

**BEFORE THE WASHINGTON
UTILITIES & TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of HYDRO ONE LIMITED and AVISTA
CORPORATION For an Order Authorizing Proposed Transaction.

DOCKET U-170970

SUPPLEMENTAL TESTIMONY OF J. RANDALL WOOLRIDGE

ON BEHALF OF

PUBLIC COUNSEL

EXHIBIT JRW-5T

October 4, 2018

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EXHIBITS LIST

Exhibit JRW-6	Timeline of Major Events in Avista-Hydro One Merger
Exhibit JRW-7	Hydro One's Response to Public Counsel Data Request 36

1 **I. INTRODUCTION / SUMMARY**

2 **Q: Please state your full name, address, and occupation.**

3 A: My name is J. Randall Woolridge, and my business address is 120 Haymaker Circle,
4 State College, PA 16801. I have previously provided testimony in this proceeding on
5 behalf of the Public Counsel Unit of the Washington Office of the Attorney General
6 (Public Counsel). I also participated in the May 22, 2018, Washington Utilities and
7 Transportation Commission (Commission) hearings in this proceeding in Olympia.

8 **Q: Please summarize your supplemental testimony.**

9 A: My supplemental testimony provides an updated evaluation of Hydro One's proposed
10 acquisition of Avista. This updated evaluation is necessary due to the recent
11 developments at Hydro One in the wake of the Province of Ontario's June elections. The
12 election of Douglas Ford as Premier of Ontario led to the replacement of the entire board
13 of directors of Hydro One as well as the retirement of CEO Mayo Schmidt. The
14 Commission subsequently requested commentary from all parties, extended the period
15 for the evaluation of the proposed transaction, and provided for supplemental testimony
16 and hearings.

17 The Parties have met and conferred regarding additional commitments, or
18 modifications of commitments, to strengthen the protections for Avista's customers. The
19 Parties' initial settlement contained a strong set of commitments, and the events in
20 Ontario presented an opportunity to evaluate whether the protections originally proposed
21 by the Parties would provide adequate protections. The Parties have taken advantage of
22 this opportunity and now propose certain additions and modifications to the
23 commitments, which are discussed more fully in my testimony.

1 The risks associated with the proposed transaction do not reduce to zero, as
2 demonstrated by the events in Ontario. I conclude that the Parties' settlement, including
3 the additional and modified commitments discussed below, provide Avista's customers
4 with the strongest protections against the transaction's risk. I conclude that the
5 commitments, including the additions and modifications, provide customers with net
6 benefits, and Public Counsel recommends that the Commission approve the transaction.

7 **Q: How is your testimony organized?**

8 A: The following is an outline of my testimony:

- 9 • First, I review my initial testimony in this proceeding, and I discuss the "net benefit"
10 standard in the state of Washington;
- 11 • Second, I provide an overview of my initial testimony and highlight issues discussed
12 at the May 22nd hearings;
- 13 • Third, I discuss developments following the June elections in Ontario, the changes at
14 Hydro One, and political risks;
- 15 • Fourth, I review the supplemental testimonies of the Joint Applicants; and
- 16 • Finally, I provide my assessment of the developments and the protections provided in
17 the Settlement.

18 **II. OVERVIEW OF INITIAL TESTIMONY AND HEARINGS**

19 **Q: Please discuss Public Counsel's initial testimony in this proceeding.**

20 A: Exhibit JRW-6 provides a timeline of events in this matter. The Joint Applicants filed
21 their Application for Merger with the Commission on September 14, 2017. Following
22 months of discovery and negotiation, the parties filed the Settlement Stipulation and

1 Agreement (Settlement) on March 27, 2018. On April 22, 2018, Mr. Corey Dahl and I
2 filed testimony on behalf of Public Counsel in support of the Settlement.¹ Hearings on
3 the proposed transaction were held on May 22, 2018, in Olympia.

4 In my testimony, I recommended that the Commission accept the Settlement without
5 condition. My recommendation was based on the agreed upon terms and 81 commitments
6 provided in the Settlement Stipulation and Agreement. The Settlement followed five
7 months of discovery and negotiations between Joint Applicants and the Settling Parties.
8 The Settlement contained significant additions and improvements to the terms and
9 commitments the Joint Applicants filed in their initial application. The additions and
10 improvements to the merger terms led me to conclude that the proposed transaction meets
11 the “net benefit” standard required by statute in the state of Washington.

12 **Q: Please briefly review Washington’s “Net Benefit” standard in utility mergers.**

13 A: The Revised Code of Washington (RCW) section 80.12.020 requires that the Commission
14 will approve a public service company’s transaction only if it results in a “net benefit” to
15 ratepayers. It is my understanding that this requires that ratepayers not only be shielded or
16 compensated for the transactional risk, but also that ratepayers must realize tangible benefits
17 from the transaction. In my opinion, the merger terms under the Settlement met this
18 standard by providing “net benefits” to ratepayers relative to, and in consideration of, the
19 risks associated with the proposed merger.

¹ The Parties to this case include Avista and Hydro One as Joint Applicants. The Non-Applicant Parties include Public Counsel; Staff of the Washington Utilities and Transportation Commission (Staff); Northwest Industrial Gas Users (NWIGU); Industrial Customers of Northwest Utilities (ICNU); The Energy Project; NW Energy Coalition (NWECC), Renewable Northwest (RNW), Natural Resources Defense Council (NRDC); Sierra Club; and the Washington and Northern Idaho District Council of Laborers (WNIDCL).

1 **Q: Please describe your testimony at the Olympia hearings on net benefits.**

2 A: At the outset of the hearings, Chairman Danner asked me to describe my thoughts on
3 the definition of the “net benefit” standard and how to apply it.² I explained that I
4 have seen parties in merger cases over the last decade more specifically identify
5 benefits to customers rather than simply ensuring that customers are not harmed by a
6 proposed transaction. That trend continued in this case, where the Parties evaluated
7 the Joint Applicant’s proposal and negotiated terms that provide net benefits to
8 customers.³ Chairman Danner asked me whether the net benefits standard is a
9 precise, formulaic analysis or whether it requires more judgment. I noted that
10 merger analysis over the last decade has become more precise and more detailed
11 regarding the benefits to customers, and I concluded that the analysis does require
12 judgment.⁴ Indeed, a commission’s decision on whether a proposed transaction
13 provides net benefits does involve “a judgment call at the end.”⁵

14 **Q: Is it still your conclusion that there is a net benefit to the Hydro One – Avista**
15 **merger?**

16 A: As I stated at the hearings, it is a judgement call. The original Settlement provided an
17 expanded and modified set of operating/management, financial, and governance/ring-
18 fencing commitments. The Settling Parties represent a diverse group of interests and
19 stakeholders. Each Party, including Public Counsel, concluded that the original Settlement
20 contained commitments that meet Washington’s net benefit standard. Furthermore,

² Woolridge, TR. 256:20 – 259:16.

³ Woolridge, TR. 257:14 - 258:25; Settlement Testimony of Corey J. Dahl, Exh. CJD-1T at 6-8.

⁴ Woolridge, TR. 259:1-16.

⁵ Woolridge, TR. 259:15-16.

1 settlements have been announced in other states (Oregon, Alaska, Montana, and Idaho), and
2 Settlement Commitment No. 81 provides a “Most Favored Nations” clause, which ensures
3 that relevant additional commitments will be incorporated into the Settlement in
4 Washington. All of these factors indicated that the original Settlement provided for a
5 proposed merger that provided net benefits.

6 However, the recent events in Ontario have tested the original Settlement terms.
7 The political developments in Ontario and the resulting changes to Hydro One’s board and
8 management highlight the potential transaction risks for Avista’s ratepayers. In light of
9 these events, the Settling Parties have negotiated additional terms and modifications to the
10 original Settlement. These additional terms and modifications provide further benefits that
11 are necessary in light of the specific risks to this transaction. Therefore, I believe that the
12 revised Settlement meets the net benefit standard.

13 **III. THE CHANGES AT HYDRO ONE AND THE POLITICAL RISK**
14 **PRESENTED BY THIS TRANSACTION**

15 **Q: Please review the changes at Hydro One.**

16 A: In Ontario’s June 7, 2018, election, Douglas Ford was elected Premier and his
17 Progressive Conservative Party gained a majority of the seats in the Provincial
18 legislature. As a result, Hydro One entered into negotiations with the new government,
19 and ultimately, on July 11, 2018, agreed to remove its entire Board of Directors. Hydro
20 One further agreed that CEO Mayo Schmidt would immediately retire. The new
21 government eventually introduced and passed the *Urgent Priorities Act, 2018*, which
22 enacted the *Hydro One Accountability Act, 2018*. This Act requires the board of Hydro
23 One to establish a new compensation framework for the Board of Directors, CEO, and

1 other executives in consultation with the Province and the other five largest shareholders.
2 The *Hydro One Accountability Act* will not apply to Avista if the merger goes through
3 since the Act specifically excludes subsidiaries incorporated in a jurisdiction outside
4 Canada. In addition, the Act does not impact Hydro One's contractual commitment to
5 acquire Avista or its merger settlements with parties in Washington, Oregon, Idaho,
6 Montana, and Alaska. On August 14, 2018, Hydro One announced its new Board of
7 Directors, as selected by the Ad Hoc Nominating Committee and named Paul Dobson as
8 the acting CEO. On September 19, 2018, the new Board of Directors of Hydro One
9 approved a resolution in support of its acquisition of Avista.⁶

10 **Q: Did your initial testimony address the issue of political risks associated with Hydro**
11 **One's purchase of Avista?**

12 A: Yes. I made the following observations:

13 **Q: How can political risks affect the customers of Avista?**

14 A: If the merger is approved, Avista's customers will be exposed to the
15 political risks associated with Hydro One. The privatization of Hydro One
16 was not a popular move by the Province of Ontario at the time the decision
17 was made. The purpose of the privatization was to raise a total of C\$9.0
18 billion – C\$5.0 billion to pay down the debt of the electric sector and C\$4.0
19 billion to build new transit lines. In a poll, 60 percent of Ontarians
20 disapproved of selling a majority of the company, and only 24 percent
21 approved.⁷ More recent polling has indicated 82 percent of Ontarian's
22 oppose the privatization of Hydro One.⁸ If this trend continues, Avista
23 customers will face the political risks associated with citizens of the
24 Province of Ontario who may be unhappy with the privatization of Hydro
25 One. Furthermore, if the citizens of Ontario are unhappy with the

⁶ Exh. JRW-7, Hydro One's Response to Public Counsel Data Request 36.

⁷ Adrian Morrow, *Poll Finds Ontarians Unhappy with Hydro One Privatization Plan*, THE GLOBE AND MAIL (Updated May 12, 2018) <https://www.theglobeandmail.com/news/national/poll-finds-ontarians-unhappy-with-hydro-one-privatization-plan/article24183279/>.

⁸ Mike Crawley, *How Privatized Power Haunts Ontario Politics*, CBC NEWS (Dec. 9, 2017, 6:00 AM ET) <https://www.cbc.ca/news/canada/toronto/ontario-hydro-bills-privatization-1.4439500>.

1 privatization of Hydro One, it seems they could be especially unhappy with
2 Hydro One's move to acquire Avista and the associated risks.

3 In addition, with the Province of Ontario as a significant and concerned
4 investor in Hydro One, Avista customers could face political risks
5 associated with such matters as energy policy in Ontario, as well as fiscal
6 matters related to deficit financing of energy and infrastructure projects in
7 Ontario. Given the investment in Hydro One, Avista customers in
8 Washington may have to deal with energy and financing issues in Ontario.
9 A shift in political winds among Hydro One's customers could lead to
10 sudden and perhaps unexpected changes in the management of the parent
11 company.⁹

12 **Q: Were political risks also addressed at the Olympia hearings on May 22nd?**

13 A: Yes. At the May 22nd hearing, the Commissioners posed questions to the Joint
14 Applicants regarding the political issues facing Hydro One. Mr. Schmidt testified that
15 the Province of Ontario entered into a governance agreement that governs the interactions
16 between Ontario and Hydro One. Under the contract, according to Mr. Schmidt, the
17 Province "is a shareholder and is not a manager of the business."¹⁰

18 Mr. Schmidt also explained in some detail the positions taken by the three major
19 parties during the elections in Ontario regarding Hydro One.¹¹ He offered insight
20 regarding the Progressive Conservative party, which ultimately won the election.¹²
21 Mr. Schmidt noted that the Province was "not in a position to terminate the CEO."¹³ On
22 changing the Board, Mr. Schmidt testified that it would be a "high bar to change the
23 entire board and yet an even higher bar to bring back another yet fully independent Board
24 of Directors."¹⁴

⁹ Settlement Testimony of J. Randall Woolridge, Exh. JRW-1T at 26-27.

¹⁰ Schmidt, TR. 310:2-6.

¹¹ Schmidt, TR. 312:23 – 314:11.

¹² Schmidt, TR. 313:23 – 314:6.

¹³ Schmidt, TR. 314:24-25.

¹⁴ Schmidt, TR. 317:6-9.

1 Chairman Danner asked, “Is there any scenario under which the Province of
2 Ontario could undo the privatization of Hydro One or take over basically its – either its
3 direction, its board of directors, or its management?”¹⁵ Hydro One’s General Counsel,
4 Jaime Scarlett responded, “The simple answer is: absent a government passing new
5 legislation to undo a lot of what’s being done, the short answer is no.”¹⁶ Indeed,
6 Mr. Scarlett stated that changes to the Board would be difficult and that “[i]t would have
7 to be something dramatic.”¹⁷

8 Mr. Scarlett also testified as follows: “And the noise – if there is noise in Ontario,
9 it shouldn’t have a big impact down here.” The recent elections indeed caused “noise”
10 and resulted in significant changes to Hydro One’s management and corporate
11 governance. Both Mr. Schmidt and Mr. Scarlett expressed extreme confidence in
12 Ontario’s political developments and their impact on Hydro One, and yet Mr. Schmidt
13 and the entire Board of Directors were casualties of these developments.

14 **Q: Have there been other developments regarding the political risks in Ontario?**

15 **A:** Yes. On September 14, Standard & Poor’s (S&P) issued a report titled "Hydro One Ltd.
16 And Subsidiary Downgraded To 'A-' On Lower Governance Assessment; Ratings Remain
17 on Credit Watch."¹⁸ S&P lowered its issuer credit ratings on Hydro One and its subsidiary
18 Hydro One Inc. to 'A-' from 'A'. S&P also lowered the issue-level rating on Hydro One
19 Inc.'s senior unsecured debt to 'A-'.

¹⁵ Chairman Danner, TR. 323:9-13.

¹⁶ Scarlett, TR. 323:18-20.

¹⁷ Scarlett, TR. 324:25 – 325:6.

¹⁸ Standard & Poor’s Corporation, HYDRO ONE LTD. AND SUBSIDIARY DOWNGRADED TO 'A-' ON LOWER GOVERNANCE ASSESSMENT; RATINGS REMAIN ON CREDITWATCH (Sept. 13, 2018).

1 In its report, S&P noted the following:

2 The one-notch downgrade reflects our reassessment of HOL's management
3 and governance structure, which has weakened following the government
4 of Ontario's decision to exert its influence on the utility's compensation
5 structure through legislation, potentially promoting the interests and
6 priorities of one owner above those of other stakeholders.

7 Ontario recently passed the Hydro One Accountability Act that allows the
8 government to issue directives governing HOL's compensation of the board,
9 CEO, and other executives. In addition, Ontario also amended the Ontario
10 Energy Board Act (OEBA) to exclude any amount in respect of
11 compensation paid to HOL's CEO and executives from consumer rates.
12 Although the financial impact of the compensation disallowance is minimal,
13 we think the legislative actions taken reflect a governance deficiency related
14 to HOL's ownership structure because Ontario is exercising its legislative
15 authority to lower electricity rates, consistent with the government's election
16 campaign promises. In our view, the use of this legislative authority to
17 influence HOL's compensation structure for some executives undermines
18 the effectiveness of the company's governance structure, and potentially
19 promotes the interests and priorities of the Ontario government above those
20 of other stakeholders. We also note that these events followed the recent
21 resignation of the entire previous board of Hydro One.

22 **IV. JOINT APPLICANT'S SUPPLEMENTAL TESTIMONY**

23 **Q: Please review the Joint Applicants testimony on the developments at Hydro One.**

24 **A:** The Joint Applicants have provided testimony from six individuals. Those providing
25 testimony, and the areas they cover, are:

26 Mr. James D. (Jamie) Scarlett, Executive Vice President and Chief Legal Officer
27 for Hydro One Limited, discusses: (1) the June 7, 2018, election of Premier Doug Ford
28 and the Progressive Conservative Party, the July 11, 2018, Letter Agreement and the
29 resignation of Hydro One's Board and retirement of Hydro One's CEO Mayo Schmidt;
30 (2) the *Hydro One Accountability Act, 2018*; (3) the settlement commitments designed to
31 protect Avista's independence and financial health from Provincial interference; (4)
32 Avista's and Hydro One's proposal to add a new commitment and amend its commitment

1 regarding Avista's post-merger board in response to the events after the June 7, 2018,
2 Ontario election; and (5) his adoption of Mayo Schmidt's previously filed testimony and
3 exhibits.

4 Mr. Christopher F. Lopez, Senior Vice President of Finance for Hydro One
5 Limited, summarizes: (1) the recent developments in Ontario; (2) reaffirms that Hydro
6 One is financially healthy and Avista will benefit from having a parent with strong access
7 to capital markets; (3) reviews the merger commitments relating to Hydro One's financial
8 support for Avista; (4) confirms that Hydro One stands by these commitments and
9 continues to provide the benefits associated with having a financially healthy parent
10 company; and (5) explains why the Ontario election, the July 11, 2018, Letter Agreement
11 between the Province of Ontario and Hydro One and subsequent events have no effect on
12 these commitments and benefits.

13 Mr. Thomas Woods, Interim Chair of the Board of Hydro One, introduces Hydro
14 One's new board of directors, summarizes how Hydro One's new Board was selected,
15 and describes the timeline and selection process for Hydro One's new CEO;

16 Mr. Scott Morris, CEO and Chairman of the Board of Avista, reaffirms Avista's
17 commitment to the Proposed Transaction following the replacement of the Board of
18 Directors of Hydro One as well as the retirement of Mayo Schmidt, and highlights
19 specific merger protections that: (1) protect Avista from political interference or
20 influence by the Province of Ontario; (2) preserve Avista's self-governance; and (3)
21 protect Avista and its customers from harm. He also indicates that the safeguards
22 included as part in the Proposed Transaction were designed to withstand the test of time
23 and changes in Hydro One management.

1 Mr. Mark T. Thies, Senior Vice President and CFO of Avista: (1) reconfirms the
2 benefits of the transaction from a financial perspective; (2) highlights the financial
3 safeguards incorporated into the agreed upon commitments in the Settlement, which were
4 designed to (a) protect and insulate Avista and its customers from a change in
5 management at Hydro One and/or changes in the political landscape of the Province of
6 Ontario, and (b) ensure Avista’s ability to continue as a financially sound, stand-alone
7 utility; and (3) emphasizes that neither Hydro One, nor the Province, can deprive Avista
8 of its necessary capital and assets and that Hydro One is obligated to provide sufficient
9 capital to allow Avista to provide safe, reliable, and cost- effective service.

10 Mr. John J. Reed, President and Chief Executive Officer of Concentric Energy
11 Advisors, Inc., provides an assessment of the reasonableness and sufficiency of the
12 governance, financial integrity and ring-fencing provisions of the Merger Commitments
13 in light of the political developments in the Province of Ontario, and changes in Hydro
14 One’s executive management and board of directors. He compares the corporate
15 governance, financial integrity, and ring-fencing provisions negotiated in this transaction
16 to those provided in 40 utility mergers in the U.S., including 11 transactions involving an
17 acquisition by a foreign utility (10 of which involve a Canadian acquirer). He concludes
18 that the negotiated Stipulated Commitments in the Settlement, are “beyond industry
19 norms”, are “more restrictive” and ensure that Avista and its Washington customers are
20 insulated from risk. In particular, he notes the following:

21 The governance, bankruptcy and financial ring-fencing and other Stipulated
22 Commitments, coupled with the Commission’s on-going regulatory
23 oversight of Avista and the laws of the United States in the five states in
24 which Avista operates (Washington, Oregon, Idaho, Montana, and Alaska)
25 put parameters around how Avista will be owned and operated post-merger.

1 As I discussed earlier, the Stipulated Commitments are binding regardless
2 of any actions the Province might take in the future. The Province has no
3 ability to directly influence Avista. The Province cannot pass laws that
4 apply to Avista. Further, even in the speculative scenario where the
5 Province took control of Hydro One and directed the two Hydro One
6 executives on Avista's post-merger board to pursue initiatives that would
7 benefit Hydro One and/or Ontario to the detriment of Avista's financial
8 resources or service, the remaining seven independent or Avista-designated
9 directors on Avista's post-merger board could override that direction.¹⁹

10 **Q: Please describe Avista and Hydro One's proposal to add a new commitment and**
11 **amend a commitment.**

12 **A:** On behalf of the Joint Applicants, Mr. Scarlett proposes an additional commitment that
13 aims at insulating compensation at Avista from outside control:

14 Avista Employee Compensation: Any decisions regarding Avista employee
15 compensation shall be made by the Avista Board consistent with the terms
16 of the Merger Agreement between Hydro One and Avista, and current
17 market standards and prevailing practices of relevant U.S. electric and gas
18 utility benchmarks. The determination of the level of any compensation
19 (including equity awards) approved by the Avista Board with respect to any
20 employee in accordance with the foregoing shall not be subject to change
21 by Hydro One or the Hydro One Board.²⁰

22 He also proposes to amend the Delegation of Authority (Appendix 5 of the Joint
23 Application) in response to the June 7th developments. (The modifications are in red.)

24 Shareholder shall have the unfettered right to designate, remove and replace
25 the Shareholder Designees as directors of the Surviving Corporation with
26 or without cause or notice at its sole discretion, subject to the requirement
27 that (i) two (2) of such directors are executives of Parent or any of its
28 Subsidiaries and (ii) three (3) of such directors are Independent Directors
29 who are residents of the Pacific Northwest Region, while such requirement
30 is in effect (subject in the case of clause (ii) hereof to Shareholder
31 determining, in good faith, that it is not able to appoint an Independent
32 Director who is a resident of the Pacific Northwest Region in a timely
33 manner, in which case Shareholder may replace any such director with an

¹⁹ Supplemental Testimony of John J. Reed, Exh. JJR-1T at 24:10-21.

²⁰ Supplemental Testimony of James D. Scarlett, Exh. JDS-1T at 25:22-25 and 26:1-4.

1 employee of Parent or any of its Subsidiaries on an interim basis, not
2 exceeding six months, after which time Shareholder shall replace such
3 interim director with Independent Director who is a resident of the Pacific
4 Northwest Region); provided, however, that this exception to clause (ii)
5 hereof shall not apply if, at any time a circumstance arises, and during the
6 pendency of any such circumstance, whereby the Province of Ontario
7 (“Ontario”) exercises its rights as a shareholder of Parent, uses legislative
8 authority or acts in any other manner whatsoever, that results, or would
9 result, in Ontario appointing nominees to the board of directors of Parent
10 that constitute, or would constitute a majority of the directors of such
11 board);²¹

12 The objective of the proposed adjustment to the Delegation of Authority is to ensure
13 the independence of the Avista board in the event that the Province takes some action in
14 the future to take control of the Hydro One Board. If triggered, this amendment restricts
15 Hydro One’s ability to replace any of its three Independent Directors on the Avista board
16 with a Hydro One executive.

17 **V. ADDITIONAL AGREEMENT OF THE PARTIES REGARDING**
18 **MERGER COMMITMENTS NECESSARY FOR NET BENEFITS**

19 **Q: Please describe what happened after Avista and Hydro One filed supplemental**
20 **testimony.**

21 **A:** After Avista and Hydro One filed supplemental testimony in this matter, the Settling
22 Parties entered into discussions regarding the Joint Applicants’ proposed governance
23 changes. These discussions led to modifications to seven of the 81 commitments, a new
24 commitment, and additional modifications to the Delegation of Authority, which are set
25 out in Commission Staff witness Mr. Chris McGuire’s Exhibit CRM-2.

26 **Q: Please summarize the modifications and the new commitment.**

²¹ Scarlett, Exh. JDS-1T at 26:16-34 and 27:1-2.

1 A: The agreed-upon modifications include the following:

- 2 1. Commitment #2 (Executive Management) is modified such that the decisions to hire,
3 fire, or replace the CEO of Avista is to be made by the Board of Directors of Avista
4 and does not require the approval of the Hydro One Board of Directors;
- 5 2. Commitment #30 (Enforcement of Commitments) strengthens the role of the
6 Commission with regards to the Enforcement of Commitments;
- 7 3. Commitment #31 (Enforcement of Commitments) provides that courts in the state of
8 Washington have jurisdiction in the enforcement of commitments;
- 9 4. Commitment #33 (Enforcement of Commitments) insures that the Commitments are
10 binding to any successor organization;
- 11 5. Commitments #67 and #70 (Low-Income) are modified to improve the timing and
12 funding of low-income commitments.

13 **Q: Please discuss new Commitment #82.**

14 A: New Commitment #82 permits any party to petition the UTC to reopen the docket for
15 reconsideration in the event that the Province of Ontario takes action that affects Avista's
16 operations or its corporate relationship with Hydro One, or that affects Hydro One's
17 authority or ability to comply with the commitments in the settlement agreement. No party
18 may object to such a proceeding being commenced.

19 **Q: Please discuss the modifications to the Delegation of Authority.**

20 A: As noted above, the proposed adjustment to the Delegation of Authority is designed to
21 ensure the independence of the Avista board in the event that the Province takes some
22 action in the future to take control of the Hydro One Board. In the agreed-upon
23 modification to this adjustment, a Province-controlled Hydro One Board is further

1 restricted by suspending its ability to appoint an independent director of Avista's Board
2 with a Hydro One employee or executive, even on an interim basis, under certain
3 conditions.

4 **Q: What is your conclusion regarding the modifications and additions agreed to by the**
5 **Parties?**

6 A: The modifications to the initial commitments and the Delegation of Authority, and the
7 addition of the new commitment, are the result of good-faith negotiations between the
8 Joint Applicants and the Non-Applicant Parties. They provide for Avista's independence
9 and insure that Avista can continue to provide safe, reliable electric utility service in the
10 state of Washington, regardless of any changes that may occur to Hydro One due to
11 political developments in the Province of Ontario.

12 VI. CONCLUSION

13 **Q: What is Public Counsel's recommendation in this matter?**

14 A: Public Counsel recommends that the Commission approve Settlement and the agreed
15 additions and modifications to the Commitments within the Settlement. Both the
16 Settlement and the additions and modifications described above allow the proposed
17 transaction to result in net benefits to Avista's customers. In particular, the
18 modifications, and new commitment, reduce the transaction risk associated with
19 developments at Hydro One and in Ontario, while preserving the financial benefits
20 associated with the merger. Importantly, the risks of this transaction can never be
21 completely eliminated, but the Commitments contained in the Settlement and modified
22 by the Parties provide the strongest protections the Parties could derive.