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ON BEHALF OF AVISTA CORPORATION

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ON BEHALF OF HYDRO ONE LIMITED

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)	
APPLICATION OF HYDRO ONE LIMITED)	CASE NO. AVU-E-17-09
(ACTING THROUGH ITS INDIRECT)	CASE NO. AVU-G-17-05
SUBSIDIARY, OLYMPUS EQUITY LLC))	
AND)	
AVISTA CORPORATION)	SUPPLEMENTAL
FOR AN ORDER AUTHORIZING PROPOSED)	TESTIMONY
TRANSACTION)	OF
_____)	K. COLLINS SPRAGUE

FOR AVISTA CORPORATION

(ELECTRIC AND NATURAL GAS)

1 **Q. Please state your name, business address, and present**
2 **position with Avista Corp.**

3 A. My name is Kevin "Collins" Sprague. My business
4 address is 1411 East Mission Avenue, Spokane, Washington. I am
5 employed by Avista Corporation as Senior Director of Government
6 Relations.

7 **Q. Did you sponsor Direct Testimony in this Case?**

8 A. No.

9 **Q. What is your background?**

10 A. I was graduated by the University of Washington with
11 honors in 1985. After working in state and local (Seattle)
12 politics, I became a contract lobbyist in 1987 representing
13 private and public sector clients before the Washington State
14 Legislature and executive state agencies. I was then hired as
15 a Manager of Government Relations for the Association of
16 Washington Business, where I created the organization's
17 environmental affairs division. I entered the employ of Avista
18 in 1990 as State Government Relations Representative and,
19 later, made Manager of State Government Relations, with the
20 primary responsibility of representing the company in Olympia,
21 Washington. I was promoted to Director of Government Relations
22 (now Senior Director) in 2012. In my current role, I oversee
23 our government relations activities in our five state
24 jurisdictions and Washington, D.C. During my career, I have

1 drafted, had introduced and secured enactment of numerous
2 pieces of legislation dealing with a range of subject matters.
3 I have also been involved with litigation associated with public
4 policy.

5 **Q. What is the purpose of this Supplemental Testimony?**

6 A. My testimony will address the question of whether or
7 not Idaho Code §61-327 prohibits the Proposed Transaction with
8 Hydro One Limited ("Hydro One").

9 **Q. Do you have a background in Law?**

10 A. No, I am not an attorney and I am not offering a legal
11 opinion. However, because of my extensive background in
12 drafting and analyzing legislation, I am providing my
13 perspective on Idaho Code §61-327, and why this statute is not
14 applicable in this proceeding.

15 **Q. Are you sponsoring any exhibits in this testimony?**

16 A. No, I am not.

17 **Q. Can you summarize the purpose of Idaho Code §61-327?**

18 A. Yes. This section of Idaho law prohibits the transfer
19 of ownership in electric utility properties used for serving
20 the public in Idaho to any "public agency" (the term used in
21 the statute's heading) that is organized or existing under the
22 laws of any other state (not "province").

23 **Q. To the best of your knowledge, what is the origin of**
24 **Idaho Code §61-327?**

1 A. Idaho Code §61-327 originated as House Bill 26 (HB
2 26), which became law in 1951. (The law was subsequently
3 amended in 1982 by House Bill 472; the substance of this later
4 enactment does not affect this analysis, as it created an
5 exception to the statute's initial prohibition by allowing the
6 transfer of property from a "public utility" to "members of a
7 mutual non-profit or cooperative electrical corporation
8 organized under the laws of Idaho" and subject to Commission
9 approval.) The year 1951 is absolutely pivotal to this analysis,
10 and why it is requires an explanation here.

11 **Q. What was the political context for the Idaho**
12 **Legislature's enactment of Idaho Code §61-327?**

13 A. Identifying the political context for Idaho Code §61-
14 327 is critical for understanding its scope and intended
15 meaning. Oddly enough, factors in Washington State appear to
16 have underpinned the text of HB 26 and motivated the Idaho
17 Legislature to enact it.

18 Public utility districts (PUDs) in the State of Washington
19 are "municipal corporations" (see Idaho Code §61-327 for cross-
20 reference) which operate in a proprietary capacity as electric
21 utilities under Washington law. (Idaho law has no equivalent to
22 Washington's public utility districts.) The formation of PUDs
23 was authorized through passage of a ballot measure (Initiative
24 1) in 1931. Initiative 1 conferred on these municipal

1 corporations, organized and existing under Washington law,
2 broad powers of eminent domain. Voter approval of Initiative 1
3 led to the creation of PUDs across the State of Washington.
4 Through the threat and exercise of their powers of eminent
5 domain, PUDs in eastern and central Washington acquired certain
6 generation, transmission and distributed assets owned by The
7 Washington Water Power Company (now Avista).

8 In the 1940s, The Washington Water Power Company (the
9 "Company") was owned by American Power and Light Company (AP&L),
10 a holding company. When the Securities and Exchange Commission
11 directed AP&L to divest of its utility holdings, a consortium
12 of three public utility districts in central and eastern
13 Washington sought to buy the stock of the Company from AP&L,
14 with the plan, had they been successful, of spinning-off the
15 Company's Idaho properties to a non-profit cooperative.¹

16 According to *People, Politics and Public Power*, "(t)his
17 arrangement unleashed legislative fights in both Idaho and
18 Washington, SEC rulings, and federal appellate court fights."²
19 This effort precipitated enactment of HB 26 by the Idaho
20 Legislature. "With active negotiations going on for three
21 eastern Washington PUDs to acquire the common stock of
22 Washington Water Power from AP&L, the Idaho Legislature rushed

¹ *People, Politics and Public Power*. Ken Billington, Washington Public Utility Districts Association, 1988.

² *Id.*, p. 49

1 a law through, under private power urging, making it illegal
2 for any PUD to own property in that state."³ The author of this
3 publication, Mr. Ken Billington, who had begun his career in
4 1951 as an employee of the Washington Public Utility Districts
5 Association, thus accurately summarized the thrust of HB 26 and
6 what exists today as the substance of Idaho Code §61-327.

7 The historical context for Idaho Code §61-327 is important
8 because it indicates that the Legislature did not introduce and
9 enact HB 26 to target any private companies or with any
10 "province" in mind. Furthermore, and central to this analysis,
11 Idaho's Legislature did not intend for the law to apply to a
12 private company "organized or existing" under the laws of any
13 other state (or province). The Legislature's clear intent was
14 to prevent certain municipal corporations -- PUDs in Washington
15 -- from acquiring the properties of the Company that were
16 located in Idaho.

17 **Q. Do you have additional thoughts about the distinction**
18 **between "state" and "province" in Idaho law?**

19 A. Yes. Looking at other Idaho laws, it is evident that
20 the Legislature is cognizant of, and very deliberate in making,
21 distinctions between "state" and "province" in Idaho Code.
22 There are examples in law where the Legislature has referenced

³ Id, p. 58

1 Canadian Provinces as being distinct from a "state." For
2 instance, Idaho Code §67-7801 (Pacific Northwest Economic
3 Region) references both "states and provinces."

4 **Q. From your perspective, does Idaho Code §61-327**
5 **prohibit the Proposed Transaction?**

6 A. No. Under the plain and ordinary meaning of the
7 statute, Idaho Code §61-327 is not applicable to the parties
8 to, or circumstances of, the Proposed Transaction for two
9 important reasons: Hydro One is not a government or municipal
10 corporation; rather it is an investor-owned utility. Moreover,
11 the statute has no application to entities formed outside the
12 United States.

13 The operative portion of the law warranting examination
14 for its application, or not, to Hydro One is as follows:

15 ". . . any **government or municipal corporation, quasi-**
16 **municipal corporation, or governmental or political**
17 **unit, subdivision or corporation,** organized or
18 existing under the laws of **any other state;** or any
19 person, firm, association, corporation or
20 organization acting as trustee, nominee, agent or
21 representative for, or in concert or arrangement with,
22 any **such** government or municipal corporation, quasi-
23 municipal corporation, or governmental or political
24 unit, subdivision or corporation; or any company,
25 association, organization or corporation, organized
26 or existing under the laws of this state or **any other**
27 **state** whose issued capital stock, or other evidence
28 of ownership, membership or other interest therein,
29 or in the property thereof, is owned or controlled,
30 directly or indirectly, by any **such** government or
31 municipal corporation, quasi-municipal corporation,
32 or governmental or political unit, subdivision or
33 corporation; or any company, association,

1 organization or corporation, organized under the laws
2 of **any other state . . .** " (Emphasis added.)
3

4 This provision embodies two distinct and relevant
5 elements. The first entails a compendium of different legal
6 forms of governmental entities, and the second concerns the
7 phrase "organized or existing under the laws of any other state"
8 and associated cross-references to that phrase with ". . . such
9 government or municipal corporation . . ." These two aspects
10 of the statute control its application to persons and
11 circumstances. An interpretation of those controlling
12 attributes leads to a conclusion that the law does not - and
13 cannot - prohibit the Proposed Transaction because it doesn't
14 apply in this instance.

15 **Q. What is the statutory basis for your analysis?**

16 A. My analysis begins with the phrase, "government or
17 municipal corporation, quasi-municipal corporation, or
18 governmental or political unit, subdivision or corporation."
19 With this phrase, the Idaho Legislature precluded the PUDs and
20 any other governmental entities from taking over the assets of
21 an investor-owned utility. Thus the Legislature was able to
22 thwart the PUDs' effort to acquire the Company's stock. The
23 Legislature was not concerned with acquisitions by private
24 companies of an interest in an investor-owned utility. Hydro
25 One, of course, is an investor-owned utility. Hydro One is not

1 a government entity, nor is it an instrument of government, nor
2 are all (or even a majority) of its shares owned by a
3 government. It is clear that the statute is meant to apply to
4 government entities, their agents, or organizations that are
5 "representative for" such government entities.

6 My analysis also addresses the phrase, "any other state,"
7 which is used throughout the statute to define its scope. In
8 particular, this analysis concentrates on the law's reference
9 to state." This specific term should substantively inform the
10 interpretation of the statute. Idaho Code §61-327 can only be
11 applied to circumstances under which "title to or interest in
12 any property located in this state" and owned by an "electric
13 public utility or electrical corporation," as defined under
14 Chapter 1, Title 61, Idaho Code, is "transferred" to, or
15 acquired, directly or indirectly, by a public agency "organized
16 or existing under the laws of (another) "state."

17 **Q. In your opinion, how might the phrase "any other**
18 **state" (taken in isolation) apply to the circumstances**
19 **underlying the Proposed Transaction?**

20 A. If the Commission approves the Proposed Transaction
21 between Hydro One and Avista, along with all other regulatory
22 authorities exercising jurisdiction in this matter, Olympus
23 Equity LLC, a Delaware limited liability company, and an
24 indirect wholly-owned subsidiary of Hydro One, a company whose

1 ownership shares are traded on the Toronto Stock Exchange, will
2 acquire all of the shares of Avista.

3 A plain and ordinary reading of the statute necessarily
4 restricts its application to an entity that is both a
5 governmental entity and that is "organized or existing under
6 the laws of any other state."

7 Importantly, Olympus Equity LLC is "organized" and exists
8 as a private, for-profit limited liability company under the
9 laws of Delaware, just as Hydro One is an investor-owned, for-
10 profit corporation organized under the laws of Ontario. Neither
11 is incorporated as "any government or municipal corporation,
12 quasi-municipal corporation, or governmental or political unit,
13 subdivision or corporation," and both therefore fall beyond the
14 scope of Idaho Code §61-327.

15 **Q. In your opinion, can Idaho Code §61-327 be construed**
16 **in any way as applying to Hydro One Limited?**

17 A. No. Idaho Code §61-327 doesn't apply and cannot be
18 applied to Hydro One.

19 Assuming, merely for the sake of argument that the Province
20 of Ontario were deemed to constitute a "state" under Idaho Code
21 §61-327, the statute does not affect Hydro One. Hydro One
22 itself is an investor-owned utility "organized and existing" as
23 a private, publicly-traded corporation under the Ontario
24 Business Corporations Act. Hydro One is not, as the statute

1 requires, a "government or municipal corporation, quasi-
2 municipal corporation, or governmental or political unit,
3 subdivision or corporation."

4 The mere fact that Hydro One has a (foreign) government
5 (the Province of Ontario) as one of its shareholders is
6 irrelevant because Hydro One is a distinct private, corporate
7 entity. (Units of government, such as CalPERS, often hold
8 ownership interests in investor-owned utilities but that does
9 not affect the status of the utility as a private, for-profit
10 corporation. It might also be noted that the Canadian Pension
11 Plan Investment Board is among the owners of Puget Sound Energy
12 (PSE) and that together with other Canadian public pension funds
13 hold a majority interest in PSE. This fact does not alter the
14 fact that PSE is a private, investor-owned utility and subject
15 to state and federal law, accordingly.) Even if the presence of
16 a governmental shareholder were somehow relevant, Idaho Code
17 §61-327 would require such a government be "organized or
18 existing under the laws of any other **state**." (Emphasis added.)
19 The Province of Ontario is neither a "state," nor is it, more
20 importantly for this analysis, "organized or existing under the
21 laws of any other state."

22 Historical context, as previously discussed, clearly
23 illustrates why the Idaho Legislature focused the statute's

1 application on "**public agencies**" that are "organized or
2 existing under the laws of any other **state.**" (Emphasis added.)

3 **Q. How would you summarize your analysis?**

4 A. Based upon the plain and ordinary meaning of Idaho
5 Code §61-327, the law does not apply to the Proposed
6 Transaction.

7 **Q. Does that conclude your Supplemental Testimony?**

8 A. Yes, it does.