

**Docket No. U-170970 - Vol. VII**

**In the Matter of: Hydro One Limited and Avista  
Corporation**

**October 23, 2018**



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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of:     ) Docket No. U-170970  
                                  )  
HYDRO ONE LIMITED AND   )  
AVISTA CORPORATION,     )  
                                  )

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EVIDENTIARY HEARING, VOLUME VII

Pages 339-508

CHAIRMAN DANNER, COMMISSIONERS RENDAHL, BALASBAS  
AND JUDGE MOSS

---

October 23, 2018  
9:15 A.M.  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest  
Olympia, Washington 98504

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1                   A P P E A R A N C E S (Continued)  
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13  
14                   SCOTT MORRIS  
15                   MARK THIES  
16                   JOHN REED  
17                   JAMIE SCARLETT  
18                   THOMAS WOODS  
19                   PAUL DOBSON  
20                   CHRIS LOPEZ  
21                   CHRIS MCGUIRE  
22  
23                   \* \* \* \* \*  
24  
25

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4                   One), Christopher F. Lopez (Hydro One),  
5                   Scott L. Morris (Avista), Elizabeth M.  
6                   Andrews (Avista), Christopher S. Hancock  
7                   (Staff), Corey J. Dahl (Public Counsel),  
8                   J. Randall Woolridge (Public Counsel),  
9                   Marc M. Hellman (AWEC), Shawn M. Collins  
10                  (Energy Project), Wendy M. Gerlitz (NWEA,  
11                  RNW, NRDC), Dough H. Howell (Sierra Club),  
12                  David Hawkins (WNIDCL), and Glen Frieberg  
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6	SLM-1T Prefiled Direct Testimony of Scott L. Morris, Chairman of the Board, President, and Chief Executive Officer of Avista Corporation (27 pages)
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1	OLYMPIA, WASHINGTON; OCTOBER 23, 2018
2	9:15 A.M.
3	--o0o--
4	P R O C E E D I N G S
5	
6	JUDGE MOSS: All right. Let's be on the record. Good morning, everyone. My name is Dennis Moss. I'm an administrative law judge with the Washington Utilities and Transportation Commission.
7	
8	I had previously informed all the parties that we would start with the preliminaries at 9:15 even though the hearing was noticed for 9:30, so that's what I'm doing now. I hope everyone's present so I don't have to repeat anything later.
9	
10	I'm going to announce now, but I will have to repeat again at the beginning of the formal proceedings, today's hearing is being live-streamed by TVW. There are two web links to access the broadcast. One link is for the morning session and one is for the afternoon session. You can visit the Commission's Twitter account for the links and more information at, I think it is, at symbol, WAUTC. That's Twitter.com/wautc. And for -- just for your information, I've never used Twitter so I'm hoping that works for you if you have. I'll repeat that later at
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1 9:30.  
 2 Now, let me just make a preliminary  
 3 statement concerning process and then we'll get into  
 4 things in earnest at 9:30. We are convened this  
 5 morning, October 23rd, 2018, In the Matter of Hydro One  
 6 Limited and Avista Corporation, Docket U-170970.  
 7 Our purpose today is to conduct supplemental  
 8 proceedings as previously noticed to receive evidence  
 9 concerning certain events that occurred after our  
 10 settlement hearing on May 22nd, 2018. These events bear  
 11 on our evaluation of Hydro One's proposed acquisition of  
 12 Avista Corporation under the terms of their agreement  
 13 and the settlement stipulation among all the parties to  
 14 this proceeding. We have received prefiled testimony  
 15 and exhibits in this phase of the proceeding, and they  
 16 will become part of the formal record I am hoping by  
 17 stipulation, and the questions today will be  
 18 transcribed. So this will all be part of the record.  
 19 We also received additional public comments  
 20 and will continue to do so through end of the business  
 21 day today. These comments will also be made part of the  
 22 official record. I want to emphasize, we will not take  
 23 any additional oral comments from members of the public  
 24 today. All of our time today is reserved for questions  
 25 from the Bench to the parties' witnesses, principally

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1 from the Commissioners. I may, however, also ask  
 2 questions that I consider necessary to ensure a clear  
 3 and complete record.  
 4 Counsel for the parties will be given  
 5 opportunities to ask clarifying questions of their  
 6 witnesses, if necessary, in light of any questions from  
 7 the Bench as is our customary process. These questions,  
 8 however, I expect to be carefully considered and brief.  
 9 In the interest of time, I ask the witnesses  
 10 to listen carefully to each question asked, answer only  
 11 the question asked, and answer crisply and succinctly  
 12 giving a yes or no answer when it's possible to do so.  
 13 There can be qualifying comments to a yes or no answer,  
 14 but please, if you can, answer yes or no first. It  
 15 moves things along.  
 16 Again, your attorney will be able to follow  
 17 up if necessary to promote a full understanding of any  
 18 answer given. If you don't understand a question,  
 19 please indicate that's the case and the inquiring  
 20 presiding officer will undertake to clarify the question  
 21 for you.  
 22 Finally, please keep in mind, all the  
 23 witnesses please keep in mind that "I don't know" is a  
 24 perfectly acceptable answer, and it's better to give  
 25 that answer than to speculate about something you have

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1 no first-hand knowledge of -- of which you have no  
 2 first-hand knowledge. That was a misplaced preposition  
 3 there.  
 4 So with that, that's all I have preliminary.  
 5 Do any of the parties have any process questions before  
 6 we begin? Mr. Meyer, anybody else?  
 7 MR. MEYER: Well, we did share with you, of  
 8 course, the exhibit list and the late additions and  
 9 revisions to that. You'll make note of that on the  
 10 record?  
 11 JUDGE MOSS: We'll update the exhibit list  
 12 after the proceeding, of course, to indicate the  
 13 admission of everything, but also to indicate the latest  
 14 revisions of various exhibits such as Joint 3 where we  
 15 have a revised -- it's Appendix 5, isn't it?  
 16 MR. MEYER: Yep.  
 17 JUDGE MOSS: So we have some revised  
 18 exhibits that are more recent than ones indicated on the  
 19 exhibit list I distributed the other day.  
 20 The questions today -- I still have a couple  
 21 minutes -- the questions today, some of these questions  
 22 will perhaps refer to something we've seen in the press  
 23 or something from a ratings agency. In terms of the  
 24 press material in particular, I'm reluctant to make  
 25 these exhibits unless it's absolutely necessary because

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1 they're not being referred to or offered for the truth  
 2 of what they assert, but rather to say here's something  
 3 we saw, here's something we read. Can you verify it,  
 4 not verify it, don't know anything about it. Whatever  
 5 the case may be. That's the purpose of those  
 6 references.  
 7 Now, to be honest about it, we've had to  
 8 learn a lot by reading the press because this is all --  
 9 kind of took us all by surprise, and we've been doing  
 10 our best to educate ourselves to the appropriate  
 11 circumstances.  
 12 To the extent we do refer to some  
 13 documentary material today and decide -- I decide it  
 14 should be made part of the record, we'll do that and  
 15 I'll -- we can notate your exhibit list accordingly.  
 16 There is one, and I don't -- disappointed I don't have  
 17 my notes here apparently. There is one thing I'm going  
 18 to make an exhibit, and I'll go ahead and mark it as  
 19 Bench Exhibit 6 I think it will be. Yes, and -- and let  
 20 me back up half a step.  
 21 When we -- when I sent out Bench Request 4  
 22 and 5 after the events this summer, they were  
 23 misnumbered. They were numbered 3 and 4, they should  
 24 have been numbered 4 and 5. I have renumbered them on  
 25 the exhibit list. So today, we'll -- anything new,

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1 we'll start with 6 and 6 will be a report from S&P  
 2 Global Ratings RatingsDirect, dated September 13th,  
 3 2018.  
 4 Mr. Meyer, you may remember, is that the one  
 5 you all furnished us through the updated comments? You  
 6 did give us one. I'm not sure it was this one.  
 7 MR. MEYER: Yeah, I'm going to have to --  
 8 Is that the one that was provided?  
 9 I'm confirming that, yes.  
 10 JUDGE MOSS: So -- so I have that in my  
 11 little book of background materials here, and we will  
 12 make that an exhibit.  
 13 MR. MEYER: All right. Thank you.  
 14 JUDGE MOSS: That's a reliable source that  
 15 everyone in the industry relies on, so I'm not concerned  
 16 about it being made an exhibit. So that will be B-6.  
 17 Since some of these are not coming from bench requests,  
 18 I'm just going to call them B. It will be a new day in  
 19 the Commission's exhibit list numbering system.  
 20 All right. Okay. All that said, I will go  
 21 off the record now.  
 22 (A break was taken from  
 23 9:24 a.m. to 9:27 a.m.)  
 24 JUDGE MOSS: Let's be back on the record.  
 25 Okay. Following our brief recess, we are back at the

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1 bench with Commissioners joining me here, Chairman  
 2 Danner, Commissioner Rendahl, and Commissioner Balasbas.  
 3 We are going to launch right in this morning. See no  
 4 need for any preliminary statements from anyone since  
 5 we're far along in this proceeding and time is somewhat  
 6 of the essence. We have a lot of witnesses and we've  
 7 got a lot of questions.  
 8 So let's -- I'll turn the floor over to  
 9 Chairman Danner. Oh, let me -- I'm sorry, I forgot.  
 10 We've got some new witnesses today. I need to swear the  
 11 new witnesses.  
 12 MR. MEYER: I think they were previously.  
 13 JUDGE MOSS: These two witnesses were  
 14 previously sworn; however, we have other witnesses in  
 15 the hearing room who have never appeared before. So I'm  
 16 going to ask them to rise now and please raise their  
 17 right hands.  
 18 (Witnesses sworn.)  
 19 JUDGE MOSS: Thank you. Please be seated.  
 20 All right. And I apologize for that. We  
 21 don't have any new counsel today, do we? Or do we?  
 22 MR. MEYER: I don't believe we do.  
 23 JUDGE MOSS: Okay. So all the counsel that  
 24 previously entered their appearances, we have that in  
 25 the transcript from the last hearing?

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1 MR. MEYER: Yeah, I think we're good. We're  
 2 good.  
 3 JUDGE MOSS: All right. Go ahead, Chairman  
 4 Danner. My apologies.  
 5 CHAIRMAN DANNER: All right. Thank you,  
 6 Judge.  
 7 And good morning, Mr. Morris. You'll recall  
 8 at our earlier hearing on May 26th, my colleagues and I  
 9 expressed concerns about potential for political  
 10 interference. These were concerns that were raised by a  
 11 number of customer comments. And in testimony, I think  
 12 both in anticipation of those comments and in response  
 13 to the concerns being raised at the hearing, we were  
 14 given a wide range of assurances about Hydro One's  
 15 independence and how that in turn would protect Avista's  
 16 independence if this proposed transaction is approved.  
 17 The events that unfolded in July appear to  
 18 have undermined that testimony to one degree or another,  
 19 and our purpose today is to learn to what extent those  
 20 assurances remain credible. For example, we received a  
 21 public comment from a gentleman, Mr. Mark Ellinger, in  
 22 which he relays the following exchange between a  
 23 reporter and Ontario's premier, Doug Ford.  
 24 The question is from the reporter, (as read)  
 25 You said many times, this is for the premier, that you

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1 are pro business and pro market, but you have now proven  
 2 that you're willing to interfere quite dramatically with  
 3 a private company. Is that the message you are sending  
 4 to private business? They will be taking a strong-arm  
 5 approach for the next four years.  
 6 Premier Ford responds, (as read) Let me be  
 7 very clear. Hydro One is not a private company. We are  
 8 the largest shareholder and our responsibility and the  
 9 minister's responsibility is to stand up and speak up  
 10 for the shareholders and that's what we have done.  
 11 So considering that many of these assurances  
 12 given to us earlier were grounded in the idea that Hydro  
 13 One was a private corporation, no more subject to the  
 14 political whim than any other regulated private utility  
 15 in North America, this remark by Premier Ford is  
 16 concerning.  
 17 And so we're going to be asking you and the  
 18 other witnesses questions today, however, because we  
 19 hope to learn basically the extent to which we can rely  
 20 on the earlier testimony and the proceeding meant to  
 21 convince us of Hydro One's independence. The possible  
 22 risks of Hydro One's ownership of Avista must be weighed  
 23 against the claimed benefits of this ownership, and we  
 24 must determine whether at the end of the day, the  
 25 balance results in a net benefit to the customers of

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1 Avista. So --  
 2 JUDGE MOSS: I'm sorry to interrupt, but I  
 3 notice that there are people calling in on the  
 4 conference bridge line, and I've already heard some  
 5 conversation in the background. That can get very  
 6 disruptive. So let me ask that anyone who is listening  
 7 in on the conference bridge line, please put your phone  
 8 on mute, and that way we won't get that interference.  
 9 I'll also repeat the fact that this is being  
 10 live-streamed by TVW today, and you can -- you can hook  
 11 up to that by going to Twitter.com/wautc, and there will  
 12 be a separate link for the morning session and the  
 13 afternoon session. So thank you. Appreciate your  
 14 cooperation.  
 15 Go ahead.  
 16 CHAIRMAN DANNER: So the questions I'm going  
 17 to be asking are basically this is -- this is going to  
 18 be the focus of them. And I don't know if you'd like to  
 19 make any preliminary remarks before I begin with the  
 20 questioning, but I have my questions ready.  
 21 MR. MORRIS: Go ahead, Mr. Chairman.  
 22 CHAIRMAN DANNER: All right. Well, thank  
 23 you. Recalling the discussion during the settlement  
 24 discussion -- or the settlement hearing on May 22, Hydro  
 25 One witness, Mr. Schmidt and Mr. Scarlett, spent a fair

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1 amount of time describing to us in detail how  
 2 essentially important the Governance Agreement between  
 3 Hydro One and the Province of Ontario was to ensuring us  
 4 that Hydro One would continue to operate as a private  
 5 corporation and one with an independent board and free  
 6 from political interference or influence by the  
 7 Province. Do you recall those discussions?  
 8 MR. MORRIS: I do, sir.  
 9 CHAIRMAN DANNER: Okay. In negotiating the  
 10 merger agreement with Hydro One, did you and Mr. Schmidt  
 11 or any other participants discuss the importance of  
 12 Hydro One being a private corporation free from  
 13 interference from the Province?  
 14 MR. MORRIS: Yes, we always had a  
 15 conversation about understanding clearly that the  
 16 Province was an -- over a 40 percent owner, that there  
 17 is a clear Governance Agreement that would be followed,  
 18 and that, indeed, that them being the largest  
 19 shareholder, that they would be a shareholder that would  
 20 not interfere in the day-to-day operation of the  
 21 company.  
 22 CHAIRMAN DANNER: So you discussed that the  
 23 Governance Agreement was a binding contract?  
 24 MR. MORRIS: I wouldn't get into that -- I  
 25 don't know if we used those terms, Mr. Chairman, but we

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1 did say that the Governance Agreement was intact. It  
 2 was something that we could rely on and that it would be  
 3 followed.  
 4 CHAIRMAN DANNER: Okay. And, again, the --  
 5 the inference being that the corporation would be free  
 6 from government interference?  
 7 MR. MORRIS: Yes.  
 8 CHAIRMAN DANNER: Okay. So the Commission  
 9 first became aware of the resignation of the Hydro One  
 10 board and resignation of Mr. Schmidt via press reports  
 11 describing Hydro One's public release on  
 12 July 11th, 2018, of the letter agreement of that date  
 13 with which we're now familiar. According to The  
 14 Spokesman-Review, in a brief article by Becky Kramer,  
 15 she said, and I quote, Avista issued a short statement.  
 16 Saying in part, quote, We are surprised by the news  
 17 regarding the retirement of Hydro One's CEO and the  
 18 agreement to replace its board of directors.  
 19 I take it, then, that you had no advance  
 20 warning that these steps were under consideration; is  
 21 that correct?  
 22 MR. MORRIS: I did not have any advance  
 23 knowledge, no.  
 24 CHAIRMAN DANNER: So is it also correct that  
 25 before the announcement, there was no discussion between

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1 Hydro One board members and executives with their  
 2 counterparts and Avista concerning the impacts that an  
 3 announcement such as this might have on the -- relative  
 4 to the value of Avista's stock?  
 5 MR. MORRIS: No, we did not have those  
 6 discussions.  
 7 CHAIRMAN DANNER: And similarly, is it the  
 8 case that there was no discussion before the  
 9 announcement between Hydro One board members or  
 10 executives and their counterparts at Avista concerning  
 11 the impacts the announcement might have relative to the  
 12 Commission's ongoing evaluation of this proposed  
 13 transaction?  
 14 MR. MORRIS: No.  
 15 CHAIRMAN DANNER: Avista also announced in a  
 16 short statement, the quote, We are monitoring  
 17 developments at Hydro One and wish Mayo Schmidt, Mayo  
 18 Schmidt well.  
 19 Did Hydro One reach out to Avista or did  
 20 Avista reach out to Hydro One to establish lines of  
 21 communication that would facilitate Avista's ability to  
 22 monitor developments?  
 23 MR. MORRIS: So really how this happened was  
 24 on the day that Mayo announced his retirement, Mayo  
 25 stepped out of his board meeting and gave me a call



1 about it, and -- and -- and said that they had come to  
2 an agreement that he would retire and that the board  
3 would resign and that they would then follow the  
4 Governance Agreement as -- as agreed upon with the  
5 Province. So that was my conversation with Mayo and --

6 CHAIRMAN DANNER: So that -- just that brief  
7 conversation?

8 MR. MORRIS: Yes, because Mayo was in the  
9 middle of his board meeting and he stepped out, and then  
10 we had a -- we called and had a conversation late that  
11 evening. I would say probably 8:00 or 9 o'clock at  
12 night, Mayo called me back and then we had a chance to  
13 really have a, more of a heart-to-heart conversation  
14 about the day's events and what it all meant.

15 CHAIRMAN DANNER: Okay. And was -- did he  
16 leave his position that very day, on July 11?

17 MR. MORRIS: My understanding is that he did  
18 resign that day. Yes --

19 (Multiple speakers.)

20 CHAIRMAN DANNER: -- that day?

21 MR. MORRIS: Yes, I want to make sure

22 that -- I would let Mr. Scarlett verify that --

23 CHAIRMAN DANNER: Okay. We'll --

24 MR. MORRIS: -- but understanding --

25 CHAIRMAN DANNER: -- verify that.

1 the July 12th price of \$50.36?

2 MR. MORRIS: Yeah, I -- yeah, I was going to  
3 say it was roughly about a 5 percent drop, so Mark's the  
4 math guy, so it's --

5 Mark?

6 MR. THIES: That sounds right. I'm sure you  
7 have the right numbers.

8 CHAIRMAN DANNER: Okay. And, again, what  
9 was the impact of the announcements on -- on the various  
10 regulatory proceedings in the three states remaining?

11 MR. MORRIS: So --

12 CHAIRMAN DANNER: That being Oregon,  
13 Washington, and Idaho.

14 MR. MORRIS: I think the response was in  
15 general similar in all cases. I think rightly so, all  
16 Commissions and staffs wanted to step back and reassess  
17 what happened and certainly wanted to have an  
18 opportunity to re-examine the record, ask more  
19 questions, and -- and be able to engage with all the  
20 parties around what this really meant. And I can say  
21 from Avista's perspective, we were very supportive of  
22 that, and I can tell you that Hydro One was very  
23 supportive of that. It was -- it was very appropriate.

24 CHAIRMAN DANNER: Okay. Thank you.

25 And what is the current status of your

1 MR. MORRIS: -- that is the case.

2 CHAIRMAN DANNER: Okay. And then your  
3 communication with the company afterwards, who was the  
4 main point of contact for you or did you have  
5 communication with the company following -- after his --

6 MR. MORRIS: With -- with --

7 CHAIRMAN DANNER: Hydro One.

8 MR. MORRIS: -- Hydro One? Yes, at that  
9 point in time, my main point of contact was with  
10 Mr. Scarlett, but then also that we had had an  
11 opportunity to meet the new CFO, Paul Dobson. So we had  
12 had conversations with Paul, Pat Meneley. The team in  
13 general, we have a great relationship, so we had an  
14 opportunity to continue conversations and talk about  
15 events and what -- what we needed, what was going to  
16 happen next.

17 CHAIRMAN DANNER: All right. What impact  
18 did the announcements on July 11th have on Avista's  
19 stock price?

20 MR. MORRIS: I'm -- you know, I'll let --  
21 I'll let Mark answer that, but I would say that there  
22 was some downward movement, but I don't think it was --

23 CHAIRMAN DANNER: Does it -- would it sound  
24 right if I -- if I said it was about 4.5 percent -- or  
25 4.5 percent down from the July 11th price of \$52.75 to

1 application in Idaho?

2 MR. MORRIS: That we are in the process of  
3 going through all of the -- the -- the filings, we have  
4 a hearing set up for the Monday after Thanksgiving, and  
5 we're in the process of engaging with all parties and  
6 have made, I would say, very good progress with all --  
7 all parties except one late intervening party that --  
8 that has not settled with us. But in general, I would  
9 say that we are in good -- a good place in Idaho.

10 CHAIRMAN DANNER: Okay. And what about  
11 Oregon?

12 MR. MORRIS: We just had a hearing yesterday  
13 in Oregon, and I would say that, again, most parties are  
14 still supportive of the transaction. CUB has stated  
15 publicly that they are no longer in favor of it, but  
16 Staff and other intervenors in Oregon have remained  
17 supportive.

18 CHAIRMAN DANNER: Okay. Would you agree  
19 that the events that Hydro One announced to the world on  
20 July 11th, 2018, were not in Avista's best interest?

21 MR. MORRIS: May I kind of elaborate on that  
22 before I say yes or no on that? So I would -- I would  
23 say this, that I was surprised when -- obviously when  
24 Mayo retired and -- and what happened. And from a  
25 personal perspective, I really enjoyed my opportunity to

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1 get to know Mayo, to work with him, and really felt like  
 2 we -- you know, a person that's really a great leader.  
 3 But also, I think it's really important to  
 4 understand that this -- this -- this deal was never done  
 5 on Scott and Mayo. This was done on the idea that this  
 6 is something that was going to be in the best interest  
 7 of not just our shareholders, but all of our  
 8 stakeholders, and that it was very important that we,  
 9 indeed, put together a deal that was a win for all of  
 10 our stakeholders, our customers, our communities, our  
 11 employees, and our shareholders.  
 12 The spirit of the negotiations of how we've  
 13 come today with all of the commitments were done  
 14 collaboratively with -- when we brought this to you,  
 15 when we announced it in July of last year, and that we  
 16 felt like we wanted to do something that, from a  
 17 perspective of doing a merger and a deal, that we put  
 18 together a Governance Agreement that really was state of  
 19 the art, that was really something that would stand the  
 20 test of time.  
 21 We know that -- that CEOs don't have long  
 22 shelf lives nor do boards, and that this really was  
 23 about the cultures and the value of Avista and Hydro  
 24 One, and that we wanted to build something great. And  
 25 we absolutely have done that with the Governance

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1 Agreement --  
 2 JUDGE MOSS: Mr. Morris, I'm going to stop  
 3 you there. You're -- you're straying from the question  
 4 so -- and I'm going to stop you there and ask you to get  
 5 back to the question which was --  
 6 CHAIRMAN DANNER: I -- I was prepared to  
 7 bring him back --  
 8 MR. MORRIS: Okay. So I was just trying to  
 9 under- -- so I just wanted to -- so -- so I guess I  
 10 wanted to say on the one hand, it may be having Mayo not  
 11 be the CEO initially you could say is not in the best  
 12 interest, but the spirit of the deal wasn't built on  
 13 Mayo, I guess is my answer. The spirit of the deal was  
 14 built on the Governance Agreement, the values of the  
 15 company, the benefits that it gives for all of our  
 16 stakeholders, and we both knew that -- Mayo and I, we're  
 17 60 years old. We're -- we don't have a ten-year run in  
 18 us on this stuff. We knew one of us was going to leave  
 19 at some point. So this was never done on whether it was  
 20 good for Scott or Mayo.  
 21 CHAIRMAN DANNER: Sure. So the question I  
 22 had, though, was the events on -- that Hydro One  
 23 announced involved a resignation of the entire board of  
 24 directors, resignation of the CEO, and the premier of  
 25 Ontario basically taking credit for the decision of

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1 those players. And as a -- as you have acknowledged,  
 2 the stock of Avista fell as a result of that, the  
 3 regulatory proceedings appeared to be slowed down, and  
 4 my question to you, do you believe that those events  
 5 were in Avista's best interest?  
 6 MR. MORRIS: No.  
 7 CHAIRMAN DANNER: Okay. And the other  
 8 question is, do you think that the events of July 11th  
 9 were in Hydro One's best interest?  
 10 MR. MORRIS: I -- I -- I don't want to  
 11 spec- -- I -- I'll let Mr. Woods and -- and -- and  
 12 Mr. Scarlett answer that question. I -- I don't know.  
 13 CHAIRMAN DANNER: But you're aware that  
 14 Hydro One stock fell about 8 percent --  
 15 MR. MORRIS: Sure.  
 16 CHAIRMAN DANNER: -- as a result and they  
 17 were downgraded and they're currently on a credit watch  
 18 negative --  
 19 MR. MORRIS: Yes, absolutely.  
 20 CHAIRMAN DANNER: -- as a result?  
 21 Since you mentioned your discussions and  
 22 your relationship with Mr. Schmidt, I wanted to ask you  
 23 a few questions on that too.  
 24 Of course, executives come and go,  
 25 commissioners come and go, people come and go, but the

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1 events -- the circumstances of his going were a bit  
 2 unusual in that you had in your earlier testimony talked  
 3 about a relationship of -- of trust and good  
 4 communication, appeared to be a shared vision. He was  
 5 removed, it appears, because people disagreed with that  
 6 vision, and I guess I will inquire of others more about  
 7 that. But do you believe, do you have a reason to  
 8 believe, that, if there is a change in the vision of the  
 9 corporation that you're intending to join with, that you  
 10 can continue to say that there is that kind of shared  
 11 vision going forward?  
 12 MR. MORRIS: Yes, since July, we've had  
 13 multiple conversations with the new chair of the board,  
 14 Woods, with the interim CEO, Paul Dobson, with the  
 15 entire Hydro One leadership team. We've had multiple  
 16 conversations up and down our organizations with many  
 17 people, Mr. Chairman, and the vision of the company  
 18 remains the same, to be an outstanding utility company  
 19 serving its customers. We feel like the -- the basis of  
 20 best practices of being able to share ideas and the idea  
 21 of both IT and with supply chain, the cultures and the  
 22 values of the company are aligned.  
 23 So while Mr. Schmidt was removed, and I'm  
 24 not -- I would maybe disagree a little bit with you, if  
 25 I may, around the vision of the company. I think some

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1 of it was around the perception of high electric rates  
2 in Ontario and perhaps, in my opinion, Hydro One taking  
3 the majority of the blame for those high rates, and  
4 Mr. Schmidt as the CEO being the person being held  
5 accountable for that. But I have never felt like the  
6 vision of the company has changed.  
7 CHAIRMAN DANNER: So basically, it's still  
8 the same Broadway play, it's just the cast has changed?  
9 MR. MORRIS: Yes.  
10 CHAIRMAN DANNER: So let me ask you about  
11 that. Do you have your testimony in Exhibit SLM-5T with  
12 you?  
13 MR. MORRIS: I do.  
14 CHAIRMAN DANNER: So on -- let me give you a  
15 second.  
16 MR. MORRIS: I'm sorry. I had 6T, not 5T.  
17 CHAIRMAN DANNER: There's a lot of paper.  
18 MR. MEYER: And, again, you're referencing  
19 his testimony just prior to his last supplemental  
20 testimony? Okay.  
21 CHAIRMAN DANNER: That's correct.  
22 MR. MEYER: So we'll just retrieve that in a  
23 minute. Thank you.  
24 If you have it. Whoever has it handy first.  
25 Thank you.

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1 MR. MORRIS: I have it, Mr. Chairman.  
2 CHAIRMAN DANNER: Okay. So on -- at page 3,  
3 lines 3 to 5, you say, (as read) As described below; do  
4 you see that?  
5 MR. MORRIS: Okay.  
6 CHAIRMAN DANNER: (As read) As described  
7 below, the proposed settlement will substantially  
8 increase those rate credits and provide additional  
9 shareholder funding -- I'm focused on the term  
10 "shareholder funding" -- of a number of customer-related  
11 initiatives.  
12 Do you see that?  
13 MR. MORRIS: Yes, sir.  
14 CHAIRMAN DANNER: Okay. Again, on page 8,  
15 at line 18 to 24, that term is used again, (as read) An  
16 additional 11.7 million of shareholder funding will be  
17 devoted to initiatives such as weatherization, low  
18 income, renewable resources, professional home energy  
19 audits, and Ongo repayment software.  
20 Do you see that one too?  
21 MR. MORRIS: I do, sir.  
22 CHAIRMAN DANNER: Okay. And then on the  
23 next page, page 9, line 5, again, we see the term  
24 shareholder-funded financial commitments. And at lines  
25 12, 14, you refer to financial benefits paid for by

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1 shareholders. So -- and I have a few other cites that  
2 those are used. On page 10, lines 1 to 3, you say, (as  
3 read) Nearly 74 million of financial benefits spread  
4 across Washington, Idaho, and Oregon all paid for by  
5 shareholders. And finally, at page 11, lines 15, 16,  
6 you refer to, quote, The shareholder-funded Montana  
7 community transition fund.  
8 In subsequent testimony, and this is SLM-16,  
9 which is another document entirely, you say that Hydro  
10 One will be in essence -- in essence be the primary  
11 shareholder of Avista. And so with respect to this last  
12 point, is it more accurate to say that Olympus Equity,  
13 LLC, an indirect wholly-owned subsidiary of Hydro One,  
14 will be the only shareholder of Avista owning and  
15 controlling a hundred percent of Avista's shares?  
16 MR. MORRIS: Yes.  
17 CHAIRMAN DANNER: Okay. And am I correct to  
18 believe, then, all those references that I just read to  
19 you where it says "shareholders," that what we're really  
20 referencing here is Olympus Equity, LLC?  
21 MR. MORRIS: Yes.  
22 CHAIRMAN DANNER: Okay. So Olympus Holding,  
23 LLC's only business function is to own a hundred percent  
24 of Avista's shares; is that right?  
25 MR. MORRIS: Yes.

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1 CHAIRMAN DANNER: Is it fair to say that to  
2 the extent that Olympus Holdings, LLC has any funds, the  
3 source of those funds then would be dividends paid up to  
4 Avista -- from Avista?  
5 MR. MORRIS: Yes. May I --  
6 MR. MEYER: Let's -- may we elaborate  
7 further on that? Maybe Mr. --  
8 MR. MORRIS: Mr. Thies?  
9 CHAIRMAN DANNER: Judge?  
10 JUDGE MOSS: That's fine if you have some  
11 different answer.  
12 MR. THIES: I do. So the dividends can come  
13 up from Avista, but also, equity can come in from Hydro  
14 One. They are the parent of Olympus, LLC, so funds can  
15 flow both ways. They can flow up and they can flow  
16 down, so funds could flow in from Hydro One and up from  
17 Avista.  
18 CHAIRMAN DANNER: Okay. Thank you.  
19 So focussing on the dividends, though, who  
20 controls the dividends paid by Avista? Is it the Avista  
21 board of directors?  
22 MR. MORRIS: Yes, with the -- the agreements  
23 that we've made, and -- and there are rules around how  
24 dividends can be dividended up and down. We have to  
25 follow the commitments made.

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1 CHAIRMAN DANNER: Okay. And so that will  
 2 continue to be true if this proposed transaction is --  
 3 MR. MORRIS: Yes.  
 4 CHAIRMAN DANNER: Okay. And so however  
 5 remote a possibility you may consider it to be, isn't it  
 6 possible, isn't it possible that at some point of time  
 7 from time to time the board of directors may decide not  
 8 to pay any dividends to Olympus?  
 9 MR. MORRIS: I can't -- I can't -- what I  
 10 would say is that the board of directors would, in my --  
 11 in my judgment, would follow the spirit of and what's in  
 12 the governance agreements that we've agreed upon so if,  
 13 indeed, that we are within our bounds, we would  
 14 certainly dividend it, if -- if it was within the bounds  
 15 of the definitions of what we've come up with, and if we  
 16 had fallen outside of that, and we would follow the  
 17 commitments we have made in the governance agreements.  
 18 CHAIRMAN DANNER: So you would -- you cannot  
 19 conceive of an instance when you would not pay dividends  
 20 that are needed to provide Olympus with the adequate  
 21 funds to meet the funding requirements of its  
 22 commitments to pay the rate credits and the low income  
 23 weatherization, et cetera?  
 24 MR. MORRIS: Yeah, and -- and that's, again,  
 25 as you -- as I -- as I mentioned, there are commitments

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1 if we fall below certain levels that we're not allowed  
 2 to dividend up. So we would follow the commitments  
 3 agreed upon in the -- in the Governance Agreement. So  
 4 if we fell below that level, then no, we would not  
 5 dividend up.  
 6 CHAIRMAN DANNER: Okay. Mr. Morris, you're  
 7 both the CEO and the chairman of the board of Avista; is  
 8 that correct?  
 9 MR. MORRIS: Yes.  
 10 CHAIRMAN DANNER: Okay. And as chairman of  
 11 the board, is it right that you have a fiduciary duty to  
 12 act in the best interest of Avista's shareholders?  
 13 MR. MORRIS: I do.  
 14 CHAIRMAN DANNER: Okay. And don't all  
 15 directors have a fiduciary duty to serve in the best  
 16 interest of the owners; that is, the shareholders?  
 17 MR. MORRIS: We do.  
 18 CHAIRMAN DANNER: So assuming that Hydro  
 19 One's proposed acquisition of a hundred percent of  
 20 Avista's stock is approved, who will be Avista's  
 21 shareholder?  
 22 MR. MORRIS: Hydro One.  
 23 CHAIRMAN DANNER: Or Olympus? Or -- or  
 24 Hydro -- Hydro One?  
 25 MR. MORRIS: Hydro One. Olympus is the

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1 United States subsidiary of Hydro One.  
 2 CHAIRMAN DANNER: Okay. So it doesn't  
 3 change anything relative to your fiduciary duty except  
 4 that it now runs exclusively to Hydro One?  
 5 MR. MORRIS: Yes, we -- Hydro One is our --  
 6 is our shareholder.  
 7 CHAIRMAN DANNER: Okay. And will that be  
 8 true for every member of the board of directors without  
 9 regard to who nominates them or who votes for them or  
 10 who they work for?  
 11 MR. MORRIS: Yes, the spirit of a board of  
 12 directors would be, again, be the fiduciary for the  
 13 shareholder; however, we also know that in order to  
 14 provide outstanding shareholder value, you've got to be  
 15 absolutely committed to your customers, your employees,  
 16 and your community. So they are not mutually exclusive.  
 17 When we make business decisions around things, of course  
 18 you're trying to maximize shareholder value, but you  
 19 have to do it in the spirit of service, employees,  
 20 communities, and if you don't do all of those extremely  
 21 well, you're not going to create superior shareholder  
 22 values. So for me, they are mutually exclusive.  
 23 CHAIRMAN DANNER: So what happens in the  
 24 interest where your shareholder informs you and all  
 25 members of the board that it wants the board to take

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1 some specific action or refrain from doing something,  
 2 you think that'll influence your decision on making  
 3 those decisions, will you act in accordance with your  
 4 owner's wishes?  
 5 MR. MORRIS: Well, I think the beauty of --  
 6 of the Governance Agreement that we created is that we  
 7 have a separate board of directors that has been  
 8 delegated the authority to run the company. And that  
 9 indeed, that -- that the interest of our shareholder  
 10 will absolutely be at the top of mind, but also in the  
 11 idea that those decisions are made from the Pacific  
 12 Northwest with independent directors, looking at it from  
 13 a broad scope of what's best for communities, employees,  
 14 customers, and our shareholders and understanding that  
 15 there's a long-term view to how you provide that kind of  
 16 service and run that kind of business and the unique  
 17 responsibility a utility has to all of its stakeholders.  
 18 So and -- and, again, it was Hydro One's  
 19 idea to set up the separate board of directors with  
 20 these independent directors in delegating that  
 21 authority. So they're very comfortable with that  
 22 arrangement. It was -- it was their idea to set it up  
 23 this way, and I was very much supportive of that. So --  
 24 so I suppose you could create scenarios where perhaps  
 25 that might be the case.

1 In a realistic -- I think realistically,  
2 they want to create and have the most shareholder value  
3 they can, and it's in their best interest that we  
4 perform at a high level. So -- so I think it's -- it's  
5 not -- I don't see scenarios where they're going to be  
6 telling us to do things that would be destructive long  
7 term for a short-term gain because this is a long-term  
8 business.

9 JUDGE MOSS: So then when you say that,  
10 Mr. Morris, do you take into account that the Province's  
11 interference in Hydro One's affairs back in the summer  
12 had a result of reducing the shareholder -- the Hydro  
13 One main shareholder, the Province, 47 percent owner,  
14 they lost something like \$200 million in share value?

15 MR. MORRIS: Yes.

16 JUDGE MOSS: So despite a move like that,  
17 you're not at all concerned?

18 MR. MORRIS: What I would say is they made a  
19 decision around following the Governance Agreement to  
20 remove the board and the -- and -- and -- and the CEO,  
21 which did create that -- that destruction of shareholder  
22 value, but at no time has -- and I'll let Mr. Woods and  
23 Mr. Scarlett talk about this, but the Province has not  
24 engaged in any type of conversation with them about how  
25 to run the business after that.

1 Hydro One's proactive negotiation with us, they have  
2 delegated authority for all compensation issues to the  
3 board of Avista, with the independent board. So they  
4 have no say in our compensation structure here in the  
5 U.S. That's delegated to our board of five independent  
6 directors from the -- in the Northwest, Pacific  
7 Northwest, who are on that board.

8 So I -- I don't see -- I don't have concern  
9 at all about the premier reaching into our business  
10 telling us how to run it. We -- we've effectively,  
11 through these delegation of authorities and these  
12 commitments, been able to ringence not just  
13 financially, but from a governance perspective, the  
14 independent operation of our company.

15 CHAIRMAN DANNER: Okay. And we'll be  
16 looking into that today as well. I thank your for the  
17 answers to my questions. That's all the questions I  
18 have at this time.

19 Judge?

20 I don't know if my colleagues have  
21 questions.

22 JUDGE MOSS: Go ahead.

23 COMMISSIONER BALASBAS: Thank you.  
24 Good morning, Mr. Morris.

25 MR. MORRIS: Good morning, Commissioner.

1 They made a decision on changing out  
2 leadership, but they have not interfered in the -- in --  
3 in how Hydro One chooses to operate and perform and  
4 serve its shareholders, its customers, its community or  
5 how they treat their employees. So from that  
6 perspective, I don't see a risk because that isn't the  
7 intent of how -- what happened --

8 CHAIRMAN DANNER: But isn't it true that  
9 since that date, there have been limitations -- I mean,  
10 this is Ontario legislature under the direction of  
11 Mr. Ford, again, putting limitations on executive  
12 compensation. He has certainly made noises both about  
13 reducing rates by 12 percent, which I think would affect  
14 the revenue stream of the company. At the -- at the  
15 same time not only has he made noises, but he's bragged  
16 about being able to keep his promises.

17 MR. MORRIS: Sure.

18 CHAIRMAN DANNER: So is there a potential  
19 that your board of directors would come to you and ask  
20 you for help in implementing some of those --

21 MR. MORRIS: My answer -- my answer would be  
22 no because of the spirit of a few things. The idea  
23 around the executive comp, it states clearly that is for  
24 Canada and Canadian subsidiaries. It does not include  
25 U.S. subsidiaries. That's clear in the bill. That on

1 COMMISSIONER BALASBAS: So you made a  
2 statement in response to one of Chair Danner's questions  
3 regarding the exit of Mr. Schmidt from Hydro One, and I  
4 think you stated something to the effect that the  
5 company -- that Hydro One's values are still intact.  
6 What -- what do you say in response to the fact that the  
7 company, meaning Hydro One, effectively ignored the  
8 procedures in its Governance Agreement to facilitate the  
9 exit of the board and the CEO? What does that say about  
10 the values of Hydro One?

11 MR. MORRIS: Well, what I would tell you,  
12 again, we're talking about the actions, and I'll let  
13 Mr. Scarlett and Mr. Woods talk about that, but it was  
14 the largest shareholder making a decision that they --  
15 they wanted to exercise the Governance Agreement on the  
16 board of directors. And the board could have followed  
17 the Governance Agreement -- this is my understanding.  
18 And, again, I'll let them -- I'd like to make -- let  
19 Hydro One elaborate. But they decided that it was not  
20 in the best interest of the company in order to prolong  
21 and follow it to the letter of the law.

22 So they -- the board I think from a values  
23 perspective and care perspective felt like they would  
24 resign so that we could go ahead and move on and get the  
25 new board in place. My understanding is that they would

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1 have followed the Governance Agreement, that we would be  
 2 getting the new board in place literally now as opposed  
 3 to being able to do it in an expedited manner, and that,  
 4 indeed, that from a values perspective and a cultural  
 5 perspective, you know, my -- Avista is -- my company is  
 6 a 129-year-old company and my board certainly has an  
 7 impact on culture and values. I would say that the  
 8 hundred and -- the 1700 employees that create Avista is  
 9 the culture and the values of the company and that it's  
 10 our company and that -- that the actions of something  
 11 like that, I don't -- I wouldn't say is a reflection  
 12 of -- of your -- of your values. So no, I wouldn't say  
 13 that.

14 COMMISSIONER RENDAHL: Good morning,  
 15 Mr. Morris.

16 MR. MORRIS: Hi.

17 COMMISSIONER RENDAHL: Do you recall a line  
 18 of questioning with Chair Danner about the shareholder  
 19 funding --

20 MR. MORRIS: Yes.

21 COMMISSIONER RENDAHL: -- parts of your  
 22 testimony in SLM-5T?

23 MR. MORRIS: I do, Commissioner.

24 COMMISSIONER RENDAHL: So there was a -- one  
 25 of the last portions that he read, the question was, on

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1 line 12, page 9, (as read) By any measure do you believe  
 2 that financial benefits of 44.3 million [inaudible] to  
 3 Washington customers and paid for by shareholders  
 4 satisfy the net benefit standard?

5 Do you recall that or do you have that in  
 6 front of you?

7 MR. MORRIS: I do, I do, yes.

8 COMMISSIONER RENDAHL: So given the line of  
 9 questioning that the shareholder funding can be both  
 10 dividending up and potentially contributing capital down  
 11 from Hydro One, but the statements have been in the  
 12 record in your current testimony and other testimony  
 13 that -- that it will be the equity that is retained  
 14 earnings that will be funding this, these commitments.  
 15 Now, you say that -- that these are customers, on line  
 16 15, you said, (as read) Absent this merger, customers  
 17 would not have enjoyed these net benefits.

18 So if primarily this is coming from retained  
 19 earnings, where is the net benefit to customers?

20 MR. MORRIS: Well, these -- these are all  
 21 new programs that would otherwise not be funded if we  
 22 did not do this -- this deal. So the benefits come from  
 23 the fact that these -- that these -- these benefits  
 24 are -- are -- if -- if this deal does not happen, then  
 25 those benefits will not be paid to customers.

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1 COMMISSIONER RENDAHL: But these benefits,  
 2 it's not -- it's coming from Avista primarily if it's  
 3 coming from retained earnings, correct?

4 MR. MORRIS: Yes.

5 COMMISSIONER RENDAHL: Okay. Thank you.

6 MR. THIES: Commissioner, may I add some  
 7 color --

8 Or Judge.

9 -- to that?

10 JUDGE MOSS: You -- you have a question?

11 MR. THIES: Well, I was going to add some  
 12 color to Commissioner Rendahl's question on the just  
 13 coming from retained earnings.

14 COMMISSIONER RENDAHL: Well, I think  
 15 there'll be some other questions --

16 MR. THIES: Okay. Okay.

17 COMMISSIONER RENDAHL: -- later.

18 MR. THIES: I'm sorry. Yeah, that's fine.

19 I'm sorry.

20 JUDGE MOSS: Let's -- perhaps the Commission  
 21 will ask specific questions, but Mr. Thies, we'll turn  
 22 to you.

23 CHAIRMAN DANNER: All right.

24 COMMISSIONER BALASBAS: Good morning,  
 25 Mr. Thies.

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1 MR. THIES: Good morning, Commissioner.

2 COMMISSIONER BALASBAS: Did Avista  
 3 Corporation have positive net income in 2017?

4 MR. THIES: Yes.

5 COMMISSIONER BALASBAS: About -- about  
 6 roughly, not exact dollars, but to the nearest million  
 7 or so, how much was that?

8 MR. THIES: I -- I would have to look it up.  
 9 I don't know off the top of my head.

10 COMMISSIONER BALASBAS: If I said  
 11 approximately \$116 million, would that sound close to --

12 MR. THIES: That would sound close, yes.

13 COMMISSIONER BALASBAS: All right. And how  
 14 much did Avista utilities contribute to that positive  
 15 net income in 2017?

16 MR. THIES: Again, off the top of my head, I  
 17 don't -- I don't know exactly, but they are the lion  
 18 shares. It's generally greater than 90 percent.

19 COMMISSIONER BALASBAS: All right. And am I  
 20 correct in assuming, then, that Avista utility  
 21 ratepayers generated that positive net income in 2017?

22 MR. THIES: Yes, that is -- that is our  
 23 revenue stream comes from our customers, delivery of our  
 24 service, and the rates and collection of the revenues.

25 COMMISSIONER BALASBAS: And what did Avista

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1 Corporation do with the net income in 2017?  
 2 MR. THIES: So largely, we pay approximately  
 3 it's about a hundred million or 90 to a hundred million  
 4 dollars. I don't know, again, the exact amount is  
 5 dividends to shareholders. And then the rest is  
 6 reinvested in the business as part of our retained  
 7 earnings.  
 8 COMMISSIONER BALASBAS: Okay. And do you  
 9 have an approximate guess as to how much of that in 2017  
 10 was retained earnings by Avista Corporation?  
 11 MR. THIES: Well, the -- so all of our  
 12 earnings go into retained earnings and then dividends  
 13 come out of retained earnings.  
 14 COMMISSIONER BALASBAS: Right.  
 15 MR. THIES: So a hundred percent goes into  
 16 the retained earnings and then the dividend comes out of  
 17 retained earnings.  
 18 COMMISSIONER BALASBAS: So I guess my  
 19 question, then, is after the dividends, roughly give or  
 20 take, how much was retained earnings in --  
 21 (Multiple speakers.)  
 22 MR. THIES: You know, 15 to 25 million. I  
 23 don't know exact. We can check that. I could get a  
 24 correct, an exact answer.  
 25 COMMISSIONER BALASBAS: So did the merger

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1 agreement contemplate either Hydro One or Avista seeking  
 2 more shareholder paid in capital to fund the various  
 3 commitments in the settlement stipulation?  
 4 MR. THIES: I'm not sure I under- -- more  
 5 capital to fund the commitments?  
 6 COMMISSIONER BALASBAS: Correct.  
 7 MR. THIES: So as I understand it, the  
 8 commitments -- a -- certain of the commitments will come  
 9 out of Avista's funds like the rate credit, right? So  
 10 that is a credit back to our customers that will come  
 11 out directly of Avista's dollars, but then we will -- we  
 12 expect to have and have, you know, worked through,  
 13 worked with Hydro One to maintain a prudent balance  
 14 sheet.  
 15 And so we will -- you know, we will -- we  
 16 will dividend some dollars up, but then we expect to get  
 17 an equity contribution from the parent and maintains our  
 18 prudent balance sheet. So all those factor into  
 19 ultimately that impacts, you know, Hydro One, that those  
 20 dollars that come out of the rate credit will be  
 21 negative to our earnings, yet we need to maintain a  
 22 prudent balance sheet so that we would then get an  
 23 equity contribution to cover that.  
 24 COMMISSIONER BALASBAS: So have the -- have  
 25 both companies always assumed, then, that Avista's

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1 retained earnings would be the first source of funds to  
 2 fund the various settlement stipulation commitments?  
 3 MR. THIES: No, it depends on what the  
 4 commitments are. Like the rate credit, yes, that was --  
 5 that will go through Avista, and that is the largest of  
 6 all of those commitments. Some of the other fundings, I  
 7 don't know that we've specifically said that it has --  
 8 the funds should come from Hydro One in a contribution  
 9 and then we could pay it or they would come from  
 10 retained earnings and then we would seek an equity  
 11 contribution.  
 12 I don't know that the specific details of  
 13 each one of those commitments have been worked out on  
 14 the flow of funds directly. Ultimately, it will impact  
 15 Hydro One because it will go through Avista's earnings  
 16 or they will fund it directly.  
 17 COMMISSIONER BALASBAS: So am I correct,  
 18 then, in concluding that effectively Avista ratepayers  
 19 are the source of the vast majority of Avista's retained  
 20 earnings?  
 21 MR. THIES: Yes, as a source of our revenue  
 22 stream because of the delivery of our service and the  
 23 payment of our rates, yes, they are the direct  
 24 provider --  
 25 COMMISSIONER BALASBAS: So am I correct in

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1 concluding, then, that effectively Avista ratepayers  
 2 are actually funding these various commitments in the  
 3 settlement stipulation?  
 4 MR. THIES: I don't believe so,  
 5 Commissioner. I believe the -- the ratepayers, the  
 6 customers, are -- are paying Avista for a service.  
 7 We're providing electric service or natural gas service,  
 8 so their funds are coming in for a service they're  
 9 receiving, and then Avista's retained earnings is really  
 10 the shareholders' benefits.  
 11 So in -- in the regulatory compact, you  
 12 know, the shareholders are allowed to earn a fair  
 13 return. That return is funded by the customers, that  
 14 is -- that is correct, but it is a return for the  
 15 shareholder. So that retained earnings and that -- and  
 16 that earning amount is really the shareholder dollars  
 17 that either gets dividended out or reinvested in the  
 18 business.  
 19 COMMISSIONER BALASBAS: All right. Thank  
 20 you.  
 21 So I would like to -- I'd like to pose the  
 22 same question that Chair Danner did to Mr. Morris about  
 23 the events of July 11th. Do you believe that the events  
 24 that happened on July 11th were in Avista's best  
 25 financial interest?

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1 MR. THIES: To Mr. Morris or Mr. Thies?  
 2 COMMISSIONER BALASBAS: To you.  
 3 MR. THIES: To me, okay. I'm sorry. Again,  
 4 as Mr. Morris said, the -- the -- you know, we did not  
 5 believe that that was in our best interest, but for all  
 6 of the other things that we had with the Governance  
 7 Agreement and the cultures and the work together with  
 8 Hydro One, we don't believe it should also stop this.  
 9 COMMISSIONER BALASBAS: All right. Okay.  
 10 I'd like to switch gears now, and do you have your  
 11 testimony MTT-6T in front of you?  
 12 MR. THIES: Yes.  
 13 COMMISSIONER BALASBAS: All right. If you  
 14 turn to page 4, I believe beginning on line 21, it  
 15 starts with the question in your testimony, (as read)  
 16 Could Hydro One cut Avista's capital budget?  
 17 MR. THIES: I'm sorry, what?  
 18 COMMISSIONER BALASBAS: The question starts  
 19 with, (as read) Could Hydro One cut Avista's capital  
 20 budget?  
 21 MR. THIES: Oh, yes, I see it. Thank you.  
 22 COMMISSIONER BALASBAS: All right. And your  
 23 answer effectively talked about Avista's ability to have  
 24 necessary funds to provide safe and reliable service; is  
 25 that a fair characterization of your answer to that

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1 question?  
 2 MR. THIES: Yes.  
 3 COMMISSIONER BALASBAS: So as I was reading  
 4 this part of your testimony, you actually didn't answer  
 5 the question from -- from the original one of  
 6 Avista's -- Avista's relationship with Hydro One and the  
 7 capital budget. So could Hydro One's board or its CEO  
 8 or the two working in concert issue a directive that  
 9 neither Hydro One nor any of its subsidiaries is  
 10 authorized to make capital expenditures for renewable  
 11 energy projects?  
 12 MR. THIES: No, I don't believe so. I  
 13 believe the capital requirements of Avista and -- and --  
 14 would -- would be based on Avista's board. Avista's  
 15 board will make the determination as to whether we make  
 16 capital investments in our system to provide safe and  
 17 reliable service or into renewable energy projects  
 18 should they be determined to be necessary and prudent.  
 19 COMMISSIONER BALASBAS: All right. So could  
 20 Hydro One's board or CEO or the two working in concert,  
 21 issue a directive suspending infrastructure improvement  
 22 activities by Hydro One and its subsidiaries heading a  
 23 determination by the Hydro One board that each planned  
 24 expenditure is necessary to ensure safe and reliable  
 25 service?

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1 MR. THIES: Again, I don't believe so. I  
 2 believe the -- the board -- we have an independent board  
 3 of Avista as -- as -- as been described in the testimony  
 4 with the -- with the two members from Avista, two  
 5 members from Hydro One and the five independent  
 6 [inaudible] that will determine the -- the capital  
 7 expenditures or the program to provide safe, reliable  
 8 service for the company in conjunction with management  
 9 as well as management historic in our practices as we've  
 10 had in front of the Commission as management determines  
 11 what capital expenditures we should make and the board  
 12 approves those.  
 13 COMMISSIONER BALASBAS: All right.  
 14 MR. THIES: I would expect that to continue.  
 15 COMMISSIONER BALASBAS: Okay. All right.  
 16 So if you could stay with your testimony, MTT-6T, I  
 17 believe on page 5, lines 12 through 18, you talk about  
 18 Stipulated Commitment 35 and Stipulated Commitment 36.  
 19 MR. THIES: Yes.  
 20 COMMISSIONER BALASBAS: All right. Do you  
 21 agree that this testimony and these specific commitments  
 22 at least imply that Avista may not be able at some point  
 23 in time to obtain and maintain a separate credit rating  
 24 from at least one nationally recognized statistical  
 25 rating agency?

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1 MR. THIES: The -- the purpose for that  
 2 statement is, the rating agencies may not -- they may  
 3 not be, you know, in existence, and -- I -- I can't say  
 4 whether Moody's or Standard & Poor will be there forever  
 5 because companies can come and go. So the intent was we  
 6 will continue to be rated by at least one of them. If  
 7 not, we will have to have a separate one available.  
 8 COMMISSIONER BALASBAS: So if you could not  
 9 obtain a rating from a credit agency, where would  
 10 lenders look to decide whether and under what terms they  
 11 would lend money to Avista?  
 12 MR. THIES: So rating agencies provide  
 13 ratings for public deals, but if we do a private deal,  
 14 and we have done some of these, the investors will do  
 15 their own evaluation. We will have a rating, but they  
 16 will do their own evaluation of what the -- what the  
 17 security or safety of Avista is and determine at what  
 18 rate they would be willing to lend us money at.  
 19 COMMISSIONER BALASBAS: So for a public  
 20 issuance, for example, where would they look?  
 21 MR. THIES: Rating agencies.  
 22 COMMISSIONER BALASBAS: They would.  
 23 MR. THIES: And -- and they may have some of  
 24 their own analysis.  
 25 COMMISSIONER BALASBAS: But if you did



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1 not -- if Avista did not have a specific rating agency,  
 2 then where would those potential debt investors look?  
 3 MR. THIES: I -- I don't know the answer to  
 4 that. I've never had that happen. Whenever we have  
 5 done a public deal, we have always had a public -- or a  
 6 rating from the rating agencies, and we anticipate that  
 7 continuing.  
 8 COMMISSIONER BALASBAS: So would those  
 9 potential debt investors, then, look to Avista's parent  
 10 company for creditworthiness?  
 11 MR. THIES: Typically not, because the way  
 12 we have -- if we were to issue that the way we have  
 13 always issued that, which is we provide first mortgage  
 14 bonds, so the security is the first mortgage bonds of  
 15 the utility assets. And so they would look to those  
 16 assets and evaluate whether in their determination those  
 17 assets provided sufficient support for their issuing of  
 18 debt, and then they would determine a rate at which they  
 19 would be willing to lend us.  
 20 COMMISSIONER BALASBAS: And where would  
 21 those investors look to obtain that asset value  
 22 information?  
 23 MR. THIES: They would look at the value of  
 24 the company and the value of the assets on the books, so  
 25 we have a book value and then we also have a value of

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1 the company relative to book value.  
 2 COMMISSIONER BALASBAS: All right. Thank  
 3 you. I believe that's all the questions I have.  
 4 JUDGE MOSS: All right. Well, I believe  
 5 that concludes the Bench's questions for you, Mr. Morris  
 6 and Mr. Thies. We appreciate your testimony today.  
 7 Mr. Meyer, did you feel the necessity to  
 8 follow up in any way?  
 9 MR. MEYER: Ever so briefly.  
 10 So you were asked, and both of you were  
 11 asked, but I will direct this to Mr. Morris.  
 12 Were the -- I'll paraphrase. The question  
 13 was something to effect that were the events in July in  
 14 the Province of Ontario in the best interest of Avista  
 15 and its customers, and I recall your answer was no.  
 16 Does that -- does that in and of itself make this a bad  
 17 deal for Avista?  
 18 MR. MORRIS: Not at all. With the  
 19 Governance Agreement that we have in place, the benefits  
 20 that we have for our customers, our communities,  
 21 employees, and our shareholders. And, again, this deal  
 22 was never done on the fact that we have a current CEO or  
 23 even a current board of directors, but this was done in  
 24 the vision of a hundred-year idea of how long our  
 25 company's been in existence. So while in the near term,

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1 it was the detriment, in the long term, it has no  
 2 effect.  
 3 MR. MEYER: Thank you.  
 4 JUDGE MOSS: Thank you. Appreciate that.  
 5 All right. We can -- why don't we take our  
 6 morning break while the witnesses retire from the  
 7 witness table and have the Hydro One panel come up. And  
 8 I'll ask counsel to stay back there at the second row of  
 9 tables because we have a lot of witnesses to be up here.  
 10 And if you need to speak, you can just signify that by  
 11 standing up, and I'll recognize you and then you can  
 12 come around and use -- there should be one vacant mic at  
 13 one end or the other. So we will have the witnesses up  
 14 here and counsel behind. We'll take ten minutes until  
 15 the half hour by the wall clock.  
 16 (A break was taken from  
 17 10:20 a.m. to 10:33 a.m.)  
 18 JUDGE MOSS: Let's be back on the record.  
 19 And, Commissioner Rendahl, were you going to  
 20 go next?  
 21 COMMISSIONER RENDAHL: I believe so.  
 22 Good morning. I have some questions for  
 23 Mr. Scarlett. I apologize for your laryngitis. Good  
 24 thing you have water.  
 25 MR. SCARLETT: That's all right.

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1 COMMISSIONER RENDAHL: Okay.  
 2 MR. SCARLETT: We'll be fine.  
 3 COMMISSIONER RENDAHL: So keeping with the  
 4 theme from the first two witnesses, let's talk about the  
 5 events after the election in June. You filed testimony  
 6 JDS-1T; do you have that with you?  
 7 MR. SCARLETT: I expect so.  
 8 COMMISSIONER RENDAHL: Okay. Going to read  
 9 through a few items starting on page 5, line 22.  
 10 MR. SCARLETT: I'm looking for it if you  
 11 want to read, we can still --  
 12 COMMISSIONER RENDAHL: Oh, okay. I'll  
 13 begin. So this is, again, JDS-1T so Mr. Scarlett's  
 14 testimony filed in the supplemental round starting on  
 15 page 5. And in that testimony, you state that on July  
 16 4th, a few days after the new government took a majority  
 17 of seats in the Ontario legislature, that discussions  
 18 were held between the representatives of the board and  
 19 the Ontario premier's office. Discussions between the  
 20 premier's office and legal counsel to the board were  
 21 held on July 5th as were discussions among the board  
 22 chair, another board member, and the board's legal  
 23 counsel. Do you see that reference in your testimony  
 24 starting on page 5?  
 25 MR. SCARLETT: Yes, I do.

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1 COMMISSIONER RENDAHL: Okay. You also state  
 2 further that discussions during the July 6th through 8th  
 3 period were held among representatives of the board, the  
 4 board's legal counsel, and representatives of the  
 5 Ontario's premier's office, correct?  
 6 MR. SCARLETT: Correct.  
 7 COMMISSIONER RENDAHL: So according to your  
 8 testimony, all of these discussions lead to the July 11  
 9 letter agreement being approved by the cabinet and  
 10 entered into between Hydro One represented by Mr. David  
 11 Denison in Ontario and Ontario represented by the  
 12 Honorable Greg Rickford, the Minister of Energy,  
 13 correct?  
 14 MR. SCARLETT: Correct.  
 15 COMMISSIONER RENDAHL: Okay. So then on  
 16 page 6, starting at line 13, you say that (as read)  
 17 These discussions and ultimately the letter agreement  
 18 were in consideration of newly-elected Premier Ford's  
 19 campaign promise to get rid of the board and CEO  
 20 Schmidt, correct?  
 21 MR. SCARLETT: Correct.  
 22 COMMISSIONER RENDAHL: Okay. And so  
 23 finally, you testified that, (as read) In light of this,  
 24 the board of Hydro One determined that it would be in  
 25 the best interest of Hydro One to voluntarily resign to

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1 facilitate the orderly replacement of the board in a  
 2 sequential manner on an expedited basis. And rather  
 3 than wait for Premier Ford to trigger the procedures in  
 4 the Governance Agreement, we'll pursue legislation with  
 5 potentially intrusive provisions. A process for  
 6 replacing the board was documented in the letter  
 7 agreement, correct?  
 8 MR. SCARLETT: Correct.  
 9 COMMISSIONER RENDAHL: Okay. So in so  
 10 doing, you also said that, (as read ) the Province and  
 11 Hydro One complied with the spirit and intent of Section  
 12 4.7 of the Government agreement -- Governance Agreement,  
 13 and in order to serve the best interest of the company,  
 14 the parties agreed to forego the requirement to hold a  
 15 shareholder's meeting thereby expediting the process and  
 16 reducing uncertainty, correct?  
 17 MR. SCARLETT: Correct.  
 18 COMMISSIONER RENDAHL: Okay. So were you  
 19 involved in any of these discussions?  
 20 MR. SCARLETT: I wasn't -- no board counsel.  
 21 The board has its own independent counsel, which was a  
 22 firm that we don't use for our other work so they were  
 23 independent. It was a firm called Davies LLP, and a  
 24 fellow there was a guy called Vince Mercier. But I did  
 25 have conversations with Mr. Mercier leading up to these

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1 conversations so -- and I'll stop, but I can tell you  
 2 more about the background if you're interested.  
 3 COMMISSIONER RENDAHL: Well, I guess I am  
 4 interested. So -- so when did you have discussions with  
 5 Mr. Mercier?  
 6 MR. SCARLETT: Well, off and on through the  
 7 weeks preceding the meetings that happened at the  
 8 beginning of July, remember the election was on June 7th  
 9 and -- and we had no communication. We, Hydro One, had  
 10 no communication with the newly elected government at  
 11 that time. We couldn't frankly get time, couldn't get  
 12 on their agenda. We weren't able to have meetings or  
 13 discussions with them.  
 14 During that time, I would talk to  
 15 Mr. Mercier about acting for the board as independent  
 16 counsel, and he -- and he was doing so with Mr. Denison  
 17 who was the chair at the time. When we were getting  
 18 down to the beginning of July and we heard that one of  
 19 the board members had been able to arrange an initial  
 20 meeting with representatives of the government, I was  
 21 actually out of town, and I had some conversations with  
 22 Mr. Mercier about how those discussions might -- might  
 23 play out, what the different alternatives were.  
 24 And frankly, it was in one of those  
 25 discussions that I suggested that one of the

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1 difficulties with the Governance Agreement in the  
 2 government's mind might well be the fact that following  
 3 the -- all of procedures in Section 4.7 could take up to  
 4 90 days, just the time it takes to call the shareholder  
 5 meeting, do the search of beneficial holders, and so on,  
 6 do a circular. All that can take you 60 days.  
 7 And so in those discussions, I recommended  
 8 that since the outcome of a shareholders vote was not in  
 9 question when you have a 47 percent shareholder, just  
 10 mathematically, there's just no way that that 47 percent  
 11 block will not carry the day. I suggested that there  
 12 would be no substantive purpose served by doing the  
 13 shareholders meeting. And so it would -- it would be  
 14 consistent with everything in the Governance Agreement  
 15 if the board was to agree that the shareholders meeting  
 16 wouldn't be necessary and we could enter into a shorter  
 17 time frame, which would have the benefit of reducing a  
 18 period of uncertainty.  
 19 So I had that discussion with Mr. Mercier,  
 20 and then I had a few other discussions going through the  
 21 weekend about what some of the compensation arrangements  
 22 were for our CEO. But I wasn't involved in direct  
 23 discussions with the government at all.  
 24 COMMISSIONER RENDAHL: Okay. So who was the  
 25 board member who had the conversations with the

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1 government?  
 2 MR. SCARLETT: Well, it was Mr. Denison.  
 3 When I mentioned the other board member, we had George  
 4 Cook who had -- who had -- who had a contact who reached  
 5 out to the government to say, you know, we should be  
 6 having a conversation about this. But I don't think  
 7 Mr. Cook was directly involved, although I don't know.  
 8 I wasn't there.  
 9 COMMISSIONER RENDAHL: So you were -- were  
 10 you providing some counsel, then, to Mr. Mercier?  
 11 MR. SCARLETT: I wouldn't -- I wasn't giving  
 12 him counsel, I was giving him some information. That's  
 13 all.  
 14 COMMISSIONER RENDAHL: And so when you said  
 15 it was your suggestion it would not be in the best  
 16 interest to follow the Governance Agreement given the  
 17 shareholder percentage, that was your recommendation?  
 18 MR. SCARLETT: Well, I certainly made that  
 19 argument, not being the only person to make it. And I  
 20 didn't just to -- to be precise on the words, I didn't  
 21 say it would be in the best interest. I said it would  
 22 be consistent with the Governance Agreement principles  
 23 to follow all the steps.  
 24 And, you know, what the Governance Agreement  
 25 is really focused on is limiting the Province's ability

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1 to act as a major shareholder, because without the  
 2 Governance Agreement, at a normal shareholders meeting,  
 3 a 47 percent or a 40 percent shareholder can elect every  
 4 director, not just 40 percent. And I felt it was  
 5 important, I felt it was important that to the extent we  
 6 could and we keep to the principles in the Governance  
 7 Agreement, and my view is that is what happened.  
 8 COMMISSIONER RENDAHL: Okay. So in these  
 9 discussions that you are having with Mr. Mercier, were  
 10 you also discussing matters with Mr. Schmidt?  
 11 MR. SCARLETT: I'm just trying to remember,  
 12 because of course I would talk to Mr. Schmidt regularly  
 13 about business and so on. I don't -- I don't recall  
 14 having any great detailed discussions with Mayo about  
 15 that procedure that we would follow. I don't recall  
 16 that.  
 17 COMMISSIONER RENDAHL: So did you have  
 18 discussions with Mr. Schmidt about whether he should be  
 19 retiring as a part of this --  
 20 MR. SCARLETT: No, I did not talk to him at  
 21 all about -- about the retirement idea. It -- it -- it  
 22 came up in the documentation.  
 23 COMMISSIONER RENDAHL: So Mr. Mercier was  
 24 communicating with the members of the board directly?  
 25 MR. SCARLETT: With the chairman of the

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1 board, and I don't know what communication went on  
 2 beyond that. And Mr. Schmidt, by the way, had his own  
 3 external independent legal counsel helping him through  
 4 these -- these -- these discussions that culminated in  
 5 the July 11 agreement.  
 6 COMMISSIONER RENDAHL: At what point did he  
 7 realize he needed to retain legal counsel?  
 8 MR. SCARLETT: I'm just trying to be as  
 9 precise as I can be. I don't know with precision, but  
 10 it would have been -- just to give you the background.  
 11 Management has had its own counsel representing all the  
 12 management on the variety of employment-type matters and  
 13 compensation-type matters going back over a year. And  
 14 then I would say probably it was very close to the time  
 15 that these discussions were happening. So it may have  
 16 been just the very week before the discussions started,  
 17 but it was -- it -- it was sometime in June, I would  
 18 say, that he, on someone else's recommendation, hired  
 19 his own separate legal counsel.  
 20 COMMISSIONER RENDAHL: Okay. So you were  
 21 here in the room when Mr. Morris and Mr. Thies were  
 22 testifying, correct?  
 23 MR. SCARLETT: Yes, I was.  
 24 COMMISSIONER RENDAHL: And so do you recall  
 25 the conversation with the discussion with Mr. Morris

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1 about when he -- when Mr. Morris first heard from  
 2 Mr. Schmidt?  
 3 MR. SCARLETT: Yes.  
 4 COMMISSIONER RENDAHL: And that -- I believe  
 5 his testimony that he stepped out of a board meeting.  
 6 MR. SCARLETT: Yes.  
 7 COMMISSIONER RENDAHL: So there was a board  
 8 meeting for the purpose of discussing the July 11  
 9 letter?  
 10 MR. SCARLETT: I believe so. I wasn't in  
 11 attendance, but it would stand to reason that this was  
 12 approved by the board, so there would have had to have  
 13 been a meeting.  
 14 COMMISSIONER RENDAHL: Okay. Are you aware  
 15 whether or not there was a vote by the board resulting  
 16 from the meeting?  
 17 MR. SCARLETT: Again, I -- I can -- I don't  
 18 have direct knowledge. I mean, I can -- I can make a  
 19 pretty informed assumption or presumption that there  
 20 must have been because the agreement was signed by the  
 21 chair, and he wouldn't have done it without the board's  
 22 consent. And all the directors agreed to resign and  
 23 agreed to the process where they would resign in a  
 24 serial manner. Just an administrative task.  
 25 COMMISSIONER RENDAHL: So who would be the

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1 right person to offer testimony about this particular  
2 topic if you are not the right one?  
3 MR. SCARLETT: The specifics about  
4 conversations --  
5 COMMISSIONER RENDAHL: About the board  
6 meeting at which --  
7 MR. SCARLETT: It would either -- either  
8 have to be the chairman of the board, the ex-chairman,  
9 or one of the advisors who was present.  
10 COMMISSIONER RENDAHL: And none of them are  
11 here today, correct?  
12 MR. SCARLETT: Correct.  
13 COMMISSIONER RENDAHL: Are you aware whether  
14 there were any board minutes that were filed as a result  
15 of that meeting?  
16 MR. SCARLETT: I expect there were. I  
17 haven't seen them. I mean, we have a -- we have a  
18 corporate secretary. It's not me, it's someone who  
19 reports to me, and she would have kept minutes of those  
20 meetings.  
21 COMMISSIONER RENDAHL: And do you know  
22 whether this was a duly noticed board meeting or was  
23 this an emergency board meeting?  
24 MR. SCARLETT: Oh, I expect it would have  
25 been an emergency, but under our bylaws, which is common

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1 in corporate law, you waive notice by attendance or by  
2 just waiving notice.  
3 COMMISSIONER RENDAHL: So would this  
4 decision and the vote have resulted from a formal board  
5 resolution?  
6 MR. SCARLETT: I -- I -- I expect so, yes.  
7 COMMISSIONER RENDAHL: And that would be  
8 included in minutes?  
9 MR. SCARLETT: I expect so. I'm not trying  
10 to avoid the question, I just don't know.  
11 COMMISSIONER RENDAHL: I understand you were  
12 not present.  
13 MR. SCARLETT: Right.  
14 COMMISSIONER RENDAHL: So if you were  
15 present, do you imagine that there -- this is  
16 hypothetical, do you imagine that there would have been  
17 discussions about what would happen to the value of  
18 Hydro One's stock if the board suddenly resigned en  
19 masse? Can you imagine what those conversations would  
20 have been like?  
21 MR. SCARLETT: It's really a guess. I  
22 would -- I would not expect that there would have been  
23 those conversations. That's not the sort of thing that  
24 I normally hear in board meetings. We did have a  
25 discussion with directors, you know, previously in

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1 weeks, you know, leading up to -- like right after the  
2 election when we were in the dark, so to speak, about  
3 talking to the Province where, you know, we talked about  
4 what the alternatives might be and what the right thing  
5 to do would be in terms of the best interest of the  
6 company. And certainly nobody talked then about what  
7 might happen to stock price.  
8 COMMISSIONER RENDAHL: So when you were  
9 talking to your directors, when you were evaluating what  
10 might happen potentially, there was no discussion of  
11 what the impact would be on Hydro One's stock?  
12 MR. SCARLETT: Not that I recall, no. The  
13 conversation was more about what's in the best interest  
14 of the company and what the fiduciary duties are to look  
15 out for the best interest of the company, what the  
16 Governance Agreement would call for and so on.  
17 COMMISSIONER RENDAHL: So given your  
18 involvement in this transaction, were there any  
19 discussions between you and the directors and the  
20 colleagues about the potential impact on this  
21 transaction and its regulatory review?  
22 MR. SCARLETT: We knew it -- we knew it  
23 would -- I can't honestly recall any direct conversation  
24 like that. Remember, this -- this all happened in a  
25 very abbreviated time, and it was a very hectic few days

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1 as we were sorting through these details and the -- what  
2 culminated in the July 11 agreement. It was all, of  
3 course, under a cloak of confidentiality. So there  
4 weren't a lot of internal discussion about impacts one  
5 way or the other.  
6 Of course, as soon as it occurred and we did  
7 the press release, you know, then we had our  
8 conversations, it was clear that it was -- the impact  
9 would be that it would be troubling to people. My own  
10 view was that while the -- there was clearly a  
11 short-term impact, it was basically on Hydro One, and  
12 that we did not believe, and I still don't believe, that  
13 the impact is really on Avista. I think that there's a  
14 short-term period of uncertainty, but I think that the  
15 way we've structured our deal, it's sort of neutral to  
16 Avista.  
17 COMMISSIONER RENDAHL: So in your  
18 discussions in -- with the directors, was there any  
19 discussion -- in your discussions with Mr. Mercier, are  
20 you aware of any discussions in his -- from  
21 conversations with him that there was discussion between  
22 Hydro One and provincial representatives about the  
23 possibility of the impact this -- these events might  
24 have that might precipitate a shareholder derivative  
25 action by one or more of the other shareholders other

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1 than the Province?  
 2 MR. SCARLETT: I -- I have not had that  
 3 discussion with anyone, nor have I heard of it  
 4 occurring.  
 5 COMMISSIONER RENDAHL: All right. Thank  
 6 you.  
 7 All right. Let's move on to another set of  
 8 topics. So in your testimony, you had said that just  
 9 today your recommendation was to not follow the  
 10 procedures in Section 4.7 of the Governance Agreement  
 11 because it would take 90 days and that it was necessary  
 12 to act in timely manner. Did you -- you thought that  
 13 this would be in the best interest even though Premier  
 14 Ford's government went ahead and pursued legislation  
 15 that had intrusive provisions in it even after the July  
 16 11 agreement?  
 17 MR. SCARLETT: Well, we took these things  
 18 one step at a time, and I thought then and I think now  
 19 that it was in the best interest of everybody that we  
 20 deal with this as expeditiously as possible. And I also  
 21 knew that, from what I could read in the paper, that we  
 22 had a government that was intent now on acting and if I  
 23 went back to them and said or someone went back and said  
 24 you can follow this process and take 90 days, I didn't  
 25 know that they were going to be patient enough to take

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1 90 days.  
 2 So I didn't think it would be attractive to  
 3 the government. I knew that it would be negative for  
 4 the company to be going through a 90-day period of  
 5 uncertainty. And so my strong recommendation was that,  
 6 in fact, we abide by all of the procedures and all of  
 7 the requirements in the Governance Agreement except only  
 8 doing away with the need for a shareholders meeting,  
 9 which I believe then and I believe now, would have had  
 10 no substantive value.  
 11 COMMISSIONER RENDAHL: Okay. Thank you.  
 12 JUDGE MOSS: Let me follow up on that if I  
 13 may. I'm just curious, and this goes back to your  
 14 earlier testimony, you said several times that having a  
 15 47 percent share of the company gave this minority  
 16 shareholder the ability to absolutely determine the  
 17 board. I don't understand that. I thought things were  
 18 by majority vote.  
 19 MR. SCARLETT: So I didn't say it would  
 20 affect -- or allow this shareholder to do it. I said  
 21 the Governance Agreement prevents the shareholder from  
 22 doing that, and that is what happened with the change of  
 23 our board.  
 24 What I'm getting at generally, Judge Moss,  
 25 is whenever you have a public company and you have a

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1 shareholder that owns a large chunk, that the  
 2 practicalities of shareholder meetings are it is a  
 3 majority vote, but a majority of the votes that are  
 4 represented at the meeting, and you never get a meeting  
 5 with a hundred percent turnout. If you're lucky, you  
 6 get a meeting with 75 percent turnout. Let's use that  
 7 number. That would mean anybody with 38 percent of the  
 8 vote, controls the entire vote.  
 9 JUDGE MOSS: And this sort of information  
 10 would be known to the investment -- investing public?  
 11 MR. SCARLETT: Oh, yeah. And anybody who  
 12 deals with public companies knows this happens and knows  
 13 that that's why in -- I was so confident when I said  
 14 that there wouldn't be a question in the outcome of the  
 15 vote because Province -- when we did the shareholders  
 16 meeting, and Province had a 47 percent vote for them not  
 17 to pass. The resolutions would have required 48 percent  
 18 against, which would have meant you would have in turn  
 19 95 percent, which is just not practically possible.  
 20 Sorry, am I making sense? Am I answering your question?  
 21 JUDGE MOSS: Well, yes, I understand what  
 22 you're saying.  
 23 Go ahead.  
 24 CHAIRMAN DANNER: Mr. Scarlett, so for those  
 25 53 percent who are not the Province, there is -- I mean,

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1 it could be possibly some of them invested in this  
 2 company with the comfort and reliance on a Governance  
 3 Agreement --  
 4 MR. SCARLETT: Correct.  
 5 CHAIRMAN DANNER: -- that established a  
 6 90-day period. And even though the votes might not have  
 7 been with them, the process might have been with them  
 8 and they might have been able to take that opportunity  
 9 to try and convince both the Province and their fellow  
 10 shareholders of the error of this particular line of  
 11 action; isn't that possible?  
 12 MR. SCARLETT: Just trying to choose my  
 13 words. I -- I think it's possible like many things are  
 14 possible, but I think it's in the realm of minute.  
 15 Actually, I don't think it's practically possible in the  
 16 climate of the day --  
 17 CHAIRMAN DANNER: And so the 90-day process  
 18 you said you didn't think it -- that would create  
 19 uncertainty. What is it you are scared of that would  
 20 happen during those 90 days?  
 21 MR. SCARLETT: Well, first of all, I didn't  
 22 know a couple of things to be very blunt. I didn't know  
 23 how the government would react if we told them they had  
 24 to wait up to 90 days to actually act on what they  
 25 wanted to do. But secondly --

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1 CHAIRMAN DANNER: And -- and what -- in what  
2 ways could they act against the best interest of the  
3 company at that time? When --  
4 MR. SCARLETT: Well, as --  
5 CHAIRMAN DANNER: -- you say you didn't know  
6 how they were going to react, what were their options?  
7 MR. SCARLETT: Well, we said in our  
8 testimony in May and I'll say again now, they always had  
9 the power to pass legislation. They could have said,  
10 we're not going to wait 90 days, here's legislation,  
11 bang. Which I think would have been much worse, because  
12 I thought it was very important that we abide by the  
13 requirements and the principles in the Governance  
14 Agreement, which -- which we did.  
15 I personally don't believe that there was  
16 any real process value in running a shareholders  
17 meeting. I don't believe that there was any chance the  
18 shareholders were going to rise up and convince the  
19 government not to do what they had publicly said.  
20 CHAIRMAN DANNER: Have you talked to  
21 shareholders, did you do that --  
22 MR. SCARLETT: I didn't personally --  
23 (Multiple speakers.)  
24 MR. SCARLETT: No, I personally did not. I  
25 mean, I think there were discussions, but I can tell you

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1 that nobody was coming to us that I was aware of saying  
2 we have to do something about this --  
3 CHAIRMAN DANNER: When you say there were  
4 discussions, what were those discussions?  
5 MR. SCARLETT: I believe our -- the  
6 ex-chair, I'm just pausing now for a minute. I know  
7 that there were discussions in May around executive  
8 compensation. Actually, I don't believe that there were  
9 discussions about the shareholders meeting concept, but  
10 I do know that I was not aware and I don't believe any  
11 shareholders came forward with a, you know, request that  
12 other action be taken. And certainly I was -- I'm not  
13 aware that there has been any kind of critical  
14 commentary from shareholders about why didn't we have a  
15 meeting.  
16 CHAIRMAN DANNER: All right. Thank you.  
17 COMMISSIONER RENDAHL: Okay. Mr. Scarlett,  
18 I would like to talk about the Governance Agreement. So  
19 do you recall your testimony here in May during which  
20 you described at length, and I can give you a transcript  
21 page if you'd like. You described the step-by-step  
22 requirements of Section 4.7 describing it as, quote,  
23 Probably a 90-day process carefully thought through and  
24 structured and essential to selling the deal to the  
25 public and, quote, To assemble the management team led

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1 by Mayo Schmidt because no one wanted to work for a  
2 Crown corporation to be blunt.  
3 MR. SCARLETT: Yes, I remember that comment.  
4 COMMISSIONER RENDAHL: Okay. So in looking  
5 at the Governance Agreement, which I believe is Exhibit  
6 JDS-2, right? There is a section providing for waiver,  
7 correct?  
8 MR. SCARLETT: I'm -- I'm sure there is.  
9 COMMISSIONER RENDAHL: Section 8.11.  
10 MR. SCARLETT: Okay.  
11 COMMISSIONER RENDAHL: And find that  
12 agreement --  
13 CHAIRMAN DANNER: It's MMS-5.  
14 COMMISSIONER RENDAHL: I'm sorry, MMS-5,  
15 which was an exhibit to Mr. Schmidt's testimony.  
16 MR. SCARLETT: I know I have it. I just  
17 need to find it. The section I have -- the section  
18 you're referring to again is?  
19 COMMISSIONER RENDAHL: Section 8.11. So  
20 that's the waiver provision, which the July 11 letter  
21 did invoke, correct?  
22 MR. SCARLETT: Yes.  
23 COMMISSIONER RENDAHL: Okay. So when you  
24 were giving your testimony in May, my understanding, and  
25 you can correct me, was that the intent of the

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1 Governance Agreement was to protect shareholders given  
2 the large percentage ownership of the Province, correct?  
3 MR. SCARLETT: Correct.  
4 COMMISSIONER RENDAHL: But doesn't Section  
5 8.11, then, severely undercut the intent of the  
6 Governance Agreement to protect shareholders if the  
7 Province can just waive any provision?  
8 MR. SCARLETT: No, that's not the effect of  
9 8.11. 8.11 is a standard term in any contract that says  
10 if we're going to waive something, we have to do it in  
11 instrument by writing. It doesn't allow one party to  
12 waive, it requires both parties. It's --  
13 COMMISSIONER RENDAHL: But in this case,  
14 this is an agreement between Hydro One and the Province,  
15 correct?  
16 MR. SCARLETT: Correct.  
17 COMMISSIONER RENDAHL: So the other  
18 shareholders have no say in the decision whether there's  
19 going to be a waiver?  
20 MR. SCARLETT: Correct.  
21 COMMISSIONER RENDAHL: And this agreement is  
22 intended to protect them?  
23 MR. SCARLETT: Correct.  
24 COMMISSIONER RENDAHL: Okay. So given -- we  
25 were talking about the legislation, the Hydro One

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1 Accountability Act, is there anything that would prevent  
 2 the provincial government from pursuing additional  
 3 legislation that might have additional intrusive effect?  
 4 MR. SCARLETT: No, the only -- for all  
 5 practical purposes, no. Under our constitution and  
 6 charter of rights, they -- they can't pass legislation  
 7 that affects our charter rights of Canadians, but for  
 8 all intents and purposes, that's I don't think relevant  
 9 to our determination. They could pass another piece of  
 10 legislation that affects Hydro One, yes, they could.  
 11 COMMISSIONER RENDAHL: Okay. So given the  
 12 turn of events in June and July, and since your  
 13 testimony in May, and given an understanding of the  
 14 waiver provision, 8.11, what faith should this  
 15 Commission have that the other terms of the Governance  
 16 Agreement would be upheld in the future if we approve  
 17 this merger?  
 18 MR. SCARLETT: I'm just sort of trying not  
 19 to overstate. I mean, my own -- my own view is that  
 20 first of all, the ability to pass legislation that could  
 21 affect Hydro One has always been there, and we said that  
 22 in May, and that's a constant. And we also said in May  
 23 every utility is subject to the ability of government  
 24 that reports, you know, has jurisdiction to pass  
 25 legislation that could affect it. Nothing different

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1 there. The Governance Agreement is a contract.  
 2 Contracts can always be amended by consent of the  
 3 parties, so that could always happen.  
 4 What I would say in looking at the current  
 5 situation, which I fully appreciate is very unsettling,  
 6 it happened, and how it happened is unsettling with  
 7 people at Hydro One as well. But I would like to  
 8 emphasize that when you stand back and look at this, the  
 9 Governance Agreement, in fact, worked. It did constrain  
 10 the government's activity. The government did not pass  
 11 legislation removing and putting a whole new board in by  
 12 fiat. It didn't do that. It -- it -- it complied with  
 13 the Governance Agreement in all substandard respects  
 14 when it came to dealing with the board of directors, and  
 15 that's, I think, a very powerful statement.  
 16 JUDGE MOSS: Well, it didn't have to pass  
 17 legislation, did it? You got a compliant board of  
 18 directors that said we'll go along with what you want to  
 19 do.  
 20 MR. SCARLETT: Well, but, Judge Moss, that  
 21 starts with they had the rights under this agreement  
 22 that are well known and they abided by them. I don't  
 23 think anybody can be critical of the government for  
 24 exercising rights that were well known, well publicized,  
 25 and they followed them in all substantial respects. So

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1 I think the Governance Agreement worked when it came to  
 2 dealing with the board of directors.  
 3 JUDGE MOSS: Even though Section 4.7 in the  
 4 Governance Agreement generally was put in place in order  
 5 to protect the interest of new investors when the  
 6 company went private, which you said was essential to  
 7 the success of the public offering, and those  
 8 shareholders were deprived of any opportunity to have  
 9 any say at all; isn't that true?  
 10 MR. SCARLETT: Again, I -- I don't accept  
 11 that.  
 12 JUDGE MOSS: All right.  
 13 MR. SCARLETT: They -- they followed the  
 14 procedures, they had an independent committee, ad hoc  
 15 committee, come up with a new slate of directors, which  
 16 they've done. The only thing that they didn't do was  
 17 hold a shareholders meeting that I thought, and I still  
 18 think, would have been a meaningless use of time and it  
 19 would be detrimental to all the shareholders of the  
 20 company if they had done that. You may have a different  
 21 view, but that's my view.  
 22 JUDGE MOSS: Okay.  
 23 CHAIRMAN DANNER: So I'm -- I'm looking at  
 24 Mr. Schmidt's testimony, which was I believe we talked  
 25 about earlier, when he said -- in our May hearing, he

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1 was speculating about the various political parties and  
 2 their positions, and he was saying that all through  
 3 that, being that we have a contract with the Province  
 4 and they will, in fact, operate as a shareholder, but  
 5 not as a manager of the business.  
 6 MR. SCARLETT: Right.  
 7 CHAIRMAN DANNER: Do you think that that has  
 8 come to pass? Do you still see that they have acted as  
 9 only as a shareholder and not as a manager of the  
 10 company?  
 11 MR. SCARLETT: Yes, I do.  
 12 CHAIRMAN DANNER: And so you don't see  
 13 publicly demanding the resignation of the CEO and the  
 14 board of directors as being managerial, you see that as  
 15 being kind of a shareholder --  
 16 MR. SCARLETT: Shareholders -- I'm sorry.  
 17 CHAIRMAN DANNER: No, go ahead.  
 18 MR. SCARLETT: Mr. Chairman, shareholders do  
 19 that in my experience all the time in public companies.  
 20 We're talking about private, but this is a public  
 21 company. It's a funny use of the word private. It's  
 22 not government, it's not private, it's public and the  
 23 public markets. In the public markets, shareholders,  
 24 active shareholders, which you see all the time in the  
 25 press in the States, they do this sort of thing all the

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1 time. And they do it with a whole lot less shareholding  
 2 than -- than 40 percent. And, again, they change --  
 3 they changed the board entirely consistently with the  
 4 rights that they have in the Governance Agreement that  
 5 were well known by all investors. And they -- and they  
 6 demanded a change in the CEO, which, again, active  
 7 shareholders do with regularity.  
 8 CHAIRMAN DANNER: So when your largest  
 9 shareholder, though, is also in charge of the levers of  
 10 government, and so they're backing up these calls,  
 11 unlike a private investor, they actually have means to  
 12 carry out something, I mean, limitations on executive  
 13 compensation, for example, to pass legislation. Don't  
 14 you see that as kind of stepping out of the traditional  
 15 shareholder role for a non-Crown corporation?  
 16 MR. SCARLETT: Well, it's farther than  
 17 traditional shareholders can go. I do see -- I think  
 18 that I can point to many examples of active shareholders  
 19 changing boards and changing senior management.  
 20 Certainly in the U.S. and in Canada, we have what's  
 21 called say on pay, so shareholders are routinely  
 22 commenting on pay packages, they do it every annual  
 23 meeting. And it's routine for companies to seek the  
 24 input of their shareholders on pay packages. It --  
 25 CHAIRMAN DANNER: But how many shareholders

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1 have the ability to pass legislation to enact that?  
 2 MR. SCARLETT: I was just going to say as  
 3 well, Chairman Danner, that it is correct that the  
 4 government has this extra stip that passes -- that says  
 5 we can pass legislation to limit the pay packets. I  
 6 can't -- I can't deny that.  
 7 CHAIRMAN DANNER: So --  
 8 MR. SCARLETT: But I don't think that's  
 9 managing the business.  
 10 CHAIRMAN DANNER: So Mr. Ford has also  
 11 called for a 12 percent reduction in rates. Would he  
 12 have the ability to enact legislation to make that  
 13 happen if the board of directors were to disagree with  
 14 him on that?  
 15 MR. SCARLETT: He has the ability to enact  
 16 legislation that would cut across the entire industry.  
 17 It wouldn't be Hydro One. I mean, if we're -- other  
 18 people on the panel may be better suited to talk more  
 19 about the -- the promise to reduce rates by 12 percent,  
 20 but the fact is -- the fact is that they cannot reduce  
 21 rates by 12 percent just by going after Hydro One. If  
 22 they're going to pass legislation, it will be  
 23 industry-wide.  
 24 CHAIRMAN DANNER: Well, the legislation can  
 25 be passed where you identify the characteristics of the

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1 companies that would be affected by that, for example, a  
 2 company with so many residential customers or a  
 3 customer -- a company with revenues of over a certain  
 4 amount. There are ways to single out a particular  
 5 company in legislation that is not necessary bill of  
 6 attainder?  
 7 MR. SCARLETT: Chair Danner, I'm sure you're  
 8 right, but I would like to observe that the size and the  
 9 scale of the 12 percent reduction issue is large enough  
 10 that it cannot be delivered by doing the kind of narrow  
 11 legislation that you are positing. There just simply  
 12 isn't enough in Hydro One to achieve that. That would  
 13 have to be industry-wide if you're going to do something  
 14 that way.  
 15 CHAIRMAN DANNER: I'm sorry, so -- so can  
 16 you restate that so I fully understand? So what you're  
 17 saying is --  
 18 MR. SCARLETT: I was responding to your  
 19 comment that somebody could be clever with legislation  
 20 and make it look like it was industry-wide but in fact  
 21 describe it in a way we're going to only hit one  
 22 company. And maybe, maybe. I'm just commenting more I  
 23 think on a more general point that if the Ford  
 24 government decides to achieve its goal of a 12 percent  
 25 reduction in Hydro rates through legislation, that will

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1 be industry-wide, because you simply cannot achieve that  
 2 kind of reduction off the back of a company like Hydro  
 3 One, which only accounts for a third of people's  
 4 electrical bills. It'd be 5 percent of electrical  
 5 bills, and not all of the customers in Ontario. So they  
 6 couldn't achieve their aim if they did the kind of  
 7 legislation you're talking about.  
 8 CHAIRMAN DANNER: Okay. And so if they did  
 9 industry-wide, I would assume that that would affect not  
 10 only your revenues or Hydro One's revenues, but those of  
 11 the other large utilities as well?  
 12 MR. SCARLETT: Yeah, I mean, I would suggest  
 13 that this line, I don't want to put it off, but I think  
 14 other members of the panel, my colleagues, Mr. Dobson,  
 15 might be better suited to --  
 16 CHAIRMAN DANNER: Well, yeah, and I -- I'm  
 17 really -- what I'm trying to get to is not to discuss  
 18 the merits of legislation but to talk about the  
 19 protections of the Governance Agreement and how they can  
 20 be sidestepped or run over.  
 21 MR. SCARLETT: Well, again, the Governance  
 22 Agreement I think specifically says that there's nothing  
 23 in it that prevents the Province from passing law to  
 24 general application.  
 25 CHAIRMAN DANNER: All right. Thank you.



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1 MR. SCARLETT: And the market knows that.  
 2 COMMISSIONER RENDAHL: Okay. So I just have  
 3 one more set of questions for you and that's about the  
 4 appointment of the new directors.  
 5 MR. SCARLETT: Okay.  
 6 COMMISSIONER RENDAHL: Okay. So, again, the  
 7 Governance Agreement in Section 4.7.2 talks about the  
 8 delivery of a removal notice. Again, all of this  
 9 process was -- was sidestepped as you said because of  
 10 the interest of the 90 days and --  
 11 MR. SCARLETT: So only the shareholders  
 12 meeting was sidestepped.  
 13 COMMISSIONER RENDAHL: Okay. So there was a  
 14 removal notice?  
 15 MR. SCARLETT: I believe so, yes. I didn't  
 16 see it, but I believe so.  
 17 COMMISSIONER RENDAHL: Okay. So Mr. Denison  
 18 would coordinate the establishment of the ad hoc  
 19 nominating committee?  
 20 MR. SCARLETT: Yes, he did that.  
 21 COMMISSIONER RENDAHL: Okay.  
 22 MR. SCARLETT: And retained an outside  
 23 search firm to help.  
 24 COMMISSIONER RENDAHL: Okay. So did the --  
 25 under the terms of the Governance Agreement, and this is

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1 Section 4.1.1, the Province gets to pick 40 percent of  
 2 the nominees and the ad hoc nominating committee selects  
 3 the remainder, correct?  
 4 MR. SCARLETT: Correct.  
 5 COMMISSIONER RENDAHL: Okay. Did the  
 6 Province -- in your knowledge, did the Province and the  
 7 ad hoc nominating committee operate independently of one  
 8 another in selecting their respective nominees?  
 9 MR. SCARLETT: Yes.  
 10 COMMISSIONER RENDAHL: And so what was  
 11 the -- since you were not -- let's just take a step  
 12 back. Were you involved in the ad hoc process?  
 13 MR. SCARLETT: No.  
 14 COMMISSIONER RENDAHL: And so what is the  
 15 basis of your knowledge of what occurred during those  
 16 discussions?  
 17 MR. SCARLETT: I would have conversations  
 18 with the corporate secretary who was involved just about  
 19 the ongoing process and what I generally knew.  
 20 COMMISSIONER RENDAHL: Okay. So the  
 21 Province, then, had no say in selecting any of the  
 22 nominees other than the four provincial nominees?  
 23 MR. SCARLETT: That's my understanding.  
 24 COMMISSIONER RENDAHL: So in your  
 25 conversations with the corporate secretary, how did

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1 those discussions occur? Were there separate meetings  
 2 with the search committee between the Province and the  
 3 search committee and the ad hoc committee and the search  
 4 committee?  
 5 MR. SCARLETT: There was only one ad hoc  
 6 committee. I don't know what search committee you're --  
 7 COMMISSIONER RENDAHL: Well, you mentioned  
 8 there was a search -- I'm sorry, a search firm that --  
 9 MR. SCARLETT: Oh, they hired -- they hired  
 10 one of the executive search firms to help them find  
 11 director candidates, which is a pretty common thing.  
 12 COMMISSIONER RENDAHL: Okay. And the  
 13 Province was a part of the ad hoc nominating committee?  
 14 MR. SCARLETT: No, no, it's -- the ad hoc  
 15 nominating committee was run by the ex-chair and it  
 16 comprised representatives of major shareholders as well,  
 17 but the Province -- the Province had its own process,  
 18 and Mr. Woods can speak to what he knows of the  
 19 Province's process. And they had their four nominees  
 20 and the ad hoc nominating committee had used a search  
 21 firm to come up with a list of candidates, interviewed  
 22 candidates, and then resolved on six of them.  
 23 COMMISSIONER RENDAHL: Okay. So once all of  
 24 the candidates were nominated and, Mr. Woods, you'll  
 25 have an opportunity to explain the process for the

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1 Province, how were the individual nominees voted on and  
 2 approved?  
 3 MR. SCARLETT: So in between shareholder  
 4 meetings, you don't do shareholder votes. As I said,  
 5 we -- we did away with that meeting and you simply  
 6 follow it's a board resolution process where you keep a  
 7 quorum on the board at all times so you don't have ten  
 8 people resign and then -- because then there's no one to  
 9 put the other ten on. You have three resign, the  
 10 remaining seven of the quorum, they appoint the  
 11 replacements and three more resign and so on until  
 12 you've completed the replacement of the board.  
 13 COMMISSIONER RENDAHL: So were you present  
 14 at that board meeting?  
 15 MR. SCARLETT: No, I was not. That was I  
 16 think just done through written resolutions actually.  
 17 COMMISSIONER RENDAHL: And are you aware  
 18 from your discussions with the corporate secretary how  
 19 and by whom the interim chairman of the board was  
 20 selected, nominated and approved?  
 21 MR. SCARLETT: I think Mr. Woods is best  
 22 able to answer that question.  
 23 COMMISSIONER RENDAHL: Okay. Great. So I  
 24 have no other questions for Mr. Scarlett. I don't know  
 25 if my colleagues do, and I don't know, Chair Danner, if

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1 you wanted to ask questions of Mr. Woods on this.  
 2 CHAIRMAN DANNER: Well, Mr. Woods, you've  
 3 heard the question that was posed and it was referred to  
 4 you. Tell me the process by which this person was  
 5 appointed.  
 6 MR. WOODS: How I was appointed as chair?  
 7 CHAIRMAN DANNER: Yeah, yeah.  
 8 MR. WOODS: Okay. I was asked by the  
 9 Province around the -- through the search firm around  
 10 July -- if I can give you one minute of preliminary, I  
 11 think that would be helpful -- around the 4th of July,  
 12 would I be interested in serving on the board as the  
 13 initial nominee.  
 14 COMMISSIONER RENDAHL: So who -- I'm sorry,  
 15 who approached you?  
 16 MR. WOODS: Mr. Bodaway of Odgers Berndtson,  
 17 the search firm in Toronto.  
 18 COMMISSIONER RENDAHL: Okay. So at that  
 19 point, there was already a search firm being considered?  
 20 MR. WOODS: Yes, for the Province.  
 21 COMMISSIONER RENDAHL: Right.  
 22 MR. WOODS: For prospective nominees. After  
 23 some discussions, I accepted that role, and that  
 24 appointment was announced I think around the early July,  
 25 okay? At that point, I assisted Odgers Berndtson in

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1 identifying and interviewing other candidates, and  
 2 within about ten days, we had four recommended nominees  
 3 that I, Odgers Berndtson, and the Province basically  
 4 settled on.  
 5 Subject to hearing from the ad hoc  
 6 nominating committee who their six nominees were,  
 7 because we were only looking for ten in total, we had to  
 8 be sure we had a good balance on our skills matrix. In  
 9 other words, we didn't -- I mean, if we had two or three  
 10 accountants, then by definition, we wouldn't have spots  
 11 for people with other skills.  
 12 So Mr. Denison, as the going chair, and I  
 13 had three or four conversations over three or four  
 14 weeks. Not identifying names at that juncture, but  
 15 simply saying in my case, because we were a little ahead  
 16 of the ad hoc nominating committee, but we'd identified  
 17 specifically an accountant, a person with First Nations  
 18 experience, and -- and a lawyer so that they factored  
 19 that into their thinking as they looked for six people  
 20 on their side.  
 21 Fast forward when they identified six people  
 22 that they felt were appropriate, in consultation with  
 23 the investors, David and I exchanged lists. Because  
 24 under the Governance Agreement, there was the right for  
 25 each side to challenge the qualifications of each of

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1 those respective groups four and six. So we -- we at  
 2 that point, saw the nominating committee's list. I  
 3 discussed that with the government, we had no challenges  
 4 and nor did they. So at that point, we had ten names.  
 5 CHAIRMAN DANNER: So you mentioned agreement  
 6 reached between the Province and ad hoc nominating  
 7 committee, and that was your testimony as well, your  
 8 written testimony as well. But looking at the  
 9 Governance Agreement, I'm looking at Section 3.21, where  
 10 is it provided agreement between the Province and the ad  
 11 hoc nominating committee is an acceptable means in which  
 12 to appoint a new chair?  
 13 MR. WOODS: No, no, that's a good point. I  
 14 didn't get that -- that far. So the next step, and I  
 15 can be brief on this, there was an agreement between the  
 16 Province and the ad hoc nominating committee that I  
 17 would be named the interim chair so that when  
 18 announcement of the ten names were issued, there would  
 19 be some indication as to who would, you know, convene  
 20 the first meeting. So that was agreement between the  
 21 Province and Mr. Denison in coordination with the  
 22 investors.  
 23 CHAIRMAN DANNER: And does the Governance  
 24 Agreement talk about interim positions?  
 25 MR. WOODS: I don't know that it does, but

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1 if I could give you one another fact. The understanding  
 2 from the beginning was that when the board met, the  
 3 process would be anyone who is interested in being the  
 4 permanent chair would identify themselves, and I did.  
 5 There was no other person who identified themselves. So  
 6 at our first meeting in September, I stepped out of the  
 7 room, there was a process over about an hour of  
 8 discussion. And actually prior to that, I had questions  
 9 for about half an hour from the other nine members. I  
 10 stepped out and I was voted by that board as the  
 11 permanent chair and that was announced that day in early  
 12 September.  
 13 CHAIRMAN DANNER: And so that vote  
 14 constituted special board resolution?  
 15 MR. WOODS: I'm not a lawyer, but I think  
 16 that's right, yeah.  
 17 CHAIRMAN DANNER: Okay. You also testified  
 18 the Hydro One board passed resolutions in a sequential  
 19 fashion to appoint the ten remaining directors. And  
 20 this is referring to the board of directors -- this is  
 21 from your testimony TDW-1T, page 12, line 16 and 17,  
 22 that's where I just -- I'm quoting that to you. Are you  
 23 referring to the board of directors that resigned on  
 24 July 11th, 2018?  
 25 MR. WOODS: I think Mr. Scarlett can

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1 clarify.  
 2 I think that is consistent with the process  
 3 that you just described?  
 4 MR. SCARLETT: That's correct, and the board  
 5 didn't resign on July 11. They resigned only when the  
 6 new board came in, in August 14th, 13th.  
 7 CHAIRMAN DANNER: Okay. So, again, what's  
 8 the authority for that action of appointing the  
 9 replacement directors?  
 10 MR. SCARLETT: Yeah, let me answer that,  
 11 please. That's just -- flows out of corporate law  
 12 practice and our bylaws that so long as -- it'll say in  
 13 the bylaws that, you know, a quorum can replace  
 14 vacancies. So you maintain a quorum to create  
 15 vacancies. This is a normal enough procedure when -- on  
 16 M & A transactions, for example, when the acquired  
 17 company's board is removed and there's a new board put  
 18 in that you -- you deal with it through designations and  
 19 filling of those vacancies.  
 20 CHAIRMAN DANNER: Okay. So, again, you have  
 21 an entire article in the Governance Agreement that deals  
 22 with the election and appointment of directors. Are  
 23 there references there to the bylaws?  
 24 MR. SCARLETT: I doubt it. I mean, the  
 25 bylaws are just the bylaws. They govern -- they govern

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1 procedure.  
 2 CHAIRMAN DANNER: So maybe you can explain  
 3 for me, what does it mean when you say the Hydro One  
 4 board passed resolutions in a sequential fashion?  
 5 MR. SCARLETT: May I answer that?  
 6 CHAIRMAN DANNER: Yeah, I guess --  
 7 MR. SCARLETT: Yeah, it simply means that to  
 8 keep a quorum in place at all times, you couldn't have,  
 9 on August the 14th, ten directors resign at once and  
 10 then you have no board. So you have three resign, seven  
 11 stay in place, and they appoint three new directors.  
 12 Then three more resign and the seven that are left  
 13 appoint three. Now you've got six new and four old.  
 14 Then you have the last ones resign and the remaining  
 15 quorum appoints the remainder.  
 16 CHAIRMAN DANNER: Again, the question about  
 17 where is this in the Governance Agreement?  
 18 MR. SCARLETT: It's in the bylaws.  
 19 CHAIRMAN DANNER: It's in the bylaws, okay.  
 20 MR. SCARLETT: And it's just corporate  
 21 procedure.  
 22 CHAIRMAN DANNER: Okay. So the Governance  
 23 Agreement's about the election and appointment of  
 24 directors is just intended to be an adjunct to the  
 25 bylaws?

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1 MR. SCARLETT: It's really setting out the  
 2 rights of the parties as to who selects which directors,  
 3 and the bylaw is what contains procedural matters.  
 4 CHAIRMAN DANNER: Okay. So the Governance  
 5 Agreement does not contain procedural matters?  
 6 MR. SCARLETT: Well, that's an  
 7 overstatement. It has procedures in it for how these  
 8 rights are exercised to come up with the nominees, but  
 9 when we get down, if we're not doing it in a  
 10 shareholders meeting, if we're doing it in a board  
 11 meeting, in board practice, you go to the bylaw, the  
 12 general corporate bylaw that tells you how the board  
 13 runs its affairs.  
 14 CHAIRMAN DANNER: Okay. All right.  
 15 Mr. Woods, would you look at your testimony  
 16 in TDW-1T, page 3.  
 17 MR. WOODS: Okay. I have it.  
 18 CHAIRMAN DANNER: Okay, good. Could you  
 19 look at lines 4 to 13, and I'm going quote it for  
 20 others' benefit. (As read) The Ontario Electricity Act  
 21 1998 and Hydro One's Articles of Incorporation preclude  
 22 any person or company or combination of persons or  
 23 companies acting jointly or in concert other than the  
 24 Province from owning or exercising control or direction  
 25 over more than 10 percent of any class or series of

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1 voting securities including common shares of Hydro One.  
 2 As such, no one owns more than 10 percent of Hydro One's  
 3 common shares other than the Province.  
 4 All right. So you --  
 5 MR. WOODS: I see that.  
 6 CHAIRMAN DANNER: -- see that?  
 7 Is the purpose of this 10 percent ownership  
 8 interest limitation for shareholders other than the  
 9 Province, is that for the purpose of ensuring that no  
 10 one other than the Province could potentially have a  
 11 controlling influence or even a substantial influence on  
 12 corporate affairs?  
 13 MR. WOODS: I would assume so. I'm not a  
 14 lawyer, but I assume that was the thinking when this was  
 15 put in place.  
 16 CHAIRMAN DANNER: Okay. And it does have an  
 17 effect, doesn't it?  
 18 MR. WOODS: Yes.  
 19 CHAIRMAN DANNER: Okay. Do you agree as a  
 20 general proposition that a board of directors of a large  
 21 publicly-traded corporation has greater independence to  
 22 act if no shareholder owns a majority share of the  
 23 company stock?  
 24 MR. WOODS: Yes.  
 25 CHAIRMAN DANNER: And your answer would be

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1 the same with respect to a single shareholder who owns,  
 2 say, 47 percent of outstanding shares?  
 3 MR. WOODS: Greater independence without any  
 4 controlling shareholder, yes. Subject to being elected  
 5 annually by the directors and by the shareholders in any  
 6 event. So there's an annual check on that, but the  
 7 answer to your question is yes.  
 8 CHAIRMAN DANNER: All right. Well, thank  
 9 you very much.  
 10 Among the other things that concern me about  
 11 the changes in leadership and Hydro One following the  
 12 election is a lack of transparency and frankly, lack of  
 13 candor by Hydro One in providing information to us by  
 14 way of a specific example. Hydro One previously  
 15 reported to have identified its five largest  
 16 shareholders other than the Province in response to our  
 17 Bench Request No. 2. And it took the extraordinary step  
 18 in response to our request for updated information of  
 19 having its counsel inform us among other things that,  
 20 quote, Disclosure of the names of these shareholders  
 21 would pose a highly significant risk of harm to Hydro  
 22 One and the shareholders.  
 23 How do you explain that shortly after our  
 24 hearing in May, it was just fine for Hydro One to  
 25 identify its five largest shareholders other than the

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1 Province, but when we asked for updated information,  
 2 this became a problem? Can you explain that to us?  
 3 MR. WOODS: Well, I would -- I wasn't  
 4 involved at the time. What I can tell you that might  
 5 shed some light is that because I was in conversation,  
 6 as I said, with Mr. Denison, the outgoing chair who in  
 7 turn was in conversation with the investors that they --  
 8 the company and he determined were the -- likely to be  
 9 the five largest shareholders were that there was likely  
 10 to be some concern amongst those shareholders if they  
 11 were identified. I mean, they were -- three of them in  
 12 the end as you may know were prepared to participate,  
 13 but if they were identified, it would cause them an  
 14 additional time and burden and responsibility I think to  
 15 respond to inquiry, et cetera. So -- so three of the  
 16 five --  
 17 CHAIRMAN DANNER: Inquiry from the press for  
 18 example or --  
 19 MR. WOODS: Perhaps from other -- other  
 20 shareholders perhaps. I'm drawing inferences here.  
 21 Three of five were prepared to assist and, you know,  
 22 participate. A fourth -- I don't know whether this is  
 23 confidential.  
 24 Is this confidential information?  
 25 MR. SCARLETT: Well, I mean, I'd like to

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1 help with this answer if I might.  
 2 MR. WOOD: Is that all right?  
 3 CHAIRMAN DANNER: Well, yeah, I'm trying to  
 4 get to the -- I'm just trying to find out the answer.  
 5 MR. SCARLETT: Yeah, I'd be happy to give  
 6 you the background that I have on it, which may be  
 7 helpful.  
 8 CHAIRMAN DANNER: All right.  
 9 MR. SCARLETT: And -- and yes, it was a  
 10 difficult situation for us. When it -- and just to set  
 11 the stage, you know, in Canada, with exceptions that  
 12 don't matter here, there's no requirement to disclose  
 13 ownership when you're less than 10 percent. The U.S.  
 14 level is 5 percent. Canada has debated that back and  
 15 forth, but it's 10 percent. So when people own -- what  
 16 the shareholders own, they have legally the ability to  
 17 keep their identity secret.  
 18 When we generally answer questions about who  
 19 we believe our big shareholders are, we don't get that  
 20 from the shareholders. They don't confirm it. We get  
 21 that information from market knowledge. And by market  
 22 knowledge, I mean we have an investor relations group,  
 23 they speak to traders and other people who are active in  
 24 the market who say, you know, we believe company X has  
 25 this kind of a holding or that kind of a holding. So

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1 it's pretty good information, but it's not -- it's not  
 2 reported anywhere, it's not verified by the individual  
 3 investors. So that's how we could give information that  
 4 we can find in the market generally.  
 5 When -- the question that we were asked as I  
 6 recall was specifically about who was on the committee.  
 7 And when the committee was formed, the people who  
 8 participated did so under the assurance of complete  
 9 confidentiality for reasons that I presume included they  
 10 don't want people to know that they participated in the  
 11 committee for fear that they might get dragged into some  
 12 disputes in the future, they didn't want to be harassed  
 13 by people calling them and bothering them in course of  
 14 that process. Maybe they wanted to keep the size of  
 15 their holdings a secret, but they had a variety of  
 16 reasons that were sensitive to them, and at least in one  
 17 case, they refused to even sit on the committee because  
 18 they didn't want to be involved in the process.  
 19 And so when we were asked to confirm the  
 20 committee members, we actually went through quite a bit  
 21 of effort trying to get a waiver of the confidential- --  
 22 obligations that we had. They weren't our -- it wasn't  
 23 our confidentiality to waive, it was the confidentiality  
 24 of the -- of the participant. And we got it waived for  
 25 one but not for some others, and we tried very hard.

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1 And frankly, we also got subject to a Freedom of  
 2 Information action in Washington that we spent a lot of  
 3 time and money fighting to try to protect the  
 4 confidential information.  
 5 From our perspective, keeping the process  
 6 and the -- and the participants confidential as they  
 7 demanded is important because, you know, we may have a  
 8 4.7 process again in the future. We need people who  
 9 will participate and not say to us, well, I'm not going  
 10 to participate because last time this is what happened.  
 11 You know, you got disclosed and we got dragged into --  
 12 into disputes and so on. So we felt that both from the  
 13 shareholder's point of view and from Hydro One's point  
 14 of view, we had to do our utmost to maintain the  
 15 integrity of the confidentiality that the ad hoc  
 16 committee was operating under. I hope that helps with  
 17 your answer.  
 18 CHAIRMAN DANNER: All right. Thank you.  
 19 Mr. Woods, you have a long history in this  
 20 business, and I know you've been on other boards. Have  
 21 you found that the 10 percent figure that we have here  
 22 in the United States has acted as an impediment to  
 23 attracting qualified people to serve on boards?  
 24 MR. WOODS: No.  
 25 CHAIRMAN DANNER: And would you -- your view

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1 be that -- well, I'll -- that's fine.  
 2 JUDGE MOSS: Let me interject here to  
 3 satisfy a point of curiosity, Mr. Scarlett. You said  
 4 just now and we earlier received information to the  
 5 effect that it was -- it's a difficult undertaking to  
 6 identify the five largest shareholders other than the  
 7 Province because of these disclosure requirements. I'm  
 8 just -- I have a hard time with that. You have to know  
 9 who your shareholders are and how many shares they hold  
 10 in order to have a shareholder meeting and count their  
 11 votes, don't you?  
 12 MR. SCARLETT: So I may have misspoken a  
 13 little bit when I said it was difficult. I didn't mean  
 14 difficult to know generally. It's difficult to know  
 15 with precision. That was the only point I was making.  
 16 We do have a pretty good idea who our shareholders are,  
 17 and that's why we're able to say that when it wasn't the  
 18 confidential question about who was on the committee. I  
 19 know they're closely aligned, but they're a bit  
 20 different.  
 21 In terms of shareholders meeting, though,  
 22 it's quite -- there's a whole different process  
 23 involved. This is why it takes -- you might say, why  
 24 does it take 60 days to hold a shareholders meeting? We  
 25 have to do a search process because, you know, in

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1 today's world, people don't hold their shares in  
 2 registered name. They hold them through a depository.  
 3 So if you look at our shareholder list, we probably have  
 4 one shareholder. And it's not the Province of Ontario,  
 5 it's probably Canada's depository for securities.  
 6 So you have to send out search cards to the  
 7 people who participate in that depository who are  
 8 financial institutions, and they in turn will do a  
 9 search and tell you who the beneficial holders are. And  
 10 under our system, you can be a nobo, a nonobjecting  
 11 beneficial owner, or an obo, an objecting beneficial  
 12 owner. And if you're an objecting beneficial own- -- an  
 13 objecting beneficial owner, we don't get to know who you  
 14 are. If you're nonobjecting, then we get to know who  
 15 you are. So you go through that search process and then  
 16 you can mail out your materials. That's how you know  
 17 who can come to your shareholders meeting.  
 18 JUDGE MOSS: So basically shareholders can  
 19 participate anonymously?  
 20 MR. SCARLETT: Yes.  
 21 JUDGE MOSS: Okay. Thank you.  
 22 CHAIRMAN DANNER: I just have a few more  
 23 questions here.  
 24 So, Mr. Woods, according to Marieke Walsh,  
 25 and she's writing for ipolitics.ca on July 6th, 2018,

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1 and I'm quoting from this article. (As read) The first  
 2 piece of legislation from Doug Ford's government  
 3 kneecaps the independence of Hydro One by giving the  
 4 provincial cabinet a veto over executive compensation.  
 5 Do you agree with this assessment?  
 6 MR. WOODS: No.  
 7 CHAIRMAN DANNER: What impacts on  
 8 recruitment or retention do you see from provincial  
 9 involvement in setting executive seminars?  
 10 MR. WOODS: Very limited. I can elaborate  
 11 if you'd like.  
 12 CHAIRMAN DANNER: Yeah, I'd appreciate that.  
 13 MR. WOODS: I mean, as you know, a -- Bill  
 14 2, the Hydro Accountable Act specifies that Hydro One  
 15 has to consult with the five largest shareholders to the  
 16 extent they're prepared to discuss as well as with the  
 17 government, come up with a compensation --  
 18 CHAIRMAN DANNER: The five largest private  
 19 shareholders?  
 20 MR. WOODS: Other than the government,  
 21 that's correct.  
 22 CHAIRMAN DANNER: Other than the government,  
 23 yes.  
 24 MR. WOODS: To the extent they're willing to  
 25 engage in dialogue. Together with the government and

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1 then come up with the compensation framework that we  
 2 require approval of the -- in effect the government, the  
 3 cabinet board. We are in the early stages of putting  
 4 that information together and then we'll soon embark on  
 5 that consultation process. And we believe we will be  
 6 able to come up with a framework that will be  
 7 satisfactory to the government and will not limit in any  
 8 material way our ability to attract a chief executive  
 9 officer and that search is now underway.

10 CHAIRMAN DANNER: And do you expect that the  
 11 salary of the incoming CEO will be considerably less  
 12 than the current CEO?

13 MR. WOODS: I don't know that it will be  
 14 considerably less. I think the probability of it being  
 15 less is very high.

16 CHAIRMAN DANNER: Significantly less?

17 MR. WOODS: I don't know. I mean --

18 CHAIRMAN DANNER: I mean, we talking a \$5  
 19 million man or a \$4 million man?

20 MR. WOODS: We're not talking about a \$5  
 21 million person, no. Possibly 4 million, possibly 3,  
 22 possibly 2. We haven't gotten down to that level of  
 23 detail.

24 CHAIRMAN DANNER: Yeah. Do you believe  
 25 that -- it's my understanding that, at least from some

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1 of the press, that the \$6 million figure was deemed by  
 2 executive compensation consultants to be somewhere right  
 3 in the middle of the pack for privately run and best run  
 4 utilities; is that your understanding?

5 MR. WOODS: Probably middle of the pack.  
 6 It's quite a wide range. I've reviewed some of the  
 7 comparable companies, and there's a quite a wide range,  
 8 but it would not have been out of the -- the range of  
 9 reasonableness, that's correct.

10 CHAIRMAN DANNER: Okay. And do you see any  
 11 problems with a framework in Hydro One being  
 12 significantly different than a framework in Avista?

