

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 352

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2019 Renewable Adjustment Clause.

ORDER

DISPOSITION: REQUEST FOR CASE CERTIFICATION DENIED

**I. INTRODUCTION**

In this decision, we consider and deny the petition for case certification of the Small Business Utility Advocates (SBUA) for intervenor funding. We review SBUA's request, the reply of parties, and SBUA's filing in response to an ALJ bench request for confidential information. Finally, we provide guidance to SBUA for future requests for intervenor support.

**II. BACKGROUND**

On February 19, 2019, SBUA filed a petition for case certification to allow it to receive intervenor funding per Article 5 of the Fourth Amended and Restated Intervenor Funding Agreement (the agreement) approved in Order No. 18-017 and per OAR 860-001-0120. On March 6, 2019, the Oregon Citizens' Utility Board (CUB), the Alliance of Western Energy Consumers (AWEC), and PacifiCorp, dba Pacific Power (collectively, Joint Parties) file a response opposing SBUA's petition.

The Joint Parties request that the petition be denied on the basis that it does not meet the criteria set forth in the agreement or in the PUC's administrative rules. On March 13, 2019, SBUA replied to the Joint Parties filing. Chief Administrative Law Judge Moser issued a Bench Request to SBUA to provide certain confidential information; specifically requesting a current membership list and most recent year audited or board-attested financials. SBUA was given a one-day extension to respond because of equipment failure at the PUC, and SBUA provided an *in camera* response on March 27, 2019.

### III. DISCUSSION

Article 5.3 of the agreement sets forth the criteria for determining whether an organization may be case-certified to receive intervenor funding. To be case-certified an organization must meet all of the following criteria:

- (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 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.<sup>1</sup>

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<sup>1</sup> *In the Matter of Public Utility Commission of Oregon, Approval of the Fourth Amended and Restated Intervenor Funding Agreement*, Docket No. UM 1929, Order No. 18-017, Appendix A at 16-17 (Jan 17, 2018).

SBUA asserts in its petition that it meets all of the criteria.<sup>2</sup> SBUA states that:

- (a) It is a 501(c)(3) nonprofit organization;
- (b) It represents small business but that it may not divulge the identities of the members in its filing;<sup>3</sup>
- (c) It has demonstrated effective representation of small business in dockets before the PUC and it lists a number of dockets in support of its assertion;
- (d) Its members include PacifiCorp customers in California and Oregon and those members contribute to SBUA's support through monetary contributions, in-kind professional services, space, and capital equipment and general participation in the organization;
- (e) It has demonstrated the ability to substantially contribute to the record on behalf of the customer interests citing to SBUA's participation in dockets UE 294, UM 1610, UM 1751, UM 1754, UM 1790, and UM 1773. Additionally, SBUA notes that its expert has significant experience in electric utility ratemaking.<sup>4</sup>
- (f) It represents a class of customers not represented by CUB or AWECC, stating it exclusively represents small business interests.
- (g) It acknowledges the schedule that is already established in the docket and asserts its participation would not cause any delay.

The Joint Parties note in their response to SBUA's petition that because customers pay the costs of intervenor funding, the Commission reserved the ability to become case-certified to receive intervenor funding to those organizations that have demonstrated a consistent ability to represent a broad class of customers with respect to utility rates, terms, and conditions of service.

The Joint Parties express concerns about SBUA's claim that it represents a broad class of customers, noting that in previous dockets, SBUA has largely represented the interests of small renewable energy developers, focusing on the "narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of utility services."<sup>5</sup> Further, the Joint Parties point out that the website of the law firm representing SBUA indicates that it "cater[s] exclusively to the renewable energy industry."<sup>6</sup> The Joint Parties also note that SBUA's contribution in UE 294 and UE 319 did not make any proposals addressing issues or rates for small business customers, and therefore SBUA did not assist the Commission in establishing just and reasonable rates or setting terms or conditions of service.

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<sup>2</sup> SBUA Petition, pp 2-8 (Feb 19, 2019).

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 6-7.

<sup>5</sup> Joint Parties Response to Petition at 6 (Mar 6, 2019).

<sup>6</sup> *Id.* at 5.

