

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

|   |   |                            |
|---|---|----------------------------|
| In the Matter of the Joint Application of | ) | DOCKET NO. UE-170970       |
|   | ) |                            |
| HYDRO ONE LIMITED and                     | ) | PETITION FOR INTERLOCUTORY |
| AVISTA CORPORATION                        | ) | REVIEW OF                  |
|   | ) | WASHINGTON AND NORTHERN    |
| For an Order Authorizing Proposed         | ) | IDAHO DISTRICT COUNCIL OF  |
| Transaction.                              | ) | LABORERS                   |
|   | ) |                            |
| _____                                     | ) |                            |

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## I. INTRODUCTION AND SUMMARY

1 Pursuant to WAC 480-07-810, the Washington and Northern Idaho District  
Council of Laborers (“WNIDCL”) petitions for interlocutory review of Order No. 2, Prehearing  
Conference Order (“Order”), issued on October 25, 2017, by Hon. Dennis J. Moss, Senior  
Review Judge. In that Order, the Senior Review Judge denied WNIDCL’s petition to intervene.  
Through this petition, WNIDCL asks that the Commission reverse that decision.

2 WNIDCL’s petition to intervene was submitted in accordance with WAC  
480-07-355, which provides that intervention may be granted “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.” WAC 480-07-355(3). WNIDCL respectfully submits that their petition meets both of  
these standards. The individuals represented by WNIDCL have a substantial interest in the  
matters at issue—they are employed by contractor organizations that provide utility services to  
Avista and its customers that are essential to the provision of safe and reliable service, and intend  
to continue to provide these services to the merged company. Indeed, other than Avista  
customers, it is hard to imagine persons with a more direct interest in the fate of the merger than  
the individuals who work at Avista and serve those customers.<sup>1</sup>

3 The involvement of WNIDCL would result in the presentation of information in this  
proceeding that falls comfortably within the scope of the “public interest” test that the

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<sup>1</sup> We note that the Order No. 2 granted, over objection, the intervention requests of several environmental group intervenors. Order No. 2 at 3. We do not take issue with the decision to allow those groups to intervene, but are constrained to point out that it is difficult to reconcile permitting NRDC and the Sierra Club to participate as parties, while denying that same right to a labor organization that represents individuals who work on a day-to-day basis at Avista.

application must meet.<sup>2</sup> If permitted to intervene, WNIDCL can provide the perspective of individuals who, on a daily basis, perform work that is central to the provision by Avista of safe and reliable service to its customers. So far as we are aware, that perspective—and the first-hand, facts-on-the-ground data that informs it—is unique in this proceeding and, respectfully, will be of assistance to the Commission in its evaluation of the proposed transaction. Indeed, granting intervention to a labor organization would be consistent with Commission precedent.

4 Finally, WNIDCL does not seek to use this proceeding as a forum in which to raise collective bargaining issues—*i.e.*, wages and terms and conditions of service—and will accept and abide by a limitation on their presentation to matters central to safe and reliable utility operations.

## II. FACTS

5 WNIDCL petitioned to intervene in writing on October 16, 2017. In support, the WNIDCL stated that it represents approximately 100 members who perform work for construction contractors working on the Avista system, that it is party to agreements that set terms of conditions of employment for such individuals, and, if granted leave to intervene, that it could offer information about construction standards and training requirements. WNIDCL asserted that no other party could represent its interest. WNIDCL likewise made clear that it would “not unreasonably broaden the issues or burden the record” in this docket. Petition at 2-3.

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<sup>2</sup> WAC 480-143-170 provides that an application cannot be approved absent a determination by the Commission that doing so is “consistent with the public interest.”

6                   Neither Avista nor Hydro One objected to WNIDCL’s intervention. Counsel for  
Commission Staff likewise filed no written objection to WNIDCL’s petition, but orally objected  
to the request at the prehearing conference.<sup>3</sup>

7                   The Judge denied WNIDCL’s intervention at hearing and subsequently issued  
Order No. 2, which stated that WNIDCL’s interests were not within the “zone of interests  
implicated by the Commission’s jurisdiction under RCW Chapter 80.12, or otherwise.”<sup>4</sup> More  
specifically, Order No. 2 concludes that the Commission “has no legal authority relative to the  
terms of collective bargaining agreements that govern the rates of pay, benefit packages, and  
employment conditions for construction workers who may work for contractors who undertake  
projects for Avista.”<sup>5</sup>

### III. ARGUMENT

#### A. The Commission Should Accept Interlocutory Review.

8                   WAC 480-07-810(2) details three circumstances when interlocutory review is  
available:

(a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;

(b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or

(c) A 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.

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<sup>3</sup> WNIDCL understands that counsel is not required to submit objections to an intervention in writing or to state a position in advance of the prehearing conference. That said, as WNIDCL had no prior warning that an objection of any kind would be lodged, we are addressing the objections in writing for the first time in this petition.

<sup>4</sup> Order No. 2, p. 3.

<sup>5</sup> *Id.*

Although a petitioner need only establish that one of the criteria is met to seek interlocutory review, WNIDCL asserts that all three criteria are met here.

9           The denial of WNIDCL's petition to intervene terminates its participation in the proceeding, preventing the Union from being able to present its position to the Commission and the parties, and ensuring that whatever ruling is issued in this proceeding will not be informed by WNIDCL's evidence and arguments. And there is no other party who will be able to represent WNIDCL's interests or those of its members in this proceeding. Moreover, there is no post-hearing avenue through which to remediate the substantial prejudice to WNIDCL from the denial of its intervention. Once the hearing concludes without an opportunity for WNIDCL to participate, it will simply be too late to address the situation, save the possibility of burdensome and time-consuming appeal processes that could unnecessarily delay the completion of the proposed transaction.

10           There is no good reason to risk these potential harms. WNIDCL's concerns fall squarely within the net benefit/public interest standards that the UTC is charged with applying in order to determine whether to approve the proposed and acquisition, and WNIDCL has committed not to broaden the issues in this case. Moreover, there is no danger that the Commission (or the other parties) will be unable to police whatever limitations are imposed; if parties should later feel that WNIDCL's testimony or briefing go beyond what is appropriate, they retain the right to seek relief.

**B. The Commission Should Reverse the Denial of WNIDCL's Petition to Intervene.**

**1. WNIDCL's Participation In This Proceeding Is In the Public Interest.**

11           A petition to intervene should be granted when the petitioner demonstrated that it has a substantial interest in the subject matter of the proceeding, or that its participation is in the

public interest.<sup>6</sup> The Commission has an obligation to ensure that the proposed acquisition is in the public interest,<sup>7</sup> and will provide a “net benefit to the customers of the company.”<sup>8</sup> The participation of WNIDCL in this proceeding is in the public interest because it has a substantial interest in the proposed acquisition, and the information it seeks to present is directly relevant to the public interest/net benefit to customers standard against which the Commission will assess the proposal.

12                    Respectfully, WNIDCL asserts that Order No. 2 erred in framing WNIDCL’s interests as limited to “the terms of collective bargaining agreements.”<sup>9</sup> WNIDCL’s intention is to provide testimony on the potential impact of the proposed transfer on adequate staffing levels, safe working conditions, and the continued provision to customers of safe and reliable service. If permitted, WNIDCL can testify as to the potential effect of the proposed transaction on the employees who perform work on the Avista system. The jobs those workers perform are integral to ensuring that customers receive safe and reliable service. And WNIDCL is in a unique position to offer this information, as its members are in the field daily, performing their jobs on the Avista system. WNIDCL’s members play an essential role in protecting the public and ensuring safe and reliable service to customers, and are literally on the “front lines,” performing work that ensures that Avista’s services are safe and reliable. Specifically:

13                    WNIDCL represents members who perform construction for Avista contractors, including NPL, Northstar Enterprises, Spokane Traffic Control, Max J Kuney, Garco, and

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<sup>6</sup> RCW 80.12.020(1).

<sup>7</sup> WAC 480-143-170.

<sup>8</sup> WAC 480-07-355(3).

<sup>9</sup> Order No. 2 at 3.



Lydig.<sup>10</sup> The work WNIDCL members perform includes everything from episodic, major projects, such as building new maintenance facilities and garages, to more day-to-day work, such as conducting ongoing maintenance work on Avista’s distribution lines. The latter efforts include bringing lines up to code as well as running new lines in order to service Avista customers.<sup>11</sup> WNIDCL members also perform new construction and maintenance work on Avista dams.<sup>12</sup>

14 WNIDCL members conduct flagging for Avista contractors working on construction projects, such as Spokane Traffic Control, which has engaged an average of 10-15 WNIDCL member flaggers for the past eight years.<sup>13</sup> WNIDCL has over 350 members who hold a flagging card and who may perform flagging work for Avista contractors such as Spokane Traffic Control and North Star Enterprise.<sup>14</sup> This is critical because traffic control is inherently dangerous for both individuals performing the work and protecting the general public. In Washington, the “Traffic Technicians” occupation had an average worker compensation cost that was 2.7 times higher than the average in 2015, and in 2012 this occupation was the 4<sup>th</sup> highest in average costs, with over \$54,000 which was 9.4 times the average claim—pointing to the dangerous nature of this work.<sup>15</sup> An Associated General Contractors survey recently found in Washington that 29% of contractors reported that in the past year there had been at least one

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<sup>10</sup> Declaration of Dave Hawkins at ¶2

<sup>11</sup> *Id.* at ¶3

<sup>12</sup> *Id.* at ¶4

<sup>13</sup> *Id.* at ¶5

<sup>14</sup> *Id.*

<sup>15</sup> Washington Department of Labor and Industry Injury Data:  
<http://www.lni.wa.gov/ClaimsIns/Insurance/DataStatistics/WorkersCompData/default.asp>

crash at a highway work zones where they operated and 78% reported that better or more frequent safety training for would help reduce the number of work zone crashes, injuries and/or fatalities.<sup>16</sup> Mitigating the costs associated with such unnecessary accidents by ensuring that the Avista workforce is adequately trained relates directly to the net benefit to customers inquiry.<sup>17</sup>

15 WNIDCL is also involved in administering the Northwest Laborers Employers Training Trust (“NWLETT”), which is dedicated to providing continuous workforce education and training which meets industry needs.<sup>18</sup> NWLETT’s most recently filed Form 990 reveals that it spent over six million dollars in a single year on workforce training in the Northwest.<sup>19</sup> Ensuring a well-trained trained workforce for contractors like those used by Avista is central to WNIDCL’s purpose.

16 WNIDCL submits that the extent to which completion of the proposed acquisition impacts—positively or negatively—the efforts and programs described above will have a direct effect on service safety and reliability. As such, the issues and perspectives to be addressed by WNIDCL fall well within the scope of the Commission’s mandate to determine whether approval of the proposed transaction on the terms proposed is consistent with the public interest, or whether conditions must be imposed on any order granting approval. If granted leave to intervene, WNIDCL would anticipate filing testimony highlighting, as part of a “net benefit” analysis, the importance to customers of ensuring that the merged company hires and retains a

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<sup>16</sup> AGC Survey questions 1, 3, 11, 16:

[https://www.agc.org/sites/default/files/Files/Communications/2015\\_Work\\_Zone\\_Survey-Washington.pdf](https://www.agc.org/sites/default/files/Files/Communications/2015_Work_Zone_Survey-Washington.pdf)

<sup>17</sup> WNIDCL members remain in the profession for an average of at least 20 years, ensuring continual employee development and a supply of experienced and well-trained professionals to perform work on Avista projects. *Id.*

<sup>18</sup> Declaration of Hawkins at ¶8.

<sup>19</sup> NWLETT’s most recently filed 990 form is available at

[http://990s.foundationcenter.org/990\\_pdf\\_archive/911/911283259/911283259\\_201603\\_990.pdf](http://990s.foundationcenter.org/990_pdf_archive/911/911283259/911283259_201603_990.pdf).

well-trained workforce, and raising concerns about the extent to which approval of the proposed acquisition may impact that objective.<sup>20</sup>

**2. WNIDCL’s Petition Relates to Issues the Parties Themselves Have Already Put At Issue in this Proceeding.**

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Order No. 2 finds (at 3) that the issues likely to be raised by the WNIDCL are “tangentially, if at all, relevant to any issue that might bear on the Commission’s determinations in this proceeding.” WNIDCL disagrees for the reasons stated *supra*, but the Commission need not take our word for it: the parties to the transaction have themselves already put at issue matters that will affect WNIDCL’s members. For instance, the Master List of “Commitments” submitted as part of the parties’ application included the following:

7) Avista will honor its labor contracts and has the authority to negotiate, enter into, modify, amend, terminate or agree to changes in any collective bargaining agreement or any of Avista’s other material contracts with any labor organizations, union employees, or their representatives;

8) Avista will maintain compensation and benefits related practices consistent with the requirements of the Merger Agreement;

10) Avista will maintain Avista Utilities’ staffing and presence in the communities in which Avista operates at levels sufficient to maintain the provision of safe and reliable service and cost-effective operations and consistent with pre-acquisition levels;

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<sup>20</sup> Federal pipeline regulations make clear that pipeline safety is directly tied to the training that front line employees receive *whether they are direct employees of a utility or a contractor’s employees that work on the system*. For instance, WNIDCL represents approximately 70-75 members who are OQ or “Operator Qualification” qualified.<sup>20</sup> OQ refers to the Operator Qualification (OQ) Rule (49 CFR Part 192, Subpart N and 49 CFR Part 195, Subpart G), which requires pipeline operators to document that certain employees have been adequately trained to recognize and react to abnormal operating conditions that may occur while performing specific tasks. The Pipeline and Hazardous Materials Safety Administration (“PHMSA”) has stated that “Each operator is responsible for assuring that individuals performing covered tasks on their pipeline facilities are qualified. This is true whether it operates distribution (mains and services) or jurisdictional gathering or transmission lines, and is *true whether the individual is an employee or a contractor*. An Operator may require the contractor to qualify (or have an independent third party or consortium approved by the operator qualify) their employees and provide the required documentation before sending them to perform covered tasks on their pipeline.” <https://www.phmsa.dot.gov/pipeline/operator-qualifications/oq-frequently-asked-questions>.

13) Avista will maintain at least Avista’s existing levels of economic development, including the ability of Avista to spend operations and maintenance funds to support regional economic development and related strategic opportunities in a manner consistent with Avista’s past practices; and

15) Avista will maintain Avista’s safety and reliability standards and policies and service quality measures in a manner that is substantially comparable to, or better than, those currently maintained.<sup>21</sup>

18                   It is unfair to preclude WNIDCL from addressing issues that the applicants themselves have made central to their case. Moreover, it is not uncommon for the parties in a merger to raise issues that have direct bearing on its employees as the parties have done here. For instance, the 2008 merger between Puget Sound Energy and Macquarie resulted in a stipulated settlement providing for staffing levels that “protect and promote the Commissions’ ability to regulate PSE in the public interest.”<sup>22</sup>

19                   In light of the parties having raised issues pertaining to the quality of the workforce and employment-related policies – which themselves relate directly to system safety and reliability--the Commission should not preclude WNIDCL and, by extension, the employees who perform work on the Avista system, from exploring these issues in this proceeding. While WNIDCL committed in its petition to intervene not to broaden the issues in this proceeding, and is ready and willing to abide by that commitment, it is apparent that the parties have already put at issue matters that pertain directly to WNIDCL’s members and about which WNIDCL is in a unique position to offer information.

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<sup>21</sup> Docket No. UE-170970, Joint Application (Sept. 14, 2017), App. 8, ¶¶7, 8, 10, 13, and 15.

<sup>22</sup> *In the Matter of Puget Holdings LLC and Puget Sound Energy*, Docket No. U-072375, Order No. 8 (Dec. 30, 2008) pp. 122.

### 3. WUTC Precedent Recognizes That a Labor Union’s Participation in Utility Merger Proceedings is In the Public Interest.

20 This Commission has previously recognized the right of labor unions to intervene in utility merger proceedings to protect the interests of their members and ensure system safety and reliability. For instance, in *In the Matter of Verizon Communications, Inc. and Frontier Communications Corp.*,<sup>23</sup> the Commission allowed the International Brotherhood of Electrical Workers, Local 89 (“IBEW”) to intervene in a proceeding concerning a proposed transfer. The Commission adopted a “zone of interest” test that assessed the nexus between the purpose of the organization and an interest protected under Washington statute and within the Commission’s jurisdiction.<sup>24</sup> Applying the zone of interests test, the Commission determined that the IBEW could intervene to the extent that its participation related to “matters specifically addressing safety and reliability of service to the Applicants’ customers and where the union is actually involved with the provision of such service.”<sup>25</sup> The Commission agreed that the union was in a position to bring a “different and perhaps unique perspective” on matters related to safety and reliability issues as a result of its members work “in the field.”<sup>26</sup>

21 Two years later, the Commission again applied the “zone of interests” test, this time in a proceeding concerning a proposed rate increase, and again found that the IBEW’s participation would be in the public interest.<sup>27</sup> Even before the 2009 *Verizon* decision, the UTC

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<sup>23</sup> Docket No. UT-090842, Order 5 (Sept. 10, 2009).

<sup>24</sup> *Id.* at ¶14.

<sup>25</sup> *Id.* at ¶¶14-17.

<sup>26</sup> *Id.* at ¶16.

<sup>27</sup> *WUTC v. Pacificorp*, Docket No. UE-111190, Order 5 (Oct. 28, 2011).

had on several prior occasions granted a union's petition for intervention.<sup>28</sup> WNIDCL is unaware of any UTC decision since the 2009 *Verizon* matter was decided in which the Commission denied a labor organization's right to participate in a merger proceeding. Order No. 2 is not consistent with this precedent.<sup>29</sup>

#### **4. Other Utility Commissions Have Recognized the Importance of a the Participation of Employees in Merger-Related Proceedings.**

22 Other Utility Commissions across the nation have repeatedly granted labor organizations intervention, recognizing the importance of the participation in merger proceedings of the individuals who provide safe and reliable utility service to customers. In a merger involving Frontier's acquisition of Commonwealth Telephone Co., an ALJ explained the basis for finding a union's participation appropriate:

It is clear that the union, representing a collective bargaining unit comprised of 22,500 members in Pennsylvania, including approximately 425 members employed by Commonwealth Telephone Company, has a substantial, direct and immediate interest in the outcome of this case. The very livelihood of the 425 members rests on the management decisions made by Commonwealth, and the myriad of decisions made by that management (relating to maintenance practices operational procedures, call center staffing and location, etc.) are vital to the members. ... Customer service, safety and reliability, network deployment and the financial health of the two Joint Applicants affect not only the customers of the Joint Applicants but the employees who provide the services.<sup>30</sup>

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<sup>28</sup> See e.g. *Puget Sound Power and Light Co.*, Docket UE-960195, Second Supplemental Order on Prehearing Conference, (May 23, 1996) (granting petitions to intervene for IBEW Local 77, the United Association of Plumbers and Pipefitters Locals 32, 83, and 265, and Teamsters Local 117); *Pacificorp. and Scottish Power PLC*, Docket UE-981627, Order (Feb. 18, 1999) (granting petitions to intervene for the Washington State Labor Council, AFL-CIO; the International Union of Operating Engineers Local 612; and IBEW Local 125).

<sup>29</sup> Order No. 2 states (at 3) that the "Commission's experience in prior, similar cases" indicated that it was unlikely that the data to be presented by the WNIDCL would be relevant to the Commission's net benefit/public interest inquiry. For the reasons stated above, WNIDCL respectfully disagrees. Order No. 2 also does not cite to any specific Commission rulings on this matter, and, based on our review of such rulings, it would appear that the UTC has found Union participation to be of at least sufficient potential value to warrant intervention.

<sup>30</sup> *Commonwealth Telephone Co. and Citizens Communications Co.*, Docket No. A-310800F0010, Order Disposing of Preliminary Objections (Dec. 14, 2006), pp. 6-7.

Similarly, a hearing examiner for the Maine Public Utilities Commission has ruled that utility labor unions should have full rights to intervene in a telecommunications merger proceeding that involved the other applicant here, Verizon:

Labor's members will be directly and substantially impacted by the Commission's decisions in this proceeding. In addition to discussing possible impacts on its members' employment status, Labor identified issues such as FairPoint's service quality problems in Maine, FairPoint's financial condition and the impact it will have on FairPoint's ability to manage operations in Maine, to maintain existing plant, and deploy advanced services .... Finally, as pointed out by Labor, section 708 is not the only statutory provision at issue in this proceeding; the broader public interest must be considered under section 1104. Clearly, Labor's Maine members are members of the public entitled to voice their opinion concerning the proposed transaction.

...  
Specifically, I find that Labor's participation in this proceeding will help ensure that the Commission has access to first-hand knowledge concerning Verizon's operations in Maine as well as the benefit of Labor's perspective on the complex financial, technical, operational, and managerial issues that will need to be addressed in this proceeding.<sup>31</sup>

The New Hampshire Public Service Commission found that the participation of a utility's labor union in a telecommunications merger proceeding involving Verizon was invaluable. That commission stated:

Among the key participants in this protracted proceeding have been the two labor unions that represent Verizon's highly experienced workforce in the three states. Their skepticism, and the evidence they produced, raised important questions about the economics of the transaction. Although they did not endorse the settlement agreement, in our judgment the Labor Intervenors' participation was key to the improved outcome.<sup>32</sup>

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<sup>31</sup> *Verizon New England Inc.*, ME PUC, Docket No. 2007-67, Procedural Order (Mar. 14, 2007), pp. 7 and 8.

<sup>32</sup> *Verizon New England Inc.*, NH PUC, Case No. 07-011, Order No. 24, 823, (Feb. 25, 2008).

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Utility Commissions have also granted the petitions to intervene of other Laborers International Union of North America (“LiUNA”) unions across the country, including Commissions in Maryland, the District of Columbia, Missouri, and Oregon.<sup>33</sup>

**IV. CONCLUSION**

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For the above-stated reasons, WNIDCL respectfully requests that the Commission reverse the decision denying it intervention in this proceeding.

Dated this 6<sup>th</sup> day of November, 2017.

Respectfully submitted,



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<sup>33</sup> *Merger of AltaGas LTD. and WGL Holdings Inc.*, MD PSC, Case No. 9449, Order No. 88233, (May 31, (2017); *Empire District Electric Co.*, MO PSC, File No. EM-2016-0213, Order Re Application to Intervene (April 27, 2016); *Merger of Altagas LTD. and WGL Holdings Inc.*, WA DC PSC, Case No. FC 1142-2017-G-26, Order Granting Intervention, (May, 17 2017); *Hydro One Ltd and Avista Co. Merger*, OR PUC, Case No. UM 1897, Prehearing Conference Memorandum, (Oct. 6, 2017).