

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 390

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2022 Transition Adjustment Mechanism.

ORDER

DISPOSITION: PETITION FOR CASE CERTIFICATION DENIED

On May 19, 2021, Small Business Utility Advocates (SBUA) filed a petition for case certification. SBUA's request for case certification for intervenor funding purposes is filed under OAR 860-001-0120(4) and Article 5.3 of the Fourth Amended and Restated Intervenor Funding Agreement (IFA). On June 25, 2021, the Alliance of Western Energy Consumers (AWEC) and Oregon Citizens' Utility Board (CUB) responded and objected to the certification request. SBUA replied to the AWEC and CUB response on July 2, 2021. For reasons explained below, we deny the petition at this time.

I. DISCUSSION

To be certified for purposes of receiving intervenor funding, an organization must meet certain criteria set forth in OAR 860-001-0120(4). Criteria a, b, c, d, f, and g are set forth below, along with SBUA's position on each. We review criterion e, which is the subject of the objection from AWEC and CUB, separately.

A. Uncontested Criteria

a) The organization is a nonprofit organization, demonstrates that it is in the process of becoming a nonprofit organization, or is comprised of multiple customers of one or more of the utilities that are parties to the agreement and demonstrates that a primary purpose of the organization is to represent broad utility customer interests.

SBUA states that it is an Internal Revenue Code Section 501(c)(3) nonprofit organization comprised of many customers of PacifiCorp. SBUA further states that its primary purpose is representing the interests of small businesses in utility proceedings.

b) The organization represents the interests of a broad class of customers and their participation in the proceedings will be primarily directed at public utility rates or terms and conditions of service affecting those customers, and not narrow interests or issues that are ancillary to the effect of the rates and terms and conditions of service on those customers.

SBUA asserts that it represents small business, generally. SBUA also asserts that small businesses are a large, broad, and diverse class of customers. SBUA claims that more than half of Oregonians are employed in small businesses and that most businesses in Oregon are small businesses. SBUA provides examples of some of the types of businesses it represents, including hair salons, businesses involved in shoe repair, food and beverage, cleaning and maintenance, and more. SBUA notes its constituents are located in many different places in Oregon, including the Portland metro area, the central coast, Salem, the rural Willamette Valley, and central Oregon. SBUA asserts that its constituents are distinct from those of AWEC and CUB.

SBUA claims its participation will be directed primarily at reviewing the company's Transition Adjustment Mechanism (TAM) in relation to small commercial customers. Its review will include, but not be limited to, net power costs, load forecasting, and rate schedule changes with regard to small general service customers. SBUA references rate schedule changes expressed in UE 390 Exhibit PAC/300 Ridenour testimony and exhibits as an example.

c) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent.

SBUA references its over ten-year history representing Oregon small businesses. SBUA also references its active participation in implementing stipulation agreement terms and in Commission workshops. SBUA highlights its intervention in dockets UM 1610, UE 294, UM 1751, UM 1754, UM 1773, UM 1790, and UE 374. SBUA also cites its participation in the public input process of SB 978. SBUA claims it plans to review the company's proposed rate schedules, the statements setting forth the number of customers affected, and grounds to support any changes, among other issues in this docket.

d) Those members of the organization who are customers of one or more of the utilities that are affected by the proceedings and are parties to the agreement contribute a significant percentage of the overall support and funding of the organization.

SBUA describes how its PacifiCorp ratepayer members participate in the organization's actions and states they contribute to the funding of SBUA. SBUA notes that its budget is not large and that financial support comes in the form of money contributions, in-kind professional services, space, and capital equipment.

f) The organization demonstrates that: (A) No pre-certified intervenor participating in the proceedings adequately represents the specific interests of the class of customers represented by the organization; or (B) The specific interests of a class of customers will benefit from the organization's participation.

SBUA states that no other party to this proceeding adequately represents the specific interests of its constituency. SBUA notes that while CUB represents residential customers and AWEC represents large non-residential customers, SBUA represents exclusively small non-residential customers. SBUA claims that such a customer class will benefit from its participation, as SBUA has information pertinent to small businesses that the Commission is not likely to receive from any other source.

g) The organization demonstrates that their request for case certification will not unduly delay the proceedings.

SBUA acknowledges the schedule that has been established in the ALJ May 10, 2021 Prehearing Conference Memorandum in this docket and claims participation by SBUA would not cause any delay in proceedings.

Resolution:

No party contested SBUA's demonstration that it meets criteria a, b, c, d, f, and g for case certification set forth in OAR 860-001-0120(4). However, we conclude that it is not necessary to determine whether SBUA has met each of these criteria because we find that it has failed to meet criterion e. We note that a failure to meet criterion e may implicate whether SBUA has satisfied some of the other criteria discussed above, including criteria c and b.

B. Contested Criteria

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 proceedings in which the organization was case certified and received a grant.

SBUA claims it has an ability to contribute to the record and has demonstrated for the record statistical familiarity with the state's small business constituency and impact of the proceedings on small businesses.

