

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 352

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER,)	JOINT PARTIES’ RESPONSE TO PETITION
)	OF SMALL BUSINESS UTILITY
2019 Renewable Adjustment Clause.)	ADVOCATES FOR CASE CERTIFICATION
_____)	

I. INTRODUCTION

Pursuant to OAR 860-001-0420(4), the Oregon Citizens’ Utility Board (“CUB”), the Alliance of Western Energy Consumers (“AWEC”), and PacifiCorp (“PAC”) hereby file this Joint Response to the Petition of Small Business Utility Advocates for Case Certification in the above-captioned proceeding (“SBUA Petition”). CUB, AWEC, and PAC (“Joint Parties”) oppose the SBUA Petition—previously filed on February 19, 2019—because it does not meet the criteria for case certification to receive intervenor funding under Section 5.3 the Fourth Amended and Restated Intervenor Funding Agreement (“IFA”)¹ and the Oregon Public Utility Commission’s (“Commission”) rules.

Section 5.3 of the IFA delineates clear criteria for determining whether an organization may be case-certified by the Commission to be eligible to receive an Issue Fund Grant.

Importantly, **all** of the following criteria must be met in order for an organization to be eligible:

- (a) The organization is (i) a not for profit organization; or (ii) demonstrates it is in the process of becoming a nonprofit corporation; or (iii) is comprised of multiple

¹ See Docket No. UM 1929, Order No. 18-017 (Jan. 17, 2018).

- customers of one or more Participating Public Utilities and demonstrates that a primary purpose of the organization is to represent broad utility customer interests.
- (b) 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;
 - (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 affected by the proceeding contribute a significant percentage of the overall support and funding of the organization;
 - (e) 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;
 - (f) The organization demonstrates that (1) 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 (2) that the specific interests of a class of customers will benefit from the organization's participation; and

(g) The organization demonstrates that its request for case-certification will not unduly delay the schedule of the proceeding.²

As seen in these criteria, the Commission has reserved the ability to become case-certified to receive intervenor funding to those organizations that have demonstrated a consistent ability to represent customer interest 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 with fulfilling 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.”³ To the end, the Joint Parties welcome the contributions to the Commission’s process of a wide variety of stakeholders, including SBUA, and particularly value the contributions of organizations that represent broad customer interests.

The Joint Parties’ concerns regarding the SBUA Petition are centered on the fact that it fails to meet the criteria delineated in Section 5.3 of the IFA. While SBUA has contributed to the records of several Commission proceedings, it has largely done so as a representative of the interests of small renewable energy developers. Since renewable energy developers are not a “broad class of customers” contemplated in Section 5.3 of the IFA, their representation is not grounds for case-certification. Further, SBUA has repeatedly side-stepped divulging the identities of its members, as can be seen in the SBUA petition in this matter.⁴ The obfuscation of SBUA’s membership renders it extremely difficult to determine whether it should be granted case-certification. Therefore, the Joint Parties respectfully request that the Commission deny the

² OPUC Order No. 18-017 at Attachment A, page 14-15.

³ ORS 756.040(1) (emphasis added).

⁴ UE 352 SBUA Petition at 3.

SBUA Petition.

To be clear, the Joint Parties encourage robust stakeholder participation in all Commission proceedings, including SBUA's participation in this proceeding. The Joint Parties simply cannot support a petition for case-certification that does not comply with the Commission delineated guidelines in Section 5.3 of the IFA. However, the Joint Parties encourage continued participation on the part of SBUA. This response will now examine several of the case-certification criteria with which the Joint Parties do not believe the SBUA Petition complies.

II. ARGUMENT

A. *SBUA does not represent utility customers' interests.*

SBUA states that its primary purpose is representing the interests of small businesses in utility proceedings.⁵ 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), UE 319 (PGE's 2017 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). The only proceedings that directly impacted customer rates were UE 294 and UE 319 and, as discussed below, SBUA's contributions to the record of those proceedings did not assist the Commission in determining whether PGE's rates were fair and reasonable.

⁵ SBUA Petition at 2-3.

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 organization, Cleantech Law Partners, indicates that it "cater[s] *exclusively* to the renewable energy industry."⁶

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 Parties 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, and this was made clear in its petition.⁷ It is not clear, therefore, how many members SBUA has, and what portion of those members are customers of PacifiCorp. It is impossible to know, then, whether SBUA's advocacy is representative of the broader small business community that is served by PAC.

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

⁶ Available at: <http://cleantechlaw.com/> (emphasis added).

⁷ SBUA Petition at 3.

behalf of qualifying facilities selling power to utilities under [PURPA].”⁸ The Commission concluded that “SBUA has failed to establish its ability to contribute on behalf of *customer* interests related to rates, and terms and conditions of service.”⁹ 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.¹⁰ 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.¹¹ 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.”

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 Docket No. UE 294, Order No. 15-144 at 1-2 (May 6, 2015).

⁹ *Id.* at 2 (emphasis added).

¹⁰ Docket No. UM 1664, SBUA Comments at 1 (Sept. 13, 2013).

¹¹ Docket No. UM 1751, SBUA Comments (Sept. 16, 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 In UE 319, SBUA intervened, but filed no testimony. 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 members contribute a significant portion of its overall funding and support.

SBUA claims that its “members include [PAC’s] customers in California and Oregon, and in Oregon, this includes Pacific Power ratepayers. Pacific Power ratepayers contribute to the overall support and funding of SBUA.”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 as small business ratepayers and that it is held accountable to these members for its advocacy.

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

As previously noted, SBUA’s substantive contributions to previous Commission

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 5.

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 Parties agree that the nature of all charges customers receive, and the level of such charges, should be understandable to all customers (and PacifiCorp has worked with SBUA to increase this understanding), such requests for additional information do not assist the Commission in ensuring that the rates PacifiCorp charges its customers are fair and reasonable.¹⁷

III. CONCLUSION

Again, the Joint Parties encourage robust stakeholder participation in all Commission proceedings, and acknowledge that access to funding – including intervenor funding – is essential to meaningful participation. Given the complexity of the issues the Commission is tasked with addressing, the Joint Parties 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, has the potential to further benefit this process. However, in this case, the SBUA Petition does not meet the criteria of Section 5.3 of the IFA for case-certification. Therefore, the Commission should deny SBUA’s Petition.

///

///

///

///

///

¹⁷ ORS 756.040(1).

Dated this 6th day of March 2019.

Respectfully submitted,



Michael P. Goetz, OSB # 141465
General Counsel
Oregon Citizens' Utility Board
610 SW Broadway, Ste. 400
Portland, OR 97205
T. 503.227.1984 x 16
F. 503.224.2596
E. mike@oregoncub.org

/s/ Tyler C. Pepple

Tyler C. Pepple
1750 SW Harbor Way, Suite 450
Portland, Oregon 97201
(503) 241-7242 (phone)
(503) 241-8160 (facsimile)
tcp@dvclaw.com
Of Attorneys for the Alliance of
Western Energy Consumers

/s/ Matthew McVee

Matthew McVee
Chief Regulatory Counsel
PacifiCorp
825 NE Multnomah Street
Suite 1800
Portland, OR 97232
Office: 503-813-5585
Mobile: 503-729-0259
Email: matthew.mcvee@pacificorp.com