

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

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, THE ALLIANCE OF WESTERN ENERGY CONSUMERS, NW ENERGY COALITION, THE ENERGY PROJECT, SIERRA CLUB, FRONT & CENTERED, AND SPARK NORTHWEST,

Petitioners,

For An Order Approving an Interim Participatory Funding Agreement between 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, the Alliance of Western Energy Consumers, NW Energy Coalition, The Energy Project, Sierra Club, Front & Centered, and Spark Northwest

DOCKET U-210595

ORDER 01

APPROVING AGREEMENT WITH MODIFICATIONS

BACKGROUND

- 1 On February 14, 2022, 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, the Alliance of Western Energy Consumers, NW Energy Coalition, The Energy Project, Sierra Club, Front & Centered and Spark Northwest (collectively, Joint Parties) filed with the Washington Utilities and Transportation Commission (Commission) a petition seeking an order authorizing Puget Sound Energy, Avista Corporation d/b/a Avista Utilities, PacifiCorp d/b/a Pacific Power

& Light Company, Cascade Natural Gas Corporation, and Northwest Natural Gas Company d/b/a NW Natural (Companies) to enter into funding agreements with certain customer advocacy organizations, thereby implementing an interim participatory funding agreement (Agreement) to enhance public participation in the Commission’s regulatory processes pursuant to RCW 80.28.430. The Agreement will take effect February 25, 2022, and will remain in place until December 31, 2022, unless extended or terminated earlier with Commission approval.

- 2 The Washington State Legislature passed Engrossed Substitute Senate Bill 5295 in 2021, codified as RCW 80.28.430. The measure required utilities to enter into funding agreements with organizations that represent broad customer interests. The Commission is directed to determine the amount of financial assistance, if any, that may be provided to any organization; the way the financial assistance is distributed; the way the financial assistance is recovered in a utility’s rates; and other matters necessary to administer the agreement. Such agreements for participatory funding must prioritize organizations that represent highly impacted communities and vulnerable populations (Prioritized Communities).
- 3 On August 19, 2021, the Commission issued a notice seeking input from stakeholders and utilities, and on September 28, 2021, the Commission hosted a workshop. After considering stakeholder input, including written comments from 11 interested parties, the Commission issued a Policy Statement on Participatory Funding for Regulatory Proceedings (Policy Statement) on November 19, 2021, that provides interim, high-level guidance on participatory funding agreements. The Policy Statement includes guidance on funding caps; funding for Prioritized Communities; the Commission’s interpretation of “eligible organizations,” “eligible proceedings,” and “broad customer interests”; and process requirements for the distribution of funds.
- 4 After the Policy Statement was issued, the Joint Parties entered discussions to negotiate the interim, one-year funding Agreement. The Agreement is limited to a one-year term, makes up to .01 percent of operating revenue available from each company (up to a cap of \$300,000 per utility), sets aside one-third of funding for organizations representing Prioritized Communities, and details a process that includes Commission approval for all requests for funds and final payments.
- 5 Commission staff (Staff) reviewed the Agreement and believes it closely aligns with the guidance in the Policy Statement. Staff believes that the funding limits are appropriate, and that the Agreement appropriately sets funding aside for organizations representing Prioritized Communities. Staff believes that, if implemented with minor modifications,

the Agreement will enable greater public participation in the Commission's regulatory processes as SB5295 intended. Staff recommends the Commission make the following modifications to the Agreement:

- 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.

Finally, Staff recommends the Commission clarify that it is not bound by the timeframes set out in the Agreement.

DISCUSSION

6 We agree, for the most part, with Staff's recommendation and approve the Agreement with several modifications.

7 First, Article 3 of the Agreement includes language stating that the obligations and rights of the Parties are subject to the condition precedent that the Commission issue an order approving the Agreement "without material modifications." This limitation conflicts with RCW 80.28.430, which requires that any proposed agreement be "approved, approved with modifications, or rejected by the Commission." The Joint Parties may not include language that dissolves the agreement in the event the Commission makes "material modifications" when the statute expressly allows the Commission to make modifications without disturbing the remainder of the agreement. Accordingly, we require the Joint Parties to modify the Agreement by striking the words "without material modifications" from Article 3.

8 For this same reason, we require the Joint Parties to modify Article 9.1(a) of the Agreement, which 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. Specifically, the Joint Parties are required to 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."

- 9 Second, Article 6.5 of the Agreement governs situations 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, we require the Joint Parties to modify the Agreement to include a subsection (j) that states “or any other factors the Commission deems relevant.” Although the list of factors is presented as optional, we require this modification to ensure the Agreement appropriately reflects the Commission’s broad discretion to regulate in the public interest.
- 10 Third, Article 7.9 of the Agreement, related to the recovery of grant funds, provides that amounts in any deferred account will include a carrying cost equal to a utility’s authorized rate of return, until the deferral is amortized, at which time it will receive a return at the current FERC rate. To mitigate the impact of the carrying costs on ratepayers, the Commission requires utilities to file annual tariff revisions to recover those deferred amounts. Accordingly, we require the Joint Parties to add the following language to Article 7.9 as the penultimate sentence to that section: “Participating Public Utilities must file tariff revisions to recover deferred costs annually in a proceeding where the Commission retains authority to approve costs.” We further require the Joint Parties to delete the words “timing and” from the second sentence of the section to effectuate this modification.
- 11 Finally, the Agreement includes several timelines for Commission action that require the Commission to make “best” or “reasonable” efforts to act on proposed funding budgets, act on an amended budget proposal, act on requests for case-certification, or act on a request for payment of a fund grant within certain timeframes. Although the Commission intends to act on these items in a timely matter, the Commission clarifies by this Order that it is not bound by the timelines set out in the Agreement.
- 12 Overall, the Commission finds that the Agreement serves the public interest, and that the funding made available through the Agreement represents a reasonable allocation of financial assistance. Accordingly, we approve the Agreement with the modifications described above and reflected in Attachment A to this Order.

FINDINGS AND CONCLUSIONS

- 13 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including electric and gas companies.
- 14 (2) Puget Sound Energy, PacifiCorp d/b/a Pacific Power & Light Company, and Avista Corporation d/b/a Avista Utilities are an electric and natural gas companies and public service companies subject to Commission jurisdiction. Northwest Natural Gas Company d/b/a NW Natural and Cascade Natural Gas Corporation are natural gas companies subject to the Commission's jurisdiction.
- 15 (3) RCW 80.28.430 requires investor-owned utilities to enter into funding agreements with organizations that represent broad customer interests, including the Agreement for which the Joint Parties seek approval.
- 16 (4) Staff has reviewed the Petition and the Agreement filed in this docket.
- 17 (5) Staff believes the proposed Agreement the Joint Parties request is reasonable and in the public interest, and that it should be granted with modifications.
- 18 (6) This matter came before the Commission at its regularly scheduled meeting on February 24, 2022.
- 19 (7) RCW 80.28.430 also delegates to the Commission the authority to review and approve an agreement, approve an agreement with modifications, or reject an agreement.
- 20 (8) The Agreement filed by the Joint Parties, with certain modifications, is consistent with both RCW 80.28.430 and the Commission's Policy Statement and should be approved.
- 21 (9) After reviewing the Petition filed in Docket **Error! Reference source not found.** on February 14, 2022, and giving due consideration to all relevant matters and for good cause shown, the Commission finds that the Agreement should be approved with the modifications described in paragraphs 7-10, above, and as reflected in Attachment A to this Order.

ORDER

THE COMMISSION ORDERS:

- 22 (1) The Agreement filed by 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, the Alliance of Western Energy Consumers, NW Energy Coalition, The Energy Project, Sierra Club, Front & Centered and Spark Northwest is approved with the modifications described in paragraphs 7-10 of, and reflected in Attachment A to, this Order.
- 23 (2) This Order shall not affect the Commission's authority over rates, services, accounts, valuations, estimates, or determination of costs, on any matters that may come before it. Nor shall this Order be construed as an agreement to any estimate or determination of costs, or any valuation of property claimed or asserted.
- 24 (3) The Commission retains jurisdiction over the subject matter and the Joint Parties to effectuate the provisions of this Order.

DATED at Lacey, Washington, and effective February 24, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner