

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES

In the Matter of the Electric Service
Reliability Reporting Plan of

AVISTA CORPORATION d/b/a
AVISTA UTILITIES

DOCKETS UE-220053,
UG-220054, and UE-210854
(Consolidated)

ORDER 08/02

GRANTING PETITION FOR
INTERLOCUTORY REVIEW, IN
PART; APPROVING PROPOSED
BUDGET SUBJECT TO
CONDITION

BACKGROUND

- 1 On November 11, 2021, Avista Corporation d/b/a Avista Utilities (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) its Electric Service Reliability Reporting Plan pursuant to Washington Administrative Code (WAC) 480-100-393, modifying the Company’s previous plan.
- 2 On January 21, 2022, Avista filed with the Commission revisions in Docket UE-220053 to its currently effective electric service tariff, Tariff WN-U28, and in Docket UG-220054 to its natural gas service tariff, Tariff WN U-29 (Avista’s 2022 GRC).
- 3 On January 27, 2022, the Commission consolidated Dockets UE-220053 and UG-220054 by Order 01 and on May 27, 2022, the Commission consolidated those dockets with Docket UE-210854 by Order 07/01.
- 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 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. On March 9, 2022, Small Business Utility Advocates (SBUA) filed a Request and a Notice of Intent to Request a Fund Grant.

- 5 On March 16, 2022, the Commission issued a bench request to SBUA requesting additional information. SBUA filed its response on March 18, 2022.
- 6 On March 24, 2022, the Commission entered Order 05, Granting Requests for Case Certification. Order 05 granted case certification to SBUA and directed it to file a Proposed Budget within 30 days. Order 05 further required that SBUA include with its proposed budget (1) greater detail and explanation of its connection to Avista's small business customers and service territory, (2) how funding, if awarded, will represent the interest of small businesses in Avista's service territory and, (3) where SBUA's interests overlap with other parties, such as Public Counsel, how the public interest will benefit from its participation and its funding as an intervenor.
- 7 On April 25, 2022, SBUA filed a Proposed Budget and requested a Fund Grant. SBUA requested a total award of \$50,000 from Avista's Customer Representation Sub-Fund based on an estimated \$23,400 in attorney fees, \$21,750 in expert witness fees, and \$4,850 for general outreach. SBUA included the following information with its Proposed Budget:
 - SBUA has over a dozen members within Avista's service territory, but expects that number to grow with its participation in this proceeding
 - SBUA has provided in-person education and outreach to small businesses in Washington
 - SBUA will provide small businesses with focused advocacy not subject to conflicts with other customer classes, and will provide the small business customer group with greater insight into Commission processes and proceedings
 - The interests of small business owners often diverge from residential ratepayers, as evidenced by SBUA disagreeing with Public Counsel's counterpart in California in both public proceedings and private forums

- 8 On May 27, 2022, the Commission entered Order 06, Approving and Rejecting Proposed Budgets for Fund Grants. Order 06 rejected SBUA’s Proposed Budget, finding that SBUA failed to establish a sufficient connection to Washington ratepayers.
- 9 On June 6, 2022, SBUA filed a Petition for Interlocutory Review (Petition) requesting the Commission modify Order 06 by approving SBUA’s Proposed Budget. SBUA argues that Order 06 errs as a matter of fact and law, “exercises the Commission’s discretion in an arbitrary and capricious fashion, and disincentivizes new intervenors from participating in the UTC’s funding program.”¹
- 10 SBUA included with its Petition the declaration of Brittney K. Marra, Executive Director of SBUA. Marra explains that SBUA secured nine new members in Spokane and Spokane Valley between January and April 2022. Marra further explains that these businesses are in the restaurant, brewery, retail, and food service industries, and specifically references a tea shop in Spokane that expressed concern about small business utility rates. Marra submits that SBUA does not intend to use any funds for organizational overhead or membership development but proposes to use a portion of the funds to hire a consultant to educate small businesses in disadvantaged communities about Avista’s general rate cases. Finally, Marra argues that SBUA’s membership list is privileged information not subject to public disclosure.

DISCUSSION AND DECISION

- 11 We grant SBUA’s petition for interlocutory review in, part, subject to the condition that SBUA file confidentially with the Commission a list of its members concurrent with its request for reimbursement.² We award SBUA \$20,000 from Avista’s Customer Representation Sub-Fund and authorize SBUA to use the funds only for attorney fees and expert witness fees. SBUA may not use the funds to perform “general outreach to small businesses in disadvantaged communities” as described in its Proposed Budget.
- 12 On November 19, 2021, the Commission issued a Policy Statement on Participatory Funding for Regulatory Proceedings (Policy Statement) in Docket U-210595. In that

¹ SBUA Petition, ¶4.

² Under WAC 480-07-810(2) the Commission has discretion to review interim or interlocutory orders. Because the participatory funding program is still being developed and parties new the Commission are not yet familiar with our standards and processes, we determine that it is appropriate to consider the additional information contained in SBUA’s Petition and provide guidance related to the threshold requirements to receive funding for all interested parties.

same docket on February 24, 2022, the Commission approved an interim agreement by the parties on participatory funding (Interim Agreement), subject to certain modifications.

13 The Interim Agreement requires participating organizations to submit to the Commission a Proposed Budget for a Fund Grant that includes 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. If the Commission receives one or more Proposed Budgets, it will “determine the amount, if any, of Fund Grants that will be made available”³ 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
- (j) any other factors the Commission deems relevant.

14 Here, the administrative law judge determined in Order 06 that SBUA did not meet the minimum threshold to receive funding because SBUA failed to demonstrate that it has established connections with Washington ratepayers. We agree.

15 As a potential intervenor in this proceeding, SBUA was required to demonstrate that its participation is in the public interest and that no other party adequately represents its interests. The Commission determined in Order 03 that SBUA met these requirements and granted SBUA’s petition to intervene. The list of factors the Commission considers when determining eligibility for funding, however, is more comprehensive, and includes a “catch all” provision that recognizes the Commission’s discretion to award funding

³ *In the Matter of the Petition of Puget Sound Energy, et al.*, Docket U-210595, Appendix A to Order 01, Interim Agreement at § 6.5 (Feb. 24, 2022).

based on any factors it deems relevant. Many of SBUA's arguments in its Petition revisit the standard for intervention rather than address the requirements to receive funding set out in the Interim Agreement, and thus are unpersuasive.

- 16 We find that the presiding officer appropriately exercised the Commission's discretion to establish a minimum threshold to receive funding – *i.e.*, a party must sufficiently demonstrate a connection to Washington ratepayers – which SBUA does not dispute. We further determine that the presiding officer appropriately concluded that SBUA failed to meet that threshold.
- 17 On two separate occasions, the Commission requested more detailed information from SBUA, both by bench request and by Order 05, which provided SBUA additional opportunities to demonstrate that it meets the standards set out in Section 6.5 of the Interim Agreement, including whether the interests of its members are adequately represented by other intervenors. With no prior history before the Commission and only vague details about its membership, the administrative law judge determined that SBUA failed to demonstrate that it has a sufficient connection to Washington ratepayers. Absent that connection, SBUA similarly failed to demonstrate that the interests of its members are not adequately represented by other intervenors for the purpose of receiving a fund grant.
- 18 We find that the ALJ's conclusion was reasonable in light of the information available in the record at the time Order 06 was entered. SBUA failed to provide adequate details about its membership until it filed the instant Petition and supporting declaration. By way of guidance, the level of detail in Marra's declaration should have been included in SBUA's Proposed Budget or provided in response to the Commission's bench request rather than at the interlocutory review stage of this proceeding.
- 19 Although we reject SBUA's argument that the administrative law judge's ruling was "arbitrary and capricious," we nonetheless exercise our discretion to accept the information in SBUA's Petition as if it were timely and properly provided because the participatory funding program is new, and this is the first time that funding grants are available for intervenors in an Avista general rate case. Subject to the condition that SBUA file a confidential list of its members concurrent with its request for reimbursement, we find that Marra's declaration contains sufficient detail to warrant a grant of funding for attorney and expert witness fees only.

- 20 We appreciate SBUA’s concerns about confidentiality but observe that other organizations have provided confidential membership lists in support of petitions to intervene and Proposed Budgets in other proceedings.⁴ Accordingly, requiring this information from SBUA is neither unusual nor extraordinary, and will assist the Commission with evaluating SBUA’s connection to Washington ratepayers.
- 21 We also determine that \$20,000 is an appropriate amount to distribute to SBUA as a first-time participant, and limit SBUA’s spending to legal and expert witness fees. The breadth of issues SBUA intends to address – which it defines as discrete topics in the general areas of COVID-19 impacts, rate design, capital expenditures, and performance metrics – is more limited in scope than that of other parties, and SBUA’s membership currently comprises a very small presence in Avista’s service territory compared to that of other parties.
- 22 Finally, SBUA may not use its fund grant to hire a consultant or specialist to perform outreach to small businesses in vulnerable and highly impacted communities to “raise awareness regarding utility and Avista GRC issues.”⁵ The Commission’s Policy Statement provides that “training, technical assistance, and outreach to organizations representing vulnerable populations and highly impacted communities, including consulting fees for those activities, are allowable expenses eligible for participatory funding.”⁶ SBUA, however, represents small businesses throughout Avista’s service territory. SBUA is not “an organization representing vulnerable populations and highly impacted communities,” nor is SBUA’s membership comprised of such organizations. The administrative law judge correctly concluded in Order 06 that SBUA’s request is more properly characterized as membership-building, which is not appropriate for ratepayer funding.

⁴ For example, the Alliance of Western Energy Consumers (AWEC) has filed confidential membership lists in both Cascade Natural Gas Corporation’s general rate case in support of its Proposed Budget (*Washington Utilities and Transportation Commission v. Cascade Natural Gas Corporation*, Exhibit B to AWEC’s Proposed Budget, Docket UG-210755), and in Puget Sound Energy’s general rate case in support of its Petition to Intervene (*Washington Utilities and Transportation Commission v. Puget Sound Energy*, Exhibit B to AWEC’s Petition to Intervene, Dockets UE-220066 and UG-220067).

⁵ SBUA Proposed Budget, ¶3.

⁶ Policy Statement, ¶66.

- 23 We remind SBUA that the Commission will make its final determination regarding reimbursement for approved spending at the conclusion of the proceeding, and that SBUA will be required to demonstrate that the allotted funds were used appropriately.

ORDER

THE COMMISSION:

- 24 (1) Grants the Small Business Utility Advocates' Petition for Interlocutory Review, in part.
- 25 (2) Approves the Small Business Utility Advocates' Proposed Budget in the amount of \$20,000 to be used for attorney fees and expert witness fees only, subject to the condition that the Small Business Utility Advocates files a confidential list of its members concurrent with its request for reimbursement.

DATED at Lacey, Washington, and effective July 11, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner