Re: Sale of Hydro One (Docket U-1-170970, WUTC v. Avista)
Submitted on August 7, 2018

Under the present circumstances, because of what has developed with respect to Hydro One in Canada and the possibility of continuing turmoil within the company and with the government of the province in which it is located, it would be unconscionable and reckless for the Commission to approve the sale of Avista to Hydro One.

The ratepayers of Avista demand that the Commission do what is best for them and not what would enrich the shareholders or senior managers of the Company. It is the duty of the Commission, since the ratepayers are at the mercy of the monopolistic company, to assure that their interests are protected and that they not be taken advantage of because of some flawed business model established to reward a few over the many who must pay their energy rates. The proposal of a sale of an energy company to an entity in another country, as has now been shown, is subject to the vagaries of the politics and policies of that foreign country and should not be approved.

Following the definition section of chapter RCW 80.12.010, dealing with the Commission, is the note containing the finding in the original legislation, which states:

> ***Finding—2009 c 24:*** *"The legislature finds and declares that the Washington utilities and transportation commission should require that a* ***net benefit to customers*** *be shown in order to approve the acquisition of the franchises, properties, or facilities owned by a gas or electrical company in the state and which are necessary or useful in the performance of the duties of a gas or electrical company, and that its decision to approve or deny such an acquisition should be made within a prescribed period of time." [2009 c 24 § 1.] (****emphasis added****)*

It is respectfully submitted that a net benefit to customers cannot be found to exist for the sale of Avista to Hydro One and the sale should not be allowed.

According to RCW 80.01.040, as the Commission is well aware, one of the general powers and duties of the Commission is to:

> *… (3) Regulate* ***in the public interest****, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this*

state in the business of supplying any utility service or commodity to the public for compensation. ***(emphasis supplied)***

As can be seen from this provision of the law, the Commission must regulate the practices of Avista in this case "in the public interest" with due consideration concerning the sale of a monopoly doing business in this state to a company located in a foreign country.

Likewise, WAC 480-100-245 - Affiliated interests—Contracts or arrangements provides, inter alia:

… The commission may institute an investigation and disapprove the contract or arrangement if the commission finds the utility has failed to prove that it is ***reasonable and consistent with the public interest. (emphasis supplied)***

The Commission should disapprove the arrangement as set out in specific terms with Hydro One relative to the sale of Avista because the provisions are not reasonable and consistent with the public interest.

If the sale is approved by the Commission, what will happen when the next change of administration occurs in the province of Ontario in Canada? Will Avista as a subsidiary of Hydro One be required to abide by a change in the law as passed by the legislative body of Canada? The myriad of questions that could be asked concerning changes occurring in Canada are too many to be imagined. Can the Commission guarantee that what they might have to allow to cover for business mistakes occurring in the parent company, or for that matter in the subsidiary company, will not adversely affect the ratepayers in the future as a result of this unwise proposal?

For example, this provision at page 94 in the agreement between Avista and Hydro one should cause concern to the Commission:

Governing Law
The merger agreement is ***governed by and will be construed in accordance with the laws of the State of Delaware****, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware,* ***except that matters related to the fiduciary obligations of the Board and matters that are specifically***

> ***required by the Washington law in connection with the merger*** *are governed by the laws of the State of Washington.* ***(emphasis supplied)***

An attorney familiar with these provisions and filings could tell how the changes in Canada might affect the merger plans and should be consulted. Does the law of Delaware or WA apply? Which "matter related to the fiduciary obligations of the Board and matters that are specifically required by the Washington law in connection with the merger" are specifically required by RCWs? Are there any? If no specific laws would apply wouldn't all disputes or concerns be decided under Delaware law? Is the Commission willing to give up its supervisory role to the laws of another state or foreign country? How could that possibly be "in the public interest" and a "net benefit" to the ratepayers of Avista?

Is the new CEO and the yet non-existent Board of Hydro One bound by the agreement, to what extent, and what happens if they change their minds and don't want to proceed with the deal? Are they still bound by those provisions? Can the penalty provision (p. 92-93) then be enforced or is Hydro One entitled to specific performance under the terms of the agreement (p, 94)? If there is a penalty to be paid, rates will obviously have to be raised to satisfy it. How can this be in the interest of the ratepayers and how could such a provision be entered into in advance of the approval of the sale?

How is it appropriate for Avista to enter into an agreement that if it is broken would result in a substantial penalty or enforcement by the specific performance provision when its approval must first occur not only by this Commission but also by the regulatory agencies of several states? What lawyers would propose such a contract to its client and what managers or board of directors of a company would agree to such provisions? Apparently one in which neither the senior management or board of directors are concerned that it has been reported Hydro One is a company that is currently $20 Billion in debt. Could that be as a result of the provisions for the senior management to obtain millions in connection with the sale? How can this possibly be advantageous to the ratepayers of Avista and a net benefit to them? The ratepayers already suffer from rates set by the Commission that allow the company to donate a substantial amount of money obtained from the ratepayers to charities of its choice. The company has advertised its promise to increase this amount if the sale obtains approval. With a rate increase in order to do it?

Why would Avista's managers and board agree to these provisions if they were aware of the impending vote and circumstances surrounding it that could result in a

change in Ontario when the person running for office there based his campaign on the fact that he would fire the CEO of Hydro One because of the way he was guiding that company? If those in Avista were not aware of the situation that is even worse.

Finally, even though RCW 80.12.030 provides, inter alia:

> *(1) Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void.*

would any agreement entered into prior to the sale or merger be void thereby eliminating the responsibilities of the penalty or specific performance provisions? If not, applying to the Commission for approval, is simply seeking a rubber stamp on what has already been cast in concrete.

Respectfully, for all the above reasons, the sale of Avista to Hydro One should not be allowed.

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