

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: July 1, 2003**

REGULAR X **CONSENT** **EFFECTIVE DATE** **Upon Filing with the
Secretary or State**

DATE: June 17, 2003

TO: Commissioners Hemmingway and Beyer

FROM: Tom Barkin, Administrative Law Judge

REVIEWED BY: Terry Lambeth, Rules Project Leader

SUBJECT: AR 462: Adoption of temporary rules OAR 860-017-0050 and 0100 on
Intervenor Funding, and Approval of Intervenor Funding Agreement

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

The Commission should adopt the rules set forth in Attachment A, as temporary rules. The Commission should also approve the Intervenor Funding Agreement set forth in Attachment B.

DISCUSSION:

On June 6, 2003, the Governor signed Senate Bill 205 into law as ORS Ch. 290, OR Laws 2003. This bill authorizes the Commission to approve written agreements for intervenor funding grants between electric and natural gas utilities and organizations representing broad customer interests. The grants would be used by the organizations when participating in Commission regulatory proceedings. The bill also requires the Commission to establish, by rule, the qualifications, "as the Commission deems appropriate for determining which organizations are eligible for financial assistance," under such an agreement.

To implement this legislation, I am recommending two actions by the Commission. The first is approval of the proposed temporary rules, attached as Attachment A, specifying the qualifications. The second is to approve an Intervenor Funding Agreement (IFA) between Portland General Electric Company (PGE), PacifiCorp, Northwest Natural Gas Company (NNG), Industrial Customers of Northwest Utilities (ICNU), Citizens' Utility Board of Oregon (CUB), and Northwest Industrial Gas Users (NWIGU), dated February 5, 2003. The IFA is attached as Attachment B.

Background. SB 205 and the IFA are products of extensive discussions between Commissioners, the electric and natural gas utilities, and the intervenor groups mentioned above. These measures respond to the Report of the House Bill (HB) 3615 Task Force issued in January 2001. The 1999 Legislative Assembly created this Task Force. In its Report, the Task Force recommended, "A program of broad intervenor funding should be created to ensure that essential resources are available to those who advocate on behalf of consumer interests in PUC proceedings." In the ensuing months, stakeholders engaged in long, but ultimately productive, negotiations to develop the intervenor funding mechanism before you today. The mechanism is embodied in SB 205 and the IFA.

SB 205. The bill provides that an energy utility may enter into an agreement with an organization representing broad customer interests. The law also states that the agreement may provide for financial assistance to organizations that have not signed the agreement.

The key elements of the law are: (a) the Commission must adopt a rule specifying the qualifications for determining which intervenors are eligible for financial assistance under the law; (b) the Commission must approve an agreement before funds are provided; and (c) the Commission may specify, by rule or order:

- The amount of financial assistance that may be provided to any organization;
- The manner in which the financial assistance will be distributed;
- The manner in which the financial assistance will be recovered in the rates of the public utility; and
- Other matters necessary to administer the agreement.

Proposed Temporary Rules on Qualifications. The proposed temporary rules only address the issue of qualifications. Because of the need to put rules into effect quickly, I recommend that the Commission limit its rulemaking to the minimum required by SB 205. The proposed temporary rules contain two major provisions. The first, OAR 860-017-0050, details the requirements for an intervenor to be certified as eligible for an intervenor funding grant. The second, OAR 860-017-0100, explains how and why certification could be canceled and the consequences of such action. The proposed temporary rules are based on the qualification provisions in the IFA.

The proposed rules provide two types of certification: precertification and case-certification. Precertification applies to the intervenors that signed the IFA and any other intervenors that can meet the criteria for eligibility. Under the IFA, CUB is

automatically precertified a representative of the residential customers. Other not-for-profit organizations can be precertified by showing that they represent the interests of a broad class or group of customers, demonstrate that they are able to effectively represent the class, show that their members contribute a significant portion of the overall support for the organization, and demonstrate that they have contributed significantly to the record in past Commission proceedings.

Organizations that are not precertified may apply for certification for a particular case. The organization applying for case certification must show that it represents the broad interests of a group of customers, can effectively represent the class of customers it seeks to represent, its members contribute a significant percent of the support and funding of the organization, has or can contribute substantively to the record, and no precertified intervenor participating in the proceeding adequately represent the interests of the class the organization seeks to represent. Under the terms of the IFA, ICNU and NWIGU must become precertified under these criteria to receive preauthorized matching grants. The IFA, discussed below, specifies the special conditions applying to these grants and to the CUB fund grants.

