

September 10, 2021

VIA ELECTRONIC FILING

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop S.E.
Lacey, Washington 98503

Re: U-210595—NW Natural Response to Notice of Opportunity to File Written Comments

Dear Mr. Johnson:

Northwest Natural Gas Company, dba NW Natural (“NW Natural” or “Company”), appreciates the opportunity to respond to the Washington Utilities and Transportation Commission’s (“Commission”) August 19, 2021 Notice of Opportunity to File Written Comments (“Notice”) in docket U-210595. NW Natural looks forward to engaging in this process to establish an intervenor funding process that works for both stakeholders and utilities, and provides the following responses to the Commission’s 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”?

Broad Customer Interests: NW Natural believes that the definition of “broad customer interests” should be interpreted to mean organizations representing a variety of interests relevant to proceedings that come before the Commission, rather than only organizations that represent large groups of customers.

The organization should have a presence within the utility’s service territory. This could be shown by having a certain number of members that are also customers of the utility. Having members within the utility’s service territory provides some level of assurance that the organization’s views and positions reflect at least a portion of the utility’s customers.

Finally, an intervenor must still satisfy the Commission’s standard for intervention in a proceeding, which is “a substantial interest in the subject matter of the hearing or if the petitioner’s participation

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is in the public interest.”¹ This will ensure that section 4(1) of ESSB 5295 is interpreted consistently with the Commission’s existing standard for intervention, and that the standard for intervention is neither inappropriately broadened nor narrowed by this new provision of law.

Regulatory Proceeding: NW Natural believes that the definition of “regulatory proceeding” in the Oregon intervenors’ funding agreement is helpful and should be considered. This definition includes general rate cases, merger and acquisition dockets, purchase gas adjustments, and any other proceeding so designated by the Commission that directly affects one or more of the Participating Utilities and is anticipated to have a substantial impact on utility rates or service. Regulatory proceedings do not “include complaint proceedings if one or more of the Participating Intervenors initiates or causes to be initiated the complaint proceeding.”²

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.

The Commission should encourage as much consistency as practicable in intervenor funding agreements. If possible, NW Natural believes there should be a single agreement between utilities and organizations that the Commission has pre-certified as eligible for intervenor funding, as is the case in Oregon.³ However, NW Natural does not know how many groups will seek intervenor funding and whether such groups intend to be involved in proceedings involving all utilities in the state or will be more local in nature. While this may result in more than one agreement, the agreements should be consistent with each other to avoid conflicts in how intervenor funding is allocated and to make the agreements as simple to administer as possible.

Organizations should be required to provide financial spreadsheets, details of funding need, and reporting of costs and expenses. This ensures that intervenor funding is spent appropriately on utility proceedings. In Oregon, intervenor funding is not allowed to be spent on “expenses for general operations, overhead, membership recruitment, fundraising, or communication with members, even if specifically related to the proceeding for which the Intervenor Funding Grant was approved.”⁴ Similarly, Oregon defines “eligible expenses” (e.g., attorney and consulting fees, travel costs, in-house staff time spent working on the proceeding) and requires these expenses to be itemized. Organizations are also required to “[d]emonstrate that the expenses are reasonable and are directly attributable to issues and positions pursued on behalf of a particular customer class and consistent with the intervenor’s proposed budget” and that it has complied with all applicable requirements to receive intervenor funding.⁵ The Commission should determine if the organization meets all of these requirements and should receive intervenor funding.

¹ WAC 480-07-355(3).

² In the Matter of Public Utility Commission of Oregon, Approval of the Fourth Amended and Restated Intervenor Funding Agreement, UM 1929, Order 18-017, Appendix A at 7-8 (2018).

³ *Id.*

⁴ *Id.* at 26. There is an exception for the Oregon Citizens’ Utility Board, but the analogous organization in Washington is the Public Counsel Unit of the Washington Attorney General’s Office. The Public Counsel Unit is funded by the state and would likely not seek intervenor funding.

⁵ *Id.* at 25.

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

NW Natural believes that the Commission should approve intervenor funding agreements if they serve the interests of customers consistent with ESSB 5295(4), the organization's interests will be materially affected by the outcome of the proceeding, the organization does not have sufficient funding to participate in the proceeding, and there are appropriate and reasonable safeguards regarding how intervenor funding is distributed.

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?

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

Determining a reasonable allocation of financial assistance is difficult to do in the abstract. As this docket progresses, stakeholders will hopefully get a better sense of how many organizations will seek intervenor funding and approximately how much funding they may request. This will help answer questions regarding the appropriate allocation of funds.

NW Natural, however, believes that the annual amount of assistance provided to intervenors should be clearly established. The utility, the intervening organizations, and the utility's customers should have certainty regarding the maximum amount that can be spent on such funding in a given year. Having this level of certainty will prevent ongoing disputes of what is the adequate level of intervenor funding because the maximum level would be set for the term of the intervenor funding agreement. In NW Natural's experience, this general approach has been workable in Oregon.⁶

Regarding the standards the Commission should use to determine allocation, NW Natural believes that the Commission should first look to ESSB 5295(4), which prioritizes groups that represent "highly impacted communities" and "vulnerable populations." In addition, in allocating funds, the Commission could factor whether groups are representing overlapping classes of customers, the complexity of the issues involved in proceedings, organizational financial need, and estimates of costs to meaningfully engage in the proceedings.

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

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?

The agreements should set the maximum amount for intervenor funding for each utility, and utilities should set their budgets based on the funding provided in the agreement. As explained above, this provides certainty to utilities, intervening organizations, and customers.

⁶ *Id.* at 9-10.

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?

a. What parameters should guide this eligibility?

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

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?

Organizations should be pre-certified by the Commission for intervenor funding using a standard that is similar to Oregon. In Oregon, this includes: 1) determining that a primary purpose of the organization is to represent utility customers' interests on an ongoing basis, 2) the organization represents a broad group of customers, 3) the organization demonstrates that it is able to effectively represent customer interests, 4) members contribute to fund a significant part of the organization, and 5) the organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests. In pre-certifying groups, the Commission should minimize the amount of overlapping groups and ensure that each group can make a material contribution to the proceeding.

NW Natural acknowledges that some of the above precertification criteria may need to be modified to reflect ESSB 5295(4). For instance, it may be impractical to require organizations that represent impacted communities and vulnerable populations to have members fund a significant part of the organization. While NW Natural believes that organizations should not solely rely on intervenor funding, some allowance should be made for prioritized organizations in ESSB 5295(4).

Regarding which organizations should not be eligible for funding, NW Natural believes that only non-profit organizations should receive intervenor funding and that for-profit organizations should be excluded.

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?

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?

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?

Generally, it seems reasonable that payments during the course of the proceeding are allowed for actual expenses incurred – provided that the detailed request for payment has been reviewed and approved by the Commission. Payment requests should reflect actual completed/incurred costs

and the request should be complete and supported as outlined in the agreement/rules that are established for this purpose.

Documentation guidelines for all funding, whether during the proceeding or at the conclusion of the proceeding, should be outlined in the agreement/rule established for intervenor funding – please see NW Natural’s response to question 2 above for potential requirements of funding requests.

Interim intervenor funding payments should be returned if the Commission later determines that the grantee did not materially contribute to, or excused itself from, a proceeding.

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

Administrative procedures governing the processes for requesting intervenor funding, including the documentation and reporting of funding requests and total funding amounts, should be established in intervenor funding agreements or Commission rule or order. Documentation for expenses should be provided to the Commission as well as the paying utility. The Commission should have sole authority to review expenses for prudence before authorizing payment through an order. The Commission should also have authorization to audit all costs. For reference, the current intervenor funding agreement in Oregon specifies “the Commission may audit the relevant, not privileged, records of any intervenor submitting a Request for Payment”.⁷

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.

The Commission should have the primary role in determining prudence and reasonableness of intervenor costs and authorize payment of costs by the utilities through an order. The administrative procedures outlined in intervenor funding agreements or Commission rule or order should specify requirements for funding requests, eligible expenses, and the process the Commission will follow in reviewing and authorizing funding. The current Oregon intervenor funding agreement provides a reasonable and relevant example for this process.⁸

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?

Please see response to question 2 above for examples of eligible and ineligible funding.

⁷ *Id* at 29.

⁸ *Id* at 24-27.

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?

Reasonableness of legal and witness fees could be determined by comparison to prevailing market rates. Supporting documentation should include itemized cost listings, any supporting workpapers and receipts where practical. Cost details can be protected through non-disclosure or confidentiality agreements or protection under WAC 480-07-016. As mentioned in our response to question 2 above, organizations should be required to demonstrate the reasonableness of expenses and that the expenses incurred are directly attributable to issues and positions relevant to the represented customer class in the proceeding at hand.

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?

NW Natural believes the use of deferred accounting with the deferral of actual expenditures seems the most straight-forward approach to cost recovery. This framework would allow for consolidating of costs and limiting rate changes to once per year when gas companies make their Purchase Gas Adjustment filings. Requiring all intervenor funding payments to be authorized by Commission order after review for prudence will ease the review of deferral amounts that the utilities will request to amortize in future rate proceedings.

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.

i. 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?

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.

As described above in the response to question 2, NW Natural believes that, if possible, there should be a single agreement between utilities and organizations that the Commission has pre-certified as eligible for intervenor funding. This agreement could establish maximum annual

amounts for intervenor funding as we indicated in the response to question 4 above. Should additional organizations emerge to participate in intervenor funding, additional agreements may be needed on a case-by-case basis. As further discussed in the response to question 2, any such additional agreements should be consistent with the primary intervenor funding agreement to avoid conflicts in how intervenor funding is allocated and to make the agreements as simple to administer as possible.

Perhaps one way to prioritize or at least target highly impacted communities and/or vulnerable populations for intervenor funding, would be for the Commission to have annual workshops that provide instruction and assistance to a targeted list of organizations representing these communities and populations regarding participating in the intervenor funding process. These workshops would include an overview of the intervenor funding process and provide instruction on how to become involved as an intervenor eligible for intervenor funding.

NW Natural agrees that it would be helpful for the Commission to provide definitions for “vulnerable populations” and “highly impacted communities” for purposes of implementing ESSB 5295(4). Oregon House Bill 2475 provides the following description for “environmental justice communities” that may be instructive here: “Environmental justice communities” includes communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including but not limited to seniors, youth and persons with disabilities.”⁹ In addition to the definitions set by the Commission, NW Natural recommends that organizations meet the criteria we have suggested in the responses to questions 1 and 6 above to be eligible for intervenor funding.

NW Natural appreciates the opportunity to provide these comments. Please contact me at (503) 610-7617 if you have questions.

Sincerely,

/s/ Zachary Kravitz

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⁹ Oregon 81st Legislative Assembly – 2021 Regular Session; House Bill 2475 Enrolled, Section 1(5).