit Fund, any shortfall will be supplied first, from the cumulative unused portions of the current rate allowances for the bill discount program, which is expected to be approximately $500,000, and second, will be deferred as a regulatory asset. To the extent that actual expenditures fall short of the current rate allowance plus the cumulative unused portions of the current rate allowances for the bill discount program plus $500,000 from the Community Benefit Fund, any excess will be deferred for use of the low-income bill discount program and the reconnection fee waiver program in a future rate proceeding.

9. Customers enrolled in the EPOP or low income bill discount programs will continue to be referred by Central Hudson to the New York State Energy Research and Development Authority's Empower-NY program or any successor to the Empower-NY program, for energy efficiency services.

10. The parties agree that these modifications justify returning to a quarterly reporting schedule. Central Hudson will file quarterly and annual reports on the EPOP and bill discount programs with the Secretary and provide copies to other parties currently receiving copies of EPOP reports. With respect to the bill discount program, the reports will provide:

a. The number of customers enrolled in the bill discount program;

b. The aggregate amounts of low-income bill discounts for the quarter and year to date; and

c. The number of reconnections of low income customers for which the fee was fully or partially waived, and the aggregate amount of reconnection fees waived to date.

11. Nothing in this Joint Proposal is intended to prejudge the treatment of low income matters by the Commission in Central Hudson's next rate case.

F. RETAIL ACCESS

In support of the Commission's retail market development initiatives, Central Hudson will set forth a total bill comparison, using the existing Central Hudson computer program that had been previously implemented, on all retail access residential bills using consolidated billing issued after 90 days following closing. The Signatories agree that this total bill comparison is to provide information to retail access customers that should be made available by the utility as part of the Commission's retail energy markets initiatives. Central Hudson shall report quarterly to the Secretary on this initiative so that Staff can continue to review and supervise this initiative and report any changes deemed desirable to the Commission on an on-going basis. Central Hudson's quarterly reports will also be provided to other parties currently receiving Central Hudson's EPOP reports.

In addition, for similar purposes of supporting the Commission's retail market development initiatives, within 60 days following issuance of the Commission Order in this case, Central Hudson will file a proposal to provide payment-troubled (i.e., subject to termination) customers with bill comparison information. The type of

reporting and continued monitoring appropriate for this initiative will be developed as part of the resolution of Central Hudson's pending proposal.

The costs of these two initiatives will be funded from the existing Competition Education Fund (net of the transfer of funds for economic development, as described below). Central Hudson shall propose a use or uses for any balance remaining in the Competition Education Fund, after these two initiatives have been funded, in its first rate filing following the closing. In the event that the costs of these two initiatives exceed the funding available from the existing Competition Education Fund (net of the transfer of funds for economic development), Central Hudson is authorized to defer the excess costs for future recovery with carrying charges at the PTROR.

The Signatories anticipate that modifications to either initiative may become appropriate based on developments in the ongoing generic retail access proceeding, Case 12-M-0476.

G. ECONOMIC DEVELOPMENT AND SUPPORT FOR STATE INFRASTRUCTURE ENHANCEMENTS

1. Economic Development

The Signatories agree that $5 million will be allocated to economic development purposes to enhance the existing Central Hudson economic development programs. The $5 million is in addition to the current Central Hudson rate allowance for economic development funding. The funding for this program will be through $4.5 million from the remaining balance of the $5 million Community Benefit Fund being provided by Petitioners and $500,000 from Central Hudson's Competition Education Fund.

The parties to this proceeding will confer following the execution and filing of this Joint Petition in this case to seek to jointly develop consensus modifications to the existing Central Hudson economic development programs. Central Hudson shall make a filing with the Commission within 15 days following the Commission's order in this case proposing modifications to the existing economic development programs that include the parties' agreements. As part of the filing made by Central

Hudson, expedited consideration by the Commission will be requested. The proposal will be for programs that will continue to be administered by Central Hudson pursuant to existing Commission authorizations, with the clarifications and modifications as follows. Central Hudson will continue to hold custody of funds and administer the programs with input from the Counties in Central Hudson's service territory. The $5 million will not receive carrying charges. The proposal will include the criterion that all applications for projects that do not have participation from Empire State Development, a County Industrial Development Agency, a County Community College, or local municipal resolution pursuant to existing program requirements will seek a letter of support from the County of origin. In addition, the proposal will state that Central Hudson will seek participation concerning award notifications and announcements from the County of origin prior to issuing such announcements.

In addition to filing the above proposal, Central Hudson will meet twice per year with representatives from all of the Counties in the Central Hudson

service territory to discuss economic development and potential program improvements. Nothing in this Joint Proposal is intended to prejudge the treatment of economic development matters by the Commission in Central Hudson's next rate case.

2) State Infrastructure Enhancements

Central Hudson shall continue to support the New York State Transmission Assessment and Reliability Study ("STARS"), the Energy Highway and economically justified gas expansion. Fortis agrees to provide equity support to the extent required by Central Hudson for such projects as receive regulatory approval and proceed to construction.

3) Gas Expansion Pilot Program

Central Hudson will commit to actively promote its "Simply Better" gas marketing expansion campaign in the Rate Freeze Period, seeking gas customer additions where Company gas facilities already exist, and economic expansion of its gas system, consistent with the Commission's Part 230 regulations, to identified expansion target areas in each operating district. The Company will continue to provide requesting and targeted customers with access to conversion calculators, third-party

turnkey conversion services (potentially including a project specialist from start to finish, a licensed heating installation professional, a detailed cost/benefit proposal on converting their heating equipment, removal of existing oil tank, and coordination of the service and heating installations), and available financing from third-party lenders to assist customers who are seeking gas delivery service or to convert from alternate fuels.

In the event that adequate financial commitments can be secured from new firm service customers and municipal franchise approvals on reasonable conditions are secured in locations where Central Hudson does not currently have gas facilities or local franchises, Central Hudson will commit to file for expedited Commission approval to exercise such franchises as are shown by Central Hudson's analyses to comply with Part 230.

Central Hudson will begin, within 90 days of an Order in this proceeding approving this Joint Proposal, to track all gas service requests and keep record of: (1) applicable gas service request dates (i.e., customer request received, Company evaluation

or commitment made, service denied/initiated); (2) the address of requested service including the township and county; (3) calculated cost to install new service lines and main extensions including customer payment responsibility; and (4) reasons for a service not being initiated. Customer information will be protected consistent with the updated Standards addressed elsewhere in this Joint Proposal.

Central Hudson will propose applying a limited pilot expansion program aimed at testing ideas to economically expand gas to customers. The pilot can be either part of a new franchise filing or a separate filing to the Commission no later than July 1, 2013. The pilot will test all or any of the following ideas:

(1) Piggy back on top of anchor customers to reduce the actual need for additional pipe beyond the 100 foot rule;

(2) surcharge all customers or specific customers over five years or more based on the savings from their alternative fuel to write down assets in order to meet the overall Rate of Return (ROR) by year 5;

(3) increase the minimum 100 feet allowed by a higher "average" amount for everyone in the customer cluster to be served based on anticipated additional revenues; and/or

(4) Trade Alliance by Central Hudson to purchase heating equipment from manufacturers for conversion/new customers and pass the savings to customers.

H. NEXT RATE CASE FILING

The Signatories recognize that Central Hudson may file new rate case applications at any time; however, the Petitioners agree to make such filing no earlier than the date that would be permitted for filing for rates to become effective on or after July 1, 2014. In its next rate case filing, Central Hudson shall provide, in a format similar to that of Petitioners' rebuttal testimony, an updated comparison between the debt ratings of Central Hudson and the regulated affiliates of Fortis based upon the latest rating agencies' analyses available at that time. In the same rate case filing, Central Hudson will include its analysis of Staff's white paper recommendations on LAUF.

V. ECONOMIC BENEFITS, INCLUDING SYNERGIES AND POSITIVE BENEFIT ADJUSTMENTS

Petitioners have agreed to provide quantified economic benefits comprised of the following synergy and positive benefit adjustments: (i) synergy savings which are guaranteed for a period of 5 years and which will provide for future rate mitigation of $9.25 million over the 5 years; (ii) a total of $35 million of combined write-offs of deferred regulatory assets and future rate mitigation funds; and, (iii) one-time funding of $5 million for a Community Benefit Fund for economic development and low income purposes. The Signatories agree that the benefits identified herein are sufficient to meet the Commission's public interest criterion (PSL Section 70).

In reaching these agreements, the Signatories have recognized a number of additional factors that demonstrate that these quantified benefits are appropriate. The Signatories agree that the corporate governance and financial commitments made by Petitioners, together with the nature of Fortis' business model and proven track record, reduce the risks presented by this transaction and provide additional value to Central Hudson's ratepayers. In addition, the Signatories agree that absent the transaction, it is likely that Central Hudson could have

demonstrated a need for a rate increase for the Rate Freeze Period. However, as a consequence of Central Hudson opting not to file a rate case for the Rate Freeze Period as part of the terms of this Joint Proposal, rates will be frozen for the full Rate Freeze Period. The parties agree these provisions provide additional benefits.

A. Synergy Savings/Guaranteed Rate Reductions

The Signatories have agreed that the transaction will produce synergy savings/guaranteed future rate mitigation totaling $9.25 million ($1.85 million/year for 5 years). Petitioners have agreed to guarantee these cost savings for a period of five years, and will begin accruing these guaranteed cost savings in the month following closing. The Signatories recognize that this accrual will provide rate mitigation for the benefit of customers that will be available at the start of the first rate year in the next rate case filed by Central Hudson. The Signatories anticipate that the forecast effect of the synergy cost savings will also be reflected in rates in Central Hudson's next rate case.

B. Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation

A total of $35 million will be provided to Central Hudson by Fortis upon the closing of the transaction and will be

recorded as a regulatory liability to be applied to write off regulatory assets on the books of Central Hudson due to storm restoration costs and to provide balance sheet offsets and rate mitigation in Central Hudson's next rate filing.

1) Storm Restoration Cost Write-offs

Central Hudson currently has two storm restoration cost deferral petitions pending before the Commission in Cases 11-E-0651 ($11.0 million exclusive of carrying charges) and 12-M-0204 ($1.6 million exclusive of carrying charges), for a total of $12.6 million exclusive of carrying charges. Additionally, Central Hudson has estimated that the incremental storm restoration costs above the current rate allowance resulting from Super-storm Sandy will be approximately $10 million. The Signatories agree that Central Hudson shall file a formal Super-storm Sandy deferral petition as soon as reasonably practicable.[3]

The Signatories agree to utilize a placeholder total for these three events of $22 million. The

[3] The Signatories agree that the review of the new petition will be expedited to the extent possible.

Signatories agree that $22 million will be written off promptly after the closing against the $35 million regulatory liability being funded by Fortis, subject to true-up for subsequent Commission determinations concerning the storm restoration costs of the three storms. The Signatories agree that the three deferral requests will be reviewed by Staff consistent with the principles and practices in the recent Central Hudson storm restoration deferral petitions involving Twin Peaks (February 2010) in Case 10-M-0473 and the December 2008 ice storm in Case 09-M-0004.

2) Disposition of the Remaining Balance

The difference between the $35 million being provided by Fortis and the $22 million in placeholder storm restoration cost write-offs is currently estimated as a $13 million placeholder. The Signatories agree that this $13 million difference will be reserved as a regulatory liability with carrying charges at the pre-tax rate of return rate. At the time of the final, trued-up storm restoration cost determination by the Commission, the reserve and associated carrying charges will be adjusted up or down to conform to

the Commission's determination. The final amount will be reserved for additional future balance sheet write-offs or other rate moderation purposes, as shall be determined in Central Hudson's next rate case.

C. Community Benefit Fund

A total of $5 million will be provided by Fortis for a Community Benefit Fund to be utilized for low income and economic development purposes as discussed in greater detail previously in this Joint Proposal.

VI. OTHER PROVISIONS

A. Counterparts

This Joint Proposal may be executed in counterparts, all of which taken together shall constitute one and the same instrument which shall be binding upon each signatory when it is executed in counterpart, filed with the Secretary of the Commission and approved by the Commission; provided, however, that, upon execution, filing with the Secretary and prior to approval by the Commission, each Signatory shall be bound to support adoption of this Joint Proposal and, to the extent required by the context, to undertake actions necessary for implementation of the provisions of this Joint Proposal upon its approval by the Commission.

B. Provisions Not Separable

The Signatories intend this Joint Proposal to be a complete resolution of all the issues in Case 12-M-0192 and the terms of this Joint Proposal are submitted as an integrated whole. If the Commission does not accept this Joint Proposal according to its terms as the basis of the resolution of all issues addressed without change or condition, each Signatory shall have the right to withdraw from this Joint Proposal upon written notice to the Commission within ten days of the Commission Order. Upon such a withdrawal, the Signatories shall be free to pursue their respective positions in this proceeding without prejudice, and this Joint Proposal shall not be used in evidence or cited against any such Signatory or used for any other purpose. It is also understood that each provision of this Joint Proposal is in consideration and support of all the other provisions, and expressly conditioned upon acceptance by the Commission. Except as set forth herein, none of the Signatories is deemed to have approved, agreed to or consented to any principle, methodology or interpretation of law underlying or supposed to underlie any provision herein.

C. Provisions Not Precedent

The terms and provisions of this Joint Proposal apply solely to, and are binding only in the context of the purposes and results of this Joint Proposal. None of the terms or provisions of this Joint Proposal and none of the positions taken herein by any Signatory may be referred to, cited, or relied upon by any other party in any fashion as precedent or otherwise in any other proceeding before this Commission or any other regulatory agency or before any court of law for any purpose other than furtherance of the purposes, results, and disposition of matters governed by this Joint Proposal. This Joint Proposal shall not be construed, interpreted or otherwise deemed in any respect to constitute an admission by any Signatory regarding any allegations, contentions or issues raised in this proceeding or addressed in this Joint Proposal.

D. Submission of Proposal

Each Signatory agrees to submit this Joint Proposal to the Commission, to support and request its adoption by the Commission, and not to take a position in this proceeding contrary to the agreements set forth herein or to assist another participant in taking such a contrary position in these proceedings.

E. Further Assurances

The Signatories recognize that certain provisions of this Joint Proposal require that actions be taken in the future to fully effectuate this Joint Proposal. Accordingly, the Signatories agree to cooperate with each other in good faith in taking such actions. In the event of any disagreement over the interpretation of this Joint Proposal or implementation of any of the provisions of this Joint Proposal, which cannot be resolved informally among the Signatories, such disagreement shall be resolved in the following manner: (a) the Signatories shall promptly convene a conference and in good faith attempt to resolve any such disagreement; and (b) if any such disagreement cannot be resolved by the Signatories, any Signatory may petition the Commission for resolution of the disputed matter.

F. Entire Agreement

This Joint Proposal, including all attachments, exhibits and appendices, if any, represents the entire agreement of the Signatories with respect to the matters resolved herein.

VII. SIGNATURES

WHEREFORE, This Joint Proposal has been agreed to as of January 25, 2013 by and among the following, each of whom by his

or her signature represents that he or she is fully authorized to execute this Joint Proposal and, if executing this Joint Proposal in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

Case 12-M-0192

SIGNATURE PAGES TO JOINT PROPOSAL DATED JANUARY 25, 2013

Cascade Acquisition Sub Inc., Fortis Inc. and FortisUS Inc.

By: _____
Barry V. Perry
Vice President, Finance and
Chief Financial Officer of Fortis Inc.

CH Energy Group Inc.

By: _____
Christopher A. Capone
Executive Vice-President and Chief Financial Officer

Central Hudson Gas & Electric Corporation

By: _____
Michael L. Mosher
Vice-President Regulatory Affairs

Staff of N.Y.S. Department of Public Service

By: _____
John L. Favreau, Esq.
Assistant Counsel
Staff of N.Y.S. Department of Public Service

New York Department of State Utility Intervention Unit

By: _____

Robert T. Friel
Director

Dutchess County New York: Dutchess County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of

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By: Christopher M. Capone
Christopher M. Capone
Executive Vice-President and Chief Financial Officer

Central Hudson Gas & Electric Corporation

By: _____
Michael L. Mosher
Vice-President Regulatory Affairs

Staff of N.Y.S. Department of Public Service

By: _____
John L. Favreau, Esq.
Assistant Counsel
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CH Energy Group Inc.

By: _____
Christopher A. Capone
Executive Vice-President and Chief Financial Officer

Central Hudson Gas & Electric Corporation

By: M.L. Mosher
Michael L. Mosher
Vice-President Regulatory Affairs

Staff of N.Y.S. Department of Public Service

By: _____
John L. Favreau, Esq.
Assistant Counsel
Staff of N.Y.S. Department of Public Service

New York Department of State Utility Intervention Unit

By: _____

Robert T. Friel
Director

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By: _____
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Executive Vice-President and Chief Financial Officer

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Staff of N.Y.S. Department of Public Service

By: _____
John L. Favreau, Esq.
Assistant Counsel
Staff of N.Y.S. Department of Public Service

New York Department of State Utility Intervention Unit

By: _____

Robert T. Friel
Director

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Vice President, Finance and
Chief Financial Officer of Fortis Inc.

CH Energy Group Inc.

By: _____
Christopher A. Capone
Executive Vice-President and Chief Financial Officer

Central Hudson Gas & Electric Corporation

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Michael L. Mosher
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Staff of N.Y.S. Department of Public Service

By: _____
John L. Favreau, Esq.
Assistant Counsel
Staff of N.Y.S. Department of Public Service

New York Department of State Utility Intervention Unit

By: _____

Robert T. Friel
Director

Dutchess County New York: Dutchess County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of

paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: _____
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

Orange County New York: Orange County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of paragraph IV.H related to the one-year rate freeze. In addition, Orange County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: Michael B. Mager
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

Orange County New York: Orange County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of paragraph IV.H related to the one-year rate freeze. In addition, Orange County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

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Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: _____
Michael B. Mager, Esq.
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By: _____
Edward A. Diana
for County Executive for Orange County

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By: _____
Mike Hein
Ulster County Executive

paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: _____
Michael B. Mager, Esq.
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By: _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G, the portions of paragraph IV.H related to the one-year rate freeze, and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

Case 12-M-0192

ATTACHMENT I

STANDARDS OF CONDUCT

STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION

Case 12-M-0192- Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

STANDARDS PERTAINING TO TRANSACTIONS, CONFLICTS OF INTEREST, COST ALLOCATIONS AND SHARING OF INFORMATION BETWEEN CENTRAL HUDSON GAS AND ELECTRIC CORPORATION AND AFFILIATES

I. Introduction

This *Standards Pertaining To Transactions, Conflicts Of Interest, Cost Allocations And Sharing Of Information Between Central Hudson Gas And Electric Corporation And Affiliates* replaces and supersedes the *Amended and Restated Settlement Agreement As Approved by the Commission on February 19, 1998 With Modifications and Conditions* ("RSA"), Case 96-E-0909 (Attachment I Standards of Conduct) as to the language and topics addressed herein. All other provisions of the RSA, including Attachments A-H, J, K, remain as approved by the Commission in Case 96-E-0909 unless otherwise agreed to by the Parties in writing or ordered by the Commission. Central Hudson Gas and Electric ("Central Hudson") retains the right to manage its own affairs including the right to amend the Standards of Conduct from time to time in a manner consistent with the Commission's Orders and statute. Central Hudson shall provide the Secretary and Department of Public Service Staff ("Staff") with thirty (30) days notice prior to amending these Standards.

The following pertains to transactions, conflicts of interest, cost allocations and the sharing of information (collectively referred to herein as the "Standards") between

Central Hudson and affiliates.[1] References in these Standards to any of the foregoing affiliates shall be deemed to include any successors. Central Hudson shall comply with the Standards within thirty (30) days following their effective date. Nothing in these Standards relieves Central Hudson or its affiliates from any obligation they may have pursuant to the PSL, including Sections 70 and 110. Nothing herein serves to divest Central Hudson or its affiliates of their legal rights under the PSL, Public Service Commission ("Commission") Orders or otherwise.

All costs and revenues recorded on Central Hudson's books of account from all affiliate transactions shall conform in all material respects to the Commission's Uniform System of Accounts.

II. Organizational Structure

A. Separation and Location

Central Hudson shall maintain separate books of account and other business records from its affiliates.

Central Hudson shall petition the Commission for approval before it establishes and maintains at an existing Central Hudson location separate and distinct office and work space from any competitive affiliate operating in any energy-related business(es) within Central Hudson's service territory.

Central Hudson shall maintain appropriate physical and technological security, with an appropriate monitoring system, to prevent competitive affiliates from accessing or obtaining Central Hudson's confidential information or other information that may provide the affiliate with a competitive advantage.

Central Hudson will not conduct competitive services, including competitive behind-the-meter energy services, absent an application to, and approval by the Commission, except that Central Hudson will be permitted to provide solutions to customer reliability and deliverability issues related to electric and gas transmission and distribution.

[1] Affiliates are considered any entity as defined as such under Public Service Law ("PSL") §110(2).

Finally, any affiliate shall be established as a separate business entity from Central Hudson.

B. Board of Directors

No later than one year after the closing of the acquisition of CH Energy Group, Inc. ("CHEG") by Fortis Inc. ("Fortis"), Fortis will appoint a board of directors for Central Hudson, the majority of whom will be independent[2], with the majority of such independent directors being resident in the State of New York and with emphasis on selecting candidates who reside, conduct business or work within the Central Hudson service territory.

III. Affiliate Transactions

A. Standards of Competitive Conduct

Central Hudson shall comply with the Commission rules governing Uniform Business Practices:[3]

1. Sales Leads

Central Hudson will not provide market information or sales leads for customers in its service territory to any affiliate, including an affiliated energy services company and will refrain from giving any appearance that it speaks on behalf of an affiliate.

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[2] Independent is as defined in Section 10A of the Securities Exchange Act of 1934. Nothing herein prohibits an independent Central Hudson director from being elected to the board of directors of Fortis Inc., and such appointment shall not immediately and by itself deprive the Central Hudson director of his or her status as independent for purposes of these Standards. If, however, the election of an independent Central Hudson board member to the Fortis Inc. board would result in a minority of independent directors on the Central Hudson board, excluding that director, Central Hudson and/or Fortis shall notify the Secretary of the Commission of the nomination of such director within 10 days following the issuance of the Fortis Inc. proxy materials pertaining to the election of Fortis Inc. board members. As part of such notice, Central Hudson and/or Fortis shall describe the benefits to Central Hudson and its customers of having such director serve on both boards. In the event that the Commission raises concerns about such director's service on both boards, Central Hudson and Fortis shall make reasonable business efforts to address such concerns. In the event that the Commission does not deem the efforts or measures taken by Central Hudson and Fortis to be adequate for their intended purpose, Fortis and Central Hudson shall, within no more than two years, ensure that the Central Hudson board is constituted with a majority of independent directors, excluding the director previously elected to the board of Fortis Inc..

[3] FortisUS Energy Corporation, which owns four Qualifying Facilities with a combined output of approximately 23 MW, all of which is sold under contracts with National Grid, does not operate in Central Hudson's service territory or compete with Central Hudson.

Central Hudson will not imply or represent to any customer, supplier or third party that any form of advantage may accrue to such customer, supplier or third party in the use of Central Hudson's services as a result of that customer, supplier or third party dealing with an affiliate. No affiliate will imply or represent to any customer, supplier or third party that any form of advantage may accrue to such customer, supplier or third party in the use of Central Hudson's services as a result of that customer, supplier or third party dealing with an affiliate. Central Hudson will not purchase goods or services on preferential terms offered only by suppliers who purchase goods or services from or sell goods or services to an affiliate of Central Hudson.

2. Customer Inquiries

If a customer requests information about securing any competitive retail service or product offered within Central Hudson's service territory by an affiliate, Central Hudson must provide a list of competitive retail companies or affiliates that are qualified and approved pursuant to Central Hudson's standards (including retail access standards) as providers of the requested products or services within Central Hudson's service territory. While this list may include Central Hudson affiliates, the list must provide information by company in alphabetical order and may not place greater emphasis on or promote any Central Hudson affiliate. A Central Hudson employee shall not promote any competitive retail affiliate operating in Central Hudson's service territory, other than to acknowledge, at the request of a customer, that an affiliation exists between Central Hudson and such affiliate or provide a list of competitive retail providers, which may include competitive retail affiliates.

3. Customer Information

Central Hudson shall not release proprietary customer information to Energy Service Companies ("ESCOs"), including an ESCO affiliated with Central Hudson, without the prior authorization by the customer and subject to the customer's direction regarding the ESCOs to whom the information may be released.[4] Central Hudson

[4] It is not a release of information by Central Hudson where an ESCO accesses customer information through Central Hudson's website, or otherwise, without Central Hudson's knowledge. Central Hudson will act in accordance with Uniform Business Standards.

shall maintain verifiable proof of customer authorization for two years after receipt of the authorization. The verifiable proof shall be available to Staff at Central Hudson's offices upon request. Under no circumstance will Central Hudson release more than 24 months of proprietary customer information unless authorized to do so by the customer or ordered to provide the information by a regulatory authority or court of competent jurisdiction. Proprietary customer information includes the customer's name, address, telephone number, account number, social security number and credit report. If a customer authorizes the release of information to a Central Hudson affiliate or one or more of the affiliate's competitors, Central Hudson shall make that information available to the affiliate and/or other competitors designated by the customer on a non-discriminatory basis. Nothing herein shall require Central Hudson to release customer information to its affiliate or any competitor unless such release is authorized by the customer.

Except for purposes of complying with applicable statutes, regulations and orders, Central Hudson will not disclose to any competitive affiliate or non-affiliate any customer or market information about its gas or electric transmission and distribution systems that may provide a competitive advantage in the gas and electric markets. Customer or market information includes, but is not limited to, confidential information that Central Hudson receives from a marketer, customer or prospective customer, which is not available from sources other than Central Hudson, unless it makes such information available to all competitors on a non-discriminatory basis.

Pursuant to the Commission's Order on Rehearing Granting Petition for Rehearing issued and effective December 3, 2010 in Case 07-M-0548, Central Hudson may also enter contracts for the benefit of customers with third party service and/or materials providers, including affiliates, that include the transfer of proprietary customer information or other confidential material. Central Hudson may enter a contract with an affiliate or third party service and/or material provider that requires the transfer of proprietary customer information or other confidential material if the affiliate or third party executes a Confidentiality and Non-Disclosure Agreement.

Under all circumstances where Central Hudson transfers proprietary customer information or other confidential market data to an affiliate, ESCO, or other third party Central Hudson shall execute a Confidentiality and Non-Disclosure Agreement with the affiliate, ESCO or other third party. The Confidentiality and Non-Disclosure Agreement shall restrict access to the protected material to only those employees of the recipient affiliate, ESCO or other third party whose functions require that they have access to the subject information. Such employees shall be instructed to maintain the confidentiality of such information and execute an Individual Non-Disclosure Agreement. A copy of Central Hudson's Confidentiality and Non-Disclosure Agreement is set forth as Code of Conduct Attachment 1. Central Hudson shall retain executed Confidentiality and Non-Disclosure Agreements at its headquarters for Staff's review upon its request.

Central Hudson's critical infrastructure information shall remain, in all media formats, within the headquarters of Central Hudson, and it shall retain customer data (i.e., names, addresses, telephone numbers, social security numbers, credit reports) in all media formats, within the headquarters or customer service center of Central Hudson unless a regulatory authority or court of competent jurisdiction requires Central Hudson to provide the information.

4. Complaint Procedure

If any competitor or customer of Central Hudson believes that Central Hudson has violated the Standards, such competitor or customer may file a complaint in writing with Central Hudson. Central Hudson will respond to the complaint in writing within twenty (20) business days after receipt of the complaint. After providing its response to the complainant, Central Hudson and the complainant will meet, if necessary, in an attempt to resolve the matter informally. If Central Hudson and the complainant are not able to resolve the matter informally within fifteen (15) business days after the commencement of the informal resolution process, the complainant may refer the matter to the Commission for disposition. This provision shall not preclude the Commission from addressing any such matter more expeditiously in the event that exigent circumstances so require. Nothing herein shall preclude a complainant from filing a formal complaint before the Commission without participating in the

informal resolution process. In any instance in which a formal complaint is filed with the Commission Central Hudson shall have a full and fair opportunity to be heard through a process established by the Commission. The Commission may order any such remedies to resolve the complaint as are within its statutory authority.

5. No Advantage Gained by Dealing with Affiliate

Central Hudson will refrain from giving any appearance that Central Hudson speaks on behalf of any affiliate operating in its service territory. Central Hudson will not participate in any joint promotion or marketing with any affiliate operating in its service territory. Concerning competitive retail electric or natural gas services offered in the market, Central Hudson will not represent to any customer, supplier or third-party that an advantage may accrue to such customer, supplier or third-party in the use of the Company's tariffed services as a result of that customer, supplier or third-party dealing with a competitive affiliate. A competitive affiliate operating in any energy-related business(es) within Central Hudson's service territory may not use the name "Central Hudson" to market its competitive product. No non-Central Hudson company will be allowed by Central Hudson or Fortis to use the Central Hudson name, trade names, trademarks, service markets or a derivative of a name of Central Hudson in any manner. [5]

6. No Rate Discrimination

All similarly-situated customers, including ESCOs and customers of ESCOs, whether affiliated or unaffiliated, will pay the same rates for Central Hudson's tariffed utility services. If there is discretion in the application of any tariff provision, Central Hudson must not offer its affiliate more favorable terms and conditions than it has offered to all similarly-situated competitors of the affiliate. In particular, Central Hudson shall process all requests for similar service in the same manner, within similar time periods, and without any preferential treatment for customers seeking tariffed services from Central Hudson affiliates. Central Hudson shall not give preference to a customer of an affiliate, or to an affiliate, regarding repairs or maintenance, or operation of its

[5] "Non-Central Hudson company" means an entity that is not controlled by Central Hudson or Fortis and that is not an affiliate of Central Hudson or Fortis Inc.

system.

Central Hudson shall, pursuant to Public Service law Section 66(12)(d), charge all tariff customers the rates and charges specified in its schedule filed and in effect.

Central Hudson may provide non-tariffed service to customers, including affiliates, by contract or other similar arrangement. Contract service provided by Central Hudson shall not affect the rate paid by tariffed customers. Central Hudson shall maintain executed contracts or other arrangements on file at its corporate headquarters available for review by Staff upon request.

B. Training and Certification

Central Hudson and any affiliate operating in its service territory, shall conduct training on these Standards for its officers and directors (including employee directors) and Shared Employees. Central Hudson's officers and directors, Shared Employees and affiliates operating in Central Hudson's service territory shall certify familiarity with these Standards within ninety (90) days following their effective date. Central Hudson shall certify that it has provided training regarding the Standards to any new officers, directors and Shared Employees within ninety (90) days after the start date for each new officer, director, or Shared Employee.

C. Adherence to Standards

On an annual basis Central Hudson's General Counsel and Vice President Human Resources and Health & Safety, or their successors, shall provide certification to the Commission of Central Hudson's adherence to the Standards. If, after an investigation by an independent auditor and hearing, the Commission finds that Central Hudson is not in substantial compliance[6] with the Standards, the Commission can order Central Hudson to pay for the cost of the independent auditor. If Central Hudson is in substantial compliance with the Standards it may petition to defer and recover the costs of the independent auditor without regard to the Commission's three-part test for deferral accounting. As part of the independent auditor's investigation it shall review the transactions and cost allocations necessary to determine Central Hudson's substantial compliance or lack thereof

[6] Substantial compliance shall be determined by the Commission.

IV. Ethics

All Central Hudson employees, officers and directors must adhere to Central Hudson's Code of Business Conduct and Ethics ("Ethics Code") as it may be amended from time to time. Central Hudson will maintain its Ethics Code at its headquarters in a manner available to Staff upon request. Central Hudson will make the Ethics Code available to its employees, officers and directors electronically at all times.

A. Corporate Governance

Central Hudson directors, officers and employees shall adhere to the applicable CHEG Governance Guidelines as they may be amended from time to time. Governance Guidelines set forth Central Hudson's principles and requirements for conflict of interest, recusal from participation in decision making and other corporate governance issues. Central Hudson will maintain its Governance Guidelines at its headquarters in a manner available to Staff upon request. Central Hudson will make its Governance Guidelines available to its employees, officers and directors electronically at all times.

V. Cost Allocations

Central Hudson will continue to follow the cost allocation procedures approved by the Commission as the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H Cost Allocation Guidelines of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998. In the event that Central Hudson's affiliate transactions exceed $7.5 million, as measured by the transactions in the immediately preceding rate year excluding transactions with an affiliated Transmission Company ("Transco") and dividend payments, Central Hudson and Staff will discuss appropriate modifications to the Cost Allocation Guidelines set forth in the RSA at Attachment H. If such discussions do not lead to a resolution of cost allocation issues within ninety (90) days Central Hudson shall notify the Commission's Secretary and convene a collaborative to resolve cost allocation issues. Adherence to the Guidelines will assure that Central Hudson maintains proper cost

allocation procedures regarding transactions between Central Hudson and its affiliates. Central Hudson will meet annually with Staff on or before April 1 of each year to review its cost allocations and their application. If at any time Central Hudson becomes aware of events likely to cause a reconsideration of or material change to its ownership or cost allocations, Central Hudson will advise Staff and arrange a meeting in order to consider cost allocation issues. Central Hudson may seek to amend the Cost Allocation Guidelines from time to time and will file with the Secretary of the Commission all proposed amendments and supplements to the guidelines at least thirty (60) days prior to their proposed effective date. These procedures apply to Paragraphs V (A-D) set forth below.

A. Transfer of Assets

Public Service Law Section 70 applies to certain transfers of assets from Central Hudson to any affiliate. Central Hudson will continue to abide by the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998. Central Hudson will maintain its affiliate transaction guidelines at its headquarters in a manner available to Staff upon request. Central Hudson will make its affiliate transaction guidelines available to its employees, officers and directors electronically at all times. Any affiliate receiving goods or services from Central Hudson will compensate Central Hudson in a timely fashion. Standard commercial terms for payments will apply to transactions between Central Hudson and its affiliates. If the Commission determines that the commercial terms applicable to a transaction between Central Hudson and an affiliate are unreasonable it may issue an appropriate remedy.

B. Transfer of Services

Central Hudson will continue to abide by the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998. Central Hudson will maintain its affiliate transaction guidelines at its headquarters in a manner

available to Staff upon request. Central Hudson will make its affiliate transaction guidelines available to its employees, officers and directors electronically at all times. Any affiliate receiving goods or services from Central Hudson will compensate Central Hudson in a timely fashion.

C. Insurance

Central Hudson and any affiliate may be covered by common property, casualty and other business insurance policies. Such policies shall provide Central Hudson with commercially reasonable protections against liability. Central Hudson and its affiliates shall maintain a corporate structure sufficient to protect it from the liabilities of its affiliates, as well as any increases in Central Hudson's insurance costs resulting from the inclusion of property or assets held by an affiliate(s) in such insurance policies. Central Hudson shall, to the extent that market information is available, submit with each rate case petition, a market survey to determine whether it could obtain insurance separately from its affiliates on financial and other terms and conditions superior to the common policies maintained with its affiliates and report to the Staff the results of its survey. The costs of such policies shall be allocated among Central Hudson and any affiliate in an equitable manner.

D. Personnel

1. Sharing of Employees, Officers and Directors

Central Hudson and its affiliates may have Shared Employees. Operating employees, defined as non-management employees, shall not be shared except for purposes of training or emergencies—including mutual assistance. A Shared Employee is a Central Hudson employee assigned to perform work for Central Hudson and one or more affiliate(s) for a period of more than six months. Central Hudson shall maintain a list of Shared Employees by position and employee number updated every six months at its offices and available for inspection by Staff upon request.

Operating officers (i.e., those officers providing other than corporate services) of Central Hudson will not be operating officers of any of its affiliates.

An officer or director of Central Hudson may not serve as an officer or

director of a competitive affiliate operating in Central Hudson's service territory.

Corporate employees may be provided by Central Hudson on a fully loaded cost-basis. During its provision of any such shared services, such individual shall be subject to all requirements in these Standards pertaining to information obtained about/from Central Hudson. Nothing herein shall limit the Commission's authority to determine ratemaking issues arising out of such transactions.

Central Hudson shall allocate the costs of employees performing work for Central Hudson and an affiliate pursuant to Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998.

Officers and directors of Central Hudson may not use any of the Company's marketing, sales, advertising, public relations, and/or energy purchasing expertise to provide services to any affiliate that competes with Central Hudson in any energy-related business within Central Hudson's service territory. Before any Central Hudson employee performs work for an affiliate, whether such employee is a Shared Employee or not, Central Hudson shall ensure that such employees are familiar with the Standards. Nothing herein shall limit the Commission's authority over ratemaking issues arising out of such transactions.

Affiliates may provide services to Central Hudson and may have separate contracts and billings for such services. Nothing in this section shall authorize Central Hudson to engage in a transaction with any affiliate if such transaction would otherwise be prohibited under these Standards, or authorize Central Hudson to tender preferential treatment to any affiliate. Any management, construction, engineering or similar contract between Central Hudson and any affiliate and any contract for the purchase by Central Hudson from an affiliate shall be governed by PSL §110.

2. Transfer of Employees

If a Central Hudson employee accepts a position with any affiliate, he or she will be required to resign from Central Hudson, unless there is a conflict with the

collective bargaining agreement in which case the collective bargaining agreement shall control. Any such employee shall be prohibited from copying or taking any non-public customer or competitively sensitive market information from Central Hudson.

3. Compensation for Employee Transfers

Employees may be transferred from Central Hudson to an affiliate or an affiliate to Central Hudson. Employees transferred by Central Hudson to an affiliate competing with Central Hudson in Central Hudson's service territory may not be reemployed by Central Hudson for a minimum of one year after such transfer. Central Hudson will file annual reports with the Commission showing transfers between Central Hudson and any affiliates by employee number, former company, former position and salary and new company, new position and salary or annualized base compensation. If the Commission determines that employee transfers inappropriately harm Central Hudson and its customers the Commission may order an appropriate remedy.

4. Employee Loans in an Emergency

The foregoing provisions in no way restrict any affiliate from loaning employees to Central Hudson to respond to an emergency that threatens the safety or reliability of service to customers; nor shall such provisions restrict Central Hudson from loaning employees to other regulated utilities, whether affiliated or unaffiliated, to respond to an emergency that threatens such safety or reliability of service to consumers. Central Hudson shall allocate the costs of employees loaned to, or from, a Central Hudson affiliate pursuant to Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998.

5. Compensation and Benefits

The compensation of Central Hudson's operating employees, officers and directors (including employee directors) may not be tied directly to the performance of any affiliates; provided, however, that this provision shall not preclude such compensation based upon aggregate performance of Central Hudson and any affiliate, including compensation based on Fortis's stock performance. The employees of Central Hudson and any affiliate may participate in common pension and benefit

plans, and the cost shall be allocated pursuant to Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998.

6. Legal Representation

Central Hudson shall have its own internal and/or external counsel whose primary responsibility is Central Hudson. Central Hudson shall not provide counsel for a competitive affiliate operating in Central Hudson's service territory in any matter between the two affiliates where the interest of the competitive affiliate is adverse to that of Central Hudson. Regarding any matter Central Hudson will take appropriate steps to ensure that Central Hudson's interests are vigorously and independently protected. Outside counsel shall adhere to the same standards as are required of Central Hudson to protect Central Hudson's confidential information that may be available to them in the course of their representation.

VI. Audits

A. Access to Books, Records and Reports

The following provisions govern the access by Staff, and are not intended to supersede or otherwise limit or expand the applicability of the PSL, to all books and records related to all transactions for goods and services and cost allocations that occur between Central Hudson and any affiliates:

1. Access to Information

Staff will have access, upon reasonable notice and subject to appropriate resolution of any issues pertaining to applicable privileges and protections against disclosure, including the attorney/client privilege, and confidentiality, to the books and records of any affiliate, controlled by Central Hudson, with which Central Hudson has transactions. Staff will have access to the extent necessary to verify the reasonableness of the charges associated with the transactions, to confirm that the terms and conditions of the transactions do not discriminate against entities competing with Central Hudson in its service territory, and as necessary for ratemaking purposes.[7] For

[7] The provisions of the RSA at 70-73, titled *32. Privileged Information* and *33. Confidentiality of Record* shall govern and control the resolution of privilege and confidentiality issues that may arise.

any affiliate over which Central Hudson does not have sufficient control to require such access, Central Hudson shall nevertheless employ its best efforts to provide such access and, in the event Central Hudson is unable to do so, it shall provide an explanation of the reasons therefor. These Standards will not be interpreted as restricting Staff in obtaining any affiliate information pursuant to PSL § 110. Nothing herein shall limit the Commission's authority over ratemaking issues arising out of such transactions.

2. Location of Audit Information

All access to Central Hudson's books and records and the books and records of affiliates controlled by Central Hudson shall be provided at Central Hudson's headquarters and shall be available to Staff upon request and in no event shall these provisions unreasonably delay Staff's ability to perform its audit functions. Central Hudson will use its best efforts to provide access to the books and records of affiliates it does not control at its headquarters and will provide Staff with an explanation if it cannot do so. Any information provided shall be subject to applicable privileges and protections against disclosure pursuant to Civil Procedure Law and Rules §§ 3101 and 4503 and as provided for in the PSL and the Commission's regulations at 16 NYCRR Parts 3 through 5 including resolution of confidentiality issues pursuant to the Commission's regulations on confidential information at 16 NYCRR Part 6, with due regard to the regulations of any other commission that may have jurisdiction over the information.

3. Company Liaison

A senior officer of Central Hudson will designate an employee, as well as an alternate to act in the absence of such designee ("Liaisons"), to act as liaison between Central Hudson and Staff. The Liaisons will facilitate the production of information to Staff. If Central Hudson believes that information requested by Staff should not be provided Central Hudson will provide the reason for its belief through the Liaisons.

Nothing herein shall deprive Central Hudson, or its affiliates, of the ability to claim privilege or confidentiality as set forth in the RSA.

B. Reporting

Commencing with the period ending December 31, 2013, Central Hudson shall file, by April 1 of each year, a joint annual report to the Commission, summarizing, for the prior year, any asset transfers, shared employees, employee transfers, employee loans for emergencies, contracts, cost allocations, affiliate transactions and competitor or customer complaints concerning the course of conduct between Central Hudson and any affiliate that is related to these Standards. Further, any management employee transfers shall be reported to the Commission on a quarterly basis beginning on April 1 of each year.

Employee transfers between Central Hudson and an affiliate shall be reported by employee number, former company, former position, new company and new position. Employee loans from an affiliate to Central Hudson to respond to an emergency that threatens the safety or reliability of service to consumers shall be reported by employee number, companies involved and length of loan period.

C. Confidentiality of Records

Central Hudson and, as applicable, any affiliate shall designate as confidential any non-public information to or of which Staff requests access or disclosure, and which such entity believes is entitled to be treated as a trade secret, and may submit information to the Commission or Staff subject to the Commission's regulations on confidential information at 16 NYCRR Part 6.

Case 12-M-0192

ATTACHMENT II

ELECTRIC RELIABILITY PERFORMANCE MECHANISM

Joint Proposal Case 12-M-0192

Electric Reliability

Operation of Mechanism

This electric service Reliability Performance Mechanism ("reliability mechanism") has been in effect for Central Hudson Gas & Electric Corporation beginning on June 18, 2010 and will remain in effect until reset by the Commission. The measurement periods for the reliability mechanism metrics will be on a calendar year basis.

The reliability mechanism establishes the following performance metrics:

(a) threshold standards, consisting of system-wide performance targets for frequency and duration of electric service interruption defined as:

1. CAIDI - Customer Average Interruption Duration Index. The average interruption duration time (customers-hours interrupted) for those customers that experience an interruption during the year.
2. SAIFI - System Average Interruption Frequency Index. It is the average number of times that a customer is interrupted per 1,000 customers served during the year.

The electric service annual metrics for System Average Frequency Index (SAIFI) and Customer Average Duration Index (CAIDI) shall be a 15 basis point (electric, pre-tax) potential negative revenue adjustment for failure to achieve an annual

SAIFI target of 1.45, and a 15 basis point (electric, pre-tax) potential negative revenue adjustment for failure to achieve an annual CAIDI of 2.50. These index targets are the same as approved in the 2009 Rate Order in Case 09-E-0588 (2009 Rate Order). After the merger, the revenue adjustment will double where the Company does not satisfy a performance target.

(b) The Quarterly Meeting process will be continued per the 2009 Rate Order.

All revenue adjustments related to this reliability mechanism will come from shareholder funds and will be deferred for the benefit of ratepayers.

Exclusions

The following exclusions will be applicable to operating performance under this reliability mechanism:

(a) Any outages resulting from a major storm, as defined in 16 NYCRR Part 97 (i.e., at least 10% of the customers interrupted within an operating area or customers out of service for at least 24 hours), except as otherwise noted.

(b) Any incident resulting from a catastrophic event beyond the control of the Company, including but not limited to plane crash, water main break, or natural disasters (e.g., hurricanes, floods, earthquakes).

(c) Any incident where problems beyond the Company's control involving generation or the bulk transmission system is the key factor in the outage, including, but not limited to, NYISO mandated load shedding. This criterion is not intended to exclude incidents that occur as a result of unsatisfactory performance by the Company.

Reporting

The Company will prepare an annual report(s) on its performance under this reliability mechanism. The annual report(s) will be filed by March 31st of each year to the Secretary.

The reports will state the:

(a) Company's annual system-wide performance under the RPM and identify whether a revenue adjustment is applicable and, if so, the amount of the revenue adjustment;

(b) Company's performance under the other metrics and identify whether a revenue adjustment is applicable and, if so, the amount of the revenue adjustment; and

(c) Basis for requesting and provide adequate support for all exclusions.

