

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 352

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2019 Renewable Adjustment Clause.

ORDER

DISPOSITION: RECONSIDERATION DENIED

I. SUMMARY

In this Order, we deny the request of Small Business Utility Advocates (SBUA) to reconsider Order No. 19-133. We find that in issuing Order No. 19-133, we acted consistently with our rules for reviewing requests for intervenor funding, which are consistent with Oregon law. In denying this request, we also provide guidance to SBUA regarding future efforts to develop financial statements supporting requests for case certification.

II. BACKGROUND

Through Order No. 19-133, we denied SBUA's request for intervenor funding case certification in this docket. We did so on narrow grounds, finding that denial was warranted because *in camera* financial information provided to us by SBUA did not demonstrate that a significant percentage of overall support and funding provided from members, and that SBUA, in that same filing, conditioned participation in this docket on securing intervenor funding. On June 16, 2019, SBUA filed a request for reconsideration.

III. REQUEST FOR RECONSIDERATION OR REHEARING

ORS 756.561(1) allows any party in a proceeding to apply for rehearing or reconsideration of an order. OAR 860-001-0720(3) provides that we may grant an application for rehearing or reconsideration where there is new evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order, or where there is good cause for further examination of an issue essential to the decision.

SBUA cites three grounds for rehearing and reconsideration. First, SBUA argues that reconsideration should be granted on new evidence regarding SBUA finances. Second, SBUA argues that Order No. 19-133 is legally deficient because of “errors of fact and law in the Order that are essential to the decision by the Commission in its denial.”¹ Finally, SBUA asserts that there is good cause for further examination of issues essential to the decision.

IV. DISCUSSION AND RESOLUTION

We deny the request to reconsider Order No. 19-133. The order applied OAR 860-001-0120(4)(d) which states that certification may only be granted to an entity whose members are “customers of one or more of the utilities that are affected by the proceeding and are parties to the agreement contribute a significant percentage of the overall support and funding of the organization.”² In Order No. 19-133, we found that “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.”³ In making this determination, we relied on the information SBUA supplied *in camera*, which included a financial statement. SBUA challenges the legal basis for this determination, arguing that our application is inconsistent with the underlying statute, ORS 757.072.

SBUA’s legal objection is unfounded. ORS 757.072(2) states, “The commission by rule shall establish such qualifications as the commission deems appropriate for determining which organizations are eligible for financial assistance under an agreement entered into under this section.” The Commission duly adopted OAR 860-001-0120(4)(d), establishing a qualification that required members of an organization have significant capacity to contribute to operations. This qualification is consistent with ORS 757.072(2).

Order No. 19-133 applied this rule, finding that, based on the *in camera* evidence provided, “significant capacity” was not demonstrated. Without divulging information that SBUA requests we keep confidential, we reaffirm that the *in camera* submission to us did not demonstrate a significant capacity to contribute to operations on behalf of members who are customers of PacifiCorp, the utility that is the subject of this proceeding.

We find that the new evidence submitted by SBUA does not alter our previous determination. SBUA’s request for reconsideration includes a Declaration of Counsel, which states that:

¹ Application for Reconsideration of Small Business Utility Advocates, at.2 (Jun 14, 2019).

² This rule is reflected in Section 5.3(d) of the Fourth Amended and Restated Intervenor Funding Agreement (*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 17 (Jan 17, 2018)).

³ Order No. 19-133, at.5 (Apr 16, 2019).

“2. The financial information provided in Confidential Exhibit B in Response to SBUA to [the] Bench Request identifying assets of SBUA in Oregon are assets provided entirely by SBUA members and customers of electric utilities in Oregon subject to the Commission proceedings.”⁴

The information provided by SBUA *in camera* demonstrated a very limited capacity based on self-described “assets” and “net assets.” Regardless of the source of these “assets” or “net assets,” they would not be sufficient to allow for an approval of the proposed case budget, because they do not approach the 20 percent threshold for that budget, which is a condition under the Fourth Amended and Restated Intervenor Funding Agreement.⁵ The financial statement did not make clear that SBUA has or had the capacity to use matching funds or in-house resources to account for or pay at least 20 percent of eligible expenses for its proposed case budget. Accordingly, this new information does not justify reconsideration of Order No. 19-133.

V. CONCLUSION

Though we deny SBUA’s request for reconsideration, we offer guidance for future applications for case certification.

First, though not formally required, we recommend that SBUA develop annual financial statements that conform to traditional non-profit accounting standards. It is difficult to understand and interpret financial statements that are not clear or that are missing important information and context. Statements developed consistent with Financial Accounting Standards Board requirements, for example, would be much easier to understand than informal and vague statements.

Second, where the question at issue is the capacity of members to contribute to the organization, the financial statements should clearly indicate the source of various revenues.

Third, the financial statements should indicate an overall financial capacity that can meet, at a minimum, the 20 percent requirement for an individual case budget. When reviewing a case certification request, if we are presented with a financial statement that indicates financial capacity that cannot meet the 20 percent requirement of a proposed budget, then a finding that OAR 860-001-0120(4)(d) has not been satisfied is inevitable.

Finally, we note that to reduce uncertainty and improve clarity regarding administrative rule requirements for intervenor funding, and the requirements associated with the Fourth Amended

⁴ Application for Reconsideration of Small Business Utility Advocates, Exhibit 1 (Jun 14, 2019).

⁵ *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 18-19 (Article 6.3(g), Fourth Amended and Restated Intervenor Funding Agreement) (Jan 17, 2018).

and Restated Intervenor Funding Agreement, we encourage SBUA to contact our Administrative Hearings Division regarding any questions associated with any prospective request for case certification.

VI. ORDER

IT IS ORDERED that the Small Business Utility Advocates' request for reconsideration of Order No. 19-133 is denied.

Made, entered, and effective Aug 8, 2019.



Megan W. Decker
Chair



Stephen M. Bloom
Commissioner

COMMISSIONER TAWNEY WAS
UNAVAILABLE FOR SIGNATURE

Letha Tawney
Commissioner



A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.