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February 23, 2017

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON
First Amended and Restated Intervenor Funding Agreement
Docket No. UM 1357

Dear Filing Center:

Enclosed please find the Joint Response of the Industrial Customers of Northwest Utilities, the Citizens' Utility Board of Oregon, Portland General Electric Company, PacifiCorp, and the Northwest Industrial Gas Users to the Petition of Small Business Utility Advocates for Precertification.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1357

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| In the Matter of |) | JOINT RESPONSE OF THE |
| |) | INDUSTRIAL CUSTOMERS OF |
| PUBLIC UTILITY COMMISSION OF |) | NORTHWEST UTILITIES, OREGON |
| OREGON |) | CITIZENS' UTILITY BOARD, |
| |) | PORTLAND GENERAL ELECTRIC |
| First Amended and Restated Intervenor Funding |) | COMPANY, PACIFICORP, AND THE |
| Agreement. |) | NORTHWEST INDUSTRIAL GAS |
| |) | USERS |
| _____ |) | |

I. INTRODUCTION

Pursuant to OAR 860-001-0400, OAR 860-001-0120, and Section 5.1 of the Third Amended and Restated Intervenor Funding Agreement (“IFA”),^{1/} the Industrial Customers of Northwest Utilities (“ICNU”), Oregon Citizens’ Utility Board (“CUB”), Portland General Electric Company (“PGE”), PacifiCorp, and the Northwest Industrial Gas Users (“NWIGU”) (collectively, the “Joint Respondents”) file this Joint Response to the Petition of Small Business Utility Advocates for Precertification (“SBUA Petition”). The Joint Respondents oppose the SBUA Petition because SBUA does not meet the criteria for precertification to receive intervenor funding under the IFA and the Public Utility Commission of Oregon’s (the “Commission”) rules.

The Commission has reserved the ability to become precertified to receive intervenor funding to those organizations that have demonstrated a consistent ability to represent

^{1/} See Docket No. UM 1357, Order No. 15-335 (Oct. 20, 2015).

customer interests with respect to utility rates and terms and conditions of service. This reflects the fact that customers pay the costs of intervenor funding, and the important role these organizations play in assisting the Commission to fulfill its primary statutory responsibility of “represent[ing] the customers of any public utility ... and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction.”^{2/} To this end, the Joint Respondents welcome the contributions to the Commission’s processes of a wide variety of stakeholders, including SBUA, and particularly value the contributions of organizations that represent broad customer interests.

SBUA has contributed to the record in a number of Commission proceedings. It has done so, however, primarily as a representative of the interests of small renewable developers. Such representation does not satisfy the requirements for precertification, and granting SBUA’s Petition would open the door for numerous other special interest organizations to seek intervenor funding. This would likely require dramatic increases in the amount of intervenor funding without ensuring a corresponding customer benefit.

II. ARGUMENT

The IFA and OAR 860-001-0120 authorizes certain organizations to become precertified to receive intervenor funding to better enable these organizations to effectively and efficiently represent customer interests in Commission proceedings. Currently, only CUB and ICNU are precertified to receive funding from the funds maintained by PacifiCorp and PGE for this purpose. NWIGU is the only other precertified organization, and receives funds from Northwest Natural, Avista Corporation, and Cascade Natural Gas (the “Gas Utilities”). CUB is

^{2/} ORS 756.040(1).

also precertified to receive funds from the Gas Utilities. Although, based on SBUA's prior involvement in Commission proceedings, the Joint Respondents assume SBUA seeks precertification for the PacifiCorp and PGE Issue and Matching Funds, NWIGU joins this Response because this is not clear from SBUA's Petition. NWIGU also joins this Response due to the precedent granting the SBUA Petition would set, which could be used to obtain intervenor funding from the Gas Utilities.

As SBUA notes, there are five criteria an organization must meet to be eligible for precertification:

- (1) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;
- (2) The organization represents the interests of a broad group or class of customers and those interests are primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of utility services;
- (3) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;
- (4) The organization's members who are customers of one or more of [PGE and PacifiCorp] contribute a significant portion of the overall support and funding of the organization's activities in the state; and
- (5) The organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests.^{3/}

Contrary to the claims in its Petition, SBUA fails to meet each one of these criteria.

^{3/} OAR 860-001-0120(3)(b); IFA § 5.2(b).

A. SBUA does not represent utility customers' interests.

SBUA states that its primary purpose is representing the interests of small businesses in utility proceedings.^{4/} The evidence of its participation in prior Commission dockets, however, demonstrates that it is primarily interested in representing the interests of small renewable energy developers. SBUA has intervened in the following dockets: UM 1610 (related to Qualifying Facility ("QF") contracting and pricing), UM 1664 (related to PGE's update of its QF pricing tariff), UE 294 (PGE's 2015 general rate case), UM 1754 (PacifiCorp's Renewable Portfolio Implementation Plan ("RPIP")), UM 1790 (PacifiCorp's revised RPIP), UM 1751 (related to energy storage guidelines), and UM 1773 (related to a petition by PGE to waive certain of the Commission's competitive bidding guidelines). SBUA also states that it is participating in AR 600/UM 1776 (related to the Commission's competitive bidding guidelines), and AR 603 (a rulemaking to implement community solar requirements). The only one of these proceedings that directly impacted customer rates was UE 294 and, as discussed below, SBUA's contributions to the record of that proceeding did not assist the Commission in determining whether PGE's rates were fair and reasonable.

Rather, the vast majority of the cases SBUA has participated in, and the substance of its contributions to those cases, relate primarily to renewable energy development. This is what SBUA has demonstrated to be its primary interest, not customers. Indeed, if there were any doubt about SBUA's primary purpose, a glance at the website of the law firm that represents the

^{4/} SBUA Petition at 2.

organization, Cleantech Law Partners, indicates that it “cater[s] *exclusively* to the renewable energy industry.”^{5/}

B. SBUA’s representation of small businesses is not supported, and its interests are not primarily directed at public utility rates and terms and conditions of service.

The Joint Respondents do not dispute that small business customers represent a broad group of utility customers. SBUA, however, has not demonstrated its representation of these customers or their interests, and, as noted above, has not historically represented these customers with respect to “rates and terms and conditions of service.”

SBUA has not divulged the identity of any of its members.^{6/} It is not clear, therefore, how many members SBUA has, and what portion of those members are customers of PGE or PacifiCorp. It is impossible to know, then, whether SBUA’s advocacy is representative of the broader small business community that is served by these regulated utilities.

Moreover, when SBUA has advocated on behalf of small businesses, this has been in their capacity as developers of renewable energy, not in their capacity as utility ratepayers. For instance, SBUA filed testimony in Docket No. UM 1610, in which it sponsored the testimony of the State Policy Director of the Distributed Wind Energy Association. In a prior order denying SBUA case certification for intervenor funding, the Commission itself noted that SBUA’s contributions to this docket “were not on the behalf of small business customers, but rather on behalf of qualifying facilities selling power to utilities under [PURPA].”^{7/} The Commission concluded that “SBUA has failed to establish its ability to contribute on behalf of

^{5/} Available at: <http://cleantechlaw.com/> (emphasis added).

^{6/} SBUA Petition at 3.

^{7/} Docket No. UE 294, Order No. 15-144 at 1-2 (May 6, 2015).

customer interests related to rates, and terms and conditions of service.”^{8/} Similarly, in Docket No. UM 1664, SBUA’s comments were focused on “the difficulty small businesses have in negotiating with utilities” with respect to power purchase agreements for qualifying facilities.^{9/} In UM 1751, SBUA filed comments on the Commission’s proposed guidelines for energy storage systems that were directed primarily at the benefits energy storage could provide to one of its members that develops small-scale distributed wind generation systems.^{10/} Finally, in UM 1773, SBUA’s comments on PGE’s 2016 Draft Renewable Request for Proposals (“RFP”) were primarily concerned with promoting a diversity of suppliers selected through the RFP, which, according to SBUA, would include “work prospects [] as well as ... participation of small business in the process.”^{11/}

In none of these cases, then, was SBUA’s participation “primarily directed at public utility rates and terms and conditions of service affecting” small businesses.^{12/} Rather, they focused on “narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of utility services.”^{13/}

C. SBUA has not demonstrated its ability to effectively represent small business customers.

In the dockets in which SBUA has commented on rate-related issues, it has yet to demonstrate its ability to effectively represent the interests of small business customers. For instance, in Docket Nos. UM 1754 and UM 1790, PacifiCorp’s RPIPs, SBUA raised certain

^{8/} Id. at 2 (emphasis in original).

^{9/} Docket No. UM 1664, SBUA Comments at 1 (Sept. 13, 2013).

^{10/} Docket No. UM 1751, SBUA Comments (Sept. 16, 2016).

^{11/} Docket No. UM 1773, SBUA Comments at 1 (June 28, 2016).

^{12/} OAR 860-001-0120(3)(b); IFA § 5.2(b).

^{13/} Id.

issues, such as rate impacts attributable to the renewable portfolio standard (“RPS”) and how the cost of transmission impacts RPS costs, but did not make any proposals related to these issues and only requested more information about them.^{14/} Similarly, in UE 294, PGE’s 2015 rate case, SBUA sponsored testimony that sought more information with respect to PGE’s rates for small business customers, but did not make any specific proposals or recommendations with respect to those rates.^{15/} The organization’s contributions to the records of these proceedings, therefore, did not assist the Commission in establishing just and reasonable rates or setting terms or conditions of service.

D. SBUA has not demonstrated that its PacifiCorp and PGE members contribute a significant portion of its overall funding and support.

SBUA claims that “Oregon based ratepayers from both [PGE and PacifiCorp] contribute to the overall support and funding of the organization.”^{16/} However, without the ability to verify the identity of any of SBUA’s members, what is required to become an SBUA member, or the overall level of support and funding for SBUA, it is impossible to know from SBUA’s Petition whether the support and funding from these members is “significant” or merely nominal. This is important because it ensures that SBUA’s participation in Commission proceedings is tied to the interests of its members and that it is held accountable to these members for its advocacy.

^{14/} Docket No. UM 1754, SBUA Comments at 2 (Feb. 24, 2016); Docket No. UM 1790, SBUA Comments at 2 (Sept. 28, 2016).

^{15/} Docket No. UE 294, SBUA/100 (June 15, 2015).

^{16/} SBUA Petition at 4.

E. SBUA has not substantively contributed to the record on behalf of customer interests in prior Commission proceedings.

As previously noted, all of SBUA's substantive contributions to previous Commission proceedings have related to issues germane to small renewable developers. On matters of customer rates and terms and conditions of service – the issues for which intervenor funding is intended to be reserved – SBUA has largely limited itself to seeking additional clarity with respect to how small businesses are billed and charged. While the Joint Respondents agree that the nature of all charges customers receive, and the level of such charges, should be understandable to all customers (and both PGE and PacifiCorp have worked with SBUA to increase this understanding), such requests for information do not assist the Commission in ensuring that the rates PGE and PacifiCorp charge their customers are fair and reasonable.^{17/}

III. CONCLUSION

Given the complexity of the issues the Commission is tasked with addressing, the Joint Respondents recognize the value that customer representatives add to the Commission's decision-making process. The voices of additional organizations that represent diverse customer groups, including small businesses, have the potential to further benefit this process. The Commission, however, is an economic regulator that is tasked primarily with overseeing the rates investor-owned utilities like PGE and PacifiCorp charge their customers. Intervenor funding is reserved for organizations that have demonstrated an ability and dedication to assisting the Commission in this fundamental task. SBUA has not shown that it is such an organization. The Commission should deny SBUA's Petition.

^{17/} ORS 756.040(1).

Dated this 23rd day of February, 2017.

Respectfully submitted,

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