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September 10, 2021

Mark L. Johnson
Executive Director and Secretary
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

RE: **Docket No. U-210595 – Comments of Avista Utilities Regarding Intervenor Funding**

Dear Mr. Johnson:

Avista Corporation, dba Avista Utilities (Avista or the Company) is providing the following comments in response to the Commission's Notice of Opportunity to File Written Comments, dated August 19, 2021, in the above-captioned docket.

I. INTRODUCTION: AVISTA'S EXPERIENCE WITH INTERVENOR FUNDING IN NEIGHBORING JURISDICTIONS

For a number of years, Avista has operated under two different models for intervenor funding -- one is a more prescriptive version in Oregon, based on utility/intervenor negotiated agreements that address nearly all of the issues posed by the Commission in this Docket, and the other, in Idaho, that is more streamlined, and is premised on an after-the-fact review of an intervenor's participation. Both approaches have served their intended purpose. A brief overview of each approach is provided below, supported by applicable statutes, rules, and examples of actual funding requests made under each. As Avista responds to each of the questions posed by the Commission in this docket, reference will be made to the attached documentation.

A. Idaho Intervenor Funding.

Idaho Code § 61-617A provides for the award of intervenor funding in Idaho, along with Idaho Public Utility Commission (IPUC) Rules 161-165, which implement the law (attached as Appendix A). In short, any electric, gas, water, or telephone utility with gross Idaho intrastate annual revenues exceeding $3.5 million may be required to pay, in the aggregate, up to $40,000 to all intervenors in any proceeding before the Commission. The determination regarding the payment of these expenses is based on an after-the-fact showing of a "material contribution" to the case at hand, as well as a finding that: the costs of participating are "reasonable in amount" and,

without which a "significant financial hardship" would be experienced; intervenor's "contribution differed materially" from that of Staff; and the contribution addressed issues of concern to the "general body of users or consumers." (Idaho Code 61-617A(2)) Expenses are an allowable business expense in the pending rate case, or in a subsequent rate case, if the proceeding at issue is not a general rate case. Those expenses are to be charged to the class of customers represented by the intervenor. (Id. at subsection (3))

The accompanying IPUC Rules prescribe the form and content for Petitions for Intervenor Funding (Rule 162), which include an itemized list of expenses (e.g., legal fees, witness fees, reproduction fees, along with hourly rates), a statement demonstrating that the costs are reasonable, and why the costs "constitute a significant financial hardship," and how its contribution differed "materially" from that of Staff, and finally, how its contribution addressed issues of concern to the general body of customers. Any such application is to be filed within fourteen (14) days of the last evidentiary hearing or other filing which submits the matter to the Commission for decision. (Rule 164)

Finally, Rule 165 provides for an award of funding, based on a satisfactory showing of the above, with payment to be made within twenty-eight (28) days of the Commission's order, and recoverable through rates. Also attached as Appendix A is a recent example of a funding request and corresponding order approving such request, in Avista's prior rate case.[1] As mentioned, this process has worked as intended in the State of Idaho for Avista.

B. Oregon Intervenor Funding.

The approach to intervenor funding in Oregon differs markedly from that in Idaho, in that it is not required under the statute (i.e., a utility "may" enter into an agreement with an intervenor). As a practical matter, however, that is not in issue, since all utilities have entered into a series of agreements for funding spanning more than a decade. It is premised on an "agreement," as noted, much like that contemplated in the Washington legislation. Also, in alignment with the Washington legislation, Oregon's approach covers only utilities providing electric and natural gas service (unlike Idaho). And finally, it requires the Oregon Public Utility Commission's (OPUC) approval of the agreement and provides for recovery of costs in rates. (See ORS 757-072) The accompanying rules (OAR 860-001-0120) further expand upon this methodology:

- Only parties that are "pre-certified" or become "case certified" are eligible.
- "Precertification" (ORS 757.072(3)) depends on a showing of:
  - Representation of utility customers on an "ongoing basis," and doing so on an "effective" basis;

[1] See Case Nos. AVU-E-17-01 and AVU-G-17-01; CAPAI's Petition for Intervenor Funding and Order No. 33953, respectively.

- The members of the intervening organization otherwise already contribute "a significant portion" of the overall support and funding of the organization's efforts;

- A prior demonstration of substantial contribution to the record;

- "Case-by-Case" Certification" (ORS 757-072(4)) depends on a showing of:

  - Representation of "broad utility customer interests";

  - Participation primarily directed at rates or terms of service for a broad class of customers, and not ancillary issues not affecting those customers;

  - Will be able to "effectively represent" those customers;

  - Its membership contributes a "significant percentage of overall support";

  - No other "pre-certified" intervenor already represents the same interests and that its participation will not unduly delay the proceedings.

Appendix B contains a copy of the applicable Oregon statute and rules referenced above.

Avista is presently a party to a Fourth Amended and Restated Intervenor Funding Agreement (hereinafter "Funding Agreement"), effective January 6, 2018 and approved by the OPUC in Order No. 18-017. This Funding Agreement extends for a four-year period through December of 2022. Avista has also been a party to prior Intervenor Funding Agreements containing substantially similar terms but differing in funding amounts.

What is especially unique about the Funding Agreement is that it is a multiple party agreement negotiated between all utilities (except for Idaho Power, which entered into its own agreement) and all "pre-certified" intervenors: Citizens' Utility Board of Oregon (CUB), Industrial Customers of Northwest Utilities (ICNU), and the Northwest Industrial Gas Users (NWIGU) -- the latter two having since been consolidated under the Alliance of Western Energy Consumers (AWEC). Since it is "voluntary," the Funding Agreement has been negotiated and periodically amended through group discussions involving all affected participants. The advantages of a single operative agreement are apparent: it assures consistency across the terms affecting all participants, and by prescribing overall funding levels for each of the utilities, it serves to assure rough consistency in levels of funding by each utility as compared with others, based on approximate size of customer base.

In short, based on the Company's experience in Oregon, the funding rules have been fine-tuned over time and are well understood and accepted by the parties. While typical re-negotiations of amended funding agreements still take a number of months, the more recent discussions have focused primarily on overall levels of funding, given that the fundamentals for funding have been fairly well established.

What does this suggest about prospects for negotiating terms of an Agreement in Washington for Avista? Only AWEC, among the group of typical intervenors in Avista's general rate cases, has prior experience in Oregon with intervenor funding in the state. Others, such as The Energy Project or the Sierra Club, do not, to the best of Avista's knowledge. Commission Staff and Public Counsel would not otherwise participate in any such agreement since both are already funded through the Commission or the Office of the Attorney General. Other utilities, such as PacifiCorp, Northwest Natural and Cascade, also have experience with intervenor funding in Oregon.

The Fourth Amended and Restated Intervenor Funding Agreement is attached, in its entirety, as Appendix C. As suggested, it is quite detailed, and, by its terms, addresses most of the questions posed by the Commission in this Docket:

- Funding levels (including "allowances" and "advances") [Article 4];
- Grant Eligibility [Article 5];
- Procedure for Grant Requests [Article 6];
- Payment of Grants (eligible expenses, Commission approval, recovery of costs) [Article 7].

Also provided, as Appendix D, are Forms for the Request for Issue Fund Grants as well as Preauthorized Matching Funds (appended to Funding Agreement), and recent examples of the process for submitting of funding requests by an intervenor (AWEC) in Avista's most recent Oregon rate case.[2]

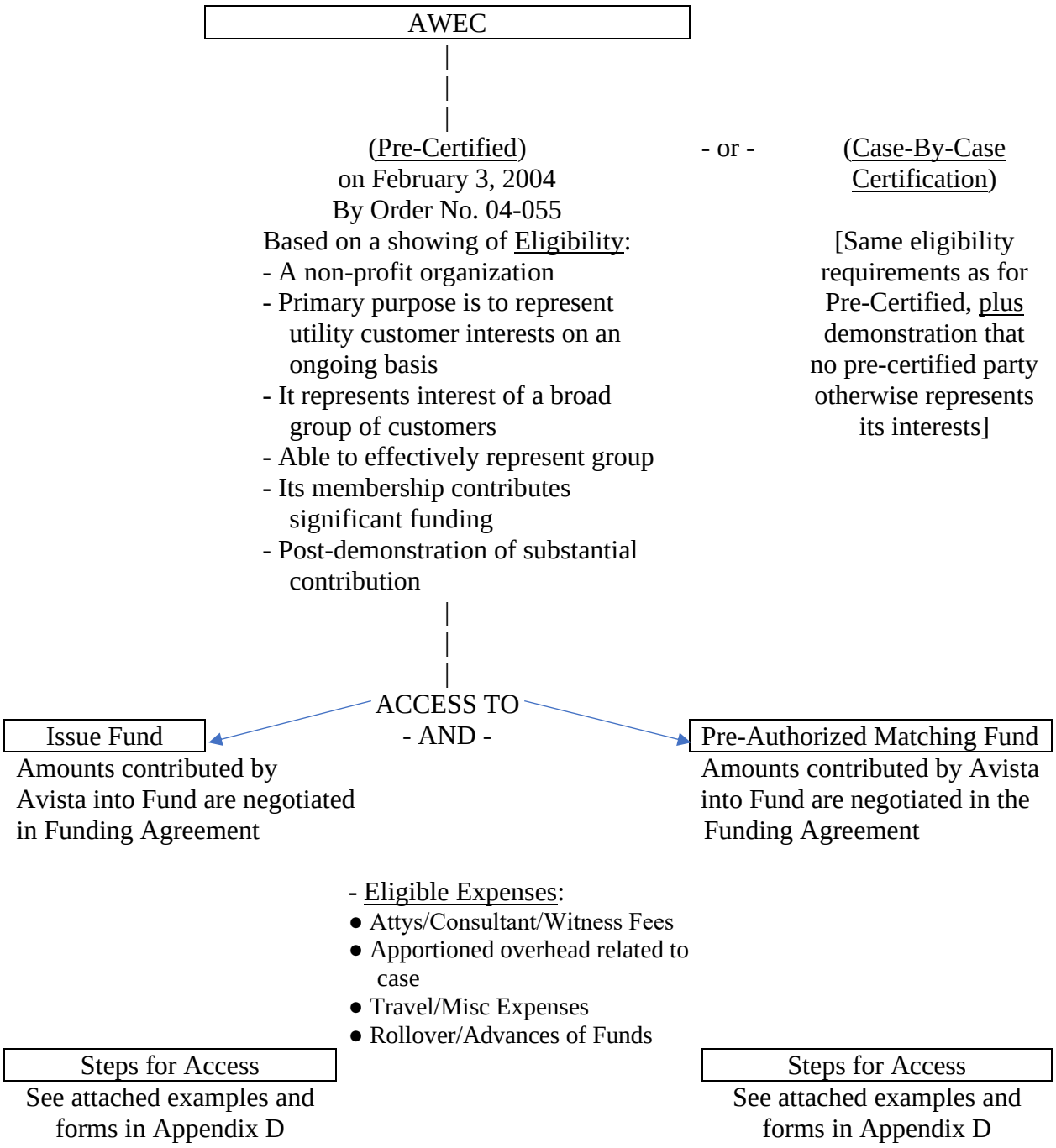
The following schematic is a rough illustration of the intervenor funding process in Oregon, using a recent application by AWEC as an example:

[2] Docket No. UG 389. Issue Fund Grant examples provided are AWEC's Notice of Intent to Request Issue Fund Grant; Proposed Issue Fund Budget; Amended Proposed Issue Fund Budget; Order No. 20-160 (approving the Amended Proposed Budget); Request for Payment of Avista Issue Fund Grant, and; Order 21-054 (approving Issue Fund Grant Request). Preauthorized Matching Fund Grant examples (Docket No. UM 1929) are AWEC's Request for Payment of a Preauthorized Matching Fund Grant and Order No. 21-101 approving the request.

Simplified Schematic of Intervenor Funding in Oregon

[Based on the terms of the Fourth Amended and Restated Intervenor Funding Agreement]

Example of AWEC Funding from Avista:



II. RESPONSE TO SPECIFIC QUESTIONS

Questions Regarding ESSB 5295 Section 4(1)

1. Section 4(1) of ESSB 5295 states: "A gas company or electrical company shall, upon request, enter into one or more written agreements with organizations that represent broad customer interests in regulatory proceedings conducted by the commission, subject to commission approval in accordance with subsection (2) of this section, including but not limited to organizations representing low-income, commercial, and industrial customers, vulnerable populations, or highly impacted communities." How should the Commission interpret "broad customer interests" and "regulatory proceedings"?

   Response: In the definition section of the Oregon Funding Agreement, "[Art. I(c) and (d)], "Eligible Proceedings" are broadly defined to include, e.g., general rate requests, mergers/acquisitions, IRPs, power or purchased gas adjustments, or any proceeding so designated by the Commission that directly involve the utility, and is anticipated to have a substantial impact on utility rates or service, a significant impact on utility, customers or the operations of the utility, is likely to result in a significant change in regulatory policy, or raised novel questions of fact or law." (It would not include, however, a complaint proceeding initiated by, or caused to be initiated by, the intervenor who requests funding.) Avista understands that the definition of "regulatory proceedings" in this Docket needs to be fairly expansive, as well, for it to accomplish its intended purpose.

   Again, adopting language from Oregon, "broad" customer interests "should refer to interests that are" "primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers [represented by that intervenor] and not narrow interests or issues that are ancillary to the presentation of the interest of consumers as consumers of utility services." (See Section 5.2(b) of Funding Agreement, Appendix C). In representing "broad customer interests," it is also to be understood that the "primary purpose of the organization is to represent utility customers' interests on an ongoing basis." (Ibid.)

2. Should the Commission require intervenor funding agreements between utilities and organizations to take a particular form, and should the agreements require organizations to provide financial spreadsheets, details of funding need, reporting of costs and expenses, or other requirements? If so, please provide suggested agreement models from other states or other preferred agreement requirements, including content.

   Response: Yes, the Commission should require intervenor funding agreements with organizations that represent broad customer interests in regulatory proceedings, as envisioned by the legislature. Those agreements would, of course,

be subject to Commission approval; failing to reach agreement, either the utility or the organization, could bring the matter to the Commission for resolution.

Ideally, a multiparty agreement between all utilities and all eligible organization would be preferred, to assure consistency and fairness across the regulatory landscape. Many (but not all) intervenors are common to all affected utilities, in any event -- e.g., The Energy Project, AWEC, etc. It would appear that only PSE in this jurisdiction does not have experience with operating under the Oregon Funding Agreement. Failing to reach a broader agreement, individual agreements (utility/intervenors) could then be utilized.

Avista would recommend the use of the Oregon Funding Agreement, attached as Appendix C, as a starting point. It has been fine-tuned over time and is well understood by several utilities and parties who appear in both Washington and Oregon. That Funding Agreement specifically addresses the need for organizations to provide financial information, a demonstration of funding needs, reporting of costs, etc. [See provisions for "matching grants" from organization (Sections 7.2, 6.6, 7.3)].

The "precertification" process in the Oregon Funding Agreement assures eligibility (as does the separate "case-certification" process), based on a showing of an ongoing interest in matters affecting "broad customer interests" and requires that the organization's members contribute a "significant percentage" of the overall support of the organization. (The Funding Agreement specifically requires that 20% or 35%, depending on the fund to be drawn from, be self-funded.) Moreover, whether "pre-certified" (as most are) or "case certified," the intervenors must submit on a standardized form, a proposed budget, including a description of areas to be investigated, estimated attorneys, staff and witness fees, and all other costs (Section 6.3). The Commission will then act on that proposed budget usually within fourteen (14) days, and determine the amount, if any, to be made available and the allocation of that amount among the various parties. (The Commission will have previously set a date for all budgets to have been submitted.) Section 6.5 of the Oregon Funding Agreement sets forth the factors guiding the Commission's decision on the proposed budgets: breadth/complexity of issues; significance of issues; dollar magnitude of issues; participation by others representing the same interests, the level of matching funds provided by intervenor; qualifications/expenses; other competing budget requests, etc. (See Appendix D for examples of budget requests submitted in Oregon, along with Orders approving such requests.) The key is the cooperation among intervenors who are competing for funds in a particular case, which has thus far not been an issue in Oregon for Avista. (Section 6.6 requires cooperation among parties in that regard; see also evidence of that in attached examples of budgets in Appendix D.)

