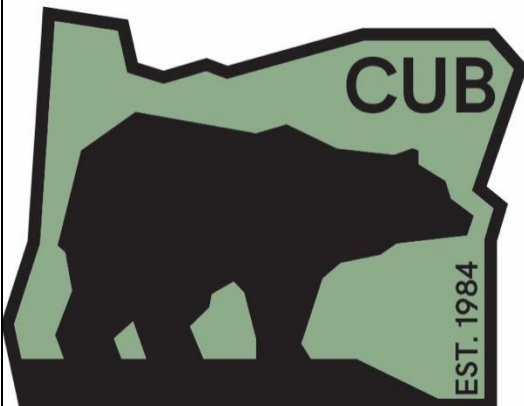


**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1897**

In the Matter of)
)
HYDRO ONE LIMITED,)
)
Application for Authorization to Exercise)
Substantial Influence over the Policies and)
Actions of AVISTA CORPORATION.)
_____)

**OBJECTIONS
OF THE
OREGON CITIZENS' UTILITY BOARD**

November 27, 2018



**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1897**

In the Matter of)	
)	
HYDRO ONE LIMITED,)	OBJECTIONS OF THE OREGON
)	CITIZENS' UTILITY BOARD TO
)	STIPULATION AND REVISED
Application for Authorization to Exercise)	STIPULATED COMMITMENTS
Substantial Influence over the Policies and)	
Actions of AVISTA CORPORATION.)	
_____)	

I. INTRODUCTION

Pursuant to OAR 860-0010350(8) and Administrative Law Judge (“ALJ”) Power’s November 6, 2018 Ruling modifying the procedural schedule, the Oregon Citizens’ Utility Board (CUB) submits its objections to the Five Party Stipulation filed by Hydro One Limited (Hydro One), Avista Corporation (Avista), Oregon Public Utility Commission Staff (Staff), the Alliance of Western Energy Consumers (AWEC) and Oregon and Southern Idaho District Council of Laborers (OSIDCL) (hereafter Stipulating Parties). In these objections, CUB reaffirms its opposition to Hydro One’s proposed acquisition of Avista (proposed transaction) and responds to arguments raised in the Stipulating Parties’ Joint Brief in Support of First Amendment to Stipulation and Revised Commitments, filed November 13, 2018.

On September 14, 2017, Hydro One filed an Application to Exercise Substantial Influence over the Policies and Actions of Avista Corporation. After several rounds of

testimony and several settlement conferences, on May 25, 2018, Hydro One, Avista, Staff, AWEC, OSIDCL and CUB entered into an all-party settlement to resolve all issues in this proceeding. However, on July 11, 2018, Hydro One entered into an agreement with the Province of Ontario (Province), where Hydro One's board of directors was replaced and CEO Mayo Schmidt was to retire effective immediately. The firing of Hydro One's management was enacted by the Province, under the guidance of Ontario Premier Doug Ford. In response to the actions of the Province, the Stipulating Parties proposed amendments to the stipulation and revised the stipulated commitments. CUB has not signed onto the stipulation, because we believe the Province should be required to sign an affidavit attesting that it is a passive investor in Hydro One and that it will not exercise substantial authority over the policies and actions of Avista.

II. ARGUMENT

A. *New Commitments do little to Assuage CUB's Concerns*

Despite the three new commitments (Commitments 116 – 118) and revisions to Stipulated Commitments 4, 5, and 112¹, CUB does not believe there is sufficient protection for and benefit to Oregon customers to render the proposed transaction supportable. That is to say, CUB continues to believe that the proposed transaction fails to meet the net benefit standard required by ORS 757.511. Therefore, CUB respectfully requests that the Commission reject the proposed transaction because it fails to provide a net benefit to Avista's Oregon customers. CUB's concerns regarding the political risk and future uncertainty of Hydro One's potential ownership of Avista have been well

¹ See UM 1897 Joint Brief in Support of First Amendment to Stipulation at 1-2.

articulated throughout the record in this proceeding.² Therefore, CUB will not belabor those arguments and, instead, incorporates them here by reference. These objections will focus on concerns related to the new commitments, revisions, and arguments raised by the Stipulating Parties in their Joint Brief.

CUB strongly disagrees with the Stipulating Parties' assertion that the new commitments resolve concerns relating to ORS 757.511, which has previously required an affidavit by the applicant or passive investor in the entity seeking to acquire an Oregon utility.³ The Stipulating Parties are correct that Judge Power directed parties to work together to find a creative solution that would function similarly to a passive-investor affidavit.⁴ Unfortunately for the Stipulating Parties, their "solution" falls flat, and fails to either adequately protect Oregon customers or provide an articulable net benefit. New Commitment 116 enables the Commission to amend or strengthen any commitments in the event of Legislative Action, and Commitment 117 "ensures that all Avista board members . . . are aware of the fact that the Province is prohibited from attempting to exercise any substantial influence over the policies and actions of Avista."⁵ This Commitment goes on to require annual affidavits from Avista board members attesting that they will notify the Commission if they are aware of any Provincial action to influence Avista.

To CUB, these commitments are relatively meaningless. The main concern that we have had throughout this proceeding is that the Province of Ontario is inextricably linked to the actions of Hydro One, and that, as the majority shareholder, it can exert

² See, e.g., UM 1897 – CUB/200/Gehrke-Jenks and UM 1897 – CUB/300/Gehrke-Jenks.

³ UM 1897 – Joint Brief in Support of First Amendment to Stipulation at 2.

⁴ *Id.* at 1.

⁵ *Id.* at 3-4.

substantial influence over the management, compensation, and operations of Hydro One. A commitment requiring notice from Avista's board members does absolutely nothing to mitigate the Province's ability to influence Hydro One. The new commitments are reactive towards the Province's influence, instead of being proactive. Therefore, they do nothing to mitigate CUB's concerns. Although the initial stipulation reached in this docket was sufficient to mitigate CUB's concerns, the intervening political events in Ontario turned our analysis in this proceeding on a head. As such, we have noted that we cannot envision any appropriate ring-fencing provisions over Ontario's authority over Hydro One.⁶ The new commitments have not changed our stance on this issue, and they do not satisfy the net benefit standard required by ORS 757.511. Therefore, CUB believes the Commission should reject the proposed transaction as it does not satisfy the legal requirements for a merger proceeding in this jurisdiction.

Alternatively, if the Commission does approve the transaction, CUB believes it should place commitments on the transaction that have an actual effect in protecting Oregon customers. The notice requirements provided in the new commitments are not sufficient. Providing notice after the fact by Avista's board members is too late to shield the Company from the political interference that we have already seen. The Province is incredibly likely to interfere in the future, as Hydro One has now been politicized in Ontario. Similar to the affidavit in the PacifiCorp-MidAmerica merger, the Commission should require the Province of Ontario to sign an affidavit ensuring it will not interfere or attempt to exert substantial influence over Hydro One or Avista. Only in the presence of such a commitment—or a divestiture of interest in Hydro One by Ontario—will CUB

⁶ UM 1897 – CUB/300/Gehrke-Jenks/8.

potentially be able to support the proposed transaction. The potential risk of future political interference is too great, and Avista is currently a well-run, prudent utility. The status quo should not be eschewed to enable executives to benefit from the proposed transaction to the detriment of Oregon customers. The proposed transaction should either be denied, or substantially modified through commitments that provide real protection.

III. CONCLUSION

For the foregoing reasons, CUB respectfully requests that the Commission reject the proposed transaction, as it fails to provide a net benefit to Avista's Oregon customers as required by ORS 757.511. Should the Commission approve the proposed transaction, CUB asks that the Commission modify the Stipulation to require an affidavit from the Province attesting that it will not attempt to exert substantial influence over the policies and actions of Avista.

Dated this 27th day of November, 2018.

Respectfully submitted,



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