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February 25, 2021

***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 PACIFICORP, dba PACIFIC POWER,  
Request for a General Rate Revision.  
**Docket No. UE 374**

Dear Filing Center:

Please find enclosed the Response of the Alliance of Western Energy Consumers and the Oregon Citizens' Utility Board to SBUA's Second Proposed Budget in the above-referenced docket.

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

Sincerely,

/s/ Jesse O. Gorsuch  
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 374**

In the Matter of	)	RESPONSE OF THE ALLIANCE OF
	)	WESTERN ENERGY CONSUMERS
PACIFICORP, dba PACIFIC POWER,	)	AND OREGON CITIZENS' UTILITY
	)	BOARD TO SBUA SECOND
Request for a General Rate Revision.	)	PROPOSED BUDGET
_____	)	

**I. INTRODUCTION**

Pursuant to OAR 860-001-0420(4),<sup>1/</sup> the Alliance of Western Energy Consumers (“AWEC”) and Oregon Citizens’ Utility Board (“CUB”) file this Response to the Second Proposed Budget of the Small Business Utility Advocates (“SBUA”). SBUA seeks an Issue Fund Grant from the 2021 PacifiCorp Issue Fund to engage in stakeholder education and outreach activities that were included in the stipulation resolving rate spread and rate design issues in the above-referenced case, which was fully litigated and decided in 2020. Because UE 374 is no longer an active docketed proceeding, the activities for which SBUA seeks an Issue Fund Grant are ineligible for intervenor funding and its proposed budget should be denied.<sup>2/</sup> If, however, the Oregon Public Utility Commission (“Commission”) disagrees with AWEC’s and

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<sup>1/</sup> Neither the Commission’s rules nor the Intervenor Funding Agreement specifies a process for a party to respond to a proposed budget for an Issue Fund Grant. Accordingly, AWEC and CUB are treating SBUA’s filing as a motion for approval of a proposed budget and responding within the 15-day period provided in the rules.

<sup>2/</sup> The Fourth Amended and Restated Intervenor Funding Agreement Section 7.4 defines eligible expenses as those related to “participation in the proceeding” (*see* § 7.4(a)-(f)) or costs for participation in workshops “prior to the institution of an Eligible Proceeding” (*see* § 7.4(g)). Because this request comes after the closure of this proceeding, the expenses for which SBUA seeks intervenor funding are not eligible under the terms of the IFA.

CUB's interpretation of the Fourth Amended and Restated Intervenor Funding Agreement ("Fourth IFA") and believes SBUA is entitled to an Issue Fund Grant, the Commission should not approve SBUA's proposed budget at the amount requested.

## **II. BACKGROUND**

UE 374 was docketed to review PacifiCorp's 2020 general rate case application. A general rate case is one of the proceedings that qualifies as an "Eligible Proceeding for Issue Funds" under the Fourth IFA.<sup>3/</sup> On March 10, 2020, SBUA petitioned for case certification to receive an Issue Fund Grant for its participation in the case. SBUA's petition sought an issue fund grant of \$18,220.<sup>4/</sup> No party objected to SBUA's petition and the Commission granted it in Order No. 20-187 issued on June 10, 2020; however, the Commission noted that less than \$100 remained unallocated in the PacifiCorp Issue Fund.<sup>5/</sup>

On August 6, 2020, SBUA sought reconsideration of Order No. 20-187, arguing that the Commission should reassign funds previously allocated to other organizations in other dockets.<sup>6/</sup> CUB and AWEC filed a response to SBUA's application for reconsideration, arguing that all funds in the PacifiCorp Issue Fund had been previously allocated and would be spent on the cases for which they were allocated.<sup>7/</sup> Therefore, the Commission could not grant the relief SBUA requested. AWEC and CUB also, however, recognized the issue SBUA raised in which the funds in an Issue Fund could be fully allocated before an intervenor becomes case certified. AWEC and CUB recommended that this issue be addressed during negotiations of the next IFA.

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<sup>3/</sup> Fourth IFA, Article 1(c).

<sup>4/</sup> SBUA Petition for Case Certification Exh. A.

<sup>5/</sup> Order No. 20-187 at 1.

<sup>6/</sup> SBUA Petition for Reconsideration at 6.