3. What standards should the Commission use for approving, approving with modifications, or rejecting an agreement for funding?

Response: The previous Response identifies the factors that should govern any particular funding request. As for approval of the underlying Intervenor Funding Agreement itself, the Commission should use the following criteria, which are required in the legislation (RCW 80.28.04):

- Manner for determining "eligibility";
- Manner for providing a reasonable allocation of financial assistance to organizations among all classes of customers;
- Manner in which financial assistance is recovered in rates;
- Manner of prioritizing organizations representing vulnerable populations or highly impacted communities;
- Manner or process for submitting Request for Funding approval and reporting;
- Manner for "pre-certifying" parties during the term of the underlying agreement (or, as the case may be, for "de-certifying" others);
- Manner for awarding ongoing "Pre-authorized Matching Funds" for eligible organizations and manner of awarding "Issue Funds" unique to each case;
- Manner of payment, including definition of eligible expenses, customer class allocation, etc.;
- Manner for terminating "eligibility" where necessary;
- Manner for terminating agreement itself;
- Miscellaneous provisions for dispute resolution, enforcement, ongoing reporting, etc.

4. What constitutes a reasonable allocation of financial assistance?

   a. Should the Commission establish an overall amount of assistance provided to intervenors by each utility?

      Response: Yes, the Commission should establish an overall amount of assistance to be provided, in the aggregate, for each year of the Agreement;

that amount may be adjusted upward from year to year, based on a method agreed to by the parties. It is important, for planning purposes, for all parties to have the benefit of a reasonable expectation of funding, based on a reasonable allocation among the parties, over time. In Oregon, the overall funding levels are set for the four-year term of the agreement, subject to yearly escalation of the Pre-authorized Matching Grant portion.

b. What standards should the Commission use to determine whether an agreement is consistent with a reasonable allocation of financial assistance?

Response: A "reasonable allocation of financial assistance" should be based on the following considerations:

- The breadth and complexity of the issues;
- The significance of any policy issue;
- The length and complexity of the procedural schedule;
- The dollar magnitude of the issues at stake;
- The participation of other parties representing the same or similar interests;
- The qualification and experience of the party before the Commission;
- The level of all remaining available funds during any funding year, including unused amounts that are "rolled over" from prior years;
- Demonstration that party will use at least a significant portion of its own resources to fund the effort (i.e., "matching");
- In evaluating all "budgets" submitted by intervenors, a preference shall be given to representation of vulnerable populations or highly impacted communities.

Questions regarding ESSB 5295 Sections 4(2) and (3)

5. Should intervenor funding be prioritized and/or disbursed based on utility budgets for funding, or should agreements be considered case-by-case and without the use of utility budgets for intervenor funding?

Response: As is the case in Oregon, Avista believes that a "utility budget" should be established as part of the underlying Funding Agreement. That overall budget, if set in concert with similar "budgets" for other utilities (as is the case in Oregon), will provide for a measure of consistency across all utilities and stakeholders, adjusted, of course, for relative size and number of intervenors. This "budget" will allow for better planning over the course of a multi-year funding agreement and a better allocation of recourses by all involved.

6. Should eligibility for organizations to enter into an agreement for intervenor funding require a demonstration of need? Should eligibility be based on other considerations, such as a material contribution to a proceeding?

Response: Yes, eligibility for funding should be based on a showing of need, and a demonstration of the other factors discussed above, in response to Question 4(b). These include:

- A demonstration of an ongoing interest in matters affecting "broad customer interests";
- A showing that the organization's members contribute a significant percentage to the overall support of the organization;
- The breadth and complexity of the issues involved; the magnitude of the issues involved;
- Participation by others representing the same or similar interests;
- The level of matching funds provided by the intervenor;
- Its qualifications and expertise;
- Other competing budget requests;
- Whether the request would incrementally serve the needs of the vulnerable and highly-impacted communities.

