

September 10, 2021

VIA ELECTRONIC FILING

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Executive Director and Secretary
Washington Utilities and Transportation Commission
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UTIL. AND TRANSP.
COMMISSION

Re: Docket U-210595—PacifiCorp’s Comments on the Washington Utilities and Transportation Commission’s Examination of Intervenor Funding Provisions for Regulatory Proceedings

PacifiCorp dba Pacific Power and Light Company (PacifiCorp) appreciates the opportunity to provide comments on the Washington Utilities and Transportation Commission’s (Commission) examination of intervenor funding provisions for regulatory proceedings. PacifiCorp is currently subject to intervenor funding processes in both California and Oregon, and can provide meaningful input on the relative merits of each program to assist the Commission in this proceeding.

In advance of the September 28, 2021 public workshop, the Commission requested that interested stakeholders submit written comments by September 10, 2021. Specifically, the Commission requested the comments respond to a series of questions to assist the Commission in its examination, along with any additional comments discussing the statutory language and implementation.

PacifiCorp provides the following comments and looks forward to continued discussion on this topic at the workshop.

COMMENTS

The Commission’s first mandate is to ensure that all utility rates are just, fair, reasonable and sufficient.¹ Accordingly, the Commission should establish an adequate process to ensure that costs associated with intervenor funding are just, fair, and reasonable. PacifiCorp has found the process in Oregon to be reasonable, providing an adequate level of accountability and sufficient background information to justify customers paying for the cost of intervention, and PacifiCorp supports use of the Oregon process as a model on which to base the Commission’s implementation of the requirements in ESSB 5295.

PacifiCorp believes that Avista’s comments accurately describe the processes in Oregon and Idaho. PacifiCorp is also subject to intervenor funding requirements in California. California’s program, however, does not fit with the requirements of ESSB 5295. In California, a separate funding agreement is not required. Instead, intervenors can simply request funding after

¹ RCW 80.28.010(1).

conclusion of a proceeding. Furthermore, there is no limitation on the type of intervenor that can receive funding. Advocacy groups, whether they represent individual interests instead of broad customer interests, can receive intervenor funding. As a result, customers are forced to subsidize positions that may be contrary to their interests.

Unlike California, ESSB 5295 identifies the type of organizations that qualify to receive intervenor funding: organizations representing low-income, commercial, and industrial customers, vulnerable populations, or highly impacted communities. While the list is not exhaustive, it illustrates the commonality that the organizations represent customers, and not the individual interests of developer or policy advocates. PacifiCorp recommends that the Commission adhere to the legislative intent and not expand intervenor funding beyond those organizations that represent customer interests.

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: Broad customer interests should require that the organization sufficiently represent a large portion of the customers within a customer class, vulnerable population, or highly impacted community. Additionally, for customer classes with smaller numbers of customers, fewer than three, intervenor funding should not be allowed given that intervenor funding should be subsequently recovered from the class represented. In these cases, intervenor funding simply shifts the timing of payment, creating undue administrative burden, raising costs due to interest, and potentially creating generational inequities.

- 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: The Commission should not prescribe a form of agreement. Funding agreements may need to evolve over time. Accordingly, any funding agreement should be limited in time to between two and four years.

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

Response: The Commission's primary responsibility is to ensure that rates are just and reasonable. Accordingly, any agreement should ensure that costs are adequately supported by the organization seeking intervenor funding and there is a mechanism for the utility to recover those costs. Any method for allocated recovery among customer classes should meet a public interest standard.

4. What constitutes a reasonable allocation of financial assistance?

Response: Intervenor funding should be capped to prevent participation simply as a funding source for an organization.

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

Response: Yes. Absent a cap, the Commission cannot control the subsequent rate impact on customers.

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

Response: Does the funding result in just and reasonable rates for customers and is the allocation of costs in the public interest.

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?

Response: To promote transparency, any intervenor funding agreement should explicitly state the total amount of intervenor funding and the prioritization of organizations that qualify to be dispersed. This provides for the utility to budget for the funding and provide a general estimate of the deferral for rate forecasting.

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. Need should be a consideration in the classification of an organization under a funding agreement. Organizations that do not otherwise have the resources to participate, but provide useful input to the Commission in proceedings should have priority access; provided the funding is used exclusively for the participation in the proceeding and is not the primary means by which the organization sustains itself.

Material contribution must also be a consideration. Customers should not be required to pay costs for an organization that does not materially contribute to a proceeding.

a. What parameters should guide this eligibility?

Response: The ability of an organization's members to contribute to costs. There is a dramatic difference between the ability of an organization representing a vulnerable community to participate and that of a trade association. A trade association has the ability to seek contributions from members as there is the potential for economic benefit through the representation. Vulnerable communities, however, may not see the immediate economic benefit and may need priority funding.

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

Response: Organizations that do not represent large stakeholder groups and organizations that have not proven to provide material contributions in proceedings.

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: In Oregon, pre-certification has provided some assurances that organizations are material contributors in proceedings before the Public Utility Commission of Oregon (OPUC). PacifiCorp supports pre-certification, but cautions that organizations should be required to show a history of material contributions in prior proceedings before being granted pre-certification. Otherwise, organizations may seek pre-certification as a funding source to then solicit a stakeholder base; thus using utility customer funds to promote the organization.

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?

Response: PacifiCorp does not oppose partial payments as long as the payments are for costs already incurred. Advance payments create numerous issues, including the potential for overpayments or payments for costs that are not just and reasonable.

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

Response: The primary factors should be the organization's financial resources and value of the organization's contribution to the proceeding. If an organization has the ability to obtain funding from other sources (e.g., its members, grants, or governmental support), those sources should be prioritized. Matching may be appropriate to assist the organization, but it is important to

remember the diverse interests of customers may mean that any one organization's advocacy does not represent the views of the entire customer class.

Additionally, the value of the organization's contribution should be considered. This evaluation can take place both at the outset of the proceeding and at the end. First, at the outset, organizations representing similar interests should be required to share costs to receive intervenor funding. The value added of redundant perspectives is minimal. Second, the Commission should consider the actual level and quality of participation in the proceeding. This helps ensure that customers are actually receiving the benefit of the costs to support intervenor participation in the proceeding.

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

Response: All costs and justification should be reported. The costs will eventually be included in rates and the Commission has an obligation to ensure that all rates are just and reasonable.

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: Advance payments should not be allowed and refunds should be required if the organization does not materially contribute to a proceeding.

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

Response: The Commission should retain all options to evaluate costs subject to intervenor funding. Again, the Commission has an obligation to ensure that rates are just and reasonable. Funded organizations should be required to provide adequate documentation of costs and report those costs to the Commission for audit and verification.

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: The Commission should review all requests and determine that they are just and reasonable before issuing an order authorizing payment by the utility. The Commission can produce templates and guides regarding the type of information required, but only the Commission can find that the costs are just and reasonable. It would not be appropriate for the Commission to delegate that responsibility to any other entity.

As an example, in Oregon intervenors file a proposed budget for OPUC review. Once approved, the entity expects a certain level of funding. The entity, however, must then file an accounting of actual costs with the Commission for review and audit. Only then will the Commission issue an order authorizing funding from the utility.

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: All costs directly associated with and appropriate to the proceeding should be allowed. General organizational costs, such as those associated with overhead and the entity's administration, should not be included.

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: The standards otherwise applicable to utility expenses should apply equally to intervenor funding costs because those costs will be eventually included in rates and the Commission must ensure that rates are just and reasonable.

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: The utility should be allowed to defer costs of intervenor funding and recover those costs through a separate rider, updated annually. This process provides for timely payment to funded organizations and timely recovery by the utility, preventing inter-generational cost shifting.

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."

Response: PacifiCorp suggests that organizations representing vulnerable populations or highly impacted communities be allowed to seek certification for funding on a case-by-case basis, removing the need to pre-certify, and that a separate funding amount be identified for those organizations in a funding agreement.

- 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: PacifiCorp suggests that a reasonable amount depends on the particular utility and its customer base. Funding of organizations representing vulnerable populations or highly impacted communities should not unduly impact rates for the utility's customers.

- 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: Yes. Defining the scope of potential funded organizations is essential to avoiding unnecessary cost increases to customers or reducing funding to organizations that truly contribute to the Commission's process. PacifiCorp's experience in both Oregon and California is that new organizations are periodically created to seek funding without proof that they represent a broad community or customer basis and seek a slice of a fixed amount of funds. This leads to disputes between intervenors.

PacifiCorp appreciates the opportunity to provide comment at this early stage, and we look forward to continued collaboration with stakeholders throughout the Commission's examination into intervenor funding and the requirements of SB 5295.

It is respectfully requested that all communications related to this proceeding be sent to the following:

By Email: WashingtonDockets@pacificorp.com

PacifiCorp Comments
Docket U-210595
September 10, 2021

Please direct inquiries to Ariel Son, Regulatory Affairs Manager, at (503) 813-5410.

Sincerely,

/s/

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