

Docket No. U-170970 - Vol. VI

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

May 22, 2018



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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

VOLUME VI
HEARING
May 22, 2018
9:32 a.m. - 12:05 p.m.
1300 South Evergreen Park Drive Southwest
Olympia, Washington

Taken Before:
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1 OLYMPIA, WASHINGTON; TUESDAY, MAY 22, 2018

2 9:32 A.M.

3

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

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<p>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.</p>	<p>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</p>
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<p>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</p>	<p>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.</p>

4 (Pages 242 to 245)

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

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.

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 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.

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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-

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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

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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

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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.

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

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 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

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

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 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

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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

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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.

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

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 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

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<p>1 Washington.</p> <p>2 Would that be something that we would catch in an</p> <p>3 audit? Is that something that would be transparent to</p> <p>4 us so we can make allocation decisions?</p> <p>5 MR. MORRIS: Absolutely, Chairman. Yes.</p> <p>6 Again, going back to our practices, whether it's been</p> <p>7 with unregulated businesses, Alaska or others, we do</p> <p>8 that now. We absolutely clearly understand that that's</p> <p>9 important to our customers, to you as commissioners, as</p> <p>10 our regulators and to our intervenors. So we would be</p> <p>11 absolutely transparent. We would make sure that we</p> <p>12 would account for all of those.</p> <p>13 And, again, I would just -- going back as being</p> <p>14 the -- at one point being the CEO of Ecova and also as</p> <p>15 chairman of the board of Ecova for many years, we made</p> <p>16 sure that if there were ever opportunities to have even</p> <p>17 discussions about things in the business, we would</p> <p>18 separately account for those.</p> <p>19 So we're fully aware of our responsibilities around</p> <p>20 accounting for things and not having our customers pay</p> <p>21 for those. And I would like to say we've got a great,</p> <p>22 from my opinion, a good past practice of doing the right</p> <p>23 thing.</p> <p>24 CHAIR DANNER: All right. Thank you.</p> <p>25 MS. ANDREWS: Can I add something here?</p>	<p>1 And our internal auditors, which would, of course, be</p> <p>2 separate, that would certainly audit the structures.</p> <p>3 In addition, we have an annual budget. We have a</p> <p>4 five-year business plan, which clearly defined costs or</p> <p>5 expenses by department, numbers of personnel. And so</p> <p>6 there is very clear measurement and delineation. And,</p> <p>7 quite frankly, Ontario would share the same concerns</p> <p>8 that you would share here. So they would want to make</p> <p>9 certain that, in fact, costs and revenues were ring</p> <p>10 fenced, and we're prepared to do that.</p> <p>11 In fact, even whether it's in our transmission</p> <p>12 business, which is measured and tested separately by</p> <p>13 budgets from our distribution, versus our forestry, and</p> <p>14 then again separating fully regulated and unregulated</p> <p>15 businesses, of which we have di minimis -- we have a</p> <p>16 telecom business, which is separate -- so those are held</p> <p>17 separate and apart and employees of either parties don't</p> <p>18 cross boundaries because they are held separate and</p> <p>19 apart. So it's part of the structural DNA of the</p> <p>20 organizations.</p> <p>21 And I think, as Scott has stated, our goals</p> <p>22 collectively are define efficiencies and productivities,</p> <p>23 and then those should go to the appropriate state or</p> <p>24 jurisdiction that they apply to for the creativity.</p> <p>25 But, as Scott mentioned, we do have things we can share</p>
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<p>1 We have existing protocols in place that helps with cost</p> <p>2 allocations and assignments of costs. And, as</p> <p>3 Mr. Morris mentioned, we follow those practices with</p> <p>4 Alaska and we would use those same type of protocols</p> <p>5 between us and Hydro One.</p> <p>6 ALJ MOSS: Okay. Let me interrupt half</p> <p>7 second here. I'm sorry for the technical interruption</p> <p>8 if you will, but you used an acronym Ecova, I believe.</p> <p>9 I assumed that is A-c-o-v-a?</p> <p>10 MR. MORRIS: No, E-c --</p> <p>11 ALJ MOSS: See? I got it wrong.</p> <p>12 MR. MORRIS: E-c-o-v-a. It's the name of</p> <p>13 a business. It used to be. Now its name has been since</p> <p>14 changed since we sold it.</p> <p>15 ALJ MOSS: Okay. Thank you.</p> <p>16 CHAIR RENDAHL: Ms. Andrews, were you done</p> <p>17 with your statement?</p> <p>18 So, Mr. Schmidt, do you have anything to add?</p> <p>19 MR. SCHMIDT: Sure. Thank you. As my</p> <p>20 first words, thank you for the kind invitation back to</p> <p>21 your beautiful state. It's a real pleasure to be here.</p> <p>22 I might just say structurally we are really -- in</p> <p>23 both organizations in a very good position to measure</p> <p>24 not only costs but revenues. And we think about our</p> <p>25 external auditors, which would be KPMG and Deloitte.</p>	<p>1 together that are going to provide benefits.</p> <p>2 So if in the case of the power poles where we have</p> <p>3 1.6 million and Avista has theirs, when we buy</p> <p>4 collectively and we get a discount for those, the</p> <p>5 numbers they buy versus the numbers we buy will apply to</p> <p>6 the state or the province in which those poles would be</p> <p>7 delivered. So that would be the structural competency</p> <p>8 that would be applied to how we would audit internally,</p> <p>9 externally, and separate board of directors, separate</p> <p>10 management teams. Thank you.</p> <p>11 CHAIR RENDAHL: Thank you. Are there any</p> <p>12 other parties that wish to weigh in, in terms of their</p> <p>13 testimony on this? Mr. Dahl.</p> <p>14 MR. DAHL: All right. I think this is on</p> <p>15 now.</p> <p>16 One thing that I will point to is Commitment 17,</p> <p>17 which, to my recollection, I just saw on page 9 of my</p> <p>18 testimony which is Exhibit CJT1T. To my recollection,</p> <p>19 that commitment was negotiated into the settlement and</p> <p>20 was not in the original application.</p> <p>21 And the high-level view of that particular</p> <p>22 commitment is that, depending on the timing of the next</p> <p>23 rate case filing, it provides for the test years that</p> <p>24 the company will provide. So it will allow for the</p> <p>25 commission to compare the operations of Avista before</p>

12 (Pages 274 to 277)

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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

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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?

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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

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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

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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

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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

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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

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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.

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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

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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

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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.

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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?

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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.

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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

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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.

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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

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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 off-sides 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

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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

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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.

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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.

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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

CERTIFICATE

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

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

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

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

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



Laura Gjuka, CCR No. 2057

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