

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of

HYDRO ONE LIMITED and  
AVISTA CORPORATION

For an Order Authorizing Proposed  
Transaction

DOCKET U-170970

COMMISSION STAFF'S RESPONSE TO  
WASHINGTON AND NORTHERN  
IDAHO DISTRICT COUNCIL OF  
LABORERS' PETITION FOR  
INTERLOCUTORY REVIEW

**I. INTRODUCTION**

1 Pursuant to WAC 480-07-10(3), Staff of the Washington Utilities and Transportation Commission (Commission) files this response in opposition to the Petition for Interlocutory Review of Washington and Northern Idaho District Council of Laborers (WNIDCL).

**II. BACKGROUND**

2 On October 16, 2017, WNIDCL filed a petition to intervene with the Commission. In its intervention petition, WNIDCL indicated that its interest in the proceeding concerned the effect of the merger on WNIDCL members because they perform work for contractors under collective bargaining agreements that address rates of pay, benefit packages, and employment conditions for construction workers performing work on Avista projects. WNIDCL further asserted that it can provide information including wage rates, training requirements, construction standards, local employment impacts, and workforce development investments.

3 At the prehearing conference on October 20, 2017, WNIDCL reiterated that the basis of its interest in the merger proceeding is that the merger will affect contracts that its members have with various construction contractors who perform work for Avista.<sup>1</sup> These

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<sup>1</sup> TR. 33:18-20.

contracts, according to WNIDCL, cover “wages, benefits, employment conditions, but also training, construction standards.”<sup>2</sup> In response to argument from Commission Staff, WNIDCL asserted that “[a]ll of these things do have a direct nexus on the safety and reliability of the system.”<sup>3</sup>

4 The presiding officer, Administrative Law Judge Moss, denied WNIDCL’s petition for intervention in Order 02, issued October 25, 2017:

[T]he interests WNIDCL identified concern matters that are not within the zone of interests implicated by the Commission’s jurisdiction under RCW Chapter 80.12, or otherwise. 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. Thus, WNIDCL failed to establish a substantial interest that would support its participation in this proceeding. Based on the Commission’s experience in prior, similar cases (i.e., transfers of property subject to RCW Chapter 80.12) it is unlikely that information concerning wage rates, training requirements, construction standards, local employment impacts, and workforce development investments will be more than tangentially, if at all, relevant to any issue that might bear on the Commission’s determinations in this proceeding. It therefore does not appear that WNIDCL’s participation would be in the public interest. Moreover, it seems likely that WNIDCL participation would include efforts to broaden the issues into the areas the union states are its concerns, but which are not issues the Commission considers in cases such as this one. In this sense, WNIDCL’s participation could require expenditures of resources by the parties and the tribunal that are unnecessary and burdensome. This would be contrary to the public interest.<sup>4</sup>

5 On November 6, 2017, WNIDCL petitioned for interlocutory review of the Commission’s Order 02. The petition includes a declaration of David Hawkins of WNIDCL that lists work performed by WNIDCL members.

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<sup>2</sup> TR. 33:20-22.

<sup>3</sup> TR. 33:22-24.

<sup>4</sup> Order 02 at ¶ 9.

### III. LEGAL STANDARD

6 Interventions in Commission proceedings are governed by the Commission’s intervention rule, WAC [480-07-355](#), as well as by the Administrative Procedure Act at RCW 34.05.443. Under 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.” 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 interests of justice and will not impair the orderly and prompt conduct of the proceedings. RCW 34.05.443(1). In addition, the APA provides that the presiding officer may impose conditions upon the intervenor’s participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include: (a) limiting the intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the petition, and (b) limiting the intervenor’s use of discovery, cross-examination, and other procedures. . . . RCW 34.05.443(2).

7 To determine if a petitioner has a substantial interest in a matter, the Commission applies a zone of interest test to see if the petitioner has shown 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>5</sup> With regard to whether intervention is in the public interest, the

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<sup>5</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).

Commission “[has] more latitude to grant intervention when such action would enhance [the Commission’s] understanding and analysis of the matter at hand.”<sup>6</sup>

#### IV. ARGUMENT

8 Under the Commission’s intervention rule, WAC 480-07-355, a petitioner for intervention must show either that it has a substantial interest in the proceeding or its participation in the proceeding is in the public interest. The first prong concerns a petitioner’s own interests, whereas the second prong considers the public interest. WNIDCL has not demonstrated that it meets either prong of the intervention rule.

##### A. WNIDCL Does Not Have a Substantial Interest in the Proceeding

9 The Commission has considered the intervention of labor unions before in proceedings examining the transfer of control of a utility. For example, WNIDCL petitioned to intervene in the Macquarie acquisition of Puget Sound Energy in 2008.<sup>7</sup> The presiding officer denied WNIDCL’s petition. In his order, he found that the petitioner’s asserted interests that its members are PSE ratepayers did not establish a substantial interest, and he concluded that WNIDCL had established no nexus between itself as an organization and any potential issue in the proceeding.<sup>8</sup>

10 In the proceeding considering Frontier’s proposed purchase of Verizon local exchange companies, the Commission also found that the labor union seeking intervention there, the International Brotherhood of Electrical Workers (IBEW), did not have a substantial interest in the proceeding. One of the reasons that the IBEW sought intervention

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<sup>6</sup> Docket UT-090842, Order 05 at ¶ 14.

<sup>7</sup> *In Re Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc. For an Order Authorizing Proposed Transaction*, Docket U-072375 (WNIDCL’s petition to intervene filed Jan. 14, 2008).

