

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2114

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF)	REPLY OF SMALL BUSINESS UTILITY
OREGON)	ADVOCATES TO JOINT RESPONSE
)	OF ALLIANCE OF WESTERN ENERGY
Investigation into the Effects of the COVID-19)	CONSUMERS AND OREGON
)	CITIZENS UTILITY BOARD
)	

I. INTRODUCTION

Pursuant to OAR 860-001-0420 and conditioned on whether Small Business Utility Advocates (“SBUA”)’s Motion to File a Reply Out of Time is granted, SBUA files this Reply to the Joint Response of Alliance of Western Energy Consumers (“AWEC”) and Oregon Citizen’s Utility Board of Oregon (“CUB”) to the Petition for Designation of Docket as an Eligible Proceeding of SBUA.

II. BACKGROUND

SBUA has participated regularly in UM 2114 In the Matter of Investigation into the Effects of the COVID-19 Pandemic on Utility Customers (“UM 2114”)¹, and also prior to the docket opening, in related workshops and Public Meetings, has provided substantive advocacy and expertise from an expert well-qualified to provide this perspective and opinion.² The qualifications of this expert, Danny Kermode C.P.A. are attached herein as Exhibit A. On

¹ SBUA filed to intervene on 12/14/20 in the docket UM 2114, however, as the docket is not a contested case, intervention was not granted.

² Danny Kermode C.P.A.

January 28, 2022, SBUA filed its Petition for Designation as Eligible Proceeding in order to qualify the docket and SBUA as meeting the criteria to receive consideration as a proceeding eligible for intervenor funding under the Fourth Amended and Restated Intervenor Funding Agreement.³ SBUA also included a Proposed Budget with its filing, stating it was for the purpose of identifying the intervenor funding sought⁴ and qualifying submission of the Proposed Budget on designation of the docket as an Eligible Proceeding.⁵

AWEC and CUB, hereinafter “AWEC-CUB” filed their response, hereinafter “Joint Response” identifying positions on three issues: 1) taking no position on the Petition to Designate as Eligible Proceeding, 2) opposing SBUA’s submission of the Proposed Budget, and 3) asking the Commission to prohibit SBUA from requesting intervenor funding for the duration of the current IFA which expires December 31, 2022.

III. ARGUMENT

The Commission should grant the Petition where there is no opposition.⁶ The opposition should be disregarded as offered by a non-party. SBUA’s Petition satisfies the criteria as designation as an eligible proceeding and it is in the public interest that SBUA be allowed to access intervenor funding for this proceeding.

A. There is no opposition to designating this proceeding as eligible for intervenor Issue Funds.

³ Approved by the Commission in Order 18-017.

⁴ Petition p1.

⁵ Id. Proposed Budget p1.

⁶ While there is opposition to the Proposed Budget the fact that AWEC-CUB do not oppose the Petition should enable this decision to be made by the ALJ rather than requiring decision by the Commissioners.

On its face the Joint Response does not oppose SBUA’s Petition to designate the docket as an eligible proceeding. On page one the Response states “CUB and AWEC neither support nor oppose SBUA’s Petition to designate this docket as an Eligible Proceeding for Issue Funds.”⁷

This Reply could end there, however, in the interest and the concern that the Commission may in its discretion consider the Response content further, SBUA addresses the Joint Responses’ other points.

B. The Joint Response should be disregarded by the Commission because AWEC is not a party to this proceeding.

AWEC is not a party to this proceeding and the Joint Response as filed does not conform to the implicit requirements imposed by the APA and Chapter 860 Commission Rules. Commission rules require that a motion, response, or reply be filed by “*parties*” to the proceeding. *See* 860-001-0420 (discussing requirements that must be met to file a motion by a “party”).⁸ AWEC provides no evidence or argument as to why it – a non-party in this proceeding – may be afforded the right to file a procedural motion in response to SBUA’s petition. The Oregon Revised Statutes governing administrative proceedings such as this define a “party,” in pertinent part, as a person or agency “entitled as of right to a hearing” or who is otherwise “named by the agency to be a party.”⁹ AWEC-CUB present together in lockstep in the Joint Response, yet the Joint Response does not make AWEC a party. AWEC has provided no showing

⁷ Joint Response p1.

⁸ *E.g.*, 860-001-0420(2) indicates that – before filing a procedural motion – the “moving *party*” must make a good faith effort to confer with other parties. Likewise, subsection (4) indicates that a “*a party* may file a response to a motion.” (emphasis added).

⁹ ORS 183.310(7)(a)–(b). Available at: https://www.oregonlegislature.gov/bills_laws/ors/ors183.html

that it is entitled to a right to a hearing, and the Joint Response does not indicate a separate review on the basis of CUB alone. For that reason alone, the Joint Response should therefore be disregarded.

C. The Joint Response presents no controversy.

The process of proposing a budget under the IFA is distinct from the process of obtaining case certification, or in this case, designation of a docket as an eligible proceeding.¹⁰ While they might be filed together, the decision of granting case certification or in this case identification of a proceedings as an eligible proceedings, precedes, and is separate from, approving a proposed budget.¹¹ The IFA identifies seeking case certification, or alternatively designation as an eligible proceeding, as one step necessary and required prior to consideration of a proposed budget as a separate step.¹² The Commission has itself explicitly indicated the distinction between case certification and submittal of a proposed budget in previous dockets.¹³ In UE 374 the Commission granted case certification even though it also identified a low level of funds remaining.¹⁴ AWEC-CUB also identify the distinction between seeking case certification or even designation as an eligible proceedings from being permitted to submit a proposed budget.¹⁵

¹⁰ IFA 5.3 and 6.2.

¹¹ IFA 6.2 and 6.3.

¹² Id.

¹³ UE 319 Order 17-167, mooted the Petition for Case Certification based on a finding that issue grant funding was depleted. SBUA respectfully disagreed with the conclusion of the finding of eligibility for case certification as not having value in and of itself.

¹⁴ Order 20-187.

¹⁵ Joint Response pp 1-2.

The Response of SBUA to the 2/16/22 Bench Request demonstrates that the costs SBUA requests to recover are for costs incurred from the date SBUA filed its Petition for Designation as Eligible Proceeding in UM 2114, that is January 28, 2022.¹⁶ SBUA's budget identifies work to be performed in 2022 as based on 2021 hours. The 2021 hours included review and comment on the several Staff Reports, meetings with stakeholders, Commission Staff, utilities, rulemaking scoping meetings, and other related actions. SBUA's budget includes its expert's scope of work delineated by an expert very experienced in Commission matters.

D. SBUA has addressed concerns with SBUA's Response to Bench Request.

SBUA fulfills requirements that lay at the heart of the Joint Response regarding SBUA's Oregon membership, finances, and proposed allocation. On February 25, 2022, SBUA filed its Response to Bench Request which addressed SBUA's Oregon finances and membership, and proposed allocation. The publicly available Response to Bench Request filing is available in each of the dockets UM 2114, UG 435 & UG 411, and UE 394, summarized as follows:

i. Membership

SBUA's Response to Bench Request filed on February 25, 2022 ("Response to Bench Request") responds to the issue of SBUA membership and funding in Oregon. In information in the Response to Bench Request, SBUA demonstrates that customers in territories services by all the utilities participating in the IFA are represented in SBUA membership with the exception for Cascade Natural Gas Company's territory where SBUA membership is not explicitly confirmed.

¹⁶ UM 2114, UG 435 & UG 411, UE 394 Response of SBUA to Bench Request, filed 2/25/22 in referenced dockets. In contrast to what the Joint Response alleges, SBUA submits that the extent of the work and resources expended by SBUA in this matter in 2020 and 2021 far exceed the amount for which SBUA requests intervenor funding.

ii. Financial contribution

The Response of SBUA to Bench Request demonstrates that SBUA in Oregon satisfies the contribution requirement.¹⁷ But even the Joint Response includes an admission in a footnote on page 2 that it is not clear that the language of the IFA 5.3(d) requires that members from a utility to have contributed to the support of the entity seeking case certification, or, as SBUA notes, in this case, designation of a proceeding as an eligible proceeding.

iii. Allocation

In its Response to Bench Request #7 SBUA clarified how the UM 2114 proposed budget would be allocated across different utilities. That response specified the utilities which are signatories to the IFA. SBUA also acknowledged that the Intervenor Funding Agreement between Idaho Power applies only to CUB. In that case, SBUA would have to negotiate a separate agreement with Idaho Power Company which would depend on the utility's agreement, and in addition the Commission would then have to approve at agreement.¹⁸

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

As this docket has now reached a stage where we have one full year of reporting data, on impact on utilities and on customers, what appears to be a waning of the pandemic, but there remains a need for just resolution for utility customers, small commercial customers would benefit from SBUA's continued participation. SBUA has the experience and expertise to advocate effectively not only for the small commercial customers that is, the small businesses in

¹⁷ IFA 6.3; See also Commission decision on related issue in UE 352.

¹⁸ ORS 757.072

our state, but also for efficient processes to achieve just resolution of the impacts of this pandemic on utility customers and utilities.

Certainly SBUA has been present throughout the UM 2114 docket and before, and has participating actively and provided position and expert support. Given approximately one year of data now available regarding small commercial customers from the utility signatories to the UM 2114 Stipulation and the more path being taken to implement its provisions, SBUA and its expert have set out a scope of work in the Response to Bench Request.

SBUA respectfully highlights for the Commission that AWEC-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 Washington and California.¹⁹ AWEC's is a trade organization representing the interests of several multi-billion dollar corporations.²⁰ AWEC's petitions to intervene demonstrate quite clearly that the organization represents fully and only the interests of the very large industrial corporations.²¹

With regard to dockets that AWEC-CUB presents SBUA 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.²²

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

¹⁹ See SBUA Public Comment UM 2114 November 3, 2020, and November 2021.

²⁰ 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).

²¹ UE 394 and the UG 435 & UG 411 Petitions to Intervene of the Alliance of Western Energy Consumers.

²² See 2/16/22 Bench Request to SBUA citing UE 352.

to seek financial support as it had a right to do and did file its budget at time when the funds were adequate.²³ 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.²⁴ Further in UE 374 SBUA did supply financial information, under seal, regarding its Oregon finances.²⁵ In UE 390 AWEC-CUB never contested SBUA's expert.

SBUA addresses the issues presented in UE 394 and UG 435 & UG 411 in other filings and requests that the Commission reject these references as Joint Respondents' bootstrapping AWEC into these proceedings that are UM 2114.

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

On or about January 4, 2022 SBUA initiated consultation with AWEC-CUB indicating SBUA's intent to seek intervenor funding. The exchange is included in full in Exhibit B attached herein, and it is clear that the 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 petition acknowledged expertise of these experienced intervenors, they have repeatedly opposed SBUA claiming that SBUA represented renewable energy interests rather than a broad

²³ UE 374 Petition of SBUA for Case Certification filed 3/10/19.

²⁴ 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.

²⁵ UE 374 Petition of SBUA for Case Certification filed 3/10/19, Exhibit 1 p4.

class of ratepayers²⁶ and that SBUA never revealed any of its members when this well established as confidential and protected information.²⁷

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 UM 2114 is an example where no other stakeholder represents the small commercial customers even though it is well-known that this customer class has been hugely impacted by the COVID-19 pandemic.

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²⁶UM 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.

²⁷See SBUA Response to Bench Request.

IV. CONCLUSION

The Commission has found that SBUA has contributed to the record and small general service customers have benefitted from these contributions, provided input of value in previous dockets already enumerated in the Petition.²⁸ There is no opposition to the Petition. Any concerns regarding the budget are addressed herein and it is within the Commission's power to review and revise or require revision. It is fully within the public interest to grant the petition so that SBUA may access intervenor funding to represent these ratepayers in this docket.

RESPECTFULLY SUBMITTED March 2, 2022.



s/ Diane Henkels

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²⁸ Petition pp 5-8 .

Danny Kermode

Certified Public Accountant

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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 & Kermode 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 NRRI 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 Follow 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

consecutive litigation time.

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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