

**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 06

APPROVING AND REJECTING
PROPOSED BUDGETS FOR FUND
GRANTS

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 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 participatory 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 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.

- 3 The Alliance of Western Energy Consumers (AWEC), The Energy Project (TEP), NW Energy Coalition (NVEC), and Small Business Utility Advocates (SBUA) each filed a Request and a Notice of Intent with the Commission.
- 4 On March 16, 2022, the Commission issued Bench Requests No. 1 and No. 2, requesting additional information regarding the requests filed with the Commission by TEP, NVEC, and SBUA. Each party timely filed their responses with the Commission by March 18, 2022.
- 5 On March 24, 2022, the Commission issued Order 05, Granting Requests for Case Certification (Order 05). The Commission granted case certification to TEP, NVEC, AWEC, and SBUA. The Commission directed these parties to file Proposed Budgets within 30 days of Order 05. TEP, NVEC, AWEC, and SBUA each timely filed Proposed Budgets for Fund Grants.

DISCUSSION

- 6 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
- 7 On November 19, 2021, the Commission issued a Policy Statement on Participatory Funding for Regulatory Proceedings (Policy Statement) in Docket U-210595.² 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 In that same docket on February 24, 2022, the

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.* at ¶ 3. The Commission indicated that the Policy Statement was as an evolving document, saying "as we implement the first round of funding arrangements, we look forward to what we expect will be many lessons learned. These lessons will inform future iterations of Washington's

Commission approved an interim agreement by the parties in Docket U-210595 on participatory funding (Interim Agreement), subject to certain modifications, and adopted it as Appendix A to the Order.⁴ Among other points, the Commission clarified that it is not bound by the timeframes set forth in the Interim Agreement.⁵

8 Participating Organizations must submit to the Commission a Proposed Budget for a Fund Grant. The Commission has significant discretion when considering Proposed Budgets for Fund Grants. The Interim Agreement approved by the Commission in Docket U-210595 requires Proposed Budgets to 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.⁶ If the Commission receives one or more Proposed Budgets, it will “determine the amount, if any, of Fund Grants that will be made available”⁷ The Commission may make this determination based on:

- (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;
- (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

participatory funding program, including the possibility of a rulemaking to codify best practices into Commission rules.” *Id.* at ¶ 17.

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 Interim Agreement at § 6.3.

⁷ Interim Agreement at § 6.5.

(j) any other factors the Commission deems relevant.”⁸

9 The Commission may deny, in whole or in part, a request for Fund Grant based on these factors.⁹ The Commission may place reasonable conditions on Fund Grants, and it may amend Fund Grants on a prospective basis.¹⁰

10 Additionally, we explained in Order 05 that Fund Grants are 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.

11 Here, each of the four case-certified parties filed Proposed Budgets. The parties’ requests would, if approved in whole, equal the total \$200,000 amount available in Avista’s Customer Representation Sub-Fund this year.¹¹ We determine that the Proposed Budgets for Fund Grants submitted by TEP, NWECA, and AWEC should be approved, and that the Proposed Budget for a Fund Grant submitted by SBUA should be rejected. We address each of the Proposed Budgets in turn.

12 **TEP.** On April 21, 2022, TEP filed a Proposed Budget and requested a Fund Grant pursuant to the Interim Agreement. It requests a total award of \$50,000 from Avista’s Customer Representation Sub-Fund based on estimated consultant and expert witness fees of \$25,000 and attorney fees of \$25,000.

13 After considering the various factors set forth in Sections 6.3 and 6.5 of the Interim Agreement, we determine that TEP’s Proposed Budget and \$50,000 Fund Grant should be approved. TEP seeks only to partially offset the costs of its participation in this proceeding. Its Proposed Budget indicates that it will contribute its own funds in addition to any funding from the Customer Representation Sub-Fund. TEP is an “incumbent” organization with a history of appearing before the Commission.¹² Also, TEP is already

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ While SBUA makes its request for funding from the Customer Representation Sub-Fund, it includes the suggestion that the Commission could allocate 10 percent of its request to Avista’s Prioritized Organizations Sub-Fund because it proposes to conduct outreach to business in vulnerable and underserved communities. SBUA Budget Request at 4.

¹² Policy Statement ¶ 18.

investigating or may investigate all matters that have an impact on low-income customers.¹³ As directed by Order 05, TEP explains in its Proposed Budget how its interests and advocacy differ from NWEC's. TEP credibly establishes that it addresses a broader range of low-income issues than NWEC, and the two parties are not merely cumulative of each other.

14 Accordingly, we approve TEP's Proposed Budget and request for a Fund Grant in light of the funds contributed by the organization itself, the breadth and complexity of the issues being investigated, the organization's qualifications, its history before the Commission, and the organization's unique expertise in low-income issues.

15 **NWEC.** On April 22, 2022, NWEC filed a Proposed Budget and requested a Fund Grant pursuant to the Interim Agreement. It requests a total award of \$50,000 from Avista's Customer Representation Sub-Fund based on an estimated \$10,000 of attorney fees, \$25,000 of consultant and expert witness fees, and \$15,000 for its staff's time spent on this case. NWEC did not request any fees for outside counsel.

16 After considering the various factors set forth in Sections 6.3 and 6.5 of the Interim Agreement, we determine that NWEC's Proposed Budget and \$50,000 Fund Grant should be approved. NWEC, like TEP, seeks only to partially offset the costs of its participation in this proceeding. Its Proposed Budget indicates that it will contribute its own funds in addition to any funding from the Customer Representation Sub-Fund. NWEC is an "incumbent" organization with a history of appearing before the Commission.¹⁴ Also, NWEC intends to investigate a number of complex issues in this proceeding, such as Avista's compliance with climate and clean energy laws, Avista's

¹³ TEP's Proposed Budget at 1-2, ¶ 4. Specifically, TEP identifies a non-exclusive list of issues including

the multiyear rate plan, low-income assistance program funding and design, low-income weatherization, billing, credit and collection issues, arrearage management, COVID-19 impacts and costs, performance based regulation and performance measures, cost of service, rate spread, rate design, decoupling, automated meters, renewables, electric vehicles, and distributed generation, information technology programs, Clean Energy Transformation Act labor, and reporting requirements.

Id.

¹⁴ Policy Statement at ¶ 18.

interest in the Colstrip coal-fired power plant, and Avista’s performance metrics and other Senate Bill 5295 implementation issues”¹⁵

17 As directed by Order 05, NWEAC explains how its interests and advocacy diverge from those of TEP. NWEAC persuasively explains that it has focused on different issues than TEP in past proceedings and that it plans to offer expert testimony on different topics than TEP in this case. However, it satisfies our concern by explaining that in those areas where the interests may overlap, NWEAC’s interest is much narrower than TEP’s: regarding low-income issues, NWEAC seeks to ensure that the transformation to clean energy treats low-income customers equitably.¹⁶

18 Accordingly, we approve NWEAC’s Proposed Budget and request for a Fund Grant in light of the funds contributed by the organization itself, the scope and complexity of the issues being investigated, the organization’s qualifications, and its history before the Commission.

19 **AWEC.** On April 22, 2022, AWEC filed a Proposed Budget and requested a Fund Grant pursuant to the Interim Agreement. AWEC estimates a total of \$97,970 for attorney fees, \$7,020 for paralegal fees, and \$69,600 for expert witness fees. AWEC estimated \$100 in travel expenses and \$130 for printing and postage. While these amounts totaled \$175,000, AWEC only requests a total award of \$50,000 from Avista’s Customer Representation Sub-Fund.

20 After considering the various factors set forth in Sections 6.3 and 6.5 of the Interim Agreement, we determine that AWEC’s Proposed Budget and \$50,000 Fund Grant should be approved. AWEC, like TEP and NWEAC, seeks only to partially offset the costs of its participation in this proceeding. Its Proposed Budget indicates its estimates that it will contribute \$125,000 of its own funds in addition to the Proposed Budget of \$50,000 from the Customer Representation Sub-Fund. AWEC is an “incumbent” organization with a history of appearing before the Commission.¹⁷ It intends to investigate all aspects of Avista’s filing, but specifically identifies Avista’s request for a Multi-Year Rate Plan,

¹⁵ NWEAC’s Proposed Budget at 2, ¶ 3. Specifically, NWEAC also identifies, as part of its non-exclusive list of issues, issues related to customer-side resources, distribution system investment, energy efficiency assistance, and other affordability issues for low- and moderate-income customers. *Id.*

¹⁶ *Id.* at 3, ¶ 8.

¹⁷ Policy Statement at ¶ 18.

performance-based ratemaking, revenue requirement items such as cost of capital, capital expenditures, expenses and revenues, and rate spread and rate design in its Proposed Budget.¹⁸ No other party focuses on the interests of industrial customers.

21 Accordingly, we approve AWEC's Proposed Budget and request for a Fund Grant in light of 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.

22 **SBUA.** On April 25, 2022, SBUA filed a Proposed Budget and requested a Fund Grant pursuant to the Interim Agreement. It requests a total award of \$50,000 from Avista's Customer Representation Sub-Fund based on an estimated \$23,400 of attorney fees, \$21,750 of expert witness fees, and \$4,850 for general outreach, at least part of which SBUA identifies will be spent on businesses in vulnerable and underserved communities.¹⁹

23 After considering the various factors set forth in Sections 6.3 and 6.5 of the Interim Agreement, we determine that SBUA's Proposed Budget and \$50,000 Fund Grant should be rejected. SBUA has no history before the Commission. This proceeding is its first. Taking this into account, we find that SBUA has failed to justify imposing the burdens on ratepayers to fund its participation in this proceeding. An organization's connections with Washington ratepayers must exist prior to the Commission considering distributing funding from ratepayers. We find it inappropriate for Washington ratepayers to fund the building and development of an organization that does not already have such a connection. We therefore determine that, consistent with the factors outlined in Section 6.5 of the Interim Agreement, a minimum threshold must require a showing of established connections with Washington ratepayers prior to receiving funding from Washington ratepayers. SBUA has not made such a showing here.

24 In its Request for Case Certification, SBUA explained the broad interest it represents by stating:

¹⁸ AWEC's Proposed Budget at 2-3, ¶ 8.

¹⁹ SBUA's Proposed Budget at 10; *Id.* at 4, ¶ 6. SBUA also indicates that its outreach efforts elsewhere have included publishing newsletters, holding energy forums, and sending out alerts about rate increases. *Id.* at 5, ¶ 9. It is unclear whether these efforts are only for small businesses in vulnerable and underserved communities.

There are approximately 630,819 small businesses in Washington, which comprise 99 percent of businesses in the state; Washington small businesses employed 1.4 million people, or 50.7% of the private workforce, in 2017.³ It is reasonable to assume that similar proportions exist in Avista's electric and gas service territories. Given that small businesses constitute a substantial part of Washington's economy, and given that RCW 80.28.430(1) identifies such "commercial" interests as among the broad customer interests the statute was intended to address, SBUA will represent a broad customer interest in this proceeding.²⁰

- 25 In Bench Request No. 2, the Commission requested SBUA to "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 [SBUA] seeks to represent."²¹ Additionally, the Commission requested SBUA to "identify and explain SBUA's connection to the customers identified . . . including duration of membership or relationship, and also SBUA's connection to Avista's service territory."²²
- 26 In its Response to Bench Request No. 2, SBUA explained that its "core mission is to ensure fair and reasonable energy costs for small business ratepayers and to promote utility programs that help small businesses"²³ 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."²⁴ 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."²⁵

²⁰ SBUA's Request for Case Certification and Notice of Intent to Request a Fund Grant at 2, ¶ 3(b).

²¹ Bench Request No. 2.

²² Bench Request No. 2.

²³ SBUA's Response to Bench Request No. 2 at 2, ¶ 7(a).

²⁴ *Id.* at 3, ¶ 7(b).

²⁵ *Id.*

- 27 In its Proposed Budget for a Fund Grant, SBUA stated that it “currently has over a dozen members within Avista’s service territory, but expects that number to grow as a result of SBUA’s participation in this proceeding and other outreach efforts.”²⁶
- 28 These vague assertions of membership, of connections to specific customers, and with Avista’s service territory are insufficient for purposes of a Proposed Budget for a Fund Grant. SBUA had multiple opportunities, even at the Commission’s request, to demonstrate its connection to Avista’s service territory or any particular Avista customer to a level acceptable for the Commission to approve its Proposed Budget for a Fund Grant. SBUA failed to take these opportunities.
- 29 In Bench Request No. 2, the Commission also asked SBUA to distinguish its representation of small business interests from the Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel). For purposes of a Proposed Budget for a Fund Grant, we find that SBUA has failed to carry its burden to distinguish its representation from the representation of Public Counsel.
- 30 Accordingly, we determine that SBUA has failed to justify that it should receive funding from ratepayers in this proceeding and we reject its Proposed Budget for a Fund Grant. Our determination is not intended to dissuade SBUA or any other organization from requesting funding in future proceedings. Here, SBUA continues as a party in this case. SBUA has shown that it is an experienced advocate with expertise for small businesses in California and Oregon. Thus, our concerns herein do not arise from SBUA’s capability as an advocate for small businesses, generally, and we do not foreclose the possibility that SBUA may satisfactorily demonstrate established connections to Washington ratepayers in a future proceeding.
- 31 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

²⁶ SBUA’s Proposed Budget at 5, ¶ 9.

references to eligibility for expenses and any relevant portions of the Interim 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

THE COMMISSION:

- 32 (1) APPROVES the Alliance of Western Energy Consumers' Proposed Budget for a
Fund Grant of \$50,000.
- 33 (2) APPROVES The Energy Project's Proposed Budget for a Fund Grant of \$50,000.
- 34 (3) APPROVES NW Energy Coalition's Proposed Budget for a Fund Grant of
\$50,000.
- 35 (4) REJECTS Small Business Utility Advocates' Proposed Budget for a Fund Grant.

DATED at Lacey, Washington, and effective May 27, 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.