

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 394

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Request for General Rate Revision.

ORDER

DISPOSITION: PETITION FOR CASE CERTIFICATION DENIED

On February 4, 2022, the Small Business Utility Advocates (SBUA) filed a petition for case certification in this proceeding. SBUA's petition is filed under OAR 860-001-0120(4) and the Fourth Amended and Restated Intervenor Funding Agreement (IFA). The Alliance of Western Energy Consumer (AWEC) and the Oregon Citizens' Utility Board (CUB) filed an objection for SBUA's petition and seek to limit SBUA's ability to further apply for certification in any proceeding for the duration of the current IFA. For reasons explained below, we deny SBUA's petition but do not adopt the relief suggested by AWEC and CUB.

I. INTRODUCTION

The general rate revision request by Portland General Electric Company (PGE), which is the subject of this proceeding, was initially filed in June 2021. On April 25, 2022, the Commission issued Order No. 22-129, adopting the first, second, third, and fourth partial stipulations, and approving a rate revision. SBUA filed a petition to intervene on October 14, 2021, a prehearing brief on February 7, 2022, rebuttal testimony on February 14, 2022, an opening brief on February 22, 2022, and a closing brief on March 2, 2022.

II. BACKGROUND

On February 4, 2022, SBUA filed a petition for case certification and a notice of intent to request an issue fund grant. Chief ALJ Moser issued a bench request requiring more information from SBUA on February 16, 2022. CUB and AWEC jointly filed an objection to SBUA's involvement as an intervenor on February 22, 2022. SBUA filed a response to the bench request on February 25, 2022, and a motion for leave to file reply out of time on March 4, 2022. Chief

ALJ Moser granted this motion on March 7, 2022, giving a deadline of March 7, 2022, for the reply. The reply was filed by SBUA on March 7, 2022.

III. DISCUSSION

A. SBUA's Petition

SBUA asserts that it meets the criteria under OAR 860-001-0120(4) for case certification because SBUA is a non-profit comprised of small businesses constituted for the purpose of representing the interests of the small business customer class. SBUA states that the class of customers that it represents are distinct from those represented by AWEC and CUB. SBUA argues that its participation in the proceeding will be directed at rate spreads and rate design and that SBUA is able to effectively represent small business customer interests. SBUA states that its effectiveness is demonstrated by its intervention and activities in dockets UM 1610, UE 294, UM 1751, UM 1773, and UM 1790. SBUA plans to represent small businesses in UE 394 by preparing expert testimony, filing documents, participating in workshops, settlement discussions, and other activities. SBUA contends that it is supported largely by constituents through financial contributions, in-kind services, space, and equipment. Finally, SBUA states that its intervention will not cause undue delay in the proceedings despite SBUA's late start to participation in the process.

1. *Chief ALJ Moser's Bench Request*

In response to SBUA's petition, Chief ALJ Moser filed a bench request for the following information:

- (1) Most recent audited financial statements;
- (2) Budget breakdown;
- (3) Clarification of "small business sector expertise, 20 hours;"
- (4) Current membership list with corresponding utilities; and
- (5) Clarification on whether SBUA will be using funds to recover costs for work already completed.

The Chief ALJ made the bench request given a prior denial of an SBUA certification request, which was based in part on filed financial information. The bench request also referenced Commission guidance provided to SBUA for future applications.

2. *AWEC & CUB's Response*

The response to SBUA's request filed jointly by AWEC and CUB argues that SBUA does not meet the requirements set forth in the IFA. AWEC and CUB reference docket UE 352 in which SBUA was denied certification based on the submitted financial information that did not create clear accountability to SBUA's members.

AWEC and CUB also indicate that while SBUA has been certified in a PacifiCorp docket, SBUA has never clearly established that they have members who are customers of PGE.

AWEC and CUB request that SBUA demonstrate that it has members who are customers of PGE, or their request should be denied.

AWEC and CUB also emphasize that the petition and budget do not conform to IFA requirements, which state that the notice of intent and petition to intervene must be filed simultaneously and that the Proposed Budget be filed within 30 days after the prehearing conference. SBUA filed this information four months after its petition to intervene and beyond the 30 days after the August 2, 2021 prehearing conference.

Finally, AWEC and CUB argue the contributions that SBUA have made to the docket have not effectively represented their client base. SBUA did not put forth any initial testimony, no tangible recommendations, and no substantive legal argument on any contested issues. AWEC and CUB argue this lack of contribution is in direct opposition to requirements in the IFA. AWEC and CUB further argue that the Commission should prohibit SBUA from requesting intervenor funding for the remainder of the IFA, which is effective through December 31, 2022, because of SBUA's failure to adhere to the IFA and because there have been no improvements over time to the quality of SBUA's advocacy.

3. *SBUA's Response*

In response to the bench request, SBUA provided information *in camera* to the Administrative Hearings Division. SBUA requests confidentiality and has cited the United States Supreme Court ruling in *Americans for Prosperity Foundation*, which SBUA contends protects the identities of SBUA's members. SBUA provided a revised budget and clarified that they do not intend to recover costs from work already performed (prior to 2022). Additionally, SBUA provided information on the activities that it expects to perform through the remainder of this docket.

In response to AWEC and CUB's position, SBUA filed a reply, as permitted by the ALJ. The response rebuts the arguments set forth by AWEC and CUB as follows:

- (1) The membership list is confidential, however, SBUA indicates that they have members within PGE's territory in Multnomah, Yamhill, and Washington counties.
- (2) The timing of SBUA's filings is not inconsistent with the IFA requirements because they filed the notice of intent at the same time as the petition for case certification. The proposed budget was delayed because the 30-day requirement is not enough time for a budget to be completed for complex issues. SBUA states that the rate spread analysis took three months, and it is not possible to review the required needs when the major issue in the case has not been set forth.

- (3) SBUA states that it has contributed to the docket by providing an expert financial analyst who has contributed to settlement discussions, stipulations, and briefs.

4. *Resolution*

We deny SBUA's request for case certification, on two grounds. First, we find that SBUA, on the information before us, cannot contribute the required 20 percent of its stated budget consistent with the IFA. Second, and more fundamentally, we find that SBUA's request for case certification is denied because it has not effectively represented the small commercial customer class in this case.

Under the IFA, proposed budgets must include "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% of the Eligible Expenses for the work to be performed for which the intervenor is seeking an Issue Fund Grant."¹

Despite our recommendation in Order No. 19-133 that SBUA as a 501(c)(3) organization provide audited financials, SBUA continues to not utilize such services. Accordingly, we received an unaudited statement from SBUA. Given this unaudited statement, we are unable to conclude that SBUA is capable of meeting its in-house resource or outside funding requirement. Specifically, the Commission is currently reviewing four intervenor funding related filings on behalf of SBUA. Consistent with the filed budgets in these requests, SBUA represents that its budget for activity in docket UM 2114 will total \$21,400, with SBUA funding 20 percent of these expenditures at \$4,280; that its budget for activity in dockets UG 435 and UG 411 is \$39,300, with SBUA funding 20 percent of these expenditures at \$7,860; that its budget for activity in docket UE 394 is \$22,970, with SBUA funding 20 percent of these expenditures at \$4,594, and finally its budget for docket UE 399 is \$21,170 with SBUA funding \$4,234. In total, SBUA seeks \$83,872 from ratepayers, and purports to fund \$20,968 of the four total budgets, which amount to \$104,840.

SBUA's unaudited financial statements do not demonstrate that SBUA can meet this overall \$20,968 independent funding requirement. Though it is not entirely clear from its statements, SBUA claims to have four sources of revenue or in-kind support. First, [REDACTED] second a [REDACTED] third presumed support from a [REDACTED] and finally SBUA in-kind resource donations totaling [REDACTED] Potentially, all of this final category of support, but [REDACTED] This represents [REDACTED] of the revenues and donations for the organization respectively.

¹In 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, 6.3 Proposed Budgets (Jan 17, 2018).

SBUA also submitted a confidential exhibit, which reviewed SBUA members, and displayed corresponding electric and natural gas utilities. Of these members four [REDACTED]

[REDACTED] We assume that the [REDACTED] referenced in the financial statement is provided by [REDACTED] Regardless, even if this support was split between [REDACTED]

In denying past certification requests on the ground that SBUA did not demonstrate a significant capacity from members to contribute to its operations to participate in our proceedings, we noted that:

[* * *] 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.²

And

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.³

It is not clear that SBUA is financially or otherwise accountable to the small commercial customer class. The difficulty in making this determination is compounded by SBUA's continued use of informal financial statements, contrary to our recommendation made three years ago in Order No. 19-133.⁴ As discussed above, the vast amount of SBUA's support [REDACTED] This demonstrates that SBUA is financially accountable [REDACTED] but not necessarily to the broad small commercial customer class.

² *In the Matter of PacifiCorp, dba Pacific Power, 2019 Renewable Adjustment Clause*, Docket No. UE 352, Order No. 19-133 at 5 (Apr 16, 2019).

³ *Id.*

⁴ SBUA's continued financial informality is inappropriate in consideration of the significant amount of ratepayer funds SBUA seeks to access, which, as referenced above, is \$83,872 for four dockets, not counting any upcoming requests from SBUA. We caution that we cannot consider providing that level of ratepayer support to an organization so informally organized, without the financial tracking that audited financial statements provides.

SBUA's financial statement includes reference to [REDACTED]
Without a better understanding of SBUA's overall financial situation, we find that SBUA's financial statements demonstrate a limited capacity provided from the small customer class. Assuming that [REDACTED]

[REDACTED]⁵ Accordingly, we find that given the financial statement before us, SBUA has demonstrated a capacity to fund a maximum overall budget of \$11,250. Under our current understanding of SBUA's financial status, it may qualify for a maximum of \$9,000 of ratepayer funding for a calendar year, if case certified. This amount is well below SBUA's request in this case, which amounts to \$18,376.

However, though we find that SBUA could qualify for up to \$9,000 of ratepayer funding in this case, we deny SBUA's request for case certification in this docket given the nature of SBUA's participation to date. As we have noted, ultimately customers pay the costs of intervenor funding.⁶ Accordingly, though we are not inclined to place hard tests regarding the quality of the advocacy or filings of a group as a requirement to access to funding, we have a responsibility to examine in some respect this issue, particularly as in this case when other parties have highlighted that performance. In this case, AWEC and CUB have noted that the contributions that SBUA have made to the docket have not effectively represented the small commercial customer class, that SBUA has not put forth any initial testimony, no tangible recommendations, and no substantive legal argument on any contested issues. We agree with AWEC and CUB, and we find that testimony submitted does not contribute significantly to the development of the record and, therefore, denial of the petition is appropriate.

We deny AWEC and CUB's further request that the Commission should prohibit SBUA from requesting intervenor funding for the remainder of the Fourth IFA whose effective period ends on December 31, 2022. As we discuss in a separate order in UG 435, SBUA's participation in all dockets has not been uniformly inadequate; accordingly, the remedy requested by AWEC and CUB is overly broad and we do not adopt it at this time.

⁵ We note that financial support from members is one way in which organizations may demonstrate member commitment and representation reflected in the organization but is not the exclusive way that class representation and accountability may be demonstrated. For example, how the organization is governed, such as through board members that are also members of or represent the customer class in question, could help demonstrate, independent of financial support, accountability and connection to the customer class served.

⁶ *In the Matter of Small Business Utility Advocates, Application for Precertification for Purposes of Receiving Intervenor Funding under the Third Amended and Restated Intervenor Funding Agreement*, Docket No. UM 1357, Order No 17-117, Appendix A at 4 (Mar 21, 2017).

IV. ORDER

IT IS ORDERED that:

1. The petition for case certification of the Small Business Utility Advocates for intervenor funding in this docket is denied.

Made, entered, and effective May 13 2022.



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.