

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

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

**May 22, 2018**



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1 A P P E A R A N C E S (Continued)

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E X H I B I T I N D E X

JOINT SETTLEMENT RELATED EXHIBITS

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- 4 JNT-1T Joint Testimony of Mayo M. Schmidt (Hydro One), Christopher F. Lopez (Hydro One), Scott L. Morris (Avista), Elizabeth M. Andrews (Avista), Christopher S. Hancock (Staff), Corey J. Dahl (Public Counsel), J. Randall Woolridge (Public Counsel), Marc M. Hellman (AWEC), Shawn M. Collins (Energy Project), Wendy M. Gerlitz (NVEC, RNW, NRDC), Doug H. Howell (Sierra Club), David Hawkins (WNIDCL), and Glen Freiberg (WNIDCL) in Support of Settlement Stipulation (REVISED 5/7/2018)
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- DH-3 Two-Year Plan for Managing Replacement of Select Pipe in Avista Utilities' Natural Gas System in its Washington Service Area, June 1, 2017
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- DH-6 Washington Department of Labor & Industries Workers' Compensation Rates for North Star Enterprises Inc.
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- DH-8 Historical resident Labor Force and Employment, seasonally adjusted Index of Washington state and labor market areas, 1990-2018
- DH-9 Hydro One Labour Requirements Clause Form 1 (Revised June 15, 2011)
- DH-10 Hydro One Schedules I, II, and III for Labour Requirements Clause Form 1 (Revised June 15, 2011)
- DH-11 Consolidated Edison Company of New York, Inc. Standard Terms and Conditions for Construction Contracts, October 15, 2014
- DH-12 Reinventing Construction: A Route to Higher Productivity, Executive Summary, 2/2017, McKinsey Global Institute



1 OLYMPIA, WASHINGTON; TUESDAY, MAY 22, 2018

2 9:32 A.M.

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4

5 ALJ MOSS: Good morning, everybody. My  
6 name is Dennis Moss. I'm an Administrative Law Judge  
7 for Washington Utilities and Transportation Commission.  
8 We are convened this morning in the matter of the joint  
9 application of Hydro One Limited (acting through its  
10 indirect subsidiary, Olympus Equity, LLC) and  
11 Avista Corporation for an order authorizing proposed  
12 transaction, Docket No. U-170970. This is a settlement  
13 hearing and we have before us our settlement -- our  
14 witnesses, who filed settlement testimony, and we'll be  
15 proceeding with them momentarily.

16 I have a few preliminary matters, but I think first  
17 we'll go ahead and take appearances of counsel. And  
18 then following that, I have a couple of things to say.

19 But before we get to the appearances, I need to  
20 announce to anyone who happens to be on our telephone  
21 conference bridge line this morning, there are limited  
22 number of ports on that line. So we're hoping to keep  
23 that as open as possible for members of the public and  
24 others who may be interested in listening but can't be  
25 here this morning.

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1           We will not be taking public comment either over  
2           that or through the TVW link, which we are broadcasting  
3           live through the TVW computer link. And anyone who  
4           wants to follow the proceedings this morning can follow  
5           that at tvw.org from their computer. And there is a  
6           link to the appropriate site on our -- on the WUTC  
7           Twitter page. I had to confess, when I was told that,  
8           that I've never been on Twitter, but I'm sure those of  
9           you out there in the cyber universe know how to do this.  
10          The Twitter page is twitter.com/WAUTC. And I would  
11          encourage anyone who is on the conference line,  
12          particularly members of the public who may wish to  
13          follow the proceeding, that they may tune in in that  
14          fashion as opposed to the conference bridge line.

15                 So, with that, let's go ahead and take the  
16          appearances. Mr. Meyer, we'll start with the company.

17                         MR. MEYER: Thank you, Your Honor. Short  
18          form appearance, David Meyer for Avista.

19                         ALJ MOSS: Yes. Unless you have not  
20          previously entered an appearance, counsel, you may use  
21          the short form.

22                         Let's start over here with Mr. Oshie and just work  
23          our way down. I think that would probably be the  
24          easiest.

25                         MR. OSHIE: Patrick Oshie, representing

1 the Alliance of Western Energy Consumers.

2 MR. GOLTZ: Jeffrey Goltz, Cascadia Law  
3 Group. I represent NW Energy Coalition, Renewable  
4 Northwest and Natural Resources Defense Council.

5 ALJ MOSS: Thank you.

6 MR. FFITCH: Simon ffitch, representing  
7 The Energy Project.

8 ALJ MOSS: It's hard to get out of these  
9 habits.

10 MR. RITCHIE: Travis Ritchie with  
11 Sierra Club.

12 ALJ MOSS: Okay.

13 MS. CAMERON-RULKOWSKI: Jennifer  
14 Cameron-Rulkowski, assistant attorney general  
15 representing commission staff.

16 ALJ MOSS: Thank you.

17 MS. THOMAS: Liz Thomas, representing  
18 Hydro One, and I would like to introduce Jamie Scarlett  
19 the general counsel with Hydro One is with me and my  
20 partner Kari Vander Stoep is also with me.

21 ALJ MOSS: Welcome.

22 MS. GAFKEN: Good morning. Lisa Gafken,  
23 assistant attorney general, appearing on behalf of  
24 public counsel. And with me is Nina Suetake, who is our  
25 newest AAG.

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1 ALJ MOSS: Welcome. Is this your first  
2 hearing?

3 MS. SUETAKE: Yes, it is.

4 MS. GAFKEN: She did file a notice of  
5 appearance.

6 ALJ MOSS: All right. We will try to make  
7 it an enjoyable experience for you.

8 MS. SUETAKE: Thank you.

9 MS. FRANCO-MALONE: Good morning.

10 Danielle Franco-Malone, counsel for the Washington  
11 Northern Idaho District Council of Laborers.

12 ALJ MOSS: Welcome. Others? Are there  
13 any counsel appearing on the conference bridge line this  
14 morning? Apparently not.

15 So thank you, all. And I think we have accounted  
16 for everybody by recollection, although it's hard to  
17 keep up with 13 witnesses and all the counsel in my  
18 head, but I do have a cheat sheet so that will help.

19 A couple of things, preliminary things. One is that  
20 the -- Mr. Hancock, who was the staff settlement witness  
21 in this case, has left the commission for other  
22 opportunities. And Mr. McGuire of our staff will be  
23 adopting his testimony for purposes of our hearing and  
24 subsequently. I'm thinking that we don't need to have  
25 the qualifying questions that might typically accompany



1 this sort of thing and that everyone can simply  
2 stipulate that Mr. McGuire is an expert and adequately  
3 equipped to adopt that testimony without further adieu.  
4 So unless there is an objection? Hearing no objections,  
5 that substitution is made. Thank you, Mr. McGuire. We  
6 appreciate you picking up the baton on that.

7 All right. I don't think there are any other  
8 substitutions, none that I'm aware of, except the  
9 witness who is not appearing here today. All right.  
10 And that's not a problem, unless it becomes evident that  
11 we need to know.

12 I think that may be all I have that -- oh, yes,  
13 preliminary. The next point, though, is the exhibits.  
14 This is also a preliminary matter. We want to -- I  
15 prefer in these type of proceedings to stipulate the  
16 exhibits into the record, rather than introducing them  
17 in a more laborious fashion.

18 I circulated previously an exhibit list. It has  
19 since been admitted to include the bench exhibits,  
20 including the public comment exhibit, with which you  
21 are -- most you at least are well familiar -- and also  
22 the company's response to bench request number one which  
23 will be made a bench exhibit as well. Typically, those  
24 are admitted without objection.

25 So let me ask Ms. Gafken: Will public counsel be

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1 able to take the lead on getting that public comment  
2 exhibit organized and into the Commission?

3 MS. GAFKEN: Yes, of course. Would you  
4 like it in about a week?

5 ALJ MOSS: About a week would be fine.  
6 Yes. I'll take "about a week" as an accurate enough  
7 description.

8 MS. GAFKEN: I don't have any calendar on  
9 me. So...

10 ALJ MOSS: That's fine. Seriously.  
11 That's quite fine.

12 MS. GAFKEN: Thank you.

13 ALJ MOSS: And, of course, you'll work  
14 with our consumer affairs and records staff to make sure  
15 it's a complete exhibit when we receive it. And, of  
16 course, we have the transcripts of the prior public  
17 comment hearings.

18 So, with that, are we prepared, parties, to  
19 stipulate all the exhibits? My intention is to have all  
20 the exhibits that were on that exhibit list part of the  
21 record.

22 Yes, sir, Mr. Oshie.

23 MR. OSHIE: Thank you, Your Honor. I just  
24 want to make it clear that we filed a revised witness  
25 statement of Mr. Hellman.

1 ALJ MOSS: Okay.

2 MR. OSHIE: And it is in the record as  
3 MMH1Tr, small R.

4 ALJ MOSS: Yes.

5 MR. OSHIE: That's not reflected on the  
6 exhibit list. And I wanted to make sure both the  
7 commission and Your Honor are aware of that.

8 ALJ MOSS: Yes, and I did not take the  
9 time to reflect all the revised testimonies. There were  
10 quite a few revisions along the way, particularly with  
11 respect to the amendment to the settlement stipulation  
12 that was filed late. The final exhibit list, which I  
13 will prepare after this hearing, will reflect -- and in  
14 fact I've already updated it, but I didn't bother to  
15 send you all another copy -- to reflect the date of the  
16 revisions.

17 I think I may abandon the little-R nomenclature,  
18 simply because that looked too much like the revision we  
19 use for transcript. So we'll just have a parenthetical  
20 noting the revision testimony. So I appreciate that.

21 And, as always, I will ask counsel to bring to my  
22 attention any errors or omissions in the final exhibit  
23 list and we'll get that corrected. All right?

24 All right. Are there -- well, so we will stipulate  
25 into the record the exhibits -- let me see. Well, I'm

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1 not going to number them for you. I'll give you an  
2 exhibit list -- speaking to the court reporter -- and  
3 then we'll have -- I don't see the point in separately  
4 identifying them at this point. Everybody is aware of  
5 them.

6 All right. So the process for today that I  
7 previously circulated to you all by email, we will have  
8 an opening statement. I believe Mr. Meyer volunteered  
9 to give an opening statement on behalf of the settling  
10 parties, who are all of you. And, of course, the  
11 opportunity would be available if anyone else wishes to  
12 speak. You just let me know and we'll offer that. And  
13 then we'll have the settlement witness panel for  
14 inquiries from the bench and take it from there.

15 First off, I'll need to swear you. At the risk of  
16 creating a mess with all of you sitting so close  
17 together, I am going to ask that you stand and raise  
18 your right hands.

19 (Witnesses sworn.)

20 ALJ MOSS: Thank you very much.

21 All right. Mr. Meyer, proceed.

22 MR. MEYER: Thank you, Your Honor. I'll  
23 keep my remarks brief because the people you really want  
24 to hear from are sitting to my left and right. But just  
25 a few things, matter of factly. I'm not going -- there

1 will be no advocacy here, but I think it's good to  
2 level-set on a few things.

3 But right off the bat, I would like to thank the  
4 commission and you, Your Honor, for arranging a panel  
5 setup here. I think it should hopefully further better  
6 the record because it will allow for some interchange  
7 and maybe facilitate that process. I know it's a bit  
8 inconvenient, but I hope this will pay dividends. So  
9 thank you.

10 Secondly, I would like to thank all the parties, and  
11 there are many parties that joined in this settlement  
12 agreement. Typically, in doing general rate case work,  
13 you don't have quite the variety of interests  
14 represented. You don't have Sierra Club. You don't  
15 have NRDC, NWAC. You don't have a union group. And I  
16 found that it really provided for a productive  
17 discussion of a lot of issues that usually don't  
18 percolate up in a general rate case. So this is good  
19 because it brought us all together for extended  
20 settlement discussions. And we learned a lot about what  
21 their interests are, and I think they hopefully learned  
22 a little bit about what our concerns and ambitions are.  
23 So it was, I think, a settlement process. It was  
24 settlement at its best. There was good faith all the  
25 way around the table.

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1           And I would like to single out staff in particular  
2           for doing a wonderful job, of Jennifer of working with  
3           the other parties and helping consolidate positions so  
4           we can make this process run even more smoothly. And  
5           there were some wonderful ideas that originated within  
6           staff to resolve certain issues. So I know the  
7           applicants are very appreciative of all of that work.  
8           And it's not just staff, everyone did something to  
9           contribute. So thank you, all.

10           Now, the advantage of having this many participants  
11           on this many issues hopefully will give the commission  
12           some comfort that the broad spectrum of interests have  
13           been represented, have been heard, and that hopefully  
14           will provide that level of comfort. And they are here  
15           today, of course, to answer all of your questions.

16           Logistically, we couldn't put everyone up here that  
17           pre-filed direct testimony way back in September. But  
18           just as resources, I'll let you know that, for Avista's  
19           purposes, we have in the audience ready to be sworn and  
20           speak if necessary -- they know they have been  
21           volunteered, so it shouldn't come as a surprise -- we  
22           have Kevin Christie. And he is prepared to speak if  
23           there is further interest in some Colstrip issues.

24           We have Linda Gervais, who, as always, is very  
25           knowledgeable about customer issues, low income issues.

1 And we have Pat Ehrbar, who seems to know everything  
2 there is about rates and rate credits and tariffs. And  
3 so he will be a good resource as well. And Mark Thies,  
4 our CFO, and he knows what CFOs know. So that is our  
5 group of supporting cast -- and I'm sure the other  
6 parties have similar people -- but they are at the ready  
7 if need be.

8 Lastly, if you think it's worthwhile, I would like  
9 to level-set where we're at with all jurisdictions at  
10 this point in time as we speak, just process-wise.

11 ALJ MOSS: Sure.

12 MR. MEYER: Where do you fit in the bigger  
13 scheme of things.

14 ALJ MOSS: Please do that.

15 MR. MEYER: Okay. Thank you. First of  
16 all, just a reminder that our hope was that by  
17 October 1st we would be able to close this transaction,  
18 assuming all approvals were obtained. And that  
19 October 1st date assumed schedules that called for  
20 litigating in every state. Well, as you see, or you  
21 will see, we've had great success in reaching  
22 settlements or settlements in principle. And it is our  
23 hope that in all jurisdictions we can expedite that  
24 date.

25 Alaska. That's in no order of size or importance.

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1 Alaska has a statutory deadline of June 4th to issue  
2 their order. There was on the 1st an order accepting a  
3 settlement stipulation with the City and Bureau of  
4 Juneau, but that isn't the end of the story. They still  
5 have to approve the transaction. So look for that on or  
6 before June 4th.

7 Idaho. An all-party settlement was filed in Idaho  
8 on April 13th. There will be no evidentiary hearing in  
9 that case. The commission has decided to accept written  
10 comments instead. And those written comments are due on  
11 June 20th. They will have public hearings, however, in  
12 three locations in north Idaho, and those will be  
13 scheduled -- are scheduled for the second week of June.

14 Oregon. Oregon has a settlement in principle that  
15 was announced on May 8th. We've adjusted the schedule  
16 for the actual filing of the stipulation that would  
17 reflect that settlement in principle, and that should  
18 happen on or about this Friday, May 25th. There may or  
19 may not be subsequent oral argument or testimony given  
20 on the 21st of June.

21 Montana. Montana happened just last week, hearings  
22 in Helena. On the eve of the hearings the applicants  
23 entered into an MOU, let's just call it a settlement, if  
24 you will, with the City of Colstrip, increasing the  
25 level of the community transition fund overall from 3-



1 to 4-and-a-half million. And our witnesses are prepared  
2 to speak to what that is and provide whatever  
3 documentation you want.

4 So those are the jurisdictions. But let's put  
5 checkmarks by the following four other things that need  
6 to happen. Hart Scott-Rodino, that period expired on  
7 April 6th. FERC, for its part, issued its order on  
8 January 16th. The FCC, transfer of licenses, that sort  
9 of thing, that was on May 4th. And CFIUS, the Committee  
10 on Foreign Investment in the US, we just received that  
11 yesterday. So those are all of the other non-retail  
12 rate-making approvals that we've requested and now that  
13 we've received them all.

14 ALJ MOSS: You said CFIUS? Could you give  
15 the acronyms to the court reporter for the purpose of  
16 the transcript?

17 MR. MEYER: I'll be careful CIFIUS (sic).  
18 Did I get that right? I got it wrong. CFIUS. Sorry  
19 about that.

20 ALJ MOSS: I'm glad I asked. Thank you.

21 MR. MEYER: Okay. Now, the last item is I  
22 know that all jurisdictions, all jurisdictions want to  
23 make sure that whatever arrangements have been agreed to  
24 in other jurisdictions are carried forward to their  
25 jurisdiction if they are more favorable. So every

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1 jurisdiction has or will have a most-favored nations  
2 clause that is identical or nearly identical. And the  
3 idea is that after an order issues in a state, we --  
4 let's say it's Oregon, just to use an example. So once  
5 the settlement agreement, if it's -- and it will be  
6 acted upon in some fashion, if it's approved in Oregon,  
7 within five days the applicants file that with this  
8 jurisdiction.

9 That triggers a ten-day period within which any  
10 party to this proceeding may request MFN treatment of  
11 any particular Oregon provisions. That then triggers a  
12 five-day follow-on period for applicants to respond, and  
13 then it's back in your lap for any improvements, if you  
14 will, in the Washington settlement based on what's been  
15 negotiated elsewhere. And this works both ways, of  
16 course. So it is a bit of an iterative process.

17 But I think that in the settlements -- and I'll  
18 probably overstate this a bit -- but in the settlements  
19 that either have been agreed to already or are agreed to  
20 in principle, we've been quite careful to make sure that  
21 the financial benefits are fairly distributed across the  
22 jurisdictions. Every state, of course, will  
23 characterize ring fencing provisions somewhat  
24 differently, and that's up to the parties to argue  
25 whether those should or should not be imported into

1       whatever order we finally issue settlement. That is the  
2       process to follow.

3               And with that, I have nothing more to add. I should  
4       get out of the way. Okay?

5                       ALJ MOSS: Thank you very much. You're  
6       hardly in the way, Mr. Meyer. We appreciate that. And  
7       I want to -- while you're still sitting there, I want to  
8       ask the commissioners if they have any questions they  
9       may wish to direct to counsel, I think particularly  
10      perhaps with respect to the most-favored nations since  
11      that's pretty much a legal provision that triggers --  
12      potentially triggers further activity. So I want to  
13      make that opportunity available if any of the  
14      commissioners wish to inquire of you about that.

15                      CHAIR RENDAHL: Just quickly I wanted to  
16      ask for Montana, so what was the nature of the hearing  
17      that was held last week? Was that an evidentiary  
18      hearing?

19                      MR. MEYER: Yes, it was. It was the only  
20      hearing on the record we will have over there. It was  
21      on last Thursday. And it was attended, of course, by  
22      the five commissioners and the applicant's witnesses.

23                      CHAIR RENDAHL: And so that is then -- you  
24      are now pending, waiting for a decision from the Montana  
25      commission after that hearing?

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1 MR. MEYER: That is correct.

2 CHAIR RENDAHL: All right. In terms of  
3 the most-favored nation if, for example, Oregon issues  
4 an order that modifies the provisions in this state that  
5 have not agreed to the commitments, the parties have ten  
6 days to respond to that once it's been filed here, and  
7 then the applicants have ten days to respond to any --

8 MR. MEYER: Five. I'm sorry, I think it's  
9 five days. Ten and then five, and then it ends up in  
10 your lap.

11 CHAIR RENDAHL: Okay. So that would be  
12 the time at which we would understand if there was any  
13 disagreement among parties about adopting it here in  
14 Washington?

15 MR. MEYER: Yes.

16 CHAIR RENDAHL: All right. That's all I  
17 have.

18 ALJ MOSS: Commissioner Balasbas.

19 CHAIR BALASBAS: Thank you. Mr. Meyer,  
20 you mentioned the statutory deadline in Alaska was  
21 June 4th?

22 MR. MEYER: Yes.

23 CHAIR BALASBAS: Do you have the statutory  
24 deadlines, if applicable, in any of the other states?

25 MR. MEYER: Well, it's -- arguably there

1 are not statutory deadlines. Some would argue that  
2 there might be a 10-month or an 11-month or a 7-month.  
3 But we haven't treated it that way. We think the way  
4 this has laid itself out procedurally we're well within  
5 that window to allow for an October close. So we  
6 haven't seen the need to argue that point.

7 ALJ MOSS: I will mention that we  
8 recognized an August 14th statutory deadline in this  
9 jurisdiction. So I don't have a statutory cite, but  
10 that's what we recognized in the procedural schedule.  
11 We will be, I think, complete well in advance of that  
12 date. That's my anticipation.

13 MR. MEYER: Sure.

14 ALJ MOSS: All right. With that then, I  
15 guess we can ask you to relinquish your seat to  
16 Ms. Andrews, and we will be ready for questions from the  
17 bench.

18 And I'll note that Ms. Andrews was among those who  
19 were previously sworn. All right.

20 CHAIR DANNER: Good morning, everyone.  
21 Thank you for being here. So my first question, I want  
22 to talk a little bit about the net benefits standard.  
23 This is a proceeding, the first proceeding in which the  
24 commission is going to apply the net benefits standard  
25 that's required under Washington state law. So this is

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1 a case of first impression. We don't have a body of  
2 case law here. And we really don't have a definition in  
3 the statute of what net benefit means. So I would like,  
4 if you would, to give me your definition of net benefit  
5 so we can get a handle on really what the standard is  
6 that we have to apply in this case. And I know that  
7 public counsel was an advocate of putting this in law.  
8 So, Mr. Woolridge, I'm going to start with you if you  
9 don't mind. Can you give me your thoughts on what is  
10 the definition of the standard of net benefit and how do  
11 we apply it?

12 MR. WOOLRIDGE: Is that on?

13 CHAIR DANNER: Yes, it is.

14 MR. WOOLRIDGE: I filed a document -- I've  
15 testified in a number of different states, and I  
16 filed -- I forget which exhibit it was, I guess it was  
17 JRW -- oh, I'm sorry, Exhibit JRW3, where I laid out  
18 some of the ones I'm familiar with. And, you know, the  
19 net benefit standards have kind of become universal in  
20 like states where we've seen a lot of acquisitions, like  
21 Maryland, New Jersey, D.C., that sort of thing.

22 And obviously, it's -- and as in any merger, it's  
23 tough to define what all the benefits are because a lot  
24 of those benefits are down the road and that sort of  
25 thing. And -- but I think what's happened, you know,

1 going from the no-harm to net benefit, is that it's  
2 really forced utilities and merger discussions to be  
3 more -- and other parties to be much more digging in to  
4 what the benefits are and trying to lay them out. You  
5 know, it was a different standard to just say, Look, we  
6 don't think there is enough commitments here and that  
7 sort of thing so there wouldn't be a harm. So now in  
8 any type -- in cases I've been involved with, laying out  
9 specifically what the benefits are so that a commission  
10 can look at it and decide, yes, there is a benefit. So  
11 I don't know the legal term. Net benefit, meaning is  
12 there a benefit? And our testimony for public counsel,  
13 I had talked a little bit about some of the net  
14 benefits. Mr. Dahl talks about a lot of the other  
15 benefits that move the needle from just being a no-harm  
16 to a net benefit.

17 So I think most -- what it's done in merger cases,  
18 it's really forced the applicants and the intervening  
19 parties to really try to flesh out what the benefits  
20 are. We can talk about down the road what some things  
21 can develop, whether it's technology, innovation, that  
22 sort of thing. But I think it's more specifically  
23 trying to flesh out what these benefits are. And in  
24 public counsel's testimony, that's what we've tried to  
25 do.

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1                   CHAIR DANNER: Okay. So you still -- I  
2                   mean, it's subjective then? I mean, there is no way to  
3                   precisely measure, even though the word "net" suggests  
4                   to me that we're looking at both the downsides and the  
5                   upsides. And I haven't heard much discussion of the  
6                   downsides. So I'm still eager to hear that. But this  
7                   isn't any kind of formula, this is really just, We'll  
8                   know it when we see it?

9                   MR. WOOLRIDGE: Yeah, and I think if you  
10                  look at our testimony, we really have tried to flesh out  
11                  what are the benefits, really specifying them. And I  
12                  think that's where I've seen this evolve over the last  
13                  decade or so in hearings like this is that you have to  
14                  be much more precise and really detail more of the  
15                  benefits so that you can take away. Obviously, there is  
16                  a judgment call at the end.

17                  ALJ MOSS: I think Ms. Gerlitz had some  
18                  testimony on this subject, is that correct, on the net  
19                  benefit standard, and perhaps Mr. McGuire for staff as  
20                  well, if you wish further response.

21                  CHAIR DANNER: I do wish further response.  
22                  I would like to actually hear from anyone who wants to  
23                  opine on this. Ms. Gerlitz, go ahead.

24                  MS. GERLITZ: Thank you. Yeah. So I did  
25                  touch on this in my testimony and can say a few words



1 about this. I think, you know, you'll note in my  
2 testimony that I referred to some testimony before the  
3 senate Environment, Water & Energy Committee back in  
4 2009 when the legislature was actually considering the  
5 net benefit standard. And I would say that our -- our  
6 joint party position on the net benefit standard is very  
7 close to that testimony that Senator Brown set forth in  
8 that hearing on that day in January 2009.

9 I think what we're looking at, particularly from the  
10 perspective of our intervention, is the environmental  
11 and low income benefits and public policies of  
12 Washington state. And so when we came into this case  
13 looking at what would be included in the net benefit  
14 standard, we were looking for appreciable benefits in  
15 those areas.

16 And, in particular, what we tried to do was look at  
17 areas where perhaps the state is having more trouble  
18 making progress. So you'll see in the settlement a  
19 particular focus on areas such as manufactured housing,  
20 low income weatherization, renewable energy benefits for  
21 low-income customers, and then Transportation  
22 Electrification with specific conditions asking to reach  
23 out and ensure that low-income customers are served.

24 When we looked at what are the potential areas for  
25 making greater progress on Washington's public policy

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1 laws in these areas, those are some of the areas that we  
2 identify for potential progress in the settlement. And  
3 we believe that this settlement does make substantial  
4 progress for -- in Avista's territory in those areas and  
5 think that therefore the settlement will leave the net  
6 benefit standard.

7 CHAIR DANNER: Even in your testimony you  
8 cited Senator Brown's statements, and she talked about  
9 net benefits without really defining them. She did give  
10 some examples of things, low income, clean energy fund,  
11 that kind of thing. But, once again, it seems that what  
12 we're dealing with here is a judgment call and no set  
13 definition. So really we just know it's something  
14 higher than no harm, but there is no test on how much  
15 higher than no harm.

16 MS. GERLITZ: Well, so I think if you're  
17 asking me do you need to do some sort of quantification  
18 of what net benefit standard means, I think that would  
19 be very difficult to do. And the circumstances in  
20 different cases obviously might differ in terms of  
21 quantification.

22 So I would say that yes, to a certain extent there  
23 will have to be some level of non-quantification of net  
24 benefits, which would require a judgment. And this is  
25 the first case, so I -- you know, I would discourage

1 against trying to quantify in any precise way what we  
2 have done here, but rather, point to the progress that  
3 is being made in the different arenas involving the  
4 public policy laws of Washington state and look at it  
5 more in a broader context than trying to come to a  
6 particular percent or dollar figure. Is that helpful?

7 CHAIR DANNER: All right.

8 MS. GERLITZ: Sorry.

9 ALJ MOSS: Thank you. Anyone else?

10 MR. MCGUIRE: Sure. I will.

11 Chris McGuire with commission staff. So in considering  
12 the net benefit standard, staff is basically asking  
13 itself the question are -- or will ratepayers be better  
14 off than they would otherwise be. And better off can be  
15 both quantitative and qualitative.

16 For example, in this transaction, the quantitative  
17 benefits would include a rate credit of greater than  
18 \$30 million. It would include protections for some of  
19 the more vulnerable members of the community, such  
20 as there is \$11 million set aside for low-income  
21 customers in this settlement.

22 But better off, as I said, would also include some  
23 qualitative things. And in this case, we have  
24 established a mechanism for handling accelerated  
25 depreciation of Colstrip units 3 and 4. Avista will

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1 provide home energy audits to roughly 2,000 homes in its  
2 service territory. We have established reliability  
3 standards. And beyond those qualitative and  
4 quantitative benefits there could also be benefits that  
5 extend beyond the ratepayer population. And in this  
6 case, we have an increase of, next year, of  
7 approximately \$7 million in charitable contributions  
8 that will be dedicated to the communities that Avista  
9 serves.

10 And there are some financial commitments to the  
11 community of Colstrip, Montana included in the  
12 settlement. And there are also some, you know, more  
13 nebulous societal benefits associated with additional  
14 acquisition of renewable resources.

15 So given all of these quantitative and qualitative,  
16 and as well as benefits extended beyond Avista's  
17 ratepayers, staff was convinced that indeed ratepayers  
18 and the community at large will be better off under the  
19 proposed arrangement.

20 CHAIR DANNER: Okay. Again, the second  
21 part of the question that I posited with Mr. Woolridge  
22 was basically the word "net" to me suggests you're  
23 netting out negatives and positives.

24 Did you identify potential downsides or risks in  
25 this non-proposed transaction?

1 MR. MCGUIRE: Yes. Although, I am not  
2 prepared to enumerate all of the specific potential  
3 risks associated with a transaction such as this. But  
4 it is true that on the other side of the coin, the first  
5 side of the coin being the net benefits, you must also  
6 put protections in place to avoid the potential risks  
7 associated with an acquisition of a utility. And in  
8 this settlement agreement, there are numerous  
9 commitments related to financial ring fencing. The  
10 objective of those commitments being to protect  
11 ratepayers from any risks associated with the activities  
12 of the parent company.

13 So we spent a significant amount of time in  
14 discussions laying out those ring-fencing provisions to  
15 ensure that all parties were comforted that financial  
16 protections were put in place, such that Avista's  
17 ratepayers would be entirely shielded from financial  
18 risk associated with the parent company.

19 ALJ MOSS: Chairman Danner, I might point  
20 out that Dr. Hellman testified specifically with respect  
21 to the importance of taking care and paying attention to  
22 the harm side if you would like to hear from him.

23 CHAIR DANNER: So -- sure.

24 DR. HELLMAN: The comment made about us  
25 setting a risk or potential risk with benefits is

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1 exactly right. It's not a quantified level.

2 CHAIR RENDAHL: I'm sorry, Mr. Hellman,  
3 but is your microphone on?

4 DR. HELLMAN: Seems like I can hear it.

5 CHAIR RENDAHL: That is much better.

6 Thank you.

7 DR. HELLMAN: Sorry. And, typically, in  
8 cases of mergers like this one, where the utility is  
9 being purchased for a premium and so that investment  
10 needs to be recovered, you're having a change in  
11 management in the sense of having a new ownership, and  
12 that gives rise to risks that people perceive that  
13 either are real or not real.

14 But in the end, you look at the potential risk and  
15 you look at the benefits being offered. And in our  
16 conclusion, the benefits offset the risks such that  
17 there is a net benefit.

18 And I would say that -- I would not say that there  
19 is a guarantee that customers will always benefit no  
20 matter what happens. In Oregon, the commission approved  
21 a merger with Enron purchasing PGE. No one could  
22 perceive the events that transpired at that time.

23 There were minimum equity provisions that helped  
24 prevent PGE being drawn into a bankruptcy. But I think  
25 if everyone saw everything that was going to happen with

1 Enron, I don't know that that transaction would have  
2 been approved.

3 But I would say that I -- I do agree with the point  
4 that under all reasonable foreseen circumstances that  
5 customers should be expected to receive a net benefit is  
6 correct. And we try and include provisions that protect  
7 from harms, which are the minimum equity and dividends  
8 and other kind of provisions like that, to address  
9 problems that potentially come up, even though we don't  
10 think that they will come up. But you still have a  
11 parent that wants to make sure that its investment pays  
12 off, and it's a reasonable expectation on their part.

13 So you have these provisions that we see as net  
14 benefits, one of them being the rate credit that was  
15 significantly increased from what the company proposed,  
16 and being provided over five years instead of ten, along  
17 with provisions that staff has mentioned that reviewed  
18 in its totality perceived risks. All parties signed off  
19 that they believe that this transaction does provide net  
20 benefit to consumers in a general interest.

21 CHAIR DANNER: Well, again, what I'm  
22 trying to make sure is that there is a legal standard  
23 that we have to meet, and I want to make sure that we're  
24 meeting that. And, again, this is a case of first  
25 impression. So it's going to depend, it seems, more on

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1 the facts than the definition in my opinion.

2 Is there anybody else on the panel who wishes to  
3 opine?

4 MR. COLLINS: Shawn Collins with the  
5 Energy Project, and I'll refer to my testimony with  
6 respect to the net benefit test. The Energy Project  
7 believes that the net benefit test establishes a higher  
8 standard than the no-harm test, allowing the commission  
9 to be proactive in protecting ratepayers and providing a  
10 basis for adopting conditions and commitments that  
11 ensure identifiable and significant benefits to  
12 customers, including benefits that advance state policy  
13 goals for low-income customers, energy efficiency, and  
14 access to energy alternative resources.

15 And so while that's not a specific calculation, I  
16 think identifiable and significant benefits,  
17 particularly advancing stated policy goals within the  
18 state provide some contingencies or reference points for  
19 the matter.

20 And I think we, as Energy Project, did identify  
21 potential risks in terms of the ownership transfer and  
22 do feel that the settlement as reached does meet the net  
23 benefit standard.

24 ALJ MOSS: Mr. Collins, just to follow up  
25 on that, as I recall your testimony, it was to the



1 effect that the Energy Project did not regard the  
2 original application as having met the standard, but  
3 based on the settlement commitments expanding the  
4 benefits perhaps, and perhaps improving the protections,  
5 Energy Project is satisfied the net benefit standard is  
6 met?

7 MR. COLLINS: That's correct. The initial  
8 final settlement we would arguably say it might have met  
9 the no-harm requirements. However, as filed, we do  
10 believe it meets the net benefit standard.

11 ALJ MOSS: Thank you very much.

12 CHAIR DANNER: All right. Thank you. I  
13 believe Commissioner Rendahl has a follow-up.

14 CHAIR RENDAHL: Yes. As a follow-up, and  
15 this question really, I guess, will go to any witness  
16 who wishes to respond to this. So this has to do a bit  
17 with the rate credit commitment, which allows for an  
18 offset of 1.02 million of realized savings. And the  
19 parties have acknowledged that these synergies might  
20 take some years to come to fruition. So these are sort  
21 of the unknowable, not knowing what might happen. But  
22 also in the near future, you've got two companies that  
23 are merging. And there will be, I assume, an additional  
24 layer of allocated costs that Avista ratepayers might be  
25 picking up, that are at some undefined level of expense

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1 for wages, incentives, overhead, et cetera.

2 So how are we going to know -- how do we know there  
3 is a verifiable or a viable net benefit, given the  
4 possibility of some costs that may be coming from  
5 Hydro One to Avista ratepayers? And I guess that's  
6 directed to the company first and then any other party  
7 who wishes to respond.

8 MR. MORRIS: Good morning, Commissioner.

9 CHAIR RENDAHL: Good morning.

10 MR. MORRIS: So around when we -- when  
11 Mayo and I started to have these conversations around  
12 what made sense, a couple of things that were apparent  
13 early on, is that just from a geographical perspective,  
14 it's very difficult to consider, I think, some  
15 synergies, in the traditional sense, when you look  
16 around. And we do a neighborhood of a merger of equals  
17 within the neighborhood, if you will.

18 So from that perspective, we really pivoted to  
19 thinking about things in the near term that would make  
20 sense, that you could perhaps get some benefits of  
21 scale, longer term and near term. Things that we knew  
22 that we needed to have deeper conversations about were  
23 in the areas of information technology, as you know,  
24 that both -- in the utility industry itself, with  
25 technology becoming such a huge part of the utility

1 operations, and with really the change happening in the  
2 utility industry around technology, particularly the  
3 distribution level, there are ample opportunities. And  
4 each company, as you know, are doing those types of  
5 technological improvements at different paces.

6 So Mayo and I talked a lot about what his best  
7 practices were happening in Toronto versus what we're  
8 doing in Spokane. And are there ones initially that we  
9 could at least share with one another, or are there  
10 opportunities for us to at least jointly think about as  
11 we have other technological improvements that we could  
12 work together as a team to make sure that we maximize  
13 efficiencies.

14 From a supply chain perspective, obviously they buy  
15 lots of things. They are much larger than we are. So  
16 we realize and recognize if we could get in and leverage  
17 their buying power, that would be really great for our  
18 customers.

19 Also, just the sharing of best practices, everything  
20 from employee safety to operational efficiencies. We  
21 both have joint operations and things like call centers  
22 and other things that we can share best practices on.  
23 So while the number initially is low, and we don't see  
24 huge synergies to the future, we do see opportunities to  
25 share benefits.

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1           The other thing I would just say, as you know, we've  
2           had a number of nonregulated businesses. We currently  
3           have Alaska. We have a long history of being able to --  
4           making sure that our current customers do not pay for  
5           those types of -- that type of work. We keep that  
6           separate. And we feel that we've got the policies and  
7           principles in place to ensure that customers won't be  
8           paying for things that they ought not to be paying for.  
9           So we feel confident that we've got that well in hand.

10           Did I answer your question?

11                   CHAIR RENDAHL: Yes. But I'm also  
12           thinking of some of those costs, including overhead and  
13           wages that may -- you know, many of the commitments are  
14           very clear that operations in Spokane will remain  
15           separate from operations at Hydro One. But over  
16           time -- and, again, benefits are, you know, hard to  
17           determine over time.

18           How do we know that Avista ratepayers aren't going  
19           to be paying for sort of overall company overhead? How  
20           will that be controlled? What controls are there on how  
21           much Avista ratepayers are going to pay for Hydro One's  
22           costs?

23                   MR. MORRIS: Yes. So, first of all, thank  
24           you for recognizing that the governance agreement and  
25           really the thought around these companies coming

1 together really is to maintain Avista's independence,  
2 everything from a separate board of directors to  
3 currently how we operate the business. So I think  
4 intentionally -- I can let Mayo speak to this -- it has  
5 been kind of imagined that there wouldn't be a lot of  
6 overheads. And everything from -- intentionally on  
7 Mayo's part when we -- let me give you one good example,  
8 is when we thought about a nine-person board of  
9 directors, five of them being Hydro One, it was Mayo's  
10 idea to say, you know what, let's have three independent  
11 board members from the Pacific Northwest, and only have  
12 two people from Hydro One, Mayo and one other person  
13 sitting on the board of directors. Because his point  
14 being -- I don't want to put words in his mouth -- he  
15 said, I don't want my team being distracted. They need  
16 to run their utility in Toronto. They don't need to be  
17 worrying about what you're doing in Spokane. So, you  
18 know, where we see the benefits really are in ideas  
19 around strategy, perhaps, best practices.

20 The other part is, as you know, from every --  
21 assuming that we do file rate cases in the future, that  
22 you will have absolute transparency into all of our  
23 costs. And so you will consistently have the ability to  
24 audit what we're doing and not have to -- you'll know  
25 what our costs are, and they will be fully transparently

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1 available to the staff, commission, and intervenors.

2 So from our perspective, Commissioner, again, while  
3 there are -- certainly we see some synergies to the  
4 future, this deal was not predicated on synergies and,  
5 again, was on the idea that, for the most part, it will  
6 continue to be run independently. And where there are  
7 opportunities for best practices, we'd come together and  
8 talk about those. But we don't imagine any time having  
9 any type of operational things being done in Canada or  
10 in having to worry about those allocation of costs.

11 Again, I would point -- I guess a great mental model  
12 would be is how we're doing it with Alaska now. Alaska  
13 is running independently. We account -- when we do do  
14 things in Alaska, we account for those specifically.  
15 They are called out, they are audited, and I would  
16 expect to follow that practice.

17 CHAIR RENDAHL: Okay.

18 CHAIR DANNER: And just to follow up, you  
19 mentioned IT as an example, could be that some of the  
20 synergies might be that you combine some of your IT  
21 functions? And so what that means is you might, because  
22 you want to maintain the staffing levels here, that you  
23 would simply assign the IT people in Spokane a lot of  
24 the work for Hydro One in Toronto, and then basically  
25 put it on the backs of the ratepayers here in

1 Washington.

2 Would that be something that we would catch in an  
3 audit? Is that something that would be transparent to  
4 us so we can make allocation decisions?

5 MR. MORRIS: Absolutely, Chairman. Yes.  
6 Again, going back to our practices, whether it's been  
7 with unregulated businesses, Alaska or others, we do  
8 that now. We absolutely clearly understand that that's  
9 important to our customers, to you as commissioners, as  
10 our regulators and to our intervenors. So we would be  
11 absolutely transparent. We would make sure that we  
12 would account for all of those.

13 And, again, I would just -- going back as being  
14 the -- at one point being the CEO of Ecova and also as  
15 chairman of the board of Ecova for many years, we made  
16 sure that if there were ever opportunities to have even  
17 discussions about things in the business, we would  
18 separately account for those.

19 So we're fully aware of our responsibilities around  
20 accounting for things and not having our customers pay  
21 for those. And I would like to say we've got a great,  
22 from my opinion, a good past practice of doing the right  
23 thing.

24 CHAIR DANNER: All right. Thank you.

25 MS. ANDREWS: Can I add something here?

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1 We have existing protocols in place that helps with cost  
2 allocations and assignments of costs. And, as  
3 Mr. Morris mentioned, we follow those practices with  
4 Alaska and we would use those same type of protocols  
5 between us and Hydro One.

6 ALJ MOSS: Okay. Let me interrupt half  
7 second here. I'm sorry for the technical interruption  
8 if you will, but you used an acronym Ecova, I believe.  
9 I assumed that is A-c-o-v-a?

10 MR. MORRIS: No, E-c --

11 ALJ MOSS: See? I got it wrong.

12 MR. MORRIS: E-c-o-v-a. It's the name of  
13 a business. It used to be. Now its name has been since  
14 changed since we sold it.

15 ALJ MOSS: Okay. Thank you.

16 CHAIR RENDAHL: Ms. Andrews, were you done  
17 with your statement?

18 So, Mr. Schmidt, do you have anything to add?

19 MR. SCHMIDT: Sure. Thank you. As my  
20 first words, thank you for the kind invitation back to  
21 your beautiful state. It's a real pleasure to be here.

22 I might just say structurally we are really -- in  
23 both organizations in a very good position to measure  
24 not only costs but revenues. And we think about our  
25 external auditors, which would be KPMG and Deloitte.



1 And our internal auditors, which would, of course, be  
2 separate, that would certainly audit the structures.

3 In addition, we have an annual budget. We have a  
4 five-year business plan, which clearly defined costs or  
5 expenses by department, numbers of personnel. And so  
6 there is very clear measurement and delineation. And,  
7 quite frankly, Ontario would share the same concerns  
8 that you would share here. So they would want to make  
9 certain that, in fact, costs and revenues were ring  
10 fenced, and we're prepared to do that.

11 In fact, even whether it's in our transmission  
12 business, which is measured and tested separately by  
13 budgets from our distribution, versus our forestry, and  
14 then again separating fully regulated and unregulated  
15 businesses, of which we have di minimis -- we have a  
16 telecom business, which is separate -- so those are held  
17 separate and apart and employees of either parties don't  
18 cross boundaries because they are held separate and  
19 apart. So it's part of the structural DNA of the  
20 organizations.

21 And I think, as Scott has stated, our goals  
22 collectively are define efficiencies and productivities,  
23 and then those should go to the appropriate state or  
24 jurisdiction that they apply to for the creativity.

25 But, as Scott mentioned, we do have things we can share

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1 together that are going to provide benefits.

2 So if in the case of the power poles where we have  
3 1.6 million and Avista has theirs, when we buy  
4 collectively and we get a discount for those, the  
5 numbers they buy versus the numbers we buy will apply to  
6 the state or the province in which those poles would be  
7 delivered. So that would be the structural competency  
8 that would be applied to how we would audit internally,  
9 externally, and separate board of directors, separate  
10 management teams. Thank you.

11 CHAIR RENDAHL: Thank you. Are there any  
12 other parties that wish to weigh in, in terms of their  
13 testimony on this? Mr. Dahl.

14 MR. DAHL: All right. I think this is on  
15 now.

16 One thing that I will point to is Commitment 17,  
17 which, to my recollection, I just saw on page 9 of my  
18 testimony which is Exhibit CJT1T. To my recollection,  
19 that commitment was negotiated into the settlement and  
20 was not in the original application.

21 And the high-level view of that particular  
22 commitment is that, depending on the timing of the next  
23 rate case filing, it provides for the test years that  
24 the company will provide. So it will allow for the  
25 commission to compare the operations of Avista before

1 and after the acquisition, depending on the timing of  
2 the next rate case filing.

3 CHAIR RENDAHL: So your understanding of  
4 that is to create a baseline before a next rate case  
5 would be filed if the merger was approved, and then that  
6 baseline would allow going forward for anybody auditing  
7 the books to be able to compare how the calculations  
8 were made and allocations were made?

9 MR. DAHL: Yeah, that's my understanding.  
10 And, additionally, it's also to better understand if  
11 there are any savings that result from the merger, from  
12 synergies or other things of that nature. It will allow  
13 for easier baseline comparisons.

14 CHAIR RENDAHL: Thank you. Any other --  
15 Mr. McGuire?

16 MR. MCGUIRE: Chris McGuire, with  
17 commission staff. Beyond Commitment 17 that was just  
18 referenced which will, to some extent, allow us to see  
19 the pre- and post-merger conditions, there were other  
20 commitments in the settlement that -- the goal of which  
21 was to better preserve staff and other parties' ability  
22 to pursue lines of inquiry in a general rate case, such  
23 that we could identify if there are costs that were  
24 allocated to Avista that should not be paid by  
25 ratepayers. And I just wanted to point those out, those

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1 being Commitment No. 22, separate books and records;  
2 Commitment 23, access to and maintenance to books and  
3 records; and Commitment 24, related to cost allocations  
4 related to corporate structure and affiliated interests.  
5 And those -- those commitments gave staff some comfort  
6 that they would be able to pursue questions related to  
7 cost allocations in future rate cases.

8 CHAIR RENDAHL: Thank you. I appreciate  
9 it.

10 CHAIR BALASBAS: So I would like to focus  
11 on the rate credit, which in the settlement is proposed  
12 as 30.7 million over five years for Washington  
13 ratepayers, electric and gas.

14 So the first question I would like to ask is: For a  
15 typical residential electric and gas customer, what does  
16 that mean to them on their monthly bill?

17 MS. ANDREWS: I'm going to have to defer  
18 this question to Mr. Ehrbar.

19 MR. MORRIS: So it's -- electric is 79  
20 cents per month and 49 cents per month for gas  
21 customers.

22 CHAIR BALASBAS: Okay. And so when you  
23 factor in the potential offset of the rate credit of  
24 just over a million dollars per year, and then you  
25 factor in the rate impact of accelerating the Colstrip

1 depreciation schedule by \$1.6 million a year, when I add  
2 up all of those numbers I get to a net rate credit --  
3 potential credit of about \$17 million over five years  
4 for ratepayers.

5 What's your response to that?

6 ALJ MOSS: Mr. Ehrbar, it looked like you  
7 were going to be able to avoid it for a moment.

8 (Mr. Ehrbar sworn.)

9 ALJ MOSS: Thank you. Please have a seat  
10 up here.

11 MR. EHRBAR: Good morning. So can you  
12 repeat the numbers that you just shared?

13 CHAIR BALASBAS: So starting with the  
14 30.7 million in the settlement over five years, you have  
15 a potential offsetable amount of the rate credit of just  
16 over a million dollars per year, so that's 5 million  
17 over five years. And then you have the rate impact of  
18 accelerating the Colstrip depreciation schedule of  
19 approximately 1.6 million per year. So for five years,  
20 that adds up to just over \$8 million. So, effectively,  
21 that brings the net rate credit down from just over  
22 30 million to just around \$17 million, in my math. And  
23 I want to know what your response to that is.

24 MR. EHRBAR: Sure. I think I would focus  
25 back on, first, the rate credit of 30.7 million. When

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1 we say a portion is offsetable up to a million a year in  
2 the first five years, those savings will still be there.  
3 So customers will still get the benefit of that credit,  
4 it's just a matter of if it's in a separate tariff, as  
5 originally filed, or if it's incorporated in the base  
6 rates, which we would justify in a general rate  
7 proceeding. So customers will get that portion, the  
8 30.7 million, through the first five years no matter  
9 what. It's just a matter of where those dollars are,  
10 base rates, or the adduct schedules or the deduct  
11 schedules.

12 CHAIR BALASBAS: So what about the  
13 Colstrip depreciation aspect, though? Because I  
14 understand that part about the offsetable portion of the  
15 rate credit, but -- and then that will lead to my next  
16 series of questions on the Colstrip depreciation rate  
17 impacts -- but that 1.6 million is actually not  
18 currently reflected in base rates, correct?

19 MR. EHRBAR: That is correct. That would  
20 be -- if this settlement is adopted, and we close by  
21 October 1st, then base rates would go up 1.6 million.  
22 It would be offset by the rate credit so that there is a  
23 net savings to customers.

24 CHAIR BALASBAS: However, that would be  
25 for the first five years, though, correct?

1 MR. EHRBAR: That is correct.

2 CHAIR BALASBAS: Because we are looking at  
3 a potential -- I believe it's a 7- and 9-year  
4 acceleration of the current Colstrip depreciation  
5 schedules and base rates?

6 MR. EHRBAR: That is correct.

7 CHAIR BALASBAS: So then after year five  
8 when the rate credit expires, that would be roughly  
9 1.6 million per year base rate increase to ratepayers?

10 MR. EHRBAR: Yes, that's correct.

11 CHAIR BALASBAS: Okay. And now I would  
12 like to turn to the structure of the proposed financing  
13 of the Colstrip accelerated -- depreciation schedule  
14 acceleration.

15 So there is the piece that is currently collected  
16 through base rates from ratepayers. And then there is  
17 the proposal to use the \$10.4 million of the excess  
18 deferred income tax that is not protected by the IRS  
19 average -- ARAM requirements to pass back to ratepayers.  
20 So that leaves a deficit of roughly 58 and a half  
21 million dollars to cover the accelerated depreciation  
22 costs.

23 So my first question is: That total, 58 and a half  
24 million dollars, represents an increase to current rates  
25 to ratepayers; is that correct?

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1                   MR. EHRBAR: That is correct. I would  
2 defer -- not to play musical chairs -- I would defer  
3 back to Ms. Andrews who can get into more details  
4 specifically on the tax component and the Colstrip  
5 depreciation.

6                   CHAIR BALASBAS: Okay. So that's where my  
7 next set of questions is going. So if you want to bring  
8 Ms. Andrews back, that's fine.

9                   All right. So, Ms. Andrews, in the settlement it's  
10 proposed that the 58-and-a-half-million-dollar  
11 regulatory asset created for the deficit in the Colstrip  
12 depreciation, the settlement proposes to -- and I'm  
13 using the word from the settlement -- is offset by the  
14 36-year protected excess deferred income tax portion.

15                   Now, how would you say that that is offsetting that  
16 rate impact when, in our recently concluded general rate  
17 case, the commission's decision was to begin putting  
18 that money -- or returning that money to the ratepayers  
19 over the next 36 years?

20                   MS. ANDREWS: Right. So, you know, this  
21 was an opportunity that actually was a suggestion from  
22 commission staff around -- with the intergenerational  
23 inequity that we have with Colstrip of increasing or  
24 accelerating depreciation and putting that acceleration  
25 of costs onto our future customers came at a time when



1 we have the tax credit available to us around this  
2 excess protected plant that was collected from customers  
3 in the past that now was going to be returned to other  
4 customers in the future.

5 So that -- for 36 years, that's going to be returned  
6 to customers at approximately \$5.7 million over that  
7 36-year period. So taking the 58.5 million of this  
8 Colstrip asset, regulatory asset and amortizing it over  
9 the same time period would help reduce that impact to  
10 our future customers.

11 So even though the rate impact went in effect May 1,  
12 it still is going to be in place over the next 36 years.  
13 So although we recognize that reduction to customers has  
14 already occurred, and this increase for depreciation  
15 expense or amortization of this regulatory asset won't  
16 start until October, it's going to occur at the same  
17 time as the rate credit will occur. So customers will  
18 see a benefit in October with a net reduction of about  
19 \$3.3 million, I think it is. And then after five years,  
20 you are correct, that will fall off. But that excess  
21 plant will offset that amortization until the end.

22 CHAIR BALASBAS: However, when we amortize  
23 that 36-year return to ratepayers, that effectively  
24 means a reduction to base rates for the customers over  
25 the next 36 years. So with the proposed settlement,

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1 we're effectively taking back a portion of that amount  
2 that we have already decided that should be returned to  
3 customers?

4 MS. ANDREWS: Right. And, you know, keep  
5 in mind that the increase in this amortization is for  
6 costs that customers would be paying over time anyway,  
7 it's just what period of time are they paying for it.  
8 So we have rates in place today to cover a certain  
9 level. We had filed a depreciation study to increase  
10 related to the -- as the retirement obligation. So  
11 there was something in front of the commission to ask to  
12 start recovering those costs in the future.

13 So it's really just a timing. It's just  
14 advantageous for the company, and especially our  
15 customers, to have this at the same time as the tax  
16 credit so that they are not seeing an increase in their  
17 bills at this time.

18 CHAIR BALASBAS: So you actually didn't  
19 really answer my question.

20 MS. ANDREWS: Okay.

21 CHAIR BALASBAS: So when you look at the  
22 approximately -- and I know that that number, the  
23 5.7 million for over 36 years, I think you mentioned in  
24 your testimony that that is not a straight-line number,  
25 that fluctuates slightly from year to year over the

1 36-year period.

2 But effectively, as I said earlier, since we have,  
3 in the general rate case, started that clock on the  
4 36 years to return that money to ratepayers, we're  
5 effectively in the settlement proposal saying that we're  
6 going to take back 1.6 million a year of that amount,  
7 over 36 years, to cover the regulatory asset to  
8 accelerate the Colstrip distribution?

9 MS. ANDREWS: Yes.

10 MR. BALASBAS: Then related to that, using  
11 this 36-year period, starting in 2018 that 36 years  
12 means 2054?

13 MS. ANDREWS: Correct.

14 CHAIR BALASBAS: So by amortizing the  
15 Colstrip depreciation deficit over 36 years, aren't we  
16 now effectively asking ratepayers to pay for Colstrip  
17 through 2054 and not 2027?

18 MS. ANDREWS: Well, most of the dollars  
19 are associated with the asset retirement obligation,  
20 which would actually occur over a longer period of time,  
21 2027, or whatever time the plant closure is. Whenever  
22 that is in the future, there is still that -- most of  
23 these dollars are associated with that asset retirement  
24 obligation, which would occur over a longer period of  
25 time.

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1 CHAIR BALASBAS: So that's a yes, we are  
2 effectively asking ratepayers to pay for Colstrip  
3 through 2054, at least a small portion of it?

4 MS. ANDREWS: Yes. And that balance will  
5 build up over time. That's the other thing about the  
6 asset retirement obligation, on our books today is about  
7 15 million. So there is about 24 million of Washington  
8 share of this additional ARO that's going to build up  
9 over that time period. So it's not that total today,  
10 but -- but, yes, to answer your question.

11 MR. BALASBAS: Okay. And then I would  
12 like to just ask a clarifying question about the amount  
13 of the commitment to the Colstrip community. I believe  
14 it was mentioned at the beginning of the hearing that  
15 that has been increased to four-and-a-half million  
16 dollars. Is that a total amount of commitment across  
17 all jurisdictions, or was that just the commitment to  
18 Montana, four-and-a-half million, plus 3 million that is  
19 proposed in the settlement?

20 MR. MORRIS: So the way it was negotiated  
21 was it's four-and-a-half million dollars, given to the  
22 community of Colstrip from shareholder dollars,  
23 recognizing, of course, that there is going to be  
24 continued dialogue among six owners and multiple  
25 jurisdictions around how best to do the right thing for

1 many different stakeholders in this group.

2 So I would just say, Commissioner, that it was four  
3 and a half million dollars directed to the City of  
4 Colstrip and around a process. So from a local  
5 perspective, it was important to the mayor, the city  
6 council, and others, that they felt like they had some  
7 local control, some immediate benefit, and some  
8 opportunity to do some thinking around recognizing that  
9 Colstrip would close someday and how could they get in  
10 front of it, and this would be a great way for them to  
11 have some dollars to have that.

12 CHAIR BALASBAS: So is it four-and-a-half  
13 million total?

14 MR. MORRIS: Yes.

15 CHAIR BALASBAS: Okay. And then before I  
16 return the mike back to my colleagues, I have just a  
17 follow-up question on an aspect of  
18 Commissioner Rendahl's question earlier about cost  
19 allocation. And, I believe, Mr. Schmidt, you may be  
20 able to answer this question.

21 So in Hydro One's current structure, with its other  
22 affiliated businesses, both regulated and unregulated,  
23 is there effectively what I would -- how I would  
24 describe maybe, like, central headquarters overhead  
25 allocations to all of those entities?

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1 MR. SCHMIDT: The allocation would be  
2 separate and apart, regulated/deregulated. And we would  
3 have an allocation --

4 CHAIR BALASBAS: Can you turn your mike  
5 on, please?

6 MR. SCHMIDT: I think it's on. Can you  
7 hear me clearly?

8 ALJ MOSS: The red light should be  
9 illuminated.

10 MR. SCHMIDT: It is.

11 CHAIR BALASBAS: Maybe if you pull the  
12 mike a little closer, that might help.

13 MR. SCHMIDT: Yes, sir. There we go. Is  
14 that better? I'm sorry, apologies.

15 Yes, in fact, we have president of Telecom, and his  
16 compensation is separate and apart from the regulated  
17 part of our business. Yes, sir.

18 CHAIR BALASBAS: And so under the  
19 acquisition structure and the way that the structure is  
20 set up for Avista, there would be -- there effectively  
21 would be some kind of central cost allocation coming  
22 from Hydro One headquarters through Olympus and then to  
23 Avista?

24 MR. SCHMIDT: No, there is not. There is  
25 not an allocation of my expense, it goes to shareholders

1 at the Hydro One level. And the board of directors and  
2 the Avista management is separate and apart from any  
3 Hydro One expenses.

4 CHAIR BALASBAS: Okay.

5 CHAIR DANNER: So I just wanted to clarify  
6 Commissioner Balasbas' question earlier about the  
7 \$3 million. You're committing here a \$3 million  
8 contribution. That's the same \$3 million, right? So  
9 it's \$3 million total to Colstrip?

10 MR. MORRIS: Is it's four and a half  
11 million dollars.

12 CHAIR DANNER: That's the total across all  
13 the states?

14 MR. MORRIS: Yes.

15 CHAIR DANNER: Okay. Thank you. I have  
16 one question I want to ask about the non-consolidation  
17 opinion. Who or what firm is going to be hired to  
18 complete that opinion that's outlined in Commitment 44?  
19 Do you have any information on that?

20 MR. MORRIS: I'm told Bracewell.

21 CHAIR RENDAHL: Is that a firm in Spokane?

22 CHAIR DANNER: It's a law firm in Texas.

23 MR. LOPEZ: Formerly, Bracewell &  
24 Patterson headquartered in New York.

25 ALJ MOSS: All right. This apparently is

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1 a good time for us to take our morning break. So I'm  
2 seeing some applause. We'll break for five minutes,  
3 which will be our typical ten, I'm sure. But please try  
4 to be back ten to the hour and be taking your seats and  
5 so forth.

6 (Recess.)

7 ALJ MOSS: Back on the record.

8 CHAIR DANNER: First, I would like to see  
9 if there are any other parties who wanted to weigh in on  
10 the colloquy we just heard, if there was anything you  
11 were hoping to contribute to that you didn't get a  
12 chance to.

13 MS. GERLITZ: Thank you. This is Wendy  
14 Gerlitz with the Northwest Energy Coalition. I just  
15 wanted to clarify around there was a commitment in  
16 section -- well, it's No. 74 regarding tribal  
17 communities. And it came to our attention this week  
18 that the wording of that could be slightly confusing  
19 because it's implementing these conditions of the civil  
20 reach-out to tribal communities.

21 And so that these conditions, we were -- we had  
22 intended that those would apply to all -- you know, all  
23 of the applicable settlement conditions throughout the  
24 entire settlement, not just to the ones in that  
25 particular section. And so we just wanted to make sure



1 that we were on the record clarifying, and I believe  
2 it's an agreed-to intent with all of the parties, but  
3 that it would apply to other sections, such as Section H  
4 and, you know, other areas. And the previous section,  
5 Section F, I think, has some items in it too.

6 CHAIR RENDAHL: You just want to make sure  
7 that the commitment made in No. 74 does not apply to  
8 just implementing the conditions in Section G?

9 MS. GERLITZ: Correct.

10 CHAIR RENDAHL: But also throughout all  
11 the commitments made in the settlement. And I guess  
12 that's a question to ask --

13 MR. MORRIS: Yes, and that was our intent  
14 as well. So that's a really good clarification.

15 ALJ MOSS: All right. Of course, if the  
16 parties think it appropriate and deem it necessary to do  
17 so, they can file a short amendment to reflect that.  
18 But we can also rely on the record here if the parties  
19 don't believe something formal is necessary. I  
20 personally do not think it's necessary, but we'll leave  
21 that to the parties' discretion. And, Ms. Gerlitz, you  
22 may wish to speak to the applicants on that.

23 MS. GERLITZ: Thank you.

24 ALJ MOSS: And generally, Chairman Danner  
25 reminded me what I should have said at the outset, and

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1 that is if any of you witnesses have follow-up on points  
2 that are being raised by your fellow witnesses or from  
3 the bench, please let us know just by raising your hand  
4 briefly or shouting out if we ignore you too much. But  
5 we don't want to miss any information that may be  
6 valuable to us. And with there being so many of you, my  
7 spider sense may not be adequate to pick up the subtle  
8 signs that someone wishes to speak. Thank you. Yes,  
9 sir. Mr. Dahl.

10 MR. DAHL: On that note...

11 ALJ MOSS: First taker.

12 MR. DAHL: I want to jump back to  
13 Chairman Danner's first question about net benefit  
14 standard. Jumping on to what Mr. Woolridge had said in  
15 terms of public counsel's view, you will see in my  
16 testimony that from public counsel's standpoint, it's  
17 sort of a two-step understanding of how you reach and  
18 determine that point where net benefits are accrued.

19 And that is, first, you must reach a status where  
20 there is no harm. So all of the transactional risks,  
21 whatever they may be depending on the circumstances of  
22 the case, should be mitigated through any commitments.  
23 And then at that point, in order for any benefits to  
24 accrue to the customers, you know, those risks must be  
25 mitigated.

1           So that, you know, goes back to your original  
2 question of how do we determine and what are net  
3 benefits. And because this is a case of first  
4 impression and the statutory language is pretty sparing  
5 and not very specific, we look to this case from a point  
6 of trying to recognize certain benefits in various  
7 categories or buckets based on transactions in other  
8 states and the market conditions here in Washington, the  
9 various circumstances that Washington ratepayers face.

10           So if you see on my testimony page 21, we proposed a  
11 sort of analytical framework of various categories of  
12 commitments that we looked for when we were going into  
13 this process, and we believed that this settlement  
14 addresses those issues.

15           And, of course, the facts and circumstances of any  
16 particular acquisition change, based on not only when  
17 the merger occurs, based on current market conditions,  
18 but also the specific parties or applicants involved.

19           So this isn't to say that this particular settlement  
20 is, you know, a word-for-word blueprint of how any  
21 future mergers must go down or, you know, the conditions  
22 are meant to reach the net benefit standard. But it's  
23 sort of a way to look at this and understanding what the  
24 statute is intending and what parties are looking for.  
25 And really it's a benefit, in our view, to everyone, as

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1 applicants are going to this that they understand what  
2 kind of commitments that they should address through any  
3 sort of proposal.

4 CHAIR DANNER: So I read your testimony  
5 and I thank you for your comments. I still keep coming  
6 back to, I guess I'll know it when I see it. You know,  
7 there is still not anything that says -- we know that  
8 it's a higher standard, we just don't know how high the  
9 parties have to jump to meet that standard or whether  
10 it's just simply something that's above no harm but  
11 barely above no harm.

12 So, you know, I think that the analytical approach  
13 you took is, in the end, I mean, if there is going to be  
14 a fact-specific analysis that's probably what we're  
15 going to do. But I'm increasingly hearing there is no  
16 bright-line test and we're going to have to figure it  
17 out.

18 Mr. McGuire?

19 MR. MCGUIRE: I have a couple of points I  
20 would like to make. The first is in regard to your last  
21 comment, Chairman Danner. The net benefit standard is a  
22 legal standard that may be better addressed by legal  
23 counsel in this room. And my understanding is that they  
24 have come to this hearing room prepared to speak to the  
25 legal net benefit standard. And they have been all very

1 well-developed thoughts on that standard. So if you  
2 would like to have that conversation and turn it over to  
3 the attorneys, they would be more than willing to have  
4 that discussion.

5 Secondly, I had want to circle back to  
6 Commissioner Balasbas' questions about Colstrip units 3  
7 and 4. And because staff was the party that initially  
8 proposed this approach, I think it's appropriate that we  
9 give you some sense of why we landed where we did.

10 And we landed where we did because we envisioned if  
11 we did nothing that would be even a bigger problem. And  
12 what I mean by that is if we did nothing, when Colstrip  
13 units 3 and 4 closed, whenever they close, there would  
14 be a substantial unrecovered plant balance remaining on  
15 the books that somebody would have to cover. And some  
16 may argue that's the company's responsibility and others  
17 may argue that that is the ratepayers' responsibility  
18 because the company did nothing wrong.

19 We thought that there was substantial risk to the  
20 ratepayers being on the hook for those stranded costs,  
21 so we decided to try to do something in this venue. And  
22 the way we determined how to handle this was to first  
23 set the depreciation expense such that it didn't change  
24 as a result of this acquisition.

25 And what that entailed was creating a regulatory

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1       asset, and then we had to decide over what time frame  
2       should we amortize that regulatory asset. And we came  
3       to the conclusion that in order to best mitigate  
4       intergenerational inequity, we could -- well, let me  
5       take a step back and just talk quickly about the  
6       intergenerational inequity that is created by changing a  
7       depreciation schedule.

8               Interchanging a depreciation schedule and  
9       accelerating a depreciation schedule, you're essentially  
10      asking for future generations of ratepayers to pay less  
11      than -- I'm sorry, pay more than their fair share of the  
12      facility, while previous generations of ratepayers would  
13      pay less than their fair share of depreciation expense.

14             And at this point in time we, in a sense, are  
15      allowed to go back in time and collect dollars of past  
16      generations of ratepayers through their  
17      over-contribution to taxes. Excess deferred income  
18      taxes essentially amount to previous generations of  
19      ratepayers overpaying taxes.

20             So in amortizing the Colstrip regulatory asset, we  
21      attempted to tie the amortization period to the ARAM  
22      amortization period for the excess deferred income tax,  
23      which was 36 years. In our minds, that is previous  
24      generations of ratepayers picking up the difference and  
25      an accelerated -- or increased depreciation expense due

1 to accelerated depreciation.

2 CHAIR BALASBAS: So I appreciate all of  
3 that context, but I guess my question back to you would  
4 be, is this an issue that you could have addressed in  
5 the context of Avista's next general rate case?

6 MR. MCGUIRE: The answer to that is yes,  
7 to some extent. The depreciation of Colstrip's side of  
8 the equation we could have, yes. It's not certain when  
9 Avista will be in next. And the longer we wait to  
10 address Colstrip-related issues, the more risk there is  
11 to future ratepayers of an earlier retirement of those  
12 units.

13 So I think time is of the essence. So we should  
14 attempt to address this, sooner rather than later. And  
15 in this circumstance it made sense because we perceived  
16 the excess deferred income tax as being sort of an  
17 appropriate offset to mitigate intergenerational  
18 inequity, and we would not have that ability in a future  
19 rate case.

20 CHAIR RENDAHL: So following on that, and  
21 we maybe you can start this -- start answering this  
22 question, there may be others who want to.

23 So, in this case, the parties, the settling parties  
24 have set the schedule, the depreciation schedule for  
25 Colstrip units 3 and 4 outside of a rate case. And

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1 depending on the outcome of this proceeding, it's also  
2 being determined outside of the depreciation study that  
3 Avista has already filed with the commission in a  
4 separate docket.

5 So how do the parties anticipate resolving this  
6 piecemeal approach to setting the depreciation rates for  
7 the company, and how is this all going to be tied up?  
8 What's the plan?

9 MR. MCGUIRE: My opinion on this is  
10 that -- well, first, my understanding is that if this  
11 were to be approved, if the settlement were to be  
12 approved by the commission, the company would file an  
13 updated depreciation study that would reflect the  
14 agreement in the settlement.

15 But my opinion is that a depreciation study itself  
16 filed alone doesn't mean anything for rates. A  
17 depreciation study is useful in a general rate case for  
18 establishing depreciation rates. But just because the  
19 company has filed a depreciation study with the  
20 commission, doesn't mean the commission is obligated to  
21 change rates consistent with that depreciation study  
22 outside of a general rate case. So this will be tied up  
23 through an update of the depreciation study and, B,  
24 incorporating those depreciation rates into rates in the  
25 next general rate case.



1 ALJ MOSS: I'm assuming you wish to add to  
2 that, Ms. Andrews?

3 MS. ANDREWS: Yes. The company fully  
4 plans to supplement once we receive -- we were going to  
5 discuss with staff the appropriate timing. It may be  
6 appropriate to wait for an order from the commission  
7 approving the sale and the use and the acceleration of  
8 Colstrip within this docket before we supplement that  
9 response. But we'll discuss with staff the best  
10 appropriate way to do that, to take into effect. And we  
11 recognize that is outside of the general rate case.

12 I can tell you that for -- if you were to remove the  
13 Colstrip portion because it's being handled in this  
14 docket, then both electric and gas would result, as it's  
15 filed today or as its filed, would result in reductions  
16 for customers. So we would obviously want to try to  
17 incorporate that as soon as we could so customers  
18 benefit from that. But I believe our application  
19 requested that we defer whatever those costs or savings  
20 were and so that it can go back to customers as soon as  
21 possible.

22 CHAIR RENDAHL: So are you saying you  
23 believe there would be additional reductions to electric  
24 and gas customers in the depreciation study as a  
25 result -- if this docket -- the merger request is

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1 approved, the settlement is approved, there would be  
2 additional beyond the Colstrip changes in the  
3 depreciation study?

4 MS. ANDREWS: Yes, because if we strip out  
5 this Colstrip -- the asset retirement obligation is the  
6 largest piece that was causing an increase to the  
7 electric side. If you strip that out, we'll end up,  
8 ultimately, I believe, ending up with electric  
9 reduction.

10 CHAIR RENDAHL: You said there might also  
11 be impacts on the gas side?

12 MS. ANDREWS: Yes. The filing that's in  
13 front of the commission already shows a reduction to gas  
14 depreciation expense.

15 CHAIR RENDAHL: Thank you.

16 CHAIR DANNER: Mr. McGuire, you mentioned  
17 the risks of early retirement, and yet what happens if  
18 we're in a situation where we have changed the  
19 depreciation schedule and we don't have early  
20 retirement? There has been some testimony in other  
21 states about continuing to run these two plants for the  
22 rest of their useful lives, whatever those might be.

23 So is there -- what are the protections if this  
24 plant runs for quite a while longer and we have changed  
25 the depreciation schedules? Is there a need to revisit?

1                   MR. MCGUIRE: So we never get depreciation  
2                   expense right. We're constantly updating depreciation  
3                   expense because depreciable balance and depreciable life  
4                   is always evolving. So I fully expect us to be wrong in  
5                   whatever we do. I'm comfortable with that.

6                   But what we're doing in changing the depreciation  
7                   schedule now is addressing the risk of early closure.  
8                   If it does not close early, then we will readjust the  
9                   depreciation schedule such that future ratepayers end up  
10                  paying less than current ratepayers as a result of this  
11                  settlement. And that is acceptable -- that's an  
12                  acceptable tradeoff to us because the risk of early  
13                  retirement, the risk of saddling future ratepayers with  
14                  unrecovered plant balance, is substantially high enough  
15                  for us to do something now.

16                  CHAIR DANNER: Okay.

17                  ALJ MOSS: Mr. Howell.

18                  MR. HOWELL: Thank you, Your Honor. I  
19                  appreciate the melding of art and science and the  
20                  attempt to get it right. And so --

21                  CHAIR DANNER: He said we don't have to  
22                  get it right.

23                  ALJ MOSS: Even more comfort in that.

24                  MR. HOWELL: And to the extent that there  
25                  is something that can inform this balance, I just would

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1       like to remind the bench of the -- the trend that  
2       reported on actually in a public hearing before you, I  
3       believe it was on a Puget Sound Energy public hearing,  
4       there was some really good testimony from someone from  
5       the Western Clean Energy Coalition, I believe is the  
6       name of it, talking about the trends of all the plants  
7       in the West. And, categorically, what they found with  
8       the -- I think it was the six largest plants that have  
9       now moved to retirement, within a year before they  
10      retired, and sometimes even months, what you were  
11      hearing is that the plant was going to go on forever and  
12      ever or much longer than what was being anticipated in  
13      the short-term.

14             And, categorically, across all these big closures  
15      across the West, in every circumstance that closure was  
16      happening much, much faster than even what was being  
17      stated by the owners, within a year and sometimes just  
18      within months.

19             So what we know, to the extent that it can  
20      contribute to the science, is that there is a very clear  
21      trend across the West in the past few years and that all  
22      closures are happening much sooner than anticipated.

23                     ALJ MOSS: Thank you, Mr. Howell.

24                     Mr. Lopez, did you have something to add?

25                     MR. LOPEZ: No.

1 ALJ MOSS: Thank you very much. Sorry for  
2 that.

3 MR. LOPEZ: That's okay.

4 ALJ MOSS: Mr. Dahl?

5 MR. DAHL: I just wanted to chime in here  
6 on the Colstrip issue, to go on the record that public  
7 counsel does recognize the risk that the change in the  
8 depreciation schedule doesn't necessarily equate to  
9 closure. The offset provided by this settlement is a  
10 reason public counsel was comfortable accepting it, and  
11 it is also in line with the depreciation schedules set  
12 in the Puget Sound Energy general rate case. You know,  
13 and so we understand that that situation exists. And  
14 given the circumstances of this settlement, we feel  
15 comfortable with our position here.

16 ALJ MOSS: Thank you, Mr. Dahl. Okay.

17 CHAIR DANNER: All right. Are we done  
18 with -- any more questions on Colstrip?

19 So I had a couple of specific questions I wanted to  
20 ask. We had a number of public hearings around the  
21 state and we heard testimony in both Colville and  
22 Spokane Valley from Mr. Mike Brown of IBEW Local 77.  
23 And he raised concerns regarding the apprenticeship  
24 programs and the agreement that you had reached with  
25 WNIDCL. And I was wondering if you could speak to the

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1 status of apprenticeship training and the agreements  
2 that you had with IBEW Local 77 and how those are going  
3 to be accommodated, if at all, with the proposed merger?

4 MR. MORRIS: So, as you know, we're very  
5 proud of our workforce at Avista and our craft  
6 positions. They are true professionals and it's --  
7 frankly, as far as I'm concerned, it has been one of our  
8 advantages that we have because we have such a  
9 well-trained workforce and have been committed to  
10 apprenticeships for my entire 37 years at the company  
11 and longer.

12 So we have multiple apprenticeships through the IBEW  
13 that have been developed and have been -- that continue  
14 to even improve to this day. And we don't see any  
15 change in any of that. So from our perspective, we're  
16 going to continue to work developing our own, our own  
17 multiple craft positions that work in both and all of  
18 our generation facilities, our linemen, our meter  
19 people, our gas folks.

20 So, you know, I can understand Mike's passion around  
21 the apprenticeships, and we share that same passion  
22 around the apprenticeships, Mr. Chairman. So I don't  
23 see any change about how we go about doing our  
24 apprenticeships with IBEW.

25 CHAIR DANNER: Well, as I'm looking at the

1 commitments in -- or Commitment 80, it's not clear to me  
2 if you are basically agreeing to exclusives with WNIDCL  
3 with regard to flagging and natural gas work or if there  
4 is a role for IBEW.

5 Is it your position that IBEW, Local 77, which I  
6 guess is 650 members that work for you, that they will  
7 continue to do the work that they are currently doing --

8 MR. MORRIS: Yes.

9 CHAIR DANNER: -- and that whatever  
10 apprenticeship programs they have will continue?

11 MR. MORRIS: Yes.

12 CHAIR DANNER: So you're not seeing any  
13 change there?

14 MR. MORRIS: No.

15 CHAIR DANNER: So this doesn't -- this  
16 settlement agreement does not favor WNIDCL over IBEW --

17 MR. MORRIS: We carved out those -- not  
18 carved out -- we identified those, we do not see any  
19 change to any of our current apprenticeships. For  
20 example, we don't do apprenticeships around flagging,  
21 for example. So none of that changes.

22 It says, "Work covered by these commitments does not  
23 include work that is customarily performed by Avista  
24 employees represented by IBEW Local 77, but that is  
25 contracted out pursuant to IBEW Local 77's collective

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1 bargaining agreement with Avista. It also does not  
2 include any work that is performed by Avista employees  
3 regardless of the type of work involved." That's --

4 CHAIR DANNER: Okay. So when Mr. Brown  
5 spoke in Spokane Valley, what he said, "What I want to  
6 speak on today is the opposition to the agreement  
7 between Avista and the Washington and Northern Idaho  
8 District Council of Laborers. We've been representing  
9 gas workers in Avista since the late 1950s, and we've  
10 got a joint apprenticeship training committee, so  
11 apprenticeships have been with us."

12 ALJ MOSS: Can you slow down for the court  
13 reporter?

14 CHAIR DANNER: Yeah, sure. In his  
15 testimony, it's not clear what his specific objections  
16 are, but overall he comes out in opposition to the  
17 agreement. So clearly there is something that is giving  
18 him concerns, and I'm trying to get at what that might  
19 be.

20 MR. MORRIS: And I think we need to  
21 continue to talk to Mike to find out what they might be.  
22 Because, again, in this agreement, it doesn't change any  
23 of their current work or current apprenticeships.

24 CHAIR DANNER: All right. Thank you for  
25 that.



1 ALJ MOSS: Other questions?

2 CHAIR RENDAHL: So following on that theme  
3 of the public hearings, which I know many of you from  
4 Avista and Hydro One were there, in Colville and Spokane  
5 there were some significant concerns raised about the  
6 issue of potential foreign ownership of a  
7 Washington-based/Spokane-based utility.

8 We understand and acknowledge that a number of the  
9 commitments in the joint settlement provide for  
10 protections for maintaining local control over Avista's  
11 operations and management, as well as our jurisdiction,  
12 the commission's jurisdiction, over those operations.

13 So, Mr. Schmidt, I would like you to address this  
14 issue of concern about foreign ownership. And the role  
15 of the Province, which was addressed in the public  
16 hearings as well, in terms of having significant  
17 ownership of the company and how that could play out,  
18 especially with the potential change in the political  
19 landscape.

20 So if you could address that. And maybe, as you're  
21 speaking, consider that you're addressing those folks  
22 that expressed that concern in the public hearings,  
23 which I'm sure was relayed back to you.

24 MR. SCHMIDT: Yes. I would be happy to.  
25 In fact, I have a unique vantage point of being both an

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1 American and more recently a Canadian citizen.

2 CHAIR RENDAHL: Can you check and see if  
3 your microphone is on?

4 MR. SCHMIDT: It is. I'll speak more  
5 closely.

6 CHAIR RENDAHL: That helps. Thank you.

7 MR. SCHMIDT: Thank you, again. I'll do  
8 that.

9 Yes. I was saying I think I have a bit of a unique  
10 vantage point, being both an American and having spent a  
11 good portion of my professional career working in the  
12 Pacific Northwest, and the more recent years being in  
13 Canada.

14 So it really begins with -- and I'll start with  
15 maybe with the governance agreement. So Ontario made an  
16 appropriate and unique decision to monetize the assets  
17 of Hydro One for purposes of other infrastructure needs  
18 that the Province had to grow, and thereby allowing the  
19 organization to the benefits -- and the Province and the  
20 citizens and the customers -- of the benefits of having  
21 a commercial organization, which has gone on to increase  
22 every customer-satisfaction statistic, as well as  
23 taking -- through productivity and efficiencies taking  
24 cost out of the system while increasing employment in  
25 the Province, so in a very constructive and positive

1 way.

2 The governance agreement structurally is that the  
3 Province and the company have a contract. And that  
4 contract is that the shareholder -- which, of course, in  
5 this case is a Province -- is a shareholder and is not a  
6 manager of the business.

7 And one of the ways that we uniquely discuss it is  
8 as a shareholder, much like securities law, the Ontario  
9 Securities Commission sits between us. So as long as  
10 the Province doesn't find themselves offside with the  
11 Ontario Security Commission and how they act as any  
12 other shareholder is that the company and all  
13 shareholders would be just fine. And, in fact, I  
14 can certainly comment that the Province has been  
15 exemplary in their behavior in not involving themselves  
16 in the business of the organization and, quite frankly,  
17 has found the work of the organization to be, simply  
18 put, outstanding.

19 Now, when I think about -- and having worked and  
20 lived in the Pacific Northwest and, quite frankly, the  
21 relationship that began to grow between our two  
22 companies, particularly when Scott and I met, is when  
23 Hydro One and myself had in our strategy had identified  
24 the Northwest because it is the type of community that's  
25 very similar to Canada and a very kind and gentle

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1 society, and certainly an outdoor society, respect for  
2 the environment. And so we begin to think, as  
3 importantly as the financial metrics, could we meld  
4 culturally, and Scott and his team clearly confirmed  
5 that we could.

6 So when I think about the foreign ownership aspect  
7 and, of course, having had the benefit of working on  
8 both sides of the border my entire career, I would say a  
9 combination of structure, which is ring fencing, the  
10 agreement that Scott and I arrived to with the  
11 governance agreement -- and I spoke to this in Juneau,  
12 in Idaho, and also here more formally at the governor's  
13 office -- is that it really was a conversation that  
14 said, How do we set up a board of directors, and how do  
15 we, in fact, govern the organization. "We" being the  
16 board, which I and one other executive from Hydro One  
17 would join of the nine, but in fact I offered to Scott  
18 to both take the pin in the structure and also identify  
19 for Hydro One's choice three Pacific Northwest business  
20 leaders that would have unique insights and experience  
21 in the Pacific Northwest. We would identify those --  
22 primarily Scott, because of his experience -- and those  
23 would in fact be independent and be the choices for  
24 Hydro One's three.

25 So out of the nine, all that really comes from

1 Canada is myself and one other business leader to be  
2 determined from Hydro One. The rest are a combination  
3 of Scott as chairman, the CEO, also one other candidate  
4 from Avista, and three independent directors as  
5 identified as independent by the New York Stock  
6 Exchange.

7 So, structurally, between the ring fencing and the  
8 governance, and the independent operations that we  
9 felt -- and the fact that Avista had the pin, and when  
10 they did the design, in fact, we did not change any of  
11 the design. We, in fact, accepted it in its entirety  
12 because it was, quite frankly, very well and eloquently  
13 written and served everyone's needs. So that would be  
14 how I would address that concern.

15 CHAIR BALASBAS: So, Mr. Schmidt, just  
16 following up on that a little bit. You mentioned that  
17 the Province as a shareholder of -- I think your word  
18 was off-sides of the Ontario Security Commission. Is  
19 the Ontario Securities Commission an entity created by  
20 the Province of Ontario?

21 MR. SCHMIDT: It would be under the law of  
22 the Ontario -- of the Province of Ontario, yes.

23 CHAIR BALASBAS: Okay. Could you speak to  
24 what is -- a little bit about what is happening? I  
25 understand the Ontario Province has provincial elections

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1 coming up in a few weeks.

2 Could you describe what the -- I believe the three  
3 major political parties are proposing should they win a  
4 majority government in the provincial elections of what  
5 they plan to do with Hydro One?

6 MR. SCHMIDT: Sure. I would be happy to.  
7 And I think your question is should they form a  
8 majorities is a key, is a point. First of all, the  
9 government today is the Liberals, in fact, were the  
10 privatizer of Hydro One and notionally have -- I should  
11 not say notionally -- I should say structurally have  
12 committed to maintaining a 40 percent ownership. Should  
13 they go below 45, they put themselves in a position  
14 where they would not be in a position to buy backup to  
15 have a position greater than 45.

16 The NDP has run on a platform for a long time of --  
17 it was their view that Hydro One should not have been  
18 privatized. And, in fact, they would like to see it  
19 back in control of the Province.

20 Having said that, there is certainly recognition  
21 that the Ontario Energy Board sets all policies and  
22 practices around pricing for customers.

23 Thirdly, is we have a Progressive Conservative  
24 party, the third party. That party would take the view  
25 that the compensation of executives at the organization

1 are outside of what are normal public corporation --  
2 companies, so owned by the Province structurally. And  
3 so they would take the view that they would replace the  
4 board of directors in an effort to change the  
5 compensatory practices, commercial versus provincially  
6 owned.

7 So those have been the three stated objectives early  
8 in the policy, among what I think now is a growing focus  
9 on more of the issues around the Province, debt, and  
10 hospitals and children and such. But that's, on the  
11 onset, been the conversation.

12 CHAIR BALASBAS: And in the governance  
13 agreement between Hydro One and the Province, I believe  
14 it has a provision that says the agreement can only be  
15 terminated by both parties.

16 So if the -- however, if the Province acting as the  
17 government of the Province decides to terminate the  
18 agreement, how could they not terminate that agreement?

19 MR. SCHMIDT: Good question. Thank you.  
20 So the Province, should they choose to, could ask to  
21 excuse the board of directors, and then they would act  
22 with the chairman of the board to end five of the  
23 largest shareholders to identify another independent  
24 board of directors. They are not in a position to  
25 terminate the CEO. That would only be through a board.

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1           So an independent board of directors, in conjunction  
2           with the five largest shareholders, and not the  
3           Province, would in fact identify and vote for a new  
4           slate of fully independent board of directors that have  
5           no -- have no structural relationship with the Province.

6           CHAIR DANNER: So I want to follow up on  
7           that, I mean, because CBC has said that the  
8           privatization of Hydro One is "a major issue in this  
9           election." The one that's coming up on June 7th.

10          And so we've got -- there's four parties. The NDP  
11          has said it will seek to buy back the shares and bring  
12          Hydro One back into public hands. That's their  
13          electoral position. The Progressive Conservatives have  
14          said they are going to fire the CEO and all the board  
15          members. And the Greens have said they want to buy back  
16          just enough shares to get a controlling stake.

17          I'm just trying to get a handle on what kind of  
18          volatility, if any, we're stepping into. Motley Fool  
19          warned investors to pay attention because "policy shifts  
20          and promises of retribution could impact the stock of  
21          the company."

22          So this agreement between the Province and Hydro One  
23          is very important. And even though it says that Ontario  
24          can't take part in the management, I wanted to just dig  
25          down a little bit into the agreement and see.



1 I noticed, for example, that there is a provision  
2 that Province's right to replace directors,  
3 notwithstanding any other provision of this agreement,  
4 the Province may at any time provide Hydro One with a  
5 notice, a removal notice, setting out its intention to  
6 request Hydro One to hold a shareholder's meeting for  
7 the purpose of removing all directors they had in  
8 office, including provincial nominees, with the  
9 exception of the CEO, and at the Province's solo  
10 discretion, the chair.

11 That sounds to me like the Province still has  
12 potential to have large sway over the policies and  
13 direction of the company. Is that your read?

14 MR. SCHMIDT: So understanding what you've  
15 read, the board of directors --

16 CHAIR DANNER: Yeah, this is Section 4.7  
17 of the governance agreement.

18 MR. SCHMIDT: Thank you for that. I'm  
19 very familiar with that.

20 The board of directors currently today, of course,  
21 is fully independent of the Province and they act  
22 commercially. And as I mentioned, the Province has not  
23 weighed in on any matters associated with the commercial  
24 operations of the organization.

25 Secondly, to your reading, is that should the

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1 Province determine that they want to change the board of  
2 directors -- and in fact the early design was to not be  
3 in a position for a Province to change a few or certain  
4 members of the board because they might be more  
5 commercially or independent from the Province, is that  
6 it would have a higher bar to change the entire board  
7 and yet an even higher bar to bring back another yet  
8 fully independent board of directors who has no  
9 connectivity with the provincial government. So  
10 therefore it's a net zero-sum gain of not gaining any  
11 particular influence over the commercial operations of  
12 the organization, and all through that being that we  
13 have a contract with the Province that they in fact will  
14 operate as a shareholder but not a manager of the  
15 business.

16 So structurally, they can remove the full board of  
17 directors, not the CEO. Then they would be compelled to  
18 vote for another fully independent board of directors  
19 and, again, not having the ability to terminate the CEO,  
20 who would be running the commercial operations of the  
21 business. If that's helpful.

22 CHAIR DANNER: Well, it is. How much, if  
23 I may -- I'm sorry, it looks like your counsel wants to  
24 confer with you.

25 MR. SCHMIDT: Thank you for that, Jamie.

1 If I may, Commissioner, Jamie asked me to, I guess,  
2 emphasize that should the -- should they, in fact,  
3 decide to eliminate the full board in its entirety, then  
4 the chairman of the board would form an ad hoc  
5 committee, which I spoke to. But to be more specific,  
6 of the five largest shareholders, such as companies like  
7 Fidelity who would represent their interest in fact,  
8 seeing that they -- in fact they've invested in a  
9 commercial organization, not a crown agency. And those  
10 fully independent ad hoc committees of our largest  
11 shareholders, public capital markets, would in fact be  
12 the selectors of the new board of directors that would  
13 be fully independent. So that really is the protection,  
14 in addition to other ring fencing structural distance  
15 that Avista has from the Province of Ontario. So they  
16 will all have their own board of directors, their own  
17 leadership team, so that the Province is not in a  
18 position to effectively effect the board or the CEO of  
19 the Avista organization.

20 CHAIR RENDAHL: So do you mean the five  
21 largest private shareholders, not including the  
22 Province?

23 MR. SCHMIDT: That is correct. Private  
24 being commercial organizations, such as Fidelity, for  
25 example. Yes, that's correct.

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1 CHAIR DANNER: I'm sorry, can you tell us  
2 who the five largest shareholders are?

3 MR. LOPEZ: Fidelity is one, 1824. There  
4 is an Australian -- I'm trying to remember the name --  
5 there is a large Australian pension fund. It is very  
6 diverse, but we'll get you the top five and we'll bring  
7 it forward at that point.

8 CHAIR DANNER: That would be useful.  
9 Thank you.

10 And can you tell me how -- I mean, this is a  
11 publicly-traded company, how much ownership can any one  
12 party take before they need to disclose that or get the  
13 Ontario utility board to approve the merger or that  
14 acquisition?

15 MR. SCHMIDT: So the only approval that --  
16 and I'll go to a couple levels -- the only approval that  
17 the Province of Ontario had over the combination with  
18 Avista was the opportunity, which was 48 hours prior to,  
19 to participate in the equity portion, which would have  
20 meant they would have stayed pro rata in their  
21 ownership. So they were at 49 percent, they reduced 2  
22 percent in a contribution to the First Nations  
23 community. This combination from 487 would take them  
24 down to approximately 42 percent, and the Province  
25 chose, because they were selling down, not to

1 participate in that equity raise, which is a debt  
2 position that, on closing, converts into equity for the  
3 organization, which is about \$1.2 billion. So that  
4 would have been their choice.

5 Now, as far as ownership, no one party or parties  
6 acting in concert, including the Province, once the  
7 Province sells down, but no other party other than the  
8 Province acting in concert can be more than 9.9 percent.

9 CHAIR DANNER: Okay. So what I'm getting  
10 at is the Province couldn't just basically decide to  
11 align itself with a minority shareholder and suddenly  
12 have over 51 percent and then have a say in the  
13 direction of the company in terms of its board of  
14 directors, it's policies, et cetera?

15 MR. SCHMIDT: Yes, Commissioner, that is  
16 correct. Once they go below 45 they are no longer.

17 CHAIR DANNER: But they are not at 45 yet?

18 MR. SCHMIDT: They will be only after the  
19 dilution effect of our combination. And I might just  
20 add, because of the good question on the three parties  
21 and their perspectives, the Progressive Conservatives,  
22 in fact, were the first party ten years ago that moved  
23 to privatize or create a public commercial company of  
24 Hydro One. At that time they got very close, but some  
25 impediments got in the way and they didn't complete

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1 that. So that was also their historical platform as a  
2 political party.

3 ALJ MOSS: Ms. Thomas, did you have  
4 something to add?

5 MS. THOMAS: Thank you, Judge Moss.

6 ALJ MOSS: You'll need to approach the  
7 microphone, please.

8 MS. THOMAS: On behalf of Hydro One, if  
9 there are more questions along these lines, general  
10 counsel Jamie Scarlett is very familiar with the  
11 securities laws in Canada and the provisions of the  
12 general grievant and those sorts of things, and we  
13 offered to swear him in if there are additional  
14 questions along those lines.

15 ALJ MOSS: Thank you very much. Let me --  
16 while we're interrupted here, we will treat as bench  
17 request No. 2 the request of the identity of the five  
18 largest shareholders, aside from the Province, and that  
19 will be reflected in the exhibit list and the record.  
20 Thank you.

21 CHAIR DANNER: Okay. So if I may, the  
22 real high-level question I'm looking at is: Is there a  
23 scenario under which the Province could undo the  
24 privatization of Hydro One, or is there a scenario by  
25 which the Province could gain control of the company

1 going forward?

2 MR. SCHMIDT: My view would be -- and we  
3 have the benefit, if you would like -- Jamie Scarlett,  
4 of course, was with the securities commission also, over  
5 30 years of M&A practice in the Province of Ontario --  
6 but I'll just answer briefly and, if you would like more  
7 detail.

8 We would view it clearly as they have a contract and  
9 that that contract between the two parties, as earlier  
10 mentioned, would need the participation of both parties.  
11 Short of the province with a majority simply saying for  
12 whatever purpose we are going to go through the effort  
13 of changing the law and in fact affecting that contract,  
14 which, you know, of course, goes to any other commercial  
15 organization doing business in the Province thinking can  
16 the contract be set aside. And it would be our view  
17 that that would not be the outcome. And I could let our  
18 counsel speak to it in greater depth if you would like,  
19 Commissioner.

20 CHAIR DANNER: Well, Your Honor, perhaps I  
21 would just give the same question then to the counsel,  
22 if you want to swear him in.

23 ALJ MOSS: All right. We can do that.

24 (Mr. Scarlett sworn.)

25 ALJ MOSS: Please be seated. And,

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1 Ms. Thomas, I'll steal your thunder here and ask the  
2 witness to please state his full name and spell his last  
3 name for the record.

4 MR. SCARLETT: My full name is  
5 James Dameron Scarlett, S-c-a-r-l-e-t-t, commonly go by  
6 Jamie, J-a-m-i-e.

7 ALJ MOSS: Thank you, Mr. Scarlett.

8 CHAIR DANNER: So the questions that you  
9 heard me ask Mr. Schmidt are the same ones. Is there  
10 any scenario under which the Province of Ontario could  
11 undo the privatization of Hydro One or take over  
12 basically its -- either its direction, its board of  
13 directors, or its management?

14 MR. SCARLETT: As with many questions,  
15 there is a simple answer and a more complicated one.

16 CHAIR DANNER: I saw it as a five-part  
17 question.

18 MR. SCARLETT: The simple answer is:  
19 Absent a government passing new legislation to undo a  
20 lot of what's being done, the short answer is no. We  
21 have a contract with the government, the governance  
22 agreement, and that should be remembered as different  
23 from the governance arrangements we have with Avista.  
24 I'm only going to talk about the governance agreement  
25 with the Province of Ontario. It's a binding contract.



1 Province of Ontario respects its contracts, and if they  
2 tried to breach the contract we can go to court. But I  
3 don't expect any of that to happen.

4 The contract is very intentionally and carefully  
5 crafted to control the power of a major shareholder. So  
6 right now they have 47-odd percent. It will be diluted  
7 to 42-odd percent if our deal goes through. But  
8 remember, this contract was in place when they owned  
9 85 percent at the time of the IPO. And it constrains  
10 their ability. It constrains their ability. In a  
11 public-traded company, you don't have to have over  
12 50 percent of the shares to vote the entire board. You  
13 can do it quite effectually at a much lower number.

14 What this agreement does is constrains the Province  
15 of Ontario to 40 percent of the board. Period, full  
16 stop. It has other language that prevents it from what  
17 we would say in Canada as acting jointly and in concert  
18 with another party.

19 So one of your questions was could they team up with  
20 somebody else to combine to get over 50, and I would  
21 say, no, that's prevented in the contract. And, B, they  
22 really wouldn't have to anyway if they wanted -- if it  
23 wasn't for the other provisions in the governance  
24 agreement.

25 I think Mr. Schmidt took you through how the change

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1 of the board works. Again, it's a complicated procedure  
2 that's meant to make it difficult for the Province to  
3 weigh in at the board. It would have to be something  
4 dramatic, and even then the new board itself would have  
5 to be at the same standard of independence as the board  
6 that currently sits.

7 CHAIR DANNER: So even by filing a removal  
8 notice it's so arduous --

9 MR. SCARLETT: Well, it's probably a  
10 90-day process because they file a removal notice. That  
11 triggers the need for a shareholders meeting, which you  
12 can do under our corporate law. And that then triggers  
13 the need to set up an ad hoc nominating committee, which  
14 would then go out under the direction of our chair.  
15 Whether he or she is replaced or not, they are in charge  
16 of the ad hoc nominating committee. They line up  
17 representatives from our five biggest shareholders.  
18 We'll get you those names. And they create a new slate.

19 And then there is a shareholders meeting and they  
20 vote on the slate. Now, of course, then they would be  
21 having the votes, and even then, they only get their  
22 40 percent. They don't get to vote the whole kit and  
23 caboodle. Just the 40 percent.

24 So it's in a very kind of carefully thought through  
25 and structured arrangement done intentionally because

1 the Province was selling the deal to the public. And if  
2 they went out to public investors and the investors  
3 thought that the Province was going to be able to meddle  
4 or fiddle around in the business of Hydro One, the view  
5 was the deal would not have been successful, nor would  
6 they be able to assemble the management team led by  
7 Mayo Schmidt, because no one wanted to work for  
8 Crown Corporation, to be blunt.

9 MR. BALASBAS: Mr. Scarlett, you prefaced  
10 all of that explanation with, absent the Province  
11 passing a law on doing the privatization. So, in  
12 essence, that is one potential scenario that could  
13 happen is the Province could pass a law to just undo the  
14 privatization and return the Hydro One to provincial  
15 control?

16 MR. SCARLETT: The short answer again is  
17 yes. But there is a more complicated answer, which  
18 is -- I mean, when I say undo the privatization, it's  
19 not a magic wand that makes all the shares just kind of  
20 gravitate back to the Province. You know, the Province  
21 would -- if it wanted to, say it's the NDP, and say they  
22 wanted to try and buy the company back, so they would  
23 have to change the law to make it legally possible.  
24 Then they have to go to shareholders who own the shares  
25 and they have to say, Would you sell them to me? And we

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1 have securities law that dictates how that kind of a  
2 process happens.

3 And, again, it isn't that it can't be done, but you  
4 have to make a good enough offer that people will  
5 tender. And if you get enough people tendering, you can  
6 then take a second-stage transaction to squeeze out  
7 minorities and all that stuff that those of us who know  
8 securities law would go yeah. Yeah. Yeah. But it's  
9 not -- it's not like snap the fingers.

10 But you're asking could a new government do it?  
11 Well, new governments can pass legislation. They can do  
12 lots of things. Just like state of Washington could  
13 pass laws that would have serious impacts on the  
14 business of Avista.

15 CHAIR DANNER: Right. And what I'm trying  
16 to get to is really I just want to get sort of the  
17 status of potential volatility here. I mean, in our  
18 state, yes, we have public utility districts that can  
19 form and basically push Avista out of a service  
20 territory, but we don't see that as -- presently,  
21 volatility. And so that's what I'm really trying to get  
22 a sense of, because this is -- seems to be a major  
23 election issue. Is this just real or is it just the  
24 heat of the election?

25 MR. SCARLETT: I'm not going to call an

1 election. The latest poll has the two top parties at  
2 the same level, so who knows what the outcome is going  
3 to be.

4 In terms of -- I'm probably going beyond by strict  
5 legal mandate here, but in terms all utility, I would  
6 just note this: It is a cash deal. So if there is  
7 volatility in the stock price of Hydro One, it won't be  
8 visited on Avista shareholders.

9 And I think, as Mr. Schmidt pointed out, putting  
10 aside the governance agreement that we talked about,  
11 there is all these protections between Hydro One and  
12 Avista itself that keep the Avista ship of state sailing  
13 smoothly, regardless of what happens up in Ontario. We  
14 have all the ring fencing on the financial side. We  
15 have all the governance arrangements that really -- and  
16 it was designed to do this, put Avista in a place where  
17 it operates its business. And the noise -- if there is  
18 noise in Ontario, it shouldn't have a big impact down  
19 here.

20 CHAIR RENDAHL: So I guess my question  
21 would be, if the worst case happens and all of these  
22 potential things occur, are the commitments in the  
23 current settlement sufficient to protect Avista  
24 customers from any interference from the Province of  
25 Ontario, which I think was the concern by many of those

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1 folks who testified with concern about control from a  
2 foreign entity.

3 MR. SCARLETT: I'll answer it as a legal  
4 matter, because there is a broader judgment question  
5 there. But as a legal matter, I don't see how anything  
6 that happens in Ontario could upset the legal  
7 requirements and undertakings that bind Hydro One  
8 through this process.

9 Does that answer your question?

10 CHAIR RENDAHL: Uh-huh.

11 ALJ MOSS: All right. The reason I'm  
12 inquiring of the commissioners here about the remaining  
13 questions, and they tell me there is not much more, but  
14 earlier I was told that Mr. Schmidt had to leave at  
15 noon. Is that still the case?

16 MR. SCHMIDT: If possible, that would --

17 ALJ MOSS: Mr. Lopez would be able to pick  
18 up the baton to the extent necessary for Hydro One?

19 MR. SCHMIDT: That's correct and  
20 Mr. Scarlett as well.

21 ALJ MOSS: Well, I wanted to point that  
22 out since the noon hour is approaching rapidly. And if  
23 you have an important commitment elsewhere, and I had  
24 indicated that I thought we would be finished close to  
25 noon. It looks like it will be, but it may be on the

1 north side rather than the south side. So, please, if  
2 you need to excuse yourself, do so. And you also,  
3 Mr. Scarlett, go ahead and take a seat in the back and  
4 we'll rely on Mr. Lopez if you have to leave.

5 MR. SCHMIDT: Okay. Is there any more  
6 questions right now or would you like me to stay a  
7 couple of minutes? I'm happy --

8 CHAIR DANNER: Just a very quick one.  
9 Again, this is more curiosity than anything else. When  
10 you mentioned 40 percent of the board of directors that  
11 is filled by the Province, are those independent  
12 directors or are those basically representatives of  
13 government or designees of government?

14 MR. SCHMIDT: Independent directors. And  
15 in fact, after -- as this board was constituted, after  
16 it was in place, the Province then selected individuals  
17 who were in those roles that were independent and they  
18 were asked if they were prepared to at least be  
19 designates. But they don't act for the Province, and  
20 therefore independent, and that is the expectation of  
21 all directors moving forward.

22 CHAIR DANNER: All right. Thank you.

23 CHAIR BALASBAS: So this is just a  
24 clarifying question on the charitable contribution  
25 aspect of the settlement agreement. I believe, if I

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1 remember correctly, the settlement proposes a one-time  
2 \$7 million contribution to the Avista foundation. And  
3 is that -- that is in the similar vein to the commitment  
4 to Colstrip, that is, a system-wide commitment, the  
5 foundation operates as a separate entity?

6 MR. MORRIS: Yes.

7 CHAIR BALASBAS: And the additional  
8 2 million per year to the foundation is in the same  
9 context where it is an additional 2 million on top of  
10 the contribution to the foundation today?

11 MR. MORRIS: Yes.

12 CHAIR BALASBAS: So the current company  
13 contribution to the foundation is \$2 million per year?

14 MR. MORRIS: No. At this point, the way  
15 we've done the foundation is that I started the  
16 foundation back -- we sold the last of our Itron stock  
17 back in the early part of the 2000s and that's how we  
18 established the foundation.

19 And since then we've tried to take opportunities to  
20 add to that foundation when they have arisen. So when  
21 we had the settlement with the State of California and  
22 we were able to get some money from Avista Energy, we  
23 took a portion of those proceeds and donated it to the  
24 foundation. We have made some -- in years that we've  
25 had, we felt appropriate, we've donated to the



1 foundation out of our budgets out of shareholder profit.  
2 But it's not a consistent thing.

3 So our view is that we want to try to continue to  
4 raise the corpus of the foundation so that it is  
5 truly -- you know, continues to grow and be substantial.  
6 But we don't have a consistent donation policy into the  
7 foundation. We pay -- our corporate donations,  
8 currently some come out of the foundation, some come out  
9 of shareholder dollars out of our budgets. So it's a  
10 combination of both.

11 CHAIR BALASBAS: And do you know what the  
12 most recent annual budget of the foundation is or maybe  
13 the last couple of years?

14 MR. MORRIS: Well, our total contributions  
15 have been in excess of \$2 million. And the breakdown  
16 between that, I would say roughly the foundation is  
17 paying not quite a million dollars of that, I would say  
18 probably closer to \$800,000, and the remaining comes out  
19 of our corporate budgets.

20 CHAIR BALASBAS: Okay.

21 MR. MORRIS: Again, we try to take about 4  
22 or 5 percent of what the basis is of the foundation, and  
23 that's what we use so we don't get into the corpus of  
24 the foundation, and we just take the earnings.

25 CHAIR BALASBAS: So switching topics to

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1 the -- I believe it's Commitment 53 related to renewable  
2 energy resources. So my question on that is: Is this  
3 commitment structured in such a way that if Avista does  
4 not have a need for those renewable resources that it  
5 would not be required to go out for an RFP for those  
6 resources? And I would ask any party who wishes to  
7 answer that question to do so.

8 MS. GERLITZ: Yes. I believe that the  
9 wording is in Commitment No. 53. It says that it would  
10 need to be necessary to meet load and also consistent  
11 with the lowest reasonable cost resource portfolio,  
12 pursuant to the most recent IRP. So, yes, that's the  
13 intent.

14 CHAIR DANNER: All right. So I just had a  
15 few questions that I would like to get on the record.

16 Mr. Lopez, Ontario passed legislation in 2015 and  
17 permanently banned coal-fired power plants. How does  
18 that law affect Province's potential ownership? They  
19 are 49 percent owners of Hydro One, 42 or 45; their  
20 potential ownership of 15 percent of Colstrip, 3 and 4.  
21 Is there any clout there whatsoever in the Hydro One or  
22 the Province of Ontario having banned coal plants but  
23 then taking ownership of them?

24 MR. LOPEZ: No, I believe the statute  
25 you're referring to talked about physical generation

1 located in Ontario. So there can be no more coal  
2 generation within the Province of Ontario. It's against  
3 the law, as we sit today.

4 CHAIR DANNER: Okay, but across the border  
5 or --

6 MR. LOPEZ: Sorry, Jamie is just  
7 conferring, that the Province does not own directly any  
8 interest in the coal plant transaction. It's owned by  
9 the shareholders, so Hydro One and then any direct  
10 ownership. But the statute you're referring, to the  
11 physical plants within the borders of Ontario.

12 CHAIR DANNER: Okay. So whether it's  
13 direct or indirect ownership, there is no prohibition on  
14 their taking ownership of Colstrip 3 and 4?

15 MR. LOPEZ: No. That's correct.

16 CHAIR DANNER: Last, I had a question on  
17 the independent board of directors coming from the  
18 Pacific Northwest.

19 MR. MORRIS: Yes.

20 CHAIR DANNER: And the Pacific Northwest  
21 is identified as the four states, and there is a  
22 requirement for independent. I just -- I noticed that  
23 Mr. Schmidt has some ties to the state of Montana, and  
24 is it anticipated that he would be one of those  
25 northwest directors or is that --

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1 MR. MORRIS: No. The way that we've  
2 described it is that there is four Avista board members  
3 and five Hydro One board members. The five Hydro One  
4 board members, two are from the Hydro One organization,  
5 Mayo being one and another person. The three other  
6 Hydro One board members would be independent, selected  
7 from the Pacific Northwest. So Mayo doesn't count --

8 CHAIR DANNER: As defined in the --

9 MR. MORRIS: Securities and Exchange.

10 CHAIR DANNER: Thank you. Okay. And then  
11 for the Northwest, those are selected by Hydro One as  
12 well?

13 MR. MORRIS: The independent board of  
14 directors ultimately would be selected, yes, by  
15 Hydro One. They would not be independent in the Pacific  
16 Northwest. The way we've done it initially is that Mayo  
17 and I will confer, and he is again relying upon my  
18 judgment as well as his own, about who those people  
19 might be. So we're in the process -- in a discovery  
20 process who they might be. But to the future, they have  
21 to be independent and they have to be picked from the  
22 Pacific Northwest.

23 CHAIR DANNER: Okay. And it's -- what is  
24 a resident of the Pacific Northwest, if it's somebody  
25 who has been here a year or two or somebody who has been

1 here a lifetime, you'll figure that out?

2 MR. MORRIS: Sure. I think the idea is  
3 that they would be residents of Washington, Idaho, or  
4 Washington.

5 CHAIR DANNER: Okay. Thank you.

6 MR. MORRIS: That's our definition of  
7 Pacific Northwest.

8 CHAIR DANNER: And mine too. Although  
9 there are parts of those states that I sometimes  
10 exclude. All right.

11 ALJ MOSS: I have one question that might  
12 be more the nature of clarification than anything else.  
13 With respect to condition 37, which requires a report to  
14 the commission in the event of the ratings agency  
15 downgrade of Avista. As I recall, the transaction with  
16 PSE a few years back had a similar provision with  
17 respect to PSE, and also the reporting requirement  
18 applied to the newly created corporate subsidiary that  
19 owned PSE.

20 There does not appear to be any requirement that the  
21 newly formed corporate subsidiary of Hydro One that will  
22 own Avista will report if it is indeed downgraded.

23 Is that something we should include, or was it a  
24 conscious decision not to include that or...

25 MR. LOPEZ: So the entity that will own

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1 Avista will be a special-purpose entity with no debt.  
2 So it will not have a rating. It does not need a  
3 rating. It has no liability to the entity.

4 ALJ MOSS: That answers the question.  
5 Thank you very much.

6 All right. Anything else from the bench?

7 All right. Do parties -- and Mr. Meyer, I guess  
8 I'll turn to you. Do you wish to have any closing  
9 statement before we finish up for the day?

10 MR. MEYER: The short answer is no. But  
11 we appreciate your patience, and if there are any  
12 follow-on questions or bench requests, we are always  
13 available to answer those.

14 ALJ MOSS: Anybody else? Anything else we  
15 need to take up today, counsel?

16 All right. Well, I would like to thank you all for  
17 your appearance today. And I apologize for the tight  
18 quarters there at the witness table, but it seemed to  
19 work out all right.

20 And I think we had a good hearing and got the  
21 information that we need. We will, of course, follow on  
22 if we need to. Otherwise, I will, again, say thank you  
23 very much, and we'll close the record.

24 (Proceeding concluded at 12:05 p.m.)

25

1 C E R T I F I C A T E

2 I, Laura Gjuka, a Certified Court Reporter in  
3 and for the State of Washington, residing at  
4 University Place, Washington, authorized to administer  
5 oaths and affirmations pursuant to RCW 5.28.010, do  
6 hereby certify;

7 That the foregoing Verbatim Report of Proceedings  
8 was taken stenographically before me and transcribed  
9 under my direction; that the transcript is a full, true  
10 and complete transcript of the proceedings, including  
11 all questions, objections, motions and exceptions;

12 That I am not a relative, employee, attorney or  
13 counsel of any party to this action or relative or  
14 employee of any such attorney or counsel, and that I am  
15 not financially interested in the said action or the  
16 outcome thereof;

17 That upon completion of signature, if required, the  
18 original transcript will be securely sealed and the same  
19 served upon the appropriate party.

20 IN WITNESS HEREOF, I have hereunto set my hand this  
21 5th day of June, 2018.

22  
23  
24  
25



Laura Gjuka, CCR No. 2057



