

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of The Commission’s
Examination of Intervenor Funding
Provisions for Regulatory Proceedings.

DOCKET U-210595

PETITION OF INVESTOR-OWNED
UTILITIES, CUSTOMER
REPRESENTATIVES AND
PRIORITIZED ORGANIZATIONS
FOR APPROVAL OF THE
WASHINGTON INTERIM
PARTICIPATORY FUNDING
AGREEMENT

I. INTRODUCTION

- I.* Pursuant to WAC 480-07-370(3), the following organizations file this Petition with the Washington Utilities and Transportation Commission (“Commission”) for approval of the Washington Interim Participatory Funding Agreement (“Interim Agreement”): Puget Sound Energy (“PSE”), Avista Corporation (“Avista”), PacifiCorp, Cascade Natural Gas Corporation (“Cascade”), Northwest Natural Gas (“NW Natural”), Alliance of Western Energy Consumers (“AWEC”), NW Energy Coalition (“NWEC”), The Energy Project (“TEP”), Sierra Club, Front & Centered, and Spark Northwest (collectively, “Joint Parties”). For the reasons discussed below, the Joint Parties support and recommend Commission approval of the Interim Agreement filed concurrently herewith. This memorandum includes sections discussing the statutory basis for participant funding, a brief history of the negotiations between the parties, a summary of the Commission’s Policy Statement on funding, and a detailed overview of the key provisions of the Agreement.

II. THE STATUTORY BASIS FOR PARTICIPANT FUNDING

2. During the 2021 legislative session, the Washington Legislature adopted legislation to authorize financial assistance for organizations representing broad customer interests in regulatory proceedings conducted by the Washington Utilities and Transportation Commission (the “Commission”).¹ The legislation was effective July 25, 2021, and has been codified at RCW 80.28.430. The financial assistance provisions were part of broader legislation in ESSB 5295 that included provisions authorizing utilities to file multi-year rate plans,² requiring consideration of performance-based regulation³ and modifying statutory requirements for low-income bill assistance.⁴
3. RCW 80.28.430 has four sections. The first section requires Washington investor-owned energy utilities to enter into financial assistance agreements with organizations representing broad customer interests in Commission proceedings. Eligible organizations include those representing low-income, commercial, and industrial customers, as well as vulnerable populations and highly impacted communities. These agreements are subject to Commission approval and may be approved, approved with modifications, or rejected. The Commission must consider the reasonable allocation of costs among customer classes of the utility.⁵
4. The second section of the statute addresses the Commission’s administration of agreements, and prescribes the matters which the Commission must determine. These include the amount of financial assistance, the manner in which it is distributed, and the manner in which

¹ Engrossed Substitute Senate Bill § 4, Chapter 188, Laws of 2021 § 4.

² RCW 80.28.425

³ RCW 80.28.425(7); Chapter 188, Laws of 2021, § 1

⁴ RCW 80.28.068

⁵ RCW 80.28.430(1).

it is recovered in the rates of the utility. Other matters necessary to administer an agreement may also be addressed by the Commission.⁶

5. The third section of the statute requires the Commission to allow recovery of funding assistance provided in rates. Utilities are allowed to defer recovery in rates. The Commission may not receive payment of any amounts under the statute.⁷

6. Finally, and importantly, the statute expressly provides that organizations representing vulnerable populations and highly impacted communities (“Prioritized Organizations”) must be prioritized for participant funding.⁸

III. DEVELOPMENT OF THE AGREEMENT

7. In the late summer and fall of 2021, customer representative organizations began discussions about how to approach implementation of participant funding. Prioritized Organizations were invited and participated. Initial efforts began with a review of the Oregon Intervenor Funding framework, and the consumer parties began work on a preliminary draft agreement based on edits and modifications to the Oregon Intervenor Funding Agreement⁹ (“Oregon IFA”) designed to align with the Washington statute and regulatory environment. These discussions were informed by the Commission workshop in the docket and the comment filings in September and October.