SBUA references its participation in docket UE 374 as evidence of its ability to substantively contribute to the record on behalf of customer interests. In that docket, SBUA maintains it obtained expert testimony informing the Commission on the state of small businesses in Oregon, the impact of PURPA projects on these businesses, and comparisons of rate increases. Further, SBUA asserts it participated in settlement negotiations on behalf of SBUA members. SBUA also references several dockets where it participated that were case certified, including UE 374, UM 1751, UM 1754, and UM 1790.

AWEC and CUB state that as demonstrated by testimony filed in this case, UE 390, SBUA has not met criterion e. AWEC and CUB argue that SBUA's June 9, 2021 testimony is not understandable, is not connected rationally, and is not rooted in the UE 390 proceeding. AWEC and CUB also argue that SBUA's testimony includes unclear and unlawful recommendations that if adopted would ultimately create negative outcomes for the customers SBUA represents.

AWEC and CUB observe that SBUA's testimony in this proceeding implies that customer rates are under investigation here. AWEC and CUB point out that this proceeding will only serve to establish PacifiCorp's power costs, and will not and cannot address rate structure and the other issues discussed in SBUA's testimony. AWEC and CUB state that SBUA's description of the 2020 Protocol betrays a fundamental misunderstanding of the Protocol, and how it relates to the TAM. Finally, AWEC and CUB assert that SBUA's testimony on the

Energy Imbalance Market (EIM) is misplaced in this docket, and if SBUA's suggestion on this point were followed, it would be detrimental to the customers SBUA represents. AWEC and CUB state that if SBUA's misplaced recommendations were adopted, retroactive ratemaking would result, or the net effect of adoption would be an increase in rates for small commercial customers.

SBUA responds that evidence gathering is not complete in this docket, and that because of this, the Commission may not evaluate SBUA's contribution at this stage. SBUA argues that its testimony is focused on "sales and transparency," and is therefore relevant to a power cost proceeding, and states that review of the 2020 protocol is necessary to establish just and reasonable rates.

Resolution:

Given the testimony SBUA has filed to date in this case, SBUA has not demonstrated an ability in this docket to substantially contribute to the record on behalf of customer interests. SBUA's response to AWEC and CUB's does not attempt to explain or clarify SBUA's initial testimony. This docket centers on PacifiCorp's TAM, and the purpose of the TAM is to update net power costs for 2022 and to set transition credits for Oregon customers who choose direct access in the November open enrollment window. The core recommendation provided by SBUA, that "Schedule 23 rates should reflect a discount based on revenues from increased availability for sales of that power through the [EIM]," does not represent relief that can be granted in this proceeding.¹

We agree with AWEC and CUB that SBUA's testimony focuses on issues outside this proceeding and betrays a lack of understanding of the power cost considerations in this docket, or in the alternative is incoherent to the degree that SBUA's insights into the TAM have not been communicated through testimony. SBUA's initial testimony in this proceeding presents no actionable recommendations for the other parties or the Commission to consider.

As a general manner, we do not intend to evaluate the quality of testimony in real-time as part of case certifications. Typically, we look to past advocacy in other dockets to evaluate the applicability of intervenor funding agreement criteria to a specific applicant. However, in this particular case, the testimony submitted does not contribute significantly to the development of the record and therefore denial of the petition is appropriate. Given this particular set of factors, until such time as SBUA demonstrates such a contribution in this docket, case certification is denied.

We acknowledge that SBUA may work diligently to understand the issues under consideration in this case, to analyze them and subsequently communicate and contribute to the record in a way that advances the interests of small commercial customers. If SBUA does so at a later stage in this proceeding, we would consider a subsequent request for case certification, but observe that SBUA would need to provide further information in response to a number of criteria, as explained above. However, no expenses associated with SBUA's initial testimony will be eligible as an expense in any future approved budget.

¹ SBUA/100, Wertz/5.

We also emphasize that a denial of case certification for intervenor funding is not the same as striking a party's testimony or denying its ability to participate in OPUC proceedings. Rather, we apply the criteria in our rules regarding case certification to ensure that we use intervenor funds appropriately to meet their intended purposes. This order should not be interpreted as discouraging participation in OPUC proceedings where a party may be struggling to determine whether its interests are at stake, or how to engage on the technical matters at issue in a proceeding. We will continue to seek to understand parties' positions and concerns raised in dockets at the OPUC, but will not grant case certification for intervenor funding purposes where the party does not meet the requirements of intervening funding. Even when a party's request for case certification for intervenor funding is denied, that party remains able to participate in the proceeding.


II. CONCLUSION

We have reviewed the petition and find that SBUA does not meet all the requisite criteria for case certification and intervenor funding. The petition for case certification is denied until such time as SBUA can demonstrate an ability to effectively contribute to the record in this case on behalf of small commercial customers, and provides further information as required to demonstrate that it meets all of the criteria laid out in our rules for case certification.

III. ORDER

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

Made, entered, and effective Aug 02 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.