

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 490

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL,

Request for a General Rate Revision.

ORDER

DISPOSITION: PETITION FOR CASE CERTIFICATION (INTERVENOR) DENIED

I. SUMMARY

In this order, we deny the petition for case certification for intervenor funding filed in this docket on March 14, 2024, by Fair Oregon Utility Rates for Small Businesses (FOUR). This proceeding is a contested case eligible for intervenors to seek issue fund grants pursuant to OAR 860-001-0120(4). We determine, as described below, that FOUR does not meet the requirements of the Fifth Amended and Restated Intervenor Funding Agreement.

II. BACKGROUND & PROCEDURAL HISTORY

This proceeding, opened on December 29, 2023, concerns a request for a general rate revision filed by Northwest Natural Gas Company, dba NW Natural. Three parties have intervened: the Oregon Citizens' Utility Board (CUB), the Alliance of Western Energy Consumers (AWEC), and a coalition of environmental and justice groups to be referred to as "The Coalition."

FOUR's petition includes arguments for meeting the seven criteria for case certification under the Fifth Amended and Restated Intervenor Funding Agreement. FOUR also provided a proposed budget in Exhibit A. The stated purpose of the certification request is to represent the small business commercial class of NW Natural customers, which FOUR asserts no party in these proceedings adequately represent. According to the filing, FOUR's participation would be focused on the fairness of rates and terms for the small business class, with specific focus on the Company's Rate Schedule 3 – Basic Firm Sales Service Non-Residential.

FOUR states that it qualifies for intervenor funding as a non-profit 501(c)(3) and is funded by small businesses across the state. FOUR argues that its purpose is to represent all small businesses in the state, noting that there are 60,000 small businesses in Oregon that are customers of the Company.

FOUR asserts that it has the ability, and that its attorney and expert have in the past demonstrated the ability to substantively contribute to the record on behalf of customer interests. FOUR notes that its counsel, Diane Henkels, has previously received case certification for small business nonprofits and non-residential ratepayers in the past. FOUR states that its board members each represent small businesses.

Intervenors AWEC and CUB jointly filed a response to FOUR's petition, questioning FOUR's ability meet criterion (c), (d), and (e) of OAR 860-001-0120(4). Respondents' concerns are based upon prior appearances before the Commission made by FOUR's representatives.

AWEC and CUB argue that FOUR is ostensibly a successor organization to Small Business Utility Advocates (SBUA), an organization which has advocated for small business utility customers in past Commission dockets. Respondents assert that FOUR's leadership includes individuals active with SBUA, and that its Legal Counsel Diane Henkels previously represented SBUA before the Commission. Respondents observe that in its petition, FOUR's argument relied heavily on the experience of their legal representation and board members in matters before the Commission—matters which they took part in largely as members or representatives of SBUA.

Respondents cite to the recent conduct of FOUR's representatives in docket UE 416, when they appeared representing SBUA, as evidence of a documented history of ineffective advocacy before the Commission. They further argue that FOUR inherits several additional inadequacies from SBUA—particularly a lack of clarity regarding financial support, membership base, and effective and timely advocacy. Respondents ask that we deny Petitioner's request for funding until they demonstrate that they can rectify these concerns.

III. RESOLUTION

We deny FOUR's request for case certification. FOUR is not barred from participating fully in this case but is not eligible, at this time, for intervenor funding under the Fifth Amended and Restated Intervenor Funding Agreement. Specifically, we find that FOUR does not meet the requirements of Article 5.3 (c), (d), and (e) of the agreement, as well as Article 6.3 (g), and 6.5 (g).

Article 5.3

Article 5.3 of the agreement outlines case-certification eligibility. Article 5.3 states in relevant part:

Organizations meeting all of the following criteria may be case certified by the Commission to be eligible to receive an Issue Fund Grant: * * *

(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 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 * * *.

FOUR does not meet these three requirements. First, FOUR has not demonstrated that it is able to effectively represent the class of customers it seeks to represent—which means it cannot meet Article 5.3 (c) and (e) of the agreement. We are persuaded by the respondents that the principals intending to participate in this docket on behalf of FOUR are the same principals that have represented SBUA in recent dockets.

SBUA's conduct in docket UE 416, particularly the conduct of SBUA's attorney, Diane Henkels, is illustrative and indicates an inability or unwillingness to effectively represent small commercial customers. In that docket, SBUA negotiated in and signed a stipulation, with terms specific to small commercial customers, that was ultimately harmful to that customer class. Later, SBUA, in a manner inconsistent with our rules, objected to this stipulation, and seemed to only thoroughly review that stipulation well after having signed it. Ultimately, the Commission was required to expend its own and party resources to un-do the stipulation SBUA agreed to, returning the small commercial customers subject to the stipulation to a version of the previous status quo.

Therefore, SBUA's activity in no way advanced the interests of small commercial customers and had the potential to be very harmful. Indeed, in effect, SBUA's participation was minimally harmful—SBUA had been granted Intervenor Funding in

that case, so small commercial customers were assessed costs for advocacy that did nothing to advance their interests.

Diane Henkels was the attorney responsible for SBUA's engagement in docket UE 416. This engagement is only one example of ineffective advocacy on behalf of the small commercial class, as respondents point out, and Diane Henkels has been reprimanded by the Commission or ALJs for confusing, contradictory, out of time, or misleading filings related to both the content of cases or intervenor funding requests.¹ Given this history, FOUR cannot demonstrate, with its current principals, that it is able to effectively represent small commercial customers. For these same reasons, we determine, consistent with Article 6.5 (g) of the agreement, that FOUR does not have the requisite qualifications and experience to justify case certification. We note that if in the future FOUR engages in active and effective participation in dockets on behalf of small commercial customers, our assessment on this requirement would be informed by that more recent example.

Second, FOUR has not demonstrated, consistent with Article 5.3 (d), that its members are customers of NW Natural. In a March 14 bench request, Chief ALJ Nolan Moser requested information regarding FOUR's membership, their relationship with NW Natural, and the class of service received. In response, FOUR indicated that it was not a membership organization and did not clarify that any of its principals took or received commercial, as opposed to residential, service from NW Natural. FOUR's response does not allow us to determine it meets the letter or the intent of Article 5.3 (d) of the agreement, which specifically references "members" as "customers" of the utility from which funds are sought. FOUR does not address or make a case as to how, as a non-member organization, it can meet this requirement.

Article 6.3

FOUR has not demonstrated it can comply with Article 6.3 (g) of the Fifth Amended and Restated Intervenor Funding Agreement. Specifically, this provision requires "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 See *In the Matter of PacifiCorp, dba Pacific Power, Request for General Rate Revision (UE 399) and Public Utility Commission of Oregon, Investigation into the Effects of the COVID-19 Pandemic on Utility Customers (UM 2114)*, Docket Nos. UE 399 & UM 2114, Order No. 23-444 (Nov. 21, 2023) and *In the Matter of Portland General Electric Company Request for a General Rate Revision; and 2024 Annual Power Cost Update*, Docket No. UE 416, ALJ Ruling (Oct. 27, 2023) and Order No. 23-477 (Dec. 18, 2023).

Chief ALJ Nolan Moser requested a financial statement from FOUR to help us determine whether FOUR is capable of meeting this requirement, given its proposed budget. FOUR supplied a financial statement, attested to by FOUR board members. FOUR is incapable at this time of meeting its 20 percent match requirement consistent with Article 6.3 (g). According to its financial statement, FOUR's current financial capability is not close to meeting the 20 percent match requirement associated with its chosen budget, and even if granted certification, could only meet a match requirement associated with a much smaller overall budget.

IV. ORDER

For the above reasons, Fair Oregon Utility Rates for Small Businesses' request for case certification is denied.

Apr 02 2024

Made, entered, and effective _____.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Les Perkins
Commissioner

