

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 399

In the Matter of)	
)	
PACIFICORP d/b/a PACIFIC POWER)	PETITION FOR CASE CERTIFICATION
)	OF SMALL BUSINESS UTILITY
Request for a General Rate Revision)	ADVOCATES
)	
_____)	

I. INTRODUCTION

The Oregon Small Business Utility Advocates (“SBUA”) petitions the Oregon Public Utility Commission (“Commission”) to certify this case, for the purpose of receiving intervenor funding and to allow SBUA to submit a Proposed Budget by the date set forth in the Administrative Law Judge (“ALJ”) April 4, 2022. This docket is a contested case proceeding as identified in the March 8, 2022 Ruling. That Ruling included a Notice of Contested Rights and Procedures. A contested case is an eligible proceeding for an intervenor to seek an issue fund grant. *See* OAR 860-001-0120(4) and Article 1(d), Article 4.2.3, Article 5.3, Fourth Amended and Restated Intervenor Funding Agreement approved in Order 18-017 on January 17, 2018.

In support of this Petition for Case Certification, SBUA provides the following statements as evidence to satisfy requirements for certification.

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II. CRITERIA FOR CASE CERTIFICATION

To demonstrate that it meets the criteria for case certification, SBUA represents as follows:

A. Criteria for Case Certification of Intervenors

Under the Agreement and Oregon Administrative Rules, for an organization to be certified for the purpose of receiving intervenor funding, the organization must satisfy certain enumerated criteria. *See* OAR 860-001-0120(4). Specifically, an organization must demonstrate that:

- “(a) The organization is a nonprofit organization, demonstrates that it is in the process of becoming a non-profit organization, or is comprised of multiple customers of one or more of the utilities that are parties to the agreement and demonstrates that a primary purpose of the organization is to represent broad utility customer interests;
- (b) The organization represents the interests of a broad class of customers and its participation in the proceedings will be primarily directed at public utility rates or terms and conditions of service affecting those customers, and not narrow interests or issues that are ancillary to the effect of the rates and terms and conditions of service on those customers;
- (c) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;
- (d) Those members of the organization who are customers of one or more of the utilities that are affected by the proceedings and are parties to the agreement contribute a significant percentage of the overall support and funding of the organization;
- (e) The organization demonstrates or has demonstrated in past Commission proceedings the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service, including in proceedings in which the organization was case certified and received a grant;
- (f) The organization demonstrates that:
 - (A) No precertified intervenor participating in the proceedings adequately represents the specific interests of the class of customers represented by the organization; or
 - (B) The specific interests of a class of customers will benefit from the organization's participation; and
- (g) The organization demonstrates that its request for case certification will not unduly delay the proceedings.

B. Applicability of Criteria to SBUA

For the reasons set forth below, SBUA meets the criteria for certification set forth in OAR 860-001-0120(4):

(a) Non-profit Status

SBUA is an Internal Revenue Code Section 501(c)(3) nonprofit organization comprised of multiple customers of PacifiCorp d.b.a. SBUA's primary purpose is to represent the interests of small businesses generally in utility proceedings.¹ See www.utilityadvocates.org.

(b) Broad Representation with Participation Directed at Public Utility Rates or Terms and Condition of Service affecting those Customers, and Not Narrow Interests or Ancillary Issues

SBUA members in Oregon include many customers of PacifiCorp d.b.a. Pacific Power ("Company") as has been previously provided *in camera* to the Commission pursuant to a Chief ALJ Bench Request.² The Commission previously found that SBUA's members do represent a broad customer class and not narrow individual interests.³

SBUA represents a large, broad, and diverse class of customers. Most businesses in Oregon are considered "small businesses". The definitions vary⁴ but, as one example the Oregon

¹ See utilityadvocates.org

² See UM 2114, UG 435 & 411, and UE 394 Response of SBUA to Bench Request, filed 2022.

³ Order 19-133 issued in UE 352 In the Matter of PacifiCorp, dba Pacific Power 2019 Renewable Adjustment Clause. The Commission denied case certification for reasons unrelated to its membership, and rather, related to demonstration of contribution through financial donations, membership fees, or in-kind support at a level where the qualifying organization is capable of some level of action and advocacy apart from intervenor funding.

⁴ Oregon Secretary of State Office of Small Business Assistance, OSBA Report Multiple Definitions Cause Confusion for Oregon Small Businesses, by Matthew. Tenney, 11/18/2021 (Describing the several provisions in Oregon law defining "small business"). See <https://www.oregon.gov/smallbusiness/SiteCollectionDocuments/OSBA-Small-Business-Definitions-Report.pdf> (Last accessed 4/13/22).

Small Business Development Act defines “small business” as those businesses with 100 or fewer employees. ORS 285B.123(2). Federal statistics show that over 99% of Oregon’s businesses are small businesses.⁵ More than half of Oregon’s workforce is employed in small businesses.⁶

SBUA customer class represents a broad diversity of interests. SBUA members in Oregon include businesses that specialize in: hair salons, hardware, commercial cleaning and maintenance, artisanal glass, website design, wood products milling, automobile and bike repair, dry cleaning, food and beverage, commercial agriculture, professional consulting, residential and commercial construction, energy efficiency, renewable energy, multi-family residential housing, and many others. Some SBUA members are already known to the Commission in other filings.⁷ SBUA members in Oregon are located in the Portland metro area, the central coast, Salem, the Willamette valley, southwest and central Oregon. SBUA exclusively represents small businesses; as such, SBUA constituents are distinct from other intervenors – such as AWEC and CUB.

SBUA’s participation in this docket is directed primarily at ensuring that any rate change is “just and reasonable” for the small business customer class. In the rate case directly antecedent to this one, SBUA represented Schedule 23 small nonresidential ratepayers and participated in negotiation of a Partial Stipulation.⁸ SBUA worked with the utility to implement the terms of the Partial Stipulation applicable to schedule 23 customers.

⁵ U.S. Small Business Administration Office of Advocacy 2021 Small Business Profile of Oregon, <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143123/Small-Business-Economic-Profile-OR.pdf> (last accessed 4/13/22).

⁶ Id.

⁷ UE 352 supra note 3, with updates in UM 2114, UGE 435 & UG 411, and UE 394 Response of SBUA to Bench Request, supra note 2.

⁸ Order

SBUA has secured the assistance of utility consultant Steele and Associates, of which Bill Steele served as SBUA's expert witness in the previous UE 374 docket. Issues of focus include reviewing the reasonableness and justification of: (1) the proposed increased Revenue Requirement of \$84.4 million (a 6.8% increase); (2) an increase to the equity component of the capital structure to 52.25 percent, with a corresponding 9.8% return on equity; (3) the proposal to change the \$6.7 million Oregon Corporate Activity Tax Credit (OCAT) from a rider to recovery in base rates; and (4) the proposal to eliminate the separate OCAT rider and the rebalance the rate mitigation adjustment of \$82.2 million (6.6%). Pacific Power's request, by definition, impacts Schedule 23 SBUA members because SBUA's members will be required to pay higher utility rates.

(c) Demonstrated Effective Representation

SBUA's legal counsel has represented Oregon's small businesses for over ten years, and is likewise experienced and knowledgeable of Oregon energy and utility matters. Since SBUA's inception in Oregon, its legal counsel has educated SBUA membership on utility regulatory matters impacting small business. SBUA intervened and fully participated in Commission Dockets: UM 1610, UE 294, UM 1751, UM 1754, UM 1773, and UM 1790. Furthermore, in 2017, SBUA participated in the SB 978 public process, submitting comments responsive to the Commission's request; SBUA also participated, to a limited extent, in the UE 352 proceeding, and fully in the UE 374 PacifiCorp dba Pacific Power Request for General Rate Revision. As previously indicated, in UE 374, in collaboration with the utility, SBUA successfully implemented provisions regarding development of potential rate design alternatives for Schedule 23 customers for possible consideration in future rate cases. Recently, SBUA participated in the

UE 394 Portland General Electric Request for General Rate Revision including negotiation and settlement in two partial stipulations.⁹

Further, expert witness Steele has demonstrated expertise in several areas of rate making including revenue requirement, return on equity, adjustments, in addition to rate spread and rate design, among other areas common in reviewing electric utility rate cases.

SBUA has demonstrated the ability to represent small business interests within the scope of its intervention on these matters, including preparing and filing expert testimony, legal briefs, and filing documents, and participating in docket workshops and other proceedings. SBUA's expertise will help the Commission analyze the reasonableness of the Company's proposal, especially as it concerns small nonresidential customers and especially Schedule 23 ratepayers.

