

Agenda Date: February 24, 2022
Item Number: A1

Docket: U-210595

Company Name: Puget Sound Energy, Avista Corporation d/b/a Avista Utilities, PacifiCorp d/b/a Pacific Power & Light Company, Cascade Natural Gas Corporation, Northwest Natural Gas Company d/b/a NW Natural

Staff: Hanna Navarro, Regulatory Analyst

Recommendation

Issue an order in Docket U-210595 approving the interim participatory funding agreement reached between jurisdictional gas and electric companies and groups representing various customer interests subject to the three modifications below.

- Remove language in Article 3 that dissolves the Agreement if the Commission modifies it.
- Add a catch-all clause to Article 6.5 that acknowledges the Commission’s broad discretion to regulate in the public interest.
- Remove language in Article 7.9 that would authorize utilities to accrue a carrying charge on deferred amounts.
- Remove language in Article 9.1 that allows any party to terminate the Agreement if the Commission modifies it.

Implementing this agreement with the above modifications will authorize funding for groups participating in the Commission’s regulatory processes as required by the Legislature.

Background

In 2021, the Legislature enacted Engrossed Substitute Senate Bill 5295 (SB5295), codified as RCW 80.28.430, to update the Washington Utilities and Transportation Commission’s (Commission) regulation of electric and natural gas utilities.¹ Among other things, the bill requires electric and gas companies to “upon request, enter into one or more written agreements with organizations that represent broad customer interests in regulatory proceedings conducted by the Commission.” The Legislature requires that any agreement prioritize funding for groups representing vulnerable populations or highly impacted communities (Prioritized Communities).

The Commission is directed to review and approve, approve with modifications, or reject these agreements.² To provide guidance on its interpretation of SB5295’s participatory funding

¹ See generally LAWS OF 2021, ch. 188.

² *Id.* at § 2, codified at RCW 80.28.430(2).

provisions, the Commission issued a notice, gathered comments, held a workshop, and ultimately, issued a Policy Statement (Policy Statement) on November 19, 2021.

Agreement

Following the issuance of the Policy Statement, the electric and gas companies subject to the Commission's jurisdiction and various customer advocacy groups developed an agreement. The parties have submitted a petition requesting the Commission's approval. Commission staff (Staff) believes this interim agreement aligns with the guidance provided by the Commission in its Policy Statement with three exceptions. A summary of key components of the agreement, points requiring clarification, and recommended modifications to the agreement is provided in this memo. An attachment (Attachment A) is provided with the specific recommended modifications. The full agreement is available in this docket.

Article 1 contains the agreement's definitions. Notably the definition for "eligible proceeding," preserves the Commission's discretion to determine whether certain complaint proceedings are eligible for funding.³

Article 2 defines the term of the agreement. If approved, the agreement will be effective between February 25, 2022, and December 31, 2022, unless otherwise approved by the Commission.

Article 3 states that the agreement will go into effect only if the Commission issues an order that approves of the agreement "without material changes."⁴ Staff believes this language contradicts RCW 80.28.430, which requires that any proposed agreement be "approved, approved with modifications, or rejected by the Commission." Staff recommends that the Commission require parties to modify the agreement by striking the words "without material modifications" from Article 3.

Article 4 creates the funds upon which stakeholders will draw and details the fund caps. There will be a fund for each utility, with each fund having two sub-funds. One of those contains the funds for organizations representing Prioritized Communities, the other contains funds for organizations representing other customer interests.⁵ Consistent with the Policy Statement, these amounts represent .01 percent of operating revenue for each utility up to \$300,000.⁶

³ Agreement § 1(c); *see* Policy Statement at 10 ¶ 35 & n.20.

⁴ Agreement § 3.1.

⁵ Prioritized Organizations may request funds from the Customer Representation sun-fund if the Prioritized Organization Sub-Fund is exhausted (Agreement § 4.2.).

⁶ Policy Statement at 14-16 ¶¶ 46-52.

	PSE	AVISTA	PACIFICORP	CASCADE	NW NATURAL
Consumer Access Fund (total)	\$300,000	300,000	300,000	265,512	72,735
Prioritized Organizations Sub-Fund	100,000	100,000	100,000	88,504	24,245
Customer Representation Sub-Fund	200,000	200,000	200,000	177,008	48,490

The Agreement states in Section 4.4 that any unused balances in Fund accounts shall be eliminated upon the termination of this Interim Agreement. The Commission did not address this in its Policy Statement, but Staff believes this is acceptable given the interim nature of the agreement.

Article 5 contains the criteria defining eligibility for obtaining participatory funding. The Agreement requires an organization seeking funding to obtain certification from the Commission for each proceeding.⁷ For the sub-funds available to organizations representing Prioritized Communities, the criteria specify that the organization must not be a for-profit or governmental entity, with the exception of tribal entities; the organization must represent Prioritized Communities, and demonstrate its ability to effectively represent those communities.⁸

In the Policy Statement, the Commission ruled out funding for governmental entities.⁹ The agreement nevertheless contains a term authorizing tribal entities to obtain funding.¹⁰ Staff believes that the Commission should approve the agreement without modification to that term. Staff understood the Commission’s proscription on funding for governmental entities to be aimed at entities like Public Counsel and the Federal Executive Agencies, rather than at tribal entities. Tribal governments are the natural advocates for some of the highly impacted communities that SB 5295 requires participatory funding agreements to prioritize for funding. Further, the Commission used the definition of “highly impacted community” provided in RCW 19.405.020, which includes “...a community located in census tracts that are fully or partially on “Indian country” as defined in 18 U.S.C. Sec. 1151.” This provision is thus consistent with the legislative intent behind SB 5295.

⁷ Agreement § 5.1.

⁸ Agreement § 5.2 includes a list of example ways that organizations may demonstrate ability to represent Prioritized Communities that does not require prior participation in Commission regulatory processes.

⁹ Policy Statement at 8 ¶ 29.

¹⁰ Agreement § 5.2.2(a).

Article 6 describes fund request procedures and timing pertaining to both participating organizations and the Commission.

The funding agreement details a process for submitting funding agreements, requests for funding, proposed budgets, and reimbursement requests to the Commission on a case-by-case basis. The requests must specify from which sub-fund the organization requests funding and include a description of how the request meets the eligibility criteria detailed in section 5.2.¹¹

Staff has one modification recommendation regarding section 6.5 which provides that when the Commission receives one or more Notices of Intent and one or more proposed budgets and includes factors the Commission may consider when determining the amount of fund grants that will be made available and the allocation of that amount among applicants. Because the list of factors is exhaustive, Staff recommends the Commission modify the Agreement to include a catch-all phrase which clarifies that the Commission may base its decision on any factors the Commission deems relevant.” This will ensure the agreement reflects the Commission’s broad discretion to regulate in the public interest.

Lastly, Staff notes that the stakeholders involved have through the agreement required the Commission to make best efforts to meet certain deadlines. Staff recommends that the Commission make clear in any order approving the agreement that the Commission is not binding itself to compliance with those deadlines.

Article 7 details payment of grants including timing and eligible expenses. To receive payment, a participating organization must submit a request for payment to the Commission and serve a copy on the utility from whose account payment is to be made. Requests must be made no later than 60 days after the Commission’s final order in a proceeding has become final and non-appealable.¹² Requests must itemize expenses, demonstrate that they are reasonable, provide sufficient information to show that the organization has complied with any condition or requirement of the fund grant, and specify whether the request is for interim funding.

Only organizations representing Prioritized Communities may request funding on an interim basis from the Prioritized Organization Fund and only for incurred expenses.¹³

The agreement lists eligible expenses which include costs incurred in relation to a proceeding for which an organization has an approved budget, but which were incurred prior to the effective date of this interim agreement.¹⁴ The Commission did not provide guidance on this topic, but Staff sees the provision for funding of work begun before the Commission approves the agreement as consistent with the legislative intent behind SB 5295.

¹¹ Agreement § 6.2.

¹² Agreement § 7.1

¹³ Agreement § 7.2.: i.e., by showing an invoice or other request for payment.

¹⁴ Agreement §§ 7.3-7.5.

The agreement also allows for any participating organization to receive funding for conducting general outreach and developing awareness of participation opportunities for organizations representing Prioritized Communities.¹⁵

Lastly, Article 7 provides that the Commission will determine in each proceeding how to recover the fund grants from the various customer classes of the affected utility,¹⁶ and specifies the terms of any deferral for costs associated with participatory funding. This article also provides in the second sentence, that “amounts deferred will include a carrying cost equal to a Company’s authorized rate of return, until such deferral is amortized, where it will receive a return using the then-published FERC rate.” Staff recommends that the Commission strike through this language. Assessing a carrying charge would allow shareholders to profit from ratepayer-provided funds, which is inconsistent with the spirit of the statute. Additionally, the Commission does not preauthorize any ratemaking treatment.

Article 8 discusses terms of eligibility and termination of case-certification.

Article 9 discusses termination of the agreement. As with Article 8, Article 9 spells out the consequences of the termination of the agreement. Article 9.1(a) provides that any party may terminate the Agreement if the Commission rejects a material part of it or adds a condition that has a material effect on its terms and conditions. Staff believes this language contradicts RCW 80.28.430, which requires that any proposed agreement be “approved, approved with modifications, or rejected by the Commission.” Staff recommends the Commission strike the words “all or a material part of this Interim Agreement or adds a condition that has a material effect on the terms and conditions of” from Article 9.1(a).

Article 10 discusses other miscellaneous topics. Of relevance, it requires the stakeholders to engage in certain alternative dispute resolution before presenting a dispute to the Commission and selects Washington’s law as the law governing the agreement.

Discussion

In Staff’s view, this agreement except as otherwise noted, aligns with the guidance the Commission set-forth in its Policy Statement. The funding limits are appropriate. There is funding set aside for organizations representing Prioritized Communities and there are other mechanisms in place for prioritizing these communities as well. The Commission retains discretion to approve funding where appropriate. And the agreement is not permanent and will expire on December 31, 2022, unless an extension is approved by the Commission.

¹⁵ Agreement § 7.4. expenses include consulting fees, training and education that provide technical assistance about the subjects of utility regulation and commission proceedings and case law

¹⁶ Agreement § 7.7.

Recommendation

Staff recommends the Commission issue an Order in Docket U-210595 approving of the agreement with the three modifications and one point of clarification listed below.

- Remove language in Article 3 that dissolves the Agreement if the Commission modifies it.
- Add a catch-all clause to Article 6.5 that acknowledges the Commission's broad discretion to regulate in the public interest.
- Remove language from Article 7.9 that would authorize utilities to accrue a carrying charge on deferred amounts.

Finally, Staff recommends the Commission clarify that it is not bound by the timeframes set out in the Agreement. Staff believes that if implemented with the recommended modifications, this participatory funding agreement between the participating organizations and the participating utilities will enable greater public participation in the Commission's regulatory processes as SB5295 intended.