

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

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

DOCKET U-210595

**SUPPLEMENTAL COMMENTS OF PUBLIC COUNSEL**

**October 5, 2021**

1. The Washington Utilities and Transportation Commission’s (“Commission” or “UTC”) held a workshop in this docket on September 28, 2021, at which it provided stakeholders with an opportunity to file supplemental comments by October 5, 2021. The Public Counsel Unit of the Washington Attorney General’s Office (“Public Counsel”) files the following supplemental comments.
2. Public Counsel appreciates the opportunity to provide supplemental comments and hopes that these comments will be useful in moving the stakeholder discussion forward. As the statutory representative of residential and small business utility customers, Public Counsel supports the public policy of providing intervenor funding in energy regulatory matters. Such funding will support a robust regulatory system by allowing expanded and enhanced intervenor participation in both litigated and non-litigated UTC matters. While Public Counsel would not be a recipient of such funds, we have a keen interest in a fairly designed intervenor funding process because ratepayers will ultimately fund it.
3. **Clearly defined goals.** At the outset, the UTC should provide guidance regarding the goals of the new intervenor funding mandate. Some guidance is found in the statute, but the Commission should state what it wishes to accomplish within the statutory framework. The statute addresses a broad range of interests, which indicates that one purpose of the statute is to ensure that existing intervenors will continue to participate and to participate at increased levels. This recognizes the value of parties who have historically had resources to engage in UTC proceedings, limited though they may be. The statute also seeks to increase the diversity of

voices and viewpoints by prioritizing funding to organizations representing vulnerable populations or highly impacted communities.

4. If the UTC’s emphasis is expanding and enhancing the participation of existing intervenors, this process should initially focus on clarifying eligibility for funding and determining requirements to ensure transparency and accountability regarding the use of the funds. If the UTC’s primary goal is to increase participation from organizations representing vulnerable populations and highly impacted communities, the focus of these discussions should shift towards determining the needs of these groups rather than the needs of existing intervenors. Notably, both of these goals would be consistent with the statute, and both of these goals are valuable. Importantly, while it is possible to address both of these goals simultaneously or in phases, it is important to be clear regarding the intended purpose behind each effort and to understand that each goal may necessitate different requirements and may need to proceed on different timelines. Without clarity, there is significant potential for misinterpretation and miscommunication amongst stakeholders, as well as muddled efforts that fail to achieve both goals.

5. **Clearly Defined Terms.** Clearly defining terms related to intervenor funding is important to developing a fair system. From the workshop and subsequent discussion, it appears to Public Counsel that stakeholders may have differing interpretations for various terms. Without meaning to, stakeholders may be talking past each other as they use terms without a common understanding for what the terms mean. Examples of terms that would benefit from a common definition include “eligibility,” “need,” “accountability,” “budgets,” and “precertification.”

Differences in interpretation can result in substantive differences in implementing the intervenor funding program, both in terms of stakeholder expectations and agency requirements.

6. **Develop the Right Process.** It is important that the UTC take the time necessary to develop the process for intervenor funding for Washington. Rushing to implement policy may result in unintended consequences that will be difficult to remedy later. A durable intervenor funding process requires the Commission to develop eligibility requirements, metrics for accountability, and transparency measures, and to effectively prioritize organizations that represent vulnerable populations or highly impacted communities.
7. Understanding that the UTC may feel some urgency about proceedings anticipated in calendar year 2022, Public Counsel believes it is reasonable to explore implementing intervenor funding in multiple phases. Intervenors could seek funding for 2022 matters under in an initial phase, assuming that eligibility requirements and accountability measures are established. The purpose of this initial phase would be to commence intervenor funding and to address the upcoming filings, with the understanding that additional work is necessary to ensure the full breadth of RCW 80.28.430 is realized. Indeed, a deeper conversation and additional efforts are required regarding how to prioritize groups and bring them into the regulatory system, and this conversation cannot effectively take place on an accelerated schedule.
8. As discussed at the workshop, simply making a pot of money available to intervenors will not draw in organizations that represent vulnerable populations or highly impacted communities. The regulatory system is difficult to navigate for new stakeholders or stakeholders who do not have sufficient resources to hire outside counsel or experts.

9. The Commission must engage in substantial outreach to community groups to learn what they need to effectively participate in UTC matters. It is crucially important that the intervenor funding process is not set up to create barriers that will be hard to unwind later. Constructing barriers that ultimately prevent the prioritized groups from accessing funding and participating in UTC matters would be a failure from the outset. Outreach takes time, effort, resources, expertise, and drive. While the UTC possesses good intentions, Public Counsel strongly recommends that the agency seek additional resources with specific expertise in this area to ensure meaningful outreach. One method would be to hire a Diversity, Equity, and Inclusion (DEI) director.
10. Public Counsel also recommends that the UTC develop intervenor funding rules that establish eligibility requirements, the required showing from the intervenor, and the required components for the funding agreement. Having regulatory rules would provide more guidance and predictability, particularly for new intervenors. It would also remove the burden from each of the utilities and intervenors from developing requirements. With rules, the agreements would acknowledge that the intervenor meets the requirements and is eligible for funding. Other items, such as a proposed budget for use of the funds, could be appended to an agreement or provided as supplemental information.
11. **Need.** The term “need” is one that may be subject to differing interpretations. As used by Public Counsel, the concept of “need” addresses transparency and accountability for a program funded with ratepayer dollars. From Public Counsel’s perspective, “need” refers to the financial resources necessary to participate in a proceeding, focusing on the use of funds. For example, does an intervenor wish to use the funding to participate in a specific proceeding? Does an intervenor wish to hire an attorney and expert witness? How many hours will an attorney or an

expert need to bill to participate in the proceeding from start to finish? Requiring transparency and accountability is a reasonable, and not radical, idea. Moreover, this requirement is not meant to be overly burdensome or onerous for intervenors, and it does not call into question a stakeholder or party's value to a proceeding. Rather, it allows the Commission to have appropriate oversight of the program and establish sufficient funding.

12. Simply providing access to unrestricted funding for intervenors is not what is required under the statute. Rather, intervenors must use the funds for participation in UTC matters.<sup>1</sup> Regarding need, the discussion among stakeholders seems to focus on two themes: financial hardship and use of funding. These two themes present different questions. There is a clear difference between providing an explanation of what the funds will be used for versus an investigation into operating budgets to prove financial hardship.

13. Some jurisdictions require a substantial annual showing of financial hardship. Public Counsel is not advocating for such a process here and believes it would be sufficient to require intervenors to show how they intend to use the funding to establish need. This showing could be done through budgets or narrative explanations. If intervenors choose to present budgets, they would not be required to disclose their entire operating budgets, but only their proposed budget for expected uses of the funds they request. Ultimately, this is a practical measure. The Commission cannot properly assess what is a prudent use of ratepayer funds without a clear understanding of the resources individual intervenors need to participate.

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<sup>1</sup> RCW 80.28.430(1) ("in regulatory proceedings conducted by the commission").

14. **Budget Cap.** Public Counsel continues to believe that no budget cap should be set during the first few years of implementation. Eventually, a budget cap may be necessary. However, until we know what level of funding is needed, any budget cap seems arbitrary and potentially contrary to the statute because an insufficient budget cap may prevent intervenors from accessing necessary funds.
15. **Matching Funds Proposal.** In comments, Avista proposed that the Commission require intervenors to provide matching funds to receive intervenor funding.<sup>2</sup> Public Counsel does not support this proposal because this requirement would impose unnecessary barriers to participation. One of the goals behind RCW 80.28.430 is to broaden participation, both by bringing in new participants and by enhancing participation of existing participants. Avista’s proposal would thwart this goal.
16. **Precertification versus Case Certification.** The meaning of precertification and case-by-case certification is important, and these terms may be subject to multiple interpretations. Some stakeholders may interpret “precertification” to mean that an intervenor would automatically have access to funding upon precertification, and that no further showing would be necessary. Other stakeholders may interpret “precertification” to mean that an intervenor would qualify for intervenor funding upon precertification, but that the intervenor would have to request funding for each matter. Public Counsel believes that eligibility and awards should be separate processes. In other words, precertification would be based on eligibility requirements while the

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<sup>2</sup> Comments of Avista Utilities Regarding Intervenor Funding at 10 (Sept. 10, 2021).

specific amount provided to each intervenor would be determined on a case-by-case basis according to their funding needs for that particular matter.

17. **Eligibility.** In our opening comments, Public Counsel provided a survey of other jurisdictions. From our perspective, it is reasonable to review how other states have addressed intervenor funding. Washington is not limited by what other states have decided, but rather the Commission should evaluate what is necessary to implement Washington policy. At the same time, the Commission does not have to unnecessarily reinvent the wheel if there are practices in other states that would translate well to our system.

18. There are distinct options regarding eligibility, including the following:

- Participation in UTC matters
- Representation of certain customer groups
- Representation of certain community groups

It would be reasonable for the Commission to allow intervenors to be eligible by meeting one or more eligibility requirements. Public Counsel does not believe that the eligibility requirements should be overly burdensome or that access should be unnecessarily restricted.

19. **Consensus Areas.** Public Counsel believes that there are a few areas where stakeholders seem to have consensus. Stakeholders seem to agree that the UTC should provide strong guidance and oversight with respect to intervenor funding, and that the utilities should not decide who receives funding or how much. Stakeholders also appear to agree that a one-size-fits-all solution may not be desirable. For example, a 50-plus page agreement similar to the Oregon model may not be workable for community groups with limited resources and experience in UTC proceedings. Rather, a more streamlined, easy-to-navigate agreement should be developed.



20. **Additional Areas for Consideration.** Public Counsel notes that there may be tension between the processes for establishing party status and establishing eligibility for intervenor funding. It may be contrary to the statute's intent if a party that is eligible and prioritized for intervenor funding was denied party status. Additionally, the process of establishing party status may create additional barriers for new intervenors (i.e. it requires resources and knowledge to complete the steps necessary to demonstrate eligibility). As such, it is important for these two processes to be harmonized, so they do not inadvertently prevent prioritized organizations from participating in UTC proceedings. Additionally, the UTC may need to establish internal resources or staff to help guide new and inexperienced intervenors through the process.

DATED this 5th day of October 2021.

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