

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a  
AVISTA UTILITIES,

Respondent.

DOCKETS UE-220053 and  
UG-220054 (*Consolidated*)

**PETITION FOR INTERLOCUTORY  
REVIEW OF ORDER No. 6  
REJECTING SMALL BUSINESS  
UTILITY ADVOCATES'  
PROPOSED BUDGET**

**I. PETITION**

1. Pursuant to Washington Administrative Code (WAC) section 480-07-810, Small Business Utility Advocates (SBUA) respectfully requests that the Washington State Utilities and Transportation Commission (Commission or UTC) review the Commission's Order No. 6 as issued on May 27, 2022 (Order). Specifically, this Petition requests that the Commission modify the Order by approving SBUA's proposed budget to participate as an intervenor.
2. Pursuant to Washington Administrative Code (WAC) section 480-07-810, SBUA requests interlocutory review of Order No. 6 because SBUA is being substantially prejudiced in a manner that is not remediable. The Order denies SBUA's proposed budget in its entirety and excludes SBUA from participating in the UTC's new intervenor compensation program.
3. In addition, the Commission has "other" compelling reasons (*see* WAC §480-07-81 (2)(c)) to review this Order to ensure the Commission's new compensation program is implemented in a fair and robust manner that fulfills the Commission's goal and Legislative mandate to bring

new voices to Commission proceedings. During this first year, the Commission has indicated that the new intervenor funding program will require participant feedback and be “an iterative process” with the Commission.<sup>1</sup> Here is an opportunity.

4. SBUA appreciates the ALJ’s discretion and diligence in implementing the new compensation program that is still developing. As discussed below, however, the Order should be reversed because it errs as a matter of fact and law, exercises the Commission’s discretion in an arbitrary and capricious fashion, and disincentivizes new intervenors from participating in the UTC’s funding program.

## **II. BACKGROUND**

5. On March 9, 2022, SBUA submitted its Request for Case Certification and Notice of Intent to Request a Fund Grant.<sup>2</sup> This request explains that SBUA is a nonprofit organization with a public purpose mission to represent, protect, and promote the interests of small businesses ratepayers. This small business perspective is unique and valuable, and SBUA explains that the interests of these customers often conflict with residential and larger commercial ratepayers, including in areas such as rate design, the factors driving increased energy rates, the potential for cost shifting between customer classes, the best way to mitigate such rate increases and cost shifts, the best use of revenue for program funds, and the economic and policy tradeoffs associated with these issues.
6. On March 16, 2022, the Commission issued Bench Request No. 1 and No. 2, requesting additional information from intervenors and SBUA (*see* No. 2) regarding their Requests for Certification filed with the Commission.

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<sup>1</sup> Policy Statement on Participatory Funding for Regulatory Proceedings (Policy Statement), at 4-6, ¶ 15.

<sup>2</sup> SBUA’s Request for Case Certification and Notice of Intent to Request a Fund Grant.

7. On March 18, 2022, SBUA submitted a response to Bench Request No. 2. This response explains that:

- a. SBUA’s mission is represent the *community* of small business ratepayers as a whole; SBUA does not represent the direct financial interests of any individual small business or member; and therefore, if SBUA prevails, the benefits to small businesses would be dispersed across all ratepayers in the relevant classes.<sup>3</sup>
- b. SBUA’s first Washington member joined in 2013; however, most of SBUA’s current members joined between 2020 and the present. And this proceeding is SBUA’s first appearance before the Washington UTC.<sup>4</sup>
- c. No other party, *e.g.*, the Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel), adequately represents small business customers in Avista’s service territory. SBUA explained that Public Counsel’s advocacy includes the interests of residential customers, which, by necessity, can conflict with the interests of small commercial customers. For example, lowering revenue allocation for one customer class, such as small commercial customers, necessarily requires redistributing the revenue requirements to other classes, including residential customers (a proposition that Public Counsel can and may oppose). Because of SBUA’s unique core mission, we are able to sustain conflict-free and untethered advocacy in favor of small commercial customers throughout proceedings.<sup>5</sup>

8. On March 24, 2022, the Commission issued Order No. 5, granting SBUA’s Request for

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<sup>3</sup> SBUA Response to Bench Request #2 at 2-3, ¶ 7(a).

<sup>4</sup> *Id.* at 3-4, ¶ 7(b).

<sup>5</sup> *Id.* at 4, ¶ 9.

Certification, stating “[w]e agree that the public interest is served by the participation of an advocate for small businesses and that no other party adequately represents these interests with the same focus as SBUA.”<sup>6</sup> Order No. 5 further directed that SBUA provide greater detail about its connection to Avista’s small businesses, how funding would represent the interest of small businesses, and how the SBUA’s advocacy differs from Public Counsel and would be in the public interest.<sup>7</sup>

9. On or around March 14, 2022, the four eligible intervenors engaged in email correspondence about the amounts they would seek for intervenor funding. Discussions included individual organization’s plans to seek \$50,000, representing ¼ of the available funds. The funding agreement allocates \$200,000 to the Avista “customer representation sub-fund,” which each of the four organizations would be eligible for.
10. On April 21, 2022, the Energy Project (TEP) submitted its proposed budget seeking \$50,000 in intervenor funding.<sup>8</sup>
11. On April 22, 2022, the Alliance of Western Energy Consumers (AWEC) submitted its proposed budget seeking \$50,000 in intervenor funding.<sup>9</sup>
12. On April 22, 2022, the NW Energy Coalition (NVEC) submitted its proposed budget seeking \$50,000 in intervenor funding.<sup>10</sup>
13. On April 25, 2022, SBUA submitted its Proposed Budget seeking \$50,000 in intervenor

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<sup>6</sup> Order No. 5 at 9, ¶ 33.

<sup>7</sup> *Id.* at ¶ 34.

<sup>8</sup> TEP’s Proposed Budget, Exh. A.

<sup>9</sup> AWEC’s Proposed Budget, Exh. A.

<sup>10</sup> NVEC’s Proposed Budget, Exh. A.

funding.<sup>11</sup>

14. In addition, SBUA's Proposed Budget provided greater detail to the Commission about the organization by explaining that:

- a. SBUA currently has over a dozen small business members within Avista's service territory, and SBUA anticipates having over two dozen members in the State of Washington by the end of 2022.<sup>12</sup>
- b. SBUA has conducted in-person education and outreach *within the State of Washington* to small businesses both in 2020 and 2021, prior to its participation in this case, and SBUA anticipates doing so again in 2022.<sup>13</sup>
- c. Funding, if awarded to SBUA, will benefit the small business customer class through SBUA's focused advocacy on their behalf, not subject to conflicts with other customer classes, which will provide a historically underrepresented customer class a greater voice in Commission proceedings.<sup>14</sup>
- d. Regarding overlapping interests with Public Counsel, SBUA highlighted areas of rate design, revenue allocation, cost allocations between customer classes, and the designs and expenditures for utility programs where SBUA and Public Counsel often conflict. SBUA further cited numerous examples of *actual* conflicts and disagreements with Public Counsel's counterpart in California (the California Public Advocates Office) in public utilities proceedings.<sup>15</sup>

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<sup>11</sup> SBUA's Proposed Budget, Exh. A.

<sup>12</sup> *Id.* at 5, ¶ 9.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 5-6, ¶ 10.

<sup>15</sup> *Id.* at 6-7, ¶ 11-12.

e. SBUA also noted that if there are instances where SBUA and other parties support the same policies or outcomes, it will likely be for separate reasons, and the Commission will benefit from hearing those diverse perspectives and identifying areas of support across multiple customer classes and stakeholders—which will result in a more fully developed record.<sup>16</sup>

15. No other party commented on or contested SBUA’s proposed budget.

16. On May 27, 2022, the Commission issued Order No. 6, which approved the full \$50,000 budget request from TEP, AWEC, and NWECA, but denied SBUA’s budget request in its entirety.<sup>17</sup>

17. In dismissing SBUA’s value to the proceeding, Order No. 6 reasoned that: (a) an organization’s connections with Washington ratepayers must “exist prior” to the Commission considering distributing funding from ratepayers, “a minimum threshold must require a showing of established connections with Washington ratepayers prior to receiving funding from Washington ratepayers,” and “SBUA has not made such a showing here”<sup>18</sup>; (b) SBUA’s “vague assertions of membership, of connections to specific customers, and with Avista’s service territory are insufficient” to justify granting SBUA funding;<sup>19</sup> (c) “[w]e find it inappropriate for Washington ratepayers to fund the building and development of an organization that does not already have such a connection”;<sup>20</sup> and (d) SBUA has failed to carry its burden to distinguish its representation from the representation of Public Counsel.<sup>21</sup>

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<sup>16</sup> *Id.* at 7-8, ¶¶ 13-15.

<sup>17</sup> Order No. 6.

<sup>18</sup> *Id.* at 7, ¶ 23.

<sup>19</sup> *Id.* at 9, ¶ 28.

<sup>20</sup> *Id.* at 7, ¶ 23.

<sup>21</sup> *Id.* at 9, ¶ 29.

The Order states that its rejection of SBUA is not intended to dissuade SBUA or other intervenors, recognizes SBUA’s capability as an advocate for small businesses, and does not foreclose the possibility of SBUA satisfactorily demonstrating connections to Washington ratepayers in a future proceeding.<sup>22</sup> As discussed below, the Order errs as a matter of fact and law, and exercises the Commission’s discretion in an arbitrary and capricious fashion. From a practical and policy perspective, the Order disincentives new intervenors from participating and runs counter to the Commission’s efforts to launch a successful intervenor program.

## I. ARGUMENT

### A. The Order Is Arbitrary and Capricious in Dismissing SBUA for Not Having Minimum Existing Contacts in the State of Washington Before Intervening

18. The law inaugurating intervenor compensation in Washington, RCW 80.28.430, does not address the required minimum contacts intervenors must have with Washington State to qualify for funding. Nor does the Commission’s Policy Statement for Participatory Funding. Nor does the Washington Interim Participatory Funding Agreement signed by SBUA and other intervenors.

19. Order No. 6 establishes a new criterion for obtaining intervenor funding based on the intervenor showing “a minimum threshold” of established connections with “Washington ratepayers.”<sup>23</sup>

20. SBUA accepts this new criterion, as set forth in Order No. 6.

21. SBUA also meets this new criterion. The record shows that SBUA had prior existing contacts

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<sup>22</sup> *Id.* at 9, ¶ 30.

<sup>23</sup> *Id.* at 7, ¶ 23.

in Washington prior to intervening. In its budget proposal, SBUA responded to Order No. 5 by providing greater detail about Washington membership, connections with Washington, and how funding, if awarded to SBUA, would help small business in Avista's service territory.<sup>24</sup>

22. Order No. 6, however, concludes that SBUA contacts in Washington are too "vague" to meet the Commission's expectations.<sup>25</sup> This is an arbitrary and capricious. The Commission's inquiries in Order No. 5 are general in nature and ask SBUA to provide "greater detail" about its connections with Washington.<sup>26</sup> SBUA did so. And SBUA's response was reasonable considering the Order is unclear as to specifically what information SBUA must provide. This is especially true as the law, Policy Statement, and Interim Agreement provide no guidance on how to address an intervenor's pre-existing contacts in the State.

23. Moreover, SBUA's submission is in line with the information and budget proposals submitted by other intervenors. SBUA reviewed other intervenor's budget proposals before finalizing its own, and SBUA was under the impression that it was providing adequately responsive information to the Commission, in line with others.

24. Considering the Commission set up a new funding program, which in year-one requires participant feedback in "an iterative process" with lessons to be learned and improved on,<sup>27</sup> and considering that the requirements to qualify for funding are evolving and not yet fixed, the Order's drastic cutting off of SBUA as the only new intervenor in this Avista case, and while the organization is midway in navigating a new system, is unfair and unnecessarily harsh.

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<sup>24</sup> See, *supra*, ¶ 14; see also SBUA's Proposed Budget at 5-6, ¶¶ 9-10.

<sup>25</sup> Order No. 6 at 9, ¶ 28.

<sup>26</sup> Order No. 5 at 9, ¶ 34.

<sup>27</sup> Policy Statement at 4-6, ¶ 15.



25. To remedy this, SBUA is providing a declaration from its Executive Director, attached as Exhibit A. This declaration attests to the veracity of SBUA's previously provided information, further showing SBUA's established connections with Washington ratepayers,<sup>28</sup> adds details regarding these members locations in various geographic areas, including in Seattle, Bellevue, Vancouver, the City of Spokane, Spokane Valley, and Lacey, and shows the diversity of SBUA's existing membership, which includes businesses in the restaurant, clothing, beauty, brewery, retail repair, pet service, and clean energy industries.<sup>29</sup>
26. The Commission has not asked for a list of SBUA's membership. The laws, policies, and interim agreement on intervenor funding do not require membership lists, and it is unclear to SBUA whether incumbent organizations have been required to provide this information in the past. However, if this disclosure is what the Commission had in mind in Order No 5, the Commission should simply state so directly. But if directed to file its membership list, SBUA requests permission to file it under seal as this information is confidential and privileged.<sup>30</sup> In such an event, SBUA further requests that the Commission approve SBUA's Budget Proposal promptly, but condition the budget on SBUA submitting under seal the organization's confidential membership list within a reasonable time thereafter.

**B. The Order Erroneously Asserts that SBUA Is Seeking Intervenor Funding for Building and Developing the Organization**

27. The Interim Participatory Funding Agreement clearly states in Section 7. 5 that "expenses for general operations, overhead, membership recruitment, fundraising, or communication with

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<sup>28</sup> Declaration of Brittney K. Marra (Marra Decl.) at ¶¶ 4-11.

<sup>29</sup> *Id.* at ¶¶ 5-9.

<sup>30</sup> *Id.* at ¶ 14.

members will not be eligible for funding under a Funding Grant.”

28. SBUA is not seeking intervenor funding for overhead or membership recruitment or general development. Nor has SBUA ever sought or received this type funding in other jurisdictions.<sup>31</sup>
29. The record before the Commission does not support the Commission’s conclusion. SBUA’s requested budget, just as with other intervenors,<sup>32</sup> is significantly lower than required to fully reimburse SBUA for the attorney and expert time dedicated to this proceeding.<sup>33</sup> Given the budget constraints in the current Interim Participatory Funding Agreement, SBUA indicated that it will waive any request for reimbursement for these additional professional costs.<sup>34</sup>
30. SBUA’s budget includes \$4,850 for General Outreach to small businesses in disadvantaged communities, which is explicitly allowed for in the Policy Statement.<sup>35</sup> But this outreach consultant is for the purpose of seeking feedback from these customers as it relates to Avista’s GRCs. It’s not intended to build and develop SBUA as an organization.
31. Moreover, Section 6.5 of the Interim Agreement provides that “[t]he Commission may place reasonable conditions on Fund Grants.” Thus, the Commission can easily condition SBUA’s Proposed Budget on not using funds for building and development.
32. Finally, approval of SBUA’s budget does not mean no further review. Intervenors must submit detailed records of costs before actually receive any funding monies. If SBUA were

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<sup>31</sup> Marra Decl., ¶¶ 12-13.

<sup>32</sup> All of the intervenors indicated that \$50,000 would be insufficient to fully cover professional fees. The work required to participate in General Rate Cases is high.

<sup>33</sup> SBUA Budget Proposal, Exh. A.

<sup>34</sup> *Id.*

<sup>35</sup> See Policy Statement at ¶ 66, stating that “. . . outreach to organizations representing vulnerable populations and highly impacted communities, including consulting fees for those activities, are allowable expenses eligible for participatory funding.”

to spend any funding money on building and developing the organization (which SBUA will not), the Commission can readily reject the reimbursement request.

**C. The Order Is Arbitrary and Capricious by Concluding that SBUA Failed to Distinguish Its Representation from Public Counsel**

33. Order No. 6 concludes with no supporting analysis that “SBUA has failed to carry its burden to distinguish its representation from the representation of Public Counsel.”<sup>36</sup> This is arbitrary and capricious.

34. SBUA explained how Public Counsel’s advocacy on behalf of two customer classes (residential and small commercial) can become problematic. The interests of residential customers and small commercial customers do not always coincide, and in zero-sum circumstances, such as revenue allocation between customer groups, their interests by necessity, are in direct conflict.<sup>37</sup> SBUA further provided numerous concrete examples from its 10 years of advocacy at the California Public Utilities Commissions where SBUA’s positions differed or conflicted with Public Counsel’s counterpart (the California’s Public Advocates Office), including in General Rate Cases.<sup>38</sup> Moreover, the Commission should find SBUA’s analogies to cases in California as persuasive, especially when the Washington UTC is modeling parts of its budding intervenor compensation program on these other jurisdictions, like California.

35. Furthermore, Public Counsel’s attorney stated at the first hearing in this case that “[w]e are a broader -- we have broader interests than the Small Business Utility Advocates. So I do think

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<sup>36</sup> Order No. 6 at 9, ¶ 66.

<sup>37</sup> See, *supra*, ¶¶ 7(c).

<sup>38</sup> See, *supra*, ¶¶ 14(c) and (d).

it would be helpful to have their specific voice in this proceeding.”<sup>39</sup>

36. The Commission’s Order No. 5 also stated that “[w]e agree that the public interest is served by the participation of an advocate for small businesses and that no other party adequately represents these interests with the same focus as SBUA.”<sup>40</sup>

37. Without any further analysis, the record before the Commission does not support the conclusion that SBUA has failed to distinguish its advocacy from Public Counsel.

38. Order No. 6 states that the Commission “is not intended to dissuade SBUA or any other organization from requesting funding in future proceedings” but the order effectively establishes precedent that any future participation by SBUA, or other small business advocate, is foreclosed by the participation of Public Advocates. These conflicting positions are arbitrary and capricious.

39. In addition, Order No. 6 is also arbitrary and capricious because it finds TEP’s representation of low-income customers is not duplicative of Public Counsel, even though TEP’s circumstances are analogous to those of SBUA. Both organizations represent a subset of the groups that Public Counsel represents. (SBUA fully supports TEP’s intervention.)

## II. CONCLUSION

40. For the foregoing reasons, SBUA respectfully request that the Commission modify Order No. 6 and exercise its discretion to grant SBUA’s proposed budget. Doing so will advance the interests small commercial customers and further the Commission’s intervenor program by encouraging other new intervenors to participate.

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<sup>39</sup> Hearing transcript, Feb. 14, 2022, Vol. 1 at 16, ln. 20-23.

<sup>40</sup> Order No. 5 at 9, ¶ 33.

Dated this 6<sup>th</sup> day of June, 2022.

Respectfully submitted,

/s/ Jeff Winmill

Jeff Winmill

Small Business Utility Advocates

548 Market St., Suite 11200

San Francisco, CA 94104

(206) 516-9660

jeff@utilityadvocates.org

*Attorney for SBUA*

**Exhibit A**

**DECLARATION OF BRITTNEY K. MARRA  
IN SUPPORT OF PETITION FOR REVIEW  
Dockets UE-220053 & UG-220054**

I, Brittney K. Marra, declare and state as follows:

1. I am the Executive Director at Small Business Utility Advocates (SBUA). I have personal knowledge of the matters set forth below and, if called as a witness to testify, I would and could testify to the facts as set forth below.

2. One of my roles at SBUA is to assist the nonprofit with outreach, education, and membership development. SBUA engages in two-way communications with its members and other small businesses and seeks to inform and educate these businesses about utility issues and opportunities for small businesses as a community to benefit through engagement in utility regulatory proceedings.

3. In Washington State, SBUA has had ongoing small business outreach campaigns since 2020 in Spokane, Vancouver, Seattle and their surrounding areas, as well as smaller communities including Centralia, Washougal, Stevenson, and the Skamania County area. Much of this work is done remotely, especially considering the Covid-19 pandemic, but in addition, I have personally travelled to and performed outreach and education efforts on behalf of SBUA in Washington on 3 different trips from 2020-2022 (Sept. 11-14, 2020 King County, Seattle/ Bellevue; Nov. 21-24, 2021 Klickitat County, Clark County, Stevenson County; and Jan 27-28, 2022 Lewis County and Clark County).

4. SBUA outreach efforts elsewhere have included publishing newsletters, holding energy forums, and sending out alerts about rate increases. These efforts have included but not been exclusively for small businesses in vulnerable and underserved communities. SBUA anticipates engaging in similar activities in Washington in conjunction with SBUA participating in regulatory cases at the UTC. And SBUA had already begun this prior to

submitting its budget proposal. *See* published information on Avista's General Rate Cases on SBUA's website, available [here](#) and [here](#).

5. In July 2013, SBUA secured its first member from Washington State, located in Lacey. This member is a small business that provides policy and marketing services in the clean energy field.

6. In December 2016, SBUA secured its second member from Washington State, located in Seattle. This member is a small business that provides consulting and research services in the energy field.

7. In 2020, SBUA secured four new members in Seattle and Bellevue areas. These members are small business in the beauty, pet services, food, and clothing repair industries.

8. In January 2021, SBUA secured another member from Washington State, located in Seattle. This member is a small business in the clothing retail industry.

9. From January - April, 2022, SBUA secured nine new members in Spokane and Spokane Valley areas of Washington State. These members are small businesses in the restaurant, brewery, retail, and food services industries.

10. A common concern by small businesses in Washington (and elsewhere) is paying high utility prices. For example, on February 24, 2022, one of Avista's small businesses customers that runs a tea shop in Spokane reached out to me with concerns that small business pay too much relative to residential customers.

11. SBUA submitted a good faith budget proposal on April 25, 2022 in this proceeding. On the advice of counsel, this proposal was meant to provide sufficient detail for the Commission to approve SBUA's budget.

12. Nothing in SBUA's submitted budget proposal is intended to cover organizational overhead or membership development.

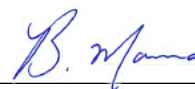
13. SBUA's proposal to hire an outside consultant to perform outreach in disadvantaged communities is for purposes of educating small businesses in those

communities about Avista's General Rate Case and seeking their input and feedback on matters that might be pertinent to their interests as Avista ratepayer and in the instant regulatory proceeding before the UTC.

14. SBUA's membership list is maintained as privileged information not subject to public disclosure, including in other states such as California and Oregon. This confidentiality is protected by the U.S. Supreme Court (*see, e.g., NAACP v. Patterson*, 357 U.S. 449 (1958), upholding confidentiality of nonprofit membership lists) but is also critical for other reasons. Small businesses, unlike large corporations, do not have the resources or staff to deal with unwanted communications. I have direct experience, for example, with a small business restaurant that contacted me in another jurisdiction because a representative from a large utility company (not a Washington utility) entered the restaurant and harassed the owner for supporting our small business advocacy in a regulatory proceeding at another Public Utilities Commission.

15. I have personal knowledge of the facts and representations set forth above and if called upon to testify, could and would do so.

I declare under penalty of perjury the foregoing is true and correct to the best of my personal knowledge. Executed on this 6th day of June 2022 at Portland, Oregon.



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Brittney K. Marra  
Executive Director  
Small Business Utility Advocates