

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DOCKET NO. U-170970

SUPPLEMENTAL TESTIMONY OF SCOTT L. MORRIS
REPRESENTING AVISTA CORPORATION

Supplemental Testimony Regarding Management Changes at Hydro One

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I. INTRODUCTION

Q. Will you please state your name, business address, and position with Avista Corporation?

A. My name is Scott L. Morris and I am employed as the Chief Executive Officer of Avista Corporation (“Avista”), at 1411 East Mission Avenue, Spokane, Washington. I also serve as the Chairman of the Board of Avista.

Q. Are you the same Scott L. Morris who sponsored pre-filed direct testimony on behalf of Avista Corporation (Avista)?

A. Yes, I sponsored Direct Testimony SLM-1T and Exh. SLM-2 through Exh. SLM-4. I also co-Sponsored Exh. JNT-1T, Testimony in Support of the Settlement Stipulation.

Q. Are you sponsoring any exhibits in this testimony?

A. Yes, I am sponsoring Exh. SLM-7, which is a map that shows foreign ownership of American utilities. It is provided for no other purpose than to show the extent of foreign ownership of utilities in this country, and that such a phenomenon is not unique to this transaction (the “Proposed Transaction”).

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1 **Q. Please summarize your Supplemental Testimony.**

2 A. The intent of my Supplemental Testimony is to reaffirm Avista's
3 commitment to the Proposed Transaction following the July 11, 2018 agreement between
4 Hydro One and the Province of Ontario that called for the orderly replacement of the Board
5 of Directors of Hydro One as well as the retirement of Mayo Schmidt as the chief executive
6 officer. As I will discuss in this Supplemental Testimony, specific merger protections, by
7 way of agreed-upon commitments (each, a "Stipulated Commitment", collectively
8 "Stipulated Commitments") contained within the filed Settlement Stipulation
9 ("Stipulation"), protect Avista from political interference or influence by the Province of
10 Ontario, preserve Avista's self-governance, and protect Avista and our customers from
11 harm. The structural safeguards included as part of this Proposed Transaction were
12 designed to withstand the test of time and changes in Hydro One management, and I
13 continue to believe that all of the reasons previously stated in support of the merger remain
14 equally true today, and that approval is in the public interest.

15 **Q. Before further discussing relevant Stipulated Commitments that insulate**
16 **Avista from Provincial interference, do you still believe that the Proposed Transaction**
17 **is beneficial to Avista's customers?**

18 A. I do. While the actions taken by the Board of Directors of Hydro One and the
19 retirement of Mayo Schmidt certainly took everyone by surprise, it is important to reflect
20 upon the Stipulated Commitments agreed to by the parties (the "Parties"). Following the
21 closing of the Proposed Transaction, the customers, employees and communities Avista
22 serves will see little or no change in Avista's operations, irrespective of actions taken in
23 Ontario. Avista will maintain its existing corporate headquarters in Spokane, Washington,

1 and will continue to operate as a stand-alone utility in Washington, Oregon, Idaho, Montana
2 and Alaska (through Alaska Electric Light & Power). It will maintain its office locations
3 throughout its service areas, continue to operate under the same Avista name, and seek to
4 retain its existing employees and management team. All of these elements together with
5 other provisions embedded within the Merger Agreement and agreed to in the Stipulation
6 are designed to ensure that Avista's culture and its way of doing business will continue for
7 the long-term. I have total confidence that the robust Stipulated Commitments developed by
8 all of the Parties to this proceeding will ensure the way Avista conducts business will
9 continue for the long-term.

10 **Q. Will Avista's operations, or the Commission's jurisdiction over Avista,**
11 **be adversely affected by the merger?**

12 A. No. As the Parties stated in support of the Stipulation, there are several
13 Stipulated Commitments included in the Stipulation that confirm the Commission's ongoing
14 jurisdiction over Avista and that confirm that Avista's operations will continue in a manner
15 substantially similar to the present after the consummation of the Proposed Transaction.¹ I
16 have stressed this point in my meetings with Avista employees that I have held since the
17 management changes were announced at Hydro One. First and foremost, assuming
18 Commission approval of the Stipulation, every Stipulated Commitment agreed to by Hydro
19 One and Avista in the Stipulation cannot be changed without approval or oversight of the
20 Commission. Commitment No. 30 states the following:

21 Hydro One and its subsidiaries, including Avista, understand that the
22 Commission has authority to enforce these commitments in accordance with
23 their terms. If there is a violation of the terms of these commitments, then the

¹ Exh. JNT-1T, p. 19, l. 3-7

1 offending party may, at the discretion of the Commission, have a period of
2 thirty (30) calendar days to cure such violation. The scope of this commitment
3 includes the authority of the Commission to compel the attendance of
4 witnesses from Olympus Holding Corp. and its affiliates, including Hydro
5 One, with pertinent information on matters affecting Avista. Olympus
6 Holding Corp. and its subsidiaries waive their rights to interpose any legal
7 objection they might otherwise have to the Commission's jurisdiction to
8 require the appearance of any such witnesses.

9
10 Second, to protect Avista from unforeseen events and outside influence, we
11 designed, purposefully, an Avista Board of Directors heavily weighted toward
12 representation from the Pacific Northwest. It is that Board that will be responsible for the
13 management of Avista, not the Hydro One Board of Directors, much less the Province of
14 Ontario. The Proposed Transaction includes extensive safeguards that have been
15 incorporated into the agreed upon Stipulated Commitments to protect and insulate Avista
16 and its customers from any change in management at Hydro One. As further discussed by
17 Hydro One's Executive Vice President and Chief Legal Officer, Mr. James Scarlett (Exh.
18 JDS-1T), the Province has ratified and reaffirmed its commitment to the Governance
19 Agreement, which remains in full force and effect and, among other things, requires that the
20 Province act as an investor and not a manager of Hydro One. The structural safeguards were
21 designed to withstand the test of time, and the inevitable changes in management. In the
22 end, I am confident that the structures and Stipulated Commitments included in the
23 Stipulation are strong, and ultimately protect Avista and its customers.

24 **Q. Are these structures and Stipulated Commitments somewhat unique in**
25 **the world of utility mergers?**

26 A. Yes. Hydro One and Avista expert witness, Mr. John Reed of Concentric
27 Energy Advisors (Exh. JJR-1T), testifies that these negotiated Stipulated Commitments and

1 governance provisions are “state-of-the-art” in terms of protecting the customer and assuring
2 operational independence. This is based on his extensive review of other transactions.

3
4 **II. REASONS FOR THE PROPOSED TRANSACTION**

5 **Q. Are the reasons for the Proposed Transaction still as compelling now as**
6 **they were when you agreed to the merger with Hydro One?**

7 A. Absolutely. In my pre-filed direct testimony (Exh. SLM-1T, pp. 9-12), I
8 explained that the merger with Hydro One will allow Avista and its customers to benefit
9 from being part of a larger organization (the benefits of scale), while at the same time
10 preserving local control of Avista and the retention of Avista’s employees and management
11 team, as well as its culture and way of doing business. That is unchanged as a result of the
12 management changes at Hydro One.

13 With regard to scale, Avista’s perspective was that the number of investor-owned
14 electric and/or natural gas utilities in North America has decreased significantly over the
15 years through consolidation. When comparing the size of investor-owned utilities from
16 largest to smallest, Avista is one of the smallest investor-owned utilities remaining in North
17 America. A bar chart indicative of the investor-owned utilities in North America, from
18 largest to smallest, is attached to my direct testimony in Exh. SLM-2. The merger of Avista
19 and Hydro One will place the combined company toward the middle of the range of
20 investor-owned utilities, in terms of size. Avista’s view is that, through consolidation, larger
21 utilities have the opportunity to spread costs, especially the costs of new technology, over a
22 broader customer base and a broader set of infrastructure to the benefit of customers.

1 Hydro One has more than 1.3 million electric distribution customers, and Avista has
2 approximately 378,000 electric customers and approximately 342,000 natural gas customers
3 (approximately 102,000 of which reside in Oregon as of the end of 2017). This combination
4 will provide opportunities for efficiencies in the long-term through the sharing of best
5 practices, technology and innovation. Avista's view was that the merger will provide
6 benefits to Avista's customers that otherwise would not occur. That view is unaffected by
7 the management changes at Hydro One.

8 As previously noted, many of these benefits of scale will not occur in the near-term
9 following the closing of the Proposed Transaction, but are expected to occur over the long-
10 term. After all approvals are received and the companies merge, both companies have stated
11 that they will work together to identify, evaluate and execute on opportunities to reduce
12 costs for both companies through, among other things, the sharing of technology, best
13 practices, and business processes. To the extent that such savings materialize, the benefits
14 from these cost savings will be reflected in subsequent rate proceedings.

