

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

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

**SUPPLEMENTAL REPLY TESTIMONY OF BRADLEY G. MULLINS
ON BEHALF OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS**

September 20, 2018

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

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

5 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REPLY TESTIMONY?**

6 A. I respond to the Supplemental Testimony of Avista and Hydro One Limited (“Hydro One”)
7 regarding the Application (“Merger Application”) of Hydro One, acting through its indirect
8 subsidiary Olympus Equity LLC to exercise substantial influence over the policies and actions
9 of Avista. The Supplemental Testimony addresses recent political events in the Province of
10 Ontario, which lead to the early retirement of Hydro One’s Chief Executive Officer (“CEO”)
11 and the voluntarily resignation of the Hydro One Board.

12 **Q. BASED ON YOUR REVIEW OF THE SUPPLEMENTAL TESTIMONY OF AVISTA**
13 **AND HYDRO ONE, AND THE RECENT POLITICAL EVENTS IN THE PROVINCE**
14 **OF ONTARIO, WHAT ARE YOUR RECOMMENDATIONS?**

15 A. The potential for the Province of Ontario to exercise influence over Hydro One’s Board,
16 through actions such as those described in Mr. Scarlett’s Supplemental Testimony, was a
17 concern addressed in AWEC’s earlier testimony, and was known when AWEC entered into the
18 Stipulation supporting the proposed merger between Hydro One and Avista. AWEC was
19 admittedly surprised that the recent election led to the immediate retirement of the CEO and
20 resignation of the Board, particularly given the representations made by Hydro One and Avista
21 dismissing the likelihood of such events. Notwithstanding, provided that the new Board and
22 CEO can demonstrate that Hydro One remains committed to the merger and the merger
23 commitments, and subject to the additional commitment recommended below and any
24 additional commitments recommended by the other parties or required by the Commission, I

1 believe the transaction would continue to meet the standard for approval under ORS 757.511.

2 Notwithstanding, AWEC remains concerned about these events and the potential effects on
3 ratepayers, and reserves the right to review and comment on the testimony of other parties filed
4 in this proceeding.

5 **Q. PLEASE SUMMARIZE THE EVENTS IN THE PROVINCE OF ONTARIO THAT**
6 **LED TO THE REMOVAL AND REPLACEMENT OF HYDRO ONE’S BOARD OF**
7 **DIRECTORS AND CEO.**

8 A. The replacement of the Board and the CEO was one of the campaign promises made by newly
9 elected Premier Doug Ford. In light of the outcome of the election that took place on June 7,
10 2018, the Board of Hydro One apparently determined that it would be in the best interests of
11 Hydro One to voluntarily resign to facilitate the orderly replacement of the Board, and did so in
12 a matter documented in a July 2018 Letter Agreement.¹ The CEO took a similar approach.
13 According to James Scarlett, because the CEO would not have the support of Hydro One’s
14 single largest shareholder, the CEO determined that it was in the best interests of Hydro One
15 and its stakeholders to retire from his positions.²

16 **Q. IS IT PROBLEMATIC FOR THE PROVINCE OF ONTARIO TO EXERCISE**
17 **CONTROL OVER AVISTA AS A SHAREHOLDER?**

18 A. All parties were aware that the Province of Ontario, as a major shareholder, could exercise
19 some degree of control over the policies and actions of Hydro One. But the same can be said
20 for any corporation—a large shareholder may take actions in order to control corporate
21 policies. It is not uncommon for a large activist shareholder in a corporation, for example, to
22 force certain corporate policies by replacing board members and executives. Carl Icahn’s

¹ Hydro One/1600, Scarlett/p. 7.

² Hydro One/1600, Scarlett/p. 9.

1 recent involvement with the potential sale of Xerox Corporation to Fuji Film comes to mind as
2 an example.³

3 What is unique in this case, however, is that the activist shareholder also happens to be
4 a provincial government of Canada. The fact that the major shareholder is a provincial
5 government—rather than an investment bank, utility holding company or other similar
6 enterprise—can be viewed as both a good and bad thing. On one hand, it is recognized that the
7 Province of Ontario’s interest in Hydro One is not purely a financial one. On the other hand,
8 there are a number of corporate governance protections that have been put into place at Hydro
9 One that go beyond the protections provided by a typical corporation specifically because the
10 Province of Ontario is the largest shareholder.

11 Further, even if the Province of Ontario were to try to exercise its policy preferences
12 over Avista, it is questionable whether those policies would be any worse than the policy
13 preferences of some other corporate utility holding company. For example, AWEC has been
14 deeply concerned with utility policies that encourage excessive spending on capital
15 expenditures to bolster earnings and policies that encourage filings that amount to single issue
16 ratemaking.

17 **Q. WHAT ACTIONS COULD THE PROVINCE OF ONTARIO ACTUALLY TAKE TO**
18 **NEGATIVELY AFFECT AVISTA RATEPAYERS?**

19 A. Generally speaking, natural gas ratepayers are concerned about safety, rates and customer
20 service. Ratepayers are usually less concerned with a utility’s stock price or the individuals
21 that own the company’s shares. Viewed from that standpoint, the ability of the Province of

³ See e.g. May 24, 2018 Bloomberg Business Week, How Not to Negotiate a \$6.1 Billion Deal
<https://www.bloomberg.com/news/features/2018-05-24/how-not-to-negotiate-a-6-1-billion-deal>

1 Ontario to exercise political influence in a manner that is harmful to ratepayers is limited
2 especially considering the protections contained in the merger commitments. The Commission
3 remains the sole jurisdiction for establishing Avista's rates and terms of service for Oregon
4 customers, and a change to Hydro One's Board or CEO will not change the Commission's
5 jurisdiction over these matters. Further, because of systematic safety upgrades that have taken
6 place for years, AWEC views Avista's Oregon gas system as well maintained currently, and
7 not requiring of any extraordinary funding from the parent in order to maintain the existing
8 service levels. Thus, from the perspective of rates and quality of service, the political situation
9 in the Province of Ontario should be of little consequence to Oregon natural gas customers so
10 long as the upstream policies and political turmoil do not, for example, impact Avista's ability
11 to access capital on reasonable terms, which is a concern addressed in the merger
12 commitments.

13 **Q. DO THE RECENT EVENTS IN THE PROVINCE OF ONTARIO POSE A GREATER**
14 **RISK WITH RESPECT TO THE TRANSACTION?**

15 A. The risk of the recent political events was present when the stipulation was adopted, so
16 AWEC's view of the transaction is largely unchanged. I would note that because of the merger
17 commitments, the current and future political events in the Province of Ontario pose a risk that
18 resides primarily with the Hydro One entity, and not Avista ratepayers. The politics in Canada
19 and the current individuals sitting on Hydro One's Board should not in theory impact Avista's
20 revenue requirement. And if the upstream political events impact Avista's rates and terms of
21 service, the commitments require Avista and Hydro One to hold ratepayers harmless from any
22 cost impact arising from the merger.

1 The Province of Ontario’s politics could, however, impact the efficacy with which
2 Hydro One executes the merger, as well as its strategy for operating Avista in the future. To
3 the extent that the political environment results in a failed merger, it is the Hydro One entity
4 that has the greatest potential to recognize losses. Thus, if the merger proceeds, Hydro One
5 and the Province of Ontario have an incentive for the merger to be successful. For that reason,
6 ratepayers can have some assurance that the Province of Ontario will not impose arbitrary and
7 irrational policy objectives, as those would likely result in the greatest harm to the Province of
8 Ontario itself.

9 As mentioned above, absent the merger commitments, the upstream political events in
10 Ontario do have the potential to produce some ripple effects that can be harmful to retail
11 customers. For example, the policies of the Province of Ontario could: (a) put negative
12 pressure on Avista’s credit rating and increase capital costs; (b) lead to increasingly aggressive
13 regulatory strategies and more frequent rate cases; (c) result in a failure to control costs; and
14 (d) lead to a refusal to invest and maintain the distribution system. From AWEC’s perspective,
15 these risks can be addressed if, and when, they materialize, with a mindset of holding
16 ratepayers harmless as required under the merger commitments. If it is determined that costs
17 are being increased a result of policy decisions in Ontario, the merger commitments prohibit
18 Avista from recovering those costs from ratepayers.

19 **Q. DOES AWEC HAVE ANY RECOMMENDATIONS TO MITIGATE THIS**
20 **POLITICAL RISK?**

21 A. At this time, AWEC has no reason to doubt that Hydro One’s new Board and CEO will act in a
22 manner that is prudent and reasonable with respect to Avista because it is in Hydro One’s best
23 interest to do so. Whatever the case may be, however, it is imperative that, if the merger is to

1 continue, that ratepayers are insulated from any political risk arising out of the Province of
2 Ontario.

3 The additional commitment I would recommend has to do with the composition of the
4 board. As it stands, there are 4 Avista designed directors and 5 Hydro One designated
5 directors (2 executives of Hydro One and 3 independent directors who are residents of the
6 Pacific Northwest). If the 3 Hydro One independent directors resign or are removed, Hydro
7 One has the ability to appoint Hydro One employees to fill these positions for up to a 6-month
8 period, giving Hydro One a majority of the board. I would recommend including a condition
9 that prohibits Hydro One from having a majority of the board, even on a temporary basis.

10 AWEC is also open to considering additional merger commitments proposed by other parties
11 to mitigate risk. Notwithstanding, when enforcing the stipulation and the merger commitments,
12 my understanding is that the Commission has wide discretion to craft appropriate remedies to
13 ensure that Avista continues to provide safe and reliable services and that its rates are fair, just
14 and reasonable. If the political circumstances in Ontario become problematic and are imposing
15 costs onto ratepayers due to Hydro One's failure to fund improvements or prudently manage
16 Avista, the Commission should exercise its authority to craft appropriate remedies within its
17 jurisdiction to protect ratepayers.

18 **Q. DOES THIS CONCLUDE YOUR REPLY TESTIMONY?**

19 A. Yes.