

**PUBLIC UTILITY COMMISSION OF OREGON  
ADMINISTRATIVE HEARINGS DIVISION REPORT  
PUBLIC MEETING DATE: October 20, 2015**

REGULAR \_\_\_\_\_ CONSENT   X   EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

**DATE:** October 2, 2015

**TO:** Public Utility Commission

**FROM:** Michael Grant, Chief Administrative Law Judge *MG*

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION: (Docket No. UM 1357)  
Approval of the Third Amended and Restated Intervenor Funding Agreement

**ADMINISTRATIVE LAW JUDGE RECOMMENDATION:**

The Commission should approve the Third Amended and Restated Intervenor Funding Agreement set forth in Attachment A.

**DISCUSSION:**

Parties to the Second Amended and Restated Intervenor Funding Agreement (IFA) have submitted a revised IFA to increase funding levels for certain Commission proceedings. The parties' Third Amended and Restated IFA increases Issue Fund amounts for Northwest Natural Gas Company, dba NW Natural, and Avista Corporation, dba Avista Utilities, as follows:

ISSUE FUND <sup>1</sup>	NW NATURAL	AVISTA
Current Amount	\$66,125	\$34,500
Proposed Amount	\$143,750	\$70,000

The proposed increase reflects the significant growth in regulatory activity related to these natural gas utilities. The revised IFA makes no other changes to the IFA, which is effective through December 2017.

<sup>1</sup> The Issue Fund is available to all parties that are pre-certified or case certified to receive intervenor funding. Currently, only the Citizens' Utility Board of Oregon (CUB) and the Northwest Industrial Gas Users (NWIGU) are pre-certified for proceedings involving NW Natural and Avista Utilities.

Although the proposed funding increase relates only to funding for cases involving NW Natural and Avista Utilities, the IFA requires that any modifications are effective only with the written approval of each party to that agreement. Therefore, all parties were required to sign the revised amendment in order for the agreement to be effective. These parties are: NW Natural; Avista Utilities, CUB, NWIGU, Portland General Electric Company; PacifiCorp, dba Pacific Power; Cascade Natural Gas Corporation; and Industrial Customers of Northwest Utilities.

The IFA is authorized by ORS 757.072, which allows energy utilities to enter into agreements for the financial assistance to organizations representing broad customer interests in Commission proceedings. Under ORS 757.072, the Commission must approve any agreement before any financial assistance is provided.

I recommend the Commission find that the Third Restated and Amended Intervenor Funding Agreement serves customers and is in the public interest. The Commission should approve the agreement under ORS 757.072 to allow the provision of increased financial assistance agreed to by the signatories for proceedings related to NW Natural and Avista Utilities.

**PROPOSED COMMISSION MOTION:**

The Commission approve the Third Restated and Amended Funding Agreement set forth in Attachment A.

# **THIRD AMENDED AND RESTATED INTERVENOR FUNDING AGREEMENT**

**BY AND AMONG**

**PORTLAND GENERAL ELECTRIC COMPANY**

**PACIFICORP**

**NORTHWEST NATURAL GAS COMPANY**

**CASCADE NATURAL GAS CORPORATION**

**AVISTA UTILITIES**

**INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES**

**CITIZENS' UTILITY BOARD OF OREGON**

**NORTHWEST INDUSTRIAL GAS USERS**

**August 1, 2015**

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### **THIRD AMENDED AND RESTATED INTERVENOR FUNDING AGREEMENT**

This Third Amended and Restated Intervenor Funding Agreement (the "Agreement"), effective as of August 1, 2015 (the "Effective Date"), is by and among Portland General Electric Company ("PGE"), an Oregon corporation; PacifiCorp ("PacifiCorp"), an Oregon corporation; Northwest Natural Gas Company ("Northwest Natural"), an Oregon corporation; Cascade Natural Gas Corporation ("Cascade"), a Washington corporation; Avista Corporation, dba Avista Utilities ("Avista"), a Washington corporation; Industrial Customers of Northwest Utilities ("ICNU"); an Oregon nonprofit corporation; Citizens' Utility Board of Oregon ("CUB"), an Oregon nonprofit corporation; and Northwest Industrial Gas Users ("NWIGU"), an Oregon nonprofit corporation (collectively, the "Parties"). As of the Effective Date and subject to the condition precedent below, this Third Amended and Restated Intervenor Funding Agreement supersedes and replaces the Second Amended and Restated Intervenor Funding Agreement, dated January 1, 2013.

#### **RECITALS**

WHEREAS, the purpose of this Agreement is to make funds available to qualified parties to enable them to advocate on behalf of broad customer interests in proceedings before the Oregon Public Utility Commission (the "Commission"); and

WHEREAS, the parties to the Second Amended and Restated Intervenor Funding Agreement wish to amend it;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

### **Article 1** **Definitions**

Except as otherwise defined herein, capitalized terms used in this Agreement have the meanings assigned to them as follows:

- (a) "Participating Intervenor" or "Participating Intervenors" means NWIGU, ICNU, or CUB.
- (b) "Eligible Expense" has the meaning set forth in Section 7.4 of this Agreement.
- (c) "Eligible Proceeding" means any Commission proceeding that directly affects one or more of the Participating Public Utilities, including, but not limited to, rulemaking proceedings, declaratory ruling proceedings, and contested case proceedings, but does not include complaint proceedings if one or more of the Participating Intervenors initiates or causes to be initiated the complaint proceeding.
- (d) "Intervenor Funding Grant" means any intervenor funding grant made available under the terms of this Agreement.
- (e) "CUB Fund" has the meaning set forth in Section 4.2.1 of this Agreement.
- (f) "CUB Fund Grant" means an Intervenor Funding Grant from one of the CUB Fund accounts.
- (g) "Preauthorized Matching Fund" has the meaning set forth in Section 4.2.2 of this Agreement.
- (h) "Preauthorized Matching Grant" means an Intervenor Funding Grant from one of the Preauthorized Matching Fund accounts.
- (i) "Issue Fund" has the meaning set forth in Section 4.2.3 of this Agreement.

(j) "Issue Fund Grant" means an Intervenor Funding Grant from one of the Issue Fund accounts.

(k) "Participating Public Utility" or "Participating Public Utilities" means Northwest Natural, PacifiCorp, PGE, Cascade or Avista.

(l) "Public Utility" shall have the meaning set forth in ORS 757.005.

## **Article 2**

### **Term**

The Agreement shall be effective beginning on the Effective Date of this Agreement and shall continue in effect until December 31, 2017, unless terminated earlier pursuant to the terms of Article 9 of this Agreement (the "Term").

## **Article 3**

### **Condition Precedent**

The obligations and rights of the Parties under this Agreement are subject to the condition precedent that the Commission issue an order (i) approving this Agreement without material modifications and (ii) finding that the intervenor funding program implemented through the Agreement serves customers and is in the public interest.

## **Article 4**

### **Scope**

4.1 General. Intervenor funding grants will be made available pursuant to the terms of this Agreement ("Intervenor Funding Grants") as a supplement to the organization's own significant funding of activities before the Commission. Intervenor Funding Grants may not be used in a complaint proceeding by an intervenor that has initiated, or caused to be initiated, the complaint proceeding. Intervenor Funding Grants will not be made available for proceedings involving telecommunications utilities, water utilities, or wastewater utilities unless the proceedings relate to one or more of the Participating Public Utilities.



4.2 Funds and Accounts. There shall be established three funds from which Intervenor Funding Grants can be made under this Agreement: a CUB Fund, a Preauthorized Matching Fund, and an Issue Fund, as each is defined below ("Fund(s)"). Accounts for the Funds shall be established for each of the Participating Public Utilities. For each calendar year during the Term of this Agreement, the following amounts shall be made available in each account:

	PGE	PACIFICORP	NW NATURAL	CASCADE	AVISTA
CUB Fund	\$66,125	\$66,125	\$66,125	\$34,500	\$34,500
Preauthorized Matching Fund	\$66,125	\$66,125	\$66,125	\$34,500	\$34,500
Issue Fund	143,750	\$143,750	\$143,750	\$34,500	\$70,000

The above amounts reflect the annual amount made available in each account (the "Annual Grant Amount"). During the Term, the Annual Grant Amounts shown above may be supplemented pursuant to the terms of Sections 4.3 and 4.4 below.

4.2.1 CUB Fund. This fund will be established for use by CUB for expenses, including, but not limited to, general operations, overhead, or the hiring of personnel or consultants. CUB may not use grants from the CUB Fund for political activities or fund raising. There will be five CUB Fund accounts, one for each of the Participating Public Utilities. For each calendar year during the Term of this Agreement, the Annual Grant Amount will be the amount shown in Section 4.2 above, which may be supplemented under the terms of Sections 4.3 and 4.4 below.

4.2.2 Preauthorized Matching Fund. There shall be five Preauthorized Matching Fund accounts, one for each of the Participating Public Utilities. For each calendar

year during the Term of this Agreement, the Annual Grant Amount shall be the amount shown in Section 4.2 above for each of the Preauthorized Matching Fund accounts, which may be supplemented under the terms of Sections 4.3 and 4.4 below. Preauthorized Matching Grants shall be provided only if the applicant demonstrates that it has provided matching grants pursuant to the terms of Section 7.2 of this Agreement. Preauthorized Matching Grants shall be limited to the amounts available in the Preauthorized Matching Fund accounts from which funding is sought. A Preauthorized Matching Grant may be used solely to pay Eligible Expenses for Eligible Proceedings involving the Participating Public Utility that is the account holder. For example, Preauthorized Matching Grants from the PGE account may be used solely to pay Eligible Expenses for Eligible Proceedings involving PGE. Preauthorized Matching Fund accounts for PGE and PacifiCorp will be available for use exclusively by ICNU according to the terms of this Agreement. The Preauthorized Matching Fund accounts for Northwest Natural, Cascade and Avista will be available for use exclusively by NWIGU according to the terms of this Agreement. An intervenor that is decertified pursuant to the terms set forth in Section 8.1 below may not receive Preauthorized Matching Grants. If NWIGU or ICNU is decertified, the Commission may either transfer the balances from the Preauthorized Matching Fund accounts into the corresponding Participating Public Utility Issue Fund accounts or commence a proceeding to select another intervenor to use the Preauthorized Matching Grant previously available to ICNU or NWIGU, as the case may be.

4.2.3 Issue Fund. There shall be five Issue Fund accounts, one for each of the Participating Public Utilities. For each calendar year during the Term of this Agreement, the Annual Grant Amount for each account shall be the amount shown in Section 4.2 above. Receipt of grants from an Issue Fund shall be subject to the matching fund requirements specified in

Sections 6.5 and 7.3 below. The Annual Grant Amount may be supplemented pursuant to the terms set forth in Section 4.3 below. The Commission will authorize Issue Fund Grants pursuant to the criteria and process set forth in Article 6 and Article 7 below. Issue Fund Grants shall be limited to the amount available in the Issue Fund account from which funding is sought. An Issue Fund Grant may be used solely to pay Eligible Expenses for Eligible Proceedings involving the Participating Public Utility that is the account holder. For example, Issue Fund Grants from the PGE Issue Fund account may be used solely to pay Eligible Expenses for Eligible Proceedings involving PGE. Any intervening party that is precertified or case-certified will be eligible to apply for Issue Fund Grants. The Commission shall review such applications using the criteria set forth in Section 6.5 below. Participating Intervenors may not be denied Issue Fund Grants on the grounds that they will receive CUB Fund Grants or Preauthorized Matching Grants under this Agreement.

4.3 Rollover.

- (a) A balance in any of the Fund accounts that is unused in any year during the Term of the Agreement will be carried over at the end of the calendar year and made available for use in succeeding years, subject to the limitations identified in this Section 4.3 (the "Rollover"). The amount of the Rollover that may be used in any calendar year during the Term shall not exceed the Annual Grant Amount associated with the applicable account set forth in Section 4.2 of this Agreement. For example, no more than \$143,750 may be rolled over in one year in PacifiCorp's Issues Fund account and no more than \$66,125 may be rolled over in one year for PGE's Preauthorized Matching Fund account.

- (b) If ICNU or NWIGU submits a request for payment of an Issue Fund Grant from a Participating Public Utility under Section 7.3 of this Agreement in any calendar year (the "Submittal Year"), and if by April 1 of the subsequent year ICNU or NWIGU requests for payment of Preauthorized Matching Grants filed under Section 7.2 of this Agreement do not exhaust the applicable Preauthorized Matching Fund of the same Participating Public Utility for the Submittal Year (including, but not limited to, any amounts in the applicable Preauthorized Matching Fund that were rolled over into the Submittal Year), the amount of funds authorized to be paid under the requests for payment of Issue Fund Grants filed by ICNU or NWIGU in the Submittal Year will be deducted from the amount of the Rollover in the applicable Preauthorized Matching Fund carried over from the Submittal Year. The resulting Rollover will not be less than zero. The amount of funds available in the applicable Issue Fund shall not increase based on the deduction from, or elimination of, the Rollover amount through the operation of this subsection. The intended effect of this subsection is illustrated by the examples attached as Exhibit A to this Agreement.
- (c) Amounts available in a Preauthorized Matching Fund for a calendar year shall continue to be shown as available into the subsequent year until the April 1 deadline for requests for payment to be submitted under Section 7.2 of this Agreement and for Intervenor's reports to be submitted under Section 6.8 of this Agreement. The Rollover from year-end balances in a Preauthorized Matching Fund, including any adjustments made pursuant to subsection (b) of this Section, shall be determined after April 1 of the subsequent year.

4.4 Advance. NWIGU, ICNU and CUB may request to use in any calendar year during the Term amounts that would otherwise be available in the respective CUB Fund accounts or Preauthorized Matching Fund accounts in the next year, subject to the limitations identified in this Section and Sections 7.1 and 7.2 of the Agreement (an "Advance"). An Advance will not be available from the Issue Fund. However, the Commission may approve an Issue Fund Grant from funds that will be made available in the next calendar year when the proceeding for which the Issue Fund Grant is sought is expected to continue into that year and funds in the current year Issue Fund are inadequate to provide the level of Issue Fund Grants that the Commission determines is appropriate. An Advance may not be used in the last year of the Term of this Agreement. An Advance shall have the effect of reducing by the amount of the Advance the Annual Grant Amount that would otherwise be made available in the next year in the applicable Preauthorized Matching Fund or CUB Fund account. The amount of the Advance that may be used in any calendar year during the Term shall not exceed the Annual Grant Amount associated with the applicable account set forth in Section 4.2 of this Agreement. For example, no more than \$66,125 may be advanced (on a combined basis) in one year for PGE's Preauthorized Matching Fund account.

4.5 Unused Balances. The unused balances in Fund accounts shall be eliminated upon the termination of this Agreement (whether as a result of a termination pursuant to Section 9.1 below or at the end of the Term), except that certain expenditures incurred pursuant to a Commission-authorized Intervenor Funding Grant awarded before termination may be reimbursed according to the terms specified in Section 9.3 below. Unused balances in Fund accounts at the end of 2007 may be rolled over to 2008, subject to the limitations of subsection 4.3(a) above but not subsection 4.3(b).

**Article 5**  
**Issue Fund Grant Eligibility (Precertification and Case-Certification)**

5.1 General. Only parties that are precertified, or parties who become case-certified for a particular proceeding, will be eligible to receive Issue Fund Grants. The Commission will provide the opportunity to submit applications for precertification at least once every 12 months during the Term of the Agreement. The Commission will act on such applications within 30 days of the date when such applications are submitted. Once precertified, an organization will remain precertified for the Term of this Agreement unless the Commission terminates the precertification under Section 8.1 of this Agreement.

5.2 Precertification. The Commission will precertify organizations meeting the criteria of paragraph (a) or (b) of this Section as eligible to receive Issue Fund Grants.

- (a) The Citizens Utility Board, as a representative of residential customers;
- (b) Not for profit organizations that meet all of the following criteria:
  - (1) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;
  - (2) The organization represents the interests of a broad group or class of customers and those interests are primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of utility services;
  - (3) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

- (4) The organization's members who are customers of one or more of the Participating Public Utilities contribute a significant portion of the overall support and funding of the organization's activities in the state; and
- (5) The organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests.

5.3 Case-Certification. Organizations meeting all of the following criteria may be case-certified by the Commission to be eligible to receive an Issue Fund Grant:

- (a) The organization is (i) a not for profit organization; or (ii) demonstrates it is in the process of becoming a nonprofit corporation; or (iii) is comprised of multiple customers of one or more Participating Public Utilities and demonstrates that a primary purpose of the organization is to represent broad utility customer interests.
- (b) The organization represents the interests of a broad group or class of customers and its participation in the proceeding will be primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the impact of the rates and terms and conditions of service to the customer group;
- (c) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;
- (d) The organization's members who are customers of one or more of the Participating Public Utilities affected by the proceeding contribute a significant percentage of the overall support and funding of the organization;

- (e) The organization demonstrates, or has demonstrated in past Commission proceedings, the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service, including in any proceeding in which the organization was case-certified and received an Intervenor Funding Grant;
- (f) The organization demonstrates that (1) no precertified intervenor participating in the proceeding adequately represents the specific interests of the class of customers represented by the organization related to rates and terms and conditions of service; or (2) that the specific interests of a class of customers will benefit from the organization's participation; and
- (g) The organization demonstrates that its request for case-certification will not unduly delay the schedule of the proceeding.

#### **Article 6**

#### **Issue Fund Grant Request Procedures**

6.1 Eligible Proceedings. Requests for an Issue Fund Grant may be made only in an Eligible Proceeding.

6.2 Notice of Intent to Request an Issue Fund Grant. Any potential intervenor seeking an Issue Fund Grant must file a notice of intent to request an Issue Fund Grant ("Notice of Intent") when it submits its petition to intervene or notice of intervention in the matter or, for matters that do not involve a formal intervention, at such other time as the Commission designates. The Notice of Intent must be served on each affected Participating Public Utility, all precertified organizations, and all parties of record in the proceeding or, if no such list has been established, to such other persons as the Commission designates. The Notice of Intent must identify the Participating Public Utility account or accounts from which the intervening party



intends to request an Issue Fund Grant. An intervenor that is not precertified must apply for case-certification on or before the time it submits its Notice of Intent. The Commission will act on requests for case-certification at least 14 days before the time set for precertified and case-certified intervenors to submit proposed budgets.

6.3 Proposed Budgets. Precertified and case certified intervenors seeking an Issue Fund Grant must submit, on a standardized form approved by the Commission, a proposed budget to the Commission along with such other information as the Commission may require to consider the request. A proposed budget must include: (a) a statement of work to be performed by the applicant for which the applicant is seeking an Issue Fund Grant; (b) a description of the areas to be investigated by the intervenor; (c) a description of the particular customer class or classes that will benefit from the intervenor's participation; (d) identification of the specific account or accounts from which the intervenor is seeking an Issue Fund Grant and an estimate of the amount of available funds in that account; (e) a budget showing estimated attorney fees, which may include the cost for appropriate support staff and operational support; (f) a budget showing estimated consultant fees and expert witness fees, which may include the cost for appropriate support staff and operational support; and (g) a representation that the intervenor will use matching funds in the form of either in-house resources or outside funding to account for or pay at least 20% of the Eligible Expenses for the work to be performed for which the intervenor is seeking an Issue Fund Grant. The deadline for submitting proposed budgets will be 30 days after the prehearing conference at which the schedule for the proceeding is established or by such other date as the Commission designates. Proposed budgets shall be served on the Commission and all parties of record in the proceeding. An intervenor may submit a combined proposed budget for related proceedings that are being considered concurrently by the Commission. In

proceedings with multiple phases, proposed budgets should encompass work to be performed for the initial phase of the proceeding. In the event the proceeding continues beyond the initial phase, the Commission will establish a schedule for intervenors to submit proposed budgets for any later phase(s) of the proceeding. If the intervenor expects to incur Eligible Expenses in an Eligible Proceeding in more than one calendar year, the proposed budget may seek an Issue Fund Grant from funds that will be made available in the next calendar year. In such cases, the proposed budget should identify the amount of funds requested from each year's fund.

6.4 Additional Information. The Commission may seek additional information concerning proposed budgets. The Commission will act upon proposed funding budgets, within 14 days of receiving the proposed budgets or, if applicable, any supplemental information provided in response to the Commission's request.

6.5 Commission Decision. If the Commission receives one or more Notices of Intent and one or more proposed budgets, then the Commission will determine the amount, if any, of Issue Fund Grants that will be made available for the Eligible Proceeding and the allocation of that amount among the intervening parties. The Commission may make these determinations based upon the following factors: (a) the breadth and complexity of the issues; (b) the significance of any policy issues; (c) the procedural schedule; (d) the dollar magnitude of the issues at stake; (e) the participation of other parties that adequately represent the interests of customers; (f) the amount of funds being provided by the applicant intervenor; (g) the qualifications of the party and experience before the Commission; (h) the level of available funds in the Fund account or accounts involved; and (i) other Eligible Proceedings in which intervenors may seek additional Issue Fund Grants from the same Fund account or accounts. The Commission shall condition Issue Fund Grants on the intervenor providing evidence that the

intervenor has used in-house resources or outside funding to account for or pay at least 20% of the Eligible Expenses for the work to be performed in the proceeding for which the intervenor is seeking an Issue Fund Grant. The Commission may deny, in whole or in part, a request for an Issue Fund Grant based on the above criteria and requirements. The Commission may place reasonable conditions on Issue Fund Grants, including but not limited to requiring that intervenors use in-house resources or outside funding to account for or pay more than 20% of the Eligible Expenses for the work to be performed in the proceeding for which the intervenor is seeking an Issue Fund Grant. Except as provided in this Section, an Issue Fund Grant shall constitute a binding obligation on the Commission to order reimbursement of Eligible Expenses subject to satisfaction of any conditions imposed on the Issue Fund Grant and the requirements set forth in Article 7 and Article 8 below. The Commission may amend an Issue Fund Grant if it finds that there has been a material change in the breadth and complexity of the issues, the significance of the policy issues, or the dollar magnitude at stake, such that the initial Issue Fund Grant is no longer warranted. If the Commission amends an Issue Fund Grant, it will provide notice to the affected recipient(s) of such Issue Fund Grant and afford an opportunity to comment and provide a revised budget. A Commission amendment of an Issue Fund Grant shall take effect on a prospective basis only. Eligible Expenses incurred or accrued before the Commission amendment will be reimbursed according to the terms set forth in Article 7 below notwithstanding the Commission amendment of the Issue Fund Grant.

6.6 Cooperation. Any precertified and case-certified parties shall make all reasonable efforts to enter into agreements with each other at any time, including before submitting proposed budgets or after receiving Issue Fund Grants, to combine their efforts and resources in

a case. Such cooperative efforts shall not affect the amount of their Issue Fund Grants except that amounts paid under a grant may not exceed actual allowable expenses.

6.7 Amendment of Proposed Budget. At any time during the proceeding, an intervenor who received Commission approval for an Issue Fund Grant may file to amend its budget and request additional funding due to unforeseen changes in the scope or complexity of issues, positions taken by other parties, changes in the schedule of the case, or other good cause. An intervenor with approved proposed budgets in multiple dockets may request to reallocate approved amounts between dockets by filing a request in both dockets. Such a request must identify the previously approved proposed budget amounts, the proposed budget amounts for each docket after reallocation of funds, and explain the purpose for the requested reallocation. Any request for reallocation must meet all applicable requirements under Section 6.3 of this Agreement. The Commission may seek additional information concerning a proposed budget amendment. The Commission will act upon the request within 14 days of receiving the proposed amendment or, if applicable, any supplemental information provided in response to the Commission's request.

6.8 Intervenors' Report.

- (a) On or before each April 1 during the Term of this Agreement, each intervenor who had, during the prior calendar year, a continuing or newly approved Issue Fund Grant or pending proposed budget for an Issue Fund Grant request shall file a report with the Commission showing, as of December 31 of the prior calendar year for each Issue Fund, their budget request pending approval, approved budget amounts, requested payments, payments received, amounts actually spent on consultants or expert witnesses fees and travel expenses for proceedings in which

the intervenor received an Issue Fund grant, and a statement indicating whether any of their approved budget amounts for an Issue Fund Grant may be released back to the applicable Issue Fund because the intervenor does not intend to use the full approved amount.

- (b) ICNU and NWIGU shall file on or before April 1 of each year during the Term of this Agreement a report with the Commission showing payments from the Preauthorized Matching Funds applicable to that intervenor for the prior year, requests for payment pending, and the current balance of each applicable fund as of December 31 of the prior calendar year.
- (c) To ensure that the organization's respective members contribute a significant portion of the organization's funding of activities before the Commission for which the organization seeks intervenor funding, any intervenor who received an Intervenor Funding Grant shall also include in its report filed pursuant to subsections (a) or (b) of this Section the following: (1) a statement showing the total expenditures the intervenor incurred participating in all proceedings affecting the Participating Public Utilities before the Commission in each of the prior five calendar years; and (2) a statement showing the amount of expenditures the intervenor incurred in participating in each proceeding affecting the Participating Public Utilities before the Commission for which it requested payment of a grant from an Issue Fund or Preauthorized Matching Fund in the prior calendar year.

- (d) Information in the reports may be designated as confidential and protected from public disclosure to the maximum extent possible under the Oregon Public Records Law (ORS 192.410 et. seq.).

**Article 7**  
**Payment of Grants**

7.1 Payment of CUB Fund Grants. Upon request by CUB, the Commission will direct the Participating Public Utilities to pay the amounts made available for CUB Fund Grants pursuant to the terms of this Agreement. The Participating Public Utilities shall pay the amount authorized by the Commission no later than 30 days after receipt of the Commission directive. Each August 1 during the Term, CUB will file with the Commission a statement setting forth the manner in which the CUB Fund Grant was spent, including information sufficient to show that the funds were spent in a manner consistent with the terms of Article 4 above. CUB will serve a copy of the statement it files under this Section on the applicable Participating Public Utility.

7.2 Payment of Preauthorized Matching Grants. Subject to the limitations identified in Sections 4.3 and 4.4, ICNU or NWIGU may file a request for payment of the Preauthorized Matching Grants but a request must be filed on or before April 1 of each year for expenses incurred in the prior calendar year. Such a request must be filed with the Commission and served on the Participating Public Utility from whose account payment is requested and must include documentation sufficient to show that the intervenor has used in-house resources or outside funding for at least 50% of the Eligible Expenses for an Eligible Proceeding. A request for payment under this Section must show that the Preauthorized Matching Grant will be used to pay Eligible Expenses for an Eligible Proceeding. Within 30 days of receiving a request for payment under this Section, the Commission will act upon the request. The Commission will grant the request and order the applicable Participating Public Utility to pay the Preauthorized

Matching Grant if the intervenor satisfies the requirements of this Section and Section 7.5 below, and if granting the request is consistent with the terms of Article 4 above. Details of requests for payment under this Section may be designated as confidential and protected from public disclosure to the maximum extent possible under the Oregon Public Records Law (ORS 192.410 et. seq.). Such a confidential designation shall not excuse service of the request on the applicable Participating Public Utility or prevent the applicable Participating Public Utility from reviewing the request. The applicable Participating Public Utility shall pay the Preauthorized Matching Grant to the applicable Participating Intervenor within 30 days after receipt of the Commission directive. A form for requests for payment under this Section is attached as Exhibit B.

7.3 Issue Fund Grant Request for Payment. In order to receive payment of an Issue Fund Grant, an intervenor must submit a request for payment of Eligible Expenses to the Commission and serve a copy on the Participating Public Utility from whose account payment is to be made (a "Request for Payment"). A Request for Payment may be made at any time during an Eligible Proceeding, but no later than 60 days after the Commission's final order issued in the Eligible Proceeding has become final and nonappealable. Any intervenor who fails to timely request payment of Eligible Expenses will be deemed to have released any remaining allocated funds back to the applicable Issue Fund. The Request for Payment must:

- (a) Itemize the expenses, payees and hourly rates for amounts to be reimbursed, including billing details, and including separately identified amounts for consultant or expert witness fees and travel expenses;
- (b) Demonstrate that the expenses are reasonable and are directly attributable to issues and positions pursued on behalf of a particular customer class and consistent with the intervenor's proposed budget;

- (c) Provide information sufficient to show that the intervenor has complied with any condition or requirement of the Issue Fund Grant, including, but not limited to, documentation sufficient to show that the intervenor has satisfied the matching fund requirement (i) set forth in Section 6.5 above or (ii) as the Commission may establish as a reasonable condition on Issue Fund Grants, whichever applies; and
- (d) Specify whether the request for payment is for a progress payment or final payment in full and indicate whether any approved budget amount may be released back to the applicable Issue Fund because the intervenor does not intend to request payment for the full approved budget amount.

Details of requests for payment under this Section may be designated as confidential and protected from public disclosure to the maximum extent possible under the Oregon Public Records Law (ORS 192.410 et. seq.). Such a confidential designation shall not excuse service of the request on the applicable Participating Public Utility or prevent the applicable Participating Public Utility from reviewing the request. A form for requests for payment under this Section is attached as Exhibit C.

7.4 Eligible Expenses. Intervenor expenses eligible for funding under an Intervenor Funding Grant ("Eligible Expenses") will include:

- (a) Actual attorney and consultant fees, whether in-house or for outside services, directly attributable to participation in the proceeding;
- (b) Expert witness fees;
- (c) Apportioned wages for in-house staff (professional and clerical) directly related to participation in the proceeding;



- (d) The cost of preparing and copying studies, data request responses and other discovery materials, exhibits, testimony, briefs and other filings in the proceeding;
- (e) Travel costs directly related to participation in the proceeding;
- (f) Costs of acquiring studies or supplies directly related to the proceeding or court report fees and transcripts; and
- (g) Costs of participation in workshops and other informal Commission activities prior to the institution of an Eligible Proceeding.

7.5 General Operation Expenses Excluded. Except as otherwise provided in Section 4.2.1 above, expenses for general operations, overhead, membership recruitment, fundraising, or communication with members, even if specifically related to the proceeding for which the Intervenor Funding Grant was approved, will not be eligible for funding under an Intervenor Funding Grant.

7.6 Commission Review and Action. Within 30 days of receiving a Request for Payment of an Issue Fund Grant, the Commission will review the sufficiency of the request and act upon it. The Commission may disallow a request for payment, in whole or in part, if it determines that the request seeks reimbursement for (a) expenses that are not Eligible Expenses, or (b) expenses that are inconsistent with the intervenor's Issue Fund Grant or any conditions placed on the Issue Fund Grant. The Commission shall not award a Request for Payment if the intervenor fails to show that it has satisfied the matching fund requirements set forth in Sections 6.5 and 7.3 above. The Commission will notify the intervenor submitting a Request for Payment and the Participating Public Utility from whose account payment is requested, of the following: (a) the amount of payment approved, (b) the Fund account or accounts from which payment is to be made, and (c) the allocation of the payment amount between the classes of

customers. The Commission may not award a Request for Payment in excess of the amount of the applicable Issue Fund Grant, including any budget amendments approved by the Commission.

7.7 Customer Class Allocation. The Commission will make a determination in each proceeding as to how to recover the Intervenor Funding Grants from the various customer classes of the affected Participating Public Utility or Utilities:

- (a) In a proceeding involving more than one Participating Public Utility, the Commission will apportion the payment among the affected Participating Public Utilities. Criteria for making this allocation may include the relative gross revenue of the utilities, load, or other such factors as the Commission determines to be relevant to the particular matter.
- (b) Intervenor expenditures pursuant to an Intervenor Funding Grant and made on behalf of a particular customer class will be charged to and paid for by that customer class. CUB Fund Grants shall be allocated and charged to residential customers. Preauthorized Matching Grants shall be allocated and charged to industrial customers. Issue Fund Grants used to advocate positions on behalf of a broad cross-section of customers may be assessed against all customers or multiple classes of customers, as determined by the Commission, so as to fairly align the costs of the advocacy with the intended potential beneficiaries of the advocacy, regardless of actual outcome of the case. The determination may result in a combination of both class-specific assessments and general assessment to all customer classes based on the expenses incurred for the benefit of various classes in a case, regardless of which intervenors incurred such expenses.

7.8 Participating Public Utilities' Payment of Intervenor Funding Grants. The Participating Public Utility or Utilities will pay intervenors the Intervenor Funding Grants as directed by the Commission pursuant to Section 7.6 above. Such payment(s) will be made within 30 days of receiving the notice of approval from the Commission.

7.9 Recovery of Intervenor Funding Grants. The Commission shall allow the Participating Public Utilities to recover in rates all amounts paid for Intervenor Funding Grants under this Agreement. If a Participating Public Utility seeks rate recovery through a deferred account, the account and amortization of the account shall be exempt from the amortization caps and earnings test set forth in subsections 5, 6, 7, 8 and 10 of ORS 757.259, as such subsections may be amended from time to time, and shall not be included in any calculation of the amortization cap for other deferred accounts. Amounts in any deferred account under this Section will include carrying costs at the Participating Public Utility's authorized cost of capital. If the applicable Eligible Proceeding results in a change of rates, Issue Fund Grants should be incorporated into rates at the same time as the rate change is made. For Issue Fund Grants that are not recovered in the Eligible Proceeding in which the funds were expended or in the case of the recovering of CUB Fund Grants and Preauthorized Matching Grants, the timing and amortization period for recovering of such Intervenor Funding Grants will be left to the discretion of the Participating Public Utility, subject to Commission approval.

7.10 Audits. The Commission may audit the relevant, not privileged, records of any intervenor submitting a Request for Payment or submitting a request for payment under Sections 7.1 or 7.2 above as necessary to verify the accuracy of the information provided in the Request for Payment or the request under Sections 7.1 or 7.2 above, or to confirm the accuracy of an Intervenor's report filed pursuant to Section 6.8.

7.11 Delegation. The Commission may delegate its authority set forth in Sections 7.6 and 7.7 to any Commission employee or category of employees. If the Commission delegates this authority, the delegatee's decisions may be appealed to the Commission.

**Article 8**  
**Termination of Eligibility**

8.1 Termination of Eligibility. Upon the filing of a complaint pursuant to ORS 756.500 or upon a Commission investigation or motion pursuant to ORS 756.515, the Commission may terminate the precertification or case-certification of an intervenor if it finds that:

- (a) The organization has committed fraud, misrepresentation, or misappropriation related to an Intervenor Funding Grant;
- (b) In a proceeding before the Commission for which intervenor funding grants were awarded to the organization, the organization has failed to represent the interests of the broad class of customers that the organization purported to represent in its application for precertification;
- (c) The organization has failed to comply with Commission orders or rules in a material way;
- (d) A Participating Intervenor has violated the obligations set forth in Section 10.1 below;
- (e) For CUB, there has been a substantial change in or repeal of ORS 774.101 to 774.990; or
- (f) A precertified organization other than CUB no longer meets the criteria of Section 5.2 of this Agreement.

A Participating Intervenor that is decertified pursuant to Section 8.1(d) above will be ineligible for precertification or case-certification for the Term of this Agreement.

8.2 Effect of Termination of Eligibility. In the event of termination of the precertification or case-certification of an intervenor, such termination shall take effect on a prospective basis only. Intervenor that have been decertified may not receive Intervenor Funding Grants except as provided in this Section. Intervenor that have been decertified may recover Eligible Expenses incurred pursuant to a Commission authorized Intervenor Funding Grant and incurred before decertification, subject to satisfaction of the requirements set forth in Article 7 of this Agreement.

## **Article 9** **Termination**

9.1 Termination. A Party may terminate this Agreement if any one or more of the following events occur:

- (a) In an order, the Commission rejects all or a material part of this Agreement or adds a condition that has a material effect on the terms and conditions of this Agreement;
- (b) The Commission repeals or amends a material part of the rules implementing this Agreement;
- (c) There is a repeal or material change in the statutory provision enabling intervenor funding;
- (d) Any of the following are enacted through legislation, ballot measure or formal action of the Commission:
  - (1) An alternative intervenor funding program affecting one or more of the Participating Public Utilities;

- (2) Changes in the method by which Public Utilities recover expenses incurred in regulatory proceedings if such changes prohibit or limit a Public Utility's ability to recover such expenses through rates;
- (3) The creation of an elected Commission;
- (4) Any action that makes intervenor funding unnecessary, including:
  - a. The creation of a consumer advocate staff or agency;
  - b. A change in the role of Commission Staff that is materially different from the statement adopted in the Commission's current Internal Operating Policy Guidelines; or
  - c. Any change similar to a. and b. above.

9.2 Notice. A Party terminating this Agreement shall give the other Parties and the Commission 30 days advance written notice. Such termination will become effective only upon a determination by the Commission that the Party has a valid basis pursuant to Section 9.1 above to terminate the Agreement. A notice under this Section shall not terminate the rights and obligations among the remaining Parties under this Agreement.

9.3 Discharge of Obligations Upon Termination. If this Agreement is terminated pursuant to this Article, the terminating Party shall be released and discharged from any obligations arising or accruing under this Agreement from and after the date of such termination. Termination of this Agreement (under this Section or at the end of the Term of this Agreement) shall not discharge or relieve any Party from any obligations or liabilities which may have accrued under the terms of this Agreement before such termination. In particular, the Commission shall require the Participating Public Utility or Utilities to pay Eligible Expenses incurred under a Commission-authorized Intervenor Funding Grant that was awarded before the

date of termination, subject to satisfaction of the requirements of Article 7. The Commission shall permit Participating Public Utilities to recover in rates any such authorized intervenor expenditures. If any Participating Public Utility has not recovered all of its payments of Intervenor Fund Grants under this Agreement by the end of the Term or the date on which the Agreement is terminated, the Commission shall permit the Participating Public Utility to recover such amounts after the Term of this Agreement or after the termination date.

**Article 10**  
**Miscellaneous**

10.1 Regulatory Information. Each Participating Public Utility will make available to the Participating Intervenors, for each significant regulatory proceeding in which it participates, the amounts each spent for outside costs (attorneys, experts, and consultants) and a good faith estimate of the internal costs for the Participating Public Utility's participation in the proceeding (the "Regulatory Expense Estimates"). Each Participating Public Utility will make available its Regulatory Expense Estimates no later than each March 1 during the Term for applicable regulatory proceedings completed in the previous calendar year. Participating Intervenors may use the information contained in the Regulatory Expense Estimates solely for the purposes of (i) evaluating the intervenor funding program before the Commission or (ii) supporting requests for Issue Fund Grants or supporting proposed budgets submitted under Section 6.3 above.

Without the advance written consent of the applicable Participating Public Utility, a Participating Intervenor may not use the Regulatory Expense Estimates for any other purpose or disclose the Regulatory Expense Estimates to any third party. The obligations of this Section with respect to a Participating Intervenor's use of information are inapplicable to information that the Participating Intervenor receives in any manner other than by virtue of the Regulatory Expense Estimates. By March 1, 2012, each Participating Public Utility will submit to the Commission

copies of all Regulatory Expense Estimates it has provided during the preceding five calendar years.

10.2 Dispute Resolution. The Parties agree to confer and make a good faith effort to resolve any dispute arising under this Agreement before bringing an action or complaint to the Commission or any court with respect to such dispute.

10.3 Parties' Cooperation and Support. The Parties shall file this Agreement with the Commission. The Parties agree to support this Agreement before the Commission and before any court in which the Agreement is considered. The Parties agree to support the Commission's adoption and issuance of rules necessary to implement the terms of this Agreement.

10.4 Enforcement. The Parties agree that the Commission may enforce the terms of the Agreement in the same manner as the enforcement of a Commission order. To the extent the Commission lacks authority to enforce or compel performance of particular terms of this Agreement, the Parties may seek enforcement in a court of competent jurisdiction of the State of Oregon. The jurisdiction over this Agreement of the Commission and the courts in the State of Oregon shall be exclusive.

10.5 Counterparts. The Agreement may be signed in any number of counterparts, each of which will be an original for all purposes, but all of which taken together will constitute only one agreement.



10.6 Entire Agreement. This Agreement supersedes any and all oral or written agreements and understandings made relating to intervenor funding to be made available by the Participating Public Utilities and constitutes the entire agreement and understanding of the Parties.

10.7 Successors. The terms and provisions of this Agreement and the respective rights and obligations of the Parties under this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors.

10.8 No Assignment. The benefits and obligations of this Agreement may not be assigned or transferred without the written consent of each of the other Parties and Commission approval.

10.9 Amendments. No amendment or modification of the terms of this Agreement shall be binding on any Party unless reduced to writing and signed by all Parties.

10.10 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, without regard to principles of choice of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of  
the day and year first above written.

PORTLAND GENERAL ELECTRIC  
COMPANY

By: Jay Tinker  
Its: Director, Rates & Regulatory Affairs  
NORTHWEST NATURAL GAS COMPANY

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
AVISTA UTILITIES

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
CITIZENS' UTILITY BOARD OF OREGON

By: \_\_\_\_\_  
Its: \_\_\_\_\_

PACIFICORP

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
CASCADE NATURAL GAS  
CORPORATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
NORTHWEST INDUSTRIAL GAS USERS

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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PORTLAND GENERAL ELECTRIC  
COMPANY

PACIFICORP

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
By: *P. Bryce Dotley*  
Its: *Vice President, Regulation*

NORTHWEST NATURAL GAS COMPANY

CASCADE NATURAL GAS  
CORPORATION

\_\_\_\_\_  
By:  
Its:

AVISTA UTILITIES

\_\_\_\_\_  
By:  
Its:

INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES

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CITIZENS' UTILITY BOARD OF OREGON

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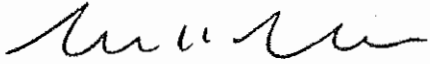
PACIFICORP

By:  
Its:

NORTHWEST NATURAL GAS COMPANY

By:  
Its:

CASCADE NATURAL GAS  
CORPORATION

  
By: *Mark R. Thompson*  
Its: *Manager of Regulatory Affairs*  
AVISTA UTILITIES

By:  
Its:

INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES

By:  
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CITIZENS' UTILITY BOARD OF OREGON

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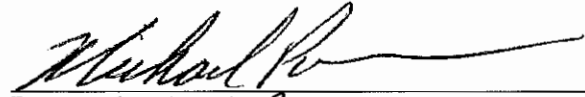
NORTHWEST NATURAL GAS COMPANY

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CASCADE NATURAL GAS  
CORPORATION

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Its:

AVISTA UTILITIES

By:   
Its: *Michael Parvinen*  
*Director, Regulatory Affairs*

INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES

By:  
Its:

CITIZENS' UTILITY BOARD OF OREGON

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NORTHWEST INDUSTRIAL GAS USERS

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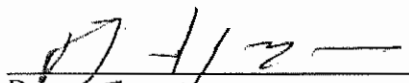
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AVISTA UTILITIES

INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES

By:  
Its:

  
*David J. Meyer*  
*V.P. for Reg & Gov't Affairs*

By:  
Its:

CITIZENS' UTILITY BOARD OF OREGON

NORTHWEST INDUSTRIAL GAS USERS

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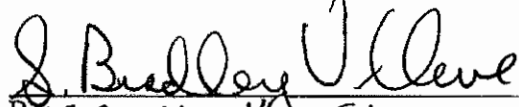
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AVISTA UTILITIES

INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES

By:  
Its:

  
By: S. Bradley Van Cleave  
Its: Attorney

CITIZENS' UTILITY BOARD OF OREGON

NORTHWEST INDUSTRIAL GAS USERS

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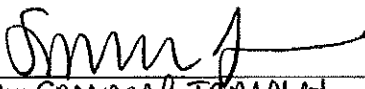
INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES

By:  
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CITIZENS' UTILITY BOARD OF OREGON

NORTHWEST INDUSTRIAL GAS USERS

  
By: Sommer Temple  
Its: staff Attorney

By:  
Its:

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CASCADE NATURAL GAS  
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AVISTA UTILITIES

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CITIZENS' UTILITY BOARD OF OREGON

NORTHWEST INDUSTRIAL GAS USERS

By:  
Its:

By:  
Its:

*Edward A Finklea*

*Edward A. Finklea*  
*Executive Director*

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