Case 12-M-0192

ATTACHMENT III

PARTS 255/261 MATERIALS

12-M-0192

ATTACHMENT III
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PARTS 255 / 261 MATERIALS

HIGH RISK SECTIONS PART 255

ACTIVITY TITLE	CODE SECTION	RISK FACTOR
Material - General	255.53(a),(b),(c)	HIGH
Transportation of Pipe	255.65	HIGH
Pipe Design - General	255.103	HIGH
Design of Components - General Requirements	255.143	HIGH
Design of Components - Flexibility	255.159	HIGH
Design of Components - Supports and anchors	255.161	HIGH
Compressor Stations: Emergency shutdown	255.167	HIGH
Compressor Stations: Pressure limiting devices	255.169	HIGH
Compressor Stations: Ventilation	255.173	HIGH
Valves on pipelines to operate at 125 psig or more	255.179	HIGH
Distribution line valves	255.181	HIGH
Vaults: Structural Design requirements	255.183	HIGH
Vaults: Drainage and waterproofing	255.189	HIGH
Protection against accidental overpressuring	255.195	HIGH
Control of the pressure of gas delivered from high pressure distribution systems	255.197	HIGH
Requirements for design of pressure relief and limiting devices	255.199	HIGH
Required capacity of pressure relieving and limiting stations	255.201	HIGH
Qualification of welding procedures	255.225	HIGH
Qualification of Welders	255.227	HIGH
Protection from weather	255.231	HIGH
Miter Joints	255.233	HIGH
Preparation for welding	255.235	HIGH
Inspection and test of welds	255.241(a),(b)	HIGH
Nondestructive testing-Pipeline to operate at 125 PSIG or more	255.243(a)-(e)	HIGH
Welding inspector	255.244(a),(b),(c)	HIGH
Repair or removal of defects	255.245	HIGH
Joining Of Materials Other Than By Welding - General	255.273	HIGH
Joining Of Materials Other Than By Welding - Copper Pipe	255.279	HIGH
Joining Of Materials Other Than By Welding - Plastic Pipe	255.281	HIGH
Plastic pipe: Qualifying persons to make joints	255.285(a),(b),(d)	HIGH
Notification requirements	255.302	HIGH
Compliance with construction standards	255.303	HIGH
Inspection: General	255.305	HIGH
Inspection of materials	255.307	HIGH
Repair of steel pipe	255.309	HIGH
Repair of plastic pipe	255.311	HIGH
Bends and elbows	255.313(a),(b),(c)	HIGH
Wrinkle bends in steel pipe	255.315	HIGH
Installation of plastic pipe	255.321	HIGH
Underground clearance	255.325	HIGH
Customer meters and service regulators: Installation	255.357(d)	HIGH
Service lines: Installation	255.361(e),(f),(g),(h),(i)	HIGH
Service lines: Location of valves	255.365(b)	HIGH
External corrosion control: Buried or submerged pipelines installed after July 31, 1971	255.455(d),(e)	HIGH
External corrosion control: Buried or submerged pipelines installed before August 1, 1971	255.457	HIGH
External corrosion control: Protective coating	255.461(c)	HIGH
External corrosion control: Cathodic protection	255.463	HIGH
External corrosion control: Monitoring	255.465(a),(c)	HIGH
Internal corrosion control: Design and construction of transmission line	255.476(a),(c)	HIGH
Remedial measures: General	255.483	HIGH
Remedial measures: transmission lines	255.485(a),(b)	HIGH
Strength test requirements for steel pipelines to operate at 125 PSIG or more	255.505(a),(b),(c),(d)	HIGH
General requirements (UPGRADES)	255.553 (a),(b),(c),(f)	HIGH
Upgrading to a pressure of 125 PSIG or more in steel pipelines	255.555	HIGH
Upgrading to a pressure less than 125 PSIG	255.557	HIGH
Conversion to service subject to this Part	255.559(a)	HIGH
General provisions	255.603	HIGH
Operator Qualification	255.604	HIGH
Essentials of operating and maintenance plan	255.605	HIGH
Change in class location: Required study	255.609	HIGH
Damage prevention program	255.614	HIGH
Emergency Plans	255.615	HIGH
Customer education and information program	255.616	HIGH
Maximum allowable operating pressure: Steel or plastic pipelines	255.619	HIGH
Maximum allowable operating pressure: High pressure distribution systems	255.621	HIGH
Maximum and minimum allowable operating pressure: Low pressure distribution systems	255.623	HIGH
Odorization of gas	255.625(a),(b)	HIGH

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PARTS 255 / 281 MATERIALS

Tapping pipelines under pressure	255.627	HIGH
Purging of pipelines	255.629	HIGH
Control Room Management	255.631(a)	HIGH
Transmission lines: Patrolling	255.705	HIGH
Leakage Surveys - Transmission	255.706	HIGH
Transmission lines: General requirements for repair procedures	255.711	HIGH
Transmission lines: Permanent field repair of imperfections and damages	255.713	HIGH
Transmission lines: Permanent field repair of welds	255.715	HIGH
Transmission lines: Permanent field repair of leaks	255.717	HIGH
Transmission lines: Testing of repairs	255.719	HIGH
Distribution systems: Leak surveys and procedures	255.723	HIGH
Compressor stations: procedures	255.729	HIGH
Compressor stations: Inspection and testing relief devices	255.731	HIGH
Compressor stations: Additional inspections	255.732	HIGH
Compressor stations: Gas detection	255.736	HIGH
Pressure limiting and regulating stations: Inspection and testing	255.739(a),(b)	HIGH
Regulator Station Overpressure Protection	255.743(a),(b)	HIGH
Transmission Line Valves	255.745	HIGH
Prevention of accidental ignition	255.751	HIGH
Protecting cast iron pipelines	255.755	HIGH
Replacement of exposed or undermined cast iron piping	255.756	HIGH
Replacement of cast iron mains paralleling excavations	255.757	HIGH
Leaks: Records	255.807(d)	HIGH
Leaks: Instrument sensitivity verification	255.809	HIGH
Leaks: Type 1	255.811(b),(c),(d),(e)	HIGH
Leaks: Type 2A	255.813(b),(c),(d)	HIGH
Leaks: Type 2	255.815	HIGH
Leak Follow-up	255.819(a)	HIGH
High Consequence Areas	255.905	HIGH
Required Elements (IMP)	255.911	HIGH
Knowledge and Training (IMP)	255.915	HIGH
Identification of Potential Threats to Pipeline Integrity and Use of the Threat Identification in an Integrity Program (IMP)	255.917	HIGH
Baseline Assessment Plan(IMP)	255.919	HIGH
Conducting a Baseline Assessment (IMP)	255.921	HIGH
Direct Assessment (IMP)	255.923	HIGH
External Corrosion Direct Assessment (ECDA) (IMP)	255.925	HIGH
Internal Corrosion Direct Assessment (ICDA) (IMP)	255.927	HIGH
Confirmatory Direct Assessment (CDA) (IMP)	255.931	HIGH
Addressing Integrity Issues (IMP)	255.933	HIGH
Preventive and Mitigative Measures to Protect the High Consequence Areas (IMP)	255.935	HIGH
Continual Process of Evaluation and Assessment (IMP)	255.937	HIGH
Reassessment Intervals (IMP)	255.939	HIGH
General requirements of a GDPIM plan	255.1003	HIGH
Implementation requirements of a GDPIM plan.	255.1005	HIGH
Required elements of a GDPIM plan.	255.1007	HIGH
Required report when compression couplings fail.	255.1009	HIGH
Requirements a small liquefied petroleum gas (LPG) operator must satisfy to implement a GDPIM plan	255.1015	HIGH

HIGH RISK SECTIONS PART 261		
Operation and maintenance plan	261.15	HIGH
Leakage Survey	261.17(a),(c)	HIGH
Carbon monoxide prevention	261.21	HIGH
Warning tag procedures	261.51	HIGH
HEFPA Liaison	261.53	HIGH
Warning Tag Inspection	261.55	HIGH
Warning tag: Class A condition	261.57	HIGH
Warning tag: Class B condition	261.59	HIGH

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OTHER RISK SECTIONS PART 255

ACTIVITY TITLE	CODE SECTION	RISK FACTOR
Preservation of records	255.17	OTH
Compressor station: Design and construction	255.163	OTH
Compressor station: Liquid removal	255.165	OTH
Compressor stations: Additional safety equipment	255.171	OTH
Vaults: Accessibility	255.185	OTH
Vaults: Sealing, venting, and ventilation	255.187	OTH
Calorimeter or calorimeter structures	255.190	OTH
Design pressure of plastic fittings	255.191	OTH
Valve installtion in plastic pipe	255.193	OTH
Instrument, control, and sampling piping and components	255.203	OTH
Limitations On Welders	255.229	OTH
Quality assurance program	255.230	OTH
Preheating	255.237	OTH
Stress relieving	255.239	OTH
Inspection and test of welds	255.241(c)	OTH
Nondestructive testing-Pipeline to operate at 125 PSIG or more	255.243(f)	OTH
Plastic pipe: Qualifying joining procedures	255.283	OTH
Plastic pipe: Qualifying persons to make joints	255.285(c),(e)	OTH
Plastic pipe: Inspection of joints	255.287	OTH
Bends and elbows	255.313(d)	OTH
Protection from hazards	255.317	OTH
Installation of pipe in a ditch	255.319	OTH
Casing	255.323	OTH
Cover	255.327	OTH
Customer meters and regulators: Location	255.353	OTH
Customer meters and regulators: Protection from damage	255.355	OTH
Customer meters and service regulators: Installation	255.357(a),(b),(c)	OTH
Customer meter installations: Operating pressure	255.359	OTH
Service lines: Installation	255.361(a),(b),(c),(d)	OTH
Service lines: valve requirements	255.363	OTH
Service lines: Location of valves	255.365(a),(c)	OTH
Service lines: General requirements for connections to main piping	255.367	OTH
Service lines: Connections to cast iron or ductile iron mains	255.369	OTH
Service lines: Steel	255.371	OTH
Service lines: Cast iron and ductile iron	255.373	OTH
Service lines: Plastic	255.375	OTH
Service lines: Copper	255.377	OTH
New service lines not in use	255.379	OTH
Service lines: excess flow valve performance standards	255.381	OTH
External corrosion control: Buried or submerged pipelines installed after July 31, 1971	255.455(a)	OTH
External corrosion control: Examination of buried pipeline when exposed	255.459	OTH
External corrosion control: Protective coating	255.461(a),(b),(d),(e),(f),(g)	OTH
Rectifier Inspection	255.465 (b),(c),(f)	OTH
External corrosion control: Electrical isolation	255.467	OTH
External corrosion control: Test stations	255.469	OTH
External corrosion control: Test lead	255.471	OTH
External corrosion control: Interference currents	255.473	OTH
Internal corrosion control: General	255.475(a),(b)	OTH
Atmospheric corrosion control: General	255.479	OTH
Atmospheric corrosion control: Monitoring	255.481	OTH
Remedial measures: transmission lines	255.485(c)	OTH
Remedial measures: Pipelines lines other than cast iron or ductile iron lines	255.487	OTH
Remedial measures: Cast iron and ductile iron pipelines	255.489	OTH
Direct Assessment	255.490	OTH
Corrosion control records	255.491	OTH
General requirements (TESTING)	255.503	OTH
Strength test requirements for steel pipelines to operate at 125 PSIG or more	255.505(e),(h),(i)	OTH

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Test requirements for pipelines to operate at less than 125 PSIG	255.507	OTH
Test requirements for service lines	255.511	OTH
Environmental protection and safety requirements	255.515	OTH
Records (TESTING)	255.517	OTH
Notification requirements (UPGRADES)	255.552	OTH
General requirements (UPGRADES)	255.553(d),(e)	OTH
Conversion to service subject to this Part	255.559(b)	OTH
Change in class location: Confirmation or revision of maximum allowable operating pressure	255.611(a),(d)	OTH
Continuing surveillance	255.613	OTH
Odorization	255.625(e),(f)	OTH
Pipeline Markers	255.707(a),(c),(d),(e)	OTH
Transmission lines: Record keeping	255.709	OTH
Distribution systems: Patrolling	255.721(b)	OTH
Test requirements for reinstating service lines	255.725	OTH
Inactive Services	255.726	OTH
Abandonment or inactivation of facilities	255.727(b)-(g)	OTH
Compressor stations: storage of combustible materials	255.735	OTH
Pressure limiting and regulating stations. Inspection and testing	255.739(c),(d)	OTH
Pressure limiting and regulating stations. Telemetering or recording gauges	255.741	OTH
Regulator Station MAOP	255.743 (c)	OTH
Service Regulator - Min & Oper. Load	255.744 (d),(e)	OTH
Distribution Line Valves	255.747	OTH
Valve maintenance: Service line valves	255.748	OTH
Regulator Station Vaults	255.749	OTH
Caulked bell and spigot joints	255.753	OTH
Reports of accidents	255.801	OTH
Emergency lists of operator personnel	255.803	OTH
Leaks General	255.805(a),(b),(e),(g),(h)	OTH
Leaks: Records	255.807(a),(b),(c)	OTH
Type 2	255.815(b),(c),(d)	OTH
Type 3	255.817	OTH
Interruptions of service	255.823(a),(b)	OTH
Logging and analysis of gas emergency reports	255.825	OTH
Annual Report	255.829	OTH
Reporting safety-related conditions	255.831	OTH
General (IMP)	255.907	OTH
Changes to an Integrity Management Program (IMP)	255.909	OTH
Low Stress Reassessment (IMP)	255.941	OTH
Measuring Program Effectiveness (IMP)	255.945	OTH
Records (IMP)	255.947	OTH
Records an operator must keep	255.1011	OTH

OTHER RISK SECTIONS PART 261		
High Pressure Piping - Annual Notice	261.19	OTH
Warning tag: Class C condition	261.61	OTH
Warning tag: Action and follow-up	261.63(a)-(h)	OTH
Warning Tag Records	261.65	OTH

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ATTACHMENT IV

NET PLANT TARGETS

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Attachment IV

Central Hudson Gas & Electric Corporation

Net Plant Targets for TME 6/30/2014
($000)

	Electric[1] TME 6/30/2014	
Electric Net Plant Target:		
Plant In Service	1,262,196	
Accumulated Reserve	(360,501)	
Net Plant	901,695	
NIBCWIP	17,638	
Net Electric Plant Target	919,333	[4]
Depreciation Expense Target:		
Transportation Depreciation [3]	1,991	
Depreciation Expense [3]	32,710	
Electric Depreciation Expense Target	34,701	[4]

	Gas[1] TME 6/30/2014	
Gas Net Plant Target:		
Plant In Service	361,146	
Accumulated Reserve	(117,428)	
Net Plant	243,718	
NIBCWIP	8,438	
Net Gas Plant Target	252,156	[4]
Depreciation Expense Target:		
Transportation Depreciation [3]	417	
Depreciation Expense [3]	8,999	
Gas Depreciation Expense Target	9,416	[4]

[1] - Electric and Gas amounts include allocation of Common Plant.
[2] - Electric and Gas Plant, Reserves and NIBCWIP are from Staff Exhibits ARP-3 and ARP-4, Schedule 7.
[3] - Electric and Gas Depreciation are from Staff Exhibits ARP-3 and ARP-4, Schedule 1.
[4] - Net Plant and Depreciation Target.

HYDRO ONE/805
Schmidt

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

MAYO M. SCHMIDT
Exhibit No. 805

***Fortis* Recommended Decision of Administrative Law Judges (May 3, 2013)**

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-M-0192 - Joint Petition of Fortis Inc., Fortis US Inc., Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

NOTICE OF SCHEDULE FOR FILING EXCEPTIONS

(Issued May 3, 2013)

Attached is the Recommended Decision of Administrative Law Judges Rafael A. Epstein and David L. Prestemon in this proceeding. Briefs on exceptions are due electronically to the Secretary at secretary@dps.ny.gov and to all active parties by 4:00 p.m. on May 17, 2013.

Briefs opposing exceptions are due by 4:00 p.m. on May 24, 2013, following the same procedures. The parties' briefs should adhere to the guidelines for filing documents with the Secretary (www.dps.ny.gov).

(SIGNED) JEFFREY C. COHEN
Acting Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-M-0192 - Joint Petition of Fortis Inc., Fortis US Inc., Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

RECOMMENDED DECISION

BY

ADMINISTRATIVE LAW JUDGES

RAFAEL A. EPSTEIN AND DAVID L. PRESTEMON

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-M-0192 - Joint Petition of Fortis Inc., Fortis US Inc., Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

RECOMMENDED DECISION

RAFAEL A. EPSTEIN and DAVID L. PRESTEMON,
Administrative Law Judges:

BACKGROUND

On February 20, 2012, CH Energy Group, Inc. (CHEG), the parent company of Central Hudson Gas & Electric Corporation (Central Hudson), entered into an Agreement and Plan of Merger (Merger Agreement) with Fortis Inc. (Fortis), a Canadian holding company; FortisUS Inc. (FortisUS), a wholly-owned subsidiary of Fortis; and Cascade Acquisition Sub Inc. (Cascade), a wholly-owned subsidiary of FortisUS. Under the terms of the Merger Agreement, CHEG would merge with Cascade, with CHEG as the surviving entity. As a result, Central Hudson, a regulated New York electric and gas corporation, would become indirectly a wholly-owned subsidiary of Fortis.

Under §70 of the Public Service Law (PSL), the transfer of ownership of all or any part of the franchise, works or system of any gas or electric corporation is prohibited without the consent of the Commission. That consent may be given only if the Commission determines that the proposed acquisition, with such terms and conditions as the Commission may fix and impose, "is in the public interest." Consequently, on April 20, 2012, Fortis, FortisUS, Cascade, CHEG and Central

Hudson (collectively, "Petitioners") sought such consent by filing the petition that is the subject of this proceeding.

Subsequent to the filing, the matter was assigned to Administrative Law Judges, and a Notice of Proposed Rulemaking was published.[1] On May 16, 2012 the Judges conducted an initial procedural conference. Participants at the conference in addition to Petitioners and staff of the Department of Public Service (Staff) were the Utility Intervention Unit of the New York Department of State's Division of Consumer Protection (UIU); the International Brotherhood of Electrical Workers Local 320 (IBEW Local 320); the Retail Energy Supply Association (RESA); Multiple Intervenors (MI); Empire State Development Corporation; and the County of Dutchess. All were admitted as parties to the proceeding, as were Hess Corporation, the County of Orange, the County of Ulster, the Joint Task Force of the Town and Village of Athens (Athens Joint Task Force), the Public Utility Law Project of New York, Inc. (PULP), and, as a group, Accent Energy Midwest Gas, LLC, Accent Energy Midwest II, LLC, IGS Energy, Inc., and Interstate Gas Supply, Inc.

Following a status conference on June 27, 2012, and upon reconsideration of an initial ruling, the Judges adopted a schedule for the proceeding calling for the filing of initial comments or testimony (at the option of the party) by October 12, 2012, and reply comments or rebuttal testimony by November 2, 2012. Ultimately, initial testimony was filed by Staff and PULP, and initial comments were submitted by Athens, Dutchess County, ESD, IBEW Local 320, MI, and UIU. Reply comments were received from Athens, and rebuttal testimony was filed by Petitioners. Staff was subsequently authorized to submit surrebuttal testimony in response to Petitioners, and did so on December 4, 2012.

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[1] *New York State Register*, May 23, 2012, p. 15.

On December 12, 2012, Petitioners filed a Notice of Settlement pursuant to which all parties, except PULP, actively participated in negotiations that lasted approximately ten business days, and resulted in the Joint Proposal that we are addressing in this Recommended Decision.[2] The Joint Proposal was filed with the Secretary on January 28, 2013, and was signed by Petitioners, Staff, MI, UIU and the Counties of Dutchess, Orange and Ulster.[3] It states the conclusion of the signatories that the proposed merger, with the terms and conditions set forth in the proposal, meets the public interest standard of PSL §70 and should be approved.

Statements expressing general support for the Joint Proposal were filed on February 8, 2013, by Petitioners, Staff, MI and UIU. The Counties reiterated their limited support. Statements opposing adoption of the Joint Proposal in its present form were filed by PULP, RESA, the New York State Energy Marketers Coalition (NYSEMC), and IBEW Local 320. Replies were

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[2] PULP explains in its comments in opposition to the Joint Proposal that it was unable to participate due to a lack of available resources caused by a delay in the receipt of funding. Initial Comments of Public Utility Law Project of New York, Inc. (PULP) in Opposition to Joint Proposal (PULP Initial Comments), pp. 1-2.

[3] The signatures of the Counties are accompanied by disclaimers stating that they are affixed for the purpose of expressing support for specific provisions of the Joint Proposal, and that the Counties take no position on the balance of the document. In general, the Counties stated support for provisions calling for a rate freeze, the crediting of synergy savings, and the payment of positive benefits including the Community Benefit Fund and write-down of regulatory assets. The Counties participated as parties, and signed the Joint Proposal, through their county executives. Subsequent to execution of the Joint Proposal, the Ulster County legislature, by resolution, and a majority of the members of the Dutchess County legislature, by letter, opposed approval of the proposal, while Orange County Executive Edward Diana submitted comments supporting it fully.

filed on February 15, 2013, by Petitioners, Staff, IBEW Local 320, MI, PULP, and RESA.

In a January 29, 2013 ruling establishing a schedule for statements in support of, or opposition to, the Joint Proposal, the Judges specified that any party advocating an evidentiary hearing on the Joint Proposal must specify in its initial comments (due February 8, 2013) a material issue of fact that could not be resolved without the cross-examination of witnesses. No party's initial comments attempted to make such a showing.

On May 1, 2013, two additional parties were admitted: Citizens for Local Power (CLP) and the Consortium in Opposition to the Acquisition (Consortium). Although some members of these groups had previously submitted comments, the organizations themselves had not participated in the proceeding prior to their admission.

By motion dated May 1, 2013, CLP and the Consortium have requested an evidentiary hearing. Although the time for opposing responses has not yet expired, we recommend on the basis of the present record that the Commission deny the motion.[4] Regardless of what any responses might assert, we find that the motion is contrary to the principle in Rule 4.3(c)(2) that late intervention is permitted only subject to the new party's acceptance of the record as of the intervention date; and, more substantively, that the motion fails to satisfy the requirement in the January 29, 2013 ruling that any request for hearings be supported by issues that require cross-examination.

We agree with CLP and the Consortium that this case is as important as others where hearings have been held. In our

[4] At Petitioners' request, without opposition from any other party, the due date for responses to the motion has been accelerated to May 6, 2013.

view, however, the determining factor is that an evidentiary hearing would serve no legitimate function because the controversies in the proceeding, notably including those raised by CLP and the Consortium in comments filed simultaneously with the motion, present no factual questions that could be clarified by confrontation of witnesses and could materially affect the Commission's decision. Moreover, while we also agree that the prefiled evidence should be available in the record as a potential basis for the Commission's decision, a hearing is not necessary to accomplish that result.

PUBLIC COMMENTS

On February 21, 2013, public statement hearings concerning the Joint Proposal were held in Kingston and Poughkeepsie. Approximately 40 people attended the hearings, 17 of whom provided comments on the record. Commenters included Central Hudson customers from throughout the utility's service territory, as well as New York State Assembly Member Kevin Cahill and Town of Rosendale Council Member Manna Jo Greene.

The original notice of public statement hearings called for all comments to be submitted by March 21, 2013. After receiving numerous requests for additional time from public officials and others, the Secretary extended the deadline through May 1, 2013. During the extension period, additional public statement hearings were held on April 17, 2013, in Poughkeepsie and April 18, 2013 in Kingston. Approximately 130 people attended the hearings and 47 provided comments. Speakers included Assembly Member Frank Skartados, Dutchess County Legislators Richard Perkins and Joel Tyner, Rosendale Council Member Greene, Rosendale Supervisor Jeanne Walsh, Woodstock Town Council Member Jay Wenk, and a representative from the office of State Senator Cecilia Tkaczyk. All speakers at all of the public statement hearings opposed the merger. Through May 1,

2013, another approximately 316 comments opposing the merger were received by the Commission by mail, e-mail, telephone, and posting to the Commission's website. In addition, 896 individuals had signed a petition posted on the SignOn.org website expressing opposition to the merger.[5]

Commenters opposed to the merger included Senator Tkaczyk and Senator Terry Gipson; Assembly Members Cahill, Didi Barrett, and James Skoufis; City of Beacon Mayor Randy Casale; Town of Woodstock Supervisor Jeremy Wilber; 13 members of the Dutchess County Legislature, by joint letter; Dutchess County Legislature Assistant Majority Leader Angela Flesland, individually; and former Member of Congress Maurice D. Hinchey. All of these past and present public officials urged the Commission to disapprove the proposed merger transaction, as did resolutions adopted by the Ulster County Legislature; the City of Newburgh; the Towns of Esopus, Marbletown, Newburgh, New Paltz, Olive, Rosendale, and Woodstock; the Village of Red Hook, and the Rosendale Environmental Commission. The Economic Development Committee of the Town of Red Hook also opposed the merger, as did AARP, the Sierra Club, the Dutchess County Central Labor Council, and the Hudson Valley Area Labor Federation.

Opponents of the merger expressed varying degrees of concern about the potential for long-run negative consequences not only for Central Hudson ratepayers, but also for the economic well-being of the utility's Mid-Hudson service territory if the transaction were consummated. The themes evoked most frequently in the comments derived from the perception that the transaction would replace a well-regarded,

[5] The SignOn.Org website allows petition signers to cause e-mails to be sent to the Secretary memorializing their signatures, and many individuals availed themselves of that option. The numbers cited above do not include those e-mails.

highly capable and locally engaged utility with a foreign entity of unproven quality having no inherent ties to the service territory and financial objectives that may conflict with the interests of ratepayers. These concerns are epitomized by the comments of Jennifer Metzger, Chair of the Town of Rosendale Environmental Commission, who stated that "Central Hudson's community involvement has benefited Rosendale tremendously," and warned that:

> this level of involvement will decrease or perhaps end in the future if the company is acquired by Fortis Inc. – a foreign company with multiple holdings outside the region and country that has an inherent incentive to cut costs and operational expenses in its subsidiaries to improve its own profitability.

This perceived potential for a divergence of interests between a distant holding company and the local community served by its utility subsidiary was a source of concern for nearly all of the commenters, many of whom expressed a general uneasiness with the prospect of foreign ownership of critical infrastructure necessary to provide essential electric and gas services. Some saw this as a continuation of a disturbing trend toward more and more foreign ownership of U.S. businesses, and expressed concern that domestic control over vital industries was being lost.

Others had more specific concerns. Many commenters described Central Hudson as having been very proactive in promoting energy efficiency and renewable energy. They suggested that there was no language in the Joint Proposal that would ensure a comparable environmental responsiveness from the merged companies. In a similar vein, many commenters noted Central Hudson's record of community involvement and support for local economic development. They questioned whether that level of commitment would extend beyond the funding expressly provided

in the Joint Proposal, which they characterized as a purely short-term benefit.

For other commenters, the issue was primarily economic. They viewed the putative financial benefits of the Joint Proposal for ratepayers as meager and transitory, while the financial risks would be substantial and persistent. Assembly Member Cahill, for example, argued that the proposed merger transaction makes no financial sense. Fortis, he suggested, could not make a profit and still maintain current levels of service for Central Hudson ratepayers. Ultimately, he contended, customers would be forced to provide that profit through either increased rates or decreased service reliability and safety.

Prior to the issuance on April 24, 2013, of the notice announcing the preparation of this recommended decision, the Commission had not received a single public comment supporting the merger. The first such comment, posted on April 24, came from Charles S. North, President and CEO of the Dutchess County Regional Chamber of Commerce. Mr. North stated that after meeting with Central Hudson officials and learning the facts of the transaction, he strongly supported it. Fortis's commitments to provide $50 million in benefits and to maintain Central Hudson as a standalone entity are a win/win for customers, he said. In Mr. North's opinion, Central Hudson will benefit from the resources of a larger organization and has done right by its customers in agreeing to the merger.

Subsequently, through May 1, 2013, the Commission has received approximately 274 comments urging that the merger be approved. About 133 of those comments came from Central Hudson employees. Many others came from Central Hudson customers and from businesses and business organizations including the Edison Electric Institute, the Hudson Valley Economic Development

Corporation, the Putnam County Economic Development Corporation, the Westchester County Office of Economic Development, the Dutchess County Economic Development Corporation, the Council of Industry of Southeastern New York, the New Paltz Regional Chamber of Commerce, the Sullivan County Partnership for Economic Development, the Greater Newburgh Partnership, the Orange County Industrial Development Authority, and the Orange County Partnership. Supporters of the merger emphasize the value of the positive benefits provided for in the Joint Proposal and the commitments of Fortis to operate Central Hudson as a stand-alone entity, maintaining local jobs and keeping its headquarters in the community. The economic development organizations stress particularly the importance of the proposed $5 million Community Benefit Fund (described below).

Supplemental comments were filed on May 1, 2013 by five parties: CLP and the Consortium, jointly; Joint Proposal signatory MI; opponent IBEW Local 320; and Petitioners. CLP and the Consortium expounded in detail on the benefits and detriments of the merger as proposed, to show that it not only would fail the pertinent Commission's positive net benefits test but would be affirmatively harmful and, in that respect, compares unfavorably with all the major energy company mergers the Commission has approved since 1999. They said the Joint Proposal satisfies neither the statutory public interest standard, nor the criteria in the Settlement Guidelines such as conformity with state policies and consensus among adversarial parties. They charged Fortis with disingenuousness or indifference regarding values the Commission should uphold in the pursuit of objectives such as environmental protection, economic development, utility infrastructure improvements, and development of sustainable energy resources.

For the most part, MI's comments repeated its criticism of previously raised objections to the Joint Proposal and emphasized the potential loss of $49.5 million in positive benefits to ratepayers if the proposal were rejected. MI also argued that less weight should be given to comments from entities that did not participate fully in the process leading to the Joint Proposal, particularly those of the legislatures of Dutchess and Ulster Counties whose county executives were signatories to the proposal.

IBEW Local 320 repeated its previously stated concerns about Central Hudson's outsourcing policies and their impact on union jobs and service quality, and contends that they have not been alleviated. The Joint Proposal should not be approved, it said, unless provision is made for a needed infusion of internal workers. The union also submitted a copy of an e-mail sent by a Central Hudson Vice President to employees urging them to submit comments to the Commission supporting the merger and providing templates for that purpose. The e-mail states that, "*The number of posted comments matters* - even if form letters are used [emphasis in original]." IBEW Local 320 states that the "vast majority" of employees who have responded with comments are not represented by the union.

Petitioners' additional comments contended that the record demonstrates that the Joint Proposal will produce benefits that greatly exceed any risks presented by the merger. They cited comments by Staff in support of the Joint Proposal stating Staff's view that the criteria for approval of the merger under PSL §70, as established in previous Commission decisions, have been met or exceeded, and that the transaction compares favorably with those previously approved.

Petitioners also argued that comments received in opposition to the merger, mainly from non-parties, have

generally been misinformed, are contradicted by the terms of the Joint Proposal and/or the comments of the signatories, and have added nothing of significance to the record. For many of the most frequently raised criticisms of the merger, Petitioners provided information tending to refute the allegations, for example, with respect to concerns about foreign ownership of Central Hudson, NAFTA, environmental issues, infrastructure investment, financial risks, and so forth. Petitioners concluded that the Joint Proposal:

> is a compelling path forward that assures the continuation and enhancement of Central Hudson consistent with its past performance as a well-run, low-cost utility that is extraordinarily sensitive to local needs and Commission requirements.[6]

All of the comments received have been included in the official record and have been fully reviewed and considered in the preparation of this recommended decision.

DESCRIPTION OF JOINT PROPOSAL

The Joint Proposal expresses the agreement of the signatory parties that the proposed acquisition of Central Hudson by Fortis is in the public interest for purposes of PSL §70, and should be approved, subject to the terms described in the proposal. Broadly speaking, those terms are intended to perform two functions: the mitigation of any potential risks that might arise from consummation of the merger transaction, and the securing of incremental public benefits to ensure a net positive outcome from the transaction. In this section, we describe the provisions of the Joint Proposal and the statements supporting and opposing their adoption.

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[6] Additional Comments of Petitioners, p. 47.

A. Risk Mitigation

1. Corporate Structure, Governance and Financial Protections

Petitioners state that although their original petition voluntarily included provisions intended to address concerns that were identified in prior Commission orders addressing the acquisition of distribution utilities, the Joint Proposal signatories have agreed to even more comprehensive and stringent requirements for corporate structure, corporate governance and financial protections. Staff agrees, arguing that the Joint Proposal incorporates "a myriad of customer protections" addressing such matters as goodwill and acquisition costs; credit quality and dividend restrictions; money pooling; a special class of preferred stock to be issued in the event of the bankruptcy of Fortis (the "golden share"); financial transparency and continued financial reporting requirements; updated affiliate transaction and cost allocations, as well as, Code of Conduct rules and standards; follow-on merger savings; and corporate governance and operational protection provisions.[7] Similarly, MI states that although Petitioners' original proposal "did a commendable job of advancing reasonable customer protections, the Joint Proposal provides additional and/or strengthened financial and operational protections for customers."[8]

a. Goodwill and Acquisition Costs

To the extent that the consideration paid by Fortis for the stock of CHEG exceeds the book value of CHEG's assets, an accounting asset, goodwill, will be created. As the

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[7] Department of Public Service Staff Statement in Support of Joint Proposal (Staff Statement), p. 10.

[8] Initial Comments of Multiple Intervenors in Support of Joint Proposal (MI Comments), p. 12.

Commission has made clear in previous orders, neither the cost of acquiring, nor the cost of carrying, that asset should be borne by utility customers, and the existence of goodwill should not adversely affect ratepayers. The Joint Proposal includes provisions intended to ensure that this will be the case for Central Hudson customers. It bars goodwill associated with the merger transaction from being recorded on the books of Central Hudson, to the extent permitted by U.S. Generally Accepted Accounting Principles (U.S. GAAP). If those accounting rules require goodwill to be "pushed down" to Central Hudson for financial reporting purposes, the Joint Proposal precludes it from being reflected in the regulated accounts of Central Hudson on which rates are based. In addition, if either Fortis or FortisUS is obligated to record an impairment of the goodwill created by the transaction, the Commission must be notified within five days. Staff argues that this provision will afford it and the Commission adequate time to take steps to ensure that the impairment does not adversely affect Central Hudson customers. Finally, the Joint Proposal requires Central Hudson to submit to Staff a schedule of all external legal, financial advisory and similar costs incurred to achieve the merger in order to permit the Commission to ensure that they cannot be recovered in rates.

b. Credit Quality and Dividend Restrictions

Staff identified the possibility of Central Hudson's credit standing being adversely affected by the finances of Fortis as a significant risk of the proposed merger. Accordingly, the Joint Proposal incorporates an array of conditions designed to protect the credit quality of the utility.

First, to permit the Commission to adequately monitor the impact of the transaction on Central Hudson's finances, the

Joint Proposal establishes a continuing requirement that copies of all presentations made by Central Hudson, Fortis or any Fortis affiliate be provided to Staff within ten business days. Both Fortis and Central Hudson are required to be registered with at least two major nationally and internationally recognized rating agencies, to maintain separate debt instruments, and to be separately rated by at least two rating agencies. In addition, neither Fortis nor Central Hudson will be permitted to enter into any debt instrument containing cross-default provisions that could affect Central Hudson.[9]

To mitigate the risk of an increase in Central Hudson's financing costs, the Joint Proposal requires that Fortis and Central Hudson support the objective of maintaining an "A" credit rating for the utility, unless the Commission modifies its financial integrity policies. Also, to ensure that Central Hudson maintains the common equity capitalization on which rates are based, the Joint Proposal would bar Central Hudson from paying dividends if its average common equity ratio for the 13 months prior to the proposed dividend were more than 200 basis points below the ratio used in setting rates.[10] Staff states that this is an additional ratepayer financial protection

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[9] A cross-default provision is one that can trigger default on a debt obligation based on a default on a different debt obligation. For example, a provision in a Central Hudson debt instrument permitting acceleration of the due date for repayment in the event of a default by Fortis on one of its bonds would be a cross-default provision prohibited under the terms of the Joint Proposal.

[10] In response to a question posed by the Judges, the signatory parties clarified their intention that this provision would bar a dividend not only when Central Hudson's trailing 13-month average equity ratio was already below the 200 basis point threshold, but also when the payment of the dividend would itself cause the average to drop below the threshold.

beyond those that the Commission has required in prior transactions.

The Joint Proposal would also continue dividend restrictions originally imposed as part of a Restructuring Settlement Agreement (RSA) approved by the Commission in 1998.[11] Among other things, the RSA stipulates that if Central Hudson's senior debt rating is downgraded below 'BBB+' by more than one credit rating agency and the downgrade is because of the performance of, or concerns about, the financial condition of its parent or an affiliate, dividends will be limited to a rate of not more than 75% of the average annual income available for dividends, on a two-year rolling average basis. In the event that the debt rating is placed on 'Credit Watch' for a rating below 'BBB' by more than one credit rating agency, dividends are limited to 50% of the average net income, and if there is a downgrade below 'BBB-' by more than one credit rating agency, no dividends are allowed to be paid until such time as the rating has been restored to 'BBB-' or higher.

In addition to continuing the RSA limitations, the Joint Proposal includes a new provision that would insulate Central Hudson ratepayers from the effects of a downgrade to Fortis's credit rating. If within three years of the merger Central Hudson's credit rating were downgraded as a direct result of a Fortis downgrade, the higher debt cost resulting from the downgrade would not be reflected in Central Hudson's cost of capital used to set rates. Ratepayers would be held harmless for the financial impact of the Fortis downgrade.

The Joint Proposal also would bar Central Hudson from providing financial support to Fortis or its other affiliates

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[11] Case 96-E-0909, *Central Hudson Gas & Electric Corporation*, Order Adopting Terms of Settlement Subject to Modifications and Conditions (issued February 19, 1998).

except as permitted by the Joint Proposal, the RSA or a Commission order. It would also require that Central Hudson's banking and other financial arrangements be kept separate from those of other Fortis affiliates.

Finally, the Joint Proposal would authorize Central Hudson to deregister from the United States Securities and Exchange Commission (SEC) and rely more on the private market under SEC Rule 144A to issue debt.[12] The Commission's order issued last year in Case 12-M-0172 would be amended to permit such private financing.[13] It is expected that the availability of this option will enhance Central Hudson's pricing position, lowering its debt costs, and benefiting ratepayers.

c. Money Pooling

Money pools enable affiliated companies to make their excess cash on hand available as a quick, low-cost source of short-term funding for other pool participants. The Joint Proposal would permit Central Hudson to participate in such pooling arrangements, but only with Fortis, FortisUS and other entities that are regulated utilities operating in the United States, provided that Fortis and FortisUS may participate only as lenders and may not receive loans or fund transfers, directly or indirectly. Cross-default provisions affecting Central Hudson would be prohibited.

[12] Rule 144A is a safe harbor exemption from the registration requirements of the Securities Act of 1933 that allows companies to sell securities in the private market to qualified institutional buyers in a more timely fashion with fewer disclosures and filing requirements.

[13] Case 12-M-0172, *Central Hudson Gas & Electric Corporation*, Order Authorizing Issuance of Securities (issued September 14, 2012).

d. Special Class of Preferred Stock

The Joint Proposal would require the creation of special class of Central Hudson preferred stock to be held by a trustee approved by the Commission. Without the consent of the holder of this "golden share," Central Hudson would be precluded from entering into voluntary bankruptcy. This is identical to a provision included in the Commission's order approving the acquisition of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation by Iberdrola.[14]

With the golden share in place, Central Hudson would be permitted to demonstrate in future rate cases that its stand-alone capital structure should be used for setting rates. That demonstration would be made by submitting current written evaluations from at least two rating agencies supporting the evaluation of Central Hudson as a separate company, without material adjustments based on risks related to the capital structure and ratings of Fortis. If such evaluations were not available, Central Hudson would have the burden of providing comparable evidence to support the stand-alone assumption.

e. Financial Transparency and Reporting

The Joint Proposal incorporates a number of provisions intended to ensure that the Commission and its Staff have ready access to the financial data and other information necessary to continue our regulatory oversight of Central Hudson. It provides that Central Hudson will continue to use the standards of GAAP for its financial accounting and financial reports. If that accounting method were replaced for publicly-traded entities, the change would apply to Central Hudson. Central Hudson would also be required to continue to satisfy all of the

[14] Case 07-M-0906, *Iberdrola, S.A. et al. - Acquisition Petition*, Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009)(*Iberdrola* order), pp. 43-44.

Commission's reporting requirements for jurisdictional companies of its size and nature.

Central Hudson would also continue to comply with the provisions of sections 302 through 404 of the Sarbanes-Oxley Act (SOX) as if Central Hudson were still bound directly by the provisions of SOX, even though it would be a subsidiary of a foreign holding company. This would include annual attestation audits by independent auditors with respect to Central Hudson's financial statements and internal controls over financial reporting.

The Joint Proposal would also require that Staff be given ready access to any books and records of Fortis and its affiliates that Staff might deem necessary to determine whether the rates and charges of Central Hudson are just and reasonable. That access must include, but is not limited to, all information supporting the underlying costs and the basis for any factor that determines the allocation of those costs. Central Hudson would also be required annually to file the financial statements, including balance sheets, income statements, and cash flow statements of Fortis and its major regulated and unregulated energy company subsidiaries in the United States, and to provide, to the extent available from a recognized financial reporting information service, the "as reported" quarterly and annual balance sheets, income statements and statements of cash flows of Fortis in U.S. dollars with the underlying currency translation assumptions. All required financial filings would be in English and in U.S. dollars or, if that were not practicable, with the underlying currency translation assumptions.

f. Affiliate Standards

The RSA approved by the Commission when Central Hudson was reorganized as a subsidiary of CHEG included a set of

standards addressing transactions, conflicts of interest, cost allocations, and information sharing among Central Hudson and its affiliates. The Joint Proposal would update and revise those standards and apply them to Fortis. Central Hudson would be barred from entering into transactions with affiliates that were not in compliance with the transaction standards; would be prohibited from sharing operating (i.e., non-management) employees with affiliates, and would be required to give 180 days' prior notice and obtain Commission approval prior to the start of any material shared services initiatives or the establishment of a shared services organization that would provide material services to Central Hudson.[15] Current cost allocation guidelines would be continued, but would be subject to revision if intercompany transactions grew beyond a defined level. Staff contends that, collectively, these provisions ensure that the Commission will have adequate advance notice of any change in Fortis's expressed philosophy of allowing its subsidiary utilities to operate on a stand-alone basis.

g. Follow-On Merger Savings

The Joint Proposal includes a condition that would ensure Central Hudson customers an appropriate share of any savings resulting from future mergers or acquisitions by Fortis until new rates are set. This condition, Staff says, is identical to follow-on merger savings provisions that have been adopted as a condition to the approval of other recent mergers.

h. Corporate Governance and Operational Provisions

The Joint Proposal contains a number of provisions intended to address concerns that the responsiveness of Central Hudson to the community it serves might be diminished as a

[15] "Material" is defined as services individually or collectively having a value greater than 5% of Central Hudson's net income on an after tax basis.

subsidiary of a foreign holding company. The provisions specify that the headquarters of the utility would remain within the service territory.[16] A new board of directors would be appointed within one year with a majority of directors who are independent, and at least one independent director would be required to live within the service territory.[17] At least 50% of Central Hudson's officers would also be required to live within the territory. These requirements, Staff says, go beyond what is currently required for CHEG.

In addition, the Joint Proposal specifies that Central Hudson is to be governed, managed and operated on a stand-alone basis post-merger. Local management would continue to make decisions concerning staffing levels, and current employees, both management and non-management, would be retained for two years after closing of the merger. Within 30 days after each of the first two anniversary dates of the merger closing, Central Hudson would be required to file a report with the Secretary comparing the level of union and management employees on that date to the levels on the merger closing date. The collective bargaining process would be continued. The Central Hudson Board would continue to be responsible for management oversight, including capital and operating budgets, dividend policy, debt, and equity requirements. The Board would also have an audit

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[16] In response to a question from the Judges, the signatory parties clarified that "headquarters" means the place where all senior officers and their support staff, legal, administrative, accounting, operating supervision, and other head office functions are located.

[17] The signatory parties agreed in response to a question from the Judges that an independent director is one who receives no consulting, advisory or other compensation from Central Hudson or an affiliate or subsidiary of Central Hudson. A director who is an officer, employee or consultant of Central Hudson, FortisUS, Fortis, or any other Fortis affiliate would not be considered independent.

committee, with a majority of members who are independent, and it would continue to be responsible for the financial integrity and effectiveness of internal controls. Finally, to maintain an active corporate and charitable presence in the service territory, Central Hudson would agree to maintain its 2011 level of community involvement through 2017.

2. Performance

A common theme throughout the testimony and comments in this case has been the concern that pressure to demonstrate the profitability of the merger transaction might lead to deferred investment in utility plant, reduced maintenance levels and other cost-cutting measures that could eventually have a negative impact on Central Hudson's provision of safe and reliable service. To reduce this risk, the Joint Proposal includes a broad range of performance-related mechanisms, some of which are more stringent than those currently applicable to Central Hudson. All of these performance mechanisms would continue until modified by the Commission in a subsequent proceeding. The Joint Proposal also incorporates provisions mandating specific levels of expenditures for important safety, maintenance and infrastructure development activities.

a. Performance Mechanisms

i. Service Quality

Under the terms of the Joint Proposal, the Service Quality Performance Mechanism included in Central Hudson's current rate plan would be continued with two changes. First, the maximum negative revenue adjustment (NRA) imposed as a result of failure to meet defined targets would be doubled from $1.9 million annually to $3.8 million. Second, the target for the PSC complaint rate would be lowered, from 1.7 per year per 100,000 customers to 1.1. In addition, during a period of dividend restriction under the financial provisions of the Joint

Proposal, the maximum NRA would increase to $5.7 million, and it would rise further, to $7.6 million, if performance targets were missed three times in any five-year period.[18]

ii. Electric Reliability

The Joint Proposal would maintain the electric reliability standards included in Central Hudson's current rate plan. As with the service quality performance mechanism, potential NRAs would be doubled immediately, tripled in the event of a dividend restriction, and quadrupled if targets were missed in three of any five calendar years. In addition, Attachment II to the Joint Proposal defines uniform reporting requirements that Staff says will aid its monitoring of Central Hudson's performance and will contribute to consistency of reporting among utilities.

iii. Gas Safety

As with electric reliability, the gas safety performance targets in Central Hudson's current rate plan would be continued, with potential NRAs immediately doubled, tripled in the event of a dividend restriction and quadrupled if targets are missed in three of five calendar years. In addition, the Joint Proposal would establish a new metric for compliance with certain pipeline safety regulations set forth in 17 NYCRR Parts 255 and 261, with potential NRAs of up to 100 basis

[18] In response to a question from the Judges, the signatories clarified this was what was intended by the phrase "if targets are missed for three years within the next five year period," in section IV.B.2 of the Joint Proposal.

points. The provision is essentially the same as ones the Commission adopted for Corning Natural Gas and National Grid.[19]

iv. Leak-Prone Pipe

The Joint Proposal would increase required annual expenditures for the replacement of leak-prone pipe, as determined through a risk-based analysis, from $6.0 million to $7.7 million, as recommended by Staff. Staff says the increase can be expected to drive down active leaks, reduce leakage rates on the distribution system and lower overtime and operating and maintenance costs. If Central Hudson fails to expend the required amount, one-half of the revenue requirement equivalent of the shortfall would be deferred for ratepayer benefit.

b. Expenditure Requirements

i. Right-of-Way Tree Trimming

The Joint Proposal would continue to budget expenditures for right-of-way tree trimming through June 30, 2014 at the level established in Central Hudson's current rate plan for the year ending June 30, 2013. At the end of the one-year extension, actual expenditures would be compared to the budget. Any shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

ii. Stray Voltage Testing

The Joint Proposal would establish targeted expenditures for the year ending June 30, 2014, of $2.023 million for stray voltage testing and $350,000 for stray voltage mitigation. If Central Hudson's expenditures fell short of

[19] Case 11-G-0280, *Corning Natural Gas Corporation*, Order Adopting Terms of Joint Proposal and Establishing a Multi-Year Rate Plan (issued April 20, 2012), p. 21; Cases 12-E-0201 and 12-G-0202, *Niagara Mohawk Power Corporation d/b/a National Grid - Electric and Gas Rates*, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued March 15, 2013), pp. 13-14.

either of the targets, the shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

iii. Infrastructure Investment

The Joint Proposal would continue the net plant reconciliation mechanism included in Central Hudson's current rate plan with new targets established for the year ending June 30, 2014. Actual net plant in service as of that date would be compared to the targets and the revenue requirement impact of any difference would be calculated using the methodology described in Attachment IV to the Joint Proposal.[20] If the difference were negative, Central Hudson would be required to defer the revenue requirement impact for the benefit of ratepayers with carrying charges at the pre-tax rate of return. If the difference were positive, no deferral would be permitted.

B. Incremental Benefits

While the provisions of the Joint Proposal discussed above are intended to be beneficial to ratepayers, their primary purpose is to reduce the potential for negative impacts from the merger. Consequently, in an effort to ensure a net positive outcome for ratepayers if the merger transaction is approved, the Joint Proposal includes a number of provisions that are designed to generate incremental benefits that would not be realized in the absence of the merger.

1. Rate Freeze

Under the terms of the Joint Proposal, Central Hudson rates currently scheduled to remain in effect through June 30,

[20] The signatory parties confirmed that references to "Attachment III" on page 34 of the Joint Proposal should read "Attachment IV."

2013, would continue through June 30, 2014. Staff calculates that this "rate freeze" would provide a small, but positive benefit to ratepayers.

2. Earnings Sharing

Central Hudson's current rate plan specifies that when the utility's earned return on equity exceeds 10.5%, ratepayers receive 50% of the excess up to an earned return of 11.0%; 80% of the excess between 11.0% and 11.5%; and 90% of the excess over 11.5%. Under the terms of the Joint Proposal, the 50% and 90% sharing thresholds would be lowered, and the 80% sharing level would be eliminated. Ratepayers would be credited with 50% of earnings between 10.0% and 10.5%, and 90% in excess of 10.5%. In addition, Central Hudson would be required to apply 50% of its share of earnings exceeding 10.5% to write down certain deferred expenses that would otherwise be recovered in rates, provided that doing so would not reduce the actual earned return below 10.5%. Through this revised sharing mechanism, Staff says, ratepayers would gain if any unexpected savings materialize as a result of the merger, but Staff rates the likelihood as small given the earnings impact of the other positive benefits required by the Joint Proposal.

3. Synergy Savings

The signatories to the Joint Proposal agree that the merger transaction will generate synergy savings of at least $1.85 million, and Central Hudson would guarantee this amount for five years, for a total of $9.25 million. The savings would begin to accrue in the month following closing of the merger transaction and would be available for rate mitigation at the start of the first rate year in the next rate case filed by Central Hudson.

4. Deferral Write-Offs and Future Rate Mitigation

The Joint Proposal specifies that upon closing of the merger, Fortis will provide Central Hudson $35 million which will be recorded as a regulatory liability, to be used to write down storm restoration expenses for which deferral and recovery from ratepayers has been requested in three pending petitions to the Commission, including most notably one for Superstorm Sandy. To the extent the total expense recovery ultimately authorized by the Commission is less than $35 million, the balance would be reserved as a regulatory liability with carrying charges at the pre-tax rate of return, subject to future disposition by the Commission.

5. Community Benefit Fund

In addition to the $35 million for deferral write-offs and rate mitigation, Fortis would be required to provide Central Hudson $5 million for a Community Benefit Fund to be used for low income customer and economic development programs.

a. Low Income Program Enhancements

The Joint Proposal specifies that $500,000 from the Community Benefit Fund would be used to supplement funds currently provided in rates for programs targeted to low income customers. Currently, Central Hudson provides a bill credit of $11.00 per month for all customers who are Home Energy Assistance Program (HEAP) recipients. Under the Joint Proposal, within 30 days after an order in this case, Central Hudson would implement a new schedule of discounts providing credits of $17.50 per month for HEAP-participant heating customers receiving only electric or only gas service, and $23.00 for those receiving both. Non-heating customers would receive credits of $5.50 for one service, or $11.00 for both, provided that customers currently receiving an $11.00 credit for a single service would continue to receive that amount. Central Hudson

would also be required to waive reconnection fees for participants in its low income programs up to a total of $50,000. If the total cost of the programs exceeded the amount allowed in rates plus the $500,000 from the Community Benefit Fund, the shortfall would be made up from funds previously deferred for the benefit of the low income programs, with any excess deferred as a regulatory asset. Central Hudson would be required to continue to refer participants in its low income programs to the New York Energy Research and Development Authority's EmPower New York program for energy efficiency services. Finally, the Joint Proposal establishes a schedule for quarterly reporting on low income programs to the Commission, and specifies the data to be provided.

b. Economic Development

The Joint Proposal provides for $5 million dollars to be allocated by Central Hudson for the support of economic development programs. The $5 million would consist of $4.5 million from the Community Benefit Fund and $500,000 from Central Hudson's existing Competition Education Fund. Within 15 days after an order in this case, Central Hudson would file a proposal with the Commission for modification of its existing economic development programs and would request expedited consideration. The modifications would provide for Central Hudson to continue to administer its programs pursuant to existing Commission authorizations with input from the counties in its service territory. They would also establish a criterion that applicants for project funding that do not have participation from Empire State Development, a county industrial development agency, a county community college, or a local municipal resolution would seek a letter of support from the county where the project would be located. Central Hudson would also agree to seek county participation in economic development

grant award notifications and announcements, and would meet twice a year with representatives of all the counties in its service territory.

6. State Infrastructure Enhancements

The Joint Proposal would commit Central Hudson to continue to support the New York State Transmission Assessment and Reliability Study, the Energy Highway, and economically justified gas expansion. Fortis would agree to provide equity support to the extent required by Central Hudson for projects that receive regulatory approval and proceed to construction.

7. Gas Expansion Pilot Program

Central Hudson would commit to continue its existing gas marketing expansion campaign during the rate freeze period and would continue to provide information and assistance to customers who are seeking or considering gas service. Where adequate financial commitments and reasonable franchise conditions can be secured, it would pursue expansion of gas facilities to areas not currently served and would seek expedited Commission approval for such expansion. Within 90 days of an order in this case, Central Hudson would initiate a modified gas service request tracking system retaining sufficient data to demonstrate why service was or was not initiated. In addition, by July 1, 2013, Central Hudson would propose a limited pilot expansion program designed to test a number of innovative measures to facilitate gas service expansion.

8. Retail Access

For the stated purpose of supporting the Commission's retail market development initiatives, the Joint Proposal would require Central Hudson within 90 days following the closing of the merger transaction to include a total bill comparison on all

retail access residential bills using consolidated billing. The comparison would be generated using an existing Central Hudson program that has already been implemented. In addition, within 60 days after the issuance of an order in this case, Central Hudson would be required to file a proposal to provide payment-troubled customers--those subject to service termination--with similar bill comparison information. The cost of implementing these initiatives would be paid from Central Hudson's existing Competition Education Fund. If the balance in the fund were inadequate, Central Hudson would be permitted to defer the excess cost. Central Hudson would report quarterly to Staff on the progress of its bill comparison efforts.

PARTY OPPOSITION TO THE JOINT PROPOSAL

Three parties, RESA, IBEW Local 320, and PULP, submitted statements in opposition to the Joint Proposal. In addition, the Town Board of the Town of Athens, while not expressly opposing the Joint Proposal, has expressed concern that the proposal does not designate a portion of the Community Benefit Fund to be used for expansion of gas service within the town, as was requested in comments submitted by the Athens Joint Task Force before the Joint Proposal was filed.

A. RESA

RESA takes exception to the retail access section of the Joint Proposal, and, in particular, the requirement that Central Hudson include a "total bill comparison" on residential retail access consolidated bills within 90 days following the closing of the merger transaction. It makes, essentially, two points.

First, RESA argues that the implementation of a bill comparison requirement is premature given that the merits of such an initiative are currently being debated in the Retail

Energy Markets case, a separate generic proceeding initiated by the Commission to consider this and various other retail access issues.[21] RESA points out that Central Hudson originally took the position that the Retail Energy Markets case would be a more appropriate forum for considering inclusion of bill comparisons in customer bills, a position with which RESA agreed. Furthermore, RESA says, the Joint Proposal itself states that the signatory parties "anticipate that modifications" to the billing initiative "may become appropriate based on developments" in the Retail Energy Markets case. Therefore, RESA argues, it would be logical and reasonable to await the outcome of that case before deciding on implementation of a monthly price comparison by Central Hudson.

RESA's second point is that the requirements of the Joint Proposal with respect to bill comparisons are vague and ill-defined. It notes that the Joint Proposal calls for the comparisons to be performed "using the existing Central Hudson computer program that had been previously implemented." There is no further information about that program in the Joint Proposal or in the record, and no meaningful description or discussion of the details of how the bill comparison methodology is designed or how it will operate in practice. Given that energy service companies (ESCOs) have significant concerns that such comparisons may be misleading, RESA says, additional review and analysis should be undertaken before this bill comparison requirement is implemented.

Staff responds that the Commission, in initiating the Retail Energy Markets proceeding, expressly specified that questions concerning the inclusion of bill comparisons on

[21] Cases 12-M-0476, *et al., Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State (Retail Energy Markets).*

customer bills, and the provision of bill comparison information to payment-troubled customers, were "being addressed for Central Hudson's operations in the context of [this merger proceeding]."[22] It says RESA did not object to this approach in the Retail Energy Markets case and did not provide any position on the bill comparison issues in this case prior to its comments on the Joint Proposal. The details of the bill comparison, Staff says, are adequately described when the Joint Proposal is read in conjunction with the questions posed by the Commission in Case 12-M-0476.

With respect to concerns about misleading comparisons, Staff argues that it is the ESCOs' responsibility to ensure that their customers understand what services they receive for the price they pay, and that a total bill comparison merely gives customers purchasing such services a clearer picture of any premium they are paying or cost savings they are realizing. Staff concludes that RESA's opposition should not cause rejection of the Joint Proposal because, if the Commission agrees that the retail access proposals in this case should be deferred pending the results of the *Retail Energy Markets* case, it should simply modify the Joint Proposal to so provide.

According to Petitioners, not only does the bill comparison deserve to be implemented here regardless of the pendency of the *Retail Energy Markets* case, but indeed the experience gained now by implementing it for Central Hudson might very well inform and assist the ongoing efforts in the generic case. A month of real-world experience with bill comparison publication might be worth a year of hearings, they suggest.

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[22] Case 12-M-0476, *et al.*, *Retail Energy Markets*, Order Instituting Proceeding and Seeking Comments Regarding the Operation of the Retail Energy Markets in New York State (issued October 19, 2012), Appendix, note 1.

B. IBEW Local 320

The union's concern, expressed in its comments and reiterated in its opposition to the Joint Proposal, is that, in its view, Central Hudson has a history of inappropriately relying on outside contractors while allowing its internal workforce to decline through attrition. This, it argues, has eviscerated the company's operational knowledge base, leading to shoddy and possibly unsafe work, increasing operating costs, and creating the potential for graft in relations with contractors. It points out that Fortis has expressed its intention to allow Central Hudson to operate as a stand-alone entity, does not have a policy regarding the outsourcing of work, and has no plans to encourage or discourage reductions in non-management employees. This, the union argues, suggests that Central Hudson's current practices concerning the use of outside contractors are likely to persist. It contends that unless the Joint Proposal is modified to include provisions that will curtail the "continued escalating use of third party contractors and diminishing internal company labor," it should be rejected.[23]

Petitioners respond that IBEW Local 320 has failed to supply any factual support for its claims and that they are unjustified. Petitioners say all of the incidents the union cites as examples of improper workmanship resulting from the use of outside contractors have been unrelated to each other and have been fully analyzed in consultation with Staff. The union's contentions that a declining internal workforce will lead to poorer service or higher costs are vague and speculative, Petitioners say, and fail to take into account productivity improvements and technology enhancements which tend to require less labor but reduce costs and improve reliability. Most fundamentally, Petitioners argue, Local 320's demand for

[23] IBEW Initial Comments, p. 6.

the inclusion in the Joint Proposal of rules concerning the use of outside contractors and the size of the internal workforce amounts to an attempt to obtain job advantages for union employees that should be considered, if at all, in the context of collective bargaining.

Staff, similarly, argues that the union's claims are speculative and lack factual support. It notes that nothing in the record of this case or in the recent management audit of Central Hudson suggests that the use of outside contractors has had a detrimental effect on service or reliability. In fact, Staff notes, the audit found that Central Hudson performs some work in-house that is customarily outsourced by other utilities, and recommended that the company implement a work management system covering both outside contractors and the internal workforce, which Central Hudson is doing. Claims of increased costs, Staff says, have no basis in the record, and warnings about potential graft are derived from incidents at a much larger and different utility and are purely speculative with respect to Central Hudson. The legitimate concerns of IBEW Local 320 have been reasonably addressed in the Joint Proposal, Staff contends, through provisions requiring adherence to the current collective bargaining agreement, maintenance of constant staffing levels for the next two years, regular reporting of union and non-union employee levels, and Commission approval for any shared services initiative.

C. PULP

PULP's opposition to the Joint Proposal raises several issues. Initially, PULP implies that the proposal does not represent a reasonably balanced compromise of disputed issues because it lacks the support of "any independent organization representing the interests of residential or low-income customers." PULP contends that UIU lacks the "indicia" of

independence required of consumer utility advocates. According to PULP, UIU's support for the Joint Proposal cannot be deemed to represent the best interests of residential consumers because UIU is part of a state agency with a direct line of accountability to the Governor.

Next, PULP argues that in applying a standard as "amorphous and debatable" as "in the public interest," the Commission should consider the unequal power dynamics within society. Low and fixed income customers, it contends, have much less influence in the decision-making process, and yet are much more likely to be adversely affected by a flawed outcome. Therefore, PULP says, the Commission should focus on minimizing the risk to these customer classes and should give greater weight to proposals that will help protect their interests. A mere rate freeze as offered by the Joint Proposal is of little benefit, PULP says, when thousands of Central Hudson customers have had service terminated or are in arrears on their bills under the current rate structure. The portion of the economic benefits of the merger transaction that are earmarked specifically for low income programs is insignificant, PULP argues. This, it says, is unsurprising because the parties nominally representing the public are mostly local and state government entities having parochial interests that should "not be confused with the interest of residential ratepayers, and the public at large."[24] Therefore, PULP concludes, the Commission should require that additional positive benefits be provided for low income customers if the merger transaction is to be approved.

The alleged benefits of the transaction, PULP contends, are illusory and paltry in comparison with the potential risks. The rate freeze, it says, is of little or no

[24] PULP Initial Comments, p. 15.

value because Central Hudson could not now raise rates much earlier that July 1, 2014 in any case, given the statutory suspension period for rate filings. Furthermore, in PULP's view, the rate plan that would be extended under the Joint Proposal is flawed and may have promoted poor performance leading to inflated storm restoration costs. The Joint Proposal, PULP alleges, mistakenly allows Petitioners to count a write-off of those possibly unjustified storm cost claims as a positive benefit of the transaction. The promised synergy savings are insignificant in relation to the total revenues of Central Hudson, PULP says, and do not even guarantee a rate reduction because they may be offset by increases in other categories of revenue requirement. The $35 million in deferral write-offs is illusory, according to PULP, because it is merely an accounting adjustment that may be traded away in future rate case negotiations over new demands for higher rates. The $5 million Community Benefit Fund is really only $4.5 million, PULP contends, because $500,000 would be taken from the existing, ratepayer-funded Competition Education Fund, and the provisions for low income customer programs are inadequate.

This particular merger transaction creates unusual risk, PULP argues, because Fortis, as a Canadian company investing in a U.S. enterprise, would be entitled to the protections afforded to foreign investors of the signatory nations by the North American Free Trade Agreement (NAFTA). Under Chapter 11 of NAFTA, Canadian, U.S. and Mexican investors may demand binding arbitration of claims for damages based on foreign governmental action that is "tantamount to expropriation" of the investors' interests. The availability of this forum, PULP argues, could threaten the Commission's ability to regulate Central Hudson. A NAFTA tribunal, it suggests, might overturn a Commission rate determination or rejection of a

capital project if it found the decision incidentally diminished the value of Fortis's property, even if that claim would not be valid under New York or federal constitutional law. Furthermore, PULP says, the Commission would have to rely on the federal government to defend its interests, and derivatively those of Central Hudson ratepayers, before the arbitration panel. This "potential grave risk," PULP argues, is not addressed at all in the Joint Proposal and warrants a finding that the merger transaction is not in the public interest.[25]

Staff, Petitioners, and MI all respond that PULP's arguments are unsupported, speculative or misinformed and should be rejected entirely. With respect to the extent to which the interests of residential customers, generally, and low income customers, specifically, were adequately represented in the negotiations leading to the Joint Proposal, all point out that PULP, albeit involuntarily, refrained from participating in the discussions and has no direct knowledge of them. MI describes PULP's derogation of UIU's efforts as "uninformed and not at all reflective of what transpired during settlement negotiations."[26] MI says UIU represented the interests of low income customers competently and aggressively, and adds that Staff, despite its broader concerns, also was very active on low income customer issues.

As to PULP's assertion that the benefits of the Joint Proposal for low income customers are inadequate and should be enhanced, Staff points out that funding for low income programs would be increased by $1 million during the rate freeze year, permitting monthly bill credits for low income heating customers to be more than doubled, and ensuring that no credits are reduced; and that service reconnection fees for many low income

[25] PULP Initial Comments, p. 14.

[26] MI Reply Comments, p. 5.

customers would be eliminated.[27] Staff, Petitioners, and MI also note that in addition to the benefits specifically targeted to them, low income customers would share in the other positive benefits provided by the Joint Proposal, including the synergy savings, deferral write-offs and Community Benefit Fund, to the same extent as other customers in the same service classifications. MI further argues that PULP's position is completely lacking in context. It notes that low income customers are the only group of customers receiving immediate rate relief under the Joint Proposal. Moreover, it says, PULP ignores the fact that expenditures for Central Hudson's low income programs, which are subsidized by all customers, have more than tripled over the last seven years, not counting the cost of low income targeted energy efficiency programs.

PULP's assertions that the positive benefits afforded by the Joint Proposal are intangible or illusory reflect a "disdain for arithmetic," according to Petitioners, and in some cases are simply wrong.[28] The guaranteed synergy savings, for example, will reduce real revenue requirement, Petitioners argue; they are not merely what PULP calls a "notional" credit. PULP's assertion that Fortis will be providing only $4.5 million for the Community Benefit Fund is wrong, Petitioners point out. Fortis will provide $5 million in total, $500,000 of which will be used for low income programs, and $4.5 million for economic development. An additional $500,000 for economic development will come from the existing Competition Education Fund.

MI and Petitioners both point out that PULP is wrong in its contention that the Joint Proposal "allows Petitioners to

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[27] In addition to the $500,000 from the Community Benefit Fund, low income program funds available but unexpended in previous years would be used to provide the total funding required for the expanded program.

[28] Petitioners' Reply Statement, p. 9.

count the write-down of its unaudited and possibly unjustified claims for blanket customer responsibility for all storm costs as merger benefits."[29] Rather, they say, the Joint Proposal expressly states that the write-offs will be applied only to costs allowed following full review by the Commission. Without the deferral write-off, those costs would be recovered in rates. MI concurs with PULP's view that Central Hudson's pending petitions for deferral of storm restoration costs should be closely scrutinized by the Commission, but says those petitions have no bearing on whether the Joint Proposal should be approved.

Finally, Staff, Petitioners and MI all argue that concerns about NAFTA are unpersuasive. According to MI, PULP's theory that the merger might impair the Commission's authority to regulate Central Hudson in the future is "no more than speculation piled upon supposition."[30] To its knowledge, MI says, NAFTA has never been interpreted in a manner detrimental to utility customers, and it notes that PULP's arguments are devoid of any citations to court cases or regulatory decisions that would suggest such a detriment. Staff agrees, noting that PULP has identified no NAFTA provision that preempts Commission jurisdiction.

D. Athens

By resolution dated February 19, 2013, the Town Board of the Town of Athens expressed concern that the Joint Proposal did not adopt the request of the Athens Joint Task Force to set aside a significant portion of the Community Benefit Fund to be used for gas service expansion in the town. The task force, in comments submitted in October and December 2012, pointed out

[29] PULP Initial Comments, p. 10.

[30] MI Reply Statement, p. 10.

that a Central Hudson gas main traverses the town, and that gas distribution service is provided by the utility to towns both north and south of Athens. In Athens itself, however, only one business, and none of the town's 4,000 full-time residents, receives gas service. Using some of the Community Benefit Fund to expand gas service within the town, the task force argued, would meet the needs of the town and village and would provide Fortis the benefit of an expanded customer base for Central Hudson.

ASSESSMENT OF OBJECTIONS TO THE JOINT PROPOSAL

A. Quality of the Economic Benefits

PULP and many commenters suggest that the economic benefits promised by the Joint Proposal may be illusory; that they may never result in savings to ratepayers. With respect to the promised one-year rate freeze, we generally agree. Although potentially a benefit at the time it was offered, the rate freeze, at this point, is largely symbolic, given the unlikelihood that Central Hudson would, or could, file a new rate case within the next two months, as would be necessary to increase rates before July 1, 2014.

On the other hand, modifications to the earnings sharing mechanism that would apply during the period of the freeze could provide value to ratepayers, as they would ensure that a larger share of any overearnings Central Hudson may realize during the freeze year would be credited to customers. This benefit may, in fact, be illusory, however. Given the additional obligations imposed on Central Hudson by the provisions of the Joint Proposal that would have to be funded during the freeze year without additional revenue from rates, overearnings appear unlikely.

The $9.25 million in synergy savings over five years are guaranteed to be credited to ratepayers even if they are not realized by Central Hudson. The $35 million payment by Fortis will be used to establish a regulatory liability against which certain of Central Hudson's regulatory assets may be written down. These benefits are real. The contention that some amounts might be credited against the $35 million for storm restoration expenses that were never actually deferred by Central Hudson is simply incorrect. The Joint Proposal provides that the funds may be used only to offset costs that have been approved by the Commission for deferral and subsequent recovery from ratepayers. If the identified storm restoration deferrals prove to be less than $35 million, the joint proposal provides that the balance of the fund will continue to be recorded as a regulatory liability for subsequent disposition by the Commission for the benefit of ratepayers.

The Community Benefit Fund is also real. This is an incremental $5 million that will be contributed by Fortis and will be used to enhance Central Hudson's low income customer programs and to support economic development projects within the service territory. Absent the fund, these program enhancements would either not be made or would be funded through rates.

The Joint Proposal's provision of an immediate credit to customers for cost savings realized by Central Hudson as a result of subsequent utility acquisitions by Fortis could also generate additional ratepayer benefit. The present value of any such benefit is entirely speculative, however, and cannot be given much weight in assessing the overall value of the merger transaction to ratepayers.

Commenters also argue that even if the economic benefits are real, they represent transitory, one-time payments that will have no lasting impact on customer rates. With regard

to the Community Benefit Fund and the deferral offsets this is generally true, although the write down of regulatory assets does have the persistent benefit of avoiding carrying charges that would continue to accrue as long as the accounts existed. In addition, the synergy savings, to the extent they are actually realized by Central Hudson, would continue to reduce Central Hudson's total revenue requirement beyond the term of the five-year guarantee, and would, therefore, be a continuing benefit to ratepayers. For the most part, though, these benefits are one-time payments that will not be repeated.

In summary, then, we find that the $49.25 million in payments and guaranteed savings provided for in the Joint Proposal are real, will inure to the benefit of ratepayers in the short term, and may generate some additional small, continuing savings. Whether this positive benefit is sufficient to justify a finding that the merger is in the public interest is a matter we will discuss further below.

B. Labor Issues

Local 320 opposition to the Joint Proposal is primarily focused on Central Hudson's policies and practices concerning the use of outside contractors and the shrinking of the utility's internal union workforce. That concern was echoed in comments by the Hudson Valley Area Labor Federation and numerous commenters.

On the one hand, it could be argued that this labor issue has no real bearing on the decision whether the proposed merger is in the public interest. Local 320 acknowledges that both Fortis and Central Hudson say they have no plans to change their labor policies if the transaction is approved. Whether the Commission approves or disapproves the transaction, the policies would remain in place.

On the other hand, plans can change. When the stock premium, transaction costs and positive benefit adjustments are totaled, this merger will be an expensive undertaking. Under the terms of the Joint Proposal, none of those costs can be recovered directly from ratepayers. There will, therefore, be considerable pressure on management to recover them in areas over which they retain control. Recent experience with substantial reductions in force following other utility mergers in this State clearly demonstrates that labor is one of, and perhaps the most important, of those areas.

Under the terms of the Joint Proposal, the labor status quo would be maintained for two years. Many commenters in this case expressed concern that beyond that period, cost-cutting efforts could result in the loss of many well-paying jobs, with a negative ripple effect on the local economy. This is a plausible concern.

It is very difficult, and generally undesirable, for the Commission to inject itself into internal utility management decision-making. There is no bright line distinguishing normal labor productivity enhancement efforts from those driven by need to compensate for extrinsic costs. Unwise cuts will generally only become apparent when they have an adverse effect on service. The Joint Proposal attempts to address this by enhancing performance, service quality, and safety mechanisms, but these mechanisms only set limits on the acceptable degradation of specific measures of Central Hudson's operations. They do not encompass the full range of functions that define the quality of a utility's service. Overall, therefore, we consider workforce uncertainty to be a residual risk of the transaction.

C. NAFTA Threat

PULP's suggestion that the anti-expropriation provisions of NAFTA could be used by Fortis to undermine the Commission's authority to regulate Central Hudson or its jurisdiction over a proposed future sale of the utility is unsupported. None of the few legal authorities cited by PULP suggests that a public utility regulatory agency acting within the scope of its statutory authority might be at risk for a claim of nationalization or expropriation under NAFTA, and we, like MI, have been unable to find any that do raise such a specter. In fact, PULP's cited authorities tend to point in the opposite direction.

PULP's citations include two cases, *Metalclad Corporation v. The United Mexican States* and *Methanex Corporation v. United States of America*, and a law review note discussing the initiation of a case by a Canadian mining company known as Glamis Gold.[31] In the *Metalclad* case, a U.S. company purchased the rights to construct and operate a hazardous waste disposal site in the state of San Luis Potosi, Mexico, after receiving assurances from the federal government that the permits it would obtain through the purchase were all that were required. Metalclad proceeded to fully construct the disposal facility, but was blocked from initiating operations by the local municipality, which claimed authority to require a local construction permit and refused to grant one. The arbitration

[31] Information concerning the *Metalclad* and *Methanex* cases, including the documents cited in this order, are available on the website of the U.S. Department of State, *http://www.state.gov/s/l/c3439.htm*. The law review note is: Judith Wallace, Note, *Corporate Nationality, Investment Protection Agreements, and Challenges to Domestic Natural Resources Law: The Implications of Glamis Gold's NAFTA Chapter 11 Claim*, 17 Geo. Int'l Envtl. L. Rev. 365, 372 (2005).

panel in the NAFTA proceeding found that the federal government had exclusive authority over construction permits for hazardous waste sites in Mexico and that its failure to override the illegal action of the municipality effectively reneged on the assurances it had given, depriving Metalclad of the use of the plant it had constructed.

The *Methanex* case involved a claim by a Canadian company for lost profits resulting from the State of California's ban on the gasoline additive MTBE, for which methanol, produced by Methanex, was used as a feedstock. The arbitration panel's final award dismissed all claims and ordered Methanex to pay $4 million in legal fees and arbitral expenses to the U.S. government. The facts of the case were complicated, but the essential conclusions of the arbiters were that California's ban did not differentiate between foreign and domestic producers, and that a non-discriminatory regulation for a public purpose, which is enacted in accordance with due process and which affects a foreign investor or investment, is not deemed expropriatory and compensable unless specific commitments were given by the regulating government that it would refrain from such regulation.[32]

Similarly, the *Glamis Gold* case involved a claim by a Canadian mining company for the alleged lost value of its proposed Imperial Project gold-mining operation due to the adoption by California of a regulation requiring the backfilling and re-grading of open pit metallic mines. The regulations were adopted while the U.S. Department of the Interior was considering a permit for the operation, and Glamis contended that this action, combined with alleged undue delay by DOI in reviewing the company's application, denied Glamis fair

[32] *Methanex*, Final Award of the Tribunal on Jurisdiction and Merits (August 3, 2005), Part IV, Chapter D, page 4.

treatment and amounted to uncompensated expropriatory action. The arbitration panel dismissed the claim in its entirety. On the claim of expropriation, it did not have to address any legal issues because it found that the cost of the reclamation measures required was not as great as projected by the claimant and did not have a sufficient economic impact to effect an expropriation. On the question of whether Glamis had been denied fair and equitable treatment, the panel concluded:

> Claimant has not established that the acts complained of fall short of the customary international law minimum standard of treatment. The complained-of acts were not egregious and shocking, a gross denial of justice, manifest arbitrariness, blatant unfairness, a complete lack of due process, evident discrimination, or a manifest lack of reasons. There was no specific inducement of Claimant's expectations. There was no causal focus on the nationality of the investor. There was no corruption exhibited at any level of government. The Imperial Project, although certainly highlighted as a triggering event for some of the measures, was not the subject of discriminatory targeting. There is simply not the egregiousness necessary to breach the fair and equitable treatment standard of [NAFTA] Article 1105 as it currently stands ... [A] breach of Article 1105 still requires acts that exhibit a high level of shock, arbitrariness, unfairness or discrimination.[33]

In other words, even though passage of the California reclamation statute may have been triggered by Glamis Gold's project, it was adopted properly, did not discriminate on the basis of nationality, and did not renege on prior government commitments. Therefore, there was no violation of NAFTA.

A number of commenters have cited the case of *Abitibi-Bowater Inc. v. Government of Canada*, apparently to

[33] *Glamis Gold Ltd. v. United States of America*, Award (June 8, 2009), p. 353.

suggest that Fortis has demonstrated its willingness to use NAFTA as a remedy for adverse government action. The suggestion arises from the fact that Abitibi-Bowater, formerly a major international pulp and paper products manufacturer, partnered with Fortis to expand and operate hydroelectric plants providing power to Abitibi-Bowater's mills. After a dispute concerning the closure of a mill, Newfoundland and Labrador enacted broad legislation in December 2008 expropriating all of Abitibi-Bowater's property and water rights within the province, sweeping up Fortis's hydroelectric plant interest in the process. Abitibi-Bowater, which was incorporated in Delaware, brought a claim under NAFTA, and the claim was settled by the Government of Canada in December 2010. Fortis, however, was not a party to the NAFTA proceeding, and did not benefit directly from the settlement. According to Petitioners' Additional Comments, Fortis has now been compensated by the Province of Newfoundland-Labrador.

It is evident from the cases discussed above that a state regulatory agency acting lawfully within its statutory authority is not liable to a claim of damages under NAFTA unless an entity covered by the treaty can demonstrate that it made its investment in the state pursuant to express commitments made by the agency which were subsequently broken. None of the Petitioners in this proceeding has been assured of any particular treatment by the Commission. Accordingly, we find that Fortis's status as an investor from a NAFTA member state does not add any significant risk to the transaction. Nevertheless, if the Commission decides to approve the merger and it wishes to ensure that there is no doubt on this point, it should require as a condition of the approval that Petitioners certify that no express promises have been made, extrinsic to

this proceeding, that any particular regulatory treatment will be accorded Central Hudson or its parent company in the future.

D. Provisions for Low Income Customers

As described above, PULP says the Joint Proposal lacks sufficient benefits for low income customers inasmuch as the low income component of the Community Benefit Fund would be limited to $500,000, and rate accommodations for low income customers would be limited to adjustments in rate design rather than allowed revenues, in the form of a prospective reduction for non-heating customers and what PULP calls a "small increase" in the low income benefit for heating customers. PULP observes that all such changes would be revenue neutral for Central Hudson, and PULP unfavorably compares their estimated $1.6 million revenue allocation impact with Central Hudson's $700 million revenue allowance.

In response, Staff and Petitioners invoke their rebuttal testimony that the Joint Proposal's allegedly inadequate low income provisions are only the features designed for the benefit of low income customers exclusively. As such, those provisions supplement the economic benefits that the Joint Proposal assertedly would confer on all customers. Staff also argues that the low income provisions would offer relief more substantial than PULP suggests and would better align low income credits with customer bills.

Aside from the above points, much of the argument over the proposed low income provisions is devoted to PULP's interpretation of the net benefits analysis established in the *Iberdrola* decision. As discussed below, that analysis requires consideration of benefits and countervailing risks or detriments properly attributable to the proposed transaction. From that basic premise, PULP proceeds to advocate what it describes as a corollary that the Commission's determination of net benefits

should err, if at all, in favor of low income customers because they are the ones least able to bear the risk that the transaction will fail to produce net benefits as anticipated. The proponents object that the *Iberdrola* decision states no such proviso.

The argument over customers' disparate risks seems to introduce undue complexity. When the Commission assesses the likelihood that the merger will produce net benefits despite its offsetting risks, the risk that the benefits will not occur is a given which need not be specifically measured and allocated among customers. The Commission's judgment about the transaction inevitably will be informed by its understanding of what the benefits might mean for diverse customer groups. In our view, the real gist of PULP's criticism is not that the Joint Proposal misallocates risks but that it does not provide sufficient benefits.

The Commission's decision in this case must not only satisfy the positive net benefits test but also conform with the other criteria normally relevant when reviewing a negotiated joint proposal pursuant to the Commission's Settlement Guidelines. For purposes of the low income benefits issue, these criteria include, for example, whether adoption of the proposed terms would reasonably balance shareholder and customer interests and promote state policies.[34] From that standpoint, for the reasons cited by Staff and Petitioners, we do not find the proposed amount of low income benefits inherently unreasonable.

We also disagree with PULP's proposal to establish a service quality measure that would limit the allowable number of

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[34] Cases 90-M-0255 et *al.*, *Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines*, Opinion No. 92-2 (issued March 24, 1992), Appendix B, p. 8.

service terminations. Unpaid bills are a cost of the utility business as they are for all businesses, and that cost is borne by the customers who do pay their bills. Restricting terminations does not promote equity; it simply increases the burden of uncollectible bills for all customers.

Finally, we do not regard the proposed transaction as a barrier to the Commission's future adoption of additional benefits for low income customers; nor are the proposed benefits properly attributable to the transaction, as they could also be obtained in its absence. Thus, in summary, we find that the low income provisions neither justify the Commission's rejection of the Joint Proposal, nor deserve to be counted as benefits of the merger.

In a related matter, we reject PULP's suggestion that UIU should not be considered a legitimate representative of the interests of residential and low income customers.[35] UIU retains the consumer protection mandate of its predecessor agency, the Consumer Protection Board. By all accounts, it was an active and hard-working participant in this case and it achieved to a substantial degree what it originally set out to accomplish on behalf of low income customers. PULP, nevertheless, suggests that the significance of UIU's signature on the Joint Proposal should be discounted on the grounds that the organization is a state agency reporting to the Governor and lacks the indicia of independence that are required for membership in the National Association of State Utility Consumer Advocates (NASUCA). PULP neglects to point out, however, that UIU is, in fact, a member

[35] Petitioners and staff propose that we disregard or discount PULP's arguments because PULP admits that it participated only intermittently in this proceeding, assertedly due to lack of funds. Such a rule would give fewer rights to a party with a hiatus in its participation than our Rules of Procedure accord to a late-admitted party.

of NASUCA.[36] We find the endorsement of UIU, along with those of MI and the Counties, to be a valid indicator of the fact that the Joint Proposal represents a compromise of interests that often are, and were initially in this case, adverse.

E. Foreign Ownership

As noted above, many commenters conveyed a general sense of unease about the transfer to foreign ownership of facilities essential to the provision of electric and gas services to the mid-Hudson region. Many expressed concern that the merger might remove those facilities from domestic control; that Fortis might ignore its obligation to make the investments necessary to maintain safe and reliable service; or that this Canadian company might someday sell Central Hudson to a buyer from a country less friendly to the United States.

Insofar as they are based solely on Fortis's being a business headquartered in a foreign country, we do not consider these concerns to be justified. Central Hudson will remain subject to the laws of New York and of the United States, and will continue to be regulated by the Commission and by the Federal Energy Regulatory Commission with respect to its electric transmission facilities. The Commission has the authority and the responsibility not only to set rates, but also to require necessary capital investments and to reject any proposed transfer of ownership that it finds not to be in the public interest. Ownership of Central Hudson by Fortis will not diminish the Commission's regulatory role.

There are, however, legitimate issues presented by the prospect of a distribution utility subject to the Commission's jurisdiction being wholly owned by a parent company located

[36] See *http://www.nasuca.org/archive/about/membdir.php* for a current directory of NASUCA members.

outside New York, whether in a foreign country or simply another state. These issues have surfaced through experience with previous mergers, and generally they involve ensuring that the Commission will continue to have full and timely access to the information it requires to carry out its regulatory functions. The Joint Proposal recognizes and addresses this problem in quite a few of its provisions. It would, for example, require that Staff be given ready access to any books and records of Fortis and its subsidiaries that Staff may deem necessary to determine whether the rates and charges of Central Hudson are just and reasonable; that Central Hudson annually file the financial statements, including balance sheets, income statements, and cash flow statements of Fortis and its major regulated and unregulated energy company subsidiaries in the United States; and that Central Hudson provide, to the extent available, quarterly and annual balance sheet, income statement and statement of cash flows of Fortis in U.S. dollars with the underlying currency translation assumptions.

The problem with these provisions is that they complicate the regulatory process. To ensure their effectiveness, they require monitoring and oversight, imposing an extra burden on an already overburdened Commission Staff. Furthermore, the provisions have no intrinsic value. It is only the merger that makes them necessary. There would be no need to adopt or implement them otherwise. Consequently, we see the potential for complications in communications and data availability required for effective regulatory oversight to be an additional residual risk of the merger transaction.

F. Loss of Local Focus and Involvement

Many commenters described Central Hudson as a part of the fabric of its Mid-Hudson service territory, an effective, trusted company engaged with and concerned about the community

in which it operates. They expressed concern that the merger would destroy that relationship; that Fortis with its multinational interests would have little concern about the Hudson Valley; and that the focus of Central Hudson's attention would be turned toward the interests of its owners in Newfoundland.

The Joint Proposal reflects recognition of these concerns in many of its provisions. It provides, for example, that a majority of the Board of Directors of Central Hudson must be independent of Fortis and its affiliates other than Central Hudson, and one member must be a resident of the service territory. The headquarters of Central Hudson, including all officers and support staff and operational managers, must remain within the service territory, and at least one-half of the officers must live within the service territory. Central Hudson will be governed, managed, and operated as a stand-alone entity with staffing decisions made by local management. Current employees of Central Hudson will be retained for at least two years. Through at least 2017, Central Hudson would continue its community involvement efforts at no less than the level of its expenditures in 2011.

These provisions are important, but they ultimately do not address the heart of citizens' concerns. Today, Central Hudson is accountable to a parent company that is headquartered in the same city and shares the same interest in the local region. After the merger, it will be accountable to a distant entity with far flung interests. While Fortis may accord Central Hudson considerable operating autonomy as required by the Joint Proposal, strategic decisions concerning the direction of the utility and its involvement with the community will come from, or be strongly influenced by, Fortis. The relationship between Central Hudson and its customers will inevitably be

altered. The breadth and depth of this concern among the residents of Central Hudson's service territory and their elected officials at the town, village, city, and state levels is remarkable. Former Member of Congress Maurice Hinchey states in his comments, "Surely, in a democratic society such as ours, the decision as to what constitutes 'public benefit' is not unrelated to the will of an informed public and its elected representatives." We think it is, and we find lack of public confidence in the putative future benefits of the Joint Proposal to be a significant detriment of the transaction.

G. Financial Concerns

The Joint Proposal incorporates numerous provisions intended to address the risk perceived by Staff that the finances of Fortis could have an adverse impact on Central Hudson's, to the detriment of ratepayers. These provisions would require that goodwill and the costs of the transaction not be recovered from ratepayers; impose restrictions on the payment of dividends by Central Hudson if the utility's equity ratio falls below prescribed levels; hold ratepayers harmless for increased credit costs resulting from the impact on Central Hudson of a Fortis credit downgrade; require both Central Hudson and Fortis to be registered with at least two major nationally and internationally recognized rating agencies, to maintain separate debt instruments, and to be separately rated by at least two rating agencies; bar debt instruments having cross-default provisions affecting Central Hudson; bar Central Hudson from participating as a lender to Fortis or FortisUS in money pooling arrangements; and create a special class of preferred stock that can be voted to prevent Central Hudson from entering into bankruptcy voluntarily.

These provisions are reasonably designed to mitigate the concerns to which they are addressed. Again, however, they

have no inherent value in the absence of the merger. They exist only to reduce risk. Only if they are entirely successful will the financial risk to Central Hudson be completely eliminated.

H. Environmental Concerns

Many commenters praised the efforts of Central Hudson to promote alternative and green energy, particularly solar, within its service territory. They express concern that Fortis may reverse these policies. Some argue that Fortis has shown a preference for natural gas and may be less inclined than Central Hudson to obtain electricity supplies from green sources.

These concerns are fundamentally misplaced. Central Hudson is a distribution utility. With minor exceptions, it does not own generating capacity, and it will not be building additional capacity in the future. Like all New York utilities, Central Hudson will continue to obtain its power from the New York Independent System Operator. Fortis will not have the ability to dictate the source of power sold to Central Hudson customers.

Central Hudson is also not a gas exploration company. It does, however, have an interest in expanding its customer base for gas service, and it will undoubtedly continue to have that objective under Fortis ownership. As noted below, that goal is fully consistent with state policy.

Finally, all utilities in New York are bound to comply with the Commission's policies concerning the promotion and accommodation of green energy alternatives. Even if Fortis were hostile to such technologies, and there is no credible evidence in this record that it is, Central Hudson's compliance with Commission policy would continue to be enforced. Accordingly, we do not see any significant environmental risk arising from the proposed transaction.

I. Expansion of Gas Service

The economic expansion of gas service within the State is a high priority for both the Governor and the Commission, as evidenced by the pending proceeding in which the Commission is examining existing barriers to such expansion and seeking ways to reduce or eliminate them.[37] The Joint Proposal in this case reflects that priority. It requires Central Hudson to support economically justified gas expansion and states that Fortis agrees to provide equity support to Central Hudson for those projects that receive regulatory approval. It also commits Central Hudson to pursue economic expansion of its gas system within each of its operating districts and to seek expedited approval of new franchises. To allow the Commission to monitor those commitments, the Joint Proposal also requires that Central Hudson maintain detailed records of all gas expansion requests and how they were evaluated and resolved.

While the desire of Athens to obtain expanded gas service for its citizens is commendable, we cannot recommend that the Commission adopt the proposal to set aside, in advance, a portion of the Community Benefit Fund to support such expansion. Low income programs will receive $500,000 from that fund. The remaining $4.5 million has been designated for economic development efforts throughout the Central Hudson service territory. If the Joint Proposal is adopted, there is likely to be considerable competition for those funds, and we cannot say on this record that the Athens request should be given priority over all others that may be forthcoming.

[37] Case 12-G-0297, *Proceeding on Motion of the Commission To Examine Policies Regarding the Expansion of Natural Gas Service*.

J. Retail Access Provisions

RESA contends that the retail access provisions of the Joint Proposal are ill-defined and premature. We agree. The Joint Proposal calls for a "total bill comparison," which is undefined, to be included on the bills of retail access residential customers "using the existing Central Hudson computer program," which likewise is undefined. That total bill comparison, the Joint Proposal says, "is to provide information to retail access customers that should be made available by the utility as part of the Commission's retail energy markets initiatives." What "should be made available" is unspecified, and perhaps cannot be fully defined prior to the completion of the generic *Retail Energy Markets* proceeding.

Significantly, the signatories recognize explicitly that whatever they agree to in the Joint Proposal may have to be modified based on the outcome of the *Retail Energy Markets* case. That case is now in its final stages. We do not believe it makes sense now to order the start of a process that may well have to be redesigned before its introduction. The footnote cited by Staff from the Appendix to the Commission's order initiating the *Retail Energy Markets* proceeding recognized that certain questions concerning the use of bill comparisons were being considered in this case. As the signatories themselves recognize, that footnote cannot reasonably be construed as requiring a final, full resolution of the issue here without reference to the results of the *Retail Energy Markets* case.

Notably, RESA objects only to the manner and timing of the implementation of bill comparisons, not to the signatories' expression of support for their use. Central Hudson has software that should give it a head start over some other utilities in making bill comparisons available to its customers. Therefore, if the Commission adopts the Joint Proposal's terms,

we recommend that it not delete the Retail Access section (IV.F). Rather, the Commission should modify that section to provide that Central Hudson must, within 30 days following a relevant final order in the *Retail Energy Markets* proceeding, file a plan for implementation of both the publication of bill comparisons on the consolidated bills of residential retail access customers and the provision of bill comparison information to payment-troubled customers. The Commission should require that the plan provide for implementation within 30 days after its filing. The cost recovery provisions described in the Retail Access section of the Joint Proposal should be adopted as currently written.

DISCUSSION

A. Standard of Review

Having set forth above our assessments of the Joint Proposal's alleged benefits, risks, and detriments, we arrive at the ultimate issue whether Petitioners have shown that approval of Central Hudson's acquisition by Fortis subject to the Joint Proposal's terms would serve "the public interest" as prescribed by PSL §70(5). We find that the transaction as proposed would not meet that test.

We reach this conclusion by applying the standard of review developed in earlier merger proceedings and stated most rigorously in the *Iberdrola* case. The Commission's order in that case requires initially a three-part assessment addressing the benefits and then any countervailing considerations, as follows: "petitioners must show that the transaction would provide customers positive net benefits after considering the expected benefits offset by any risks or detriments that would remain after applying reasonable mitigation measures."[38] To

[38] *Iberdrola* order, p. 111.

demonstrate an "expected" benefit for purposes of this exercise, Petitioners must show that the benefit is a consequence of the transaction and would not otherwise occur.[39]

Once the net benefits have been gauged by comparing the transaction's intrinsic benefits and offsets, it becomes possible to judge whether the achievement of net positive benefits requires that the intrinsic benefits be supplemented with monetized "positive benefit adjustments" (PBAs).[40] "Then the final step in quantification is to establish a specific PBA amount, necessarily as an exercise of informed judgment because there is no mathematical formula on which to base such a decision."[41]

To a large extent, the criteria described above have shaped the parties' arguments in this case and indeed the Joint Proposal itself. None of the parties overtly challenges the *Iberdrola* order's analysis. But, as discussed below, they disagree about the weight to be accorded the various alleged benefits and detriments, which inevitably entails a degree of uncertainty and subjective evaluation. Our own evaluations of the risks and benefits (set forth below) lead us to recommend that the Commission decline to adopt the Joint Proposal's terms.

As another preliminary comment on the standard of review, a caveat is in order regarding Petitioners' argument that the monetized PBAs in this Joint Proposal are proportional to the PBAs the Commission has required in other cases, when stated as a percentage of the respective companies' revenues.

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[39] See, e.g., *Iberdrola* order, pp. 105-06 (whether above-book proceeds from a post-merger sale of assets could be deemed a result of the merger).

[40] At one point in the *Iberdrola* order (p. 111) and in some of the present pleadings, PBA is misstated as a "public" benefit adjustment."

[41] *Iberdrola* order, p. 136.

Any such comparison among cases should be viewed with great caution because, again, the PBAs required in each case reflect a judgment regarding the shortfall in net benefits after considering a particular transaction's benefits versus its risks or detriments. Such factors often defy quantitative assessment and, more likely than not, are unique to the transaction under consideration.

Thus an attempt to extrapolate from the dollar amount of PBAs required in the *Iberdrola* decision to the amount proposed in this case, based on a variable such as proportionate corporate revenues, for example, poses a number of pitfalls. Among the complications the Commission cited in reaching the *Iberdrola* PBA determination were that much of the risk and benefit was not quantifiable; the PBA amount was influenced by whether synergy savings were expected sooner rather than later; the decision there was assisted by a rate case quality presentation of revenue requirements, not offered here; the result in *Iberdrola* was derived from highly disputed decisions that some earlier mergers were relevant in comparing PBAs while others were less so; and, in its final analysis regarding PBAs, all the Commission could firmly conclude was that the PBA amount it prescribed represented the "middle of the range of reasonableness."[42] Moreover, as we have described, the present case involves an extraordinary degree of public opposition which constitutes an inherent risk or detriment of the transaction, while no comparable element figured into the Commission's analysis of the Iberdrola transaction. There is no simple mathematical formula whereby a PBA amount derived from these numerous considerations could confidently be used to determine the outcome in a different proceeding such as this.

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[42] *Ibid.*, p. 137.

Another obstacle to direct comparisons among PBA levels from one case to the next is that the Commission's decision making is properly informed by past experience which was not available when the Commission performed its risk assessments in earlier merger cases. For example, in the Iberdrola transaction, anticipated benefits in the form of enhanced financial strength and wind generation investment may not have materialized to the extent that the Commission expected. Similarly, in the National Grid acquisition, the challenges to regulatory oversight may have proved more difficult than anticipated. CLP and the Consortium put great emphasis on those negative outcomes and argue that Fortis's superior financial resources, as compared with Central Hudson's, would create new opportunities for management to escape effective regulatory review.

Even if one presupposed that previous mergers have failed to live up to expectations, this of course would not preordain that Central Hudson's acquisition by Fortis would also lead to disappointment. However, the intended relevance of Petitioners' and Staff's comparison between the proposed PBAs and those in other mergers is presumably that, under the Settlement Guidelines, one criterion in evaluating the Joint Proposal is whether it conforms with Commission policy. Unfavorable experiences with the Iberdrola and National Grid transactions make it difficult to assess whether the Commission now believes that the balance of interests struck in those cases, particularly the PBA levels, still represents sound policy when gauging the adequacy of the benefits offered in the Fortis transaction.

B. Benefits Intrinsic to the Merger

As noted, Petitioners must demonstrate that the benefits unattainable absent the transaction, supplemented if

necessary by PBAs or other enhancements, and offset by the transaction's risks or detriments mitigated to the extent possible, would yield a net positive benefit for customers. Of course the mere recital of that test makes clear that it defies mathematical certitude, but calls for an exercise of informed judgment regarding a combination of quantitative and qualitative factors. With that disclaimer, we recommend that the Commission weigh the benefits and mitigated detriments as follows.

In appraising the transaction, the first major difficulty is to identify its intrinsic benefits, before even starting to inquire whether they should be augmented with monetized or incidental benefits and whether the attendant risks are adequately mitigated. For all Petitioners' and opponents' arguments about the adequacy of the benefits and safeguards negotiated in the Joint Proposal, the record provides little basis for finding that the underlying transaction itself would benefit customers or otherwise serve the public interest.

One of the only such rationales is that operational synergies would save customers $9.25 million over five years. Because the Joint Proposal guarantees these savings for ratemaking purposes, the Commission should recognize them as a tangible benefit of the transaction. However, before relying on them as a material consideration, we believe the Commission also should attach some weight to the opponents' claims that they would rather forgo the savings if that is the price they must pay to stop the transaction and retain Central Hudson in its present form. While these objections are more statements of opinion than fact, such opinions themselves are direct evidence that customers may not value the synergy savings as much as the status quo.

A second benefit claimed on behalf of the transaction is that it might enhance Central Hudson's operations insofar as

that company's management would gain access to Fortis's expertise and best practices. Doubtless it would be frivolous for Central Hudson, or any company, to claim that that its management is so excellent as to leave no room for improvement. Nevertheless, given the "federal" model proposed here, such a benefit is not likely to be significant; and in fact Staff has testified that it has no adequate information as to the value of Fortis's expertise for Central Hudson. Consequently, we recommend that the Commission not count access to Fortis's expertise as a material benefit of the transaction.

A third possible benefit of the transaction is that Fortis's size and financial standing would provide Central Hudson ready access to capital. This claim is intuitively appealing because one naturally expects capital cost savings to result from acquisition by a larger parent, all else equal. In this instance, however, the Commission should approach it with special caution. Petitioners have not gone so far as to claim that Central Hudson as a Fortis affiliate could obtain capital on more favorable terms than now, and Staff has testified that it has no information sufficient to support such a theory. Thus, in our view, the record does not support a conclusion that Central Hudson's partaking in Fortis's financial strength should be counted as a benefit of the transaction.

After taking into account the claims of benefits from synergies, shared expertise, and financing at the parent level, there seem to be no other fundamental justifications asserted as contributing to the public interest. In search of other possible rationales, on our own initiative, we have reflected on the possible importance of messages to the investment and business communities. Those dissatisfied with Commission disapproval of a transfer of Central Hudson's ownership might characterize it as a sign that New York is insensitive to values

such as the power of managerial transformation or the marketability of utility company securities. However, we conclude that such criticisms would be unfounded because Fortis disavows any plans for managerial change and because those who invest in New York utilities do so with at least constructive knowledge that the transfer of utility company assets is subject to the Commission's determination of the public interest pursuant to statute.

C. Benefits from the Joint Proposal's Terms

Finding no public interest rationale inherent in the basic merger transaction beyond the $9.25 million guaranteed synergy savings over five years, as discussed in the preceding section, we believe any other customer benefits the Commission might identify are those negotiated as part of the Joint Proposal. As detailed above, we would quantify as $40 million the combined benefit of the rate freeze (no tangible benefit), excess earnings recalibration (no tangible benefit), regulatory liability for storm recovery or other purposes ($35 million), and Community Benefit Fund ($5 million), additional to the $9.25 million of synergies, for a total customer benefit of $49.25 million.

We believe the Joint Proposal's remaining features could be negotiated in other cases absent the merger or, failing that, could be ordered in the routine exercise of the Commission's authority. These comprise the Joint Proposal's provisions for structuring low income and economic development programs (other than the use of the Community Benefit Fund), maintaining and financing Central Hudson's commitments to infrastructure improvements pursuant to state policy initiatives, continuing Central Hudson's gas marketing initiatives, and continued support of the Commission's evolving retail energy access policies. While parties disagree about the

design of these efforts, particularly the measures for low income customers and retail access, no party denies that they would serve the public interest. But, because the merger is not a necessary precondition of achieving or pursuing these programs, their presence in the Joint Proposal does not provide additional support for an inference that approval of the merger itself would serve the public interest.

D. Risks and Mitigation

After identifying the proposed transaction's benefits, the next step in the *Iberdrola* model is to consider the risks and detriments remaining after they are mitigated to the extent possible. Viewed in that context, risk mitigation measures are more appropriately seen not as benefits but as whole or partial solutions to problems that arise only because of the transaction. In fact, as CLP and the Consortium observe, they are tell-tale evidence of possible conflicts between the transaction and the public interest. If such safeguards sufficiently minimize the transaction's risks, the most favorable assessment one can adopt is that risks and mitigation amount to a net zero impact.

For the most part, there seems to be a consensus that adoption of the Joint Proposal's terms would mitigate the transaction's risks to the fullest extent possible. This assessment is supported by a review of the proposed safeguards, exhaustive and generally uncriticized, regarding corporate governance and financing, regulatory oversight, performance standards, and related concerns. However, a critical issue remains whether, despite these safeguards, there are residual risks and detriments that cannot be mitigated and are serious enough to outweigh the transaction's benefits. What the *Iberdrola* analysis teaches, as do experiences with other mergers in recent years, is that a transaction cannot be structured to

completely immunize customers against risks; indeed, that is precisely why the Commission requires evidence of benefits in addition to risk mitigation measures.

Two alleged inadequacies in mitigation measures relative to risks are those asserted by PULP, namely the purportedly unadulterated risks that Commission regulation would be deemed unlawful under NAFTA; and that low income or financially stressed customers are the least able to tolerate rate burdens and present their interests in a case such as this. But the supposed legal conflict between NAFTA and state regulation is overstated, for reasons we already have cited; and we interpret any insufficiency in the proposed treatment of low income customers not as a "risk" in the relevant sense but as an alleged failure to provide customer benefits on a scale that PULP would prefer.

In our view, the primary risk that is not sufficiently mitigated here is the risk, unique to this case, that the loss of local ownership would end an arrangement in which customers have dealt with Central Hudson as a local institution with long established roots in their specific community. As a result, we see this transaction as fundamentally unlike takeovers of sprawling, diffuse service territories by Iberdrola or National Grid. Any doubt whether those cases materially differ from this one should be dispelled by the extraordinarily negative reaction to the proposal among the general public, unprecedented to the best of our knowledge in any other case involving only a transfer of ownership. As we have explained, the risk is not merely that approval of the transaction will generate ill will toward the new owners, but that this negative outlook itself will compromise management's performance of its tasks for years to come.

CONCLUSION

We find it relatively easy to conclude that the benefits of the merger transaction pursuant to the Joint Proposal are outweighed by the detriments remaining after mitigation. Our rationale is that the proposed transaction has generated an extraordinarily intense degree of public opposition to a change of Central Hudson's ownership among customers, their elected officials, and labor representatives and other public organizations in the service territory. Indeed, quite a few commenters made it clear that they would rather forgo the monetized benefits offered in the Joint Proposal than see the Fortis acquisition go forward.

To be clear, we emphatically do not view this case as a plebiscite or, even more inappropriately, a popularity contest between Central Hudson and Fortis. However, the Commission should consider that a utility company's stock in trade, so to speak, consists in large measure of good customer relations. In our view, one of the proposed transaction's unquantifiable but highly material risks or detriments is that the traditional functions of a utility company, as well as emergent changes in the nature of utility service, are likely to be managed more successfully by Central Hudson in its present form as contrasted with a new corporate regime that already has produced the fierce public hostility evidenced in hearings and comments. Moreover, during most of the time that the petition has been pending, Petitioners have made little as far as we can discern to forestall or defuse public opposition, and that apparent passivity itself lends credence to public objections that the new parent company would not appreciate the importance of maintaining customer satisfaction.

Alternatively, recognizing that much of our analysis involves exercises of judgment in which reasonable minds may

differ, we recommend that the Commission consider adopting the proposed terms subject to modifications that would alter the transaction's balance of risks and benefits. The Commission might conclude that this could be accomplished by requiring PBAs additional to those offered in the Joint Proposal, should Petitioners come forward with such a proposed modification. Since any such possibility is speculative, we will not address it except to state our opinion that the proposed transaction's flaws may be inherently unsusceptible to effective remediation by means of supplemental PBAs.

May 3, 2013
RAE, DLP /seh

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

MAYO M. SCHMIDT
Exhibit No. 806

James Scarlett Biography

James Scarlett Biography

Hydro One's Executive Vice-President and Chief Legal Officer, James Scarlett ("Jamie"), joined Hydro One in September 2016. Prior to joining Hydro One, Mr. Scarlett was a Senior Partner at Torys LLP. At Torys, Mr. Scarlett's practice focused on representing public companies and investment banks on mergers and acquisitions, corporate finance and corporate governance matters. From 1986 to 1990, Mr. Scarlett was seconded to the Ontario Securities Commission, where he acted as Legal Counsel in the Corporate Finance Branch and as Director, Capital Markets Branch.

Over the years, Jamie has amassed an impressive track record: over 15 M&A deals worth approximately C$18b; numerous Board or Special Committee mandates including hostile situations in which he made, or defended against, unsolicited takeover bids or dissident shareholder actions; and approximately 30 public equity deals worth almost C$8b.

Mr. Scarlett holds the designation of ICD.D from the Institute of Corporate Directors. This designation represents a commitment to excellence in the boardroom and effective directorship. 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.

Recognition

Best Lawyers' *Best Lawyers in Canada*—Leading lawyer in corporate law, mergers and acquisitions law, and securities law (2006-2017)

Chambers & Partners' *Chambers Canada*—Leading lawyer in Ontario, corporate/commercial (2016)

Legal Media Group/Euromoney's *IFLR1000 The Guide to the World's Leading Financial Law Firms*—Leading Canadian lawyer in corporate and M&A (2015-2016)

Lexpert/American Lawyer's *Guide to the Leading 500 Lawyers in Canada*—Leading lawyer in corporate commercial law, corporate finance and securities, and in M&A (2008-2016)

Law Business Research's *Who's Who Legal*—Capital markets (Debt and equity) (2015)

Law Business Research's *Who's Who Legal*—Project finance (2015)

Chambers & Partners' *Chambers Global: World's Leading Lawyers for Business, The Client's Guide*—Leading lawyer in corporate/M&A (2008-2016)

The Legal 500 Canada—Leading lawyer in corporate and M&A (2014-2016)

Law Business Research's *Who's Who Legal, The International Who's Who of Business Lawyers*—Leading lawyer in corporate governance (2013-2014) and mining (2014)

Law Business Research's *Who's Who Legal: Canada*—Leading lawyer in capital markets (2010-2015)

Lexpert/Thomson Reuters' *Canadian Legal Lexpert Directory*—Leading lawyer in corporate commercial law, corporate finance & securities, M&A (2008-2014); and mining (2014)

Guide to the World's Leading Capital Markets Lawyers—Leading Canadian lawyer (2013)

Expert Guides: The World's Leading Experts in Capital Markets—Leading lawyer (2013)

Practical Law Company's *Which Lawyer?*—Leading lawyer in capital markets: debt and equity; recommended in corporate/M&A (2009-2012)

Lexpert's *Special Law Inserts* appearing in The Globe and Mail's *Report on Business Magazine*—Most frequently recommended lawyer in corporate commercial, and corporate finance and securities (2011)

Lexpert's *Cross-Border Guide to the Leading U.S./Canada Cross-Border Corporate Lawyers in Canada*—Leading cross-border practitioner in corporate finance and securities and M&A (2008-2010)

Law Business Research's *Who's Who Legal, The International Who's Who of Business Lawyers*—Leading lawyer in capital markets (2008-2010)

Representative Work

- Independent committee to the Board of Trustees of Calloway Real Estate Investment Trust in the C$1.16 billion acquisition of SmartCentres Inc., currently Canada's largest developer and operator of unenclosed shopping centres
- Independent committee to Rio Alto Mining Limited in its C$1.33 billion business combination with Tahoe Resources Inc.
- Glencore Xstrata in its £807 million (US$1.5 billion) acquisition of Caracal Energy Inc.
- BMO Capital Markets, CIBC World Markets, Macquarie Capital Markets Canada and the syndicate of underwriters in Ivanhoe Mines Ltd.'s C$143.8 million public offering of units and concurrent C$25 million private placement
- Independent committee of the board of directors of McGraw-Hill Ryerson Ltd. in McGraw's C$29.9 million sale to McGraw-Hill Global Education Holding, LLC
- Viterra in its C$6.1 billion acquisition by Glencore International plc.
- HOMEQ Corporation in its C$136 million sale to Birch Hill Equity Partners Management Inc.
- CIBC World Markets, RBC Capital Markets and the syndicate of underwriters in Whistler Blackcomb Holdings Inc.'s C$345 million initial public offering of common shares
- Wi-LAN in its C$480 million unsolicited takeover bid for MOSAID Technologies Incorporated
- E.I. du Pont Canada in its acquisition of manufacturing assets from INVISTA (Canada) Company

- Pallinghurst Resources in its US$175 million acquisition of shares in Platmin Limited for a total joint venture holding of 69.8% with Bakgatla-Ba-Kgafela Tribe
- Alinda Capital Partners in its C$1.74 billion acquisition of UE Waterheater Income Fund
- Saskatchewan Wheat Pool (now Viterra Inc.) in its C$1.8 billion unsolicited takeover bid and acquisition of Agricore United
- Great Lakes Carbon Income Fund in its takeover bid by Rain Commodities and ultimate C$625 million sale to Oxbow Carbon & Minerals Holdings, Inc.
- PBB Global Logistics Income Fund in its C$250 million sale to Livingston International Income Fund following Livingston's unsolicited hostile takeover bid

HYDRO ONE/900
Lopez

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1897

REBUTTAL TESTIMONY OF CHRISTOPHER F. LOPEZ
REPRESENTING HYDRO ONE

Proposed Transaction, Hydro One Financials, Financial Commitments

I. INTRODUCTION

Q. Please state your name, business address and present position with Avista Corporation?

A. My name is Christopher F. Lopez, and my business address is 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5. I am Senior Vice President of Finance for Hydro One Limited ("Hydro One").

Q. Have you filed direct testimony in this proceeding?

A. Yes. My testimony describes the Proposed Transaction, the corporate structure, financing arrangements, ring-fencing, rate credits and related matters.

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

A. Yes. Attached to my testimony are:

- Exhibit 901 - S&P Global Ratings, Research Update: Avista Corp. Outlook Revised to Positive from Stable on Planned Acquisition by Hydro One Ltd. (July 19, 2017)
- Exhibit 902 - Hydro One Consolidated Business Plan 2018-2023 (December 8, 2017)
- Exhibit 903 - Presentation of Hydro One's Consolidated Business Plan 2018-2023 (December 8, 2017)
- Exhibit 904 - Proposed Updated Post-Closing Corporate Structure

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Summary of Testimony

Q. Please summarize your testimony.

A. I will discuss the financial features of the acquisition, address some of the

financial questions that other parties have raised, and describe important revisions that we have made to the merger commitments (each, a "Revised Oregon Merger Commitment," collectively, the "Revised Oregon Merger Commitments," which are Exhibit 801 to Hydro One witness Mayo Schmidt's Oregon Rebuttal Testimony) in order to provide improved benefits to customers and the public from ring-fencing and other financial aspects of the transaction.

Q. Please summarize how the transaction would provide benefits that do not exist today.

A. My rebuttal testimony discusses a number of benefits for Avista's Oregon customers from the transaction that would not otherwise exist:

- A rate credit spread over five years that totals approximately 5% of one year of Avista's revenues from Oregon customers;
- The benefits of a strategic buyer with a strong balance sheet;
- Capital injections from Hydro One as needed to maintain Avista's financial integrity;
- Restrictions on dividends and distributions that help preserve Avista's financial integrity; and
- An equity floor for Avista.

II. FINANCIAL FEATURES OF ACQUISITION

Q. What kind of buyer is Hydro One and how will that help Avista's creditworthiness and credibility in financial markets?

A. Hydro One is a strategic buyer rather than a financial investor. We want this transaction with Avista because Avista is so well aligned with our business objectives. As a

strategic investor, Hydro One intends to be here for the long term. It is in Hydro One's own interest to invest funds in Avista so that Avista can continue to thrive and to realize the efficiencies we expect to find. Financial investors, such as private equity firms, generally differ in three important ways from strategic buyers: 1) financial investors typically incur substantial debt at the holding company level to finance the transaction; 2) financial investors typically have shorter investment horizons, often expecting to sell their interest in five or ten years; and 3) financial investors see enhanced near-term earnings prospects.

Q. How would you characterize transactions involving strategic buyers?

A. There are two primary types of strategic transactions—"confederation" transactions and "integration" transactions. Hydro One and Avista have a confederation transaction. With an integration transaction, often there are bordering service territories, activities that can be consolidated, and substantial headcount reductions may be expected. By contrast, with a confederation transaction, the acquiring company seeks non-monetary goals, such as geographic, regulatory, and rate base (i.e., both electric and gas assets) diversification. It is becoming more common in confederation transactions for the board and management of the acquired company to retain a high degree of control and autonomy over the day-to-day operations of the regulated utility.

Q. Mr. Mullins testified that "this is a highly leveraged transaction, which has the potential to decrease Avista's credit rating and to increase its costs of debt. In addition, Avista's access to capital will be dependent on Hydro One's consent and cooperation."[1] Is the leverage involved in Hydro One's acquisition of Avista cause for concern?

[1] Mullins, NWIGU Ex. 100, page 17 (lines 3-5); *see also*, Mullins, NWIGU Ex. 100, pages 3 (line 21) - 4 (line 4).

A. No. I disagree with Mr. Mullin's characterization of the Hydro One acquisition of Avista as a highly leveraged transaction. As explained in the Application, the financing for the Proposed Transaction is based on a mix of debt and equity. The convertible debentures issued by Hydro One to finance the transaction should be viewed as equity not debt because they will be converted to equity at the time of closing.

Moreover, Hydro One is financially strong and is viewed by credit rating agencies as a prudent, well-managed company. This is demonstrated by Hydro One Inc.'s strong investment grade credit ratings from Moody's Investors Service ("Moody's"), Standard & Poor's ("S&P"), and DBRS. Hydro One Inc. has an "A" long-term credit rating from S&P, an A3 rating on senior unsecured debt from Moody's, and an A (high) rating from DBRS. Hydro One Ltd. has an "A" long-term credit rating from S&P. By comparison, Avista's credit ratings are BBB from S&P and Baa1 from Moody's.

Due to the financial strength and solid investment grade credit ratings of Hydro One, the transaction was well-received by rating agencies for Avista, with S&P revising the outlook for Avista to Positive from Stable. In its report announcing the revised outlook, S&P explains the rationale for the Positive outlook for Avista as follows:

> The outlook revision on Avista reflects the potential for higher ratings upon the completion of the acquisition by Hydro One Ltd. (HOL). Post-acquisition, we will view Avista as a highly strategic subsidiary of HOL. Our assessment is based on our view that Avista will be an important member of the HOL group, highly unlikely to be sold, and integral to overall group strategy and operations. Avista will be a significant cash flow contributor to the group, making up about 22% of consolidated EBITDA. We would also see a strong, long-term commitment of support from HOL senior management in almost all circumstances.[2]

[2] *See* Ex. 901 to OR Rebuttal Testimony of Chris Lopez (S&P Global Ratings, Research Update: Avista Corp. Outlook Revised to Positive from Stable on Planned Acquisition by Hydro One Ltd., July 19, 2017, at 2).

Contrary to Mr. Mullin's position that the transaction has the potential to decrease Avista's credit rating, S&P concludes that Avista's highly strategic group status within Hydro One could result in an upgrade for Avista.

Q. Should the Oregon Public Utility Commission (the "Commission") be concerned by the risk of double leverage?

A. No. CUB argues that customers are paying Olympus Holding Corp. a 9.4% return on equity, and that Olympus Holding Corp. is using that return to finance debt and is retaining the difference as an additional return.[3] However, it is common for utility mergers to use parent company debt to finance some portion of the transaction. If the acquiring company (Hydro One) chooses to use additional debt at the parent level to finance the transaction, that is management's decision to take on additional risk at the holding company. Any additional potential risk resulting from this financing structure is borne by Hydro One's shareholders, and the financial and ring-fencing commitments that have been proposed by Hydro One and Avista protect the utility's customers from any adverse consequences of such leverage. Further, customers are paying Avista, not the holding company, a 9.4% return, which the Commission has determined to be a reasonable return for Avista. This return will be earned and booked at the Avista regulated utility level. The funds received by Olympus Holding Corp. will be limited to the amount of dividends paid to Avista's parent company when declared by the Avista Board pursuant to its historical practice and consistent with the Revised Oregon Merger Commitments made in this proceeding, subject to the dividend restrictions contained in Revised Oregon Merger Commitment No. 35. Based on the historical dividend payout ratio, a portion of the retained earnings will be reinvested in Avista.

[3] Jenks-Gehrke, CUB Ex. 100, pages 19 (line 1) - 20 (line 4).

Q. In addition to Hydro One's financial health and the credit rating agencies' reactions to the proposed merger, are Hydro One and Avista willing to adopt revised merger commitments to address Commission Staff's, CUB's, and NWIGU's concerns that this merger will weaken Avista's access to capital?

A. Yes.

Revised Oregon Merger Commitment No. 23: As shown in Revised Oregon Merger Commitment No. 23 (*see* Ex. 801), leverage at the parent level will not impact Avista's ratepayers:

> 23. **Ratemaking Cost of Debt and Equity:**
>
> Avista will maintain separate debt and, if outstanding, preferred stock ratings. Avista will maintain its own corporate credit ratings from Moody's and at least one other nationally recognized credit rating agency, so long as those rating agencies are in existence, as well as ratings for each publicly-issued long-term debt and publicly-issued preferred stock (if any) issuance.
>
> Avista will not advocate for a higher cost of debt or equity capital as compared to what Avista's cost of debt or equity capital would have been absent Hydro One's ownership.
>
> For future ratemaking purposes:
>
> a. Determination of Avista's debt costs will be no higher than such costs would have been assuming Avista's credit ratings by at least one industry recognized rating agency, ~~including, but not limited to,~~ S&P, or Moody's, ~~Fitch or Morningstar,~~ as such ratings were in effect on the day before the Proposed Transaction closes and applying those credit ratings to then-current debt, unless Avista proves that a lower credit rating is caused by circumstances or developments not the result of financial risks or other characteristics of the Proposed Transaction;
>
> ~~a.~~ b. Avista bears the burden to prove prudent in a future general rate case any pre-payment premium or increased cost of debt associated with existing Avista debt retired, repaid, or replaced as a part of the Proposed Transaction; and
>
> ~~a.~~ c. Determination of the allowed return on equity in future general rate cases will include selection and use of one or more proxy group(s) of companies engaged in businesses substantially similar to Avista, without any limitation related to Avista's ownership structure.

Revised Oregon Merger Commitment No. 24: Revised Oregon Merger Commitment No. 24 also provides that Avista's common equity ratio must be maintained at a level no less than 44% to total Avista actual capital structure on a preceding or projected 13-month average:

24 **Avista Capital Structure:** ~~At all times following the closing of the Proposed Transaction, Avista will have a~~ Avista common equity ratio ~~of not~~ must be maintained at a level no less than 44 percent~~. (as calculated for ratemaking purposes) except to the extent~~ of total Avista actual capital structure determined on a preceding or projected thirteen month average. Should Avista's equity component of its capital structure fall below 44 percent in violation of this condition, Avista shall:

a. Within 5 business days: (A) notify the Commission ~~establishes a lower~~; and (B) provide an explanation for why Avista common equity ratio fell below 44 percent.
b. Within 30 days of providing notice, Avista shall provide a plan and timeline ("Compliance Plan") for ~~Avista for ratemaking purposes~~restoring Avista's common equity ratio to 44 percent or above that is subject to Commission review, modification, rejection, or approval.
c. Subsequent to the filing of the Compliance Plan, Avista shall file progress reports every 90 calendar days detailing its efforts to restore its equity component to 44 percent or above, as described above, in addition to detailing how Avista has met each requirement in the Compliance Plan.
d. Avista agrees to make its officers available to appear before the Commission regarding the violation and/or the Compliance Plan.

If Hydro One and Avista find it reasonably likely that Avista common equity could fall below 44 percent or projected thirteen month average, Avista shall provide a report to Staff with its projections indicating that common equity could fall below 44 percent, and take the steps listed above.

If Avista's common equity component of its capital structure is at or below 46 percent, on a preceding or projected thirteen month average, and the above steps have not been triggered, Avista will provide quarterly projections of the common equity component of its capital structure to Staff, along with supporting work papers.

Revised Oregon Merger Commitment No. 32: As shown in Revised Oregon Merger Commitment No. 32, Hydro One has also committed to provide equity injections as needed to maintain the financial integrity of Avista, such that Avista maintains an investment grade credit rating:

32 **Capital Structure Support:** Hydro One will provide equity ~~to support Avista's~~ capital ~~structure that is designed to allow~~ injections as needed for maintaining the financial integrity of Avista ~~access to debt financing under reasonable terms and on a sustainable basis~~such that Avista maintains an investment-grade credit rating.

Revised Oregon Merger Commitment No. 35: In addition, Hydro One and Avista have committed to restrictions on dividends and distributions from Avista to Olympus Equity LLC if Avista's equity ratio falls below 44% on the date of such Avista distribution (after giving

effect to the distribution), and requiring Avista to notify the Commission of its intention to declare a special dividend if Avista's equity ratio falls below 46%:

> ~~35.~~ **Restrictions on Upward Dividends and Distributions:**
>
> a. ~~If~~Except as noted in (b) below, if either (i) Avista's corporate credit/issuer rating as determined by at least one ~~industry~~nationally recognized rating agency~~, including, but not limited~~ that issues ratings with respect to~~, S&P, Moody's, Fitch, or Morningstar~~ Avista is investment grade, or (ii) the ratio of Avista's EBITDA to Avista's interest expense is greater than or equal to 3.0, then distributions from Avista to Olympus Equity LLC shall not be limited so long as Avista's equity ratio is equal to or greater than 44 percent on the date of such Avista distribution after giving effect to such Avista distribution, except to the extent the Commission establishes a lower equity ratio for ratemaking purposes. Both the EBITDA and equity ratio shall be calculated on the same basis that such calculations would be made for ratemaking purposes for regulated utility operations.
>
> b. If Avista's equity ratio is lower than 46 percent, Avista must notify the Commission of its intention to declare a special dividend (defined as a one-time dividend that is paid in addition to Avista's established or expected quarterly dividend) at least 30 days before the intended date of such dividend. Any such dividends from Avista to Olympus Equity LLC are allowed only with prior Commission approval.
>
> ~~b.~~c. Under any other circumstances, distributions from Avista to Olympus Equity LLC are allowed only with prior Commission approval.

Q. Mr. Mullins also claims that the additional leverage at the holding company level will make Avista more risky because the higher holding company debt will limit the ability of Avista to manage variability in earnings.[4] What is your response?

A. I do not share Mr. Mullins' concern with the effect of holding company leverage on the regulated utility operations of Avista. The ring-fencing conditions agreed to by Hydro One and Avista insulate Avista from any negative effects of leverage at the holding company. The Commission will continue to have regulatory authority over Avista and will ensure that customer rates in Oregon are not affected by the Proposed Transaction. Any variability in Avista's earnings will only affect Hydro One and its shareholders if it limits the

[4] Mullins, NWIGU Ex. 100, pages 8 (line 3) - 9 (line 3).

ability of Avista to pay dividends to Hydro One. There will be no effect on regulated utility operations in Oregon as a result of debt used to finance the acquisition.

Q. Does Hydro One agree with CUB's statement that this transaction will result in a debt heavy financial structure, i.e., that Avista will be owned by a debt encumbered holding company and that this will create significant risk to Avista's customers?

A. No, for a few reasons. First, as stated above, the convertible debentures issued by Hydro One should be viewed as equity because they will be converted to equity at the time of closing. Second, Hydro One disagrees with CUB's statement that Olympus Holding Corp. will be encumbered with debt. CanSub will finance Olympus Holding Corp. through a combination of debt and equity. At the Olympus Holding Corp. level, equity will comprise more than half of the capital structure. Third, Avista will be protected by the robust ring-fencing provisions that are described in greater detail below.

Q. Does Hydro One agree with CUB's suggestion that due to leverage, the transaction would cause Avista's customers to lose a primary benefit of equity?[5]

A. No, the transaction would not change the rate-making capital structure of Avista's regulated utility operations. Avista's customers would realize the same benefits from equity at the Avista level that they have always had. That is because the financing for this transaction will be above Avista, at the Hydro One and the Olympus Holding Corp. levels. No debt will be added to Avista as a result of the transaction. The borrowings for the acquisition will be incurred at the shareholder level, above Avista and above Avista's immediate parent, Olympus Equity LLC. Dividend payments are made at the discretion of

[5] Jenks-Gehrke, CUB Ex. 100, pages 19 (line 7) - 20 (line 4).

the Avista board and are subject to the restrictions on dividends set forth in Revised Oregon Merger Commitment No. 35, quoted above. Avista has generated sufficient cash flow to fund quarterly dividends for the last 29 years. We expect sufficient cash flows to continue to be generated by Avista. If there are insufficient funds to service the acquisition-related debt, it is Olympus Holding Corp.'s, and ultimately Hydro One's, responsibility to ensure that debt payments are made. Since the debt ratio at the Avista level is unchanged by the transaction, there is no change to the ability of equity to act as a shock absorber, and customers are not losing a primary benefit of equity.

Q. Do you agree with Mr. Mullins' assessment that the acquisition premium that will be paid to Avista shareholders is excessive?[6]

A. No. The acquisition premium that Hydro One will pay to Avista's shareholders simply reflects the fact that Avista is more valuable to Hydro One as a single strategic investor than it is to Avista's current multitude of shareholders. The investment advisors for both Hydro One and Avista have determined that the purchase price is fair, from a financial point of view, and the boards of both companies as well as Avista's shareholders have approved the Proposed Transaction.

Further, the premium paid by Hydro One for Avista is in line with the market. Staff witness Muldoon agrees that the 24% premium paid by Hydro One for Avista is generally consistent with past mergers, such as Scottish Power's acquisition of PacifiCorp.[7]

Q. Do you agree with Mr. Mullins' speculation that Hydro One and Avista could be incentivized to deploy new capital within Avista to improve returns and to recover the premium paid to Avista shareholders as part of the merger?[8]

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[6] Mullins, NWIGU Ex. 100, pages 4 (line 7) - 7 (line 10).
[7] Muldoon, Commission Staff Ex. 200, page 3 (lines 8 -18).

A. No. NWIGU witness Mullins argues that because the acquisition premium paid by Hydro One is 40% higher than the book value of the Avista assets that are being acquired, the only way for Hydro One to improve the effective returns it realizes through its investment is by deploying new capital within the utility. Mr. Mullins asserts that these aggressive capital programs often have the effect of increasing customer rates, particularly for small utilities such as Avista, which has been experiencing little to no load growth.[9]

Mr. Mullins is incorrect for two reasons. First, Hydro One will not "recover" the acquisition premium. Under Revised Oregon Merger Commitment No. 16, the acquisition premium or "goodwill" associated with the merger are transaction costs that are not recoverable from ratepayers:

> 16. **Treatment of Net Cost Savings and Transaction Costs:** Any net cost savings that Avista may achieve as a result of the Proposed Transaction will be reflected in subsequent rate proceedings, as such savings materialize. To the extent the savings are reflected in base retail rates they will offset the Rate Credit to customers, up to the offsetable portion of the Rate Credit.
>
> Avista will not, and Hydro One agrees that Avista will not, seek recovery in Avista rates of: (1) any acquisition premium or "goodwill" associated with the Merger; or (2) any transaction costs incurred in connection with the Merger. The categories of transaction costs incurred in connection with consummation of the Merger that will not be recovered from utility customers are: (1) consultant, investment banker, legal, and regulatory support fees, (2) change in control or retention payments, executive severance payments, and the accelerated portion of supplemental executive retirement plan payments, (3) costs associated with the shareholder meetings and a proxy statement related to the Merger approval by Avista shareholders, and (4) costs associated with the imposition of conditions or approval of settlement terms in other state jurisdictions.
>
> Avista will file, and Hydro One agrees Avista will file, a Report of Action within one hundred and twenty (120) days after closing of the Merger. The Report of Action will contain: (1) the closing date of the Merger; (2) the actual total sale price; and (3) the actual accounting entries records in Hydro One's and Avista's books to reflect the Merger. The Merger-related accounting entries in Hydro One's and Avista's books will include: all Transaction Cost accounting entries for Hydro One and Avista; all Merger-related fair value, goodwill, and/or acquisition premium accounting entries for Hydro One and Avista; all Merger-related tax accounting entries for Hydro One and Avista; all Merger-related debt-equity financing accounting entries for Hydro One and Avista; and all set-up cost accounting entries for Hydro One and Avista.

[8] Mullins, NWIGU Ex. 100, pages 4 (line 7) - 7 (line 10).
[9] Mullins, NWIGU Ex. 100, pages 7 (lines 12-21) - 8 (lines 1-2).

> Avista will track and account for Merger-related savings, and transition costs to enable those savings, in its next two base rate cases in which the test year in question includes transition costs. Avista will amortize the transition costs over five years, will not seek recovery in rate proceedings over those five years of any amortized transition costs or corporate costs allocated from Hydro One to Avista in excess of Merger-related savings. "Transition costs" as used in this commitment are incremental non-recurring costs to facilitate the integration of the companies. "Merger-related savings" as used in this commitment refers to the tangible financial benefits achieved as a result of the Merger for the five years after Merger Close that would not have been possible if the individual companies were to continue to operate separately.
>
> Taxes and assessments paid by Avista to the federal government, to states, and to political subdivisions thereof shall be no greater than they would be had Avista not been acquired by Hydro One, based on consistent methodologies before and after the transaction.

The purchase price is paid by Hydro One to Avista's existing shareholders at closing, and the acquisition premium is absorbed by the shareholders of Hydro One.

Second, after the merger closes, the Commission will continue to have authority over Avista's rates, including the amount included in rate base, the authorized return on equity for Avista, and the prudence of capital investments made by Avista. Thus, there is no economic incentive for Hydro One aggressively to invest in capital projects at Avista if Avista will not be allowed to recover those costs in customer rates. As noted previously, Hydro One has indicated that the primary reason for the transaction is to achieve geographic, regulatory, and rate base diversification.

Q. Will Hydro One and Avista respond to Mr. Muldoon's recommendation that Revised Oregon Merger Commitment No. 16 should be strengthened to ensure that the merger premium and all merger-related costs will not be recovered from Avista ratepayers?[10]

A. As quoted in my previous answer, Revised Oregon Merger Commitment No. 16 provides additional clarifications and details regarding the costs that are not recoverable from Avista ratepayers and the requirement that Avista track merger-related

[10] Muldoon, Commission Staff Ex. 200, page 9 (lines 10-15).

savings and transaction costs. With those modifications, Hydro One believes we have addressed Commission Staff's concerns in this area.

Q. Will Hydro One and Avista make Revised Oregon Merger Commitment No. 16 binding on Hydro One as well as Avista?

A. Revised Oregon Merger Commitment No. 16 quoted above speaks to whether transaction and transition costs may be recovered by Avista through rates. Hydro One and Avista have made clear, however, in Revised Oregon Commitment No. 16 that Hydro One agrees that transaction and transition costs will not be recovered through Avista's rates.

III. AVISTA'S ACCESS TO CAPITAL

Q. Please summarize Commission Witness Muldoon's testimony regarding whether the transaction will improve Avista's access to capital as compared with Avista's ability to raise capital as a stand-alone entity.

A. Staff witness Muldoon recognizes that "the Company could benefit from being part of a larger organization that is focused on making each aspect of Avista's financing stronger."[11] However, he expresses concern that Avista's access to capital will be limited because the Company will no longer be listed on the New York Stock Exchange (NYSE).[12] In addition, he observes that post-merger Avista will be dependent on Hydro One for equity support, and that Hydro One is to a rather large degree dependent on Ontario's leadership, regulators, and citizens understanding that investing and spending are divergent activities.[13]

Q. How will having Hydro One as a parent affect Avista's access to capital?

A. By being part of a larger, financially strong holding company, Avista's access

[11] Muldoon, Commission Staff Ex. 200, page 27 (lines 14-18).
[12] *Id*., pages 10 (lines 14-21) - 11 (lines 1-2).
[13] *Id*., page 20 (lines 5-14).

to capital will improve. Avista is a relatively small utility holding company as compared with other utility holding companies in the U.S. As shown in Morris' testimony,[14] Bank of America Merrill Lynch determined that at the time the Hydro One acquisition was announced in July 2017, Avista's market capitalization of $2.7 billion was smaller than all but four publicly-traded U.S. electric utilities covered by Value Line. Post-merger, the combined Hydro One/Avista company would have a market capitalization of approximately $13 billion, placing the new combined company near the middle of U.S. electric utilities by market capitalization.

Being part of the larger Hydro One organization will provide Avista with increased scale that will enhance its ability to compete for capital with larger utility holding companies in the U.S. Hydro One has deep and broad banking relationships. Hydro One's 2018 financing plans total roughly C$2.6 billion, while Avista is forecasting the issuance of long-term debt of approximately $900 million for the period 2017 through 2021. Banks aggressively pursue Hydro One's business. Once Avista is part of Hydro One, it too will realize the benefits of Hydro One's strong financial relationships. Many small and medium size utility companies, such as Avista, are finding that mergers that allow them to increase their size and financial strength are important in order to allow them continued access to capital markets on reasonable terms to finance the ongoing capital needs associated with serving their customers.

Q. Could the transaction have a negative impact on Avista's access to and/or cost of capital, as Mr. Muldoon has suggested?

A. No. The Applicants' Revised Oregon Merger Commitments ensure that, at a

[14] Morris, Avista Ex. 101, page 1.

minimum, Avista will have access to capital on terms at least as favorable as it would have absent the Proposed Transaction. First, through Revised Oregon Merger Commitment No. 23 quoted above, we have committed that the transaction will not increase Avista's cost of debt or equity.

Second, through Revised Oregon Merger Commitment No. 32 quoted above, we have committed to maintaining an investment grade credit rating for Avista.

Q. Mr. Muldoon contends that the Province of Ontario's right to buy stock to maintain its 40% ownership and the restriction on any other single shareholder owning more than 10% of Hydro One's outstanding shares increases Hydro One's cost of capital in comparison with other IOUs.[15] Do you agree?

A. No. Mr. Muldoon incorrectly asserts that the Province's preemptive right to buy stock (which he improperly describes as a right of first refusal) and the 10% restriction on outstanding shares somehow would "reduce the parent's available cash to support subsidiary infusions of liquidity in support of subsidiary operations and credit ratings."[16] He further asserts that, "It could also make it harder for Hydro One to rely as heavily on common equity to fund future M&A, putting more pressure on Hydro One to issue debt, which weighs on Hydro One's and Avista's credit ratings if not adequately ring-fenced."[17] This speculation is unfounded and unsupported by evidence. First, the proposed ring-fencing is robust (*see* Revised Oregon Merger Commitments) and will wholly protect Avista and its customers for the reasons discussed in Section VII below. In addition, the preemptive right of the Province to purchase up to 45% of certain issuances under Article 6 of the Governance Agreement (*see*

[15] Muldoon, Commission Staff Ex. 200, pages 58 (line 15) - 59 (line 9).
[16] *Id*., page 59 (lines 4-6).
[17] *Id*., page 59 (lines 6-9).

OR Rebuttal Testimony of M. Schmidt, Ex. 803 (hereinafter "Governance Agreement") affects only *who* will buy what portion of shares that are issued, not whether the shares will be issued. Hydro One's success in issuing the convertible debentures to provide equity for the acquisition of Avista demonstrates that Hydro One has ready access to capital.

Q. Do you agree with the speculation in Mr. Mullins testimony[18] that approval from the Province of Ontario would be required for Avista to obtain the necessary capital infusion from Hydro One?

A. No. Under the Governance Agreement, the Province of Ontario has no role in such decisions. As Mr. Schmidt explains in his rebuttal testimony (Exhibit 800), the Province of Ontario has no oversight role with respect to Hydro One. Hydro One manages its utility business, not the Province of Ontario. That was true when Hydro One was provincially owned, and it is even more true today when more than 50% of Hydro One's common shares are owned by private investors. Avista will not require provincial approval to obtain capital once the acquisition closes. Rather, as a wholly-owned subsidiary of Hydro One, Avista will manage its capital requirements through equity infusions from Hydro One, and will pass dividends up to Hydro One. Finally, and importantly, Hydro One has a strong incentive to maintain Avista as a financially-strong, well-managed utility.

IV. HYDRO ONE'S ACCESS TO CAPITAL AND FINANCIAL HEALTH

Q. Does the fact that Hydro One is only listed on the Toronto Stock Exchange limit its access to capital compared with other investor-owned utilities that are listed on the NYSE?[19]

A. No. Hydro One has ample access to capital in both the United States and

[18] Mullins, NWIGU Ex. 100, page 3 (line 21) - 4 (line 4).
[19] Muldoon, Commission Staff Ex. 200, page 4 (lines 15-20).

Canada. The Toronto Stock Exchange (TSX) is a major exchange, and Hydro One through Hydro One Inc. has a proven track record of being able successfully to access the Canadian debt capital markets without needing to issue secured debt. In addition, Hydro One Inc. has debt listed on the NYSE. Hydro One Inc. currently files a quarterly Form 6-K and an annual Form 40-F. It should be noted that a listing on the NYSE serves to access retail and smaller accounts, but major pools of equity capital are readily available through "Rule 144A" offerings. (A Rule 144A equity offering is an unregistered offer and sale of equity securities issued by a U.S. or foreign company, the equity securities of which are neither listed on a U.S. securities exchange nor quoted on a U.S. automated inter-dealer quotation system.) Hydro One has already demonstrated that it has ready access to capital on reasonable terms for purposes of supporting Avista. Hydro One has excellent access to capital, having successfully issued over C$6.5B in common shares from October 2015 to May 2017. Hydro One's convertible debentures, which were offered in correlation with the announcement of the acquisition of Avista for C$1.54B, were oversubscribed - demonstrating that Hydro One could have easily acquired substantial additional funds on reasonable terms. Moreover, Avista is currently one of the smallest investor-owned utilities remaining in North America, and as a result of the transaction, will be a top 20 utility, thereby providing even greater access to capital.

Q. Please explain how these convertible debentures work.

A. In essence, a convertible debenture is debt that will be converted into equity when it is needed. Hydro One, through a subsidiary, issued the convertible debentures last summer in order to ensure that Hydro One would have the equity it needed to complete the transaction in 2018. At the time of closing, these debentures will be converted from debt to

equity. If, for some reason, the transaction is not consummated, we can simply repay the debt. It is not financially prudent for the acquiring company to carry equity on its balance sheet pending closing of the acquisition because to do so would be dilutive and expensive. A more prudent approach is to issue an instrument such as convertible debentures before closing that will convert to equity at closing. Convertible debentures are a common way to finance mergers and acquisitions that involve waiting for regulatory approvals.

Q. Are there additional indicators of Hydro One's sound financial health and access to capital?

A. Yes, there are many. First of all, Hydro One Ltd. and Hydro One Inc. have very strong investment grade credit ratings -- even higher than Avista's. Hydro One Inc. has an "A" long-term credit rating from S&P, an A3 rating on senior unsecured debt from Moody's, and an A (high) rating from DBRS. Hydro One Ltd. has an "A" long-term credit rating from S&P. Strong investment grade credit ratings, such as those maintained by Hydro One Inc., indicate that the company has access to capital on reasonable terms and conditions and adequate liquidity to pay dividends and fund capital expenditures primarily with internal cash flows.

Q. How will incremental costs of currency exchange, volatility of foreign exchange rates and spreads, and further incremental costs of hedging to smooth cash flows be managed by Hydro One to ensure that none of these financial risks impacts Avista's customers?[20]

A. There is no linkage between exchange rates and our ownership structure, and any suggestion to the contrary is unfounded speculation. The bulk of the Avista acquisition

[20] Muldoon, Commission Staff Ex. 100, page 26 (lines 4-13).

will be financed through the issuance of long-term debt denominated in U.S. dollars, which will act as a natural hedge. Hydro One recognizes that costs may be incurred to hedge its exposure to foreign currency transactions. The market rate bid-ask spread is indicative of the economic cost of converting funds between currencies. No foreign-exchange related costs will be allocated to Avista's customers.

Q. Is Hydro One willing to pursue listing on the NYSE?

A. Not at this time. Listing on the NYSE would not serve a purpose at this time, and it is not needed for access to capital for reasons stated above. Furthermore, pursuing a listing on the NYSE would not provide any additional protections or benefits to Avista ratepayers. As noted above, Hydro One has ready and ample access to capital and is in strong financial health.

Q. Commission witness Muldoon contends that Avista's access to capital markets is diminished if Avista is de-listed from the NYSE and Hydro One is only listed on the Toronto Stock Exchange.[21] Do you agree?

A. No. As discussed previously in my Rebuttal Testimony, Avista is small relative to other utility holding companies in the U.S. The acquisition by Hydro One joins Avista with a financially-stronger parent holding company and provides Avista with enhanced scale and scope when it needs to compete for capital with other electric and gas utilities. The proposed transaction improves Avista's financial strength and access to capital markets as compared to the status quo (i.e., Avista as a stand-alone entity).

Q. Are Hydro One's credit ratings impacted negatively by the Fair Hydro

[21] Muldoon, Commission Staff Ex. 200, pages 10 (lines 14-21) - 13 (lines 1-2).

Plan?[22]

A. No. The Fair Hydro Plan has no financial impact on Hydro One. The plan is fully funded by the Province and charges related to the plan are collected by the local distribution companies ("LDCs").

Q. Commission Staff contend that Hydro One faces significant environmental liabilities that could impact Avista's environmental strategies and compliance. Is this true, and how will Hydro One ensure that its long-term financial health is not impacted by these environmental liabilities?[23]

A. The environmental liability costs that Hydro One will have to bear are well understood and are already included in multi-year financial and investment planning. This is a business-as-usual process for Hydro One. The process by which Hydro One prioritizes investment includes three criteria: (1) Safety, (2) Reliability, and (3) Environmental Risk. Regulatory compliance is considered a "mandatory" funding trigger, and programs relating to compliance are understood as a required cost of the business and approved for funding. Further, Hydro One's combined Health, Safety, and Environmental Management System ("HSEMS") includes a risk assessment component to identify and to prioritize corporate risks relating to environmental aspects of our operations. This allows us to focus on the most relevant environmental risks.

Internal audit activities also investigate environmental processes to ensure risk is appropriately managed and are integrated with the HSEMS and Enterprise Risk Management through internal meetings and collaboration. Hydro One re-evaluates and reports on liabilities associated with environmental matters annually, including remaining costs associated with the

[22] Muldoon, Commission Staff Ex. 200, pages 24 (line 4) - 26 (line 19).
[23] Muldoon, Commission Staff Ex. 100, page 29 (lines 10-19).

Polychlorinated Biphenyl (PCB) and Land Assessment and Remediation (LAR) program.

Hydro One is committed to the safety and protection of the environment in Ontario, and will extend this commitment and associated approaches to environmental risk management, to the U.S. Hydro One has provided evidence supporting our focus on compliance with environmental legislation in Canada and Ontario. There is no evidence to suggest that Hydro One would influence Avista negatively with respect to meeting their environmental compliance obligations. As stated, regulatory compliance is a mandatory funding trigger in Hydro One's investment prioritization. Further, Avista will retain the authority to manage and to control Avista's operations, including compliance with environmental laws and regulations. Hydro One will not negatively impact Avista in this regard.

Q. Does Hydro One agree with Commission Staff's concerns regarding Hydro One's revolving credit facility?[24]

A. No, as Hydro One noted in response to Commission Staff DR 193(H1), the credit rating agencies have reviewed Hydro One's existing credit agreements and have expressed the view that Hydro One has adequate liquidity. Credit rating agencies have not expressed any concerns regarding diversity of geographic and institutional bank participation similar to Commission Staff's perception of concentration risk.

Q. Does Hydro One share Commission Staff's concerns regarding the language in Hydro One's credit facility?[25]

A. No. Prior to execution, the credit facilities that Hydro One enters into are reviewed by external and internal legal counsel. Credit rating agencies have also reviewed

[24] Muldoon, Commission Staff Ex. 202, page 19 (lines 9-19).
[25] Muldoon, Commission Staff Ex. 202, page 19 (lines 9-21) - 20 (lines 1-12).

Hydro One's credit agreements and have not expressed any concerns regarding the language in those agreements, which, as Hydro One has stated, is customary in Canada. Hydro One has never paid fees other than legal, commitments, and standby fees.

