

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Joint Application of  
HYDRO ONE LIMITED (acting through  
its indirect subsidiary, Olympus Equity  
LLC)**

**DOCKET U-170970**

**And**

**AVISTA CORPORATION  
For an Order Authorizing Proposed  
Transaction**

**SUPPLEMENTAL TESTIMONY OF  
SHAWN M. COLLINS (EXH. SMC-2T)**

**DIRECTOR OF  
THE ENERGY PROJECT**

*In Support of Settlement Stipulation and Modified Commitments*

**October 4, 2018**

**LIST OF EXHIBITS FOR SHAWN M. COLLINS (SMC-2T)**

- Exh. SMC-3 Hydro One Response to TEP Data Request No. 44
- Exh. SMC-4 Hydro One Response to TEP Data Request No. 40
- Exh. SMC-5 Hydro One Response to TEP Data Request No. 42
- Exh. SMC-6 Hydro One Response to TEP Data Request No. 43
- Exh. SMC-7 Hydro One Response to TEP Data Request No. 38
- Exh. SMC-8 Hydro One Response to TEP Data Request No. 39
- Exh. SMC-9 Hydro One Response to TEP Data Request No. 41

1 I. INTRODUCTION

2 **Q: Please state your name and business address.**

3 A: I am Shawn Collins. My business address is 3406 Redwood Avenue, Bellingham,  
4 WA 98225.

5 **Q: By whom are you employed and in what capacity?**

6 A: I am the Director of The Energy Project (TEP), a program of the Washington  
7 State Community Action Partnership housed at the Opportunity Council in  
8 Bellingham, WA.

9 **Q: Would you please state your educational and professional background?**

10 A: My educational and professional background is covered in Exh. JNP-2 submitted  
11 with the Joint Testimony in this docket, April 10, 2018.

12 **Q: On whose behalf are you testifying?**

13 A: I am testifying for TEP, an intervenor in this proceeding, on behalf of the  
14 Community Action Partnership (CAP) organizations that provide low-income  
15 energy efficiency and bill payment assistance for customers in Avista's service  
16 territory. These agencies include: SNAP (Spokane Neighborhood Action  
17 Partners) (Spokane County), Rural Resources (Ferry, Lincoln, Stevens Counties),  
18 Community Action Partnership (Asotin County), Community Action Center  
19 (Whitman County), Opportunities Industrialization Center (OIC) of Washington  
20 (Adams County), and Washington Gorge Action Programs (Skamania and  
21 Klickitat Counties).

1 **Q: Have you previously provided testimony in this proceeding?**

2 A: Yes. On April 10, 2018, I provided testimony in support of the Settlement  
3 Stipulation (Settlement), filed as Testimony of Shawn M. Collins, Exh. SMC-1T.  
4 I appeared as a witness on the settlement panel at the Commission's May 22,  
5 2018, evidentiary hearing to review the Settlement. On July 18, 2018, TEP filed  
6 comments in response to the Commission Notice of Intent to Conduct Additional  
7 Process, supporting the Commission's intention to conduct supplemental  
8 proceedings to ensure the record will be fully developed regarding the impact of  
9 the Ontario election, and that the commitments of Avista and Hydro One remain  
10 viable and enforceable.

11 **II. PURPOSE OF TESTIMONY**

12 **Q: Could you please summarize the purpose of your supplemental testimony?**

13 A: The purpose of my supplemental testimony is to respond to the Supplemental  
14 Testimony of Joint Applicants filed on September 6, 2018, and to provide TEP's  
15 perspective on the impact of the events affecting Hydro One and the proposed  
16 merger transaction subsequent to the Ontario Provincial election. As discussed in  
17 more detail below, TEP continues to recommend approval of the Settlement,  
18 subject to approval of the modified Commitments submitted by TEP and by the  
19 other parties.

1 **Q: Can you provide a recap of the key elements of the all-party Settlement**  
2 **currently before the Commission that address low-income issues?**

3 A: The Settlement includes a number of important components that provide benefits  
4 for low-income customers:

- 5 • Commitments to maintain the current Low-Income Rate Assistance  
6 Program (LIRAP) and related pilots (Commitment 66), to maintain the  
7 existing low-income weatherization program (Commitment 70), to  
8 improve penetration of these programs (Commitment 73), and to work  
9 with the advisory groups to address other low-income issues, including  
10 program funding levels. (Commitments 65, 68)
- 11 • \$4 million of additional funding over a 10-year period for existing low-  
12 income weatherization programs. (Commitment 70)
- 13 • \$5 million in funding over a 10-year period for new renewables projects to  
14 benefit low-income customers. (Commitment 67)
- 15 • \$2 million over a 10-year period for replacement of manufactured homes.  
16 (Commitment 69)
- 17 • A goal that 30 percent of residential program EVSE funds be dedicated to  
18 projects that serve low-income customers. (Commitment 62)
- 19 • Consumer protection commitments related to AMI including limitations  
20 on remote disconnection and prepayment. (Commitment 72)
- 21 • A modified security deposit policy eliminating deposits for new customers  
22 and returning some security deposits. (Commitment 71)

- 1           • A commitment to maintain existing levels of community involvement and  
2           support for tribal and low-income organizations. (Commitment 12)
- 3           • A commitment to reach out to tribal communities to encourage  
4           participation in settlement benefits. (Commitment 74)

5           These elements of the settlement are essential components enabling the  
6           transaction to meet the “net benefit” standard. The Energy Project believes it is  
7           important, when evaluating the impact of the Ontario events, to recognize that the  
8           Settlement has both a “no-harm” aspect (e.g., ring-fencing, financial integrity,  
9           local presence) and a “net benefit” aspect (e.g., community and low-income  
10          commitments). Even if the “no harm” components, such as ring-fencing, are  
11          adequate to protect Avista itself from financial harm and undue interference, the  
12          Commission and the parties must also be satisfied that Hydro One and its  
13          subsidiaries above Avista are fully committed and capable of fulfilling their  
14          obligations to provide net benefits to customers, and that the Commission has the  
15          necessary jurisdiction and enforcement authority to address any problems that  
16          might arise involving entities above Avista in the corporate structure.

### 17                   **III. THE IMPACT OF THE ONTARIO ELECTION**

18   **Q: Did The Energy Project have concerns with the impact of the Ontario**  
19   **election on the proposed transaction in this docket?**

20   **A:** Yes. The events surrounding the departure of Hydro One’s CEO Mayo Schmidt,  
21   a witness in this proceeding, and the resignation of the Hydro One Board of  
22   Directors in July 2018 were unsettling. Occurring after TEP and other parties had

1 signed the Settlement in March and testified at the hearing in May, these events  
2 raised concerns for TEP regarding the Provincial government's future ability to  
3 direct or influence Hydro One's compliance with the Settlement. The Energy  
4 Project's concerns focused on two primary areas: (1) potential uncertainty  
5 regarding the Commitments to fund increased renewables (Commitment 67) and  
6 weatherization (Commitment 70) for low-income customers in Washington; and  
7 (2) the sufficiency of the Commitments with regard to Commission jurisdiction  
8 over Hydro One and its subsidiaries, and enforcement of the Settlement and the  
9 81 listed Commitments.

10 **Q: Could you explain The Energy Project's concerns regarding funding of the**  
11 **renewables and weatherization commitments?**

12 A: As originally filed, the commitments regarding low-income renewables and  
13 weatherization provided that funding would be made available over a 10-year  
14 period. The Energy Project's expectation was that Hydro One and Avista would  
15 fund projects as they were approved by the Advisory Groups. However, no  
16 specificity was stated with regard to the timing of the payments. Commitments  
17 67, 70, and 72 provide that Hydro One is ultimately responsible for these  
18 payments. The events following the Ontario election introduced some uncertainty  
19 from TEP's perspective regarding the vulnerability of Hydro One to Provincial  
20 action via legislation or otherwise, that could affect Hydro One's funding of the  
21 low-income commitments, or the timing of the funding.

1 **Q: Has this concern been addressed, and if so, how?**

2 A: The concern has been addressed in two ways. First, the Joint Applicants have  
3 agreed to modification of Commitments 67 and 70 such that the payments will be  
4 made at a minimum on a pro rata basis (one tenth per year) over the 10-year  
5 period. For Commitment 67 this means a minimum payment of \$500,000 per  
6 year, and for Commitment 70 a minimum payment of \$400,000 per year. This  
7 provides additional certainty regarding the timing of the payments that was not  
8 previously included in the Commitments.

9 Under TEP's agreement with Joint Applicants, the following language will  
10 be added to Commitments 67 and 70:

11 Funding will be made available for eligible projects as they are  
12 identified and approved by the Advisory Committee throughout the  
13 10-year timeframe of the commitments; provided, however, that  
14 funding will be made available, at a minimum, on a pro rata basis  
15 over the period (i.e., one-tenth of the total each year), but need not  
16 occur any more frequently than on a pro rata basis over the 10-year  
17 period. Funding commitments may be made at any time during the  
18 10-year period.

19 For example, if no funding is approved by the Advisory Committee  
20 until the third year of the 10-year period, up to [\$1.5 million for  
21 Commitment 67 / \$1.2 million for Commitment 70] must be made  
22 available in the third year. Nothing in this provision shall be  
23 interpreted to preclude payment of funding in installments over time  
24 for large projects that are approved early in the 10-year period. For  
25 example, a \$5 million project could be approved in Year 3 [under  
26 Commitment 67] with \$1.5 million due in Year 3 and \$0.5 million  
27 per year due each year for the next seven years, assuming no funding  
28 had been made available under Commitment 67 in Year 1 or Year  
29 2.



1 For Commitment 70, the words “energy efficiency” will be added before  
2 “Advisory Committee” to clarify which committee is intended.

3 As the language indicates, the modified Commitment allows a “funding  
4 commitment” for a project that exceeds the pro rata amount, with the  
5 understanding that Hydro One is only obligated to provide the “actual funding” in  
6 installments, i.e., on the pro rata schedule. Hydro One is not precluded from  
7 funding on greater than a pro rata basis if it chooses.

8 **Q: Please explain the second way in which Joint Applicants addressed The**  
9 **Energy Project’s funding concerns:**

10 The Joint Applicants also addressed the concern in testimony and discovery  
11 responses. In his September 6 Supplemental Testimony on behalf of Hydro One,  
12 Executive Vice President and Chief Legal Officer James Scarlett addressed how  
13 the Commission can be certain that Hydro One, as Avista’s sole shareholder, will  
14 ensure there is funding for the renewables and weatherization commitments.<sup>1</sup> He  
15 responded by reciting and reaffirming the terms of Commitment 75 as a “firm  
16 commitment to provide the dollar amount specified over the time period specified  
17 and for the time period specified,” and stated that “[t]herefore, Hydro One, as  
18 Avista’s sole shareholder, ultimately bears the cost of these commitments.”<sup>2</sup> Mr.  
19 Scarlett went on to note that funding could be made available from Avista’s  
20 retained earnings to fund the Commitments.<sup>3</sup>

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<sup>1</sup> His testimony also addresses the other financial commitments in the Settlement.

<sup>2</sup> Exh. JDS-1T, at 22:9-10.

<sup>3</sup> *Id.*, at 22:11-20.

1 Christopher Lopez, Senior Vice President of Finance for Hydro One,  
2 addressed this issue in his September 6 Supplemental Testimony. Mr. Lopez  
3 similarly noted that Avista retained earnings would be available to fund the  
4 Commitments and that under this approach “there would be no need for cash to  
5 flow from Hydro One to Avista.”<sup>4</sup> He further testified that Hydro One “remains  
6 financially healthy” and he does not expect that to change.<sup>5</sup> In response to TEP  
7 discovery, Mr. Lopez stated that Hydro One was “not aware of any factors that  
8 would limit the amount of Avista’s retained earnings for funding the listed  
9 Commitments” and that “if needed, [Hydro One] could make use of its retained  
10 earnings to fund the Stipulated Commitments.”<sup>6</sup> Finally, he stated that any  
11 electric rate reductions required by the Province of Ontario “would not have any  
12 bearing on the ability to meet these Commitments” because the Commitments  
13 were expected to be funded from Avista’s retained earnings.<sup>7</sup>

14 **Q: Does The Energy Project have any concerns regarding Commitment 69**  
15 **regarding mobile-home replacement?**

16 A: The general concerns mentioned above apply, however, mobile-home  
17 replacement Commitment 69 currently provides that at least half the funds must  
18 be spent in the first five years and that Avista will begin implementation within 6  
19 months. Because these terms already provide some additional certainty regarding

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<sup>4</sup> Exh. CFL-6T, at 11:10-12:6.

<sup>5</sup> *Id.*, at 12:7-9.

<sup>6</sup> Exh. SMC-3 (Hydro One Response to TEP Data Request No. 44 (a) and (b)).

<sup>7</sup> *Id.* (Hydro One Response to TEP Data Request No 44 (d)).

1 the timing of payments and implementation, TEP did not request modification of  
2 this specific Commitment.

3 **Q: Please explain The Energy Project's concern regarding enforcement and**  
4 **jurisdictional issues.**

5 A: As a result of the events in Ontario, TEP wanted to confirm its understanding of  
6 the Commission's ability to enforce the Commitments with respect to Hydro One  
7 and its subsidiaries. Because Hydro One, the parent, is the entity ultimately  
8 responsible for compliance with many of the Commitments in the Settlement  
9 Stipulation, in particular the low-income commitments, the Commission's  
10 authority vis a vis Hydro One is of critical importance.

11 Upon further review of existing Commitments 30 (Commission  
12 Enforcement of Commitments), Commitment 31 (Submittal to State Court  
13 Jurisdiction for Enforcement of Commission Orders), and Commitment 33  
14 (Commitments Binding), TEP had concerns that the provisions had some  
15 ambiguities or did not clearly include Hydro One Limited or all intermediate  
16 subsidiaries in the chain to Avista. For example, existing Commitment 31  
17 (Submittal to State Court Jurisdiction) does not reference the parent Hydro One  
18 Limited or any entity above Olympus Holding Corp and does not specifically  
19 reference Washington courts.<sup>8</sup>

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<sup>8</sup> An organizational chart for Hydro One Limited was provided in the April 10 Supplemental Testimony of Christopher Lopez, Exh. CFL-5T at 5 (Illustration No. 1).

1 **Q: Please explain how The Energy Project's concerns about enforcement and**  
2 **jurisdiction have been addressed.**

3 A: The Energy Project reviewed the parallel provisions regarding enforcement and  
4 jurisdiction issues in the Oregon settlement (Oregon Commitments 110-112) and  
5 found them to be clearer than the Washington commitments in addressing these  
6 concerns. The Energy Project consulted with Joint Applicants and was able to  
7 reach agreement to incorporate the concepts from the Oregon Commitments into  
8 the Washington Settlement.

9 The modified Commitments state as follows, with the changes shown in  
10 legislative format:

11 **Commitment 30 – Commission Enforcement of Commitments**

12 Hydro One and its subsidiaries, including Avista, understand and agree that  
13 the Commission has authority to enforce these commitments in accordance  
14 with their terms. If there is a violation of the terms of these commitments,  
15 then the offending party may, at the discretion of the Commission, have a  
16 period of thirty (30) calendar days to cure such violation. The scope of this  
17 commitment includes the authority of the Commission to compel the  
18 attendance of witnesses from Olympus Holding Corp. and its affiliates,  
19 including Hydro One, with pertinent information on matters affecting  
20 Avista. Hydro One, Olympus Holding Corp. and its subsidiaries waive their  
21 rights to interpose any legal objection they might otherwise have to the  
22 Commission's jurisdiction to require the appearance of any such witnesses.

23 **Commitment 31 – Submittal to State Court Jurisdiction For Enforcement of**  
24 **Commission Orders**

25  
26 Hydro One, on behalf of itself and its subsidiaries in the post-close corporate  
27 structure between Hydro One and Avista (as those companies in between  
28 may change over time), and Avista ~~Olympus Holding Corp., on its own and~~  
29 its subsidiaries' behalf, including Avista's, will file with the Commission  
30 prior to closing the Proposed Transaction an affidavit affirming that they ~~it~~  
31 will submit to the jurisdiction of the ~~relevant state~~ Washington courts for  
32 enforcement of the Commission's orders adopting these commitments and

1 subsequent orders affecting Avista, and will agree to the application of  
2 Washington law with respect to such matters.

3 **Commitment 33 – Commitments Binding**

4 Hydro One, its subsidiaries in the post-close corporate structure between  
5 Hydro One and Avista (as those companies in between may change over  
6 time) Olympus Holding Corp. and its subsidiaries, including and Avista,  
7 acknowledge that the commitments being made by them are fully binding  
8 only upon them and their successors in interest and upon their affiliates,  
9 except where specifically noted, and their successors in interest. Hydro One  
10 and Avista are not requesting in this proceeding a determination of the  
11 prudence, just and reasonable character, rate or ratemaking treatment, or  
12 public interest of the investments, expenditures or actions referenced in the  
13 commitments, and the parties in appropriate proceedings may take such  
14 positions regarding the prudence, just and reasonable character, rate or  
15 ratemaking treatment, or public interest of the investments, expenditures or  
16 actions as they deem appropriate.

17 If Hydro One or any other entity in the chain of Avista's ownership  
18 determines that Avista or any other entity has failed to comply with an  
19 applicable Commitment, the entity making such determinations shall take  
20 all appropriate actions to achieve compliance with the Commitment.

21 **Q: In addition to the modified Commitments, were there other ways in which**  
22 **The Energy Project's concerns regarding enforcement and jurisdiction were**  
23 **addressed?**

24 A: Yes. Hydro One also addressed these issues in testimony and in response to  
25 discovery. In his September 6 Supplemental Testimony, Mr. Scarlett testified that  
26 under Commitments 30, 31, and 33: "Hydro One, as Avista's sole shareholder,  
27 and/or its subsidiaries, have submitted to the jurisdiction of the Commission and  
28 Washington courts for the enforcement of all of the Stipulated Commitments,

1 including those that require Hydro One funding.”<sup>9</sup> Mr. Scarlett went on to state:

2 [I]f the merger is consummated, the Province will not have jurisdiction to  
3 modify or nullify the 81 Stipulated Commitments and any conditions  
4 included in the Commission’s order approving the merger. *Hydro One is*  
5 *bound by these contractual obligations. Even though the Province is a*  
6 *shareholder of Hydro One, Hydro One is the entity that bears the full legal*  
7 *responsibility for the 81 Stipulated Commitments and any commitments*  
8 *included in the Commission’s order approving the merger if the merger is*  
9 *consummated. The Province is not a party to Hydro One’s contracts and*  
10 *commitments in this proceeding and no action on the part of the Province*  
11 *is required for Hydro One to fulfill its obligations.*<sup>10</sup>

12  
13 This statement was reiterated in response to discovery.<sup>11</sup> Mr. Scarlett stated  
14 additionally that “[t]he Province’s legislative authority to modify or abrogate  
15 contracts entered into by Hydro One or any of its subsidiaries is limited to those  
16 matters over which it has jurisdiction. The Province has no legislative jurisdiction  
17 outside the Province of Ontario.”<sup>12</sup>

18 Regarding Commitment 30, Mr. Scarlett stated in response to discovery  
19 that “[e]xcept as otherwise stated in the Commitments themselves...there are no  
20 limitations on the Commission’s authority to enforce the Commitments of the  
21 Settlement Stipulations as against Hydro One Limited, or any Hydro One  
22 subsidiary.”<sup>13</sup>

23 Regarding Commitment 31 (Submittal to State Court Jurisdiction), Mr.  
24 Scarlett confirmed in response to discovery that “Hydro One agrees to submit to  
25 the jurisdiction of the Washington courts for enforcement of violations of the

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<sup>9</sup> Exh. JDS-1T, at 22:21-23:10.

