

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 374

In the Matter of

PACIFICORP, d.b.a. PACIFIC POWER,

Request for General Rate Revision

ORDER

DISPOSITION: PROPOSED BUDGET FOR ISSUE FUND GRANT DENIED

I. INTRODUCTION

In this decision, we deny the petition for an Issue Fund Grant to the Small Business Utility Advocates (SBUA) under the Fourth Amended and Restated Intervenor Funding Agreement (IFA). Although SBUA was case certified in this proceeding, we conclude that SBUA's request to utilize funds for the implementation of the partial stipulation approved in this docket on December 18, 2020, in Order No. 20-473, is not within the scope of "eligible proceeding" as defined by ORS 757.072. Intervenor funding exists to help ensure the Commission has a fully informed record for decision-making in docketed proceedings, and is not intended for use in implementing programs or operations outside of those proceedings. SBUA's request comes after the closure of the docket and record, for activities beyond the scope of an Eligible Proceeding for Issue Funds.

II. BACKGROUND

On March 2, 2020, the SBUA was granted intervenor status in this docket, and petitioned for case certification on March 10, 2020, to receive an Issue Fund Grant. On June 10, 2020, SBUA received case certification and initially petitioned for an Issue Fund Grant of \$18,220.

We granted the petition in Order No. 20-187, however we noted that less than \$100 remained unallocated in the PacifiCorp Issue Fund. On August 6, 2020, SBUA petitioned for reconsideration of Order No. 20-187, asking the Commission to reassign unallocated funds from the 2019 and 2020 PacifiCorp Issue Funds to SBUA's proposed

budget. No order was issued on SBUA's application for reconsideration, and it was thus denied by application of law.¹

On December 16, 2020, the Administrative Law Judge (ALJ) closed the record and the Commission issued Order No. 20-473 (Final Order) in the docket on December 18, 2020.

In relevant part, the Final Order accepted a partial stipulation to resolve rate spread and rate design issues raised in the docket. Under the partial stipulation, PacifiCorp agreed to several components applicable to small business customers, including (a) create a marketing, education and outreach (ME&O) plan for Schedule 23 customers; (b) work collaboratively with SBUA regarding the ME&O plan for these customers, particularly as it relates to enrollment in Schedules 23/210 and 29; and (c) by October 2021, consult with SBUA prior to providing an informational report on data obtained regarding Schedule 23 customers.

On February 9, 2021, SBUA filed a second proposed budget for an Issue Fund Grant in this proceeding, to complete the work agreed to in the partial stipulation. SBUA's proposed budget shows eligible expenses of \$44,250, and it seeks an Issue Fund Grant of \$35,400.

On February 25, 2020, the Alliance of Western Energy Consumers (AWEC) and the Oregon Citizens' Utility Board (CUB) filed a response to SBUA's second proposed budget, arguing SBUA's activities within paragraph 21 of the partial stipulation are outside of Commission purview, not within the scope of an eligible proceeding for issue funds, and would not produce eligible expenses.

On March 12, 2021, SBUA filed a reply to AWEC-CUB's response, arguing that its second proposed budget is consistent with the Commission's obligations to protect customers and set utility rates that are fair, just, and reasonable. SBUA argues it represents 83,000 commercial customers, who are ratepayers and are impacted by the intervenor funding and budget process.

III. DISCUSSION

A. Applicable Law

Intervenor funding derives from intervenor funding agreements, authorized under ORS 757.072 (known as the "Intervenor Funding Act"), which allows utilities to enter

¹ See OAR 860-001-0720(6). CUB and AWEC filed a response to SBUA's application for reconsideration, stating that all of the proposed funds had previously been allocated and would be spent on prior cases.

funding agreements with organizations representing various consumer groups and customer classes.

The process for organizations seeking to receive financial assistance begins with certification. To qualify for financial assistance, organizations must “represent broad customer interests” in a proceeding before the Commission relating to public utilities.² Section 2 also gives the Commission the ability to establish qualifications for determining which organizations are eligible for financial assistance.

On January 17, 2018, Portland General Electric, PacifiCorp, Idaho Power Company, Cascade Natural Gas Corporation, Avista Corporation, dba Avista Utilities, and Northwest Natural Gas Company, dba NW Natural, entered into the IFA with CUB, the Industrial Customers of Northwest Utilities (ICNU), and the Northwest Industrial Gas Users (NWIGU). In Order No. 18-017, the Commission approved the agreement, and adopted rules establishing qualifications for organizations to be eligible, as well as criteria for proceedings to be eligible.

The IFA establishes three funds under which an Intervenor Funding Grant can be created under the agreement. Section 4.2.3 of the IFA creates the “Issue Fund,” which allows grants to pay for expenses in certain Commission proceedings to intervenors that are pre-certified or case certified. Issue Fund Grants are allocated on a case-by-case basis. CUB and AWEC are pre-certified by Section 5.2 to receive Issue Fund Grants for all eligible proceedings.

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;

² ORS 757.072(2).

- (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 pre-certified 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.

After an organization is certified, it may request an Issue Fund Grant to receive financial assistance. Section 6.3 of the IFA provides that pre-certified and case certified organizations must submit a proposed issue fund budget to the Commission that contains, at a minimum, the following information:

- (a) A statement of the work to be performed;
- (b) A description of the areas to be investigated;
- (c) A description of the particular customer class(es) that will benefit from the intervenor's participation;
- (d) Identification of the specific fund accounts from which the intervenor is seeking monies and an estimate of the amount of available funds in that account;
- (e&f) A budget showing estimated attorney, consultant and expert witness fees, which may include the cost for appropriate support staff and operations support; and
- (g) A representation that the intervenor will use matching funds in the form of either in-house resources or outside funding to account for or pay at least 20 percent of the eligible expenses for which the intervenor is seeking an Issue Fund Grant.

Under Section 6.1 of the IFA, requests for an Issue Fund Grant may only be made in an Eligible Proceeding for Issue Funds. "Eligible Proceeding for Issue Funds" means a proceeding before the Commission to review:

- i. a general rate case request,
- ii. the proposed acquisition or merger of one of the Participating Public Utilities,
- iii. an Integrated Resource Plan,
- iv. an annual power cost request (such as PGE's Annual Update Tariff or PacifiCorp's TAM) or a purchase gas adjustment request; or
- v. any other proceeding so designated by the Commission that directly affects one or more of the Participating Utilities and is anticipated to have a substantial impact on utility rates or service, a significant impact on utility customers or the operations of the utility, is likely to result in a significant change in regulatory policy, or raises novel questions of fact or law.

Once the proposed budget is received, the Commission decides whether Issue Fund Grants are available for use based on factors identified in the IFA. The Commission has the authority to accept, deny, or partially deny the request, and may place reasonable conditions on the grant.

To determine the appropriate amount of an Issue Fund Grant, the Commission relies on several factors laid out in Section 6.5 of the IFA. These factors include:

- (a) the breadth and complexity of the issues;
- (b) the significance of any policy issues;
- (c) the procedural schedule;
- (d) the dollar magnitude of the issues at stake;
- (e) the participation of other parties that adequately represent the interests of customers;
- (f) the amount of funds being provided by the applicant intervenor;
- (g) the qualifications of the party and experience before the Commission;
- (h) the level of available funds in the Fund account or accounts involved; and
- (i) other Eligible Proceedings for Issue Funds in which intervenors may seek additional Issue Fund Grants from the same Fund account or accounts.

Lastly, Section 7.4 defines "eligible expenses," which are recoverable through intervenor funding grants. These expenses include:

- (a) Actual attorney and consultant fees, whether in-house or for outside services, directly attributable to participation in the proceeding;
- (b) Expert witness fees;
- (c) Apportioned wages for in-house staff (professional and clerical) directly related to participation in the proceeding;

- (d) The cost of preparing and copying studies, data request responses and other discovery materials, exhibits, testimony, briefs and other filings in the proceeding;
- (e) Travel costs directly related to participation in the proceeding;
- (f) Costs of acquiring studies or supplies directly related to the proceeding or court report fees and transcripts; and
- (g) Costs of participation in workshops and other informal Commission activities prior to the institution of an Eligible Proceeding for Preauthorized Matching Funds or Issue Funds as the case may be.

On March 5, 2003, former Commission Chair Roy Hemingway testified before the Oregon Senate Committee on Business and Labor that funding consumer advocacy through the Intervenor Funding Act would create more complete records, fuller opportunity to decide the issues, and lend increased credibility to proceedings and results. The bill was intended to benefit consumers, who would now be subject to lower rates due to increased advocacy on their behalf. On June 6, 2003, Governor Kulongoski signed the Intervenor Funding Act into law.

ORS 757.072 gives the Commission authority over which organizations can qualify and all decisions regarding financial assistance. ORS 757.072(3) provides that the Commission by rule or order may determine:

- (a) The amount of financial assistance that may be provided to any organization;
- (b) The manner in which the financial assistance will be distributed;
- (c) The manner in which the financial assistance will be recovered in the rates of the public utility under subsection (4) of this section; and
- (d) Other matters necessary to administer the agreement.

The Commission shall allow any public utility that provides financial assistance under this section to recover the cost of such assistance through rates. Utilities may defer inclusion of those amounts in rates as provided by ORS 757.259, if they so choose. Any agreement under this section, however, may not provide for any payment of any amounts to the Commission.

B. Positions of the Parties

SBUA asserts that its second proposed budget is consistent with the requirements of Sections 6.1 and 7.4 of the IFA. CUB and AWEC disagree. We summarize their objections, and SBUA's responses below.

1. Eligibility of Proceeding for Issue Funds

CUB and AWEC argue that the activities regarding the implementation of the partial stipulation are not within the scope of an Eligible Proceeding for Issue Funds, because the proceeding is now over. They assert SBUA is not case certified for the informal processes required by the partial stipulation, and as no pending case exists, SBUA could not become case certified. They argue that the IFA was established to help ensure the Commission has a fully informed record for decision-making. Since the docket and record are closed, CUB and AWEC contend that SBUA's obligations do not reasonably aid the Commission in rendering a decision.

SBUA states in reply that docket UE 374 is an eligible proceeding, and the docket is not closed as demonstrated by several documents filed in 2021. SBUA argues that Commission guidance explains that activity in a contested case may continue even after the record is closed. SBUA adds that the Commission regularly holds scheduled decision meetings to discuss and arrive at a decision after the record is closed.

CUB and AWEC further argue that the activities encompassed in paragraph 21 of the partial stipulation are informal and will occur outside of Commission purview, without Commission oversight or approval. They assert that the obligations associated with SBUA's second proposed budget are not related to any particular proceeding before the Commission, as required by Section 6.1 of the IFA.

SBUA states that CUB and AWEC's description of the activities as informal and not requiring Commission oversight or approval is unclear. SBUA argues that CUB and AWEC signed onto the partial stipulation, the partial stipulation was approved by the Commission, and no party challenged it. SBUA asserts that the activities are explicitly included in the partial stipulation, and therefore are enforceable and a part of the proceeding.

Lastly, CUB and AWEC argue SBUA's participation in helping PacifiCorp implement the outreach and reporting requirements of paragraph 21 of the Stipulation do not qualify under Section 7.4's definition of "eligible expenses." They assert that even though eligible expenses encompasses "[c]osts of participation in workshops and other informal Commission activities," these "informal" activities must occur "prior to the institution of an Eligible Proceeding for * * * Issue Funds * * *."³

³ AWEC-CUB Response at 5-6, quoting IFA § 7.4(g).

2. *Budget*

CUB and AWEC argue that based on the factors outlined in Section 6.5 of the IFA, if the Commission is to approve an Issue Fund Grant for SBUA, the grant should be limited to no more than \$5,000. They claim that SBUA's budget is grossly disproportionate to the tasks assigned to the SBUA by the partial stipulation, and SBUA has not explained why SBUA's activities require attorneys and experts at all.

SBUA explains that its work under the proposed budget will be extensive, going beyond conducting marketing and outreach to small businesses. SBUA explains that it plans to review the significance of customer choice, outreach and rate design discussions regarding residential, large commercial, and industrial customers, and the residential ratepayer class rate spread and a variety of other topics during the outreach process.

CUB and AWEC point to the factors outlined under Section 6.5 of the IFA as additional reasons to deny or substantially reduce SBUA's Second Proposed Grant. They argue that because the issues are narrowly tailored, relatively uncomplicated, and applicable only to small business customers, the "breadth and complexity of the issues" factor favors denial of the request. SBUA references the testimony of Mr. Steele, a utility economist who provided expert testimony throughout the rate case, and argues that this testimony illustrates the breadth and complexity of the issues presented. SBUA further argues that in light of the Commission's recent concern for applying an equity lens to proceedings, this proceeding is very important as it involved a ratepayer class as large as the small commercial customer in Oregon.