The advantage of the "pre-certification" processes and criteria described in the Oregon Funding Agreement, is the ability to vet these issues in advance, and for the duration of the funding agreement.

a. What parameters should guide this eligibility?

Response: [See above]

b. What organizations should *not* be eligible for funding, if any?

Response: As is true in Oregon, no organizations should receive funding with respect to a complaint filed by it or instigated by it. Intervenor funding is not a vehicle to potentially be misused in service of complaint proceedings. Typically, complaint proceedings only address the particular circumstances of the complainant and do not otherwise broach matters of "broad customer interests" (see Response to Question 1). Should it become so, the matter would otherwise be put before a broader constituency, perhaps in a general rate case, where funding would be available.

Also, of course, no funding should be provided to Staff or the Office of Public Counsel, who are otherwise funded by the Commission and/or the Office of Attorney General.

c. Should the Commission consider or allow for pre-certification of organizations, similar to the methodology used by the Oregon Public Utilities Commission, to enter into agreements with utilities? Or should all agreements and all organizations be considered on a case-by-case basis?

Response: Avista favors the approach embodied in the Oregon Funding Agreement allowing for a "pre-certification" as well as "case-by-case" certification for those who are not otherwise pre-certified. As a practical matter, those who are eligible for funding would largely consist of established organizations who have demonstrated that they can satisfy the eligibility criteria and will usually be pre-certified. "Pre-certification" would streamline the process. As is true in Oregon, any other new party may seek "pre-certified" status upon application by a date certain each year. In the alternative, an organization that is not "pre-certified" can still seek a "case-by-case" certification if it can satisfy the eligibility criteria discussed above.

7. Should the Commission consider interim funding needs, i.e., full or partial payments provided to organizations in advance of or during a proceeding, or should all funding be disbursed at the conclusion of a proceeding?

Response: Yes, a means of providing interim funding should be provided. This issue is addressed in the Oregon approach to intervenor funding. (See Sections 4.2.2 and 4.2.3) It begins with the creation of two funds:

(1) A Pre-authorized Matching Fund that is made available each year to pre-certified intervenors to cover ongoing eligible expenses across multiple proceedings, but is subject to a required matching of resources provided by the Intervenor (currently 35%); and

(2) A separate Issues Fund Grant to be made available to intervenors based on their demonstrated needs in any particular case. Procedures are set forth for an intervenor to provide a "Notice of Intent" to seek such funding and the submittal of a proposed budget that is acted upon early in the proceeding by the Commission. Payments of these funds, however, await the conclusion of the proceeding and a showing of actual expenditures. (See Section 7.3)

Accordingly, the Pre-authorized Matching Fund provides an ongoing source of funding, irrespective of the need for additional "Issue Funds" for any particular case. Moreover, unused portions can be "rolled over" into succeeding years, subject to certain limitations. In effect, this process provides for "interim" funding on an ongoing basis. (See Section 4.3 of Oregon Funding Agreement.)

In addition, intervenors may request an "advance" against their allotted Pre-authorized Matching Fund for the following year. (Section 4.4 of Oregon Funding Agreement) Advances are not to be made from the Issue Fund, however, except where a proceeding carries over into the next calendar year.

a. What factors should the Commission consider to determine whether an organization is eligible for interim funding?

Response: Eligibility for "interim" funding (in the form of the parties' Pre-authorized Matching Fund) is determined by virtue of being "pre-certified" as an intervenor. Those eligibility requirements are set forth in Section 5.2 of the Oregon Funding Agreement. See also Part I.B. (Introduction) of these comments. Eligibility for a progress or "interim" payment from the Issue Fund can also be made during the pendency of a proceeding based on the showing required in Section 5.3 (i.e., itemized expenses, demonstration of reasonableness and pertinence to issues raised).

b. What documentation should an organization submit to support a request for interim funding?

Response: In Oregon, "interim" funding comes in two forms: through the Pre-authorized Matching Grant (and through "Advances," as discussed above) and in the form of "progress payments" of Issue Funds. (See Section 5.7.3 for "Issue Fund" Progress Payments). Eligible expenses for any disbursement (whether final or "interim") are set forth in Section 7.4 of the Funding Agreement - e.g., attorney and consulting fees, expert witness fees, case processing costs, travel costs, etc. General operating expenses, however, are excluded from the Issue Fund disbursement. (Section 7.5 of Funding Agreement.) These include, e.g., fundraising, membership recruitment, overhead, etc.

c. Should the Commission consider a process for the return of interim funding payments if a payment grantee does not materially contribute to a proceeding or must excuse itself from the proceeding for any reason?

Response: Because funding under a Preauthorized Matching Grant is based on a vetting and certification process, there is not an express provision for the return of those funds in Oregon. The Issue Fund Grant is not made unless and until a showing has been made (typically at the end of a case, unless a "progress payment" has been made), but only if an express determination is made at the time of payment that the expenses are eligible for reimbursement and that a substantial contribution has been made (see discussion above).

If, however, an intervenor has been "decertified" for any number of reasons set forth in Section 8.1 of the Funding Agreement (fraud, failure to properly represent a broad class of customers or failure to meet its obligations), the termination will take place on a "prospective" basis only. (See Section 8.2.)

8. What administrative procedures should be in place for the distribution of financial assistance, such as cost audits, documentation, reporting, or others?

Response: The process for distribution of funds is delineated with some particularity in the Oregon Funding Agreement, and has been discussed above: The establishment of aggregate funding each year (Preauthorized Matching Fund and Issue Funds) (see Article 4); eligibility for grant funding (Article 5); Grant Request Procedures (Article 6); Payment of Grants (Article 7); and Termination of Eligibility (Section 8). Those procedures describe, with great specificity, who is eligible, what expenses are eligible, and the multistep process for securing funding. This includes: certification; filing of Notice of Intent to seek Funding; filing of a proposed budget; approval of that budget by the Commission (i.e., acting through its hearing officer) and actual disbursement of funds for a proper purpose; as well as periodic reports to be filed by grant recipients (Section 6.8) (e.g., semiannually on or before April 1 and October 1, showing pending requests for payments, payments received, and account balances) for the prior six (6) month period.

In addition, Section 7.10 of the Funding Agreement provides for "audit" rights of the Commission into the books and records of the intervenor, to verify accuracy of requests and a confirmation of "eligibility."

9. What should be the Commission's role, if any, in administering agreements and funding *after* approving agreements? For example, should the Commission have a role in assessing the validity or reasonableness of intervenor costs; approving or rejecting final funding amounts or payments; providing templates for forms and paperwork, including agreements, funding applications, and cost or budget tracking

of funding awards; or requiring reporting from intervenors and utilities? Please provide administrative models from other states or jurisdictions as relevant.

Response: Yes, the Commission should have an ongoing role, typically acting through its designated hearing examiner or other Administrative Law Judge assigned for that purpose. Avista supports the Oregon model, as described above, and embedded in the Oregon Funding Agreement. Once in place, and after the parties have become familiar with it, this model addresses each of the items identified in this question, including the manner of Commission involvement, approval of funding, budget requests, documentation, review, and reporting. These have been described above. See also Appendix D for an example of forms and budget requests and approvals.

10. What types of expenses or costs should be eligible for funding (e.g., legal costs, professional services, expert witnesses, consultants, etc.)? What types of expenses or costs should not be eligible for funding, if any?

Response: Again, as set forth in the referenced Oregon Funding Agreement (Section 7.4), "eligible expenses" include: attorney/consultant fees; expert witness fees; apportioned wages and overhead; travel and case preparation costs, etc. "General Operating Expenses," however, are excluded, including membership recruitment, fundraising, membership communication, etc. (Section 7.5)

11. If the Commission reviews the reasonableness of expenses or costs, what factors should the Commission consider? For example, what factors should the Commission consider to determine reasonable attorney and expert witness fees? What supporting documentation should the Commission require in order to establish the reasonableness of services provided?

