

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES
AND TRANSPORTATION
COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UG-230393

ORDER 05

GRANTING REQUESTS FOR
CASE CERTIFICATION AND
APPROVING PROPOSED
BUDGETS AND FUND GRANTS

BACKGROUND

- 1 On May 25, 2023, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective natural gas tariff WN U-2. PSE characterizes its filing as establishing a new tariff schedule, Schedule 141LNG – Liquefied Natural Gas Rate Adjustment, made pursuant to the Commission’s final order in Dockets UE-220066 and UG-220067 in PSE’s last general rate case (2022 GRC).
- 2 The Commission suspended operation of the tariffs on June 8, 2023, by Order 01 entered in this Docket. The Commission convened a virtual prehearing conference on June 26, 2023, before Administrative Law Judge Samantha Doyle.
- 3 On July 7, 2023, the Commission entered Order 03, Prehearing Conference (Order 03) setting a procedural schedule and giving notice of hearing. The Commission granted petitions to intervene from the Alliance of Western Energy Consumers (AWEC), and the Puyallup Tribe of Indians (Puyallup Tribe), and noticed an evidentiary hearing for November 6, 2023, at 9 a.m. Parties that sought intervenor funding were required to submit requests for case certification and notices of intent to seek funding, pursuant to Section 6.2 of the Revised Agreement. Such Parties are also required to submit their proposed budgets, pursuant to Section 6.3 of the Revised Agreement.
- 4 On July 19, 2023, AWEC filed a Request for Case Certification and Notice of Intent to Request a Fund Grant. AWEC indicated that it intended to request a fund grant from the

Customer Representation Sub-fund of the Customer Access Fund for PSE. AWEC submits that this proceeding, Docket UG-230393, is an “eligible proceeding” under the Revised Agreement.

- 5 Citing Sections 5.2.1 and 6.2 of the Revised Agreement, AWEC requests case-certification. AWEC submits that it is a non-profit organization; that it represents “broad customer interests,” representing the class of industrial customers that take natural gas service from PSE and has several members that are PSE industrial customers; and that AWEC has a history of effective representation of PSE’s industrial customers in past proceedings, and that no other party to this proceeding (and, thus, no other stakeholder that could be case-certified) adequately represents the interests of industrial customers. Finally, AWEC states that its request for case-certification will not unduly delay this proceeding.
- 6 Additionally, on July 19, 2023, AWEC submitted its proposed budget in the above-captioned proceeding pursuant to Article 6.3 of the Revised Agreement.
- 7 Later, on July 28, 2023, the Puyallup Tribe filed its request for Case Certification and Notice of Intent to Request a Fund Grant. The Puyallup Tribe indicated that it intended to request a fund grant from the Prioritized Organizations Sub-Fund of the Consumer Access Fund for PSE, pursuant to sections 5.2.2 and 6.2 of the Revised Agreement.
- 8 In its request, the Puyallup Tribe states that the Commission previously found the Puyallup Tribe to be an eligible organization that can effectively represent customer interests that no other party adequately represents, under Dockets UE-220066 and UG-220067 and continues to meet the criteria for certification found in section 5.2.2. The Puyallup Tribe also submits that the tribal community living and working within the 1873 Survey Area qualifies as a Highly Impacted Community under RCW 19.405.020(23), and the Puyallup Tribe is in a unique position to represent this community. The Puyallup Tribe adds that it has approximately 6,500 members, and many tribal households are PSE ratepayers. The Puyallup Tribe asserts that its participation will be narrow and focused; its intervention will not unreasonably broaden the issues, burden the record, or delay the proceeding.
- 9 In addition, on July 28, 2023, the Puyallup Tribe submitted its proposed budget in the above-captioned proceeding.
- 10 As has been noted within this Order, AWEC and the Puyallup Tribe have each filed their requests for case certification and notices of intent to seek funding and proposed budgets. We will address both types of filings in this Order.

DISCUSSION

- 11 Pursuant to RCW 80.28.430, utilities must enter into funding agreements with organizations that represent broad customer interests. The Commission is directed to determine the amount of financial assistance, if any, that may be provided to any organization; the way the financial assistance is distributed; the way the financial assistance is recovered in a utility's rates; and other matters necessary to administer the agreement.¹
- 12 On November 19, 2021, the Commission issued a Policy Statement on Participatory Funding for Regulatory Proceedings (Policy Statement).² The Commission provided "high-level guidance regarding the amount of financial assistance that may be provided to organizations, the manner in which it is distributed to participants and recovered in the rates of gas or electrical companies, and other matters necessary to administer agreements."³
- 13 On February 24, 2022, the Commission issued Order 01, Approving Agreement with Modifications (Order 01).⁴ The Commission approved the Interim Agreement filed by the parties on February 23, 2022, subject to certain modifications, and adopted the Interim Agreement as Appendix A to the Order. Among other points, the Commission clarified that it is not bound by the timeframes set forth in the Interim Agreement.⁵
- 14 On February 9, 2023, the Commission entered Order 02, Approving Agreement Subject to Condition, Requiring Refiling of Modified Agreement.⁶ The Commission approved the Revised Agreement submitted by the parties (Revised Agreement), subject to the removal of paragraph 7.9, which authorized deferred accounting

1 RCW 80.28.430(2).

2 *In the Matter of the Commission's Examination of Participatory Funding Provisions for Regulatory Proceedings*, Docket U-210595 (November 19, 2021).

3 *Id.* ¶ 3.

4 *In the Matter of the Petition of Puget Sound Energy, et al.*, Docket U-210595 Order 01 (February 24, 2022).

5 *E.g., Id.*

6 *In the Matter of the Petition of Puget Sound Energy, et al.*, Docket U-210595 Order 02 (February 9, 2023). Originally titled as the Extended Interim Participatory Funding Agreement in the December 20, 2022 Joint Petition.

treatment.⁷ The Commission also clarified that it was not bound by the timelines set forth in the Revised Agreement.⁸

15 As relevant here, the Revised Agreement carried forward the same requirements for case certification.⁹

Case Certification and Notices of Intent to Seek Funding

16 In relevant part, Section 5.2 of the Revised Agreement provides that the Commission will case-certify an organization that is not a for-profit or governmental entity; represents “broad customer interests”; demonstrates it is able to “effectively represent the particular customers it seeks to represent”; demonstrates that no other case-certified stakeholder adequately represents these interests or that the proceeding will benefit from the organization’s participation; and establishes that it will not unduly delay the proceeding.¹⁰

17 In this proceeding, the Commission is determining whether PSE’s tariff revisions may injuriously affect the rights and interests of the public. To that point, the Commission has suspended PSE’s tariff filing and opened this matter, and held public hearings to determine “whether the proposed rate increases would result in rates that are fair, just, reasonable, equitable, and sufficient.”¹¹ This is a “regulatory proceeding” within the meaning of the statute, which is appropriate for participatory funding. We continue on to address each Request for Case Certification and Notice of Intent to Seek Funding.

18 **AWEC.** AWEC is a non-profit organization that represents broad customer interests. RCW 80.28.430(1) provides that organizations representing “broad customer interests” includes organizations representing “industrial” customers. In its Policy Statement, the Commission recognized certain “incumbent” organizations that have a history of representing these customer interests before the Commission and specifically referred to AWEC in making this statement.¹²

19 AWEC demonstrates that it can effectively represent the particular customers it seeks

7 *Id.* ¶ 20.

8 *Id.* ¶ 21.

9 Revised Agreement § 5.2.

10 *Id.*

11 *Washington Utilities and Transportation Commission v. Puget Sound Energy*, Docket UG-230393 Order 01 (June 8, 2023) at ¶6.

12 Policy Statement ¶ 18.

to represent. AWEC routinely appears before the Commission, participates in settlements, and offers testimony at evidentiary hearings without causing undue delays. Although AWEC recently opposed a settlement in a power-cost only rate case, the Commission was still provided sufficient opportunity to reinstate a procedural schedule, and AWEC did not seek to delay the proceeding beyond what was necessary to present its opposition.¹³ We agree that the public interest is served by AWEC's participation and that no other party adequately represents the interests of industrial customers. We therefore grant AWEC's Request for Case Certification.

20 We also find that AWEC has properly filed a Notice of Intent to seek funding, stating that the organization intends to seek funds from PSE's Customer Representation Sub-fund. Pursuant to Section 6.5 of the Revised Agreement, however, the Commission will address the funding proposals within this Order.

21 **The Puyallup Tribe.** The Puyallup Tribe of Indians is a sovereign tribal government and federally recognized Indian Tribe. It is an "Eligible Organization" under Section 5.2.2 of the Revised Agreement, because the restriction on governmental entities does not encompass tribal governments.

22 The Puyallup Tribe represents broad customer interests. RCW 80.28.430(1) requires utilities to enter into agreements for participatory funding with organizations representing "broad customer interests," specifically organizations that represent "vulnerable populations" and "highly impacted communities." RCW 80.28.430(4) further states that "[o]rganizations representing vulnerable populations or highly impacted communities must be prioritized for funding under this section." The Clean Energy Transformation Act (CETA)¹⁴ defines "vulnerable populations" as communities that experience a disproportionate cumulative risk from environmental burdens due to adverse socioeconomic factors and sensitivity factors.¹⁵ CETA defines "highly impacted communities" as a community designated by the Department of Health based on cumulative impact analysis or a community located within "Indian country" as defined by federal law.¹⁶ The Puyallup Tribe's land base is commonly referred to as the

13 See *WUTC v. PacifiCorp d/b/a Pacific Power & Light Company*, Docket UE-210402 Order 5 (November 2, 2021) (reinstating and modifying procedural schedule given AWEC's opposition to a settlement).

14 Because RCW 80.28.430 does not itself define the terms "vulnerable populations" or "highly impacted communities," we read these terms in light of the definitions in the Clean Energy Transformation Act, RCW 19.405 *et seq.*

15 RCW 19.405.020(40).

16 RCW 19.405.020(23) (citing 18 U.S.C. § 1151).

1873 Survey Area, and this area meets the definition of Indian Lands as set forth in 11 U.S.C. § 1151. The Puyallup Tribe credibly submits that it represents prioritized communities. We therefore find that the Puyallup Tribe represents broad customer interests.

23 The Puyallup Tribe demonstrates that it can effectively represent the particular customers it seeks to represent, noting that it routinely represents the interests of its members in various courts and administrative agencies.

24 We agree that the public interest is served by the Puyallup Tribe's participation and that no other party adequately represents the interests represented by the Puyallup Tribe. We therefore grant the Puyallup Tribe's Request for Case Certification.

25 We also find that the Puyallup Tribe has properly filed a Notice of Intent to seek funding, stating that the organization intends to seek funds from PSE's Prioritized Communities sub-fund. Pursuant to Section 6.5 of the Revised Agreement, however, the Commission will address the funding proposals below in this Order.

Proposed Budgets

26 In relevant part, the Revised Agreement requires that Proposed Budgets include a statement of the work to be performed, a description of the general areas to be investigated, an identification of the specific sub-fund at issue, and a budget showing any estimated attorney fees or consultant fees.¹⁷ If the Commission receives one or more Proposed Budgets, it will "determine the amount, if any, of Fund Grants that will be made available . . ."¹⁸ The Commission may make this determination based on the following factors:

- (a) the breadth and complexity of the issues;
- (b) the significance of any policy issues;
- (c) the procedural schedule;
- (d) the dollar magnitude of the issues at stake;
- (e) the participation of other parties that adequately represent the interests of customers;

¹⁷ Revised Agreement § 6.5.

¹⁸ *Id.*

- (f) the amount of funds being provided by the applicant intervenor, if any;
- (g) the qualifications of the party and experience before the Commission;
- (h) the level of available funds in the Fund account or accounts involved;
- (i) other Eligible Proceedings for Funds in which stakeholders may seek additional Fund Grants from the same Sub-Fund; or
- (j) any other factors the Commission deems relevant.”¹⁹

27 The Commission may reject, in whole or in part, a request for Fund Grant based on these factors.²⁰ The Commission may place reasonable conditions on Fund Grants, and it may amend Fund Grants on a prospective basis.²¹

28 In this case, both of the parties we deemed as case-certified in this Order filed Proposed Budgets. AWEC requests \$20,000 of the \$155,000 remaining in PSE’s Customer Representation Sub-Fund. Puyallup Tribe requests \$45,350 of the \$180,000 amount available in PSE’s Prioritized Organizations Sub-Fund. We address each Proposed Budget in turn, considering them in light of the content requirements set forth in Section 6.3 and the various factors set forth in Section 6.5 of the Revised Agreement.

29 AWEC. On July 19, 2023, AWEC filed a Proposed Budget. AWEC also requested a Fund Grant of \$20,000 from the Customer Representation Sub-Fund to partially offset the costs of its participation in this matter. AWEC intends to investigate all economic and policy aspects of PSE’s filing as challenged by other parties to this proceeding in accordance with its obligations and interests under the Tacoma LNG Settlement from PSE’s most recent multi-year rate case proceeding, which gave rise to the current proceeding. AWEC estimated a total of \$17,750 for attorney fees, \$4,000 for paralegal fees, \$100 for travel, \$150 for printing and postage and \$18,000 for expert witness fees. While these amounts totaled \$40,000, AWEC only requested a Fund Grant of \$20,000.

30 We approve AWEC’s Proposed Budget and its request for a \$20,000 Fund Grant. We again refer to many of the same factors set forth in Section 6.5 of the Revised Agreement. AWEC plans to contribute \$20,000 of the \$40,000 estimated costs for its participation in this proceeding. AWEC is an “incumbent” organization, with a history

19 *Id.*

20 *Id.*

21 *Id.*

of appearing before the Commission,²² and it intends to investigate all economic and policy aspects of the Company's filing. Finally, no other party focuses on the interests of industrial customers. AWEC's presentation is not merely cumulative of other parties.

31 The Commission approves AWEC's request for a \$20,000 Fund Grant given the breadth and complexity of the issues being investigated, the funds contributed by the organization, the organization's history before the Commission, and its expertise in representing industrial customers.

32 The Puyallup Tribe. On July 28, 2023, the Puyallup Tribe filed a Proposed Budget, requesting \$45,350 from PSE's Prioritized Organizations Sub-Fund to offset the costs of its participation. The Puyallup Tribe intended to investigate the prudence of PSE's post-September 16, 2016, decisions regarding Tacoma LNG Facility and distribution line.

33 The Puyallup Tribe estimated \$45,350 for outside counsel attorney fees. The total amount requested is also 45,350. The Puyallup Tribe does not request any fees for expert witnesses or in-house counsel.

34 After considering the factors set forth in Section 6.5 of the Revised Agreement, we find that the Puyallup Tribe's request should be granted. The Commission should provide a total Fund Grant to the Tribe of \$45,350.

35 As was stated elsewhere in this Order, the Puyallup Tribe represents a "highly impacted community."²³ Organizations representing such communities must be prioritized for intervenor funding.²⁴ Approving the Puyallup Tribe's request for intervenor funding would be consistent with the legislature's intent to encourage participation from historically under-represented communities.

36 We observe that the Puyallup Tribe requests its total costs. However, unlike prior related proceedings, the Puyallup Tribe does not request funding for expert witnesses, although it presented written and verbal testimony from its expert in this proceeding.²⁵

22 Policy Statement ¶ 18.

23 See Paragraph 20 of this Order as well as Footnote 10. See also Dockets UE-220066 and UG-220067 Order 3 ¶22.

24 RCW 80.28.430(4).

25 Testimony of Ranajit Sahu (Sahu, Exh. RXS-1T), filed September 8, 2023; Cross-Answering Testimony of Sanjit Sahu (Sahu, RS-T), filed October 6, 2023.

Based on this it seems that the Puyallup Tribe has contributed its own resources to the proceeding which also weighs in favor of the Puyallup Tribe's request.

- 37 We also note that in this proceeding, the Puyallup Tribe is the only prioritized organization in this proceeding and that no other such organization is a party to this case. The Commission also takes note of the level of funds available at this time, and the likelihood of other proceedings of intervenors seeking fund grants from the same sub-fund, as we are approaching the close of the year.
- 38 Taking all of these factors into consideration, we find it appropriate to award the total Fund Grant to the Tribe of \$45,350. We appreciate the Puyallup Tribe's clear presentation of its Proposed Budget, and conclude that the factors support an award for the amount requested without reduction.
- 39 Finally, we remind all parties that neither case-certification nor approval of a Proposed Budget for a Fund Grant is a guarantee of reimbursement. We may determine that a party's request for reimbursement should be denied in part or in whole. The amount of funding in each Consumer Access Fund is limited, and it may be required for more than one Eligible Proceeding. These funds are also sourced from ratepayers, many of whom are faced with their own economic challenges. Thus, we expect all requests for reimbursement to contain great detail, including receipts, invoices, and any other documentation of costs for which recovery is requested. All requests must also include references to eligibility for expenses and any relevant portions of the Revised Agreement. To incentivize appropriate use and equitable distribution of Fund Grants, we will also carefully evaluate how recovered costs should be allocated to customers. For example, we will consider whether each case-certified party's recovered costs should be allocated towards a specific customer class, a select group of classes, or across the entirety of customers.

ORDER

40 **THE COMMISSION ORDERS:**

- (1) Alliance of Western Energy Consumers' Request for Case Certification is GRANTED.**
- (2) The Puyallup Tribe's Request for Case Certification is GRANTED.**
- (3) Alliance of Western Energy Consumers' Proposed Budget and Fund Grant is APPROVED, in the amount of \$20,000.**

- (4) **The Puyallup Tribe's Proposed Budget and Fund Grant is APPROVED, in the amount of \$45,350.**

Dated at Lacey, Washington, and effective November 23, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael Howard
MICHAEL HOWARD
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.