8. In early November, the customer representative organizations and Prioritized Organizations shared a proposed draft agreement for discussion with the investor-owned utilities

⁶ RCW 80.28.430(2)

⁷ RCW 80.28.430(3)

⁸ RCW 80.28.430(4)

⁹ *In the Matter of Public Utility Commission of Oregon, Approval of the Fourth Amended and Restated Intervenor Funding Agreement*, Docket UM 1929, Order No. 18-017 (January 17, 2018), Appendix A (“Oregon IFA”).

and began meeting in late November. The Attorney General’s Office of Public Counsel also participated. Aware that the Commission would be issuing policy guidance by November 30, the parties awaited issuance of the Policy Statement and then modified the draft agreement to reflect the guidance provided. The utilities, customer representatives and Prioritized Organizations continued discussions and the exchange of edits through the end of the year.

9. In early 2022, the parties were able to reach a consensus on all provisions of the Agreement.¹⁰ The Joint Parties now respectfully recommend and request that the Commission approve the Agreement in full as filed.

IV. COMMISSION POLICY GUIDANCE

10. Beginning in August 2021, the Commission conducted an inquiry in this docket to determine the appropriate amount of financial assistance to be provided under the statute, and to determine appropriate processes and other matters necessary to the provision of funding to administering written agreements. The Commission solicited comments from interested stakeholders and the public on September 10, conducted a workshop on September 28, and provided an opportunity for supplemental comments on October 5.

11. Based on this inquiry, on November 19, 2021, the Commission issued its Policy Statement on Participatory Funding for Regulatory Proceedings (“Policy Statement”). The Policy Statement was intended to provide interim high-level policy guidance for funding agreements that begin on or before December 31, 2022. The Commission expressed two goals in the implementation of RCW 80.28.430: (1) increasing participation of groups of people who

¹⁰ The parties were unable to resolve one outstanding issue which has been reserved for future discussions, as explained in the overview section of the memorandum.

have not historically been part of Commission proceedings; and (2) increasing the effectiveness of participation of other parties that have historically been active before the Commission.¹¹

12. As urged by the Policy Statement, the Joint Commenters have drafted the accompanying Interim Agreement with the Commission’s policy and goals in mind. The Commission Policy Statement provided guidance on a number of key issues, as summarized in this section of the Joint Memorandum. The next section of the memorandum provides an overview of the terms of the Interim Agreement, indicating, as appropriate, how the Interim Agreement is consistent with the Policy Statement.

Broad Customer Interests

13. The Commission declined to define “broad customer interests” specifically at this time but expressed disapproval for narrow interpretations of the term which could exclude some organizations from access to funding, such as by limiting organizations to those representing large groups of customers.¹² The guidance provides that funding should be limited to non-profit organizations and that governmental entities should not be eligible for funding.¹³

Eligible Organizations

14. The Policy Statement notes the statutory identification of low-income, commercial, and industrial customer organizations as eligible to receive funding, citing Alliance for Western Energy Consumers and The Energy Project as examples.¹⁴ In addition, vulnerable populations and highly impacted community organizations are specifically prioritized as eligible

¹¹ Policy Statement, ¶ 14

¹² Policy Statement, ¶ 37-38

¹³ Id., ¶ 29

¹⁴ Id., ¶ 18

organizations.¹⁵ The Commission guidance does not adopt “pre-certification” of organizations for the interim period.¹⁶

Regulatory Proceedings

15. The Policy Statement interprets the term “regulatory proceedings” broadly and declines to create a specific list of types of proceedings.¹⁷ The Commission states that it will view as eligible for funding “any proceeding carried out in accordance with or under the auspices of the public service laws, our regulations, or orders the Commission has issued.”¹⁸ The Commission specifically declines to exclude non-adjudicatory proceedings, noting that these represent a significant share of Commission process and can have a significant impact on the public interest.¹⁹ Complaint proceedings will be considered for funding on a case-by-case basis where the Commission determines that the proceeding is in the public interest.²⁰ The Commission cautions that eligibility is unlikely to be approved for cases involving such matters as individual customer tariff complaints, non-controversial and routine matters, brief adjudicative proceedings, or Open Meeting items, where the interests at stake have little relation to the broad public interest.²¹

Program Budget Caps

16. The Commission adopted recommended intervenor funding amounts through 2022 for each utility, calculated as 0.1 percent of operating revenues for the respective companies, up to a cap. For PSE, Avista, and PacifiCorp, this would establish a funding cap of

¹⁵ Id.

¹⁶ Id. ¶29

¹⁷ Id., ¶ 33

¹⁸ Id.,

¹⁹ Id. ¶ 34

²⁰ Id., ¶ 66

²¹ Id., ¶ 35, n. 20

\$300,000 for each utility for all proceedings.²² The Commission declined to parse the funding into separate allocations by types of participants and proceedings, except to require that at least one-third of available funding be reserved specifically for organizations representing vulnerable populations and highly impacted communities.²³ This reserved funding may be used for conducting outreach and developing awareness of participation opportunities for vulnerable populations and highly impacted communities.²⁴

Prioritization of Organizations Representing Highly Impacted Communities and Vulnerable Populations

17. The Policy Statement identifies three mechanisms for prioritizing assistance to organizations that represent vulnerable populations and highly impacted communities, as required by RCW 80.28.430(4). The first method, as mentioned above, is to designate that at least one-third of available funding must be reserved specifically for Prioritized Organizations. Secondly, the Commission states that these funds may be used for conducting outreach and developing awareness of Commission proceedings.²⁵

18. Finally, the Commission announced that it will allow interim funding for Prioritized Organizations as a meaningful way to prioritize groups that may not have funds available to pay up-front costs over a period of months during a proceeding. Interim funding will be available to Prioritized Organizations that demonstrate a need and that provide appropriate supporting documentation.²⁶

²² Id., ¶ 49

²³ Id., ¶50-51

²⁴ Id., ¶ 51

²⁵ Id.,

²⁶ Id., ¶ 60

Commission Review and Procedure

19. The Policy Statement provides that the Commission will have a central role in administering the participatory funding program. The Commission and its Administrative Law Judges (“ALJs”) will evaluate a funding agreement or agreements, proposed budgets, and reimbursement requests on a case-by-case basis. The Commission retains the authority to review funding requests and final reimbursement requests and to adjust or reject requests if costs are unreasonable or contrary to the public interest.²⁷

20. The process outlined by the Policy Statement provides that parties will submit an agreement for review and approval. In order to be eligible to receive funding, stakeholders will need to provide an anticipated budget with detailed cost expectations for that specific proceeding at the outset of the proceeding.²⁸ Final requests for reimbursement must be submitted at the conclusion of the proceeding, accompanied by receipts and invoices detailing the costs incurred. The requested payments may not exceed the amount of the initial request and budget.²⁹ The Commission will not approve participant funding for overhead expenses and lobbying. However, as noted, expenses, including consulting expenses, incurred by Prioritized Organizations for technical assistance and outreach are allowable and eligible for funding.³⁰

Recovery of Costs

21. The Policy Statement provides guidance that the Commission will allow the costs of participant funding to be recovered in customer rates, as provided by statute.³¹ Utilities may file a petition for deferral of such costs to FERC Account 182.3, Other Regulatory Assets. These

²⁷ Id., ¶ 64

²⁸ Id., ¶ 66

²⁹ Id., ¶ 68

³⁰ Id., ¶ 66

³¹ RCW 80.28.430(3)

costs can be recovered in a general rate case or through a separate tariff schedule with an annual true-up.³²

V. SUMMARY OF THE MAJOR PROVISIONS OF THE INTERIM AGREEMENT

A. Overview

22. The Joint Parties used the Oregon IFA as a starting point for the Interim Agreement, and then modified, added, and removed provisions to fit Washington’s specific circumstances. For instance, the Oregon IFA is a multi-year agreement that allows organizations to request funding from a future year for cases that will continue into that year, and also allows unused funds to be rolled over into future years. Because the Interim Agreement is a one-year agreement, both of these provisions have been removed; however, the Interim Agreement specifically reserves the headings for these provisions in anticipation of the possibility that future agreements may be for a longer term and, therefore, advances and rollovers may be reasonable in that context (subject to Commission approval).³³ The Interim Agreement also removes the concept of “pre-certification,” contained in the Oregon IFA, based on the Commission’s Policy Statement.

23. The major provisions of the Interim Agreement are summarized in the following sections. Additional changes from the Oregon IFA are also noted, where relevant.

B. Organizations And Proceedings Eligible For Funding

24. The Interim Agreement creates two different categories of organizations: (1) “Prioritized Organizations”; and (2) other customer representative organizations that meet the

³² Id., ¶ 69

³³ See Interim Agreement, Articles 4.3 and 4.4.

criteria in the Interim Agreement. Prioritized Organizations are those that represent vulnerable populations and highly impacted communities, as those terms are defined in the Clean Energy Transformation Act, RCW 19.405.020(23) and .020(40). Both Prioritized Organizations and other organizations must be “case-certified” to receive funding for a particular proceeding.³⁴

25. General customer representative organizations must demonstrate that they are neither a for-profit organization nor a governmental entity; they must represent broad customer interests and demonstrate that they are able to effectively represent the customers they seek to represent; they must show either that no other case-certified organization participating in the proceeding adequately represents the organization’s particular interests, or that the customers the organization represents or the public interest generally will benefit from the organization’s participation; and they must demonstrate that case-certification will not unduly delay the proceeding.³⁵ Any organization that meets all of these criteria is eligible for funding under the Interim Agreement.³⁶

26. The criteria for a Prioritized Organization to become case-certified differs somewhat from the criteria applicable to other organizations. Prioritized Organizations must show that they represent vulnerable populations or highly impacted communities.³⁷ They also may not be for-profit or governmental entities, except that they may represent tribal entities, which could be considered governmental entities.³⁸ While the Commission’s Policy Statement excludes governmental entities from funding, the Joint Parties did not interpret this guidance to

³⁴ Interim Agreement, Article 5.2.

³⁵ Id., Article 5.2.1.

³⁶ Id., Article 5.1.

³⁷ Interim Agreement, Article 5.2.2(b).

³⁸ Id., Article 5.2.2(a).

intentionally exclude tribal entities, given the inclusion of tribal lands in the definition of highly impacted communities under RCW 19.405.020(23).

27. Finally, Prioritized Organizations must show that they are able to effectively represent vulnerable populations or highly impacted communities of the utility that is the subject of the proceeding in which the Prioritized Organization seeks funding.³⁹ Evidence of effective representation need not include prior activity at the Commission and can instead include activities like participating in public policy matters before governmental entities, in the private sector, or in community forums. These criteria were developed with input and guidance from Prioritized Organizations in an effort to avoid creating undue barriers to participation.

28. With respect to the type of proceedings eligible for funding, the Joint Parties have defined this in a deliberately broad manner to encompass not only adjudicative proceedings, but also non-adjudicative proceedings to the extent matters affecting the public interest are at issue.⁴⁰ These may include, for example, stakeholder meetings during the development of an Integrated Resource Plan or Clean Energy Implementation Plan before such plans are filed at the Commission, or low-income and conservation resource advisory group meetings. It also includes complaint proceedings to the extent they relate to a matter of broad public interest, as opposed, for example, to an issue between a single customer and a utility. This is a change from the Oregon IFA, which precludes funding for any complaint proceeding. Ultimately, however, whether a proceeding – formal or informal – is eligible will be determined by the Commission when it makes a decision on whether an organization should be case-certified for that proceeding.

³⁹ Id., Article 5.2.2(c).

⁴⁰ Id., Article 1(c).

C. Availability Of Funds And Fund Accounts

29. The Interim Agreement creates five separate “Consumer Access Funds,” one for each Participating Public Utility (PSE, Avista, PacifiCorp, Cascade, and NW Natural).⁴¹ The total amount available in each Consumer Access Fund is consistent with the limits adopted in the Commission’s Policy Statement.⁴² Each Consumer Access Fund is then divided into two separate sub-funds, a “Prioritized Organizations Sub-Fund” dedicated to Prioritized Organizations and a “Customer Representation Sub-Fund” for all other eligible organizations.⁴³

30. The Policy Statement made clear that at least one-third of available funding should be reserved for Prioritized Organizations.⁴⁴ The Interim Agreement allocates exactly one-third of funding to these organizations; however, it also provides them avenues for seeking additional funding. First, if at the end of the term of the Interim Agreement, funds remain in the Customer Representation Sub-Fund, Prioritized Organizations have the option to request this funding if all funding in the Prioritized Organizations Sub-Fund has been used.⁴⁵ Except for outreach funding,⁴⁶ organizations that are not Prioritized Organizations do not have a reciprocal option to seek unused funding from the Prioritized Organization Sub-Fund. Additionally, if all funding in both sub-funds has been allocated, Prioritized Organizations may petition the Commission to increase the amount of funding in the Prioritized Organizations Sub-Fund.⁴⁷ Again, by contrast, other organizations do not have a right to request funding above the caps of the Customer Representation Sub-Fund.

⁴¹ Interim Agreement, Article 4.2.

⁴² Policy Statement, ¶ 49.

⁴³ Id., Article 4.2.1.

⁴⁴ Policy Statement, ¶ 21.

⁴⁵ Interim Agreement, Article 4.2.2.

⁴⁶ Id., Article 7.4.

⁴⁷ Id., Article 4.2.2.

31. The right of Prioritized Organizations to seek funding above the caps identified in the Commission’s Policy Statement in the narrow circumstance where all funding has been used and a Prioritized Organization requires more to fully effectuate its advocacy in a proceeding is not strictly consistent with the Policy Statement. The Joint Parties believe, however, that this option is reasonable given the prioritization requirement, the uncertainty over the level of participation from Prioritized Organizations in this first year of funding, the amount of funding Prioritized Organizations will require, and the uses to which these organizations will put the funding. The Joint Parties respectfully request approval of this approach as a reasonable variation on the Policy Statement.

32. The Interim Agreement provides that Prioritized Organizations may also request interim funding when needed. Interim funding is defined as any funding provided prior to the conclusion of an Eligible Proceeding.⁴⁸ The Commission’s Policy Statement explicitly authorized interim funding for these organizations and required a demonstration of expenses incurred to receive this funding.⁴⁹ The Interim Agreement adheres to these requirements, but allows Prioritized Organizations to submit, as evidence of expenses incurred, invoices and other requests for payment before these invoices are paid.⁵⁰ As certain Prioritized Organizations noted during negotiation of the Interim Agreement, there may be circumstances in which a Prioritized Organization lacks the funds to pay these invoices until it receives funding through the Interim Agreement, so this provision further assists and encourages these organizations’ participation.

⁴⁸ Id., Article 7.2.

⁴⁹ Policy Statement, ¶¶ 53, 59-60.

⁵⁰ Interim Agreement, Article 7.2.

D. Eligible Expenses

33. The Interim Agreement is very similar to the Oregon IFA with respect to the types of expenses eligible for reimbursement. These include primarily attorney and consultant/expert witness fees, but also include several other expenses incurred for participation in an Eligible Proceeding, such as travel expenses and copying costs.⁵¹ The most significant difference between the Interim Agreement and the Oregon IFA is that the Interim Agreement includes an additional category of costs, under Section 7.4, for outreach and developing awareness of Commission proceedings and participation opportunities by vulnerable populations and highly impacted communities. Any organization is eligible to receive reimbursement of these costs, which are allocated from the Prioritized Organizations Sub-Fund. This reflects the Joint Parties' understanding of the Commission's intent in Paragraphs 51, 59, and 66 of the Policy Statement.

34. The Interim Agreement clarifies the time frames for eligible expenses. Expenses incurred in 2023 may be recovered for cases that began in 2022 and continued to the following year.⁵² Expenses incurred in an eligible proceeding in 2022 prior to the approval of the Agreement are also allowable.⁵³ Finally, the Agreement also allows for recovery of costs incurred in 2021, if those costs relate to a proceeding for which an organization has an approved budget.⁵⁴ An example would be the electric utilities' Clean Energy Implementation Plans. Several stakeholder workshops occurred in relation to these plans in 2021, which are now being considered before the Commission in 2022. Because the statute allowing for funding became

⁵¹ Id., Article 7.3.

⁵² Interim Agreement, Article 7.3.

⁵³ Id.

⁵⁴ Id.

effective in 2021, the Joint Parties believe that carrying over these costs into an approved budget is reasonable.

E. Process For Requesting And Seeking Payment Of Fund Grants

35. The process for requesting and seeking payment of Fund Grants is also similar to the Oregon IFA. The requesting organization must file a Request for Case Certification and a Notice of Intent to Request a Fund Grant either prior to the prehearing conference in a proceeding or at such other time as the Commission designates.⁵⁵ The Notice of Intent is designed to notify the utility and any parties of record that a budget request will be made. The organization may also file a proposed budget at the same time or can wait to file a proposed budget after the organization is case-certified.

36. The Agreement clarifies that the Commission may delegate administration of any participant funding matters to an Administrative Law Judge or other appropriate Commission staff pursuant to RCW 80.01.030.

37. The Interim Agreement includes a standardized form for proposed budgets, which must include: (a) a statement of work to be performed; (b) a description of the general areas to be investigated; (c) identification of the specific Sub-Fund from which the applicant seeks a Fund Grant along with an estimate of the amount of funds in that Sub-Fund, if known; (d) a budget showing estimated attorneys' fees; and (e) a budget showing estimated consultant and expert witness fees.⁵⁶ Budgets are due 30 days following the prehearing conference or the date designated by the Commission.⁵⁷ Organizations may also propose budgets that seek funding

⁵⁵ Id., Article 6.2.

⁵⁶ Interim Agreement, Exhibit A.

⁵⁷ Id., Article 6.3.

from two or more Consumer Access Funds, if the proceeding involves more than one Participating Public Utility.⁵⁸

38. The Interim Agreement requests that the Commission act on proposed budgets within 30 days, on a best-efforts basis.⁵⁹ It also gives the Commission discretion to modify a proposed budget based on several criteria.⁶⁰ Organizations may also seek to amend their proposed budget during a proceeding if additional funding becomes necessary due to various circumstances, such as a change in scope of the proceeding, or positions taken by other parties.⁶¹

39. At the end of a proceeding (or if interim funding is requested by a Prioritized Organization, as discussed above), a Participating Organization with an approved budget will submit a request for payment to the Commission, with a copy served on the Participating Public Utility.⁶² As with proposed budgets, the Interim Agreement includes a form for requests for payment.⁶³ When applicable, this request must be made no later than 60 days after a Commission final order has become non-appealable. The request must: (a) itemize the expenses; (b) demonstrate that the expenses are reasonable and directly attributable to the organization's activities in the proceeding; (c) demonstrate that the organization has complied with any requirements in a Fund Grant; and (d) specify whether the request is for interim funding (if made by a Prioritized Organization) or for final payment.⁶⁴

40. The Participating Organization may request that details of the payment request be designated as confidential and protected from disclosure to the maximum extent allowable under

⁵⁸ *Id.*, Article 6.2.

⁵⁹ *Id.*, Article 6.4.

⁶⁰ *Id.*, Article 6.5.

⁶¹ *Id.*, Article 6.7.

⁶² Interim Agreement, Article 7.1.

⁶³ *Id.*, Exhibit B.

⁶⁴ *Id.*, Article 7.1.

Washington’s Public Records Act, Chapter 52.56 RCW.⁶⁵ In Oregon, requests for payment have been provided under the Oregon Commission’s standard protective order, and the Joint Parties expect a similar process would be acceptable in Washington.

41. As with proposed budgets, the Interim Agreement requests Commission review and approval of a request for payment within 30 days on a best-efforts basis.⁶⁶ If the Commission approves the request for payment, it will notify the Participating Utility of the approval, the amount to be paid, and the Sub-Fund from which it is to be taken.⁶⁷ In Oregon, this is done through an order that is served on all parties to the docket, including the requesting organization and the Participating Utility. Participating Public Utilities have 30 days from the date of the order to pay the approved amount.⁶⁸

F. Allocation Of Costs

42. Like the Oregon IFA, the Interim Agreement contemplates that Fund Grants will primarily be recovered from the customer classes the organization receiving the Fund Grant represents. In some circumstances this allocation will be straightforward, whereas in others it may not be clear if certain customer classes benefit more than others. The Interim Agreement, therefore, provides the Commission with discretion in how to allocate the costs, with the ultimate goal being to “fairly align the costs of the advocacy with the intended potential beneficiaries of the advocacy, regardless of actual outcome of the case.”⁶⁹

⁶⁵ Id.

⁶⁶ Id., Article 7.6.

⁶⁷ Id.

⁶⁸ Interim Agreement, Article 7.8.

⁶⁹ Id., Article 7.7(b).

43. Costs incurred by the Participating Public Utilities are eligible for deferral, with carrying costs at each Participating Utility's authorized rate of return until amortization is authorized, at which point the return will be at the published FERC rate.⁷⁰

G. Additional Provisions

44. In addition to the provisions discussed above, several additional provisions are worth mentioning here. First, the Interim Agreement allows for an organization to be decertified to receive funding under certain circumstances.⁷¹ These include if the organization has committed fraud or misrepresentation, or misappropriated a Fund Grant. Decertification may also occur if the organization fails to represent the interests of the customers it claimed to represent, or fails to comply with Commission orders or rules in a material way. The decertified organization may still recover Eligible Expenses incurred prior to decertification, unless decertification was due to fraud, misrepresentation, or misappropriation.

45. The Interim Agreement may also be terminated under certain circumstances, including if the Commission rejects all or any material part of the agreement, or if there is a material change to the law authorizing the funding provided in the Interim Agreement.⁷² Finally, the consumer parties had proposed to include in the Interim Agreement a provision from the Oregon IFA that requires Participating Public Utilities to make available to participants information regarding their outside costs for attorneys, experts, and consultants, and a good faith estimate of internal costs to participate in each significant regulatory proceeding. The Oregon IFA provides that these estimates were to be used by Participating Organizations only for

⁷⁰ Id., Article 7.9.

⁷¹ Id., Article 8.1.

⁷² Interim Agreement, Article 9.1.

internal purposes to support funding requests or for evaluating the Commission's intervenor funding program. They would not be allowed to be disclosed to third parties or used in any regulatory proceeding. The utilities objected to inclusion of this term. In order to resolve the disagreement, the consumer organizations agreed that this term would not be part of the Washington Interim Agreement, with the understanding that the issue would be open for discussion during the development of the next participant funding agreement, and that parties are free to take any position on the matter at that time.

VI. FURTHER PROCESS

46. Because the Interim Agreement is a one-year agreement, if the Commission approves it, the Joint Parties intend to meet and confer later in 2022 to discuss a longer-term agreement. Specifically, not later than ninety (90) days prior to the scheduled termination of this Agreement, interested parties will meet and confer, in order to discuss an acceptable form of longer-term funding agreement to supplant this Interim Agreement, based on any further input provided by the Commission or interested parties derived from actual operating experience under this Agreement. The Joint Parties will inform the Commission before these negotiations begin so that a representative from the Commission may attend these discussions if desired.

VII. CONCLUSION

47. For the foregoing reasons, the undersigned Joint Parties respectfully request that the Commission find that the Washington Interim Participatory Funding Agreement filed concurrently herewith to be consistent with RCW 80.28.430, the Commission's Policy Statement, and with the public interest, and that the Commission adopt and approve the Interim Agreement by Order.

48. Representatives of the Joint Parties will be available at the Open Meeting scheduled for consideration of this matter.

Dated this 14th day of February, 2022.

Respectfully submitted,

/s/ Jon Piliaris

Jon Piliaris
Puget Sound Energy

/s/ Tyler C. Pepple

Tyler C. Pepple
Alliance of Western Energy Consumers

/s/ David Meyer

David Meyer
Avista Corporation

/s/ Lauren McCloy

Lauren McCloy
NW Energy Coalition

/s/ Ajay Kumar

Ajay Kumar
PacifiCorp

/s/ Shawn Collins

Shawn Collins
The Energy Project

/s/ Lori Blattner

Lori Blattner
Cascade Natural Gas Corporation

/s/ Gloria D. Smith

Gloria D. Smith
Sierra Club

/s/ Zach Kravitz

Zach Kravitz
Northwest Natural Gas

/s/ Mariel Thuraisingham

Mariel Thuraisingham
Front & Centered

/s/ Andrea Axel

Andrea Axel
Spark Northwest