

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 2114, UG 435 & UG 411 and UE 394

In the Matters of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Effects of the COVID-
19 Pandemic on Utility Customers
(UM 2114);

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL,

Request for General Rate Revision
(UG 435),

Advice 20-19, Schedule 198 Renewable
Natural Gas Recovery Mechanism
(ADV 1215) (UG 411); and

PORTLAND GENERAL ELECTRIC
COMPANY,

Request for a General Rate Revision
(UE 394)

RESPONSE OF SMALL BUSINESS
UTILITY ADVOCATES TO BENCH
REQUEST

INTRODUCTION

Pursuant to the February 16, 2022 Bench Request issued in the above referenced dockets by the Oregon Public Utility Commission's Chief Administrative Law Judge (ALJ), Small Business Utility Advocates ("SBUA") files this response for consideration of three intervenor funding related filings. Small Business Utility Advocates is a 501(c)(3) corporation in good standing with a mission to represent, protect, and promote the interests of small businesses in their capacity as utility customers. Consistent with its governing mission, SBUA seeks members in Oregon that are small businesses receiving electric

and/or natural gas service and represents them as a community to protect their utility and energy-related concerns. SBUA provides the following information in the order presented in the Bench Request:

1. Most recent year audited financials. If audited financials are not available, then a financial statement of current income and expenses may be provided and attested to by an officer or board member of SBUA.

The confidentiality of SBUA's financial statement is protected by Oregon and federal law. In response to the ALJ's Bench Request, SBUA is providing certain financial information that has not been audited, is for reporting purposes to the board only, and is not publicly disclosed. In response to the ALJ's request and confidential protections offered in the Bench Request, and pursuant to OAR 860-001-0070, SBUA attaches an unaudited financial statement of current income and expenses for limited disclosure as Confidential Exhibit 1, which SBUA's Board Member and Treasurer has specifically reviewed and attested to for the disclosure. The information includes Oregon operations, including in-kind and other contributions, for in camera review and solely for purposes of accommodating the ALJ's Bench Request.

Pursuant to federal and state law, SBUA respectfully requests to maintain the confidentiality of its donor names and addresses. Federal law and U.S. Supreme Court precedent protects against disclosure. *Americans for Prosperity v. Bonta, Thomas More Law Center v. Bonta*, 594 U.S. ____, 141 S.Ct. 2373 (2021)(Invalidating a California statute requiring disclosure of donors, finding the disclosure requirement is facially invalid because it burdens donors' First Amendment rights and is not narrowly tailored to an important government interest). Neither the Oregon intervenor statutes nor the Commission's current guidelines specifically requires intervenors to disclose donor identities. Maintaining confidentiality is the expectation of SBUA's donors, and keeping to this practice avoids a chilling effect on donations and is consistent with nonprofit best practices. *See, e.g., Americans for Prosperity Foundation v. Kamala Harris*, 182 F.Supp.3d 1049, 1058-1059 (Cal. C.D., 2016) (Attorney General barred from obtaining donor information due to chilling effects on donors and violations of First Amendment association rights). SBUA follows a donor bill of rights to ensure

donor information is handled with confidentiality to the maximum extent provided by law.¹

SBUA further believes this practice is consistent with the practices of a substantial number of other 501(c)(3) organizations.

For these reasons, SBUA submits sources of income including in-kind and cash donations by members but without identifying the donors consistent with the U.S. Supreme Court ruling in *Americans for Prosperity Foundation*. No member has donated more than \$1,500, and in-kind. Counsel for SBUA has assured payment for its experts.

2. A breakdown of information in SBUA’s UE 394 proposed budget showing the amount of time spent by attorney, associate attorney, and expert witness, on filed testimony and briefs, and clarification as to whether or not the funds requested in that docket are intended to recover costs associated with these filings.

SBUA responds to this request by submitting an Amended Proposed Budget Exhibit A, herein attached as Exhibit A, with this explanation. SBUA seeks funds for work performed in 2022.

Acknowledging that SBUA filed a Petition for Case Certification later in the docket, SBUA does not seek to recover intervenor funds in 2021. The docket has evolved in such a way that a significant focus of SBUA in the docket, rate spread, was subject to be, it appeared, determined by the Commission, though Parties did negotiate regarding the rate spread topic in 2022. SBUA viewed the terms of the third and fourth stipulations as a total package with numerous components including the termination of the decoupling mechanism regarding the Schedule 32 customers SBUA represents in making its decision to sign on to the stipulations. With the resurgence of the issue of whether the decoupling mechanism will be removed or not, SBUA is in a position where it needs to share existing and perform additional analysis and potentially testimony to address the impact of continuing decoupling on Schedule 32 customers.

//

//

¹ See, e.g., Donor Bill of Rights, Association of Fundraising Professionals, available at www.afpnet.org/Ethics/EnforcementDetail.cfm?ItemNumber=3359.

3. An explanation in greater detail of what future activity in docket UM 2114 SBUA anticipates will necessitate 66 hours of expert witness time, 35 hours of time from attorneys, and 52 hours of activity from other organization representatives. Additionally, please clarify the following line item: “Small business sector expertise, 20 hours.”

To respond to this request SBUA describes generally the future activity and then specifically the hours for expert witness, the attorneys, and the other organization representatives. In providing this response SBUA assumes the “Small business sector expertise” includes those hours in the “organization representatives” even though the expertise is outside of SBUA.

Generally, this docket includes diverse areas of activity including 1) continued identification and impacts of the UM 2114 Stipulation on small commercial customers including review and analysis of data gathering and interpretation of arrearages and disconnections, bad debt, late fees; 2) participation in informal rulemaking pursuant to UM 2114 Stipulation where a formal rulemaking has not opened, and SBUA has set forth initial technical views well supported by its expert to support its advocacy for fair treatment of small commercial customers in this process; 3) tracking the costs identified in the UM 2114 Stipulation as subject to deferrals for and the which the Commission would likely in this docket determine appropriate time for prudence review, even though the deferrals themselves are in separate dockets, and 4) implementation of the Stipulation paragraphs 27 -34 where small commercial customers are part of environmental justice communities.

a. Expert witness

In response to request for specifics on what necessitates 66 hours of expert witness time, SBUA submits the attached Exhibit B from SBUA’s expert which describes the work proposed for the 2022 activity in UM 2114. This expert, Danny Kermode C.P.A., who is known to the Commission is very familiar with public utility commission rulemaking and also with utility cost deferrals. Work identified by SBUA’s expert in Track one and two of the expert’s proposed budget are eligible expenses pursuant to the IFA 7.4(g)(Including as “Eligible Expenses” for Issue Funds the costs of participation in workshops and other informal Commission activities prior to the institution of an Eligible Proceeding).

b. Attorney & organization representatives

The table below provides an explanation in greater detail of future activity in docket UM 2114 SBUA anticipates will require 35 hours of attorney time and 52 hours of activity from other organization representatives. These tasks are basically what SBUA has been doing in this docket, UM 2114, except evolution is anticipated regarding informal rulemaking, deferrals, research of docket and environmental justice data, in addition to continued participation in public meetings and related comment.

Personnel	Hours	Tasks
Attorneys	35	Interface with expert with regard to informal rulemaking, prepare for expected Commission action regarding deferred bad debt and other COVID-19 costs
		Analyze and summarize for small business sector expertise COVID-19 information from utility reporting and Staff analysis and Commission decisions and receive small business sector input re same
		Draft comments and proposals for rules, public comment for public meeting; proposals for fair treatment of COVID-19 deferrals
		Meet with Staff, utilities, constituency, and other stakeholders
Administrator / paralegal	30	Review, track, and analyze COVID-19 reporting data with regard to small commercial customers
		Research and draft public comment re overlap of small commercial customers impacted zip codes and environmental justice communities
		Review Staff Reports and assist in drafting public comment
		Meet with Staff, utilities, constituency, and other stakeholders
Small business sector expertise	20	Representatives of business organizations meet 2022 to each public meeting to update re status of utility COVID-19 related costs, receive input on Commission Staff proposals re rulemaking, proposal for deferrals
		Prepare public comment to the Commission.
Executive Director	2	Receive and review SBUA public comment and formal submissions for the organization, providing input as necessary.

c. Small business sector expertise:

SBUA offers the expertise of skilled business persons providing their experience and training in testimony to inform the Parties and the Commission with regard to small commercial customers. No other

party brings this expertise to the table. Depending where the impact is perceived by industry or geography, SBUA would interface with that expertise to review the docket Report and data and give input and, hopefully public comment directly to the Commission at Public Meeting. The industry or commercial experts would require time to review the Commission information prepare comment likely with the assistance of SBUA counsel, and be present for one or more public meetings. This time could easily add up to 20 hours for two to four business persons.

4. Clarification of the following line item in SBUA's proposed budget for UG 435 and UG 411: "Small business sector expertise, 20 hours." Additionally, please explain why this line item is for \$150 per hour in the UG 435 and UG 411 budget, while a corresponding line item in SBUA's budget in UM 2114 is for \$100 dollars per hour.

SBUA offers the expertise of skilled business persons providing their experience and training in testimony to inform the Parties and the Commission with regard to small commercial customers. No other party brings this expertise to the table. Depending where the impact is perceived in SBUA's expert SBUA would call upon that expertise to review the testimony for industry-based information. The industry expert would require time to review the relevant testimony, prepare testimony likely with the assistance of SBUA counsel, and potentially be available to testify. This time could easily add up to 20 hours.

The line item for this expertise in the Northwest Natural Rate Case is \$150 per hour. In two previous general rate cases, SBUA proposed expert testimony from a credentialed and small business professional.² The budget proposed in those rate cases was \$150 per hour where the rate case involved a professional with substantial experience, training, and expertise in the business subject matter of the docket. Further, UG 435 & UM 411 is a contested case proceeding with several stages including supplying testimony, not to mention voluminous technical documents. The amount proposed for this

² UE 294 Portland General Electric Company ("PGE") Request for General Rate Revision, Opening Testimony of Ronald J. White, a licensed engineer with significant experience in engineering, construction, and also small business matters including business equity and diversity. That rate case resulted in a lower rate for Schedule 32 customers than originally proposed by PGE. In another PGE General Rate Case, UE 319, SBUA filed a Petition for Case Certification and a Proposed Budget for the same expert who testified in UE 294 and provided expert input in UM 1773. In UM 1773, the Commission granted case certification in Order 16-256, and approved the Proposed Budget in Order 16-308. In UE 319, no party objected to the budget funds for the witness set at \$150 per hour and though the UE 319 Petition for Case Certification was denied in Order 17-167, it was based on insufficient issue funds and not on the merits of SBUA's Petition.

expertise in this natural gas rate case is the same time and amount per hour as that proposed in the electric utility general rate cases.

In comparison, the budget for UM 2114 requests a lesser amount per hour. In the UM 2114 docket the subject matter experts include experienced business people but not pandemic experts, for example. Further the scope of work is of a very different kind and nature from expert work in a general rate case. For example, the information in UM 2114 the issues presented do not include the rate of cost of capital, revenue requirement, rate spread, and other typical rate case topics. SBUA estimates that experienced business persons very familiar with the impact of the pandemic on their businesses would provide helpful insight and useful information based on credible information with regard to SBUA's focus in the UM 2114 docket.

5. SBUA's most recent membership list with corresponding information on the utilities from which these members are receiving utility service.

The confidentiality of SBUA's membership list is protected by Oregon and federal law. Pursuant to OAR 860-001-0070. As an association, the U.S. Supreme Court recognizes constitutional rights to keep membership lists and information private and confidential. *See, e.g., NAACP v. Patterson*, 357 U.S. 449 (1958) (upholding confidentiality of nonprofit membership lists). SBUA does not publicly disclose members, which would open them up to being contacted by third parties, including for solicitation or potentially by utilities in litigation proceedings, and could have a potential chilling effect on developing new membership. In addition, SBUA's membership list has potential economic value from its disclosure or use, and therefore is protected from disclosure under other Oregon law. ORS 646.461(4)(Oregon Uniform Trade Secret Act), ORS 192.345 and 192.355 (Oregon Public Records law), and ORS 40.225 (Oregon Evidence Code regarding privileged information). The Commission's discovery rules recognize that laws and regulations such as trade secrets, and privilege provide substantive basis for assertion of confidentiality.³

For these reasons, SBUA's membership list is maintained as privileged information not subject to public disclosure. SBUA's Board of Directors may specifically approve the disclosure of a more specific

³ OAR 860-001-0500, ORCP 36 C recognizing that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way. (https://www.oregonlegislature.gov/bills_laws/Pages/orcp.aspx, last accessed 2/23/22).

membership list of members under seal and solely for purposes of accommodating the ALJ's Bench Request, which information is provided in Confidential Exhibit 2 includes Oregon SBUA members and known electric and natural gas utility providers, for *in-camera* review only.

6. Clarification of whether SBUA intends to utilize any funding to recover costs incurred for work already completed in all three proposed budgets.

By the time of filing this Response to Bench Request and the issuing of decisions on SBUA's corresponding petitions, certain work will already be done by SBUA in all of the matters subject of the petitions, therefore, SBUA respectfully responds as follows:

If SBUA is granted case certification in UG 435 & UG 411 SBUA intends to utilize funding to recover costs including costs allowed pursuant to the Commission's decision and the IFA in the UG 435 and UG 411 NW Natural Request for General Rate Revision for all work performed in the docket. and for work performed in 2022 in UE 394.

If SBUA is granted case certification in UE 394 SBUA intends to utilize funding to recover costs incurred in 2022 absent Commission determination otherwise.

If the Commission designates UM 2114 as an Eligible Proceeding and grants SBUA's Petition and approves its Proposed Budget, SBUA intends to utilize any funding to recover costs incurred from the date SBUA filed its Petition for Designation as Eligible Proceeding in UM 2114.

7. Clarification in the UM 2114 proposed budget on how the budget would be allocated across different utilities.

Most SBUA members are in locations served by PacifiCorp dba Pacific Power ("Pacific Power"), Portland General Electric Company ("PGE"), Northwest Natural Gas Company ("NW Natural"), and fewer but some members are located in territory served by Avista Utilities ("Avista") and Cascade Natural Gas Company ("CNGC").⁴ The member distribution approximates the proportion of funds in the issue fund account of the utilities participating in the Fourth Amended and Restated Intervenor Funding Agreement, approved in Order 18-017 ("IFA") ("Participating Utilities") in the IFA 4.2. SBUA proposes,

⁴ SBUA has done specific identifiable work to assist small businesses alleviate their arrearages thereby potentially and favorably impacting their utility rates in Idaho Power Company's service territory, however, as the IFA does not cover that and the Idaho Power Company-Oregon Citizens' Utility Board Intervenor Funding Agreement, approved by Order No. 20-493, explicitly allows only the Oregon Citizens Utility Board to access intervenor funding under that agreement, SBUA did not include that IFA in its Petition.

therefore, a proportional allocation of the budget across the Participating Utilities as follows: 27% or \$4,622 to Pacific Power, PGE, and NW Natural, 13% or \$2,226 to Avista, and 6% or \$1,027 to CNGC.

CONCLUSION

SBUA appreciates the opportunity to address Chief ALJ Moser's Bench Request. SBUA looks forward to continued representation of the important and often overlooked stakeholder group that are Oregon's small businesses. And we look forward to continued work with the Commission and other parties in these proceedings.

RESPECTFULLY SUBMITTED February 25, 2022.



s/ Diane Henkels

Diane Henkels
Attorney, Small Business Utility Advocates
www.utilityadvocates.org
621 SW Morrison St. Ste 1025
Portland, OR 97205
541-270-6001
diane@utilityadvocates.org

UE 394

EXHIBIT A

SBUA Amended Proposed Budget for Issue Fund Grant

Personnel	Hours	Rate	Cost
Attorney		\$225	
Review & research	2		\$450
Testimony drafting and consult	4		\$900
Filing & docket communication	2		\$450
Briefs	10		\$2,250
Settlement and meetings	3		\$675
Hearing	4		\$900
Associate Attorney		\$190	
Legal research	2		\$380
Brief	2		\$380
Hearing preparation	1		\$190
Administrator/paralegal	4	\$75	\$300
Filings			
Expert Witness		\$150	
Expert witness	4		\$600
Testimony	10		\$1,500
Review	5		\$750
Settlement conferences & meetings			
Subtotal			\$9,725
20% of SBUA Funded Expenditures			\$1,945
Total SBUA Issue Fund Grant Proposed Request			\$7,780

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 2114, UG 435 & UG 411 and UE 394

In the Matters of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Effects of the COVID-
19 Pandemic on Utility Customers
(UM 2114);

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL,

Request for General Rate Revision
(UG 435),

Advice 20-19, Schedule 198 Renewable
Natural Gas Recovery Mechanism
(ADV 1215) (UG 411); and

PORTLAND GENERAL ELECTRIC
COMPANY,

Request for a General Rate Revision
(UE 394)

DECLARATION OF DANNY KERMODE

I, Danny Kermode, do hereby declare and say:

1. My name is Danny Kermode. I am the expert engaged by Small Business Utility Advocates ("SBUA") to provide information and analysis on behalf of SBUA in the Public Utility Commission of Oregon docket UM 2114 Investigation into the Effects of the COVID-19 Pandemic on Utility Customers ("UM 2114").

2. I am the same Danny Kermode who prepared the attached Exhibit A e-mail message dated February 22, 2022 to SBUA's counsel detailing my 66 hour estimate for my work in UM 2114.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Signed February 25, 2022.

s/ Danny Kermode

Danny Kermode

Diane,

I am responding to your request for further detail of my 66 hour estimate for UM-2114. The proposed budget assumes the docket maintains its current "two tracks" for proposed action by the commission. Within each of the two tracks I assume that the commission must take at least two commission actions that would trigger the need of my services. I have detailed each below. — All times are estimates and not fixed hours

—.

TRACK 1 - Informal Rulemaking

Track 1 of UM 2114 is the informal rulemaking approved by the commission last July 23, 2021, to review disconnection policy, specifically the characteristics and circumstances to be used to protect certain customers against disconnections of energy service.

1. Initial proposal - 16 hours (two 8-hour days)
 - Review and identification of issues in any new suggested policy or rule changes,
 - Meet with SBUA leadership and attorney to discuss proposal,
 - Prepare comments to be filed in the docket.
 -
2. Final proposal before adoption - 16 hours
 - Review and identification of issues in proposed policy or rule change,
 - Meet with SBUA leadership and attorney to discuss proposal,
 - Prepare comments to be filed in the docket,
 - Commission Public meeting attendance.

TRACK 2 - Deferred COVID Costs Recovery

Track 2 represents the expected commission action on the recovery of deferred bad debt and other related COVID costs. I assumed, as with Track 1, that this track will also have two periods of activity which require my services.

1. Initial proposal on recovery - 18 hours
 - Review and identification of issues in any proposal for the recovery of deferred COVID costs.
 - Meet with SBUA leadership and attorney to discuss proposal,
 - Develop Small Business proposal if required
 - Prepare comments to be filed in the docket.
 -
2. Final proposal before adoption - 16 hours
 - Review and identification of issues in proposed policy or rule change by the commission,
 - Meet with SBUA leadership and attorney to discuss proposal,
 - Workshop attendance (if required)
 - Prepare comments to be filed in the docket,
 - Commission Public meeting attendance.
 -

The total of service to be provided is estimated at 66 hours spread across both tracks and four activities. Of course , if the commission ends up adding or eliminating activities or actions the expected hours would be reduced or increased respectively.

NOTE: The following is additional work which is related to UM-2114 that were not included in the original estimate because of either notice of an issue was received after the budget was prepared or at the time, the process and timetable was not yet clear.

— All times are estimates and not fixed hours —.

1. Second scoping discussion of Division 21 Including review of Staff's revised working draft
- 16 hours
 - Review and identification of issues in any new suggested policy or rule changes,
 - Meet with SBUA leadership and attorney to discuss proposals,
 - Prepare comments if needed to be filed in the docket.
2. Review and identification of small business issues impacted by OPUC's implementation of HB 2475 (UM 2211) Deferrals that could be linked to implementation of the energy equity program, 16 hours
3. Review and identification of any impacts of a UM 2114 Stipulation on small business. 16 hours

Best regards,
Danny Kermode CPA