The Joint Parties argue that SBUA has repeatedly “side-stepped” naming its members, making it difficult to determine if it meets the criteria for case-certification.<sup>7</sup> They state that without the ability to verify the identity of SBUA’s members, what is required to become a member, or the overall level of support and funding for SBUA, it is not possible to determine if the funding from its members who are customers of PacifiCorp is significant or nominal. The Joint Parties note the importance of this as the level of funding and support from members ensures that SBUA is held accountable for its advocacy and that SBUA’s participation is in the interest of its small business rate-paying members.<sup>8</sup>

The Joint Parties acknowledge that access to funding is essential to meaningful participation in Commission proceedings and that diverse customer group representation adds value to the Commission’s decision-making processes. While they welcome the participation of a wide variety of stakeholders, including SBUA, the Joint Parties oppose SBUA’s petition for case certification because it does not meet the criteria set forth in the agreement or in the Commission’s administrative rules.

SBUA’s reply to the Joint Parties reiterates its assertions in its petition for case certification. SBUA disputes the Joint Parties’ indication that SBUA’s counsel caters exclusively to the renewable energy industries and further notes that the point is without merit because law firms frequently represent a range of clients in a range of services.<sup>9</sup> SBUA asserts that the identity of its members is protected by law, not subject to disclosure, and that SBUA does not waive this protection, but that SBUA maintains that its membership is a cross-section of Oregon’s economy. SBUA argues that its participation in dockets has focused on rate impacts and terms of service in some dockets and on specific issues in others. SBUA further notes that in this docket, UE 352, it could provide relevant expertise with its newly acquired expert. Finally, SBUA asserts that its members contribute cash and in-kind contributions, nominal or not.

SBUA filed a response to Chief ALJ Moser’s bench request for more financial and membership information on March 27, 2019. SBUA’s filing was detailed, responsive, and complete. This response provided a clear picture of SBUA’s financial status, as well as insights into its membership. As part of this response, SBUA indicated that its active participation in this docket would be conditioned on SBUA receiving intervenor funding.

#### IV. DECISION

We deny SBUA’s petition for case certification. This denial is based on limited and specific grounds. We find that SBUA’s filings in support of case certification reinforced its request with regard to several important elements. SBUA has provided tangible examples of activity in dockets demonstrating a degree of effective representation of the small business customer class. We have reviewed SBUA’s confidential membership

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<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 7.

<sup>9</sup> SBUA Reply at 2 (Mar 13, 2019)

information, and find that SBUA's members do represent a broad customer class, and not narrow individual interests.

However, upon review of the bench request response provided by SBUA, we find that denial of the case certification is appropriate on two grounds. First, SBUA's submitted financial information, at this time, does not demonstrate a significant capacity from members to contribute to its operations to participate in our proceedings. We do not expect or require every entity qualifying for intervenor funding to maintain extensive staff with large budgets. However, it is essential that members of an organization qualifying for funding find the organization of enough independent value that members are willing to contribute to its operations significantly through financial donations, membership fees, or in-kind support. This contribution should reach a level so that a qualifying organization is capable of some level of action and advocacy apart from intervenor funding. We find that at this time SBUA does not meet the requirements of Article 5.3(d) of the intervenor funding agreement.

We observe that entities qualifying for intervenor funding must be clearly accountable to their members. This ensures that qualifying organizations understand member goals and priorities in the dockets they participate in, and faithfully represent their perspective in proceedings. In this way, we can be confident that a qualifying intervenor truly represents a customer class.

Second, SBUA has explicitly communicated to us that it has no plans to meaningfully participate in this docket without intervenor funding. Though we would certainly expect more thorough participation in a docket on behalf of an organization where intervenor funding is secured, meaningful participation in our dockets should not be conditioned on the promise or prospect of intervenor funding for *any* qualifying organization. Intervenor funding is premised on the concept that an organization has and will continue to demonstrate value to its customer class members, and demonstrate an ability to support a full resolution of issues in dockets through effective representation, independent of intervenor funding.

Finally, we note that SBUA may achieve intervenor funding support in the future. To achieve such support, we recommend that SBUA focus on participation in dockets relevant to its members, and do so in a manner that demonstrates value to members and contributes to the proceeding, so that members seek to provide independent support to SBUA's operations – even to a limited degree. We understand that SBUA's participation may necessarily be selective, due to available resources.

**V. ORDER**

IT IS ORDERED that the Small Business Utility Advocates' petition for case-certification is denied.

Made, entered, and effective Apr 16 2019.

*Megan W Decker*

**Megan W. Decker**  
Chair

COMMISSIONER BLOOM WAS  
UNAVAILABLE FOR SIGNATURE

**Stephen M. Bloom**  
Commissioner

*Letha Tawney*

**Letha Tawney**  
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.