



BRIEF

Merger, they wrote: Avista and Hydro One ask Washington regulators to reconsider rejection

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Dive Brief:

- Avista and Hydro One on Monday asked the Washington Utilities and Transportation Commission (UTC) to reconsider its order denying approval of their \$6.7 billion merger proposal.
- Earlier this month, the UTC rejected the proposal on concerns that it would give the Ontario provincial government, which owns 47% of Hydro One, undue power over Avista. Monday's filing contends that the commissioners "misapprehended" the political risks that would be involved in being owned by Hydro One.
- Avista and Hydro One say they face a March 29, 2019, closing deadline. Shortly after that date, they claim funding for the transaction would not be available, so they are asking for a decision from the UTC by the end of January.

Dive Insight:

Facing limited alternatives to their planned merger, Avista and Hydro One are taking a second shot. But it may be a long shot.

"I would be amazed if it worked," Robert McCullough, principal of consulting firm McCullough Research, told Utility Dive.

McCullough said he found the filing for reconsideration "surprising" and surmised it was a result of Hydro One being "desperate to get the relatively high rate of returns" that Avista earns in Washington State.

In the filing for reconsideration, Avista and Hydro One said that, in addition to "misapprehending the political risks" that the Province of Ontario's ownership stake in Hydro One poses to Avista and its customers, the commission failed to understand the transaction's benefits to ratepayers, and misperceived the potential harm to Hydro One shareholders as a result of provincial interference.

In its denial, the UTC cited the July resignation of Hydro One CEO Mayo Schmidt and the entire Hydro One board under pressure from Ontario's newly elected premier, Doug Ford, who had made reform of the utility one of his top campaign promises.

"Hydro One's directors cannot be considered independent and the province's role is not limited to that of a minority shareholder in a publicly traded corporation," the UTC wrote in its denial order.

In refiling, the petitioners argue that the UTC did not elaborate "a specific way in which the Province could actually reach through the corporate structure and the state-of-the-art ring fencing commitments to impact Avista and its customers."

Avista and Hydro One also said rejection of the merger would eliminate approximately \$42.4 million in customer benefits and significant charitable contributions over a 10 year period.

The merger agreement calls for Avista to contribute \$7 million to its charitable foundation, to maintain a \$4 million annual budget for charitable contributions for five years, as well as a \$2 million contribution to Avista's charitable foundation.

The petitioners also said the commission mistakenly understood the retained earnings from which ratepayer benefits would flow

as ratepayer funds, instead of shareholder funds.

As additional evidence, Avista and Hydro One submitted to the UTC a letter from Stephen Rhodes, Ontario's deputy minister of energy that "reiterate[s] the Ministry's commitment to supporting Hydro One in its efforts to complete the Avista acquisition."

The petitioners also offered to provide testimony by Hydro One's new president and CEO once he is appointed.

But McCullough says Avista has history against it, both recent and distant.

The dismissal of Hydro One's CEO "has not been a success story that we are all most comfortable with." Prior to that, there was the ill-fated \$7.8 billion acquisition of PacifiCorp by Scottish Power in 2000, which fell apart in 2005, and in 2009, Macquarie Group acquired Puget Energy in a leveraged buyout. In 2018, Macquarie sold its stake in Puget Energy to Canadian pension funds.

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