

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UG 435

In the Matter of)	
)	
NORTHWEST NATURAL GAS COMPANY)	RESPONSE OF THE OREGON
dba NW Natural)	CITIZENS' UTILITY BOARD AND
)	ALLIANCE OF WESTERN ENERGY
Request for a General Rate Revision.)	CONSUMERS TO SMALL BUSINESS
_____)	UTILITY ADVOCATES
)	

I. INTRODUCTION

Pursuant to OAR 860-001-0120(4), the Oregon Citizens' Utility Board ("CUB") and the Alliance of Western Energy Consumers ("AWEC") (collectively "Joint Parties") file this Response to the Small Business Utility Advocates' ("SBUA") Petition for Case Certification ("Petition") under the Fourth Amended and Restated Intervenor Funding Agreement ("IFA") in this docket. As described more fully below, SBUA has failed to demonstrate that it satisfies the requirements for Case Certification under the IFA and its Petition should be denied.

II. ARGUMENT

The IFA contains specific requirements applicable to any party seeking intervenor funding in Oregon. SBUA, however, has repeatedly ignored the express provisions of the IFA, and ignored specific guidance from the Public Utility Commission of Oregon ("Commission") about how to participate under the IFA.¹ Not only has SBUA failed to comply with procedural requirements under the IFA, such as filing a Notice of Intent along with a Petition to Intervene, SBUA has failed repeatedly to satisfy the substantive requirements, such as demonstrating that it

¹ Docket No. UE 352, Order No. 19-133 at 5 (Apr. 16, 2019).

“is able to effectively represent the particular class of customers it seeks to represent,” and that the petitioner has “the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service.”² Further, SBUA has not demonstrated that it has members who are customers of the Participating Public Utility in this case—Northwest Natural Gas Company (“NW Natural”), or that such members contribute to a significant portion of the overall support and funding of SBUA’s activities in Oregon.³ Indeed, NW Natural has pending data requests seeking this and other information relevant to SBUA’s Petition. At a minimum, SBUA should be required to respond to NW Natural’s data requests demonstrating that it meets the eligibility requirements of the IFA before the Commission rules on SBUA’s Petition.

The Joint Parties recently requested that the Commission deny SBUA’s proposed budget filed in the Commission’s Investigation into the Effects of the COVID-19 Pandemic on Utility Customers docketed as UM 2114. The Joint Parties asked for this relief, in part, because it appears that SBUA is seeking recovery of costs for work it has already performed, and/or for recovery for future work in areas of investigation that have already been resolved by Commission Order. SBUA’s request in that matter represents a continuation of its historical failure to adhere to guidance provided by the Commission and the terms of the IFA.

The Joint Parties also requested that the Commission prohibit SBUA from requesting intervenor funding for the duration of the currently effective IFA, which currently expires on December 31, 2022. This extreme position is based on SBUA’s checkered history of involvement in Commission proceedings and disregard of the IFA requirements and Commission guidance. Given SBUA’s historical inability to represent the customer class it purports to

² IFA ¶ 5.3(c), (e).

³ Id. at ¶ 5.2 (b)(4).

represent, as well as the resource strains its filings place on the Commission and the Joint Parties, the Joint Parties believe the remedy sought in UM 2114 is appropriate.

While the Joint Parties will not repeat the same arguments here, below is a summary of SBUA's past involvement in Commission proceedings that highlight the Joint Parties' concerns with the Petition in this matter:

- UE 352, PacifiCorp's Renewable Adjustment Clause proceeding. On February 19, 2019, SBUA sought intervenor funding in UE 352. The Commission denied SBUA's petition on the grounds that it had not demonstrated that a significant portion of funding was provided by SBUA members and that SBUA's participation was contingent on receiving intervenor funding. The Commission, however, provided guidance on how SBUA could satisfy the case certification requirements in the future. For instance, the Commission noted that SBUA "did not demonstrate a significant capacity from members to contribute to its operations to participate in our proceedings" and recommended that SBUA demonstrate this in future proceedings.^{4/}
- UM 1050, PacifiCorp's 2020 Inter-Jurisdictional Allocation Protocol. SBUA objected to approval of PacifiCorp's 2020 Inter-Jurisdictional Allocation Protocol and sought intervenor funding to support its activity in the docket. SBUA lodged its objection despite not having participated in any of the Multi-State Process Workgroup meetings that had occurred over several years and that led to the development of the 2020 Protocol. In its request for intervenor funding, SBUA simply ignored the Commission's guidance provided directly to SBUA in UE

^{4/} Docket No. UE 352, Order No. 19-133 at 5 (Apr. 16, 2019). To date, SBUA has not complied with this Commission guidance.

352. Ultimately, SBUA acknowledged that it failed again to meet the case certification requirements and withdrew its request.

- UE 374, PacifiCorp’s 2020 general rate case. The Commission denied SBUA’s budget, finding that SBUA’s scope of work was not within the definition of “Eligible Proceeding” under the IFA.
- UE 390, PacifiCorp’s 2022 Transition Adjustment Mechanism. That petition was denied because the Commission found that “SBUA has not demonstrated an ability in this docket to substantially contribute to the record on behalf of customer interests.”^{5/} However, SBUA went on to challenge the Commission’s decision and continued to advance the same arguments that the Commission held were ineligible for intervenor funding.

SBUA’s advocacy and compliance with the IFA does not appear to be improving over time. For example, the IFA requires parties seeking an Issue Fund Grant to file a Notice of Intent simultaneously with the party’s petition to intervene, and to file proposed budgets within 30 days after the prehearing conference.^{6/} Nevertheless, SBUA filed its Notice of Intent to Request an Issue Fund Grant more than 10 days after it filed a Petition to intervene in this docket. While this requirement can be waived by the Commission, similarly, SBUA filed a Notice of Intent to Request an Issue Fund Grant nearly four months after it petitioned to intervene in UE 394, PGE’s rate case, and a proposed budget on the same day despite the fact that the prehearing conference in this matter was held on August 2, 2021.

More importantly, in its request for Case Certification in UG 435, despite previous guidance from the Commission, SBUA did not demonstrate that it has members that take service

^{5/} Docket UE 390, Order No. 21-245 at 4 (Aug. 2, 2021).

^{6/} IFA ¶¶ 6.2-6.3.

from NW Natural or demonstrate that these members make any significant contribution to SBUA, again failing to follow the Commission’s direct guidance to SBUA in UE 352.

The Commission’s order denying SBUA’s petition for Case Certification in UE 352 is relevant to SBUA’s Petition in this docket. In UE 352, the Commission denied the petition for Case Certification on two grounds. One of these was that “SBUA’s submitted financial information, at this time, does not demonstrate a significant capacity from members to contribute to its operations to participate in our proceedings.”⁷ The Commission went on to state that:

[I]t 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 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*.⁸

In denying reconsideration, the Commission provided specific guidance to SBUA, stating that “where the question at issue is the capacity of members to contribute to the organization, [SBUA’s] financial statements should clearly indicate the source of various revenues.”⁹ This includes “an overall financial capacity that can meet, at a minimum, the 20 percent requirement for an individual case budget.”¹⁰

SBUA has never demonstrated that it has resources and membership from NW Natural’s small business customers. Indeed, SBUA’s statement in its Petition in this docket is nearly identical to its claims of member support in UE 352.¹¹ This consists of unsubstantiated claims

⁷ UE 352, Order No. 19-133 at 5 (Apr. 16, 2019).

⁸ *Id.* (emphasis added).

⁹ UE 352, Order No. 19-262 at 3 (Aug. 8, 2019).

¹⁰ *Id.*

¹¹ *Compare* UE 352, SBUA Petition for Case Certification at 5 (Feb. 19, 2019) *with* UG 435, SBUA Petition for Case Certification at 6 (Feb. 1, 2022).

that “SBUA members in Oregon includes [*sic*] Northwest Natural ratepayers,” that “SBUA members contribute to the overall support and funding of SBUA” which consists of “various members’ money contributions, in-kind professional services, space and capital equipment”¹² SBUA has provided no financial statements demonstrating support from members that are *NW Natural customers*, or any list of members that show NW Natural customers at all, which the Commission has previously required for SBUA to be case certified for PacifiCorp proceedings.

As provided in the Commission’s order in UE 352 denying SBUA Case Certification, it is crucial that SBUA demonstrate a membership base of NW Natural customers to be eligible for funding from the NW Natural Issue Fund. It ensures that SBUA’s advocacy is “accountable to [its] members” and that SBUA “truly represents a customer class” with an interest in NWN’s rates and service.¹³ SBUA has put forth no information to substantiate its claim that its members include NW Natural ratepayers and has not demonstrated the level of support any such members provide to SBUA. SBUA’s Petition in this case does not meet these criteria and should be denied on this basis alone.

The Joint Parties also have significant concerns about SBUA’s ability to significantly contribute to the record in this docket. SBUA has no demonstrated history of any effective advocacy in any natural gas rate proceeding before the Commission. SBUA’s advocacy in different proceedings, as highlighted above, demonstrate an inability to effectively advocate on behalf of NW Natural’s customers, an essential component to be eligible for Case Certification in this proceeding.

If, in the future, SBUA is able to demonstrate effective advocacy and a true membership base of small business customers of NW Natural that contribute a significant percentage of its

¹² SBUA Petition at 6.

¹³ Order No. 19-133 at 5.

overall support and funding, the Joint Parties would have no objection to the organization receiving funding at that time.

III. CONCLUSION

For the foregoing reasons, the Joint Parties recommend that the Commission deny SBUA Case Certification in this proceeding.

Dated this 21st day of February, 2022.

Respectfully submitted,

/s/ Michael P. Goetz

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