

ORDER NO. 17 117

ENTERED MAR 21 2017

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1357

In the Matter of

SMALL BUSINESS UTILITY
ADVOCATES,

Application for Precertification for Purposes
of Receiving Intervenor Funding under the
Third Amended and Restated Intervenor
Funding Agreement.

ORDER

DISPOSITION: ADMINISTRATIVE HEARING DIVISION'S RECOMMENDATION
ADOPTED

This order memorializes our decision, made and effective at our March 21, 2017 Regular Public Meeting, to adopt the Administrative Hearing Division's recommendation in this matter. The AHD Report with the recommendation is attached as Appendix A.

Dated this 21st day of March, 2017, at Salem, Oregon.


Lisa D. Hardie
Chair



COMMISSIONER SAVAGE WAS
UNAVAILABLE FOR SIGNATURE

John Savage
Commissioner


Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

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ITEM NO. 5

**PUBLIC UTILITY COMMISSION OF OREGON
AHD REPORT**

PUBLIC MEETING DATE: March 21, 2017

REGULAR X CONSENT EFFECTIVE DATE N/A

DATE: March 16, 2017

TO: Public Utility Commission

FROM: Michael Grant *MG*

SUBJECT: SMALL BUSINESS UTILITY ADVOCATES (Docket No. UM 1357):
Application for Precertification for Purposes of Receiving Intervenor
Funding under the Third Amended and Restated Intervenor Funding
Agreement.

RECOMMENDATION:

Deny the application of Small Business Utility Advocates (SBUA) for precertification for intervenor funding.

DISCUSSION:

On February 9, 2017, SBUA filed an application for precertification under Section 5.1 of the Third Amended and Restated Intervenor Funding Agreement (IFA)¹ and OAR 860-001-0120(3)(b).

Portland General Electric Company (PGE), PacifiCorp, dba Pacific Power (PacifiCorp), the Industrial Customers of Northwest Utilities (ICNU), Oregon Citizens' Utility Board (CUB), and the Northwest Industrial Gas Users (NWIGU) (the Joint Respondents) filed a joint response opposing the application on February 23, 2017.

SBUA replied on February 28, 2017.

I. BACKGROUND

The IFA is authorized by ORS 757.072, which allows energy utilities to enter into agreements for financial assistance to organizations representing broad customer interests in Commission proceedings. In accordance with Section 7 of the IFA, the Commission allows a utility to recover in rates amounts paid for intervenor funding

¹ Approved by Order No. 15-335 (Oct 20, 2015).

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grants and make a determination in each proceeding as to how to recover any funding grants from the utility's various customer classes. Eligible intervenor expenditures made on behalf of a particular customer class will be charged to and paid for by that customer class.

To receive intervenor funding, an organization must either be "precertified" or "case-certified." Precertified organizations are eligible to seek funding grants in any proceeding in which they participate. Currently, only CUB, ICNU, and NWIGU are precertified. Case-certified organizations are eligible to seek funding in specific cases for which they seek certification.

SBUA has previously applied for case certification in six dockets. The Commission denied two earlier requests:

- In docket UM 1610, the Commission denied case certification, finding that SBUA's primary purpose was to promote renewable resource development and its focus was on the prices a utility pays to a qualifying facility selling power to the utility, not on utility customer rates.²
- In PGE's 2015 rate case, the Commission denied certification, finding SBUA failed to establish its ability to contribute on behalf of customer interests related to rates, and terms and conditions of service.³

The Commission granted four more recent requests—all of which were unopposed:

- Dockets UM 1790 and UM 1754 concerning PacifiCorp's renewable portfolio standard planning
- Docket UM 1751 regarding utility energy storage programs
- Docket UM 1773 concerning PGE's request to fast-track a request for proposals (RFP) for renewable energy.

In these four cases the costs of SBUA's advocacy was allocated to PGE or PacifiCorp's small nonresidential customers.

² *In the Matter of Public Utility Commission of Oregon Staff Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-257 at 2 (Jul 9, 2014).

³ *In the Matter of Portland General Electric Company Request for a General Rate Revision*, Docket No. UE 294, Order No. 15-144 at 2 (May 6, 2015).

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SBUA now requests to be precertified. This precertification would continue through the expiry of the term of the IFA, December 31, 2017, unless the Commission decertifies SBUA earlier for any of the reasons provided in Section 8.1 of the IFA.

The Joint Respondents protest SBUA's application for precertification. They acknowledge that SBUA has contributed to the record in a number of Commission proceedings, but contend that SBUA has done so primarily as a representative of the interests of small renewable developers. The Joint Respondents claim that such representation does not satisfy the requirements for precertification, and raise concerns that granting SBUA's petition would open the door for other special interest organizations that do not represent the broad interests of customers.

II. DISCUSSION

A. Criteria for Precertification

To be precertified for purposes of receiving intervenor funding, an organization must establish that it represents the broad interests of utility customers and demonstrated the ability to substantively contribute to the record on behalf of these interests. The specific criteria are set forth in OAR 860-001-0120(3)(b) and provide:

- (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 class of customers and those interests are primarily directed at public utility rates or terms and conditions of service affecting those customers, and not narrow interests or issues that are ancillary to the representation of those 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 are customers of one or more of the utilities that are parties to the applicable agreement and 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 proceedings the ability to substantively contribute to the record on behalf of customer interests.

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B. Analysis

Under the IFA and our rules, the Commission will precertify only those organizations that have consistently represented the interests of a broad class of customers with respect to utility rates or terms and conditions of service affecting those customers. If there is a reasonable risk that an organization may in a future proceeding advocate only narrow interests or issues that are ancillary to the representation of the broad class of customers, the Commission would deny precertification and direct the organization to continue seeking case certification.

The Commission sets this bar high for precertification because utility customers pay the costs of intervenor funding. Since the funding an organization receives is recovered from the particular class of its customers it seeks to represent, its advocacy must be on behalf of the broad interests of that entire class of customers with respect to utility rates or terms and conditions of service.

SBUA states that its primary purpose is representing the interests of small businesses in utility proceedings. SBUA describes the small business community as broad class of customers spanning many different industries. Its advocacy efforts, SBUA states, focus on how energy regulation may impact terms and conditions and rates affecting small business, including rates that small business pay for electricity and how small business is impacted as a workforce from energy infrastructure projects.

A review of SBUA's contribution to the record in numerous past proceedings, however, shows that SBUA's participation has often been primarily as a representative of the narrow interests of small renewable energy developers. For example, in recent docket UM 1751, SBUA's comments on draft guidelines for utility energy storage programs focused mainly on ensuring that smaller tech companies developing and deploying applicable technology were able to participate in the utility programs. Similarly, in docket UM 1773, SBUA's comments regarding PGE's petition to waive certain competitive bidding guidelines and fast-track its RFP were primarily concerned with promoting a diversity of suppliers selected through the RFP and "leveling the playing field for smaller energy producers."⁴ These comments advocate the interest of small businesses as renewable energy developers, not the entire small business class as utility ratepayers.

⁴ Docket No. UM 1773, Comments of Small Business Utility Advocates at 5 (Jun 28, 2016).

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SBUA's representation of small business customers—as a broad class of customers in past proceedings—has been limited and does not rise to the level that the Commission requires for precertification. Rather, in the majority of the cases SBUA has participated in, SBUA's representation on behalf of small business has been in their capacity as developers of renewable energy—not in their capacity as utility ratepayers.

I recommend that the Commission deny SBUA's petition. SBUA may continue to seek case-certification in specific dockets, but I conclude that SBUA has failed to meet the relatively higher standard for precertification under the IFA.

PROPOSED COMMISSION MOTION:

Deny the application of Small Business Utility Advocates (SBUA) for precertification for intervenor funding.