15 In the end, Avista's choice to merge with Hydro One will allow Avista and its
16 customers to benefit from being a part of a larger organization, while at the same time
17 preserving local control of Avista as well as its culture and its way of doing business.
18 Agreements to preserve Avista, essentially as it is today, for the long-term are memorialized
19 in the Merger Agreement. The Proposed Transaction also provides benefits to Avista's
20 customers, employees, shareholders, and the communities Avista serves; including
21 immediate financial benefits to Avista's customers. Those have been exhaustively discussed
22 in prior testimony supporting the Stipulation.

23

1 Chief Executive Officer of Avista as of the time immediately prior to
2 closing for a one year term. If any Avista Designee resigns, retires or
3 otherwise ceases to serve as a director of Avista for any reason, the
4 remaining Avista Designees shall have the sole right to nominate a
5 replacement director to fill such vacancy, and such person shall
6 thereafter become an Avista Designee.

7 The term "Pacific Northwest region" means the Pacific Northwest
8 states in which Avista serves retail electric or natural gas customers,
9 currently Alaska, Idaho, Montana, Oregon and Washington."

10
11 I believe that the unique construct of the Board, which consists of four Avista
12 designees and three Independent Directors, will have enough independence and separation
13 from influence by Hydro One (and the Province of Ontario).

14 Further, Stipulated Commitment No. 2 assures that Avista's executive management
15 will remain in place. Stipulated Commitment No. 2 states the following:

16 Avista will seek to retain all current executive management of Avista, subject
17 to voluntary retirements that may occur. This commitment will not limit
18 Avista's ability to determine its organizational structure and select and retain
19 personnel best able to meet Avista's needs over time. The Avista board retains
20 the ability to dismiss executive management of Avista and other Avista
21 personnel for standard corporate reasons (subject to the approval of Hydro
22 One Limited ("Hydro One") for any hiring, dismissal or replacement of the
23 CEO).

24
25 **Q. Certain of these Stipulated Commitments were developed to ensure that**
26 **Avista cannot be subjected to political interference or influence by the Province. Do**
27 **you believe these Stipulated Commitments are adequately designed to prevent the**
28 **Province or any other party from exercising inappropriate control over Avista?**

29 A. Yes. I believe the structure of Avista's board would protect it from
30 inappropriate influence by the Province. Although the Province is permitted under the

1 Governance Agreement to nominate 40% of Hydro One's Board members, those Board
2 members must be independent of the Province and, other than the CEO, Hydro One. Hydro
3 One's management and Board, and not the Province, will be responsible for selecting five of
4 Avista's nine Board members (three of whom must be independent and reside in the Pacific
5 Northwest).

6 **Q. Do you believe there are adequate financial and bankruptcy ring fencing**
7 **Stipulated Commitments to protect all Parties and customers?**

8 A. Yes. The Stipulated Commitments appended to the Stipulation contain a
9 substantial number of financial and bankruptcy/ring-fencing protections that will protect the
10 financial health of Avista. Neither Hydro One, nor the Province, can deprive Avista of its
11 capital and assets. There are Stipulated Commitments that (i) Avista will continue to have
12 its own credit ratings, (ii) assure that Hydro One will provide equity capital injections to
13 support Avista's capital structure and allow Avista to access debt financing under reasonable
14 terms and on a sustainable basis, and (iii) provide restrictions on dividends and distributions
15 that help preserve Avista's financial integrity. Hydro One and Avista also committed to
16 issue a single share of preferred stock referred to as the Golden Share to an independent
17 third party to address any bankruptcy concerns. All of these Stipulated Commitments are
18 further discussed in Mr. Thies' Supplemental Testimony.

19 **Q. Are there other specific Stipulated Commitments that serve to protect**
20 **against outside control of the Province of Ontario?**

21 A. Yes. There are several Stipulated Commitments that assure all the existing
22 pieces that make Avista "Avista" will remain in place. More specifically, the following
23 Stipulated Commitments highlight this. Stipulated Commitment No. 2 speaks to Avista's

1 executive management:

2 Avista will seek to retain all current executive management of Avista, subject
3 to voluntary retirements that may occur. This commitment will not limit
4 Avista's ability to determine its organizational structure and select and retain
5 personnel best able to meet Avista's needs over time. The Avista board retains
6 the ability to dismiss executive management of Avista and other Avista
7 personnel for standard corporate reasons (subject to the approval of Hydro
8 One Limited ("Hydro One") for any hiring, dismissal or replacement of the
9 CEO).

10 Stipulated Commitment No. 9 speaks to maintaining Avista's headquarters location:

11 Avista will maintain (a) its headquarters in Spokane, Washington; (b) Avista's
12 office locations in each of its other service territories, and (c) no less of a
13 significant presence in the immediate location of each of such office locations
14 than what Avista and its subsidiaries maintained immediately prior to
15 completion of the Proposed Transaction.

16 Stipulated Commitment No. 10 addresses local staffing:

17 Avista will maintain Avista Utilities' staffing and presence in the communities
18 in which Avista operates at levels sufficient to maintain the provision of safe
19 and reliable service and cost-effective operations and consistent with pre-
20 acquisition levels.

21 And Stipulated Commitment No. 39 protects pension and post retirement expenses and
22 assets:

23 Avista will maintain its pension funding policy in accordance with sound
24 actuarial practice. Hydro One will not seek to change Avista's pension
25 funding policy.

26 I believe this preservation of Avista's headquarters, its culture and its way of doing
27 business, among other things, are important commitments to our employees and Avista's
28 customers, as they continue to expect and experience reliable service and a high level of
29 customer satisfaction. This demonstrates our commitment to best serve the public interest,
30 given our rich heritage of serving customers with safe, reliable, and cost-effective service.

31 **Q. Are there significant Stipulated Commitments which recognize the**

1 **Commission's authority over Avista's operations?**

2 A. Yes, in my view, there are two Stipulated Commitments that protect the
3 interest of all Parties, and explicitly recognize that the Commission's authority over Avista's
4 operations will remain unchanged by the merger, that the parties will comply with all
5 applicable laws and regulations, and that recognize the Commission's jurisdiction over all
6 matters of concern. First, Stipulated Commitment No. 20 provides the following:

7 Olympus Holding Corp. and its subsidiaries, including Avista, as appropriate,
8 will comply with all applicable laws, including those pertaining to transfers of
9 property (Chapter 80.12), affiliated interests (Chapter 80.16), and securities
10 and the assumption of obligations and liabilities (Chapter 80.08).

11 Furthermore, Stipulated Commitment No. 21 states:

12 Olympus Holding Corp. and its subsidiaries, including Avista, acknowledge
13 that all existing orders issued by the Commission with respect to Avista or its
14 predecessor, Washington Water Power Co., will remain in effect, and are not
15 modified or otherwise affected by the Proposed Transaction.

16

17 **Q. Do you believe the Stipulated Commitments filed in the Stipulation**
18 **ensure that Avista could not be negatively impacted in any way, and that these**
19 **Stipulated Commitments preserve Avista self-governance and local control for the**
20 **purpose of maintaining safe and reliable service to Avista's utility customers?**

21 A. Yes. In my view the Stipulated Commitments offered in the Stipulation were
22 negotiated and designed to provide separate governance and financial ring-fencing between
23 Avista and Hydro One, and to preserve Avista's headquarters in Spokane, along with
24 retention of existing management and employees. All of the protections described above in
25 addition to all of the other Stipulated Commitments included in the Stipulation ensure that
26 Avista will continue as a financially sound, stand-alone utility and will bind Hydro One,

1 regardless of political developments and change in management. In short, all of these
2 Stipulated Commitments were designed by the Parties to “stand the test of time.”

3 Furthermore, Avista and Hydro One have committed that none of the Stipulated
4 Commitments can be amended without approval from Avista’s state regulators (see
5 Stipulated Commitment No. 30, “Commission Enforcement of Commitments”), which
6 assures that the Commission will continue to regulate Avista as it always has, to ensure that
7 Avista’s customers are protected and continue to only pay fair, just, and reasonable rates.

8

9 **IV. ADDITIONAL COMMITMENT**

10 **Q. Notwithstanding the above discussion, are Avista and Hydro One**
11 **offering an additional commitment based on the recent changes in management at**
12 **Hydro One?**

13 A. Yes. As discussed in the “Comments of Avista and Hydro One As Joint
14 Applicants in Reference to Management Changes at Hydro One” filed on July 18, 2018,
15 Hydro One and Avista provided the following new commitment:

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

24

25 This new commitment provides further protection to Avista’s employees, such that it
26 is only the Avista Board, and not the Hydro One Board nor the Province of Ontario, which

1 will determine how Avista will be able to continue to recruit and retain the most highly
2 qualified employee talent base for our customers.

3 **Q. Have Avista and Hydro One discussed making any revisions to the**
4 **Delegation of Authority (Appendix 5 of the Joint Application) to respond to the events**
5 **after the June 7, 2018 Ontario election involving Hydro One?**

6 A. Yes. Avista and Hydro One propose to amend this section of the Delegation
7 of Authority as follows:

8 Shareholder shall have the unfettered right to designate, remove and replace
9 the Shareholder Designees as directors of the Surviving Corporation with or
10 without cause or notice at its sole discretion, subject to the requirement that (i)
11 two (2) of such directors are executives of Parent or any of its Subsidiaries
12 and (ii) three (3) of such directors are Independent Directors who are residents
13 of the Pacific Northwest Region, while such requirement is in effect (subject
14 in the case of clause (ii) hereof to Shareholder determining, in good faith, that
15 it is not able to appoint an Independent Director who is a resident of the
16 Pacific Northwest Region in a timely manner, in which case Shareholder may
17 replace any such director with an employee of Parent or any of its Subsidiaries
18 on an interim basis, not exceeding six months, after which time Shareholder
19 shall replace such interim director with Independent Director who is a resident
20 of the Pacific Northwest Region; provided, however, that this exception to
21 clause (ii) hereof shall not apply if, at any time a circumstance arises, and
22 during the pendency of any such circumstance, whereby the Province of
23 Ontario (“Ontario”) exercises its rights as a shareholder of Parent, uses
24 legislative authority or acts in any other manner whatsoever, that results, or
25 would result, in Ontario appointing nominees to the board of directors of
26 Parent that constitute, or would constitute a majority of the directors of such
27 board).

28

29 **Q. What is the purpose of the new text in the Delegation of Authority?**

30 A. This proposed amendment to the Delegation of Authority is designed to
31 protect the independence of the Avista board in the event that the Province takes some

1 action in the future to control a majority of the Hydro One Board. If that event occurs, this
2 amendment is triggered and blocks Hydro One's limited right to replace any of its three
3 Independent Director designees on the Avista board with a Hydro One executive or
4 employee.

5

6 **V. FOREIGN OWNERSHIP OF UNITED STATES UTILITIES**

7 **Q. There have been general concerns among a small group of customers in**
8 **certain portions of Avista's service territory about a foreign company purchasing an**
9 **American utility. Do you share these concerns?**

10 A. No, I do not. First, all of the protections discussed briefly above dictate how
11 Avista will, or will not be, affected by Hydro One's ownership. Second, this is not the first
12 transaction in the United States where a foreign entity purchased all or a portion of an
13 American utility. Approximately 30 States have utilities that are owned by foreign entities,
14 including many that are owned by Canadian entities (utilities, pension funds, etc.). Exh.
15 SLM-7 provides a map showing where there is foreign ownership of American utilities. In
16 addition, we are unaware of any issues resulting from foreign ownership. It is also
17 important to remember that the Proposed Transaction has also been cleared by the
18 Committee on Foreign Investment in the United States (CFIUS). In the end, I believe the
19 purchase of Avista by Hydro One should not be seen as something new, novel or scary –
20 such transactions are actually quite common, and if designed well, have and will continue to
21 provide benefits for American utility customers. And, as Hydro One and Avista witness Mr.
22 Reed notes in his testimony (Exh. JJR-1T), this Proposed Transaction has been designed
23 with "state-of-the-art" protections.

1 **Q. Do you have any concluding comments?**

2 A. Yes. As I stated earlier, I understand that the recent events in Ontario were
3 unexpected. However, when the smoke clears and one looks at this Proposed Transaction
4 through the lens of the Stipulated Commitments, nothing fundamental has changed. The
5 reason for the Proposed Transaction still holds – Hydro One will in essence be the primary
6 shareholder of Avista, but the Avista Board, along with Avista management under the
7 oversight of this Commission, will continue to operate a well-run utility for the benefit of
8 our customers. The Parties carefully crafted protections and commitments to withstand the
9 test of time, and the inevitable changes in management. I fully support the Proposed
10 Transaction, believe it is in the public interest (especially given the rate credits, low-income
11 funding, and community support), and request the Commission approve the Proposed
12 Transaction.

13 **Q. Does this conclude your Supplemental Testimony?**

14 A. Yes.