

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of )  
 ) DOCKET U-210595  
WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )  
 ) COMMENTS OF THE ALLIANCE OF  
Relating to the Commission’s examination ) WESTERN ENERGY CONSUMERS  
of intervenor funding provisions for )  
regulatory proceedings )  
\_\_\_\_\_ )

**I. INTRODUCTION**

1 Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) August 19, 2021 Notice of Opportunity to File Written Comments in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) submits these comments on agreements to provide stakeholder funding to participate in Commission proceedings.

2 While AWEC and its predecessor organizations have participated in Commission proceedings without intervenor funding for many years (and in the process has saved all customers millions of dollars on their electricity and natural gas bills), recent changes to Commission processes – driven in large part by new statutory mandates – are making it more difficult for AWEC (and likely other organizations) to fully protect customers’ interests. For example, the Clean Energy Transformation Act (“CETA”), and the Commission’s rules promulgated thereunder, have created extensive stakeholder processes outside of adjudicative proceedings that can be far more time-consuming and have less predictability in terms of the

length and frequency of meetings than more traditional Commission processes. Further, the Commission has indicated a preference to avoid adjudications of deliverables under CETA, such as Clean Energy Implementation Plans, where possible. If that is to occur, contested issues must be resolved in the informal stakeholder process. Without a supplemental source of funding, however, AWEC does not have the means to fully participate in these processes, which makes it more likely that AWEC will reserve its review of utility filings until they have been made at the Commission, which increases the potential for adjudications of these filings. AWEC, therefore, supports the Commission opening this docket and hopes that it will approve one or more agreements to provide funding for qualified organizations to participate in these and other Commission processes.

3           AWEC has extensive experience with intervenor funding in Oregon and believes the Commission can incorporate many of the elements of that process into a funding protocol for Washington. Indeed, it makes sense to use Oregon as a model because several of the utilities covered by Section 4 of SB 5295 are signatories to the Oregon Public Utility Commission’s Intervenor Funding Agreement (“IFA”), so there is already an established construct in place with which several parties to any agreement in Washington are already comfortable.

4           That said, some provisions of the Oregon process are likely not suited to Washington, and AWEC has proposed some alternative options for the Commission below. Broadly speaking, however, AWEC recommends that a single intervenor funding agreement that covers all utilities and all participating organizations be developed. This will allow the Commission to approve a comprehensive framework for intervenor funding, and approve individual organizations for inclusion within that agreement on a case-by-case basis through

precertification and case-certification, as described in more detail below. This will substantially reduce the administrative burden for the Commission and provide the utilities and all interested organizations with clarity on what is required to receive funding.

5           Additionally, the Commission’s Notice indicates an intention to draft a policy statement providing guidance on intervenor funding agreements. While AWEC does not object to the issuance of a policy statement, AWEC does not see the need for one either. Subsection 4(2) of SB 5295 requires that, “[b]efore administering an agreement” the Commission “shall, by rule or order, determine” several criteria enumerated in the statute. AWEC believes that a more administratively efficient approach which would comply with these requirements is for the utilities and interested stakeholders to negotiate and draft an agreement for the Commission to review. The Commission then, by order, can either approve this agreement, modify it, or reject it. If approved, this order will occur before the Commission begins “administering” the agreement. This approach will give the Commission specific language to review and deliberate on, rather than requiring it to provide general guidelines in a policy statement, after which it will still need to review one or more specific agreements.

## II. COMMENTS

6           AWEC responds to the Commission’s specific questions below.

### A.   **How should the Commission interpret “broad customer interests” and “regulatory proceedings”?**

7           AWEC recommends that “broad customer interests” be interpreted to mean that an organization must represent interests that are shared by more than just a few uniquely situated customers. For instance, while an organization representing the interests of Qualifying Facilities (“QF”) might be able to argue that it represents “customer interests” in the sense that QFs are

interconnection customers of utilities, they have a narrow interest limited to interconnection issues that typically have tangential impacts on the utilities' retail customers overall.

Conversely, an organization that represents customers with respect to their rates and terms and conditions of service represents "broad customer interests" that inure to the benefit of all customers, even if that organization purports to represent a specific subset of customers (i.e., AWEC's representation of industrial customers or Public Counsel's representation of residential customers). Similarly, organizations that represent vulnerable populations or highly impacted communities will raise issues that are shared by a broad subset of the utilities' retail customers, so long as those issues are within the scope of the Commission's jurisdiction.

8                   AWEC recommends that "regulatory proceedings" be defined as any process associated with a docketed proceeding or that may lead to, or is the outcome of, a docketed proceeding. This would include traditional proceedings such as general rate cases and annual filings such as Purchased Gas Adjustments. It would also include stakeholder meetings prior to the filing of an Integrated Resource Plan, Clean Energy Action Plan, or Clean Energy Implementation Plan, each of which are associated with a docket once filed. Finally, it would include any workshops or other processes that are, for instance, mandated by a stipulation or final order of the Commission. An example of this would be Puget Sound Energy's ("PSE") workshops to establish a methodology for measuring benefits from the Energy Imbalance Market, which is a process required by the stipulation approved in PSE's most recent Power Cost Only Rate Case.

**B. 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?**

9 As noted above, AWEC believes the Oregon IFA should act as a template for a Washington funding agreement, with modifications where appropriate. Indeed, AWEC, PacifiCorp, Avista, NW Natural and Cascade are all signatories to that agreement. The Oregon IFA contains reporting requirements for intervenor funding, and AWEC is comfortable with providing any level of funding detail and cost reporting the Commission feels is reasonable.

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

10 As noted above, AWEC recommends that the Commission approve a single funding agreement that applies to all utilities and all eligible organizations. AWEC believes that the standard for approval of such an agreement is whether the Commission finds that this agreement is in the public interest and “is consistent with a reasonable allocation of financial assistance provided to organizations ...” consistent with Subsection 4(1) of SB 5295.

**D. What constitutes a reasonable allocation of financial assistance?**

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

11 Yes, AWEC recommends that each utility provide a total amount of funding, and that this funding is divided into funds that are specifically dedicated to each pre-certified organization. Oregon’s IFA has three funds: (1) a Citizens’ Utility Board (“CUB” fund; (2) a matching fund; and (3) an issue fund. The CUB fund is exclusively for use by CUB, while the matching fund is exclusively for use by AWEC. The issue fund is available to any pre-certified or case-certified organization.

12 While disputes over the issue fund have been rare, this is largely attributable to the fact that few organizations have satisfied Oregon’s requirements to obtain intervenor funding described in Paragraph 20 below. If intervenor funding in Washington is available to a broader set of organizations than in Oregon, the potential for disputes over how much each organization should receive is much higher, which the Commission would need to resolve. AWEC believes that dedicated funds for each organization will be easier to administer and will dramatically reduce the potential for disputes.

13 An intervenor funding agreement could also establish a separate fund for organizations that are case-certified – that is, determined to be eligible to receive funding for a specific proceeding, either because their interest is limited to that proceeding or because they have not yet been determined to have met the requirements for precertification.

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

14 Oregon’s intervenor funding agreement allocates the cost of intervenor funding to the beneficiary customer class. Thus, AWEC’s intervenor funding is recovered exclusively from industrial rate schedules, while the CUB intervenor funding is recovered exclusively from residential rate schedules. AWEC supports this method because it allocates the cost of advocacy to the customers that primarily benefit from that advocacy.

15 Additionally, the recovery of intervenor funding costs should not materially impact a utility’s rates. For instance, in Oregon, the total amount of funding potentially available in a year to participate in PacifiCorp proceedings is approximately \$318,000. This represents 0.02% of the utility’s total revenue requirement in Oregon. AWEC recommends that the

Commission find that total funding that exceeds 0.1% of a utility’s revenue requirement is presumptively unreasonable. For combined electric and gas utilities, this would apply to the combined total revenue requirement. Note that, because Washington utilities vary widely in size, 0.1% of revenue requirement may be far more than is necessary. Reaching this threshold for Puget Sound Energy, for instance, would mean providing several million dollars in funding. For smaller utilities, like Cascade Natural Gas or PacifiCorp, however, 0.1% of revenue requirement may be necessary to ensure all eligible organizations can meaningfully participate.

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

16 AWEC recommends that the agreement the Commission approves rely primarily on predetermined budgets for funding and, as noted above, that each pre-certified organization have its own dedicated budget. AWEC would not oppose the creation of a separate budget that is reserved for other organizations on a case-by-case basis, or that can be used by pre-certified organizations if, for instance, there is an unusual amount of work associated with a particular utility in a particular year.

**F. 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?**

1. What parameters should guide this eligibility?

17 AWEC recommends that the Commission not use “need” as a parameter for determining eligibility, as this is a highly subjective term. Organizations may be able to self-fund their participation in a proceeding by diverting funds from another area of focus, but does that mean they cannot show the requisite “need”? Without a full audit of an organization’s

books, how would the Commission determine whether an organization has a “need” for the funding or not, and does the Commission want to take on that obligation prior to certifying an organization? The ability to demonstrate competent and material contributions to a proceeding is a better method of determining eligibility because it can be assessed more objectively from the organization’s actual contributions.

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

18 As a general qualification, AWEC recommends that for-profit organizations be excluded from receiving funding. Additionally, the Commission should not approve organizations that have had their precertification status revoked for any reason.

3. 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?

19 As noted in the introduction, AWEC believes that an efficient means of administering intervenor funding in Washington is to approve a single comprehensive agreement that applies to all utilities and all organizations and to make decisions on the eligibility of individual organizations. Precertification and case-certification are a good way to do this.

20 Oregon’s IFA establishes several criteria for organizations other than CUB to be eligible for precertification. These are:

- (1) A primary purpose of the organization is to represent utility customers’ interests on an ongoing basis;
- (2) The organization represents the interests of a broad group or class of customers and those interests are primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of utility services;



- (3) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;
- (4) The organization's members who are customers of one or more of the Participating Public Utilities contribute a significant portion of the overall support and funding of the organization's activities in the state; and
- (5) The organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests.<sup>1/</sup>

AWEC would support adopting these same criteria for precertification in Washington, but understands that not all of these criteria are likely to be acceptable to other organizations.

AWEC recommends that the utilities and interested organizations use the Oregon criteria as a framework for negotiating criteria that are mutually acceptable to all signatories of a Washington agreement, as well as to the Commission.

21                   Regardless of the criteria adopted for a Washington agreement, AWEC believes that some demonstration of an organization's ability to effectively represent its customers and interests should be necessary for precertification. As stakeholder funding is new in Washington, there may be some organizations that do not have a track record at the Commission and cannot immediately demonstrate this criterion. In these cases, the Commission could conditionally pre-certify an organization pending a demonstration that the organization can effectively represent its interests. A conditionally pre-certified organization would need to demonstrate its advocacy before receiving funding, or could receive funding up-front but subject to refund if the organization fails to demonstrate effective advocacy. Alternatively, organizations without an

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<sup>1/</sup> In re Public Utility Commission of Oregon, Approval of the Fourth Amended and Restated Intervenor Funding Agreement, Docket No. UM 1929, Order No. 18-017, App. A ("Oregon IFA") at 15-16 (Jan. 17, 2018).

established track record at the Commission could be case-certified for a time until they establish a consistent pattern of effective advocacy.

**G. 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 dispersed at the conclusion of a proceeding?**

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

22 Interim funding could be one manner in which the Commission prioritizes organizations representing vulnerable populations and highly impacted communities (see Section K, below). The Commission could allow these organizations to receive some amount of up-front funding, while other organizations must seek reimbursement at the conclusion of a case or when their budget has been exhausted.

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

23 The answer to this question depends on the circumstances under which the Commission authorizes interim funding. If interim funding is available to all organizations as a matter of course, then little documentation may be necessary. If it is only available under certain circumstances to certain organizations, then the documentation will need to be sufficient to demonstrate that the organization meets the applicable criteria. Without an understanding of how the Commission wants to structure interim funding, if at all, it is difficult to be more specific at this time.

3. 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?

24 AWEC believes that any funding should be tied to an organization's demonstrated contribution to a proceeding, so it would support a requirement that interim funding is returned if the requisite minimum contributions are not met. That said, there may be a legal barrier to the Commission requiring an organization over which it does not have regulatory authority to return funding already provided. This could be overcome through contractual language, but the legal implications of this process should be fully understood.

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

25 AWEC recommends that the Commission ensure the ability to audit any organization receiving intervenor funding at any time. Organizations should be required to maintain financial records sufficient to enable such an audit for a minimum of three years.

**I. 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?**

26 AWEC is comfortable with the Oregon IFA model, but it is true that this model requires a significant amount of administrative work for the Oregon Commission. The life cycle of an Issue Fund Grant in Oregon is as follows:

27 First, when AWEC intervenes, it also submits a notice of an intent to request an Issue Fund Grant. Additionally, if the proceeding is not one that automatically qualifies for an

Issue Fund Grant, AWEC will also file a motion to designate the proceeding as eligible for an Issue Fund, which the Oregon Commission must then grant.

28                   Next, AWEC submits its proposed budget, which shows an estimate of the costs AWEC expects to incur for the proceeding, primarily through attorney and consulting time. The Oregon Commission must then approve the budget.

29                   During the course of a proceeding, AWEC may make a request for a partial payment from the Issue Fund that covers a portion of its approved budget. For both interim and final payments, AWEC submits evidence of the costs it has incurred, as well as a certification that the costs were incurred in relation to the subject proceeding. The documentation AWEC submits includes a breakdown of legal and consulting costs. The Oregon Commission then reviews this submission and issues a ruling on the request for payment. All of this information is submitted under a protective order.

30                   Either at the end of a proceeding or when it has fully used its allocated budget, AWEC will make a request for final payment, which includes the same information discussed above. If AWEC has not used its entire budget, it can either reallocate the unused portion to a different proceeding or release it back to the Issue Fund.

31                   The process for a receiving matching fund grant is different in that AWEC does not need to submit a budget or receive approval from the Oregon Commission to access the matching fund, since this fund is exclusively dedicated to AWEC's use. Instead, twice per year AWEC submits a request for a matching fund grant that shows all costs AWEC incurred for any eligible proceeding (that is, any docketed proceeding for which costs are not already covered by an Issue Fund Grant). Again, this includes both legal and consultant costs and is accompanied

by a certification from AWEC that the costs were incurred in connection with the subject proceeding and do not include any ineligible costs. The Oregon Commission also reviews this submission before approving payment from the matching fund.

32                   Finally, by April 1<sup>st</sup> of each year, AWEC submits an annual intervenor funding report, which shows, among other things: (1) the amounts authorized and paid from the Issue Fund in the previous year; (2) amounts spent on expert witnesses and travel; and (3) a statement of the total expenditures AWEC incurred in each of the previous five years from participating in all eligible proceedings.

33                   The Oregon Commission also tracks all intervenor funding. It maintains a spreadsheet, available [here](#),<sup>2/</sup> that shows the amount available in each fund, including any carry-over from a previous year; the approved budget amounts; and payments made.

34                   Thus, the Oregon process imposes substantial administrative commitments on the Oregon Commission. Again, AWEC is familiar and comfortable with this process if the Commission feels it is necessary to ensure the integrity and auditability of intervenor funding. However, much of the requirements on the Oregon Commission are due to the Issue Fund, which is not dedicated to any specific organization and, thus, must be tracked differently from the Matching Fund or the CUB Fund. AWEC's proposal for Washington is not to have an issue fund and, instead, to have separate funds dedicated to each organization for each utility. This by itself would eliminate a significant amount of administrative process. If, however, the Commission still desires a less administratively cumbersome process, other options may be possible.

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<sup>2/</sup> Click the link for "Intervenor Funding Summary."

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The least burdensome process would likely be to simply dole out the amount available to an organization up-front for use as that organization sees fit. This is effectively what the Oregon IFA does with the CUB Fund; CUB is entitled to access this fund at the beginning of each year by simply requesting it. If this is the approach the Commission takes, then it seems, at a minimum, that organizations should at least file some statement or accounting evidencing that they spent the funding on Commission processes. If the organization did not spend the entire fund, it could either return the unused funds to the utility or request that the unused portion be rolled over to the next year.

**J. What types of expenses or costs should be eligible for funding? What types of expenses or costs should not be eligible for funding, if any?**

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AWEC supports the Oregon Intervenor Funding Agreement's definition of Eligible Expenses. These are:

- (1) Actual attorney and consultant fees, whether in-house or for outside services, directly attributable to participation in the proceeding;
- (2) Expert witness fees;
- (3) Apportioned wages for in-house staff (professional and clerical) directly related to participation in the proceeding;
- (4) The cost of preparing and copying studies, data request responses and other discovery materials, exhibits, testimony, briefs and other filings in the proceeding;
- (5) Travel costs directly related to participation in the proceeding;
- (6) Costs of acquiring studies or supplies directly related to the proceeding or court report fees and transcripts; and
- (7) Costs of participation in workshops and other informal Commission activities prior to the institution of an [eligible proceeding].<sup>3/</sup>

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<sup>3/</sup> Oregon IFA § 7.4.

In addition, the Oregon Intervenor Funding Agreement excludes the following costs from eligibility: (1) expenses for general operations; (2) overhead; (3) membership recruitment; (4) fundraising; and (5) communication with members, even if specifically related to the proceeding for which an intervenor funding grant was approved.

**K. 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?**

37 AWEC recommends that the reasonableness of costs be judged based on the reasonableness of the budget requested or level of funding provided, rather than on the hourly rates charged by experts or attorneys. For one, what constitutes a “reasonable” attorney or expert witness fee is subjective and would potentially embroil the Commission in unresolvable disputes. For another, if the overall budget for a case is reasonable, then it is less important what rate an attorney or expert witness charges. A witness could charge \$600 per hour, but that simply means the party has fewer hours to spend on a case within the approved budget than if it hired a witness at \$200 per hour. Organizations should have the flexibility to use their approved budgets in the manner they feel most effectively advances their advocacy.

**L. 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?**

38 AWEC recommends that the utilities be allowed to defer the costs of intervenor funding for later inclusion in rates.

**M. What does it mean to prioritize organizations representing vulnerable populations and highly impacted communities?**

39 AWEC has identified one option above related to the provision of interim  
funding. AWEC will review the comments of other parties on this question.

**N. Should the Commission define “highly impacted communities” and “vulnerable populations”?**

40 AWEC does not take a position on this question.

**III. CONCLUSION**

41 AWEC appreciates the opportunity to provide these comments and looks forward  
to working with the Commission and stakeholders on the development of intervenor funding in  
Washington.

Dated this 10<sup>th</sup> day of September, 2021.

Respectfully submitted,

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