

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES,

Respondent.

DOCKET U-170970

ORDER 03

ACCEPTING INTERLOCUTORY
REVIEW OF ORDER 02 AND
GRANTING INTERVENTION OF
WASHINGTON AND NORTHERN
IDAHO DISTRICT COUNCIL OF
LABORERS

BACKGROUND

- 1 On September 14, 2017, Hydro One Limited, acting through Olympus Equity LLC, an indirect, wholly-owned subsidiary, and Avista Corporation d/b/a Avista Utilities (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Joint Application for an Order Authorizing Proposed Transaction whereby Olympus Equity LLC would acquire all of the outstanding common stock of Avista, and Avista would become a direct, wholly-owned subsidiary of Olympus Equity LLC and an indirect, wholly-owned subsidiary of Hydro One Limited.
- 2 On October 17, 2017, the Washington and Northern Idaho District Council of Laborers (WNIDCL) filed a Petition to Intervene in this proceeding. WNIDCL is a labor organization that represents members in Washington and Northern Idaho, including approximately 100 members who perform work for construction contractors working on the Avista system.
- 3 On October 20, 2017, the Commission convened a prehearing conference in this docket before Administrative Law Judge Dennis Moss. During the prehearing conference, Commission staff (Staff) objected to WNIDCL's petition for intervention. Staff argued that WNIDCL's stated interests in the proceeding – rates of pay, benefit packages, and employment conditions for construction workers employed on Avista projects – are not matters the Commission regulates. Accordingly, Staff asserts that WNIDCL has no substantial interest in this proceeding. Moreover, Staff argued that WNIDCL failed to establish that its participation would be in the public interest because wage rates, training

requirements, construction standards, and local employment impacts have no nexus to the public interest within the Commission's purview.

4 In response to Staff's objection, WNIDCL argued that it has a substantial interest in this docket because wage rates, training requirements, and construction standards have a direct relationship to the safety and reliability of Avista's system. WNIDCL emphasized that it would take steps to ensure its intervention would not unreasonably burden or broaden the issues in this proceeding.

5 At the prehearing conference, the Administrative Law Judge concluded that the Commission's jurisdiction does not extend to WNIDCL's stated interests, which are largely contractual issues. On October 25, 2017, the Commission entered prehearing conference Order 02, which, among other things, concluded that WNIDCL failed to establish a substantial interest that would support its participation in this proceeding. Specifically, Order 02 concluded that it is unlikely that information concerning wage rates, training requirements, and workforce development investments will be more than tangentially relevant, if relevant at all, to any issue in this proceeding. Order 02 further concluded, on that same basis, that WNIDCL's participation would not be in the public interest, and that WNIDCL had not demonstrated that its participation would benefit the Commission's consideration of the issues to be determined.

6 On November 6, 2016, WNIDCL filed a petition for interlocutory review of Order 02 (Petition). WNIDCL urges the Commission to exercise its discretion to accept such review pursuant to WAC 480-07-810(2) because Order 02 terminates its participation in this proceeding and the Commission cannot remedy the alleged substantial harm resulting from this order by reviewing it at the end of the proceeding.

7 On the merits, WNIDCL contends that it has a substantial interest in this docket because "the individuals represented by WNIDCL ... 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 the services to the merged company."¹ WNIDCL also asserts that its involvement would be in the public interest because it will "provide the perspective of individuals who, on a daily basis, perform the work that is central to the provision by Avista of safe and reliable service."² WNIDCL argues that its perspective is unique to this proceeding and will assist the Commission in

¹ Petition ¶ 2.

² *Id.* ¶ 3.

its evaluation of the proposed transaction. According to WNIDCL, the Commission routinely permits such entities to intervene in adjudications.

- 8 Finally, WNIDCL notes that it does not seek to use this proceeding as a forum to address collective bargaining issues, and that it will accept and abide by a limitation on its presentation to matters central to safe and reliable utility operations.
- 9 On November 16, 2017, Staff filed its answer to the Petition. Staff continues to oppose WNIDCL's intervention, contending that it has neither demonstrated a substantial interest in the proceeding nor that its participation is in the public interest. Specifically, Staff argues that WNIDCL does not have a substantial interest within the meaning of WAC 480-07-355. Staff further argues that WNIDCL has not met the public interest test because it has not clearly explained how its engagement with safety and reliability issues will help the Commission. Staff acknowledges that WNIDCL members who work on distribution lines or perform maintenance work on dams may provide relevant information on system safety and reliability, but expresses doubt that members who perform flagging work can provide information material to this proceeding.
- 10 Finally, in the event the Commission decides to grant WNIDCL's petition for intervention, Staff urges the Commission to limit its participation to those matters specifically addressing safety and reliability of service to customers where its members are actually involved in the provision of such service. Moreover, Staff urges the Commission to decline to consider any labor relations matters, including the interests that WNIDCL identified in its initial Petition related to rates of pay, benefit packages, and employment conditions for construction workers.
- 11 No other party filed a response.

DISCUSSION AND DECISION

- 12 Staff does not oppose interlocutory review of Order 02, and we agree with WNIDCL that such review is appropriate under the circumstances presented here.³ We also conclude that while WNIDCL does not have a substantial interest in this proceeding, its participation is in the public interest and could assist the Commission to the extent it can address the safety and reliability of service to customers where its members are actually

³ See WAC 480-07-355(5); WAC 480-07-810(2).

involved in the provision of such service. Accordingly, we grant WNIDCL's petition to intervene but limit its participation to presentation on those matters.

13 The Administrative Procedure Act (APA) states that a presiding officer may grant a petition to intervene in an adjudication "upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings."⁴ Commission rules provide the presiding officer with discretion to grant intervention "[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."⁵ In addition, "the presiding officer may impose conditions upon the intervenor's participation in the proceedings."⁶

14 We agree with the conclusion in Order 02 that WNIDCL has not demonstrated a substantial interest in the subject matter of this proceeding. As Staff notes in its Response, "the Commission applies a zone of interest test to determine whether a petitioner has shown that there is a nexus between the organization's purpose and an interest protected by a Washington statute within the Commission's jurisdiction."⁷ WNIDCL contends in its Petition to Intervene that, as the bargaining representative of members employed by certain Avista construction contractors, intervention would serve its members' interests. We agree with Staff that such interests, related solely to collective bargaining issues, are not jurisdictional to the Commission. As such, we find that WNIDCL's members do not have a substantial interest in this case.

15 We nevertheless find that permitting WNIDCL to intervene in this case would be useful to the Commission in compiling an appropriate record, and is therefore in the public interest. WNIDCL states that it intends to provide testimony on "the continued provision to customers of safe and reliable service."⁸ In Order 05 in Docket UT-090842, we granted the International Brotherhood of Electrical Workers' (IBEW) petition for intervention on

⁴ RCW 34.05.443(1).

⁵ WAC 480-07-355(3).

⁶ RCW 34.05.443(2); *accord* WAC 480-07-355(3).

⁷ Staff's Response ¶ 7, citing *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 (September 10, 2009).

⁸ Petition for Interlocutory Review ¶ 12.

interlocutory review because we found that “the observations of its members as to their work ‘in the field’ pertains directly to safety and reliability issues within the purview of the Commission.”⁹ Like IBEW, no other party offers WNIDCL’s unique perspective of the employees who perform work on the Avista system whose jobs are, as WNIDCL describes, “integral to ensuring that customers receive safe and reliable service.”¹⁰ This information will assist us in our determination of whether the proposed acquisition will provide a “net benefit to the customers of the company”¹¹ and will be in the public interest, which are the standards we apply in our evaluation of property transfers.

- 16 Staff argues that WNIDCL’s members are distinguishable from IBEW’s members because they are not directly employed by Avista. We disagree. For the purposes of this proceeding, the nature of the work performed – construction and maintenance of Avista’s transmission lines and dams – is the relevant consideration rather than the technical nature of the employment relationship between Avista and WNIDCL’s members. Accordingly, we find that the work performed by WNIDCL’s members has a direct nexus to the provision of safe and reliable service, which is of principal concern in this proceeding.
- 17 We agree with Staff, however, that WNIDCL’s participation should be confined solely to matters specifically addressing the safety and reliability of service to customers where its members are actually involved in the provision of such service. As with IBEW’s role in Docket UT-090842, we similarly limit WNIDCL here. Therefore, we expressly decline to consider in this proceeding any labor relations matters, including the interests that WNIDCL identified in its initial Petition related to rates of pay, benefit packages, and employment conditions for construction workers. We condition WNIDCL’s grant of intervention accordingly.

ORDER

THE COMMISSION ORDERS That

- 18 (1) The Commission accepts interlocutory review of Order 02.

⁹ Docket UT-090842, Order 05, ¶ 16.

¹⁰ Petition ¶ 12.

¹¹ See RCW 80.12.020(1).

- 19 (2) The Commission grants the Petition to Intervene filed by the Washington and Northern Idaho District Council of Laborers subject to the conditions described above in paragraph 17.

Dated at Olympia, Washington, and effective November 20, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner