



December 5, 2023

Filing Center
Oregon Public Utility Commission
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Re: UM 2114 Amended Final, Revised Budget of Small Business Utility Advocates

Greetings:

Please see attached for filing this UM 2114 Amended Final, Revised Budget of Small Business Utility Advocates (“SBUA”). The Amended Motion accompanies information transmitted by confidential facsimile to the Commission.

This Amended Final, Revised Budget of SBUA is updated to provide additional information for context and explanation, particularly of the last section per Order 23-444 page 12 including documentation supporting explanations provided in Section 5 including 5(a), (c), and (d), and identifying acronyms in footnotes on pages 3, 4, and 7.

Respectfully submitted,

s/ Diane Henkels

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Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 2114

IN THE MATTER OF:)	
)	
INVESTIGATION INTO THE)	AMENDED FINAL, REVISED BUDGET
EFFECTS OF THE COVID-19)	OF SMALL BUSINESS
PANDEMIC ON UTILITY)	UTILITY ADVOCATES
CUSTOMERS)	
_____)	

1. INTRODUCTION

Comes now Small Business Utility Advocates (“SBUA”) pursuant to Public Utility Commission (« Commission ») Order No. 23-444 to submit this UM 2114 Amended Final, Revised Budget and Exhibit A to the Commission for approval consistent with the Fifth Restated and Amended Intervenor Funding Agreement approved by the Commission in Order 22-506 on December 29, 2022 (“IFA”).¹ Materials submitted in fax form support the Commission finding SBUA has met the requirement of matching 20% of this Final, Revised Budget.

UM 2114 is a complicated matter regarding the COVID-19 pandemic where there are several utilities and stakeholders involved, over the course of at least three years. In SBUA’s experience in Oregon, the proceeding was unique. The contents herein seek to be responsive as to the requirements of the IFA and also to the Order No. 23-444.

2. BACKGROUND

SBUA incorporates herein the contents of its original UM 2114 Petition for Designation as Eligible Proceeding in the Matter of the Investigation into the Effects of the COVID-19 Pandemic on Utility Customers filed on January 28, 2022 (“Petition”). On August 3, 2022 the Chief ALJ signed an Administrative Hearings Division Recommendation in a report for August 9, 2022 Public Meeting Agenda Item No. RA2 (“ALJ Recommendation”) to case certify SBUA, designate the docket as eligible, and deny the proposed budget in docket UM 2114. On August 19,

¹ The Fourth Restated and Amended Intervenor Funding Agreement approved by Commission in Order 18-017 (“4th IFA”) was in effect when the Commission granted SBUA case certification in this docket, however, SBUA submits this Budget because SBUA seeks, pursuant to Order No. 23-444 to recover only for costs incurred in UM 2114 in 2023.

2023 the Commission adopted the ALJ Recommendation in Order 22-304.² The ALJ Recommendation identified that SBUA could only qualify up to a maximum of \$9,000 of ratepayer funding on an annual basis and that SBUA's budget should be rejected.³ On September 1, 2023 SBUA submitted its UM 2114 Amended Proposed Budget of SBUA including its Exhibit A.⁴ The Commission issued a Ruling: Memoranda Disposition: Small Business Utility Advocates Directed to File a Supplemental Budget on October 17, 2023 directing SBUA to file a supplemental budget. The supplemental budget was to outline and explain, for executive director and attorney expenses, how much of each listed cost was incurred for UE 399, and how much for UM 2114, to provide the information by filling out the table provided, and to submit this information no later than 4:00 p.m. On October 20, 2023, SBUA filed a UE 399, UM 2114 by filling out the table including the information requested.

a) SBUA contributions to the UM 2114 docket:

The background of the docket UM 2114 is well-known by stakeholders participating in the docket including parties to the UM 2114 Stipulated Agreement on Effects of COVID-19 Pandemic on Energy Utility Customers approved on November 5, 2020 in Order 20-401. SBUA had provided evidence-based information regarding how small business customers across all the utilities should be treated fairly and reasonably and how COVID-19 cost deferrals and cost recovery should be treated with regard to small commercial customers.⁵ Several businesses and business groups had advocated a UM 2114 workshop to work this out ahead of the cost recovery process.⁶ However, in addition to the participation of SBUA in the UM 2114 docket since before the docket was opened, the related rulemaking that emerged out of the docket⁷, the COVID-19 related

² Order 22-304.

³ The Commission did not approve a budget in Order 22-304 as noted in Order No. 23-444, pp 2 and 4.

⁴ This Amended Proposed Budget was filed along with the *UE 399 and UM 2114 Motion for Reallocation of Issue Fund Grant of Small Business Utility Advocates*, filed September 1, 2023.

⁵ Comments of Danny Kermode CPA-retired in support of SBUA, filed with SBUA public comment in UM 2114 on November 5, 2021.

⁶ The following organizations each offered public comment in Summer 2021 in UM 2114 to support a Commission workshop to review COVID-19 pandemic and small commercial customers: Benefit Corporations for Good, BESThq, Community Chamber Coalition of Oregon, Oregon Restaurant and Lodging, along with SBUA and certain individual comments.

⁷ AR 653 Division 21 Rulemaking.

costs deferrals were dealt with separately utility by utility. SBUA has dealt with the deferrals with individual utilities, though not with all of them.⁸

b) COVID-19 cost recovery work prior to 2023:

Some allocation of COVID-19 deferral costs was resolved prior to 2023. UM 2114 COVID-19 cost deferrals from 2020 and 2021 were resolved with regard to Northwest Natural Gas Company (“NW Natural”) in the UG 435 NW Natural General Rate Case, and UM 2114 COVID-19 costs deferrals from 2020 through 2022 were resolved with regard to PacifiCorp dba Pacific Power in the UE 399 PacifiCorp dba Pacific Power General Rate Case.⁹ SBUA’s intervened and was granted case certification in these dockets.

On August 24, 2022, SBUA filed in the Northwest Natural Gas (« NW Natural ») General Rate Case UG 435, SBUA Amended Proposed Budget, and submitted confirmation on December 12, 2022 that required matching payments were made by SBUA, and on December 30, 2022, in Order 22-507, the Commission approved SBUA’s amended budget in that docket. UG 435 involved litigation and was resolved as to the 2020 and 2021 COVID-19 deferred costs.¹⁰

The Commission approved SBUA’s amended budget in UE 399 PacifiCorp dba Pacific Power Request for General Rate Revision in Order 23-165. That amended budget resources utilized in negotiating the rate case generally and also resources utilized specifically to resolve the COVID-19 pandemic related costs.¹¹ The Commission approved this amended proposed budget on May 9, 2023 in Order 23-165¹² but noted that the amount remaining in the 2022 PacifiCorp

⁸ With regard to Idaho Power Company (“IPC”), SBUA had provided education and input to local government in jurisdiction served by IPC to reduce the arrearages of small commercial customers which resulted in use of funds from the American Rescue Plan Act (ARPA), the federal stimulus bill to aid public health and economic recovery from the COVID-19 pandemic signed by President Biden on March 11, 2021.

⁹ UE 399 was consolidated with several other dockets during the rate case. The full docket number was UE 399, UM 1964, UM 2134, UM 2142, UM 2167, UM 2185, UM 2186, UM 2201. The COVID-19 docket was not consolidated though the parties were not foreclosed from raising the issues. UE 399 Disposition: Correction to April 11, 2022 Ruling on Motions to Consolidate Granted in Part; Denied in Part, July 6, 2022.

¹⁰ Errata Order 22-437 correcting Order 22-388 Disposition: First Partial Stipulation Adopted Subject to Modification; Second and Third Partial Stipulations Adopted; Application for General Rate Revision Approved as Revised on October 24, 2022.

¹¹ UE 399 Amended Proposed Budget of Small Business Utility Advocates, filed 10/25/22.

¹² Parties to the UE 399 PacifiCorp dba Pacific Power Request for General Rate Revision settled the COVID-19 2020 and 2021 deferred costs in a UE 399 Third Partial Stipulation adopted by Order 22-491 First, Second, and Third Partial Stipulations Adopted; Request for Clarification Granted, on December 16, 2022.

Issue fund account was approximately \$7,300.¹³ This amount, \$7,300, was hugely insufficient to cover the costs including costs of the experts incurred in the UE 399 rate case which included the COVID-19 costs that were negotiated during that rate case.¹⁴

Any work done with regard to Idaho Power Company related COVID-19 costs was done prior to 2023 and SBUA does not and will not seek funds from that utility for work done in 2020-2023 in this docket.¹⁵

c) 2023 COVID-19 cost recovery work:

In 2023, other utility deferred costs from the UM 2114 docket were resolved.¹⁶

On March 21, 2023, the Commission approved Portland General Electric Company (“PGE”) ADV 1474 Advice No 22-45 Schedule 152 Major Event Cost Recovery. SBUA with its expert participated in negotiations regarding this PGE docket allocating UM 2114 related deferred costs. As a result of this advice filing the COVID-19 deferred costs were not included in the UE 416 PGE Request for General Rate Revision also filed in 2023.

In addition, in 2023, the UM 2114 related costs deferred in the Cascade Natural Gas were resolved in 2023 though costs incurred by SBUA in this process were *de minimis* and SBUA does not include these costs for recovery.

¹³ This was similar to the previous UE 374 PacifiCorp dba Pacific Power Request for General Rate Revision when funds were reduced preventing recovery of intervenor funds for which SBUA had been found eligible. See Order 20-187 granting SBUA case certification but taking notice that the available balance was \$100. SBUA’s Application for Reconsideration, filed August 6, 2020, was denied pursuant to OAR [860-001-0720](#)(6). The issue fund balance of that year is \$13,838.18 as of December 4, 2023.

¹⁴ SBUA respectfully submits that the expression “hugely insufficient” is not an exaggeration where recent filings have identified rate case work as requiring far more than \$7,000 or \$10,000. *C.f.* UE 416 Community Action Partnership’s (“CAPO”) Request for Amendment of Proposed Budget, filed 9/7/23, seeking to double its budget from \$11,500 proposed on May 9, 2023 to \$20,825 on September 7, 2023 stating on page 1: “As a new energy justice intervenor, CAPO underestimated how time-intensive participation in a general rate case is. Even without hiring an attorney and/or expert witness, simply being reasonably informed (i.e. reviewing thousands of pages of testimony and exhibits) and attending all meetings where issues of relevance to low-income customers might be discussed, is very resource-intensive.” See also UM 2114/UE 399 filed public comment 10/20/23 by business owner Gordon Feighner noting that \$7,311 remaining in the 2022 PacifiCorp funds is insufficient to pay costs incurred for experts in the rate case, let alone other staff time.

¹⁵ As the Commission notes, Order No. 23-444, pp 5, 7.

¹⁶ With regard to Idaho Power Company, SBUA had provided education and input to local government resulting in use of ARPA to reduce the arrearages of small commercial customers. Those costs were incurred in 2022 and in this Final, Revised Budget, SBUA does not seek to recover them. Order 22-192 approving Stipulation filed on May 12, 2022 in UE 401 Idaho Power Company’s 2021 Annual Power Supply Expense True-Up, including paragraph 21 resolving allocation of deferred COVID-19 costs from March 2020 through December 31, 2022).

Further resolution of COVID-19 costs occurred in Docket Northwest Natural UG 483/ Advice No. 23-16A Amortization of Costs Associated with the COVID-19 Pandemic,¹⁷ however, SBUA was unable to review or participate in that resolution.

SBUA did not participate in Commission's October 25, 2022 letter to Avista Utilities adopting Staff Report as resolution to that utility's 2020 and 2021 COVID-19 deferrals (Advice No. 22-02-G).

d) Proposed allocation amongst utilities:

In response to a previous Bench Request, SBUA had proposed that allocation amongst the utilities be in accordance with each utilities percentage of payment into the intervenor issue fund.¹⁸ This appeared particularly appropriate in 2021 and 2022 when all utilities were engaged in frequent meetings and rule making impacting COVID-19 costs on all small nonresidential customers and necessitating significant time. In this Final, Revised Budget, however, SBUA's time focused on only one utility, PGE. Consequently, allocation of the Final, Revised Budget would be exclusively from PGE intervenor funding.

e) SBUA has provided to the Commission documentation of SBUA's having met the 20% requirement.¹⁹

3. FINAL, REVISED BUDGET

Taking into account Order 22-161, 22-304, and Order No. 23-444, and within the framework of the Fifth IFA, SBUA submits this UM 2114 Final, Revised Budget and Exhibit A specifically for the COVID-19 related work SBUA has performed in docket UM 2114 with respect to Portland General Electric ADV 1474 resolving COVID-19 deferral costs.

Provision 6.7 of the Fourth and of the Fifth IFA states, "At any time during the proceeding, an intervenor who received Commission approval for an Issue Fund Grant may file to amend its budget and request additional funding due to unforeseen changes in the scope or complexity of issues, positions taken by other parties, changes in the schedule of the case, or other good cause."²⁰ This Final, Revised Budget is based only on work performed in 2023 related to UM 2114.

The UM 2114 Final, Revised Budget of SBUA Exhibit A reflects SBUA's revised budget.

SBUA's expert in COVID-19 cost allocation is well-experienced in such proceedings and has provided consistent testimony regarding COVID-19.

¹⁷ October 26, 2023 Public meeting CA23.

¹⁸ UM 2114 Response to Bench Request of SBUA, February 25, 2022, pp 8-9.

¹⁹ Order 23-444, p10 expresses receipt of documentation and check from SBUA. Such amount of attorney trust account exceeded the 20% match for the Final, Revised Budget.

²⁰ Fifth IFA section 6.7; Fourth IFA.

The particular customer classes that has benefitted from SBUA's participating in the proceeding in 2023 have been the Portland General Electric Schedule 32 customers.

(d) Identification of the specific account or accounts from which the intervenor is seeking an Issue Fund Grant and an estimate of the amount of available funds in each account.

The account and respective balance from which SBUA seeks Issue Fund grant is Portland General Electric Company, and an estimate of that fund balance is \$718 issue fund balance and \$10,000.²¹

4. UM 2114 FINAL, REVISED BUDGET EXHIBIT A

UM 2114 Final, Revised Budget Exhibit A attached addresses (e), (f), and (g): a budget showing estimated attorney fees, which may include the cost for appropriate support staff and operational support, a budget showing estimated consultant fees and expert witness fees, which may include the cost for appropriate support staff and operational support, and 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.

5. OTHER INFORMATION REQUIRED BY ORDER NO. 23-444.

Order No. 23-444 required the Final, Revised Budget of SBUA include an explanation of various financial and budget information submitted by SBUA in its Motion for Reallocation filed September 1, 2023 and its Supplemental Budget submitted on October 20, 2023.

a) Order 23-444 pp 9-10:

“SBUA sought to provide evidence in fax form of its 20 percent match for its proposed combined budgets. This submission alone contained multiple issues.

For one, it did not add up as asserted by SBUA. SBUA indicated that through this request it met its \$4,360 match identified for its budget, even listing that number on its submission. However, when checks were added together, the total was \$3,812.”

Explanation: SBUA acknowledges that the original facsimile provided checks totaling \$3,812 rather than the \$4,360 stated in the fax. SBUA has submitted via confidential facsimile

²¹ Available at a spreadsheet linked to: <https://www.oregon.gov/puc/filing-center/pages/intervenor-funding.aspx> (last accessed December 1, 2023). Such funding also depends on the amount of case certified funding is allocated for other dockets, such as UE 416 where Order No.23-463 Granted SBUA's case certification and approved the budget, though SBUA's recovery is contingent on certain requirements articulated in that Order.

on 12/5/23 supplemental documentation demonstrating that SBUA has met the match identified in the budget minus \$50.

b) Order 23-444 p10:

“Moreover, this fax seems to indicate that SBUA’s attorney, who has repeatedly denied running or retaining financial responsibility or other responsibility for the organization, has paid experts with her own funds, [omitting footnote] rather than SBUA paying experts directly from its own independent funds, which SBUA has previously represented to us that it had in the form of tens of thousands of dollars in unrestricted cash.”

Explanation: The fax demonstrating payment of funds by SBUA’s attorney to SBUA experts was not attorney funds, but rather funds from a client trust account which was marked on the checks. Client trust account funds are not the attorney’s “own independent funds” and such checks in Oregon are marked “IOLTA”, that is, “Interest on Lawyer Trust Account”, to distinguish them from attorney operating funds.²²

c) Order 23-444 p10:

“SBUA’s initial reallocation requests lists a total request of \$21,762, but this is not accurate—the total for SBUA’s individual requests as outlined by SBUA is \$21,800.”

Explanation: SBUA has not located the amount “\$21,800” in the following documents: UE 399 and UM 2114 Motion for Reallocation of Issue Funds of SBUA, the UM 2114 SBUA Amended Proposed Budget for Issue Fund Grant attached as Exhibit A, and the Supplemental Budget of SBUA filed 10/30/2023, however SBUA has located the sum \$21,762. SBUA did locate on the Amended Proposed Budget for UM 2114 Exhibit A the expert budget of nine hours at one hundred fifty dollars per hour which equals 1,350, however, the amount of the check was correct per the invoice, that is \$1,312, and the difference between \$1,312 and \$1,350 is \$38.²³

²²From the Oregon State Bar Professional Liability Fund *Guide to Setting Up and Using Your Lawyer Trust Account* Table of Contents and also p 33 Q&A:

Q. Can I pay client costs directly out of the trust account?

A. Yes, as long as the client has money in the trust account to cover the costs. If funds have been deposited on behalf of a client have not yet cleared, you must either wait until they clear or pay the costs out of your general account and reimburse the general account when the funds have cleared.

<https://assets.osbplf.org/A%20Guide%20to%20Setting%20Up%20and%20Using%20Your%20Lawyer%20Trust%20Account%202018%20%20%20with%202019%20change.pdf>

²³ See confidential fax transmitted to the Commission 12/5/23.

d) Order 23-444 pp10-11:

“SBUA stated in exhibit A to its September 1, 2023 request that its total budget was \$21,762 for UM 2114, that its 20 percent match was \$4360, and that its total issue fund request was as a result \$15,800. However, this budget is off significantly. \$21,762 minus \$4,360 is \$17,402, not \$15,800.”

Explanation: It is correct that SBUA budget identified \$15,800 as the issue fund grant even though \$17,402 is the correct sum. SBUA requested less than the amount to which it would be entitled had the UM 2114 Amended Proposed Budget for Issue Fund Grant been approved. Per Order 23-444 SBUA is proposing a Final, Revised Budget for work performed in UM 2114 in 2023 which proposed request is even less than \$15,800.

d) Order 23-444 p11:

“In SBUA’s response to the most recent memo in this docket, referring to specific dollar entries for activity in specific years, SBUA states that “N/A means SBUA did not request or include funds request for this neither the original or amended budgets.” Notably, SBUA put the “N/A” entry in cells for “Executive Director UE 399.” However, in its original request, SBUA listed in its budget costs for “Executive Director UM 2114 & UE 399.” [footnote omitted] Contrary to SBUA’s assertion in its response to the memorandum, it did in fact list costs for its Executive Director associated with UE 399.”

Explanation: SBUA listed no funds for the Executive Director in the UE 399 Amended Proposed Budget of SBUA filed October 5, 2022²⁴, and that filing included the time spent in UE 399 dealing with UM 2114 related costs.

SBUA did include funds for Executive Director in its UM 2114 Amended Proposed Budget Exhibit A where UM 2114 costs were included in UE 399 rate case.

The “N/A” note at the bottom of the UM 2114 and UE 399 and UM 2114 Supplemental Budget of SBUA submitted October 20, 2023 should have also noted: “SBUA Executive Director was not included in UM 2114 funding in 2021. In 2021 funds for Executive Director in UE 399 were non-applicable since the docket UE 399 was not opened until 2022.

e) Order 23-444 p11: \$6,712 budgetary discrepancy:

“More glaringly, SBUA’s response to Chief ALJ Nolan Moser’s memorandum shows another \$6,712 budgetary discrepancy and indicates that SBUA may not have met its 20 percent match associated with its full request for another reason, outside of the fact that its contractor appears to have paid its experts. In its

²⁴ UE 399 AMENDED PROPOSED BUDGET OF SBUA Exhibit A
<https://edocs.puc.state.or.us/efdocs/HAH/UE399HAH188Merged.pdf>

initial allocation request, SBUA had a total budget of \$21,800 (stated as \$21,762) for UM 2114. But in its response to the recent memo, that total budget is now \$28,512, and attorney costs—which go directly to Diane Henkels—have more than doubled. This changed the match requirement from \$4,360 to \$5,703 such math even if Diane Henkels were herself able to meet the match requirements by paying experts, that match has not yet been demonstrated. [footnote omitted]. This major increase is not explained.”

Explanation: SBUA submission of a filled in table on October 20, 2023 included data from three different dockets: UM 2114, UE 399, and ADV 1474. The total of the amounts listed by SBUA in the table is \$21,762 for UM 2114 (including attorney fees of \$5000 as listed in UM 2114 SBUA Amended Proposed Budget Exhibit A, and \$1312 for the PGE ADV 1474 COVID-19 cost recovery), and \$6750 for UE 399 attorney fees as listed in the UE 399 SBUA Amended Proposed Budget Exhibit A). That totals \$28,512.

It bears clarifying that the UE 399, UM 2114 Supplemental Budget response submitted by SBUA on October 20, 2023 includes both the UE 399 rate case, the UM 2114 docket 2021-2023, and the part of the UE 399 rate case that dealt with UM 2114, per the understanding of SBUA as the deliverable required of SBUA by October 20, 2023. The Supplemental Budget Response does not include the \$11,250 from the UE 399 rate case and a few other budget items like part of the Legal Extern and the Technical assistance.

6. CONCLUSION

SBUA submits the information above and attached as its Final, Revised Budget to assist its representation of small business and small nonresidential a.k.a. small general service or small commercial ratepayers for the Commission’s consideration. SBUA respectfully requests consideration within the timeframe identified in the Fifth IFA with regard to this request.

Respectfully submitted: December 5, 2023.

s/ Diane Henkels

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