<sup>8</sup> *In Re Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc. For an Order Authorizing Proposed Transaction*, Docket U-072375, Order 01, ¶ 6 (Jan. 17, 2008).

was to protect its members, who are employees of Verizon, in labor relations matters. The Commission applied the zone of interest test and found that “labor relations matters clearly fall outside the scope of our jurisdiction.” Accordingly, the Commission concluded that “the interest IBEW expressly protects is one we cannot consider when deciding the outcome of this case.”<sup>9</sup>

11 Just as with IBEW, WNIDCL’s interests are not issues that the Commission can address. WNIDCL’s interests in pay, benefits, and employment conditions for construction workers employed by third parties on Avista projects are not matters that the Commission regulates, and therefore these are not substantial interests within the meaning of WAC 480-07-355.

12 In its petition for interlocutory review, WNIDCL inaccurately portrays the Commission’s application of the substantial interest test. WNIDCL states, “[a]pplying the zone of interests test, the Commission determined that the IBEW could intervene.”<sup>10</sup> Although the Commission did ultimately grant IBEW’s intervention in the Verizon-Frontier proceeding, the basis for the decision was *not* IBEW’s labor relations interests. Rather, the Commission accepted IBEW’s participation in the case based on the public interest prong of the intervention rule.

13 WNIDCL argues that it should be allowed to participate in the proceeding because its petition relates to issues that the applicants have already placed at issue.<sup>11</sup> This argument is problematic, however, because these labor issues are not within the purview of the Commission’s regulatory authority. Consequently, simply because the applicants have

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<sup>9</sup> Docket UT-090842, Order 05 at ¶ 15.

<sup>10</sup> Petition at ¶ 20.

<sup>11</sup> See Petition at ¶ 17.

included commitments in their filing related to labor contracts, compensation and benefits, and staffing, which may indeed greatly interest WNIDCL, this does not convert such issues into “substantial interests” for purposes of the intervention rule.

**B. WNIDCL Has Not Shown That Its Intervention Is In the Public Interest**

14 WNIDCL now states that it intends to testify on the issues of adequate staffing levels, safe working conditions, and safe and reliable service.<sup>12</sup> And it has proffered a declaration that lists the type of work that WNIDCL members perform for third parties that contract with Avista.<sup>13</sup> It is still not clear, however, that WNIDCL participation in the case will “enhance the Commission’s understanding and analysis of the matter at hand.” In the Verizon-Frontier proceeding, the Commission found that it was in the public interest to grant IBEW’s intervention for the limited purpose of addressing issues related to safety and reliability of service to the consumer.<sup>14</sup> WNIDCL is using the right words, “safety and security,” to get in the case, but WNIDCL has not clearly explained how its engagement with these issues will help the Commission.

15 WNIDCL is not exactly the same as IBEW. Whereas IBEW included 1,300 employees of the utility being acquired,<sup>15</sup> WNIDCL is composed of members who work for third parties who contract with Avista. Because WNIDCL members are not even employees of Avista, it is difficult to ascertain their level of knowledge regarding adequate staffing levels, or anything else, and their potential value to the proceeding. While it is possible that WNIDCL members’ work on distribution lines or maintenance work on dams, for example,

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<sup>12</sup> Petition at ¶ 12.

<sup>13</sup> Declaration of David Hawkins in Support of the Petition for Interlocutory Review of Washington and Northern Idaho District Council of Laborers (Declaration of Hawkins).

<sup>14</sup> Docket UT-090842, Order 05 at ¶¶ 16-17.

<sup>15</sup> See *id.* at ¶ 15.

could provide a basis for relevant information on system safety and reliability, it is doubtful that the 350 members who hold a flagging card and may perform flagging work for Avista can provide information that is material to this proceeding.<sup>16</sup> Flagging may enhance traffic safety and may have the potential to lower accident costs to the utility,<sup>17</sup> but not every indirect cost raises a public interest issue. The public interest prong for intervention is flexible, but it is not all encompassing. While safety and reliability are general matters of concern to all parties, specific issues that arise can be adequately addressed by the existing parties to this proceeding. WNIDCL still has not demonstrated that its participation can assist the Commission in deciding whether or not Hydro One should be allowed to acquire Avista.

16 In the event that the Commission decides to grant WNIDCL's petition for intervention, WNIDCL's participation should be limited as in the Verizon-Frontier order.

There, the Commission stated:

[W]e will limit the IBEW's participation to those 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. The IBEW shall not raise, nor shall we consider, "labor relations" matters, which we define as those subjects of bargaining covered by the union's collective bargaining agreement, including but not limited to the terms, tenure, wages, hours, benefits, and conditions of employment.<sup>18</sup>

17 Any participation by WNIDCL should be similarly restricted, which WNIDCL indicates it would accept,<sup>19</sup> and the Commission should decline to consider any labor relations matters including the interests that WNIDCL, in its initial petition to intervene,

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<sup>16</sup> See Declaration of Hawkins at ¶¶ 3-5.

<sup>17</sup> See Petition at ¶ 14.

<sup>18</sup> Docket UT-090842, Order 05 at ¶ 17.

<sup>19</sup> Petition at ¶ 4.

identified: rates of pay, benefit packages, and employment conditions for construction workers.

## V. CONCLUSION

18 Because WNIDCL has not shown it has a substantial interest in the matter of this proceeding or that its participation would be in the public interest, the Commission should deny WNIDCL's petition for interlocutory review.

DATED November 16, 2017.

Respectfully submitted,

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