CUB and AWEC assert that the following two factors: "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," strongly favor reducing SBUA's second proposed budget. They argue that SBUA's budget would account for 25 percent of the available funds, materially reducing the funding available for other proceedings, diminishing the ability of other intervenors to participate in these dockets, and thus impairing the Commission's records and decisions. SBUA argues the Commission already has deprived small commercial customers of any intervenor funding in 2020, and therefore the Commission should not deprive SBUA where a budget is reasonable based on information to date. SBUA states it will be providing valuable technical work that may assure just and reasonable rates in the future. SBUA also points to several safeguards to ensure proper issue fund expenses, including requests for additional information and identification of expense categories. SBUA asserts that the demands of other dockets do not change their obligations under the partial stipulation. Lastly, CUB and AWEC assert that the remaining factors outlined in Section 6.5 of the IFA each favor a substantially smaller grant, if any.

IV. DECISION

We have previously found that SBUA is an organization that meets the qualifications to be eligible for intervenor funding under ORS 757.072 and OAR 860-001-0120(4) for activity in these proceedings. We conclude, however, that SBUA's second proposed budget for an Issue Fund Grant must be denied because the activities regarding the implementation of the partial stipulation are ineligible for intervenor funding.

ORS 757.072 was created to provide funding to consumer advocacy groups so they may utilize experts during case preparation and presentation.⁴

Intervenor funding provides consumer advocacy groups the funds necessary to assist in providing adequate representation for consumers in docketed proceedings. Intervenor funding was intended to impact active Commission proceedings, to create more complete records, provide full opportunity for the Commission to decide the issues, and lend increased credibility to the results of proceedings.

We find that SBUA's activities proposed to be funded through the second proposed budget for an Issue Fund Grant are outside of these proceedings, and therefore, are not aligned with the purpose of intervenor funding. SBUA's request comes after the effective closure of the docket (at least as to issues not under reconsideration) and record, and will not aid in creating a robust record. Specifically, SBUA's activities will not provide a fuller opportunity for the Commission to decide the issues, because the Commission has already issued the final order and approved the partial stipulation SBUA seeks to carry out.

The purpose of providing funds during the Commission proceeding is explicitly illustrated through the IFA, specifically in defining "Eligible Proceeding for Issue Funds" and "eligible expenses." Article 1(c) defines eligible proceedings as proceedings before the Commission to review, and lists general proceedings that qualify, such as general rate requests and the proposed acquisition or merger of one of the Participating Public Utilities. Section 7.4(a)-(f) defines "eligible expenses" as those related to "participation in the proceeding," and consistent with 7.4(g) includes the costs of participation in workshops and other informal Commission activities "prior to the institution of an Eligible Proceeding."

While SBUA's involvement in the proceeding prior to the Final Order would be eligible because SBUA was case certified for docket UE 374, its activities in implementing the partial stipulation are not. Article 1(c) explicitly states the proceeding needs to be "before the Commission to review." SBUA's activities are not presently before the Commission. Additionally, SBUA's implementation of the outreach and reporting

⁴ OR B. Summ., 2003 Reg. Sess. SB 205.

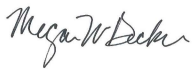
requirements of the partial stipulation are best characterized as organizational and operational tasks, specific to SBUA, which it has agreed to conduct as part of its agreement under the partial stipulation. These activities are not “participation in the proceeding” and thus the costs of these activities do not constitute eligible expenses. Eligible expenses include costs associated with informal Commission activities and workshops, but only when those activities occur “prior to the institution of an Eligible Proceeding for Preauthorized Matching Funds or Issue Funds.”

Ultimately, SBUA’s second proposed budget is not consistent with the purpose of intervenor funding. Intervenor funding was not created to support organization-specific activities beyond a docketed proceeding. Instead, ORS 757.072 was created to strengthen the reliability and credibility of proceedings themselves through funding of activity that supports the building of the case record and the exploration of legal, practical, and policy questions in the context of a pending Commission decision on those topics.

V. ORDER

IT IS ORDERED that the petition for an Issue Fund Grant under the Fourth Amended and Restated Intervenor Funding Agreement, filed by the Small Business Utility Advocates, is denied.

Made, entered, and effective Apr 07 2021.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
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.