

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a  
AVISTA UTILITIES,

Respondent.

DOCKETS UE-190334, UG-190335, and  
UE-190222 (*Consolidated*)

COMMISSION STAFF'S RESPONSE TO  
NORTHWEST CITIZENS POWER  
COALITION'S REQUEST FOR  
INTERLOCUTORY REVIEW OF ITS  
PETITION TO INTERVENE

**I. INTRODUCTION**

1 Pursuant to WAC 480-07-810(3), Staff of the Washington Utilities and  
Transportation Commission (Commission) files this response in opposition to the Petition  
for Interlocutory Review of Northwest Citizens Power Coalition's (NWCPC) Petition to  
Intervene.

**II. BACKGROUND**

2 NWCPC is an organization of residential rate payers who take service from Avista  
Corporation (Avista or Company) in Washington. TR. 13:8-11. On May 20, 2019, NWCPC  
filed a petition to intervene with the Commission. NWCPC presented argument in support  
of its petition at the prehearing conference on May 24, 2019. On May 30, 2019, the  
Commission denied NWCPC's petition for intervention in Order 03. In Order 03,  
Administrative Law Judge (ALJ) O'Connell concluded that NWCPC had "failed to show it  
has a substantial interest in this proceeding that is not already adequately represented by

another party, or that its participation is in the public interest.” Order 03 at ¶ 16. ALJ

O’Connell further found as follows:

NWCPC’s argument in support of its petition to intervene rests entirely on its dissatisfaction with Public Counsel’s and other intervenors’ roles in the proceeding concerning Avista’s acquisition by Hydro One, which was denied by the Commission. NWCPC’s dissatisfaction with Public Counsel and others’ representation of the interests of Washington citizens is not sufficient to establish a substantial interest justifying intervention in this proceeding. Neither has NWCPC provided any basis demonstrating that its intervention would provide any particular benefit to the public interest or aid the Commission’s decision-making. Further, we determine that NWCPC’s intervention would be burdensome in this proceeding. Any benefits of intervention – to safeguard Avista’s residential customers and the broader public interest – are traditionally represented by Public Counsel pursuant to statute.

Order 03 at ¶ 17 (citations omitted).

3           NWCPC filed a petition for interlocutory review of Order 03 (Review Petition) on June 7, 2019, requesting that the Commission reconsider its decision to deny NWCPCs petition to intervene. In the first two pages of its Review Petition, NWCPC largely repeats or re-states its petition to intervene, except that NWCPC adds that it is now also dissatisfied with Commission Staff (Staff) for supporting the Hydro One merger proposed in Docket U-170907. The remaining pages contain “additional comments,” which are discussed below.

### **III. LEGAL STANDARD**

4           Interventions in Commission proceedings are governed by the Administrative Procedure Act at RCW 34.05.443, and the Commission’s intervention rule, WAC [480-07-355](#). The APA provides for intervention if the petitioner qualifies as an intervenor under any

provision of law and if the intervention sought is in the interest of justice and will not impair the orderly and prompt conduct of the proceedings. RCW 34.05.443(1).

5 Under the Commission’s intervention rule, WAC 480-07-355(3), the presiding officer in a proceeding “may grant a petition to intervene if the petitioner has a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.” This rule “provide[s] the presiding officer with discretion to grant intervention” if a petition meets the intervention standard.<sup>1</sup>

6 Together these statements of the intervention standard provide for a balancing of interests. The “substantial interest” language addresses the individual interests of the petitioner. These individual interests are relevant to the proceeding, however, only to the extent that there is a nexus between the purpose of the organization and an interest protected by a Washington statute within the Commission’s jurisdiction.<sup>2</sup> The “public interest” encompasses interests beyond those of an individual petitioner but is not boundless. Rather, an intervention that is in the public interest will “enhance [the Commission’s] understanding and analysis of the matter at hand.”<sup>3</sup> This means that if the Commission does not believe the petitioner’s participation will help the Commission resolve the issues in a proceeding, the intervention is not in the public interest. Pursuant to the APA, the Commission weighs any

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<sup>1</sup> *In Re Joint Application of Hydro One Limited and Avista Corp.*, Docket U-170970, Order 03, ¶ 13 (Nov. 20, 2017).

<sup>2</sup> *In Re Joint Application of Verizon Communications Inc. and Frontier Communications Corporation For an Order Declining to assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest Inc.*, Docket UT-090842, Order 05, ¶ 14 (Sept. 10, 2009).

<sup>3</sup> Docket UT-090842, Order 05 at ¶ 14.

demonstrable interests against the consideration of whether the intervention will impair the orderly and prompt conduct of the proceeding.

#### IV. ARGUMENT

7 Under the APA and the Commission’s rules, the Commission properly exercised its discretion to deny intervention to NWCPC. The additional comments included in the Review Petition do not justify changing the intervention decision in Order 03.

8 NWCPC mentions several issues that it believes establish its interests and value as an intervenor. First, NWCPC argues that, because parties other than the Company live outside the utility’s service territory, they will have no knowledge of local issues that may be applicable to setting rates. Review Petition at 3. The Commission, for many decades, has set rates for a number of companies in various industries throughout the state without requiring the participation of a non-company “local party.” Ratemaking to a large extent consists of a regulatory accounting audit, and is not a process that is driven by local politics. The Review Petition does not identify any “local issues” that are applicable to the process of ratemaking, and the contention that another “local party” is needed does not establish a substantial interest or that NWCPC’s participation in the proceeding would be in the public interest.

9 Next NWCPC essentially argues that it should be able to intervene if the Alliance of Western Energy Consumers (AWEC) is allowed to intervene. *See* Review Petition at 3. The intervention analysis is different, however, for each petitioner, depending on the circumstances of that particular petitioner. AWEC is comprised of industrial customers who have a different customer profile from the average residential or small commercial customer represented by the Public Counsel Unit of the Attorney General’s Office (Public Counsel).

In its petition, NWCPC incorrectly identifies AWEC's members as commercial customers rather than industrial customers and, accordingly, incorrectly asserts that AWEC's members are also represented by Public Counsel. Public Counsel does not represent the industrial customers that make up AWEC; rather, Public Counsel represents residential and small commercial ratepayers. Most significant, however, is that the profile of AWEC's members is quite distinct from the residential customers comprising NWCPC. Even if AWEC were represented by Public Counsel (which, again, it is not), because AWEC has a customer profile that is distinct from that of other parties, AWEC's status as an intervenor does not support granting intervention to NWCPC.

10           NWCPC comments that it is growing and that it is non-partisan. Review Petition at 3. These attributes do not establish a substantial interest, however, nor do they change the fact that residential customers as a group are already represented in this proceeding by Public Counsel.

11           ALJ O'Connell appropriately found that NWCPC's dissatisfaction with a particular position that Public Counsel took in a recent merger proceeding does not establish a substantial interest in the instant general rate proceeding. A policy of allowing the intervention of any ratepayer who disagreed with a particular position taken on a particular issue in a past proceeding would impair the Commission's ability, sooner rather than later, to conduct orderly and prompt proceedings.

12           Moreover, ALJ O'Connell's decision is consistent with the Commission's final order in another, recent proceeding denying the intervention of a ratepayer who contended that he represented particular ratepayer interests. In Docket U-180608, the Commission found that the intervention of the ratepayer would not be in the public interest, explaining as follows:

Public Counsel has the statutory duty “to represent and appear for the people of the state of Washington” in Commission proceedings. The administrative law judge correctly concluded in Order 03 that Public Counsel represents PSE’s residential customers, and [ratepayer’s] purported representation of the interests of those same customers would be redundant at best.

*In Re Joint Application of Puget Sound Energy, Alberta Investment Management Corp., British Columbia Investment Management Corp., OMERS Administration Corp., and PGGM Vermogensbeheer B.V. for an Order Authorizing Proposed Sales of Indirect Interests in Puget Sound Energy*, Docket U-180680, Order 04, ¶ 17 (Dec. 13, 2018).

(citation omitted). The same is true in the instant case in that NWPCP’s intervention would be redundant at best. In this proceeding, which is a general rate proceeding, Public Counsel will represent the members of NWPCP who are ratepayers of Avista in Washington.

13 NWPCP intimates that none of the other parties has sufficient technical knowledge to address the issue of deferred federal income taxes (DFIT) and that its intervention is therefore necessary to address this issue. Review Petition at 3-4. NWPCP relies primarily on the comments of Staff counsel at the prehearing conference to support its position. It was not clear to Staff counsel at the prehearing conference which type of DFIT NWPCP was referring to. The important point, however, was and is that the Commission, its expert staff, and the parties that regularly appear before the Commission in rate cases are well aware of and knowledgeable about DFIT issues. The proposed settlement in the Hydro One merger proceeding<sup>4</sup> as well as the last Avista rate case<sup>5</sup> contained detailed discussion of the

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<sup>4</sup> Docket U-170970, Settlement Stipulation and Agreement, filed March 27, 2018; Commission Staff Testimony in Support of Settlement, filed April 10, 2018.

<sup>5</sup> See *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-170485 & UG-170486 (consolidated), Order 07, ¶¶ 21-22; *In re Petition of Avista Corp. for an Order Authorizing Deferral of Federal Income Tax Expenses for the Effects of Revisions of the Federal Income Tax Code Upon Avista’s Cost of Service*, Dockets UE-171221 & UG-171222 (consolidated), Order 02, ¶¶ 21-22 (April 26, 2018) (authorizing Avista to

treatment of Avista's DFIT. And the Commission discussed Avista's DFIT even more recently, in an order filed this spring.<sup>6</sup> Granting the intervention of NWCPC to address DFIT issues is not necessary.

14 NWCPC opines that intervenors, such as the Sierra Club, "are not technically knowledgeable of the rate setting process and have been deceived in the past" and that ratepayer cooperatives are better for customers. Review Petition at 4-5. NWCPC further proposes that the Commission consider alternative opportunities and touts the organization's "unique understanding of cooperatives." Review Petition at 5. It appears that NWCPC is suggesting that the regulatory framework for IOUs is unsatisfactory and that the issues in this proceeding should be broadened to incorporate consideration of the benefits of utility cooperatives. Such issues are outside the scope of a general rate case and including them would inappropriately broaden the issues and burden the proceeding.

15 NWCPC states that it "would like to ask Avista questions and receive answers without a third-party intermediary that may or may not understand the question." Review Petition at 4. Presumably NWCPC is referring to discovery. Although NWCPC states it does not intend to burden the process, the extra-rate-case scope of the organization's stated interests (discussed above and below) indicate otherwise. Commission proceedings are not

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"amortize the protected excess deferred income tax as of December 31, 2017, over 36 years in accordance with the ARAM methodology" and ordering Avista to continue to defer "the unprotected excess deferred income taxes of approximately \$10.4 million").

<sup>6</sup> *In re Petition of Avista Corp. for an Order Authorizing the Company to Revise its Electric and Natural Gas Book Depreciation Rates and Authorizing Deferred Accounting Treatment for the Difference in Depreciation Expense*, Dockets UE-180167 & UG-180168 (consolidated), Order 04, ¶¶ 27-28 (March 25, 2019).

to be misused by any intervenor to pursue resolution of issues outside the scope of the proceeding.<sup>7</sup>

16           NWCPC is concerned about the ratepayer impact of the Clean Energy Transformation Act (SB 5116), which was signed into law last month. Review Petition at 5. These impacts are important issues to Staff and almost certainly to each of the customer groups that participate regularly in rate cases before the Commission. These issues, however, do not refer to costs that Avista is requesting to recover in this case and, thus, are not within the scope of this proceeding.

17           NWCPC states its intention “to be involved for the long-term.” Review Petition at 5. Staff welcomes the involvement of informed ratepayers. Intervention in a rate case, however, is not necessarily the best way for ratepayers to be involved, in large part due to the complex and technical nature of the process as well as the issues. Public comment is also an integral part of rate cases. Contributing informed and thoughtful public comment is an area in which NWCPC could make a difference.

## V. CONCLUSION

18           Intervention is at the discretion of the Commission. Given NWCPC’s expression of its interests in intervening in this general rate case, ALJ O’Connell’s decision to deny intervention to NWCPC was appropriate and fully within the bounds of the Commission’s discretion. The issues that NWCPC raises are either outside the scope of the proceeding or

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<sup>7</sup> See *In Re Joint Application of Embarq Corp. and CenturyTel, Inc. for Approval of Transfer of Control of United Telephone Company of the Northwest d/b/a Embarq and Embarq Communications, Inc.*, Docket UT-182119, Order 05, ¶ 69 (May 28, 2009) (dismissing intervenor IBEW from proceeding):

While union-management negotiations are important, and we would not want to interfere with them in any way, their insertion in the regulatory process can undermine the integrity of our processes. The Commission is charged in proceedings such as this one with furthering the public interest. If parties dwell on issues outside the Commission’s regulatory purview, then it is possible that the timeliness of our proceedings, and their substance, may be impacted to the detriment of the greater public interest we must promote.



will be competently addressed by Public Counsel as well as by other non-company parties to the proceeding. Because NWCPC has not demonstrated a substantial interest or that its participation would be in the public interest, and because NWCPC's participation in this general rate case likely would impair the orderly and prompt conduct of the proceeding, the Commission should deny NWCPC's petition for interlocutory review.

DATED June 17, 2019.

Respectfully submitted,

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