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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF HYDRO ONE LIMITED AND AVISTA CORPORATION FOR APPROVAL OF A MERGER AGREEMENT	CASE NO. AVU-E-17-09 AVU-G-17-05 **HYDRO ONE LIMITED'S AND AVISTA'S BRIEF ON IDAHO CODE § 61-327**

I. INTRODUCTION

Idaho Public Utilities Commission's ("IPUC") Staff has conducted exhaustive due diligence on the Hydro One Limited ("Hydro One") and Avista Corporation ("Avista") proposed merger. This hard look confirms that the transaction meets the criteria of Idaho Code § 61-328, and that this merger is good for the citizens of Idaho. Late in the process, months after the intervention deadline, an entity called the Avista Customer Group intervened, and now asserts that Idaho Code § 61-327 bars the merger. As discussed below, Idaho Code § 61-327 does not apply to this transaction, and the merger should be approved by the IPUC.

II. STATUTORY FRAMEWORK

In January 1951, the Idaho Legislature passed Session Law 1951, ch.3, compiled as Idaho Code §§ 61-327- 61-331 ("the Act"). (A copy of the Act is attached in its entirety as an Appendix to this brief.) Section 327 of the Act provides that certain public governmental agencies, as well as entities not subject to regulation by the IPUC, are prohibited from acquiring *property in Idaho used to generate electricity*. Any transfer of such property is subject to the IPUC's approval under the Act, which also includes penalty provisions.

III. STATEMENT OF FACTS

Avista is a Washington State corporation that generates, transmits, and distributes electricity in Idaho and elsewhere. Hydro One is an investor-owned electricity transmission and distribution utility headquartered in Toronto, Ontario, Canada. The capital stock of Hydro One is traded on the Toronto Stock Exchange. Hydro One is not a government entity, but rather is an investor-owned corporation organized under the laws of Ontario. Direct Testimony of Mayo Schmidt at 5-6 (Sept. 14, 2017)("Schmidt Direct"). A number of investors, including some investors that are government entities, own some of Hydro One's capital stock. *Id.* at 8. No single investor or group of affiliated investors owns or controls all or even a majority of Hydro One's capital stock. Direct Testimony of Christopher Lopez at 10 (Sept. 14, 2017). As a result, no investor has a controlling interest in Hydro One. *Id.*

Among Hydro One's investors, the Province of Ontario (the "Province") is the largest Investor. Rebuttal Testimony of Thomas Woods at 2 (Nov. 14, 2018) ("Woods Reb."). However, the Province does not control Hydro One. *Id.* The Province currently owns less than 50% of Hydro One's stock and, after completion of the merger, the Province will own less than 43% of Hydro One's stock. Supplemental Testimony of James Scarlett at 22-23 (Sept. 24, 2018). The Province is prohibited by a Governance Agreement between the Province and Hydro One from

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acquiring additional shares if doing so would result in the Province having control over more than 45% of shares. *Id.* at 23; Ex. 10-3 at § 2.7.1. Hydro One also does not act as a trustee, nominee, agent, or representative for the Province. Woods Reb. at 2-8.

The role of the Province with respect to Hydro One is established *and restricted* by the Governance Agreement that was entered in 2015 as part of Hydro One's Initial Public Offering. Joint Application at 17. Neither the Province nor any other Hydro One shareholder has any representatives on Hydro One's Board of Directors. Woods Reb. at 7-8. Instead, with the exception of the CEO, all Hydro One Directors must be independent of both Hydro One and the Province. See Exh. 10-3 (Governance Agreement ("GA") §§ 4.2.2, 4.2.3). The Governance Agreement also establishes that the Hydro One Board is responsible for managing and supervising Hydro One's business and affairs. Schmidt Direct at 10; see also GA § 2.1.2. The Governance Agreement explicitly states that the Province will be involved in Hydro One as an investor and not as a manager. Schmidt Direct at 10; see also GA § 2.1.3.

After the merger (the "Transaction") closes, the stock of Avista will be 100% owned by Olympus Equity LLC, an Idaho limited liability company. Olympus Equity LLC stock in turn will be held by Olympus Holding Corp., a Delaware corporation which is a wholly owned indirect subsidiary of Hydro One. See Errata to Joint Application, Appendix 1 (Nov. 26, 2018). Avista's assets will continue to be owned by Avista and managed by Avista's executives and Board. Pursuant to the Stipulated Commitments filed with the IPUC, only two of Avista's nine Board members will be executives or employees of Hydro One. Stipulated Commitment No. 3. All other Avista Board members will be either independent or Avista executives or employees. *Id.* Avista's Board of Directors alone will be responsible for the selection of its CEO and will set all policies for the utility, including any policy regarding the disposition of utility property. Stipulated Commitment No. 2. All decision-making authority over Avista operations will belong

to the Avista Board, and not to Hydro One. The Province will not own any Avista stock and cannot exercise any control, direct or indirect, over Avista after the merger.

IV. DISCUSSION

The plain language of Idaho Code § 61-327 and the legislative intent underlying the statute demonstrate that Idaho Code § 61-327 does not apply to the merger between Avista and Hydro One.

(a) The plain language of Idaho Code § 61-327 does not apply to the merger.

Under Idaho law "[t]he language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent." Idaho Code § 73-113(a). Therefore any analysis must start with the language of the statute.

Article III, section 16 of the Idaho Constitution requires that every act must express its subject matter in its title. Idaho Code § 61-327 begins as follows: "ELECTRIC UTILITY PROPERTY- ACQUISITION BY CERTAIN PUBLIC AGENCIES PROHIBITED." From the title of Idaho Code §61-327 it is clear the subject matter of the law prohibits "certain public agencies" from acquiring *electric utility property*, which is consistent with the language of the Section.

Specifically, the statute provides that "[n]o title to or interest in any public utility . . . property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall be transferred or transferable to, or acquired by, directly or indirectly, by any means or device whatsoever,"

(1) "any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, organized or existing under the laws of any other state";

(2) "or any person, firm, association, corporation or organization acting as trustee, nominee, agent or representative for, or in concert or arrangement with, any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation";

(3) "or any company, association, organization or corporation, organized or existing under the laws of this state or any other state, whose issued capital stock, or other evidence of ownership, membership or other interest therein, or in the property thereof, is owned or controlled, directly or indirectly, by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation";

(4) "or any company, association, organization or corporation, organized under the laws of any other state, not coming under or within the definition of an electric public utility or electrical corporation as contained in chapter 1, title 61, Idaho Code, and subject to the jurisdiction, regulation and control of the public utilities commission of the state of Idaho under the public utilities law of this state; ...."

Idaho Code § 61-327.[1]

1. **Because Hydro One and Avista are taxable for-profit corporations, and not government entities, Idaho Code § 61-327 does not apply to the Transaction.**

In enacting Idaho Code § 61-327, the Legislature was specifically concerned with preventing tax-exempt government entities from acquiring operating public utility property in Idaho because this would deprive the State of valuable tax revenue supplied by these utilities. In a nutshell, it wanted to retain its ability to tax and regulate these entities.[2] To address these concerns, the Legislature prohibited transfers to any "government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, organized or existing under the laws of any other state." Because Idaho Code § 61-327 only applies to government entities, and because Hydro One is not a government entity, Idaho Code § 61-327 does not apply to the Transaction. Hydro One and Avista, like other for-profit

[1] This is an excerpt of Idaho Code § 61-327 and does not include the exception added in 1982 for cooperative electric corporations. Also, for readability, the subheading numbers (1) - (4) were added.
[2] The legislative intent of § 61-327 is discussed further in section (b) of this brief at 8-10.

corporations, operate with the purpose of producing profits for their shareholders. Avista pays Idaho taxes. If Avista merges with Hydro One, Idaho will continue to be paid taxes, as the merger does not involve any tax exempt governmental entities. Further, the IPUC will retain full regulatory authority over Avista.

Hydro One is also not acting as "trustee, nominee, agent or representative for, or in concert or arrangement with" a government entity. All of those terms indicate an intent on behalf of the Legislature to encompass companies that are acting on behalf of a government entity. Hydro One does not meet that definition and is not the Province's alter ego. Although the Province owns a portion of Hydro One's shares, so do many private investors. No single investor owns or controls all or even a majority of Hydro One's capital stock. The Hydro One Board is not empowered or permitted to consider the interests of the Province separate from its duties to the corporation and its stakeholders as a whole. The Province does not serve on the Hydro One Board. GA §§ 4.2.2, 4.2.3. Hydro One's Board of Directors, alone, is responsible for deciding to pursue the merger with Avista. GA §§ 2.1.2, 2.1.3. Because Hydro One is not acting on behalf of, or as the alter ego of, the Province, the Transaction is not prohibited by Idaho Code § 61-327.

Finally, Hydro One is not a "corporation ... whose issued capital stock, or other evidence of ownership, membership or other interest therein, or in the property thereof, is owned or controlled, directly or indirectly," by a government entity. The terms "owned or controlled" are not defined, so a court will give those terms their plain meaning. The plain meaning of the phrase "owned" is that the government entity must own all or a majority of the corporation's stock. The Province's minority interest in Hydro One does not make Hydro One a government entity or give the Province ownership of Hydro One. Furthermore, the Province cannot be said to control (i.e., possess the power to manage or direct) the actions of Hydro One. GA §§ 2.1.2, 2.1.3, 4.2.2, 4.2.3. The Governance Agreement prohibits the Province from controlling or

managing Hydro One or its subsidiaries. Any interest the Province has in Hydro One by virtue of stock holdings cannot be used to transfer any title to or interest in Avista's public utility property, impact the regulation of Avista by the IPUC or be used to control Avista. Because Hydro One is not controlled by the Province, and Avista cannot be controlled by the Province, Idaho Code § 61-327 does not prohibit the Transaction.[3]

2. Idaho Code § 61-327 applies only to transfers of tangible utility property in Idaho.

Idaho Code § 61-327 also does not apply to the Transaction because there will be no transfer of title or interest in tangible public utility property. Idaho Code § 61-327 is expressly limited to transfers or acquisitions of "title to or interest in any public utility ... property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public ... ." The literal words of the statute require this construction. The property covered by the statute is defined with respect to its location and use. It must be within Idaho, and used for the generation, transmission, distribution, or supply of electric power and energy. This clear language does not apply to the transfer of shares of capital stock of Avista. The IPUC has never interpreted Idaho Code § 61-327 to prohibit mergers involving the stock of investor owned companies. On the contrary, it has approved them.[4]

Furthermore, the language of the penalty provisions in the Act demonstrate that Idaho Code § 61-327 is limited to tangible public utility property. Section 329 of the Act references the

[3] Because the immediate parent of Avista will be Olympus Equity LLC, an Idaho LLC, the fourth limitation in Idaho Code § 61-327 is not triggered.

[4] See, e.g., Final Order, 28213, Joint Application of PacifiCorp and Scottish Power PLC, Nov. 15, 1999, at 17 n.18, which approved a merger transaction between PacifiCorp and Scottish Power, a foreign corporation. In this order, the IPUC disposed of Idaho Code § 61-327 in a footnote on the basis that both PacifiCorp and Scottish Power were privately owned corporations that did not fall within the parameters of Idaho Code § 61- 327.

court's sale of property escheated to the State to be conducted as a foreclosure sale. Likewise, the penalties in Section 331 explicitly refer to "a transfer of any real or personal property."

In the Transaction pending before the Commission, the only items being acquired by Hydro One (through its indirect subsidiary, Olympus Equity LLC) are the shares of Avista's capital stock owned by Avista's investors. Avista will continue to exist and operate as a stand-alone utility in Idaho and will continue to have its own Board of Directors and its own CEO. Joint Application at 9. None of Avista's property or other assets will change hands as a result of the Transaction. *Id.* This is evidenced further by the fact that Avista has retained its water rights.

Capital stock is not "property" within the meaning of Idaho Code § 61-327 both because it is not tangible property located in Idaho and because it is not used to generate or supply electricity to the public. Because capital stock is not "property" under Idaho Code § 61-327, and because capital stock is the only item being acquired in the Transaction through the merger and by operation of law, Section 61-327 does not apply to the Transaction.

Hydro One's acquisition of Avista's capital stock also will not result in an "indirect" transfer of Avista's tangible public utility property in Idaho to Hydro One. Under Idaho law, a corporation is a distinct and separate legal entity. *Jolley v. Idaho Securities, Inc.*, 90 Idaho 373, 387, 414 P.2d 879 (1966). Ownership of stock in a corporation does not equate to ownership of the corporation's assets or property. *Pincock v. Pocatello Gold & Copper Mining Co.*, 100 Idaho 325, 328, 597 P.2d 211 (1979). Because stock ownership does not confer an ownership interest in a corporation's property to a stockholder, no title or interest in Avista's public utility property will change hands as a result of the Transaction, either directly or indirectly.

(b) The Legislative history and the public policy underlying the Act support Hydro One's interpretation that it does not bar the Transaction.

If the IPUC finds Idaho Code § 61-327 ambiguous, it may consider the legislative history of Section 61-327 to understand the Legislature's intent in enacting this law. Fortunately there are several historical documents that reveal the clear purpose and intent behind Section 61-327.[5] These documents confirm it was the intent of the Legislature to bar tax-exempt governmental bodies from other states from acquiring utility property in Idaho to protect its tax base.

Shortly after passage, the Act was summarized succinctly by the Idaho Attorney General in his 1951-1952 Biennial Report to the State Legislature:

> The 1951 Legislature enacted a statute which forbade acquisition by a municipal corporation of another state of facilities for the generation or transmission of electrical energy in Idaho. The statute was patently aimed at preventing acquisition by Public Utility Districts of the State of Washington of the operating properties of the Washington Power Company located in North Idaho.

Ferguson Declaration, Ex. D, p. 37.

As recounted by the *Idaho Daily Statesman* on January 23, 1951, the Legislature took this emergency action in a single day because if the Washington Water Power Company (which was investor owned), was transferred to tax-exempt Public Utility Districts in Washington State, the State of Idaho would lose significant tax revenues. Ferguson Declaration, Ex E, p. 43.

A concern was expressed at the Technical Hearing that if the Legislature barred the transfer of utility property to government entities of other states, it may have intended to bar foreign governmental entities too, as it seems unlikely it would give preferential treatment to foreign bodies over sister states. However, there is a logical reason why the legislature targeted sister states and was unconcerned about foreign governmental entities. The Act applies to

[5] These documents are attached as exhibits to the Declaration of Deborah A. Ferguson, and submitted in support of this brief. Hydro One asks the IPUC to take administrative notice under IDAPA 31.01.01.263.01(b)(3) of the historical public documents surrounding Section 327, which are attached as exhibits to the declaration.

domestic governmental entities of other states because of their tax exempt status;[6] foreign entities are taxable. So even if a party to this transaction were a foreign governmental entity, or controlled by one, the statute is not a bar.

But the Commission can safely avoid reaching that issue because Hydro One and Avista are non-governmental *private entities*. Private entities--foreign or domestic--are not barred by Section 61-327. If a foreign entity sought to acquire electric utility property within Idaho's borders, it would remain taxable and subject to IPUC control, and Section 61-327 would have no application to it. As in the IPUC's order approving the merger of PacifiCorp and Scottish Power, Section 61-327 likewise does not apply here, as this Transaction is also between non-governmental entities subject to Idaho taxes and IPUC regulation.

V. CONCLUSION

Idaho Code § 61-327 does not apply to this Transaction as demonstrated through the language of the Act and the legislative intent behind it. Because the Hydro One and Avista merger is in the best interest of Idahoans, it should be approved by the Commission.

Respectfully submitted this 7th day of December, 2018.

[6] Idaho Code § 63-602A exempts from property tax, among other things, "property belonging to the state of Idaho ... [and] property belonging to any county or municipal corporation or school district within this state." While there is no law that interprets this statement in the context of a municipal corporation organized under the law of a state other than Idaho, the slight variation in the language of this statute from similar language in Article 7. Section 4 of the Constitution of the State of Idaho indicates that the latter exemption should be read as broadly applicable to property within the State of Idaho that is owned by any municipal corporation organized under the law of any state. In addition, out-of-state government entities generally are not subject to Idaho's income tax provisions, which begin with and are intended to "mirror" applicable U.S. federal income tax law except to the extent expressly provided in the Idaho Code. Idaho Code § 63-3002. Thus, without specific provision--of which there is none--to override Section 115 of the Internal Revenue Code of 1986, as amended, an out-of-state government entity should not be subject to Idaho income taxation to the extent the income concerned is derived from the entity's performance of an essential government function and accrues to the entity.

HYDRO ONE LIMITED

By: _____
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Counsel on Behalf of Hydro One Limited and Olympus Equity LLC

AVISTA CORPORATION

By: _____
David J. Meyer, ISB No. 8317
Chief Counsel for Regulatory and Governmental Affairs

Counsel on Behalf of Avista Corporation

APPENDIX TO

HYDRO ONE LIMITED'S AND AVISTA'S

BRIEF ON IDAHO CODE § 61-327

Idaho Statutes

TITLE 61
PUBLIC UTILITY REGULATION
CHAPTER 3
DUTIES OF PUBLIC UTILITIES

61-327. ELECTRIC UTILITY PROPERTY — ACQUISITION BY CERTAIN PUBLIC AGENCIES PROHIBITED. No title to or interest in any public utility (as such term is defined in chapter 1, title 61, Idaho Code) property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall be transferred or transferable to, or acquired by, directly or indirectly, by any means or device whatsoever, any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, organized or existing under the laws of any other state; or any person, firm, association, corporation or organization acting as trustee, nominee, agent or representative for, or in concert or arrangement with, any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized or existing under the laws of this state or any other state, whose issued capital stock, or other evidence of ownership, membership or other interest therein, or in the property thereof, is owned or controlled, directly or indirectly, by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized under the laws of any other state, not coming under or within the definition of an electric public utility or electrical corporation as contained in chapter 1, title 61, Idaho Code, and subject to the jurisdiction, regulation and control of the public utilities commission of the state of Idaho under the public utilities law of this state; provided, nothing herein shall prohibit the transfer of any such property by a public utility to a cooperative electrical corporation organized under the laws of another state, which has among its members mutual nonprofit or cooperative electrical corporations organized under the laws of the state of Idaho and doing business in this state, if such public utility has obtained authorization from the public utilities commission of the state of Idaho pursuant to section 61-328, Idaho Code.

History:

[61-327, added 1951, ch. 3, sec. 1, p. 4; am. 1982, ch. 7, sec. 1, p. 10.]

TITLE 61
PUBLIC UTILITY REGULATION
CHAPTER 3
DUTIES OF PUBLIC UTILITIES

61-328. ELECTRIC UTILITIES — SALE OF PROPERTY TO BE APPROVED BY COMMISSION. (1) No electric public utility or electrical corporation as defined in chapter 1, title 61, Idaho Code, owning, controlling or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall merge, sell, lease, assign or transfer, directly or indirectly, in any manner whatsoever, any such property or interest therein, or the operation, management or control thereof, or any certificate of convenience and necessity or franchise covering the same, except when authorized to do so by order of the public utilities commission.

(2) The electric public utility or electrical corporation shall file a verified application setting forth such facts as the commission shall prescribe or require. The commission shall issue a public notice and shall conduct a public hearing upon the application.

(3) Before authorizing the transaction, the public utilities commission shall find:

(a) That the transaction is consistent with the public interest;

(b) That the cost of and rates for supplying service will not be increased by reason of such transaction; and

(c) That the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service.

The applicant shall bear the burden of showing that standards listed above have been satisfied.

(4) The commission shall have power to issue said authorization and order as prayed for, or to refuse to issue the same, or to issue such authorization and order with respect only to a part of the property involved. The commission shall include in any authorization or order the conditions required by the director of the department of water resources under section 42-1701(6), Idaho Code. The commission may attach to its authorization and order such other terms and conditions as in its judgment the public convenience and necessity may require.

History:

[61-328, added 1951, ch. 3, sec. 2, p. 4; am. 2000, ch. 224, sec. 2, p. 620.]

TITLE 61
PUBLIC UTILITY REGULATION
CHAPTER 3
DUTIES OF PUBLIC UTILITIES

61-329. UNLAWFUL TRANSFER OR ACQUISITION — ESCHEAT. Any such property or interest in property hereafter transferred or acquired in violation of this act shall escheat to the state of Idaho. The attorney general of the state shall institute proceedings in the district court of any county in which such property, or any portion thereof, is situated, to have such escheat adjudged and decreed. If the property is operating property, the court shall continue the operation thereof under a receiver appointed by and under the control and supervision of the court, pending final determination of the action and the sale and disposition of the property. When the court has entered judgment escheating the property to the state, the court shall thereupon order a sale of the property, or interest therein, in the same manner as prescribed by the laws of the state of Idaho for the sale of real estate under mortgage foreclosure. Out of the proceeds arising from such sale, any valid liens or claims of third parties shall be paid, and the balance shall be paid into the state treasury for the credit of the school fund.

History:

[61-329, added 1951, ch. 3, sec. 3, p. 4.]

TITLE 61
PUBLIC UTILITY REGULATION
CHAPTER 3
DUTIES OF PUBLIC UTILITIES

61-330. EVASIONS OF ACT — CONCLUSIVE PRESUMPTIONS. Every conveyance or transfer of property, or any interest therein, in violation of the provisions of this act, whether voluntary or involuntary, or though colorable in form, or if made with the intent or purpose to evade or avoid the provisions of this act, shall be void as to the state, and the property or interest thereby conveyed or transferred, shall escheat to the state as in this act provided. A conclusive presumption that the conveyance or transfer is made with the intent or purpose to evade or avoid the provisions of this act shall arise upon proof of any of the following facts:

a. The purchase, acquisition or taking of the property, or interest therein, in the name of a person or party other than persons or parties referred to in section 61-327[, Idaho Code], if the consideration is paid, guaranteed or otherwise secured, or agreed or understood to be paid, guaranteed or otherwise secured, directly or indirectly, by a government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation referred to in section 61-327[, Idaho Code].

b. The taking of the property in the name of a company, association, organization or corporation, if the shares of stock therein, or other evidence of ownership, membership or other interest therein, or in the property thereof, held by any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, or any other company, association, organization or corporation, referred to in section 61-327[, Idaho Code], together with such shares or other evidence of ownership, membership or interest held by others but paid for, guaranteed or otherwise secured, directly or indirectly, by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, amount to a majority of the issued stock or other evidence of ownership, membership or other interest therein, or in the property thereof.

c. The purchase, acquisition or holding of the majority of the issued stock, or other evidence of ownership, membership or other interest therein, or the voting control of any such stock or other evidence of ownership, membership or interest, either directly or indirectly, by any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, or any other company, association, organization or corporation, referred to in section 61-327[, Idaho Code], in any company, association, organization or corporation now or hereafter owning, holding or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof.

The enumeration in this section of certain presumptions shall not be construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent or purpose to

evade or avoid the provisions of this act, or escheat as provided for herein.

History:

[61-330, added 1951, ch. 3, sec. 4, p. 4.]

Idaho Statutes

TITLE 61
PUBLIC UTILITY REGULATION
CHAPTER 3
DUTIES OF PUBLIC UTILITIES

61-331. VIOLATION OF ACT — CRIMINAL PENALTY. If any person, or two (2) or more persons, act, negotiate, participate, attempt, arrange or conspire to make or effect, or to receive or take, a transfer of any real or personal property used for the purposes specified in section 61-327 or section 61-328[, Idaho Code], or of any interest therein, in violation of the prohibitions contained in section 61-327[, Idaho Code,] or of any other provision of this act, each, any or all of such persons, upon conviction thereof, shall be punished by imprisonment in the county jail or state penitentiary not exceeding two (2) years or by a fine not exceeding $5000, or by both such fine and imprisonment.

History:

[61-331, added 1951, ch. 3, sec. 5, p. 4.]

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Attorney for Hydro One Limited

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF HYDRO ONE LIMITED AND AVISTA CORPORATION FOR APPROVAL OF MERGER AGREEMENT	)	CASE NO. AVU-E-17-09 AVU-G-17-05 **DECLARATION OF DEBORAH A. FERGUSON IN SUPPORT OF HYDRO ONE LIMITED'S AND AVISTA'S BRIEF ON IDAHO CODE § 61-327**

STATE OF IDAHO)

COUNTY OF ADA)

I, Deborah A. Ferguson, declare as follows:

1. I am duly licensed to practice law in the State of Idaho and before the Idaho Public Utilities Commission (the "Commission"), and I am an attorney with the firm Ferguson Durham, PLLC and am an attorney of record for Hydro One Limited ("Hydro One") in the above-referenced action. I make this declaration based upon my own personal knowledge, and can testify as to the truth of the statements contained herein if called upon to do so.

2. I make this declaration in support of Hydro Ones and Avista's brief on Idaho Code § 61-327 filed concurrently herewith (the "Brief").

3. I researched whether there are any official records of the floor debates on January 22, 1951, pertaining to the passage of the legislation that became Idaho Code § 61-327. There are no official records of the floor debates recorded by the legislature.

4. Attached hereto as Exhibit A is a true and correct copy of Hydro One's Articles of Incorporation.

5. Attached hereto as Exhibit B is a true and correct excerpt of *People, Politics & Public Power* by Ken Billington, Washington Public Utility Districts' Association, p. 58 (1988).

6. Attached hereto as Exhibit C is a true and correct excerpt of the January 22, 1951 Idaho House and Senate Journal.

7. Attached hereto as Exhibit D is a true and correct excerpt from the Thirty-First Biennial Report of the Attorney General of Idaho, 1951-1952, Robert E. Smylie, Attorney General.

8. Attached hereto as Exhibit E is a true and correct copy of an article published in The Idaho Daily Statesman on January 23, 1951, by John Corlett titled, "*Bill Passed Banning Public Utility Sales to Governmental Agencies.*"

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Respectfully submitted this 7th day of December, 2018.

HYDRO ONE LIMITED

By: _____
Deborah A. Ferguson
Ferguson Durham, PLLC

On Behalf of Hydro One Limited and Olympus Equity LLC

EXHIBIT A

For Ministry Use Only
À l'usage exclusif du ministère

Ontario Corporation Number
Numéro de la société en Ontario

1941138

Ministry of Government Services / Ministère des Services gouvernementaux
Ontario

CERTIFICATE / **CERTIFICAT**

This is to certify that these articles are effective on / Ceci certifie que les présents statuts entrent en vigueur le

AUGUST 31 AOÛT, 2015

Director / Directeur
Business Corporations Act / Loi sur les sociétés par actions

ARTICLES OF INCORPORATION
STATUTS CONSTITUTIFS

Form 1
Business Corporations Act

Formule 1
Loi sur les sociétés par actions

1. The name of the corporation is: (Set out in BLOCK CAPITAL LETTERS)
Dénomination sociale de la société : (Écrire en LETTRES MAJUSCULES SEULEMENT)

HYDRO ONE LIMITED

2. The address of the registered office is:
Adresse du siège social :

483 Bay Street, South Tower, Suite 800
(Street & Number or R.R. Number & if Multi-Office Building give Room No.)
(Rue et numéro ou numéro de la R.R. et, s'il s'agit d'un édifice à bureaux, numéro du bureau)

Toronto — ONTARIO — M5G 2P5
(Name of Municipality or Post Office) / *(Nom de la municipalité ou du bureau de poste)*
(Postal Code) / *(Code postal)*

3. Number of directors is/are:
Nombre d'administrateurs :

Fixed number / *Nombre fixe* [ ]
OR minimum and maximum / ***OU*** *minimum et maximum* 10 to 15

4. The first director(s) is/are:
Premier(s) administrateur(s) :

First name, middle names and surname *Prénom, autres Prénoms et nom de famille*	Address for service, giving Street & No. or R.R. No., Municipality, Province, Country and Postal Code *Domicile élu, y compris la rue et le numéro, le numéro de la R.R. ou le nom de la municipalité, la province, le pays et le code postal*	Resident Canadian? Yes or No *Résident canadien? Oui/Non*
See Schedule 1A.		

07116E (06/2007)

Schedule 1A

First name, middle names and surname Prénom, autres Prénoms et nom de famille Address	Address for service, giving Street & No. or R.R. No., Municipality, Province, Country and Postal Code Domicile élu, y compris la rue et le numéro, le numéro de la R.R. ou le nom de la municipalite, la province, le pays et le code postal	Resident Canadian? Yes or No Résident canadien? Oui/Non
Mayo Schmidt	483 Bay Street, 8th Floor, South Tower Toronto, ON M5G 2P5	No
David Denison	483 Bay Street, 8th Floor, South Tower Toronto, ON M5G 2P5	Yes
George Cooke	483 Bay Street, 8th Floor, South Tower Toronto, ON M5G 2P5	Yes
Gale Rubenstein	333 Bay Street, Suite 3400 Toronto, ON M5H 2S7	Yes
Marcello (Marc) Caira	483 Bay Street, 8th Floor, South Tower Toronto, ON M5G 2P5	Yes
Charles Brindamour	700 University Avenue, Suite 1500 Toronto, ON M5G OA1	Yes
Kathryn Jackson	483 Bay Street, 8th Floor, South Tower Toronto, ON, M5G 2P5	No
Ian Bourne	606 4th Street SW, Suite 1410 Calgary AB T2P 1T1	Yes
Frances Lankin	483 Bay Street, 8th Floor, South Tower Toronto, ON M5G 2P5	Yes
Jim Hinds	40 Castle Frank Road Toronto, ON M4W 2Z6	Yes
Margaret (Marianne) Harris	483 Bay Street, 8th Floor, South Tower Toronto, ON M5G 2P5	Yes
Christie Clark	401 Bay Street, Suite 1600 Toronto, ON M5H 2Y4	Yes
Philip Orsino	483 Bay Street, 8th Floor, South Tower Toronto, ON M5G 2P5	Yes
Jane Peverett	483 Bay Street, 8th Floor, South Tower Toronto, ON M5G 2P5	Yes
Roberta Jamieson	50 Generations Drive Ohsweken, ON N0A 1M0	Yes

5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.
Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la société.

None.

6. The classes and any maximum number of shares that the corporation is authorized to issue:
Catégories et nombre maximal, s'il y a lieu, d'actions que la société est autorisée à émettre :

an unlimited number of Common Shares; and
an unlimited number of Preferred Shares, issuable in series.

7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series:
Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions qui peut être émise en série :

See Schedule 7A - Common Share Terms
See Schedule 7B - Preferred Share Class Terms

SCHEDULE "7A"

HYDRO ONE LIMITED

(The "**CORPORATION**")

COMMON SHARE TERMS

The Common Shares shall, as a class, have attached thereto the following rights, privileges, restrictions and conditions:

1. The holders of the Common Shares shall be entitled to receive notice of and to attend all meetings of shareholders of the Corporation except meetings at which only the holders of another class or series of shares are entitled to vote separately as a class or series, and shall be entitled to one vote at all such meetings in respect of each Common Share held.

2. Subject to the rights, privileges, restrictions and conditions attaching to any other class or series of shares, the holders of the Common Shares shall, at the discretion of the directors, be entitled to receive any dividends declared and payable by the Corporation on the Common Shares.

3. Subject to the rights, privileges, restrictions and conditions attaching to any other class or series of shares, upon the liquidation, dissolution or winding-up of the Corporation or other distribution of the Corporation's assets among its shareholders for the purposes of winding-up its affairs, the holders of the Common Shares shall be entitled to receive the remaining assets of the Corporation.

SCHEDULE "7B"

HYDRO ONE LIMITED

(The "**CORPORATION**")

PREFERRED SHARE CLASS TERMS

The Preferred Shares shall, as a class, have attached thereto the following rights, privileges, restrictions and conditions:

1. The Preferred Shares may, from time to time, be issued in one or more series;

2. The Preferred Shares of each series shall, as to the payment of dividends, distribution of assets and return of capital in the event of liquidation, dissolution or winding up of the Corporation, rank on parity with the Preferred Shares of every other series and senior to the Common Shares and all other shares ranking in such regard junior to the Preferred Shares;

3. The directors of the Corporation may from time to time issue Preferred Shares in one or more series, each series to consist of such number of shares as shall before issuance thereof be fixed by the directors who (subject as herein provided) shall at the same time determine the designation, rights, privileges, restrictions and conditions attaching to the Preferred Shares of such series including, without limiting the generality of the foregoing, the rate of preferential dividends, the dates of payment thereof, the redemption price and terms and conditions of redemption (if any), the conversion rights (if any), the participation rights (if any) and any sinking fund, purchase fund or other provisions attaching to the Preferred Shares of such series, the whole subject to the issuance of a certificate of amendment in accordance with the *Business Corporations Act* (Ontario); and

4. Subject to the *Business Corporations Act* (Ontario), the holders of the Preferred Shares or of a series thereof shall not be entitled as holders of such class or series to receive notice of or to attend any meeting of the shareholders of the Corporation or to vote at any such meeting except that votes may be granted to a series of Preferred Shares when dividends are in arrears on any one or more series; such voting rights, if any, will be determined by the applicable series provisions.

8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:
L'émission, le transfert ou la propriété d'actions est/n'est pas restreint. Les restrictions, s'il y a lieu, sont les suivantes :

See Schedule 8A - Ownership Restrictions

SCHEDULE "8A"
OWNERSHIP RESTRICTIONS

1. INTERPRETATION AND DEFINITIONS

1.1 In this Schedule "8A":

1.1.1 The terms "**company**" and "**person**" have the meanings given to those terms, respectively, in the *Securities Act* (Ontario) ("**OSA**"), as now enacted or as the same may be from time to time amended, varied, replaced, restated, re-enacted or supplemented.

1.1.2 The term "**control**" and the phrase "**acting jointly or in concert**" are to be interpreted in a manner that is consistent with the interpretation of that phrase as used in Part XX of the OSA.

1.1.3 All terms other than those referred to in subsections 1.1.1 and 1.1.2 and which are not otherwise defined in this Schedule "8A" have the meanings given to those terms in the OSA or the *Business Corporations Act* (Ontario) ("**OBCA**"), respectively, provided that in the event of any inconsistency between a definition contained in the OSA and a definition contained in the OBCA, the definition contained in the OSA shall prevail.

1.1.4 Except where the context requires the contrary, words importing the singular shall include the plural and vice versa and words importing gender shall include masculine, feminine and neuter genders.

1.2 In this Schedule "8A":

"**Affected Shareholders**" has the meaning set out in section 11.2;

"**Amendments**" has the meaning set out in section 2.2;

"**directors' determination**", or "**as determined by the directors of the Corporation**" and similar expressions mean a determination made by the directors of the Corporation in accordance with section 12;

"**Electricity Act**" means the *Electricity Act, 1998* (Ontario);

"**excess Voting Securities**" means the number of Voting Securities beneficially owned or over which control or direction is exercised in excess of the maximum number of Voting Securities that could be beneficially owned or over which control or direction could be exercised in compliance with the share constraint;

"**net proceeds of sale**" has the meaning set out in section 7.3;

"**OBCA**" has the meaning set out in section 1.1.3;

"**OSA**" has the meaning set out in section 1.1.1;

"**Province**" means the Minister as defined in the Electricity Act on behalf of Her Majesty in right of Ontario;

"**redemption price**" has the meaning set out in section 8.2;

"**sell-down notice**" has the meaning set out in section 5.1;

"**share constraint**" has the meaning set out in section 3.2;

"**shareholder default**" has the meaning set out in subsection 5.1.4;

"**shareholder's declaration**" means a declaration made in accordance with section 13;

"**suspension**" has the meaning set out in section 6.1 and "**suspend**", "**suspended**" and similar expressions have corresponding meanings; and

"**voting security**" has the same meaning as voting security in the Electricity Act; and

"**Voting Security**" means any voting security issued by the Corporation.

1.3 For greater certainty, no person or company is presumed to be acting jointly or in concert with any other person or company for purposes of this Schedule "8A" solely by reason that one of them has given the other the power to vote or direct the voting of Voting Securities of a class or series of Voting Securities at a meeting of the holders of that class or series under a revocable proxy where:

1.3.1 the proxy is solicited solely by means of an information circular issued in a public solicitation of proxies that is made in respect of all Voting Securities of that class or series and in accordance with applicable law;

1.3.2 the proxy is solicited but no information circular is required to be issued under the OSA or the OBCA; or

1.3.3 the proxy is not solicited.

1.4 For the purposes of this Schedule "8A":

1.4.1 where two or more persons or companies acting jointly or in concert beneficially own or exercise control or direction over Voting Securities, the number of Voting Securities beneficially owned or over which control or direction is exercised by each person or company shall include the number of Voting Securities beneficially owned or over which control or direction is exercised with those other persons or companies; and

1.4.2 references to Voting Securities "**held by**" a person or company are to Voting Securities beneficially owned or over which control or direction is exercised by that person or company.

1.5 Where Voting Securities are registered in the name of a depositary that does not beneficially own, or, except for purposes of complying with this Schedule "8A", exercise control or direction over, Voting Securities, then, unless explicitly stated otherwise or unless the context otherwise requires, references in this Schedule "8A" to the "registered holder" refer to the depositary in its capacity as the registered holder solely of the Voting Securities beneficially owned, or over which control or direction is exercised, by a particular person or company or a particular combination of person or companies, referenced in this Schedule "8A" and not of all the Voting Securities registered in the name of the depositary.

2. REGULATION

2.1 The Corporation has imposed the restrictions on the transfer and ownership of the Voting Securities set out in this Schedule "8A" for the purposes of ensuring that the Corporation complies with section 48.2 of the Electricity Act.

2.2 In the event that the provisions of section 48.2 of the Electricity Act are from time to time amended, varied, replaced, restated, re-enacted or supplemented (the "**Amendments**"), and the Amendments are inconsistent with this Schedule "8A", the Amendments are deemed to be incorporated in this Schedule "8A" from their effective date, without, for greater certainty, any approval by the holders of Voting Securities, and the Amendments supersede the provisions of this Schedule "8A" to the extent of the inconsistency.

2.3 On the date that the Corporation is not required to constrain the transfer or ownership of its Voting Securities for the purposes identified in section 2.1 or otherwise, this Schedule "8A" shall be deemed to be deleted in its entirety from the Articles of the Corporation without, for greater certainty, any approval by the holders of Voting Securities and this Schedule "8A"shall be of no further force or effect as and from that date.

2.4 In the event that this Schedule "8A" is amended as provided for in section 2.2 or is deemed to be deleted in accordance with section 2.3, the directors of the Corporation shall restate the Articles of Incorporation of the Corporation, as amended from time to time, to reflect the amendment or deletion within thirty (30) days of such amendment or deletion, without, for greater certainty, any approval by the holders of Voting Securities. The Corporation shall, within fifteen (15) days of the effective date of restatement of the Articles, give written notice of the restatement to each registered holder of Voting Securities registered as of the close of business on the effective date of the restatement. The accidental failure or omission to give the notice to one or more of the holders shall not affect the validity of the provisions of this section 2.4.

3. SHARE CONSTRAINT

3.1 No person or company, and no combination of persons or companies acting jointly or in concert, may beneficially own or exercise control or direction over more than 10 per cent of any class or series of Voting Securities. However this restriction does not apply with respect to Voting Securities held by the Province.

3.2 The prohibition set out in section 3.1 is referred to in this Schedule "8A" as the "**share constraint**".

3.3 The share constraint does not apply to an underwriter who holds Voting Securities solely for the purpose of distributing Voting Securities to purchasers who comply with section 3.1.

4. CONTRAVENTION OF THE SHARE CONSTRAINT

4.1 In the event of a directors' determination, whether based on a review of the securities registers of the Corporation or otherwise, that any person or company or any combination of persons or companies is in contravention of the share constraint:

4.1.1 the Corporation shall not accept any subscription for Voting Securities from that person or company or any person or company forming part of that combination;

4.1.2 the Corporation shall not issue any Voting Securities to that person or company or any person or company forming part of that combination;

4.1.3 the Corporation shall not register or otherwise recognize the transfer of any Voting Securities to that person or company or any person or company forming part of that combination;

4.1.4 no person or company may, in person or by proxy, exercise the right to vote any of the Voting Securities held by that person or company or any person or company forming part of that combination;

4.1.5 subject to section 11.1, the Corporation shall not declare or pay any dividend, or make any other distribution:

4.1.5.1 on any excess Voting Securities held by that person or company or any person or company forming part of such combination; or

4.1.5.2 on all of the Voting Securities held by that person or company or any person or company forming part of such combination if there is a directors' determination that the contravention of the share constraint was intentional, unless there is a directors' determination that it would be in the best interests of the Corporation to make the distribution in respect of some part or all of the non-excess Voting Securities;

and any entitlement to that dividend or other distribution shall be forfeited; and

4.1.6 the Corporation shall send a sell-down notice to the registered holder of the Voting Securities held by that person or company or any person or company forming part of such combination.

4.2 In the event of a directors' determination, whether based on a review of the securities registers of the Corporation or otherwise, that any person or company or combination of

persons or companies, after any proposed subscription for or issue or transfer of Voting Securities, would be in contravention of the share constraint, the Corporation shall not:

4.2.1 accept the proposed subscription for Voting Securities from;

4.2.2 issue the proposed Voting Securities to; or

4.2.3 register or otherwise recognize the proposed transfer of any Voting Securities to;

that person or company or any person or company forming part of that combination.

4.3 In the event of a directors' determination that during any prior period or at any prior time any person or company or any combination of persons or companies is or was in contravention of the share constraint, the directors of the Corporation may, where there is a directors' determination that it would be in the best interests of the Corporation, also make a directors' determination that:

4.3.1 any votes cast, in person or by proxy during that period or at that time in respect of the Voting Securities held by that person or company or any person or company forming part of that combination shall be disqualified and deemed not to have been cast; and

4.3.2 subject to section 11.1, each such person or company or each person or company forming part of such combination is liable to the Corporation to restore to the Corporation the amount of any dividend paid or distribution received during that period:

4.3.2.1 on the excess Voting Securities held by that person or company and of each other person or company forming part of that combination; or

4.3.2.2 on all of the Voting Securities held by that person or company or any person or company forming part of that combination in the event of a directors' determination that the contravention of the share constraint was intentional.

5. SELL-DOWN NOTICE

5.1 Any notice (a "**sell-down notice**") required to be sent to a registered holder of Voting Securities under subsection 4.1.6:

5.1.1 shall specify in reasonable detail, based on the information then available to the directors of the Corporation, the nature of the contravention of the share constraint, the number of Voting Securities determined to be excess Voting Securities and the consequences of the contravention specified in section 4;

5.1.2 shall request an initial or further shareholder's declaration;

5.1.3 shall specify a date, which shall be not less than 45 days after the date of the sell-down notice (such date specified, the "**response date**"), by which the excess Voting Securities are to be sold or disposed of; and

5.1.4 shall state that unless the registered holder either:

5.1.4.1 sells or otherwise disposes of the excess Voting Securities by the response date on a basis that does not result in any contravention of the share constraint and provides to the directors of the Corporation, in addition to the shareholder's declaration requested under subsection 5.1.2, written evidence satisfactory to the directors of the Corporation of that sale or other disposition; or

5.1.4.2 provides to the directors of the Corporation by the response date, in addition to the shareholder's declaration requested under subsection 5.1.2, written evidence satisfactory to the directors of the Corporation that there is no contravention of the share constraint;

a default (a "**shareholder default**") shall occur that shall result in the consequence of suspension under section 6 and may result in the consequence of sale in accordance with section 7 or redemption in accordance with section 8, in each case without further notice to the registered holder, and shall specify in reasonable detail the nature and timing of those consequences.

5.2 In the event that, following the sending of a sell-down notice, written evidence is submitted to the directors of the Corporation for purposes of subsection 5.1.4.2 by the response date, the directors of the Corporation shall assess the evidence as soon as is reasonably practicable and shall give a second notice to the person or company submitting the evidence as soon as is reasonably practicable after receipt of the evidence stating whether the evidence has or has not satisfied the directors of the Corporation that there is no contravention of the share constraint. If the evidence has satisfied the directors of the Corporation, the sell-down notice shall be cancelled and the second notice shall so state. If the evidence has not satisfied the directors of the Corporation, the second notice shall reiterate the statements required to be made in the sell-down notice under subsections 5.1.3 and 5.1.4 provided the response date for the second notice shall be the later of: (i) the response date specified in the first notice and (ii) third business day following the date that the second notice is given.

6. SUSPENSION

6.1 In the event of a shareholder default in respect of any registered holder of Voting Securities, then, without further notice to the registered holder:

6.1.1 all of the Voting Securities of the registered holder shall be deemed to be struck from the securities register of the Corporation;

6.1.2 no person or company may, in person or by proxy, exercise the right to vote any of those Voting Securities;

6.1.3 subject to section 11.1, the Corporation shall not declare or pay any dividend, or make any other distribution, on any of those Voting Securities and any entitlement to a dividend or other distribution shall be forfeited;

6.1.4 the Corporation shall not send any form of proxy, information circular or financial statements of the Corporation or any other general communication from the Corporation to any person or company in respect of those Voting Securities; and

6.1.5 no person or company may exercise any other right or privilege ordinarily attached to those Voting Securities.

(All of the foregoing consequences of a shareholder default are referred to in this Schedule "8A" as a "**suspension**".) Notwithstanding the foregoing, a registered holder of suspended Voting Securities shall have the right to transfer those Voting Securities on any securities register of the Corporation on a basis that does not result in contravention of the share constraint.

6.2 The directors of the Corporation shall cancel any suspension of Voting Securities of a registered holder and reinstate the registered holder to the securities register of the Corporation for all purposes if they make a directors' determination that, following the cancellation and reinstatement, none of those Voting Securities will be beneficially owned, controlled or directed in contravention of the share constraint. For greater certainty, any reinstatement shall permit, from and after the reinstatement, the exercise of all rights and privileges attached to the Voting Securities so reinstated, but subject to section 11.1, shall have no retroactive effect.

7. SALE

7.1 In the event of a shareholder default in respect of any registered holder of Voting Securities, the Corporation may choose by directors' determination to sell, on behalf of the registered holder, the excess Voting Securities of that registered holder, without further notice to that registered holder, on the terms set out in this section 7 and section 9.

7.2 The Corporation may sell any excess Voting Securities in accordance with this section 7:

7.2.1 on the Toronto Stock Exchange; or

7.2.2 if the Voting Securities are not then listed on the Toronto Stock Exchange, on any other stock exchange or organized market on which the Voting Securities are then listed or traded as the directors of the Corporation may choose by directors' determination; or

7.2.3 if the Voting Securities are not then listed on any stock exchange or traded on any organized market, in any other manner as the directors of the Corporation may choose by directors' determination.

7.3 The "**net proceeds of sale**" of excess Voting Securities sold in accordance with this section 7 shall be the net proceeds from such sale after deduction of any commission, tax

and other costs of sale (including, but not limited to, the Corporation's reasonable legal fees).

7.4 The Corporation has the requisite legal power and authority for all purposes of a sale of excess Voting Securities in accordance with this section, as if it were the registered holder and beneficial owner of the Voting Securities being sold.

8. REDEMPTION

8.1 In the event of a shareholder default in respect of any registered holder of Voting Securities and in the event of a directors' determination either that the Corporation has used reasonable efforts to sell excess Voting Securities in accordance with section 7 but that the sale is impracticable or that it is likely that the sale would be contrary to the best interests of the Corporation, the Corporation may choose by directors' determination, subject to applicable law, to redeem the excess Voting Securities of the registered holder, without further notice to the registered holder, on the terms set out in this section 8 and section 9.

8.2 The "**redemption price**" paid by the Corporation to redeem any excess Voting Securities in accordance with this section 8 shall be:

8.2.1 the average of the closing prices per share of the Voting Securities on the Toronto Stock Exchange (or, if the Voting Securities are not then listed on the Toronto Stock Exchange or if the requisite trading of Voting Securities has not occurred on the Toronto Stock Exchange, any other stock exchange or any other organized market on which the requisite trading has occurred as the directors of the Corporation may choose by directors' determination) over the last 10 trading days on which at least one board lot of Voting Securities has traded on the Toronto Stock Exchange (or other stock exchange or other organized market) in the period ending on the trading day immediately preceding the date fixed for redemption by the directors pursuant to a directors' determination; or

8.2.2 if the requisite trading of Voting Securities has not occurred on any stock exchange or other organized market, on any basis the directors of the Corporation may choose by directors' determination;

less any commission, tax and other costs of redemption (including, but not limited to, the Corporation's reasonable legal fees).

9. PROCEDURES RELATING TO SALE AND REDEMPTION

9.1 In the event of any sale or redemption of excess Voting Securities in accordance with sections 7 or 8, respectively, the net proceeds of sale or the redemption price; respectively, constitute trust funds and the Corporation shall deposit the funds in a special trust account in any bank or trust corporation in Canada selected by it. The Corporation may commingle the trust funds with other such trust funds. The amount of the deposit, together with any income earned thereon from the beginning of the month next following the date of the receipt by the Corporation of the net proceeds of sale or the redemption

price, less any taxes on the income and the reasonable costs of administration of the trust fund, shall be payable to the registered holder of the excess Voting Securities sold or redeemed on presentation and surrender by the registered holder to the Corporation or to the trust corporation to which the trust funds are transferred in accordance with section 9.6 of the certificate or certificates representing the excess Voting Securities if such certificate or certificates have been issued or, if no certificate has been issued, other evidence of ownership of the excess Voting Securities satisfactory to the Corporation or its registrar and transfer agent. A receipt signed by the registered holder shall be a complete discharge of the Corporation, or the trust corporation to which the trust funds are transferred in accordance with section 9.6, in respect of the trust funds and income earned on these trust funds paid to the registered holder.

9.2 From and after any deposit made under section 9.1, the registered holder shall not be entitled to any of the remaining rights of a registered holder in respect of the excess Voting Securities sold or redeemed, other than the right to obtain a certificate or other evidence of ownership representing the excess Voting Securities for the purpose only of tendering it to receive trust funds in respect of the excess Voting Securities sold or redeemed and to receive the trust funds on presentation and surrender of the certificate or certificates or other evidence of ownership satisfactory to the Corporation or its registrar and transfer agent representing the excess Voting Securities sold or redeemed.

9.3 If a part only of the Voting Securities represented by any certificate is sold or redeemed in accordance with section 7 or 8, respectively, the Corporation shall, on presentation and surrender of that certificate and at the expense and request of the registered holder, issue a new certificate representing the balance of the Voting Securities.

9.4 As soon as is reasonably practicable after, and, in any event, not later than 30 days after, a deposit made under section 9.1, the Corporation shall send a notice to the registered holder of the excess Voting Securities sold or redeemed and the notice shall state:

9.4.1 that a specified number of Voting Securities has been sold or redeemed, as the case may be;

9.4.2 the amount of the net proceeds of sale or the redemption price, respectively;

9.4.3 the name and address of the bank or trust company at which the Corporation has made the deposit of the net proceeds of sale or the redemption price, respectively;

9.4.4 all other relevant particulars of the sale or redemption, respectively; and

9.4.5 that to receive the net proceeds of sale or the redemption price, the registered holder must present and surrender to the Corporation the certificate or certificates representing the excess Voting Securities so sold or redeemed if such certificate or certificates have been issued or, if no certificate has been issued, other evidence of ownership of the excess Voting Securities satisfactory to the Corporation or its registrar and transfer agent.

The accidental failure or omission to give the notice to the registered holder shall not affect the validity of the sale or redemption of Voting Securities completed in accordance with section 7, 8 or 9.

9.5 For greater certainty, the Corporation may sell or redeem excess Voting Securities in accordance with section 7 or 8, respectively, despite the fact that the Corporation does not possess the certificate or certificates representing the excess Voting Securities at the time of the sale or redemption. If, in accordance with section 7, the Corporation sells excess Voting Securities without possession of the certificate or certificates representing the excess Voting Securities, the Corporation shall issue to the purchaser of such excess Voting Securities or its nominee a new certificate or certificates or other evidence of ownership representing the excess Voting Securities sold. If, in accordance with section 7 or section 8, the Corporation sells or redeems excess Voting Securities without possession of the certificate or certificates representing the excess Voting Securities and, after the sale or redemption, a person or company establishes that it is a bona fide purchaser of those same excess Voting Securities also sold or redeemed by the Corporation, then, subject to applicable law:

9.5.1 the excess Voting Securities beneficially owned by the bona fide purchaser are deemed to be, from the date of the sale or redemption by the Corporation, as the case may be, validly issued and outstanding Voting Securities in addition to the excess Voting Securities sold or redeemed; and

9.5.2 notwithstanding section 9.2, the Corporation is entitled to the trust funds deposited under section 9.2 and, in the case of a sale in accordance with section 7, shall add the amount of the deposit to the stated capital account for the class and series, if applicable, of Voting Securities issued;

provided that if the steps contemplated by sections 9.5.1 and 9.5.2 are not permitted by applicable law, then the Corporation shall take other reasonable steps to rectify the circumstances of such bona fide purchaser.

9.6 The Corporation may transfer any trust fund established under this section 9 and its administration to a trust corporation in Canada registered as such under the laws of Canada or a province or a territory thereof, and the Corporation is then discharged of all further liability in respect of the trust fund. The trust funds described in section 9.1 together with any income earned on the trust funds, less any taxes and reasonable costs of administration, that has not been claimed for a period of 10 years after the date of the sale or redemption by the person or company entitled under section 9 to receive such funds is forfeited to the Corporation.

10. EXCEPTIONS

10.1 Notwithstanding section 3, the share constraint does not apply in respect of Voting Securities that are held:

10.1.1 by any person or company or combination of persons or companies by way of security only provided such person or company does not exercise the votes

attaching to such Voting Securities and does not otherwise exercise control or direction over such Voting Securities, but only in respect of such person or company or combination of persons or companies;

10.1.2 by any person or company or combination of persons or companies who beneficially owns or exercises control or direction over such shares by virtue of having realized on a security interest in the Voting Securities but who is in the process of disposing of the Voting Securities, for a reasonable period of time to be determined by a directors' determination to facilitate such disposition, provided that during such period of time the number of votes attached to those Voting Securities shall be reduced to a number that is the largest whole number of votes that may be attached to the Voting Securities which that person or company or combination of persons or companies could beneficially own or exercise control or direction over from time to time in compliance with the share constraint; or

10.1.3 for greater certainty, by any person or company that is acting in relation to the Voting Shares solely in its capacity as an intermediary in the payment of funds or the holding or delivery of securities, or both, in connection with trades in securities and that provides centralized facilities for the clearing of trades in securities, but only in respect of that person or company.

11. SAVING PROVISIONS

11.1 Notwithstanding any other provision of this Schedule "8A":

11.1.1 the directors of the Corporation may choose by directors' determination to pay a dividend or to make any other distribution on Voting Securities that would otherwise be prohibited by any other provision of this Schedule "8A" where there is a directors' determination that the contravention of the share constraint that gave rise to the prohibition was inadvertent or of a technical nature and such contravention of the share constraint has been remedied within a reasonable period of time, as determined by the directors; and

11.1.2 where a dividend has not been paid or any other distribution has not been made on Voting Securities as a result of a directors' determination of a contravention of the share constraint, or where the amount of a dividend or any other distribution has been restored to the Corporation under subsection 4.3.2 as a result of a directors' determination of a contravention of the share constraint, the directors of the Corporation shall declare and the Corporation shall pay the dividend, make the distribution, or refund the restored amount to the affected shareholder, respectively, if there is a subsequent directors' determination that no contravention occurred.

11.2 In the event that the Corporation suspends or redeems Voting Securities in accordance with section 6 or 8, respectively, or otherwise redeems, purchases for cancellation or otherwise acquires Voting Securities, and the result of that action is that any person or company or any combination of persons or companies who, prior to that action, were not

in contravention of the share constraint are, after that action, in contravention (the "**Affected Shareholders**"), then, notwithstanding any other provision of this Schedule "8A",

11.2.1 subject to section 11.2.3, the sole consequence of that action to each Affected Shareholder, in respect of the Voting Securities that Affected Shareholder beneficially owned or over which control or direction is exercised at the time of that action, shall be that the number of votes attached to those Voting Securities will be reduced to a number that is the largest whole number of votes that maybe attached to the Voting Securities which that Affected Shareholder could beneficially own or exercise control or direction over from time to time in compliance with the share constraint, as determined by directors' determination;

11.2.2 the directors of the Corporation shall identify, by directors' determination, the Affected Shareholders and the Corporation shall give written notice to each Affected Shareholder so identified, within fifteen (15) days of the directors' determination, of the fact that the Affected Shareholder is in contravention of the share constraint and is entitled to rely on the protection provided in section 11.2.1; and

11.2.3 the protection afforded to any Affected Shareholder in section 11.2.1 is effective from the date the Affected Shareholder is in contravention of the share constraint as a result of the actions of the Corporation described above, up to and including the date that is 180 days after that date.

The accidental failure or omission to give the notice referred to in section 11.2.2 to one or more of the Affected Shareholders shall not affect the validity of the provisions of this section 11.2.

11.3 Notwithstanding any other provision of this Schedule "8A", a contravention of the share constraint shall have no consequences except those that are expressly provided for in this Schedule "8A" or under applicable law. For greater certainty but without limiting the generality of the foregoing:

11.3.1 no transfer, issue or ownership of, and no title to, Voting Securities;

11.3.2 no resolution of shareholders (except to the extent that the result is affected as a result of a directors' determination under subsection 4.3.1); and

11.3.3 no act of the Corporation, including any transfer of property to or by the Corporation;

will be invalid or otherwise affected by any contravention of the share constraint.

12. DIRECTORS' DETERMINATIONS

12.1 The directors of the Corporation shall have the sole right and authority to administer the provisions of this Schedule "8A" and to make any determination required or

contemplated under this Schedule "8A". In so acting, the directors of the Corporation shall enjoy, in addition to the powers set out in this Schedule "8A", all of the powers necessary or desirable, in their sole opinion, to carry out the intent and purpose of this Schedule "8A" including, without limitation, the power to require:

12.1.1 the filing of a shareholder's declaration under section 13;

12.1.2 the production of all documents in the possession, power or control of the maker of the shareholder's declaration touching or concerning the subject of the shareholder's declaration, together with certification that such production has been made;

12.1.3 the response to such written interrogatories concerning the subject of the shareholder's declaration as the directors of the Corporation may determine to ask the maker of the shareholder's declaration; and

12.1.4 the attendance before the directors of the Corporation of the maker of the shareholder's declaration or such other persons or companies related thereto as the directors may determine, for the purpose of responding to questions from the directors of the Corporation concerning the subject of the shareholder's declaration.

12.2 In the event of a directors' determination that a person or company has failed to provide a complete, accurate and timely response to a request for information that the directors of the Corporation have made pursuant to their powers under section 12.1, the directors of the Corporation may draw an inference adverse to the interests of that person or company.

12.3 The directors of the Corporation shall make, on a basis which is timely in the circumstances, all determinations necessary for the administration of the provisions of this Schedule "8A" and, without limitation, if the directors of the Corporation consider that there are reasonable grounds for believing that a contravention of the share constraint has occurred or will occur, the directors of the Corporation shall make a determination with respect to the matter. All directors' determinations shall be conclusive, final and binding except to the extent modified by any subsequent directors' determination. Notwithstanding the foregoing, the directors of the Corporation may delegate, in whole or in part:

12.3.1 their power to make a directors' determination in respect of any particular matter to a committee of the board of directors of the Corporation subject to section 127 of the OBCA; and

12.3.2 any of their other powers under this Schedule "8A" subject to sections 127 and 133(a) of the OBCA.

12.4 In administering the provisions of this Schedule "8A", including, without limitation in making any directors' determination required or contemplated under this Schedule "8A", the directors of the Corporation shall act honestly and in good faith with a view to the

best interests of the Corporation and shall exercise their business judgment. In this regard, the directors of the Corporation shall not owe fiduciary duties or any duty of care to those who could be affected by their determinations, although the directors of the Corporation shall endeavour to make their determinations by way of a process that is fair in all the circumstances to those who could reasonably be expected to be affected.

12.5 The directors of the Corporation shall not be considered to be subject to a conflict of interest in administering the provisions of this Schedule "8A" and there shall be no reasonable apprehension of bias by reason only that their own tenure as directors or officers of the Corporation could be affected directly or indirectly by a determination they are to make pursuant to the provisions of this Schedule "8A".

12.6 In administering the provisions of this Schedule "8A", the directors of the Corporation may rely on any information on which the directors of the Corporation consider it reasonable to rely in the circumstances. Without limitation, the directors of the Corporation may rely upon any shareholder's declaration, the securities register of the Corporation, the knowledge of any director, officer, employee or agent of the Corporation or any advisor to the Corporation and the opinion of counsel to the Corporation.

12.7 Provided that the directors of the Corporation have acted honestly and in good faith, no shareholder of the Corporation or any other interested person or company shall have any claim or action against the Corporation or against any director or officer of the Corporation nor shall the Corporation have any claim or action against any director or officer of the Corporation arising out of or in relation to any act (including any omission to act) performed under or in pursuance of the provisions of this Schedule "8A", and, for greater certainty, neither the Corporation nor any director or officer shall be liable for any damages or losses related to or as a consequence of any such act or any breach or alleged breach of the provisions of this Schedule "8A". To the extent that, in accordance with sections 12.1 or 12.3, any other person exercises the powers of the directors of the Corporation under these provisions, this section 12.7 applies *mutatis mutandis*.

12.8 Any directors' determination required or contemplated by this Schedule "8A" shall be expressed and conclusively evidenced by a resolution of the directors of the Corporation, or of any committee of the directors exercising the powers of the directors of the Corporation under this Schedule "8A" pursuant to section 12.3.1, duly adopted.

13. SHAREHOLDER'S DECLARATIONS

13.1 For purposes of monitoring the compliance with and of enforcing the provisions of this Schedule "8A", the directors of the Corporation may require that any registered holder or beneficial owner of Voting Securities, or any other person or company of whom it is, in the circumstances, reasonable to make a request (including, without limitation, any person who wishes to have a transfer of a Voting Security registered in the name of, or to have a share issued to, that person), file with the Corporation or its registrar and transfer agent a completed shareholder's declaration. The directors of the Corporation shall approve from time to time written guidelines with respect to the nature of the

shareholder's declaration to be requested, the times at which shareholder's declarations are to be requested and any other relevant matters relating to shareholder's declarations.

13.2 A shareholder's declaration shall be in the form from time to time approved by the directors of the Corporation under section 13.1 and, without limitation, may be required to be in the form of a simple declaration in writing or a statutory declaration under the *Evidence Act* (Ontario). Without limitation, a shareholder's declaration may be required to contain information with respect to:

13.2.1 whether the person or company is the beneficial owner of, or exercises control or direction over, particular Voting Securities or whether any other person or company is the beneficial owner of, or exercises control or direction over, those Voting Securities; and

13.2.2 whether the person or company is acting jointly or in concert with any other person or company or is part of a combination of persons or companies acting jointly or in concert with respect to any Voting Securities, including whether the person or company and any other person or company are parties to an agreement or an arrangement, a purpose of which is to require them to act in concert with respect to their interests, direct or indirect, in the Corporation.

14. MISCELLANEOUS

14.1 The invalidity or unenforceability of any provision, in whole or in part, of this Schedule "8A" for any reason shall not affect the validity or enforceability of any other provision or part thereof.

14.2 Subject to the OBCA and the Electricity Act, the directors of the Corporation may make, amend or repeal any rules or by-laws they deem necessary or appropriate to administer the share constraint.

14.3 In addition to dealing with registered holders of Voting Securities in the administration of the provisions of this Schedule "8A", the directors of the Corporation and the Corporation may also deal with the beneficial owner of Voting Securities if the identity of the beneficial owner is known to the directors of the Corporation and the Corporation as a result of a directors' determination or otherwise. Without limiting any other provision of this Schedule "8A", where the identity of the beneficial owner is unknown, the directors of the Corporation may require the registered holder to assist the Corporation in ensuring compliance by the beneficial owner with the share constraint.

9. Other provisions if any:
Autres dispositions, s'il y a lieu :

None.

10. The names and addresses of the incorporators are:
Noms et adresses des fondateurs :

First name, middle names and surname or corporate name *Prénom, autres prénoms et nom de famille ou dénomination sociale*	Full address for service or if a corporation, the address of the registered or head office giving street & No. or R.R. No., municipality, province, country and postal code *Domicile élu au complet ou, dans le cas d'une société, adresse du siège social ou adresse de l'établissement principal, y compris la rue et le numéro ou le numéro de la R.R., la municipalité, la province, le pays et le code postal*
Angela Carberry	79 Wellington Street W., 30th Floor, TD South Tower Toronto, ON M5K 1N2

These articles are signed in duplicate.
Les présents statuts sont signés en double exemplaire.

Full name(s) and signature(s) of incorporator(s). In the case of a corporation set out the name of the corporation and the name and office of the person signing on behalf of the corporation
Nom(s) au complet et signature(s) du ou des fondateurs. Si le fondateur est une société, indiquer la dénomination sociale et le nom et le titre de la personne signant au nom de la société

Angela Carberry

Signature / signature

Name of incorporator (or corporation name & signatories name and office)
Nom du fondateur (ou dénomination sociale et nom et titre du signataire)

Signature / signature

Name of incorporator (or corporation name & signatories name and office)
Nom du fondateur (ou dénomination sociale et nom et titre du signataire)

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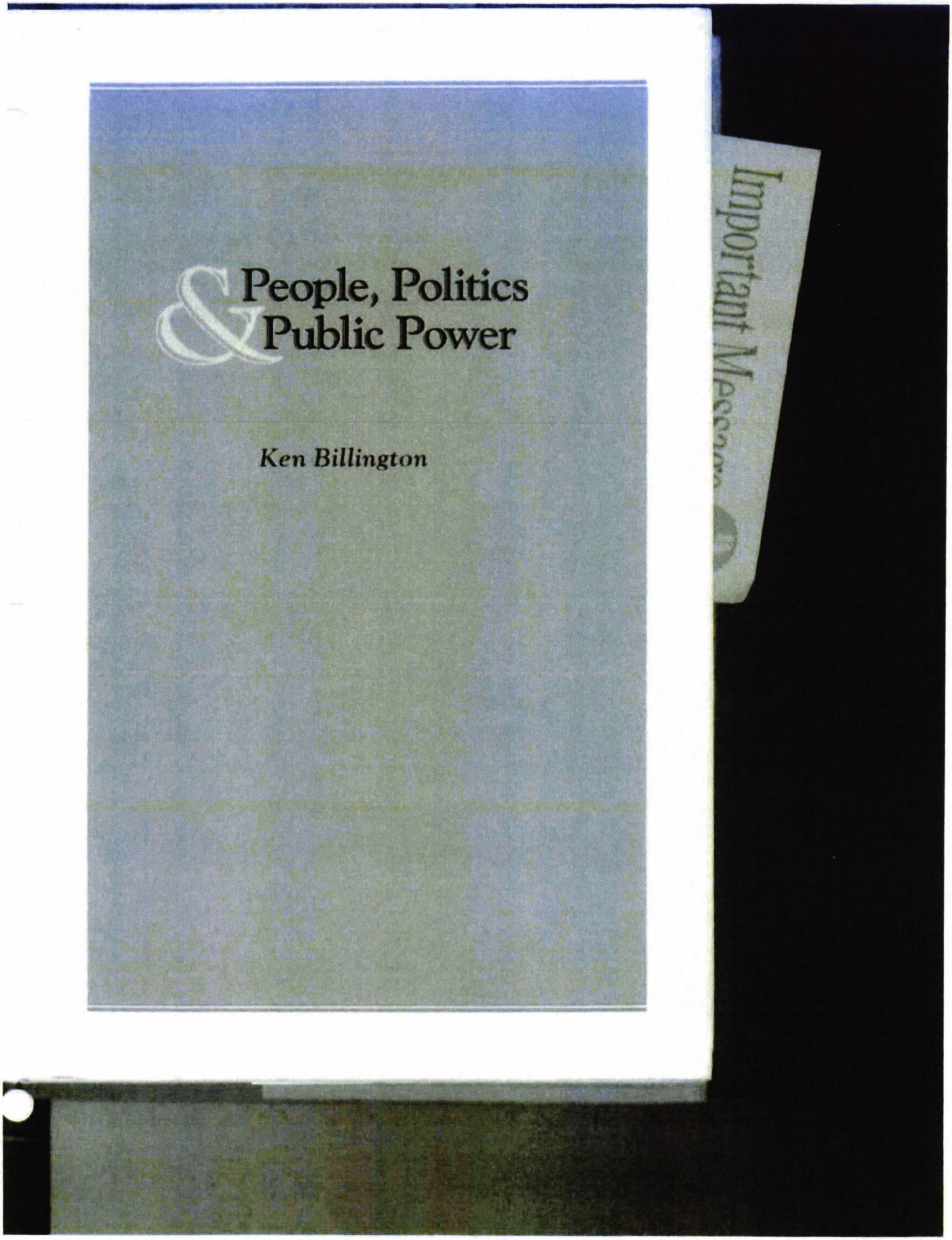
Name of incorporator (or corporation name & signatories name and office)
Nom du fondateur (ou dénomination sociale et nom et titre du signataire)

Signature / signature

Name of incorporator (or corporation name & signatories name and office)
Nom du fondateur (ou dénomination sociale et nom et titre du signataire)

EXHIBIT B


& People, Politics
Public Power
Ken Billington
Important Messa

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People, Politics & Public Power

The strong public power movement in the Pacific Northwest began as a protest against the abuses of the monopoly private power companies, which were owned by eastern holding companies more interested in making money than in providing good electric service.

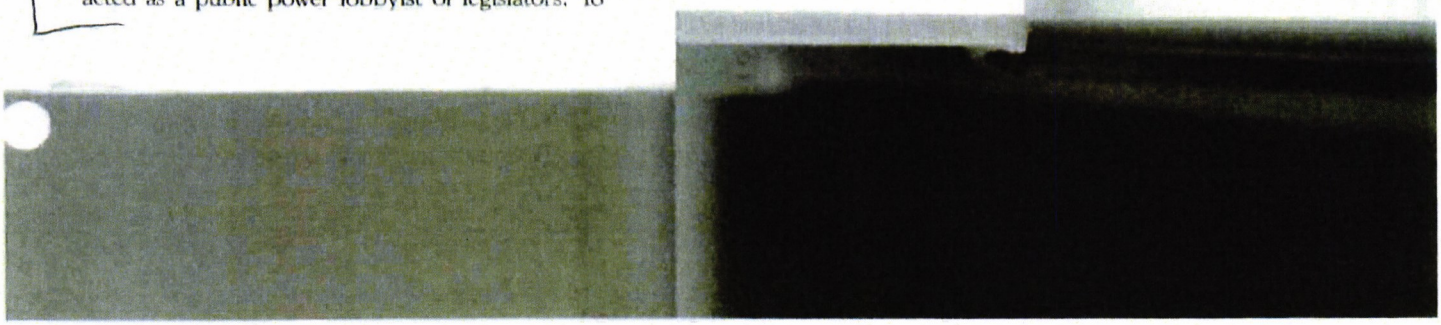
Electric rates were exorbitant for people in the cities, but they were the lucky ones. Farmers' wives were cooking on wood stoves and scrubbing their clothes on washboards into the late 1930's because the private companies refused to build lines to rural areas. In Washington State, farmers through their granges joined with labor organizations to do something about the problem, and in 1930 Initiative 1 to the legislature, the basic public power law, was passed by a statewide vote of the people.

The new law permitted the people of a county to create a public utility district and elect local commissioners to provide not-for-profit utility service under strict procedures set by the legislature.

With the election of Franklin D. Roosevelt in 1932, the broad federal public power program got under way, and the Bonneville Power Administration became the main supplier of power to the PUDs.

But the private companies did not give up easily. In the Washington State Legislature, they sought to weaken the public power law by introducing bills at every session to hamstring the public utility districts if they could not dissolve them. In Congress, they tried to do away with the "preference clause" in the BPA law which gives public power utilities first rights to buy low-cost Bonneville power.

Onto this battlefield in 1951 came Ken Billington, the young Executive Director of the Washington Public Utility Districts' Association, who acted as a public power lobbyist of legislators. To



People, Politics & Public Power

by

Ken Billington

Washington Public Utility Districts' Association
Seattle, Washington

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With active negotiations going on for three eastern Washington PUDs to acquire the common stock of Washington Water Power from AP&L, the Idaho Legislature rushed a law through, under private power urging, making it illegal for any PUD to own property in that state. The law also established substantial penalties and fines for PUD officials found guilty of trying to acquire property for a public utility. In this State, efforts to block the PUD purchase took the form of legislation providing that the City of Spokane would have a vote on the matter. Proponents of the bill were claiming that public power was being "rammed down the throats" of the Spokane people who had never voted for public power. This legislation was supported by Governor Arthur B. Langlie, who came from the City of Seattle and as its former Mayor had been supportive of Seattle City Light, but felt strongly that local people should have the right to vote on whether they wanted public power. Backed by the Governor's support, the Senate passed the bill by a vote of 28 to 17. To offset this pro-private power legislation, the PUD forces sponsored a bill mandating that the City of Spokane would have the right to acquire such properties from the PUDs should the purchase occur, and that the city could make the purchase by condemning any such PUD-owned properties. The issues bounced back and forth between the Senate and the House by means of parliamentary maneuvers until March 7, when utter confusion arose over a statement on the House floor by a Pierce County representative that he and one other member had been offered a bribe to support the Spokane Power Bill. His accusations resulted in the investigation and jailing of the person he named although no direct link could be established between that person and the private power lobbyists who were suspected of being behind the bribe. The result was defeat of the Spokane Power Bill in the House 55 to 44 and passage by the Legislature of the PUD-sponsored legislation to make sure that if the PUDs' purchase went forward, the people of Spokane could take over the properties in that city.

It was during this legislative session that an event took place which changed my personal life. Frank Stewart had left the Washington Public Utility Commissioners' Association in early 1950 to pursue business developments in Brewster where construction of the Chief Joseph Dam had just started. Replacing Stewart as Executive Secretary was John McCauley, who had previously joined the PUD Association's staff as an editor of its newsletter. During House consideration of the public power sponsored bill, a vote on the House floor was scheduled for a Friday. On Monday of that week, McCauley sent a special notice to the various PUD commissioners around the State which included a list of House members whom McCauley labeled as being ready to
it; and a list of those whose inter
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for their support. On Friday, jus
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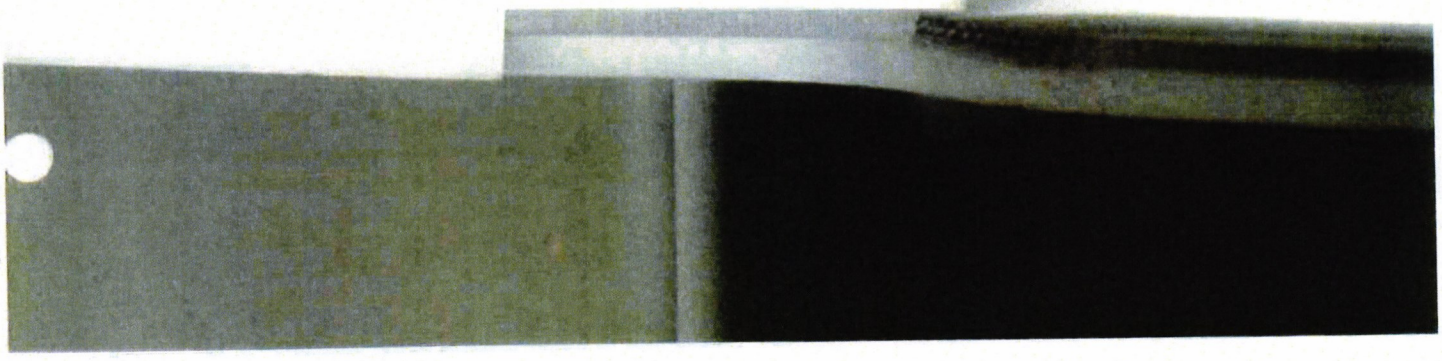


EXHIBIT C

Motion to Suspend Rules

House of Representatives, Boise, Idaho,
January 22, 1951.

Mr. Speaker:

I move that all rules of the House interfering with the immediate passage of House Bill No. 26 be suspended; that the portions of Section 15, Article 3 of the Constitution of the State of Idaho, requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that House Bill No. 26 be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

Moved by Mr. Young.

Seconded by Mr. Murphy.

Roll call resulted as follows:

AYES—Barrett, Bell, Blick, Brewer, Canarrusa, Chalfant, Coiner, Commons, Davis, Dinnison, Doane, Doolittle, Drevlow, Eastman, Emery, Everett, Gardner, Gooch, Gowey, Grayot, Gunnell, Hampton, Hanson, Isaacson, Jensen, Jones, Larsen, LaTurner, Mendenhall, Merrill, Miller, Mills (Boise), Monroe, Munk, Murphy, Nielsen, Paulson, Payton, Pyle, Ricks, Roche, Sewell, Storey, Vandenberg, Vincent, Westfall, Willes, Wilson, Winkler, Young, Mr. Speaker. Total—51.

NAYS—Koschmitter, Smith, Vetter. Total—3.

Absent and excused—Gaffney, Gwartney, Holm, McDevitt, Vernon. Total—5.

Total—59.

Whereupon, the Speaker declared that more than two-thirds having voted in the affirmative, the motion prevailed, the rules were suspended, and House Bill No. 26 was read the first time by title, second time by title, and the third time at length, section by section, and placed upon its final passage.

House Bill No. 26 was read the first time by title, the second time by title, and third time at length, section by section, and placed before the House for final consideration.

The question being: "Shall House Bill No. 26 pass?"

Roll call resulted as follows:

AYES—Barrett, Bell, Blick, Brewer, Canarrusa, Chalfant, Coiner, Commons, Davis, Dinnison, Doane, Doolittle, Emery, Everett, Gardner, Gooch, Gowey, Grayot, Gunnell, Hampton, Hanson, Isaacson, Jensen, Jones, Larsen, LaTurner, Mendenhall, Merrill, Miller, Mills (Boise), Monroe, Munk, Murphy, Nielsen, Paulson, Pyle, Ricks, Roche, Sewell, Storey, Vincent, Westfall, Willes, Wilson, Winkler, Young, Mr. Speaker. Total—47.

NAYS—Drevlow, Eastman, Koschmitter, Payton, Smith, Vandenberg, Vetter. Total—7.

Absent and excused—Gaffney, Gwartney, Holm, McDevitt, Vernon. Total—5.

Total—59.

Whereupon, the Speaker declared House Bill No. 26 passed.

Title was approved and the bill ordered transmitted to the Senate.

At this time the Speaker excused the Appropriations Committee.

Motions and Resolutions
Motion to Suspend Rules

Senate Chamber, Boise, Idaho,
January 22, 1951.

Mr. President:

I move that all rules of the Senate interfering with the immediate passage of House Bill No. 26 be suspended; that the portions of Section 15, Article 3 of the Constitution of the State of Idaho, requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that House Bill No. 26 be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

Moved by Senator Soelberg.

Seconded by Senator Starr.

The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES—Albertini, Alexander, Blackstock, Bolton, Burns, Burstedt, Buxton, Campbell, Cook, Collin, Costley, Davis, Detweiler, Farthing, Geaudreau, Goodwin, Irwin, Jackson, Johnston, Jones, Meek, Middlemist, Moore, Murdock, Nock, Ransom, Schwendiman, Schwiebert, Slusser, Soelberg, Sorensen, Starr, Tate, Thatcher, Wetherell, Wherry, Wright. Total—37.

NAYS—Hamilton, Ingalls, Phillips. Total—3.

Absent and not voting—None.

Excused—Buhr, Lowry, Miller and Snook. Total—4.

Two-thirds having voted in the affirmative, the President declared the rules suspended.

House Bill No. 26 was read the first time by title, the second time by title, and third time at length, section by section, and placed before the Senate for final consideration, the question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES—Albertini, Alexander, Blackstock, Bolton, Burns, Burstedt, Buxton, Campbell, Cook, Collin, Costley, Davis, Detweiler, Farthing, Geaudreau, Goodwin, Irwin, Jackson, Johnston, Jones, Meek, Middlemist, Moore, Murdock, Nock, Ransom, Schwendiman, Schwiebert, Slusser, Soelberg, Sorenson, Starr, Tate, Thatcher, Wetherell, Wherry, Wright. Total—37.

NAYS—Hamilton, Ingalls, Phillips. Total—3.

Absent and not voting—None.

Excused—Buhr, Lowry, Miller and Snook. Total—4.

Whereupon the President declared the bill passed.

Title was approved and the bill ordered returned to the House.

There being no objection, the Senate returned to the Ninth Order of Business.

Messages from the House

House of Representatives, Boise, Idaho,
January 22, 1951.

Mr. President:

I have the honor to return herewith Senate Concurrent Resolution No. 3 which has passed the House.

C. A. BOTTOLFSEN,
Chief Clerk.

EXHIBIT D

THIRTY-FIRST BIENNIAL REPORT OF THE

Attorney General

OF

Idaho

1951 - - - 1952

ROBERT E. SMYLIE
Attorney General

in the office. The increased work load is being handled with an increase in personnel amounting to only 20 per cent over the staff during the 1941-1943 biennium.

LITIGATION

A review of the docket section of this report will indicate that we have been able to close many pending cases in the office and that the litigation docket is now in better condition than at any recent time. This has been due in part to the enactment of the new provisions of the Income Tax Law which authorize the Tax Collector to execute and issue warrants of distraint for unpaid taxes. Previously a law suit had to be instituted on each delinquent account. This has not automatically reduced the burden of work in this office by the numerical number of cases, because each distraint warrant requires consultation. However, the litigation burden, with its consequent costs, has been substantially lessened by the new statute. The cases which are now on the docket, however, are complex, and time-consuming in nature. A detailed report of the litigation activity of the office is attached to this report. Some of the more interesting cases are described below.

The Washington Water Power Case

The 1951 Legislature enacted a statute which forbade acquisition by a municipal corporation of another state of facilities for the generation or transmission of electrical energy in Idaho. The statute was patently aimed at preventing acquisition by Public Utility Districts of the State of Washington of the operating properties of the Washington Water Power Company located in North Idaho. The enactment of the statute was productive of the most time consuming litigation in which the office has been engaged in the period reported in this report. Our efforts were directed at the problem of securing enforcement of the new statute.

The Washington Water Power Company was then a wholly owned subsidiary of American Power & Light Company. In 1942, the American Company had been ordered by the Securities & Exchange Commission of the United States to divest itself of its operating properties, including the Washington Company. In 1951, the American Company entered into a contract to sell all of the common stock of the Washington Company to the Washington State Public Utility Districts. Certain citizens of the Public Utility Districts undertook to restrain the purchase by the Districts on the ground that acquisition of the Idaho properties by the Washington Districts was beyond their power. The Washington State Courts so held and enjoined the sale and purchase as then proposed.

Thereupon, we urged the Securities & Exchange Commission to enforce its 1942 order of dissolution by taking mandatory action against

the American Company. We suggested that the proper method of accomplishing a divestiture of the Washington Company was by distribution of the Washington Company common stock to the stockholders of the American Company, *pro rata* as their ownership in the American Company appeared.

After a series of hearings the Securities & Exchange Commission ordered that such divestiture occur not later than January 1, 1952 unless plans were then in process of completion which would effect some other disposition of the Washington Company. Just prior to the deadline, the American Company filed a plan for another sale of the Washington Company to the Public Utility Districts and to an Idaho Corporation not yet formed. It developed that no contract of sale had been entered into between the proposed parties and that the Idaho corporation, while non-profit in character, would in effect be another holding company for the operating property. We felt compelled to resist this plan and made appropriate representation to the Securities & Exchange Commission. An order was entered setting the American plan for sale and, the plan for divestiture by distribution down for hearing.

The Public Utility Districts thereupon sought a restraining order in the U.S. Circuit Court of Appeals for the Ninth Circuit against holding the hearing. We joined the Securities Commission in seeking to have the restraining order dissolved and the petition for review of the Commission's action dismissed. The Court agreed with this position, dismissed the petition for review and dissolved the restraining order. The Commission thereupon ordered the hearing. The American Company then filed a plan for distribution in accordance with our initial suggestion to the Commission. That distribution was finally accomplished on August 21, 1952 and the Washington Company is now an independent operating utility, without holding company control of any kind. The purposes of the 1951 statute have been rendered effective. We entered the litigation at the Federal administrative level in order to avoid long, difficult and costly litigation in our own State Courts, and in the several United States Courts.

The Clinger Case

Two cases arose in Madison County which are of fundamental importance to the conduct of the public trust imposed on the administration of the public school lands. The Land Board offered a section of land in that county for sale at public auction to the highest bidder. The land was offered in two parcels. On one parcel a competing bidder was successful and on the other the person who had applied to have the land offered for sale was successful. The competition at the auction was brisk, and the person who applied to have the land offered for sale dishonored her check for the down payment on the next business

EXHIBIT E

Bill Passed Banning Public Utility Sales to Governmental Agencies

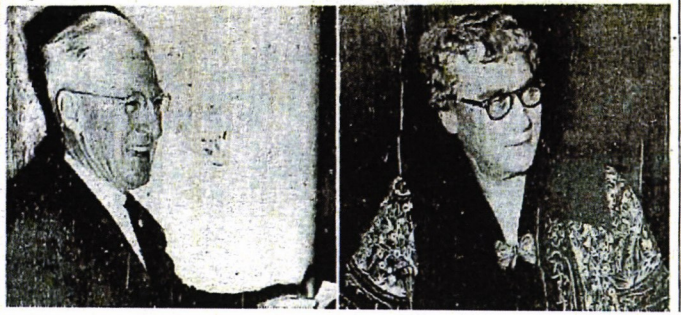
Quick Action On Measure Draws Protest

Proponents Declare Law May Prevent Loss of Revenue

By JOHN CORLETT
Statesman Political Editor

The Idaho legislature suspended rules Monday and passed a bill through both houses which would bar the sale of utility properties in Idaho to any governmental agency or instrumentality outside the Gem state.

Little Sketches of Idaho Legislators



Trading Stamp Issue Argued Before Solons

Friends and Enemies Of Premium Plan Appear at Hearing

Friends and foes of the little "green" stamps, which housewives redeem for premiums, invaded the Idaho legislature Monday to present their pro and con arguments befbre a house state affairs subcommittee.

A bill has been introduced in the house which would outlaw the use of the so-called trading stamp program and some of them even volunteered petitions."

Church said that if "we had a week or two more between 50,000 and 75,000 signatures could be obtained to retain the stamps," and added:

"If the stamp program is not sound or is a bad practice, it will die of its own weight."

Church presented the replies from the merchants to the subcommittee.

Boice told the committee that he used green stamps and said "these fellows selling the green stamps are making 54 per cent profit."

Newhouse said that a careful check in his store showed that 74 per cent of the stamps were being used. He said they represented a cash discount to his customer and that the prices were not raised "one cent."

Termed "Vicious"

Eastman said he was jealous [illegible] should license the firms which sell the stamps."

He got no direct answer to that question.

Eastman said that "if some of the profits going out of the state could be returned he would be in favor of it."

Later Rep. Dave Doane (R-Ada) said he believed that a bill now before the legislature would aid in procuring income tax on income made in Idaho by oue-of-state [illegible]

UTAHAN TO SPEAK

WEISER (Special) — Weiser Chamber of Commerce members will hear Gus Backman, Salt Lake City. Chamber secretary, as principal speaker at their annual meeting Jan. 31 at 7:30 o'clock. Backman will discuss Utah travel exploitation. Weiser Chamber President Jack Bennett will preside at the meeting.

Twin Falls Woman Killed in Headon Automobile Crash

JEROME (AP)—Mrs. Ben Aspey, 48, Twin Falls, was killed instantly and two men injured in a headon auto accident on U. S. highway 93 south of here Monday.

The accident occurred shortly after 9 a. m. Mrs. Aspey was riding in a car driven by her husband. Donal Hine, Filer, was driver of the other car. Aspey, a prominent Twin Falls real estate broker, and Hine are in the Magic Valley Memorial hospital at Twin Falls. Attendants said their condition was "just fair."

State Patrolman Gene Hagler is investigating the crash.

The death was the second for Magic valley in 1951, both occur-

Bill Passe

Quick Action On Measure Draws Protest

Proponents Declare Law May Prevent Loss of Revenue

By JOHN CORLETT
Statesman Political Editor

The Idaho legislature suspended rules Monday and passed a bill through both houses which would bar the sale of utility properties in Idaho to any governmental agency or instrumentality outside the Gem state.

After less than 15 minutes debate, the house approved the measure by a whopping vote of 47 to 7. The measure, rushed to the senate, was passed there 37 to 3, with hardly more than 10 minutes of discussion. Democrats cast the only no votes.

The measure's supporters justified the suspension of the rules to get immediate action on the ground that an emergency situation existed which might cost the state of Idaho close to $500,000 in revenue. They explained that negotiations were now going on in New York for the sale of the Washington Water Power company's north Idaho utility properties to a group of public utility districts in nearby Washington state. The tax-exempt status of the PUD's, said the bill's proponents, would prove costly to Idaho.

Argue Against Haste

The opponents argued against the haste. Some of the north Idaho house members contended they were not being given adequate time to get the viewpoint of their constituents.

Earlier, the senate approved by a 35 to 0 vote a measure which appropriates $1,000,000 from the general fund to the governor for emergency civil defense purposes. The measure carries restrictions which would prevent the governor from using any of the funds unless the United States and Canada were confronted by an enemy attack.

The senate, also by a 35-0 vote, approved a bill that would provide a simpler system whereby members of the armed forces could vote in national, state and county elections in their absence from Idaho.

Caucuses Held

The public utility measure came up in the house after a noon hour recess and after Democratic and Republican members held separate caucuses. Suspension of the rules was okehed by a 51 to 8 vote.

It immediately became obvious that Rep. Jesse Vetter, the veteran Democrat from Kootenai, was prepared to scrap. Twice he objected to moves for unanimous consent to have the clerk stop reading the lengthy bill and have it entered on the record as read in full. And so the house sat quietly as Chief Clerk C. A. Bottolfson droned through the seven closely-typed pages.

Then Rep. David Doane (Ada), assistant Republican floor leader, opened the debate for the bill's supporters. He explained that the major purpose was to protect power users of Idaho, particularly those in North Idaho, "to be sure that the electric utility properties be owned in Idaho and not escape taxation."

He told the house that there

Then Rep. David Doane (Ada), assistant Republican floor leader, opened the debate for the bill's supporters. He explained that the major purpose was to protect power users of Idaho, particularly those in North Idaho, "to be sure that the electric utility properties be owned in Idaho and not escape taxation."

He told the house that there was now pending negotiations between the Washington Water Power company and the PUD group from Washington for the sale of the former's north Idaho properties.

"How soon they are going through with the deal, we don't know," said Doane, "but it is essential that this bill be passed right away."

Leads Opposition

Vetter, leading off for the opposition, said "I don't see any necessity for rushing this kind of legislation through." He said the measure was put on his desk only this morning.

"It is so complicated, I've written my attorney," he added. "All I know about this bill came from the attorney for the Idaho Power company and I'll tell you what I told him to his face—I don't trust him."

Standing at his desk with thumbs hooked into his lower vest pockets, Vetter turned his attention to the PUD's. These cooperative groups, he said, were owned by farmers "and I'd rather trust the farmers—I'm satisfied they will not exploit the people."

"Something," said Vetter, his high-pitched voice rising higher, smells mighty strong to me that they're trying to get this through so quick."

Rep. Joseph Kaschmitter (D-Idaho) took up for the opposition.

"Many of the things that Mr. Vetter has said, I am in full accord," he said. "I ask—why the haste? I, for my part, want to know a little more before I vote in favor of it."

Rep. William Pyle (R-Gooding) directed a question at Vetter.

"I, too, am a farmer," he said. "I ask you will the farmers who are trying to buy these utilities have integrity enough to pay their taxes in Idaho?"

"I'm willing to trust 'em," was Vetter's reply.

Rep. William C. Smith (D-Shoshone) echoed Kaschmitter's words.

Rep. Walter Dinmson (R-Clearwater), reminding that he was a north Idahoan, said he regarded haste as essential in the present matter.

Closing debate, Doane emphasized that his interest in the bill was dictated by his conviction that the measure was to the interest of the state. He said that if the north Idaho properties were sold before the legislature could stop it, the state would lose at least $460,000 in revenues.

Those voting against the bill in the house—all Democrats—were Reps. W. E. Drevlow (Lewis), Sam Eastman (Kootenai), Kaschmitter (Idaho), W. O. Payton (Valley), Smith (Shoshone) and Marvin G. Vandenberg (Boundary), and Vetter.

In the senate, Sen. E. J. Soel-

berg (R-Butte), the majority floor leader, launched the debate by saying there was "great urgency" for passage of the measure because of negotiations now in progress in New York City.

"If the sale is made prior to passage of this bill, Idaho would stand to lose heavily in taxes. If the Washington Water Power company were transferred to the tax-exempt PUDs in Washington, the state of Idaho would stand to lose a lot of money."

Sen. Clark Hamilton (D-Washington) was the only opponent to take the floor against the bill in the senate. He said he opposed the hurry in passing the bill.

At another point he said he thought "it was a vicious bill, a bad bill."

Later, referring to public-owned utilities, he said:

"I feel they ought to be brought back on the tax rolls. I think all cooperatives should pay taxes."

Sen. William J. Costley (D-Lewis) said, "If we want PUDs in Idaho it should be for this body and the one across the hall (house) to set up the "plan." He expressed fear that failure to pass the measure might mean that PUDs would be forced on Idaho. Senator Costley said he was served by REA and private power company, adding that REA rates were higher than Washington Water Power's, "but there's a reason for it."

Rejections Noted

Sen. William C. Moore (R-Latah) noted that Spokane county voters in Washington had twice rejected public utility districts and that Asotin county, Washington, which adjoins his home county, just last November rejected a PUD by a five-to-one vote.

"Why, if they don't care about PUD in nearby Washington state, should it be thrust upon us," Senator Moore demanded.

The three senate votes against the bill were cast by Sens. Hamilton (Washington), James L. Ingalls (Kootenai) and Clarence Phillips (Cassia).

During its morning and afternoon sessions, the house received eight bills, one of these, introduced by Rep. Frank Chalfant, (R-Ada) and Rep. Peter J. Ricks (R-Madison), would prevent the sale of beer in such establishments as grocery stores and any other place where youths under 20 are permitted to enter.

Six bills and a joint memorial were introduced in the senate.

Both the house and senate adjourned until 10 a. m. today.