

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • jog@dvclaw.com
Suite 450
1750 SW Harbor Way
Portland, OR 97201

February 14, 2022

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON,
Investigation into the Effects of the COVID-19 Pandemic on Utility Customers.
Docket No. UM 2114

Dear Filing Center:

Please find enclosed the Joint Response of the Alliance of Western Energy Consumers and Citizens' Utility Board of Oregon to the Small Business Utility Advocates' Petition for Designation of Docket as an Eligible Proceeding and Proposed Budget in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2114

In the Matter of)	
)	RESPONSE OF THE ALLIANCE OF
PUBLIC UTILITY COMMISSION OF)	WESTERN ENERGY CONSUMERS
OREGON)	AND OREGON CITIZENS' UTILITY
)	BOARD TO SMALL BUSINESS
Investigation into the Effects of the COVID-19)	UTILITY ADVOCATES
Pandemic on Utility Customers.)	
_____)	

I. INTRODUCTION

Pursuant to OAR 860-001-0420(4), the Alliance of Western Energy Consumers (“AWEC”) and Oregon Citizens’ Utility Board (“CUB”) file this Response to the Petition for Designation of Docket as an Eligible Proceeding (“Petition”) of the Small Business Utility Advocates (“SBUA”), filed in the above-referenced docket. Concurrently with its Petition, SBUA filed a proposed budget for the docket (“Proposed Budget”).

In this Response, CUB and AWEC make two prayers for relief from the Oregon Public Utility Commission (“Commission”). First, CUB and AWEC request that the Commission deny SBUA’s Proposed Budget as both premature and improper. Second, for the reasons described below, CUB and AWEC request that the Commission prohibit SBUA from requesting intervenor funding for the duration of the currently effective Fourth Amended and Restated Intervenor Funding Agreement (“IFA”), which currently expires on December 31, 2022. CUB and AWEC neither support nor oppose SBUA’s Petition to designate this docket as an Eligible Proceeding for Issue Funds.

II. ARGUMENT

A. The Commission should deny SBUA's Proposed Budget

In the event that the Commission designates UM 2114 as an Eligible Proceeding, SBUA provided a Proposed Budget for participation in the docket of \$17,120. First and foremost, SBUA's Proposed Budget is premature because, even if UM 2114 is designated as an Eligible Proceeding, SBUA has not requested case certification to receive funding in this docket. This is particularly important in SBUA's case because it is questionable, if not doubtful, that SBUA can meet at least two of the criteria for becoming case certified.

Section 5.3(d) of the IFA requires that "[t]he organization's members who are customers of one or more of the Participating Public Utilities affected by the proceeding contribute a significant percentage of the overall support and funding of the organization." While SBUA has provided information in previous PacifiCorp dockets that it may have a few members that take service from this utility, it has never demonstrated that it has any other members connected to any other Participating Public Utility.^{1/}

Additionally, Section 5.3(c) of the IFA requires that "[t]he organization demonstrate[] that it is able to effectively represent the particular class of customers it seeks to represent." As discussed in more detail below, SBUA has repeatedly failed to effectively represent the class of small business customers.

In addition to being premature, SBUA's Proposed Budget is improper. While not entirely clear, it appears that SBUA is seeking recovery of costs incurred for work it has already performed, and/or for recovery for future work in areas of investigation that have already been

^{1/} Although it is not clear from the language of Section 5.3(d), CUB and AWEC understand this section to require 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.

resolved by Commission Order. Section 7.3 of the IFA requires that requests for payment of Issue Funds be made “no later than 60 days after the Commission’s final order issued in the Eligible Proceeding for Issue Funds has become final and nonappealable.”

UM 2114 is a multi-phase docket. It began in 2020 as an investigation into the effects of COVID-19 on utility customers. In 2020, a series of workshops were held to examine the impact of COVID-19 and to negotiate a set of term sheets containing consumer protections for energy, water and telecommunications providers. This phase concluded with Commission Order No. 20-401 on November 5, 2020—well over a year ago from the time of this writing. Order No. 20-401 adopted a stipulated agreement which restricted disconnections of customers, and established new time payment arrangements and arrearage relief. Under the IFA, SBUA is ineligible to receive intervenor funding for work completed in a phase of the proceeding that concluded more than a year ago.

The second phase of this docket began in 2021 and was primarily concerned with monitoring the status of the arrearage management programs and adjusting the expiration of the disconnection moratorium based on the state of the pandemic. Finally, OPUC’s Order No. 21-483 opened the latest phase of the docket, a rulemaking to review the Division 21 rules in order to strengthen customer protections concerning disconnection. While work has begun to consider the scope of these rules, the rulemaking docket itself has not been opened, nor has it been assigned a docket number.

It is clear that SBUA is requesting intervenor funding for both the current phase of the docket as well as for earlier phases. In requesting that this docket be designated as eligible to receive intervenor funding, SBUA cites the rate spread associated with the COVID deferrals, and the interest rate on the deferrals, which are not issues that are associated with the current

rulemaking. In describing the work that SBUA intends to investigate, SUBA says that it will “analyze and recommend regarding bad debt associated with COVID-19 and reported by the participating utilities.”^{2/} This was what the workshops in 2020 focused on and led to the 2020 Stipulation and Order.^{3/} SBUA further states that it will investigate the costs of utility arrearage programs authorized in the 2020 stipulation.^{4/} Those arrearage management programs were established and funded at a level of 1% of revenue requirement in 2020, so the cost was predetermined in 2020. SBUA stated that it intends to review “information regarding amounts received from sources outside of ratepayers including the Joint Legislative Emergency Board for additional taxpayer funded energy bill assistance payment funding (\$30 - \$50 million request if federal funds become available), any increase in the ‘low income’ assistance charge on utility bills.”^{5/} This is a bit confusing but clearly is not associated with Division 21 rules. Finally, SBUA is clear that the attached budget includes 2021 hours along with its estimates of 2022 hours, which is improper.^{6/}

SBUA also fails to identify how its Proposed Budget would be allocated among the various Participating Public Utilities, and appears to request funding from Idaho Power, which is not a Participating Public Utility under the terms of the IFA under which SBUA has submitted this request.

For these reasons, SBUA’s Proposed Budget is both premature and improper and should be denied, even if the Commission grants SBUA’s Petition.

^{2/} Docket UM 2114, Proposed Budget of SBUA at 2.

^{3/} OPUC Order No 20-401

^{4/} Docket UM 2114, Proposed Budget of SBUA at 3.

^{5/} Id. at 5.

^{6/} Id., Exhibit A

B. The Commission should prohibit SBUA from requesting intervenor funding for the duration of the currently effective IFA.

The Commission has a general obligation to regulate in the public interest.^{7/} With respect to participation in proceedings, this includes ensuring that intervening parties “will not unreasonably broaden the issues or burden the record.”^{8/} It also requires that the Commission ensure that all rates charged by a public utility are just and reasonable.^{9/} Recently, SBUA has intervened and sought intervenor funding in several proceedings. In each of these, SBUA has failed to competently represent the class of customers it purports to represent, has burdened the record and delayed proceedings, and has failed to substantiate its funding requests.

Intervenor funding is recovered from the customers the organization receiving the funding represents.^{10/} Given SBUA’s general and persistent inability to provide competent advocacy, using small business customer dollars to prop up this ineffective advocacy does not result in just and reasonable rates for these customers. Further, SBUA’s repeated improper requests for intervenor funding are a misuse of the Commission’s limited time and resources, as well as those of the parties that must respond to these requests, namely CUB and AWEC. While CUB and AWEC do not seek to deny SBUA an ability to participate in Commission proceedings, the litany of examples below, in addition to SBUA’s current Petition, demonstrates that administrative efficiency and the public interest are now best served by prohibiting SBUA from filing further frivolous requests for intervenor funding, at least through the term of the current IFA. If, in the future, SBUA is able to demonstrate effective advocacy and a true membership base of small business utility customers that contribute a significant percentage of

^{7/} ORS 756.040.

^{8/} ORS 756.525(2).

^{9/} ORS 756.040; ORS 757.020.

^{10/} IFA, Article 7.7.

its overall support and funding, CUB and AWEC would have no objection to the organization receiving funding at that time.

On February 19, 2019, SBUA sought intervenor funding in UE 352, PacifiCorp's Renewable Adjustment Clause proceeding. 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.^{11/}

On January 10, 2020, in UM 1050, 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. SBUA's objection appeared to be designed to delay the proceeding, seeking nothing more than the development of a more robust record without identifying any specific lack of evidence supporting the 2020 Protocol. Further, in its request for intervenor funding, SBUA simply ignored the Commission's guidance provided directly to SBUA in UE 352. Ultimately, SBUA acknowledged that it failed again to meet the case certification requirements and withdrew its request.

In UE 374, PacifiCorp's 2020 general rate case, SBUA filed two different proposed budgets for intervenor funding. While the first was granted, there were insufficient funds in the

^{11/} Docket No. UE 352, Order No. 19-133 at 5 (Apr. 16, 2019).
PAGE 6 – AWEC-CUB RESPONSE TO SBUA

PacifiCorp Issue Fund to fulfill SBUA’s proposed budget. In seeking reconsideration, SBUA argued funds already allocated to other organizations should be reallocated to SBUA, even though these organizations had already incurred the costs necessary to request full payment of their budget requests. In its second proposed budget, SBUA sought an advance of funds from the 2021 PacifiCorp Issue Fund to fund SBUA’s own stakeholder education and outreach activities performed outside of any regulated proceeding before the Commission. In addition, the proposed budget was filed after the Commission issued its final order in UE 374 and was intended to cover expenses incurred after the docket was closed. SBUA’s proposed budget was also wildly disproportionate to the activities for which it sought to use the funding. SBUA requested over \$35,000 based on 90 hours of attorney time and 130 hours of expert time. The Commission denied SBUA’s budget, finding that SBUA’s scope of work was not within the definition of “Eligible Proceeding” under the IFA.

Finally, SBUA sought case certification in UE 390, PacifiCorp’s 2022 Transition Adjustment Mechanism. That petition was denied because, based on the testimony SBUA sponsored in the proceeding, the Commission found that “SBUA has not demonstrated an ability in this docket to substantially contribute to the record on behalf of customer interests.”^{12/} The Commission noted that SBUA’s testimony “focuses on issues outside this proceeding and betrays a lack of understanding of the power cost considerations in this docket, or in the alternative is incoherent ...”^{13/} However, the Commission left the door open for SBUA to “work diligently to understand the issues under consideration in this case . . . and contribute to the record in a way that advances the interests of small commercial customers.”^{14/} Despite being

^{12/} Docket UE 390, Order No. 21-245 at 4 (Aug. 2, 2021).

^{13/} Id.

¹⁴ Id.

given this opportunity, SBUA continued to advance the same positions in that docket that the Commission had already ordered did not contribute to the record. SBUA went on to unsuccessfully move for reconsideration of the Commission's thoughtful order denying case-certification.

The Commission's findings in UE 390 are, unfortunately, a consistent theme in SBUA's advocacy, which does not appear to be improving over time. 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.^{15/} Nevertheless, SBUA recently filed a Notice of Intent to Request an Issue Fund Grant more than 10 days after it filed a Petition to intervene in NW Natural's rate case, docketed as UG 435. Similarly, SBUA recently filed a Notice of Intent to Request an Issue Fund Grant nearly four months after it petitioned to intervene in UE 394, PGE's ongoing 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. Additionally, in its concurrently filed petition for case certification in UE 394, SBUA did not demonstrate that it has members that take service from PGE or demonstrate that these members make any significant contribution to SBUA, again failing to meet the Commission's direct guidance to SBUA in UE 352.

Furthermore, while SBUA is a party to PGE's ongoing general rate case, SBUA failed to file opening testimony, and its rebuttal testimony was almost entirely dedicated to supporting the three partial stipulations that had been filed in that docket (which were already accompanied by supporting testimony), rather than rebutting any party's position on remaining issues. As with

^{15/} IFA ¶¶ 6.2-6.3.

other cases, SBUA has not substantively contributed to the record of PGE's rate case and has failed to effectively represent small business customers.

CUB and AWEC also have significant concerns about SBUA's ability to significantly contribute to the record in NW Natural's Docket No. UG 435 rate case. While SBUA has filed for case-certification in that proceeding, it has no demonstrated history of any effective advocacy in any natural gas rate proceeding before the Commission. Similar to UE 394, in its petition for case certification, SBUA claims that its members include NW Natural ratepayers, but has put forth no information to substantiate its claim and has not demonstrated the level of support any such members provide to SBUA.

CUB and AWEC do not make their recommendation to bar SBUA from making further funding requests under the Fourth IFA lightly. It is undoubtedly an extreme remedy, but one that is nevertheless warranted in this instance. It is a misuse of party and Commission resources to continue to address and resolve SBUA's inadequate pleadings and advocacy. CUB and AWEC are organizations with finite resources. The time spent responding to inadequate SBUA pleadings is significant and would be better served substantively advocating for the respective interests of residential and industrial customers, along with advocacy that benefits all customer classes.

III. CONCLUSION

For the reasons described above, CUB and AWEC respectfully request that the Commission: (a) deny SBUA's Proposed Budget as both premature and improper; (b) prohibit SBUA from requesting intervenor funding for the duration of the currently effective IFA, which currently expires on December 31, 2022; and (c) order such other relief as the Commission may deem necessary or appropriate and in the public interest.

Dated this 14th day of February, 2022.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

Tyler C. Pepple

1750 SW Harbor Way, Suite 450

Portland, OR 97201

(503) 241-7242 (phone)

(503) 241-8160 (facsimile)

tcp@dvclaw.com

Of Attorneys for the

Alliance of Western Energy Consumers

/s/ Michael P. Goetz

Michael P. Goetz

General Counsel

Oregon Citizens' Utility Board

610 SW Broadway, Ste. 400

Portland, OR 97205

503.227.1984 (phone)

mike@oregoncub.org

/s/ Chad M. Stokes

Chad M. Stokes

Cable Huston LLP

1455 SW Broadway, Suite 1500

Portland, OR 97201

Telephone: (503) 224-3092

Facsimile: (503) 224-3176

E-Mail: cstokes@cablehuston.com

Of Attorneys for the

Alliance of Western Energy Consumers