

**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. 35605**  
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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.

**FINAL ORDER NO. 35561**

On October 13, 2022, the Commission issued Final Order No. 35561 dismissing the Complaint. Order No. 35561 provides:

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

Order No. 35561 at 4-5.

### **PETITION FOR RECONSIDERATION**

On October 25, 2022, Mr. Kinne filed a letter with the Commission ("Petition for Reconsideration") "call[ing] the matter back into question." Mr. Kinne took issue with some of the analysis done by the Commission's Legal Staff and provided additional argument on the issue.

Mr. Kinne argued that "[r]equesting better practices for public safety is within the jurisdiction of the commission. I did make mention that it be investigated as to whether the management rules were being complied with." Pet. Recon. at 2. Further, Mr. Kinne argued that "[s]ufficient evidence was provided to show that Avista is not abiding by NESC provisions." *Id.* Specifically, that "[t]he actual dates of the pictures can be given and confirmed with the original images. Terry Oliver is a forester registered with Bonner County in Idaho. For the matter of questioning the judgment of Terry Oliver I am including a letter from another forester that was present the day of the event." *Id.* Mr. Kinne submitted an unsigned letter that he argues is from a forester name John Kinne.

Finally, Mr. Kinne argued that:

In the informal proceedings it was made known that the tree was on Railroad property and the agreement Avista has holds them responsible for all hazards no matter of distance. The railroad tried to contact Avista but Avista refused to respond on the matter. The railroad stated that if Avista believes they have no responsibility for the tree because of the distance from the line they must prove it with proper documentation. This has never been done. Everything that I have submitted to the commission shows that Avista is not operating in a manner that is preferential or just.

*Id.* Mr. Kinne concluded that "if a utility company failing to address known hazards and providing false information to the public can't be seen as a public safety matter that needs rectified then the public of Idaho has no hope for ever having a just utility commission." *Id.* at 3.

## COMMISSION FINDINGS AND DECISION

The Commission finds that the petition does not meet the substantive requirements for a petition for reconsideration. Rule 331 provides:

Petitions for reconsideration must set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is *unreasonable, unlawful, erroneous or not in conformity with the law*, and a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.

IDAPA 31.01.01.331.01 (emphasis added). Further, “the petition . . . must state whether the petitioner . . . requests reconsideration by evidentiary hearing, written briefs, comments, or interrogatories.” IDAPA 31.01.01.331.03.

In this case Mr. Kinne has not set forth any specific grounds for reconsideration, nor has he indicated the nature and quantity of evidence he would offer to show Order No. 35561 was unreasonable, unlawful, erroneous, or not in conformity with the law. Further, Mr. Kinne does not request reconsideration by evidentiary hearing, written briefs, comments, or interrogatories.

With respect to the submitted evidence, Mr. Kinne argues that the date of his submitted photos is not relevant, but that it can be established; however, Mr. Kinne does not establish that date for the Commission to consider. Mr. Kinne attempts to support the submitted testimony of Terry Oliver, which failed to establish any foundation for Mr. Oliver’s knowledge, with the submission of an unsigned letter alleged to be from John Kinne. This new letter fails to establish any foundation for John Kinne’s knowledge, nor does Mr. Kinne provide any argument that this new letter provides support for Mr. Oliver’s letter.

Finally, Mr. Kinne now submits an allegation that the tree in question was on railroad property, but that there is an agreement between the railroad and Avista that holds Avista liable for all damage regardless of distance or location of the tree from the pole. Mr. Kinne does not submit any evidence of this agreement, and Mr. Kinne did not argue this agreement in his original complaint. Thus, Mr. Kinne is now raising a new issue on reconsideration that was not presented to, or considered by, the Commission in its previous order.

Pursuant to Rule 332, “[g]rounds for reconsideration or issues on reconsideration that are not supported by specific explanation may be dismissed.” IDAPA 31.01.01.332. Based upon the petition’s lack of specific grounds for reconsideration and supporting argument, the Petition for Reconsideration is denied.

**ORDER**

IT IS HEREBY ORDERED that the Petition for Reconsideration is denied.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order, or other final or interlocutory Orders previously issued in this case, may appeal to the Supreme Court of Idaho within forty-two (42) days pursuant to the Public Utilities Law and the Idaho Appellate Rules. *Idaho Code* § 61-627; I.A.R. 14.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 23rd day of November 2022.



ERIC ANDERSON, PRESIDENT



JOHN CHATBURN, COMMISSIONER



JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:



Jan Noriyuki  
Commission Secretary

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