

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES,

Respondent.

DOCKETS UE-220053 & UG-220054
(Consolidated)

ORDER 05

GRANTING REQUESTS FOR CASE
CERTIFICATION

BACKGROUND

- 1 On January 21, 2022, Avista Corporation d/b/a Avista Utilities (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions in Docket UE-220053 to its currently effective electric service tariff, Tariff WN U-28, and in Docket UG-220054 to its natural gas service tariff, Tariff WN U-29.
- 2 On January 27, 2022, the Commission entered Order 01, consolidating Dockets UE-220053 and UG-220054, suspending the tariff revisions, and setting the matters for adjudication.
- 3 On February 14, 2022, the Commission convened a virtual prehearing conference, and on February 16, issued Order 03, Prehearing Conference Order and Notice of Hearing.
- 4 On February 28, 2022, the Commission convened a second virtual prehearing conference to discuss intervenor participatory funding procedures for these consolidated proceedings and on March 1, 2022, issued Order 04, Second Prehearing Conference Order. The Commission adopted the filing deadlines discussed during the second prehearing conference for intervenor funding filings. Participating Organizations seeking a Fund Grant were required to file a Request for Case Certification (Request) and Notice of Intent to request a Fund Grant (Notice of Intent) by 5 p.m. on Wednesday, March 9,

2022. Any party that had already filed its Request and Notice of Intent was permitted to amend its filing up until the deadline on March 9, 2022. The Commission also determined that each Participating Organization should be required to file with the Commission its proposed budget 30 days after the Commission issued a decision on its Request and Notice of Intent.

5 By March 9, 2022, the Alliance of Western Energy Consumers (AWEC), The Energy Project (TEP), NW Energy Coalition (NVEC), and Small Business Utility Advocates (SBUA) had each filed a Request and a Notice of Intent with the Commission.

6 In its Request and Notice of Intent, AWEC submits that this is an “Eligible Proceeding” within the meaning of the Interim Agreement. Furthermore, AWEC is a non-profit organization representing “broad customer interests.” AWEC maintains that it is eligible for participatory funding.

7 TEP indicated that it intended to request a fund grant from the Customer Representation Sub-Fund of the customer access fund for Avista. TEP submits that this proceeding, Avista’s general rate case, is an “eligible proceeding” under the Interim Agreement. Citing Sections 5.2.1 and 6.2 of the Interim Agreement, TEP requests case-certification. TEP submits that it is a non-profit organization; that it represents “broad customer interests,” including thousands of low-income customers; and that TEP has a history of effective representation in regulatory proceedings over the last two decades. TEP submits that it is the only party focusing solely on the interests of low-income customers and that its participation will not unduly delay the proceeding.

8 NVEC submits that it is a non-profit organization and that it is an alliance of more than 100 organizations, including more than 40 organizations in Washington, and individual members. NVEC focuses on energy efficiency, renewable energy, low-income and consumer protections, and informed public involvement in renewable energy. NVEC also focuses on issues that have a material impact on vulnerable populations and highly impacted communities, advocating for a fair and equitable distribution of benefits to all customers, including low-income customers. NVEC routinely participates in Commission proceedings involving Avista, participating in advisory groups, submitting formal comments to the Commission, and intervening in previous Avista general rate cases.

9 SBUA indicated that it intended to request a fund grant from the Customer Representation Sub-Fund of the customer access fund for Avista. SBUA submits that it is

a non-profit organization; that it represents “broad customer interests,” noting that there are approximately 630,819 small businesses in Washington and assumes a portion of those exist in Avista’s service territory; that it will effectively represent small business customers because its counsel and experts have decades of experience in energy and public utility matters and it has “successfully intervened in well over 50 dockets at the California Public Utility Commission, including at least 10 General Rate Cases, and has been awarded compensation for making substantial contributions to numerous cases in California over the last 10 years.”¹ SBUA submits that it is the only party in these proceedings focused exclusively on the small business community, whose interests diverge from other customer groups such as residential and large business customers.

10 On March 16, 2022, the Commission issued Bench Requests No. 1 and No. 2, requesting additional information regarding Requests filed with the Commission by TEP, NWECA, and SBUA. The Commission requested TEP and NWECA to

(a) Please detail *and explain* how the overlapping interests represented by The Energy Project and NW Energy Coalition (including low-income and transportation electrification issues) differ and how each intervenor’s specific perspectives on these topics are not adequately represented by the other.

(b) Where the represented interests overlap (including low-income and transportation electrification issues), please explain how the public interest will benefit from the participation and funding of both intervenors.

The Commission requested SBUA to

(a) Please identify and explain, with greater specificity and in greater detail than the stated calculation of the likely number of small businesses that operate in Avista’s service territory, the particular customers Small Business Utility Advocates (SBUA) seeks to represent.

(b) Please identify and explain SBUA’s connection to the customers identified in (a), above, including duration of

¹ SBUA’s Request at 2, ¶ 3(c).

membership or relationship, and also SBUA's connection to Avista's service territory.

(c) Please detail and explain how no other party, *e.g.*, the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel), adequately represents small business customers in Avista's service territory. Where the represented interests of small business customers in Avista's service territory overlap with that of Public Counsel, please explain how the public interest will benefit from the participation and funding of SBUA's participation in these consolidated proceedings.

- 11 TEP, NWEAC, and SBUA filed their responses by March 18, 2022. No party filed a response to the responses to the Bench Requests.
- 12 In its Response, TEP explains that it is only one of 107 diverse organizations comprising NWEAC. TEP distinguished its interests from NWEAC's, explaining that it "has a broad interest in every issue that impacts low-income customers, while NWEAC's interest in low-income issues is more narrow: ensuring that the transformation to clean energy treats low-income customers equitably."² TEP also observes that NWEAC does not hold itself out as a principal advocate for low-income customers. Additionally, "NWEAC has a broad interest in all aspects of transportation electrification, while TEP has a narrow interest in alternative transportation solutions for low-income customers."³
- 13 In its Response, NWEAC's explanations mirrored TEP's. It explains that its focus is specific to clean and affordable energy, while TEP's is a broader scope of low-income customer issues. Consistent with TEP's Response, NWEAC observes that "TEP represents the specific interests of the Community Action Agencies and their clients, and low-income customers generally. In contrast, NWEAC represents a diverse coalition of organizations and individuals who support an equitable transition to clean and affordable energy that protects low-income customers."⁴
- 14 In its Response, SBUA explains that its "core mission is to ensure fair and reasonable energy costs for small business ratepayers and to promote utility programs that help small

² TEP's Response to BR 1 at 2.

³ *Id.*

⁴ NWEAC's Response to BR 1 at 1, ¶ 1(a).

businesses”⁵ In addition, SBUA submits that it “has numerous members that are Avista small business customers, which are among the hundreds of SBUA members across California, Oregon, and Washington. SBUA’s first Washington member joined in 2013; however, most of SBUA’s current members joined between 2020 and the present.”⁶ It also identifies that these proceedings are SBUA’s first before the Commission and that it expects its membership and relationships to actively develop to include “over two dozen members in the State of Washington by the end of 2022.”⁷

DISCUSSION

- 15 We grant each of the parties’ requests for case certification. We instruct certain parties, however, to provide additional information in support of any proposed budgets.
- 16 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.⁸
- 17 On November 19, 2021, the Commission issued a Policy Statement on Participatory Funding for Regulatory Proceedings (Policy Statement).⁹ 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.”¹⁰

⁵ SBUA’s Response to BR 1 at 2, ¶ 7(a).

⁶ *Id.* at 3, ¶ 7(b).

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⁸ RCW 80.28.430(2).

⁹ *In the Matter of the Commission’s Examination of Participatory Funding Provisions for Regulatory Proceedings*, Docket U-210595 (November 19, 2021).

¹⁰ *Id.* ¶ 3.

- 18 On February 24, 2022, the Commission issued Order 01, Approving Agreement with Modifications (Order 01).¹¹ 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.¹²
- 19 In relevant part, Section 5.2 of the Interim 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.¹³
- 20 This case is Avista’s 2022 general rate case. The Commission has already suspended this proceeding for an adjudication. It is therefore a “regulatory proceeding” within the meaning of the statute, which is appropriate for participatory funding.¹⁴ We continue on to address each Request for Case Certification and Notice of Intent to Seek Funding.
- 21 **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.¹⁵
- 22 AWEC demonstrates that it can effectively represent the particular customers it seeks 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

¹¹ *In the Matter of the Petition of Puget Sound Energy, et al.*, Docket U-210595 Order 01 (February 24, 2022).

¹² *E.g., Id.*

¹³ Interim Agreement § 5.2.

¹⁴ *See* Policy Statement ¶ 33 (interpreting the term “regulatory proceeding” broadly). *See also* Interim Agreement § 1(c) (defining “Eligible Proceeding”).

¹⁵ Policy Statement ¶ 18.

did not seek to delay the proceeding beyond what was necessary to present its opposition.¹⁶ 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.

23 We also find that AWEC has properly filed a Notice of Intent to seek funding, stating that the organization intends to seek funds from Avista's Customer Representation Sub-Fund. Pursuant to Section 6.5 of the Interim Agreement, however, the Commission will not address any funding proposals until after the deadline for submitting proposed budgets.

24 **TEP.** TEP 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 "low-income" 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 TEP in making this statement.¹⁷

25 TEP also demonstrates that it can effectively represent the particular customers it seeks to represent. TEP routinely appears before the Commission, participates in settlements, and offers testimony at evidentiary hearings without causing undue delays.¹⁸ We agree that the public interest is served by TEP's participation and that TEP establishes it will not unduly delay the proceeding. We therefore grant TEP's Request for Case Certification.

26 We also find that TEP has properly filed a Notice of Intent to seek funding, stating that the organization intends to seek funds from Avista's Customer Representation Sub-Fund.

27 Pursuant to Section 6.5 of the Interim Agreement, the Commission will not address any funding proposals until after the deadline for submitting proposed budgets. In its Response to Bench Request No. 1, TEP distinguished at least a portion of apparent overlapping interests between it and NVEC. It also explained how the public interest

¹⁶ 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).

¹⁷ Policy Statement ¶ 18.

¹⁸ TEP's Request for Case Certification ¶ 4(e). See also *WUTC v. Cascade Natural Gas Corporation*, Docket UG-200568 Order 05 ¶¶ 335-357 (May 18, 2021) (discussing and relying in part on TEP's testimony regarding a utility's disconnection moratorium and low-income programs).

would benefit from its participation. In any proposed budget submitted by TEP, it should include the information from its Response to Bench Request No. 1, any additional detail and explanation of how any overlapping interests differ from other intervenors, such as NWEC, how each intervenor's specific perspectives on these topics are not adequately represented by the other intervenor, and how its participation will benefit the public interest.

- 28 **NWEC.** NWEC is a non-profit organization that represents broad customer interests. In its Policy Statement, the Commission found that the term “broad customer interests” should not be limited to organizations representing larger groups of customers.¹⁹ The Commission specifically agreed with NWEC’s comments that an organization representing specific customers may implicate broader public interests.²⁰ We find that NWEC meets this standard. NWEC has appeared before the Commission on numerous occasions.²¹ For instance, NWEC appeared in PSE’s 2019 general rate case and argued that the Company should be required to revert back to its previous natural gas line extension allowance calculation methodology.²² Although the Commission did not adopt NWEC’s recommendation in that case, the Commission later cited to and adopted NWEC’s recommendation in an October 28, 2021, open meeting.²³
- 29 NWEC demonstrates that it can effectively represent the particular customers it seeks to represent. NWEC routinely appears before the Commission without causing undue delays.²⁴ We agree that the public interest is served by NWEC’s participation. We therefore grant NWEC’s Request for Case Certification.
- 30 We also find that NWEC has properly filed a Notice of Intent to seek funding, stating that the organization intends to seek funds from Avista’s Customer Representation Sub-Fund.
- 31 Pursuant to Section 6.5 of the Interim Agreement, the Commission will not address any funding proposals until after the deadline for submitting proposed budgets. In its

¹⁹ Policy Statement ¶ 28.

²⁰ *Id.*

²¹ NWEC’s Request for Case Certification at 2, ¶ 3(b).

²² *WUTC v. Puget Sound Energy*, Dockets UE-190529, UG-190530 *et al.*, Order 08/05/03 ¶ 600 (July 8, 2020).

²³ *In the Matter of Chair Danner’s Motion*, Docket UG-210729 Order 01 ¶ 7 (October 29, 2021) (noting NWEC’s earlier testimony in PSE’s 2019 general rate case).

²⁴ *See* NWEC’s Request for Case Certification at 2-3, ¶ 3(c).

Response to Bench Request No. 1, NWEC distinguished at least a portion of apparent overlapping interests between it and TEP. It also explained how the public interest would benefit from its participation. In any proposed budget submitted by NWEC, it should include the information from its Response to Bench Request No. 1, any additional detail and explanation of how any overlapping interests differ from other intervenors, such as TEP, how each intervenor's specific perspectives on these topics are not adequately represented by the other intervenor, and how its participation will benefit the public interest.

32 **SBUA.** SBUA is a non-profit organization that represents broad customer interests. In its Policy Statement, the Commission generally declined to interpret the term "broad customer interests."²⁵ Yet the Commission agreed that the term "should not be limited to organizations representing larger groups of customers."²⁶

33 In this case, the Commission granted SBUA's Petition to Intervene, finding that SBUA demonstrated a substantial interest in these proceedings absent any objection to the contrary. While SBUA may represent few small business customers in Washington, its experience advocating for small business policies highlights its core mission is one that seeks to represent broad customer interests in Avista's service territory that are not the sole focus of any other party or intervenor. SBUA therefore represents "broad customer interests." We agree that the public interest is served by the participation of an advocate for small businesses and that no other party adequately represents these interests with the same focus as SBUA. Ultimately, we determine that SBUA's Request for Case Certification should be granted.

34 We also find that SBUA has properly filed a Notice of Intent to seek funding, stating that the organization intends to seek funds from Avista's Customer Representation sub-fund. Pursuant to Section 6.5 of the Interim Agreement, the Commission will not address any funding proposals until after the deadline for submitting proposed budgets. However, any proposed budget submitted by SBUA should provide greater detail and explanation of its connection to Avista's small businesses and service territory and how funding, if awarded, will represent the interest of small businesses specifically in Avista's service territory and, where SBUA's interests overlap with other parties, such as Public Counsel,

²⁵ See Policy Statement ¶ 28.

²⁶ *Id.*

SBUA should explain how the public interest will benefit from the participation of these parties and its funding as an intervenor.

35 Finally, we remind SBUA and the other parties that case-certification does not guarantee a Fund Grant. 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. The Commission must therefore determine the highest and best use of these funds, and whether the needs of intervenors justify the burdens imposed on ratepayers to fund the party's participation in Commission proceedings. The Commission "will determine the amount, *if any*, of Fund Grants that will be made available" for the proceeding and how those funds will be allocated among the case-certified parties.²⁷

36 Consistent with Order 04, we require Participating Organizations to file proposed budgets within 30 days of the date of this Order.

ORDER

THE COMMISSION

- 37 (1) GRANTS the Alliance of Western Energy Consumers' Request for Case Certification.
- 38 (2) GRANTS The Energy Project's Request for Case Certification.
- 39 (3) GRANTS NW Energy Coalition's Request for Case Certification.
- 40 (4) GRANTS Small Business Utility Advocates' Request for Case Certification.
- 41 (5) Requires Participating Organizations to file proposed budgets within 30 days of the date of this Order.

²⁷ Interim Agreement § 6.5 (emphasis added).

DATED at Lacey, Washington, and effective March 24, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL

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.