

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1357

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF)	
OREGON)	REPLY OF SMALL BUSINESS UTILITY
)	ADVOCATES TO JOINT
The First Amended and Restated Intervenor)	RESPONDENTS
Funding Agreement)	

Pursuant to OAR 860-001-0120, OAR 860-001-0400(5) and the ALJ Ruling of February 16, 2017, Small Business Utility Advocates (“SBUA”) submits this reply to the Joint Response of the Industrial Customers of Northwest Utilities (“ICNU”), the Citizens’ Utility Board of Oregon (“CUB”), Portland General Electric Company (“PGE”), PacifiCorp, and the Northwest Industrial Gas Users (“NIGU”) to the Petition of SBUA for Precertification (“Joint Response”). Among other things, CUB and ICNU seek to carve out special intervenor status to the exclusion of others. But the State of Oregon’s intervenor program is not intended to be a special club.

SBUA has a valuable role to offer. SBUA is a nonprofit with a mission to represent small commercial customers, an important customer class. Time and again, SBUA has advanced the interests of this class before the Commission. SBUA has been certified numerous times as an intervenor without any protests or responses from other groups.

Joint Respondents’ basis to exclude SBUA – that SBUA does not have the ability to assist the Commission in decision-making and that SBUA represents only renewable energy groups – is unfounded. The Commission has accepted SBUA’s testimony as valuable on numerous occasions, and as a factual matter SBUA does not represent renewable energy sector. SBUA represents small businesses.

A. SBUA Meets the Commission's Requirements for Precertification

Since 2007 when the Commission opened UM 1357 the criteria have remained the same for precertification. Criteria for case-certification are similar.¹ They both require: a nonprofit representing ratepayers on on-going basis, representation of a broad class of customers and not narrow interests or ancillary issues, effective representation, customers of the PGE or PacifiCorp contributing a significant portion of overall support and funding of the organization's activities in the state, and past demonstration of substantive contribution to the record.

On numerous occasions, the Commission has ruled that SBUA meets all of the requisite criteria for case-certification in UM 1754, UM 1790, UM 1773, and UM 1751.² None of the Joint Respondents responded to any of SBUA's several petitions for case certification in Commission dockets UM 1610, UE 294, UM 1754, UM 1790, UM 1773, or UM 1751. Instead, Joint Respondents cherry-pick SBUA testimony from other proceedings and complain that this testimony was unhelpful testimony to the Commission. *See, e.g.*, Joint Response, p. 8 (SBUA's comments on "how small businesses are billed and charged" do not assist the Commission).

B. SBUA Does Not Represent the Renewable Energy Sector

SBUA has a nonprofit mission to represent the utility interests of small businesses. The fact that SBUA's legal counsel, Cleantech Law Partners, has special knowledge in the field of renewable energy does not change SBUA's mission or advocacy. SBUA is the client.

Joint Respondents' objection that SBUA represents primarily renewable energy developers is false. All Joint Respondents have participated in dockets where SBUA has described its members and most Joint Respondents have participated in UM 1773 where several SBUA members identified themselves and were not renewable energy developers. The Response concern for "opening the door for special interest organizations" seeks to close the door for repre-

¹ Compare First and Third Intervenor Funding Agreements, <http://edocs.puc.state.or.us/efdocs/HAA/um1357haa161551.pdf> Section 5.2(b) & 5.3(a)-(e), <http://apps.puc.state.or.us/orders/2015ords/15-335.pdf>, Section 5.2(b) & 5.3(a)-(e).

² *See* Order 16-113 <http://apps.puc.state.or.us/orders/2016ords/16-113.pdf>, Order 16-428 <http://apps.puc.state.or.us/orders/2016ords/16-428.pdf>, UM 16-256 <http://apps.puc.state.or.us/orders/2016ords/16-256.pdf>, Order 16-266 <http://apps.puc.state.or.us/orders/2016ords/16-266.pdf>.

senting what presents by far the second largest class of ratepayers, and also the backbone of Oregon's economy.

In each petition for intervention and for case certification that it has submitted, SBUA has identified a sample of SBUA member company industries including food and beverage, commercial agriculture, jewelry, multi-family commercial residential, construction, website hosts and designers, architecture, custom wood products, artisanal glass, and others, and such membership has always been comprised by companies that in the majority are not renewable energy developers.³ Also, SBUA has identified that the majority of its members are in the PGE and PacifiCorp service territories.

Further, while SBUA does not divulge the identify of its membership, any more than CUB reveals all its members in name, certain SBUA members have willingly divulged themselves which has demonstrated SBUA represents a very wide variety of small businesses. In UM 1773, some SBUA membership was divulged confidentially to other parties, including ICNU and CUB, signatories on 5/20/16 and 5/23/16, respectively, to the docket's protective order.⁴ Those companies in the confidential document included a marketing firm, a pest control business, a welding business, an imaging firm, small business incubator and entrepreneur support firm, and a financing company. Respondents who received this confidential document included legal counsel for ICNU, legal counsel for CUB, the CUB Executive Director, and PGE legal counsel.

To the extent SBUA has commented in renewable energy matters, the comments were made from the perspective and interests of small businesses. All ratepayers classes have an interest in renewable energy matters because it impact the cost of electricity and what constitutes fair and reasonable rates. Moreover, IUCN and CUB both have commented on renewable energy matters. ICNU has intervened and commented in UM 1773, UM 1790, UM 1754, in addition to

³ SBUA Petitions for Case Certification in UM 1610, UE 294, UM 1790, UM 1773, UM 1754, UM 1751. It should be noted that in Docket UM 1610 SBUA endeavored to illuminate the link, supported by testimony citing reports, between small business, Oregon's clean energy economy, and community renewable energy projects. Looking very broadly at "green jobs" generally, categories show how diverse the Oregon economy is that may be involved in the green economy including in part renewable energy. See <http://osece.org/wp-content/uploads/2015/10/OED-Graham-Slater.pdf>, last accessed 2/26/17.

⁴ See SBUA Confidential Exhibit A, published <http://edocs.puc.state.or.us/efdocs/HAH/um1773hah133929.pdf>, p 3, and mailed to the parties.

CUB and ICNU intervening in UM 1610 and UM 1751. There is no reason SBUA should be precluded from doing so.

C. SBUA Advocates for Fair and Reasonable Rates

SBUA consistently promotes the small business interests of securing fair rates and work-force participation. The dockets SBUA participates in all relate to energy regulatory proceedings that impact rate-making and infrastructure buildout based on implementing the State of Oregon's energy policy as expressed and implemented in statute and rule. As described in Section E. *infra*, in UE 294 PGE General Rate Case, as in its comments and participation in workshops for that rate case, SBUA noted that the increase in rates for building a gas plant was proportionally higher for small nonresidential class, Schedule 32, than for any other rate class.⁵

In addition to existing Renewable Portfolio Standard ("RPS") and other policy indicators of a clean energy economy, the 2016 Legislature passed SB 1547. That bill includes provisions explicitly providing both for OPUC implementation and also for recovery of costs in Section associated with the increased RPS⁶ related to AR 600 and in Section 22's community solar provisions⁷ implemented by AR 603, and thereby implicating the second largest rate payer class, small nonresidential customers of PacifiCorp and of PGE in the rates, terms and conditions pertaining to implementing this legislation. These utilities themselves, and CUB, were part of negotiating this legislation from its earliest stages.

D. SBUA's funding complies with requirements for intervenor funding.

Joint Respondent's state that without the ability to verify what is required to become an SBUA member or overall level of support and funding for SBUA it is impossible to know from the Petition whether support and funding are significant or nominal. The Commission has found that SBUA member contributions comply with Commission rules and Respondents have not

⁵ UE 294 SBUA Petition for Case Certification <http://edocs.puc.state.or.us/efdocs/HAO/ue294hao141729.pdf>, p 4.

⁶ Section 11 of the bill allows "...timely recovery of costs prudently incurred by an electric company to construct or otherwise acquire facilities that generate electricity from renewable energy sources [and for], costs related to associated electricity transmission and costs related to associated energy storage." <https://olis.leg.state.or.us/liz/2016R1/Downloads/MeasureDocument/SB1547/Enrolled>

⁷ Id. Section 22 of the bill provides in (7)(a) and (c) "Except as otherwise provided in this section, owners and subscribers shall bear the costs and benefits of constructing and operating a community solar project... (c) All start-up costs prudently incurred during the development or modification of the program established under this section are recoverable in the rates of an electric company."

shown any discrepancy. SBUA has filed in good faith support provided by members. Further, the Commission has in place already mechanisms to protect ratepayers. IFA Sections 6.8(a) and (c) requires those receiving intervenor funding to provide an annual report of same, and Section 8 provides for termination of eligibility for precertification or case-certification for failure to comply and other reasons.⁸

E. SBUA Already Has Demonstrated Its Ability to Substantively Contribute to Commission Proceedings

SBUA's abilities to participate in Commission proceedings already have been proven. For example, the Commission found that in UM 1610 SBUA contributed substantively to the record in that docket.⁹ In UE 294 involving PGE General Rate Case, SBUA legal counsel were among the very few or only attendees ratepayers in the public meeting regarding UE 294 PGE general rate case and provided to the Commissioners questions SBUA had regarding the rate case and participated in subsequent settlement proceedings.¹⁰ In that docket, SBUA pointed out the disparate impact on small business of the proposed rate increase stating in its petition for case certification that:

SBUA is comprised of and represents small businesses exclusively, at least some of which are members of the Small Non-residential Customer class, Schedule 32. This customer class is under-represented in this docket. PGE maintains in Exhibit 2 of the Executive Summary indicates that the base rate effect of the proposed price change will be 5.9% for Small Non-residential Customers as compared to 3.1 % for Residential Customers, and 4.8% for Large Non-residential Customers. SBUA's mission is to advocate for the interests of small business and to ensure that any rate change is fair, just and reasonable consistent with ORS 757.210, and will focus on the rates and terms and conditions of service affecting its members.¹¹

⁸Order 15-335 Third Amended and Restated Intervenor Funding Agreement, <http://apps.puc.state.or.us/orders/2015ords/15-335.pdf>

⁹ "SBUA has demonstrated its ability to contribute substantively to the record" OPUC Order 15-144 p. 2.

¹⁰See SBUA comments submitted at OPUC Public Comment Hearing in UE 294 May 18, 2015 <http://edocs.puc.state.or.us/efdocs/HCG/ue294hcg151343.pdf>.

¹¹ UE 294 SBUA Petition for Case Certification <http://edocs.puc.state.or.us/efdocs/HAO/ue294hao141729.pdf>, p 4.

SBUA may not yet employ analytical tools as sophisticated as other seasoned intervenors such as CUB or ICNU, however, that does not prevent SBUA from providing substantive input. Simply pointing out inconsistencies between utility representations and energy regulatory filings can impact primary filings and utility representation to the public including customers and help produce fairer and more reasonable rates and terms and conditions of service. See UM 1773 regarding PGE Waiver of Competitive Bidding Guidelines where, in response to SBUA comments regarding the difference between the draft RFP which included no mention of supplier diversity and the utility's otherwise public support for supplier diversity, the utility included explicitly its Supplier Diversity Policy into RFP terms.¹² In UM 1754 and UM 1790 PacifiCorp acknowledged the need for better expression of planning for meeting renewable portfolio standards given comments of stakeholders including SBUA.¹³

F. Joint Respondents Rejected SBUA's Efforts to Cooperate and Communicate

SBUA received no note of concern when it reached out to PGE, PacifiCorp, ICNU, or CUB prior to SBUA's filing its Petition for Precertification. Such notice was sent one day in advance e-mail to the first three. No communication by phone or e-mail was received from ICNU, PGE, or PacifiCorp. Further, despite SBUA outreach, in part in compliance with IFA 6.6¹⁴, neither CUB nor ICNU has taken initiative to reach out to SBUA regarding consumer group representatives potential synergies. In fact, CUB had almost a month to respond to SBUA overtures in 2017 and while CUB's e-mailed interest, its first follow up communication was joining in this Joint Response without informing SBUA.

SBUA acknowledges that it did not make clear in its Petition that the filing did not include NWIGU. SBUA has only been involved in electricity regulation proceedings to date and anticipates that in 2017, the period remaining for this IFA that, consistent with its filings, it will only be involved with electricity dockets this year.

¹² The utility added its supplier diversity guidelines to its RFP <http://edocs.puc.state.or.us/efdocs/HAH/um1773hah8368.pdf>, p 36.

¹³ UM 1790 PacifiCorp Reply Comments <http://edocs.puc.state.or.us/efdocs/HAC/um1790hac165835.pdf> p 8, UM 1790 Comments of SBUA <http://edocs.puc.state.or.us/efdocs/HAC/um1790hac14445.pdf> p 1.

¹⁴ "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."

For the foregoing reasons, SBUA respectfully requests that the Commission approve this Petition for Precertification. SBUA, just like CUB and ICNU, advances the rights of an important customer class in the PGE and PacifiCorp service areas, meets the criteria and should not be excluded from precertification.

RESPECTFULLY SUBMITTED February 28, 2017.

/s/ Diane Henkels

Of Counsel, Cleantech Law Partners PC
Counsel for Small Business Utility Advocates