

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: KARL T. KLEIN
DEPUTY ATTORNEY GENERAL**

DATE: MARCH 29, 2018

**SUBJECT: IDAHO FOREST GROUP'S AND IDAHO CONSERVATION LEAGUE'S
LATE PETITIONS TO INTERVENE IN THE INVESTIGATION INTO
THE IMPACT OF FEDERAL TAX CODE REVISIONS ON UTILITY
COSTS AND RATEMAKING – CASE NO. GNR-U-18-01.**

On February 22, 2018, the Commission set a March 6, 2018 intervention deadline for this case. Order No. 33991. About two weeks after the intervention deadline ran, Idaho Forest Group LLC (IFG) and Idaho Conservation League (ICL) separately petitioned to intervene. The rules for late petitions to intervene, and the late petitions filed by IFG and ICL, are summarized below.

RULES GOVERNING LATE PETITIONS TO INTERVENE

Commission Rules provide that a petitioner seeking intervention must state its “direct and substantial interest . . . in the proceeding.” IDAPA 31.01.01.072. Petitions to intervene that are not timely filed “must state a substantial reason for delay.” IDAPA 31.01.01.073. “The Commission may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons.” *Id.* Also, “Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition.” *Id.*

IFG'S PETITION

On March 19, 2018, IFG filed a Petition for Leave to Intervene and Notice of Partial Waiver of Service. IFG states it has a direct and substantial interest in this case because its lumber milling and processing facilities are served under Avista Corporation's Schedule 25-Extra Large

General Service-Idaho, and this case could materially affect IFG's electric rates and terms and conditions of service. IFG Petition at 2.

IFG asserts its late intervention would not prejudice other parties because IFG has filed its petition relatively early in the case. IFG notes it filed its petition before the utilities' March 30, 2018 deadline to report on the effect of the tax changes, and before any party had taken a substantive position in the case. *Id.* at 1. IFG states its intervention "will not unduly broaden the issues or cause delay," and that it only wants to participate in the case relating to Avista. IFG thus waives service of all process that is not relevant to Avista. *Id.* at 3.

No one has opposed IFG's petition.

ICL'S PETITION

ICL filed its petition to intervene on March 20, 2018. ICL explains its petition was late because ICL did not realize it had a direct and substantial interest in this case until after the March 6, 2018 intervention deadline had run. According to ICL, on March 16, 2018, it received a notice that parties to Washington's Avista/Hydro One merger docket had reached a settlement that implicates federal tax issues. A day earlier, on March 15, 2018, the Idaho Commission's Staff had asked ICL and other parties to Idaho's Avista/Hydro One merger docket to reschedule settlement conferences in that case. ICL explains "[t]he combined impact of the notice filed in Washington and the rescheduling of the settlement conference in Idaho, leads ICL to claim a direct and substantial interest in this investigation into the impact to Avista of federal tax code changes regarding how this issue impacts our direct and substantial interest in the Avista and Hydro One merger docket." ICL Petition at 1.

ICL states it has a direct and substantial interest in this proceeding because the ICL's Sandpoint field office is a commercial customer of Avista, and the ICL has about 700 members who take residential service from Avista. ICL, on its own and its members behalves, claims a direct and substantial interest in the case arising from the potential for changes in the federal tax code to impact electric rates and services. ICL notes it brings a unique and valuable perspective to the case because of its interest in ensuring money collected for one public purpose, paying taxes, is used for another public purpose. *Id.* at 2.

ICL asserts that its late intervention would not prejudice other parties or cause delay. ICL filed its petition to intervene before any party had filed proposals or information relating to

Avista (*id.* at 1), and ICL's interest in this case is limited to Avista. *Id.* at 2. Further, ICL agrees to be bound by existing schedules. *Id.* at 1.

ICL waives service of all filings not relevant to Avista. *Id.* at 2.

No one has opposed ICL's petition.

COMMISSION DECISION

1. Does the Commission wish to grant the IFG's late petition to intervene?
2. Does the Commission wish to grant the ICL's late petition to intervene?



Karl T. Klein
Deputy Attorney General

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