

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Commission's
Examination of Participatory Funding
Provisions for Regulatory Proceedings

DOCKET U-210595

POLICY STATEMENT ON
PARTICIPATORY FUNDING FOR
REGULATORY PROCEEDINGS

- 1 In 2021, the Washington state Legislature passed Engrossed Substitute Senate Bill 5295 (ESSB 5295), an act relating to transforming the regulation of gas and electrical companies toward multiyear rate plans and performance-based ratemaking. Section 4 of ESSB 5295, codified as RCW 80.28.430, authorizes energy utilities to provide financial assistance to certain organizations participating in regulatory processes before the Washington Utilities and Transportation Commission (Commission) by requiring a gas or electrical company to enter into one or more written funding agreements with organizations that represent broad customer interests in regulatory proceedings before the Commission. The statute further directs the Commission and utilities to prioritize organizations representing vulnerable populations or highly impacted communities for funding and provides that the Commission shall, by rule or order, determine the amount of financial assistance provided to any organization and any other matters necessary to administer the agreement.
- 2 The Commission subsequently conducted an inquiry into determining the appropriate amount of financial assistance provided to organizations by energy utilities, and funded by ratepayers, and to determine appropriate processes and other matters necessary to administering written agreements consistent with RCW 80.28.430.
- 3 Under the provisions of RCW 34.05.230 and WAC 480-07-920, the Commission issues this Policy Statement to provide 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 pursuant to RCW 80.28.430 for the first year of funding agreements.
- 4 Through stakeholder engagement in this Docket, it has become apparent to the Commission that additional consideration of the various issues related to participatory funding will better enable the Commission to develop firm rules guiding participants in the program and to ensure organizations representing vulnerable populations or highly impacted communities are prioritized for funding. Thus, this Policy Statement is

specifically concerned with providing interim, high-level guidance for funding agreements for participation in regulatory proceedings that begin on or before December 31, 2022, the first year that funding is available. It is appropriate to provide utilities and stakeholders with guidance as these first agreements are negotiated. The Commission may provide additional guidance after administering these initial funding agreements and gaining more experience and insight into the needs of organizations representing prioritized communities.

I. BACKGROUND AND LEGAL CONTEXT

5 Before the passage of ESSB 5295, codified as RCW 80.28.430, Washington law did not provide a mechanism for parties other than the Public Counsel Unit of the Attorney General’s Office (Public Counsel) to receive financial assistance for representing customer interests in regulatory proceedings before the Commission.

6 In 2019, the Washington state Legislature passed the Clean Energy Transformation Act (CETA) relating to the clean energy transition of electric utilities in Washington.¹ As relevant here, the Legislature recognized the public interest in “maintaining safe and reliable electricity to all customers at stable and affordable rates.”² The Legislature also recognized the need for “[t]he equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities.”³ However, CETA did not adopt any provisions for organizations representing these communities before the Commission to obtain financial assistance from electric utilities.

7 With the recent enactment of RCW 80.28.430, which applies to both electric and gas utilities, the Legislature recognizes the benefit of supporting organizations that represent broad customer interests in regulatory proceedings before the Commission. These include, but are not limited to, organizations that represent low-income, commercial, and industrial customers that frequently advocate for stable and affordable rates. Consistent with CETA’s focus on equity, the Legislature also prioritizes funding for organizations representing vulnerable populations or highly impacted communities, which historically have not participated in Commission proceedings.

8 On August 19, 2021, the Commission issued a Notice of Opportunity to File Written Comments relating to the Commission’s examination of funding agreements for

¹ Laws of 2019, ch. 288.

² Laws of 2019, ch. 288, § 1(6).

³ *Id.* For the purposes of this Policy Statement, the definitions of “highly impacted communities” and “vulnerable populations” are those contained in RCW 19.405.020.

regulatory proceedings. By September 10, 2021, the Commission received written comments from 10 stakeholders in this Docket.⁴ On September 28, 2021, the Commission convened a stakeholder workshop to continue discussing proposals and considerations for a Washington participatory funding program, during which time the Commission offered an opportunity for stakeholders to submit supplemental comments by October 5, 2021. The Commission received supplemental comments from six stakeholders.⁵

- 9 We appreciate the feedback provided by all the commenters and incorporate into our discussion and statement of policy in Section III, below, several concepts and recommendations offered by stakeholders.

II. Other State Models for Participatory and Intervenor Funding

- 10 As detailed in Staff research and Appendix A of Public Counsel's initial comments, at least 13 other states provide or are considering funding assistance opportunities for participants in public utility commission regulatory proceedings. These states include California, Colorado, Hawaii, Idaho, Maine, Michigan, Minnesota, New Hampshire, New York, Oregon, Virginia, West Virginia, and Wisconsin. In addition to these U.S. jurisdictions, the Commission is also aware that the British Columbia Utilities Commission has developed procedures to implement funding opportunities.
- 11 Across all jurisdictions, the amount of assistance and administration of assistance programs vary in scope and opportunity for participants. Some states, such as Idaho and New Hampshire, have specific amounts of funding available to individual participants or in aggregate. California and Oregon have specific requirements on the types of participants and proceedings eligible for funding, while California, Colorado, Hawaii, and others require participants to prove or demonstrate certain requirements to receive funding, such as proving a substantial or material contribution to a proceeding. Other states appear more permissive and expansive in their opportunities. At least one state, Michigan, uses a third party to administer aspects of funding programs, while most states administer programs directly through their commissions. Finally, some states, such as

⁴ The Commission received comments from 10 stakeholders: Avista Corporation d/b/a Avista Utilities, Alliance of Western Energy Consumers, The Energy Project, Spark Northwest, Northwest Natural Gas Company, Puget Sound Energy, NW Energy Coalition, PacifiCorp d/b/a Pacific Power & Light Company, Northwest & Intermountain Power Producers Coalition, and the Public Counsel Unit of the Attorney General's Office.

⁵ The Commission received comments from six stakeholders: Avista Corporation d/b/a Avista Utilities, Alliance of Western Energy Consumers, The Energy Project, NW Energy Coalition, and the Public Counsel Unit of the Attorney General's Office, and Front and Centered.

Maine, provide funds directly from state commissions, while others, such as California and New Hampshire, allow utilities to recover the costs of funding programs through rates paid by utility customers.⁶

- 12 As the Commission began its inquiry into developing a funding program for Washington state, the California and Oregon programs were of particular interest to stakeholders. These two states share jurisdiction over some of Washington's investor-owned energy utilities and are familiar to some of the organizations that have historically participated in Commission processes. Through comments, many stakeholders urged the Commission to model various aspects of its program on the programs in these states, including variations on the Oregon funding agreement, which is specific to organizations intervening in formal proceedings before the Oregon Public Utilities Commission.
- 13 The Commission found these other jurisdictional examples helpful, and Oregon particularly offered a useful starting point from which to consider the formation of a Washington program. Nevertheless, we determined through our discussions with stakeholders that no other state model perfectly fits the considerations and requirements included in RCW 80.28.430, such as the statute's requirement to prioritize organizations representing vulnerable populations and highly impacted communities. We find that certain requirements and parameters of funding programs in jurisdictions in our region, such as those requiring participants to demonstrate a history of successful advocacy before a commission or those requiring participants to provide matching funds, do not provide for the equitable elevation of new voices in our processes that the Washington statute requires. Similar to the state-specific nature of all funding programs across the country, we find ourselves in the situation of developing a funding program that fits Washington's specific needs rather than choosing an existing state program to model directly.
- 14 In the following section of this Policy Statement, we will detail our policy and expectations for a funding program in Washington. Our goals in implementing RCW 80.28.430 are twofold: To increase participation of groups of people who historically have not been part of our proceedings, including the statute's named priority communities; and to increase the effectiveness of participation of other parties that historically have been active participants in Commission proceedings.
- 15 We will measure the program's success, in part, by surveying new participants to ensure they have a clear understanding of how our processes work, by the feedback we receive from those participants on whether they have had an effective opportunity to participate

⁶ Public Counsel Comments, Appendix A.

in our regulatory proceedings, and by the feedback we receive from prioritized communities about whether they feel heard and represented in our proceedings. As detailed later in this Policy Statement, the Commission will engage in additional outreach work to bring new voices to the table. This will also be an iterative process, guided in part by qualitative and quantitative analysis of arguments and testimony enabled by participatory funding presented before us in regulatory proceedings.

- 16 We recognize that the participants advocating in this Docket were largely entities that previously have participated in proceedings before the Commission, and we recognize that we do not have all the information and answers before us now to outline holistically a truly effective program. We will learn by doing and continuously addressing issues that come before us, including issues we may not anticipate at this time. We will examine specifically whether prioritized communities were able to make their arguments effectively in ways that would have been inaccessible to them but for participant funding.
- 17 As participants begin to negotiate the terms and conditions of the first round of funding arrangements, we expect them to keep the Commission’s stated policy and goals in mind. And 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 participatory funding program, including the possibility of a rulemaking to codify best practices into Commission rules.

III. Commission Policy on Participatory Funding

- 18 When it mandated participatory funding, the Legislature recognized the value of diverse voices in Commission regulatory proceedings and the ways in which access to monetary resources can help or hamper equitable representation of those voices. The statute identifies organizations representing low-income, commercial, and industrial customers who may be represented by organizations that currently participate in Commission processes, such as the Alliance of Western Energy Consumers (AWEC) and The Energy Project, that we refer to in this statement as “incumbent” organizations. The statute also places clear emphasis on vulnerable populations and highly impacted communities, who are historically under-represented before the Commission. The statute provides that incumbent organizations are eligible to receive financial assistance as they continue to appear before the Commission, but specifically prioritizes organizations representing highly impacted communities and vulnerable populations for funding.
- 19 In this Policy Statement, the Commission provides high-level guidance for utilities and other stakeholders as they negotiate the first round of agreements under RCW 80.28.430. We interpret statutory language concerning qualifying proceedings and organizational eligibility for funding, establish initial program funding caps, set program parameters and

requirements for funding recipients, and we identify the method by which utilities may seek to recover program costs through rates.

20 The Commission additionally acknowledges and clarifies its role in the administration of funding agreements by establishing a high-level process by which the Commission will review agreements and review costs for reimbursement. The Commission and its administrative law judges will evaluate any funding agreements, proposed budgets, and reimbursement requests on a case-by-case basis. We decline to consider organizations for “pre-certification” eligibility at this time, though we may revisit this topic as Washington’s participatory funding program matures. Because of the need to protect ratepayers and adhere to funding caps, the Commission will evaluate the reasonableness of any reimbursement requests and “[t]he amount of financial assistance, if any” that may be awarded to the organization.

21 We also take certain steps to prioritize vulnerable and highly impacted communities, as required by the statute. We set aside *at least* one-third of each utility’s funding cap for organizations representing prioritized communities. We also provide for the interim payment of expenses incurred by these prioritized organizations during regulatory proceedings in order to support their participation. But to satisfactorily prioritize organizations representing vulnerable and highly impacted communities, we must hear more from the organizations themselves. Utilities, stakeholders, and the Commission itself should reach out and make proactive efforts so that Washington’s participatory funding provides tangible benefits to communities that historically have not participated in regulatory proceedings.

Broad Customer Interests

22 As we detail our expectations for Washington’s participatory funding program, we begin with our interpretation of statutory language scoping funding agreement eligibility. The statute requires utilities to enter into written agreements with organizations that represent “broad customer interests.” This term serves to limit the organizations that may be eligible for funding under RCW 80.28.430.

23 The statute itself does not define the term “broad customer interests.” We must therefore interpret this term in light of established principles of statutory construction. “Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.”⁷

⁷ *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

- 24 Stakeholders offered various recommendations for how the Commission should interpret this term in light of the statute's purposes. Some stakeholders read the statute as limiting the organizations that may be eligible for funding. For example, PacifiCorp recommends interpreting "broad customer interests" as pertaining to organizations that represent a "large portion" of the customers within a customer class, vulnerable population, or highly impacted community. Citing the Fourth Amended and Restated Intervenor Funding agreement (Oregon model agreement) approved by the Oregon Public Utility Commission in 2018, Avista Utilities (Avista) recommends that the term should refer to "interests that are 'primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers [represented by that intervenor] and not narrow interests or issues that are ancillary to the presentation of the interest of consumers as consumers of utility services.'" Avista also notes that the Oregon model agreement only pertains to non-profit organizations, the primary purpose of which is to represent utility customers on an ongoing basis.
- 25 Northwest Natural Gas Company (NW Natural) reads the term "broad customer interests" to mean organizations that represent a variety of interests relevant to Commission proceedings, have a presence within the relevant utility's service territory, and meet the Commission's standards for intervention under RCW 34.05.443 and Commission rules. The Energy Project maintains that funding should be limited to organizations that address issues related to and directly impacting customer classes, *e.g.*, residential customers. The Energy Project does not recommend awarding funding to organizations that are concerned with narrow interests. These interpretations would tend to exclude organizations that represent only a few, uniquely-situated customers or that focus on only a narrow issue before the Commission.
- 26 Other stakeholders recommend a more liberal interpretation. Public Counsel notes that it is not an eligible organization as contemplated by RCW 80.28.430 and that it is funded through the Public Service Revolving Fund. But Public Counsel recommends that the Commission take guidance from California's standards, which provide funding to organizations that represent multiple customers. NW Energy Coalition (NVEC) would also interpret the term "as broadly as possible" to include organizations representing specific customers, so long as those interests encompass broad customer interests. AWEC similarly maintains that an organization representing a specific subset of customers, such as industrial customers, should be eligible for funding, because this representation benefits all customers. However, AWEC notes that an organization only representing a few, uniquely-situated customers should not be eligible for funding. The Northwest and Intermountain Power Producers Coalition (NIPPC) would interpret the term broadly to include interconnection customers. Finally, Puget Sound Energy (PSE) argues that the Commission should not limit funding to organizations representing larger groups of

customers, because this could be counter to the Legislature's intent to include vulnerable and highly impacted communities in regulatory proceedings.

- 27 We decline to define the term "broad customer interests" at this juncture. While some stakeholders recommend a narrower interpretation of the term, we are concerned that this will exclude some organizations from accessing funding and undermine the Legislature's intent. For example, we do not have sufficient information to determine whether the organization should represent a "large portion" of the customer class or prioritized community, as recommended by PacifiCorp. Similarly, we do not have sufficient information to determine whether the organization must address more than one issue relevant to Commission regulatory proceedings, as recommended by NW Natural. It is possible that organizations that fail to meet these standards may implicate or represent "broad customer interests." We cannot make *a priori* determinations on these issues before new participants appear before the Commission and articulate their positions.
- 28 For the present time, we agree with PSE's comment that the term "broad customer interests" should not be limited to organizations representing larger groups of customers. This could exclude organizations representing specific vulnerable and highly impacted communities. We also agree with NVEC's observation that an organization representing specific customers may implicate broader customer interests. We must gain more experience administering participatory funding agreements and conduct outreach to prioritized communities before we are able to arrive at a fully informed decision.
- 29 It is clear, however, that certain organizations do not represent "broad customer interests" and should not be eligible for funding under this section. We are persuaded that participatory funding should be limited to non-profit organizations. As Avista notes, the Oregon model agreement provides a helpful, though not entirely Washington-suitable, example of a mature funding program with established practices familiar to some of the Commission's stakeholders and regulated utilities. The Oregon model agreement contains this same limitation on for-profit entities. We also find that governmental entities should not be eligible for funding. Governmental entities are funded through separate measures and are not participants as contemplated by the statute. Public Counsel makes this very observation regarding its own funding and eligibility, and we find that this reasoning applies with equal force to other governmental entities. Therefore, we do not interpret the statute as requiring utilities to enter into funding agreements with for-profit or governmental entities.

Regulatory Proceedings

- 30 We next discuss the type of "regulatory proceedings" to which RCW 80.28.430 applies. Although commentors in this docket generally agree that we should read the term

“regulatory proceedings” broadly,⁸ two areas of disagreement emerged regarding the types of matters for which organizations should be eligible for funding under the statute.

31 The first area of disagreement concerns whether we should read “regulatory proceedings” to mean “adjudicative proceeding[s].”⁹ PSE urges us, at least initially, to presumptively do so, although it recommends that we authorize some kind of mechanism to make other proceedings eligible for funding upon designation.¹⁰ NWEAC, in contrast, notes that the “Legislature specifically did not limit intervenor funding to ‘adjudicative proceedings,’ as defined in RCW 34.05.010,” and advocates for reading the term as including non-adjudicatory proceedings.¹¹ Other commenters appear to agree with NWEAC by favoring a reading of “regulatory proceedings” that includes rulemakings or other non-adjudicatory matters.¹²

32 The second area of disagreement concerns whether we should exclude a limited subset of adjudicatory proceedings from eligibility for funding. Specifically, Avista, NW Natural, and PSE recommend that we exclude from eligibility for funding “a complaint proceeding initiated by, or caused to be initiated by, the intervenor who requests the funding.”¹³ NWEAC, in contrast, explicitly counsels us to view proceedings initiated by a complaint as “regulatory proceedings” eligible for funding.¹⁴ And other commenters implicitly support NWEAC’s interpretation by recommending that we interpret the term

⁸ See Avista’s Comments, p. 6; AWEAC’s Comments, p. 4; NIPPC’s Comments, p. 1-2; Public Counsel’s Initial Comments, p. 5-6; The Energy Project’s Initial Comments, p. 2; NW Natural’s Comments, p. 2.

⁹ RCW 34.05.010(1).

¹⁰ PSE’s Comments, p. 2.

¹¹ NWEAC’s Comments, p. 2.

¹² Avista’s Comments, p. 6 (noting the need for a broad definition of “regulatory proceedings”); AWEAC’s Comments, p. 4 (urging us to define “regulatory proceedings as “any process associated with a docketed proceeding or that may lead to, or is the outcome of, a docketed proceeding”); NIPPC’s Comments, p. 1-2 (inviting us to broadly read the term “regulatory proceeding”); NW Natural’s Comments, p. 2 (referencing the broad standard applied in Oregon); Public Counsel’s Initial Comments, p. 5-6 (surveying the law of sister states and noting the broad availability of funding for advocates where allowed); and The Energy Project’s Comments, p. 2 (interpreting “regulatory proceedings” to “include any . . . docketed process, including adjudications . . . , rulemakings . . . , special statutory proceedings . . . , and major “policy” dockets”).

¹³ Avista Comments, p. 6; *accord* NW Natural Comments, p. 2; PSE Comments, p. 5.

¹⁴ NWEAC Comments, p. 2.

“regulatory proceedings” to include any adjudicatory matter,¹⁵ which would include complaints.¹⁶

- 33 As many of the commenters recommend, we interpret the term “regulatory proceedings” broadly but decline to create a specific or exhaustive list of the types of proceedings that constitute “regulatory proceedings.” Subject to the guidance that we offer below, we view as eligible for funding any proceedings carried out in accordance with or under the auspices of the public service laws, our regulations, or orders the Commission has issued.
- 34 RCW 80.28.430 represents the Legislature’s determination that public participation benefits our regulatory processes. As many commenters note, a significant share of those processes take place in non-adjudicative proceedings that nevertheless have a significant impact on the public interest.¹⁷ We also clarify that there may be certain adjudicated proceedings in which it advances the public interest to grant funding to those participating by way of limited intervenor status. By more broadly construing the kinds of proceedings for which participatory funding may be eligible, we attempt to give effect to the legislative purposes underlying RCW 80.28.430.
- 35 We nevertheless offer a word of caution. We regulate in accordance with the public interest as set forth in the public service laws,¹⁸ and we recognize that there will be some regulatory proceedings in which the interests at stake have little, if any, relation to the public interest. Such proceedings include brief adjudicative proceedings,¹⁹ and may, as several commenters note, include certain complaints that advance the interests of a few individual utility customers rather than the public in general.²⁰ Other proceedings are or

¹⁵ See AWEC Comments, p. 4 (viewing any docketed process as a “regulatory proceeding”); The Energy Project Comments, p. 2 (viewing any adjudication, which would include those initiated by a complaint, as a “regulatory proceeding”)

¹⁶ WAC 480-07-300.

¹⁷ *E.g.*, *In re Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*; *In re Amending or Adopting rules relating to WAC 480-100-238, relating to Integrated Resource Planning*, Dockets UE-191023 & UE-190698, General Order 601 (Dec. 28, 2020) (rulemaking concerning the clean energy implementation plans mandated by the Clean Energy Transformation Act); LAWS OF 2021, ch. 188, § 1 (requiring the Commission to issue a policy statement about alternatives to traditional rate-base/rate-of-return ratemaking).

¹⁸ RCW 80.01.040(3).

¹⁹ RCW 34.05.482(1)(b), (d).

²⁰ The only formal complaints brought against regulated energy companies in recent years were related to tariff charges specific to the customers who brought those complaints. It is difficult to

should be noncontroversial, such as routine items on our open meeting dockets. While organizations may be able to participate in some of these matters, that participation may not meaningfully advance the public interest. In such cases, we are unlikely to approve requests for funding, though we may still consider such requests on a case-by-case basis.

Program Budget Caps

- 36 In response to Commission questions exploring the requirement in RCW 80.28.430 that the Commission consider whether agreements provide a “reasonable amount of financial assistance” to potential funding participants and to questions regarding the usefulness of program caps and budgets, respondents generally agree program assistance should not materially impact customers rates, place undue burden on a particular class of customer, or result in rates that are not fair, just, and reasonable.²¹ However, respondents are divided on whether the Commission should establish an overall cap on initial program funding.
- 37 Avista, AWEC, NW Natural, PSE, PacifiCorp, and The Energy Project comment that establishing an overall amount of funding is useful from perspectives of cost containment and predictability for both utilities and program participants.²² In initial comments, AWEC proposes an annual program cap of up to 0.1 percent of utility revenue requirements.²³ In its supplemental comments, Avista proposes a program cap of up to 0.05 percent of utility revenues and additionally notes that 0.05 percent of Avista revenue would correspond to \$350,000 annually for both electric and gas services.²⁴
- 38 NWEC proposes that standing budgets for each utility may be useful to a program framework but recommends that the Commission gather more information on current participant spending levels before determining total program caps. NWEC proposes surveying current stakeholders in Commission proceedings, including utilities, Commission Staff, and Public Counsel to more accurately understand the monetary amounts that would reasonably support new entrants to Commission proceedings. NWEC also proposes developing an initial funding program without the use of budgets for the

contemplate a scenario where parties would be granted funding in such proceedings. Nevertheless, we will consider any such request on a case-by-case basis.

²¹ Initial Comments of AWEC, NWEC, PacifiCorp, Public Counsel, and The Energy Project.

²² Avista Comments, p. 8; AWEC Comments, p. 5; NW Natural Comments, p. 3; PSE Comments, p. 4; PacifiCorp Comments, p. 3, and The Energy Project Supplemental Comments, p. 6.

²³ AWEC Comments, p. 6

²⁴ Avista Supplemental Comments, p. 3

first two years.²⁵ Similarly, Public Counsel supports initiating a funding program without the use of program caps and budgets to gather additional information. Public Counsel argues, “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.”²⁶

39 Most commentors, including Avista, PacifiCorp, PSE, Spark NW, Front and Centered, and The Energy Project also support earmarking, through various methods, a portion of funds for prioritized organizations, or those representing highly impacted communities and vulnerable populations.²⁷ Avista suggests that not less than some percentage of overall funding amounts be set aside for new participants representing highly impacted communities and vulnerable populations and proposes a starting point of 20 percent of available funds.²⁸

40 Front and Centered recommends that funding for highly impacted communities and vulnerable populations should be designated for Commission-led capacity-building for these organizations. Front and Centered further comments that, in the short term, the Commission should assign funds specifically to assist organizations with navigating regulatory proceedings and should direct a significant portion of funding to building the capacity of organizations to participate in the Commission’s regulatory proceedings.²⁹

41 NWEAC proposes the Commission exempt organizations representing vulnerable populations and highly impacted communities from any funding cap, arguing that funds should be available for these groups when they are able to participate.³⁰ Similarly, though it does not advocate for any program funding caps or specific earmarking, Public Counsel argues that in using the term “prioritize,” the Legislature intended to ensure organizations representing highly impacted communities and vulnerable populations have access to funding. In its comments, Public Counsel goes on to state that if intervenor funding is not

²⁵ NWEAC Comments, p. 4-5

²⁶ Public Counsel Supplemental Comments, p. 6

²⁷ Avista Comments, p. 15; PacifiCorp Comments, p. 6; PSE Comments, p. 8; Spark NW Comments, p.1; Front and Centered Comments, p. 2; and The Energy Project Supplemental Comments. p.3.

²⁸ Avista Comments, p. 15

²⁹ Front and Centered Comments, p. 2

³⁰ NWEAC Supplemental Comments, p. 3

limited to a program cap, funding for groups representing highly impacted communities and vulnerable populations also would not be limited.³¹

- 42 We also heard from numerous commentors during the Commission’s workshop on September 28, 2021, and in supplemental comments, that prioritized communities will broadly require more outreach and information about opportunities provided by participatory funding and about the Commission’s regulatory processes before these organizations will be able to determine their funding needs and interest in participation.
- 43 Finally, various commentors also proposed certain other funding budgetary subcategories, or specific earmarks for funding, based on considerations such as a program participant organization’s eligibility or “pre-certification” to qualify for program funding or based on various groupings of regulatory proceedings.
- 44 The Commission appreciates the detailed and thoughtful comments submitted by respondents on the issue of total caps on, and spending budgets for, participatory funding authorized by RCW 80.28.430. Though stakeholder recommendations on these topics were varied and wide-ranging, several common threads are evident. Largely, stakeholders agree that as a new statutory provision in Washington state, a participatory funding program for energy utility regulatory proceedings should be refined as the Commission and stakeholders learn more about needs of new and current entrants engaging in our processes. In workshop comments and other written comments, stakeholders also largely agree that the Commission, not utilities, should retain broad discretion over how the program is built and administered to ensure utilities are not in a position of determining which organizations have access to the program or which organizations receive funding. Stakeholders also generally commented on themes of program cost-control, program impacts on ratepayers, Commission authority over ensuring fair, just, and reasonable rates, and program accessibility for new participants.
- 45 As we considered monetary limits on aggregate amounts of funding available during the first year of a participatory funding program, all these common threads were central to the discussion. The Commission agrees with Public Counsel and NWECA that future information on the number of possible program participants and the scope of their interaction in utility proceedings will help shed light on how much program funding is sufficient to meet both the Legislature’s and the Commission’s goals to provide for participatory funding. However, information gathering and experimentation to develop Washington’s program can occur within the bounds of an initial program cap on funding, which will provide clarity to stakeholders, utilities, and Commission Staff administering

³¹ Public Counsel Comments, p. 19

agreements on how much ratepayer money the Commission is willing to allow in exploring the expansion of participation in regulatory proceedings. Future information may demonstrate the need for an increase or decrease in an overall program cap on funding, and the Commission retains explicit authority to make any such adjustments over time.

- 46 Because we agree that providing initial guidance on appropriate spending levels for the first year of a participatory funding program will provide clarity to all involved, we must turn to the aggregate amount of funding we will allow during the first year of the program and consider any additional budgetary subcategories suggested by participants in this Docket. AWEC and Avista each provide explicit recommendations for the amounts of funding they believe to be appropriate for a burgeoning program and that, in their views, would not constitute a material burden to utility ratepayers. Respectively, they recommend amounts up to 0.1 percent of a utility's revenue requirement and up to 0.05 percent of a utility's revenues.
- 47 The corresponding dollar figures for both recommended program cap amounts result in wide variation between utilities and, thus, varied opportunity for funding stakeholder participation in utility regulatory proceedings. On the low-end of these proposed funding ranges, the amount that corresponds to 0.05 percent of revenues for a regulated energy utility with a smaller footprint in Washington state may not be sufficient to provide funding to more than two or three participants each year. On the higher end at 0.1 percent of revenues, for larger utilities, this range could result in ratepayers shouldering several million dollars a year in program costs.
- 48 As a regulatory body tasked with ensuring utility rates are fair, just, and reasonable, and as a body newly tasked with administering a successful participatory funding program, we aim to provide for an amount of funding that ensures an adequate program that expands represented viewpoints in regulatory proceedings. We also must ensure Washington ratepayers are not unduly burdened by costs that are more expensive than they are useful for expanding proceedings to be more inclusive and equitable. We must accommodate new and incumbent participants in our processes as well as ensure efficient use of ratepayer funds.
- 49 We agree that AWEC's proposal provides the most opportunity for funding participants on the lower end of its range, but we are hesitant, at least initially, to approve spending at the higher end of that percentage range. To alleviate our concerns with approving such large figures at the outset of our experience with participatory funding, we look to the annual amounts allocated to intervenors in Oregon and to their spending proposals for

Oregon proceedings.³² These snapshots of the Oregon program provide some illustration of the monetary amounts we might expect from individual funding requests in the initial years of our program, and as participants and the Commission gain a better understanding of how this program might operate. Based on these snapshots, we cap program spending for the first year of implementation at 0.1 percent of operating revenues, but no more than \$300,000, per utility for gas and electric operations combined. The amounts in the table below are ballpark numbers, calculated from 2020 operating revenues, that illustrate our policy.

Intervenor Funding Amounts through 2022 Per Utility ³³ Calculated at 0.1% of Operating Revenue and \$300,000				
PSE	Avista	PacifiCorp	Cascade Natural Gas	NW Natural
\$300,000	\$300,000	\$300,000	\$265,512	\$72,735

50 While the Commission additionally heard and received comments proposing other methods to parse funding into separate allocations by types of participants and proceedings, the Commission declines to further delineate funding for the initial round of program agreements in 2022 with one exception, described below. The Commission recognizes that the statute bases Washington’s funding program on agreements that will be negotiated between utilities and participants. The Commission expects participating stakeholders can and will use the Commission’s provided program caps to make their own decisions about how and in which proceedings program funding may be most beneficial.

51 The exception we make related to additional delineation of funding amounts involves the statute’s prioritization of organizations representing highly impacted communities and vulnerable populations. We detail our consideration of the Legislature’s use of the term “prioritization” in more detail below, but here will additionally state the Commission’s policy that *at least* one third of available funding per utility will be reserved specifically for use by organizations representing vulnerable populations and highly impacted communities and, at least for the first year of this program, may be used for the purposes of conducting outreach and developing awareness of participation opportunities for vulnerable populations and highly impacted communities.

52 Funding for the first year of the program for both incumbent organizations and for prioritized organizations is subject to the limitations that are established elsewhere in this

³² Avista Comments, Appendices B, C, and D

³³ Electric and Gas Company Annual Reports, 2020

Policy Statement except where explicitly noted. The Commission also makes clear that training and education that provides technical assistance to organizations representing highly impacted communities and vulnerable populations about the subjects of utility regulation and Commission proceedings and case law are considered eligible uses for funding.

Prioritization of Organizations Representing Highly Impacted Communities and Vulnerable Populations

- 53 Section 4 of RCW 80.28.430 explicitly requires the prioritization for funding of organizations representing highly impacted communities and vulnerable populations.³⁴ The Commission received many recommendations through initial comments, workshop discussion, and supplemental comments from stakeholders in this Docket interpreting the legislative intent in prioritizing highly impacted communities and vulnerable populations. Stakeholders suggest earmarking funding for prioritized groups, as discussed above, but additionally propose other avenues by which the Commission might prioritize these groups. These other avenues for prioritization include lowering the threshold for eligibility for these groups such that it is easier for them to qualify for funding,³⁵ providing continued outreach to and training for highly impacted communities and vulnerable populations to understand the opportunities provided by participatory funding, and making interim funding available exclusively to these groups.

Outreach

- 54 In supplemental comments, Front and Centered emphasizes that few organizations that represent highly impacted communities and vulnerable populations are currently in a position to become participants in regulatory proceedings and emphasized the importance of training and administrative assistance for organizations that represent these groups. Front and Centered also urges the Commission to “conduct additional outreach to solicit input and participation from diverse, non-utility groups in designing an equitable mechanism for intervenor funding.”³⁶ NW Natural suggests the Commission host annual

³⁴ RCW 80.28.430(4).

³⁵ Public Counsel suggests that if the Commission provides funding solely on a case-by-case basis, rather than “pre-certifying” certain organizations’ eligibility as suggested by other commenters, eligibility thresholds could be lower or easier to meet for organizations representing highly impacted communities and vulnerable populations.

³⁶ Front and Centered Comments, p. 2

workshops that provide instruction and assistance to vulnerable populations and highly impacted communities to enable their participation in the program.³⁷

- 55 In supplemental comments, NWEAC urges the Commission to conduct targeted outreach to community-based organizations representing highly impacted communities and vulnerable populations “to get their input on the form of intervenor funding agreements that would apply to them.”³⁸ In supplemental comments, Public Counsel recommends that the Commission seek “additional resources with specific expertise in this area to ensure meaningful outreach.”³⁹ In supplemental comments, The Energy Project notes that it is “apparent that additional work will be required to bring this to fruition, including further outreach to engage these communities in the [intervenor funding] planning process.”⁴⁰
- 56 The Commission acknowledges there is additional work to be done engaging organizations that represent highly impacted communities and vulnerable populations to better understand how to design a participatory funding program that meets and prioritizes their needs as required by the statute. We agree with commenters including Front and Centered, NW Natural, NWEAC, and others that recommend the Commission conduct targeted outreach and provide training and educational opportunities to organizations that represent highly impacted communities and vulnerable populations. Front and Centered makes clear in its comments at the September 28, 2021, workshop, and in its written comments, that elements of procedural equity are imperative to ensuring that any funds specifically earmarked for prioritized organizations are used, and used effectively. The Commission will continue its work in this Docket following the publication of this Policy Statement to engage with prioritized groups to build a program that works for them.

Interim funding

- 57 While all commenters suggest that interim funding, as described in the Commission’s August 19, 2021, Notice of Opportunity to File Written Comments as “full or partial payments provided to organizations in advance of or during a proceeding,” could be a

³⁷ NW Natural Comments, p. 7.

³⁸ NWEAC Comments, p. 3

³⁹ Public Counsel Supplemental Comments, p. 4

⁴⁰ The Energy Project Supplemental Comments, p. 3

general component of a participatory funding program subject to certain conditions,⁴¹ some also suggest using interim payments as a means of prioritizing highly impacted communities and vulnerable populations.

58 AWEC and The Energy Project both suggest interim funding be available only to organizations representing vulnerable populations and highly impacted communities in order to prioritize these groups. NWEAC suggests interim funding be disbursed as requested but recommends that the Commission consider limiting interim funding to organizations with a demonstrated need. PSE suggests the Commission allow partial payments based on organizational need and highlighted the difficulty prioritized groups may have with waiting until the close of a proceeding to receive funds needed to pay for their participation in a proceeding.⁴² Public Counsel, noting “the difficulty of increasing participation in equity advisory groups by organizations that do not traditionally engage in UTC practice,” suggests the Commission consider providing funding to organizations up front rather than at the conclusion of a proceeding.⁴³

59 As discussed above, the Commission will reserve *at least* one-third of aggregate funding to prioritized groups, which may be used for outreach, training, and education to create a space at the regulatory table for their participation. Additionally, the Commission will allow interim funding only for organizations representing highly impacted communities and vulnerable populations. The Commission agrees with AWEC and The Energy Project that interim funding is a meaningful way to prioritize these groups, which may not have the funds available up front to pay the costs of participating in regulatory proceedings, which can last for months. Both the existence and timing of funding can be barriers to participation for organizations with fewer resources. The Commission finds that making funding available before the close of a proceeding can help more organizations that represent prioritized groups participate effectively in Commission proceedings. More established organizations with a history of participating in Commission proceedings are not likely facing this same barrier to participation.

60 The Commission agrees with commenters that potential participants seeking interim funding should demonstrate need as a threshold for eligibility for interim funding only—

⁴¹ Avista suggests the Commission make some portion of funding available in advance to pre-certified organizations on the condition that the organization match the funding. AWEC and NW Natural suggested interim funding be contingent on material contribution to a proceeding. NW Natural and PacifiCorp argued that interim funding was acceptable if the funding was for expenses already incurred.

⁴² PSE Comments, p. 6

⁴³ Public Counsel Comments, p. 14

for now, the Commission will not require a demonstration of need for funding generally—and that interim funding should be allowed only for expenses incurred. Because the source of participatory funding will be ratepayer money, the Commission must ensure that it is spent appropriately. The Commission will require that organizations seeking interim funding submit a budget with a petition for funding that demonstrates how the organization intends to use the money. To receive interim funding, organizations are required to provide detailed information, including receipts and invoices, to demonstrate how money was spent.

- 61 The Commission declines to condition general funding and interim funding on the basis of a participant’s material contribution to a proceeding at this time. The Commission needs more experience with the program before it can assess how materiality would impact overall eligibility. The Commission wants to ensure any materiality requirements will not discourage participation of newcomers in our processes nor discourage collaboration among participants in adjudicative and non-adjudicated proceedings.
- 62 The Commission also declines to establish pre-certification status for general funding and for interim funding at this time. Pre-certification is used in several other states, including in Oregon. The Commission recognizes the value pre-certification of organizational eligibility may bring from an administrative efficiency perspective. However, we are persuaded that allowing organizations to be pre-approved for funding at the start of our experience with participatory funding programs would present several unnecessary complications and would benefit incumbent organizations to the detriment of newcomers.
- 63 The various requirements stakeholders presented in advocating for pre-certification include elements that organizations can only prove based on an established presence in the utility regulatory space and in Commission processes.⁴⁴ Meanwhile, a key priority of RCW 80.28.430 is expanding representation in regulatory proceedings to groups who have not participated before in Commission processes. The statute directs the Commission to prioritize highly impacted communities and vulnerable populations. Allowing for pre-certification so early in the creation of a program would put the needs of incumbent organizations above the needs of the communities the Commission is specifically directed to prioritize. Additionally, the Commission needs more time with a participatory funding program to determine what qualifications it would require to allow participants to move more quickly through administrative funding procedures. It is clear to us that we must first spend the time establishing guidelines to encourage prioritized groups to participate in our program and represent themselves in our processes.

⁴⁴ See Initial Comments of Avista, AWEC, NW Natural, PacifiCorp, and PSE.

Commission Review of Agreements, Funding Requests, and Costs; Recovery of Program Costs in Utility Rates

- 64 As detailed above, the Commission heard from numerous stakeholders in this Docket about the need for Commission oversight of Washington’s participatory funding program to ensure ratepayer dollars are spent appropriately and to ensure that utilities are not permitted to pick and choose who is eligible for participatory funding.⁴⁵ The Commission and its administrative law judges will evaluate any funding agreements, requests for funding, proposed budgets, and reimbursement requests on a case-by-case basis. Because of the need to protect ratepayers and adhere to funding caps, the Commission will evaluate the reasonableness of any reimbursement requests and “[t]he amount of financial assistance, if any” that may be awarded to the organization. The Commission retains authority to review funding requests and final reimbursement requests and to adjust or reject funding requests and reimbursement requests if costs are unreasonable or contrary to the public interest. The Commission may provide additional guidance on appropriate and reasonable costs eligible for participatory funding at a later date and as we gain more experience with this participatory funding program.
- 65 The Commission does not yet have enough information to provide detailed expectations for funding agreements between utilities and organizations, but we provide below a high-level overview of the process to which we expect utilities and program participants to adhere.
- 66 Utilities and organizations entering funding agreements must submit them to the Commission for review and approval. Before participants may receive funding, they must submit to the Commission at the outset of a proceeding their proposed requests for funding, including anticipated budgets with detailed cost expectations for that specific proceeding. The Commission will not approve participant funding for organizations for overhead expenses, lobbying, and the filing of formal complaints, though, as noted above, the Commission will consider funding requests for participation in complaint proceedings that it determines are in the public interest. In addition, as noted above, 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.
- 67 For organizations representing highly impacted communities and vulnerable populations, the Commission will consider interim funding payments during the pendency of a proceeding in circumstances where petitioners demonstrate need. Reimbursement

⁴⁵ See Initial Comments of Avista, AWEC, NW Natural, PacifiCorp, PSE, and Public Counsel.

requests for interim funding must be submitted to the Commission for approval along with detailed information, including invoices and receipts, documenting the costs incurred.

- 68 All organizations must submit their final requests for reimbursement at the conclusion of a proceeding, accompanied by receipts and invoices detailing costs incurred. Reimbursement payments may not exceed costs outlined in funding requests and associated budgets presented in an organization's approved request for funding.
- 69 The Commission shall allow a utility that provides financial assistance under this guidance to recover the amounts provided in rates, consistent with RCW 80.28.430(3). Energy companies must file a petition for deferral of such expenses to FERC Account 182.3, Other Regulatory Assets. Utilities may seek recovery of these costs in a general rate case or through a separate tariff schedule with an annual true-up.
- 70 The Commission issues this Policy Statement pursuant to RCW 34.05.230 and WAC 480-07-920. This statement contains guidance to electric companies, natural gas companies, and organizations that represent or seek to represent broad customer interests in regulatory proceedings before the Commission. As provided in RCW 34.05.230 and WAC 480-07-920, this Order and Policy Statement is not binding upon either the Commission or the parties that may come before it in formal proceedings, nor is this Policy Statement an enforceable rule.

Dated at Lacey, Washington, and effective November 19, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner