

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1897

FINAL TESTIMONY OF JAMES SCARLETT  
REPRESENTING HYDRO ONE

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Agreement on New and Revised Stipulated Commitments, Proposed New Commitment No. 117,  
Non-Consolidation Opinions,  
the Province of Ontario's Notwithstanding Clause, Schedule for Concluding this Proceeding,  
and Net Benefits

**I. INTRODUCTION**

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

A. My name is James (“Jamie”) Scarlett, and my business address is 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5. I am Executive Vice President and Chief Legal Officer for Hydro One Limited (“Hydro One”).

**Q. Have you filed testimony in this proceeding?**

A. Yes. I filed supplemental testimony on August 30, 2018 and rebuttal testimony on October 4, 2018.

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

A. No.

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1 **Summary of Testimony**

2 **Q. Please summarize your testimony.**

3 A. My testimony explains how Hydro One, Avista, Staff of the Public Utility  
4 Commission of Oregon (“Commission”), and the Alliance of Western Energy Consumers  
5 (“AWEC”) have reached agreement on a set of new and amended commitments to address the  
6 changes in governance at Hydro One since the Ontario election in June 2018. I also address  
7 Commission Staff’s critique of the value of non-consolidation opinions. My testimony  
8 explains why the Citizens’ Utility Board’s (“CUB’s”) concerns regarding the Province of  
9 Ontario’s (the “Province”) “notwithstanding clause” is inapplicable to this proceeding.  
10 Finally, I conclude, in agreement with Commission Staff, that the Commission should reach  
11 a decision in this matter by the target date of December 15, 2018.

12

13 **II. CONSENSUS ON SET OF NEW AND AMENDED COMMITMENTS**

14 **Q. Have Hydro One, Avista, Commission Staff, and AWEC reached**  
15 **agreement on a set of new and amended commitments to address the changes in**  
16 **governance at Hydro One since the Ontario election in June 2018?**

17 A. Yes. Through testimony filed since the election in Ontario, Commission Staff,  
18 AWEC, Hydro One, and Avista have reached agreement on a new set of commitments and  
19 amendments to existing commitments to address governance concerns raised as a result of the  
20 leadership changes at Hydro One that occurred after the election. The following describes the  
21 agreements reached on amendments to Stipulated Commitment Nos. 4 and 112 and a new  
22 Stipulated Commitment No. 116.

- 1       • Amended Stipulated Commitment No. 4 - Executive Management:<sup>1</sup> Commission  
2       Staff agrees to Hydro One and Avista’s proposal to amend Stipulated Commitment  
3       No. 4 to establish that Avista employee and executive compensation will be set by the  
4       Avista board and is not subject to approval by Hydro One.<sup>2</sup>
- 5       • Amended Stipulated Commitment No. 112 - Submittal to State Court Jurisdiction for  
6       Enforcement of Commission Orders: Commission Staff agrees to Hydro One and  
7       Avista’s proposal to amend Stipulated Commitment No. 112 to establish more clearly  
8       that all entities in the corporate structure between Hydro One and Avista will submit  
9       to the jurisdiction of the Commission and Oregon courts for enforcement of the  
10       Stipulated Commitments and the Commission’s orders adopting those commitments.<sup>3</sup>  
11       Commission Staff also agrees to Hydro One and Avista’s proposal to amend Stipulated  
12       Commitment No. 112 to establish that Oregon law will govern any proceedings  
13       necessary to enforce the Stipulated Commitments and the Commission’s orders  
14       adopting those commitments.<sup>4</sup>
- 15       • New Stipulated Commitment No. 116 - Notice and Petition: Commission Staff agrees  
16       to this Hydro One and Avista proposal to give notice to the Commission when any  
17       government action in Ontario will affect the operations of Avista or Hydro One’s  
18       ability to comply with the Stipulated Commitments and the confirmation of any

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<sup>1</sup> See Stipulation and Settlement, May 25, 2018 (“Stipulated Settlement”). The Stipulated Settlement includes 115 merger commitments (each, a “Stipulated Commitment,” collectively, the “Stipulated Commitments”).

<sup>2</sup> UM 1897 - Staff/800/Muldoon/14/Lines 9-12; UM 1897 - Staff/900/Anderson/7-8.

<sup>3</sup> UM 1897 - Staff/800/Muldoon/15/Lines 1-30.

<sup>4</sup> *Id.*

1 parties' right to petition the Commission to consider whether the Commission should  
2 amend its final order approving the merger in order to address the government action.<sup>5</sup>

3 **Q. How have Commission Staff, AWEC, Hydro One, and Avista resolved**  
4 **Staff's and AWEC's concerns regarding Stipulated Commitment No. 5 - Avista Board**  
5 **of Directors?**

6 A. Staff has agreed to two of Hydro One and Avista's proposed revisions to  
7 Stipulated Commitment No. 5 that are designed to address concerns that arose after the  
8 Ontario election:

- 9 • Staff agrees to Hydro One and Avista's proposal to amend Stipulated Commitment  
10 No. 5 to require Hydro One and Avista to consult with each other on the selection of  
11 independent directors for the post-merger Avista board.<sup>6</sup> This amendment was  
12 proposed by Public Counsel in the Washington Utilities and Transportation  
13 Commission ("WUTC") proceeding and adopted by all of the parties to that  
14 proceeding.<sup>7</sup> Despite agreeing with Hydro One, Avista, and AWEC on this revision  
15 to Stipulated Commitment No. 5, Staff contends that more revisions to Stipulated  
16 Commitment No. 5 are needed.
- 17 • Staff also agrees to Hydro One and Avista's proposal to amend Stipulated  
18 Commitment No. 5 to (i) suspend Hydro One's ability to replace its independent  
19 directors with Hydro One employees on a six-month interim basis if the Province takes  
20 action to control Hydro One's board, and (ii) restrict Hydro One's use of its ability to  
21 replace its independent directors with Hydro One employees on a six-month interim

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<sup>5</sup> UM 1897 - Staff/800/Muldoon/3/Lines 8-18.

<sup>6</sup> UM 1897 - Staff/800/Muldoon/14/Lines 13-16.

<sup>7</sup> UM 1897 - AWEC/300/Mullins/3/Lines 3-7.

1 basis to appoint a majority of Hydro One employees on the post-merger Avista board.<sup>8</sup>

2 The foregoing amendment (ii) was proposed by AWEC in the WUTC proceedings.<sup>9</sup>

3 Again, despite agreeing with Hydro One, Avista, and AWEC on this revision to

4 Stipulated Commitment No. 5, Staff contends further revisions to Stipulated

5 Commitment No. 5 are needed.

6 Hydro One appreciates AWEC's important contribution to the supplemental proceedings that

7 have occurred since the Ontario election.

8 **Q. What additional changes do Commission Staff propose for Stipulated**  
9 **Commitment No. 5?**

10 A. Hydro One appreciates that Commission Staff provided in its sur-rebuttal  
11 testimony an alternative to its prior proposal to require the formation of an independent  
12 governance committee on the post-merger Avista board to select Avista's independent  
13 directors. Staff has proposed instead an amendment to Stipulated Commitment No. 5 that will  
14 give Avista sole responsibility to appoint all of its directors on the post-merger Avista board  
15 without any interference or input from Hydro One:

16 ~~If any Avista designee resigns, retires or otherwise ceases to serve as a director of~~  
17 ~~Avista for any reason, the remaining Avista designees shall have the sole right to~~  
18 ~~nominate a replacement director to fill such vacancy, and such person shall thereafter~~  
19 ~~become an Avista designee.~~ Avista shall have the unfettered right to designate,  
20 remove and replace the Avista designees as directors of the Avista Board with or  
21 without cause or notice at its sole discretion.

22 Hydro One and Avista can support this alternative proposal to amend Stipulated Commitment  
23 No. 5.

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<sup>8</sup> UM 1897 - Staff/800/Muldoon/16/Lines 7-15; UM 1897 - Staff/900/Anderson/8-9.

<sup>9</sup> UM 1897 - AWEC/300/Mullins/2/Lines 8-17.

1           **Q.     Please summarize why Commission Staff’s prior proposal regarding**  
2 **Stipulated Commitment No. 5 -- an independent governance committee on the post-**  
3 **merger Avista board that would select the board’s independent directors -- is**  
4 **problematic.**

5           A.     As noted in my rebuttal testimony, Chris Lopez’s rebuttal testimony, and John  
6 Reed’s rebuttal testimony, Commission Staff’s prior proposal for an independent governance  
7 committee cannot be accepted by Hydro One and Avista because it would result in the  
8 following negative impacts on Hydro One, Avista and Avista’s Oregon ratepayers:

9           •     The installation of an independent governance committee would create an  
10           unprecedented disconnection between a wholly owned subsidiary’s board and its  
11           parent.<sup>10</sup> Commission Staff misinterprets my rebuttal testimony when it concludes  
12           that “[i]f future goals are in conflict, Mr. Scarlett is clear that Hydro One’s needs are  
13           a priority over Avista’s.”<sup>11</sup> I was simply explaining that Staff’s independent  
14           governance committee would create an unprecedented barrier between a wholly  
15           owned subsidiary’s board and its parent’s board. Such a disconnect would actually be  
16           detrimental to Avista’s Oregon customers. In the long run, the arrangement could be  
17           an impediment to an efficiently operated corporate family that will benefit Avista’s  
18           Oregon customers through savings that will be achieved through Hydro One and  
19           Avista working together in the future. This observation does not suggest, as claimed  
20           by Commission Staff, that Hydro One will prioritize its shareholders over Avista’s  
21           Oregon customers. Hydro One has committed to 115 Stipulated Commitments that

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<sup>10</sup> UM 1897 - Hydro One/2400/Scarlett/17-18.

<sup>11</sup> UM 1897 - Staff/800/Muldoon/11/Lines 6-7; *see also* UM 1897 - Staff/900/Anderson/2-3.

1 are designed to benefit Oregon customers and that are enforceable by the Commission.

2 Furthermore, I firmly believe that operating Avista to the benefit of Avista's Oregon

3 customers is ultimately to the benefit of Hydro One shareholders' long-term interests.

4 • The installation of an independent governance committee also would put Hydro One

5 and Avista at significant risk that their accounting and financial reporting would no

6 longer be consolidated and their credit ratings would be de-linked.<sup>12</sup> De-linking likely

7 results in a downgrade of Hydro One's credit rating -- a negative result for Avista,

8 which must rely on Hydro One as its parent to provide equity and other support.<sup>13</sup>

9 Over the long term, de-linking also would deny Avista a potential improvement of its

10 credit rating due to being part of the Hydro One corporate family.<sup>14</sup> In that way, the

11 independent governance committee could drive up Avista's cost of capital.

12 **Q. Based on your review of Commission Staff's and AWEC's sur-rebuttal**  
13 **testimony, are there any outstanding, unresolved issues with respect to amendments or**  
14 **new commitments needed to address the changes in Hydro One governance since the**  
15 **Ontario election in June 2018?**

16 A. No. I believe that with one possible exception, which I will discuss in a

17 moment, Hydro One, Avista, Commission Staff, and AWEC have resolved all outstanding

18 issues with respect to amendments or new commitments needed to address the changes in

19 Hydro One governance since the Ontario election. Hydro One is thankful for the cooperation

20 and creative solutions proposed by Commission Staff and AWEC and the collegial approach

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<sup>12</sup> UM 1897 - Hydro One/2500/Lopez/8-11; UM 1897 - Concentric/2600/Reed/18-19.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*



1 taken to reaching agreement on a set of new and amended commitments to address the events  
2 that occurred after the Ontario election.<sup>15</sup>

3 **Q. What is the possible exception?**

4 A. At the Commissioners' Workshop on October 22, 2018, a question was raised  
5 as to whether an affidavit similar to that from Warren Buffett for PacifiCorp should be used  
6 in our docket, given that the Province might be an "affiliated interest" under Commission rules  
7 and statutes. We do not believe that such an affidavit would be useful or necessary, but we  
8 have developed a proposed new commitment to address the issue.

9 **Q. What is the proposed new commitment?**

10 A. It would be a new Commitment No. 117, to read as follows:

11 **117. No Substantial Provincial Influence.**

- 12 a. Hydro One and Avista will advise each member of the Avista Board of Directors  
13 that the Province may not, directly or indirectly, exercise any substantial influence  
14 over the policies and actions of Avista. Hydro One and Avista will require each  
15 of their respective director designees to execute an undertaking to notify the  
16 Commission immediately if they have reason to believe that the Province is  
17 directly or indirectly exercising any substantial influence over the policies and  
18 actions of Avista.
- 19 b. If a member of the Avista Board of Directors provides notice to the Commission  
20 pursuant to Commitment 117.a, the Commission may initiate a proceeding to  
21 determine whether the Commission should amend its final order, and neither  
22 Hydro One, nor any of its subsidiaries, including Avista, will oppose initiation of  
23 such a proceeding.

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<sup>15</sup> Commission Staff also requests a clarification of Stipulated Commitment No. 32 regarding funding for Oregon SENDOUT Seats to confirm that it is flexible enough to allow for the substitution of different software if Avista changes to a system other than SENDOUT. UM 1897 - Staff/800/Muldoon/12/Lines 11-16. Hydro One and Avista confirm that Stipulated Commitment No. 32, as agreed to by the parties in this proceeding on May 25, 2018, provides this flexibility: "Nothing in this commitment precludes Avista from replacing SENDOUT with a different comparable service provided that Avista continues to provide the \$30,000 annual contribution for Staff, CUB, and AWEC use of SENDOUT or such comparable service for the agreed upon ten-year period."

1 c. Hydro One's authority to replace an Independent Director on the Avista Board  
2 with an employee or executive on an interim six-month basis is suspended for the  
3 pendency of any proceeding pursuant to Commitment 117.b.

4 **Q. Why do you believe an affidavit is neither useful nor necessary?**

5 A. There are three primary reasons. First, in the July 11, 2018 Letter Agreement  
6 between the Province and Hydro One, the Province reaffirmed its commitment in the  
7 Governance Agreement to function as an investor and not as a manager of Hydro One. Thus  
8 the Province's commitment not to interfere in Hydro One's activities, including its proposed  
9 ownership of Avista, has already been established in a document executed by the Province.

10 Second, there are significant differences between the posture of Warren Buffett with  
11 respect to PacifiCorp and the posture of the Province with respect to Avista. For example, all  
12 members of the Hydro One board of directors (other than Hydro One's CEO) are independent  
13 of both the Province and Hydro One. There is no indication that was the case with MEHC.  
14 In fact, the Buffett affidavit stated that he was a director for both Berkshire Hathaway and  
15 MEHC. As a result, Avista is not vulnerable to influence to the same extent as PacifiCorp.

16 Finally, Hydro One's merger commitments already protect Avista at least as well as a  
17 Buffett-style affidavit. If further protection is desired, it should focus on the perceived risks  
18 at issue in this case, that is, risks associated with governmental action in the context of a  
19 merger application. Accordingly, in our proposed new commitment No. 117, the triggering  
20 event for a potential reopening of the merger docket is, "reason to believe that the Province is  
21 directly or indirectly exercising any substantial influence over the policies and actions of  
22 Avista."

23

1                   **III.    VALUE OF NON-CONSOLIDATION OPINIONS**

2           **Q.    Do you agree with Staff's conclusions that non-consolidation opinions, as**  
3 **required in Stipulated Commitment No. 57, have little value in determining whether an**  
4 **acquired utility will not be included in a bankruptcy proceeding involving its parent?**<sup>16</sup>

5           A.    Staff is wrong to conclude that the assumptions included in a non-consolidation  
6 opinion make the opinion of little value to regulators who must determine whether the  
7 acquired utility will not be included in the bankruptcy proceedings involving its parent.<sup>17</sup>

8           The non-consolidation opinion for this transaction will analyze the specific facts in the  
9 context of the laws, regulations, commitments and structural governance safeguards that will  
10 affect and be in place for Hydro One and Avista post-closing. That said, Staff is not wrong  
11 that a non-consolidation opinion makes the assumption that the parties will abide by all of  
12 these safeguards -- that is because the subject of the opinion is limited to whether or not such  
13 structural safeguards and commitments would be sufficient to prevent corporate  
14 consolidation. Since the law firm drafting the non-consolidation opinion is not in control of  
15 the parties and their future actions, the opinion does not address whether or not the parties will  
16 abide by the safeguards -- it addresses only whether the parties will be protected from  
17 corporate consolidation under the applicable legal precedent.

18           A non-consolidation opinion is meaningful in that it provides a professional, legally  
19 reasoned, fact-specific analysis from a reputable law firm upon which the parties may rely,  
20 finding that the structure and underlying documents in a merger satisfy the legal requirements  
21 to prevent corporate consolidation. Moreover, there are structural safeguards built into the

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<sup>16</sup> UM 1897 - Staff/800/Muldoon/20-21.

<sup>17</sup> UM 1897 - Staff/800/Muldoon/20-21.

1 115 Stipulated Commitments that will prevent, or in a worst-case scenario quickly expose,  
2 critical violations of the non-consolidation opinion’s assumptions and qualifications:

- 3 • requiring compliance with laws, regulations, and corporate documents;
- 4 • separate boards of directors;
- 5 • majority independent directorship;
- 6 • a golden share;
- 7 • separate headquarters;
- 8 • separate Securities and Exchange Commission reports; and
- 9 • separate credit ratings.

10 These are verifiable safeguards, some involving independent third parties, intended to prevent  
11 or quickly expose violations of non-consolidation opinion assumptions. Consequently, they  
12 not only support the ultimate opinion of separateness, but strengthen the reliability of the  
13 opinion itself.

14

15 **IV. NOTWITHSTANDING CLAUSE**

16 **Q. Do you share the concern that CUB expresses with respect to the**  
17 **“notwithstanding clause”?**<sup>18</sup>

18 A. No. In its sur-rebuttal testimony, CUB refers to the notwithstanding clause in  
19 the Canadian Charter of Rights of Freedoms (the “Charter”), which is part of the Canadian  
20 Constitution, and the Province’s recent threat to use this clause “to force a reduction in the  
21 number of city councilors in the city of Toronto.”<sup>19</sup> Contrary to CUB’s assertion, the

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<sup>18</sup> UM 1897 - CUB/300/Gehrke-Jenks/6.

<sup>19</sup> UM 1897 - CUB/300/Gehrke-Jenks/6.

1 notwithstanding clause is irrelevant because it protects only personal rights, not property  
2 rights. Therefore, the notwithstanding clause adds nothing to the government's powers  
3 regarding Hydro One.

4 Notably, the clause was not relied upon to reduce the number of city councilors as the  
5 court did not find that the legislation violated the Charter.

6

7 **V. SCHEDULE FOR REMAINDER OF PROCEEDING AND NET BENEFITS**

8 **Q. Do you agree with Staff's recommendation in its sur-rebuttal testimony**  
9 **that the Commission should use its current schedule to carefully consider the positions**  
10 **of the parties and issue a decision by December 15, 2018?**<sup>20</sup>

11 A. Hydro One appreciates Staff's recommendation that the Commission use its  
12 current schedule to consider the positions of the parties and issue a decision by the December  
13 15, 2018 target date. As explained in my rebuttal testimony and the rebuttal testimony of  
14 Chris Lopez, Tom Woods, and Scott Morris,<sup>21</sup> the current record provides the Commission  
15 the certainty it needs with respect to whether Avista is sufficiently protected from potential  
16 interference by the Province. Further, the rebuttal testimony of Chris Lopez and Scott Morris  
17 explains the benefits to Avista's Oregon customers of a decision by the December 15, 2018  
18 target date.<sup>22</sup>

19 **Q. After the events following the Ontario election and the development of**  
20 **new and revised commitments to respond to those events, can you conclude that the**

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<sup>20</sup> UM 1897 - Staff/800/Muldoon/25-26, 29-30.

<sup>21</sup> UM 1897 - Hydro One/2400/Scarlett/10-21; Hydro One/2500/Lopez/7-8; Hydro One/2300/Woods/3-4;  
Avista/2100/Morris/3-6.

<sup>22</sup> Hydro One/2500/Lopez/15-16; Avista /2100/Morris/3.

1 **acquisition of Avista remains in the public interest and will provide a net benefit to**  
2 **Avista's Oregon customers?**

3 A. Yes. The new and revised Stipulated Commitments described previously in  
4 my testimony ensure that the events that occurred in Ontario or that could occur in the future  
5 will not trickle down to harm Avista's Oregon customers. Therefore, the acquisition remains  
6 in the public interest. Further, as explained in detail in the final testimony of Hydro One's  
7 acting CEO Paul Dobson, the existing 115 Stipulated Commitments include many benefits for  
8 Oregon customers that will ultimately result in a net benefit if this merger is consummated.<sup>23</sup>

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

10 A. Yes, it does.

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<sup>23</sup> UM 1897 - Hydro One/2900/Dobson/3.

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1897

FINAL TESTIMONY OF CHRISTOPHER F. LOPEZ  
REPRESENTING HYDRO ONE

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Sufficiency of Settlement Commitments, Proposed Revisions to Stipulated Commitment No. 5, and  
Proposal to Reduce Hydro One's Rates

**I. INTRODUCTION**

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

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 the Acting Chief Financial Officer (“CFO”) for Hydro One Limited (“Hydro One”).

**Q. Have you filed testimony in this proceeding?**

A. Yes. I have filed direct, rebuttal and supplemental testimony. I also co-sponsored June 2018 joint testimony in support of the Stipulation and Settlement filed with the Public Utility Commission of Oregon (the “Commission”) on May 25, 2018 (“Stipulated Settlement”).

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

A. No.

A table of contents for my testimony is as follows:

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1 **Summary of Testimony**

2 **Q. Please summarize your testimony.**

3 A. My final testimony addresses the sufficiency of the 115 Stipulated  
4 Commitments to protect Avista from potential interference by the Province of Ontario. I also  
5 address Commission Staff's proposed revisions to Stipulated Commitment No. 5. Finally, I  
6 conclude that the new government's campaign promise to reduce electrical rates in the  
7 Province by 12% will not impact Avista.

8

9 **II. SUFFICIENCY OF 115 STIPULATED COMMITMENTS**

10 **Q. Do agree with Commission Staff that the 115 Stipulated Commitments<sup>1</sup>**  
11 **are “for the most part, impervious to change in leadership in Ontario”<sup>2</sup>?**

12 A. Yes. The recent events in Ontario provided a real world test for the 115  
13 Stipulated Commitments agreed to by the parties before the Ontario election in June 2018.  
14 The following commitments sufficiently protect Avista from interference by the Province of  
15 Ontario (the “Province”) and ensure Avista's financial integrity regardless of actions by the  
16 Province:

- 17 • Stipulated Commitment No. 4 - Executive Management
- 18 • Stipulated Commitment No. 5 - Avista Board of Directors (BOD)
- 19 • Stipulated Commitment Nos. 43-53 - the Financial Ring-Fencing Commitments
- 20 • Stipulated Commitment Nos. 54-63 - the Bankruptcy Ring-Fencing Commitments

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<sup>1</sup> See Stipulation and Settlement, May 25, 2018 (“Stipulated Settlement”). The Stipulated Settlement includes 115 merger commitments (each, a “Stipulated Commitment,” collectively, the “Stipulated Commitments”).

<sup>2</sup> UM 1897 - Staff/800/Muldoon/2/Lines 9-23.

- 1       • Stipulated Commitment No. 77 - Equal or Better Access to Financial Markets in the
- 2       U.S. and Canada
- 3       • Stipulated Commitment No. 78 - Venue for and Resolution of Disputes
- 4       • Stipulated Commitment No. 79 - Headquarters
- 5       • Stipulated Commitment No. 80 - Local Staffing
- 6       • Stipulated Commitment No. 87 - Compliance with Existing and Future ORS, OAR
- 7       and Commission Orders
- 8       • Stipulated Commitment No. 110 - Commitments Binding
- 9       • Stipulated Commitment No. 111 - Commission Enforcement of Commitments
- 10      • Stipulated Commitment No. 112 - Submittal to State Court Jurisdiction for
- 11      Enforcement of Commission Orders

12       **Q.     Do you agree with Staff’s conclusion that there is a “potential for the**  
13 **Province as a powerful governmental shareholder to persuasively request higher returns**  
14 **from Hydro One, possibly at the same time taking legislative or regulatory action to**  
15 **reduce rates in Ontario ... [thereby causing] Hydro One [to] apply pressure on Avista**  
16 **to provide outsized returns to its sole shareholder”<sup>3</sup>?**

17       A.     No. All investor-owned utilities have shareholders who would like higher  
18 returns. This incentive is nothing new to the regulators of investor-owned utilities. Staff’s  
19 speculation ignores the fact that the Commission will continue to have regulatory authority  
20 over Avista’s Oregon rates and operations.

21       Commission Staff’s observation is particularly inapplicable in this case because  
22 Stipulated Commitment No. 50 places significant restrictions on Hydro One’s ability to seek

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<sup>3</sup> UM 1897 - Staff/900/Anderson/6/Lines 12-18.

1 dividends and distributions from Avista. Normally, utility regulators do not have the benefit  
2 of such restrictions on upward dividends and distributions to protect utility ratepayers from  
3 the pressure of shareholders seeking returns on their investments.

4 Commission Staff's speculation further ignores the fact that the 115 Stipulated  
5 Commitments include the following commitments to ensure that nothing that the Province  
6 could do in Ontario will impact the rates paid by Avista's Oregon customers and the safe and  
7 reliable service that will be provided to Avista's Oregon customers:

- 8 • Stipulated Commitment Nos. 10-33 - the Safety and Service Quality Measures  
9 Commitments
- 10 • Stipulated Commitment Nos. 34-39 - the Hold Harmless Commitments
- 11 • Stipulated Commitment Nos. 64-66 - the Access to Information Commitments
- 12 • Stipulated Commitment No. 67 - Separate Books and Records
- 13 • Stipulated Commitment Nos. 68-71 - the Cost Allocations Commitments
- 14 • Stipulated Commitment Nos. 92-96 - the Future Rates Commitments

15 Finally, the new Stipulated Commitment No. 116 provides additional protection to  
16 address Staff's speculation because Hydro One and Avista will give notice to the Commission  
17 when any government action in Ontario will affect the operations of Avista or Hydro One's  
18 ability to comply with the Stipulated Commitments. New Stipulated Commitment No. 116  
19 also confirms the right of any party to petition the Commission to consider whether the  
20 Commission should amend its final order approving the merger in order to address the  
21 government action.

22 **Q. As raised by the Citizens' Utility Board ("CUB"), should the Commission**  
23 **be concerned that the Province might rebate its share of dividends received by Hydro**

1 **One from Avista to Ontario ratepayers?<sup>4</sup>**

2 A. No. Pursuant to Stipulated Commitment No. 50, only if the equity floor,  
3 earnings-to-interest ratio, and credit rating commitments have been met will Avista be allowed  
4 to issue any dividends to Hydro One. Once Avista issues dividends, which typically result  
5 from operations, the dividends belong to the shareholder to do with as it wishes, whether it's  
6 Avista's current shareholders or Hydro One in the future. The same is true when Hydro One  
7 issues dividends to its own shareholders, including the Province.

8

9 **III. COMMISSION STAFF PROPOSAL TO REVISE STIPULATED**  
10 **COMMITMENT NO. 5**

11 **Q. As an alternative to the independent governance committee proposed in**  
12 **Staff's testimony of September 20, 2018, Staff's sur-rebuttal testimony presents an**  
13 **alternative proposed revision to Stipulated Commitment No. 5 that will give Avista sole**  
14 **responsibility to appoint all of its four directors on the post-merger Avista board without**  
15 **any interference or input from Hydro One.<sup>5</sup> What is your response?**

16 A. Hydro One can support this approach as an alternative to the independent  
17 governance committee that Staff previously proposed. This new approach is helpful and  
18 Hydro One appreciates Staff bringing it forward, as explained in more detail in James  
19 Scarlett's final testimony.<sup>6</sup>

20 **Q. Do you agree with Staff's conclusion that if its prior proposal to add an**  
21 **independent governance committee to Stipulated Commitment No. 5 were to result in**

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<sup>4</sup> UM 1897 - CUB/300/Gehrke-Jenks/8.

<sup>5</sup> UM 1897 - Staff/900/Anderson/7-10.

<sup>6</sup> UM 1897 - Hydro One/2800/Scarlett/5.

1 **de-linking the credit ratings of Avista and Hydro One, that could actually benefit Avista**  
2 **because “[s]eparation has a positive flip-side too—there is also the possibility that**  
3 **Avista’s ratings will be shielded because of Avista’s independence from Hydro One”?**<sup>7</sup>

4 A. No. First of all, the credit rating agencies still anticipate that the Proposed  
5 Transaction will be a credit positive for Avista. But even if Staff’s observation might be true  
6 in the short term if Hydro One’s credit ratings were downgraded below Avista’s credit ratings,  
7 it is not good for Avista in the long term. De-linking likely guarantees a downgrade of Hydro  
8 One’s credit rating because Hydro One’s credit rating will account for the debt it incurs to  
9 acquire Avista but denies Hydro One the benefit of the potential income stream from Avista.  
10 This result ultimately is negative for Avista, which must rely on Hydro One as its parent to  
11 provide equity and other support.<sup>8</sup> Over the long term, de-linking also would deny Avista a  
12 potential improvement of its credit rating due to being part of the Hydro One corporate  
13 family.<sup>9</sup>

14

15 **IV. PROVINCIAL PROMISES TO REDUCE ELECTRICITY RATES BY**  
16 **TWELVE PERCENT**

17 **Q. Do you agree with Staff’s conclusion that a reduction to electricity rates**  
18 **for Hydro One customers in Ontario could negatively impact Avista?**<sup>10</sup>

19 A. No. For a number of reasons, rate reductions for electric customers in Ontario  
20 would have no bearing on Avista or its customers. First, as detailed in my Rebuttal  
21 Testimony,<sup>11</sup> increasing cash flows from Avista would do nothing to reduce rates in Ontario

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<sup>7</sup> UM 1897 - Staff/800/Muldoon/11/Lines 13-20.

<sup>8</sup> UM 1897 - Hydro One/2500/Lopez/17-18; UM 1897 - Concentric/2600/Reed/11-12.

<sup>9</sup> UM 1897 - Concentric/2600/Reed/18-19.

<sup>10</sup> UM 1897 - Staff/900/Anderson/5/Line 1.

<sup>11</sup> UM 1897 - Hydro One/2500/Lopez/16-20.

1 since Hydro One is obligated by its commitments to invest in Avista. Stipulated Commitment  
2 No. 50, which restricts dividends and limits Hydro One's ability to seek cash flows from  
3 Avista, and Stipulated Commitment Nos. 10, 11-33, 39, 54, and 67 also protect Avista in the  
4 event of rate reductions for Hydro One's own customers. Therefore, we do not believe that  
5 any electricity rate decreases instituted by the Province could negatively impact Avista.

6 Second, it is important to recognize that Hydro One would not be the entity to absorb  
7 all of a rate reduction in Ontario. As explained in Hydro One's previous testimony, Hydro  
8 One is only a transmission and distribution company in Ontario. As a result, the bills that  
9 Hydro One customers receive also include the pass through costs of the power that is delivered  
10 to them on Hydro One's transmission and distribution lines as well as other charges. Only  
11 about a third of customers' bills represent costs incurred by Hydro One. Hydro One has no  
12 indication that the full cost of a 12% rate reduction would come solely from Hydro One.  
13 Rather, we would anticipate that any rate reduction would be shared by all of the contributors  
14 to the bills received by Hydro One's customers.

15 **Q. If the Province succeeds in reducing Hydro One's rates by 12%, as**  
16 **promised by the Progressive Conservative party during the election campaign, won't**  
17 **that leave less money available at Hydro One to ensure Avista's financial health?**

18 A. If this merger is approved, our merger commitments require Hydro One to  
19 ensure Avista's financial health regardless of what is happening with Hydro One in Ontario.  
20 If Hydro One bears the brunt of a significant rate reduction in Ontario, its cost of raising funds  
21 will increase, which will make the cost of raising funds to support Avista more expensive.  
22 However, that does not change the fact that Hydro One must abide by the binding merger  
23 commitments to support Avista's financial health if the merger is approved. Moreover, Avista

1 customers would be protected from any increase in the cost of raising funds to support Avista  
2 because Stipulated Commitment No. 35 provides that “Avista and Parent agree that Avista  
3 will not advocate for a higher cost of debt or equity capital as compared to what Avista’s cost  
4 of debt and equity capital would have been absent Hydro One’s ownership.”

5 **Q. Does this conclude your supplemental testimony?**

6 A. Yes it does.

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1897

FINAL TESTIMONY OF PAUL DOBSON  
REPRESENTING HYDRO ONE

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Benefits of the Merger for Avista's Oregon Customers



**I. INTRODUCTION**

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

A. My name is Paul Dobson, and my business address is 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5. I am the acting President and Chief Executive Officer (CEO) for Hydro One Limited (“Hydro One”).

**Q. Have you previously filed testimony in this proceeding?**

A. Yes. I filed supplemental testimony on August 30, 2018, and rebuttal testimony on October 4, 2018.

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

A. No.

A table of contents for my testimony is as follows:

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II. BENEFITS OF THE MERGER FOR AVISTA’S OREGON CUSTOMERS	2

**Summary of Testimony**

**Q. Please summarize your testimony.**

A. My final testimony explains why I believe the merger continues to be a benefit to Avista’s Oregon customers.

1       **II.   BENEFITS OF THE MERGER FOR AVISTA’S OREGON CUSTOMERS**

2           **Q.    The Staff of the Public Utility Commission of Oregon (“Commission”)**  
3 **stated that it appreciates your confirmation of Hydro One’s ongoing support for the**  
4 **merger as Hydro One’s Acting CEO. Staff critiqued your testimony, however, because**  
5 **it did not express why the merger is good for Avista’s Oregon customers.<sup>1</sup> Can you**  
6 **explain why the merger is good for Avista’s Oregon customers?**

7           A.    Yes. The proposed merger of Hydro One and Avista will generate net benefits  
8 for customers and remains in the public interest for many reasons. Hydro One remains a  
9 strong and suitable parent company for Avista, and the benefits of the transaction for Avista’s  
10 Oregon ratepayers remain unchanged.

11           The merger will benefit Avista’s Oregon ratepayers in numerous ways:

- 12       • Avista will be part of a much larger corporate structure with significantly greater  
13 access to equity and debt financing. Hydro One’s market capitalization is  
14 approximately three times the size of Avista and will provide Avista with improved  
15 access to capital markets. Over time, Avista’s credit rating should experience an uplift  
16 due to Avista being part of consolidated financial reporting within Hydro One’s  
17 corporate family.
- 18       • Hydro One and Avista have similar corporate cultures that will allow their teams to  
19 work together seamlessly to provide benefits for Oregon customers. In particular,  
20 Hydro One and Avista will embark on a sharing of best practices, which will result in  
21 savings for Oregon customers.

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<sup>1</sup> UM 1897 - Staff/800/Muldoon/6/Lines 8-19.

- 1       • Hydro One is a strategic investor, rather than a financial investor, and its interests are  
2       aligned with Avista’s for long-term success.
- 3       • Hydro One also made a number of commitments to preserve Avista’s ability to run its  
4       own business on a day-to-day basis, which ensures Avista’s continued track record of  
5       strong customer service to its Oregon ratepayers.
- 6       • Hydro One and Avista will embark on joint procurement strategies that will leverage  
7       their larger size and ultimately benefit Oregon customers.

8       **Q.     Are there immediate benefits to Avista’s Oregon customers included in**  
9       **the 115 Stipulated Commitments submitted by the parties to this proceeding as part of**  
10      **their settlement agreement?**

11       A.     All of the parties to this proceeding filed a Stipulation and Settlement with the  
12      Commission on May 25, 2018 (“Stipulated Settlement”). The Stipulated Settlement includes  
13      115 merger commitments (each, a “Stipulated Commitment,” collectively, the “Stipulated  
14      Commitments”). Many of the Stipulated Commitments provide an immediate net benefit to  
15      Avista’s Oregon customers, including the following:<sup>2</sup>

- 16       • Rate Credits to Oregon Ratepayers - Stipulated Commitment No. 40: Avista and  
17      Hydro One commit to a rate credit to Oregon gas customers of \$7,541,159 over 5  
18      years. A portion of this rate credit (\$1,131,174 over 5 years) is offsetable, but only to  
19      the extent that Avista can demonstrate that benefits from the merger are already being  
20      passed on to customers through base rates set in a general rate case.

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<sup>2</sup> Hydro One’s and Avista’s complete analysis of the commitments that provide benefits to Avista’s Oregon ratepayers is contained in Exhibit 101 to the Joint Testimony in Support of Stipulation filed by the parties to this proceeding on June 19, 2018.

- 1       • Safety and Reliability Standards and Service Quality Measures - Stipulated  
2       Commitment No. 10: Avista and Hydro One agree to “maintain and improve, to the  
3       extent reasonably practicable, Avista’s natural gas safety and reliability and resilience  
4       standards, policies, and service quality measures.”
- 5       • Oregon Winter Protection Program - Stipulated Commitment No. 14: Avista has  
6       agreed to submit to the Commission a proposal for a Winter Protection Program  
7       against winter shut-offs for at-risk customers.
- 8       • Oregon Low Income Weatherization - Stipulated Commitment No. 16: Hydro One  
9       and Avista agree that Avista will increase current funding for Oregon low-income  
10      weatherization programs by paying \$1,275,000 over five years to agencies in charge  
11      of Avista Oregon Low Income Energy Efficiency Program (AOLIEE). This payment  
12      cannot be recovered from ratepayers.
- 13      • Oregon Low-Income Rate Assistance Program (LIRAP) - Stipulated Commitment No.  
14      17: Hydro One and Avista agree that Avista will increase LIRAP funding for Oregon  
15      customers by paying \$100,000 per year over five years. This payment cannot be  
16      recovered from ratepayers. This is a benefit to low income customers. This funding  
17      will increase Oregon LIRAP funding by roughly 50% for five years.
- 18      • Oregon SENDOUT Seats - Stipulated Commitment No. 32: Avista will provide  
19      \$30,000 annually for ten years for the purpose of obtaining SENDOUT seats, or a  
20      comparable service, for Staff, the Citizens’ Utility Board (“CUB”), and Alliance of  
21      Western Energy Consumers (“AWEC”). This money is not recoverable in customer  
22      rates. This will help Staff, CUB, and AWEC better assess Avista’s IRP portfolios and  
23      rate case load forecasts.

- 1       • On Bill Repayment Program (OBRP) - Stipulated Commitment No. 33: Hydro One  
2       will arrange funding of the approximately \$100,000 (system-wide basis) initial  
3       investment in software upgrades and \$5,000 in administrative costs to implement an  
4       on-bill repayment program for customer investments in energy efficiency through  
5       customers' Avista bills.

6       Hydro One stands by these commitments and looks forward to providing these benefits to  
7       Avista's Oregon customers.

8           **Q.     Please sum up your personal observations about why Hydro One and**  
9       **Avista will be able to work together to deliver benefits to Avista's Oregon customers?**

10          A.     I joined Hydro One in March of this year as the chief financial officer and have  
11       been serving as the acting CEO since July. Since taking on that role, I have had the  
12       opportunity to speak and interact with Avista's senior management team and Avista CEO  
13       Scott Morris on a frequent basis. Despite the events following the election in Ontario, I have  
14       seen first hand how the two companies continue to share similar values and to be culturally  
15       aligned. Avista helped both companies navigate the recent changes at Hydro One, and I have  
16       also seen that the strategic rationale that motivated both companies to come together in the  
17       first place continues to exist. We continue to expect to gain operating efficiencies and share  
18       best practices and technologies, taking advantage of the increased scale of the combined  
19       companies. Most importantly, I know that we will bring a lot of value to Avista and its  
20       customers and that they will benefit from the strong protections in place for Avista.

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

22          A.     Yes it does.

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1897

FINAL TESTIMONY OF HYDRO ONE BOARD CHAIR  
THOMAS WOODS  
REPRESENTING HYDRO ONE

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Role of the Province with Hydro One and  
Implementation of the Hydro One Accountability Act

**I. INTRODUCTION**

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

A. My name is Thomas D. (Tom) Woods, and my business address is 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5. I am the Chair of the Board of Directors for Hydro One Limited (“Hydro One”).

**Q. Have you filed testimony in this proceeding?**

A. Yes. I filed supplemental testimony on August 30, 2018, and rebuttal testimony on October 4, 2018.

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

A. No.

A table of contents for my testimony is as follows:

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II. ROLE OF THE PROVINCE .....2

**Summary of Testimony**

**Q. Please summarize your testimony.**

A. I explain that I do not anticipate further interference by the Province of Ontario (the “Province”) in the governance or management of Hydro One. Further, I explain that the Hydro One Board retains the authority to set executive compensation pursuant to the *Hydro*

1 *One Accountability Act*, subject to consultation with the Province. I also point out that the  
2 *Hydro One Accountability Act* has not hampered the Hydro One Board’s chief executive officer  
3 (“CEO”) search. Finally, I conclude that it is not appropriate for the Public Utility Commission  
4 of Oregon (“Commission”) to wait to approve this merger until the Province takes a position  
5 on it, given that the Province is not expected to take a position on the merger; it is solely the  
6 Hydro One Board’s responsibility to make decisions on matters such as mergers.

7

8 **II. ROLE OF THE PROVINCE**

9 **Q. Do you share the concern of Commission Staff<sup>1</sup> about future risks that the**  
10 **Province will interfere with Hydro One’s management?**

11 A. No. Based on my communications with Provincial officials prior to accepting a  
12 position on the Hydro One Board of Directors, and based on communications and events since  
13 that time, I expect that the Province will not intervene in Hydro One management other than  
14 participating in a limited manner on certain compensation matters as set forth in the *Hydro One*  
15 *Accountability Act*.<sup>2</sup>

16 **Q. Do you agree with Staff’s<sup>3</sup> and the Citizens’ Utility Board’s (“CUB’s”)<sup>4</sup>**  
17 **continued concern that the *Hydro One Accountability Act* could impair Hydro One’s**  
18 **ability to attract and retain talented executive management?**

19 A. No. The Province will not set pay for Hydro One’s executives under the *Hydro*  
20 *One Accountability Act*. The Act states that the Hydro One Board of Directors will establish a

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<sup>1</sup> UM 1897 - Staff/900/Anderson/4/Lines 12-15.

<sup>2</sup> UM 1897 - Hydro One Exh. 1602.

<sup>3</sup> UM 1897 - Staff/800/Muldoon/29/Lines 1-4.

<sup>4</sup> UM 1897 - CUB/300/Gehrke-Jenks/5/Lines 1-19.



1 new compensation framework for the Board, CEO, and other executives in consultation with  
2 the Province and Hydro One's other five largest shareholders. In addition to its right to consult  
3 with the Board on the compensation framework, the *Hydro One Accountability Act* provides  
4 the Management Board of Cabinet some regulatory oversight with respect to the compensation  
5 framework.

6 While the *Hydro One Accountability Act* provides the Province some regulatory  
7 oversight over executive compensation, Section 2.1.3 of the Governance Agreement between  
8 Hydro One and Her Majesty the Queen in Right of Ontario dated November 5, 2015 (the  
9 "Governance Agreement")<sup>5</sup> still provides that the Province is an investor in, and not a manager  
10 of, Hydro One. Further, the Province made clear in Section 16 of the July 11, 2018 letter  
11 agreement<sup>6</sup> (the "July 2018 Letter Agreement") that the Governance Agreement remains in full  
12 force and effect:

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

21  
22 Hydro One Exh. 1601, § 16.

23 **Q. Has the Board started working on compliance with the *Hydro One***  
24 ***Accountability Act*?**

25 A. Yes. We have retained an external advisor, Mercer's, to provide advice and  
26 market information. Our first focus is on developing a CEO compensation framework, as

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<sup>5</sup> UM 1897 - Hydro One Exh. 803.

<sup>6</sup> UM 1897 - Hydro One Exh. 1601.

1 retaining a new CEO is our immediate priority. Work has also begun on developing frameworks  
2 for other executives. I meet with government officials from time to time for general updates,  
3 including reports on our progress under the *Hydro One Accountability Act*.

4 **Q. Has the Province set a compensation cap for Hydro One's executives in**  
5 **these consultations?**

6 A. No. The Province has not prescribed a cap for the compensation of Hydro One's  
7 executives. Under the *Hydro One Accountability Act*, the Board is still in charge of Hydro  
8 One's executive compensation framework and will ensure that executive compensation is as  
9 competitive as necessary to attract high-quality talent and personnel to serve the best interests  
10 of Hydro One and its stakeholders.

11 **Q. How has the implementation of the *Hydro One Accountability Act* impacted**  
12 **the Board's simultaneous task of recruiting a new CEO?**

13 A. It has not. Our executive search firm has reported that a number of highly  
14 qualified individuals are interested in becoming our next CEO. We have not heard that the  
15 *Hydro One Accountability Act* has deterred the interest of qualified candidates. I am confident  
16 that the Hydro One Board has the latitude it needs to ensure the selection of a highly qualified  
17 CEO while at the same time complying with the *Hydro One Accountability Act*. In my  
18 consultations with the new government to date, I have not received any indication that the  
19 Province will interfere with the Board's authority to hire a new CEO and offer a competitive  
20 compensation package to the finalist.

21 **Q. Can you confirm that the *Hydro One Accountability Act* will not apply to**  
22 **Avista after the merger?**

23 A. With respect to Avista, it is important to note that the *Hydro One Accountability*

1 Act does not apply to Avista, as the Act expressly excludes Hydro One subsidiaries  
2 “incorporated in a jurisdiction outside of Canada.” In addition, Hydro One and Avista have  
3 offered to amend Stipulated Commitment<sup>7</sup> No. 4 to give the Avista board sole responsibility  
4 for setting compensation levels for Avista’s CEO and executives. Commission Staff supports  
5 this amendment to Stipulated Commitment No. 4.<sup>8</sup>

6 **Q. But can’t the Province amend the *Hydro One Accountability Act* to apply to**  
7 **Avista, thereby nullifying the new commitment?**

8 A. No. The Province cannot pass laws that apply directly to Avista. Rather, if the  
9 merger closes, Hydro One’s ownership of Avista will be constrained by the Stipulated  
10 Commitments, the Commission’s approval order, and the laws of the United States and the five  
11 states in which Avista operates. The amendment to Stipulated Commitment No. 4 puts the sole  
12 responsibility for the pay of Avista’s executives and employees in the hands of the post-merger  
13 Avista board.

14 **Q. Do you agree with CUB’s conclusion<sup>9</sup> that the Commission should wait to**  
15 **approve the merger until the Province has expressed its support?**

16 A. No. In Section 16 of the July 2018 Letter Agreement, the Province ratified and  
17 reaffirmed its obligations in the Governance Agreement. The Province’s relationship with  
18 Hydro One has not changed in that the Province remains an investor in Hydro One and not a  
19 manager, pursuant to the Governance Agreement. All of Hydro One’s strategic business

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<sup>7</sup> See Stipulation and Settlement, May 25, 2018 (“Stipulated Settlement”). The Stipulated Settlement includes 115 merger commitments (each, a “Stipulated Commitment,” collectively, the “Stipulated Commitments”).

<sup>8</sup> UM 1897 - Staff/800/Muldoon/14/Lines 9-12; UM 1897 - Staff/900/Anderson/7-8.

<sup>9</sup> UM 1897 - CUB/300/Gehrke-Jenks/4/Lines 15-18.

1 decisions—for example, negotiating, entering into, and completing this merger—are made by  
2 the Hydro One Board.

3           Commitment to the merger is a Board prerogative that the Board exercises on behalf of  
4 all of Hydro One’s shareholders. On September 19, 2018, the Board unanimously passed a  
5 resolution acknowledging and affirming, for and on behalf of Hydro One: (i) Hydro One’s  
6 obligations under the Merger Agreement and with respect to the merger-related commitments  
7 to be performed by Hydro One and/or its subsidiaries if the merger is consummated pursuant  
8 to the Merger Agreement; and (ii) Hydro One’s intention to consummate the Merger; in each  
9 case in accordance with the terms of, and subject to the conditions set out in, the Merger  
10 Agreement and the merger-related commitments.<sup>10</sup>

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

12           A. Yes it does.

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<sup>10</sup> See also, UM 1897 - Hydro One/2300/Woods/2/Lines 15-22.

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1897

FINAL TESTIMONY OF JOHN J. REED,  
CONCENTRIC ENERGY ADVISORS, ON BEHALF OF HYDRO ONE LTD.  
AND AVISTA CORPORATION

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Proposed Revisions to Stipulated Commitment No. 5, Credit Rating Impacts, and  
Non-Consolidation Opinions

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is John J. Reed. I am President and Chief Executive Officer of  
4 Concentric Energy Advisors, Inc. (“Concentric”) and CE Capital Advisors, Inc. (“CE  
5 Capital”), which has its headquarters at 293 Boston Post Road West, Suite 500, Marlborough,  
6 Massachusetts 01752.

7 **Q. On whose behalf are you submitting this testimony?**

8 A. I am testifying on behalf of Hydro One Limited (“Hydro One”) and Avista  
9 Corporation (“Avista”) in support of the proposed transaction between Hydro One and Avista  
10 (the “Proposed Transaction”) and the all-party stipulation (“Stipulated Settlement”) in this  
11 proceeding filed with the Public Utility Commission of Oregon (“Commission”) on May 25,  
12 2018.

13 **Q. Have you previously filed testimony in this proceeding?**

14 A. Yes, I filed supplemental testimony in this proceeding on August 30, 2018 and  
15 rebuttal testimony on October 4, 2018.

16 **Q. What is the purpose of your final testimony?**

17 A. The purpose of my final testimony is to respond to the sur-rebuttal testimonies  
18 of the Commission Staff (“Staff”) witnesses Matt Muldoon and Rose Anderson as they pertain  
19 to the ability of the Province of Ontario (“the Province”) to impact Avista and the sufficiency  
20 of the governance, financial integrity and ring-fencing provisions of the Commitments  
21 attached as Exhibit A to the Stipulated Settlement<sup>1</sup> (each, a “Stipulated Commitment”,

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<sup>1</sup> UM 1897, Stipulation and Settlement, May 25, 2018 (“Stipulated Settlement”). The Stipulated Settlement includes 115 merger commitments (each, a “Stipulated Commitment,” collectively, the “Stipulated Commitments”).

1 collectively, the “Stipulated Commitments”) in light of the recent political developments in  
2 the Province and changes in Hydro One’s executive management and board of directors.

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

4 A. No.

5 A table of contents for my testimony is as follows:

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10

11 **Summary of Sur-Rebuttal Testimony**

12 **Q. Please briefly summarize the sur-rebuttal testimonies you respond to.**

13 A. On October 4, 2018, Hydro One and Avista submitted rebuttal supplemental  
14 testimony addressing the concerns of Staff, Oregon Citizens’ Utility Board (“CUB”), and  
15 Alliance of Western Energy Consumers (“AWEC”) regarding the recent developments in the  
16 Province and changes in Hydro One’s Board of Directors and executive management and  
17 explaining how the Stipulated Commitments continue to be fully protective of the public  
18 interest in Oregon, as well as the interests of Avista’s Oregon customers. I am responding to  
19 the sur-rebuttal testimony of both Staff witnesses as it pertains to my rebuttal supplemental  
20 testimony.

21 Ms. Anderson made a number of comments on my rebuttal supplemental testimony,  
22 but ultimately proposed changes to Stipulated Commitment No. 4 and Stipulated Commitment  
23 No. 5 that she believes will contribute to mitigating Staff’s concerns. Those proposed changes  
24 are noted below.

1           In addition, Mr. Muldoon had several comments on my rebuttal supplemental  
2 testimony, although he states that he is more optimistic since his reply testimony regarding  
3 the Proposed Transaction and that the remaining issues can be resolved.<sup>2</sup> He urges the  
4 Commission to make full use of the available time in the schedule before the Commission’s  
5 decision by December 15, 2018.<sup>3</sup> He also states that Ms. Anderson’s proposed changes to  
6 Stipulated Commitment No. 5 further enhance the independence of the Avista Board of  
7 Directors.<sup>4</sup> He recommends “few changes to the Stipulated Commitments beyond updates to  
8 address a possible software change, incorporation of the improved language refined in  
9 Washington, improvements offered by Hydro One and Avista in their rebuttal testimony, and  
10 adjustments to the governance provision – see Ms. Anderson’s testimony.”<sup>5</sup>

11

12                                   **II. STAFF WITNESSES ANDERSON AND MULDOON**

13           **Q. Please respond to Ms. Anderson’s position that her proposed use of an**  
14 **independent nominating committee could prevent the merger from providing a boost to**  
15 **Avista’s credit rating, but that boost is not a guarantee and may not be a sufficient**  
16 **benefit to offset the risk of provincial influence.**<sup>6</sup>

17           A. When the Commission considers this issue, it is important to understand the  
18 full extent of the problems that the adoption of an independent nominating committee in  
19 Stipulated Commitment No. 5 as proposed in Ms. Anderson’s reply testimony, creates. Not  
20 only could the addition of the proposed provision prevent a positive impact on Avista’s credit

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<sup>2</sup> UM 1897 - Staff/800/Muldoon/2-7.

<sup>3</sup> *Id.* at 29.

<sup>4</sup> *Id.* at 8.

<sup>5</sup> *Id.* at 30.

<sup>6</sup> UM 1897 - Staff/900/Anderson/3-4.



1 rating as she notes, it could also negatively impact Hydro One's credit rating. As noted by  
2 Mr. Shipman, "if Hydro One emerges from the acquisition of Avista with a credit profile that  
3 is even marginally compromised by greater independence at Avista, the entire group profile  
4 could suffer and lead to lower ratings at Hydro One than would otherwise have resulted."<sup>7</sup>  
5 This result is also ultimately negative for Avista as it would not be in the best interests of any  
6 member of the Hydro One group if the parent company suffers some measure of ratings  
7 decline.

8 Furthermore, and as discussed in the rebuttal testimony of Mr. Lopez, the adoption of  
9 the independent nominating committee in Stipulated Commitment No. 5 could have serious  
10 tax and accounting implications. If Hydro One does not have control of Avista's Board, Hydro  
11 One would likely be unable to consolidate Avista for accounting purposes, and Avista would  
12 be accounted for using the equity method. If Hydro One is not able to consolidate Avista for  
13 accounting purposes, there could be further negative implications to Hydro One's credit  
14 metrics as it would have more debt and no additional cash flow to service the debt. Finally,  
15 the inability of Hydro One and Avista to file a consolidated U.S. federal tax return would  
16 result in higher cash taxes. Ultimately, the independent nominating committee proposal raises  
17 four issues, not just one.

18 **Q. Please respond to Ms. Anderson's concern that the Province has more**  
19 **power over Hydro One than even a majority shareholder would and that the Province's**  
20 **centralized power as a legislator, regulator (Ontario Energy Board ("OEB")) and**

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<sup>7</sup> UM 1897 - Reed Exh. 2601 at 7 (Shipman Report).

1 **market administrator (Independent Electricity System Operator (“IESO”)) gives the**  
2 **Province additional leverage for any requests it makes of Hydro One.<sup>8</sup>**

3 A. In evaluating this transaction, I believe the Commission should distinguish  
4 between the influence that the Province could have on Ontario ratepayers versus the influence  
5 that the Province could have on Avista and Avista’s ratepayers. While it is possible that  
6 legislation created by the Province could hypothetically pressure the OEB to decrease rates at  
7 Hydro One, with the Stipulated Commitments in place in Oregon this could not have any  
8 effect on Avista or Avista’s customers. While it is also possible that the Province could devise  
9 legislation for the IESO that could impact energy pricing in Ontario, again, this would not  
10 impact Avista or Avista ratepayers.

11 The Stipulated Commitments fully protect the public interest in Oregon as well as  
12 interests of Avista’s Oregon customers even if something extraordinary happens in Ontario.  
13 As Mr. Muldoon notes in his testimony, the “Stipulated Commitments are already proving  
14 resilient when confronted with changes in operating environment for Hydro One,” and that  
15 the ring-fencing will continue to be “impervious to change in leadership in Ontario”<sup>9</sup>.

16 **Q. Do you agree with Ms. Anderson’s updated proposal to strengthen**  
17 **Stipulated Commitment No. 5?**

18 A. Yes. Those changes include:

- 19 • Only Avista will have the right to designate, remove, and replace the Avista designees  
20 as directors of the Avista Board with or without cause or notice at its sole discretion.  
21 • Ms. Anderson has also adopted:

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<sup>8</sup> UM 1897 - Staff/900/Anderson/6.

<sup>9</sup> UM 1897 - Staff/800/Muldoon/2.

- 1           ○ (i) Hydro One’s proposed language that Hydro One designees that are  
2           employees of Hydro One or its subsidiaries will not constitute a majority of the  
3           directors of Avista, and
- 4           ○ (ii) Hydro One’s proposed restriction that if a majority of the Hydro One Board  
5           is appointed by the Province, then Hydro One’s authority to replace an  
6           Independent Director on the Avista Board with an employee or executive on  
7           an interim basis is suspended until the majority of the Hydro One Board  
8           members are no longer appointed by the Province.

9           These changes to Stipulated Commitment No. 5 strengthen the independence and  
10          governance of the Avista Board of Directors. In addition, and as noted below, Mr. Muldoon  
11          “prefers defenses that are active and deter harm to ratepayers, as proposed in Ms. Anderson’s  
12          Surrebuttal Testimony.”<sup>10</sup>

13           **Q.     Do you agree with Mr. Muldoon’s contention that non-consolidation**  
14          **opinions cannot help mitigate the risks that Avista faces in this transaction?**<sup>11</sup>

15           A.     No, I do not agree with Mr. Muldoon’s argument. As discussed by Mr. Scarlett  
16          in his final testimony, a non-consolidation opinion is a meaningful commitment that the  
17          parties may rely upon that the merger satisfies the legal requirements to prevent corporate  
18          consolidation in the unlikely event of bankruptcy. It is highly unlikely that utility  
19          commissions all over the U.S. would adopt non-consolidation opinions as part of their  
20          acceptance of merger transactions if they are considered to be ineffective. For example, since  
21          2010 a non-consolidation opinion was included in the merger commitments in the following

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<sup>10</sup> *Id.* at 7.

<sup>11</sup> To be clear, the following quote from Docket 1804, Order No. 17-526 that Mr. Muldoon referenced in his sur-  
rebuttal testimony -- “the conditions cannot mitigate the risk that the [Applicant] will not abide by one or more  
of the conditions” -- was not specifically speaking to non-consolidation opinions, but to conditions in general. .

1 states: CT, DC, DE, ID, LA, MA, MD, MO, OR, and TX. In addition, they were included in  
2 Oregon merger commitments for the MidAmerican Energy Holdings Company/Pacific Power  
3 & Light transaction<sup>12</sup> and the MDU Resources Group/Cascade Natural Gas Corporation  
4 transaction,<sup>13</sup> both of which were approved by the Commission before 2010. If the  
5 Commission did not believe that non-consolidation opinions were a form of risk mitigation,  
6 then they would likely not include them as part of a merger approval.

7 **Q. What positive developments does Mr. Muldoon cite as being the cause of**  
8 **his increased optimism for the transaction?**

9 A. Mr. Muldoon stated that he is more optimistic for the following reasons: 1) the  
10 Stipulated Commitments are already proving resilient; 2) Hydro One was receptive to issues  
11 that Oregon had with the Proposed Transaction and worked toward solutions; 3) the offer by  
12 Hydro One and Avista of Commitment No. 116; 4) the majority of the Hydro One senior  
13 management team have remained with Hydro One to date; 5) the statement by Mr. Woods,  
14 the Chair of the Board of Hydro One, that he is committed to the merger; 6) the recent trip by  
15 Hydro One executives to meet with the Commission and the rest of the parties to discuss the  
16 Proposed Transaction; and 7) Mr. Lopez has addressed liquidity concerns that now allow  
17 Hydro One to better support enforcement of the Stipulated Commitments from a financial  
18 perspective.<sup>14</sup>

19 **Q. Do you agree with Mr. Muldoon's reasons for optimism?**

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<sup>12</sup> *In the Matter of MidAmerican Energy Holdings Company Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp*, UM-1209, Order No. 06-082 (Feb. 24, 2006).

<sup>13</sup> *In the Matter of MDU Resources Group, Inc. Application for Authorization to Acquire Cascade Natural Gas Corporation*, UM 1283, Order No. 07-320 (July 25, 2007).

<sup>14</sup> UM 1897 - Staff/800/Muldoon/2-7.

1           A.     Yes, I do. With the optimism noted above by Mr. Muldoon, coupled with Ms.  
2 Anderson's proposed additions to Stipulated Commitment No. 5 (the governance  
3 commitment) as an alternative to her prior recommendation for an independence governance  
4 committee, Staff, Hydro One and Avista should be able to resolve all outstanding issues.

5           Q.     **Does this conclude your rebuttal testimony?**

6           A.     Yes, it does.