

Hydro One, Avista hope to learn Monday if Washington utility regulator will reverse ruling on merger

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IN BRIEF

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The deal received federal antitrust clearance April 6, US Federal Communications Commission approval May 4, and national security clearance from the Committee on Foreign Investment in the United States May 21. But the merger was blocked in the state of Washington in December when the Washington Utilities and Transportation Commission (UTC) determined the combination didn't serve the public interest.

Separately, the Idaho Public Utilities Commission also blocked the deal yesterday, saying the merger would violate a state law preventing the sale of electric utility assets to entities "owned or controlled, directly or indirectly, by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit ... organized under the laws of any other state."

The companies submitted a petition for reconsideration in Washington state on Dec. 17; the review period will expire Monday. The UTC can grant the petition for reconsideration, modify its prior order, or take other actions, including extending the time frame for deliberations, the companies said.

If the UTC doesn't take action by Monday, the petition is considered denied. The companies would then have 30 days to seek a judicial review if they choose, according to the Washington UTC.

— Long odds —

Toronto-based Hydro One and Spokane, Washington-based Avista must close the merger by March 29 or they lose funding for the transaction, the companies

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said.

Energy analysts and consultants following the companies' efforts to convince the UTC to reverse the ruling and approve the deal say the merging utility companies are facing long odds.

Robert McCullough, founder of McCullough Research, a Portland, Oregon-based energy consulting firm that provides strategic planning assistance and litigation support, said the companies' application for reconsideration overlooks the fundamental shortcoming of the merger, "primarily that the second-largest utility in Washington state will be controlled by a foreign government."

Avista serves more than 240,000 electric and nearly 153,000 natural gas customers in eastern Washington. Hydro One is Ontario, Canada's largest electricity transmission and distribution provider, with more than 1.3 million customers.

The Province of Ontario owns 47 percent of Hydro One and has influence over the utility's management. That ownership stake is largely why the UTC denied the combination on Dec. 5, with the regulator claiming the merger agreement didn't protect Avista or its customers from political and financial risk.

Idaho also cited that ownership and influence as a reason for blocking the deal yesterday.

– 'Foundational' concerns –

Under the companies' original proposal, Avista would have become a subsidiary of Hydro One. Avista would have kept its corporate headquarters in Spokane and retained its management team.

In March 2018, the companies negotiated a settlement with UTC and other parties that would have provided more than \$30 million in rate credits to Washington state ratepayers over a five-year period, among other benefits.

The companies also said the deal insulated Avista from Hydro One's largest shareholder, the Province of Ontario, which claimed to be a passive investor.

Following a general election in Ontario this past June, the province and Hydro One announced an agreement to replace Hydro One's board of directors and for its CEO to retire.

The change to the company's management structure, presumably prompted by changes in the province's ruling party, caused government officials in Washington state to take another look at how politics could impact Avista and its customers.

“The Commission’s concern is a foundational one,” McCullough said. “It goes something like, ‘We like investors, we’re a little concerned about governments’. If this was the North Korean government offering to buy, everyone would say, ‘Oh my gosh.’”

“Well, this is a Canadian quasi-government institution, which is much less scary, but it still has a different set of goals,” he said.

Rob Rains, senior energy analyst for Washington Analysis, a Washington, DC-based research firm that analyzes changes in public policy, said in a research paper that Hydro One and Avista have a difficult path for “rescuing this deal,” Associated Press reported in December.

When the Washington state UTC rejected the merger, it said in a statement that the agreement “elevated the provincial government’s political interests above the interests of other stakeholders, including investors that own 53 percent of Hydro One’s common stock.”

“The action resulted in credit downgrades and decreased the value of Hydro One and Avista stock,” the commission said. “The province subsequently passed a law limiting the compensation of the company’s executives and providing for ongoing involvement by the province in matters typically reserved to executive management and the board of a private company.”

In their petition for reconsideration, the companies said the Washington UTC failed to specify “how Provincial actions could actually impact Avista” and that the commission had downplayed the benefits of the sale to Avista utility customers, including about \$42.4 million in customer benefits and charitable contributions over a decade.

McCullough called the companies’ efforts to rescue the deal a long shot, adding that the companies’ appeal in Washington state isn’t likely to “pluck the heartstrings of the commission.”

Linked Case File(s)

Hydro One - Avista

Subjects : Mergers & Acquisitions

Industries : Electricity, Energy, Oil, Gas, Coal

Regulators / Courts : DOJ, FTC, US Courts

Jurisdiction : North America, USA

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