

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF NOAH KINNE’S) **CASE NO. AVU-E-22-08**
FORMAL COMPLAINT AGAINST AVISTA)
CORPORATION) **ORDER NO. 35561**
_____)

On August 20, 2021, Noah Kinne contacted the Idaho Public Utilities Commission (“Commission”) alleging, among other things, that Avista Corporation (“Company” or “Avista”) failed to comply with its vegetation management policy. After informal proceedings proved unsatisfactory, on March 7, 2022, Mr. Kinne filed a formal Complaint with the Commission.

Mr. Kinne claimed that on or about July 13, 2021, a tree fell on Avista’s power line just outside of Sandpoint, Idaho. Mr. Kinne stated that the tree fell south from railroad property, on the west side of a farm access road, and that the tree downed a power line, which started a fire that caused damage to Mr. Kinne’s Combine Harvester. Mr. Kinne claimed that, based on Avista’s negligence, the fire resulted in the total loss of Mr. Kinne’s farm equipment worth approximately \$8,000. Mr. Kinne claimed that had the Company paid closer attention to the state of vegetation surrounding its power lines, the fire would not have occurred because the Company would have noticed the rotted tree and removed it.

In its informal proceeding response, the Company claimed that: (1) the downed tree that caused the brush fire was outside of the Company’s utility corridor and therefore, not within the scope of the Company’s vegetation management; (2) there was no evidence of negligence, or improper or incorrect work or actions, on the part of the Company; and, (3) the tree was visibly healthy, and did not pose any visible risks to the power lines.

STAFF RECOMMENDATION

The Deputy Attorney General (“Legal Staff”) reviewed the Complaint as well as the documents provided by both parties during the informal proceeding. Based upon its review of the Complaint and all submitted materials, Legal Staff recommended that the Commission dismiss the Complaint because: (1) the relief sought was outside the scope of the Commission’s jurisdiction; and (2) the Complaint lacked sufficient argument or authority for the Commission to consider.

A. Relief Sought

Legal Staff noted that while it was not included in Mr. Kinne’s Formal Complaint, the basis of Mr. Kinne’s informal complaint and the underlying relief sought by Mr. Kinne was a monetary

damages award against Avista for the damages done to Mr. Kinne's farm equipment. Legal Staff believed that the Commission lacked jurisdiction to provide any monetary damage judgment against Avista.

With respect to the relief sought as stated in the Formal Complaint, Mr. Kinne concluded:

This problem can be remedied by doing the needed vegetation management in the area and replacing the damaged pole. Avista claims that this tree would not have been seen when doing a level 1 inspection of the area. If major hazards like this are missed, they need to implement a better method of doing their inspections. It might be called for to investigate whether Avista is actually complying with vegetation management rules. Any fire caused by vegetation should warrant an onsite inspection by the vegetation management department of the utility company to ensure that there are no other hazards and if any others are present, they are addressed immediately.

Complaint at 3. Legal Staff reasoned that the basis of Mr. Kinne's sought relief was that the Commission would dictate the way the Company would operate its vegetation management process. Legal Staff believed that the Commission did not have jurisdiction to dictate the way the Company operated its vegetation management process; rather, the Commission had jurisdiction under *Idaho Code* 61-302 to determine whether a public utility had furnished its facilities and equipment to promote the safety, health, comfort, and convenience of its customers and the public, and to be in all respects adequate, efficient, just, and reasonable. Legal Staff concluded that Mr. Kinne had not sought any relief that the Commission might grant.

B. Sufficiency of Argument and Authority

Legal Staff reasoned that even if the Commission were to determine that it could grant some relief as requested by Mr. Kinne, the Complaint lacked sufficient argument or authority for the Commission to make any determination as to the issues presented.

Mr. Kinne cited to three sources of authority in his Complaint: (1) "Tariff schedule 70 16. CONTINUITY OF SERVICE"; (2) Idaho Code § 61-302; and (3) The National Electric Safety Code ("NESC") Rule 218. However, Legal Staff noted that Mr. Kinne did not provide any argument or analysis as to how or why the Company's actions or omissions constituted a violation of any of the cited authority. Legal Staff noted that Mr. Kinne presented, without evidentiary support, conclusory statements that Avista was negligent in its actions, and that Avista should have seen the tree as a hazard during its inspection.

Legal Staff explained that Mr. Kinne had presented a statement from Terry Oliver, President of Legacy Consulting, and that Mr. Oliver stated that: "My conclusion is that this tree

was ‘standing dead’ for who knows how long and it finally succumbed to gravity and fell in the direction of the sun as that is where the majority of the dead limbs were pointed.” Legal Staff reasoned that Mr. Oliver’s statement did not contain any reference to the date on which his examination was conducted, nor a recitation of Mr. Oliver’s qualifications to make such a statement. Further, the statement itself indicated that Mr. Oliver did not know when the tree may have died.

Additionally, Legal Staff explained that Mr. Kinne provided some photographs of the area in question. One photo was alleged to have been taken on 7/3/2020, prior to the incident, and to show the tree in question amongst other trees; however, Legal Staff noted that the photo appeared to be taken from a great distance and did not clearly show any supporting evidence for Mr. Kinne’s complaint. Mr. Kinne’s additional photographs were not dated but Legal Staff believed they were taken in preparation for the formal complaint in the year 2022, months after the event in question.

Finally, Legal Staff noted that during the informal proceedings, Avista had submitted argument and documentation to show that the tree was outside of its utility corridor, and that the tree would not have appeared as a risk or hazard during its inspection of the power line corridor.

COMMISSION FINDINGS AND DECISION

The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of all public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provisions of law, and to fix the same by order. *Idaho Code* §§ 61-501, -502, and -503. The Commission may enter any final order consistent with its authority under Title 61.

Idaho law requires every public utility to provide safe and adequate service that promotes the safety, health, comfort and convenience of the public. *Idaho Code* § 61-302 provides:

Maintenance of adequate service. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.

The Idaho Legislature has given the Commission regulatory oversight over utility safety. *Idaho Code* § 61-515 authorizes the Commission to enact safety regulations for public utilities. In 1993, the Commission promulgated the *Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission*. Pursuant to Rule 101, electric utilities are required to abide by the provisions of the NESC.

NESC requires electric utilities to maintain both vertical and horizontal clearances near its power lines for public safety and reliability. Under Vegetation Management, NESC provides that “[v]egetation management should be performed around supply and communication lines as experience has shown to be necessary. Vegetation that may damage ungrounded supply conductors should be pruned or removed.” Rule 218.A.

The Commission has reviewed all of the submitted material and the arguments presented. Based upon its review, the Commission determines that Mr. Kinne has not presented a specific prayer for relief that the Commission may grant, nor has Mr. Kinne presented sufficient facts, argument, or authority for the Commission to consider.

With respect to the prayer for relief, Idaho Public Utilities Commission Rule of Procedure 54 states that a formal complaint must “[s]tate what action or outcome should be taken to resolve the complaint.” IDAPA 31.01.01.054.04. In his Complaint, Mr. Kinne alleges that the “problem can be remedied by doing the needed vegetation management in the area and replacing the damaged pole¹,” and that “[i]t might be called for to investigate whether Avista is actually complying with vegetation management rules.” Complaint at 3. However, Mr. Kinne does not refute the Company’s informal proceeding claim that it did the vegetation management, rather, Mr. Kinne contends that the Company needs “to implement a better method of doing their inspections.” *Id.*

After reviewing the record and submitted materials, the Commission cannot find that Mr. Kinne has presented a specific prayer for relief that the Commission may grant. The Commission does not dictate the methods by which the Company conducts its vegetation management program, and at this point Mr. Kinne has only submitted general conflicting claims that the Company has both not done the inspection, and also done the inspection incorrectly.

Further, Mr. Kinne has not alleged that the tree in question was on property that was subject to the Company’s inspection; Mr. Kinne has not submitted any argument or authority to show that the Company did not comply with the rules and regulations cited in the Complaint, and at this time the only support Mr. Kinne has submitted for the conclusory claim that the Company should have

¹ Mr. Kinne makes only one reference to a “damaged pole” in his Complaint. While not required to reach its decision in this Order, the Commission sent an informal request for information to the Company regarding the pole. The Company responded that the pole had been inspected and determined to be structurally sound.

seen the tree in question is insufficient, as reasoned above, to support his claim. Thus, Mr. Kinne's Formal Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED that the Formal Complaint is dismissed.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date upon this Order regarding any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* §§ 61-626 and 62-619.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 13th day of October 2022.



ERIC ANDERSON, PRESIDENT

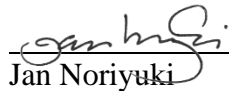


JOHN CHATBURN, COMMISSIONER



JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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