

**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*)

ORDER 04

DENYING INTERLOCUTORY  
REVIEW

**BACKGROUND**

- 1 On April 30, 2019, Avista Corporation d/b/a Avista Utilities (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-28, Electric Service, in Docket UE-190334 and revisions to its currently effective Tariff WN U-29, Natural Gas Service, in Docket UG-190335.
- 2 On May 20, 2019, the Northwest Citizens Power Coalition (NWCPC) filed a petition to intervene in this proceeding (Intervention Petition). In its Intervention Petition, NWCPC explains that its organization was formed in response to the proposed transfer of Avista to Hydro One Ltd. in Docket U-170970 (Avista-Hydro One Proceeding).<sup>1</sup> NWCPC argues that neither its members' interests nor the public interest were adequately safeguarded by any party to that proceeding. As such, NWCPC seeks to represent its members, all of whom are Avista residential customers, in Commission proceedings going forward.<sup>2</sup>
- 3 The Commission convened a prehearing conference in these dockets at its headquarters in Olympia, Washington, on May 24, 2019, before Administrative Law Judge (ALJ) Andrew J. O'Connell. During the prehearing conference, the Company explained that it

---

<sup>1</sup> *In the Matter of the Joint Application of HYDRO ONE LIMITED (acting through its indirect subsidiary, Olympus Equity LLC) and AVISTA CORPORATION for an Order Authorizing Proposed Transaction*, Docket U-170970.

<sup>2</sup> On March 18, 2019, NWCPC filed with the Commission a letter requesting intervention in "any and all rate and other requests submitted to the Commission by or associated with the Avista Corporation."

appreciated NWCPC's interest in the proceeding, but ultimately argued that NWCPC should not be granted party status because its interests are represented by Public Counsel. Commission staff (Staff) expressed several concerns about NWCPC's participation and recommended that, if NWCPC were granted intervention, the Commission give instructions to help guide and focus NWCPC's participation in discovery. Public Counsel took no position on NWCPC's petition, but explained that NWCPC did not have an interest separate and distinct from Public Counsel, the statutorily-appointed representative for Washington residents in proceedings before the Commission.<sup>3</sup> Public Counsel represents Avista's residential customers, including each of the residential customers who comprise NWCPC.

4 On May 30, 2019, the presiding administrative law judge entered Order 03, which, among other things, concluded that NWCPC failed to articulate a substantial interest that would support its participation in this proceeding that is not already adequately represented by Public Counsel, and also failed to demonstrate that its participation would be in the public interest.

5 June 7, 2019, NWCPC filed a Petition for Interlocutory Review of Order 03 (Petition for Review). In its Petition for Review, NWCPC reiterates the arguments set forth in its Intervention Petition and requests the Commission consider its additional comments. As relevant to NWCPC's Intervention Petition,<sup>4</sup> those comments include the following arguments:

- NWCPC members live in the Avista service area, while Commission staff, Public Counsel, and other intervenors do not.
- AWEC was granted intervenor status even though it has only three of Avista's commercial customers among its members. Public Counsel technically represents the interests of commercial customers, and commercial customers should not receive higher status than residential customers.
- The use of a 36-year payback period for non-property deferred tax liability is unreasonable because IRS regulations only require a 36-year payback period for

---

<sup>3</sup> RCW 80.04.510.

<sup>4</sup> NWCPC's Petition for Review includes descriptions of its members' political affiliations, suggests that other parties may be influenced by Avista's campaign contributions, and states its opinion that other intervenors have been deceived by Avista in the past. None of these comments have any bearing on whether NWCPC has a substantial interest in this proceeding, or whether its participation would be in the public interest. As such, we decline to address them in this Order.

property-related deferred tax liability. The Commission should encourage input from NWCPC because it has demonstrated technical knowledge about this subject.

- NWCPC does not intend to burden the process and intends to work cooperatively with Public Counsel.
- Alternative opportunities should be part of the conversation, and NWCPC has a unique understanding of cooperatives that Staff does not.
- NWCPC intends to make sure that customers are aware of any “alternative compliance payments” Avista passes onto its customers under the provisions of the Washington Clean Energy Law.

6 For these reasons, NWCPC asserts that it has a direct and substantial interest in this proceeding that will not be adequately represented by any other party. In addition, NWCPC argues that permitting its intervention is in the public interest because its members will be affected by Commission’s decisions in this proceeding.

7 On June 17, 2019, Staff filed a response opposing the Petition for Review. Staff argues the Commission should uphold the decision denying the Intervention Petition because NWCPC has not demonstrated that it has a substantial interest in the proceeding or that its participation is in the public interest. Staff asserts that the Commission properly exercised its discretion to deny intervention to NWCPC, and that NWCPC’s additional arguments set forth in its Petition for Review do not justify reversing the ALJ’s decision in Order 03. Finally, Staff argues that allowing intervention by any ratepayer who disagrees with a position taken on a particular issue in a past proceeding would impair the Commission’s ability to conduct orderly and prompt proceedings.

8 Also on June 17, 2019, Avista filed a response opposing the Petition for Review. Avista argues that NWCPC failed to demonstrate that its participation would provide any particular benefit to the public interest or aid the Commission in its decision making. Avista further argues that NWCPC’s interests are no different from those of any other Avista customer, and that NWCPC will be provided an opportunity to submit its comments and concerns both orally and in writing. Finally, Avista argues that NWCPC’s participation is not in the public interest because the issues it seeks to raise are beyond the scope of this proceeding.

9 No other party filed a response.

## DISCUSSION AND DECISION

10 The Commission may accept review of interim or interlocutory orders if it finds that:

- (a) The order terminates a party's participation in the proceeding, and the party's inability to participate thereafter could cause it substantial and irreparable harm;
- (b) Immediate review is necessary to prevent substantial prejudice to a party that would not be remediable in the Commission's final order; or
- (c) Immediate review could save the Commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.<sup>5</sup>

11 As a preliminary matter, we find that NWCPC has not demonstrated substantial and irreparable harm, or prejudice from the inability to participate in the proceeding as party, or that interlocutory review would result in resource savings for the parties and the Commission. We nevertheless exercise our discretion to accept review of the decision in Order 03 to deny NWCPC's petition to intervene. We agree with that determination and thus deny the Petition for Review.

12 The presiding officer in a Commission adjudication may grant a petition to intervene "[i]f the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest."<sup>6</sup> NWCPC's Intervention Petition fails to meet either of these standards. We address each of NWCPC's arguments below.

13 First, NWCPC argues that because its members are Avista residential customers, the organization has a substantial interest in this proceeding. We disagree. The ALJ correctly concluded in Order 03 that the benefits NWCPC claims its participation will bring to the proceeding – *i.e.*, safeguarding both residential customers and the broader public interest – are duties that Public Counsel is statutorily required to fulfill. Public Counsel represents Avista's residential customers, and NWCPC's purported representation of the interests of those same customers would be unnecessarily duplicative.

---

<sup>5</sup> WAC 480-07-810(2).

<sup>6</sup> WAC 480-07-355(3).

- 14 Second, NWCPC asserts that its interests will not be adequately represented by any other party, in part, because no other party resides in Avista's service territory. As Staff correctly observes, however, NWCPC's Petition fails to identify any issues in which the residential location of the parties would be germane. We are sensitive to the concerns of the ratepayers who reside in Avista's service territory. In addition to Public Counsel's representation, the Commission receives written and oral comments from utility customers over the course of any general rate proceeding; those oral comments are received at public comment hearings held in multiple locations. These processes provide individual customers, or groups of customers, ample opportunity to share their concerns in general rate proceedings.
- 15 Third, NWCPC argues that AWEC was granted intervenor status even though Public Counsel represents both commercial and residential ratepayers and AWEC has only "three Washington Avista commercial customers" in Avista's service territory. This argument, however, stems from a faulty premise. While Public Counsel represents small commercial customers, AWEC represents large *industrial* customers. No party other than AWEC purports to represent, or actually represents, the interests of its members. As such, AWEC's interests are not adequately represented by any other party. Conversely, NWCPC's interests are adequately represented by Public Counsel, whose sole responsibility is to represent residential and small commercial ratepayers before the Commission.
- 16 Fourth, NWCPC argues that it possesses technical expertise that would be beneficial to the Commission related to the "non-property related deferred tax liability payback period"<sup>7</sup> that must be returned to ratepayers as a result of the 2017 Tax Cuts and Jobs Act (TCJA). We disagree and find that NWCPC has not demonstrated that it has an expert-level understanding of the impacts of the TCJA on regulated utilities or how the Commission has addressed the issue in prior orders.
- 17 The TCJA reduced the federal corporate tax rate from 35 to 21 percent effective January 1, 2018.<sup>8</sup> As such, generally accepted accounting principles required regulated utilities to revalue the balance of their accumulated deferred income taxes (ADIT) at the lower tax

---

<sup>7</sup> Petition for Review at 3.

<sup>8</sup> TCJA 13001, section 1561(d)(3)(A) defines excess tax reserve and provides that the reduction in the federal corporate tax rate applies "as of the day before the corporate rate reductions provided in the amendments made by this section take effect," or December 31, 2017.

rate of 21 percent, which created excess deferred income taxes (EDIT). EDIT must be refunded to customers using appropriate amortization period(s).

- 18 Excess tax reserve, or Protected EDIT, relates to book-tax depreciation timing differences. For the purposes of our discussion here, all property-related EDIT (also referred to as Protected-Plus EDIT), which is generally defined as timing differences tied to depreciable property, must be returned to customers using the Federal Internal Revenue Service's Average Rate Assumption Method (ARAM). All non-property related EDIT will be returned to customers in the time and manner prescribed by the Commission, which is typically a much shorter amortization period.
- 19 In Avista's last general rate case, the Commission authorized the Company to amortize Protected-Plus EDIT, valued at a combined total of approximately \$253.3 million for electric and natural gas service, over 36 years, consistent with the ARAM.<sup>9</sup> The Commission also authorized the continued deferral of Avista's non-property EDIT related to electric operations, valued at approximately \$10.4 million, until the conclusion of the Avista-Hydro One Proceeding. Avista's non-property EDIT related to gas operations, valued at \$1.2 million, was returned to ratepayers through the Company's Schedule 174 over a 12-month amortization period beginning June 1, 2018.
- 20 At the prehearing conference, and again in its Petition for Review, NWCPC erroneously represented that both Avista and Staff take the position that the Company's non-property EDIT must be amortized over a 36-year period.<sup>10</sup> This is contrary to positions the parties have expressed in the past. Further, prior Commission orders have clearly established that the Commission retains the authority to determine the method and timeframe for returning non-property EDIT to ratepayers. As such, NWCPC's argument is misplaced, and its concerns are moot. We find that NWCPC has failed to demonstrate that its participation in the proceeding on these issues would assist the Commission with making decisions related to these issues.
- 21 Fifth, NWCPC states that it does not intend to burden this proceeding but should be allowed to participate in this proceeding because "alternative opportunities should be part

---

<sup>9</sup> *Washington Utilities and Transportation Commission v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-170485 and UG-170486 (consolidated), Order 07/02/02 ¶ 14 (April 26, 2018).

<sup>10</sup> NWCPC incorrectly represents that Avista's Unprotected EDIT is valued at \$450 million. The Company's total remaining non-property EDIT balance, previously valued at \$10.4 million, is currently valued at \$10.9 million.

of the conversation” in addition to issues such as return on equity for shareholders. Further, NWCPC states that it has “a unique understanding of cooperatives that does not exist at the WUTC staff level.”<sup>11</sup> The issue of whether there should be an alternative utility model is not a subject of the pending proceeding, and the decision whether a utility should be publicly or cooperatively owned is not within the Commission’s jurisdiction. NWCPC’s stated intent to raise issues over which the Commission has no jurisdiction belies its claim that it will not unnecessarily burden this proceeding. Accordingly, we find NWCPC’s argument unpersuasive.

22 Finally, NWCPC states its intent to “be involved for the long term,” and to “make sure customers are aware” of any “alternative compliance payments” made in lieu of paying regulatory penalties and recovered from ratepayers.<sup>12</sup> Both Staff and Avista acknowledge NWCPC’s concern, but ultimately argue that, because Avista has not requested recovery of any “alternative compliance payments” in this proceeding, this particular issue exceeds its scope. We agree. While the Legislature in Engrossed Second Substitute Senate Bill 5116 granted utilities the option to make alternative compliance payments, the option to do so is tied to future deadlines for compliance that have not yet occurred. Because the issue of alternative compliance payments is not presently or properly before us, it would be both unnecessary and inappropriate to address it in the context of this proceeding.

23 While we appreciate NWCPC’s desire to participate in this proceeding as a party, we find that NWCPC failed to demonstrate that it has a substantial interest in this proceeding that necessitates its participation as an Intervenor, or that such participation is consistent with the public interest. Accordingly, we conclude that Order 03 should be affirmed and that NWCPC’s Petition for Review should be denied. We nevertheless encourage NWCPC to file comments in these dockets and to participate in public comment hearings. We further inform NWCPC that the Commission’s evidentiary hearings are open to the public for observation. We invite NWCPC to submit public comments in this proceeding, and we will consider NWCPC’s comments to the extent they are relevant to the determinations we will make in it.

---

<sup>11</sup> Petition for Review at 5.

<sup>12</sup> *Id.*

**ORDER**

**THE COMMISSION ORDERS That** the Northwest Citizens Power Coalition's Petition for Interlocutory Review of Order 03 is DENIED.

Dated at Lacey, Washington, and effective June 28, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner