

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2032

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Treatment of
Network Upgrade Costs for Qualifying
Facilities.

ORDER

DISPOSITION: REQUEST FOR CASE CERTIFICATION DENIED

I. INTRODUCTION

In this decision, we deny the petition for case certification for intervenor funding of the Northwest and Intermountain Power Producers Coalition (NIPPC) under the Fourth Amended and Restated Intervenor Funding Agreement (IFA). Although we find that NIPPC has met all of the eligibility criteria for an organization eligible for financial assistance for agreements approved under ORS 757.072 and OAR 860-001-0120, we conclude that NIPPC does not meet the requirements for an issue fund grant under the terms of the IFA. Future intervenor funding agreement discussions should include representatives of interconnection customers, so that agreements may be developed in a manner that permits interconnection customers to contribute financial assistance for representatives of their interests to participate in relevant proceedings.

II. BACKGROUND

NIPPC seeks case certification for its representation of interconnection customers in our investigation into the treatment of network upgrade costs for qualifying facilities (QFs). As noted by Staff in the Public Meeting Report recommending that an investigation be opened:

Currently, utilities require QFs to apply for Network Resource Integration Service (NRIS). NRIS can necessitate more “Network Upgrades” than other interconnection service such as Energy Resource Interconnection Service. Network Upgrades are upgrades to the transmission provider’s transmission system at or beyond the point of interconnection. And, unlike FERC’s policy for non-independent transmission providers such as PGE, PacifiCorp, and Idaho Power, Oregon’s small and large generators

are generally required to pay for Network Upgrades to the transmission provider's transmission system.¹

The purpose of this investigative docket is to examine whether it is appropriate to require QFs to select NRIS and, if they must, whether it is appropriate to allocate costs of network upgrades to QFs.

On December 16, 2019, NIPPC filed a petition to intervene in these proceedings. In its petition, NIPPC stated that it is a trade association representing the interests of its members, which include independent power producers who are interconnection customers that have purchased and will need to purchase interconnection services from Oregon's utilities.

On that same date, NIPPC filed a notice stating that it intended to pursue intervenor funding, including a petition for case certification to allow it to receive intervenor funding pursuant to Article 5 of the IFA, which had been entered pursuant to ORS 757.072 and approved in Order No. 18-017. NIPPC has neither previously sought nor received intervenor funding for participation in proceedings before the Commission.

On January 15, 2020, the Oregon Citizens' Utility Board (CUB) and the Alliance of Western Energy Consumers (AWEC) submitted a joint response opposing NIPPC's request, and stated that Portland General Electric Company (PGE) and PacifiCorp, dba Pacific Power, supported their joint response. On January 22, 2020, NIPPC filed a reply, indicating the Community Renewable Energy Association (CREA) and the Renewable Energy Coalition (the Coalition) supported NIPPC's reply.

On February 6, 2020, the Chief Administrative Law Judge (ALJ) issued a bench request directing NIPPC to provide certain confidential information pertinent to the Commission's consideration of NIPPC's request. The bench request sought a current membership list, audited financial statements or most recent year board-attested financials, and any agreement between NIPPC, the Coalition, or CREA coordinating advocacy and representation in the docket. NIPPC provided an *in camera* response to the bench requests.

III. DISCUSSION

A. Applicable Law

Under ORS 757.072, an energy utility may enter into agreements to provide financial assistance to organizations representing broad customer interests in Commission proceedings. The statute requires the Commission to promulgate rules to establish

¹ *In the Matter of Public Utility Commission of Oregon, Investigation into PURPA Implementation*, Docket No. UM 2000, Order No. 19-254, Appendix A at 3, 20 (Jul 31, 2019).

qualifications for organizations eligible for financial assistance under such agreements, which must be approved by the Commission.

Shortly after ORS 757.072 was enacted by the legislature in 2003, PGE, PacifiCorp, Idaho Power Company, and Northwest Natural Gas Company (NW Natural) entered into the IFA with CUB, the Industrial Customers of Northwest Utilities (ICNU), and the Northwest Industrial Gas Users (NWIGU).² In Order No. 03-388, the Commission approved the agreement, and simultaneously adopted rules establishing qualifications for organizations eligible for financial assistance.³

The IFA establishes three funds under which an Intervenor Funding Grant can be made under the agreement. One of those funds is the “Issue Fund,” which makes available grants to pay for expenses in certain Commission proceedings to intervenors that are pre-certified or case-certified.⁴ Both CUB and AWEC are pre-certified to receive Issue Fund grants for all eligible proceedings.⁵ Other intervenors may apply to be case-certified on a case-by-case basis.⁶

Section 5.3 of the IFA and OAR 860-001-0120(4) set forth the criteria for determining whether an organization may be case-certified under the IFA. 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

² ICNU and NWIGU subsequently merged to become AWEC. Avista Corporation and Cascade Natural Gas Corporation later joined the agreement in 2007.

³ Although the IFA has been amended and reinstated four times, the terms at issue in this matter, as well as the applicable provisions set forth in rule, have remained unchanged.

⁴ Section 4.2.3.

⁵ Section 5.2.

⁶ Section 5.3.

- 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.⁷

Additionally, Section 7.7 of the IFA outlines how costs will be allocated among customer classes:

7.7 Customer Class Allocation. The Commission will make a determination in each proceeding as to how to recover the Intervenor Funding Grants from the various customer classes of the affected Participating Public Utility or Utilities:

- (a) In a proceeding involving more than one Participating Public Utility, the Commission will apportion the payment among the affected Participating Public Utilities. Criteria for making this allocation may include the relative gross revenue of the utilities, load, or other such factors as the Commission determines to be relevant to the particular matter.
- (b) Intervenor expenditures pursuant to an Intervenor Funding Grant and made on behalf of a particular customer class will be charged to and paid for by that customer class. CUB Fund Grants shall be allocated and charged to residential customers. Preauthorized Matching Grants shall be allocated and charged to industrial customers. Issue Fund Grants used to advocate positions on behalf of a broad cross-section of customers may be assessed against all customers or multiple classes of customers, as determined by the Commission, so as to fairly align the costs of the advocacy with the intended potential beneficiaries of the advocacy, regardless of actual outcome of the case. The determination may result in a

⁷ *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).

combination of both class-specific assessments and general assessment to all customer classes based on the expenses incurred for the benefit of various classes in a case, regardless of which intervenors incurred such expenses.⁸

B. Positions of the Parties

NIPPC asserts that it meets all of the criteria for case certification under the IFA and OAR 860-001-0120(4). CUB and AWEC disagree. We summarize their objections, and NIPCC's responses thereto, separately below.

1. Ability to Represent Class

CUB and AWEC argue that NIPPC cannot represent a class of customers, because NIPPC has primarily participated in Commission proceedings as a representative of entities seeking to sell energy or other services to utilities. They assert that NIPPC cannot demonstrate a history of an ability to represent customer interests in Commission proceedings.

NIPPC states in reply that it does not need a history of representing its members as customers, nor a history of receiving intervenor funding, in order to meet the requirements for funding described in rules, because it has demonstrated an ability to effectively represent its members on interconnection issues in the past.⁹

CUB and AWEC further argue that CREA and the Coalition have overlapping interests. In response, NIPPC acknowledges that CREA and the Coalition have intervened in the proceeding and NIPPC intends to cooperate with them to represent interconnection customers. CREA and the Coalition have informed NIPPC that they support NIPPC's effort to obtain intervenor funding.

In addition, NIPPC provided in response to the Chief ALJ's bench request a detailed representation agreement between NIPPC, the Coalition, and CREA. The agreement states that for the interconnection issues associated with this investigation that NIPPC will represent and advocate for members of all three organizations.

2. Broad Class of Customers

CUB and AWEC state that the rules require an eligible recipient of funds to represent a broad, not a narrow interest. They assert that NIPPC does not represent a "broad class of customers," because its membership is presumably limited to independent power

⁸ *Id* at 25-26.

⁹ NIPPC Reply to Joint Response at 14 (Jan 22, 2020).

producers.¹⁰ According to CUB and AWEC, NIPPC does not represent retail customers, as CUB and AWEC do.

CUB and AWEC explain the purpose of the requirement, stating that: “By requiring representation of ‘broad’ customer interests, the legislature necessarily made a distinction between, and intended to present the provision of intervenor funding to, organizations that represent ‘narrow’ customer interests.”¹¹

CUB and AWEC argue that NIPPC represents a narrow group in two ways; first—that interconnection customers are interested in only one issue—in contrast to traditionally funded groups that are interested in many issues. Second, they argue that there are relatively few interconnection customers, compared to other customer classes.

NIPPC acknowledges that interconnection customers are a different customer class, and have different interests than the customer classes CUB and AWEC represent. NIPPC asserts this does not change the breadth of the class NIPPC represents. NIPPC intends to represent the broad range of interconnection customers in this proceeding. “NIPPC is seeking intervenor funding to represent all interconnection customers on all interconnection issues affecting those services. *** ‘Broad’ should be read to mean all or almost all customers of one or more utility services.”¹² Although the class may be small in number of customers, NIPPC argues it deserves recognition and representation as a unique class of customers. “The criteria do not require that the interests of a broad customer class be themselves broad.”¹³

NIPPC points to specific examples where the Commission has provided intervenor funding to groups representing small customer classes. NIPPC cites irrigation customer representative groups, including classes interested in very narrow issues. NIPPC notes that, in Docket No. UE 170, the Commission provided intervenor funding to two groups representing irrigation customers specifically to engage on rate spread.¹⁴

3. *Retail Customer Status*

CUB and AWEC argue that ORS 757.072 and the intervenor funding agreement limit intervenor funding to retail customers. They argue that interconnection is a service offered by utilities. They state that the legislature’s PURPA statutes do not refer to generators and customers, and instead use different terms to describe these generators. “If the legislature had contemplated that ‘customer’ encompassed interconnection customers, presumably it would have used that term in these statutes.”¹⁵

¹⁰ Joint Response of CUB and AWEC at 5 (Jan 15, 2020).

¹¹ *Id.* at 9.

¹² NIPPC Reply to Joint Response at 8.

¹³ *Id.*

¹⁴ *Id.* at 9.

¹⁵ Joint Response of CUB and AWEC at 6.

NIPPC counters that nothing in the statute, rules, or the agreement specifically limits funding to groups representing retail customers as opposed to customers of other services. According to NIPPC, “Interconnection customers are customers too.”

CUB and AWEC assert that, even if an interconnection service-designated recipient is a “customer” for the purpose of the intervenor funding statute, there is no evidence the legislature intended that interconnection customers be included in this group. To make this point, CUB and AWEC quote then Commission Chair Beyer, testifying to the legislature on the purpose of intervenor funding:

Essentially what this does is the agreement between the utilities and these groups is allows them to put some money on the table to allow these intervenors to represent customer better if you will. And I think they would tell you...that the ratepayers pay for these rate cases presented by the utilities and this will allow the ratepayers to also pay for an opposing view or challenge to be there.¹⁶

To CUB and AWEC, intervenor funding was intended for captive customers, and they argue that interconnection customers are not captive. “Interconnection customers, by contrast, have a choice. * * * [I]f a QF developer remains dissatisfied with these rates it can always develop projects elsewhere.”¹⁷

NIPPC counters that Commissioner Beyer’s comments support their position. They state that funding was intended to enable “an opposing view or challenging view” to be made on behalf of the customers who will be affected by a utility’s proposal.¹⁸

NIPPC argues that interconnection customers who have purchased and will need to purchase interconnection services from Oregon’s utilities are an eligible class of customers, just as much as others who have received intervenor funding.

When individuals and companies pay utilities to study their generation interconnection requests, construct interconnection facilities, and facilitate interconnected operations (i.e., provide interconnection service) to their generators, it is self-evident that they are “users of the service and consumers of the product of a public utility.” Such entities are therefore, “customers” under Oregon law. In addition, under the Commission’s regulations: “‘Interconnection *customer*’ means a person with one or

¹⁶ Relating to financial assistance for organizations appearing before the Public Utility Commission in matters relating to public utilities that provide electricity or natural gas; and declaring an emergency, Tape Recording, Hearing Before Senate Committee on Business and Labor, SB 205, Chapter 234, Mar 5, 2003, Tapes 25 and 26 (Statement of Lee Beyer at 3:25-:3:42).

¹⁷ Joint Response of CUB and AWEC at 8.

¹⁸ NIPPC Reply to Joint Response Reply at 7.

more small generator facilities interconnected to a public utility's transmission or distribution system.”¹⁹

To NIPPC, the customers it represents are just as captive as residential or commercial customers. “They cannot purchase interconnection services from any other entity besides the monopoly utility in whose service territory they are located * * * an interconnection customer has no more ability to escape the monopoly than other customers do.”²⁰ NIPPC notes that, if the standard for determining whether or not a customer is captive considers their ability to move to another service territory to receive service, then current electric service customers would not be considered captive either. “The ability to escape a monopoly by physically changing locations does not change one's status as a captive customer.”²¹

4. *Nature of Representation in the Docket*

CUB and AWEC argue that the effect of NIPPC's participation in the docket will be presentation of an argument in favor of new charges that will be incurred by the customer classes CUB and AWEC represent. NIPPC disagrees, and outlines the positions it plans to take in the proceeding:

- 1) Interconnection customers should have the option of procuring Energy Resource Interconnection Service rather than Network Resource Interconnection Service;
- 2) Interconnection customers should not ultimately be held responsible for the costs of network upgrades, because network upgrades benefit all customers and removing the burden from interconnection customers helps to prevent utility discrimination against independent power producers; and/or
- 3) Network interconnection upgrades should be presumed to provide quantifiable system wide benefits, absent evidence to the contrary.²²

NIPPC notes, however, that this docket may involve many other potential issues. NIPPC also asserts that its positions will benefit all ratepayers, arguing that this is what FERC concluded when it decided that, for FERC-jurisdictional interconnections, any network upgrades to a transmission provider's transmission system “benefit all users” of the transmission system and developed a crediting mechanism for the costs of network upgrades advanced by interconnection customers.²³

¹⁹ *Id.* at 5 (emphasis in text).

²⁰ *Id.* at 6.

²¹ *Id.*

²² *Id.* at 10

²³ *Id.* at 11.

NIPPC addresses the potential for disagreement between NIPPC and AWEC or CUB by pointing out that CUB, AWEC, and previous recipients of intervenor funding—like the irrigation customers mentioned above—often may disagree about how costs are allocated among customer classes. This disagreement, NIPPC notes, is an important and helpful feature of Commission proceedings, making diversity in intervenor funding a good idea to help guard against cross-subsidization.

5. *Allocation of Charges*

CUB and AWEC object because the only funds available for intervenor funding have been contributed by other customer classes:

Section 7.7(b) specifies that “Intervenor expenditures pursuant to an Intervenor Funding Grant made on behalf of a particular customer class will be charged to and paid for by that customer class.” Issue fund grants apportioned to CUB, for instance, are deferred and recovered from the utilities’ residential customers; issue fund grants apportion to AWEC are deferred and recovered from the utilities’ industrial customers. No equivalent option exists to recover NIPPC’s issue fund grant because there is no rate schedule applicable to QFs.²⁴

NIPPC proposes several alternatives for allocating funding, including by utilizing all sources of intervenor funding. NIPPC’s first proposal is to collect costs directly from interconnection customers after a future assessment. CUB and AWEC respond that “of these options, only the first appears even potentially viable as a means of ensuring the costs of NIPPC’s participation are apportioned directly to interconnection customers, though CUB and AWEC believe more information is necessary on how such a new interconnection fee would be developed and whether measures would need to be established to ensure this fee is not passed on to retail customers.”²⁵ NIPPC responds that it attempted to work on proposals with these groups, but they did not engage on the request.

CUB and AWEC desire to ensure that any funding is provided from interconnection customers and not from other customers. “In any event, while CUB and AWEC oppose NIPPC’s request for an issue fund grant, if the Commission approves NIPPC’s application, it should ensure that whatever method it selects to allocate the costs of NIPPC’s issue fund grant prevents retail customers from bearing these costs, either directly or indirectly.”²⁶

²⁴ Joint Response of CUB and AWEC at 12

²⁵ *Id.* at 12.

²⁶ *Id.* at 14.

IV. DECISION

We find that NIPPC is an organization that meets the qualifications to be eligible for intervenor funding under ORS 757.072 and OAR 860-001-0124(4). We conclude, however, that NIPPC's petition for case certification under the IFA should be denied because its request is not consistent with the operative terms of that agreement.

We first find that the term "customer" as used in ORS 757.072 is not limited to retail customers, and that an organization representing broad interests of interconnection customers may qualify for financial assistance under the statute and our rules. Although the term "customer" is not defined in ORS 757.072, our rules establishing criteria for qualifying organizations clarify that "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 * * *." Because interconnection customers are subject to unique terms and conditions of service, an organization representing their broad interests would be eligible for financial assistance in Commission proceedings affecting those terms and conditions.

We next find that NIPPC has established that it will represent the broad interests of interconnection customers in this proceeding. After review of NIPPC's *in camera* response to the bench request, we determine that NIPPC can effectively represent the breadth of interconnection customers interested in the outcome of this investigation and that NIPPC has demonstrated the financial capacity to effectively represent these customers. The interconnection customers relevant to this case are broadly represented by NIPPC, as reflected through NIPPC's agreement with the Coalition and CREA. NIPPC's representation of its members along with those of the Coalition and CREA covers the interconnection customers whose interests are at stake in this docket, which is limited to interconnection issues affecting QFs and other mid-sized and large customers.

This finding is consistent with our previous decision in PacifiCorp's general rate proceeding, docket UE 170. There, we case-certified two organizations that represented irrigation customers in the Klamath Valley. Although these two groups represented only those customers located in a particular region of PacifiCorp's service territory, we found that they could represent the broad interests of the class of irrigation customers with regard to rate spread.²⁷

The fact that NIPPC's positions on cost allocation may conflict with CUB and AWEC's positions on cost allocation should not in itself result in a denial of eligibility under the statute or rules. CUB and AWEC themselves represent different classes of customers with potentially conflicting views of how utility costs should be allocated among customer classes. Indeed, CUB and AWEC routinely disagree with each other on cost

²⁷ See *In the Matter of Pacific Power & Light, dba PacifiCorp, Request for a General Rate Increase in the Company's Oregon Annual Revenues and In the Matter of Pacific Power & Light, dba PacifiCorp, Klamath Basin Irrigation*, Docket Nos. UE 170 and UE 171, Order No. 05-134 (Mar 17, 2005).

allocation in dockets involving direct access. By determining that interconnection customers can be eligible for funding under the statute and rules, when funding is available, we can ensure robust advocacy and record development from all perspectives to help us determine if interconnection charges are fair and efficient.

We ultimately conclude, however, that NIPPC is not eligible for an Issue Fund Grant under this IFA. Although we have found agreements for financial assistance under ORS 757.072 are not restricted to organizations representing retail customers, the IFA at issue here was negotiated and entered among energy utilities and organizations representing retail customers in Commission proceedings. Thus, the agreement was developed to ensure that retail customers could be adequately represented, and contains provisions that were crafted with only retail customers in mind—specifically with regard to ensuring that only those customers represented by the organizations representing retail customers would ultimately be responsible for bearing the costs of the financial assistance provided.

Because the IFA was negotiated between the energy utilities and retail customer organizations, the agreement contains no provisions for the potential funding for non-retail customers. Section 7.7 of the IFA explicitly requires that “expenditures pursuant to an Intervenor Funding Grant and made on behalf of a particular customer class will be charged to and paid for by that customer class”²⁸ and the IFA contains a mechanism to ensure that any financial assistance provided to CUB or AWEC are exclusively recovered from only residential or industrial customers, respectively. There is no such mechanism, however, to ensure that funds paid to NIPPC are charged and paid for by the customer class that NIPPC represents.

In summary, we find that NIPPC is an organization eligible for financial assistance under the broader terms of ORS 757.072 and OAR 860-001-0120(4) for this proceeding, but fails to meet the more narrow and specific requirements for an Issue Fund Grant under an agreement entered into pursuant to the statute and rules.

Ultimately, NIPPC’s application exposes a limitation of intervenor funding in our current regulatory landscape. Although the IFA has worked well to help ensure retail customers broadly are represented in Commission proceedings, the scope of our work has expanded to include the interests of new customer classes (as well as customer segments within broad classes). In order to meet the original goals of providing a program of broad intervenor funding to ensure that resources are available to those who advocate on behalf of consumer interests in Commission proceedings, new agreements need to reflect the greater scope of agency work.

We determine that this issue should be addressed going forward through the development of new intervenor funding agreements, and that representatives of interconnection

²⁸*In re OPUC*, Docket No. UM 1929, Order No. 18-017, Appendix A at 25 (Jan 17, 2018).

customers should participate in the development of those agreements. We recognize that ORS 757.072 gives utilities discretion whether to enter into agreements to provide for intervenor funding, but we note that intervenor funding can be worthwhile to ensure that more perspectives are heard as we consider issues associated with rapidly changing energy systems, where third party and customer participation in the system continues to grow.

More and more entities—including retail customers—will interact with electric companies in new ways as distributed generation and storage resources become more prevalent. We expect that Commission proceedings and decisions will be strengthened by a more consistent representation of interconnection customers' views on interconnection and related issues.

V. ORDER

IT IS ORDERED that the petition for case certification under the Fourth Amended and Restated Intervenor Funding Agreement, filed by the Northwest and Intermountain Power Producers Coalition petition for case certification, is denied.

Made, entered, and effective Jun 3, 2020.



Megan W. Decker
Chair



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.