Q. Commission Staff states that Avista has the ability to ride out a financial storm like the 2008-2009 market disruption that took down Lehman Brothers and control costs with likely no negative impacts to its credit ratings. Does Hydro One have any comments on this statement?

A. Hydro One Inc. was not materially impacted by the global financial crisis that began in 2008. The company continued to issue commercial paper and was the first to issue long-term debt in the Canadian capital markets after Lehman Brothers declared bankruptcy in 2008. While strong individually, Hydro One and Avista will be stronger together.

Q. What is the driver of S&P's negative outlook on Hydro One referenced in Commission Staff's testimony[26] at?

A. In their July 19, 2017 Research Update, S&P's cites a slight erosion in Hydro One's business risk profile and credit metrics. This slight erosion in Hydro One's credit metrics and financial risk drive the negative outlook. S&P's states that: "The negative outlook on Hydro One Limited reflects our view that the Avista acquisition signals a shift in Hydro One Limited's business strategy, which will align the company with its global peers removing the historical rationale for a one-notch rating uplift."

V. HYDRO ONE'S PLANS AND BUDGETS

Q. Is Hydro One willing to disclose its 10-year plan and corporate budget to

[26] Muldoon, Commission Staff Ex. 200, page 23 (lines 4-5).

Commission Staff as requested in Mr. Muldoon's testimony?[27]

A. Hydro One will provide to the Commission the following planning and budgeting documents, which Hydro One also provides to the Ontario Energy Board.

- Exhibit No. 902: Hydro One's Consolidated Business Plan 2018-2023
- Exhibit No. 903: Presentation of Hydro One's Consolidated Business Plan 2018-2023

VI. TAXES

Q. Commission Staff and CUB raise a concern in their reply testimony that Hydro One and Avista have not explained how tax benefits and burdens above Avista in the Hydro One corporate structure will be reflected in Avista's rates.[28] **How will Hydro One ensure that the appropriate amount of taxes would be reflected in Avista's rates post-merger?**

A. The calculation of taxes for regulatory purposes will not change as a result of the acquisition. Avista will continue to operate on a stand-alone basis, and therefore, no changes will be made to the allocation of taxes to Oregon gas customers related to any Hydro One operations post-merger. Hydro One will not allocate taxes payable by any Canadian entity, including foreign taxes, to Avista post-merger.

The acquisition will be financed partly through debt, which will result in interest expense and additional tax deductions at Olympus Holding Corp. These costs and tax effects are not being incurred by Avista, are not being charged to customers, and that is and should be equally true for the expense itself and the tax effects of that expense. To protect Oregon ratepayers, Hydro One, as well as Olympus Holding Corp., as the U.S. parent company, have

[27] Muldoon, Commission Staff Ex. 202, page 1 (lines 20-24).
[28] Muldoon, Commission Staff Ex. 100, page 28 (lines 10-19); *see also* Jenks-Gehrke, CUB Ex. 100, unredacted page 22 (lines 19-22) - page 23 (1-5).

committed to "ring-fence" Avista's financial position and to insulate Avista's customer from any adverse financial impacts from the acquisition. The imputation of the tax benefit from the holding parent company to the Avista ratepayers would disregard and violate the basic ring-fencing principles.

The additional interest expense incurred by Hydro One to finance the transaction is excluded from rates. Therefore, it follows that any tax benefits arising from the interest should likewise be excluded from Avista's rates post-merger. To do otherwise would violate the matching principle of utility regulation, and completely misalign ratemaking "benefits" and "burdens."

Q. What is the basis by which the taxes in Avista's rates will be calculated to ensure customer protections from subsidizing Hydro One's, or its affiliates', tax expense post-merger?[29]

A. Olympus Holding Corp. will file a consolidated tax return. However, for rate filing purposes, consistent with Oregon statues and regulations, Avista's taxes will be calculated on a stand-alone basis, reflecting only its regulated operations, as it currently is, and the rates of Oregon ratepayers will be unaffected by the merger. The calculation of Avista's tax expense for regulatory purposes will remain the same post–merger, which ensures Oregon customers are protected and are not subsidizing any other operations of Hydro One and its affiliates. Tax expense is and will be calculated based on Avista's taxable income as derived through the ratemaking process. In accordance with ratemaking practices, the Commission will be able to review and to approve the tax expense included in rates. Tax expense charged to Avista's Oregon utility operations will, and should, include expected and

[29] Muldoon, Commission Staff Ex. 100, page 28 (lines 10-19); *see also*, Gardner, Commission Staff Ex. 300, page 4 (lines 11-18).

deferred taxes relating to the provision of regulated utility service to Oregon gas customers. Further, the merger itself is an activity at the shareholder level and does not affect Avista as a regulated utility company. Therefore, the approval of the merger is not expected to impact the utility operations post-closing and tax expenses to Avista's regulated operations in Oregon.

The tax benefit associated with the interest deduction is compensation for the additional leverage incurred by Hydro One in connection with the acquisition. The funding of this interest payment is the responsibility of the shareholder and, therefore, the tax benefits should accrue to the shareholder. Excluding these parent company tax effects from rates is not a subsidy; on the contrary, including it in rates would create a subsidy.

Olympus Holding Corp. will not increase the cost of borrowing for Oregon customers, will not represent debt for which ratepayers are responsible, and will not affect customers' rates. Therefore, any imputation of the tax benefit from the interest expense associated with debt would create a direct subsidy for customers at the cost of the shareholder. It would be tantamount to an involuntary rate credit.

Q. Ms. Gardner testified that the merger commitments do not provide "assurance that the appropriate amount of taxes would be included in rates post-merger" or "speak to customer protections from subsidizing Hydro One's, or its affiliates', tax expense post-merger."[30] Is Hydro One willing to clarify in the commitments that it will not recover Hydro One's or its affiliates' tax expenses in Avista's rates post-merger?

A. Yes. The last paragraph in Revised Oregon Merger Commitment No. 16 makes clear that Hydro One will never recover its or its affiliates' tax expenses through Avista's

[30] Gardner, Commission Staff Ex. 300, page 4 (lines 11-18).

rates post-merger:

> Taxes and assessments paid by Avista to the federal government, to states, and to political subdivisions thereof shall be no greater than they would be had Avista not been acquired by Hydro One, based on consistent methodologies before and after the transaction.

It should be noted that Hydro One never had this intention, but is more than willing to provide this as a commitment.

Q. Does Hydro One agree with NWIGU witness Mullins that "the cost[s] of preparing the tax returns and annual filings for the five newly created entities will be material, in relation to the level of cost savings"[31] at Avista?

A. No. As discussed above, the newly created entities that will form the corporate parent structure between Avista and Hydro One will conduct limited business activities. They will file a consolidated tax return, and the costs of including these entities in one tax return will be negligible, if any.

Q. Should the Commission be concerned by CUB's discussion of so-called "phantom taxes"?[32]

A. No. The "phantom tax" terminology is misleading and suggests that the taxes are not real. That is incorrect.

Contrary to the example provided by Mssrs. Jenks-Gehrke in their testimony regarding Enron filing its taxes on a consolidated basis, the interest deduction on the filing of consolidated tax returns of Olympus Holding Corp. will represent the actual interest costs on borrowed funds by Olympus Holding Corp. to finance its acquisition of Avista. We believe Avista should continue to pay taxes under the ratemaking principle that the operating utility must be viewed on a stand-alone basis. It would be improper for a commission selectively to

[31] Mullins, NWIGU Ex. 100, page 14 (lines 13-15).
[32] Jenks-Gehrke, CUB Ex. 100, pages 21 (line 4) - 22 (line 17).

impute some benefits but no costs from the holding company down to the operating utility. Conversely, a consolidated tax adjustment can also raise rates, rather than reduce rates for customers, if the utility ever goes into a tax loss position. Unfortunately, that kind of adjustment would come at the worst possible time, when the utility and its customers were already facing a financial challenge.

The imputation of benefits practice effectively incorporates selected jurisdictional activities into the utility's rates in an attempt to transfer tax impacts from one member of the consolidated tax paying group to another. It is really no different than one taxpayer seeking to tap into another taxpayer's mortgage deduction for a home, while refusing to incur any cost for the mortgage payments themselves. It is both inequitable and inappropriate.

VII. RING-FENCING COMMITMENTS

Q. Commission Staff and other intervenors are concerned that the ring-fencing commitments in the Application are not strong enough and do not sufficiently interlock to ensure Avista will not suffer from negative financial events at Hydro One or any of its other subsidiaries. How will Hydro One and Avista address these concerns?[33]

A. While we believe that our original suite of ring-fencing commitments is quite robust and reflective of current market conditions, we are proposing a number of clarifications and revisions to address these concerns.

Q. Are Hydro One and Avista willing to include a "Golden Share" commitment?[34]

A. Yes. The original merger Commitment No. 40 in Appendix 8 to the

[33] Muldoon, Commission Staff Ex. 200, page 5 (lines 4-11); *see also*, Mullins, NWIGU Ex. 100, page 2 (lines 3-5).
[34] Muldoon, Commission Staff Ex. 200, page 5 (lines 4-11).

Application already required the vote of an independent director on Avista's post-merger board to include Avista in voluntary bankruptcy proceedings. While Hydro One and Avista believe this commitment, in combination with the other proposed ring-fencing commitments, is sufficient to protect Avista from being included in a voluntary bankruptcy proceeding involving corporate entities above Avista, Hydro One and Avista are also willing to adopt a Golden Share commitment which is Revised Oregon Merger Commitment No. 40:

> 40. **Golden Share**. To enter into voluntary bankruptcy shall further require the affirmative vote of a "Golden Share" of Avista stock. The Golden Share shall mean the sole ($1 Par) share of Preferred Stock of Avista as authorized by the Commission. This share of Preferred Stock must be in the custody of an independent third-party, where the third-party has no financial stake, affiliation, relationship, interest, or tie to Avista or any of its affiliates, or any lender to Avista, or any of its affiliates. This requirement does not preclude the third-party from holding an index fund or mutual fund with negligible interests in Avista or any of its affiliates. In matters of voluntary bankruptcy, this share will override all other outstanding shares of all types or classes of stock.

Q. Are Hydro One and Avista willing to adopt a commitment that ensures that the independent members of Avista's post-merger Board of Directors are independent of Avista and Hydro One?[35]

A. Yes, Revised Oregon Merger Commitment No. 39 (original Commitment No. 40) has been revised to clarify that three of the nine members of the board of directors of Avista post-merger will meet the standards for "independent directors" under the requirements of the NYSE:

[35] Muldoon, Commission Staff Ex. 200, page 5 (lines 4-11).

39. **Independent Directors:** At least ~~one~~three (3) of the nine members of the board of directors of Avista will ~~be an~~ meet the standards for "independent ~~director who is not a member, stockholder, director (except as an independent director of Avista or Olympus Equity LLC), officer, or employee of Hydro One or its affiliates.~~directors" under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Directors"). At least one of the members of the board of directors of Olympus Equity LLC will ~~be an independent director who is not a member, stockholder, director (except as an independent director of Olympus Equity LLC or Avista), officer, or employee of Hydro One or its affiliates.~~meet the standards for "independent directors" under section 303A.02 of the New York Stock Exchange Listed Company Manual (the "Independent Director"). The same individual may serve as an ~~independent director~~Independent Director of both Avista and Olympus Equity LLC. The organizational documents for Avista will not permit Avista, without the consent of a two-thirds majority of all its directors, including the affirmative vote of the ~~independent director~~Independent Director (or if at that time Avista has more than one ~~independent director~~Independent Director, the affirmative vote of at least one of Avista's ~~independent directors~~Independent Directors), to consent to the institution of bankruptcy proceedings or the inclusion of Avista in bankruptcy proceedings. In addition to an affirmative vote of this independent director, the vote of the Golden Share shall also be required for Avista to enter into a voluntary bankruptcy.

Q. Is a non-consolidation opinion of any value in determining whether the ring-fencing commitments are sufficient to protect Avista from a bankruptcy further up the corporate chain?[36]

A. Yes. The non-consolidation opinion provided in Revised Oregon Merger Commitment No. 41 is the strongest possible demonstration of protection against upstream bankruptcy, absent an actual bankruptcy. Public utility commissions generally require and accept non-consolidation opinions for that reason.

VIII. PROPOSED CORPORATE STRUCTURE AND TRANSACTION FINANCING

Q. Please explain the purpose of all of the corporate entities between Avista and Hydro One Limited.[37]

A. Olympus Equity LLC provides ring-fencing support because it is a debt-free special purpose entity immediately above Avista Corporation. Olympus 1 LLC and Olympus

[36] Mullins, NWIGU Ex. 100, page 21 (lines 3-17).
[37] Muldoon, Commission Staff Ex. 200, page 5 (lines 4-11); *see also*, Muldoon, Commission Staff Ex. 200, pages 38 (line 25) - 39 (line 3) and Muldoon Commission Staff Ex. 200, page 3.

2 LLC were initially created to help navigate the U.S. and Canadian federal tax jurisdictions and implications. U.S. federal tax reform has made those entities unnecessary. Olympus Holding Corp. is the holding company for U.S. purposes. Regardless of the number of entities in the corporate parent chain, Avista is protected from financial distress in that chain by the ring-fencing commitments.

Q. Would Hydro One be willing to obtain a determination letter or similar written documentation from a taxing authority that such arrangements and entities are authorized for exactly how specific companies will be employed, as Mr. Muldoon suggested?[38]

A. Hydro One does not believe such a letter or determination is necessary or appropriate. Holding companies are common practice, especially when setting up a new U.S. parent to hold U.S. investments. There are no complex or opaque strategies being considered by Hydro One in this transaction. CanSub will obtain financing for the transaction and will invest the money to Olympus Holding Corp. as a combination of debt and equity. Olympus Holding Corp. will invest the proceeds down the chain as equity to Olympus Equity, LLC, which will use the funds to acquire Avista. This is a rather routine use of investor funds to finance a transaction.

Further, as stated in this testimony, the shareholder loan is at the Olympus Holding Corp. level, which is above the regulated activities of Avista and shielded from Avista through the ring-fencing commitments. Consequently, Avista's Oregon customers are not responsible for the debt used to finance the transaction.

Q. Will Hydro One's non-consolidation opinion address the various entities

[38] Muldoon, Commission Staff Ex. 202, pages 3 (lines 17-21) and 26 (lines 4-15).

in the corporation chain? Given the various entities in the corporate chain, is additional guidance or are controls necessary so that the non-consolidation opinion and finding is based on the actual use and purposes of the special purpose entities?[39]

A. The non-consolidation opinion is the strongest possible demonstration of protection against upstream bankruptcy, absent an actual bankruptcy. Public utility commissions generally require and accept non-consolidation opinions for that reason. The non-consolidation opinion that Hydro One obtains for this transaction will apply to the post-close corporate structure.

Q. Are all of these corporate entities still needed for this transaction?

A. No.

Q. Will Hydro One remove these entities from the corporate structure now that they are no longer needed?

A. We are willing to eliminate Olympus 1 LLC and Olympus 2 LLC, if all states agree. Exhibit 904 to my testimony, "Proposed Updated Post-Closing Corporate Structure," illustrates what the post-closing corporate structure would be if Olympus 1 LLC and Olympus 2 LLC were eliminated.

Q. Would the continued existence of these corporate entities between Hydro One Limited and the bankruptcy remote entity just above Avista in the corporate chain make Avista more vulnerable to being included in a bankruptcy of Hydro One Limited or one of the subsidiaries between Hydro One Limited and Avista?[40]

A. No, not at all. They are irrelevant to that analysis, but again, we are willing to

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[39] Muldoon , Commission Staff Ex. 202, page 4 (lines 1-6).
[40] Muldoon, Commission Staff Ex. 200, page 5 (lines 4-11); *see also*, Muldoon, Commission Staff Ex. 202(HC), page 3 (lines 13-23).

eliminate Olympus 1 LLC and Olympus 2 LLC.

Q. Will these corporate entities between Hydro One and Olympus Holding Corp. restrict Commission Staff's and the Commission's ability to understand the financial and other activities of Olympus Holding Corp. (the Special Purpose Entity)?[41]

A. No. Hydro One has explained through a data request (Commission Staff DR 253(H1)) and in this testimony, the purpose of each entity in the corporation chain. Further, consistent with Revised Oregon Merger Commitment Nos. 20 and 21, the Commission will have complete access to all books and records of Hydro One and Avista, and all corporations in between, that pertain to and that could affect Avista's Oregon operations.

Q. Please describe the steps that will be taken to effectuate the transaction.

A. Olympus Holding Corp., a Delaware Corporation, and an indirect wholly-owned subsidiary of Hydro One, proposes to acquire all of the shares of Avista through a merger of a wholly-owned indirect subsidiary, Olympus Corp., and Avista. After the merger, Avista will be the surviving corporation, and Olympus Corp. will cease to exist.

Q. Please describe how the acquisition of Avista by Hydro One will be financed.

A. Hydro One is committed to maintaining an investment-grade balance sheet through and after completion of the acquisition. Hydro One plans to finance this all-cash transaction using a mix of long-, medium- and short-term debt together with a convertible debenture installment receipts offering. Hydro One is planning to issue the debt financing in U.S. dollars totaling US$2.6 billion (and issued convertible debenture installment receipts in Canada of C$1.54 billion or approximately US$1.2 billion). We expect the convertible

[41] Gardner, Commission Staff Ex. 300, page 8.

debenture to be fully converted to equity around the time of the closing of the transaction. The planned US$ debt financing contemplates a combination of 5-year, 10-year and 30-year US$ denominated notes.

Q. Will Avista pledge any assets or guarantee any of these transactions for the purpose of the acquisition of Avista by Hydro One?

A. No. Avista will not pledge any assets or guarantee any of the transactions necessary for this acquisition.

Q. In and of itself, as a result of the closing of this transaction, will Avista's financial statements change?

A. No. Avista's U.S. financial statements, prepared using generally accepted accounting principles ("GAAP"), will not be impacted by the closing of this transaction. Avista will maintain its own accounting system, separate from Hydro One's accounting system. The acquisition will be accounted for in accordance with GAAP. The premium paid by Hydro One for Avista will be recorded in the accounts of the acquisition company and not in the utility accounts of Avista or AELP.

IX. AVISTA'S FUTURE FINANCIAL HEALTH

Q. Do the commitments in the Application ensure that Hydro One will preserve Avista's credit ratings?[42]

A. As previously discussed, there is evidence that Avista's credit rating may be improved as a result of the transaction -- in fact, Avista's credit rating outlook was revised from Stable to Positive by S&P upon announcement of the deal. Further, Hydro One has specifically committed to preserve an investment-grade credit rating for Avista and to provide

[42] Muldoon, Commission Staff Ex. 200, pages 3 (line 21) - 4 (line 2).

Avista capital structure support. Specifically, Revised Oregon Merger Commitment No. 32 provides that Hydro One will provide equity capital injections as needed for maintaining the financial integrity of Avista such that Avista maintains an investment grade credit rating. An interlocking provision, Revised Oregon Merger Commitment No. 23, provides that, "Avista will not advocate for a higher cost of debt or equity capital as compared to what Avista's cost of debt or equity capital would have been absent Hydro One's ownership." Thus, Hydro One has fully protected Avista's credit rating against any negative effects from the transaction.

Q. Are Hydro One and Avista willing to strengthen these commitments to ensure that Hydro One will preserve and strengthen Avista's current credit ratings in the future and ensure Avista's access to low-cost debt?[43]

A. Hydro One has committed to maintain Avista's investment grade credit ratings in Revised Oregon Merger Commitment No. 32. However, Hydro One cannot commit to "strengthen" or to "improve" Avista's credit rating for two important reasons. First, a higher credit rating does not necessarily translate to lower customer rates. For example, a utility with a higher proportion of common equity may have a higher credit rating, but it would also have a higher overall rate of return due to the relatively large portion of capital subject to equity returns, which are typically higher than debt returns. Second, a credit rating is the product of multiple factors, including business and financial risks, many of which are industry-wide and beyond Hydro One's control.

Q. Do the commitments in the Application allow Hydro One and Avista to

[43] Muldoon, Commission Staff Ex. 200, pages 3 (line 21) - 4 (line 2); *see also*, Muldoon, Commission Staff Ex. 200, page 17 (lines 1-9) and Muldoon, Commission Staff 200, pages 36 (line 20) - 37 (line 3).

rely on a substandard credit rating agency for Avista's credit ratings after the merger?[44]

A. No. Revised Oregon Merger Commitment No. 23 provides that Avista will maintain separate debt and, if outstanding, preferred stock ratings, and that Avista will maintain its own corporate credit ratings from Moody's and at least one other nationally recognized credit rating agency, so long as those rating agencies are in existence, as well as ratings for each publicly-issued long-term debt and publicly-issued preferred stock (if any) issuance. Furthermore, the Applicants have pledged in Revised Oregon Merger Commitment No. 34 that Avista will continue to be rated by Moody's and at least one other nationally recognized credit rating agency, and that Hydro One will continue to be rated by at least one nationally recognized credit rating agency.

Q. Will Hydro One commit to supplying liquidity into Avista in a manner that is at least comparable to Avista's ability to attract capital in public markets today to ensure Avista's credit rating does not suffer?[45]

A. Yes, as indicated in Revised Oregon Merger Commitment No. 32, Hydro One will provide equity capital injections as needed for maintaining the financial integrity of Avista such that Avista maintains an investment grade credit rating. It is important to note that Hydro One is already prepared to provide Avista an infusion of capital in 2018. In Avista's press release announcing its financial results for the fourth quarter and fiscal year 2017 (released Feb. 21, 2018), Avista announced that it expects to issue approximately $375.0 million of long-term debt and up to $85.0 million of equity in 2018 in order to refinance maturing long-term debt, to fund planned capital expenditures, to fund the impacts of the

[44] Muldoon, Commission Staff Ex. 200, pages 3 (line 21) - 4 (line 2); *see also*, Muldoon, Commission Staff Ex. 200, page 23 (lines 10-18).
[45] Mullins, NWIGU Ex. 100, page 9 (lines 8-19); *see also*, Mullins, NWIGU Ex. 100, page 10 (lines 2-8).

federal income tax law changes, and to maintain an appropriate capital structure. The $85.0 million of equity in 2018 may come through the sale of shares through Avista's sales agency agreements, or from an equity contribution from Hydro One upon consummation of the acquisition, or from a combination of those sources.

Q. Are Hydro One and Avista willing to require Hydro One and Avista to notify the Commission if Avista's credit rating falls below investment grade?[46]

A. Yes, as provided in Revised Oregon Merger Commitment No. 34, Hydro One and Avista agree that Avista will notify the Commission in the event that either Moody's or another nationally recognized credit rating agency downgrades Avista's credit rating for any reason. If Avista's credit rating drops below investment grade for Moody's or another nationally recognized credit rating agency, Avista will file a plan with the Commission detailing a range of options to maintain or to restore Avista's credit rating, or to explain actions consistent with Avista's customers' best interest. We believe it is appropriate to peg this notice provision to the concept of "investment grade." This is a well-established concept among rating agencies. It would be inappropriate to tie the notice requirement to a particular rating.

Q. Do the commitments in the Application allow Avista's target of 50% debt / 50% equity capital structure to change?[47]

A. Yes, the Revised Oregon Merger Commitments preserve the discretion of Avista's board and management to decide, subject to regulatory oversight, what Avista's rate-making capital structure should be. The Proposed Transaction simply preserves the *status quo*. As Avista's sole shareholder, Hydro One will benefit from Avista having a strong equity

[46] Muldoon, Commission Staff Ex. 200, pages 3 (line 21) - 4 (line 2).
[47] Muldoon, Commission Staff Ex. 200, page 4 (lines 6-9).

ratio. A number of factors, however, influence what capital structure is best for a particular utility at a particular point in time. These factors include, for example, the cost of debt and equity and the size of the utility's capital investment program. In any event, Avista will have an equity layer of at least 44%, and the Commission will receive notice if Avista's equity ratio falls below 46%. *See* Revised Oregon Merger Commitment No. 24.

Q. If Avista's target of 50% equity in the capital structure for rate-making purposes is reduced, will rates for Avista's customers increase?[48]

A. No, not necessarily. In any event, the Commission will retain its current regulatory jurisdiction over cost of capital, capital structure, and the many other factors that affect rates.

Q. Do the commitments require Hydro One and Avista to notify the Commission before Avista's equity ratio falls below 44%?[49]

A. Hydro One and Avista, in response to Mr. Muldoon's testimony, propose Revised Oregon Merger Commitment No. 24 to require Avista to provide quarterly projections of the common equity component of its capital structure to Staff if Avista's common equity is at or below 46%, on a preceding or projected 13-month average. Further, Revised Oregon Merger Commitment No. 35 requires notice to the Commission in the event that Avista's equity ratio falls below 46% before declaring a special dividend.

Q. Are Hydro One and Avista willing to notify the Commission if Avista's equity ratio starts to fall below its current level of 50%?[50]

A. We believe such a provision would serve no useful purpose.

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[48] Muldoon, Commission Staff Ex. 200, page 5 (lines 1-3).
[49] Muldoon, Commission Staff Ex. 200, pages 3 (line 21) - 4 (line 2).
[50] Muldoon, Commission Staff Ex. 200, pages 3 (line 21) - 4 (line 2).

Q. Please summarize Mr. Mullins' recommendations regarding dividend restrictions if the Proposed Transaction is approved.

A. Mr. Mullins recommends a dividend restriction if Avista's credit rating on senior secured debt falls below the current levels of A- from S&P and A2 from Moody's. In addition, Mr. Mullins recommends a dividend restriction if Avista's equity ratio falls below 48%.[51]

Q. Are these conditions necessary?

A. No, these dividend restrictions are neither necessary, helpful nor something with which Applicants agree. First, S&P has indicated that Avista's credit rating might be upgraded by one notch as a result of the acquisition. Therefore, there is no basis for Mr. Mullins' concern that the acquisition will result in the deterioration of Avista's credit profile. Second, management should be given the flexibility to responsibly manage the capital structure within reasonable limits. The equity ratio commitments proposed by Hydro One provide reasonable safeguards for customers, while allowing Hydro One and Avista to manage the capital structure based on the needs of the business. Mr. Mullins' proposed dividend restriction is unnecessary and would only create the potential for cash to be trapped in one entity unnecessarily rather than allowing management to prudently manage cash for the combined company. Given the other restrictions and reporting requirements in the Revised Oregon Merger Commitments on credit quality and capital structure, this further dividend restriction is unnecessary and should be rejected.

Q. Do you have other concerns with Mr. Mullins' proposed dividend restriction?

[51] Mullins, NWIGU Ex. 100, pages 19 (lines 12-24) - 20 (lines 1-10).

A. Yes. I am also concerned about how the credit rating agencies would view such a dividend restriction. For example, Moody's discusses the importance of not unreasonably restricting the free flow of cash between operating utility companies and their holding company, and the significant negative credit concerns that doing otherwise could create:

> By contrast, the debt of the HoldCo is typically serviced primarily by dividends that are up-streamed by the OpCos. Under normal circumstances, these dividends are made from net income, after payment of the OpCo's interest and preferred dividends. In most non-financial corporate sectors where cash often moves freely between the entities in a single issuer family, this distinction may have less of an impact. However, **in the regulated utility sector, barriers to movement of cash among companies in the corporate family can be much more restrictive, depending on the regulatory framework. These barriers can lead to significantly different probabilities of default** for HoldCos and OpCos.[52]

Q. Is it true that annual dividend growth rates for U.S. electric and gas utilities "are markedly lower than the dividend metrics that Hydro One targets in Ontario"?[53]

A. No. From 2012-2016, the average payout ratios for U.S. IOUs that were provided in response to Commission Staff DR 83(H1) were within a range of approximately 70-95%. Hydro One targets a dividend payout ratio of approximately 70% - 80% of net income, within this range.

Q. **Will Hydro One seek dividends from Avista that are the same as the dividend metrics that Hydro One targets in Ontario?[54]**

A. Hydro One has committed to maintaining Avista's capital structure as noted in

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[52] Moody's Investors Service, Rating Methodology: Regulated Electric and Gas Utilities, December 23, 2013, at 25.
[53] Muldoon, Commission Staff Ex. 200, pages 31 (lines 11-14) - 32 (lines 3-8).
[54] *Id*.

Revised Oregon Merger Commitment No. 24, and any future dividends will be in line with this capital structure.

Q. Does Hydro One expect the Avista dividends post-merger will largely parallel current quarterly dividends to Avista's current investors?[55]

A. Hydro One has committed to maintaining Avista's capital structure as noted in Revised Oregon Merger Commitment No. 24, and any future dividends will be in line with this capital structure.

Q. Will Avista be able to issue First Mortgage Bonds (FMB) post-merger?[56]

A. Yes, as described in the Rebuttal Testimony of Mark Thies, Avista Ex. 1100. Hydro One has not suggested that Avista's FMB program will not be maintained. In fact, Hydro One expects that Avista will continue to issue FMBs after the close of the transaction. Hydro One does not expect Avista to issue unsecured debt instead of FMBs.

Q. Would Avista ratepayers achieve a lower overall cost of financing by issuing green bonds as described in Commission Staff's testimony?[57]

A. Hydro One understands that investors are not willing to accept a lower rate of interest in green bonds as opposed to other types of bonds. Since the costs associated with obtaining and maintaining green bond certification are in addition to all other issuance costs, and the yields are no lower than conventional bonds, Hydro One would not expect a decrease in overall cost of financing for Avista ratepayers by issuing green bonds.

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[55] Muldoon, Commission Staff Ex. 200, page 50 (lines 8-12).
[56] Muldoon, Commission Staff Ex. 200, pages 35 (lines 9-22) - 36 (lines 1-7).
[57] Muldoon, Commission Staff Ex. 200, pages 20 (lines 15-19) - 22 (lines 1-12).

X. ALLOCATION OF COSTS BETWEEN HYDRO ONE AND AVISTA

Q. Could Hydro One recover its stranded costs through Avista's ratepayers?[58]

A. Nothing about this transaction changes the Commission's regulatory authority over Avista and Avista's rates; only costs approved by the Commission can be recovered through Avista customer rates. Moreover, the Applicants have expressly committed not to seek rate recovery of transaction costs (Revised Oregon Merger Commitment No. 16); to comply with all affiliated interest and other applicable laws (Revised Oregon Merger Commitment No. 18); to implement a robust and transparent cost allocation process (Revised Oregon Merger Commitment No. 22); and to hold Avista's customers harmless from the business activities of Hydro One and its other affiliates (Revised Oregon Merger Commitment No. 44).

The rate regulation by the Ontario Energy Board ("OEB") of Hydro One's primary distribution and transmission utility in Ontario, Hydro One Networks Inc., does not somehow put Avista's ratepayers at risk of recovery of Hydro One's costs. If anything, the OEB reinforces the Applicants' cost allocation commitments by providing regulatory oversight of Hydro One's Ontario utility operations, just as the Commission provides regulatory oversight of Avista's Oregon operations.

Q. Is there a risk that the Province of Ontario may "see Hydro One as the Province's resource, to draw upon as necessary"?[59]

A. No. As more fully described in the testimony of Hydro One witness Mayo Schmidt (Exhibit 800), the Governance Agreement between Hydro One and the Province of

[58] Muldoon, Commission Staff Ex. 200, page 49 (lines 7-8).
[59] Muldoon, Commission Staff Ex. 200, page 49 (lines 10-18).

Ontario precludes any such treatment. It makes clear that the role of the Province is that of an investor only. Hydro One's Board and management oversee Hydro One; the Province does not.

Q. Is there any risk that the Province or OEB could try to recover the costs of a Crown Corporation like Ontario Power Generation through the rates of Avista's ratepayers?[60]

A. No. OEB will not regulate Avista and will have no jurisdiction over Avista's rates or operations. Avista will continue to be regulated by the Commission. Avista will not be able to pass through costs in rates or extract financial resources from ratepayers absent Commission approval in a GRC. Further, Avista will have to comply with the cost allocation restrictions set forth in Revised Oregon Merger Commitment Nos. 16, 18, 22, 44.

Q. Will Hydro One's move from cost-based to performance-based rates in Ontario impact Avista?[61]

A. No. The transition to performance-based rates in Ontario will have no impact on Avista. Avista will continue to operate as a stand-alone utility subject to the Commission's jurisdiction and regulation, and the performance-based rates in Ontario will not contribute to any increased risks to Hydro One's operation of the utility or cost recovery from ratepayers in Ontario. It is also important to keep in mind that rates at one entity cannot influence the rates of another, and rates are set by each jurisdiction's regulators based on the merits of the service and operating requirements laid out in individual rate filings by the respective utilities at the applicable regulatory entity. Further, any performance-based rates are intended to drive increases in efficiency and/or to result in reductions in cost over

[60] Muldoon, Commission Staff Ex. 200, page 49 (lines 10-18).
[61] Muldoon, Commission Staff Ex. 100, page 5 (lines 15-16).

time. Actions taken and outcomes achieved will be shared with the management of Avista to ensure they have the opportunity to implement for Avista ratepayers where it makes sense to do so.

XI. RATE CREDITS

Q. Have you reviewed the intervening parties' testimony related to the Rate Credits offered by the Applicants?

A. Yes. The proposed Rate Credits were briefly addressed by NWIGU witness Brad Mullins, CUB witnesses Bob Jenks and William Gehrke, and Commission Staff witnesses Matt Muldoon and Rose Anderson.

Q. What is the main criticism leveled by the parties regarding the proposed Rate Credits?

A. The testimony directly addressing the proposed Rate Credits is minimal, but all parties generally complain that the Rate Credits included in the Application are too small.

Q. Do any of the parties quantify what would be an appropriate level of Rate Credits?

A. No. The parties discuss the Rate Credits in the context of Oregon's 'net benefit' standard, claiming that the credits are not sufficient to outweigh the risks they perceive in the transaction. Staff states the credit is "extremely small considering the risks and costs to customers associated with the merger identified [by] Staff."[62] CUB argues, "This rate credit does[n't] (sic) add up too (sic) much of a benefit for Avista customers in Oregon, especially when compared to risks described above."[63] And NWIGU claims, "The minimal rate credits to Oregon customers do not provide enough benefit to overcome the significant

[62] Anderson, Commission Staff Ex. 500, page 15 (lines 10-12).
[63] Jenks-Gehrke, CUB Ex. 100, page 29 (lines 6-7).

risk associated with this transaction."[64] While the parties each claim the benefits are not sufficient, none quantifies what Rate Credits would need to be provided by Hydro One and Avista in order to meet Oregon's net benefit standard.

Q. Has Hydro One addressed in its rebuttal testimony the perceived risks identified by the various parties?

A. Yes. Hydro One witness Mayo Schmidt and I have addressed in our rebuttal testimony the issues raised by the parties in their reply to our Application.[65] To that end, Hydro One and Avista have also submitted a revised set of merger commitments accompanying our rebuttal testimony. These revised commitments clarify that, under the Proposed Transaction, Avista will retain control over its operations through a governance structure that preserves the authority and independence of Avista's board and management and will respond to various issues that were raised by the Commission Staff and intervenors during the pre-filed testimony. As part of the Revised Oregon Merger Commitments, Hydro One and Avista have also substantially increased the amount of Rate Credits and other quantifiable benefits that would flow to Avista's customers in Oregon.

Q. Do you believe that the proposed Rate Credits are unreasonably small?

A. No. I believe the Rate Credits included in the Application were reasonable based on the Proposed Transaction. Initially, Hydro One and Avista offered to provide Avista's customers in Washington, Idaho, and Oregon a total of $31.5 million over a period of 10 years. Oregon customers would have received a share of the Rate Credits based on the allocation factors used to allocate common costs among Avista's service lines and

[64] Mullins, NWIGU Ex. 100, page 16 (lines 23-24).
[65] Schmidt, Application Ex. 200, pages 23 (lines 14-23) - 33; *see also*, Lopez, Application Ex. 440, page 6 (lines 9-18) and pages 15 - 21 (lines 1-14).

jurisdictions, resulting in a total credit to Oregon customers of approximately $2.9 million over 10 years.

In our rebuttal filing, we have increased the proposed Rate Credits to $50.9 million for customers in Oregon, Washington, and Idaho and have accelerated the payment of the credits to take place over 5 years. Oregon customers will now receive a total of $4.4 million over 5 years, determined by applying 5% to the annual base revenue in Oregon. I believe that Hydro One and Avista have responded to the concerns raised by parties in their reply testimony, and that the Revised Oregon Merger Commitments, increased Rate Credits, and other customer benefits provided in the commitments meet the net benefit standard in Oregon.

Q. How did Hydro One and Avista determine the level of Rate Credits proposed in their initial Application?

A. Hydro One and Avista considered a recent investor-owned utility merger in the Pacific Northwest, which involved Puget Sound Energy ("PSE") in Washington, and we structured our proposed Rate Credits in a similar fashion. As part of a settlement agreement approved by the Washington Utilities and Transportation Commission ("WUTC") in Docket No. U-072375, PSE agreed to provide a substantial benefit to its customers through the adoption of $100 million in Rate Credits over a period of 10 years.[66] Hydro One and Avista understood that it was important to demonstrate our commitment to providing net benefits to Avista's customers at the outset of this proceeding. Using the PSE Rate Credit as a baseline,

[66] At the time of the PSE transaction, the Washington statute required that a change in the controlling interest of a regulated utility met a 'no harm' standard. Since then, the applicable Washington statute has been altered to a 'net benefit' standard, similar to Oregon. Nonetheless, in its order approving the PSE transaction (WUTC Docket U-072375, Order 08), the WUTC recognized that the PSE rate credits provided affirmative benefits to Washington customers through the adoption of rate credits and other measures. Accordingly, the WUTC concluded that the PSE "transaction not only does no harm, it offers affirmative benefits to ratepayers and to the region." Order 08 at ¶ 32.

we offered to provide an equivalent Rate Credit for Avista's customers. While we used the PSE transaction as a comparison when considering customer rate credits, we also recognize that the circumstances of each utility at the time of a transaction such as this are unique, and the transaction with Avista should be evaluated on its own merits.

Q. What do you mean that the $31.5 million Rate Credit for Avista's customers is equivalent to the PSE credit of $100 million?

A. Rate Credits of $31.5 million for Avista's customers in Oregon, Washington, and Idaho are equivalent to the credits provided to PSE customers considering the relative size of each company. The total PSE Rate Credits of $100 million represented approximately 3.1% of PSE's annual revenue requirement in 2008. Applying the same 3.1% to Avista's combined retail revenue requirement for 2016 in its Oregon, Washington, and Idaho jurisdictions yields a total Rate Credit of approximately $31.5 million. The PSE Rate Credits also included a portion that was offsetable to the extent PSE demonstrated in a subsequent rate case that the underlying cost savings were reflected in customers' rates. We structured our proposal in a similar manner, with a portion of the Rate Credits offsetable to the extent identifiable cost savings are included in customers' rates. The PSE transaction provides a reasonable benchmark for the acquisition of Avista because it is a recent example of an electric and natural gas utility acquisition in a similar geographic region and a similar regulatory environment.

Q. Why did Hydro One and Avista calculate the Rate Credits as a percent of revenue requirement?

A. Expressing the Rate Credits as a percent of revenue requirement creates a common basis for comparison between utilities of different sizes. Simply comparing the total

dollars credited, or even dollars-per-customer credited, does not accurately convey the relative value of the credits between one company and another. Comparing the Rate Credits to revenue requirements is also a way of quantifying the value to cost of service customers who pay rates for services based on a revenue requirement determination. The value of a rate credit to customers is in relation to the cost that customer pays for the service received. Commission Staff criticizes the Rate Credits proposed in the Application as being very small on a per-customer basis, but when compared with other transactions on a percent of revenue requirement basis, they are not out of line.

Q. Staff witness Ms. Anderson references past utility acquisitions considered in Oregon, and she states that "on a percent of operating revenue basis, the rate credit currently offered by Hydro One is one of the smallest this Commission has seen."[67] Do you agree that Ms. Anderson's comparisons undermine the Rate Credits proposed by Hydro One?

A. No. Ms. Anderson cites three acquisitions of electric utilities proposed in Oregon: the 1997 merger of Portland General Electric ("PGE") and Enron, the 2004 application of Oregon Electric Utility Company ("OEUC/TPG") to acquire PGE, and the 2005 merger of PacifiCorp and MidAmerican Energy Holdings Company ("MEHC/BHE"). Ms. Anderson's testimony discussed the total dollar amounts of rate credits offered in these transactions, but she did not actually compare the credits on a percent of operating revenue basis. To remain consistent with comparisons in my testimony, I have calculated the credits referenced by Ms. Anderson on a percent of revenue requirement basis for each company in Table 1 below. For further comparison, Table 1 also includes the rate credits approved in the

[67] Anderson, Commission Staff Ex. 500, page 15 (lines 1-3).

PSE transaction and two additional cases involving Oregon natural gas utilities.

Table 1: Rate Credit Comparison – PSE and Oregon Transactions

Target	Acquiring Entity	Year/Status	Jurisdiction	Total Rate Credits ($ millions)	% of Revenue Requirement	Electric	Gas
Puget Sound Energy	Macquarie	2009/Complete	WA	$100.0	3.1%	x	x
Portland General Electric	Enron	1997/Complete	OR	$105.0	14.1%	x	
Portland General Electric	OEUC/TPG	2005/Rejected	OR	$43.0	3.4%	x	
PacifiCorp	MEHC/BHE	2006/Complete	CA, ID, OR, UT, WA, WY	$142.6	5.3%	x	
Cascade Natural Gas	MDU Resources	2007/Complete	OR, WA	$3.6	0.8%		x
NW Natural	Holdco Reorg	2017/Complete	OR	$1.7	0.3%		x
Average % Revenue Requirement (Excluding PSE)					4.8%		

Table 1 shows that the rate credits offered in the five Oregon transactions averaged approximately 4.8% of the target utility's revenue requirement prior to the transaction. Notably, the acquisition of PGE by Enron in 1997 included rate credits that were significantly higher than the average. A review of the language describing this rate credit in the Stipulation approved by the Commission highlights the unique nature of that transaction and the circumstances at the time (emphasis added):

> 20.
> A. Payment
> Enron and PGE are obligated to provide PGE's customers $105 million upon merger completion, which *represents full payment for any entitlement PGE's customers may have to value that relates to*:
> 1) use of PGE's name, reputation, business relationships, expertise, goodwill or other intangibles;
> 2) *wholesale and non-franchise retail activities that PGE has undertaken that will not take place within PGE after the merger* (this includes but is not limited to PGE's discontinued term wholesale trading and risk management activities), *and wholesale and non-franchise retail activities that PGE might have undertaken had the merger with Enron not occurred*; and,
> 3) added value of the merged entity that is achievable because of the combination or because of the association with PGE.
> *This payment obligation also shall constitute full payment to PGE's customers for any entitlement to the revenues, value or other benefits arising from the business activities of the merged entity, other than the regulated business activities conducted by PGE*. The term "regulated business activities" shall mean the assets and services of PGE which are

subject to economic regulation under Oregon or federal law.[68]

The arrangement agreed to by Enron, and approved by the Commission in 1997, clearly dealt with circumstances and business operations that were very different from the Proposed Transaction between Hydro One and Avista. In the Application, Hydro One has committed to allow Avista to continue to operate as a stand-alone business and to continue serving its Oregon customers in the same manner as, or better than, prior to the transaction. Removing the PGE/Enron merger from the calculation in Table 1 reduces the average rate credits proposed in Oregon to an approximately 2.5% revenue requirement.

Table 2: Rate Credit Comparison – PSE and Oregon Transactions Excluding PGE/Enron

Target	Acquiring Entity	Year/Status	Jurisdiction	Total Rate Credits ($ millions)	% of Revenue Requirement	Electric	Gas
Puget Sound Energy	Macquarie	2009/Complete	WA	$100.0	3.1%	x	x
Portland General Electric	OEUC/TPG	2005/Rejected	OR	$43.0	3.4%	x	
PacifiCorp	MEHC/BHE	2006/Complete	CA, ID, OR, UT, WA, WY	$142.6	5.3%	x	
Cascade Natural Gas	MDU Resources	2007/Complete	OR, WA	$3.6	0.8%		x
NW Natural	Holdco Reorg	2017/Complete	OR	$1.7	0.3%		x
Average % Revenue Requirement (Excluding PSE)					2.5%		

Q. Are there other recent transactions that demonstrate the proposed Rate Credits in this case are reasonable?

A. Yes. Hydro One reviewed nation-wide acquisitions of regulated electric and natural gas utilities that were completed from January 2016 to March 2018, or that are currently pending regulatory approval. Because circumstances and regulatory approval requirements vary by transaction and jurisdiction, not all acquisitions require a showing of net benefits or include customer rate credits; transactions that included quantified rate credits for customers are included in Table 3. The rate credits are expressed in terms of total dollars and

[68] Docket UM 814, Order No. 97-196, Appendix A, Page 6.

as a percent of revenue requirement for comparison purposes. Table 3 shows that, when included, customer rate credits averaged 3.7% of the target company's revenue requirement.

Table 3: National Utility Acquisitions with Quantified Customer Rate Credits

Target	Acquiring Entity	Year/Status	Jurisdiction	Total Rate Credits ($ millions)	% of Revenue Requirement	Electric	Gas
Piedmont Natural Gas	Duke Energy	2016/Complete	NC, SC, TN	$10.0	1.0%		x
TECO/New Mexico Gas Company	Emera US, Inc.	2016/Complete	NM	$2.0	0.7%		x
Cleco	Macquarie	2016/Complete	LA	$136.0	16.7%	x	
SourceGas	Black Hills Utility Holdings	2016/ Complete	AR, CO, NE, WY	$2.3	0.6%		x
Pepco Holdings	Exelon Corporation	2016/Complete	DC, DE, MD, NJ	$246.3	6.0%	x	x
AGL Resources Inc.	Southern Company	2016/ Complete	FL, GA, IL, MD, NJ, TN, VA	$17.7	1.0%		x
A.O.G. Corporation	Summit Utilities	2017/Complete	AR, OK	$0.2	0.5%		x
WGL Holdings	Altagas	2017/Pending	DC, MD, VA	$38.0	4.7%	x	
Westar	Great Plains	2017/Pending	KS, MO	$50.0	2.4%	x	
Average % Revenue Requirement					3.7%		

Q. Ms. Anderson also referenced the proposed merger between Dominion Energy and SCANA Corporation, and claims Dominion is "offering $1,000 cash per ratepayer along with a five percent rate reduction in its proposed bid."[69] Is Ms. Anderson's statement an apt comparison to Hydro One's acquisition of Avista?

A. No. Dominion's proposed acquisition of SCANA is unique in that it is closely intertwined with issues of cost recovery for a failed nuclear generation plant development in South Carolina. Rates for electric customers of South Carolina Electric & Gas ("SCE&G"), a subsidiary of SCANA Corporation, already include some of the costs related to construction of two new units at the V.C. Summer Nuclear Generating Station. In July 2017, however, SCE&G decided to halt construction. Dominion's proposed acquisition of SCANA includes several interrelated commitments to provide rate credits to electric customers and to write down investment in the plant, but the commitments are accompanied by a request for commission approval of cost recovery for $3.3 billion related to the failed units. Dominion also commits to reduce current rates by 5% in order to "refund[] certain amounts previously

[69] Anderson, Commission Staff Ex. 500, page 15 (lines 3-6).

collected under the [failed nuclear project] which is designed to provide [a] 3.5% retail electric bill decrease" and "reduce electric bills further to reflect the impact of federal tax reform passed in December 2017, which is estimated to lower bills an additional [1.5%], resulting in a total estimated bill reduction of approximately 5%."[70],[71] Because of these unique circumstances, I have not included the proposed Dominion/SCANA merger as a comparable transaction in Table 3.

Q. Are there recent examples of other Canadian entities acquiring U.S. utilities that include customer rate credits?

A. Yes. Table 3 includes one transaction, the acquisition of TECO/New Mexico Gas Company by Emera US, Inc. in 2016.[72] In that transaction, Emera agreed to provide an incremental $2.0 million of rate credits, approximately 0.7% of revenue requirement, to New Mexico Gas Company customers.[73]

In 2014, Fortis Inc. acquired UNS Energy and agreed to provide $30 million in

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[70] In Re: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc., for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., as may be required, and for a prudency determination regarding the abandonment of the V.C. Summer Units 2 & 3 Project and associated customer benefits and cost recovery plan, Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc., Docket No. 2017-370-E (January 12, 2018).

[71] Avista filed an application for deferred accounting treatment in Docket UM 1918 to capture the benefits of the 2017 federal tax reform for later inclusion in customers' rates. See also Docket UM 1923.

[72] This transaction also included acquisition of Tampa Electric (TECO), but approval was not required from the Florida commission and no rate credits were given to TECO customers. The rate credits and revenue requirement in Table 3 is for New Mexico Gas Company only.

[73] Order of the New Mexico Public Regulation Commission, dated June 8, 2016, In the Matter of the Application of New Mexico Gas Company, Inc., TECO Energy, Inc., Emera Inc., Emera US Holdings, Inc., and Emera US Inc. for Approval of the Merger of Emera US, Inc. with TECO Energy Inc. and Emera US Holdings Inc.'s Acquisition of TECO Energy, Inc., and for all Other Approvals and Authorizations Required to Consummate and Implement the Acquisition, Certification of Stipulation (Case No. 15-00327-UT).

customer rate credits, approximately 2.8% of revenue requirement.[74] In 2016 Fortis Inc. also purchased ITC Holdings Corp., an electric transmission company based in Michigan. In that case, Fortis Inc. was not required to provide customer rate credits, but one state included a commitment to ensure merger savings would flow through to customers in future general rate cases.[75] Likewise, savings achieved at Avista due to the acquisition by Hydro One will flow through to Avista's customers through future general rate cases.

Another transaction, the acquisition of Empire District Electric Co. by Liberty Utilities Co. (Algonquin Power & Utilities Corp) in 2016, did not include customer rate credits, but did include agreements to withdraw a pending rate case and to increase charitable funding. Although the Proposed Transaction between Avista and Hydro One includes both rate credits and charitable funding, the charitable funding commitments, which are substantial, are excluded from my analysis of rate credit commitments.

Q. How do the revised Rate Credits included in Hydro One and Avista's rebuttal testimony compare to the regional and national transactions you've identified?

A. The revised Rate Credits of $50.9 million on a system basis equate to approximately 5% of Avista's revenue requirement. The updated Rate Credits are higher than the average rate credits included in national transactions and higher than those in past Pacific Northwest transactions, even when the Enron/PGE transaction is included in the average.

Q. Are Oregon gas customers being treated unfairly by the allocation of the Rate Credits among Avista's service lines and jurisdictions?

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[74] Opinion and Order of the Arizona Corporation Commission, dated August 12, 2014, In the Matter of the Reorganization of UNS Energy Corporation. Decision No. 74689.

[75] Order of the State of Illinois Commerce Commission, dated August 24, 2016, Fortis Inc. and ITC Midwest, LLC, Application pursuant to Section 7-204 of the Public Utilities Act for authority to engage in a Reorganization, and for such other approvals as may be required under the Public Utilities Act to effectuate the Reorganization (Docket 16-0135) .

A. No. Hydro One and Avista propose to set the level of Rate Credits for each service and jurisdiction at 5% of base revenue using tariffs effective February 1, 2018. As a result, Oregon gas customers would receive a total rate credit of $4.4 million, increased from $2.9 million in the initial Application, spread over 5 years. Details of this calculation are provided in Mr. Ehrbar's rebuttal testimony.

XII. RATE CREDIT AND NET BENEFITS

Q. Does Hydro One believe that the rate credit proposed in the Application provides a net benefit to Avista's Oregon customers?[76]

A. Yes. But in order to be responsive to intervener criticisms, Hydro One proposes to increase the rate credit and pay it out more quickly. As set forth in Revised Oregon Merger Commitment No. 17, the Oregon annual rate credit will be $884,630 per year with offsetable credits of $147,585 per year. The credits will total $4.4 million with offsetable credits totaling $737,925.

Q. Why are Hydro One and Avista at this stage of the transaction unable to quantify and to specify the benefits that will derive from economies of scale, sharing of best practices, a shared technological platform, and improved purchasing power?[77]

A. Hydro One and Avista are restricted in their evaluation of further potential savings until after the merger closes. Antitrust laws continue to apply in full force during all phases of the premerger process, from consideration of a transaction all the way through the final phases of regulatory approval. Transacting parties must remain independent and

[76] Anderson, Commission Staff Ex. 500, page 3 (lines 16-21); *see also*, Anderson, Commission Staff Ex. 500, page 12 (lines 12-17).
[77] Muldoon, Commission Staff Ex. 100, pages 31 (line 10) - 32 (line 5); *see also*, Muldoon, Commission Staff Ex. 200, page 35 (lines 3-8); Gardner, Commission Staff Ex. 300, page 12 (lines 6-16); Anderson, Commission Staff Ex. 500, pages 16 (line 16) - 17 (lines 1-16)).

continue to treat each other as competitors prior to closing. The U.S. antitrust laws also prevent a proposed acquirer, such as Hydro One, from exercising control over the target company, in this case Avista, prior to the closing of the transaction, so Hydro One cannot make decisions on behalf of Avista, whether related to synergies or other items. In addition, those laws also restrict either company from providing to each other commercially sensitive information during this interim period prior to closing that could raise competitive or market concerns, so there are certain limitations on Hydro One's and Avista's ability to share certain information, even if that information could be useful to estimate potential synergies going forward. In fact, the information that is needed to identify potential synergies with granularity is usually precisely the type of highly sensitive information that, if shared, can raise a concern under the antitrust laws.

As such, Hydro One and Avista can only identify opportunities at a level that does not risk disclosing anti-competitive material. Hydro One's and Avista's decision to assure the parties are in compliance with the antitrust laws should not be considered the result of a 'lack of attention' on either company's part. Further, while it is entirely reasonable to expect synergies will be achieved in areas such as IT and supply chain, Revised Oregon Merger Commitment Nos. 16 and 17 guarantee that Avista's ratepayers will see benefits akin to them even if they are not.

XIII. TREATMENT OF AVISTA'S PENSION AND POST-RETIREMENT MEDICAL FUNDS

Q. Are Hydro One and Avista willing to memorialize in a commitment that Hydro One could not access and draw upon Avista's pension and post-retirement medical funds?[78]

A. Hydro One will comply with all applicable laws. As a for-profit Washington Corporation, Avista's pension and post-retirement welfare plans are subject to ERISA. Any assets in trusts that fund pension benefits could only be accessed directly by Avista if Avista were to terminate the pension plan and only then if the plan was overfunded. These assets could not be accessed directly by Hydro One. Any assets in a post-retirement welfare plan cannot be accessed by Avista or Hydro One. The tax rules prohibit any reversion to the employer even on termination.

Further, Revised Oregon Merger Commitment 36 provides:

> 36. **Pension Funding:** Avista will maintain its pension funding policy in accordance with sound actuarial practice~~,~~ and applicable legal requirements. Hydro One will not seek to change Avista's pension funding policy.

Q. Does this conclude your rebuttal testimony?

A. Yes it does.

[78] Muldoon, Commission Staff Ex. 200, page 34 (lines 5-15).

HYDRO ONE/901
Lopez

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

CHRISTOPHER F. LOPEZ
Exhibit No. 901

S&P Global Ratings, Avista Corp. Outlook Revised To Positive From Stable On Planned Acquisition by Hydro One Ltd.

S&P Global
Ratings

RatingsDirect®

Research Update:

Avista Corp. Outlook Revised To Positive From Stable On Planned Acquisition By Hydro One Ltd.

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Research Update:

Avista Corp. Outlook Revised To Positive From Stable On Planned Acquisition By Hydro One Ltd.

Overview

- Toronto, Ontario-based utility Hydro One Ltd. (HOL) has entered into an agreement to acquire U.S.-based Avista Corp. (Avista) for C$6.7 billion in an all-cash transaction.
- We are affirming our ratings on Avista, including the 'BBB' issuer credit rating, and revising the outlook to positive from stable.
- The positive outlook reflects the potential for higher ratings on Avista if the acquisition is completed as proposed.

Rating Action

On July 19, 2017, S&P Global Ratings affirmed its ratings, including the 'BBB' issuer credit rating, on Avista Corp. and revised the outlook to positive from stable.

Rationale

The outlook revision on Avista reflects the potential for higher ratings upon the completion of the acquisition by Hydro One Ltd. (HOL). Post-acquisition, we will view Avista as a highly strategic subsidiary of HOL. Our assessment is based on our view that Avista will be an important member of the HOL group, highly unlikely to be sold, and integral to overall group strategy and operations. Avista will be a significant cash flow contributor to the group, making up about 22% of consolidated EBITDA. We would also see a strong, long-term commitment of support from HOL senior management in almost all circumstances.

Avista's highly strategic group status would result in an issuer credit rating one notch below the rating on HOL.

Our assessment of Avista's business risk reflects the strength and contribution of its regulated electric and gas utility operations. Avista conducts vertically integrated electric and natural gas distribution utility operations in Washington and Idaho, electric operations in Alaska, and gas distribution in Oregon. The company serves a total of about 700,000 customers.

Our financial risk profile assessment on Avista is based on financial ratio benchmarks that are more relaxed compared with those used for typical corporate issuers. This reflects the mostly steady cash flow from its regulated utility operations. Our base-case scenario projects adjusted funds

from operations (FFO) to debt of roughly 16%-18% over the next two years.

Liquidity

We assess Avista's liquidity as adequate because in our view its sources are likely to cover uses by more than 1.1x over the next 12 months and to meet cash outflows, even in the event of a 10% decline in EBITDA. The assessment also reflects the company's generally prudent risk management, sound relationships with banks, and a generally satisfactory standing in credit markets.

Principal liquidity sources:

- Cash FFO of about $355 million; and
- Revolving credit facility availability of $400 million.

Principal liquidity uses:

- Debt maturities, including outstanding commercial paper, of about $110 million;
- Capital spending of about $410 million; and
- Dividends of about $95 million.

Outlook

The positive outlook reflects the potential for higher ratings on Avista if HOL completes its acquisition as proposed. Upon close of the transaction, we will consider Avista as a highly strategic subsidiary of HOL, resulting in an issuer credit rating on Avista that is one notch below our rating on HOL.

Downside scenario

We do not envision a lower rating on Avista, but we would revise the outlook to stable if the transaction fails to close or is completed in a manner that results in more than a one-notch downgrade of HOL.

Prior to the completion of the acquisition, we could lower the rating on Avista if its business risk weakens materially or credit measures diminish such that FFO to debt is consistently below 15%. This could occur due to increased use of leverage to cover funding shortfalls or adverse regulatory decisions leading to increased regulatory lag or a large deferral of costs.

Upside scenario

We could raise our ratings on Avista by one notch following the acquisition if our issuer credit rating on HOL is 'A-'. Once HOL owns Avista, we will base our issuer credit rating on Avista on the group's credit profile, which would typically be one notch lower.

We do not contemplate an upgrade on Avista before the acquisition is completed given the company's current business mix, regulatory risk, and financial measures in our base-case scenario.

Recovery Analysis/Issue Ratings

- Avista's first-mortgage bonds benefit from a first-priority lien on substantially all of the utility's real property owned or subsequently acquired. Collateral coverage of more than 1.5x supports a recovery rating of '1+' and an issue rating two notches above the issuer credit rating.
- We rate the preferred stock issued by Avista Capital II two notches below the issuer credit rating on Avista Corp. to reflect the discretionary nature of the dividend and the deeply subordinated claim if a bankruptcy occurs.
- The short-term rating on Avista Corp. is 'A-2' based on our 'BBB' issuer credit rating on the company.

Ratings Score Snapshot

Corporate Credit Rating: BBB/Positive/A-2

Business risk: Strong
- Country risk: Very low
- Industry risk: Very low
- Competitive position: Satisfactory

Financial risk: Significant
- Cash flow/Leverage: Significant

Anchor: bbb

Modifiers
- Diversification/Portfolio effect: Neutral (no impact)
- Capital structure: Neutral (no impact)
- Financial policy: Neutral (no impact)
- Liquidity: Adequate (no impact)
- Management and governance: Satisfactory (no impact)
- Comparable rating analysis: Neutral (no impact)

Stand-alone credit profile: bbb
- Group credit profile: bbb

Related Criteria

- General Criteria: Methodology For Linking Long-Term And Short-Term Ratings , April 7, 2017
- Criteria - Corporates - General: Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- Criteria - Corporates - General: Corporate Methodology: Ratios And Adjustments, Nov. 19, 2013

- Criteria - Corporates - General: Corporate Methodology, Nov. 19, 2013
- Criteria - Corporates - Utilities: Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- General Criteria: Group Rating Methodology, Nov. 19, 2013
- General Criteria: Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- General Criteria: Methodology: Industry Risk, Nov. 19, 2013
- Criteria - Corporates - Utilities: Collateral Coverage And Issue Notching Rules For '1+' And '1' Recovery Ratings On Senior Bonds Secured By Utility Real Property, Feb. 14, 2013
- General Criteria: Methodology: Management And Governance Credit Factors For Corporate Entities And Insurers, Nov. 13, 2012
- General Criteria: Use Of CreditWatch And Outlooks, Sept. 14, 2009
- Criteria - Insurance - General: Hybrid Capital Handbook: September 2008 Edition, Sept. 15, 2008
- Criteria - Corporates - General: 2008 Corporate Criteria: Rating Each Issue, April 15, 2008

Ratings List

Ratings Affirmed; Outlook Action

	To	From
Avista Corp.		
Corporate Credit Rating	BBB/Positive/A-2	BBB/Stable/A-2

Ratings Affirmed

Avista Corp.	
Senior Secured	A-
Recovery Rating	1+
Avista Capital II	
Preferred Stock	BB+

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at www.standardandpoors.com for further information. Complete ratings information is available to subscribers of RatingsDirect at www.globalcreditportal.com and at www.spcapitaliq.com. All ratings affected by this rating action can be found on the S&P Global Ratings' public website at www.standardandpoors.com. Use the Ratings search box located in the left column.

S&P Global
Ratings

RatingsDirect®

Summary:

Avista Corp.

Primary Credit Analyst:
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Secondary Contact:
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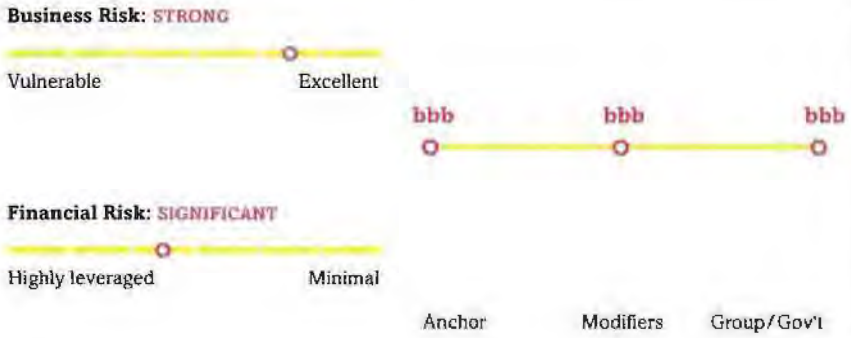

CORPORATE CREDIT RATING

BBB/Stable/A-2

Rationale

Business Risk: Strong	Financial Risk: Significant
• Regulated, vertically integrated electric and natural gas distribution utility. • Non-utility operations are minimal (less than 5% of consolidated EBITDA). • Geographic and operational diversity with large Washington focus. • Fuel supply mix tilted toward hydroelectric power, followed by natural gas. • Regulatory mechanisms provide cash flow stability when Avista purchases power during low-water periods, but do not allow recovery of capital investments between rate cases.	• Capital spending of $400 million - $420 million annually. • Negative discretionary cash flow. • Funding of capital expenditures through a healthy combination of external funding and equity issuance. • Adequate liquidity position provides a cushion due to Avista's reliance on hydroelectric power.

Outlook: Stable

S&P Global Ratings' stable outlook on Avista Corp. reflects our expectation that over the next two years the company will make efforts to better manage its regulatory risk, fund capital spending in a manner that does not meaningfully increase leverage, preserve adequate liquidity, and maintain comparable financial performance. Under our base-case scenario we expect funds from operations (FFO) to total debt to average around 17%.

Downside scenario

We could lower the rating if business risk rises materially or credit measures diminish such that FFO to debt would be consistently below 15%. This could occur due to increased use of leverage to cover funding shortfalls or adverse regulatory decisions leading to increased regulatory lag or a large deferral.

Upside scenario

We do not contemplate an upgrade in the next two years given the company's current business mix, regulatory risk and financial position. Credit quality could strengthen if cash flow measures considerably improve, specifically FFO to debt of more than 20% on a consistent basis. The company could accomplish this by paying down debt with higher internally generated cash flow, increased equity issuances, asset dispositions or by boosting FFO without adding debt.

Our Base-Case Scenario

Assumptions

- Effective management of regulatory risk especially in Washington where Avista was denied a rate increase.
- Capital spending of $400 million - $420 million annually.
- Dividends of roughly $100 million annually.
- Regular recovery of electric and gas rates in Washington, through surcharges and approval of base rate reset, respectively.
- Average operation and maintenance expenses consistent with historical levels.

Key Metrics

	2016A	2017E	2018E
FFO/total debt (%)	21	16.5-18	15.6-18
Debt/EBITDA (x)	4.3	4.1-4.6	4-4.5
OCF/total debt (%)	16.9	15-16	16-17.5

S&P Global Ratings' adjusted figures. A--Actual. E--Estimate. FFO--Funds from operations. OCF--Operating cash flow.

Business Risk: Strong

Avista's low business risk profile reflects the strength and contribution of its regulated electric and gas utility operations. Avista conducts vertically integrated electric and natural gas distribution utility operations in Washington and Idaho, electric operations in Alaska, and gas distribution in Oregon. Although the company operates in four states,

Washington and Idaho are the key revenue drivers, with Oregon and Alaska contributing less than 10% of revenues on a combined basis. The customer base of roughly 700,000 electric and gas customers has no meaningful industrial concentration and demonstrates average growth prospects. The company has material exposure to hydro-electric power (roughly 35% - 40% of fuel supply mix), followed by gas-fired generation, both of which help to keep electricity prices competitive compared with the national average but dependence on hydro power introduces fuel replacement risk in low water years. Recovery mechanisms are important to maintain operating cash flow after purchasing power for customers when hydroelectric generation is lower than expected.

The company has an earnings mechanism in Washington subject to minimum thresholds and a deferral band which helps it recover excess power costs while absorbing a portion of the difference. The company also has a power cost adjustment in Idaho, which allows 90% of energy cost differences to be deferred for future recovery. Purchased gas mechanisms for gas distribution units in all three gas jurisdictions, along with hedging, mitigate gas price risk. These regulatory mechanisms help avert large cost-adjustment requests and support the business risk profile. Decoupling mechanisms smooth out operating cash flow in all jurisdictions except Alaska.

Financial Risk: Significant

We assess Avista's financial risk profile as significant using financial ratio benchmarks that are more relaxed compared with those used for typical corporate issuers, given the mostly steady cash flow from regulated utility operations. Our base case indicates that capital spending, along with dividend payments, will lead to negative discretionary cash flow over the next few years, necessitating a reliance on external funding to pay for capital expenditures and dividends. Our base-case scenario suggests lower financial measures over the next two years, including funds from operations (FFO) to debt of roughly 16% - 18%, reflecting a rate increase denial in Washington earlier this year. The financial measures, although lower than full year 2016 results, remain in the middle range of our significant financial risk profile for 2017 and 2018. Importantly, our forecasts indicate the company will need to get timely base rate recoveries to keep financial measures from slipping to the lower end of the financial profile (which may happen if they do not get the rate increases recently requested as part of general rate cases in Washington and Idaho). Our base case indicates an expected supplemental ratio of operating cash flow to debt of about 15% to about 17%, supporting the significant financial risk profile assessment.

Liquidity: Adequate

Avista has an adequate liquidity assessment because in our view its sources are likely to cover uses by more than 1.1x over the next 12 months and to meet cash outflows, even in the event of a 10% decline in EBITDA. The adequate assessment also reflects the company's generally prudent risk management, sound relationships with banks, and a generally satisfactory standing in credit markets.

Principal Liquidity Sources	Principal Liquidity Uses
• Cash FFO of about $355 million • Revolving credit facility of $400 million.	• Debt maturities of roughly $110 million, including short term debt • Capital spending of about $410 million • Dividends of roughly $95 million.

Other Credit Considerations

Other modifiers have no impact on the rating outcome.

Group Influence

Avista is subject to our group rating methodology criteria. We view Avista as the parent and driver of the corporate group. As a result, Avista's group and stand-alone credit profiles are the same at 'bbb'.

Recovery Analysis

Avista's first-mortgage bonds benefit from a first-priority lien on substantially all of the utility's real property owned or subsequently acquired. Collateral coverage of more than 1.5x supports a recovery rating of '1+' and an issue rating two notches above the issuer credit rating.

Issue Ratings

- We rate the preferred stock issued by Avista Capital II two notches below the issuer credit rating to reflect the discretionary nature of the dividend and the deeply subordinated claim if a bankruptcy occurs.
- The short-term rating on Avista Corp. is 'A-2' based on its issuer credit rating.

Related Criteria And Research

Related Criteria

- Criteria - Corporates - General: Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- Criteria - Corporates - Utilities: Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- Criteria - Corporates - General: Corporate Methodology: Ratios And Adjustments, Nov. 19, 2013
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- General Criteria: Methodology For Linking Short-Term And Long-Term Ratings For Corporate, Insurance, And Sovereign Issuers, May 7, 2013

- Criteria - Corporates - Utilities: Collateral Coverage And Issue Notching Rules For '1+' And '1' Recovery Ratings On Senior Bonds Secured By Utility Real Property, Feb. 14, 2013
- General Criteria: Methodology: Management And Governance Credit Factors For Corporate Entities And Insurers, Nov. 13, 2012
- General Criteria: Use Of CreditWatch And Outlooks, Sept. 14, 2009
- Criteria - Insurance - General: Hybrid Capital Handbook: September 2008 Edition, Sept. 15, 2008
- Criteria - Corporates - General: 2008 Corporate Criteria: Rating Each Issue, April 15, 2008

Business And Financial Risk Matrix

	Financial Risk Profile					
Business Risk Profile	Minimal	Modest	Intermediate	**Significant**	Aggressive	Highly leveraged
Excellent	aaa/aa+	aa	a+/a	a-	bbb	bbb-/bb+
Strong	aa/aa-	a+/a	a-/bbb+	**bbb**	bb+	bb
Satisfactory	a/a-	bbb+	bbb/bbb-	bbb-/bb+	bb	b+
Fair	bbb/bbb-	bbb-	bb+	bb	bb-	b
Weak	bb+	bb+	bb	bb-	b+	b/b-
Vulnerable	bb-	bb-	bb-/b+	b+	b	b-

S&P Global
Ratings

RatingsDirect®

Research Update:

Avista Corp. Rating Affirmed At 'BBB' After Review; Outlook Stable

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Research Update:

Avista Corp. Rating Affirmed At 'BBB' After Review; Outlook Stable

Overview

- We are affirming our credit ratings on U.S. integrated electric and gas utility Avista Corp. after a review. These include the 'BBB' issuer credit rating, the 'A-' first mortgage bond rating with a recovery rating of '1+', and the 'A-2' short-term rating. We revised the liquidity assessment to adequate from strong based on current estimates of uses such as capital spending, debt maturities, short-term borrowings, and dividend payments. The outlook remains stable.
- The stable outlook reflects our expectation that the company will continue to effectively manage regulatory risks, fund capital spending in a manner that does not meaningfully increase leverage, maintain adequate liquidity, and maintain comparable financial performance. We also expect no material increase in business risk through expansion into nonutility operations. Under our base-case scenario, we expect funds from operations to total debt to average about 18%.

Rating Action

On May 26, 2016, S&P Global Ratings affirmed its ratings on Avista Corp., including the 'BBB' issuer credit rating, the 'A-' first mortgage bond rating with a recovery rating of '1+', and the 'A-2' short term rating. The outlook is stable. In addition, we revised the liquidity assessment to adequate from strong.

Rationale

In our assessment, Avista's business risk profile is strong, reflecting its lower-risk, vertically integrated electric and natural gas distribution utility operations in Washington and Idaho, electric operations in Alaska, and gas distribution in Oregon. Although the company operates in four states, it has fewer than 400,000 electric and about 330,000 natural gas customers with no meaningful industrial concentration. When needed, the utility requests cost recovery from regulators. Because the utility has hydroelectric power exposure, recovery mechanisms are important to maintain operating cash flow after purchasing power for customers when hydroelectric generation is unavailable. The company has some flexibility in implementing incremental rate changes through its energy-recovery mechanism in Washington and the power cost adjustment in Idaho, but the recovery of excess power costs is subject to minimum thresholds and deferral bands. Purchased gas adjustments for gas distribution units in all three gas jurisdictions, along with hedging,

mitigate gas price risk. These help avert large cost-adjustment requests and support the business risk profile. Decoupling mechanisms smooth out operating cash flow in all jurisdictions except Alaska.

Our financial risk profile assessment of significant takes into consideration the mostly steady cash flows from the utility business. Our base case indicates that capital spending along with dividend payments will lead to negative discretionary cash flow over the next few years. Avista will need external funding to cover the deficit because internally generated cash flow is insufficient. Our base-case scenario suggests stronger financial measures over the next two years, including funds from operations (FFO) to debt of roughly 18%, mainly benefiting from higher deferred taxes due to bonus depreciation. Our base case indicates an expected supplemental ratio of operating cash flow to debt of about 16% to about 18%, bolstering the significant financial risk profile assessment.

Liquidity

Avista has an adequate liquidity assessment because in our view its sources are likely to cover uses by more than 1.1x over the next 12 months and to meet cash outflows, even with a 10% decline in EBITDA. The adequate assessment also reflects the company's generally prudent risk management, sound relationships with banks, and a generally satisfactory standing in credit markets. Avista recently extended the maturity of its credit facilities to 2021.

Principal liquidity sources:

- We estimate FFO of about $360 million for the 12 months ending March 31, 2017.
- Revolving credit facility of $425 million.
- Cash on hand of roughly $10 million.

Principal liquidity uses:

- Capital spending of about $350 million for the 12 months ending March 31, 2017.
- Dividends of roughly $85 million for the 12 months ending March 31, 2017.
- Debt maturities of about $195 million, including short-term borrowings.

We rate the preferred securities at Avista Capital II two notches below the issuer credit rating to reflect the discretionary nature of the dividend and the deeply subordinated claim if a bankruptcy occurs.

The short-term rating on Avista is 'A-2' based on the issuer credit rating and our assessment of its liquidity as at least adequate

Other Credit Considerations

Other modifiers do not affect the rating outcome.

Group Influence

Avista is subject to the group rating methodology criteria. We view Avista as the parent that drives the group credit profile. As a result, Avista's group and stand-alone credit profiles are the same at 'bbb'.

Outlook

The stable outlook on Avista reflects our expectation that over the next two years the company will continue to effectively manage regulatory risks, fund capital spending such that leverage does not meaningfully increase, preserve adequate liquidity, and maintain comparable financial performance. We also expect no material increase in business risk through expansion into nonutility operations. Under our base-case scenario, we expect FFO to total debt to average about 18%.

Downside scenario

We could lower the rating in the next two years if business risk materially rises or credit measures diminish such that FFO to debt would be consistently less than 15%. This could occur due to greater borrowing or increased rate lag, a large deferral, or adverse regulatory decisions.

Upside scenario

In the next two years, we do not currently contemplate an upgrade given the company's current business mix. Credit quality could strengthen if cash flow measures considerably improve, specifically FFO to debt of more than 20% on a consistent basis. The company could accomplish this by paying down debt with higher internally generated cash flow or increased equity, or by boosting FFO without adding debt.

Ratings Score Snapshot

Corporate Credit Rating: BBB/Stable/A-2

Business risk: Strong
- Country risk: Very low
- Industry risk: Very low
- Competitive position: Satisfactory

Financial risk: Significant
- Cash flow/Leverage: Significant

Anchor: 'bbb'

Modifiers

- Diversification/Portfolio effect: Neutral (no impact)
- Capital structure: Neutral (no impact)
- Financial policy: Neutral (no impact)
- Liquidity: Adequate (no impact)
- Management and governance: Satisfactory (no impact)
- Comparable rating analysis: Neutral (no impact)

Stand-alone credit profile: 'bbb'
- Group credit profile: 'bbb'

Recovery Analysis

Avista's first mortgage bonds benefit from a first-priority lien on substantially all of the utility's real property owned or subsequently acquired. Collateral coverage of more than 1.5x supports a recovery rating of '1+' and an issue rating two notches above the issuer credit rating.

Related Criteria And Research

- Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- Group Rating Methodology, Nov. 19, 2013
- Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- Corporate Methodology, Nov. 19, 2013
- Corporate Methodology: Ratios And Adjustments, Nov. 19, 2013
- Methodology: Industry Risk, Nov. 19, 2013
- Methodology For Linking Short Term And Long-Term Ratings For Corporate, Insurance, And Sovereign Issuers, May 7, 2013
- Collateral Coverage And Issue Notching Rules For '1+' And '1' Recovery Ratings On Senior Bonds Secured By Utility Real Property, Feb. 14, 2013
- Management And Governance Credit Factors For Corporate Entities And Insurers, Nov. 13, 2012
- General Criteria: Use Of CreditWatch And Outlooks, Sept. 14, 2009
- Hybrid Capital Handbook: September 2008 Edition, Sept. 15, 2008
- 2008 Corporate Criteria: Rating Each Issue, April 15, 2008

Ratings List

Ratings Affirmed

Avista Corp.	
Corporate Credit Rating	BBB/Stable/A-2
Senior Secured Rating	A-
Recovery Rating	1+

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed

to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at www.standardandpoors.com for further information. Complete ratings information is available to subscribers of RatingsDirect at www.globalcreditportal.com and at www.spcapitaliq.com. All ratings affected by this rating action can be found on the S&P Global Ratings public website at www.standardandpoors.com. Use the Ratings search box located in the left column.

STANDARD & POOR'S RATINGS SERVICES
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Avista Corp.

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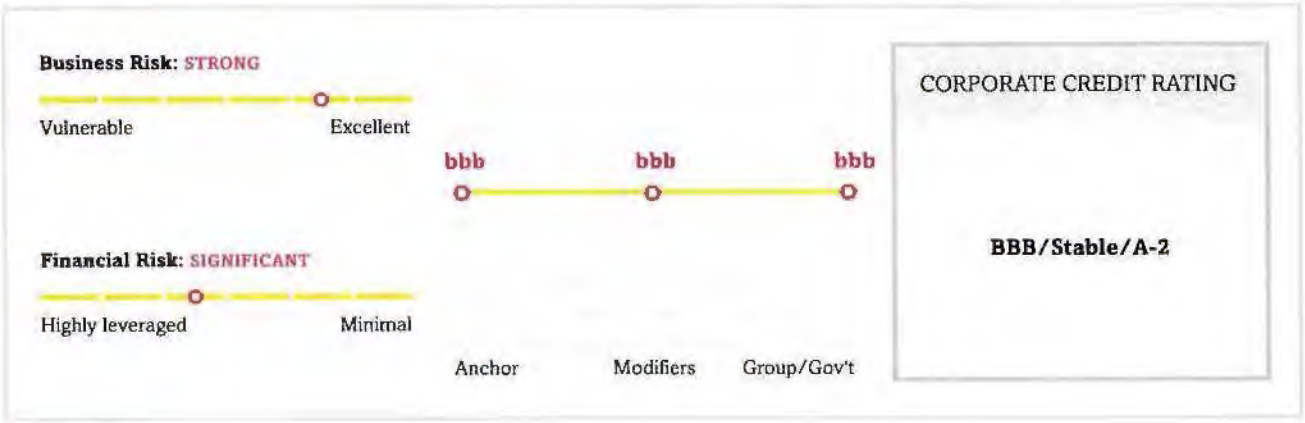

Rationale

Business Risk: Strong	Financial Risk: Significant
• Regulated vertically integrated electric and natural gas distribution utility. • Geographic and operational diversity but largely Washington focus. • Higher hydroelectric power use. • Regulatory mechanisms provide cash flow stability when purchasing power during low water periods.	• Elevated capital spending over the next few years. • Negatively discretionary cash flow after dividends. • Consistent access to capital markets to fund capital spending. • A "strong" liquidity position that provides the utility a cushion due to its hydroelectric power use.

Outlook: Stable

The stable outlook on Avista Corp. reflects our expectation over the next two years that the company will continue to effectively manage regulatory risks, fund capital spending in a manner that does not meaningfully increase leverage, preserve adequate liquidity, and maintain comparable financial performance. Under our base-case scenario we expect funds from operations (FFO) to total debt to average about 16%.

Downside scenario

We could lower the rating in the next two years if business risk were to materially rise or credit measures diminish such that FFO to debt would be consistently below 13%. This could occur as a result of greater borrowing or increased rate lag, a large deferral, or adverse regulatory decisions.

Upside scenario

In the next two years, we do not currently contemplate an upgrade given the company's current business mix and its focus on regulated operations. Credit quality could strengthen if cash flow measures considerably improve, specifically FFO to debt of more than 23% on a sustained basis. In addition, we would expect debt to EBITDA of less than 3.5x. The company can accomplish this by paying down debt with higher internally generated cash flow, increased equity issuances, or asset dispositions.

Standard & Poor's Base-Case Scenario

Assumptions

- Average capital spending of $360 million in 2015 and declining to $350 million for 2016.
- Dividends of roughly $85 million per year over the forecasted period.
- Regular recovery of electric and gas rates through respective surcharges.
- Average operation and maintenance expenses consistent with historical levels.
- Negative discretionary cash flow indicating external funding needs.

Key Metrics

	2014A	2015E	2016E
FFO/total debt (%)	20.8	14.2-15.5	15.7-16.5
Debt/EBITDA (x)	4.5	4.2-4.6	3.8-4.2
OCF/total debt (%)	24	17-18.5	17-18.5

Note: Standard & Poor's adjusted figures. A--Actual. E--Estimate. FFO--Funds from operations. OCF--Operating cash flow.

Business Risk: Strong

In our assessment, Avista's business risk profile is "strong" based on what we consider the utility's "satisfactory" competitive position, "very low" industry risk of the regulated utility industry, and "very low" country risk of the U.S. where the company operates. The company's competitive position incorporates its vertically integrated electric and natural gas distribution utility operations in Washington and Idaho, electric operations in Alaska, and gas distribution

in Oregon. Although the company operates in four states, it has fewer than 400,000 electric and about 330,000 natural gas customers with no meaningful industrial concentration. When needed, the utility requests through the regulatory process to recover costs. Since the utility has hydroelectric power exposure, recovery mechanisms are important to mitigate the need to purchase power for customers when the hydro power is unavailable. The company has some flexibility in implementing incremental rate changes through its energy recovery mechanism in Washington and the power cost adjustment in Idaho, but the recovery of excess power costs in Washington is more restrictive with minimum thresholds and deferral bands. Purchased gas adjustments for gas distribution units in all three gas jurisdictions, along with hedging, mitigate gas supply risk. We view these as important in averting large cost adjustment requests and support the business risk profile.

Financial Risk: Significant

We base our financial risk profile assessment of "significant" on the medial volatility financial ratio benchmarks. Our assessment takes into consideration the mostly steady cash flows from the utility business. Our base case indicates that capital spending along with dividend payments will lead to negative discretionary cash flow over the next few years. External funding will be needed to cover the deficit since internally generated cash flow is insufficient. Our base-case scenario suggests mostly steady key credit measures for the next several years, including FFO to debt from about 14% to 16%. Our base case indicates that the supplemental ratio of operating cash flow to debt is expected to range from about 17% to about 18.5%, bolstering the "significant" financial risk profile assessment.

Liquidity: Strong

Avista has "strong" liquidity as our criteria define the term. We believe the company's liquidity sources are likely to cover its uses by more than 1.5x over the next 12 months and remain above 1x over the subsequent 12 months. We expect the company to meet cash outflows even with a 30% decline in EBITDA.

Principal Liquidity Sources	Principal Liquidity Uses
• We estimate FFO of about $280 million in 2015 and $310 million in 2016. • Revolving credit facility of $425 million in 2015 and 2016.	• Capital spending of about $360 million in 2015 and $350 million in 2016. • Dividends of roughly $85 million per year in 2015 and 2016.

Other Credit Considerations

Other modifiers have no impact on the rating outcome.

Group Influence

Avista is subject to the group rating methodology criteria. We view Avista as the parent that is also the driver of the group credit profile. As a result, Avista's group and stand-alone credit profiles are the same at 'bbb'.

Ratings Score Snapshot

Corporate Credit Rating

BBB/Stable/A-2

Business risk: Strong

- **Country risk:** Very low
- **Industry risk:** Very low
- **Competitive position:** Satisfactory

Financial risk: Significant

- **Cash flow/Leverage:** Significant

Anchor: bbb

Modifiers

- **Diversification/Portfolio effect:** Neutral (no impact)
- **Capital structure:** Neutral (no impact)
- **Financial policy:** Neutral (no impact)
- **Liquidity:** Strong (no impact)
- **Management and governance:** Satisfactory (no impact)
- **Comparable rating analysis:** Neutral (no impact)

Stand-alone credit profile : bbb

- **Group credit profile:** bbb

Recovery Analysis

- Avista's first mortgage bonds benefit from a first-priority lien on substantially all of the utility's real property owned or subsequently acquired. Collateral coverage of more than 1.5x supports a recovery rating of '1+' and an issue rating two notches above the issuer credit rating.

Issue Ratings

- We rate the preferred stock two notches below the issuer credit rating to reflect the discretionary nature of the dividend and the deeply subordinated claim if a bankruptcy occurs.

- The short-term rating on Avista is 'A-2' based on the issuer credit rating and our assessment of its liquidity as at least adequate.

Related Criteria And Research

Related Criteria

- Criteria - Corporates - General: Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- Criteria - Corporates - Utilities: Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- Criteria - Corporates - General: Corporate Methodology: Ratios And Adjustments, Nov. 19, 2013
- General Criteria: Methodology: Industry Risk, Nov. 19, 2013
- Criteria - Corporates - General: Corporate Methodology, Nov. 19, 2013
- General Criteria: Methodology For Linking Short-Term And Long-Term Ratings For Corporate, Insurance, And Sovereign Issuers, May 7, 2013
- Criteria - Corporates - Utilities: Collateral Coverage And Issue Notching Rules For '1+' And '1' Recovery Ratings On Senior Bonds Secured By Utility Real Property, Feb. 14, 2013
- General Criteria: Methodology: Management And Governance Credit Factors For Corporate Entities And Insurers, Nov. 13, 2012
- Criteria - Corporates - General: 2008 Corporate Criteria: Rating Each Issue, April 15, 2008

Business And Financial Risk Matrix

	Financial Risk Profile					
Business Risk Profile	Minimal	Modest	Intermediate	**Significant**	Aggressive	Highly leveraged
Excellent	aaa/aa+	aa	a+/a	a-	bbb	bbb-/bb+
Strong	aa/aa-	a+/a	a-/bbb+	**bbb**	bb+	bb
Satisfactory	a/a-	bbb+	bbb/bbb-	bbb-/bb+	bb	b+
Fair	bbb/bbb-	bbb-	bb+	bb	bb-	b
Weak	bb+	bb+	bb	bb-	b+	b/b-
Vulnerable	bb-	bb-	bb-/b+	b+	b	b-

MOODY'S
INVESTORS SERVICE

Rating Action: Moody's Affirms Avista Corp. at Baa1; Outlook Stable

Global Credit Research - 19 Jul 2017

Approximately $1.5 Billion of Debt Securities Affected

New York, July 19, 2017 -- Moody's Investors Service, ("Moody's") affirmed the ratings of Avista Corp., including its Baa1 long-term issuer rating (see debt list below), following its announced agreement to be acquired by the Canadian electric utility Hydro One, Ltd. (HOL unrated). The outlook is stable.

Outlook Actions:

..Issuer: Avista Corp.

....Outlook, Remains Stable

Affirmations:

..Issuer: Avista Corp.

.... Issuer Rating, Affirmed Baa1

....Multiple Seniority Medium-Term Note Program, Affirmed (P)A2

....Senior Secured Medium-Term Notes, Affirmed A2

....Senior Secured First Mortgage Bonds, Affirmed A2

....Senior Secured Medium-Term Note Program, Affirmed (P)A2

....Senior Unsecured Medium-Term Note Program, Affirmed (P)Baa1

RATINGS RATIONALE

"The affirmation of Avista's ratings reflects our understanding that the acquisition debt, to be issued by Hydro One, Ltd., will be a direct obligation of the larger, more diverse Canadian holding company and should not affect Avista's standalone financial profile" said Vice President Ryan Wobbrock.

On 19 July, HOL announced it had reached an agreement to acquire Avista Corp. for $53 per share in a $5.3 billion all-cash transaction, including the assumption of roughly $1.9 billion of Avista reported debt. The $53 per share purchase price represents a premium of around 24% to Avista's 18 July closing price. HOL has indicated that part of the transaction financing will include the issuance of nearly $2.6 billion of HOL debt and about CAD1.4 billion of contingent convertible debentures.

Moody's expects that the transaction debt will be issued directly by HOL, a much larger holding company, and that it will not materially change Avista's financial or leverage metrics. Moody's also assumes that there will be no significant change to Avista's regulated capital structure and dividend policy. As such, we believe that HOL's ownership will be credit neutral, based on current assumptions.

The acquisition is subject to the approval of Avista shareholders, various US state utility regulatory commissions (i.e., the Washington Utilities and Transportation Commission, the Oregon Public Utilities Commission, the Idaho Public Utilities Commission, the Regulatory Commission of Alaska, and the Montana Public Service Commission), the Federal Energy Regulatory Commission, among others, and in compliance with the Hart-Scott-Rodino Act.

Avista's Baa1 senior unsecured rating and stable outlook reflects its primary business as a low-risk vertically integrated electric and gas utility with supportive cost recovery mechanisms, such as electric and gas revenue decoupling. Recent adverse regulatory events in Washington, Avista's primary jurisdiction, create some uncertainty for the company going forward, but Avista's financial profile can provide cushion to offset any negative effects over the next 12-18 months.

Rating Outlook

The stable rating outlook reflects our view that the pending acquisition by HOL will not materially affect the credit quality of Avista. The outlook also incorporates a view that Avista will continue to benefit from reasonably credit supportive regulation in its jurisdictions, especially its primary jurisdiction of Washington.

Factors that Could Lead to an Upgrade

The ratings for Avista could be upgraded if regulatory relationships in Washington improve and the company is able to produce cash flow to debt metrics above 21% on a sustained basis, without the benefits from one-time adjustments or temporary tax benefits.

Factors that Could Lead to a Downgrade

Avista's ratings could considered for downgrade if less credit supportive regulatory relationships materialize over a sustained period of time or if cash flow to debt metrics were to fall to 17% on a consistent basis. Also, if the contribution of Avista's unregulated business were to increase significantly or its dividend payout increased meaningfully to support the new parent company's acquisition debt.

The principal methodology used in these ratings was Regulated Electric and Gas Utilities published in June 2017. Please see the Rating Methodologies page on www.moodys.com for a copy of this methodology.

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INFRASTRUCTURE AND PROJECT FINANCE

MOODY'S
INVESTORS SERVICE

CREDIT OPINION
11 March 2016

Update

Rate this Research

RATINGS
AVISTA CORP

Please see the ratings section at the end of this report for more information.

Contacts

Avista Corp.

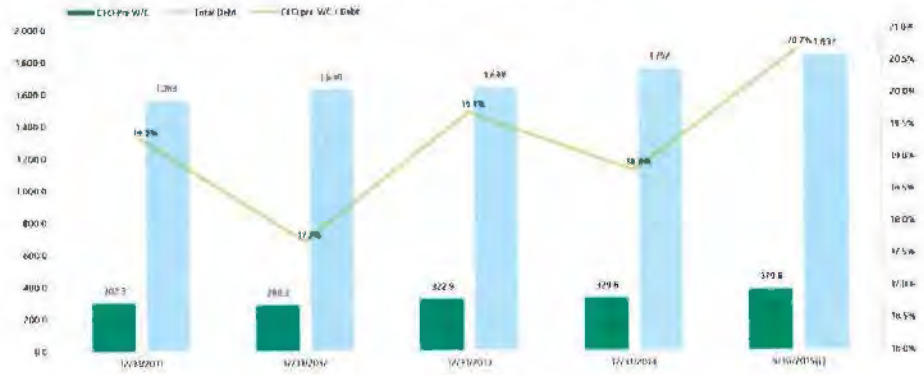
A Vertically Integrated Electric and Gas Utility

Summary Rating Rationale

Avista's Baa1 issuer rating reflects its primary business as a low-risk vertically integrated electric and gas utility with strong financial metrics. The rating is underpinned by supportive regulatory jurisdictions, which provide important cost recovery mechanisms such as electric and gas revenue decoupling.

Avista has some unregulated exposure in addition to its ownership of regulated utility Alaska Electric Light and Power (AELP, Baa3 stable), which provide marginal operational and cash flow diversity, but remain neutral in terms of affecting the ratings of Avista.

Exhibit 1
Avista's CFO pre-WC to debt is consistently in the high-teens.



Source: Moody's Investors Service

Credit Strengths

» Low-risk utility in supportive regulatory jurisdictions

» Core utility business in Washington provides stable cash flow

Credit Challenges

» High dividend payout ratio

» Eying long-term growth potential outside of rate-regulated, core business

Rating Outlook

The stable outlook incorporates our view that Avista's financial profile will maintain CFO pre-WC to debt in the high-teens range and that it will continue to receive supportive cost recovery from its regulators. The stable outlook also incorporates a view that unregulated operations will remain below 15% of consolidated earnings and cash flow, and that the company's financial policy will maintain a relatively even mix of debt and equity in its capital structure.

Factors that Could Lead to an Upgrade

The ratings for Avista could be upgraded if the company were able to produce CFO pre-WC to debt above 20% on a sustainable basis, without the benefits from one-time adjustments.

Factors that Could Lead to a Downgrade

Avista's ratings could be negatively impacted if the level of regulatory support wanes, if the contribution of its unregulated business were to increase disproportionately to those of its regulated operations, or if CFO pre-WC to debt were to fall to 15% for a sustainable period.

Key Indicators

Exhibit 2

KEY INDICATORS [1]

Avista Corp.

	12/31/2015	12/31/2014	12/31/2013	12/31/2012	12/31/2011
CFO pre-WC + Interest / Interest	5.7x	5.2x	5.0x	4.4x	4.8x
CFO pre-WC / Debt	20.7%	18.8%	19.7%	17.7%	19.3%
CFO pre-WC – Dividends / Debt	16.2%	14.3%	15.2%	13.5%	15.3%
Debt / Capitalization	44.8%	44.6%	46.7%	47.4%	47.3%

[1] All ratios are based on 'Adjusted' financial data and incorporate Moody's Global Standard Adjustments for Non-Financial Corporations
Source: Moody's Investors Service

Detailed Rating Considerations

RECENT REGULATORY DECISIONS ARE CREDIT POSITIVE

The primary credit driver for Avista is the degree of regulatory support and cost recovery allowed by its regulatory authorities, and particularly via the Washington Utilities and Transportation Commission (WUTC), which regulates roughly 60% of the company's revenue. We view the WUTC to be generally supportive to credit, while having improved cost recovery provisions in the last few years. For example, in December 2014, the WUTC allowed Avista to implement electric and gas decoupling mechanisms which enhances the timely recovery of fixed costs for the utility and provides for stable and predictable gross margin and cash flow in the face of declining use, in addition to attrition adjustments for ongoing rates. This has been particularly helpful for Avista, since energy delivery to customers has fallen in both electric and gas segments for 2015.

More recently, the WUTC allowed a $10.8 million gas revenue increase in January; however, the commission also ordered the company to reduce electric rates by $8.1 million. The rate reduction was mainly driven by lower commodity and power prices compared to the time when Avista made its original filing. As such, we view the WUTC order as immaterial to Avista's credit profile, since fuel and power costs do not generate margin and the rate reduction is not a result of unsupportive regulatory treatment.

Following the electric rate decrease, Avista filed a rate case with a two-step electric and gas rate increase proposal through the 18 months ending June 2018. Avista's request includes around $50 million of electric and approaching $6 million of gas annual rate increases. Avista will also be offsetting some of the customer rate impacts through energy recovery mechanism (ERM) rebates. The filing is primarily driven by capital investments for maintaining and upgrading its system.

In Oregon, the Oregon Public Utilities Commission (OPUC) approved a $4.5 million gas rate increase on March 3, 2016, based on a 9.4% return on equity. While relatively minor in terms of scale, the decision is credit positive since Avista is now allowed to implement a revenue-per-customer decoupling mechanism.

In Idaho, the Idaho Public Utilities Commission (IPUC) authorized Avista just under $2 million of electric and just over $2 million of gas rate increases, effective January 1, 2016, with an allowed ROE of 9.5%. In addition to the settlement, the company was authorized electric and gas decoupling mechanisms, as well.

STRONG CASH FLOW METRICS OFFSET HIGH PAYOUT AND SHARE REPURCHASES MADE IN 2014

Avista's key financial metrics, such as cash flow from operations before the changes in working capital (CFO pre-WC) to debt, have been very stable over the past five years, at around 19%. The strength and consistency of Avista's financial metrics provides an offset to a dividend payout ratio that is close to 70% and the repurchase of $80 million worth of common stock in 2014. Despite these credit negative financial policies, Avista continues to maintain a financial profile in-line with Baa1 integrated peers, who have averaged just over 20% CFO pre-WC to debt and 15% CFO pre-WC less dividends to debt over the past five years; both are consistent with the levels produced by Avista over this time.

Avista's $376 million of CFO in 2015 is significantly higher than historical periods, partly due to higher depreciation and amortization from additional plant-in-service and a full year of AELP on Avista's consolidated books, non-cash pension expense exceeding cash plan contributions by around $25 million, and a $35 million swing in power and natural gas cost deferrals. While the asset additions will continue to boost depreciation and amortization, we expect the pension and deferrals for power and fuel costs to reverse over time, as the company's recovery mechanisms true-up the temporary mismatch between the costs Avista incurred and rates charged to customers.

We expect for Avista's ongoing margin and cash flow to remain around $300 million due to margin-stabilizing decoupling mechanisms in Washington, Idaho and Oregon. This would result in about 17% of Avista's total adjusted debt at December 2015.

APPETITE FOR GROWTH MAY INTRODUCE GREATER RISK OVER THE LONG-TERM

Avista management has indicated an interest in creating new growth platforms through a non-utility subsidiary, Salix, Inc. (not rated), a subsidiary of Avista Capital, Inc. (not rated, a wholly-owned subsidiary of Avista). Salix was formed to explore opportunities to extend natural gas use beyond traditional pipeline supplied markets, via expansion of liquefied natural gas (LNG) services throughout

the region. Avista's strategy is premised on the low-price and abundant supply of natural gas, which could give LNG an economic advantage over other competing fuels. However, this strategy has slowed given the steep declines in oil prices over the last 18 months.

For now, we expect that the management will take small, measured approaches to the development of its unregulated business. Currently, we do not view Salix as a negative to Avista's credit profile; however, if Salix grows to be a larger portion of earnings and cash flow, or exhibit more business risk, it has the potential of negatively hurting the credit profile for Avista.

The current nature of Avista's capital plan is viewed positively, since the company is long power and primarily focused on basic system improvements; but, if other non-traditional areas are targeted for growth opportunities, this could have the potential to raise the risk profile of the company.

Liquidity Analysis

Avista's external liquidity source consists of a $400 million senior secured revolving credit facility, which expires in April 2019. As of December 31, 2015, there were $149 million of cash borrowings, leaving $250.4 million of available liquidity under the line of credit. Since Avista currently has unsecured investment grade ratings from two nationally recognized rating agencies, the company has the option to request the banks to relinquish the existing First Mortgage Bond collateral position, but it has chosen not to do so for economic reasons. Despite the collateral staying in place at Avista's discretion, the secured nature of the credit facilities somewhat constrains Avista's liquidity flexibility, in our opinion, since the typical investment grade issuer (having an unsecured facility) can use collateral as an option to improve bank credit access during periods of unforeseen liquidity stress.

The facility has a $100 million accordion feature and is subject to grid pricing. The $400 million facility does not contain any material adverse change language for borrowings but does so to access the $100 million accordion feature. The facility also includes a debt to capitalization covenant not to exceed 65%. As of December 2015, the company had sufficient headroom available under the debt to capitalization covenant.

AEL&P has a $25 million line of credit which expires in November 2019 and has a consolidated debt to capitalization covenant of 67.5%. As of December 31, 2015, the full amount was available for borrowing and AEL&P was in compliance with its covenant.

Avista's next material debt maturities occur in August 2016 when $90 million of first mortgage bonds is due. AERC's next maturity is in 2019 when its $15 million term loan is scheduled to expire.

Profile

Avista Corp. is primarily a regulated electric and gas utility servicing around 375,000 electric and 335,000 gas customers in Washington, Idaho and Oregon. Avista also owns Alaska Energy and Resources Company (AERC; not rated), parent of Alaska Electric Light and Power Company (AELP; Baa3) which serves around 17,000 electric customers in Juneau, Alaska.

Avista's utility operations are primarily regulated by the Washington Utilities and Transportation Commission (WUTC), Idaho Public Utilities Commission (IPUC) and the Oregon Public Utility Commission (OPUC). AELP's rates are regulated by the Regulatory Commission of Alaska (RCA).

Rating Methodology and Scorecard Factors

Exhibit 3

Rating Factors

Avista Corp.

Regulated Electric and Gas Utilities Industry Grid [1][2]	Current FY 12/31/2015		Moody's 12-18 Month Forward View As Date Published [3]	
Factor 1 : Regulatory Framework (25%)	**Measure**	**Score**	**Measure**	**Score**
a) Legislative and Judicial Underpinnings of the Regulatory Framework	A	A	A	A
b) Consistency and Predictability of Regulation	A	A	A	A
Factor 2 : Ability to Recover Costs and Earn Returns (25%)				
a) Timeliness of Recovery of Operating and Capital Costs	Baa	Baa	Baa	Baa
b) Sufficiency of Rates and Returns	Baa	Baa	Baa	Baa
Factor 3 : Diversification (10%)				
a) Market Position	Baa	Baa	Baa	Baa
b) Generation and Fuel Diversity	A	A	A	A
Factor 4 : Financial Strength (40%)				
a) CFO pre-WC + Interest / Interest (3 Year Avg)	5.3x	A	4.5x - 4.9x	A
b) CFO pre-WC / Debt (3 Year Avg)	19.8%	Baa	15% - 19%	Baa
c) CFO pre-WC – Dividends / Debt (3 Year Avg)	15.3%	Baa	11% - 15%	Baa
d) Debt / Capitalization (3 Year Avg)	45.3%	Baa	45% - 50%	Baa
Rating:				
Grid-Indicated Rating Before Notching Adjustment		Baa1		Baa1
HoldCo Structural Subordination Notching	0	0	0	0
a) Indicated Rating from Grid		Baa1		Baa1
b) Actual Rating Assigned		Baa1		Baa1

[1] All ratios are based on 'Adjusted' financial data and incorporate Moody's Global Standard Adjustments for Non-Financial Corporations.
[2] As of 12/31/2015.
[3] This represents Moody's forward view, not the view of the issuer, and unless noted in the text, does not incorporate significant acquisitions and divestitures
Source: Moody's Investors Service

Ratings

Exhibit 4

Category	Moody's Rating
AVISTA CORP.	
Outlook	Stable
Issuer Rating	Baa1
First Mortgage Bonds	A2
Senior Secured	A2
Senior Unsecured MTN	(P)Baa1
ALASKA ELECTRIC LIGHT AND POWER COMPANY(AELP)	
Outlook	Stable
Issuer Rating	Baa3
AVISTA CORP. CAPITAL II	
Outlook	Stable
BACKED Pref. Stock	Baa2

Source: Moody's Investors Service

REPORT NUMBER [illegible]

MOODY'S
INVESTORS SERVICE

Rating Action: Moody's Assigns Baa3 Issuer Rating to Alaska Electric Light & Power Company; Outlook Stable

Global Credit Research - 27 Jul 2015

New York, July 27, 2015 -- Moody's Investors Service, ("Moody's") today assigned a Baa3 Issuer Rating to Alaska Electric Light and Power Company (AELP), a subsidiary of Alaska Energy and Resources Company (not rated), which is a subsidiary of Avista Corporation (Baa1 stable). The rating outlook is stable.

RATINGS RATIONALE

"The Baa3 Issuer Rating for AELP reflects strong regulatory support provided by the Regulatory Commission of Alaska (RCA), which helps to offset AELP's weak financial metrics and small size" said Assistant Vice President Ryan Wobbrock. "The RCA's track record of allowing sufficient revenue increases to recover costs and allowing high returns (e.g., AELP's current 12.875% allowed ROE and 53.8% equity layer) provides the foundation for an investment grade credit profile that offsets AELP's other weaknesses" Wobbrock added.

AELP's investment grade credit profile balances the generally low-risk nature of a rate regulated utility company with weak cash flow to debt metrics of around 10%, its materially small size and concentration risks. For example, following Avista's recapitalization of AELP, CFO pre-WC to debt has fallen to 11%, which is more reflective of a non-investment grade metric. We expect this level of financial performance over the next several years, as AELP constructs new generation facilities but also anticipate a slow gradual improvement in this metric as annual amortization payments are made on a portion of AELP's long-term debt. In terms of concentration risk, about two thirds of AELP's 420 gigawatt hours of 2014 generation production comes from a single facility, the 78 megawatt Snettisham Hydroelectric Project, which provides AELP power under a power purchase agreement.

Avista's ownership, while not a direct benefit to AELP's credit profile, is seen as a positive rating factor since Avista is a relatively conservative strategic owner and any potential equity support for AELP could be provided (with regulatory approval), without causing financial duress to Avista. At the same time, the existence of a $15 million term loan at AERC adds additional indebtedness requirements for AELP, since AELP is the only operating company to service the intermediate holding company debt.

What Could Change the Rating - Up

AELP could be upgraded if it were able to produce CFO pre-WC to debt in the mid-teens for a sustained period.

What Could Change the Rating - Down

Weak financial metrics are expected to persist beyond the next 12 -- 18 month rating horizon; however, AELP's rating could be downgraded during its four year construction period if CFO pre-WC to debt remains below 10% on a standalone prospective basis. Additionally, AELP could be downgraded if regulatory treatment from the RCA becomes less credit supportive, or if the company experiences a prolonged operational difficulty.

Alaska Electric Light and Power Company (AELP; Baa3 stable) is a vertically integrated electric utility that services just under 16,500 customers in Juneau, Alaska. AELP is the primary operating subsidiary of Alaska Energy and Resources Company (AERC, not rated), an intermediate holding company and subsidiary of Avista Corp. (Avista; Baa1 stable). AELP's utility operations are primarily regulated by the RCA, with certain of its generation facilities being regulated by the Federal Energy Regulatory Commission (FERC).

The principal methodology used in this rating was Regulated Electric and Gas Utilities published in December 2013. Please see the Credit Policy page on www.moodys.com for a copy of this methodology.

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HYDRO ONE/902
Lopez

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

CHRISTOPHER F. LOPEZ
Exhibit No. 902

Hydro One Consolidated Business Plan 2018-2023

Consolidated Business Plan 2018-2023

December 8, 2017

Strategy

Hydro One is a purpose-led and values-driven company. Earlier in 2017, Hydro One launched the values that are integral to the company and to its communities. Those values include:

- Safety comes first;
- Stand for people;
- Empowered to act;
- Optimism charges us; and
- Win as one.

Hydro One's strategic vision and business goals are consistent with, and included in, the business plans for Hydro One. This strategy will involve executing a number of strategic initiatives as follows:

- Optimization of the Core;
- Innovation in the Core;
- Diversification by Entering Commercial Businesses; and
- Building Scale and Diversifying the Business through M&A.

Optimization and Innovation in the Core

For the Ontario-based, rate-regulated transmission and distribution businesses Hydro One is transforming to achieve its vision of becoming a best-in-class, customer-centric commercial entity, with a culture of operational excellence and continuous improvement. To achieve this vision, Hydro One will execute on its strategy to transmit and distribute electricity safely and reliably in a manner that produces the greatest value for customers. Hydro One seeks to be excellent in every facet of its operations, to the benefit of its customers, employees and shareholders.

Hydro One's commercial orientation means that the company will be focused on customers, demonstrate corporate accountability for performance outcomes, and drive company-wide efficiency and productivity. Understanding customers' needs and preferences and delivering system outcomes that are valued by customers are critical to Hydro One's future success. Hydro One will excel at managing relationships with key stakeholders including customers, Indigenous communities, employees, governments and regulators.

Innovation will become a focus for the company and Hydro One plans to invest in innovation to modernize the transmission and distribution grids, improving reliability and efficiencies as well as building a platform for connecting distributed energy resources.

Diversification by Entering Commercial Businesses

[redacted]

Customer Expectations

Hydro One is a customer centric commercial entity that provides service to its customers that meets their needs and preferences while ensuring that the system continues to deliver safe, reliable energy. This customer focus requires that Hydro One have a strong understanding of customer's expectations for the Company. These expectations evolve and change over time which is why it is necessary for Hydro One to conduct formal customer engagement activities at regular intervals to ensure that Hydro One's business objectives and investment planning outcomes are appropriate, supplementing ongoing customer feedback and interaction. It also allows the Company to have focused discussions on system investment plans prior to rate filings.

Hydro One's Transmission and Distribution businesses have very different classes of customers that were segmented and engaged using a variety of consultation methods including

but not limited to one-on-one sessions, online surveys and focus groups. The results of the engagement showed contrasting priorities between the two businesses. Transmission customers' top priority was reliability maintenance or improvement and they were willing to accept a small rate increase to achieve that outcome. In addition, energy quality was a significant factor for several sophisticated energy users. Distribution customers consistently prioritized low cost and wanted Hydro One to limit increases in rates. These preferences have guided the development of the investment plan for each business, with Transmission focusing on investments that will improve reliability and quality, and the Distribution investment plan designed to leverage productivity and keep rate impact low while still seeking some improvements in reliability. Both plans have benefited from a significant focus on analytics and cost efficiency plans to continue to reduce costs before asking customers for increases in rates.

More details on the methodology for customer engagement and detailed results of the findings can be found in the business plans for Transmission and Distribution.

Common Corporate Costs

Hydro One utilizes a centralized shared services model to deliver its common services to its Transmission and Distribution businesses and to its affiliated companies. Each business and affiliate pays their share of these costs based on a cost allocation methodology developed by Black and Veatch Corporation and approved by the OEB which utilizes a breakdown of activities and drivers based on cost causality principles.

As shown below, the majority of costs are allocated to the Transmission and Distribution businesses. A significant portion of these costs get capitalized based on the size of the Company's capital work program relative to OM&A. The balance of 10.7% gets allocated Telecom, Remotes and shareholders. The OEB took issue with the amount of corporate management costs included for recovery from rate payers. The OEB considered some significant costs to be associated with transforming the company from a government owned regulated utility business to a growth oriented publicly traded company. Following OEB input, an adjustment has been made to move additional business transformation costs out of rate recovered business units.

Total Corporate Common Costs 2017 to 2023

Corporate Common Cost $M	2017F	2018	2019	2020	2021	2022	2023	CAGR
Corporate Management	$ 12	$ 14	$ 14	$ 14	$ 15	$ 15	$ 15	3.9%
General Counsel & Regulatory Affairs	$ 35	$ 41	$ 39	$ 38	$ 38	$ 40	$ 41	2.6%
Operations	$ 113	$ 108	$ 108	$ 106	$ 107	$ 108	$ 108	-0.8%
Customer and Corporate Relations	$ 40	$ 43	$ 44	$ 45	$ 47	$ 47	$ 47	3.1%
Human Resources	$ 18	$ 22	$ 21	$ 21	$ 22	$ 22	$ 22	3.7%
Strategy	$ 13	$ 10	$ 10	$ 10	$ 11	$ 11	$ 11	-3.3%
Finance	$ 43	$ 48	$ 48	$ 49	$ 50	$ 50	$ 51	2.8%
Information Solutions Division	$ 21	$ 19	$ 19	$ 17	$ 18	$ 18	$ 18	-2.7%
Bad Debt	$ 18	$ 19	$ 19	$ 18	$ 18	$ 18	$ 18	-0.3%
Total	**$ 313**	**$ 323**	**$ 321**	**$ 320**	**$ 325**	**$ 329**	**$ 331**	**0.9%**

	OM&A	Capital
Transmission Portion	16.4%	30.3%
Distribution Portion	23.9%	18.8%
Other Allocated	10.7%	

HYDRO ONE/903
Lopez

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

CHRISTOPHER F. LOPEZ
Exhibit No. 903

Presentation of Hydro One's Consolidated Business Plan 2018-2023

Consolidated Business Plan 2018-2023

Board of Directors | December 8, 2017

hydro One

Key Outcomes in this 6 Year Plan include...

Improved Customer Satisfaction	▪ Customer initiatives to improve satisfaction and increase efficiency including:
	  ▪ eBilling will increase customer participation from 8% to 40% by 2022
	  ▪ Web and Bill redesign will increase self-serve transaction from 90,000 to 500,000 by 2019
	▪ Indigenous Relations Initiatives include a new service model for First Nations focused on in-community, face-to-face interactions and enhanced engagement regarding our Distribution and Transmission applications
	▪ Customer bill impacts have been minimized
	  ▪ [redacted]
	  ▪ Distribution - average of **1.3%** per year or an average of $1.81 per monthly bill

Regulatory Responsiveness	▪ This plan addresses concerns raised by the OEB:
	  ▪ Earlier and more comprehensive customer engagement
	  ▪ Improved investment planning process
	  ▪ Improved work program execution performance

Enhanced Operational Effectiveness	▪ Operations initiatives and outcomes that improve safety, customer satisfaction, reliability and cost:
	  ▪ Replacement of assets and deployment of new technologies reduces the likelihood of failures and associated health, safety and environmental risks
	  ▪ [redacted]
	  ▪ Reduces Distribution outage duration (SAIDI) by 28% compared to 2017 year end forecast
	  ▪ Using technology to improve operational efficiency and reduce costs
	  ▪ [redacted]

Financial Performance	[redacted]

[1] See table on Slide 5 for calculation and Risks and Opportunities on Slide 8.

Key Assumptions Underlying the Business Plan

OEB Rate Filings	▪ Distribution 2018-2022 - approved as filed, subject to updates in this plan [redacted]
Allowed Return on Equity	▪ Increased from 8.78% in prior plan to 9.00% for 2018-2023
Deferred Tax Asset	[redacted]
Conservation & Demand Management (CDM)	[redacted]
Collective Bargaining	▪ Power Workers Union: 1% existing contract yearly escalation. Agreement expires March 31 2018, Plan escalates by inflation thereafter ▪ Society of Energy Professionals: 0.5% existing contract yearly escalation. Agreement expires March 31 2019, Plan escalates by inflation thereafter
Avista Corporation	[redacted]
Dividend Policy	▪ Plan targets dividend payout in middle of 70%-80% target range
Specifically Excluded from Budget	▪ Future acquisitions ▪ New innovation businesses such as distributed generation ▪ Significant development projects are not included in the plan such as East-West tie and Northwest bulk transmission

Business Plan Opportunities & Risks (Ontario)

	Opportunity/Risk Identification	[1]Net Income Impact (C$ millions)	
		2018 Budget	2018-23 Annual Impact
Return on Equity	[redacted] Dx: ROE locked at 9.00% until 2021 *100 bps change*	No Impact. ROE set in Business Plan at OEB approved level.	[redacted] Dx : 2021-23 ▪ +/- $36 – $39 million annually
Interest Rates	Cost of debt included in revenue requirement, but subject to risk once the revenue envelope is approved *100 bps change*	+/- $23 million	+/- $23 – $40 million annually
Load Forecast	Revenue based on actual demand and consumption may differ from the October 2017 Load Forecast *1 standard deviation*	[redacted] Dx: +/- $11 million	[redacted] Dx: 2018-23 ▪ +/- $11 million – $33 million
Deferred Tax Asset[2]	Risk of losing full shareholder benefit	One-time impairment: [redacted] ▪ Dx: ~($370) million	No annual income impact Annual FFO impact: ($50)–($60) million
OEB – Capital	[redacted] 10% of Dx Capital (2018) = $65M	[redacted]	[redacted]

[1] *1 cent on EPS ~ $6 million net income*
[2] *Motion to Review & Vary Tx Decision filed in October 2017 seeking full allocation of DTA to shareholder. If unsuccessful, will appeal to higher court with lower probability of success.*

[redacted]

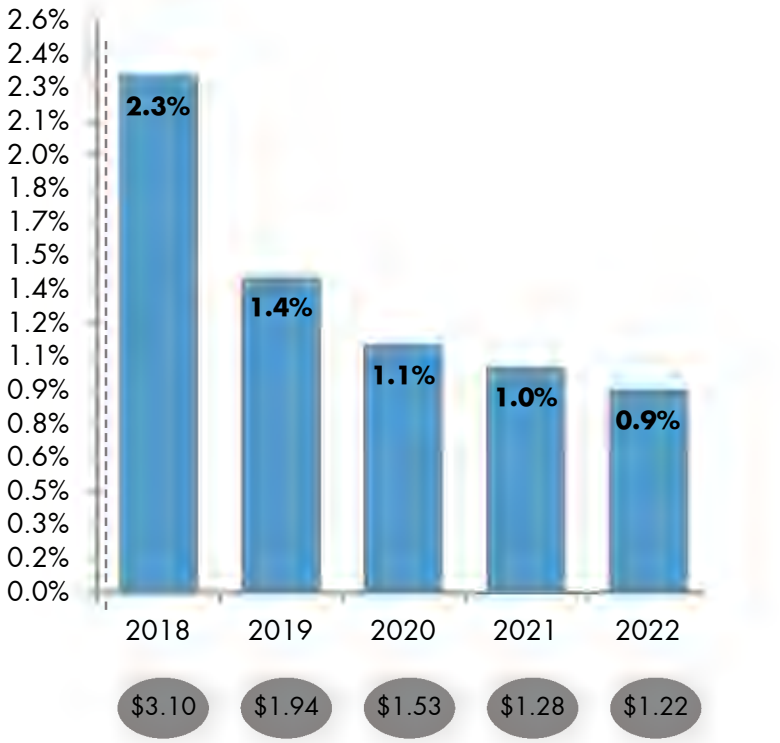
Distribution Tariff and Total Bill Impacts

Dx Tariff Impacts (%)[1]

2018-2022[1]

Bill impact: Typical Residential Customer[2]

2018-2022[2]



- **Key Comments:**
  - 2018 Tariff increase largely a result of higher Cost of Capital updates including ROE *[9.00% from 8.78%]*
  - Rate Base Growth throughout the planning period
  - 2021 acquired LDCs incorporated

[1] *Distribution rates only filed with OEB until 2022.*
[2] *An estimated total bill amount before taxes for a typical R1 customer is approximately $135. Fair Hydro Plan impact considered for commodity portion of bill only.*

Strategy

- **Hydro One is transforming to achieve its vision of becoming a best-in-class, customer-centric commercial entity, with a culture of continuous improvement and excellence in execution.**
- **Hydro One's commercial orientation means that the company will:**
  - be focused on customers,
  - demonstrate corporate accountability for performance outcomes,
  - and drive company-wide efficiency and productivity.
- **Hydro One's vision and strategy reflect values that are integral to the well-being of communities:**
  - Safety comes first;
  - Stand for people;
  - Empowered to act;
  - Optimism charges us; and
  - Win as one.
- **The key outcomes that the Company expects from its strategy are as follows:**
  - Improved levels of customer satisfaction;
  - Minimizing the long-term cost of maintaining the reliability of the Transmission and Distribution systems;
  - Maintain top quartile reliability in the Transmission system and continually improve reliability in the Distribution system by mitigating risk arising from asset deterioration;
  - Achieve an injury free workplace and a safe environment for the public;
  - Compliance with all regulatory and reliability standards; and,
  - Responsible environmental stewardship.

Customer Relations

- **Hydro One is a customer centric commercial entity that provides service to its customers that meets their needs and preferences while ensuring that the system continues to deliver safe, reliable energy.**

- **Customer from Tx and Dx were segmented and engaged using a variety of consultation methods**

- **Distribution customers' key preferences**
  - Customers consistently prioritized low rates as the top priority and wanted Hydro One to do its best to limit increases.
  - Reliability was the second most important factor – very low willingness to accept rate increases to attain better reliability.
  - Power quality was a significant factor for large customers.

- **These preferences have guided the development of the investment plan**
- **In-Sourcing of Customer Contact Centre**

Indigenous Relations

- **Hydro One's Indigenous Relations Strategy is to ensure the Company remains committed to developing and maintaining relationships with Indigenous communities that demonstrate mutual respect.**

- **The key goal for Hydro One is to become the primary business partner to Indigenous communities by 2021. The key objectives to meet that goal are:**
  - Become Top of Class: Fully integrate Indigenous relations into each line of business;
  - Become Primary Utility Partner: Create business, technical, knowledge and advocacy partnerships; and,
  - Support Indigenous Leaders: Work with communities by supporting future leaders.

- **Hydro One is actively pursuing a number of initiatives that fit well with the framework:**
  - Successfully offered a new service model to several Ontario First Nation communities that focuses on in-community, face-to-face interactions, to ensure that customers understand and have access to all available programs; and,
  - Implementing the First Nations Conservation Program for communities that have not benefited from the IESO's Aboriginal Conservation Program;
  - Implementing the Affordability Fund to help First Nation customers make their home more energy efficient provided they cannot afford to make energy efficiency improvements, and do not qualify for the Save on Energy Home Assistance Program; and,
  - Development of training for the Executive Leadership on Indigenous Relations.

Regulatory

- **Risks related to obtaining rate orders or other regulatory approvals**
  - Uncertainty regarding, or delays in receiving, approval of major application revenue requirements or capital plans, by the OEB.
  - Risks around regulatory approvals by the OEB for leave to construct applications, applications for mergers or acquisitions and environment approvals

- **Deferred Taxes**
  - As part of the IPO, Hydro One incurred a departure tax of $2.6 billion due to the transition to the Federal taxing authority.
  - Company recorded a deferred tax recovery, representing the fair market value "bump" of its assets, $2.3 billion related to Networks.
  - OEB decision ruled against excluding the tax recovery and 38% is to be shared with Ratepayers – Hydro One is appealing.

- **Integration of Acquired Local Distribution Companies and New Rate Classes**
  - Integration of acquired LDCs to be complete in 2021

- **Rate Setting Approach and Business Implications**
  - Dx rates for 2018 will be set using a rebasing approach and rates for 2019 to 2022 will be set on a formulaic basis. Proposing a similar application for Transmission.
  - Risks on OM&A borne by the shareholder and the company loses the ability to adjust for load and ROE over the period.
  - Have proposed updating load forecast and ROE in 2021 to coincide with the integration of Acquired Utilities.
  - This adds risk and opportunity for the Company and must be carefully managed.

- **Capital In-Service Variance Account**
  - Dx application proposed a CISVA; [redacted]. The features of a CISVA include:
    - Tracks variances between in-service additions and amount included in OEB approved rates in each individual year;
    - Revenue requirement associated with any under spending to be accumulated and returned to customers at end of the five-year term; and,
    - Account will be asymmetrical; over spending of these amounts is not recoverable.

Productivity

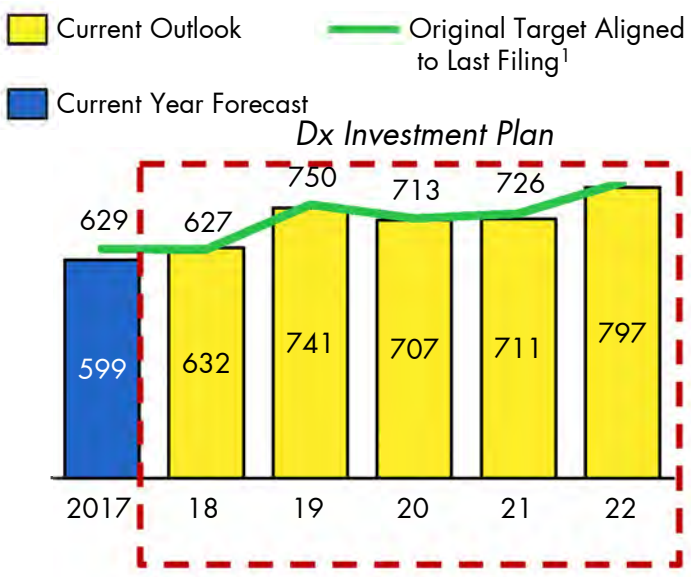
- **Quantifiable and sustainable improvements embedded in the work program and or cost centers:**
  - More effective procurement programs, including investments in new processes and tools;
  - Reductions in administrative expenditures through improved processes, tools and optimization of internal staff skills;
  - Rationalization of Fleet size, cost and related spending;
  - Rationalization of IT spending;
  - Improved field efficiency through improved work planning and analytics; and,
  - Development of analytical measures to enable tracking of outcomes and better leveraging of existing spend.
- **Robust governance structure ensures productivity savings reported accurately**

Investment Plan – Dx Capital

Dx Capital is $3.6 billion over five years, representing an annual 6.0% Growth Rate

Capital Expenditure Trajectory

$ million, 2018-2022



	Total CapEx $ million, 2018-22	Growth Rate % 2018-2022
Original Target	$3,628	6.7%
Recommended Plan	$3,588	6.0%
Change	($40)	(0.7%)

Highlights

Dx Capital Plan is $3.6 billion over five years

- Improvement in reliability (SAIDI) of 28% from 8 hours to 5.8 hours
- Addresses highest risk assets within the system
- Addresses critical safety & environmental risks

Forecasted costs for the core Dx Investment Plan are consistent with the 5-year Dx OEB filing

- Address worst performing feeders and modernize the Dx system to meet the expanding and evolving needs of our customers
- Address the aging infrastructure by replacing end of life assets

We seek to balance customers' needs and preferences with responsible asset management in a manner that controls costs.

- Continue to leverage innovation and improve productivity in order to reduce cost and improve service levels to our customers
- Productivity savings of $240M is built into the plan

1. Original target based on previous investment plan filed as part of the 2018-22 Dx Rate Application
2. Figures exclude Acquired LDCs

Investment Plan – Total OM&A

[redacted]

[redacted]

Highlights

- **The plan addresses condition assessments, preventative and corrective maintenance, including increasing environmental and regulatory compliance requirements.**
- Dx OM&A plan is $2.8 billion over five years

[redacted]

- Vegetation Management and Planned Outage Reductions account for 80% of the overall distribution SAIDI reductions

The plan incorporates OEB and Customer Feedback:

- Reflects customer priorities for cost, safety and reliability
- Continues to optimize the life of the existing assets by balancing operational risk, cost and value delivered to customers

Forecasted costs for the core Dx Investment Plan are consistent with the figures filed with the OEB

- Incorporates the new vegetation management program (Optimal Cycle Protocol) that is expected to result in improved unit costs and long-term efficiency as well as improved reliability and customer satisfaction

[redacted]

Common Corporate Costs

- **Majority of costs allocated to Transmission and Distribution (89%).**
- **A significant portion of these costs get capitalized (49%).**
- **The remaining 11% of costs get allocated to Telecom, Remotes, Other Subs and Shareholder.**

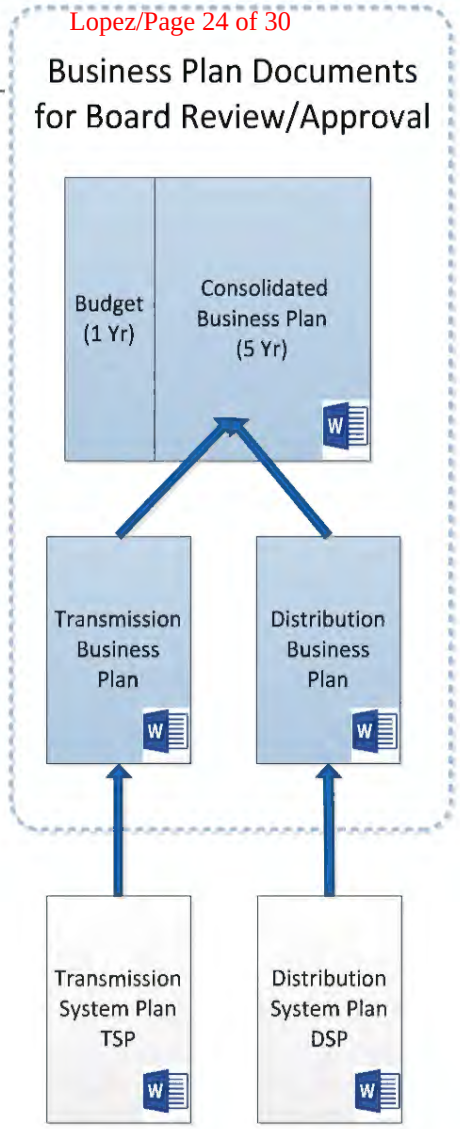
Corporate Common Cost $M	2017F	2018	2019	2020	2021	2022	2023	CAGR
Corporate Management	$ 12	$ 14	$ 14	$ 14	$ 15	$ 15	$ 15	3.9%
General Counsel & Regulatory Affairs	$ 35	$ 41	$ 39	$ 38	$ 38	$ 40	$ 41	2.6%
Operations	$ 113	$ 108	$ 108	$ 106	$ 107	$ 108	$ 108	-0.8%
Customer and Corporate Relations	$ 40	$ 43	$ 44	$ 45	$ 47	$ 47	$ 47	3.1%
Human Resources	$ 18	$ 22	$ 21	$ 21	$ 22	$ 22	$ 22	3.7%
Strategy	$ 13	$ 10	$ 10	$ 10	$ 11	$ 11	$ 11	-3.3%
Finance	$ 43	$ 48	$ 48	$ 49	$ 50	$ 50	$ 51	2.8%
Information Solutions Division	$ 21	$ 19	$ 19	$ 17	$ 18	$ 18	$ 18	-2.7%
Bad Debt	$ 18	$ 19	$ 19	$ 18	$ 18	$ 18	$ 18	-0.3%
Total	**$ 313**	**$ 323**	**$ 321**	**$ 320**	**$ 325**	**$ 329**	**$ 331**	**0.9%**

	OM&A	Capital
Transmission Portion	16.4%	30.3%
Distribution Portion	23.9%	18.8%
Other Allocated	10.7%	

Appendix

Business Plan Diagram

- **Consolidated Business Plan** – fundamental document outlining the company's plans for the 2018-2023 period.
- **Budget** – this document, which integrates closely with the Consolidated Business Plan, lays out the specifics of expenditures for the 2018 calendar year.
- **Transmission Business Plan** – Plan for the 2018-2023 period that focuses on the Transmission side of the business. It is fully expected that this will be filed with the OEB as part of our April 2018 Tx rate filing.
- **Distribution Business Plan** – Plan for the 2018-2023 period that focuses on the Distribution side of the business. Either by interrogatory or by motion, it is fully expected that this could be called into evidence as part of our previous March 2017 Dx rate filing with the OEB.
- **Transmission System Plan** – TSP to be filed as part of the April 2018 Tx filing. This is a document explaining the many factors, processes and outcomes that comprise our investment plan.
- **Distribution System Plan** – the DSP was filed as part of our Dx application in March 2017. This has not been altered.

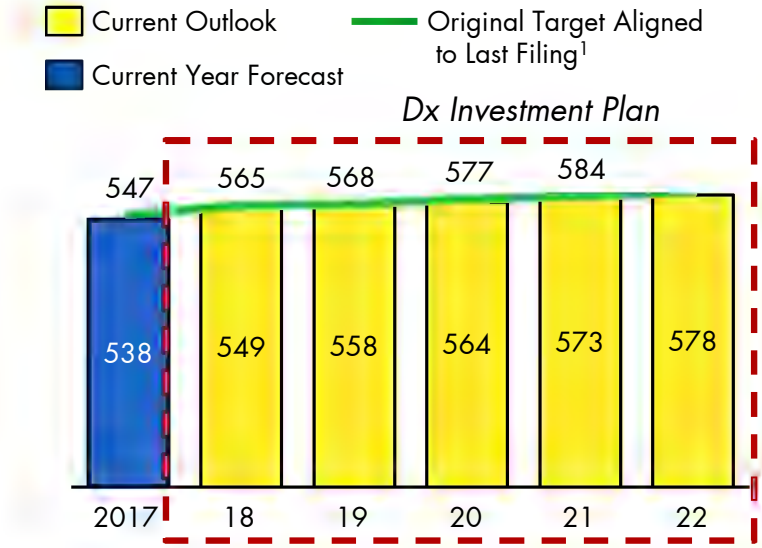


Investment Plan – Dx OM&A

Dx OM&A is $2.8 Billion over five years, representing an annual 1.3% Growth Rate

Work Program OM&A Trajectory 2018-2022

$ Millions (Does not include corporate common costs)



	Total OM&A $ M, 2018-22	OM&A Growth %, 2018-22	OM&A Growth %, 2019-22
Original Target	$2,885	1.1%	1.3%
Draft Plan	$2,823	1.3%	1.2%
Change	($17)	0.2%	(0.1%)

Highlights

Dx OM&A Plan is $2.8 Billion over five years

Forecasted costs for the core Dx Investment Plan are consistent with the figures filed with the OEB

- Redirection opportunities have been identified, but not embedded in the plan, to introduce a shortened and targeted vegetation management program that is expected to result in long-term productivity savings as well as improved reliability and community relations.

Common corporate investments have been updated consistent with the Tx Investment Plan.

We minimized the customer rate impact of the plan through productivity commitments

- Includes $142 Million of embedded productivity savings related to the core Dx business, identified in the previous plan
- Includes $61 Million of common IT savings

1. Original target based on previous investment plan filed as part of the 2018-22 Dx Rate Application
2. Figures exclude Acquired LDCs

HYDRO ONE/904
Lopez

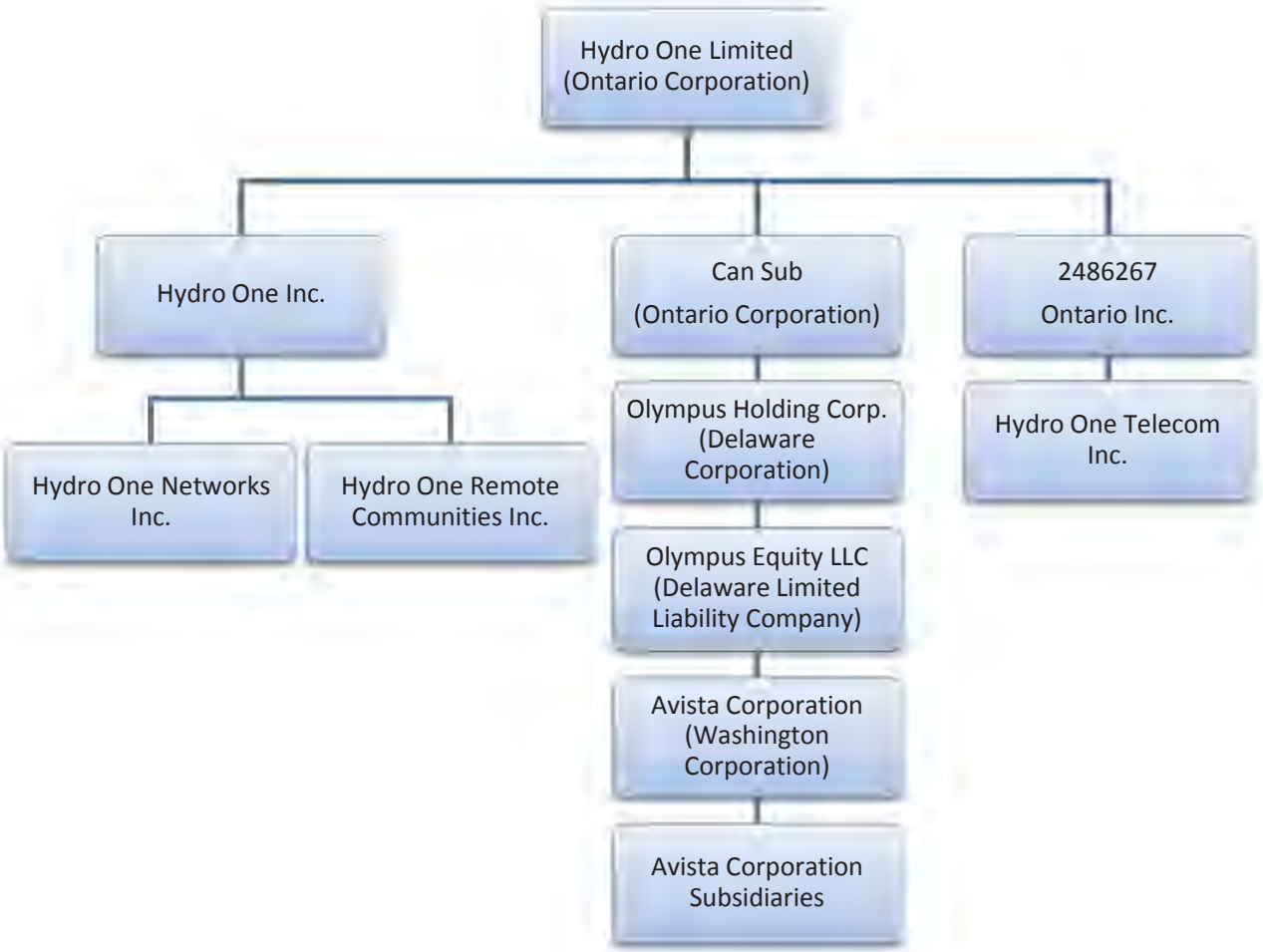
BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

CHRISTOPHER F. LOPEZ
Exhibit No. 904

Proposed Updated Post-Closing Corporate Structure

Revised Post-Closing Corporate Structure



BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1897

REBUTTAL TESTIMONY OF FERIO G. F. PUGLIESE
REPRESENTING HYDRO ONE

Hydro One Customer Service; Labor Commitments;

Environmental Matters; First Nations

I. INTRODUCTION

Q. Please state your name, business address and present position with Avista Corporation?

A. My name is Ferio Pugliese and my business address is 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5. I am Executive Vice President, Customer Care and Corporate Affairs of Hydro One for Hydro One Networks Inc. ("Hydro One Networks"). Hydro One Networks is an indirect, wholly-owned subsidiary of Hydro One Limited ("Hydro One") and serves more than 1.3 million residential and business customers in Ontario, Canada. Hydro One Networks is the largest business segment of Hydro One.

Q. Please summarize your education and business experience.

A. Prior to my appointment at Hydro One, I held progressively senior leadership roles in hospitality, pulp and paper and airline industries with responsibility for human resources, operations and customer service. Starting in 2007, I was a member of the executive leadership team at WestJet Airlines, serving as WestJet's Executive Vice President, People, Culture and Inflight Services. In 2013, I led the launch and successful operation of the company's regional airline as President of WestJet Encore. WestJet Encore was recognized for having the continent's top on-time performance for regional airlines in 2015. I have been recognized as a market leader in customer service, and I bring expertise in building and leading a winning culture focused on serving customers and communities. I was recognized by Caldwell Partners as one of Canada's Top 40 under 40 in 2007. I hold a Master of Arts degree in Adult Education from Central Michigan University, as well as an Honors Bachelor of Arts degree in Social Science and an Honors Bachelor of Commerce degree from the University of Windsor.

Q. Please describe the responsibilities of your current position.

A. My primary responsibilities for Hydro One Networks include customer service, indigenous relations, market solutions, government relations, and communications. As the leader of the customer service organization, I am responsible for the provision of high quality service to 1.3 million customers, including rural residential customers, local distribution companies, and the large-use businesses. This includes responding to customers' inquiries when they contact the Contact Centre; ensuring a dedicated team of account executives is available for our large-use customers; obtaining meter readings; issuing timely and accurate bills; providing online tools and products for our customers to monitor their electricity usage; processing customer payments; managing the collections program; and providing financial assistance to low-income customers.

Through interactions with our customers, Hydro One Networks aims to educate customers about their bills, explain electricity prices, provide energy usage analytics, and offer social service assistance to low-income customers.

Q. Have you filed direct testimony in this proceeding?

A. Yes, Hydro One Ex. 600.

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

A. No.

A table of contents for my testimony is as follows:

Description		Page
I.	INTRODUCTION	1
II.	CUSTOMER SERVICE	4
III.	LABOR COMMITMENTS	7
IV.	ENVIRONMENTAL MATTERS	8
V.	FIRST NATIONS	12

Summary of Testimony

Q. Please summarize your testimony.

A. The purpose of my testimony is to explain the following ways in which the Proposed Transaction will benefit Avista's Oregon customers and the public:

- Hydro One Networks' customer service record and improved practices demonstrate its commitment to directly address problems in a meaningful way;
- Avista's labor commitments and Hydro One's pledge that Avista will continue to act as a stand-alone utility within this context;
- Hydro One's environmental compliance policies, with an emphasis on Hydro One's dedication to the Pacific Northwest; and
- Hydro One Networks' experience and priorities related to providing electric service to the rural and remote regions, including Indigenous Communities.

My testimony will explain why, from a customer perspective, Hydro One is the right partner for Avista, and that over time, through our combined focus and commitment to customers, as well as our aligned customer service philosophy, Avista's customers will benefit from the partnership between Hydro One and Avista.

II. CUSTOMER SERVICE

Q. The Commission Staff's testimony noted Hydro One's billing problems in 2014 and the Ontario Ombudsman's investigation. Do those events represent the Hydro One that proposes to acquire Avista today?[1]

A. No, not at all. Hydro One today is a very different company. Prior to its Initial Public Offering ("IPO") -- when it was still a Crown Corporation and under different management than today -- Hydro One encountered a number of issues when it implemented a new billing system in 2013.

Since November 2015, Hydro One has become a publicly traded company with an entirely new management team. I was hired specifically to improve Hydro One's customer service, bringing a wealth of expertise in building and leading a strong corporate culture focused on serving customers and communities. Since 2015, the overall health of Hydro One's Customer Service department has made significant strides in all functional areas, including billing, Contact Centre, and collections.

The billing issues encountered in 2013 as a result of the new customer information system have been resolved. In fact, billing accuracy surpassed the Ontario Energy Board's requirement of 98% in 2017 and is the highest in the Company's history. Hydro One is committed to providing customers with timely and accurate bills.

Critical Contact Centre metrics, most notably speed of answer and first call resolution, also exceeded targets in 2017, whereby 82% of customer calls were answered in 30 seconds, against an Ontario Energy Board target of 65% in 30 seconds. Furthermore, First Call Resolution ended the

[1] Zarate, Commission Staff Ex. 400, page 9 (lines 27) - 10 (line 11).

year at 85%, and customer satisfaction with a Contact Centre agent ended the year at 90%, both of which are the highest in the company's history.

In an effort to assist customers who were struggling to remain current on their bills, the department reviewed all the customer-facing collection policies and implemented several changes. This included the continuation of the Winter Relief Program and the release of over $12 million in security deposits. Hydro One's improved collection policies and practices resulted in numerous financial, operational, and customer benefits, including a 37% reduction in the number of customers in arrears exceeding 90 days and an 80% reduction in collection-related escalations in the Contact Centre. Furthermore, overdue accounts receivables has declined over 60% since the peak in 2014. Through these revised policies and practices, Hydro One was able to exceed financial objectives while reducing the number of customers who were disconnected by over 55%.

2016 and 2017 also marked significant advances in operations with the deployment of new initiatives and services for customers, including: eBilling, high usage alerts, a new website, Winter Relief, and a newly designed bill. These new initiatives provide customers with additional choices and self-serve abilities at their convenience.

Hydro One has transformed into a world-class, customer-first company and is committed to improving the overall customer experience and providing great customer service. As a result of strong operational performance in recent years, Hydro One's 2017 overall customer satisfaction rate with distribution customers improved by 5% over 2016 results, to 71%. Furthermore, the 2017 overall satisfaction rate with transmission customers improved by 10% over 2016 results, to 88%.

Q. Staff Witness Zarate's testimony quoted Hydro One's former CEO as stating that, "Hydro One's culture was at the heart of our customer service failings. We are committed to changing that culture to become one of service and pride that puts the focus on ensuring that Hydro One is the company the people of Ontario need us to be."[2] Would you agree?

A. Yes, the change in Hydro One's culture has happened. We have new management, and objective metrics demonstrate that customer service has improved dramatically since the company's pre-IPO days. In fact, one of Hydro One's corporate priorities is customer service. The entire company is focused on putting our customers at the centre of what we do, by listening and responding to their needs, advocating on their behalf, and focusing the organization on pursuing activities that have both meaning and impact. These issues have been resolved.

Q. The Commission Staff testimony noted inefficiencies in Hydro One's historical customer service.[3] Why should the Commission conclude that Hydro One's pre-IPO customer service issues are not indicative of how Hydro One will function as the parent of Avista?[4]

A. As described in my previous answers, Hydro One is under new management that brought with it a particular focus on customer service. Our record demonstrates that customer service has improved dramatically since 2015. More importantly, a significant feature of our merger agreement with Avista is our commitment that Avista will remain as a stand-alone utility that will continue to be operated by Avista's existing management and employees and governed

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[2] *Id*.

[3] *Id*.

[4] *Id*. at pages 12 (line 10) - 13 (line 4).

by a Board of Directors, many of whom must be from the five states in which Avista operates. *See* Exh. 801 to Mayo Schmidt's Oregon Rebuttal Testimony, Commitment Nos. 2, 3, 4, 9, 10, 15 (hereafter "Revised Oregon Merger Commitment," collectively, the "Revised Oregon Merger Commitments"). Avista's customer service will therefore be directly controlled by Avista personnel.

III. LABOR COMMITMENTS

Q. In Ontario, does Hydro One have a policy of using only union signatory contractors when Hydro One hires contractors for capital projects?

A. In part – Hydro One has various collective agreement obligations directly and through its membership in an employers' association, the Electrical Power Systems Construction Association, which negotiates collective agreements with various craft unions on behalf of Hydro One and other employers. Under these obligations, whether a contractor is a signatory or not, the employer agrees to apply the terms and conditions of the respective labor agreements and to employ unionized labor for the duration of the work on the capital project. This arrangement is largely a result of labor laws unique to Canada and Ontario. The labor laws in Ontario and in Canada are generally very supportive of unions.

This, however, will not impact Avista's use of contractors for capital projects in Oregon and throughout Avista's service territory. Avista will continue to operate as a stand-alone utility and will be responsible for obtaining contractors for projects consistent with the commitments made in this docket. As Avista Witness Patrick D. Ehrbar in his Oregon Rebuttal Testimony, Exh. 1300, describes, a settlement on labor issues has been reached in this docket.

IV. ENVIRONMENTAL MATTERS

Q. Will Hydro One support Avista with compliance with all environmental laws applicable to Avista's operations?[5]

A. Yes, of course. Hydro One will continue to comply with environmental laws and regulations in Ontario, just as Avista will continue to comply with those environmental laws and regulations in the states where it operates after the merger. This is not discretionary, as Ms. Zarate's concerns seem to suggest. Our merger commitments relating to ring-fencing and financial matters enable Avista to retain funds needed to carry out its operations, including environmental compliance. Hydro One will not directly fund environmental compliance activities in Avista's service territory, and Avista will not be responsible for Hydro One's environmental compliance in Canada. To do so in either direction would be a violation of the affiliate allocation rules and environmental commitments, which the Applicants have agreed to as part of this transaction.

Hydro One puts a high priority on the protection of safety and the environment in Ontario, just as Avista puts a priority on safety and environmental matters where it operates. Hydro One has provided evidence in response to Oregon data requests supporting our focus on compliance with environmental legislation in Canada and Ontario. For example, Hydro One explained the detailed safeguards, protections, and policies that it has enacted to minimize and to eliminate transmission lines' adverse impacts on bird species. Such prophylactic measures include completing vegetation management work outside of the migratory bird nesting season and installing bird diverters on transmission lines in high risk areas. Another of our Oregon data

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[5] *Id*. at pages 21 (line 31) - 22 (line 3).

responses details how Hydro One has attempted to avoid the building of new transmission lines in or near water and wetland crossing as an ideal environmental and engineering practice.

As explained in the rebuttal testimony of Hydro One witness Christopher Lopez in his Oregon Rebuttal Testimony, Ex. 900, regulatory compliance is a mandatory funding trigger in Hydro One's investment prioritization. Thus, Hydro One's culture of compliance, together with the fact that Avista will continue to operate as a stand-alone utility, support Avista's continued compliance with environmental requirements.

In addition, Revised Oregon Merger Commitment No. 3 provides that Avista's post-merger board will have significant representation from the states of the Pacific Northwest (Oregon, Washington, Idaho, Montana, and Alaska). Three of Hydro One's five board designees must be residents of the Pacific Northwest. Most or all of Avista's designees may also be from the Pacific Northwest. This ensures familiarity with U.S. environmental laws among Avista's leadership. Furthermore, Avista will retain its management and employees. *See* Revised Oregon Merger Commitment Nos. 2, 3, 4, 9, 10. Avista already operates in an environmentally responsible manner and will continue to do so. *See* Revised Oregon Merger Commitment Nos. 47-52. Avista will continue to have personnel with knowledge of environmental compliance and to maintain legal requirements under Hydro One's ownership. *See* Revised Oregon Merger Commitment Nos. 2, 4, 9, 10.

Q. Does the requirement that the three independent Avista board members be from the Pacific Northwest impact Avista's environmental strategies and compliance?[6]

A. As stated, the Avista that exists after the merger will continue to control and to manage Avista's day-to-day operations. Although Pacific Northwest residency will not

[6] *Id*. at page 18 (lines 12-16).

necessarily compel board members to take an interest in their resident area, this is a reasonable step to provide additional assurance that the interest is present. Further, the independent board members will be carefully selected, independent under NYSE rules, and subject to their fiduciary responsibilities. These requirements ensure appropriate representation and knowledge on all issues including environmental strategies and compliance.

Q. Do Canadian environmental laws and Hydro One's approach to compliance pose risks to Avista's compliance with environmental laws in the United States?[7]

A. No, not at all. Canadian environmental laws and regulations have no impact on Hydro One's business in other jurisdictions. Thus, Canadian environmental laws and regulations will not impact Oregon ratepayers. Moreover, these environmental laws and regulations are administered by Hydro One's operating subsidiaries, such as Hydro One Networks, rather than on a corporate-wide basis.

Q. **What is Hydro One's experience with site restoration legal compliance issues?[8]**

A. Hydro One has extensive experience with site restoration legal compliance. Hydro One restores those contaminated lands that bring about an "adverse effect" or could reasonably be expected to cause such an effect if not pro-actively addressed. This is done during the useful life of the asset, during site upgrades, or sometimes at end of life.

Hydro One's Land Assessment and Remediation (LAR) program was established in 1999/2000 to address facilities with environmental risk. A risk-based approach was used to prioritize sites into high, medium, and low priority based on numerous relevant considerations,

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[7] *Id*. at pages 18 (line 20) - 19 (line 2).

[8] *Id*. at page 19 (lines 3-12).

including the types and severity of contaminants present, whether contaminants extended to off-site areas, and the nature of receptors around the site. Dedicated funding was established to fulfil this program. To date, high risk sites have been addressed, and medium-risk sites are in progress.

Hydro One's belief in an open and transparent communication process on environmental matters has been one of the pillars of Hydro One's success on restoration and related environmental legal compliance issues. Hydro One has extensive in-house experience assessing and remediating sites and working closely and successfully with regulatory agencies, property owners, elected officials, and public agencies. This has been driven predominantly by voluntary actions on the part of Hydro One, as opposed to orders imposed by regulators and/or civil litigation. Hydro One is committed to the protection of safety and the environment in Ontario. Hydro One also has familiarity with these issues in the United States through its membership in the Electric Power Research Institute ("EPRI"). We actively participate in EPRI's research and development of pilot projects and workshops across Canada and the United States. Therefore, Hydro One has an appreciation for the United States' regulatory framework and process, and the compliance issues that Avista may encounter.

Q. Does Hydro One devote the necessary resources to meet its environmental obligations? For example, with respect to efforts to control invasive species, has Hydro One worked fully and completely to control invasive species as necessary and appropriate?[9]

A. Invasive species matters are legislated at the provincial level, and Hydro One complies with this legislation. Hydro One holds a seat on the board of directors of the Ontario Invasive Plant Council and remains committed to addressing invasive species issues using the

[9] *Id*. at page 19 (lines 13-22).

best available knowledge. Hydro One is not alone in dealing with these challenges and has demonstrated partnerships with colleagues at municipalities, conservation authorities, and government agencies to address these same concerns. We work collaboratively with these entities to find effective solutions. Hydro One also provides internal training and awareness programs for Hydro One staff on invasive species. Past environmental initiatives have included programs to reduce the spread of invasive species as a result of Hydro One's activities.

Q. What steps has Hydro One taken with regard to care for avian species with respect to transmission facilities?[10]

A. In 2017, Hydro One installed 12 Osprey nesting boxes and repaired numerous others throughout Ontario. Hydro One invests approximately $15,000 in this program annually, in addition to supporting bird banding research work. We have extensive resources available through in-house expertise, collaboration with other utility colleagues, the Canadian Electricity Association, and through the use of qualified consultants. We also are joining the Avian Power Line Interaction Committee ("APLIC") in an effort for continual improvement of our processes by drawing on the experiences of the primarily American utilities that are represented on APLIC.

V. FIRST NATIONS

Q. Does Hydro One actively seek input from public interest groups such as Canadian First Nations?

A. Yes. At Hydro One we work proactively to build relationships with Indigenous Peoples based on understanding, respect, and mutual trust. We respect the rights of Indigenous Peoples, including the Aboriginal and the treaty rights of Aboriginal peoples, as recognized and affirmed in section 35 of the Constitution Act, 1982.

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[10] *Id*. at page 20 (lines 11-21).

Q. **Can you elaborate on how Hydro One seeks input from Canadian First Nations?**

A. Indigenous communities served by Hydro One are well aware of and familiar with Hydro One's environmental stewardship practices as they relate to both distribution and transmission work projects. Hydro One notifies on average over 100 Indigenous communities each year regarding various work projects. In many cases, these projects include an environmental stewardship component, such as a form of environmental assessment, which seeks to understand environmental impacts associated with projects and to mitigate concerns, including specific concerns from Indigenous communities. When Hydro One notifies an Indigenous community about a work project, Hydro One always offers to meet the community to discuss the project, to ask for the Indigenous community's input, and to seek the community's participation as a monitor of studies in which they have an interest. Each time a community has expressed an interest in participating in the environmental components of a Hydro One work project, Hydro One has agreed to consider and to support such participation by providing, among other things, the financial capacity to enable such participation.

Hydro One has developed over the years a project engagement and consultation process that is fully consistent with the criteria used by the courts to assess the adequacy of consultation.

Hydro One has proudly established positive relationships over the years from engaging with Indigenous communities on Hydro One's work projects. Hydro One's support of Indigenous communities' participation in environmental stewardship-related works is a strong indicator that Hydro One is pursuing an industry best practice in helping customers and communities realize their aspirations.

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

A. Yes it does.

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

REBUTTAL TESTIMONY OF MARK T. THIES
REPRESENTING AVISTA CORPORATION

First Mortgage Bonds, Income Taxes, SEC Reporting and Commitments

Q. Please state your name, business address, and present position with Avista Corp.

A. My name is Mark T. Thies. My business address is 1411 East Mission Avenue, Spokane, Washington. I am employed by Avista Corporation as Senior Vice President, Chief Financial Officer and Treasurer.

Q. Are you the same Mark T. Thies who sponsored pre-filed direct testimony, on behalf of Avista Corporation (Avista)?

A. Yes, I sponsored direct testimony and exhibits in this Docket.

Q. Are you sponsoring any exhibits in this testimony?

A. No, I am not.

Q. Does Avista expect to continue to use first mortgage bonds as a low cost financing option under the new ownership of Hydro One? (Muldoon, Staff Ex. 200, page 4, lines 10-14)

A. Yes. Even as a subsidiary of Hydro One, Avista plans to continue to issue secured long-term debt under our mortgage in the form of first mortgage bonds.

Q. Are there requirements that have to be met under the Mortgage to issue first mortgage bonds? (Muldoon, Staff Ex. 200, page 35, lines 9-10)

A. Yes. Avista's first mortgage bonds are issued under, and secured, by Avista's Mortgage and Deed of Trust ("Mortgage"), dated as of June 1, 1939 as amended. Substantially all of Avista's properties are subject to the lien of the Mortgage indenture. Under the terms of the Mortgage, Avista may issue additional first mortgage bonds in an aggregate principal amount equal to the sum of:

- 66-2/3 percent of the cost or fair value (whichever is lower) of property additions which have not previously been made the basis of any application under Avista's Mortgage, or
- an equal principal amount of retired first mortgage bonds which have not previously been made the basis of any application under Avista's Mortgage, or
- deposit of cash.

However, Avista may not individually issue any additional first mortgage bonds (with certain exceptions in the case of bonds issued on the basis of retired bonds) unless we have "net earnings" (as defined in the respective Mortgage) for any period of 12 consecutive calendar months out of the preceding 18 calendar months that were at least twice the annual interest requirements on Avista's mortgage securities at the time outstanding, including the first mortgage bonds to be issued, and on all indebtedness of prior rank.

Q. Staff witness Mr. Muldoon states that "Avista currently maintains both adequate cash flows to interest service and a sufficient pool of qualified assets to issue first mortgage bonds." Does the proposed merger with Hydro One present any risk to Avista's ability to issue first mortgage bonds? (Muldoon, Staff Ex. 200, page 35, lines 9-10)

A. No, it does not. Avista will continue to maintain the ability to issue first mortgage bonds under Hydro One's ownership based on the restrictions under the Mortgage noted above. As of December 31, 2017, we had approximately $1.3 billion of capacity available in property and retired bonds against which to issue first mortgage bonds. We are forecasting approximately $1.9 billion of bond availability by 2022 based on forecasted capital expenditures, debt issuances and retiring debt. As of December 31, 2017, Avista's net

earnings, as defined in the Mortgage, was 3.9 times the annual interest requirement and we are forecasting the net earnings test to continue to be between 3.0 and 3.9 times the annual interest requirement. We believe we have adequate capacity to issue first mortgage bonds to meet our financing needs over the next several years. The Proposed Transaction will not affect our ability to continue to use first mortgage bonds as a low cost financing option for Oregon customers as the capacity is driven by utility assets and earnings. Also, the Public Utility Commission of Oregon ("Commission") will continue to have the ability to review and approve our cost of capital in future rate proceedings for prudency.

Q. Will the Hydro One merger increase the amount of income taxes included in customer's rates? (Gardner, Staff Ex. 300, page 24, lines 7-20)

A. No. As discussed in more detail by Hydro One witness Mr. Lopez, the appropriate level of income taxes will continue to be included in customer rates post-merger. Avista will not be changing its methodology for calculating federal and state income taxes at the utility level nor making any changes to the methodology for assignment of utility related taxes at the service and jurisdictional level. Income tax accruals will continue to be made at the Avista level and will be separate and apart from Hydro One's Canadian income tax costs. The company will continue providing the necessary level of accounting information going forward to allow for Commission review in future rate filings.

Q. At the Commissioner workshop held on February 26, 2018, Commissioner Hardies asked if Avista plans to continue to file reports with the SEC post-merger. Will you respond to that question?

A. Yes, under commitment No. 37, Avista agrees following the closing of the Proposed Transaction, Avista will file required reports with the Securities Exchange

Commission ("SEC"). We currently have an obligation to file periodic and current reports (10-K, 10-Q and 8-K) with the SEC pertaining to common stock and debt. Additionally, our debt agreements require us to provide quarterly financial statements as well as audited annual financial statements to bondholders. Upon consummation of the proposed merger, we will continue to file periodic and current reports with the SEC related to the issuance of public debt. Following the merger, we may be able to follow a reduced disclosure format eliminating certain disclosures but we expect many of the SEC reporting requirements to remain in effect. Our periodic reports will still provide a comprehensive review of our financial performance, including audited financial statements on an annual basis and condensed financial statements on a quarterly basis.

Q. Have Avista and Hydro One proposed a revised master list of commitments as part of the filing (see Exhibit No. 801 in Mr. Schmidt's testimony)?

A. Yes, Avista and Hydro One are proposing revisions to the following commitments to address concerns raised by the parties to the case:

Rate Commitments:
- Treatment of Net Cost Savings and Transaction Costs – Commitment No. 16

Regulatory Commitments:
- Ratemaking Cost of Debt and Equity – Commitment No. 23
- Avista Capital Structure – Commitment No. 24

Financial Integrity Commitments:
- Capital Structure Support – Commitment No. 32
- Continued Credit Ratings – Commitment No. 34
- Restrictions on Upward Dividends and Distributions – Commitment No. 35
- Pension Funding – Commitment No. 36

Ring-Fencing Commitments:
- Golden Share – Commitment No. 40

- Hold Harmless; Notice to Lenders; Restriction on Acquisitions and Dispositions – Commitment No. 44

Q. Do you concur with the edits to the commitments Mr. Schmidt has provided?

A. Yes, on behalf of Avista I do concur with these revised commitments. I also agree with Mr. Schmidt that the Proposed Transaction, as strengthened by the revised commitments sponsored by me and other witnesses, provides benefits to Avista's Oregon customers and will more broadly serve the public interest.

Q. Does that conclude your Reply Testimony?

A. Yes, it does.

AVISTA/1200
Christie

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

REBUTTAL TESTIMONY OF KEVIN J. CHRISTIE
REPRESENTING AVISTA CORPORATION

Customer Service and Support Programs

I. INTRODUCTION

Q. Please state your name, business address and present position with Avista Corporation?

A. My name is Kevin J. Christie and my business address is 1411 East Mission Avenue, Spokane, Washington. I am employed as the Vice President of External Affairs, Chief Customer Officer.

Q. Have you filed direct testimony in this proceeding?

A. Yes. My testimony provided an overview of Avista's Customer Solutions organization, our Customer Service and support programs, and what we are doing to meet our evolving customer expectations. I also explained certain commitments proposed by Avista and Hydro One as part of our request for approval of the Proposed Transaction. Finally, my testimony explained why the Proposed Transaction will provide the opportunity to preserve and enhance customer service; in that regard, Hydro One stands firmly behind Avista in its continuing efforts to maintain and improve customer service.

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

A. Yes. I am sponsoring Exhibit No. 1201, which are the Company's proposed Service Quality Measures discussed in Revised Commitment No. 15 (Exhibit 801) sponsored by Hydro One witness Mr. Schmidt, provides "Revised Commitments" that are revised from Hydro One's and Avista's original 55 commitments and several "New Commitments").

II. RESPONSE TO TESTIMONY OF COMMISSION STAFF WITNESSES MS. ANDERSON AND MS. ZARATE

Economic Development and Charitable Contributions

Q. Commission Staff witness Ms. Anderson states, "that over the last five years

only about one percent of Avista's economic development investment has been for economic development in Oregon."[1] Is that statement correct?

A. No. Avista supports economic development and innovation through a number of activities, including annual and ongoing support to economic development agencies and initiatives such as the Business Entrepreneurship Network. Avista's Oregon jurisdiction accounts for approximately 9% of Avista's utility business, and the Company's economic development contributions are in line with that percentage. Avista provided over $2.1 million in Oregon from 2013 – 2017 in regional economic development, which on average is approximately 9%.

Q. Ms. Anderson goes on to say in her testimony that "from 2014 through September 2017, Avista made no contributions to any organization operating in Oregon."[2] Did the Company make a contribution to any organization operating in Oregon during that time period?

A. Yes. The Company has provided multiple organizations with funding to support Oregon customers. For example, over 150 organizations throughout Oregon have benefited from Avista charitable contributions.[3] The following are just a sample of 21 out of 156 organizations in Oregon which benefit from Avista's charitable contributions:

- Kiwanis Club of Boardman
- Town of Bonanza
- Klamath Community College
- Malin Community Service Club
- Family YMCAs of Rogue Valley, Ashland, an Grants Pass
- Rogue Valley Foundation
- Southern Oregon Regional Economic Development, Inc. (SOREDI)
- Southern Oregon University

[1] Staff/500, p. 20.
[2] Staff/500, p. 23.
[3] Avista response to Staff DR 047.

- St. Vincent de Paul
- The ARC of Jackson County
- League of Oregon Cities
- Oregon Economic Development Association
- City of Grants Pass
- Rogue Community College
- City of Talent
- Southern Oregon University
- Union County Extension
- Providence Community Health Foundation
- Rogue Community Health
- Klamath County Economic Development Association (KCEDA)

Oregon Institute of Technology

Over $375,000 was provided by Avista in Oregon to many different organizations (as shown above) from 2015 through September 2017.

Q. Ms. Anderson also questions whether the proposed charitable contribution, Original and Revised Commitment No. 11[4] in the Proposed Transaction, would even apply in a net benefit calculation for Oregon customers. Do you agree?

A. No. Avista and Hydro One have proposed immediate financial "net benefits" for Avista Oregon customers through the proposed Rate Credits. An increase in charitable contributions only made possible through the merger, as proposed in Original and Revised Commitment No. 11, include an increase from Avista's annual contributions in recent years of approximately $2.5 million per year to $4 million per year. A one-time contribution of $7 million will be made to the Avista Foundation endowment at the time the transaction closes (see Original and Revised Commitment 53). In addition, a $2.0 million annual contribution will be made to the Avista Foundation. The Avista Foundation provides funding to non-profit

[4] Avista will maintain a $4,000,000 annual budget for charitable contributions (funded by both Avista and the Avista Foundation). This is an increase from Avista's average annual contributions in recent years of approximately $2.5 million per year. In addition, a $2.0 million annual contribution will be made to the Avista Foundation. The Avista Foundation provides funding to non-profit organizations addressing the needs of communities and citizens served by Avista. The Avista Foundation also includes a matching gifts program for employees of Avista.

organizations addressing the needs of communities and citizens of Oregon served by Avista.

Service Quality Measures and Billing Practices

Q. Commission Staff witness Ms. Zarate expressed concerns related to Original Commitment 15 (Safety and Reliability Standards and Service Quality Measures), stating that "this commitment adds no incremental benefit to Avista's customers, and in fact misses an opportunity to improve some issues in Avista's service quality policies."[5] Does the Company agree that there was a missed opportunity to improve its service quality policies?

A. No. The Company agrees, however, that there is an opportunity to develop a set of Service Quality Measures (SQM) that could be reported to the Commission in Oregon each year. Through Revised Commitment 15 and as shown in Exhibit 1201, Avista is proposing a set of service measures and accompanying benchmarks and reporting requirements that, taken together, can provide an overall assessment of the quality of the Company's service to its customers. These measures, referred to collectively as Avista's "Service Quality Measures Program," include: 1) five individual measures of the level of customer service and satisfaction that the Company must achieve each year; 2) four individual service measures where Avista will provide customers a payment or bill credit (shareholder funded) in the event it does not deliver the required service level ("customer guarantees"); and 3) filing with the Commission an annual report with SQM results on or before April 30th each year.

Q. What did Commission Staff recommend regarding the Company's billing practices for arriving or departing customers?

[5] Exhibit 400, page 15.

A. Commission Staff witness Ms. Zarate suggests that the Company and Hydro One add a commitment regarding billing practices for "arriving" and "departing" customers.[6] Specifically, Staff recommends that "if the time for reading the meter is going to be more than five days from when the customer departs or a new customer is connected, Avista will read the meter at the time the customer is leaving service or beginning service."[7]

Q. What is Avista's current billing practice for arriving or departing customers?

A. Avista's current billing practice for arriving or departing customers utilizes actual meter reads when available. If there is a meter read within three days (past or future) from the requested start or stop date, the Company will use that meter reading as the start or stop date. If there is a meter read scheduled between four to 15 days in the future, the Company will prorate a customer's open or closing bill using that read. If a read is scheduled more than 15 days in the future, the Company will estimate the meter read or request a service order to obtain an actual read. When estimating, the estimate is done using the prior meter read and historical usage information.

Q. Would Avista agree to adopt Staff's recommendation?

A. Yes. Avista would agree to modify its billing practices as suggested by Commission Staff. The modifications Staff suggests include: 1) if there is a meter read that occurred four to five days in the past, the Company can prorate the start or stop read using that read; and 2) in situations when a meter reading date is scheduled more than 15 days in the future, the Company will obtain an actual meter read for customers that are arriving or

[6] Exhibit 400, page 14.
[7] Exhibit 400, page 16.

departing. The combination of these two changes will result in using actual meter reads to determine the therm usage for customers leaving or departing in all situations.

Q. Is Avista willing to modify other billing practices that would benefit Oregon customers?

A. Yes. As part of the merger, Avista would agree to eliminate security deposits for new Avista residential customers and return existing security deposits to customers who have a deposit held longer than 6 months.

Q. Does this conclude your reply testimony?

A. Yes it does.

AVISTA/1201
Christie

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

KEVIN J. CHRISTIE
Exhibit No. 1201

Avista Oregon Service Quality Measures Program

Exhibit No. 1201
(UM 1897 Avista / Hydro One Merger)

Avista Oregon Service Quality Measures Program

Customer Service Measures

1. The level of Customer satisfaction with telephone service, as provided by the Company's Contact Center, will be at least 90 percent, where:
    a. The measure of Customer satisfaction is based on Customers who respond to Avista's quarterly survey of Customer satisfaction, known as the Voice of the Customer, as conducted by its independent survey contractor;
    b. The measure of satisfaction is based on Customers participating in the survey who report the level of their satisfaction as either "satisfied" or "very satisfied"; and
    c. The measure of satisfaction is based on the statistically-significant survey results for both electric and natural gas service for Avista's entire service territory for the calendar year, and will also separately be reported for Oregon customers only.

2. The level of Customer satisfaction with the Company's field services will be at least 90 percent, where:
    a. The measure of Customer satisfaction is based on Customers who respond to Avista's quarterly survey of Customer satisfaction, known as the Voice of the Customer, as conducted by its independent survey contractor;
    b. The measure of satisfaction is based on Customers participating in the survey who report the level of their satisfaction as either "satisfied" or "very satisfied"; and
    c. The measure of satisfaction is based on the statistically-significant survey results for both electric and natural gas service for Avista's entire service territory for the calendar year, and will also separately be reported for Oregon customers only.

3. The number of complaints filed with the Public Utility Commission of Oregon by Avista's natural gas customers will not exceed the rate of 0.4 complaints per 1,000 customers for the calendar year.

4. The percentage of customer calls answered by a live representative within 60 seconds will be at least 80 percent for the calendar year, where:
    a. The measure of response time is based on results from the Company's Contact Center, and is initiated when the customer requests to speak to a customer service representative; and
    b. Response time is based on the combined results for both electric and natural gas customers for Avista's entire service territory.

5. The Company's average response time to a natural gas system emergency in Oregon will not exceed 55 minutes for the calendar year, where:
    a. Response time is measured from the time of the customer call to the arrival of a field service technician; and

b. "Natural gas system emergency" is defined as an event when there is a natural gas explosion or fire, fire in the vicinity of natural gas facilities, police or fire are standing by, leaks identified in the field as "Grade 1", high or low gas pressure problems identified by alarms or customer calls, natural gas system emergency alarms, carbon monoxide calls, natural gas odor calls, runaway furnace calls, or delayed ignition calls.

Customer Service Guarantees

1. The Company will keep mutually agreed upon appointments for natural gas service, scheduled in the time windows of either 8:00 a.m. – 12:00 p.m. or 12:00 p.m. – 5:00 p.m., except for the following instances:
    a. When the Customer or Applicant cancels the appointment;
    b. The Customer or Applicant fails to keep the appointment; or
    c. The Company reschedules the appointment with at least 24 hours' notice.

2. The Company will provide a cost estimate to the Customer or Applicant for new natural gas supply within 10 business days upon receipt of all the necessary information from the Customer or Applicant.

3. The Company will respond to most billing inquiries at the time of the initial contact, and for those inquires that require further investigation, the company will investigate and respond to the Customer within 10 business days.

4. The Company will investigate Customer-reported problems with a meter, or conduct a meter test, and report the results to the Customer within 20 business days from the date of the report or request.

CUSTOMER SERVICE GUARANTEE CREDITS

For failure to meet a Customer Service Guarantee for service provided to an electric Customer, the Company will apply a $50 credit to the Customer's account. For failure to meet a Customer Service Guarantee for service provided to an Applicant, the Company will mail a check for $50 to the Applicant. Avista will timely provide the qualifying customer credit or applicant check without any requirement on the part of the customer or applicant to either apply for, or request the applicable credit or check.

Tracking of the Company's performance on the Customer Service Guarantees, including the application of customer credits, will begin on January 1, 2019.

ANNUAL REPORT

The Company will include the results of its Service Quality Measures Program in an annual report to be filed with the Public Utility Commission of Oregon on or before April 30th of each year.

CUSTOMER REPORT CARD

Within 90 days of filing its Annual Service Quality Measures Report, the Company will send a Service Quality Measures Program Report Card to its Customers, which will include the following:

a. Results for each of the Company's Customer Service Measures, compared with the respective performance benchmarks;
b. Results for each of the Customer Service Guarantees, compared with the respective benchmarks, and including the number of events for each measure where a credit was provided, and the total dollar amount of the credits paid for each measure; and
c. Performance highlights for the year.
d. The company will issue its first Report Card to customers on or before July 31, 2020.

AVISTA/1300
Ehrbar

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM-1897

REBUTTAL TESTIMONY OF PATRICK D. EHRBAR
REPRESENTING AVISTA CORPORATION

Labor, Capital Expenditures, Rate Cases, Rate Credit

I. INTRODUCTION

Q. Please state your name, business address and present position with Avista Corporation?

A. My name is Patrick D. Ehrbar and my business address is 1411 East Mission Avenue, Spokane, Washington. I am the Director of Regulatory Affairs for Avista.

Q. Have you filed direct testimony in this proceeding?

A. Yes. My testimony explained certain commitments offered by Avista and Hydro One as part of our request for approval of the Proposed Transaction. Among the commitments was a proposed Rate Credit to customers beginning following the closing of the transaction, and I explained how we proposed to allocate that benefit to Avista's electric and natural gas customers. I also addressed other regulatory commitments offered by the companies. Finally, my testimony explained the proposed accounting protocol for any affiliate transactions between Avista and Hydro One following the closing of the transaction.

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

A. No, I am not. A table of contents for my testimony is as follows:

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II. RESPONSE TO TESTIMONY OF LABORERS' INTERNATIONAL UNION OF NORTH AMERICA ("LIUNA")

Q. With regards to the Testimony of Laborers' International Union of North America ("LIUNA"), its affiliated District Council, and Local Unions serving or located in Oregon, has Avista reached agreement in principle on certain labor-related commitments?

A. Yes. As a part of New Commitment No. 60 (Exhibit 801, sponsored by Hydro One witness Mr. Schmidt, provides "Revised Commitments" that are revised from Hydro One's and Avista's original 55 commitments and several "New Commitments"), if the Proposed Transaction is approved in all states, Avista has agreed to the following:

> 1. On a prospective basis, and for a period of 10 years ending March 7, 2028, Avista will require the use of Oregon and Southern Idaho District Council of Laborers,' including any future successor organization, ("OSIDCL") members for the type of work that is ordinarily and customarily performed by OSIDCL on natural gas replacement and all natural gas work. This will not apply to work performed under contracts already in effect as of March 7, 2018. This agreement will not apply to (a) atmospheric corrosion; (b) locating; and (c) leak survey. This agreement will also not apply to work performed where signatory contractors are not available (unavailability is typically due to locations being in remote areas), or choose not to bid on projects; provided that work performed in such areas will be paid at equivalent wages and benefits.
>
> 2. On a prospective basis, and for a period of 10 years ending March 7, 2028, Avista will require the use of OSIDCL members for all flagging work, unless otherwise performed by Avista employees represented by IBEW Local 659. This will not apply to work performed under contracts already in effect as of March 7, 2018.
>
> 3. OSIDCL will provide for signatory contractors OSIDCL members that are qualified pursuant to applicable OSHA 1910 regulations and all other applicable training. In addition OSIDCL will provide OSIDCL members knowledgeable in the DOT Title 49 Code of Federal Regulations, Part 192, and all applicable state pipeline safety regulations. Contractors shall be required to provide proof of compliance with this requirement to Avista.

4. On a prospective basis, Avista will require contractors to utilize Oregon and Southern Idaho Laborers-Employers Training Trust ("OSILETT") for required training, if applicable courses are offered by OSILETT and are reasonably accessible in the locality where the work is to be performed.

5. Avista will meet and confer with OSIDCL to discuss possible involvement in all future hydroelectric projects that are within the sphere of OSIDCL expertise.

6. Avista will encourage contractors to utilize union labor, including, without limitation and as applicable, members of OSIDCL, Pipefitters and Steamfitters, and IBEW, on Avista projects as part of its bidding solicitation process on all other construction work, including but not limited to capital work on hydro facilities, and will evaluate the use of such members in the staffing plans of bidding contractors as an element of Avista's bid evaluation process.

7. Avista will continue to prioritize the hiring of qualified contractor personnel through the bidding process, by requiring analysis of not only the price proposals submitted by contractors, but a variety of other factors, including minimum staffing requirements as applicable, training programs, documented qualification programs, safety track records, OSHA 300 reportables, and other safety records as appropriate. Review of these components is intended to verify that the contractor is able to supply a sufficient workforce to meet Avista's needs, and that their personnel are appropriately trained, qualified and able to safely and reliably perform work for Avista.

8. Work covered by these commitments does not include any work that is customarily performed by Avista employees represented by IBEW Local 659 but that is contracted out pursuant to the IBEW Local 659 collective bargaining agreement with Avista. It also does not include any work that is performed by Avista employees, regardless of the type of work involved.

9. Avista will meet and confer with OSIDCL at least six months prior to March 7, 2028 to discuss extending or modifying the terms set forth herein.

Q. Is it your understanding that, based on the above commitments, LIUNA will fully support the proposed merger in Oregon?

A. Yes, based on current communications with LIUNA, that is our understanding.

Q. Does Avista have any other items to address related to the testimony filed by LIUNA?

A. No, it does not.

III. RESPONSE TO TESTIMONY OF ALL OTHER PARTIES

Q. Is NWIGU witness Mr. Mullins incorrect when he asserts Avista will significantly overspend on capital additions due to the acquisition premium? (Mullins, NWIGU Ex. 100, page 7, lines 1-2)

A. Yes. Mr. Mullins simply speculates, without any support whatsoever, that Avista will seek to overspend on capital so that the acquisition premium paid by Hydro One can be minimized sooner than would otherwise naturally occur with growth over time. First, although unintended I'm sure, he questions the integrity and professionalism of people who work at Avista. Avista is not in the business of spending capital for the sake of spending capital. In fact, in our last general rate case (Docket UG-325), Avista explained that we have chosen not to fund all of the capital investment projects proposed by the various departments, driven primarily by the Company's desire to mitigate the retail rate effects on customers. Decisions to delay funding certain projects are made only in cases where the Company believes the amount of risk associated with the delay is reasonable and prudent. In fact, in 2016 and 2017, the dollar amount of capital projects funded was below the amount requested by individual departments by $70 million and $62 million, respectively, for Avista as a whole. Based on an approximate $400 million capital budget, unfunded capital represents approximately 17% of the total capital budget, not an insignificant amount.

Second, Avista cannot increase rates on its own; rather it is the Commission, through a general rate case, that approves Avista's rates. In the process of review, all capital additions will be audited and reviewed by Commission Staff and interested parties to determine whether the rationale and costs for each project were prudent at the time the projects were considered/completed. Avista's rates cannot be adjusted without that very important and

necessary regulatory review.

Q. Does the structure of the Rate Credit proposed in the Joint Application somehow incentivize Avista to file more rate cases in the future? (Mullins, NWIGU Ex. 100, page 16, lines 5-20)

A. No, the structure of the Rate Credit will not otherwise cause Avista to file more rate cases in the future. As I discuss later in my testimony, the offsettable portion of the proposed Rate Credit has been reduced in the Revised Commitments (both in total dollar amount, and in term – five years versus ten years). Quite simply the annual amount of the offsettable portion would not drive a rate filing. While Avista strives hard to minimize the number of rate cases it files in its jurisdictions, the primary drivers of Avista's filings are related to necessary and prudent capital expenditures (which are unaffected by the Proposed Transaction) in an environment of relatively slow customer and load growth (which would otherwise help to absorb cost increases).

Q. Does Avista believe that the acquisition premium should be recoverable from Oregon customers? (Mullins, NWIGU Ex. 100, page 6, lines 12-15)

A. No, Avista does not believe the acquisition premium should be recoverable from any regulated customer (whether Oregon, Washington, Idaho, or even in Ontario, Hydro One's service territory). As stated in Original Commitment 17 and Revised Commitment No. 16, the premium paid by Hydro One for Avista is not recoverable from any of Avista's retail customers in any of its jurisdictions.

Q. Is it fair to state that Oregon natural gas customers will not receive benefits derived from economies of scale, sharing of best practices, a shared technological platform, and improved purchasing power because Hydro One is not a natural gas utility?

(Muldoon, OPUC Staff Ex. 100, page 30, lines 9-21; Anderson, OPUC Staff Ex. 500, page 18 (lines 19-21) - page 19 (lines 1-5); Jenks-Gehrke, CUB Ex. 100, unredacted page 27 (lines 7-9); Gardner, OPUC Staff Ex. 300, page 11 (lines 1-8); Anderson, OPUC Staff Ex. 500, page 18 (lines 19-21) - page 19 (lines 1-5))

A. No, it is not fair to make such an assertion. It is true that Hydro One is an electric transmission and distribution utility, and is not a natural gas utility. That said, there are many areas where efficiencies may occur that are not dependent on the type of utility (i.e., electric or natural gas). For example, both electric and natural gas utilities, in general, have common infrastructure, including, but not limited to:

- Information Systems and Technology
- Customer Management and Contact Centers
- Human Resources & Labor Relations
- Fleet
- Legal
- Procurement
- Accounting, Regulatory and other Financial Services

As we have stated in data responses to the Parties, Hydro One and Avista have just started to engage in high-level discussions around potential future opportunities to create additional benefits for both organizations. We believe that there are many areas where potential efficiencies can occur that will benefit natural gas customers in not only in Oregon, but also in Washington and Idaho.

Q. When will Hydro One and Avista provide a more detailed explanation of how they plan to allocate corporate overhead costs between Hydro One and Avista? (Muldoon, OPUC Staff Ex. 100, page 27 (line 16) - 28 (line 8); Mullins, NWIGU Ex. 100, page 14 (line 16) - 15 (line 9); Gardner, OPUC Staff Ex. 300, pages 3-4 (lines 18-21; 1-3);

Gardner, OPUC Staff Ex. 300, page 4 (lines 4-10); Gardner, OPUC Staff Ex. 300, page 17 (lines 16-20) - page 18 (lines 1-2) & page 23 (lines 12-20))

A. First, it is important to recognize that I sponsored on behalf of Hydro One and Avista, Exhibit No. 703, a "Direct Assignment Protocol". The Protocol addresses the accounting for costs both prior to the closing of the transaction, as well as the accounting for costs following the closing. That protocol has been in place for some time, and governs assignments and allocations of costs between services and jurisdictions, as well as between Avista and its affiliates – e.g., AELP, our electric utility affiliate serving 17,000 customers in Juneau, Alaska. To my knowledge, I am unaware of any issues arising in Oregon based on the use of that protocol. As a part of Revised Commitment No. 22, Avista, however, will prepare a Master Services Agreement (MSA), itemizing and explaining corporate cost allocation methods used to set rates. The MSA will be fully described and supported in testimony and workpapers in Avista's first general rate case submitted after this application is approved by the Commission. Thereafter, the MSA will be filed along with any general rate case filed with the Commission. This filing will capture, highlight and explain all changes since the MSA was last provided to the Commission. The entirety of the MSA and its components are subject to review and approval by the Commission in subsequent proceedings before the Commission to confirm that cost drivers, accounting methods, assumptions, and practices result in fair, just and reasonable utility rates. I should note that a similar commitment was made in the recently-approved reorganization of Northwest Natural (Docket No. UM 1804, Commitment 26E).

IV. RATE CREDIT AND OTHER COMMITMENTS

Q. In response to the testimony of the parties in this case, have Hydro One and

Avista modified the proposed Rate Credit? (Anderson, OPUC Staff Ex. 500, page 15, lines 8-12)

A. Yes. In my direct testimony I stated that the proposed $31.5 million system benefit ($2.9 million Oregon share) for the 10-year period represented the "floor" of benefits customers will receive; as additional merger savings occur, those would be reflected as part of the cost of service captured in subsequent general rate cases. However, as outlined in Revised Commitment No. 17, Avista and Hydro One are proposing to flow through to Avista's retail customers in Oregon a larger Rate Credit of $4.4 million over a 5-year period, beginning at the time the merger closes, as shown below:

	Rate Credit Proposal	
	Oregon Annual Credit Years 1-5	Oregon Total Credit
Total Credit	$884,630	$4.4 Million
Offsetable Credit	$147,585	$737,925

The Total Rate Credit to customers for the five years following the closing would be $884,630 per year. Only a small portion of the annual total Rate Credit would be offsetable, in the amount of $147,585.[1] That amount is equivalent to Oregon's share of system annual savings identified by Avista witness Mr. Thies post-closing of the merger. During the 5-year period the financial benefits will be flowed through to customers either through the separate Rate Credit described above or through a reduction to the underlying cost of service as these benefits are reflected in the test period numbers used for ratemaking. At the time of the closing of the

[1] The offsetable portion of the Rate Credit was calculated using a pro rata share of the jurisdictional total of the rate credit, i.e., Oregon's share of the offsetable Rate Credit was 8.68%, therefor Oregon's share of the $1.7 million offsetable portion is $147,585.

merger, the $884,630 benefit will be provided to customers through a separate Rate Credit, as long as the reduction in costs has not already been reflected in base retail rates for Avista's customers.

To the extent Avista demonstrates in a future rate proceeding that cost savings, or benefits, directly related to the Proposed Transaction are already being flowed through to customers through base retail rates, the separate Rate Credit to customers would be reduced by an amount up to the offsetable Rate Credit amount. The portion of the total Rate Credit that is not offsetable effectively represents acceptance by Hydro One of a lower rate of return during the 5-year period.

The $4.4 million represents the new "floor" of benefits that will be flowed through to Avista's customers, either through the Rate Credit or through benefits otherwise included in base retail rates. To the extent the identifiable benefits exceed the annual offsetable Rate Credit amounts, these additional benefits will be flowed through to customers in base retail rates in general rate cases as they occur. Avista and Hydro One believe additional efficiencies (benefits) will be realized over time from the sharing of best practices, technology and innovation between the two companies. It will take time, however, to identify and capture these benefits. The level of annual net cost savings (and/or net benefits) will be tracked and reported on an annual basis, and compared against the offsetable level of savings.

Q. To demonstrate that this Proposed Transaction meets the requirements of ORS 757.511, has Hydro One committed to other programs and initiatives that will provide a net benefit to Avista's customers, and at the same time not impose a detriment on Oregon citizens as a whole? (Muldoon, OPUC Staff Ex. 100, page 11, lines 11-17)

A. Yes, it has. In addition to other non-financial commitments that will protect

both Avista's customers and Oregon citizens as a whole (such as the ring fencing and golden share provisions), Hydro One and Avista have proposed the following commitments:

Original and Revised Commitment No. 53 - Community Contributions: Hydro One will cause Avista to make a one-time $7,000,000 contribution to Avista's charitable foundation at or promptly following closing,[2] and $2,000,000 per year thereafter (noted in Original and Revised Commitment No. 11).

Original and Revised Commitment No. 54 - Low-Income Energy Efficiency Funding: Avista will continue to work with its advisory groups on the appropriate level of funding for low income energy efficiency programs.

Original and Revised Commitment No. 55 - Addressing Other Low-Income Customer Issues: Avista will continue to work with low-income agencies to address other issues of low-income customers, including funding for bill payment assistance.

In addition, for New Commitments 56, 57, and 58, Hydro One and Avista propose to commit a total of $1,626,995 over 10 years to help Avista's low-income customers in Oregon.[3] Hydro One and Avista look forward to working with the parties to determine how to best allocate the funds between these three commitments:

New Commitment No. 56 – Low Income Rate Assistance Program (LIRAP): Hydro One and Avista commit to continue Avista's LIRAP program. Hydro One will arrange[4]

[2] Note that Original and Revised Commitment 11 contains additional provisions relating to Avista's charitable contributions.

[3] See Footnote 10, p. 10 of Exhibit No. 801.

[4] Throughout the Revised Commitment List, any commitment that states Hydro One will arrange funding is not contingent on Hydro One's ability to arrange funding, particularly from outside sources, but is a firm commitment to provide the dollar amount specified over the time period specified and for the purposes specified. To the extent Avista has retained earnings that are available for payment of dividends to Olympus Equity LLC consistent with the ring fencing provisions in the list of merger commitments, such retained earnings may be used. Funds available from other Hydro One affiliates may be used without limitation. Avista will not seek cost recovery for any of the commitments funded or arranged by Hydro One in the list of merger commitments. Hydro One also will not seek cost recovery for such funds from ratepayers in Ontario.

additional funding over a 10-year period, for LIRAP in Oregon. The Community Action Agencies will administer the funds consistent with Avista tariff schedule 493.[5]

New Commitment No. 57 - Funding for Oregon Energy Fund (OEF): Hydro One will arrange funding over 10 years to be given to the Oregon Energy Fund, for the purpose of funding programs that benefit Avista customers in Oregon, consistent with the OEF's mission.[6] The funds will be paid into a separate account to be managed and disbursed by Avista at the direction of Oregon Energy Fund (OEF). Eligible costs will include reasonable administration costs required for disbursement.

New Commitment No. 58 - Low Income Weatherization: Hydro One will arrange additional funding over 10 years to fund low income weatherization for Avista customers in Oregon. The Community Action Agencies and Avista will work together to design the program, and it will be administered through the Avista Oregon Low Income Energy Efficiency Program ("AOLIEE") program.[7] For both existing funding and the new Hydro One funding, 20 percent of the funds may be used for "direct" project coordination costs and 10 percent for "indirect" general overhead costs of administering the weatherization program.

Q. What other Commitment has been made as it relates to On Bill Repayment ("OBRP")?

A. In New Commitment 61, Hydro One will arrange funding of the approximately $100,000 (system basis) initial investment in software upgrades and $5,000 in administrative costs to implement an on-bill repayment program ("OBRP"). OBRP is a pass-through billing service for energy efficiency loans, where Avista would collect loan payments on customers'

[5] The current annual funding levels for LIRAP are approximately $230,000.
[6] At present Avista does not currently provide funding to the Oregon Energy Fund.
[7] The current annual funding levels for AOLIEE are approximately $660,000.

bills then transmit the sum monthly to the third-party lender. Only non-profit lenders would be eligible, offering low rates for energy efficiency loans. The lender has no ability to shut off power (due to non-payment) and all lending activity is managed separate from the utility, where the lender:

- Provides all capital, bears full risk;
- Manages delinquent files and collections off-bill;
- Handles loans/balances separate from utility financial systems; and
- Meets consumer lending regulatory requirements.

Hydro One and Avista believe that this is a new benefit for Oregon customers that will help facilitate customers adopting more energy efficient space and water heating appliances, among other things. Under no circumstance will the ratepayer population be responsible for any default related to the OBRP.

Q. For all of the Commitments outlined in Hydro One and Avista's Reply Testimony, is there a commitment that requires Avista to file an annual report with the Commission providing status updates on Avista's compliance with the various commitments?

A. Yes. While Hydro One provided Original Commitment No. 30 in its originally filed Master List of Commitments related to annual reporting, as shown in the Revised Master List of Commitments sponsored by Hydro One witness Mr. Schmidt, that commitment has been greatly enhanced. In particular, Revised Commitment No. 30 provides that Avista will provide more detailed information regarding the corporate structure of Hydro One, as well as the process should Hydro One or Avista violate any of the approved commitments. This enhanced commitment should give the Commission assurance that Avista will, and Hydro One agrees

Avista will, provide compliance reports on the commitments, and sets forth what happens should there be a violation. We understand the importance of continued Commission oversight of compliance with the commitments and pledge to promptly address any issues, if they occur.

Q. Does this conclude your reply testimony?

A. Yes it does.