

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**AR 652**

In the Matter of  Rulemaking Regarding Intervenor Funding Consistent with HB 2475	COMMENTS OF ROGUE CLIMATE, COMMUNITY ENERGY PROJECT, AND OREGON CITIZENS' UTILITY BOARD ON PROPOSED JUSTICE FUND RULES AND RESPONSE TO PARTICIPATING PUBLIC UTILITIES' WRITTEN COMMENTS
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Rogue Climate, Community Energy Project (CEP), and the Oregon Citizens' Utility Board (CUB) appreciate the opportunity to provide comments and responses to comments on the draft rules noticed in this Commission Docket AR 652. Rogue Climate and CEP were privileged to be two of three negotiators representing the interests of the Environmental Justice organizations (including Verde, CEP, with CUB's greatly valued participation and consultation). Rogue Climate, CEP, and Verde are parties to the Environmental Justice Communities Funding Agreement (the Agreement).

The Participating Public Utilities (Utilities) have submitted comments which propose changes to the rules and require a response. While characterized as clarifying, some of the proposed changes are not consistent with the Agreement or the negotiations. To illustrate our responses, we provide our recommendations below to better track the Agreement, including alternative language to some of the proposed rules.

**Comments in Response to the Utilities' Comments**

At the public meeting on March 16, Portland General Electric (PGE), gave comments on three concerns with the AR 652 proposed rules saying, generally, that the comments were

directed at aligning the rules with the Agreement. First, PGE asserted that the rules needed to clarify that the utilities' obligations were dependent upon an agreement being in place. Second, noting the need for clarification on whether the limitation of pre-certification fund eligibility to only five organizations and expressing their opinion that the rule is meant to mean five organizations per utility, not five organizations total. Finally, requesting that termination language be added to the rules like it is in the IFA rules. In the utilities' comments jointly filed on March 28, they reiterated these three concerns in more detail and proposed changing the purpose statement seeking to clarify that the Justice Funds (JF) are limited to organizations representing low-income customers or the interests of environmental justice communities.

We agree that the purpose statement in proposed rule OAR 860-001-0800 could better guide the organizations seeking these funds. We think a more simple, specific change is appropriate and reject the amendment the utilities propose. The statement as presented in the rule is sufficient because it references the underlying statute. If the Commission determines additional language is necessary to help the reader of the rules understand what organizations are eligible under that statute, the rule should simply quote the statute or use the description of eligible organizations provided in the agreement. A statement using the Agreement description could be stated as follows:

- (1) The purpose of OAR 860-001-0800 through OAR 860-001-0900 is to provide guidance for organizations ~~seeking Justice Funding Grants, made available through ORS 757.072,~~ that represent the interests of low-income residential customers or interests of customers that are members of Environmental Justice Communities as described in ORS 757.072 to seek Justice Funding Grants in matters at the Oregon Public Utility Commission.

We are okay with the utilities' request to remove from the rule the requirement for utilities to have pre-certification accounts and case fund accounts. While we appreciate the clear directive, one of the stated goals of the negotiations was to allow for adaptations to agreements over time as this process is implemented, without forcing a new rulemaking proceeding. Like the IFA, this fund account language is included in the recently-negotiated Agreement. We believe it is sufficient to keep these terms in the Agreement and agree with the utilities' proposal to strike -850(1) and -860(1). Such contributions could easily be changed in a re-negotiated agreement without having to amend the rules.

We also are okay with utilities' recommendation to clarify that the obligations and process outlined in the rules do not exist without an executed voluntary agreement. While this understanding is already addressed in Intervenor Funding laws, in the interest of making this clearer for organizations, the best way to provide this clarification is to clearly state that the Justice Funds are administered by the Commission only when there is an Agreement in place, and definitely not to reference the Agreement which expires in December 2024.<sup>1</sup> The rule can refer to "Agreement" and not refer to any order number approving any agreement. We suggest the following change to proposed rule 860-001-0800(2):

(2) These rules facilitate the administration and implementation of the ~~reflect~~ Justice Fund Agreement adopted by the Commission, and which can be found online on the Commission's Intervenor Funding webpage at <https://www.oregon.gov/puc/filing-center/Pages/Intervenor-Funding.aspx> <https://apps.puc.state.or.us/orders/2023ords/23-033.pdf>.¶

If the Commission believes it is necessary to define "Agreement" in the rules then we do not

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<sup>1</sup> See ORS 757.072(2)(d) ("[T]he commission must evaluate and approve an agreement described in this paragraph before financial assistance may be provided under the agreement.").

believe the definition should be connected to a specific order number and we propose the following language for consideration for inclusion in proposed rule 860-001-0810(1):

(1) “Agreement” means the current unexpired Justice Fund Agreement approved by the Commission.

The limitation of five pre-certified grants per year was to allow only five organizations to obtain any of the funds in the pre-certified fund accounts so that the grants could be large enough, roughly \$50,000 each, for groups regularly before the Commission to do significant work. It was not intended to allow for five organizational grants per the three utilities (i.e., fifteen possible organizations). Pursuant to the agreement, if five organizations do not apply for the full amount of the \$255,000 plus fund, the funds will be available for case fund awards. We are okay with the utilities' request to add termination/decertification language to the rule. This was anticipated as the language is stated in Exhibit 2 of the current Agreement, and is similar to the IFA rule, OAR 860-001-0130. But we are curious as to why the AHD did not include this section, or if it was inadvertent.

Finally, we are okay with the utilities' recommendations regarding privacy as the importance of an order was expressed by the utilities in negotiations. While this is not included in an IFA rule, this is a rule that we think is important to flag for Eligible Recipients.

#### **Additional Comments on the Proposed Rules**

Relatedly, we believe it makes sense that the Agreement rules are no more restrictive than the IFA rules that apply to organizations representing broad interests of customers. ORS 757.072 states the Commission may create rules to determine the organizational eligibility for the Justice Funds, and that the Commission shall establish a process for evaluating and

approving an agreement for financial assistance, and that it is the Agreement that shall govern the way financial assistance may be provided to a qualified organization.<sup>2</sup>

These rules are intended to help guide grantees through this process, but some things can and should be left to negotiations. These rules were drafted to reflect the Agreement, but we are concerned that codifying too much of what can exist in the agreement on its own, as the Agreement and IFA show, would unnecessarily limit the flexibility of a future agreement. This is a new program that may have some kinks to work out and requiring a rulemaking to negotiate different terms in a future Agreement may prove unnecessarily burdensome. Just as the IFA has been successfully negotiated over the years without similarly prescriptive language in the rule, it makes sense for the Agreement to have the same flexibility.

Accordingly, we recommend striking the following rules and leave those terms to be negotiated in future agreements:

- OAR 860-001-0870, Eligible Expenses
- OAR 860-001-0890, Payment of Grants and Reporting
- OAR 860-001-0900(1), Recovery of Justice Funding Grants and Cost Allocation.

Just as the IFA has been successfully negotiated over the years without similarly prescriptive language in the rule, it makes sense for the Agreement to have the same flexibility in future negotiations. We note, however, that the Commission's adoption of the cost recovery provision set forth in Exhibit 1 of the Agreement is a condition precedent and believe the Commission's approval of the Agreement should satisfy this condition, so we include 0900 paragraph 1. Paragraph 2 was recommended to be adopted by rule, so it should remain.

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<sup>2</sup> ORS 757.072 (2)(b)&(d).

Finally, the definition of eligible recipient in the rule is incorrect. The definition of “eligible recipient” in the rule should mirror the definition in the agreement but need not reference any specific agreement section or nomenclature:

(5) “Eligible Recipient” means an organization that represents the interests of either low-income residential customers, ~~as described in OAR 860-021-0180~~ or customers that are members of Environmental Justice Communities as described in statute and that meets the criteria defined ~~below~~ in these Division 1 rules.

Moreover, the parties explicitly rejected any reference to OAR 860-021-0810 throughout the Agreement negotiations and it should not be included in the rules.

Rogue Climate, CEP and CUB appreciate the efforts all parties to UM 2211 and AR 652 have put into negotiating the first Agreement, and at the same time, figuring out how to shape the program so it is accessible to organizations representing low-income and environmental justice communities. We encourage the Commission to adopt the rules as amended and suggested above. We hope our comments provide clarification of our expectations for the rules, as well as reiterate our concern to preserve parties’ ability to continue to have robust

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negotiations in the future. We appreciate the opportunity to comment on these rules and the Commission's consideration of our edits and suggestions.

Dated this 6<sup>th</sup> day of April 2023.

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