

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2273

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation Into House Bill 2021
Implementation Issues.

MEMORANDUM

The purpose of this memorandum is to explain to all potential participants in this docket the deadlines and requirements for accessing Justice Funding, and to review and explain ways in which individuals and groups may participate in these proceedings. At the end of this memorandum, a table of dates relevant to funding is included for quick reference. For questions associated with any portion of this memorandum, you may contact me directly or may contact the Commission's Administrative Hearing Division. My contact information is below:

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Participation without an Attorney in this Docket

As described in the other memorandum issued in this docket today, the Commission intends to manage this docket as a contested case during an initial scoping phase. Though this docket is contested, it will be managed in a manner that all individuals, including unrepresented individuals and groups, may participate.

Specifically, the scoping schedule includes a request for written comments, a workshop at which participants may offer verbal comment regarding scoping to the Commission and may be invited to engage in dialogue with the Commission, and another opportunity for written comment.

OAR 860-001-0310(2)(b) in part states, "The ALJ may not allow an authorized representative who is not an attorney to present legal argument except to the extent authorized in ORS 183.457."¹ We anticipate that the scoping processes will inevitably

¹ OAR 860-001-0310(4)(a) states: "Legal Argument" includes arguments on: (A) The jurisdiction of the Commission to hear the contested case; (B) The constitutionality of a statute or rule or the application of a

involve arguments, issues and positions that implicate both legal and policy questions simultaneously. We do not consider arguments regarding the meaning of HB 2021 and positions relating to how it can or should be implemented to be legal argument during this scoping phase, and do not consider statements regarding what HB 2021 requires or does not require to be legal argument.² Accordingly, participants in this docket do not need to be represented by an attorney during the scoping phase to fully participate and offer perspectives on the scoping questions.

Intervention or request to be listed as “Interested Person”

During the scoping phase of this proceeding, groups start participation by filing either a “petition to intervene” or a “notice of participation.” Our rules on intervention are found at OAR 860-001-0300. A sample petition to intervene forms may be obtained by contacting the Administrative Hearings Division at puc.hearings@puc.oregon.gov.

Becoming an intervenor in the case ensures that you will receive all notices and allows you to participate in any event associated with this docket. If you do not want to intervene in the case, but still want to receive email notifications, you may ask the Administrative Hearings Division to list you as an interested person by sending an email to puc.hearings@puc.oregon.com with your request along with your contact information and reference to docket UM 2273.

Importantly, though we strongly encourage groups and individuals that plan to participate in all phases of this proceeding to request formal intervention, intervention is not required to issue comment or participate in the Commission workshop planned for the scoping phases of this docket. Future phases of this proceeding may require formal intervention for full participation.

Justice Funding

Participation in this docket, including potential support for hiring and working with an attorney is available through “Justice Funding.” Justice Funding is available to groups representing Environmental Justice Communities, and groups representing the interests of low-income customers. The Commission approved an agreement between Justice advocates and utilities to implement this type of funding in docket UM 2211. You may find the agreement in Order No. 22-033 here: <https://apps.puc.state.or.us/orders/2023ords/23-033.pdf>.

constitutional requirement to the Commission (C) The application of court precedent to the facts of the particular contested case proceeding.

² Under, OAR 860-001-0310 (4)(b) states that “Legal Argument” does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on: (A) The application of the statutes or rules to the facts in the contested case; (B) Comparison of prior actions to the Commission in handling similar situations; (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; (D) The admissibility of evidence; and (E) The correctness of procedures being followed in the hearing.

AHD is working to implement this agreement and has proposed rules to do so in docket AR 652. You may review the proposed rules here: <https://apps.puc.state.or.us/orders/2023ords/23-056.pdf>.

There are two types of funding available under this new opportunity. The first is case funding, which is requested on a docket-by-docket basis. This means that a group may ask for funding as they start to participate in a single docket. Up to 50 percent of this funding is available up-front.

The second is pre-certification grant funding. This is a broader type of funding and is available to groups to participate in a variety of dockets. Essentially, this funding can operate as a multi-subject grant for activity at the PUC, and groups can request that all of this funding be provided up front. Groups request this type of funding one time per year, with the PUC approving funding for up to five requests per year for this more flexible type of funding. The deadline for pre-certification requests in 2023 is April 3, and applications for pre-certification may be submitted in docket UM 2276. A filing explaining this opportunity, the amounts available, and the requirements and procedures for requesting pre-certification funding has been filed in docket UM 2276 and is available here: <https://edocs.puc.state.or.us/efdocs/HDD/um2276hdd181050.pdf>.

This portion of the memorandum will discuss the requirements and procedures for accessing environmental justice case funding in this docket.

1) Notice of Intent

- a. You must first file a notice of intent to seek case funding to notify the Commission and other parties that you plan to access Justice Funding. Your notice of intent can be filed when you file a petition for intervention in this case or may be filed separately. In all cases, however, it must be filed no later than April 19, 2023, for this docket. The notice must identify the utility account from which funding will be requested (in this case, PGE and PacifiCorp's account, as these are the only utilities subject to the Clean Energy Plan requirements of HB 2021), and should explain why your organization meets the following eligibility criteria, which the Commission will evaluate:
 - i. The organization represents the interests of low-income residential customers or Environmental Justice Communities, and participation in proceedings will be primarily directed at public utility issues affecting those interests, including but not limited to interests in utility rates and terms and conditions of service, interests in the cost of access and impact from the delivery of services, interest in utility programs, and interest in utility resource planning;
 - ii. The organization identifies the specific Environmental Justice Community or low-income customers it represents and demonstrates that it is able to effectively represent them;

- iii. The organization demonstrates that it is able to effectively represent or develop advocacy positions benefitting or informed by the Environmental Justice Community or low-income customers, in the service area of each Participating Public Utility for which funding is sought and demonstrates how it will identify the issues or advocacy positions that are important to those represented;
 - iv. When applicable, the organization has demonstrated in past Commission matters its ability to substantively contribute to the record on behalf of such interests;
 - v. In contested case proceedings such as this docket, the organization demonstrates that its request for funding will not unduly delay the schedule of the proceeding; and
 - vi. In determining whether organizations should be eligible to receive a Justice Fund Grant, the Commission may also consider whether the organization has significant ties to the Environmental Justice Community or low-income customers in the service area of each Participating Public Utility for which the Justice Fund Grant is sought, so your request may speak to that question.
- b. The notice of intent must also identify if the case is eligible for case certification. Case certification will be granted only for eligible proceedings, which include proceedings before the Commission that affect a participating public utility such as PGE and PacifiCorp, its customers and its Environmental Justice Communities. These include, but are not limited to, named, non-docketed Commission-led processes, rulemakings, declaratory ruling proceedings, contested case proceedings such as rate cases, integrated resource plans and updates, distribution system planning, depreciation dockets, deferrals for projects or pilots and design and implementation of differential rates, the Energy Trust's budget and planning process, and power or purchased gas adjustment.
 - c. Replies to the notice of intent and applications for case certification may be filed by any party no later than 14 days from the filing of the request.

2) Budget

- a. Once certified by the Commission, a Case Fund certified organization must submit to the Commission a proposed budget for its participation in an Eligible Proceeding. The proposed budget must include a statement of work, estimated eligible expenses, and a description of the Participating Public Utility account or accounts from which the applicant seeks funds and how the initial payment should be apportioned. Importantly, you may request up to 50 percent of an overall budget for up-front funding. To avoid making two different filings, you may submit a budget before or simultaneously with a notice of intent and request for certification.
- b. Budgets must be submitted no later than 30 days after the organization is case certified for the specific proceeding but can always be submitted before this date. Early submission is encouraged. Replies to filed budgets may be filed by any party no later than 14 days after the proposed budget is filed.

- c. As the Commission reviews budgets for approval, denial, or amendment, will consider whether:
 - i. The proposal is consistent with the breadth and complexity of the issues;
 - ii. The degree to which any policy issues affect the interests of low-income residential customers or the interests of residential customers that are members of Environmental Justice Communities;
 - iii. The procedural schedule;
 - iv. The dollar magnitude of the issues at stake;
 - v. The qualifications of the organization and experience before the Commission;
 - vi. The level of available Case Funds remaining for the year; and
 - vii. Other Eligible Proceedings in which other Eligible Recipients may seek additional funds consistent with ORS 757.072(2)(c).
- 3) The Commission will review and evaluate the requests, may ask for clarifying information, and will issue a decision following review. The Commission will make its best efforts to act on proposed budgets within 21 days of receipt.

PGE and PacifiCorp are the only utilities affected by this proceeding. Given the rollover of funding from last year, PGE’s Case Fund account balance, which includes both funds allocated from 2022 and funds from 2023 is at \$105,030.82 as of the date of this memorandum. PacifiCorp’s Case Fund account balance, which includes both funds allocated from 2022 and funds from 2023 is at \$99,560.61 as of the date of this memorandum. Importantly, this funding is available for all PGE and PacifiCorp related eligible dockets and is not an amount dedicated solely to this docket.

The factors by which the Commission will review these requests can be found in the rules and order referenced above.

Table of Dates and Deadlines

Note: The below dates are deadlines, we encourage you to file early if you can, which will allow the Commission to consider and issue decisions on your requests faster.

Justice Case Funding (Order No. 23-033)	Date
Notice of Intent and Request for Case Certification Due ³	April 19, 2023.
Response to Notice of Intent Due	May 3, 2023, or 14 days after the notice of intent is filed. ⁴

³ Proposed Budgets may be filed with Notice of Intent and Request for Case Certification.

⁴ Responses are due 14 days after the filing of certification requests. Accordingly, if a request is filed prior to the April 19 deadline, then responses are due 14 days after the filing is made.

Target Date for Commission Certification Decisions	May 10, 2023. ⁵
Budget Due	30 days following order granting certification. ⁶
Responses to Budget Due	14 days after submission of budget.
Target Date for Commission Decision on Budgets	21 days following submission of budget.

Dated this 16th day of March, 2023, at Salem, Oregon.



Nolan Moser
Chief Administrative Law Judge

⁵ Commission will work to issue decisions on requests 7 days following the close of the period for party responses, 21 days from the day you file your request. Accordingly, we encourage you to file your notice and requests early, as this will provide the Commission the opportunity to issue a decision on funding sooner, rather than later.

⁶ As noted in the body, budgets can be submitted before the 30-day deadline.