<sup>7/</sup> AWEC/CUB Response to SBUA at 1-2.

SBUA filed a reply to CUB and AWEC's response, but the Commission did not issue an order on SBUA's application, which was deemed denied by application of law.<sup>8/</sup> The Commission closed the record in UE 374 on December 16, 2020 and issued Order 20-473 (the "Final Order") in the docket on December 18, 2020.

In the Final Order, the Commission approved a stipulation among all parties that resolved rate spread and rate design issues, which officially closed the active work in the eligible proceeding. The stipulation includes several components applicable to small business customers.<sup>9/</sup> These include commitments to: (a) create a marketing, education and outreach ("ME&O") plan for Schedule 23 customers; (b) work collaboratively with SBUA regarding the ME&O plan; and (c) by October 2021, consult with SBUA prior to providing an informational report on data obtained regarding Schedule 23 customers.<sup>10/</sup> Importantly, none of these commitments are at all related to building a record related to issues addressed during the active proceeding.

### III. ARGUMENT

**A. Because the activities covered by SBUA's proposed budget are not part of an Eligible Proceeding for Issue Funds and will not result in Eligible Expenses, the Commission should deny SBUA's budget.**

SBUA seeks an Issue Fund Grant "to assist SBUA in implementing" Paragraph 21 of the stipulation approved in the Final Order.<sup>11/</sup> The Fourth IFA defines an "Eligible Proceeding For

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<sup>8/</sup> OAR 860-001-0720(6).

<sup>9/</sup> Order No. 20-473, Appen. A ¶ 21.

<sup>10/</sup> Id.

<sup>11/</sup> SBUA Second Proposed Budget at 1.

Issue Funds” as, among other things, “a proceeding before the Commission to review: (i) general rate case request ....”<sup>12/</sup>

By its terms, an “Eligible Proceeding For Issue Funds” must be a “proceeding before the Commission.”<sup>13/</sup> While UE 374, as a general rate case, undoubtedly qualified as an “Eligible Proceeding For Issue Funds,” that proceeding is now over. The docket is closed and there is no more process before the Commission (other than PacifiCorp’s pending motion for reconsideration of the Final Order, which is unrelated to SBUA’s proposed budget). Moreover, all of the activities encompassed within Paragraph 21 of the stipulation are informal activities that will occur outside of Commission purview and do not require further Commission oversight or approval. There is, in other words, no “proceeding before the Commission” associated with the activities for which SBUA seeks an Issue Fund Grant.

Similarly, SBUA was granted “case certification” for UE 374. The term is “case-certification” because certification must be associated with a particular “case.” That is why the Fourth IFA specifies that case certified intervenors may only “become case-certified for a particular proceeding.”<sup>14/</sup> Just as with an Eligible Proceeding for Issue Funds, SBUA’s activities associated with its proposed budget are not related to any “particular proceeding” before the Commission. Consequently, SBUA has no ability to seek an Issue Fund Grant in any event, because it is not case certified for the informal processes required by Paragraph 21 of the stipulation, nor can it become case certified, as no pending case exists.

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<sup>12/</sup> Fourth IFA, Art. 1(c).

<sup>13/</sup> Id.

<sup>14/</sup> Fourth IFA § 5.1.

In contrast, NW Natural's UG 344 general rate case proceeding was split into a Phase II after the Commission rejected part of the second partial stipulation regarding regulatory treatment of the impact of the Tax Cuts and Jobs Act and proposed amortization of its pension balancing account.<sup>15/</sup> There, Phase II of the proceeding addressed those issues via a fully litigated record including new rounds of testimony, a hearing, and briefing that was set at a prehearing conference. As such, it was an eligible proceeding under the Fourth IFA, and both AWEC and CUB requested issue funds. Here, there is no second phase of UE 374 that warrants building a record to litigate issues. Instead, SBUA is requesting issue funds to conduct marketing and outreach to address only its members or recruit new ones. These activities are not within the scope of an eligible proceeding, are not within the Commission's purview, and are wholly inappropriate for the disbursement of intervenor funding.

Section 7.4 of the Fourth IFA also defines "Eligible Expenses" recoverable through an intervenor funding grant in a manner that contemplates that these expenses would be incurred from participating in a proceeding before the Commission. Section 7.4(a), for instance, identifies one category of Eligible Expenses as "Actual attorney and consultant fees ... directly attributable to participation in the proceeding." Again, SBUA's participation in assisting PacifiCorp in implementing the outreach and reporting requirements of Paragraph 21 of the stipulation is not encompassed within any Commission proceeding. While Eligible Expenses also encompass the "[c]osts of participation in workshops and other informal Commission activities," these "informal" activities must occur "prior to the institution of an Eligible

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<sup>15/</sup> *In re Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision*, OPUC Docket No. UG 344, Order No. 18-419 at 1 (Oct. 26, 2018).

Proceeding for ... Issue Funds ....”<sup>16/</sup> The types of activities contemplated by this section are events such as power cost workshops and other informational meetings designed to assist intervenors in reviewing an upcoming utility filing. By contrast, the provisions of Paragraph 21 of the stipulation include only process requirements that do not require any additional Commission action or contemplate any subsequent Commission proceeding.

AWEC’s and CUB’s interpretation of the Fourth IFA is consistent with previous interpretations of this agreement. In 2018, AWEC sought a Matching Fund Grant for its participation in the informal process the Commission held pursuant to the requirements of SB 978. As shown in the attachment to this Response, that request was informally denied on the basis that SB 978 was not a docketed proceeding, and AWEC withdrew its request. While the Matching Fund, rather than the Issue Fund, was the subject of that discussion, the principles were similar to those argued above and apply equally here. There, the Commission’s Executive Director indicated his belief that the purpose of the Fourth IFA is to help ensure the Commission has a “more fully informed *record* for Commission decision-making.”<sup>17/</sup> CUB and AWEC agree with this interpretation. The Fourth IFA was negotiated to ensure a robust record. Since SBUA’s request here comes after the closure of the docket and record, the issue funds it seeks cannot reasonably aid the Commission in rendering a decision on a record.

Because the activities for which SBUA seeks an Issue Fund Grant are not within the scope of an Eligible Proceeding for Issue Funds and would not produce Eligible Expenses, the Commission should deny SBUA’s Second Proposed Budget.

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<sup>16/</sup> Fourth IFA § 7.4(g).

<sup>17/</sup> Attachment A at 1 (emphasis added).

**B. If the Commission authorizes a budget for SBUA to assist in implementing Paragraph 21 of the stipulation, it should substantially reduce this budget from the requested amount.**

To assist in implementing the provisions of Paragraph 21 of the stipulation, SBUA has requested an Issue Fund Grant of \$35,400.<sup>18/</sup> This is nearly double what SBUA requested to participate in the rate case itself. The budget includes 90 hours of attorney time, 50 hours of administrator and paralegal time, and 130 hours of expert time. This is grossly disproportionate to tasks assigned to SBUA by the stipulation. Paragraph 21 obligates PacifiCorp, not SBUA, to create an ME&O plan for Schedule 23 customers. PacifiCorp is then to “[w]ork collaboratively with SBUA regarding the ME&O plan ... particularly as it relates to enrollment in Schedules 23/210 and 29.” At most, this invites SBUA to participate in implementation of the ME&O plan and encourage enrollment in the listed schedules. Finally, PacifiCorp is to “consult with SBUA prior to providing an informational report on data obtained regarding Schedule 23 customers.” Such activity would seem to be limited to one or two meetings between the parties. SBUA has not explained why so much attorney and expert time is required to implement Paragraph 21 of the stipulation or, indeed, why the activities involving SBUA require attorneys and experts at all.

Under Section 6.5 of the Fourth IFA, the Commission is to determine an appropriate amount of an Issue Fund Grant based on several factors. A review of these factors provides an additional basis to deny SUBA’s Issue Fund Grant request outright, or at least indicates that the activities SBUA plans to engage in warrant a substantially smaller grant. The Commission, for instance, is to consider “the breadth and complexity of the issues.” Here, the issues are narrowly tailored, applicable only to small business customers, and are relatively uncomplicated – they

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<sup>18/</sup> SBUA Second Proposed Budget Exh. A



relate to marketing, education, outreach, and data collection on small business customers. The Commission must also consider “the significance of any policy issues.” Again, to the extent any policy issues are implicated here, they are minor relative to the numerous other policy issues the Commission must address, such as resource planning, wildfire mitigation, power cost forecasting, resource adequacy, and others. The “procedural schedule” is another factor for the Commission to consider. This factor supports AWEC’s and CUB’s arguments above that Issue Fund Grants are reserved for proceedings before the Commission, not informal processes that occur outside of Commission purview. There is no procedural schedule associated with the requirements of Paragraph 21 of the stipulation. Another factor is the “dollar magnitude of the issues at stake.” No money at all is at stake, only reporting and outreach compliance obligations.

Two final factors are “the level of available funds in the Fund account or accounts involved” and “other Eligible Proceedings for Issue Funds in which intervenors may seek additional Issue Fund Grants from the same Fund account or accounts.” These factors also strongly favor substantially reducing SBUA’s proposed budget. There is \$143,750 in the PacifiCorp Issue Fund. SBUA’s budget would represent nearly 25% of the available funds. In 2021, it is already known that PacifiCorp will file its annual Transition Adjustment Mechanism proceeding, and will initiate a new investigation into its coal plant decommissioning costs, as required by the Final Order in UE 374. The Commission has also initiated a resource adequacy docket that would impact PacifiCorp and, given the substantial policy issues at play, may qualify in its own right as an Eligible Proceeding for Issue Funds. Approval of SBUA’s proposed budget would materially reduce the funding available for these other proceedings and will, in

turn, diminish the ability of other intervenors to participate in these important dockets, ultimately to the detriment of a robust record and a fully informed Commission decision.

Based on the requirements of Paragraph 21 of the stipulation, AWEC and CUB recommend that, if the Commission is to approve an Issue Fund Grant for SBUA, that grant be limited to no more than \$5,000. At the rates identified in SBUA's proposed budget, this amount would represent over 20 hours of senior attorney time, or 40 hours of time from an "outreach expert." This is more than enough to cover the activities contemplated by the stipulation.

#### **IV. CONCLUSION**

For the foregoing reasons, AWEC and CUB recommend that the Commission deny SBUA's Second Proposed Budget as inconsistent with the requirements of the Fourth IFA. If, however, the Commission awards an Issue Fund Grant to SBUA, it should limit this amount to no more than \$5,000.

Dated this 25th day of February, 2021.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

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Of Attorneys for the

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OREGON CITIZENS' UTILITY BOARD

/s/ Michael Goetz

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Of Attorneys for the

Oregon Citizens' Utility Board

**From:** GRANT Michael <michael.grant@state.or.us>  
**Sent:** Thursday, October 4, 2018 4:53 PM  
**To:** Tyler C. Pepple  
**Cc:** DAVIS Diane  
**Subject:** Intervenor Funding

Hi Tyler. I received your message and tried to call but got no answer. I am out of the office tomorrow so wanted to get back to you to share my thoughts on your intervenor funding question.

As you know, I have been supportive of efforts to provide and expand intervenor funding to the customer groups. I do not believe, however, that the SB 978 public process qualifies as an eligible proceeding for matching funds under Section (1)(d). That section defines such proceedings as “any Commission proceeding that directly affects one or more of the Participating Utilities, including but not limited to, rulemaking proceedings, declaratory ruling proceedings, and contested case proceeding, but does not include complaint proceedings if one or more of the Participating Intervenors initiates or causes to be initiate the complaint proceeding.” The SB 978 public process was not a docketed proceeding, in contrast to the examples provided in Section (1)(d). Section (7)(4) similar defines “Eligible Expenses” as being related to Commission proceedings. Section (7)(4)(g) does address informal Commission activities, but those activities must preceded a formal proceeding.

My interpretation is consistent with the original purpose of the intervenor funding agreement to help ensure the Commission had a more fully informed record for Commission decision-making. Here, the Commission made no decisions in a proceeding affecting PGE or PacifiCorp, but rather used a public process to help inform a report to the legislature.

That said, I acknowledge that this is just my opinion, and the Commission would be the ultimate decision-maker as to whether the SB 978 proceedings qualify as an eligible proceeding. If you like, you may supplement your request for payment to demonstrate eligibility.

I am also happy to discuss with you next week.

Thanks  
Mike

**Michael Grant**  
Executive Director  
Public Utility Commission of Oregon  
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