

Idaho Public Utilities Commission

Office of the Secretary

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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)	REBUTTAL TESTIMONY
FOR AN ORDER AUTHORIZING PROPOSED)	OF
<u>TRANSACTION</u>)	CHRISTOPHER F. LOPEZ

FOR HYDRO ONE LIMITED

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I. INTRODUCTION

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

A. My name is Christopher F. Lopez, and my business address is 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5. On September 6, 2018 I was appointed as Acting Chief Financial Officer ("CFO") for Hydro One Limited ("Hydro One"). Prior to September 6, 2018 I was Senior Vice President of Finance for Hydro One.¹

Q. Have you filed direct, rebuttal, or supplemental testimony in this proceeding?

A. Yes. I filed direct testimony on September 14, 2017 and supplemental testimony on September 24, 2018.

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

A. No.

A table of contents for my testimony is as follows:

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¹ See AVU-E-17-09, AVU-G-17-05, Supplemental Report on Hydro One Management Changes (Sep. 7, 2018).

1 Summary of Testimony

2 Q. Please summarize your testimony.

3 A. I will discuss how we worked with IPUC Staff and
4 other parties to modify certain Stipulated Commitments and
5 add others to resolve concerns that the Province as a minority
6 shareholder in Hydro One might somehow undermine Avista's
7 financial integrity; and how the Proposed Transaction meets
8 the standards of Idaho Code § 61-328.

9

10 II. NEW SETTLEMENT COMMITMENTS DESIGNED TO ADDRESS
11 PROVINCE'S MINORITY SHAREHOLDING IN HYDRO ONE

12 Q. IPUC Staff testified that amendments to Stipulated
13 Commitment No. 38 help resolve concerns that the Province
14 will attempt to undermine Avista's financial integrity by
15 demanding dividends from Avista.² Can you provide more detail
16 on those amendments and why they will protect Avista?

17 A. The amendments provide additional protection to
18 Avista in two ways.

19 First, Stipulated Commitment No. 38 establishes a 44%
20 minimum equity ratio for purposes of allowing dividends. As
21 agreed to in April, the 44% floor for purposes of dividends
22 in Stipulated Commitment No. 38 would have been automatically
23 adjusted downward if Avista's equity ratio for ratemaking

² AVU-E-17-09/AVU-G-17-05 - Direct Testimony of Terri Carlock at pg. 7 (Nov. 6, 2018) ("Carlock Direct Testimony").

1 purposes were set below 44%. As amended, the commitment no
2 longer provides for an automatic adjustment. Instead, the
3 Parties have agreed that if Avista's equity ratio for
4 ratemaking purposes is set below 44%, the Commission should
5 consider whether any adjustment should be made to the minimum
6 equity ratio for dividend purposes. This provides additional
7 protection to Avista by giving the Commission a opportunity
8 to review the proper minimum equity ratio for dividend
9 purposes if there is a proposal to drop the equity layer for
10 ratemaking purposes to 44%.

11 Second, as amended, Stipulated Commitment No. 38 now
12 contains a new subparagraph d. This prohibits the comingling
13 of Avista cash flows with cash flows at Hydro One and its
14 other affiliates prior to Avista's issuance of dividends. It
15 also requires that Avista's accounts and subaccounts be kept
16 separately from accounts of the other entities.

17 **Q. Did Hydro One, Avista, IPUC Staff, and other**
18 **parties to this proceeding develop further amendments to the**
19 **Stipulated Commitments to address concerns of Provincial**
20 **influence that could harm Avista?**

21 A. Yes. These other amendments are detailed in the
22 Rebuttal Testimony of James Scarlett for Hydro One Limited,
23 filed November 14, 2018 ("Scarlett Rebuttal Testimony").

1 III. COMPLIANCE WITH IDAHO CODE § 61-328

2 Q. Does IPUC Staff conclude that the Proposed
3 Transaction complies with Idaho Code § 61-328?³

4 A. Yes; IPUC Staff concludes that (i) the Proposed
5 Transaction is consistent with the public interest (Idaho
6 Code § 61-328(3)(a)),⁴ (ii) Avista's cost of and rates for
7 supplying service will not be increased by reason of the
8 Proposed Transaction (Idaho Code § 61-328(3)(b)),⁵ and (iii)
9 Hydro One has the bona fide intent and financial ability to
10 operate and maintain Avista in the public service (Idaho Code
11 § 61-328(3)(c)).⁶

12 Q. Do you agree with IPUC Staff that the Proposed
13 Transaction complies with Idaho Code § 61-328?

14 A. Yes.

15 Q. Which of the Stipulated Commitments in Exhibit 101
16 to Terri Carlock's Direct Testimony ensures that the Proposed
17 Transaction is consistent with the public interest (Idaho
18 Code § 61-328(3)(a))?

19 A. Hydro One, Avista, IPUC Staff, and Clearwater Paper
20 Corporation ("Clearwater"), Idaho Forest Group, LLC (Idaho
21 Forest Group), Idaho Conservation League ("ICL"), the

³ Carlock Direct Testimony at pgs. 3-5.

⁴ Carlock Direct Testimony at pgs. 4, lines 11-25.

⁵ Carlock Direct Testimony at pgs. 3-5.

⁶ Carlock Direct Testimony at pgs. 4, lines 19-25.

1 Community Action Partnership Association of Idaho ("CAPAI")
2 and the Washington and Northern Idaho District Council of
3 Laborers ("WNIDCL") agreed to numerous Stipulated Commitments
4 that ensure that the public interest will be served by the
5 Proposed Transaction.⁷ They fall into several groups.

6 Financial Integrity. As noted by IPUC Staff,⁸ the
7 following Stipulated Commitments protect Avista's financial
8 integrity after the Proposed Transaction is consummated:

- 9 • 34 - Capital Structure Support: Hydro One will
10 provide equity support designed to allow Avista
11 access to debt financing on reasonable terms.
- 12 • 35 - Utility-Level Debt and Preferred Stock: To
13 protect Avista's financial integrity, Avista will
14 maintain separate debt to support its utility
15 operations.
- 16 • 36 - Continued Credit Ratings: Avista will continue
17 to be rated by at least one credit rating agency.
- 18 • 37 - Credit Ratings Notification: Avista will
19 notify the Commission in the event of a ratings
20 downgrade to non-investment grade status.

⁷ Revised Exhibit A to First Amendment to Stipulation and Settlement
(sponsored by Staff Witness Carlock as Exhibit 101).

⁸ Carlock Direct Testimony at pg. 9.

- 1 • 38 - Restrictions on Upwards Dividends and
2 Distributions: Avista is prohibited from making
3 upwards distributions of dividends under certain
4 circumstances that could be indicators of financial
5 weakness.
- 6 • 39 - Pension Funding: Avista will maintain a sound
7 pension funding policy.
- 8 • 40 - SEC Reporting Requirements: Avista will comply
9 with applicable SEC reporting requirements.
- 10 • 41 - Compliance with the Sarbanes-Oxley Act: Avista
11 will comply with applicable requirements of the
12 Sarbanes-Oxley Act.

13 Protection against Bankruptcy. As noted by IPUC Staff,⁹
14 the following Stipulated Commitments establish ring-fencing
15 to protect Avista from bankruptcy in the event of financial
16 distress at entities above Avista in the corporate chain:

- 17 • 42 - Golden Share: Avista's entry into voluntary
18 bankruptcy would require the affirmative vote of
19 the holder of the Golden Share.
- 20 • 43 - Independent Directors: Avista's entry into
21 voluntary bankruptcy or the inclusion of Avista in
22 bankruptcy proceedings would require the consent of

⁹ Carlock Direct Testimony at pg. 9.

1 a two-thirds majority of all of its directors,
2 including the affirmative vote of at least one of
3 its Independent Directors.

- 4 • 44 - Non-Consolidation Opinion: Avista and Hydro
5 One will provide the Commission with a non-
6 consolidation opinion to confirm that with these
7 ring-fencing measures, a bankruptcy court would not
8 order the substantive consolidation of the assets
9 and liabilities of Avista with its parent
10 companies.
- 11 • 45 - Olympus Equity LLC: Avista's immediate parent,
12 Olympus Equity LLC, will be a debt-free and
13 bankruptcy-remote special purpose entity.
- 14 • 46 - Restriction on Pledge of Utility Assets:
15 Avista's utility assets can be pledged only for the
16 benefit of Avista, not Hydro One. Thus, the Hydro
17 One cannot strip Avista of its capital and assets
18 for the benefit of the Canadian interests.
- 19 • 47 - Hold Harmless; Notice to Lenders; Restriction
20 on Acquisition and Dispositions: Hydro One will
21 hold Avista harmless for Hydro One's business risks
22 and will notify lenders of the ring-fencing
23 requirements.

- 1 • 48 - Olympus Holding Corp. and Olympus Equity LLC
2 Sub-entities: Avista's immediate parent, Olympus
3 Equity LLC, will limit its activities to Avista,
4 and Olympus Holding Corp. will limit its activities
5 to Olympus Equity LLC.
- 6 • 49 - No Amendment: None of the commitments may be
7 amended without prior Commission approval.
- 8 • 50 - No Inter Company Debt: Avista will obtain
9 Commission approval before entering into any inter-
10 company debt transactions with Olympus Holding
11 Corp., Hydro One, or any of their subsidiaries or
12 affiliates.
- 13 • 51 - No Inter Company Lending: Prohibits Avista
14 from lending money to Olympus Holding Corp., Hydro
15 One, or any of their subsidiaries or affiliates
16 without prior Commission approval.

17 Regulatory Commitments. IPUC Staff also notes that the
18 Regulatory Stipulated Commitment Nos. 20 - 33 constitute part
19 of the overall financial protections.¹⁰ I agree.

20

¹⁰ Carlock Direct Testimony at pg. 9.

1 Q. Besides these Stipulated Commitments, what other
2 factors demonstrate that the Proposed Transaction is
3 consistent with the public interest (Idaho Code § 61-
4 328(3)(a))?

5 A. The Proposed Transaction is consistent with the
6 public interest in many ways. Avista's Idaho customers will
7 receive \$15.8 million rate credits and a number of financial
8 protections that do not exist today, such as the restrictions
9 on dividends in Stipulated Commitment No. 38. Avista
10 customers can expect benefits as a result of the financial
11 and business stability associated with being owned by a larger
12 utility. Avista's customers will benefit from the backing of
13 another, larger utility with a strong balance sheet, a credit
14 rating higher than Avista's, and a customer base somewhat
15 similar to Avista's.

16 Furthermore, the broader public in Idaho will benefit
17 from the Stipulated Commitments relating to funding of
18 approximately \$5.3 million for energy efficiency,
19 weatherization, conservation, and low-income assistance
20 programs (No. 58); local staffing (No. 10), charitable
21 contributions (Nos. 11 and 61), community involvement (No.
22 12), and economic development (NO. 13); efforts to improve
23 the penetration of low income programs (No. 64); and outreach
24 to tribal communities (No. 65).

1 Q. Which of the Stipulated Commitments ensure that
2 Avista's cost of and rates for supplying service will not be
3 increased by reason of the Proposed Transaction (Idaho Code
4 § 61-328(3)(b))?

5 A. Several of the Stipulated Commitments function in
6 tandem to ensure that the Proposed Transaction will not result
7 in any increase to Avista's cost of and rates for supplying
8 service. These include:

- 9 • 16 - Treatment of Net Cost Savings: Hydro One
10 commits that Avista customer rates will not
11 increase as a result of the Proposed Transaction.
12 Hydro One will also hold Avista customers
13 harmless from any such rate increase. Any net
14 cost savings attributed to the Proposed
15 Transaction will be reflected in subsequent rate
16 proceedings.
- 17 • 17 - Treatment of Transaction Costs: Costs
18 associated with the Proposed Transaction cannot
19 be recovered from Avista customers.
- 20 • 18 - Travel Expenses: Limits Avista's corporate
21 travel expenses recoverable in rates.
- 22 • 19 - Rate Credits: A Rate Credit totaling
23 approximately \$15.8 million will flow to Avista's

1 retail customers in Idaho in the first five (5)
2 years after the merger closes.

3 • 24 - Avista's customers will not cross-subsidize
4 unregulated activities. Hydro One costs will not
5 be allocated or charged to Avista's ratepayers
6 absent specific Commission authorization.

7 • 25 - Avista will not advocate for a cost of debt
8 or equity that is higher than what Avista's cost
9 of debt or equity capital would have been absent
10 Hydro One's ownership.

11 • 50 and 51 - There will be no inter-company debt
12 or lending with out Commission approval.

13 • 66 - Sources of Funds for Hydro One Commitments:
14 Hydro One's funding commitments are not
15 contingent and are not rate-recoverable.

16 **Q. Besides these Stipulated Commitments, what other**
17 **factors demonstrate that Avista's cost of and rates for**
18 **supplying service will not be increased by reason of the**
19 **Proposed Transaction (Idaho Code § 61-328(3)(b))?**

20 A. The Commission will have ample opportunity in
21 Avista's next Idaho general rate case and all subsequent rate
22 cases to review all costs that make up the revenue requirement
23 and assure itself that Avista and Hydro One have lived up to
24 their commitments that are designed to ensure Avista's cost

1 of service and rates will not increase by reason of the
2 Proposed Transaction. The Commission, not Avista, nor Hydro
3 One, sets rates for Idaho customers. Those rates are developed
4 based on a thorough and substantial evidentiary record of
5 expert written and oral testimony, exhibits, and work papers
6 that include detailed accounting and cost allocation records,
7 which document Avista's cost to provide service to Avista's
8 Idaho customers.

9 **Q. Which of the Stipulated Commitments in Exhibit 101**
10 **to Terri Carlock's Direct Testimony ensures that Hydro One**
11 **has the bona fide intent and financial ability to operate and**
12 **maintain Avista in the public service (Idaho Code § 61-**
13 **328(3)(c))?**

14 **A.** A number of the commitments relating to financial
15 integrity, as well as other evidence of record, demonstrate
16 that Hydro One has the bona fide intent and financial ability
17 to operate and maintain Avista in the public service. The
18 relevant Stipulated Commitments include:

19 • The many commitments that impose specific financial
20 burdens on Hydro One, such as Stipulated Commitment
21 Nos. 11 and 61 (charitable contributions); 19 (rate
22 credits); 70 (Montana Community Transition Fund)

1 • 34 - Capital Structure Support: Hydro One will
2 provide equity support designed to allow Avista
3 access to debt financing on reasonable terms.

4 • 66 - Sources of Funds for Hydro One Commitments:
5 Hydro One's funding for specific commitments is not
6 contingent on Hydro One's ability to arrange
7 funding, but is a firm commitment to provide the
8 dollar amount specified.

9 **Q. Besides these Stipulated Commitments, what other**
10 **factors demonstrate that Hydro One has the bona fide intent**
11 **and financial ability to operate and maintain Avista in the**
12 **public service (Idaho Code § 61-328(3)(c))?**

13 A. Hydro One's financial ability to operate and
14 maintain Avista is demonstrated by its strong credit rating,
15 which is higher than Avista's; its size; its ready access to
16 capital on reasonable terms and conditions; and the fact that
17 convertible debentures are already in place as an element of
18 financing for the transaction. This is detailed in my prior
19 testimony in Section III of my supplemental testimony filed
20 September 24, 2018.

21 Hydro One's bona fide intent to operate and maintain
22 Avista is demonstrated by the effort that Hydro One has
23 invested in this transaction and the work we have already
24 done to identify areas where we can achieve efficiencies and

1 implement best practices. See Direct Testimony of Mayo M.
2 Schmidt at pg. 28 (Sept. 14, 2017).

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

4 **A. Yes it does.**