

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 490

In the Matter of)	RESPONSE OF THE ALLIANCE OF
)	WESTERN ENERGY CONSUMERS
NORTHWEST NATURAL GAS COMPANY,)	AND OREGON CITIZENS' UTILITY
dba NW Natural,)	BOARD TO PETITION FOR CASE
)	CERTIFICATION OF FAIR OREGON
Request for a General Rate Revision.)	UTILITY RATES FOR SMALL
)	BUSINESS
_____)	

I. INTRODUCTION

Pursuant to OAR 860-001-0420(4), the Alliance of Western Energy Consumers (“AWEC”) and Oregon Citizens’ Utility Board (“CUB”) file this Response to the Petition for Case Certification (“Petition”) of Fair Oregon Utility Rates for Small Business (“FOUR”) filed in the above-referenced docket.

FOUR is a recently incorporated nonprofit organization and the direct descendant of Small Business Utility Advocates (“SBUA”), an organization with a demonstrated record of ineffective advocacy before the Public Utility Commission of Oregon (the “Commission”). To this point, FOUR is comprised of some of the same board members as SBUA, has engaged the same expert previously used by SBUA, and is represented by the same legal counsel.¹ The Commission should therefore analyze FOUR’s request for case certification as if it had been made directly by SBUA. Alternatively, if FOUR is indeed a new entity separate from SBUA,

¹ Petition at 4.

then it does not yet have a history of effective advocacy before the Commission necessary to award it case certification.

Regardless, the Commission should not be swayed that FOUR’s decision not to structure itself “as a membership organization the way SBUA Oregon did”² will change the way it participates in Commission proceedings. The Commission has denied SBUA case certification in the past³ and, instead of remedying deficiencies with its manner of participation, SBUA—now FOUR—has instead continued to supply the Commission with sufficient reason to deny it case certification.⁴ Therefore, for the reasons stated more fully below, CUB and AWEC request that the Commission deny FOUR’s request.

II. ARGUMENT

The Commission’s rules allow an organization to seek case certification if it meets certain criteria.⁵ Most relevant to FOUR’s request are the requirements that the organization 1) demonstrates an ability to effectively represent its class of customers, 2) represents broad customer interests, 3) receives significant funding from its members, and 4) will not delay proceedings. FOUR is unable to satisfy any of these requirements.

A. **SBUA—now FOUR—has a demonstrated history of ineffective advocacy before the Commission.**

The Commission has a general obligation to regulate in the public interest.⁶ With respect to participation in proceedings, this includes ensuring that intervening parties “will not

² Response of FOUR Small Business to Bench Request at 1.

³ See *In the Matter of PacifiCorp, dba Pacific Power, 2019 Renewable Adjustment Clause*, Docket UE 352, Order No. 19-133 (Apr 16, 2019).

⁴ See *In the Matter of Portland General Electric Company Request for a General Rate Revision; and 2024 Annual Power Cost Update*, Docket UE 416, ALJ Ruling (Oct 27, 2023).

⁵ OAR 860-001-0120(4).

⁶ ORS 756.040.

unreasonably broaden the issues or burden the record.”⁷ It also requires that the Commission ensure that all rates charged by a public utility are just and reasonable.⁸ In the past, SBUA has intervened and sought intervenor funding in several proceedings. In each of those proceedings, SBUA has failed to competently represent the class of customers it purports to represent, has burdened the record and delayed proceedings, and has failed to substantiate its funding requests.

A thorough history of this advocacy can be found in AWEC and CUB’s February 14, 2022, Response to SBUA’s Petition for Designation of Docket as an Eligible Proceeding in UM 2114. While SBUA was eventually granted case certification in that docket, its budget was denied. Later in that docket, the Commission also denied SBUA’s request for reallocation of funds, noting that “SBUA’s filings are generally confusing and contradictory, and typically do not add up to SBUA’s reported totals.”⁹

Recently in docket UE 416, Chief Administrative Law Judge (“ALJ”) Nolan Moser staunchly denied SBUA’s requests for clarification about the inclusion of written public comments in the record and additional time to submit testimony.¹⁰ In response to SBUA’s request to clarify where in the record written public comments could be found, ALJ Moser noted that exhibits included in the record were “set forth clearly in chart format” and that “the inclusion of public comments with Staff’s testimony [was] consistent with the IOGs *as quoted in SBUA’s filing*.”¹¹ ALJ Moser summarized, “It is not clear why SBUA’s counsel is not able to find these

⁷ ORS 756.525(2).

⁸ ORS 756.040; ORS 757.020.

⁹ *In the Matter of PacifiCorp, DBA Pacific Power, Request for General Rate Revision (UE 399) and Public Utility Commission of Oregon, Investigation into the Effects of the COVID-19 Pandemic on Utility Customers (UM 2114)*, Docket UE 399 & UM 2114, Order No. 23-44 at 10 (Nov 21, 2023).

¹⁰ Docket UE 416, ALJ Ruling at 3 (Oct 27, 2023).

¹¹ *Id.* (emphasis in original).

items in the record, and there is no excuse for failing to do so a third time.”¹²

There were also several issues regarding SBUA’s request to leave the record open regarding fourth and fifth partial stipulations. As to the fifth stipulation, an earlier ruling and subsequent procedural schedule should have alerted SBUA’s counsel as to the ongoing nature of that matter, and its request to leave the record open pending further process “indicate[d] that SBUA’s counsel [was] not reviewing the communications issued in the docket regarding case process.”¹³ As to its objection to the fourth partial stipulation, SBUA failed to consult with parties and filed its motion out of time with Commission rules.¹⁴ ALJ Moser also found it “extremely unprofessional” that it appeared that SBUA was reviewing a stipulation “*that SBUA signed.*”¹⁵ ALJ Moser summarized SBUA’s conduct in the docket, stating that “SBUA’s approach to this docket seems to be informal, is concerning and not consistent with effective advocacy on behalf of the small business community.”¹⁶

SBUA has failed to demonstrate that it is able to effectively represent the particular class of customers it seeks to represent. OAR 860-001-0120(4)(c). FOUR is SBUA’s direct successor, and the Commission should expect the same type of advocacy from this “new” organization. Alternatively, if FOUR is to be understood as an entirely new entity, it has not yet “demonstrated in past Commission proceedings the ability to substantively contribute to the record” and should

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

be denied case certification for that reason. OAR 860-001-0120(4)(e).

B. SBUA—now FOUR—does not represent broad customer interests, must verify that it receives significant funding from its members, and will likely delay proceedings.

Intervenor funding is recovered from the customers the organization receiving the funding represents.¹⁷ Given SBUA’s persistent inability to provide competent advocacy, for the reasons listed below, using small business customer dollars to prop up ineffective advocacy does not result in just and reasonable rates for this customer class.

First, FOUR cannot earnestly allege that it represents a broad class of customers as required by OAR 860-001-0120(4)(b). It is unclear whether FOUR has three or four board members: “Since incorporation, one additional board members has been added, bringing the size of the current board of three into alignment with the adopted bylaws.”¹⁸ According to FOUR, these three—or four— board members are owners of small businesses in Oregon, as are the volunteers who helped developed FOUR’s budget. FOUR also states that it has received early financial contributions from other Oregon small businesses. However, notwithstanding its reluctance to actually *name* any Oregon small businesses represented in its board or that have provided financial support, FOUR does not—or cannot—even state the *number* of Oregon small businesses that support its advocacy. FOUR’s claim to represented a broad class of small business customers is questionable at best.

Second, the Commission should pay close attention to the adequacy of the funding FOUR receives from “small businesses and small businesses and small business focused organizations

¹⁷ Fifth Amended and Restated Intervenor Funding Agreement, Article 7.7.

¹⁸ Response of FOUR Small Business to Bench Request at 1.

across the state.”¹⁹ SBUA’s past inability to demonstrate significant financial support from its members has been central to the Commission’s prior decisions to deny case certification:

“[C]ontribution should reach a level so that a qualifying organization is capable of some level of action and advocacy apart from intervenor funding.”²⁰

Finally, both ALJ Moser—as described above—and the Commission have found SBUA’s participation in proceedings to needlessly result in a waste of both Commission and stakeholder resources. In Order No. 23-444, the Commission summarized SBUA’s participation in proceedings:

“SBUA has been given many chances to comply with the agreements, rules, orders, and to demonstrate professional financial and contractor management. Instead, SBUA consistently provides confusing requests or contradictory financial information. It is not an appropriate use of Commission resources for us to continue to independently investigate SBUA’s filings to find good cause for funding, where SBUA has not demonstrated that itself.”²¹

Less than a year ago, SBUA demonstrated its inability to provide effective, *efficient* advocacy before the Commission. The same should now be expected of FOUR, and the Commission should deny the organization’s request for case certification.

III. CONCLUSION

While CUB and AWEC do not seek to deny FOUR an ability to participate in Commission proceedings, FOUR’s direct predecessor has demonstrated that administrative efficiency and the public interest are best served by denying FOUR’s Petition. If, in the future, FOUR is able to demonstrate effective advocacy and a true membership base of small business utility customers that contribute a significant percentage of its overall support and funding, CUB

¹⁹ Petition at 4.

²⁰ Order No. 13-133 at 5.

²¹ Order No. 23-44 at 13.

and AWEC would have no objection to the organization receiving funding at that time. However, FOUR has yet to demonstrate effective advocacy, actual representation of broad customer interests, that its participation in this proceeding is not premised on receiving intervenor funding, or that its participation will do anything other than delay proceedings consistent with its predecessor's behavior. For these reasons, the Commission should deny FOUR's petition for case certification.

Dated this 21st day of March 2024.

Respectfully submitted,

/s/ Jennifer Hill-Hart

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