

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: August 9, 2022**

REGULAR X CONSENT ___ RULEMAKING ___ EFFECTIVE DATE N/A

DATE: August 3, 2022

TO: Public Utility Commission

FROM: Nolan Moser **SIGNED**

THROUGH: N/A

SUBJECT: ADMINISTRATIVE HEARINGS DIVISION: Recommendation to case certify SBUA, designate docket as eligible, and deny proposed budget in docket UM 2114.

RECOMMENDATION:

The Commission should adopt the proposed order granting Small Business Utility Advocates (SBUA) case certification in docket UM 2114, designating docket UM 2114 as eligible for Issue Fund Grants, and denying SBUA's proposed budget.

DISCUSSION:

Issue

Whether the Public Utility Commission of Oregon (Commission) should determine that SBUA meets the requirements to be eligible for Intervenor Funding Agreement grants in this docket.

Applicable Law or Rule

At Staff's request, the Commission opened docket UM 2114 in September 2020 to investigate the effects of the COVID-19 pandemic on utility customers. Two years prior, the Commission adopted the Fourth Amended and Restated Intervenor Funding Agreement (IFA).¹

Per the IFA, a proceeding eligible for funds is one:

¹ *In the matter of the Public Utility Commission of Oregon, Approval of the Fourth Amended and Restated Intervenor Funding Agreement*, Docket. No. UM 1929, Order No. 18-017 (Jan 17, 2018).

that directly affects one or more of the Participating Utilities and is anticipated to have a substantial impact on utility rates or service, a significant impact on utility customers or the operations of the utility, is likely to result in a significant change in regulatory policy, or raises novel questions of fact or law.²

Analysis

Background

This docket is an investigation into the effects of the COVID-19 pandemic on utility customers, which was initially opened in September of 2020. On January 28, 2022, SBUA filed a petition for designation of docket as an eligible proceeding and a proposed budget. Alliance of Western Energy Consumers (AWEC) and the Oregon Citizens' Utility Board (CUB) filed a response to SBUA's involvement as an intervenor on February 14, 2022. On February 16, 2022, I filed a bench request for more information from SBUA. SBUA filed a response to the bench request on February 25, 2022, and a motion for leave to file reply out of time on March 7, 2022. On March 2, 2022, SBUA filed a reply to AWEC and CUB's objection on condition that the motion for leave to file reply out of time be granted. I granted this motion on March 7, 2022, giving a deadline of March 7, 2022, for the reply.

SBUA Request

SBUA has not requested case certification in this docket. In other dockets, such as docket UG 435, SBUA has asserted that it meets the criteria under OAR 860-001-0120(4) because SBUA is a non-profit comprised of small businesses constituted for the purpose of representing the interests of the small business customer class. SBUA stated that the class of customers that it represents are distinct from those represented by AWEC and CUB. SBUA argued that its participation in that proceeding will be directed at rate spreads and rate design and that SBUA is able to effectively represent small business customer interests.

SBUA stated that its effectiveness is demonstrated by its intervention and activities in dockets UM 1610, UE 294, UM 1751, UM 1773, and UM 1790. SBUA contended that it is supported largely by constituents through financial contributions, in-kind services, space, and equipment. SBUA stated that its participation would not cause undue delay in that proceeding despite SBUA's late start to participation in the process. The

² *Id.*, Appendix A at 5, 1 Definitions (Jan 17, 2018).

Commission granted SBUA's petition for case certification in docket UG 435.³ In this proceeding, SBUA contends it represent small businesses by participating in workshops, analyzing data, filing documents, and other activities.

In its petition, SBUA asserts docket UM 2114 is an eligible proceeding under the IFA. SBUA states that several Participating Utilities are directly affected by docket UM 2114 as signatories to the Stipulated Agreement. SBUA asserts docket UM 2114 is anticipated to have a significant impact on rates or service because of deferrals costs and disconnections. SBUA states docket UM 2114 has a significant impact on utility customers and operations because the docket is intended to address such impacts caused by the COVID-19 pandemic. SBUA argues docket UM 2114 will likely result in a significant regulatory policy change because it is already doing so in response to the effects of COVID-19 through disconnections and deferrals. Finally, SBUA asserts docket UM 2114 raises novel questions of fact by addressing the COVID-19 pandemic and its legal implications.

Bench Request

In response to SBUA's petition, I issued a bench request for the following information:

- (1) Most recent audited financials;
- (2) Explanation of anticipated activity in docket UM 2114;
- (3) Clarification of "small business sector expertise, 20 hours;"
- (4) Current membership list with corresponding utilities;
- (5) Clarification on whether SBUA will be using funds to recover costs for work already completed; and
- (6) Clarification on how the docket UM 2114 proposed budget would be allocated across different utilities.

The bench request was made given a prior denial of an SBUA certification request, which was based in part on filed financial information. The bench request also referenced Commission guidance provided to SBUA for future applications.

AWEC and CUB Response

The response to SBUA's request, filed jointly by AWEC and CUB, argues that SBUA does not meet the requirements set forth in the IFA. AWEC and CUB reference docket UE 352 in which SBUA was denied certification based on the submitted financial information that did not create clear accountability to SBUA's members. AWEC and

³ *In the Matter of Northwest Natural Gas Company, dba NW Natural, Request for General Rate Revision*, Docket No. UG 435, Order No. 22-161 at 6 (May 13, 2022).

CUB also indicate that while SBUA has been certified in a PacifiCorp docket, SBUA has never clearly established that they have members who are customers of other IFA Participating Utilities.

In addition, AWEC and CUB argue SBUA's proposed budget is improper because it requests funding for work completed in finalized prior phases of this docket and because SBUA does not allocate its funding request among IFA Participating Utilities.

AWEC and CUB argue that they doubt SBUA is capable of contributions to the docket that will effectively represent members. AWEC and CUB further argue that the Commission should prohibit SBUA from requesting intervenor funding for the remainder of the IFA whose effective period ends on December 31, 2022, because of SBUA's failure to adhere to the IFA and because there have been no improvements over time to the quality of SBUA's advocacy.

SBUA Response

In response to the bench request, SBUA provided information *in camera* to the Administrative Hearings Division. SBUA requests confidentiality and has cited the U.S. Supreme Court ruling in *Americans for Prosperity Foundation*, which SBUA contends protects the identities of SBUA's members. SBUA clarified that it does not intend to recover costs from work already performed prior to January 28, 2022, the date SBUA filed its petition for this docket to be designated as an eligible proceeding. Additionally, SBUA provided information on the activities that it expects to perform through the remainder of this docket.

In response to AWEC and CUB's position, SBUA filed a reply. The response rebuts the arguments set forth by AWEC and CUB as follows:

1. SBUA states there is no opposition to designating this proceeding as eligible for funds.
2. SBUA argues that because AWEC is not a party to this proceeding, AWEC and CUB's response should be disregarded.
3. SBUA argues AWEC and CUB's response does not present a controversy because case certification is a process distinct from docket designation, and SBUA's proposed budget shows that SBUA is able to contribute significantly to the docket through an expert witness and has previously contributed to dockets as well.
4. SBUA asserts it addressed concerns regarding membership, financial contribution, and allocation in its response to the bench request.

5. SBUA asserts it is in the Public Interest to grant SBUA's petition because the customer class supported by SBUA is not covered by CUB or AWEC.
6. Finally, SBUA alleges that AWEC and CUB are using aggressive tactics rather than attempting to settle matters outside of litigation. SBUA states that their tactics cost SBUA money and time defending themselves rather than contributing to dockets.

AHD Recommendation

We recommend that SBUA be certified as eligible to receive funds in this case and that SBUA's petition to designate this docket as an eligible proceeding be granted. However, given the Commission's decision in docket UG 435, SBUA's budget should be denied.

In Order No. 22-161, the Commission determined that given SBUA's filed financial statements, it could be entitled to a maximum of \$9,000 for the year in intervenor funds. SBUA's budget in this docket well exceeds that amount, and SBUA has yet to submit a revised budget in docket UG 435 as requested by the Commission. Together, both budgets may not exceed requests for \$9,000 in intervenor funds.

We recommend that SBUA can be certified in this case despite not requesting case certification, because SBUA's participation to date has been sufficient to effectively contribute to the record. SBUA has filed several rounds of comments in this docket, including expert analysis in comments filed November 5, 2021, for the November 17, 2021 Public Meeting. That contribution provided a review of small business customer interests like interclass rate subsidy in relation to the Order No. 20-401 deferral of costs and revenues and specific recommendations for addressing the problems identified. In any future funding requests, SBUA should follow the case certification procedure as indicated by OAR 860-001-0120(2), (3) and IFA Articles 5.1, 6.2, 6.3.

The Commission should find that docket UM 2114 is an eligible proceeding because it meets the requirements of an eligible proceeding in the IFA. Docket UM 2114 directly affects several of the Participating Utilities and is having a significant impact on those utilities' rates and services. Docket UM 2114 has a significant impact on utility customers' ability to manage impacts associated with the COVID-19 pandemic. Docket UM 2114 is implementing significant regulatory changes and continues to grapple with the effects of COVID-19 and their legal implications.

Though SBUA is capable of contributing to the record in this eligible docket, SBUA can only qualify up to a maximum of \$9,000 of ratepayer funding on an annual basis and SBUA's budget should be rejected. SBUA may submit a revised budget consistent with

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this overall annual funding level. In doing so, SBUA must consider whether it will also file an amended budget proposal in docket UG 435. If SBUA seeks funding in both dockets, the sum of the proposed budgets must be within the maximum \$9,000 funding cap for this year.

PROPOSED COMMISSION MOTION:

Adopt the proposed order to grant SBUA case certification in docket UM 2114, designate docket UM 2114 as an eligible proceeding, and deny SBUA's proposed budget.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2114

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Effects of the
COVID-19 Pandemic on Utility Customers.

ORDER

DISPOSITION: ADMINISTRATIVE HEARINGS DIVISION RECOMMENDATION
ADOPTED

This order memorializes our decision, made and effective at the August 9, 2022 Regular Public Meeting, to adopt the Administrative Hearings Division's recommendation in this matter. SBUA is granted case certification in this proceeding, but SBUA's budget is denied. In future funding requests, SBUA should follow the case certification procedure as indicated by OAR 860-001-0120(2), (3) and Intevenor Funding Agreement Articles 5.1, 6.2, 6.3. SBUA may file a revised budget for consideration consistent with Order No. 22-161.

Made, entered, and effective _____

Megan W. Decker
Chair

Letha Tawney
Commissioner

Mark R. Thompson
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.