

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UG 435 & UG 411

IN THE MATTER OF:	)	
	)	
NORTHWEST NATURAL GAS	)	REPLY OF SMALL BUSINESS
COMPANY, dba NW NATURAL	)	UTILITY ADVOCATES TO
	)	AWEC AND CUB’S RESPONSE
Request for General Rate Revision (UG	)	
435), and	)	
	)	
Advice 20-19, Schedule 198 Renewable	)	
Natural Gas Recovery Mechanism (ADV	)	
1215) (UG 411)	)	
_____	)	

**1. INTRODUCTION:**

Pursuant to OAR 860-001-0420 and the ALJ Ruling of March 8, 2022, Small Business Utility Advocates (“SBUA”) files this Reply to the Response of the Alliance of Western Energy Consumers (“AWEC”) and Citizens Utility Board of Oregon (“CUB”) (together “AWEC and CUB”) opposing case certification of SBUA in this docket.

**2. BACKGROUND:**

On January 19, 2022 SBUA filed its Petition to Intervene, which was granted on January 25, 2022, and on February 1, 2022, SBUA filed its Petition for Case Certification and its Notice of Intent to seek Issue Funds pursuant to the Fourth Amended and Restated Intervenor Funding Agreement.<sup>1</sup> The Joint Response was filed on February 16, 2022 and included various objec-

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<sup>1</sup> Approved by Public Utility Commission of Oregon Order 18-017, and hereinafter (“IFA”). OAR 860-001-0420 and IFA 5.3.

tions.<sup>2</sup> On February 16, 2022, the Chief Administrative Law Judge (“ALJ”) issued a Bench Request to SBUA requesting various information be filed by February 25, 2022.<sup>3</sup> On February 25, 2022 SBUA timely submitted its Response of SBUA to Bench Request.<sup>4</sup> including response to the ALJ request for the various information regarding membership, clarification of SBUA's Proposed Budget in this docket, and whether SBUA intended to utilize funding to recover costs incurred in work already completed in this budget, among other information .<sup>5</sup>

### **3. ARGUMENT:**

This is the third of three replies to AWEC and CUB’s responses objecting to SBUA’s petitions that, pursuant to the IFA, SBUA must file and the Commission must grant in order for SBUA to access intervenor funding in Commission proceedings. While each docket is separate, common elements are found in the UM 2114, UG 435 & UG 411, and UE 394 Response of SBUA to Bench Request which provides information applicable to some of the concerns raised by respondents AWEC and CUB.

A. Information regarding SBUA membership and financial contributions is protected by state and federal law, is confidential and not subject to disclosure.

SBUA incorporates here the contents of its publicly disclosed Response to Bench Request.<sup>6</sup> The Response to Bench Request references the federal and state law protecting SBUA

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<sup>2</sup> SBUA sees the 2/21/22 date next to the signature in the Joint Response as a typographical error and acknowledges a filing date of 2/16/22.

<sup>3</sup> The Bench Request was filed in three dockets: UM 2114, UG 435 & UG 411, and UE 394 dockets where SBUA had filed in 2022 petitions per the IFA pertaining to seeking intervenor funding.

<sup>4</sup> UM 2114, UG 435 & UG 411, and UE 394 Response of SBUA to Bench Request.

<sup>5</sup> Bench Request, p3.

<sup>6</sup> Response to Bench Request pp. 1-3, 7-8.

members from being disclosed in identity and protecting SBUA donors from disclosure. There is good reason to protect this information as disclosure could chill support for the organization, as explained in SBUA's Response to Bench Request.<sup>7</sup>

Without waiving said objection, SBUA answers that it has many small business member customers of NW Natural and those members include restaurants and coffee shops, glass artisans, hair salons, dry-cleaning, auto repair and service, grocers, bike repair and sales, business consultants, hardware store, and the like. Those SBUA members are found throughout NW Natural Oregon service territory including Multnomah, Lincoln, Benton, Marion, Washington counties.

B. — AWEC and CUB's financial contribution argument is inconsistent and inconclusive and should be disregarded.

AWEC and CUB present contradicting arguments in these different dockets regarding the IFA requirements for financial contributions. In the Response, AWEC and CUB state not once but twice that NW Natural customers must contribute a significant portion of the overall support and funding of SBUA's activities in Oregon.<sup>8</sup> Yet AWEC and CUB states in their AWEC and CUB Response to SBUA in UM 2114 that "it is not clear from the language of the IFA Section 5.3(d) requires the organization seeking case certification to have contributing members taking service from the Participating Public Utility that is the subject of the proceeding for which the organization seeks certification."<sup>9</sup>

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<sup>7</sup> Response to Bench Request p7.

<sup>8</sup> AWEC and CUB Response, p2 & 6.

<sup>9</sup> UM 2114 Response of the Alliance of Western Energy Consumers and Oregon Citizens' Utility Board to Small Business Utility Advocates, filed 2/14/22, p2 footnote 1.

C. SBUA has the ability to contribute significantly to the docket.

AWEC and CUB expressed concern regarding SBUA's ability to significantly contribute to the record in this docket. The expertise of SBUA's expert is demonstrated in the attached Exhibit A. Among other background, Kermode, a Certified Public Accountant, has significant expertise in natural gas rate cases before the Washington Utility and Transportation Commission and teaches ratemaking to professionals. Recently SBUA has also participated in electric utility rate cases where SBUA's expert joined expertise to that of AWEC's and CUB's and others to resolve myriad regulatory issues in that general rate case.

Additionally, AWEC and CUB's objection that SBUA has "no demonstrated history of any effective advocacy in any natural gas rate proceeding before the Commission" is not credible in this docket where in this very same docket, CUB defended the intervention of low income and environmental justice advocates stating the utility was assuming the advocates' future testimony. CUB explicitly denounced this saying "Prejudging a party's case and rejecting it before it has been developed is inappropriate and inconsistent with the Commission's rules."<sup>10</sup>

D. It is in the public interest that the Commission grant SBUA's Petition.

SBUA respectfully highlights for the Commission that AWEC and CUB's representation are in direct conflict with that of SBUA. CUB's proposal for this proceeding, UM 2114, did not incorporate the extent of protections for small commercial customers, unlike those in sister states

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<sup>10</sup> UG 435 & UG 411 *In the Matter of Northwest Natural Gas Company Request for General Rate Revision*, Oregon Citizens' Utility Board's Reply to Northwest Natural's Response to Petition to Intervene, filed 3/7/22, pp3 & 4. *See also for contrast* CUB's UE 390 Response of AWEC and CUBre Petition of SBUA for Case Certification.

Washington and California.<sup>11</sup> CUB represents residential rate payers<sup>12</sup> whose interests conflict often with those of commercial customers. AWEC's is a trade organization representing the interests of several multi-billion dollar corporations.<sup>13</sup> While AWEC and CUB's advocacy may benefit all customers, their legal obligation to their organizations and their filings demonstrate quite clearly that the organizations represent fully the interests of the residential and the very large industrial corporations, respectively.<sup>14</sup>

With regard to dockets that AWEC and CUB presents to undermine SBUA's advocacy, SBUA incorporates its Petition for Case Certification in this docket demonstrating that SBUA effectively represents its constituency, and also submits the following:

In UE 352 the Commission recommended but did not require that SBUA submit financial information, and SBUA did submit this information even though the IFA does not require it.<sup>15</sup>

In UE 374 SBUA's case certification was granted and SBUA went on to fulfill its required tasks pursuant to the Stipulation in that docket. SBUA utilized the provisions of the IFA to seek financial support as it had a right to do and did file its budget at time when the funds were

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<sup>11</sup> See SBUA Public Comment UM 2114 November 3, 2020, and November 2021.

<sup>12</sup> ORS 773.010(2).

<sup>13</sup> See Attachment A of the UM 2033 *In the Matter of the Portland General Electric Company Transportation Electrification Plan* <https://edocs.puc.state.or.us/efdocs/HAP/um2033hap155454.pdf> (Last accessed 3/2/22).

<sup>14</sup> ORS 773.010(2); *C.f.* UE 394 *In the Matter of Portland General Electric Company Request for General Rate Revision*, Proposed Budget and Request for Issue Fund Grant of the Alliance of Western Energy Consumers, filed August 2, 2021, p2 ("AWEC's participation will directly benefit industrial customers, as well as all other large non-residential customers of PGE.") and the UG 435 & UG 411 *In the Matter of Northwest Natural Gas Company Request for General Rate Revision*, Proposed Issue Fund Budget of Alliance of Western Energy Consumes, filed February 4, 2022, p2 ("Accordingly, AWEC's advocacy will benefit the industrial rate class. AWEC's focus on the overall revenue requirement and cost of capital will benefit all customers, including residential customers.")

<sup>15</sup> See 2/16/22 Bench Request to SBUA, pp 1-2, citing UE 352 *In the Matter of PacifiCorp dba Pacific Power*, 2019 Renewable Adjustment Clause, Docket No. UE 352, Order no. 19-262 at 3 (Aug 8, 2019).

adequate.<sup>16</sup> SBUA took the steps it was supposed to take to rightfully seek and obtain intervenor funding and as it did obtain in previous dockets and may have obtained in UE 374 and others.<sup>17</sup> Further in UE 374 SBUA did supply financial information, under seal, regarding its Oregon finances.<sup>18</sup> In UE 390 AWEC and CUB never contested SBUA's expert.

E. The Joint Response demonstrates unnecessarily aggressive tactics on the part of AWEC and CUB.

On or about January 4, 2022 SBUA initiated consultation with AWEC and CUB indicating SBUA's intent to seek intervenor funding. The exchange is included in full in Exhibit B attached herein. It is clear that these Joint Respondents utilize valuable time in litigation rather than a more efficient resolution process. This is a pattern of these Joint Respondents. While SBUA has in each of its case certification petitions acknowledged expertise of these experienced intervenors, AWEC and CUB have repeatedly opposed SBUA presenting any number of pretenses of why SBUA should not access intervenor funding including, among others, that SBUA represented renewable energy interests rather than a broad class of ratepayers<sup>19</sup> and that SBUA never revealed any of its members when this well established as confidential and protected information.<sup>20</sup>

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<sup>16</sup> UE 374 Petition of SBUA for Case Certification filed 3/10/19.

<sup>17</sup> UE 319 where SBUA's Petition for Case Certification was denied as moot where the issue funds were identified as depleted in the Commission's decision.

<sup>18</sup> UE 374 Petition of SBUA for Case Certification filed 3/10/19, Exhibit 1 p4.

<sup>19</sup> UM 1610 where SBUA's expert was an expert in community wind demonstrating the benefit of community projects to the local community referring to an National Renewable Energy Laboratory report, and also the technical aspects of line loss and related issues that were part of the docket.

<sup>20</sup> See SBUA Response to Bench Request. Further, some of SBUA's members have self-identified in dockets and in public meeting. *C.f.* UM 1773

These tactics force SBUA to use its resources to defend itself against these allegations and detracts from SBUA's ability to direct the resources to a more productive use which is to contribute even more to dockets generally to achieve just and reasonable rates for ratepayers generally including the small commercial customers. This docket UE 435 & UG 411 is an example where no other stakeholder represents the small commercial customers even though this rate payer class is presented with almost a 10% rate increase at a time when it is still dealing with the COVID-19 pandemic impacts among other stressors they face.

**4. CONCLUSION:**

Commission Staff explained to the Oregon xxx that is akin to taxation without representation. Small commercial customers should be represented in these proceedings and SBUA is well-equipped to do so. For the aforementioned reasons set forth above, the Commission should grant the Petition of SBUA for Case Certification.

RESPECTFULLY SUBMITTED March 8, 2022.



s/ Diane Henkels

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Diane Henkels  
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# Danny Kermode

Certified Public Accountant

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[5553dkcpa@gmx.us](mailto:5553dkcpa@gmx.us)

## Professional Experience

### **Assistant Director for Water and Transportation**

April 2015 – December 2020

Washington Utilities and Transportation Commission

Managed and directed the economic regulation of Washington investor-owned water companies and certain regulated transportation companies such as the state's investor-owned solid waste and residential recycle haulers, oil pipeline, harbor pilots, passenger ferries, low level radioactive waste and bio-waste transporters. Developed and directed transportation policy regarding rule enforcement and rate setting. Oversaw the use of rate base and operating ratio approaches to ratemaking. Provided expert recommendations include acting as expert witnesses in judicial proceedings.

### **Acting Director of Policy and Legislation** January 2015 – March 2015

**Senior Policy Advisor** May 2010 – December 2014

Washington Utilities and Transportation Commission

Provided direct policy and decision-making support to the commissioners and executive director while serving as an expert in policy, economic or technical issues related to regulated electric and gas industries, specifically in the areas renewable technology, power system reliability and cyber security. Projects, assignments, and continuing work included formulating, developing, analyzing, communicating, and implementing state, regional or national regulatory and ratemaking policies. Assigned more than 80 electric and over 100 natural gas filings ranging for PGAs to full rate cases.

### **Regulatory Analyst**

October 1996 – April 2010

Washington Utilities and Transportation Commission

Constructed complex computer models to analyze electric, natural gas, and water company financial and accounting data. Reviewed cost data and prepared cost of service models, assigned over 45 electric cases and more 46 natural gas filings. Audited and analyzed financial data filed in support of tariff revisions. Conducted studies as a team lead and as a team member. Prepare written testimony and exhibits and appear as an expert accounting witness, regarding financial, income tax and accounting issues. Presented recommendations to the commission in public open meetings.

**Controller**

June 1994 - October 1996

Rocky Mountain Institute

Responsible for all financial and accounting aspects including budgeting for the institute, which had seven research areas and consolidated revenues of over \$5 million. Developed new budgeting approaches and management reports. Overseen the financial accounting and budgeting of its wholly-owned subsidiary E-Source.

**Partner**

February 1986 - September 1993

Kozoman & Kermod CPAs - Phoenix, AZ

Prepared testimony and exhibits supporting rate applications and financing requests. Appeared as an expert accounting witness concerning public utility financial and accounting issues. Prepared corporate, partnership, and not-for-profit tax returns. Provided financial analysis, accounting reviews, systems design and developed positions on tax issues. Development of projections and forecasts, including pro forma financial statements, rate base, and cost of capital analysis used in rate proceedings.

**Staff Accountant**

July 1983 - January 1986

Troupe, Kehoe, Whiteaker & Kent CPAs - Phoenix, AZ

Prepared testimony and exhibits supporting rate applications and financing requests. Appeared as an expert accounting witness concerning public utility financial and accounting issues. Provided management consulting functions which included performing financial analysis of accounting records. Preparation of complex public utility year-end statements and corporate tax returns. Prepared schedules and exhibits used in regulatory proceedings.

Education

**San Carlos University - Cebu City, Philippines**

Postgraduate - Management Accounting, Economic Analysis and Quantitative Business Analysis

**Arizona State University - Tempe, Arizona**

Bachelor of Science in Business Administration, Major in Accounting

**College of Financial Planning – Denver, Colorado**

Professional Education Program - CFP certification

## Publications

### **FERC reporting through the XBRL looking glass (2019)**

*Public Utility Fortnightly, Oct 2019*

### **The Philippines: An update on the Country's New Feed-In Tariff (2014)**

*Update for: A Handbook for International Energy Regulators (2011) USAID NARUC*

### **Transforming Regulated Industries**

*iBR Magazine, Vol 3 Issue 2 (2013)*

### **Regulatory Provision of Income Taxes for S Corporations**

*The NRRJ Journal of Applied Regulation, Vol 2 (2004)*

### **Contributions in Aid of Construction: IRS Final Regulations**

*Journal AWWA, Vol. 94, No. 3 (2002)*

## Faculty Member

### **IPU Annual Ratemaking Course**

Institute of Public Utilities  
Michigan State University,  
2019 - 2022

### **Advanced Regulatory Studies Program**

Institute of Public Utilities  
Michigan State University,  
2019 - 2021, 2009 - 2012

### **USAID Regulatory Partnerships**

Africa, Philippines, and Ukraine

### **The NARUC Utility Rate School**

1992, 1993, 2008 - 2013

### **Saint Martin's University**

Adjunct Professor –  
Business Income-Taxes 2014

## Other Notables

Certified Public Accountant

Senior Fellow at the Institute of Public Utilities, Michigan State University

Innovator in Regulatory Policy Award 2017 NARUC

United States Air Force Veteran



**From:** Mike Goetz mike@oregoncub.org  
**Subject:** Re: UE 394 and intervention funding  
**Date:** January 3, 2022 at 10:43 AM  
**To:** Diane Henkels diane@utilityadvocates.org  
**Cc:** Tyler C. Pepple tcp@dvclaw.com, Bob Jenks bob@oregoncub.org



Hi Diane -

Happy New Year! Thanks for reaching out on this--we appreciate you seeking to find a diplomatic resolution. Unfortunately, in this limited instance pertaining to PGE's current rate case, I am not sure there is much CUB or AWEC can do. As you know, SBUA must first become case-certified to seek intervenor funding in a docket. The case-certification request must comply with the criteria in the Intervenor Funding Agreement, and demonstration of compliance with the criteria must be made to the Commission. Ultimately, the decision to approve or deny case-certification must come from the Commission and there is little AWEC or CUB could or should do on the front end.

Further, as you know, one of the criteria for case-certification is the "ability to substantively contribute to the record on behalf of customer interests." Because SBUA has not contributed to the record in this case, it would be premature for CUB or AWEC to recommend that SBUA receive intervenor funding because there is no work product to point to.

Thanks again, and hopefully this helps.

Best,

Mike

**Michael P. Goetz** (he/him)  
General Counsel



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**Please note that we have updated our phone system and no longer have individual extensions. If you would like to reach a specific CUB staff member by phone, please dial (503-227-1984) or their cell number, if provided.**

On Wed, Dec 29, 2021 at 9:21 AM Diane Henkels <diane@utilityadvocates.org> wrote:

Hello Bob, Mike, and Tyler,

SBUA, as party to UE 394 PGE Rate Case and has worked to keep its participation focused and refined to best use resources. We appreciate the very deep skills, experience, and knowledge that your organizations bring to the rate cases not to mention all PUC matters. Also SBUA acknowledges the interests of the small commercial class of ratepayers to have representation in the remainder of the docket. We would like to apply for intervenor funding to help cover costs of our work in the remaining issues in UE 394. Could you please let me know how you see we could come to agreement on that in advance and prevent avoidable litigation?

There are several matters SBUA will work in, w/known and accepted expertise, before the PUC this coming year specifically among perhaps others, the Northwest Natural rate case, the UM 2114 COVID impacts including related deferral dockets, not to mention implementing the new bills, and it would be preferable to have some understanding on intervention where we can, in order to conserve litigation time

EXHIBIT B  
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Hoping to hear back from you soon on this.

And happy holidays.



Diane Henkels  
She/her/hers  
Attorney, Small Business Utility Advocates  
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