

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of The Commission's
Examination of Intervenor Funding
Provisions For Regulatory Proceedings

DOCKET U-210595

INITIAL COMMENTS OF THE ENERGY PROJECT

I. INTRODUCTION

1 The Energy Project (TEP) files these comments in response to the Commission's Notice of
Opportunity to File Written Comments served on August 19, 2021. These comments are focused on
the questions contained in the Commission's Notice. The Energy Project may have additional
comments as the docket develops and looks forward to participating in this important discussion.

II. RESPONSES TO NOTICE QUESTIONS

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"?**

2 The Energy Projects recommends that the Commission interpret "broad customer interests" to
mean issues relating to and directly impacting customer classes of a utility, such as residential
customers. Organizations representing these customers' interests focus on issues impacting large
groups of customers. One such example is low-income residential customers.

3 This is in distinct contrast to organizations that may focus on very narrow interests and may in
fact not reflect the concerns of specific utility customer classes. The Energy Project would recommend
not including organizations fitting that description in the scope of this funding opportunity.

4 The statute doesn't provide any limitation on the term "regulatory proceedings." This can be reasonably interpreted to include any Commission docketed process, including adjudications (rate cases, mergers, major property transfers), rulemaking dockets, special statutory proceedings (e.g., CETA CEIP plans which may be set for adjudicative hearings), and major "policy" dockets ("decarbonization" docket, decoupling policy docket, alternative regulation, generic class cost of service), and the COVID-19 relief docket. Broad reading of the statute is recommended to include workshops, new legislation, etc. Dockets are an area where a lot of UTC work occurs.

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.

5 The Energy Project recommends that the UTC utilize standardized agreements between utilities and organizations. Providing proof that costs were incurred during a proceeding (a General Rate Case, for example) is reasonable. The Energy Project does not support requiring details of funding need, as the statute does not require a demonstration of need for funds to be made available to organizations.

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

6 It is TEP's view that agreements need to demonstrably be in the public interest and consistent with the statute.

4. What constitutes a reasonable allocation of financial assistance?

7 The Energy Project's view is that the total amount of intervener funding should not have a material impact on customer rates.

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

8 The Energy Project recommends exploring the possibility of creating two 'buckets' of funding.

The first fund would be specifically for General Rate Case proceedings and utilities would provide funds directly to each approved intervener for each case. The second fund would be utilized for non-

General Rate Case proceedings and would be a ‘pool’ of funds contributed to by each utility and provided to approved organizations. The overall amount of assistance for each organization would be dependent upon costs incurred in General rate Case proceedings and possibly a set budget for each organization for non-General rate Case proceedings.

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

9 As stated, TEP’s view is that the total amount of intervener funding should not have a material impact on customer rates.

5. 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?

10 The Energy Project suggests that the UTC accept intervenor status using a case-by-case basis in General Rate Cases, while prioritizing EJ participation in non-General Rate Case dockets.

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?

11 As stated, TEP does not support requiring proof of a funding need, as the statute does not require a demonstration of need for funds to be made available to eligible organizations. Additionally, “demonstration of need” could be a highly subjective process, potentially involving scrutiny by the Commission, utilities, and even other parties of budgets, staffing, and availability of other funding sources. The passage of the legislation at least implicitly already assumes the generally understood reality that regulatory proceedings are very costly, and that consumers and consumer groups, ordinarily small non-profits, face serious financial challenges to fully participate.

a. What parameters should guide this eligibility?

12 N/A.

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

13 The Energy Projects recommends that the UTC prohibit for-profit organizations from being eligible for intervener funding.

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?

14 The Energy Project supports a pre-certification process for organizations, however there should also be a case-by-case allowance for organizations entering into proceedings after the pre-certification process has ended.

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 dispersed at the conclusion of a proceeding?

15 The Energy Project supports the concept of interim funding.

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

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

16 Interim funding could be prioritized for organizations representing vulnerable populations and highly impacted communities to ensure their participation.

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?

17 The Energy Project does not have a comment on this specific issue at this time.

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

18 The Energy Project supports requiring documentation for the costs incurred for the intervener funding and would support the ability for the UTC to audit those documents as needed.

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.

19 The Commission’s role would ideally be kept to a minimum in overseeing the deployment of the intervenor funds. The Energy Project recommends that the UTC provide standard forms and agreements, as well as establish rules governing allowable costs. Direct UTC involvement would be needed in their role of ongoing monitoring of the funds, and in the case of a dispute.

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?

20 The Energy Project supports allowing for the types of expenses mentioned above to be eligible expenses, as well as costs incurred from travel, lodging, and per diem expenses for experts etc.

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?

21 One method that the UTC could implement to judge the reasonableness of expenses is to utilize an approved budget for intervenors. This would allow for the review of individual budget line items of expenses expected to be incurred. Audits of the actual expenses would be available upon request.

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?

22 The Energy Project recommends that costs should be recovered in rates and filed as a deferred expense.

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?

23 The Energy Project has suggested that prioritization of interim funding be made available to organizations representing vulnerable populations and highly impacted communities.

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.

24 Vulnerable populations and highly impacted communities have already been defined through the Clean Energy Transformation Act (and codified in RCW 19.405.020) and TEP does not see a need for any additional definitions.

III. CONCLUSION

25 This concludes comments from The Energy Project. We look forward to continuing to participate in this docket with Commission staff and other stakeholders.