Intervenor Funding Agreement. The IFA is a pilot project that extends to December 31, 2007. The IFA addresses additional matters that must be fleshed out for the program to work effectively, including those matters listed in SB 205. The IFA specifies the amounts contributed by each utility and the structure of the funds where the amounts are maintained. It also sets forth the procedures for intervenors to submit budgets, Commission approval of budgets, and utility payment of grants. One important feature of the IFA is that intervenors can work together to pool resources in a case.

The IFA sets up three funds for each participating utility. The CUB Fund, the Preauthorized Matching Fund, and the Issue Fund. CUB may use the amounts in the CUB Fund for its expenses, excluding political activities or fund raising. The Matching Fund is intended for ICNU and NWIGU to use for participating in regulatory proceedings, other than complaint actions they or CUB file. As the title of the Fund indicates, the intervenors must provide matching funds at least equal to the amount of the grant. The Issue Funds may be used by any precertified or case-certified intervenor. The IFA also provides provisions for advances and rollovers from one year

to the next and for supplementing the amounts in the funds. The amounts in the funds are as follows:

	PGE Accounts	PacifiCorp Accounts	NNG Accounts
CUB Fund	\$50,000	\$50,000	\$50,000
Preauthorized Matching Fund	\$50,000	\$50,000	\$50,000
Issue Fund	\$125,000	\$125,000	\$50,000

Under the IFA, the Commission is actively involved in this program. Not only does the Commission approve eligibility, it must also determine the amount, if any, that will be made available for a grant from the Issue Fund in any particular proceeding. The Commission considers numerous factors, including the breadth and complexity of the issues, the significance of any policy issues, the procedural schedule, the dollar magnitude of the issues at stake, the participation of other parties that adequately represent the interests of the customers, and the qualifications of the party requesting the funds. The Commission also authorizes payment of the grants and may audit the use of the grants.

Another important requirement is that the Commission allocate the costs of intervention to the appropriate customer class. Residential customers will pay for amounts granted from the CUB Fund. Industrial customers will pay amounts from the Preauthorized Matching Fund. The Commission will allocate amounts from the Issue Fund to align the costs of advocacy with the intended beneficiaries of the advocacy, regardless of the actual outcome of the case.

There are also provisions by which participating utilities will disclose the costs they incur to participate in a regulatory proceeding and provisions regarding dispute resolution and enforcement.

I recommend the Commission adopt the approach offered by the signers of the IFA. After we work with the IFA for a time, we can determine whether additional rulemaking is required. By adopting the IFA, the Commission can expedite issuance of the initial intervenor funding grants.

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PROPOSED COMMISSION MOTION:

The Commission should adopt the rules as set forth in Attachment A, as temporary rules. The Commission should also approve the Intervenor Funding Agreement set forth in Attachment B.

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ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 462

Temporary Rules Defining Qualifications)
For Certification As An Intervenor Eligible)
For Intervenor Funding and Specifying)
Conditions For Terminating Certification.)

ORDER

**DISPOSITION: AGREEMENT APPROVED; TEMPORARY RULE
ADOPTED**

At its public meeting on July 1, 2003, the Commission adopted the Administrative Law Judge's recommendation attached as Appendix A.

The recommendation includes temporary rules and an agreement. The temporary rules specify the qualifications for certifying intervenors as eligible for intervenor funding under Senate Bill 205 (SB 205) and the conditions for terminating this certification. The agreement, between Pacific Power and Light Company (dba PacifiCorp), Portland General Electric Company, Northwest Natural Gas Company, Northwest Industrial Gas Users, Citizens' Utility Board of Oregon, and Industrial Customers of Northwest Utilities, dated February 5, 2003, specifies the terms and conditions for intervenor funding grants.

The temporary rules and agreement implement Or Laws 2003, Ch. 234 (Senate Bill 205), which the Governor signed into law on June 6, 2003. This statute authorizes the Commission to approve written agreements for intervenor funding grants between electric and natural gas utilities and organizations representing broad customer interests. The grants would be used by the organizations when participating in Commission regulatory proceedings. The temporary rules respond to the provision in SB 205 that requires the Commission to establish, by rule, the qualifications, "as the Commission deems appropriate for determining which organizations are eligible for financial assistance," under such an agreement.

The agreement is adopted pursuant to the provision of SB 205 that states: "Any agreement entered into under (this law) must be approved by the commission before any financial assistance is provided under the agreement."

The Commission has considered the Administrative Law Judge's recommendation, incorporating the temporary rules and the agreement. The temporary rules should be adopted. The agreement should be approved.

ORDER

IT IS ORDERED that:

1. The temporary rules, OARs 860-017-0050 and 860-017-0100 that are incorporated in Appendix A, are adopted.
2. The temporary rules shall be effective upon filing with the Secretary of State.
3. The agreement incorporated in Appendix A is approved.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

860-017-0050

Grant Eligibility (Precertification and Case-Certification)

(1) Definitions:

(a) "Agreement" means a Commission approved agreement under ORS Ch. 234, OR Laws 2003 between a utility providing electricity or natural gas and a not-for-profit organization that represents broad customer interests in Commission regulatory proceedings.

(b) "Grant" means financial assistance to an intervenor under the terms of an agreement.

(2) General. Upon Commission approval of an agreement, the Commission shall apply the qualifications set forth in this rule to determine eligibility for a grant. Only parties that are precertified, or parties that become case-certified for a particular proceeding, will be eligible to receive grants under an agreement. The terms of an agreement will be binding on all organizations seeking a grant under that agreement and will be followed by the Commission in administering the grant.

(3) Precertification. The Commission will precertify organizations meeting the criteria of subsection (3)(a) or (3)(b) as eligible to receive grants. Once precertified, an organization will remain precertified unless the Commission decertifies the organization under OAR 860-017-0100.

(a) The Citizens' Utility Board of Oregon (CUB), as a representative of residential customers; or

(b) Not-for-profit organizations that meet all of the following criteria:

(A) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;

(B) 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;

(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 utilities that are parties to the agreement, contribute a significant portion of the overall support and funding of the organization's activities in the state; and

(E) The organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests.

(4) Case-Certification. Organizations meeting the following criteria may be case-certified by the Commission to be eligible to receive a grant:

(a) 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;

(b) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(c) The organization's members who are customers of one or more of the utilities affected by the proceeding that are parties to the agreement contribute a significant percentage of the overall support and funding of the organization;

(d) 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 a grant;

(e) The organization demonstrates that:

(A) 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

(B) The specific interests of a class of customers will benefit from the organization's participation; and

(f) The organization demonstrates that its request for case-certification will not unduly delay the schedule of the proceeding.

Stat. Auth.: ORS Ch. 234, OR Laws 2003

Stats. Implemented: ORS Ch. 234, Or Laws 2003

Hist.: New

860-017-0100

Termination of Eligibility – Decertification

(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 any grant made available under the terms of a Commission-approved agreement;

(b) In a proceeding before the Commission for which 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) The intervenor who is signatory to an agreement has violated terms and conditions of the agreement pertaining to the use and disclosure of information required to be provided by utilities under the agreement;

(e) For the Citizens' Utility Board of Oregon (CUB), there has been a substantial change in or re peel of ORS 774.101 through 774.990; or

(f) A precertified organization other than CUB no longer meets the criteria of OAR 860-017-0050(2).

(2) An intervenor that is decertified will be ineligible for future precertification or case-certification under the agreement.

(3) Termination of the precertification or case-certification of an intervenor shall be prospective only.

Stat. Auth.: ORS Ch. 234, OR Laws 2003

Stats. Implemented: ORS Ch. 234, Or Laws 2003

Hist.: New

INTERVENOR FUNDING AGREEMENT

BY AND AMONG

PORTLAND GENERAL ELECTRIC COMPANY

PACIFICORP

NORTHWEST NATURAL GAS COMPANY

INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

CITIZENS' UTILITY BOARD OF OREGON

NORTHWEST INDUSTRIAL GAS USERS

February 5, 2003

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INTERVENOR FUNDING AGREEMENT

This Intervenor Funding Agreement (together with all Exhibits attached, the "Agreement"), dated this 5th day of February, 2003 (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, 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").

RECITALS

WHEREAS, the purpose of this Agreement is to make funds available in a pilot project 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 intend to support legislation before the 2003 Oregon Legislative Assembly to authorize the Commission to regulate the process by which qualified parties request and receive the funds made available under the terms of this Agreement.

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, adjudications, and contested cases, 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.

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(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, or PGE.

(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, 2007, unless terminated earlier pursuant to the terms of Article 9 of this Agreement (the "Term"). Reference in this Agreement to "each calendar year during the Term of this Agreement" includes 2003.

Article 3
Conditions Precedent

The obligations of the Parties under this Agreement are contingent upon the occurrence of each of the following conditions not later than December 31, 2003, unless extended by written agreement of the Parties:

- (a) the enactment by the Oregon Legislative Assembly and the Governor of legislation substantially similar in substance to SB 205, as modified in the attached Exhibit A (the "Legislation");
- (b) a Commission order approving this Agreement and implementing its terms;

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- (c) the adoption by the Commission of rules necessary to implement the terms of this Agreement; and
- (d) the adoption by the Commission of a statement, acceptable to each Party, concerning the role of Commission Staff that states, among other things, that (1) Commission Staff's role is to scrutinize all aspects of a utility's filing and challenge aspects as appropriate to enable the Commission to carry out its statutory duties; and (2) Commission Staff's role will not change as a result of the intervenor funding grants made available by this Agreement.

Each Party may, in its sole discretion, waive any of the foregoing conditions as condition precedent to its obligations under this Agreement by giving written notice of such waiver to the other Parties. Within 7 days after the occurrence of each condition precedent, a signature sheet will be circulated to the Parties. Within 14 days after receipt of a signature sheet, each Party will indicate whether it agrees that the applicable condition precedent has occurred, does not agree that the applicable condition precedent has occurred, or waives the applicable condition precedent. Each Party will send a copy of its response to each signature sheet to the other Parties.

Article 4
Scope

4.1 General. Intervenor funding grants will be made available pursuant to the terms of this Agreement ("Intervenor Funding Grants"). 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

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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 (collectively, the "Funds"). 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 Accounts	PacifiCorp Accounts	Northwest Natural Accounts
CUB Fund	\$50,000	\$50,000	\$50,000
Preauthorized Matching Fund	\$50,000	\$50,000	\$50,000
Issue Fund	\$125,000	\$125,000	\$50,000

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 Section 4.3 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 three 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 shall be \$50,000 for each of the CUB Fund accounts, which may be supplemented under the terms of Section 4.3 below.

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4.2.2 Preauthorized Matching Fund. There shall be three 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 \$50,000 for each of the Preauthorized Matching Fund accounts, which may be supplemented under the terms of Section 4.3 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 may be used solely to pay Eligible Expenses for Eligible Proceedings. 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 account for Northwest Natural will be available for use exclusively by NWIGU according to the terms of this Agreement. ICNU and NWIGU must become precertified according to the terms of Section 5.2 within one year of the Effective Date in order to receive Preauthorized Matching Grants. 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 or if either fails to become precertified within one year of the Effective Date, the Commission may either transfer the balances from the Preauthorized

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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 three 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 shall be \$50,000 for the Northwest Natural Issue Fund account; and \$125,000 for each of the PGE and PacifiCorp Issue Fund accounts. 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 may be used solely to pay Eligible Expenses for Eligible Proceedings. Issue Fund Grants shall be limited to the amounts available in the Issue Fund accounts. 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 and Advances. A balance in any of the Fund accounts that is unused in any year during the Term of the Agreement will be carried over and made available for use in

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succeeding years, subject to the limitations identified in this Section (the "Rollover"). NWIGU, ICNU, and CUB may use in any 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 of the Agreement (an "Advance"). An Advance will not be available from the Issue Fund. 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 Rollover and, if applicable, 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 \$125,000 may be rolled over in one year in PacifiCorp's Issues Fund account and no more than \$50,000 may be rolled over and advanced (on a combined basis) in one year for PGE's Preauthorized Matching Fund account. The 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.

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

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provide the opportunity to submit applications for precertification no later than 60 days after the Legislation has become law and is effective and at least once every 12 months thereafter. The Commission will act on such applications within 30 days of the date set for such applications to be 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. None of the Parties will oppose the initial request for precertification of each of the Participating Intervenors.

(a) The Citizens Utility Board, as a representative of residential customers;

(b) Not for profit organizations that meet all of the following criteria:

(A) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;

(B) 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;

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(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 contribute a significant portion of the overall support and funding of the organization's activities in the state; and

(F) 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 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;
- (b) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

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- (c) 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;
- (d) 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;
- (e) The organization demonstrates that (i) 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 (ii) that the specific interests of a class of customers will benefit from the organization's participation; and
- (f) 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

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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 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: (1) a statement of the work to be performed by the applicant for which the applicant is seeking an Issue Fund Grant; (2) a description of the areas to be investigated by the intervenor; (3) a description of the particular customer class or classes that will benefit from the intervenor's participation; (4) identification of the specific Fund account or accounts from which the intervenor is seeking an Issue Fund Grant; and (5) a budget showing estimated attorney and consultant fees and expert witness fees, which may include the cost for appropriate support staff and operational support. The deadline for submitting the proposed budget will be not less than 14 days after the prehearing conference at which the schedule for the proceeding is established or

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by such other date as the Commission designates. Proposed budgets shall be served on the Commission and all parties of record in the proceeding.

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: (1) the breadth and complexity of the issues; (2) the significance of any policy issues; (3) the procedural schedule; (4) the dollar magnitude of the issues at stake; (5) the participation of other parties that adequately represent the interests of customers; (6) the amount of funds being provided by the applicant intervenor; (7) the qualifications of the party and experience before the Commission; (8) the level of available funds in the Fund account or accounts involved; and (9) other Eligible Proceedings in which intervenors may seek additional Issue Fund Grants from the same Fund account or accounts. The Commission may deny, in whole or in part, a request for an Issue Fund Grant based on the above criteria. The Commission may place reasonable conditions on Issue Fund Grants, including but not limited to the requirement that the intervenor provide matching funds. The Commission may not authorize Issue Fund Grants that violate the terms set forth in Article 4 of this Agreement, including but

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not limited to the limitations on the amounts in the Fund accounts described in Article 4 above. 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 recipients of Issue Fund Grants 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 may 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,

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positions taken by other parties, changes in the schedule of the case, or other good cause. 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.

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. CUB will file with the Commission no later than July 1, 2004, and each July 1 thereafter during the Term, 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.

7.2 Payment of Preauthorized Matching Grants. At any time during the Term, ICNU or NWIGU may file a request for payment of the Preauthorized Matching Grants. Such a request must be filed with the Commission and 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

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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 granting the request is consistent with the terms of Article 4 above. 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.

7.3 Issue Fund Grant Request for Payment. In order to receive payment of an Issue Fund Grant, an intervenor must submit requests for payment of Eligible Expenses to the Commission and to 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.

The Request for Payment must:

- (a) Itemize the expenses, payees, and hourly rates of amounts to be reimbursed;
- (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; and
- (c) Provide information sufficient to show that the intervenor has complied with any conditions imposed on the Issue Fund Grant, including but not limited to documentation of matching funds if the Issue Fund Grant was conditioned on matching funds being used. Documentation of matching funds must be sufficient to prove that the intervenor has used in-house resources or outside funding to account for at least 50% of the Eligible Expenses for an Eligible Proceeding.

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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

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it. The Commission may disallow a request for payment, in whole or in part, if it determines that the request seeks reimbursement for (i) expenses that are not Eligible Expenses, or (ii) expenses that are inconsistent with the intervenor's Issue Fund Grant or any conditions placed on the Issue Fund Grant. 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: (i) the amount of payment approved, (ii) the Fund account or accounts from which payment is to be made, and (iii) 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

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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 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 4, 5, and 7 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

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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.

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

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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 Legislation after it is enacted;
- (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;

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- b. A change in the role of Commission Staff that is materially different from the statement adopted pursuant to Article 3(d) above; 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

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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, with the first Regulatory Expense Estimates being submitted by March 1, 2004. 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, 2006, each Participating Public Utility will submit to the Commission copies of all Regulatory Expense Estimates it has provided during the Term of the Agreement.

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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 of 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.

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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.

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PORTLAND GENERAL ELECTRIC
COMPANY

PACIFICORP

By:
Its:

By:
Its:

NORTHWEST NATURAL GAS COMPANY

INDUSTRIAL CUSTOMERS OF THE
NORTHWEST UTILITIES

By:
Its:

By:
Its:

CITIZENS' UTILITY BOARD OF OREGON

NORTHWEST INDUSTRIAL GAS USERS

By:
Its:

By:
Its: