

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UE 352

In the Matter of	)	
	)	
PACIFICORP, d.b.a. PACIFIC POWER	)	REPLY OF SMALL BUSINESS
	)	UTILITY ADVOCATES TO JOINT
	)	PARTIES' RESPONSE TO SBUA
	)	PETITION
2019 Renewable Adjustment Clause	)	
_____	)	

**1. INTRODUCTION**

Pursuant to OAR 860-001-0120(4), Small Business Utility Advocates (“SBUA”) submits this Reply to Joint Parties Response to Petition of Small Business Utility Advocates For Case Certification (“Joint Response”) in the above-referenced proceeding. Citizens’ Utility Board (“CUB”), the Alliance of Western Energy Consumers (“AWEC”), and PacifiCorp (“PAC”), collectively referred to herein as “Joint Parties” do not dispute that SBUA’s participation will not unduly delay the proceedings, nor that there is no other adequate representation of small nonresidential customers and the interests of the class will benefit from the organization’s participation.

Mindful of the range of interests and concerns arising in providing electricity for the range of ratepayers, SBUA appreciates the representation of the broad utility customer interests, including representation by some of the Joint Parties. Applying the applicable statutes, the Fourth Amended and Restated Intervenor Funding Agreement (“IFA”), the Oregon Public Utility

Commission (“Commission”) rules, SBUA reiterates that it meets criteria for Case Certification in this docket<sup>1</sup> and requests permission to submit a budget for consideration by the Commission.

**2. SBUA IS A 501(C)3 REPRESENTING THE INTERESTS OF SMALL BUSINESS GENERALLY IN THE COMMISSION PROCEEDINGS.**

SBUA is itself a nonprofit and its counsel is an Oregon based firm. SBUA is a 501(c)(3) organization that grew out of feedback from the small business community that its interests were poorly represented in utility proceeding. Contrary to the Joint Response indication,<sup>2</sup> the Commission may examine the website of SBUA and its counsel and observe that SBUA is not represented by a law firm catering exclusively to the renewable energy industry.<sup>3</sup> And even if SBUA counsel were a firm that represented primarily renewable energy companies, the argument is without merit where law firms frequently represent a range of clients in a range of services, within the bounds of conflicts rules and other rules of professional responsibility. For example, counsel for AWEC may represent parties in renewable energy transactions and litigation.<sup>4</sup> Further, as the National Consumer Law Center points out, any consumer advocacy group is in the business of renewable energy where utility commissions and dockets are concerned with how to most reasonably and fairly navigate the route to a low carbon energy supply.<sup>5</sup> This report from

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<sup>1</sup> Applying the Commission’s Internal Operating Guidelines of 10/14/2014 serving the goals of fairness, openness, transparency, and effectiveness to proceedings including contested cases. <https://www.puc.state.or.us/commission/Internal%20Operating%20Guidelines.pdf>

<sup>2</sup> Joint Response, p 5.

<sup>3</sup> Small Business Utility Advocates [www.utilityadvocates.org](http://www.utilityadvocates.org); Henkels Law LLC, [www.henkelslaw.com](http://www.henkelslaw.com)

<sup>4</sup> See <https://www.davisonvanclave.com/> (last accessed 3/13/19).

<sup>5</sup> Nancy Brockway, “Intervenor Funding in Public-Utility Rate Cases”, National Consumer Law Center, June 1995.

1995 is brought to present by similar observation that the electric utility industry is in the midst of a profound transformation driven largely by technological innovation; federal and state policies; and changing customer needs and increasing expectations, with a transition to a clean energy future as a key trend driving change in the electric utility industry.<sup>6</sup>

**A. SBUA MEMBERS ARE A WIDE VARIETY OF BUSINESSES AND INDUSTRY SECTORS.**

As a 501(c)(3) organization, the identity of SBUA members is protected by law. SBUA's membership list is maintained as privileged information not subject to public disclosure. 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. State of Alabama, ex rel. John Patterson*, 357 U.S. 449, 452 (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 and 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 fiduciary responsibility precludes disclosure of this information. Maintaining confidentiality is the expectation of SBUA's members, and keeping to this practice avoids a chilling effect on membership and donations and is consistent with nonprofit best practices.<sup>7</sup> SBUA does not now and has not waived this protection.

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<sup>6</sup> Lisa Schwarz, L. Wood, J. Howat, R. Cavanagh, S. Borenstein, "Recovery of Utility Fixed Costs: Utility, Consumer, Environmental and Economist Perspectives", Lawrence Berkeley National Laboratory, LBNL-1005742, Report No. 5, p. 4, June 2016, available at [https://emp.lbl.gov/sites/all/files/lbnl-1005742\\_1.pdf](https://emp.lbl.gov/sites/all/files/lbnl-1005742_1.pdf) last accessed 3/13/19.

<sup>7</sup> In addition, except for political or private foundations, 501(c)(3) exempt organizations are protected under the Internal Revenue Code against disclosing the name and address of any contributor to the organization. 26 U.S.C. § 6104(d)(3)(A) (nondisclosure of contributors).

That said, SBUA has disclosed numerous members and does so on a specific case-by-case basis if members agree, including for purposes of providing information input to Commission proceedings. Joint Parties falsely assert that “SBUA has not divulged the identity of any of its members, and this was made clear in its Petition.” Joint Response, p. 5. The Petition for Case Certification of Small Business Utility Advocates (“Petition”) included examples where SBUA identified several specific SBUA members, who agreed, in those specific matters, to disclosure in those proceedings. Petition p. 4. One click and short scrolling through the referenced filings of these dockets, including reference to confidential paper filing, in dockets where these same Joint Parties were each parties, and the Joint Parties and the Commission, can see that SBUA has disclosed the identity of specific SBUA members.<sup>8</sup> Further these identified members include a small business incubator, a pest control company, a marketing business, a welding company, an technology entrepreneur, a distributed wind energy company, and others. As it maintains in its petition to intervene and for case certification, SBUA membership is varied; it is a cross-section of Oregon’s economy. Some of those companies may engage in the energy sector for the same reason that Citizen Utility Board is Oregon energy value in clean energy and its board has members with renewable energy expertise.<sup>9</sup> The law firm supplying AWEC counsel represents energy

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<sup>8</sup> See for example, UE 294 SBUA/100, White/4 <https://edocs.puc.state.or.us/efddocs/HTB/ue294htb17027.pdf>; UM 1773 Petition for Case Certification of SBUA p 3 referencing confidential filing accessible to those signatories of the applicable Protective Order, [https://edocs.puc.state.or.us/efdocs/HAH/um1773hah133929.pdf](https://edocs.puc.state.or.us/efddocs/HAH/um1773hah133929.pdf); UM 1751 Implementing Energy Storage Program Guidelines pursuant to House Bill 2193 including definition of the term energy system and requesting that the guidelines address a wide range of considerations including technology among many others; and UM 1610 PURPA docket. dealing with qualifying facilities under the federal Public Utility Regulatory Policies Act of 1978 and ORS 758.505 through 758.555. Disclosure was for the specific purpose of the individual docket and is not to be construed more broadly.

<sup>9</sup> CUB aims to represent both the financial interests and the values of Oregonians by keeping Oregon’s energy mix affordable, reliable, and clean. See <https://oregoncub.org/programs/energy/> last accessed 3/13/19.

clients in a variety of matters and has expertise in renewable energy as demonstrated by its intervention in many Commission matters related to the State of Oregon enactment and amendment of Renewable Portfolio Standards required of PacifiCorp in Oregon.<sup>10</sup>

**B. SBUA HAS FOCUSED ITS INPUT IN DOCKETS AS REQUIRED IN THE DOCKET, AND EDUCATING THE COMMISSION ON IMPACT ON SMALL NONRESIDENTIAL CUSTOMERS OF RATES AND TERMS OF SERVICE IN DOCKETS.**

SBUA has focused on rate impacts of dockets, and on terms of service in relevant dockets; and in others SBUA has focused on docket specific topics. In this docket, having acquired additional appropriate expertise, SBUA could provide relevant and helpful expertise

In UM 1610, SBUA intervened and in June of 2013 the Commission found that SBUA did demonstrate the ability to contribute substantively to the record.<sup>11</sup> Joint Parties are correct that the Commission in that proceeding found that SBUA presented the interests of small business renewable energy developers, but SBUA also opined on rates and terms and conditions of service. As parties explain in Post-Hearing briefs in UM 1610, the state PURPA closely parallels the federal statute of the same name and acronym.<sup>12</sup> As SBUA explains in page 3 of that brief, SBUA testimony demonstrates aspects of implementing PURPA in Oregon advocating for a transparent rather than “black box” methodology for determining PURPA rates. Joint Parties indicate that SBUA intervened as representing renewable energy developers, and SBUA does not dispute that testimony provided was from an Oregon based distributed wind energy developer.

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<sup>10</sup> See <https://www.oregon.gov/energy/energy-oregon/Pages/Renewable-Portfolio-Standard.aspx>

<sup>11</sup> Order 15-144 p 2 <https://apps.puc.state.or.us/orders/2015ords/15-144.pdf>

<sup>12</sup> See UM 1610, Post-Hearing Brief of SBUA p 2-3 at <https://edocs.puc.state.or.us/efdocs/HBC/um1610hbc163211.pdf>

SBUA does dispute, however, that its representation in PURPA docket was not about rates and terms and conditions of service. SBUA Testimony described the technical link between distributed generation and rates and terms of service.<sup>13</sup>

SBUA acknowledges that it did intervene in UE 319 but for lack of resources did not file testimony.

UM 1754 and UM 1790 entailed analysis of PacifiCorp's Renewable Portfolio Standard Implementation Plan in compliance with ORS 469A.075 and OAR 860-083-0400, for the compliance years 2017-2021.<sup>14</sup> In their Joint Parties Response, Joint Parties admit that SBUA raised issues of rate impacts attributable to the RPS and how cost of transmission impacts RPS costs.<sup>15</sup> Joint Parties also represent falsely that SBUA comments did not make a proposal related to issues.<sup>16</sup> Rather, SBUA's comments did offer a proposal to improve the report's information, Id., though nothing in the statute or rule requires that comments make proposals. *See* OAR 860-083-0400(8). Similarly, SBUA proposed other improvements in SBUA comments in UM 1790, PacifiCorp's subsequent RPS Implementation Plan.<sup>17</sup> In fact on page 3 of those Comments SBUA Referenced the same issue of this docket UE 352, that is where the automatic adjustment clause allows recovery of "costs related to transmission".<sup>18</sup> Joint Parties mischaracterize SBUA

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<sup>13</sup> UM 1610 SBUA/100 Price/1 <https://edocs.puc.state.or.us/efdocs/HTB/um1610htb114046.pdf> at p 6.

<sup>14</sup> UM 1754 <https://apps.puc.state.or.us/edockets/docket.asp?DocketID=19926>; UM 1790 <https://apps.puc.state.or.us/edockets/docket.asp?DocketID=20275>

<sup>15</sup> Joint Parties Response, pp 6-7. SBUA Comments, UM 1754 <https://edocs.puc.state.or.us/efdocs/HAC/um1754hac82346.pdf>

<sup>16</sup> Joint Parties Response, p 7.

<sup>17</sup> SBUA Comments p 2 , UM 1790 <https://edocs.puc.state.or.us/efdocs/HAC/um1790hac14445.pdf>

<sup>18</sup> Id. at 3. <https://apps.puc.state.or.us/edockets/docket.asp?DocketID=20275>

intervention as limited to seeking clarity of billing and charging though these characteristics may be considered part of fair and reasonable rate making where the billing itemizes the costs charged to the customer.

SBUA Testimony in UE 294 regarding Portland General Electric General Rate Increase request clearly indicated the different rate increases proposed and the need for clarity and transparency in the reasons for the rate change for small businesses.<sup>19</sup> Joint Parties falsely state that in UE 294 SBUA testimony did not make any specific proposals or recommendations with regard to rates.<sup>20</sup> In UE 294, SBUA participated fully throughout the docket supplying testimony, the issues list, and in settlement discussions. As the Commission noted, SBUA did participate in the discussions but was not signatory to the stipulation.<sup>21</sup> Based at least in part of SBUA participation, however, the schedule pricing was changed to not presume consolidation of schedules to reduce the rate increase burden on Schedule 32 relative to the original proposal.<sup>22</sup> The Commission included in its considerations SBUA's assertion of comparing rate impacts on a general rate case.<sup>23</sup> SBUA demonstrated in those proceedings SBUA's ability to effectively represent small business customers, and SBUA's ability to utilize the Commission process and expertise available to SBUA to advocate consumer interests.

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<sup>19</sup> UE 294, SBUA/100, White/5, <https://edocs.puc.state.or.us/efdocs/HTB/ue294htb17027.pdf>

<sup>20</sup> Response, p 7.

<sup>21</sup> Order 15-356 Adopting a proposed settlement authorizing an overall rate increase of 1 percent, p 2.

<sup>22</sup> Id. at 10 <https://apps.puc.state.or.us/orders/2015ords/15-356.pdf>

<sup>23</sup> Order 16-266 p<https://apps.puc.state.or.us/orders/2016ords/16-266.pdf>

### **3. PACIFICORP MEMBERS CONTRIBUTE A SIGNIFICANT PORTION OF SBUA'S OVERALL FUNDING AND SUPPORT.**

As previously stated herein, SBUA identified certain SBUA members in previous proceedings. SBUA members of PacifiCorp including Schedule 23 member ratepayers include members in Multnomah, Marion, Lincoln, Deschutes, Benton counties among other locations in Oregon. As stated previously, SBUA is not required to reveal its membership any more than Citizen Utility Board reveals all of its members in PacifiCorp territory.

However, as a 501(c)(3) organization, SBUA has annual meetings and regular fundraising efforts. SBUA members contribute cash and in kind support, such as office space and labor, whether nominal or not, and Oregon PacifiCorp d.b.a. Pacific Power customers have contributed a significant portion of SBUA's cash, and in addition, in-kind contributions in Oregon. SBUA has filed with the Commission SBUA's reports for intervenor funding received in previous years. SBUA should not be required to identify its fundraising efforts any more than CUB for AWEC identify their funding from individual ratepayers, and 501(c)(3) exempt organizations are protected under the Internal Revenue Code against disclosing the name and address of any contributor to the organization. 26 U.S.C. § 6104(d)(3)(A) (nondisclosure of contributors).

In addition to regulatory requirements and restrictions imposed on 501(c)(3) organizations, like SBUA, SBUA is represented by legal counsel bound by Oregon Rules of Professional Responsibility and is required to represent in good faith and accurately every time SBUA legal counsel signs and files a filing with the Commission.



**4. SBUA FILES THIS REPLY TIMELY AND CONSISTENTLY WITH THE COMMISSION RULES.**

SBUA presumes any possible defect under OAR 860-001-0420 in conferring with other parties regarding a procedural motion is waived as it was not presented in any response to its Petition. SBUA also presumes that the Petition is considered a substantive motion entailing, among other considerations, that permission to file the reply is permitted without seeking permission by the Administrative Law Judge. OAR 860-001-0420(5).

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## 5. CONCLUSION

It is fair and reasonable to grant case certification to SBUA in this docket. As the Commission stated, this docket may have a substantial impact on utility rates and may result in a change in regulatory policy.<sup>24</sup> SBUA has been granted case certification in four different dockets, including PacifiCorp d.b.a. Pacific Power related dockets, which take up topics pertinent to the subject of this docket. The Joint Parties who have participated in many if not all of the same dockets where SBUA have intervened, have never previously contested SBUA's eligibility for case certification. SBUA has obtained expertise to assist with analysis for SBUA's constituency and for the Commission the relevant information and provide analysis helpful to the Commission in deciding docket issues. For the foregoing reasons the Commission should grant Petition for Case Certification of SBUA in this docket and allow SBUA to submit a budget.

RESPECTFULLY SUBMITTED March 13, 2019.



s/ Diane Henkels

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Diane Henkels, Attorney  
Small Business Utility Advocates  
[www.utilityadvocates.org](http://www.utilityadvocates.org)  
621 SW Morrison St. Ste 1025  
Portland, OR 97205  
541-270-6001  
[diane@utilityadvocates.org](mailto:diane@utilityadvocates.org)

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<sup>24</sup> Commission Order No. 19-024 p. 2.