Response: Upon receiving a request for payment, the Commission, acting through delegated authority, will determine whether expenses are "eligible" (as defined in the underlying agreement) (Section 7.6), as well as the allocation of funding among the intervening parties. It will assess the request in light of the (a) breadth and complexity of the issues; (b) the significance of any policy issues; (c) the procedural schedule; (d) the dollar magnitude of the issues at stake; (e) the participation of other parties addressing the same issues; (f) the amount of funding being provided by the intervenor; (g) its qualifications and experience; (h) level of available funds in the account; (i) other eligible proceedings which may result in duplication of efforts. (See Section 6.5) Moreover, the intervenor must have paid for at least 20% of the eligible expenses in the preceding from its own resources. (Ibid.) (35% if it pertains to Pre-authorized Matching Funds.)

12. How might the Commission require intervenor funding to be recovered in gas or electric utility rates? What should the Commission consider in adjusting rates to reflect any written funding agreements?

Response: Avista believes that this question includes two elements: One of customer class allocation, and one of means of cost recovery. Again, looking to the Oregon Funding Agreement for guidance, the Commission will determine in each proceeding (as part of the "budget approval" process) how to recover the grants from the various customer classes. Where more than one utility is involved in a "generic" proceeding, for example, the Commission would apportion the cost among all companies.

In terms of cost recovery, since a final determination of eligibility and allocation of costs may not be determined until after revenue requirement and class allocations and assignments are otherwise made in a particular rate case, it would be preferable to defer the amounts, with a carrying charge, for recovery in the next general rate case. (See Section 7.9)

Questions regarding ESSB 5295 Section 4(4)

13. Section 4(4) of ESSB 5295 states: "Organizations representing vulnerable populations or highly impacted communities must be prioritized for funding under this section."

    a. What does it mean to prioritize organizations representing vulnerable populations and highly impacted communities? Please explain in detail and relative to the other comments you have provided in response to this notice.

        - For example: If you advocate for utilities setting aside standing budgets for intervenor funding, should prioritizing vulnerable populations and highly impacted communities require a specific budget item? If so, what is a reasonable amount or percentage of an overall budget? If you advocate for all funding agreements to be considered on a case-by-case basis without the use of standing utility budgets, how might vulnerable populations and highly impacted communities be prioritized in such a case-by-case model?

    Response: Avista would favor the use of a separately designated fund to be earmarked for these constituencies. If the Oregon model is used, the underlying Funding Agreement, to be negotiated by the parties and approved by the Commission, would establish annual funding requirements for (1) a Preauthorized Matching fund; (2) an Issue Fund; and (3) a separate fund for vulnerable populations and highly impacted communities" (however designated). Avista suggests that not less than 20% of the aggregate total of all three funds be set aside for this purpose, until greater experience is gained through ongoing participation by parties under the terms of the underlying Funding Agreement. After the expiration of the initial term of the Funding Agreement (e.g., four years), the proportionate

level of funding can be renegotiated, along with the total amount of funding for all purposes.

b. Should the Commission define "highly impacted communities" and "vulnerable populations"? If yes, please provide definitions or provide references to existing legal definitions in statute or administrative rule.

Response: Both the terms "highly impacted communities" and "vulnerable populations" (Named Communities) are already defined in WAC 480-100-605. What is not defined are the specific areas of each utilities' service territory that fall into these Named Communities. For the purposes of intervenor funding, the Commission should not further define the specific Named Communities for each utility. Through the ongoing negotiations of an underlying funding agreement, all parties and the Commission will benefit by the exchange of ideas and perspectives about who these populations and communities are, and how best to assure representation of their interests. If the parties are unable to reach agreement among themselves, the matter can be brought back to the Commission for resolution. Even if resolved among the parties, the Commission will still have the final say as part of its overall approval process.

Avista thanks the Commission for providing this opportunity to comment. If you have any questions, please feel free to contact Patrick Ehrbar (patrick.ehrbar@avistacorp.com) or David Meyer (david.meyer@avistacorp.com).

/s/ Patrick Ehrbar
Patrick Ehrbar
Director of Regulatory Affairs