13 MR. WOODS: I think the two are quite  
 14 separate, I think considerably different. I don't know  
 15 that there will be problems. I think the two will be  
 16 produced separately. As you know, the board of Avista  
 17 has rights on compensation. They'll engage in a  
 18 process, we'll have two of our executives as part of the  
 19 nine-person board. Process for Hydro One will be just  
 20 as I described.

21 CHAIRMAN DANNER: Okay. Thank you. I  
 22 mentioned before, and I know that you have an extensive  
 23 background in business, I -- I -- you know, you worked  
 24 for corporations on -- on both sides of the border. And  
 25 I guess based on your many years of experience in the

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1 business world, on how many occasions have you witnessed  
 2 a case where a major corporation faced the sudden  
 3 resignation of the entire board of directors and its  
 4 CEO?

5 MR. WOODS: Yeah, I don't know that I've  
 6 directly witnessed it. I know it has happened, but this  
 7 was a first time I have seen it directly.

8 CHAIRMAN DANNER: So you're -- but this is  
 9 not something -- you can't imagine circumstances or you  
 10 would have seen this at the VOA board of directors or  
 11 the outward investment management corporation or some of  
 12 the Province, St. Joseph's, St. Michael's healthcare or  
 13 any of these other places that you have worked?

14 MR. WOODS: That's correct. Have not seen  
 15 something like this. By the way, just to be clear,  
 16 because it's the second time you referred to that, those  
 17 were boards that I served on, not worked.

18 CHAIRMAN DANNER: Yeah --  
 19 (Multiple speakers.)

20 JUDGE MOSS: Do not talk at the same time,  
 21 please.

22 CHAIRMAN DANNER: Thank you, Judge.  
 23 So do you believe that the sudden  
 24 resignation of the board of directors and CEO of Hydro  
 25 One was in the best interest of the corporation?

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1 MR. WOODS: No.

2 CHAIRMAN DANNER: Do you believe that the  
 3 sudden resignation of the board of directors and CEO was  
 4 in the best interest of the proposed acquisitions of  
 5 Avista?

6 MR. WOODS: No, because it presents  
 7 uncertainties. Could I -- if I could just follow up.  
 8 Technically, the sudden resignation was caused by events  
 9 that were certainly not in the best interest of Hydro  
 10 One. The process by which that took place, as  
 11 Mr. Scarlett discussed, I think was the best process.  
 12 But no, certainly the events leading up to that and the  
 13 ultimate result were not in the best interest of the  
 14 company.

15 CHAIRMAN DANNER: All right. All right. I  
 16 think that's all I have, Judge.

17 Thank you very much, Mr. Woods.

18 JUDGE MOSS: Recognizing that we must take  
 19 what we read in the press with a certain degree of  
 20 skepticism, I want to ask you about an article that I  
 21 looked at. It was written by somebody named Rob  
 22 Ferguson, Queen's Park Bureau of the Star in Canada.  
 23 And the caption or the title of the article of  
 24 Mr. Ferguson was "Hydro One given six months to trim  
 25 executive pay," and then the lead is, "The new chair of

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1 the board at Hydro One is set to clean house and cut pay  
 2 in the executive suite following the July ouster of CEO  
 3 Mayo Schmidt, says Premier Doug Ford."  
 4 Has he ever said that to you?  
 5 MR. WOODS: No.  
 6 JUDGE MOSS: Okay. Do you understand that  
 7 you have a six-month time frame here or some other time  
 8 frame in which this is all supposed to be set in motion?  
 9 MR. WOODS: Yeah, the Bill 2, the Hydro  
 10 Accountability Act refers to six months to come up with  
 11 a compensation framework and, in fact, it's five months  
 12 because that has to be posted, but to receive approval  
 13 by the government, that's in respect of the  
 14 compensation, that's correct.  
 15 JUDGE MOSS: So we've got August, September,  
 16 October, we're nearly three months into that process.  
 17 MR. WOODS: Yes, our goal is to have that  
 18 done by the end of the calendar year.  
 19 JUDGE MOSS: And then it's only at that  
 20 point in time that you'll actually be able to seriously  
 21 go out and recruit for a new CEO; is that right?  
 22 MR. WOODS: No, and that -- it's -- it's an  
 23 important point. Because we are actively in discussions  
 24 with CEOs, we know we are going to have to come up with  
 25 some guidance on that. So we will have to. We've not

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1 yet done that, had those preliminary discussions with  
 2 the government in advance of finalizing the entire  
 3 framework.  
 4 JUDGE MOSS: Okay. Thank you very much. I  
 5 appreciate that clarification.  
 6 MR. WOODS: Yep. Thank you.  
 7 COMMISSIONER BALASBAS: All right. Good  
 8 morning, Mr. Lopez. My questions will be mostly  
 9 directed at you. So I'd like to follow up a little bit  
 10 on the questions that I asked Mr. Thies earlier this  
 11 morning regarding Avista's retained earnings. And do  
 12 you have your testimony in front of you, CFL-16, page  
 13 11?  
 14 MR. LOPEZ: I do.  
 15 COMMISSIONER BALASBAS: All right. In this  
 16 testimony, you talk about the rate credit provided in  
 17 Stipulated Commitment No. 19, and that credit will flow  
 18 through to Avista customers in the bills?  
 19 MR. LOPEZ: Yes.  
 20 COMMISSIONER BALASBAS: And in that  
 21 testimony a little bit later, you also refer to -- make  
 22 a statement that although no funds will flow from Hydro  
 23 One to Avista, Hydro One will bear the burden of these  
 24 rate credits as they will reduce the earnings.  
 25 Potentially they were both Hydro One as dividends; do

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1 you see that?  
 2 MR. LOPEZ: Yes.  
 3 COMMISSIONER BALASBAS: All right. Could  
 4 you tell us where in your earlier testimony in this  
 5 proceeding you explain clearly that the rate credits  
 6 will be paid directly by Avista?  
 7 MR. LOPEZ: Sorry, you mean earlier like in  
 8 a preceding statement?  
 9 COMMISSIONER BALASBAS: In this proceeding.  
 10 Have you testified earlier in this proceeding that these  
 11 rate credits will be paid directly by Avista?  
 12 MR. LOPEZ: I think so. I need to look for  
 13 the exact reference.  
 14 MS. THOMAS: We will look for references.  
 15 We don't have them on hand.  
 16 COMMISSIONER BALASBAS: All right. Are  
 17 you -- well, while you're looking, are you aware of any  
 18 other Hydro One or Avista witnesses offering such  
 19 testimony?  
 20 MR. LOPEZ: I'm not directly aware. I  
 21 believe I have offered the testimony, so we will find  
 22 that in terms of how it would be funded over time.  
 23 COMMISSIONER BALASBAS: So is it your view  
 24 that these rate credits can be paid by Avista without  
 25 independent determination by the Avista board of

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1 directors that the funds are available to be paid as  
 2 dividends and can be paid subject to the constraints on  
 3 dividend payments in the settlement?  
 4 MR. LOPEZ: Can you repeat the question?  
 5 I'm just trying to follow.  
 6 COMMISSIONER BALASBAS: So in your view,  
 7 do -- is it your view that the rate credits can be paid  
 8 by Avista without an independent determination by the  
 9 Avista board?  
 10 MR. LOPEZ: The Avista board -- we -- we  
 11 couldn't direct the Avista to pay it out of funds from  
 12 Avista. So the way I understand it here is the rate  
 13 credit is a requirement from Avista to pay to -- to  
 14 ratepayers. Ultimately, it will result in less funds  
 15 being available to Hydro One as a shareholder. I think  
 16 Mr. Thies testified this morning that it could come from  
 17 an equity injection or it come from retained earnings,  
 18 which would have otherwise been available to the  
 19 shareholders. Ultimately, both of them reduce funds  
 20 available to Hydro One shareholders in the future, and  
 21 that's the intent.  
 22 COMMISSIONER BALASBAS: So if Avista --  
 23 if -- so is it also true, then, that if Avista has  
 24 retained earnings that would otherwise be available to  
 25 Hydro One, that those retained earnings would be used by

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1 Avista to directly fund the other stipulated commitments  
 2 requiring a monetary contribution other than the rate  
 3 credit?  
 4 MR. LOPEZ: That would be the case for both  
 5 forms of funding. So, again, I'll -- I'll just  
 6 reiterate. It could be paid by an equity injection by  
 7 Hydro One to Avista and Avista would then make the  
 8 payment to the -- the parties that are entitled to those  
 9 payments. And that would be an injection of equity,  
 10 more funds, more cash available at Avista or  
 11 alternatively, it could be taken out of retained  
 12 earnings that would otherwise be available to Avista  
 13 share -- to Hydro One shareholders who don't pay the  
 14 dividend.  
 15 COMMISSIONER BALASBAS: So if Avista -- if  
 16 Avista has sufficient retained earnings to make the  
 17 payments for these commitments, would it -- would you  
 18 then expect Hydro One to make an equity injection to pay  
 19 for those?  
 20 MR. LOPEZ: I think it would depend on the  
 21 circumstance at the time, and, again, in discussion with  
 22 the Avista board, the Avista board will have to stick by  
 23 the commitments and ensure this other commitment in here  
 24 that talk about maintaining a common equity ratio of 44  
 25 percent, so have to stick by that. So I would expect

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1 the Avista board to say no, we have to maintain the  
 2 strong balance sheet to be able to do that, therefore we  
 3 need an equity injection, whether that be for these  
 4 commitments or for further capital in the future.  
 5 COMMISSIONER BALASBAS: So as a  
 6 hypothetical, if the Avista board does make a  
 7 determination that sufficient retained earnings exist to  
 8 pay the stipulated -- pay for the stipulated  
 9 commitments, would Hydro One make an equity injection?  
 10 MR. LOPEZ: Again, I think it would depend  
 11 on the circumstances at the time. Is -- do we pay --  
 12 COMMISSIONER BALASBAS: So the answer to my  
 13 question, Mr. Lopez, is yes or no. Would -- if the  
 14 Avista board determined that there is sufficient  
 15 retained earnings --  
 16 MR. LOPEZ: It would be an option available  
 17 to Avista to pay it out of retained earnings. If it  
 18 wasn't there, we would do an equity injection and help  
 19 them with that.  
 20 COMMISSIONER BALASBAS: But if the retained  
 21 earnings are there, then you don't see the need for an  
 22 equity injection?  
 23 MR. LOPEZ: No.  
 24 COMMISSIONER BALASBAS: All right. Thank  
 25 you.

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1 MR. LOPEZ: And just to follow up, it's  
 2 Commitment 75 where we talked about the source of funds  
 3 available to pay for those commitments.  
 4 COMMISSIONER BALASBAS: So my understanding  
 5 of Commitment 75 is that it is not specific in terms of  
 6 the source of funds. It just is a commitment that Hydro  
 7 One will ensure that there is funding available for the  
 8 commitments; is that correct?  
 9 MR. LOPEZ: Let me just read it. It talks  
 10 about to the extent -- to the extent Avista has retained  
 11 earnings that are available for payment of dividends  
 12 particularly [inaudible] specific with ringfencing, such  
 13 retained earnings may be used. So we specifically  
 14 called out they would be used for that purpose.  
 15 COMMISSIONER BALASBAS: Okay. Thank you.  
 16 So I'd like to turn now in your testimony in  
 17 CFL-16, page 2 of line 7 through 18, and your  
 18 supplemental testimony, I'm reading a partial quote  
 19 here, (as read) confirms that Hydro One stands by the  
 20 commitments in the settlement agreement. Do you see  
 21 that?  
 22 MR. LOPEZ: Please point me to the line.  
 23 COMMISSIONER BALASBAS: It's confirm- -- I'm  
 24 sorry, it's page line -- I'm sorry, line 7 through 18,  
 25 there you state during -- in that block of lines there

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1 that confirms that Hydro One stands by; do you see that?  
 2 MR. LOPEZ: Yes, I do.  
 3 COMMISSIONER BALASBAS: At the time you made  
 4 this statement in your testimony on September 6th, 2018,  
 5 had the new board of directors been voted and confirmed  
 6 by resolution?  
 7 MR. LOPEZ: I can't recall a specific date.  
 8 MR. SCARLETT: The new board -- may I?  
 9 COMMISSIONER BALASBAS: Yes.  
 10 MR. SCARLETT: The new board was installed  
 11 by resolution on August the 13th or 14th.  
 12 COMMISSIONER BALASBAS: All right. And have  
 13 you provided a copy of the board's resolution to that  
 14 effect?  
 15 MR. LOPEZ: I have not.  
 16 MR. SCARLETT: I don't know.  
 17 MS. THOMAS: If I may, Commissioner, the  
 18 substance of re- -- the substance of the resolution is  
 19 in a response to a data request that has been included  
 20 in evidence as Exhibit JRW-7 from Public Counsel.  
 21 JUDGE MOSS: And that's dated  
 22 September 19th, 2018; is it not?  
 23 MS. THOMAS: Yes, sir.  
 24 JUDGE MOSS: Thank you.  
 25 CHAIRMAN DANNER: I'm sorry, Ms. Thomas,



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1 what was the -- what was the number?  
 2 MS. THOMAS: I'm sorry, the date is  
 3 October -- the date on the -- well, the date on the  
 4 exhibit is October 4.  
 5 CHAIRMAN DANNER: What was the number of the  
 6 exhibit?  
 7 MS. THOMAS: Exhibit JRW-7.  
 8 CHAIRMAN DANNER: Thank you.  
 9 JUDGE MOSS: And I think the question was  
 10 whether the board had made its resolution to confirm its  
 11 commitment to the -- to the settlement stipulation,  
 12 whether that had been done at the time of Mr. Lopez's  
 13 testimony on September 6th. And I'm pointing out that  
 14 the resolution itself I believe is dated September 19th,  
 15 so the answer to that question is?  
 16 MR. LOPEZ: Is no, if that's the case, my  
 17 interpretation. My understanding when I made this  
 18 statement is that the contract to and the commitment to  
 19 stand by the stipulated commitments is one between the  
 20 company and Avista. And at that point, the prior board  
 21 had -- had -- had passed a resolution that said we would  
 22 stand by these commitments.  
 23 JUDGE MOSS: The prior board.  
 24 COMMISSIONER BALASBAS: Prior board  
 25 resolution, not the new board resolution?

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1 MR. LOPEZ: Yeah, so specifically the new  
 2 board, no, but why I could make this statement is that  
 3 the company, the company I represent, the company I work  
 4 for, is obligated to stand by these commitments.  
 5 JUDGE MOSS: And so a related question, if  
 6 you know, has the provincial government stepped up and  
 7 said in any formal fashion that it stands by this  
 8 agreement, that it supports this agreement?  
 9 MR. LOPEZ: I -- I'm not aware of any  
 10 statements.  
 11 MR. WOODS: I can confirm that they have  
 12 not.  
 13 JUDGE MOSS: They have not. Thank you.  
 14 COMMISSIONER BALASBAS: Thank you. All  
 15 right.  
 16 So now, Mr. Lopez, I want to turn to the  
 17 Hydro One Accountability Act that took effect and in  
 18 part it deals with the compensation framework for  
 19 directors, the CEO, and executives of Hydro One and its  
 20 subsidiaries. And you testify in CFL-16 on page 4,  
 21 lines 11 through 18 that there is an exception for  
 22 subsidiaries incorporated in jurisdictions outside of  
 23 Canada.  
 24 MR. LOPEZ: Correct.  
 25 COMMISSIONER BALASBAS: So could you point

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1 out where exactly in Bill 2, Schedule 1 that this  
 2 exception is stated?  
 3 MR. LOPEZ: Will do that momentarily. Okay.  
 4 I'm looking at Exhibit JDS-3.  
 5 MR. SCARLETT: The definition of subsidiary.  
 6 MR. LOPEZ: And the definition is page --  
 7 well, it says page 1 of 3 at the bottom, and the first  
 8 section under definitions one, two, three, four, the  
 9 fifth definition says, (as read) Subsidiary. Has the  
 10 same meaning as in the Business Corporations Act, but  
 11 does not include subsidiary incorporated in a  
 12 jurisdiction outside Canada.  
 13 COMMISSIONER BALASBAS: All right. Thank  
 14 you. So what is there to stop the provincial government  
 15 from amending this definition section to remove the  
 16 exclusion for subsidiaries outside of Canada?  
 17 MR. LOPEZ: I think Jamie Scarlett would be  
 18 best able to answer that question.  
 19 COMMISSIONER BALASBAS: So, Mr. Scarlett,  
 20 what is -- is there anything that would stop the  
 21 provincial government from amending this definition?  
 22 MR. SCARLETT: I don't believe so. They  
 23 could amend the definition, but it would be applied to  
 24 Hydro One. I mean, the Province of Ontario doesn't have  
 25 jurisdiction in the state of Washington, so I don't

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1 think that they would have jurisdiction to pass  
 2 legislation that tells Avista what to do. So they would  
 3 have to come up with some concoction that would apply to  
 4 Hydro One.  
 5 COMMISSIONER BALASBAS: But you don't see  
 6 anything that could stop the Province from trying?  
 7 MR. SCARLETT: No. They could try. I have  
 8 a hard time thinking about how it could be effective in  
 9 any particular way.  
 10 COMMISSIONER BALASBAS: So what, if  
 11 anything, could bar the provincial government from  
 12 possessing legislation that would effectively alter,  
 13 amend, or eliminate any of the commitments Hydro One is  
 14 making in this settlement stipulation before us?  
 15 MR. SCARLETT: Those are commitments that  
 16 are made under the laws of the various states. We've  
 17 attorned to the jurisdiction of the states and to the  
 18 venue of the states. So those are enforceable against  
 19 Hydro One, and I don't think the Province of Ontario can  
 20 pass legislation that says they're not enforceable.  
 21 COMMISSIONER BALASBAS: So, Mr. Lopez, I  
 22 want to talk about what -- how ratings agencies have  
 23 reacted to the Province's removal of the previous board  
 24 of directors and the CEO and the new legislation  
 25 affecting Hydro One. Are you aware of rating agencies

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1 commenting on the recent developments at the company?  
 2 MR. LOPEZ: I am.  
 3 COMMISSIONER BALASBAS: And do you agree  
 4 with the statements made by, for example, Moody's in  
 5 their statement? Do you agree with Moody's statement  
 6 that's Hydro One's board and CEO were forced out?  
 7 MR. LOPEZ: The board resigned and the CEO  
 8 retired, so I -- I can't comment on their state of mind  
 9 in their decision-making.  
 10 COMMISSIONER BALASBAS: How would you -- how  
 11 would you characterize it?  
 12 MR. LOPEZ: I believe they made a decision  
 13 in the best interest of the company and ultimately in  
 14 the best interest of this transaction going forward.  
 15 COMMISSIONER BALASBAS: So you believe the  
 16 resignation of the board and the CEO were in the best  
 17 interest of the company and for this transaction?  
 18 MR. LOPEZ: I think based on the  
 19 circumstances that were in place at the time, yes, faced  
 20 with the -- the alternative.  
 21 COMMISSIONER BALASBAS: So do you agree,  
 22 then, that Ontario's willingness to force out the  
 23 current board clearly demonstrates that Hydro One is not  
 24 immune to direct political influence?  
 25 MR. LOPEZ: That's correct.

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1 COMMISSIONER BALASBAS: So does this trouble  
 2 you as an officer of Hydro One?  
 3 MR. LOPEZ: I think it creates some  
 4 circumstances that we must be mindful of and ensure that  
 5 we -- we plan and prepare in the best way possible to  
 6 meet the best interest of all stakeholders, which I  
 7 think we're doing in this case in terms of the  
 8 ringfencing provisions and so on. And we need to do the  
 9 same thing in Canada for our existing customers and  
 10 stakeholders there as well.  
 11 MR. BALASBAS: So do you agree that if the  
 12 Province follows through on its promise to reduce  
 13 customer rates by 12 percent and that reduction reduces  
 14 Hydro One's revenue and cash flow, that this would be  
 15 materially credit negative to Hydro One?  
 16 MR. LOPEZ: I think it will -- the report  
 17 you're referring to with Moody that talks if they shift  
 18 the cost of doing that directly to a shareholder. And  
 19 so if they did that, that would be true. There would be  
 20 less cash available to the shareholder to support  
 21 repayments of debt and interest payments. If it was  
 22 done in a constructive manner through restructuring the  
 23 industry and looking for ways to reduce costs over the  
 24 long-term, then it may not be, have an impact on  
 25 debtholders.

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1 COMMISSIONER BALASBAS: But in the  
 2 likelihood that the industry would not be restructured,  
 3 would this be materially credit negative for Hydro One?  
 4 MR. LOPEZ: Again, you're asking me to  
 5 speculate as to how they would exactly achieve the 12  
 6 percent reduction. During the election, the government,  
 7 Rob Ford, indicated that he would use the Hydro One  
 8 dividends, which would have no impact on Hydro One's  
 9 cash flow. But the dividend the government receives to  
 10 reduce rates for ratepayers in Ontario, that would have  
 11 no impact on Hydro One whatsoever.  
 12 COMMISSIONER BALASBAS: Are you ware of S&P  
 13 Global Ratings research comment on Hydro One's credit?  
 14 MR. LOPEZ: I am.  
 15 COMMISSIONER BALASBAS: Do you -- so does  
 16 this assessment from S&P Global Ratings concern you as  
 17 an officer of Hydro One?  
 18 MR. LOPEZ: It does.  
 19 COMMISSIONER BALASBAS: How so?  
 20 MR. LOPEZ: They're making -- they've made  
 21 the inference that -- and their rating that you're  
 22 talking about came out on September 13th. So let me  
 23 give you a little bit of history there because there  
 24 were two -- two ratings actions that S&P took. They  
 25 took one when the transaction was announced back in July

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1 of last year. And what they did at that point was  
 2 say -- they said when you borrow money to buy Avista, we  
 3 will put you on -- put you on credit negative, credit  
 4 watch negative, to say that when you do increase the  
 5 debt, there will be a downgrade, a likely downgrade  
 6 action. And then come September 13, they said they  
 7 considered specifically the impact of Bill 2. And Bill  
 8 2 was namely around the compensation framework.  
 9 And their view on that one was that it --  
 10 that was a direct intervention into, in their words, the  
 11 management and governance structure of Hydro One. And  
 12 they downgraded Hydro One one notch at that point, left  
 13 us on credit watch negative in relation to the initial  
 14 assessment, but they downgraded us one notch as a result  
 15 of their review, which suggested that the governance and  
 16 management has gone from satisfactory to failed.  
 17 COMMISSIONER BALASBAS: So as a  
 18 hypothetical, if the Province takes any further  
 19 legislative action that impacts Hydro One, would you  
 20 expect these ratings -- one or more of these rating  
 21 agencies to further downgrade Hydro One's credit?  
 22 MR. LOPEZ: Again, I'm speculating. I  
 23 believe S&P has taken the action that they've taken and  
 24 that reflects the government's ability to do that and  
 25 they've done that today. So if they did it again, I

1 personally wouldn't expect them to do that. I think,  
2 you know, what you could see here, is that potentially  
3 they could reevaluate if the government took no further  
4 action, say, for a period of time. So I think that's --  
5 that's the -- the -- the intent there.

6 One thing I would point to is that although  
7 they downgraded Hydro One or Hydro One Limited, they did  
8 not downgrade positive effect of Hydro One acquiring  
9 Avista. Hydro One -- or Avista was -- when Hydro One  
10 announced the acquisition, was upgraded to credit watch  
11 positive and they still maintain that. So regardless of  
12 the downgrade to Hydro One, as it stands today, Avista  
13 would be benefit -- hop up from a one notch upgrade upon  
14 the close of the deal. And that ultimately means lower  
15 costs, lower interest costs.

16 COMMISSIONER BALASBAS: So would you agree  
17 that the provincial government has achieved some of its  
18 political goals in respect to Hydro One, would you agree  
19 that its actions caused a precipitous drop in the value  
20 of Hydro One stock?

21 MR. LOPEZ: I don't know what the  
22 government's ultimate actions are, but they made some  
23 statements during the election and I believe they've  
24 achieved those. I believe there was an impact on the  
25 stock price over July, and I think I have that in my

1 shareholder funds.

2 COMMISSIONER BALASBAS: And from what's --  
3 so from what sources of shareholder funds?

4 MR. LOPEZ: It will either be from equity  
5 directly from Hydro One down through the subsidiary. I  
6 think we went through that this morning, down through  
7 Olympus, or it could be from retained earnings which  
8 means that there will be a lower dividend paid or less  
9 amounts dividends paid upwards by that time.

10 COMMISSIONER BALASBAS: Thank you. I don't  
11 believe I have any additional questions.

12 CHAIRMAN DANNER: So I just have just one  
13 follow-up or two.

14 You mentioned Rob Ford, you meant Doug Ford?

15 MR. LOPEZ: Sorry, yeah. We had -- it's  
16 been going on for a while, and I did not meet Doug Ford  
17 or Rob Ford personally so...

18 CHAIRMAN DANNER: But I also just wanted to  
19 note, when you talked about July being bad for the  
20 utility industry generally, but Hydro One's stock price  
21 went down 4.5 percent in the 24 hours after the  
22 announcement of the change on July 11th. So would you  
23 attribute that drop to the -- to the events of the 11th?

24 MR. LOPEZ: You could. The -- the challenge  
25 with that is as -- as we all know, that it's very unwise

1 testimony. This is not new. The stock went down 6  
2 percent in the month of July.

3 I would point out that the industry went  
4 down 3.8 percent in the month of July, regulated  
5 utilities, across North America. So a part of that was  
6 due to other reasons, but the government, you know --  
7 you could infer from that that there was an impact from  
8 that decision. There could be other things that  
9 accounted for July's movement.

10 COMMISSIONER BALASBAS: So would you -- so  
11 what is your assessment, then, overall of S&P Global  
12 Ratings and Moody's statements about Hydro One's  
13 creditworthiness? Do you think that they got -- they  
14 got this about right?

15 MR. LOPEZ: I think they've made a statement  
16 in the best interest of debtholders is the answer, and  
17 they've made their intentions fairly clear that, you  
18 know, these actions are not favorable for debtholders.

19 COMMISSIONER BALASBAS: Now, returning to  
20 funding of the stipulating commitments, what actual  
21 consideration does Hydro One -- or is Hydro One putting  
22 in to fund the stipulated commitments in the settlement  
23 stipulation?

24 MR. LOPEZ: Hydro One is making a commitment  
25 that all stipulated commitments will be funded from

1 to make decisions on stockholding as in a knee jerk  
2 fashion. So I think what you could -- it's better to  
3 look it over a longer period of time. So you saw 4.5  
4 percent in one day, but by the end of the month, Hydro  
5 One was lower than other utilities by 2 percent. So  
6 it's a tough -- tough thing to say is a reaction to an  
7 event and that is the ultimate impact on the stock  
8 price. It needs to be looked at over time.

9 CHAIRMAN DANNER: Okay. So you would  
10 question the causation of this drop in stock?

11 MR. LOPEZ: I -- I -- I -- I don't question  
12 the causation. What I suggest there is that there was a  
13 reaction on the day, there was 4.5 percent. I think in  
14 the cold light of day when people have a chance to look  
15 at what it really means long-term, you take into  
16 account, you know, some debtholders' views and so on,  
17 that ultimate difference between Hydro One and the  
18 market over the month of July was 2 percent.

19 CHAIRMAN DANNER: Thank you.

20 JUDGE MOSS: Why don't we take our noon  
21 recess, and we will take an hour for hunch, so come back  
22 here about 1:00 or a few minutes after and we'll pick up  
23 there.

24 MR. GOLTZ: Your Honor, if I may, a couple  
25 of the parties who just filed letters saying we -- we

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1 agree with the transition still, they were excused.  
 2 Ms. Gerlitz on behalf of NVEC and all filed a brief  
 3 one-page testimony with the same effect, if there's no  
 4 questions for her or anticipate none, we'd like to have  
 5 her excused if that's possible.  
 6 JUDGE MOSS: She can be excused.  
 7 MR. GOLTZ: Okay. Thank you very much.  
 8 MS. THOMAS: Your Honor, on a particular  
 9 matter, I believe Mr. Woods needs to leave no later  
 10 than --  
 11 Oh, you're okay?  
 12 MR. WOODS: 2:30.  
 13 MS. THOMAS: So we just wanted to make sure.  
 14 JUDGE MOSS: I think we'll have time.  
 15 MS. THOMAS: Thank you.  
 16 JUDGE MOSS: I think in terms of the third  
 17 panel, which is the intervenor witnesses, in light of  
 18 what Mr. Goltz was just raising with me, we will excuse  
 19 everyone who wishes to be excused other than  
 20 Mr. McGuire. We'll have some questions for him, but the  
 21 other intervenor witnesses we will not have questions  
 22 for. Okay. We're in recess.  
 23 (Lunch break taken from.  
 24 12:05 p.m. until 1:07 p.m.)  
 25 JUDGE MOSS: Let's be back on the record.

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1 As I understand it, Ms. Thomas will have some brief  
 2 redirect, so that's why we have the full panel still up  
 3 here with us. And I believe the questions that the  
 4 Bench has remaining will go to Mr. Dobson and  
 5 Mr. Scarlett perhaps. So I will leave it to you,  
 6 Commissioners, to proceed.  
 7 COMMISSIONER BALASBAS: All right. Good  
 8 afternoon, Mr. Dobson.  
 9 MR. DOBSON: Good afternoon.  
 10 COMMISSIONER BALASBAS: Have you discussed  
 11 with counsel that if Hydro One somehow indicated that it  
 12 does not remain committed to the transaction, would this  
 13 potentially open Hydro One to the up to \$103 million  
 14 penalty under Section 7.3 of the merger agreement or at  
 15 least support a claim for this fee by Avista?  
 16 MR. DOBSON: I have never had a conversation  
 17 with counsel about not being committed to the  
 18 transaction, although we have discussed if the  
 19 transaction for a variety of reasons did not go through,  
 20 what our financial exposure would be including that --  
 21 the break fee.  
 22 COMMISSIONER BALASBAS: Okay. And have you  
 23 discussed with counsel whether the legislative grant of  
 24 immunity from civil liability included in Bill 2 would  
 25 prevent Avista from enforcing Section 7.3 of the merger

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1 agreement?  
 2 MR. DOBSON: Never had that conversation,  
 3 no.  
 4 COMMISSIONER BALASBAS: Okay. So what would  
 5 be your personal opinion would you believe this to be  
 6 the case?  
 7 MR. DOBSON: I'm sorry, could you re --  
 8 COMMISSIONER BALASBAS: What is your -- you  
 9 answered you did not have conversation with counsel on  
 10 this question, but I'm asking, what is your personal  
 11 opinion?  
 12 MR. DOBSON: My personal opinion -- sorry,  
 13 I'm still unsure of what you're asking me.  
 14 COMMISSIONER BALASBAS: Well, your personal  
 15 opinion of whether you believe the legislative grant of  
 16 immunity from civil liability would prevent Avista from  
 17 enforcing the penalties under the termination of the  
 18 agreement.  
 19 MR. DOBSON: Yeah, I'm not -- I'm sorry, I'm  
 20 not a lawyer or legal -- or well-versed in such matters,  
 21 and I've never had a discussion about that with legal  
 22 counsel either in terms of the company or external, so I  
 23 really don't have an opinion.  
 24 COMMISSIONER BALASBAS: All right. So  
 25 turning to the Hydro One Accountability Act, Bill 2,

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1 which we have discussed over the course of the day, the  
 2 Act provides for ongoing provincial oversight of  
 3 approval for executive compensation and director  
 4 compensation. Do you share concerns over executive  
 5 recruitment and retention due to these compensation  
 6 restrictions imposed by the Province?  
 7 MR. DOBSON: At the moment, I do not,  
 8 because I don't believe -- I believe that the changes to  
 9 executive compensation are going to affect first and  
 10 foremost the CEO, and whoever that person turns out to  
 11 be will agree on the terms and conditions including  
 12 compensation that are offered. The extent to which the  
 13 compensation extends down beyond the CEO into other  
 14 parts of the organization still remains to be -- remains  
 15 to be seen. And my own personal opinion is that -- that  
 16 will -- may impact the -- the executive leadership team  
 17 to some degree. Not to the same degree as the CEO what  
 18 the current compensation is. But I have no basis to  
 19 believe that's going to impact retention at this moment.  
 20 COMMISSIONER BALASBAS: What do you think  
 21 the Province has in mind in terms of compensation levels  
 22 for directors or executives at Hydro One?  
 23 MR. DOBSON: The only -- I could only  
 24 speculate on what the Province has in mind. I think it  
 25 mainly involves around CEO compensation since that was

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1 made -- you know, that made most news during the  
 2 campaign and was stated by the politicians at the time  
 3 that that was their aim. As I just stated previously, I  
 4 don't believe that their real aim is to go much beyond  
 5 the CEO, but that still remains to be seen. And I'm  
 6 only speculating on all that.

7 COMMISSIONER BALASBAS: Okay. And what  
 8 compensation framework for Hydro One's CEO and board  
 9 members do you envision?

10 MR. DOBSON: I envision it to be, you know,  
 11 market competitive. They will look at certainly peers  
 12 across North America to ensure that we can attract the  
 13 right talent and be able to compensate that person  
 14 through combination of base short-term incentives and  
 15 long-term incentives to make sure that that person's  
 16 compensation is aligned with the strategic goals of the  
 17 company.

18 COMMISSIONER BALASBAS: So turning to the  
 19 part of the legislation that prohibits recovery of  
 20 executive salary in Hydro One rates, if not from rates,  
 21 then where will the money come to pay executives at  
 22 Hydro One?

23 MR. DOBSON: It'll be paid through the  
 24 shareholder.

25 COMMISSIONER BALASBAS: So will the

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1 Province, then, as a 47, roughly, over 40 percent  
 2 shareholder be kicking in 40 percent of the cost of that  
 3 compensation?

4 MR. DOBSON: When you say "kicking in," I  
 5 mean by sort of -- you know, by nature of their  
 6 shareholding, they would -- as a shareholder, they would  
 7 participate in that as much as any other shareholder.  
 8 If you're asking -- sorry, if you're asking about kick  
 9 in like additional compen- -- or capital being added, I  
 10 don't believe that that is going to happen.

11 COMMISSIONER BALASBAS: But it is your  
 12 belief, though, that because the Province, as a 40-plus  
 13 percent shareholder of the company, would be responsible  
 14 for roughly that amount of the executive salaries?

15 MR. DOBSON: Yes.

16 COMMISSIONER BALASBAS: And what would be  
 17 the source of the Province's funds for that --

18 MR. DOBSON: Well, they --

19 COMMISSIONER BALASBAS: -- responsibility?

20 MR. DOBSON: I'm sorry. They would be --  
 21 you know, they would share in the earnings of the  
 22 company proportionate to their shareholding. And so to  
 23 the extent that that executive compensation was excluded  
 24 from rates and be borne by the shareholder, in other  
 25 words, coming through as a straight cost, that would

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1 impact the earnings of the company and their  
 2 proportionate share of those earnings.

3 COMMISSIONER BALASBAS: Does it concern you  
 4 that the Province has shown a willingness to dictate  
 5 whether specific costs incurred by Hydro One can or  
 6 cannot be included in rates?

7 MR. DOBSON: I think it is -- it is unusual  
 8 to some degree, and I think there is still some  
 9 interpretation in the legislation as to what exactly  
 10 they mean is going to be excluded. Because legislation  
 11 in the -- in the -- in the -- the statement made in the  
 12 legislation is not quite clear when it talks about Hydro  
 13 One Limited, which is the holding company, and the  
 14 executives, you know, excluding salaries from that.

15 So technically, there are only I think three  
 16 or four executives that are not -- that are part of  
 17 that, and the others are attributed to other -- other  
 18 subsidiaries. And so we are -- want that discussion  
 19 with government about the interpretation of what exactly  
 20 is to be excluded.

21 COMMISSIONER BALASBAS: So turning to the  
 22 provincial government's promise of reducing Hydro One  
 23 rates by 12 percent, does it concern you that the  
 24 Province might require such a rate reduction for which  
 25 this amount does not take into account traditional

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1 regulatory ratemaking principles?

2 MR. DOBSON: I think it -- I know that the  
 3 government is looking at various options as to how they  
 4 may get to the 12 percent, but remains to be seen as to  
 5 what the mechanism they would go about doing that. And  
 6 so they could still utilize ratemaking mechanisms to do  
 7 that in combination with other -- other sorts of tools  
 8 at their disposal.

9 On the 12 percent, as we've mentioned  
 10 earlier, you know, our proportionate share of the total  
 11 cost of energy, delivered electricity delivered in  
 12 Ontario is relatively small. Relatively small  
 13 compared -- it's mostly by generation and it's mostly  
 14 about this thing called a global adjustment. And so we  
 15 expect that most of the reduction or impact, where it's  
 16 going to come from has to come from generation and the  
 17 global adjustment. There still may be some impact to  
 18 Hydro One, but it remains to be seen what that -- what  
 19 that impact would be.

20 COMMISSIONER BALASBAS: So assuming that the  
 21 merger is approved and consummated, will Hydro One be  
 22 able to use dividends from Avista to support its  
 23 operating costs?

24 MR. DOBSON: Yes, they will be able to.

25 COMMISSIONER BALASBAS: And would dividends

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1 from Avista be able to support Hydro One's capital  
2 needs?

3 MR. DOBSON: Yes. I'm sorry, if I could  
4 clarify. Not in its entirety, but could contribute to  
5 it.

6 COMMISSIONER BALASBAS: So Mr. Scarlett  
7 testified that the board of directors determined it  
8 would be in the best interest of Hydro One for the  
9 entire board to resign and that Mr. Schmidt determined  
10 it would be in the best interest of Hydro One for him to  
11 retire.

12 So preceding the decision to approach the  
13 premier's office with this offer to resign, did the  
14 board consult with you, Mr. Lopez -- or the company's --  
15 consult with you, the company's CFO, concerning the  
16 likely consequences for the value of company stock if  
17 these events occurred?

18 MR. DOBSON: They did not.

19 COMMISSIONER BALASBAS: Do you know why they  
20 did not elect to consult with you?

21 MR. DOBSON: I -- I -- I couldn't answer why  
22 they did not consult with me. I think there was a --  
23 there was a sense amongst -- amongst the management team  
24 that if this did go through or something like this did  
25 go through, the campaign promises that would be some

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1 impact, but the degree to which that impact would be  
2 just pure speculation.

3 COMMISSIONER BALASBAS: Did the board, to  
4 your knowledge, raise this question with anyone else who  
5 might be in a position to offer board members an  
6 informed opinion?

7 MR. DOBSON: I'm not aware of the board  
8 discussions.

9 COMMISSIONER BALASBAS: So to your  
10 knowledge, they either did not consider this question at  
11 all or simply relied on their own judgment without  
12 seeking any advice from knowledgeable sources?

13 MR. DOBSON: Again, I don't know if they  
14 consulted with any other sources.

15 COMMISSIONER BALASBAS: So did the board or  
16 any of its members consult with you concerning the  
17 likely response of the ratings analyst community on  
18 these events?

19 MR. DOBSON: No, they did not.

20 COMMISSIONER BALASBAS: And did you at any  
21 time advise one or more members of the board the  
22 resignation of the entire board was more likely than not  
23 to have adverse consequences on the company's share  
24 value or its ratings?

25 MR. DOBSON: I do not recall that I did

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1 that, no.

2 COMMISSIONER BALASBAS: Did anyone on the  
3 board or did Mr. Schmidt discuss with you whether the  
4 board's resignation and/or his retirement should cause  
5 you to have any concerns relative to your employment at  
6 Hydro One as an officer?

7 MR. DOBSON: I don't recall a conversation  
8 like that.

9 COMMISSIONER BALASBAS: And did any member  
10 of the board or did Mr. Schmidt ask for your opinions  
11 concerning the potential consequences of the board's  
12 resignation or his retirement on the value of Avista's  
13 stock?

14 MR. DOBSON: No, they did not.

15 COMMISSIONER BALASBAS: And were you asked  
16 to consult with Avista on the question I just asked you?

17 MR. DOBSON: No, I was not.

18 COMMISSIONER BALASBAS: All right. Thank  
19 you. I believe that's all I have.

20 COMMISSIONER RENDAHL: Mr. Scarlett, I have  
21 just a few more questions for you.

22 MR. SCARLETT: Delighted.

23 COMMISSIONER RENDAHL: And these have to do  
24 with the new Commitment 82. Do you have that commitment  
25 in front of you? I believe it's part of Exhibit JNT-3,

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1 it's the most recent redline version that I'm looking  
2 at.

3 MR. SCARLETT: Yeah, I'm familiar with this.

4 COMMISSIONER RENDAHL: Okay. Good. So as I  
5 read Commitment 82, and I just want to have this  
6 conversation with you about it, this is intended to  
7 present assurances to the Commission that we will have  
8 recourse should any governmental entity in Canada take  
9 an action that affects Avista's operations or prevents  
10 compliance with the commitments, correct?

11 MR. SCARLETT: Correct.

12 COMMISSIONER RENDAHL: And it provides any  
13 party -- that any party can seek to hold a proceeding,  
14 to ask the Commission to hold a proceeding to rehear our  
15 decision were we to approve the merger, correct?

16 MR. SCARLETT: That's correct.

17 COMMISSIONER RENDAHL: But it does not allow  
18 the Commission to seek rehearing on its own motion, does  
19 it?

20 MR. SCARLETT: Let me just take a closer  
21 read, but I -- I was -- my understanding that -- excuse  
22 me, would be we wouldn't need to actually make that  
23 commitment, that the Commission has that authority on  
24 its own.

25 COMMISSIONER RENDAHL: Okay. Thank you.

1 MR. SCARLETT: Is my understanding.  
 2 COMMISSIONER RENDAHL: So given that the  
 3 risks that we discussed today in this hearing and the  
 4 questions about the risks that we've asked, can you  
 5 explain what the benefit of this commitment is to Avista  
 6 ratepayers?  
 7 MR. SCARLETT: Well, I think there's a  
 8 couple of things. First, the commitment also has an  
 9 obligation on our part to monitor and advise when things  
 10 might be changing so that there's more notice, more  
 11 advance notice, thereby allowing the parties -- excuse  
 12 me -- to consider what the right course of action would  
 13 be and to react, you know, promptly. I think that's in  
 14 their -- I think that's in the best interest of  
 15 ratepayers. And I also think that confirming that the  
 16 parties can bring this forward, the interested parties  
 17 who represent the variety of the ratepayers and  
 18 empowering them to bring the matters back for a  
 19 rehearing I think is also additive to ratepayer  
 20 protection.  
 21 COMMISSIONER RENDAHL: So but how -- how can  
 22 this Commission or the Commission effectively unring a  
 23 bell here? If there's a risk of harm to the company and  
 24 its ratepayers, is rehearing and remod- -- rehearing and  
 25 potentially modifying the decision a real feasible

1 that this -- this commitment, though, then shifts the  
 2 burden to the Commission to figure out what to do?  
 3 MR. SCARLETT: Not necessarily. It -- it  
 4 puts a burden on us to deal with the matter, to come  
 5 back to the Commission. I think that as a practical  
 6 matter, the burden is always going to be on us to work  
 7 with the interested parties, including staff of the  
 8 Commission, to address the issues and come forward with  
 9 proposals and ideas that would rectify the situation,  
 10 would protect ratepayers in Washington.  
 11 COMMISSIONER RENDAHL: All right. And then  
 12 so how would this commitment square with the immunity's  
 13 provision that the Province approved in Bill 2, the  
 14 Hydro Accountability Act? If the Province takes an  
 15 action that has an impact, there's no recourse against  
 16 the Province, is there?  
 17 MR. SCARLETT: Bill 2 is really only dealing  
 18 with what is in Bill 2. The immunity in Bill 2 is about  
 19 actions taken under Bill 2, which are dealing with  
 20 compensation at Hydro One. I don't think it has any  
 21 relevance to what happens down at Avista.  
 22 COMMISSIONER RENDAHL: All right. Thank  
 23 you.  
 24 CHAIRMAN DANNER: So, Mr. Scarlett, so  
 25 looking at this Commitment 82, let's say that the

1 outcome for ratepayers?  
 2 MR. SCARLETT: It's a very difficult  
 3 question to answer without a specific in mind. You  
 4 know, sort of -- can I think of situations where there  
 5 might be a benefit at a rehearing and the resulting  
 6 tuning or refinement of some of the commitments? Yes, I  
 7 can probably think of something, although it doesn't pop  
 8 into my mind right now.  
 9 COMMISSIONER RENDAHL: So if something  
 10 drastic or if the -- if the Province or a governmental  
 11 entity in Canada were to take an action that would have  
 12 a drastic impact on the company and potentially the  
 13 ratepayers, obviously a process takes time, how does  
 14 this protect ratepayers from that potential impact?  
 15 MR. SCARLETT: Well, I think in the  
 16 situation that you're posing, where something is drastic  
 17 and it does have a drastic impact, so if we take that as  
 18 the starting point, this kind of a clause really helps I  
 19 think get things moving faster because you wouldn't want  
 20 to react to it. You'd want look at it and do something  
 21 about it. So this clause is additive in terms of  
 22 getting the process moving faster, having more parties  
 23 involved in the process, having an obligation on our  
 24 part to keep you apprised of what's going on.  
 25 COMMISSIONER RENDAHL: So would you agree

1 premier asks for and the legislature approves a bill  
 2 that directs the industry to take a 12 percent rate  
 3 decrease.  
 4 MR. SCARLETT: Right.  
 5 CHAIRMAN DANNER: Would you interpret that  
 6 as being something well, that's because we have a  
 7 Governance Agreement or a ringfencing provision in place  
 8 that that would not trigger Commitment 82?  
 9 MR. SCARLETT: I would have to talk with my  
 10 colleagues about whether we thought that would have some  
 11 impact on Avista. I don't really know offhand how  
 12 significant that impact would be on Hydro One. I  
 13 suppose if we felt that it was going to have such a  
 14 material financial impact that we wouldn't be able to  
 15 support all of our obligations to Avista, well, then,  
 16 clearly it would have that kind of an impact.  
 17 CHAIRMAN DANNER: But if you felt that you  
 18 could meet your obligations, then you would say it's not  
 19 triggered?  
 20 MR. SCARLETT: Yeah, if we went -- just want  
 21 to go back to the words.  
 22 CHAIRMAN DANNER: Sure.  
 23 MR. SCARLETT: I want to be careful with  
 24 words with thought of -- carefully with all the parties,  
 25 but it talks about some type -- it's a very broad

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1 opening, legislation rule policy directive that affects  
 2 Avista's operations because of its corporate  
 3 relationship with Hydro One or affects our compliance  
 4 with any commitments in this stipulation.  
 5 So if we, you know, fairly concluded,  
 6 reasonably concluded, and we wouldn't do this in an  
 7 offhand way. We'd deliberate very seriously, and I'd  
 8 expect we would err on the side of caution because we  
 9 want a good relationship. We don't want a bad  
 10 relationship. But if we took a look and we said  
 11 whatever this change is, it's not going to have a big  
 12 financial impact on us, we can manage it quite readily.  
 13 We can meet all of our commitments. We would -- we  
 14 would expect we would discuss it with Avista because  
 15 we'll be doing a lot of things in partnership with  
 16 Avista.  
 17 But yes, on these words, if we came to the  
 18 conclusion it wasn't going to affect Avista's operations  
 19 nor was it going to detract from our ability to meet all  
 20 of our commitments, then on this language, we would not  
 21 have an obligation to come back to you. I mean, we  
 22 might anyway, but we wouldn't have an obligation.  
 23 CHAIRMAN DANNER: All right. Just sort of  
 24 thinking of something that -- I mean, that's an example  
 25 because that's something that's been talked about,

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1 something that's more significant even, and you felt  
 2 that you couldn't meet your commitments, basically we're  
 3 going to have a proceeding here, we're going to reopen  
 4 the record in this proceeding, what -- what is the  
 5 potential outcome? Is it that we would order you to do  
 6 something that the company can't do, or would we order  
 7 the company to spin Avista back, make its independence  
 8 known to a third party? What -- what are you  
 9 envisioning how this works in practice, because I'm  
 10 trying -- I'm trying to figure a scenario about how this  
 11 would all --  
 12 MR. SCARLETT: Well, I'm not an expert in  
 13 the full range of your powers and authorities of which  
 14 you can and can't work. So I'm belaboring under that  
 15 difficulty. And also, as I said earlier just a minute  
 16 ago, it's difficult to, you know, with a complete  
 17 hypothetical, give a definitive answer. What do I think  
 18 would happen here? I think because we're all, you know,  
 19 reasonable, rational people, we'd see this situation had  
 20 occurred, we would say what's the effect going to be,  
 21 we're going to come in here and explain the effect.  
 22 We're not just going to come in and drop it on the  
 23 table. You know, we're going to come in and say we  
 24 think it causes this issue, and we think we can fix it  
 25 this way, and your staff will have their input and, you

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1 know.  
 2 CHAIRMAN DANNER: It must have been written  
 3 and proposed with some hypotheticals in mind and some  
 4 hypotheticals discussed. And I'm just wondering because  
 5 I'm trying to figure out the process here.  
 6 MR. SCARLETT: Right. Well, this wasn't  
 7 actually proposed by the applicant. It was proposed as  
 8 part of our discussions with Staff and the intervenors,  
 9 and -- and we added -- you know, and as these things go,  
 10 we fiddled the language to make it satisfactory to  
 11 everybody, and we -- I think it may have been the  
 12 applicant's suggestion, maybe not about the giving the  
 13 notice of new developments, but the -- but the initial  
 14 idea of this didn't come from us. So I didn't have  
 15 any --  
 16 CHAIRMAN DANNER: All right.  
 17 MR. SCARLETT: -- fact pattern in mind, no.  
 18 We did make other changes, by the way, that contemplated  
 19 potential fact patterns, but that's all in the testimony  
 20 so...  
 21 JUDGE MOSS: All right. Well, this witness  
 22 panel, then, I think the Commission has completed its  
 23 questions.  
 24 Ms. Thomas, you had some brief redirect?  
 25 MS. THOMAS: Yes. Thank you, Your Honor.

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1 Mr. Dobson, in an earlier question, there  
 2 was a -- there was actually a question to Mr. Lopez  
 3 regarding his September 6th testimony that stated the  
 4 continuing Hydro One commitment to the transaction and a  
 5 question about how that September 6th statement was made  
 6 in light of the fact that the resolution affirming the  
 7 commitment transaction wasn't adopted until September  
 8 19th. As the acting chief executive officer, did you  
 9 sit in on an earnings call on August 14th?  
 10 MR. DOBSON: I did.  
 11 MS. THOMAS: And do you recall what, if any,  
 12 discussion there was regarding Hydro One's commitment to  
 13 the merger during that call?  
 14 MR. DOBSON: I do recall that commitment to  
 15 the merger with Avista was -- was confirmed by myself on  
 16 at least two or three times during that call.  
 17 MS. THOMAS: Thank you, Mr. Dobson.  
 18 Mr. Scarlett, a redirect for you. In  
 19 discussion of the Governance Agreement, do you recall  
 20 questions regarding the application of the bylaws in  
 21 terms of how the new board was constituted?  
 22 MR. SCARLETT: Yes, I do.  
 23 MS. THOMAS: And do you recall being asked  
 24 whether the Governance Agreement referred to the bylaws?  
 25 MR. SCARLETT: Yes.



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1 MS. THOMAS: And did you have a chance to  
 2 look at the bylaws during our break?  
 3 MR. SCARLETT: Yes, I did.  
 4 MS. THOMAS: Were you able to determine  
 5 whether the Governance Agreement refers to the bylaws?  
 6 MR. SCARLETT: Yes. Can I just explain  
 7 briefly?  
 8 MS. THOMAS: Yes.  
 9 MR. SCARLETT: I was asked if the bylaws  
 10 were referred to in the Governance Agreement, and I said  
 11 I didn't think so. That was incorrect. They are  
 12 referred to in Section 2.11, and it -- the section I can  
 13 briefly summarize two things. It says that if the  
 14 bylaws in the Governance Agreement are inconsistent, we  
 15 have an obligation to amend the bylaw to the extent it's  
 16 permissible to do so to make them consistent. And it  
 17 also says that if the Governance Agreement has items  
 18 that are additive to the bylaws, that we'll comply with  
 19 the bylaws and the Governance Agreement. So it's really  
 20 a harmonizing obligation.  
 21 MS. THOMAS: Mr. Woods, I have a couple of  
 22 questions for you. Do you recall testifying about how  
 23 you were asked to serve on the new board and how the new  
 24 board was constituted? Do you recall mentioning that  
 25 there was a search firm who contacted you?

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1 MR. WOODS: Yes.  
 2 MS. THOMAS: Did the Province hire a search  
 3 firm to help it identify board members?  
 4 MR. WOODS: Yes.  
 5 MS. THOMAS: Did the ad hoc committee also  
 6 hire a search firm to help them identify --  
 7 MR. WOODS: Yes, a different search firm.  
 8 MS. THOMAS: Okay. And you mentioned, of  
 9 course, that you accepted the proposal to serve on the  
 10 board. On what basis did you accept that offer?  
 11 MR. WOODS: Well, among the bases were that  
 12 this is a very important company in Ontario, and I felt  
 13 that it was an important role that I could assist in  
 14 contributing.  
 15 But second, it was also based on discussions  
 16 I had with members of government following which I  
 17 concluded that the board would be able to act  
 18 independently and that was important to me.  
 19 MS. THOMAS: Do you know whether your fellow  
 20 new board members evaluated the ability to act  
 21 independently as well?  
 22 MR. WOODS: Yes, I don't know that I spoke  
 23 with every single one of the other nine, but I know  
 24 several of us did talk about that and they had similar  
 25 levels of comfort.

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1 MS. THOMAS: Mr. Woods, another question for  
 2 you. Oh, sorry. This is actually -- I'm sorry. Just a  
 3 moment. On the spot here. That's it for you,  
 4 Mr. Woods. Thank you.  
 5 Mr. Lopez, you were asked about rating  
 6 agency comments, you were asked about questions --  
 7 Moody's report that the recent events were credit  
 8 negative; do you remember answering those questions?  
 9 MR. LOPEZ: Yes.  
 10 MS. THOMAS: At that point, did Moody's  
 11 downgrade Hydro One?  
 12 MR. LOPEZ: No.  
 13 MS. THOMAS: Did it take any other action?  
 14 MR. LOPEZ: No.  
 15 MS. THOMAS: You also testified about a  
 16 comment from Standard & Poor's, and you mentioned that  
 17 Standard & Poor's issued two reports, the first of which  
 18 came out July 2017; do I have that right?  
 19 MR. LOPEZ: Correct.  
 20 MS. THOMAS: And at that point in time, what  
 21 was Standard & Poor's prediction of the impact on  
 22 Avista's rating of the proposed transaction with Hydro  
 23 One?  
 24 MR. LOPEZ: It upgraded the outlook for  
 25 Avista to credit watch positive, which meant that

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1 there's a 50 percent likelihood of being upgraded at the  
 2 time the transaction closed.  
 3 MS. THOMAS: And is that still true today?  
 4 MR. LOPEZ: Yes, it is.  
 5 MS. THOMAS: And that concludes my recross.  
 6 Thank you, Your Honor.  
 7 JUDGE MOSS: All right. Thank you. I  
 8 appreciate all of you panelists being here today and  
 9 testifying in response to the questions from the Bench,  
 10 and you all may take your seats in the back, and we'll  
 11 have Mr. McGuire come up.  
 12 I certainly hope you don't need all that  
 13 material, Mr. McGuire. I appreciate you coming  
 14 prepared, though. You've been sworn before in this  
 15 proceeding, so you're still under oath.  
 16 MS. SUETAKE: Judge Moss, before we start  
 17 the questioning of Mr. McGuire --  
 18 This is Nina Suetake from Public Counsel.  
 19 -- I had a quick procedural question. You  
 20 had mentioned earlier that there was potentially more  
 21 public comments earlier at the beginning of the hearing,  
 22 and we were wondering if we needed to amend or resubmit  
 23 the public hearing -- or public comment exhibits?  
 24 JUDGE MOSS: I think Mr. Roberts will be  
 25 contacting Public Counsel's office to update the public

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1 comment exhibit to reflect the materials that have been  
 2 received in this phase of the proceeding.  
 3 MS. SUETAKE: Okay.  
 4 JUDGE MOSS: I've been working with him on  
 5 that and of course the comment will close today, close  
 6 of business today and so should be able to accomplish  
 7 that in fairly short order. We've got four volumes  
 8 already. I don't know if this will be a fifth volume or  
 9 what, but you all will work it out I'm sure.  
 10 MS. SUETAKE: Okay. Thank you very much.  
 11 We will be in touch with him.  
 12 JUDGE MOSS: Thank you very much.  
 13 Mr. McGuire, I believe you're ready.  
 14 COMMISSIONER RENDAHL: Good afternoon,  
 15 Mr. McGuire.  
 16 MR. MCGUIRE: Good afternoon.  
 17 COMMISSIONER RENDAHL: Thanks for being  
 18 here. You've sat through the entire hearing I assume?  
 19 MR. MCGUIRE: Yes.  
 20 COMMISSIONER RENDAHL: Okay. So you have  
 21 listened to the questions about the Governance Agreement  
 22 and Section 4.7, and without going through the  
 23 requirements of that section with you, first, do you --  
 24 you've read that section and you've read the Governance  
 25 Agreement?

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1 MR. MCGUIRE: I have.  
 2 COMMISSIONER RENDAHL: Okay. Given the  
 3 events that we've talked about today and the terms of  
 4 the Governance Agreement including the waiver provision,  
 5 don't you agree that it shows that there's a risk of  
 6 political intervention by the Province in Hydro One's  
 7 corporate affairs?  
 8 MR. MCGUIRE: I agree, yes, that there is a  
 9 risk of that type of interference.  
 10 COMMISSIONER RENDAHL: And that it remains  
 11 significantly greater than the testimony we heard from  
 12 Mr. Schmidt and Mr. Scarlett on May 22nd, correct?  
 13 MR. MCGUIRE: I -- I don't know that the  
 14 risk is greater. I would say that the perceived risk is  
 15 certainly greater, yes.  
 16 COMMISSIONER RENDAHL: Okay. In your review  
 17 of the Governance Agreement in this proceeding, did you  
 18 consider the effect of the waiver provision, Section  
 19 8.11, in evaluating Staff's position in this case?  
 20 MR. MCGUIRE: No, I did not.  
 21 COMMISSIONER RENDAHL: Does it concern you  
 22 after listening to the discussion today?  
 23 MR. MCGUIRE: Not particularly, no. Staff's  
 24 review was more focused on the Governance Agreement with  
 25 respect to Avista than it was with respect to Hydro One.

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1 The -- the majority of our review was focused on  
 2 ensuring that Avista remains protected from any  
 3 intervention from -- from the government in Ontario.  
 4 COMMISSIONER RENDAHL: So if the Governance  
 5 Agreement pertains to Hydro One but Hydro One would  
 6 become the primary shareholder of Avista if this merger  
 7 would come to fruition, does that concern you, the  
 8 provisions of the Governance Agreement now that you  
 9 understand the waiver provision?  
 10 MR. MCGUIRE: No, it does not concern me.  
 11 Again, I -- my review was focused on assuring that, you  
 12 know, Avista was protected from any -- from any actions  
 13 of -- of any malicious actions or bad actors associated  
 14 with the parent company. Before we even learned that  
 15 the Province of Ontario had intended to interfere with  
 16 the -- with Hydro One, we entertained the possibility  
 17 that someone may be a bad actor and how do we protect  
 18 Avista from the potential that something bad upstream  
 19 may happen.  
 20 And with those thoughts in mind, we  
 21 negotiated what we felt to be strong ringfencing  
 22 provisions and strong financial protections and strong  
 23 language in the governance documents that essentially  
 24 provided for a diverse board of directors that seem to  
 25 be able to carry out the board of director function

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1 without interference from the Province of Ontario.  
 2 COMMISSIONER RENDAHL: So in your testimony,  
 3 and that's the CRM-1T on page 6, line 17 to 19, you said  
 4 that (as read) Although the Province may force the  
 5 resignation of the entire Hydro One board, the Province  
 6 may only nominate 40 percent of the new board members  
 7 and that a single shareholder cannot enact an agenda  
 8 with a minority of board votes.  
 9 Do you recall that?  
 10 MR. MCGUIRE: Yes, I do.  
 11 COMMISSIONER RENDAHL: So after the recent  
 12 resignation of the entire Hydro One board, do you still  
 13 believe that the authority to force the resignation of  
 14 the entire Hydro One board is not effective control over  
 15 majority if not the entire Hydro One board?  
 16 MR. MCGUIRE: I wrote this testimony  
 17 subsequent to the actions in Ontario, so I do believe  
 18 what I wrote to be true, yes.  
 19 COMMISSIONER RENDAHL: So why do you think  
 20 the new board would be less influenced by the Province's  
 21 wishes than the prior board?  
 22 MR. MCGUIRE: I don't believe they would be  
 23 less influenced, and I didn't testify to that. What I  
 24 was attempting to say is that the Province of Ontario  
 25 does have certain powers with respect to the board. The

1 Province can force resignation or can oust the entire  
2 board and that is -- that has been known throughout this  
3 proceeding that they had that capability. And what  
4 happened isn't outside of what we understood to be the  
5 capability of the Province of Ontario.

6 COMMISSIONER RENDAHL: Okay. So I have a  
7 few questions about the Commitment 82.

8 MR. MCGUIRE: Okay.

9 COMMISSIONER RENDAHL: Okay. Similar to the  
10 questions I asked Mr. Scarlett, was it Staff's intent in  
11 agreeing to this commitment that it would present  
12 assurances to the Commission that the Commission would  
13 have recourse if any government entity, governmental  
14 entity in Canada, took a position or an action that  
15 affected Avista's operations or prevented compliance  
16 with the commitments?

17 MR. MCGUIRE: Yes.

18 COMMISSIONER RENDAHL: Okay.

19 MR. MCGUIRE: Would you like me to  
20 elaborate?

21 COMMISSIONER RENDAHL: Go ahead.

22 MR. MCGUIRE: Yeah, so when we negotiated  
23 the settlement, we did our best to negotiate, again,  
24 strong ringfencing provisions and strong financial  
25 provisions, things that would protect Avista and its

1 given the risks we've discussed today, what benefit does  
2 this commitment provide to Avista's ratepayers?

3 MR. MCGUIRE: Well, this benefit -- or this  
4 commitment benefits the ratepayers by giving parties and  
5 the Commission recourse again in the event that  
6 something detrimental happens. Something that the  
7 Commission or other parties perceive as being  
8 detrimental to Avista or its ratepayers, those parties  
9 and the Commission can use this commitment to reopen the  
10 record and redecide this issue.

11 COMMISSIONER RENDAHL: But then effectively,  
12 how can we unring a bell? So once a transaction is  
13 concluded, if there's risk of harm to the company and  
14 its ratepayers, is rehearing and modifying the decision  
15 really a feasible outcome? What's the remedy?

16 MR. MCGUIRE: That I don't know. I don't  
17 know the answer to that, and that's straining into legal  
18 territory that I just don't -- I just don't know the  
19 answer to that. So I don't know.

20 COMMISSIONER RENDAHL: Okay. Thank you. I  
21 have no other questions.

22 CHAIRMAN DANNER: So, Mr. McGuire, my  
23 question to you, then, is Commitment 82 just bells and  
24 suspenders, are you satisfied with 1 through 81 as being  
25 sufficient?

1 ratepayers from something unforeseen and unfortunate.  
2 But after the recent actions in Ontario, we thought it  
3 would be useful to the Commission to negotiate another  
4 commitment that would allow the Commission to have  
5 recourse against some other unforeseeable event.

6 So in my mind, this commitment is a  
7 protection for the Commission in the event that anything  
8 else comes to pass, that the Commission or any of the  
9 intervening parties here deem to be detrimental to  
10 Avista or its ratepayers.

11 COMMISSIONER RENDAHL: So do you agree with  
12 Mr. Scarlett's statement that the Commission has the  
13 authority now to -- if we were to approve the merger, to  
14 reopen on our own motion --

15 MR. MCGUIRE: Yes.

16 COMMISSIONER RENDAHL: -- despite the  
17 commitments?

18 MR. MCGUIRE: Yes, I believe that to be  
19 true, and I think language in the commitment itself  
20 reaffirms that position. The very last sentence of  
21 Commitment 82 says that, (as read) Nothing in this  
22 commitment is intended to restrict or to limit the  
23 authority of the Commission.

24 COMMISSIONER RENDAHL: Thanks.  
25 So same question I asked Mr. Scarlett is

1 MR. MCGUIRE: Yes, I was satisfied with  
2 those commitments as being sufficient, but I do  
3 appreciate that this new commitment exists and that the  
4 applicants have agreed to this commitment essentially  
5 allowing the Commission to -- to reevaluate the issues  
6 in this case.

7 CHAIRMAN DANNER: So was there a fact  
8 pattern in your head that this Commitment 82 was  
9 addressing and did you have a scenario that you were  
10 trying to address?

11 MR. MCGUIRE: No, I did not have a scenario  
12 I was trying to address. This commitment was  
13 predominantly negotiated to -- and for my perspective,  
14 to provide the Commission and other parties with some  
15 clear recourse in the event something unfortunate  
16 happens. That's -- I didn't have anything specific in  
17 mind. As I mentioned a moment ago, this exists  
18 partially because we can't think of everything that  
19 could happen, and this commitment exists because we  
20 believe that it does provide something additional that  
21 possibly wasn't clear, maybe it wasn't clear whether or  
22 not the other parties could petition to reopen this  
23 record and have the Commission redecide certain issues  
24 in this docket.

25 CHAIRMAN DANNER: Okay.

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1 COMMISSIONER BALASBAS: So, Mr. McGuire,  
2 when this commitment was being contemplated and you  
3 stated a few times here of either redeciding or  
4 reopening the record in this case, did you think about  
5 the possibility that in that event, the Commission would  
6 rescind its approval of this transaction?  
7 MR. MCGUIRE: Yes, I thought of that.  
8 COMMISSIONER BALASBAS: And so this  
9 commitment was designed with that possibility in mind?  
10 MR. MCGUIRE: It was designed very broadly,  
11 yes, for a reason.  
12 COMMISSIONER BALASBAS: Thank you.  
13 JUDGE MOSS: I know you're not a lawyer,  
14 Mr. McGuire, so my question may be falling on the wrong  
15 person here, but what practical significance would it be  
16 if we said, oh, we're rescinding our approval of a  
17 transaction that's already been consummated? Doesn't  
18 have any practical effect, does it?  
19 MR. MCGUIRE: Can I pass that on to my  
20 attorney?  
21 JUDGE MOSS: I think we can just let it  
22 drop, how about that?  
23 MR. MCGUIRE: Okay.  
24 JUDGE MOSS: All right. No further  
25 questions?

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1 All right. Mr. McGuire, we do appreciate  
2 you coming forward and giving your testimony this  
3 afternoon. I think we're finished with you and you can  
4 retire to the back of the room if you choose.  
5 MR. MCGUIRE: Thank you.  
6 JUDGE MOSS: I assume you have no redirect,  
7 Ms. Cameron-Rulkowski?  
8 MS. CAMERON-RULKOWSKI: I have no redirect,  
9 thank you.  
10 JUDGE MOSS: All right. Thank you very  
11 much.  
12 Well, that, then, I believe brings us to the  
13 conclusion of this phase. I've been calling it phase  
14 two in my notes, but I haven't announced that publicly,  
15 so there's nothing formal about it. But we have the  
16 record in a state where we can move forward with our  
17 deliberations. The Commissioners can deliberate on  
18 this, and we will then enter an order in due course.  
19 Anything further we need to talk about?  
20 MR. MEYER: There is, Your Honor. After --  
21 after conferring with our colleagues at Hydro One and  
22 still being mindful of the schedule and the December  
23 14th date and what has to happen between now and then,  
24 applicants would like the opportunity in short order to  
25 submit a brief.

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1 JUDGE MOSS: Mr. Meyer, I think you just  
2 love to write briefs.  
3 MR. MEYER: Yeah.  
4 JUDGE MOSS: You always ask for briefs.  
5 MR. MEYER: And I always ask for more pages,  
6 which I never get.  
7 JUDGE MOSS: Yes, you always want 65 pages.  
8 MR. MEYER: That's right. So we understand  
9 each other on that.  
10 JUDGE MOSS: Yes, we do.  
11 MR. MEYER: But in this -- in this case in  
12 all seriousness, a number of issues have been raised,  
13 but we're not sure we understand precisely the concern.  
14 We can surmise what the concerns might be through the  
15 questioning. We just want to make sure that through  
16 this extended process we've addressed head-on what your  
17 issues are.  
18 So to that end, it would benefit applicants  
19 if we would be given the chance to submit a rather short  
20 and to the point brief. On what? That's where we could  
21 use the assistance perhaps of Your Honor, if you could,  
22 so we don't act as ships passing in the night, if you  
23 can help identify issues that you would prefer to see  
24 some briefing on.  
25 JUDGE MOSS: Well, we have discussed the

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1 issue of briefing, and the Commissioners have decided  
2 among themselves they see no need for briefs in this  
3 case at this juncture. We've had quite a bit of  
4 process, and we feel like we have a pretty complete  
5 record. So I don't really -- unless they tell me that  
6 they're changing their mind up here, which I see head  
7 shaking in the negative, I don't think we'll have  
8 briefs, Mr. Meyer.  
9 MR. MEYER: Thank you.  
10 JUDGE MOSS: Appreciate it.  
11 CHAIRMAN DANNER: Hey, not so fast.  
12 JUDGE MOSS: Not so fast?  
13 CHAIRMAN DANNER: Mr. Meyer, were you  
14 envisioning all the parties submitting separate briefs?  
15 MR. MEYER: I was -- no, quite frankly, I  
16 was envisioning the two applicants, perhaps within  
17 like -- we haven't discussed this, perhaps within ten  
18 days submitting a relatively short brief, maybe 20, 30  
19 pages at the most. Just --  
20 You want more?  
21 MS. THOMAS: No. I think we can do it  
22 faster and shorter. I think we have a couple of issues  
23 that we wanted to make sure that our answers were very  
24 crisp and clear on -- answers that were in the nature of  
25 legal discussion, and that's what we'd like an

1 opportunity to do.  
2 CHAIRMAN DANNER: I think we --  
3 JUDGE MOSS: All right. Well, we'll be in  
4 recess for a few minutes while we confer on this issue.  
5 (Pause in the proceedings.)  
6 JUDGE MOSS: Let's be back on the record.  
7 So, again, while we appreciate your concerns  
8 and your invitation to outline a short brief for you, I  
9 think we're going to demur. The Commission does not  
10 feel the need for briefs. We've had a lot of process,  
11 we've heard pretty much every argument that could be  
12 possibly be made about this transaction. And so we're  
13 prepared to go forward with a decision at this point.  
14 All right.  
15 MR. MEYER: Thank you very much.  
16 MS. THOMAS: Thank you, Your Honor.  
17 JUDGE MOSS: Anything else? All right. I  
18 think we can -- I think with that, we'll just go ahead  
19 and close the record. Appreciate everybody being here  
20 today. I think the hearing was very useful to the  
21 Commission. I think it gave us what we needed, and  
22 we'll move forward from here. We have the December 14th  
23 deadline in mind. All right. Thank you. We're off the  
24 record.  
25 (Adjourned at 1:55 p.m.)

1 CERTIFICATE  
2  
3 STATE OF WASHINGTON  
4 COUNTY OF THURSTON  
5  
6 I, Tayler Garlinghouse, a Certified Shorthand  
7 Reporter in and for the State of Washington, do hereby  
8 certify that the foregoing transcript is true and  
9 accurate to the best of my knowledge, skill and ability.  
10  
11  
12   
13 Tayler Garlinghouse  
14 Tayler Garlinghouse, CCR 3358  
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