<sup>10</sup> *Id.*, at 23:12-20. (emphasis added).

<sup>11</sup> Exh. SMC-4 (Hydro One Response to TEP Data Request No. 40 (e)).

<sup>12</sup> *Id.*, (Hydro One Response to TEP Data Request No. 40 (d)).

<sup>13</sup> Exh. SMC-5 (Hydro One Response to TEP Data Request No. 42 (a)).

1 Commitments in the Settlement Stipulation, as was agreed to in the Oregon  
2 Settlement Stipulation.”<sup>14</sup>

3 In response to discovery, Mr. Scarlett reiterated that the Settlement creates  
4 contractual obligations for Hydro One regarding all 81 Commitments,  
5 additionally describing the documents constituting the contract, the contract  
6 parties, and the remedies available to the Commission.<sup>15</sup> Hydro One’s consultant  
7 witness John Reed echoes the binding contractual nature of the Settlement,  
8 stating: “[i]n addition to Hydro One and Avista being bound by these  
9 commitments, all corporate entities existing between Hydro One and Avista will  
10 be bound as well, including Olympus Holding Corp and Olympus Equity LLC.”<sup>16</sup>

11 Mr. Scarlett also stated in response to discovery that the immunity from  
12 civil liability created by the Hydro One Accountability Act in no way limits the  
13 Commission’s enforcement authority with respect to any of the Settlement  
14 Commitments.<sup>17</sup>

15 In summary, modified Commitments 30, 31, and 33, the supplemental  
16 testimony, and the responses to discovery have sufficiently addressed TEP’s  
17 concerns regarding enforcement and jurisdiction.

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<sup>14</sup> Exh. SMC-5 (Hydro One Response to TEP Data Request No. 42 (b)).

<sup>15</sup> Exh. SMC-6 (Hydro One Response to TEP Data Request No. 43 (a)-(c)).

<sup>16</sup> Exh.SMC-7 (Hydro One Response to TEP Data Request No. 38), Exh. SMC-8 (Hydro One Response to TEP Data Request No. 39). In Exh. SMC-8, Mr. Reed states as a non-attorney that in the “speculative scenario” where the Province would take control of Hydro One, he does not envision “any basis for Hydro One taking any action that would be inconsistent with the Commitments in the Settlement Stipulation” and that the Settlement would act as a limitation on any such action.

<sup>17</sup> Exh. SMC-9 (Hydro One Response to TEP Data Request No. 41).

1 **Q: Are there other modified Commitments that you wish to address?**

2 A: The Energy Project is aware that Joint Applicants have also agreed to modified  
3 Commitment 2 (executive management), Commitment 3 (Board of Directors),  
4 and a new Commitment 82 regarding the right to reopen the docket, as well as a  
5 modification of the Delegation of Authority. The Energy Project has reviewed  
6 these changes and supports their adoption.

7 **IV. CONCLUSION**

8 **Q: Does The Energy Project continue to support approval of the Settlement?**

9 A: Yes, on the condition that the modified Commitments discussed in my testimony  
10 are incorporated in the Settlement Stipulation. With this understanding, The Energy  
11 Project believes that the Settlement meets the statutory requirement that the merger  
12 must provide a net benefit to Avista's customers and that it is in the public interest.  
13 The Energy Project recommends that the Settlement, with the modified  
14 Commitments discussed, be approved by the Commission.

15 **Q: Does this conclude your testimony?**

16 A: Yes.