(d) Members who are Utility Customers Contribute a Significant Percentage of the Overall Support and Funding of the Organization

SBUA members include the Company's customers in both California and Oregon. In Oregon, SBUA's members include Pacific Power ratepayers. Pacific Power ratepayers in Oregon contribute to the overall support and funding of SBUA in the form of dues and financial contributions, in-kind and other services. Support also comes in the form of general participation in the organization from SBUA members in Oregon, including Pacific Power Schedule 23 ratepayers from the Portland metro area, central Oregon, the central coast, and the Willamette Valley. SBUA members support the organization by participating in the organization and attending meetings. SBUA also receives third party support from funding sources. Current

⁹ UE 394 Portland General Electric Company Request for General Rate Revision, currently awaiting Commission decision.

information regarding SBUA's support is provided in the attached Exhibit A: Declaration of Counsel.

SBUA represents that it will provide documentation that it will expend in-house resources, or outside funding, accounting for at least 20% of the Eligible Expenses.

(e) Demonstrated Ability to Substantively Contribute to the Record on Behalf of Customer Interests

SBUA incorporates its response above to criteria "(c)" here. SBUA has demonstrated an ability represent the interests of its customer class, relating to: rates, terms and conditions of service; offering expert testimony and informing the Commission in Oregon, participating in settlement negotiations, and providing other meaningful input on behalf of its members. SBUA contributed substantively to the record in UE 294 docket (2015).¹⁰ SBUA received case certification in: UM 1751 (2016), regarding HB 2193 Implementing an Energy Storage Program Guidelines; UM 1754 (2016), regarding the Company's 2017-2021 Renewable Portfolio Standard Implementation Plan; UM 1790 (2017), regarding the Company's 2017-2021 Renewable Portfolio Standard Implementation Plan filed in 2016, and UM 1773 (2016) regarding Portland General Electric Partial Waiver of Competitive Bidding Guidelines, approval of RFP Schedule, and more recently in UE 374 PacifiCorp dba Pacific Power Request for General Rate Revision. SBUA contributed to the record in the aforementioned dockets, and is uniquely familiar with the state's small business constituency, and the impacts of a Commission's proceeding on small business.

¹⁰ See UE 294 SBUA Testimony <https://edocs.puc.state.or.us/efdocs/HTB/ue294htb17027.pdf>.

Further, SBUA's expert, William Steele, known to the Commission, has significant experience in electric utility ratemaking as utility commission staff, is a regular instructor for a nationally recognized electric utility ratemaking trainings, and also serves on a state advisory board representing small business interests in utility matters.

SBUA's legal counsel has over 20 years of legal experience, including working on utility related issues in Oregon, advising clients in utility matters, prior employment at Oregon Department of Energy, and intervening in OPUC dockets. SBUA's legal counsel has also received specialized training in electricity pricing and ratemaking.

(f) No Other Adequate Representation and the Specific Interests of the Class will Benefit from Organization's Participation

No other party is capable of adequately representing the specific interests of Oregon's small business, or the Company's Small Nonresidential customers. The Citizens' Utility Board represents the Residential customer class by statute, and stands to run a conflict given the different proposed rate impacts on Residential and Small Nonresidential Customer classes. Likewise, the Alliance of Western Energy Consumers ("AWEC") represents *large* non-residential customers. SBUA exclusively represents small business interests. Small nonresidential customers, and Schedule 23 customers will benefit from SBUA participation in this proceeding, given that SBUA maintains unique knowledge and experience representing small nonresidential customers – no other intervenor group is capable of adequately representing SBUA's member's interests.

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(g) Participation will not Unduly Delay the Proceedings

SBUA's participation will not unduly delay the proceedings per the April 4, 2022 Scheduling Conference Memorandum.

III. CONCLUSION

For the foregoing reasons, SBUA requests that the Commission grant this Petition.

RESPECTFULLY SUBMITTED April 13, 2022



s/ Diane Henkels

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BEFORE THE PUBLIC UTILITY COMMISSION
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)
PACIFICORP d/b/a PACIFIC POWER) DECLARATION OF COUNSEL
)
Request for a General Rate Revision)
)
_____)

1. I represent Small Business Utility Advocates (“SBUA”) in the above-referenced matter.
2. Secured bookkeeping assist being unavailable to timely provide Financial Statement for Oregon SBUA, I have caused to be compiled this 2022 information in support of UE 399 Petition for Case Certification of SBUA.
3. In 2022 from Oregon members, SBUA has received at least \$1400, donation of various in-kind services such as videography services and physical plant, and SBUA has secured legal extern services for Spring and Summer 2022 by second year energy law student.
4. In 2022, SBUA has outstanding at least two grant applications.
5. SBUA has paid expert fees in the amount of \$11,737.00 in 2022.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

RESPECTFULLY SUBMITTED April 13, 2022

s/ Diane Henkels

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