

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re: the Commission's Examination of
Intervenor Funding Provisions for Regulatory
Proceedings

DOCKET U-210595

INITIAL COMMENTS OF PUBLIC COUNSEL

September 10, 2021

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I. INTRODUCTION AND GENERAL OBSERVATIONS

1. The Public Counsel Unit of the Washington Attorney General’s Office (“Public Counsel”) files the following comments regarding intervenor funding pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) August 19, 2021, Notice of Opportunity to File Written Comments (“Notice”).
2. Engrossed Substitute Senate Bill 5295, Laws of 2021 (“ESSB 5292”), includes provisions for intervenor funding.¹ Electric and natural gas utilities are required to enter into agreements with “organizations that represent broad customer interests in regulatory proceedings conducted by the commission.”² Notably, the agreements are subject to Commission approval. The Commission may approve, approve with modifications, or reject the agreements.
3. Prior to administering a funding agreement, ESSB 5295 requires the Commission to determine by rule or order the amount of financial assistance, how the assistance is distributed, how the assistance is recovered in rates, and any other matters necessary to administer the agreement.³ The current docket intends to address implementation of ESSB 5295, Sec. 4.
4. Public Counsel is a statutory party in proceedings under Title 80 and 81 RCW.⁴ As such, Public Counsel is not an intervenor as contemplated by ESSB 5295. Public Counsel achieves party status in Commission proceedings by filing a Notice of Appearance rather than a Petition for Intervention. Additionally, Public Counsel is funded through the Public Service Revolving

¹ ESSB 5295, Sec. 4, 67th Leg., 2021 Reg. Sess. (Wash.).

² ESSB 5295, Sec. 4(1), 67th Leg., 2021 Reg. Sess. (Wash.) (“A gas company or electrical company *shall, upon request, enter into one or more written agreements...*” (emphasis added)).

³ ESSB 5295, Sec. 4(2), 67th Leg., 2021 Reg. Sess. (Wash.).

⁴ RCW § 80.01.100 (2013), RCW § 80.04.510 (2013), RCW § 81.04.500 (2013); *see also* RCW § 80.04.095 (2005), RCW § 81.77.210 (2014).

Fund, which also funds the Commission’s operations and the operations of the Utilities and Transportation Division of the Attorney General’s Office. ESSB 5295 does not change the operation of the Public Service Revolving Fund, and Public Counsel would not be funded through the intervenor funding at issue in this docket.

5. Even so, Public Counsel has an interest in ensuring that new intervenor funding is fairly designed because such funding shall be recovered in rates.⁵ As a result, intervenor funding will ultimately consist of ratepayer dollars, and it is imperative that these funds be administered equitably, meaningfully, and judiciously. Moreover, ESSB 5295 alters neither the requirement that utility rates be fair, just, reasonable, and sufficient⁶ nor the requirement that the Commission regulate in the public interest.⁷

6. As a general matter, the utilities should not have discretion regarding who should receive the funding or how much funding will be awarded. Allowing the utilities to exercise discretion, and to essentially serve as a de facto gatekeeper to Commission proceedings, would lead to unintended consequences, including influence over how intervenors may approach their advocacy. Intervenor funding should broaden both the types of parties who can participate in regulatory proceedings and the scope of their advocacy. As the ratepayer advocate for residential and small business customers, Public Counsel views increased participation as being in the public interest and ultimately beneficial to the interests we represent. Guidance and oversight

⁵ ESSB 5295, Sec. 4(3), 67th Leg., 2021 Reg. Sess. (Wash.) (“The commission shall allow a gas company or electrical company that provides financial assistance under this section to recovery the amounts provided in rates.”)

⁶ RCW § 80.28.010 (2011), RCW § 80.28.20 (2011).

⁷ RCW § 80.01.040 (2007).

provided by the Commission should remove utility discretion and foster the intent of intervenor funding.

7. The questions posed in the Notice address various aspects of how intervenor funding should be implemented. The next section addresses the Notice questions. In approaching the questions, Public Counsel is studying how other jurisdictions approach intervenor funding. Public Counsel has reviewed materials from California, Colorado, Hawaii, Idaho, Maine, Michigan, New Hampshire, New York, Oregon, Virginia, West Virginia, and Wisconsin.⁸ Our review continues, and Public Counsel submits these Comments based on current information. With this in mind, Public Counsel reserves the right to supplement or amend our comments through this process.

II. NOTICE QUESTIONS

A. 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”? (Notice Question 1)**

8. The term “broad customer interests” appears to mirror language used in Oregon; however, Oregon does not provide a detailed definition of what constitutes broad customer interests. California has an intervenor funding framework that includes three categories of

⁸ See Appendix A State Intervenor Funding Research, which provides a summary matrix of information from states with intervenor funding.

eligible customers. California’s Category 1 customer designation applies to a single customer who wishes to participate and request intervenor compensation.⁹ The customer must be an actual customer of the utility whose self-interest in the proceeding arises primarily from their role as a customer of the utility, and, at the same time, the customer must represent the broader interests of at least some other customers.¹⁰ In this case, “broader interest” means that the customer’s participation goes beyond just their own self-interest and will benefit other customers.¹¹

9. California’s application of broader interest only applies to Category 1 customers.

Categories 2 and 3 are, by definition, customers or groups that represent broader interests of other customers. Category 2 applies to a representative of a small group of customers, but not a formal organization.¹² Category 3 applies to formal organizations or non-profit entities representing small business and/or residential customers.¹³

10. Given that ESSB 5295 expressly limits the written agreements to “organizations,” California’s three-category framework may not be wholly appropriate in Washington but does inform what “broad customer interests” might include. Under California’s framework, impact on multiple customers provides a threshold for eligibility. ESSB 5295 includes a non-exhaustive list of the types of interests that might qualify as “broad customer interests,” which includes low-income customers, commercial customers, industrial customers, vulnerable populations, or

⁹ See Cal. Pub. Utils. Code § 1802(b)(1)(A) (2017).

¹⁰ Cal. Pub. Utils. Comm’n, CALIFORNIA PUBLIC UTILITIES COMMISSION, INTERVENOR COMPENSATION PROGRAM GUIDE at 9 (Rev. Apr. 2017) (hereinafter “CA IComp Guide”), <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/icompe-materials/updated-icompe-program-guide-april-2017.pdf>.

¹¹ *Id.*

¹² See Cal. Pub. Utils. Code § 1802(b)(1)(B) (2017); see also CA IComp Guide at 9.

¹³ See Cal. Pub. Utils. Code § 1802(b)(1)(C) (2017); see also CA IComp Guide at 9.

highly impacted communities, and also appears to incorporate the idea of impact on multiple customers.

11. The term “regulatory proceedings” is broad and not limited to adjudicated matters. Policy dockets, such as this one, are regulatory proceedings. However, the Commission should consider appropriate limitations. ESSB 5295, Sec. 4(1) suggests that intervenor funding is contemplated only for electric and natural gas proceedings, but does not suggest a limit on the type of proceeding.¹⁴
12. The California Public Utilities Code defines “proceeding” broadly to mean an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.¹⁵ However, compensation is only available for participation in electric, gas, water, and telephone utility proceedings.¹⁶ Compensation is not available in transportation and oil pipeline proceedings.
13. Colorado limits funding to issues that concern the general body of users or consumers and involve rates and charges.¹⁷ Oregon limits funding to matters involving electric and natural gas utilities.¹⁸ Hawaii, Idaho, Maine, New Hampshire, and Wisconsin have no limitations on the type of regulatory proceeding.¹⁹

¹⁴ ESSB 5295, Sec. 4(1) states that a *gas company or electrical company* will enter into the intervenor funding agreements with organizations.

¹⁵ Cal. Pub. Utils. Code § 1802(g) (2017).

¹⁶ Cal. Pub. Utils. Code § 1801.3(a) (2017).

¹⁷ Colo. Rev Stat § 40-6.5-105 (1)(b) (2021).

¹⁸ Or. Rev. Stat. § 757.072 (2021).

¹⁹ S.B. 2733, 30th Leg., Reg. Sess. (Haw. 2020); Idaho Code Ann. § 61-617A(2) (2003); Me. Stat. tit. 35-A, § 1310(1)(A) (1997); N.H. Rev. Stat. Ann. § 365:38-a (2000); Wis. Admin. Code § PSC 3 (1995).

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. (Notice Question 2)**

14. Developing a template agreement could be useful to ensure that agreements contain the necessary elements and that all such agreements are uniform across the utilities. At this time, Public Counsel has not developed a model for consideration. Public Counsel looks forward to reviewing recommendations from other stakeholders and the Commission regarding models or templates.

15. It appears that states with intervenor funding evaluate agreements or requests on a case-by-case basis. Details regarding documentation, demonstrating need, and other requirements are considered in evaluating eligibility rather than being agreement elements.

3. **What standards should the Commission use for approving, approving with modifications, or rejecting an agreement for funding? (Notice Question 3)**

16. The Commission's overarching duty is to ensure that utility rates are fair, just, reasonable, and sufficient. The public interest standard governs the Commission's decisions. ESSB 5295 does not provide a new or different standard, so the public interest standard would apply to intervenor funding agreements as well. Additionally, the agreements and organizations will be required to meet any requirements the Commission establishes regarding eligibility and funding limits. To the extent that proposed agreements do not meet Commission requirements, are not in the public interest, or result in utility rates that are unfair, unjust, unreasonable, or insufficient, the Commission will be required to reject or modify the agreements.

4. What constitutes a reasonable allocation of financial assistance? Should the Commission establish an overall amount of assistance provided to intervenors by each utility? What standards should the Commission use to determine whether an agreement is consistent with a reasonable allocation of financial assistance? (Notice Question 4(a), (b))

17. ESSB 5295, Sec. 4(1) requires that the Commission consider whether the agreement is consistent with a reasonable allocation of financial assistance provided to organizations among the customers of a utility. This language seems to suggest that there must be consideration of what customer interests are represented by the intervenors. If that is the case, that determination cannot be completed as agreements are made, but only after all agreements are made for a particular regulatory proceeding. The language is ambiguous and unclear, and the Commission should avoid developing policies that unduly burden any customer class with the obligation to provide intervenor funding assistance.

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

18. ESSB 5295, Sec. 4(2) and (3) address what the Commission is required to do. In particular, the Commission must provide guidance through rule or order regarding the amount of financial assistance provided, how it is distributed, how the cost of the financial assistance is recovered in rates, and any other matters necessary to administer the financial assistance agreements.²⁰ The Commission must also allow electric and natural gas utilities to recover the costs of approved financial assistance agreements in rates.²¹ The statute does not prescribe what guidance the Commission must give, but provides the areas the Commission must consider. As a

²⁰ ESSB 5295, Sec. 4(2), 67th Leg., 2021 Reg. Sess. (Wash.).

²¹ ESSB 5295, Sec. 4(3), 67th Leg., 2021 Reg. Sess. (Wash.).

result, the Commission retains discretion to determine the specific requirements and framework for providing intervenor funding.

1. 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? (Notice Question 5)

19. Requiring budgets is desirable from a cost-containment perspective. However, in practice intervenor funding budgets may have unintended consequences, which could include restricting how many participants could be allowed or the number of issues those participants could address.²² On the other hand, unlimited intervenor funding could result in escalating costs, putting unreasonable upward pressure on rates.

20. In California, intervenor funding is not prioritized or disbursed based on utility budgets, nor are there caps on total funding amounts.²³ All eligible parties request compensation for their contributions to individual proceedings, and each request is considered case by case without the use of utility budgets. Utilities are allowed to recover intervenor funding as an expense immediately upon the determination of the amount of the award.²⁴ Smaller California utilities (typically water utilities) may include a line item surcharge on customer bills for intervenor funding compensation, but larger energy utilities may use tracking accounts and include

²² The Commission may, of course, exercise its discretion when deciding to allow a party to intervene by limiting the scope of intervention, which is a separate issue from the issues addressed in this docket.

²³ *Order Instituting Rulemaking on the Comm'n's Intervenor Compensation Program*, Rulemaking 97-01-0099 and Investigation 97-01-010, Decision 98-04-059 at 74–76 (Cal. Pub. Utils. Comm'n. Apr. 23, 1998).

²⁴ Cal. Pub. Utils. Code §1807(a) (2014) (“An award made under this article shall be paid by the public utility that is the subject of the hearing, investigation, or proceeding, as determined by the commission, within 30 days. Notwithstanding any other law, an award paid by a public utility pursuant to this article shall be allowed by the commission as an expense for the purpose of establishing rates of the public utility by way of a dollar-for-dollar adjustment to rates imposed by the commission immediately on the determination of the amount of the award, so that the amount of the award shall be fully recovered within one year from the date of the award.”).

intervenor funding compensation in an end-of-year, true-up filing.²⁵

21. While some states have implemented spending limits for intervenor funding, several states approach funding similarly to California, including Colorado, Hawaii, Maine, Oregon, and Wisconsin.²⁶ Intervenor funding in Idaho is capped at \$40,000.²⁷ New Hampshire caps funding at \$10,000 per party, per utility.²⁸

22. At this time, Public Counsel believes a case-by-case determination, independent from utility budgets, is appropriate due to Washington's focus on equity in regulatory proceedings. While that policy is expressed as a component of the Clean Energy Transformation Act (CETA), equity should be considered throughout the Commission's policies. If actual funding levels raise concerns, the Commission may revisit the issue, evaluate the concerns, and modify its guidance as appropriate.

2. 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? What parameters should guide this eligibility? What organizations should *not* be eligible for funding, if any? 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? (Notice Question 6(a), (b), (c))

23. The Commission should carefully consider eligibility requirements. Intervenor funding will impact customer rates because ratepayers will ultimately fund this new expense. It is

²⁵ See e.g., Pacific Gas and Elec. Co., Electric Preliminary Statement CZ, Distribution Revenue Adjustment Mechanism, Sheet 2, Item 5q (Aug. 18, 2017), https://www.pge.com/tariffs/assets/pdf/ELEC_PRELIM_CZ.pdf.

²⁶ Colo. Rev Stat § 40-6.5-105 (2021); S.B. 2733 § 269, 30th Leg., Reg. Sess. (Haw. 2020); Me. Code Rules § 65-840; *In re: Pub. Util. Comm'n of Or., Approval of the Fourth Amended and Restated Intervenor Funding Agreement*, Docket No. UM 1929, Order 18-017, Attachment A (Jan. 17, 2018); Wis. Admin. Code § PSC 3 (1995).

²⁷ IDAPA 31.01.01, Rule 165(01) (Idaho 2004).

²⁸ N.H. Rev. Stat. Ann. § 365:38-a (2000).

important that the Commission ensure ratepayer funds are used appropriately by developing proper eligibility requirements.

24. **Need.** States have approached eligibility requirements differently. For example, California requires that the intervenor must be a party to a commission proceeding. The intervenor must prove significant hardship and status as a customer of the utility. Supporting documents required varies by the category of customer, but may include disclosure of financial data, including personal financial data in the case of individual customers or small groups of customers intervening. Organizations may be required to provide financial data and copies of their bylaws to demonstrate that they are authorized to represent residential and small business interests.

25. Maine also requires proof of substantial hardship and disclosure of financial data. Additionally, intervenors with similar interests must consolidate their efforts.²⁹ New Hampshire and Hawaii also require proof of substantial hardship.³⁰ Colorado does not require a demonstration of need,³¹ nor does Oregon.³²

26. **Material contribution.** Most states require some showing of material contribution. California requires a showing of substantial contribution to a commission decision, but does not require the commission to be swayed by all the intervenor's arguments. Rather, the party's contribution is significant to a decision if the party's presentation substantially assisted the commission in making its decision because it adopted, in whole or in part, one or more factual

²⁹ Me. Stat. tit. 35-A, § 1310(1)(A)(3) (1997).

³⁰ N.H. Rev. Stat. Ann. § 365:38-a (2000); S.B. 2733 § 269, 30th Leg., Reg. Sess. (Haw. 2020).

³¹ Colo. Rev. Stat. § 40-6.5-105 (1)(b) (2021).

³² Or. Rev. Stat. § 757.072(2) (2021).

contentions, legal contentions, or specific policy or procedural recommendations. A substantial contribution includes evidence or arguments that supports part of the decision, even if the commission does not adopt a party’s position in total.³³

27. Colorado requires intervenors to address issues of general concern regarding rates and charges, but not issues otherwise sufficiently addressed by their statutory ratepayer advocate. Colorado intervenors must sway the commission in its decision making, and only “active” intervenors may seek compensation, not those who played more passive roles.³⁴

28. New Hampshire and Hawaii similarly require intervenors to sway the commission in its decision making, but not on all of the issues an intervenor raises.³⁵ Other states, such as Maine and Michigan, require intervenors to show the uniqueness and strength of their advocacy on the commission’s ruling.³⁶ Oregon requires proof of substantial contributions.³⁷

29. **Entities that should not be eligible for funding:** States differ in their approach to whether there are entities barred from seeking intervenor funding. For example, no direct competitor of a utility can be awarded intervenor costs in Colorado and Idaho.³⁸ Municipalities in New Hampshire are ineligible.³⁹ In California, intervenor compensation is intended to ensure that individuals and entities that represent residential or small commercial electric utility customers have the financial resources to bring their concerns and interests to the California

³³ CA IComp Guide at 17–18.

³⁴ Colo. Rev Stat § 40-6.5-105 (2021).

³⁵ N.H. Rev. Stat. Ann. § 365:38-a (2000); S.B. 2733 § 269, 30th Leg., Reg. Sess. (Haw. 2020).

³⁶ Me. Code Rules § 65-407-840-2 (2021); Mich. Comp. Laws § 460.6m (12)(f) (2016).

³⁷ Or. Admin. R. 860-001-0120 (4)(E) (2010).

³⁸ Colo. Rev Stat § 40-6.5-105 (1)(g) (2021); IDAPA 31.01.01, Rule 165(01) (Idaho 2004).

³⁹ N.H. Rev. Stat. Ann. § 365:38-a (2000).

Public Utilities Commission during formal proceedings. Although the wording of the California statute could allow compensation for larger commercial and industrial customers as a Category 1 customer⁴⁰ or Category 2 representative of a customer group,⁴¹ it is unlikely that such customers could claim undue hardship, which would require a showing that the customer(s) cannot afford to pay the costs of effective participation.⁴² Large commercial and industrial customers are generally barred by statutory definition from claiming status as a Category 3 customer.⁴³

30. The Commission should consider whether and to what extent entities should demonstrate financial hardship in Washington to establish eligibility for funding. Intervenor funding should result in incremental increases in what parties are able to participate and what they are able to accomplish in their advocacy. Intervenor funding should not result in unnecessary cost shifting to ratepayers for costs that an intervening party is capable of absorbing, and requiring some showing of financial hardship can protect against this.

31. **Pre-certification versus case-by-case.** The Notice Question 6 references the process in Oregon, but does not describe that process. It appears that Oregon allows for intervenor funding agreements that establish eligibility for a period of time. While certifying a party as eligible for funding for a period of time is one way to design intervenor funding, California offers another model.

⁴⁰ See Cal. Pub. Utils. Code § 1802(b)(A) (2017).

⁴¹ See Cal. Pub. Utils. Code § 1802(b)(B) (2017).

⁴² See Cal. Pub. Utils. Code § 1802(h) (2017); *see also* CA IComp Guide at 13.

⁴³ Cal. Pub. Utils. Code § 1802(b)(C) (2017) (“A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.”); Cal. Pub. Utils. Code § 1802(i) (2017) (“‘Small commercial customer’ means any nonresidential customer with a maximum peak demand of less than 50 kilowatts.”); *see also* CA IComp Guide at 9.

32. In California, eligibility is determined at the outset of a proceeding. Intervenors file a Notice of Intent to Claim Intervenor Compensation within 30 days of a prehearing conference or at a time determined by the commission for proceedings without prehearing conferences.⁴⁴ The notice must include the party's customer status, showing of significant financial hardship, anticipated scope of participation, list of issues, explanation of how it will avoid duplication with other parties, and an estimated budget.⁴⁵ For intervenors who have previously established their showing of significant financial hardship in another proceeding, the commission's ruling on the matter serves as a rebuttable presumption of eligibility for compensation in other proceedings commencing within one year of the ruling.⁴⁶ The commission must issue a preliminary ruling within 30 days addressing whether the customer is eligible for an award of compensation if requested by the filing party. Otherwise, a party may rely on the rebuttable presumption that they have been previously found eligible.⁴⁷

3. **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? What factors should the Commission consider to determine whether an organization is eligible for interim funding? What documentation should an organization submit to support a request for interim funding? 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? (Notice Question 7(a), (b), (c))**

⁴⁴ Cal. Pub. Utils. Code § 1804(a)(1) (2017); Cal. Pub. Utils. Comm'n, Rules of Practice and Procedure, Rule 17.1.

⁴⁵ Cal. Pub. Utils. Code § 1804(a)(2) (2017); Cal. Pub. Utils. Comm'n, Rules of Practice and Procedure, Rule 17.1; *see also* CA IComp Guide at 7–17.

⁴⁶ Cal. Pub. Utils. Code § 1804(b) (2017); *see also* See Cal. Pub. Utils. Comm'n, CALIFORNIA PUBLIC UTILITIES COMMISSION NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION AND, IF REQUESTED, ADMINISTRATIVE LAW JUDGE'S RULING ON SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP, n.1, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/icom-p-materials/updated-noi-form-march-2017.docx> (last visited Sept. 10, 2021).

⁴⁷ *Id.*

33. With the exceptions of Michigan and Oregon,⁴⁸ all of the states with intervenor funding statutes provide for funding after a proceeding has completed. California, Colorado, Hawaii, Idaho, Maine, New Hampshire, and Wisconsin provide intervenor funding after the commission issues its order.⁴⁹ Wisconsin, Oregon, and California require intervenors to establish eligibility in advance even though funding is provided after a proceeding concludes.⁵⁰ Michigan determined that after-the-fact intervenor funding created hardships for most intervenors, and that advance funding allowed for consistent and beneficial input from intervenors on behalf of customers. Michigan attributed this to the complex nature of the subject matter and the cost of hiring expert witnesses.⁵¹

34. Given the equity mandates of CETA and the difficulty of increasing participation in equity advisory groups by organizations that do not traditionally engage in UTC practice, Washington may wish to create a hybrid model that provides funding up front and additional funding at the conclusion of a matter. The timing of the funding could also depend on the nature of the matter, whether it is an advisory group, rulemaking, or general rate case, for example. Groups with limited cash flow may be excluded from participating if they are unable to pay staff, attorneys, or experts to engage in a matter. The intent of intervenor funding is to expand

⁴⁸ Mich. Comp. Laws § 460.6m (2016); *In re: Pub. Util. Comm'n of Or., Approval of the Fourth Amended and Restated Intervenor Funding Agreement*, Docket No. UM 1929, Order 18-017, Attachment A, art. 6 at 17–23 (Jan. 17, 2018).

⁴⁹ Cal. Pub. Utils. Code § 1803 (2017); Colo. Rev Stat § 40-6.5-105 (2021); S.B. 2733, 30th Leg., Reg. Sess. (Haw. 2020); IDAPA 31.01.01, Rule 165(01) (Idaho 2004); Me. Stat. tit. 35-A (1997); N.H. Rev. Stat. Ann. § 365:38-a (2000); Or. Rev. Stat. § 757.072 (2021); Wis. Admin. Code § PSC 3 (1995).

⁵⁰ Cal. Pub. Utils. Code § 1803 (2017); *In re: Pub. Util. Comm'n of Or., Approval of the Fourth Amended and Restated Intervenor Funding Agreement*, Docket No. UM 1929, Order 18-017, Attachment A, art. 5 at 15-17 (Jan. 17, 2018); Cal. Pub. Utils. Code § 1803 (2017).

⁵¹ Comments of the Attorneys General of Massachusetts, Connecticut, Delaware, Maryland, Michigan, Minnesota, Oregon, Rhode Island, and Wisconsin, and the Maine Office of the Public Advocate and Maryland People's Counsel, at 4, *The Office of Public Participation*, Docket No. AD21-9, (FERC April 23, 2021).

involvement. The rules should not create an artificial barrier to participation, so timing of disbursement could be based on an intervenor's demonstrated financial need.

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

35. The Commission should ensure that the process is robust enough to ensure that intervenors prove that they qualify for funding. Once claims are ripe for payment, many states require documentation of the intervenor's costs. California requires timesheets and receipts for expenses. Hawaii requires intervenors to demonstrate actual costs and the commission has audit power over the intervenors.⁵² Intervenors in Idaho, Maine, and Michigan also demonstrate actual costs to their respective commissions.⁵³

36. In this respect, the Commission does not have to reinvent the wheel. Several areas of law require documentation for fee awards. Documentation related to intervenor funding may be similar in that attorneys and experts will track their time and create invoices. If the Commission allows intervenor funding to cover the costs of a party's internal staff, the Commission may require that party to document the staff's time in a similar manner.

5. 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. (Notice Question 9)

⁵² S.B. 2733 § 269, 30th Leg., Reg. Sess. (Haw. 2020).

⁵³ IDAPA 31.01.01, Rule 165(01) (Idaho 2004); Me. Code Rules § 407-840-7; Mich. Comp. Laws § 460.6m (20) (2016).

37. The utilities should not be in a position where they are approving or rejecting claims due to the negative impact of allowing the utilities to be “gatekeepers” to regulatory proceedings. Utility control over funding could negatively impact or skew an intervenor’s advocacy during a proceeding. The Commission should assess whether an intervenor has produced the appropriate documentation supporting the request for funding. In California, the administrative law judge (ALJ) assigned to the proceeding rules on a party’s Notice of Intent to Claim Compensation. After the final decision is made in the case, the ALJ will review the party’s compensation claim, and the commission renders a final decision on the claim.

38. Templates and similar guidance are useful in creating regulatory uniformity and clear expectations. California, for example, streamlined its process by creating forms for both the Notice of Intent as well as the Claim for Compensation for all parties and proceedings.⁵⁴

6. 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? (Notice Question 10)

39. Intervenor funding might reasonably include attorney and expert fees. In California, these fees are based on an hourly rate set by the commission. If the commission has not previously set an hourly rate for a specific person, the party must provide documentary support for the requested rate. California also recognizes expenses including paralegal costs, photocopying,

⁵⁴ See Cal. Pub. Utils. Comm’n, CALIFORNIA PUBLIC UTILITIES COMMISSION NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION AND, IF REQUESTED, ADMINISTRATIVE LAW JUDGE’S RULING ON SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/icompat-materials/updated-noi-form-march-2017.docx> (last visited Sept. 10, 2021) and Cal. Pub. Utils. Comm’n, CALIFORNIA PUBLIC UTILITIES COMMISSION INTERVENOR COMPENSATION CLAIM AND DECISION ON INTERVENOR COMPENSATION CLAIM, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/icompat-materials/intervenor-compensation-fclaim-form-october-2018.docx> (last visited Sept. 10, 2021).

mailing, telephone, fax transmission, on-line legal research, expert travel time, and time spent preparing the claim. Travel time and hours spent preparing the compensation request are compensated at one-half the preparer's normal hourly rate. California does not compensate for time spent on clerical and administrative tasks, routine travel (i.e., part of your daily commute), basic operational services (i.e., costs for Adobe software), or meals.⁵⁵

7. 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? (Notice Question 11)

40. The Commission should require time sheets to show effort expended in the matter. Comparing the claimed expenses to the market could be useful; however, the Commission should be mindful of the varying rates charged to different types of entities.

8. 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? (Notice Question 12)

41. Intervenor funding would be recovered through general rate case filings. As with any rate adjustment, the Commission should consider whether the resulting rates are fair, just, reasonable, and sufficient and whether they are in the public interest. The Commission should consider whether the specific impact on customers requires adjustment. For example, the Commission might consider whether intervenor funding be amortized over one year or multiple years.

⁵⁵ See CA IComp Guide at 22.

C. Questions regarding ESSB 5295 Section 4(4)

1. **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?**
 - 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. (Notice Question 13(a), (b))**

42. “Highly impacted communities” and “vulnerable populations” are defined in CETA. RCW 19.405.020(23) defines highly impacted communities as “a community designated by the department of health based on cumulative impact analyses in RCW 19.405.140 or a community located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151.”. RCW 19.405.020(40) defines vulnerable populations as “communities that experience a disproportionate cumulative risk from environmental burdens due to ... [a]dverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and ... sensitivity factors, such as low birth weight and higher rates of hospitalization.” Intervenor funding rules should adopt these definitions.

43. The intent regarding prioritization of organizations representing highly impacted communities and vulnerable populations is to ensure that these organizations have access to

funding. If intervenor funding is not limited to a budget, but rather based on a case-by-case need, the Commission can consider whether the eligibility threshold for these organizations is lower or easier to meet. Under this model, funding for other intervenors is not reduced as a result of the participation of groups representing highly impacted communities and vulnerable populations.

III. CONCLUSION

44. Availability of intervenor funding presents an opportunity for greater involvement and representation of more customer interests in UTC proceedings. In distributing intervenor funding, the Commission should ensure a fair process that assesses financial need and ability for an intervenor to materially contribute to a proceeding. Funding should be approved by the Commission rather than individual utilities. As with any utility cost charged to ratepayers, intervenor funding can be included in rates if it is prudent and does not lead to unfair, unjust, or unreasonable rates.
45. Equity should be another factor for the Commission to consider when disbursing intervenor funds. Statute defines vulnerable populations and highly impacted communities, so the Commission can take these definitions into consideration if a prospective intervenor represents those customer interests. The purpose of intervenor funding is to include voices left out of the process due to resource constraints, so this is one way to include intervenors who can advocate for more equitable outcomes.
46. Public Counsel's comments also provide significant references to intervenor funding models in other jurisdictions. This information is intended to inform this rulemaking process as stakeholders develop a model that works for the Washington Commission and customers of

Washington investor-owned utilities. Public Counsel looks forward to continued engagement with Commission Staff and other stakeholders through this important rulemaking process.

DATED this 9th day of September 2021.

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/s/

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