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Idaho Public Utilities Commission  
Office of the Secretary  
RECEIVED

JUN 20 2018

*Via Electronic Mail*

Boise, Idaho

June 20, 2018

Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington St.  
Boise, ID 83702

RE: Case Nos. AVU-E-17-09 and AVU-G-17-05

Enclosed for filing with the Commission are an original and 7 copies of the Hydro One and Avista Comments in Support of the Stipulation and Settlement in Case Nos. AVU-E-17-09 and AVU-G-17-05.

Please direct any questions related to the transmittal of this filing to Pat Ehrbar at 509-495-8620.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Meyer", with a long horizontal line extending to the right.

David J. Meyer  
Vice President, Chief Counsel for Regulatory & Governmental Affairs

Enclosures

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 20<sup>th</sup> day of June, 2018, served the foregoing letter and Joint Hydro One and Avista Comments in Support of Stipulation and Settlement in the Merger Case Nos. AVU-E-17-09/AVU-G-17-05, upon the following parties, by mailing a copy thereof, properly addressed with postage prepaid to:

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IDAHO PUBLIC UTILITIES COMMISSION

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE JOINT	)	
APPLICATION OF HYDRO ONE	)	CASE NO. AVU-E-17-09
LIMITED AND AVISTA CORPORATION	)	AVU-G-17-05
FOR APPROVAL OF MERGER	)	
AGREEMENT	)	<b>AVISTA AND HYDRO ONE JOINT</b>
	)	<b>COMMENTS IN SUPPORT OF</b>
	)	<b>STIPULATION AND SETTLEMENT</b>

1 Avista Corporation and Hydro One Limited comment as follows on the Settlement  
2 Stipulation and Agreement (“Stipulation”) filed in this Case on April 13, 2018. The Stipulation  
3 was entered into by and among Hydro One Limited (“Hydro One”), acting through its indirect,  
4 wholly-owned subsidiary Olympus Equity LLC, and Avista Corporation (“Avista”) (sometimes  
5 hereafter jointly referred to as “Joint Applicants” or the “Companies”), the Staff of the Idaho Public  
6 Utilities Commission (“Staff”), Clearwater Paper Corporation (“Clearwater”), Idaho Forest Group,  
7 LLC (“Idaho Forest Group”), Idaho Conservation League (“ICL”), the Community Action  
8 Partnership Association of Idaho (“CAPAI”) and the Washington and Northern Idaho District  
9 Council of Laborers (“WNIDCL”). These entities are collectively referred to as the “Parties,” and  
10 represent all of the parties in this consolidated Case. The Joint Applicants urge the Idaho Public

1 Utilities Commission (“IPUC” or the “Commission”) to approve their proposed merger (the  
2 “Proposed Transaction”) upon the terms set forth in the Stipulation.

3  
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11  
12 **I. BACKGROUND**

13 On July 19, 2017, Avista and Hydro One announced that they had entered into a merger  
14 agreement (the “Merger Agreement”). On September 14, 2017, the Joint Applicants filed  
15 applications for approval of the merger with the Commission and in the four other states where  
16 Avista operates.

17 Avista is an investor-owned utility providing electric generation, transmission, and  
18 distribution services to approximately 378,000 retail customers in Washington, Idaho and  
19 Montana, and the distribution of natural gas to approximately 342,000 retail customers in  
20 Washington, Idaho and Oregon. Alaska Electric Light & Power Company (“AEL&P”), a wholly-  
21 owned indirect subsidiary of Avista, also provides electric generation, transmission and  
22 distribution services to approximately 17,000 retail customers in the City and Borough of Juneau,  
23 Alaska.



1 Hydro One is an investor-owned utility incorporated under the laws of Ontario. Hydro  
2 One operates a large electric transmission and distribution system in Ontario. Although Hydro One  
3 recently became a publicly traded company, Hydro One is not a new company. It has a track  
4 record of over 100 years as a utility providing high-quality service to its customers. Hydro One's  
5 workforce and senior managers have decades of experience with the industry and extensive  
6 experience leading and implementing successful mergers and acquisitions.

7 Although Hydro One's largest shareholder is the Province of Ontario, the Province does  
8 not hold or exercise any managerial oversight over Hydro One. For this reason and also due to the  
9 independence of the Avista board described below, the Province will not hold or exercise any  
10 managerial oversight over Avista. Of Hydro One's 14 directors, all are independent of the Province  
11 and, with the exception of the President and CEO, all of Hydro One's directors are independent of  
12 Hydro One within the meaning of Canadian securities laws.

13 The Proposed Transaction has been structured to ensure that Avista's customers will  
14 continue to receive the high-quality customer service they have come to know and appreciate from  
15 Avista. Post-merger, Avista will be a separate indirect subsidiary of Hydro One, with its own  
16 management and its own board of directors, giving Avista a similar look and feel to customers that  
17 it has today. Over time, due to the similarities between Avista and Hydro One, the Proposed  
18 Transaction will provide opportunities for increased innovation, research and development, and  
19 efficiencies by extending the use of technology, best practices, and business processes over a  
20 broader customer base and a broader set of infrastructure between the two companies. These  
21 benefits will not only be viewed favorably by customers, but also by debt holders and rating  
22 agencies. With the agreed-upon commitments described below, the Proposed Transaction clearly  
23 results in net benefits to Avista's customers and is in the public interest.

1 All Parties are signatories to the Stipulation. As shown above, the Parties represent a wide  
2 range of interests. These constituencies include residential (including low-income constituents),  
3 commercial, and industrial customers.

4 In accordance with the procedural schedule adopted at the prehearing conference, all  
5 Parties attended the first scheduled settlement conference held in Boise, Idaho, on April 4 2018.  
6 Based on discussions at this settlement conference and related communications, the Parties have  
7 reached an agreement on commitments attached as Appendix A to the Stipulation (hereinafter  
8 “Stipulated Commitments” and individually, “Stipulated Commitment”) that provide a basis upon  
9 which the Parties recommend Commission approval of the Proposed Transaction in Idaho.

10 All of the Parties fully participated in the settlement discussions, and all are signatories to  
11 the Stipulation. The Parties, representing all who have intervened or appeared in this Case, agree  
12 that this Stipulation is in the public interest, provides “net benefits” to customers, and should be  
13 accepted by the Commission as a full resolution of the issues in this Case.

14 The Joint Applicants supported their merger application before the Commission (“Joint  
15 Application”) with 7 witnesses and 30 exhibits containing 748 pages of documentation. The  
16 Parties have engaged in extensive discovery and have submitted numerous data requests, exploring  
17 issues critical to them regarding the Proposed Transaction. The Parties have sufficiently explored  
18 areas of concern, are well versed in the issues, and entered into meaningful settlement discussions.

19 As noted in the Stipulation, the Parties agree that the Stipulation represents a compromise  
20 in the positions of the Parties, and that the Stipulation is in the public interest. The Parties agree  
21 further that the Stipulation meets the requirements for Commission approval under relevant Idaho  
22 Code. As with any settlement agreement, no Party shall be deemed to agree that any provision of  
23 the Stipulation is appropriate for resolving issues in any other proceeding, except those  
24 proceedings involving enforcement or implementation of the Stipulation terms. The Parties agreed



1 to support the Stipulation and recommend approval of the Proposed Transaction in this proceeding,  
2 subject to the agreed-upon Stipulated Commitments.

3 The Proposed Transaction received approval from Avista shareholders on November 21,  
4 2017. The Joint Applicants received antitrust clearance on April 5, 2018 after the expiration of  
5 the waiting period under the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, as  
6 amended and consent to close their merger from the Federal Communications Commission on  
7 May 4, 2018. The Committee on Foreign Investment in the United States completed its review of  
8 the Proposed Transaction on May 18, 2018, and has concluded that there are no unresolved  
9 national security concerns with respect to the Proposed Transaction. More recently, the Proposed  
10 Transaction also received approval with conditions from the Regulatory Commission of Alaska on  
11 June 4, 2018 and the Montana Public Service Commission voted in favour of the merger on June  
12 12, 2018. Applications for regulatory approval of the transaction are still pending with utility  
13 commissions in Washington and Oregon, however all-party settlements have been reached in  
14 Washington and Oregon. Hydro One and Avista continue to anticipate closing the Proposed  
15 Transaction in the second half of 2018.

## 16 17 **II. APPLICABLE LAW AND LEGAL STANDARD**

18 The Joint Application was filed pursuant to Idaho Code §61-328, which requires  
19 authorization by order of the Commission before an electric public utility owning, controlling or  
20 operating any property located in Idaho used in the generation, transmission, distribution or supply  
21 of electric power or energy to the public may merge, sell, lease, assign or transfer, directly or  
22 indirectly, such property, or the operation, management or control thereof.

23 Accordingly, the Commission has jurisdiction over the Proposed Transaction pursuant to  
24 Idaho Code §61-328. This section prohibits Hydro One from acquiring Avista without the written

1 authorization of the Commission. Before authorizing such a transaction, the Commission must  
2 find that: (1) the transaction is consistent with the public interest; (2) the transaction will not cause  
3 the cost of, or rates for, supplying electrical service to increase; and (3) that Hydro One has the  
4 bona fide intent and financial ability to operate and maintain Avista's operations in Idaho. Idaho  
5 Code §61-328.

6 In the Stipulation, as explained below, the Parties have proposed immediate financial net  
7 benefits for Avista's customers, as well as presenting the opportunity for longer-term benefits for  
8 customers from efficiencies gained through best practices, technology and innovation. It is  
9 consistent with the public interest and the Proposed Transaction will not cause the cost of, or rate  
10 for, supplying service to increase. Hydro One has the intent and ability to assure that Avista's  
11 operations in Idaho will be maintained in the best interest of customers.

### 12 13 **III. RATIONALE FOR TRANSACTION**

14 Avista's decision to merge with Hydro One was driven by the unique partnership that is  
15 possible with Hydro One. The merger with Hydro One will allow Avista and its customers to  
16 benefit from being part of a larger organization (the benefits of scale), while at the same time  
17 preserving local control of Avista and the retention of Avista's employees and management team,  
18 as well as its culture and its way of doing business.

19 With regard to scale, the number of investor-owned electric and/or natural gas utilities in  
20 North America has decreased significantly over the years through consolidation. When comparing  
21 the size of investor-owned utilities, Avista is one of the smallest remaining in North America.<sup>1</sup>  
22 The merger of Avista and Hydro One will place the combined company toward the middle of the

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<sup>1</sup> As measured by equity value.



1 range of investor-owned utilities, in terms of size. Through consolidation, larger utilities have the  
2 opportunity to spread costs, especially the costs of new technology, over a broader customer base  
3 and a broader set of infrastructure which inures to the benefit of customers.

4 Hydro One has more than 1.3 million electric distribution customers, and Avista has  
5 approximately 378,000 electric customers and approximately 342,000 natural gas customers. This  
6 combination will provide opportunities for efficiencies in the long-term through the sharing of best  
7 practices, technology and innovation. The merger will provide benefits to Avista's customers that  
8 otherwise would not occur.

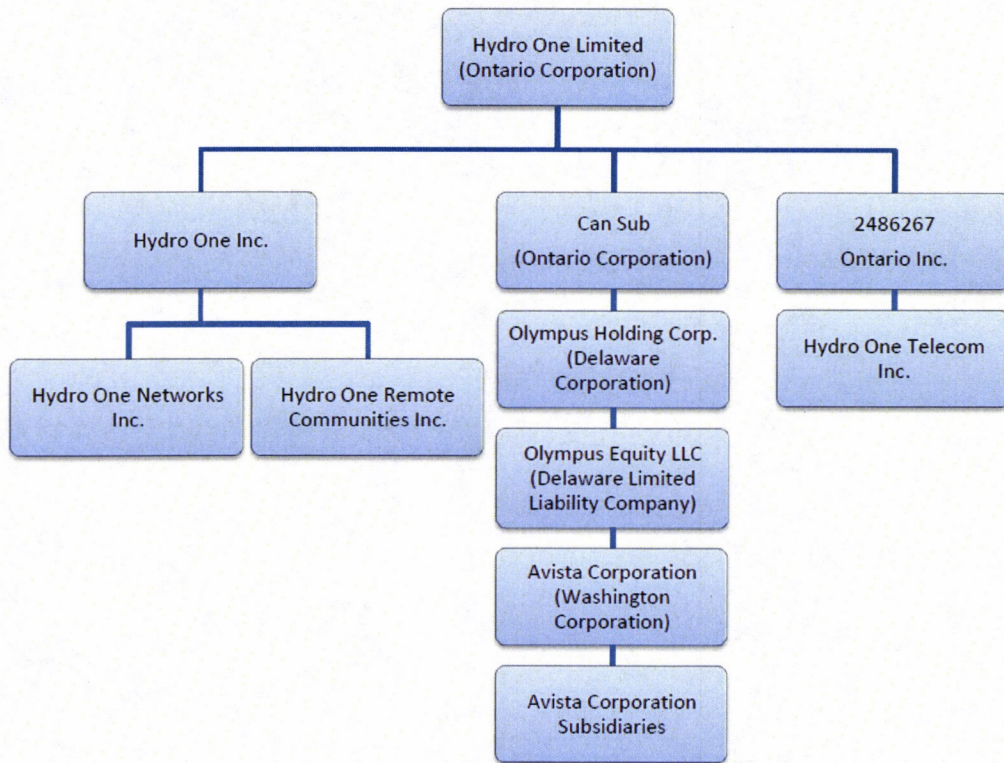
9 These benefits of scale will not necessarily occur in the near-term following the closing of  
10 the transaction, but are expected to occur over the long-term. After all approvals are received and  
11 the Companies merge, the Companies will work together to identify, evaluate and execute on  
12 opportunities to further reduce costs through, among other things, the sharing of technology, best  
13 practices, and business processes. The benefits from these cost savings will be flowed through to  
14 customers in future general rate cases.

15 Customers also benefit from other Stipulated Commitments insuring financial integrity, as  
16 well as "ring-fencing". Avista will be subject to tighter controls and restrictions than currently  
17 exist, such as maintaining a specified equity component of the capital structure as well as  
18 restrictions on dividend payments. In addition, the various ring-fencing provisions further insulate  
19 Avista from external financial risks. Avista and Hydro One believe that customers are receiving a  
20 benefit in this regard. While it may be argued that these Stipulated Commitments merely satisfy  
21 a "no harm" standard, some of them provide customers with protections that do not presently exist  
22 (e.g., "financial integrity"), thereby providing benefits to customers.

23 Hydro One's interest in the Proposed Transaction was driven by its desire to diversify its  
24 geographic base, its regulatory jurisdictions and the types of service it provides. With Avista, it

1 found a merger partner with a similar customer base and a similar culture that could help Hydro  
2 One to achieve those goals. Together, both Companies expect to be stronger.

3 At the close of the Proposed Transaction, Avista will continue to operate as a standalone  
4 utility in Alaska, Idaho, Montana, Oregon, and Washington. Hydro One will serve as Avista's  
5 indirect parent company through the following post-close corporate structure:



18 Following the closing of the Proposed Transaction, the customers, employees and  
19 communities Avista serves will see little or no change in Avista's operations. Avista will maintain  
20 its existing corporate headquarters in Spokane, Washington, and will continue to operate as a  
21 standalone utility in Washington, Oregon, Idaho, Montana and (through AEL&P) Alaska. It will  
22 maintain its other office locations throughout its service areas, continue to operate under the same  
23 Avista name, and seek to retain its existing employees and management team. All of these elements  
24 together with other provisions embedded within the Merger Agreement and captured by the



1 Stipulation are designed to ensure that Avista's culture and its way of doing business will continue  
2 for the long-term. Avista will continue to have a local Board of Directors consisting primarily of  
3 either board members chosen by Avista, and/or members who reside in the Pacific Northwest. In  
4 addition, a majority of board members will now be independent under the standards established  
5 by the New York Stock Exchange (NYSE) Listed Company Manual.

6 Avista and Hydro One believe this preservation of Avista's name, its headquarters, its  
7 culture and its way of doing business, among other things, is important to Avista's customers, in  
8 that customers can continue to expect and experience reliable service and a high level of customer  
9 satisfaction. In addition, customers will see immediate financial benefits in the form of proposed  
10 retail rate credits and other contributions beginning at the close of the Proposed Transaction. As  
11 described elsewhere, the Stipulation substantially increased those Rate Credits from what was  
12 proposed in the Joint Application and provides additional shareholder funding of a number of  
13 customer-related initiatives.

14 Furthermore, over time the merger will provide increased opportunities for innovation,  
15 research and development, and efficiencies by extending the use of technology, best practices, and  
16 business processes over a broader customer base and a broader set of infrastructure between the  
17 two companies. Through this unique arrangement with Hydro One, Avista's customers can receive  
18 the benefits of scale that come with joining a larger organization while also avoiding the risk of a  
19 potential subsequent acquisition by another party that may not share Avista's culture and values.  
20 These immediate and longer-term benefits to Avista's customers are benefits that will otherwise  
21 not occur absent the merger.

22 Following completion of the merger, the communities Avista serves will see increased  
23 charitable contributions and a continuation of the strong support Avista provides in economic  
24 development and innovation. Finally, Avista and Hydro One employees will experience career

1 development, professional employment opportunities and personal growth as the two Companies  
2 pursue efficiencies and innovation through the use of technology, best practices and business  
3 processes.

4 **IV. STIPULATION AND KEY COMMITMENTS**

5 Exhibit A to the Stipulation contains the complete list of Stipulated Commitments that the  
6 Joint Applicants collectively and individually agree to make in exchange for the support of the  
7 Parties in this proceeding. The Stipulated Commitments are comprised of general commitments  
8 applicable to all the states in which Avista's service territory extends and Idaho-specific  
9 commitments that apply only to the activities and operations of Avista within Idaho.

10 The Stipulation includes a robust set of merger commitments made by Hydro One and  
11 Avista to ensure the Proposed Transaction is in the public interest and provides net benefits to  
12 Avista's customers in Idaho. The Stipulated Commitments address Avista's post-closing  
13 operations, ratemaking and rate credits, corporate structure, governance matters, financial stability  
14 and integrity, and ring-fencing. The Stipulated Commitments provide security to Avista's  
15 customers in Idaho by, among other things, offering substantial financial commitments to those  
16 customers through rate credits and low-income programs. Finally and importantly, the Stipulated  
17 Commitments confirm the Commission's ongoing regulatory authority over Avista and its utility  
18 operations, including the maintenance of and access to books and records, allocation of costs,  
19 ratemaking, and enforcement of the Stipulated Commitments.

20 The Stipulated Commitments are substantially more robust than the merger commitments  
21 included in the Joint Application. Although Hydro One and Avista included merger commitments  
22 in their Joint Application, the Parties collectively agreed during settlement negotiations upon  
23 various changes and additions to those commitments. The result is a group of comprehensive and  
24 substantial commitments that provide net benefits to Avista's customers and result in a transaction

1 that is in the public interest. Hydro One and/or Avista have agreed to provide in Idaho a total of  
2 \$21.1 million in funding over time, none of which will be recoverable from customers.

3 The total level of financial commitments funded by Hydro One and Avista (excluding  
4 charitable contributions) in Idaho greatly exceed what was originally proposed in the Joint  
5 Application. Approximately \$8.9 million (Idaho share) of such commitments were made in the  
6 Joint Application. That number has more than doubled to \$21.1 million, as a result of the  
7 Stipulation, representing an increase of approximately \$12.2 million over what was originally  
8 proposed. Hydro One and Avista have committed to \$5.3 million in funding over a 10-year period,  
9 none of which will be recoverable from customers, to fund energy efficiency, weatherization,  
10 conservation, and low-income assistance programs. As noted in the table below, if this total  
11 funding of \$21.1 million in Idaho were to be applied to other jurisdictions on a “most favored  
12 nations” basis (see Stipulated Commitment 73), the quantifiable benefits to customers would  
13 approximate \$78.6 million over the five to ten year period (depending on the specific commitment)  
14 after the merger closes.

	<b>Benefits Funded by Hydro One and Avista</b>	<b>System *</b>	<b>Idaho</b>
	<b>Rate Credit</b>	<b>\$ 55,067,259</b>	<b>\$ 15,811,050</b>
<b>A</b>	Total Rate Credit	55,067,259	15,811,050
	<b>Colstrip</b>	<b>\$ 4,500,000</b>	<b>\$ -</b>
<b>B</b>	Community Transition Fund (SH Portion)	4,500,000	-
	<b>Low-Income, Weatherization, Miscellaneous (total of lines C - J)</b>	<b>\$ 19,049,348</b>	<b>\$ 5,308,847</b>
<b>C</b>	Professional Home Energy Audits	600,000	-
<b>D</b>	Weatherization	5,275,000	-
<b>E</b>	Manufactured Home Replacement	2,000,000	-
<b>F</b>	On-Bill Repayment Software	65,500	-
<b>G</b>	Renewables (Low-Income)	5,000,000	-
<b>H</b>	General Fund for Energy Efficiency, Weatherization, Conservation, and Low-Income Assistance	5,308,847	5,308,847
<b>I</b>	Low-Income Rate Assistance Program	500,000	-
<b>J</b>	SENDOUT Seats	300,000	-
	<b>Total</b>	<b>\$ 78,616,607</b>	<b>\$ 21,119,897</b>

1 \* This assumes “most favored nations” (MFN) treatment across all jurisdictions.

2 Avista and Hydro One are also making financial commitments to support charitable and  
3 community needs. This is something that Avista is particularly passionate about. Avista’s budget  
4 will be almost doubled for purposes of charitable giving, with an additional \$2 million annual  
5 contribution to Avista Foundation – the charitable giving arm of Avista (see Stipulated  
6 Commitment 11). On top of that, an additional one-time contribution of \$7 million will be made  
7 to the Avista Foundation at closing. The Avista Foundation provides funding to non-profit  
8 organizations throughout Avista’s service territory, addressing the needs of citizens served by  
9 Avista. When assessing whether the Proposed Transaction serves the public interest, this  
10 additional funding should be recognized. Moreover, the people ultimately benefiting from this  
11 funding are largely customers of Avista. Our customers may use services made possible by this  
12 funding. Absent a merger, less funding would be available.<sup>2</sup>

<sup>2</sup> As always, any charitable contributions are “below the line” costs and are not recovered from customers.



1           Specific Stipulated Commitments.   The Stipulated Commitments fall into several

2 categories.

- 3           • Stipulated Commitments 1-15 involve reservations of authority to the Avista board. These  
4 commitments confirm that Avista will retain control over operation of the utility through  
5 the retention of executive management, a stand-alone board of directors, and continued  
6 authority over other utility activities. They also provide for increased annual charitable  
7 contributions and budget.
  
- 8           • Stipulated Commitments 16-19 relate to customer rates. They provide for Rate Credits  
9 totaling approximately \$15.8 million to its Idaho customers in the first five (5) years after  
10 the merger closes. These commitments also flow through certain merger savings to  
11 customers, limit recovery of travel costs and prohibit rate recovery of transaction costs.
  
- 12          • Stipulated Commitments 20-33 address regulatory matters. They fully preserve the  
13 Commission's jurisdiction over Avista; ensure proper allocation of costs; ensure that  
14 Avista's cost of capital will not increase due to the Proposed Transaction; and require  
15 Avista to retain a common equity ratio of at least 44%.
  
- 16          • Stipulated Commitments 34-41 protect and enhance Avista's financial integrity.
  - 17           ○ To protect financial integrity, Avista will maintain separate debt to support its  
18 utility operations, will continue to be rated by at least one credit rating agency, will  
19 notify the Commission in the event of a ratings downgrade to non-investment grade  
20 status, will maintain a sound pension funding policy and will comply with  
21 applicable SEC reporting requirements and requirements of the Sarbanes-Oxley  
22 Act. (Stipulated Commitments 35, 36, 37, 39, 40, & 41.)
  
  - 23           ○ To enhance Avista's financial integrity, Hydro One will provide equity support  
24 designed to allow Avista access to debt financing on reasonable terms. Moreover,  
25 Avista is prohibited from making upwards distributions of dividends under certain  
26 circumstances that could be indicators of financial weakness. (Stipulated  
27 Commitments 34 & 38.)
  
- 28          • Stipulated Commitments 42-51 ring-fence Avista, insulating it from any potential financial  
29 weakness at the parent level.
  - 30           ○ Avista's entry into voluntary bankruptcy or the inclusion of Avista in bankruptcy  
31 proceedings would require the consent of a two-thirds majority of all of its  
32 directors, including the affirmative vote of at least one of its Independent Directors.  
33 (Stipulated Commitment 43.) Under Stipulated Commitment No. 42, Avista's entry  
34 into voluntary bankruptcy would additionally require the affirmative vote of the  
35 holder of the Golden Share. Avista's immediate parent will be a debt-free and  
36 bankruptcy-remote special purpose entity. (Stipulated Commitment 45.)
  
  - 37           ○ Restrictions are imposed on pledges of Avista's utility assets and on inter-company  
38 debt and lending. (Stipulated Commitments 46, 50 & 51.)

- 1           ○ Hydro One will hold Avista harmless for Hydro One’s business risks and will notify  
2           lenders of the ring-fencing requirements. (Stipulated Commitment 47.)
- 3           ○ Avista and Hydro One will provide the Commission with a non-consolidation  
4           opinion to confirm that with these ring-fencing measures, a bankruptcy court would  
5           not order the substantive consolidation of the assets and liabilities of Avista with  
6           its parent companies. (Stipulated Commitment 44.)
- 7           ● Stipulated Commitments 52-55 address resource planning. These commitments confirm  
8           Avista’s continued offering of renewable power programs, its commitment to sound  
9           resource planning policies and practices, its evaluation of the Energy Imbalance Market,  
10          and its initiation of a stakeholder process to explore opportunities for transport  
11          electrification.
- 12          ● Stipulated Commitments 56 and 57 address environmental matters. These commitments  
13          confirm Avista’s continued participation in greenhouse gas and carbon initiatives and  
14          compliance with applicable greenhouse gas reporting requirements.
- 15          ● Stipulated Commitments 58-65 provide funding and other forms of support for a number  
16          of initiatives. These include:
- 17               ○ Approximately \$5.3 million in funding over a 10-year period for energy efficiency,  
18               weatherization, conservation, and low-income assistance programs under the  
19               direction of a newly-formed stakeholder committee. (Stipulated Commitment 58.)
- 20               ○ Support for Clearwater and Idaho Forest Group on certain demand-side  
21               management programs. (Stipulated Commitments 59 & 60.)
- 22               ○ A \$7 million one-time contribution to Avista’s charitable foundation. (Stipulated  
23               Commitment 61.)
- 24               ○ Avista’s continued work with low-income agencies to address the needs of low-  
25               income customers, and efforts to improve the penetration rate of low-income  
26               programs. (Stipulated Commitments 62 & 64.)
- 27               ○ Avista’s continued offering of the fee free payment program. (Stipulated  
28               Commitment 63.)
- 29               ○ Avista’s outreach to tribal communities. (Stipulated Commitment 65.)
- 30          ● Stipulated Commitments 66-73 address miscellaneous issues. These include:
- 31               ○ Confirming that Hydro One’s funding commitments are not contingent and are not  
32               rate-recoverable. (Stipulated Commitment 66.)
- 33               ○ Processes for review of Avista’s gas service rules and its metering policies and  
34               practices. (Stipulated Commitments 67 & 68.)

- 1           ○ A process through which Hydro One and Avista will support, a December 31, 2027  
2           end-of-life for depreciation purposes of Avista’s 15% ownership interest in Colstrip  
3           Units 3 and 4. (Stipulated Commitment 69.)
- 4           ○ Funding for a Colstrip community transition fund. The Stipulation required \$3  
5           million for this purpose. Through a proposal to the Montana Public Service  
6           Commission, the amount has subsequently been increased to \$4.5 million.  
7           (Stipulated Commitment 70.)
- 8           ○ Avista’s participation in regional Colstrip transmission planning efforts.  
9           (Stipulated Commitment 71.)
- 10          ○ Avista’s commitment to pay fair and competitive wages, to principles of fairness in  
11          bidding and contracting work, and to employ highly skilled and trained workers.  
12          (Stipulated Commitment 72.)
- 13          ○ A “Most Favored Nations” or “MFN” process as described below. (Stipulated  
14          Commitment 73.)

15           In addition to benefits under specific Stipulated Commitments, Avista’s Idaho customers  
16          can expect benefits as a result of the financial and business stability associated with being owned  
17          by Ontario’s largest regulated transmission and distribution company. Avista’s customers will  
18          benefit from the backing of another, larger utility with a strong balance sheet, a credit rating higher  
19          than Avista’s, and a customer base somewhat similar to Avista’s.

21          **V.           SPECIFIC ISSUES RAISED DURING PUBLIC COMMENT HEARINGS<sup>3</sup>**

22           Foreign Ownership and Control / Impact of Canadian Politics – During the public hearings  
23          held in Sandpoint and Coeur d’Alene, members of the public expressed concern regarding the fact  
24          that the Province of Ontario is Hydro One’s largest shareholder. On June 14, 2018, the Oregon  
25          Commission issued a Bench Request requiring Hydro One to file a report on the following issues:  
26          (1) implications of the recent Ontario election for (a) the future management and plans of Hydro  
27          One, and (b) Hydro One’s acquisition of Avista; (2) a plan for keeping the Commission informed

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<sup>3</sup> Public comment hearings were held in Moscow, Idaho on June 12, 2018; in Sandpoint, Idaho on June 13, 2018; and in Coeur d’Alene, Idaho on June 14, 2018.

1 on a timely basis as to new developments; and (3) what further measures might be necessary to  
2 fully develop the record if material changes are made in Hydro One's management or Board of  
3 Directors ("Board"). Hydro One has prepared a detailed report in response to that Bench Request,  
4 which provides a through explanation of these issues. A copy is attached at Exhibit A to these  
5 comments.

6 Financial / Operating Issues at Hydro One Will Not Impact Avista – During the public  
7 hearings held in Sandpoint and Coeur d'Alene, questions were raised regarding whether financial  
8 or operational changes at Hydro One will impact Avista and its service to customers. This issue  
9 was a central theme during the settlement negotiations involving all the Parties in this Case. The  
10 Parties developed Stipulated Commitments that ensure Avista will remain a financially healthy,  
11 standalone utility after the merger regardless of any negative financial or operational changes that  
12 could occur at Hydro One, whether the result of the Ontario election or some other event.

13 The Province could trigger the provisions in Article 4.7 of the Governance Agreement to  
14 replace Hydro One's Board or the Province's new leadership could introduce legislation for the  
15 purpose of dismissing Hydro One's CEO or members of the Board. These are just possibilities,  
16 but even if they were to come to pass, Hydro One, Avista, and the other Parties in this Case have  
17 included governance and financial ring-fencing in the Stipulation that will protect Avista and its  
18 customers and bolster the protections already provided by the Governance Agreement:

19 First, as established in the Stipulation filed with this Commission on June 14, 2018, Avista  
20 will have a nine-member board separate from Hydro One that will govern Avista's management  
21 and day-to-day operations, as set forth in Stipulated Commitment 1. Hydro One (not the Province)  
22 will select five of Avista's directors. Three of these five directors must be independent under  
23 NYSE rules. Further, those three directors must be residents of the Pacific Northwest. As a result,



1 the Province will not be able to exercise any control over Avista through selection of Avista's  
2 board.

3 Second, Olympus Equity LLC's three-member board must include one independent  
4 director. See Idaho Stipulated Commitment 43.

5 Third, Avista's executive management will remain in place and must be selected by  
6 Avista's board -- not Hydro One. See Idaho Stipulated Commitment 2.

7 Fourth, generally, Avista's employees will be retained. See Idaho Stipulated Commitments  
8 2, 9, 10.

9 Fifth, as part of the Stipulation, Hydro One is required to provide Avista with enough equity  
10 so that Avista can access debt on reasonable terms. See Idaho Stipulated Commitments 26, 34.  
11 Therefore, the Province cannot deprive Avista of its capital and assets for the benefit of the  
12 Province.

13 Sixth, as part of the Stipulation, Avista will continue to have its own credit ratings. Hydro  
14 One is required to provide Avista with sufficient equity to ensure that Avista's credit ratings remain  
15 investment grade. See Idaho Stipulated Commitments 36, 37. Therefore, again, the Province  
16 cannot deprive Avista of its capital and assets for the benefit of the Province.

17 Seventh, as part of the Stipulation, Avista will be prohibited from issuing dividends if  
18 certain financial metrics relating to the equity floor, credit ratings and debt coverage are not met.  
19 Basically, this operates to keep retained earnings at the Avista level where they will improve  
20 Avista's financial strength. See Idaho Stipulated Commitment 38. This too prevents the Province  
21 from depriving Avista of its capital and assets for the benefit of the Province.

22 Eighth, as part of the Stipulation, several of the Commitments protect Avista from being  
23 drawn into bankruptcy proceedings that are not in the best interest of Avista and its customers.  
24 Avista will issue a single share of preferred stock referred to as the Golden Share to an independent

1 third party. The vote of this share will be required to place Avista into voluntary bankruptcy. See  
2 Idaho Stipulated Commitment 42. Further, Avista's entry into voluntary bankruptcy would require  
3 the consent of a two-thirds majority of all of its directors, including the affirmative vote of a  
4 majority of the Independent Directors at Avista, which would have to include the affirmative vote  
5 of at least two Avista-designated Independent Directors. See Idaho Stipulated Commitment 43.  
6 Hydro One and Avista must also provide a non-consolidation opinion to confirm the effectiveness  
7 of the ring-fencing measures to prevent the substantive consolidation of the assets and liabilities  
8 of Avista with those of the entities above it in the corporate chain of ownership. See Idaho  
9 Stipulated Commitment 44. The corporate structure also includes Olympus Equity LLC, a  
10 bankruptcy-remote special purpose entity that will have no debt. See Idaho Stipulated  
11 Commitment 45.

12 Ninth, as part of the Stipulation, Avista's utility assets can be pledged only for the benefit  
13 of Avista, not Hydro One. See Idaho Stipulated Commitment 46. Therefore, the Province cannot  
14 strip Avista of its capital and assets for the benefit of the Province.

15 Hydro One and Avista, along with the rest of the Idaho parties, developed the Settlement  
16 Stipulation to ensure that Avista could not be negatively impacted in any way by any of the  
17 hypothetical political events described in the previous sections. If any of the above-described  
18 hypothetical events were to occur, Hydro One would still be legally obligated to comply with the  
19 Stipulation in this Case, the settlements it has reached in Oregon, Washington, Montana, and  
20 Alaska, the Regulatory Commission of Alaska's June 4, 2018 order approving this merger, the  
21 Montana Public Service Commission's forthcoming order approving this merger, and any orders  
22 approving this merger issued by this Commission, the Washington Utilities and Transportation  
23 Commission, and the Oregon Public Utility Commission. As a result, all of the protections  
24 described above that have been built into the Stipulation to ensure that Avista will continue as a

1 financially sound, stand-alone utility will bind Hydro One regardless of political developments  
2 (e.g., Avista’s independent board, financial ring-fencing, capital support). Furthermore, through  
3 the Stipulation in this proceeding and the settlements in Washington and Oregon, Hydro One and  
4 Avista have committed that none of the commitments in the settlements can be amended without  
5 approval from Avista’s state regulators. See Idaho Stipulated Commitments 1, 30, 33, 49.

6 Finally, the Stipulation in this Case confirms that the Commission will continue to regulate  
7 Avista as it always has to ensure that Avista’s customers are protected and continue to pay fair,  
8 just, and reasonable rates. See Idaho Stipulated Commitments 20-24, 30-33.

9 No “Climate Change” agenda. Some comments expressed concern that Hydro One, or  
10 indirectly the Province of Ontario, might somehow seek to impose a climate change agenda on  
11 Avista. First, as noted above, Avista is fully protected from any attempt by the Province to  
12 influence Avista on policy matters because the merger commitments in this Case vest Avista’s  
13 own board with decision-making over Avista’s operations and management. Second, under the  
14 Governance Agreement, the Province has no role in the management of Hydro One. Finally,  
15 neither Hydro One nor the Province of Ontario has any desire to impose a “cap and trade” agenda  
16 on Avista or its customers. The prior government under Kathleen Wynne instituted an Ontario-  
17 only cap and trade program on January 1, 2017, however, Premier-Designate Doug Ford has  
18 announced that it is a priority of his to remove this program. Mr. Ford’s “Plan for the  
19 People”<sup>4</sup> includes a proposal for, “Scrapping the Carbon Tax and cancelling Kathleen Wynne’s  
20 cap-and-trade slush fund[.]” Further, even if the current cap and trade program were to remain  
21 law in Ontario, it could not be enforced against Avista or have any effect on Avista or its customers.

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<sup>4</sup> Available at [https://www.ontariopc.ca/plan\\_for\\_the\\_people](https://www.ontariopc.ca/plan_for_the_people), visited June 19, 2018.

1           Explanation of “Golden Share”. During the public hearings held in Sandpoint and Coeur  
2 d’Alene, questions were raised about the provision for a Golden Share. In the context of utility  
3 mergers, a Golden Share is an element of ring-fencing designed to help protect the operating utility  
4 (here, Avista) from being placed by its parent company into voluntary bankruptcy under  
5 circumstances where such a bankruptcy would not be in the best interests of the operating utility  
6 or utility customers. The inclusion of a Golden Share provision in the Stipulated Commitments  
7 provides extra comfort to state regulators that Avista will not be pushed into a "restructuring"  
8 bankruptcy by Hydro One in the event Hydro One was ever to encounter severe financial  
9 difficulties.

10           Under Stipulated Commitment No. 43, Avista’s entry into voluntary bankruptcy or the  
11 inclusion of Avista in bankruptcy proceedings would require the consent of a two-thirds majority  
12 of all of its directors, including the affirmative vote of at least one of its Independent Directors.

13           Under Stipulated Commitment No. 42, Avista’s entry into voluntary bankruptcy would  
14 additionally require the affirmative vote of the holder of the Golden Share. The holder of this  
15 share must be an independent third party with no financial stake, affiliation, relationship, interest  
16 or tie to Avista or any of its affiliates (including Hydro One), or any lender to Avista or any of its  
17 affiliates, which insulates Avista from being placed into voluntary bankruptcy by Hydro One or  
18 any of its affiliates. Typically, a company (rather than an individual) which specializes in  
19 providing independent third party corporate services for ring-fencing purposes serves as the holder  
20 of the Golden Share.

21           The sole purpose of the Golden Share is to provide this independent third party with veto  
22 power over Avista’s entry into voluntary bankruptcy even if the Avista Board voted, as described  
23 above, in favor of such a filing. No dividends are paid on the Golden Share and the holder of the  
24 Golden Share does not participate in shareholder activities unrelated to bankruptcy.



1 Hydro One and Avista commit to identify the holder of this Golden Share prior to any  
2 action taken by this Commission to approve the Proposed Transaction. We will notify the  
3 Commission and all parties when this occurs.

4 How will \$5.3 million of funding for Energy Efficiency, Weatherization, Conservation,  
5 and Low-Income Assistance be distributed? Hydro One and Avista have committed to \$5.3  
6 million in funding over a 10-year period, none of which will be recoverable from customers, to  
7 fund energy efficiency, weatherization, conservation, and low-income assistance programs. The  
8 funding will be disbursed as directed by the Energy Efficiency, Weatherization, Conservation, and  
9 Low-Income Assistance Committee (“EWCL”), a new committee of stakeholders tasked with  
10 determining which existing or new programs should receive this funding to address energy  
11 efficiency, weatherization, conservation, and low-income needs in Avista’s Idaho service territory.  
12 The committee will initially consist of a broad cross-section of representatives from the following  
13 stakeholders: Avista, Staff, Lewiston CAP, Idaho Conservation League, Idaho Forest Group, and  
14 Clearwater. The Committee may add members at its discretion. The EWCL will consider the  
15 needs of all parties and remain flexible on the timing of any disbursements. The EWCL will  
16 convene within 90 days after the close of the Proposed Transaction, will present a 10-year funding  
17 plan to Avista by June 1, 2019, and will revise this plan periodically as needed. Additional public  
18 involvement may be called for, as and when needed.

19 Cost Allocation Methodologies are already in place. A theme that was discussed by several  
20 commenters at the Public Hearings was related to the rates charged by Avista, and how those rates  
21 might increase because Hydro One’s retail rates are significantly higher than Avista’s. Quite  
22 simply, it is not Avista, nor Hydro One, that sets rates for Idaho customers; rather, the Commission  
23 sets Idaho retail rates. Those rates are developed based on a thorough and substantial evidentiary  
24 record of expert written and oral testimony, exhibits, and work papers that include detailed

1 accounting and cost allocation records, which relate only to the cost to provide service to Avista's  
2 Idaho jurisdictional customers.

3 Costs related to Avista providing service in other jurisdictions served by Avista, which  
4 include Oregon, Washington, Montana and Alaska, are not included in Idaho retail ratemaking.  
5 Likewise, Avista and Hydro One would never seek, nor would the Commission ever allow, the  
6 inclusion of Hydro One's utility costs in Idaho rates, nor would the Commission meld or somehow  
7 average Hydro One's retail rates with Avista's jurisdictional rates. To do so would depart from  
8 the very essence of cost-based ratemaking.

9 In addition, all costs associated with evaluating and executing on the Proposed Transaction  
10 are being separately tracked and recorded below-the-line to a non-operating account, using a  
11 "Direct Assignment Protocol" (the "Protocol"), attached as Exhibit No. 7, Schedule 3 to Mr.  
12 Ehrbar's direct testimony. The Protocol addresses the accounting for costs both prior to the closing  
13 of the transaction, as well as the accounting for costs following the closing. To the extent Avista  
14 employees dedicate time and incur costs related to the operations of Hydro One, those costs will  
15 be directly assigned and billed to Hydro One, and would not be borne by Avista's customers.  
16 Likewise, should Hydro One employees dedicate time and incur costs associated with Avista's  
17 operations, such costs would be directly assigned and billed to Avista. If a Hydro One employee's  
18 time and costs are related to Avista's regulated utility operations, the costs would be subject to  
19 review and approval by the Commission prior to being recovered in retail rates. Avista expects  
20 such assignment of costs, both to Hydro One and from Hydro One, to be relatively small, especially  
21 in the near-term, since Avista will continue to operate as a standalone utility. This methodology  
22 has been used since 2014, when Avista acquired Alaska Energy and Resources Company,  
23 including AEL&P, which provides electric service to customers in the City and Borough of Juneau,  
24 Alaska.

1 At this point in time, there are no plans to combine any specific utility operations. In the  
2 future, however, if opportunities arise for the consolidation of certain Avista and Hydro One utility  
3 functions, where the utilities have an opportunity to benefit from specialized expertise or to achieve  
4 efficiencies, it may be appropriate to develop additional or different direct assignment or allocation  
5 protocols, as has been committed in Commitment 24 provided below:

6 Stipulated Commitment 24  
7

8 Cost Allocations Related to Corporate Structure and Affiliate Interests: Avista agrees to  
9 provide, and Hydro One agrees Avista will provide, cost allocation methodologies used to  
10 allocate to Avista any costs related to Hydro One or its other affiliates and subsidiaries,  
11 and commits that there will be no cross-subsidization by Avista customers of unregulated  
12 activities.  
13

14 The cost-allocation methodology provided pursuant to this commitment will be a generic  
15 methodology that does not require Commission approval prior to it being proposed for  
16 specific application in a general rate case or other proceeding affecting rates. The cost-  
17 allocation methodology provided pursuant to this commitment also will establish a  
18 procedure for ensuring that additional costs or revenues resulting from changing currency  
19 exchange rates will not be reflected in rates charged to Idaho customers.  
20

21 Avista will bear the burden of proof in any general rate case that any corporate and affiliate  
22 cost allocation methodology is reasonable for ratemaking purposes. Neither Avista nor  
23 Hydro One or its affiliates and subsidiaries will contest the Commission's authority to  
24 disallow, for retail ratemaking purposes in a general rate case, unreasonable, or  
25 misallocated costs from or to Avista or Hydro One or its other affiliates and subsidiaries.  
26

27 With respect to the ratemaking treatment of affiliate transactions affecting Avista, Hydro  
28 One, and Olympus Holding Corp. and its subsidiaries, as applicable, will comply with the  
29 Commission's then-existing practice; provided, however, that nothing in this commitment  
30 limits Avista from also proposing a different ratemaking treatment for the Commission's  
31 consideration, or limit the positions any other party may take with respect to ratemaking  
32 treatment.  
33

34 Avista will notify the Commission of any change in corporate structure that affects Avista's  
35 corporate and affiliate cost allocation methodologies. Avista will propose revisions to such  
36 cost allocation methodologies to accommodate such changes. Avista will not take the  
37 position that compliance with this provision constitutes approval by the Commission of a  
38 particular methodology for corporate and affiliate cost allocation.  
39

40 Avista will notify the Commission prior to the implementation of plans by Avista or Hydro  
41 One or any of Hydro One's affiliates:

- 1 a. To form an affiliate for the purposes of transacting business with Avista's regulated
- 2 operations;
- 3 b. To commence new business transactions between an existing affiliate and Avista; or
- 4 c. To dissolve an affiliate that has transacted substantial business with Avista.

5  
6 Finally, Avista will commit to preparing a Master Services Agreement (MSA), itemizing  
7 and explaining corporate cost allocation methods used to set rates. The MSA will be fully  
8 described and supported in testimony and workpapers in Avista's first general rate case submitted  
9 after the Joint Application is approved by the Commission. Thereafter, the MSA will be filed  
10 along with any general rate case filed with the Commission. This filing will capture, highlight and  
11 explain all changes since the MSA was last provided to the Commission. The entirety of the MSA  
12 and its components are subject to review and approval by the Commission in subsequent  
13 proceedings before the Commission to confirm that cost drivers, accounting methods,  
14 assumptions, and practices result in fair, just and reasonable utility rates.

15 No loss of "critical infrastructure" to foreign ownership. During the public comment  
16 process, some of those testifying expressed a concern over "foreign ownership" (Canadian) of  
17 Avista and its facilities. The Joint Applicants respectfully respond as follows to those concerns:

18 1) After consummation of the Proposed Transaction, Avista will not be owned or  
19 controlled by the Province of Ontario; instead it will be owned by Hydro One, which is no longer  
20 a "Crown Corporation". At present, and following the merger, Hydro One will be majority-owned  
21 by a much broader base of individual or institutional shareholders (As at June 12, 2018, the  
22 Province owned 282,412,648 common shares of Hydro One, representing approximately 47.4%  
23 of the common shares. Following conversion of the convertible debentures issued to finance  
24 Hydro One's acquisition of Avista, the Province will hold less than 43% of Hydro One's  
25 outstanding stock.) Those shareholders may freely exchange their shares over time on the Toronto

1 Stock Exchange, in much the same manner as do current shareholders who trade shares of Avista  
2 on the New York Stock Exchange.

3 2) Any concern about yielding “critical infrastructure” to foreign ownership was  
4 squarely resolved through the filing made by Avista for approval of the transaction by the  
5 Committee on Foreign Investment in the United States (CFIUS). Section 721 of the Defense  
6 Production Act of 1950, as amended (section 721, codified at 50 U.S.C. § 4565), authorizes the  
7 President of the United States, acting through CFIUS, to review certain mergers, acquisitions, and  
8 takeovers which could result in foreign control of any person engaged in interstate commerce in  
9 the United States. On May 18, 2018, CFIUS informed Avista that it had reviewed the information  
10 provided to it regarding the transaction. It concluded, “based on its review, and after full  
11 consideration of all relevant national security factors, including the factors enumerated in  
12 subsection (F) of section 721, CFIUS has determined that there are no unresolved national security  
13 concerns with respect to the transaction that is the subject of the notice.”

14 3) In reaching its conclusion, CFIUS was required to consider the plans of the foreign  
15 person (Hydro One) for the U.S. business with respect to:

- 16 a. Reducing, eliminating, or selling research and development facilities;
- 17 b. Changing product quality;
- 18 c. Shutting down or moving outside of the United States facilities that are within the  
19 United States;
- 20 d. Consolidating or selling product lines or technology;
- 21 e. Modifying or terminating certain contracts; or
- 22 f. Eliminating domestic supply by selling products solely to non-domestic markets.

23  
24 There are no plans to carry out any of the aforementioned activities. Following closing of  
25 the Proposed Transaction, Avista’s customers and the communities Avista serves are expected to  
26 see little or no change in Avista’s operations. Avista will maintain its existing corporate  
27 headquarters in Spokane, Washington, and will continue to operate as a standalone utility in Idaho,  
28 Washington, Oregon, , and Montana. Avista’s subsidiary, AEL&P, will continue to operate as a



1 standalone utility in Alaska. Avista will maintain office locations throughout its service areas,  
2 continue to operate under the same Avista name and seek to retain its existing employees and  
3 management team.

4 Hold Harmless Provisions. Hold harmless provisions protect Idaho customers from all  
5 business and financial risk exposures of Hydro One and its affiliates. During public comment  
6 hearings, it was suggested that Avista’s customers would only be “held harmless” from  
7 the unregulated activity of Avista or Hydro One. This is a misreading of Stipulated Commitment  
8 47 (a.), which quite clearly states:

- 9 a. Hydro One, its affiliates, and subsidiaries including Avista will hold Avista  
10 customers harmless from any business and financial risk exposures associated with  
11 Olympus Holding Corp., Hydro One, and Hydro One’s other affiliates. (emphasis  
12 added)  
13

14 The commenter apparently misread Commitment 47(c).i, to limit any hold harmless  
15 protection only to the unregulated activities of Avista and Hydro One only.<sup>5</sup> Quite the opposite is  
16 true. This sub-part was added to the blanket “hold harmless” commitment in 47(a) (supra) to  
17 expand that protection to cover the unregulated activities of Avista and Hydro One as well.

18 Finally, and perhaps most importantly, the Commission will have continuing, ongoing  
19 jurisdiction under Idaho Code §61-328 to regulate any subsequent transfers of Avista’s property  
20 to Hydro One or others. Indeed, Idaho Code §61-328 forms the very basis for Commission  
21 jurisdiction over this transaction. In short, the Commission’s ongoing jurisdiction will form the  
22 bulwark against any transfers that are not in the best interest of Idaho customers.

23 Provisions of Idaho Code §61-328 have been satisfied. The provisions of Idaho Code §61-  
24 328 are satisfied by the proffered Stipulated Commitments. Idaho Code §61-328 provides that,

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<sup>5</sup> Commitment 47(c)(i) reads: “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.” (emphasis added)

1 before authorizing the Proposed Transaction, the Commission must find that: (1) the transaction  
2 is consistent with the public interest; (2) the transaction will not cause the cost of or rates for  
3 supplying electrical service to increase; and (3) that Hydro One has the bona fide intent and  
4 financial ability to operate and maintain Avista's operations in Idaho. It was suggested during the  
5 public hearings that the Stipulation does not satisfy the requirement that the "cost of and rates for  
6 supplying service will not be increased by a reason of such transactions." (Idaho Code §61-328  
7 (3)(b))

8 The following commitment provides assurance that costs will not increase.

9 Commitment 17:

- 10
- 11 a. Costs associated with the Proposed Transaction will be separately tracked as non-utility  
12 costs with no charges, either allocated or direct, to be recovered from Avista customers.  
13 After the consummation of the Proposed Transaction, any remaining transaction costs  
14 or other costs of Olympus Holding Corp. or Hydro One will not appear on Avista's  
15 utility books, i.e. such costs will be recorded as non-utility. Avista shall furnish the  
16 Commission with journal entries and supporting detail showing the nature and amount  
17 of all costs of the Proposed Transaction (including but not limited to management time,  
18 BOD time, in-house and outside counsel time, any consultants engaged, etc.) since the  
19 Proposed Transaction was first contemplated, as well as the accounts charged, within  
20 120 days of a Commission order in this docket.
- 21
- 22 b. Avista will exclude, and Hydro One agrees Avista will exclude, from Avista general  
23 rate cases, or any other method of cost recovery, all costs related to the Proposed  
24 Transaction including but not limited to: (i) all legal work from in-house counsel and  
25 outside counsel; (ii) any financial advisory fees associated with the Proposed  
26 Transaction; (iii) the acquisition premium; (iv) costs related to M&A consulting and  
27 advice (v) preparation of and materials for presentations relating to the Proposed  
28 Transaction (vi) any senior executive compensation or any Avista board of director  
29 time tied to a change of control of Avista; and (vii) any other costs directly related to  
30 the Proposed Transaction.
- 31
- 32 c. Technology expenditures and investments related to software and hardware  
33 compatibility issues between Avista and Hydro One and its affiliates shall not be  
34 recovered from Idaho ratepayers except to the extent such costs are offset by savings  
35 over time.

36

37 Finally, some commenters suggested that this merger Case is the place to review and  
38 determine whether costs will increase as a result to the Proposed Transaction. It is to be

1 remembered that no “costs” of the merger could ever find their way into rates outside of the context  
2 of a general rate filing -- and this is not that filing. The Commission will have ample opportunity,  
3 in Avista’s next Idaho general rate case filing, to review all costs that make up the revenue  
4 requirement and assure itself that Avista has lived up to its Stipulated Commitments discussed  
5 above, that exclude all such merger-related costs.

6 Idaho Code §61-327 is not an impediment to this transaction. A few individuals  
7 commented that the provisions of Idaho Code §61-327 somehow prohibit the Proposed  
8 Transaction with Hydro One. The language (indeed the very title of the section) belies any such  
9 interpretation:

10 61-327. Electric utility property — Acquisition by certain public agencies  
11 prohibited. No title to or interest in any public utility . . . shall be transferred or  
12 transferable to, or acquired by, directly or indirectly, by any means or device  
13 whatsoever, any government or municipal corporation, quasi-municipal  
14 corporation, or governmental or political unit, subdivision or corporation,  
15 organized or existing under the laws of any other state; . . .

16  
17 There is no direct or indirect transfer of ownership to a “public agency” in the Proposed  
18 Transaction. Hydro One is not a “public agency“, and is not a “government or municipal  
19 corporation, quasi-municipal corporation, or governmental or political unit, subdivision or  
20 corporation, organized or existing under the laws of any other state; . . .”

21 Instead, Hydro One is a publicly-traded corporation governed by its own Board of  
22 Directors, as is Avista, as is Mid–American Holdings (which received approval to purchase  
23 PacifiCorp’s Idaho properties in Case No. PAC-E-05-8), and as is Montana-Dakota Utilities  
24 (which acquired Intermountain Gas<sup>6</sup>).

25

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<sup>6</sup> The Commission took up the MDU Resources/Intermountain Gas Transaction at its August 25, 2008 regularly scheduled Decision Meeting. The Commission did not exert jurisdiction over the purchase transaction.

1 **VI. CONCLUSION**

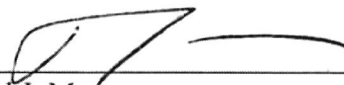
2 All Parties to this consolidated Case have agreed that the Stipulation is in the public  
3 interest, that all of its terms and conditions are fair, just and reasonable, and that the Joint  
4 Applicants have satisfied the standard under Idaho Code §61-328 for approval of the Proposed  
5 Transaction. Avista and Hydro One respectfully request that the Commission issue an order  
6 approving the Joint Application and the Stipulation.

7  
8 DATED this 20th day of June, 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  
Attorney for Avista Corporation

1 **VI. CONCLUSION**

2 All Parties to this consolidated Case have agreed that the Stipulation is in the public  
3 interest, that all of its terms and conditions are fair, just and reasonable, and that the Joint  
4 Applicants have satisfied the standard under Idaho Code §61-328 for approval of the Proposed  
5 Transaction. Avista and Hydro One respectfully request that the Commission issue an order  
6 approving the Joint Application and the Stipulation.

7  
8 DATED this 20th day of June, 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  
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By: \_\_\_\_\_  
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EXHIBIT A

AVISTA AND HYDRO ONE JOINT COMMENTS IN  
SUPPORT OF STIPULATION AND SETTLEMENT

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1897

In the Matter of the Application of Hydro )  
One Limited (acting through its indirect ) HYDRO ONE LIMITED'S  
subsidiary Olympus Equity LLC) for an ) RESPONSE TO JUNE 14, 2018  
Order Authorizing Hydro One Limited To ) BENCH REQUEST  
Exercise Substantial Influence Over the )  
Policies and Actions of Avista Corporation )

1 Hydro One Limited ("Hydro One") provides the following response to Administrative  
Law Judge Patrick Power's Bench Request issued on June 14, 2018.

I. BENCH REQUEST

2 The Bench Request requires Hydro One to file a report on the following issues: (1)  
implications of the recent Ontario election for (a) the future management and plans of Hydro  
One, and (b) Hydro One's acquisition of Avista; (2) a plan for keeping the Oregon Public Utility  
Commission ("OPUC" or "Commission") informed on a timely basis as to new developments;  
and (3) what further measures might be necessary to fully develop the record if material changes  
are made in Hydro One's management or Board of Directors ("Board").

II. BACKGROUND

3 Hydro One provides the following information as context to the specifics of its response  
to the Bench Request.

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

4 Until 2015, Hydro One Inc. was owned by the Province of Ontario and referred to as a  
Crown Corporation. Hydro One, a new holding corporation, was incorporated by the Province

of Ontario on August 31, 2015, under the *Business Corporations Act* (Ontario). On October 30, 2015, Hydro One's articles of incorporation were amended to authorize the creation of an unlimited number of Series 1 preferred shares and an unlimited number of Series 2 preferred shares, with the Series 1 preferred shares to be issued to the Province. On October 31, 2015, all of the issued and outstanding shares of Hydro One Inc. were acquired by Hydro One from the Province in exchange for the issuance to the Province of common shares and Series 1 preferred shares of Hydro One. On November 4, 2015, the articles of Hydro One were amended to authorize the consolidation of its outstanding common shares such that 595,000,000 common shares of Hydro One were issued and outstanding. The preferred shares continue to be outstanding. On November 5, 2015, Hydro One completed its initial public offering ("IPO") on the Toronto Stock Exchange by way of secondary offering of common shares by the Province of Ontario, with the goal that, over time, approximately 60% of Hydro One would be held by private investors. Today, Hydro One is a public company traded on the Toronto Stock Exchange under the ticker symbol "H."

5           As at June 12, 2018, the Province owned 282,412,648 common shares of Hydro One, representing approximately 47.4% of the common shares. Following conversion of the convertible debentures issued to finance Hydro One's acquisition of Avista, the Province will hold less than 43% of Hydro One's outstanding stock.

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then the Province shall, subject to certain requirements, take steps to acquire as many voting securities of that class or series of voting securities as are necessary to increase the Province's ownership to not less than 40% of the outstanding number of voting securities of that class or series.

7 In order to assist the Province in meeting its ownership obligations under the *Electricity Act, 1998*, under the Governance Agreement with the Province, Hydro One has granted the Province a pre-emptive right to subscribe for and purchase up to 45% of any proposed issuance by Hydro One of voting securities or securities that are convertible or exchangeable into voting securities (other than certain specified excluded issuances). Any offered securities not subscribed for and purchased by the Province pursuant to its pre-emptive right may be issued to any other person pursuant to the proposed offering.

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**B. GOVERNANCE AGREEMENT BETWEEN HYDRO ONE AND PROVINCE OF ONTARIO**

9 The Governance Agreement between Hydro One and the Province of Ontario (Attachment A to this Response to Bench Request) is a binding contract that was a pre-requisite for Hydro One's IPO. The Province of Ontario understood that Hydro One would not succeed as an investor-owned utility and would lose the trust of its investors if the Province were to meddle in the running of Hydro One's business. As a result, the Province 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 – strictly as an investor – to own at least 40% of Hydro One’s shares.

10           The Hydro One Board, and not the Province, is responsible for supervising the management of Hydro One’s business and affairs. (Governance Agreement (“GA”) 2.1.2 and 2.3) The Province is involved in Hydro One as an investor and not as a manager. (GA 2.1.3) The Province has no role in the processes of appointment, removal, replacement, and compensation relating to executive officers or 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)

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C. **SETTLEMENT STIPULATION COMMITMENTS:  
GOVERNANCE AND FINANCIAL RING-FENCING SEPARATE  
AVISTA FROM HYDRO ONE**

14 Hydro One, Avista, OPUC Staff, the Citizens' Utility Board, Alliance of Western Energy Consumers, and the Oregon and Southern Oregon District Council of Laborers (collectively, the "Parties") filed a Settlement Stipulation on May 25, 2018. The Parties negotiated numerous commitments designed to provide governance and financial ring-fencing between Avista and Hydro One. Certain of these merger commitments were developed to ensure that Avista cannot be subjected to political interference or influence by the Province of Ontario and bolster the protections already provided by the Governance Agreement.

15 First, Avista will have a nine-member board separate from Hydro One that will govern Avista's management and operations. Three of the five Avista directors selected by Hydro One

(not by the Province) must be independent under NYSE rules. Further, those three directors must be residents of the Pacific Northwest. Two of the four directors selected by Avista must be independent under NYSE rules. *See* Stipulation Commitment No. 5. As a result, the Province will not be able to exercise any control over Avista through selection of Avista's board.

16           Second, Avista's CEO must be selected by Avista's board -- not Hydro One or the Province. *See* Stipulation Commitment No. 4.

17           Third, Olympus Equity LLC's three-member board must include one independent director. *See* Stipulation Commitment No. 6.

18           Fourth, Avista's executive management will remain in place and must be selected by Avista's board -- not Hydro One. *See* Stipulation Commitment No. 4.

19           Fifth, Avista's employees will be retained. *See* Stipulation Commitment Nos. 11, 12, 79, 80.

20           Sixth, Hydro One is required to provide Avista with enough equity so that Avista can access debt on reasonable terms. *See* Stipulation Commitment Nos. 44, 47. Therefore, the Province cannot deprive Avista of its capital and assets for the benefit of the Province.

21           Seventh, Avista will continue to have its own credit ratings. Hydro One is required to provide Avista with sufficient equity to ensure that Avista's credit ratings remain investment grade. *See* Stipulation Commitment Nos. 45, 48. Therefore, again, the Province cannot deprive Avista of its capital and assets for the benefit of the Province.

22           Eighth, Avista will be prohibited from issuing dividends if certain financial metrics relating to the equity floor, credit ratings and debt coverage are not met. Basically, this operates to keep retained earnings at the Avista level where they will improve Avista's financial strength.

See Stipulation Commitment No. 50. This too prevents the Province from depriving Avista of its capital and assets for the benefit of the Province.

23 Ninth, several of the Stipulation commitments protect Avista from being drawn into bankruptcy proceedings that are not in the best interest of Avista and its customers. Avista will issue a single share of preferred stock referred to as the Golden Share to an independent third party. The vote of this share will be required to place Avista into voluntary bankruptcy. See Stipulation Commitment No. 55. Further, Avista's entry into voluntary bankruptcy would require the consent of a two-thirds majority of all of its directors, including the affirmative vote of a majority of the Independent Directors at Avista, which would have to include the affirmative vote of at least two Avista-designated Independent Directors. See Stipulation Commitment No. 56. Hydro One and Avista must also provide a non-consolidation opinion to confirm the effectiveness of the ring-fencing measures to prevent the substantive consolidation of the assets and liabilities of Avista with those of the entities above it in the corporate chain of ownership. See Stipulation Commitment No. 57. The corporate structure also includes Olympus Equity LLC, a bankruptcy-remote special purpose entity that will have no debt. See Stipulation Commitment No. 58. Therefore, the Province cannot obtain Avista's capital and assets through a bankruptcy proceeding unless that would be in the best interests of Avista's customers.

24 Tenth, Avista's utility assets can be pledged only for the benefit of Avista, not Hydro One. See Stipulation Commitment No. 59. Therefore, the Province cannot strip Avista of its capital and assets for the benefit of the Province.

### III. RESULTS OF ONTARIO ELECTION

25 On June 7, 2018, voters in the Province of Ontario elected a new government that will be led by the Progressive Conservative Party, replacing the Liberal government led by Kathleen

Wynne. The Premier-Designate is Doug Ford. The Ontario Premier is the equivalent of a state governor in the United States. The new government will be sworn in on June 29, 2018.

26 Mr. Ford has suggested that he is going to call the provincial legislature back into session during the month of July to address several priority issues that arose during the campaign. Normally the provincial legislature would not reconvene until fall. On Friday, June 15, 2018, Mr. Ford stated that his top priority is to dismantle Ontario's cap-and-trade system for carbon emissions and repeal the carbon tax. Mr. Ford also wants to pass legislation that will end a strike at Toronto's York University.

27 During the campaign, Mr. Ford stated that he wanted to remove Hydro One's CEO Mayo Schmidt and some or all of the members of Hydro One's Board of Directors. On Friday, June 15, 2018, Mr. Ford made a statement reiterating his intention to remove Mr. Schmidt. We do not know whether or how Mr. Ford will attempt to follow through on these statements.

28 During the campaign, members of the New Democratic Party stated that they would try to "bring Hydro One back into public hands" by buying back some or all of Hydro One's shares held by entities other than the Province; the precise mechanism by which this would be accomplished was never revealed. The New Democratic Party did not win enough seats to control the provincial government, nor offset the majority of seats now held by the Progressive Conservatives in Ontario's Legislative Assembly. Even if a party were to attempt this in the future, the Governance Agreement would make this more complex than simply buying back shares, as it prevents the Province from buying any additional shares if it owns more than 45% of Hydro One. Mr. Ford and other members of the Progressive Conservative Party have not suggested that they will pursue a policy of returning Hydro One to Crown Corporation status and

had made statements throughout the campaign generally supportive of privatization in Ontario's energy sector.

#### **IV. PROCESS FOR REMOVAL OF HYDRO ONE BOARD OR HYDRO ONE CEO**

29 If Mr. Ford and his Progressive Conservative Party wished to seek to remove some or all of Hydro One's Board and its CEO, they could accomplish these objectives in one of two ways: (1) procedures established by the Governance Agreement, or (2) legislation.

30 As explained above, the Governance Agreement establishes an independent Hydro One Board with the following features: the CEO is selected by the Board (not the Province), the Province nominates 40% of the Board's directors (or its proportionate share, whichever is less) proposed for election, the Nominating and Governance Committee (now known as the "Governance Committee") nominates the remaining directors proposed for election, and other than the CEO, each director must be independent of Hydro One and the Province. The Province has no role in the processes of appointment, removal, replacement, and compensation relating to executive officers or over related succession planning.

31 In order to remove the Hydro One Board, the Province must follow the procedures in Article 4.7 of the Governance Agreement: (1) serve a Removal Notice on Hydro One requesting the removal of Hydro One's Board at a shareholder meeting (the Removal Notice does not apply to Hydro One's CEO even though he is a Board member; the Province also can exempt the chair of Board from its Removal Notice) (GA 4.7.1); (2) the chair of the Board will establish a committee comprising representatives of Hydro One's five largest shareholders, except the Province (the "Ad Hoc Nominating Committee") (GA 4.7.2); (3) the Ad Hoc Nominating Committee and the Province will work together to develop a slate of new Board members to be considered at an upcoming shareholder meeting (the "Removal Meeting") (GA 4.7.3); (4) once



the slate of new Board members is established, the shareholder Removal Meeting must be held within 60 days (GA 4.7.4); and (5) at the Removal Meeting, the Province must vote in favor of the slate of new Board members established by the Ad Hoc Nominating Committee and the Province (GA 4.7.6).

32 Under the Article 4.7 procedures, Hydro One's shareholders must remove the entire Hydro One Board; they cannot remove just certain Board members. (GA 4.7.1) Further, the Board cannot be replaced with any board members who were part of the previous Board. (GA 4.7.3) All nominees must be vetted by the Ad Hoc Nominating Committee and must meet the stringent qualification standards set in the Governance Agreement. (GA 4.7.3 and 4.3) Article 4.7 does not permit shareholders to hire or fire Hydro One's CEO or other members of its management team. (GA 4.7.1) Article 4.7 simply provides a process by which Hydro One's shareholders can install a new Board.

33 Although the Province cannot remove the CEO, presumably the new Board installed pursuant to Article 4.7 procedures could take steps to consider removing the CEO if the Province triggers this process.

34 As an alternative to following the Article 4.7 procedures in the Governance Agreement, Mr. Ford and his Progressive Conservative Party could attempt to pass legislation during the upcoming legislative session that would give the Province the authority to remove and replace the Hydro One CEO and/or its Board. We do not know whether Mr. Ford and his party will pursue such legislation, and we do not know what provisions and procedures would be included in that legislation to effect the removal of the Hydro One CEO and/or the Board.

## V. REPORTS ON FUTURE POLITICAL DEVELOPMENTS IN ONTARIO

35 Hydro One's plan for keeping the Commission informed on a timely basis as to new developments in Ontario and the management of Hydro One is as follows. Hydro One respectfully requests that each report filed pursuant to the plan described below be included as part of the record in this docket.

36 Hydro One will file reports in this docket (until the docket is closed) whenever a significant event occurs or statement is made by the Province's new leadership that provides further new insight regarding the future of Hydro One's executive leadership and/or Board. The next scheduled significant event would be the convening of the provincial legislature in July if Mr. Ford follows through on his proposal to reconvene the legislature before the regular session this fall or any media statements in the interim period containing new and significant insight into the government's plans with regard to Hydro One. Hydro One will file reports regarding any legislation that is proposed or statements made prior to or during that session regarding Hydro One's executive leadership and Board. Further, Hydro One also will file reports on any significant public statements made by the Province's new leadership that provide new insight regarding the future of Hydro One's executive leadership and Board. Finally, Hydro One will file reports on any efforts made by the Province to trigger the procedures in Article 4.7 of the Governance Agreement to replace Hydro One's Board.

## VI. CONCLUSION

37 The Province could trigger the provisions in Article 4.7 of the Governance Agreement to replace Hydro One's Board or the Province's new leadership could introduce legislation for the purpose of dismissing Hydro One's CEO or members of the Board. These are just possibilities,

but even if they were to come to pass, Hydro One, Avista, and the other Parties in this docket have included governance and financial ring-fencing in the Settlement Stipulation that will protect Avista and its customers. Even if Hydro One's CEO and Board are replaced, that would not change anything with respect to Avista as established by the Parties in their Settlement Stipulation.

38 Even if Mr. Ford succeeded in removing Hydro One's CEO or Board, such actions would not diminish Hydro One's deep and highly experienced management and its ability to successfully operate Hydro One's business and be an owner of Avista. Furthermore, as described above, Avista will be governed by its own board and operated by its own management after the merger.

39 Hydro One and Avista, along with the rest of the Oregon Parties, developed the Settlement Stipulation to ensure that Avista could not be negatively impacted in any way by any of the hypothetical events described in the previous sections. If any of the above-described hypothetical events were to occur, Hydro One would still be legally obligated to comply with the Stipulation in this docket, the settlements it has reached in Washington, Montana, and Idaho, the Regulatory Commission of Alaska's June 4, 2018 order approving this merger, the Montana Public Service Commission's forthcoming order approving this merger, and any orders approving this merger issued by this Commission, the Washington Utilities and Transportation Commission, and the Idaho Public Utility Commission. As a result, all of the protections described above that have been built into the Stipulation to ensure that Avista will continue as a financially sound, stand-alone utility will bind Hydro One regardless of political developments (e.g., Avista's independent board, financial ring-fencing, capital support). Furthermore, through the Stipulation in this proceeding and the settlements in Washington and Idaho, Hydro One and

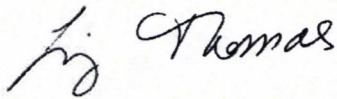
Avista have committed that none of the commitments in the settlements can be amended without approval from Avista's state regulators. See Stipulation Commitment No. 2.

40 Finally, the Stipulation in this docket confirms that the Commission will continue to regulate Avista as it always has to ensure that Avista's customers are protected and continue to pay fair, just, and reasonable rates. See Stipulation Commitment Nos. 64-71, 110-114.

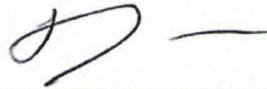
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AVISTA CORPORATION



By: \_\_\_\_\_  
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16           Second, Avista's CEO must be selected by Avista's board -- not Hydro One or the Province. *See* Stipulation Commitment No. 4.

17           Third, Olympus Equity LLC's three-member board must include one independent director. *See* Stipulation Commitment No. 6.

18           Fourth, Avista's executive management will remain in place and must be selected by Avista's board -- not Hydro One. *See* Stipulation Commitment No. 4.

19           Fifth, Avista's employees will be retained. *See* Stipulation Commitment Nos. 11, 12, 79, 80.

20           Sixth, Hydro One is required to provide Avista with enough equity so that Avista can access debt on reasonable terms. *See* Stipulation Commitment Nos. 44, 47. Therefore, the Province cannot deprive Avista of its capital and assets for the benefit of the Province.

21           Seventh, Avista will continue to have its own credit ratings. Hydro One is required to provide Avista with sufficient equity to ensure that Avista's credit ratings remain investment grade. *See* Stipulation Commitment Nos. 45, 48. Therefore, again, the Province cannot deprive Avista of its capital and assets for the benefit of the Province.

22           Eighth, Avista will be prohibited from issuing dividends if certain financial metrics relating to the equity floor, credit ratings and debt coverage are not met. Basically, this operates to keep retained earnings at the Avista level where they will improve Avista's financial strength.

*See* Stipulation Commitment No. 50. This too prevents the Province from depriving Avista of its capital and assets for the benefit of the Province.

23            Ninth, several of the Stipulation commitments protect Avista from being drawn into bankruptcy proceedings that are not in the best interest of Avista and its customers. Avista will issue a single share of preferred stock referred to as the Golden Share to an independent third party. The vote of this share will be required to place Avista into voluntary bankruptcy. *See* Stipulation Commitment No. 55. Further, Avista's entry into voluntary bankruptcy would require the consent of a two-thirds majority of all of its directors, including the affirmative vote of a majority of the Independent Directors at Avista, which would have to include the affirmative vote of at least two Avista-designated Independent Directors. *See* Stipulation Commitment No. 56. Hydro One and Avista must also provide a non-consolidation opinion to confirm the effectiveness of the ring-fencing measures to prevent the substantive consolidation of the assets and liabilities of Avista with those of the entities above it in the corporate chain of ownership. *See* Stipulation Commitment No. 57. The corporate structure also includes Olympus Equity LLC, a bankruptcy-remote special purpose entity that will have no debt. *See* Stipulation Commitment No. 58. Therefore, the Province cannot obtain Avista's capital and assets through a bankruptcy proceeding unless that would be in the best interests of Avista's customers.

24            Tenth, Avista's utility assets can be pledged only for the benefit of Avista, not Hydro One. *See* Stipulation Commitment No. 59. Therefore, the Province cannot strip Avista of its capital and assets for the benefit of the Province.

### **III.    RESULTS OF ONTARIO ELECTION**

25            On June 7, 2018, voters in the Province of Ontario elected a new government that will be led by the Progressive Conservative Party, replacing the Liberal government led by Kathleen



Wynne. The Premier-Designate is Doug Ford. The Ontario Premier is the equivalent of a state governor in the United States. The new government will be sworn in on June 29, 2018.

26 Mr. Ford has suggested that he is going to call the provincial legislature back into session during the month of July to address several priority issues that arose during the campaign. Normally the provincial legislature would not reconvene until fall. On Friday, June 15, 2018, Mr. Ford stated that his top priority is to dismantle Ontario's cap-and-trade system for carbon emissions and repeal the carbon tax. Mr. Ford also wants to pass legislation that will end a strike at Toronto's York University.

27 During the campaign, Mr. Ford stated that he wanted to remove Hydro One's CEO Mayo Schmidt and some or all of the members of Hydro One's Board of Directors. On Friday, June 15, 2018, Mr. Ford made a statement reiterating his intention to remove Mr. Schmidt. We do not know whether or how Mr. Ford will attempt to follow through on these statements.

28 During the campaign, members of the New Democratic Party stated that they would try to "bring Hydro One back into public hands" by buying back some or all of Hydro One's shares held by entities other than the Province; the precise mechanism by which this would be accomplished was never revealed. The New Democratic Party did not win enough seats to control the provincial government, nor offset the majority of seats now held by the Progressive Conservatives in Ontario's Legislative Assembly. Even if a party were to attempt this in the future, the Governance Agreement would make this more complex than simply buying back shares, as it prevents the Province from buying any additional shares if it owns more than 45% of Hydro One. Mr. Ford and other members of the Progressive Conservative Party have not suggested that they will pursue a policy of returning Hydro One to Crown Corporation status and

had made statements throughout the campaign generally supportive of privatization in Ontario's energy sector.

#### **IV. PROCESS FOR REMOVAL OF HYDRO ONE BOARD OR HYDRO ONE CEO**

29 If Mr. Ford and his Progressive Conservative Party wished to seek to remove some or all of Hydro One's Board and its CEO, they could accomplish these objectives in one of two ways: (1) procedures established by the Governance Agreement, or (2) legislation.

30 As explained above, the Governance Agreement establishes an independent Hydro One Board with the following features: the CEO is selected by the Board (not the Province), the Province nominates 40% of the Board's directors (or its proportionate share, whichever is less) proposed for election, the Nominating and Governance Committee (now known as the "Governance Committee") nominates the remaining directors proposed for election, and other than the CEO, each director must be independent of Hydro One and the Province. The Province has no role in the processes of appointment, removal, replacement, and compensation relating to executive officers or over related succession planning.

31 In order to remove the Hydro One Board, the Province must follow the procedures in Article 4.7 of the Governance Agreement: (1) serve a Removal Notice on Hydro One requesting the removal of Hydro One's Board at a shareholder meeting (the Removal Notice does not apply to Hydro One's CEO even though he is a Board member; the Province also can exempt the chair of Board from its Removal Notice) (GA 4.7.1); (2) the chair of the Board will establish a committee comprising representatives of Hydro One's five largest shareholders, except the Province (the "Ad Hoc Nominating Committee") (GA 4.7.2); (3) the Ad Hoc Nominating Committee and the Province will work together to develop a slate of new Board members to be considered at an upcoming shareholder meeting (the "Removal Meeting") (GA 4.7.3); (4) once

the slate of new Board members is established, the shareholder Removal Meeting must be held within 60 days (GA 4.7.4); and (5) at the Removal Meeting, the Province must vote in favor of the slate of new Board members established by the Ad Hoc Nominating Committee and the Province (GA 4.7.6).

32 Under the Article 4.7 procedures, Hydro One's shareholders must remove the entire Hydro One Board; they cannot remove just certain Board members. (GA 4.7.1) Further, the Board cannot be replaced with any board members who were part of the previous Board. (GA 4.7.3) All nominees must be vetted by the Ad Hoc Nominating Committee and must meet the stringent qualification standards set in the Governance Agreement. (GA 4.7.3 and 4.3) Article 4.7 does not permit shareholders to hire or fire Hydro One's CEO or other members of its management team. (GA 4.7.1) Article 4.7 simply provides a process by which Hydro One's shareholders can install a new Board.

33 Although the Province cannot remove the CEO, presumably the new Board installed pursuant to Article 4.7 procedures could take steps to consider removing the CEO if the Province triggers this process.

34 As an alternative to following the Article 4.7 procedures in the Governance Agreement, Mr. Ford and his Progressive Conservative Party could attempt to pass legislation during the upcoming legislative session that would give the Province the authority to remove and replace the Hydro One CEO and/or its Board. We do not know whether Mr. Ford and his party will pursue such legislation, and we do not know what provisions and procedures would be included in that legislation to effect the removal of the Hydro One CEO and/or the Board.

## V. REPORTS ON FUTURE POLITICAL DEVELOPMENTS IN ONTARIO

35 Hydro One's plan for keeping the Commission informed on a timely basis as to new developments in Ontario and the management of Hydro One is as follows. Hydro One respectfully requests that each report filed pursuant to the plan described below be included as part of the record in this docket.

36 Hydro One will file reports in this docket (until the docket is closed) whenever a significant event occurs or statement is made by the Province's new leadership that provides further new insight regarding the future of Hydro One's executive leadership and/or Board. The next scheduled significant event would be the convening of the provincial legislature in July if Mr. Ford follows through on his proposal to reconvene the legislature before the regular session this fall or any media statements in the interim period containing new and significant insight into the government's plans with regard to Hydro One. Hydro One will file reports regarding any legislation that is proposed or statements made prior to or during that session regarding Hydro One's executive leadership and Board. Further, Hydro One also will file reports on any significant public statements made by the Province's new leadership that provide new insight regarding the future of Hydro One's executive leadership and Board. Finally, Hydro One will file reports on any efforts made by the Province to trigger the procedures in Article 4.7 of the Governance Agreement to replace Hydro One's Board.

## VI. CONCLUSION

37 The Province could trigger the provisions in Article 4.7 of the Governance Agreement to replace Hydro One's Board or the Province's new leadership could introduce legislation for the purpose of dismissing Hydro One's CEO or members of the Board. These are just possibilities,

but even if they were to come to pass, Hydro One, Avista, and the other Parties in this docket have included governance and financial ring-fencing in the Settlement Stipulation that will protect Avista and its customers. Even if Hydro One's CEO and Board are replaced, that would not change anything with respect to Avista as established by the Parties in their Settlement Stipulation.

38 Even if Mr. Ford succeeded in removing Hydro One's CEO or Board, such actions would not diminish Hydro One's deep and highly experienced management and its ability to successfully operate Hydro One's business and be an owner of Avista. Furthermore, as described above, Avista will be governed by its own board and operated by its own management after the merger.

39 Hydro One and Avista, along with the rest of the Oregon Parties, developed the Settlement Stipulation to ensure that Avista could not be negatively impacted in any way by any of the hypothetical events described in the previous sections. If any of the above-described hypothetical events were to occur, Hydro One would still be legally obligated to comply with the Stipulation in this docket, the settlements it has reached in Washington, Montana, and Idaho, the Regulatory Commission of Alaska's June 4, 2018 order approving this merger, the Montana Public Service Commission's forthcoming order approving this merger, and any orders approving this merger issued by this Commission, the Washington Utilities and Transportation Commission, and the Idaho Public Utility Commission. As a result, all of the protections described above that have been built into the Stipulation to ensure that Avista will continue as a financially sound, stand-alone utility will bind Hydro One regardless of political developments (e.g., Avista's independent board, financial ring-fencing, capital support). Furthermore, through the Stipulation in this proceeding and the settlements in Washington and Idaho, Hydro One and



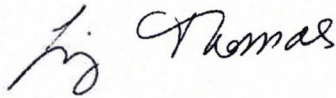
Avista have committed that none of the commitments in the settlements can be amended without approval from Avista's state regulators. See Stipulation Commitment No. 2.

40 Finally, the Stipulation in this docket confirms that the Commission will continue to regulate Avista as it always has to ensure that Avista's customers are protected and continue to pay fair, just, and reasonable rates. See Stipulation Commitment Nos. 64-71, 110-114.

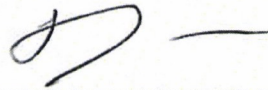
DATED: June 19, 2018.

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

AVISTA CORPORATION



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