

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UG 435

In the Matter of

NORTHWEST NATURAL GAS  
COMPANY, dba NW NATURAL

Request for General Rate Revision  
(UG 435), and

Advice 20-19, Schedule 198 Renewable  
Natural Gas Recovery Mechanism  
(ADV 1215) (UG 411).

ORDER

**DISPOSITION: PETITION FOR CASE CERTIFICATION GRANTED, BUDGET DENIED**

On February 1, 2022, the Small Business Utility Advocates (SBUA) filed a petition for case certification. SBUA's petition for designation is filed under OAR 860-001-0120(4) and the Fourth Amended and Restated Intervenor Funding Agreement (IFA). CUB and AWEC have filed an objection for SBUA's intervention and ability to further apply for certification in any proceeding for the duration of the current IFA. For reasons explained below, we deny the petition.

**I. BACKGROUND**

This is a general rate revision request by Northwest Natural Gas Company, dba NW Natural, which was initially filed in December of 2021. On January 19, 2022, SBUA filed a petition to intervene. This petition was granted on January 25, 2022. On February 1, 2022, SBUA followed up with a petition for case certification and a notice of intent to request an issue fund grant. CUB and AWEC filed an objection to SBUA's involvement as an intervenor on February 21, 2022. On February 16, 2022, Chief ALJ Moser filed a bench request for more information from SBUA. 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 7, 2022. The reply to AWEC and CUB's objection was filed by SBUA on March 2, 2022, on condition that the motion for leave to file reply out of time be granted. Chief ALJ Moser granted this motion on March 8, 2022, giving a deadline of March 9, 2022, for the reply.

## II. 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 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 NW Natural. NW Natural has pending data requests out to SBUA to determine funding information of SBUA's clients. AWEC and CUB request that SBUA demonstrate that it has members who are customers of NW Natural, or their request should be denied. CUB and AWEC argue that this data request should be completed before the Commission rules on SBUA's petition.

Finally, AWEC and CUB argue that they doubt SBUA is capable of contributions to the docket that will effectively represent their members. AWEC and CUB further argue that the Commission should prohibit SBUA from requesting intervenor funding for the remainder of the IFA whose effective period ends on 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) Though its membership list is confidential, SBUA indicates that they have members within NW Natural's territory in Multnomah, Lincoln, Benton, Marion, and Washington counties.
- (2) SBUA states that it is able to contribute significantly to the docket through their expert witness and has previously contributed to dockets as well. AWEC and CUB argue that SBUA does not have a demonstrated history of advocating in natural gas dockets, however, SBUA argues in opposition to this objection by stating that a party's argument should not be rejected before it has been developed.
- (3) SBUA asserts it is in the Public Interest to grant SBUA's petition because the customer class supported by SBUA is not covered by CUB or AWEC.
- (4) Finally, SBUA alleges that AWEC and CUB are using aggressive tactics rather than attempting to settle matters outside of litigation. SBUA states that their tactics cost SBUA money and time defending themselves rather than contributing to dockets.

#### 4. *Resolution*

We grant SBUA's request for case certification, but require SBUA to file a revised budget. We find that SBUA, on the information before us, cannot contribute the required 20 percent of its stated budget consistent with the IFA. We find that SBUA's request for case certification can be granted in this case because SBUA's participation to date has been sufficient to effectively contribute to the record.

SBUA has effectively demonstrated an ability to contribute to the record on behalf of small commercial customers in this case. As we have noted, ultimately customers pay the costs of intervenor funding.<sup>1</sup> 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 assert that SBUA has no demonstrated history of effective advocacy in any natural gas rate proceeding before the Commission. However, SBUA has in part effectively participated in this docket. Specifically, on April 22, 2022, SBUA filed opening testimony in this docket. That testimony provided a review of interclass subsidy and parity for setting rates, small business customer contributions to other rate classes, and employee stock expense; and includes specific recommendations for addressing the problems testimony identifies. However, though we conclude that SBUA is capable of contributing to the record in this docket, we find that SBUA can only qualify up to a maximum of \$9,000 of ratepayer funding on an annual basis, and require that SBUA submit a revised budget consistent with this overall annual funding level.

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."<sup>2</sup>

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

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<sup>1</sup> *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).

<sup>2</sup> *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 18-19, 6.3 Proposed Budgets (Jan 17, 2018).

\$39,300, with SBUA funding 20 percent of these expenditures at \$7,860; that its budget for activity in 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 self-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.

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.<sup>3</sup>

And

We observe that entities qualifying for intervenor funding must be clearly accountable to their members. This ensures that qualifying organizations

<sup>3</sup> *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).

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.<sup>4</sup>

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.<sup>5</sup> As discussed above, the vast amount of SBUA's support [REDACTED] [REDACTED] This demonstrates that SBUA is financially accountable [REDACTED] but not necessarily to the broad small commercial customer class.

SBUA's financial statement includes reference [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] [REDACTED].<sup>6</sup> 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 \$31,440.

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 effective through December 31, 2022.

### III. ORDER

IT IS ORDERED that:

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

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<sup>4</sup> *Id.*

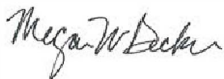
<sup>5</sup> SBUA's continued financial informality is inappropriate in consideration of the significant amount of ratepayer funds SBUA seeks to access, which, as referenced above, is \$83,872 for four dockets, not counting any upcoming requests from SBUA. We caution that we cannot consider providing that level of ratepayer support to an organization so informally organized, without the financial tracking that audited financial statements provides.

<sup>6</sup> 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.

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2. The Small Business Utility Advocates' proposed budget for Issue Fund Grants is denied.
3. The Small Business Utility Advocates may file an amended budget consistent with this order.

Made, entered, and effective May 13 2022.



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**Megan W. Decker**  
Chair



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**Letha Tawney**  
Commissioner



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**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.