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Filed Via Web Portal

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

Re: Relating to the Commission’s examination of intervenor funding provisions for regulatory proceedings, Docket U-210595

Dear Mr. Johnson:

Puget Sound Energy (“PSE”) appreciates the opportunity to provide comments to the Washington Utilities and Transportation Commission (the “Commission”) in Docket U-210595 in response to the August 19 Notice of Opportunity to File Written Comments (the “Notice of Opportunity”) regarding intervenor funding provisions for regulatory proceedings and relating to implementation of statutory authorities contained in Engrossed Substitute Senate Bill 5295, Chapter 188, Laws of 2021 (“ESSB 5295”).

ESSB 5295 recognizes the crucial role that intervenors play in contributing to a robust record for Commission decision making. In particular, the statute specifically prioritizes organizations that represent highly impacted communities and vulnerable populations – voices that represent a gap in current participation in Commission proceedings. Intervenor funding can be one tool to help fill this gap and lead to better informed regulatory decisions.

In these comments, PSE first provides overarching comments on the need for program goals and evaluation metrics and procedures and then responds to the specific questions contained in the Notice of Opportunity.

Program Goals and Evaluation

PSE recommends that the Commission identify clear goals and metrics for success and establish mechanisms to monitor intervenor funding implementation at the outset of the process. This will

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ensure that the investment of customer dollars is resulting in achieving the desired outcomes related to intervenor funding.

Some potential goals to consider are:

- 1) Enhance participation from highly impacted communities and vulnerable populations to contribute critical perspectives that have been historically underrepresented in Commission proceedings.
- 2) Ensure a diversity of customer interests are informing Commission decisions.
- 3) Create and maintain a structure that is simple, easy to use and administer, and fiscally efficient.

Examples of metrics that should be tracked to enable program evaluation include: 1) data from intervenor organizations on the customers represented; 2) engagement levels during proceedings as measured by contributions to the proceeding (comments submitted, meetings attended, etc.) and impact on the final decision; and 3) compensation provided as a percentage of total budget expenditures.

The remaining comments provide responses to the specific questions enumerated in the Notice of Opportunity.

Notice of Opportunity Responses

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” should be interpreted as referring to organizations that represent a variety of customer interest topics or areas. “Broad” and “customer” should both be interpreted as descriptive words referring to and signaling characteristics related to “interests” as opposed to interpreted as “broad” referring to customers, which could limit the use of funds to organizations representing larger groups of various customers. This second interpretation could be counter to the intent of the statute to prioritize organizations that represent vulnerable populations and highly impacted communities.

“Regulatory proceedings” should be interpreted as any filing in which an organization is granted intervention by the Commission. The Commission should further limit the scope of regulatory proceedings that are considered “eligible proceedings.” An initial list of “eligible proceedings” should focus on adjudicated proceedings that have a substantive and material impact on customer interests, such as Clean Energy Implementation Plan dockets, or a significant change in regulatory policy. The definition of eligible proceedings should also include the authority for the Commission to designate any proceeding as eligible after due consideration.

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.

Yes. The Commission should determine a standardized form for intervenor funding agreements. The form should not be overly detailed or burdensome, but should require organizations to provide sufficient details documenting funding need and costs. Additionally, reporting documentation of financial expenditures related to the intervenor funding agreement should be required and reviewed by the Commission for accuracy and to ensure fulfillment of the requirements of the agreements.

Organizations seeking intervenor funding should be required to submit an application to the Commission for intervenor funding at the same time that it files a petition to intervene in the proceeding, if applicable. The application should include, at a minimum:

- 1) A proposed budget, including a statement of work to be performed by the applicant and a breakdown of specific professional costs expected including the amount requested and reflecting any matching funds that will be used to support participation in the proceeding;
- 2) a description of the topics that will be addressed by the applicant; and
- 3) a description of the customers (or group of customers) represented by the applicant.

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

The Commission should consider the following standards for approving, approving with modifications or rejecting an agreement for funding:

- 1) Customers represented by the organization will be materially affected by the outcome of the proceeding or they will be materially affected if the organization is unable to participate in the proceeding due to lack of funding.
- 2) The organization will make a material contribution to the proceeding and the approval of funding amounts are proportional to the contribution the organization will provide.
- 3) The organization does not otherwise have sufficient funding to participate meaningfully in the proceeding.
- 4) The interests are not otherwise adequately represented by another organization in the proceeding.
- 5) The organization represents the interests of highly impacted communities or vulnerable populations in a utility (ies) service territory.

4. What constitutes a reasonable allocation of financial assistance?

A reasonable allocation of financial assistance should be an amount of assistance necessary to enable organizations to participate in Commission proceedings in a manner that will allow them to provide a unique and material contribution to the record.

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

Yes, the Commission should establish an overall amount of assistance to be provided in each year and should specify the share of assistance that will be contributed by each utility. Additionally, the Commission should provide some guidance regarding the anticipated size and scope of individual intervenor funding agreements. This budget and associated guidance will be useful for utilities in budget planning and also for prospective intervenors to enable drafting of funding requests that are likely to be successful.

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

In general, the allocation of financial assistance should be based on:

- 1) Organizational need;
- 2) reasonable estimates of professional services needed to ensure a material contribution to the UTC proceeding(s);
- 3) consideration of the breadth and complexity of the issues in the proceeding to which the organization will be responding;
- 4) significance of the financial and policy issues in the proceeding;
- 5) amount of matching funds provided;
- 6) amount of funds expended or expected to be expended under the intervenor funding program for the fiscal year; and
- 7) whether the organization directly represents customers of highly impacted communities or vulnerable populations within a utility's service territory.

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?

PSE recommends establishing annual budgets for intervenor funding that are dispersed on a case-by-case basis. Funds remaining at the end of the year can roll over to future years. Due to the differing nature of Commission proceedings, PSE offers the following approach for structuring and considering funding agreements:

- 1) Each utility will have an annual intervenor funding budget. Decisions related to utility specific proceedings will be issued on a case-by-case basis by the Commission.
- 2) An "issues fund" will be established with funding from all the utilities to provide opportunity for organizations to apply for intervenor funding related to proceedings that

are more general in nature and that involve multiple utilities, including rulemakings, dockets considering general matters of policy, etc. The Commission should set an annual budget for each utility's contribution to the issues fund and determine intervenor funding based on a case-by-case basis from the amounts in the fund.

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?

Yes. Eligibility should require a demonstration of need. Many states require a demonstration that participation in the proceeding would impose a financial hardship on the intervenor.¹

Only nonprofit organizations should be eligible for intervenor funding. Eligibility should also be based on the organization's ability to provide a material contribution to a proceeding. Further, the organization should be required to demonstrate that it has the ability to contribute on behalf of the customer interests it seeks to represent. Other factors that should be considered are enumerated in the response to question 4(b) above.

a. What parameters should guide this eligibility?

Most of these eligibility factors are qualitative in nature and may not lend themselves to numerical assessments. The Commission should establish clear and consistent guidance on eligibility requirements.

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

For-profit companies or corporations, individual customers, government entities, and public utilities should not be eligible for funding. Additionally, no organizations should receive funding with respect to a complaint filed or initiated by that same organization.

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?

PSE recommends that requests for intervenor funding should be considered by the Commission on a case-by-case basis to ensure that they meet the threshold for material contribution to each specific proceeding.

¹ See California (California Public Utilities Code §1801-1812); Hawaii (Hawaii HB 805 SB 2733); Idaho (Idaho Public Utility Regulation Title 61 Section 61-617A); Maine (Maine Public Utilities §1310); New Hampshire (New Hampshire Statute §365:38-A);

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?

PSE recommends that the Commission consider at least partial payments in advance of and/or regular payments throughout the pendency of the proceeding. Many organizations representing vulnerable populations and highly impacted communities work on extremely limited budgets and it may not be practicable for them to cover the expenses of participation until the end of a proceeding.

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

Organizations should be able to demonstrate organizational need for interim funding at the time of their application for intervenor funding. Factors to consider could include the total budget for the intervenor funding request and the size of the organizational budget.

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

A specific request and justification of the need for interim funding should be provided on the initial intervenor funding request form.

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?

Yes, funding that is not expended consistent with the terms of the funding agreement should be returned to the intervenor fund.

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

Organizations should submit a request for payment, along with a report including detailed expenses to the Commission for review and approval. The Commission should then direct the utility or utilities regarding reimbursement amounts. A final report should be required that includes information related to program evaluation components as recommended previously in these comments. The Commission should preserve the ability to audit the records of any intervenor submitting a request for payment in order to verify the accuracy of the information provided by that intervenor.

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 maintain a lead role in the intervenor funding process. This will avoid potential appearance of favoritism, conflicts of interest, or other potential complications of having utilities in a decision making role with regard to funding related to customer interests and stakeholders in regulatory proceedings. The Commission should be responsible for administering agreements and funding throughout the intervenor funding process. Specifically, the Commission should:

- 1) Review any and all documentation submitted to substantiate intervenor costs.
- 2) Approve, modify, or reject all funding amounts or payments.
- 3) Provide templates for all necessary paperwork, including agreements, funding applications, cost tracking and reporting.
- 4) Maintain the ability to amend intervenor funding awards or decisions.

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?

Any and all professional costs associated with direct participation in an eligible, active Commission proceeding should be eligible for funding. This includes legal costs, professional services, expert witnesses, travel costs, consultants, etc. General operating revenue or expenses, overhead, and fundraising should not be eligible expenses.

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?

The Commission should consider the market rates paid to persons of comparable training and experience who offer similar services. Supporting documentation could include receipts, invoices, summaries of staff time expended and other information necessary to account for the expended 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?

ESSB 5295 explicitly provides that utilities shall be allowed to recover all amounts paid for intervenor funding in rates. The Commission should consider cost causation principles when determining how intervenor funding costs will be recovered. Establishing a set annual budget

will allow utilities to plan for and include the costs in rates. To the extent that costs are not known in advance, utilities could defer amounts, with a carrying charge, for later recovery.

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?**

The Clean Energy Transformation Act introduced the designation of highly impacted communities and vulnerable populations to utility regulation. Since the enactment of that legislation, investor-owned electric utilities in Washington have deliberately initiated activities to engage, consult and involve these customers in its resource planning processes. These voices have historically been significantly underrepresented in utility decision making and we have much to learn from their contributions. Many of the organizations that represent these customers are small, under-resourced organizations with large scopes of work. In recognition of the resource constraints of these organizations, PSE offers a stipend to those committing time and expertise to its newly formed our Equity Advisory Group. In prioritizing these groups for intervenor funding, ESSB 5295 recognizes the importance of providing funding to these organizations to elevate these customer voices at the Commission.

PSE has recommended intervenor funding be determined on a case-by-case model to ensure that the selection of recipients is always appropriate and proportional to a specific proceeding. Admittedly, especially at the beginning of this process, this approach makes it more difficult to prioritize one type of organization over others, especially while ensuring reasonable overall expenditures on intervenor funding.

One approach to prioritizing organizations representing vulnerable populations and highly impacted communities could be to dedicate a significant portion of the overall annual intervenor funding budget for these organizations. Initially, the process to establish the overall annual budgets could include direct consultation with organizations representing vulnerable populations and highly impacted communities to get an estimate of the interest in various proceedings expected over the course of the year, in order to determine a rough estimate of funding needs. This consultation process would help determine a reasonable proportion of funds to prioritize for these groups.

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.

The Clean Energy Transformation Act (CETA) defines highly impacted and vulnerable communities in RCW 19.405.202. PSE recommends adopting these definitions for purposes related to intervenor funding agreements. The intent and manner in which these terms are used in ESSB 5295 is consistent with the definitions already established under CETA.

PSE appreciates the opportunity to provide responses to the questions identified in the Commission’s Notice of Opportunity to File Written Comments. Please contact Wendy Gerlitz at 425-462-3051 for additional information about these comments. If you have any other questions please contact me at (425) 456-2142.

Sincerely,

/s/ Jon Piliaris

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