

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 435

In the Matter of)	
)	OREGON CITIZENS' UTILITY
NORTHWEST NATURAL GAS)	BOARD'S REPLY TO NORTHWEST
COMPANY, dba NW Natural,)	NATURAL'S RESPONSE TO
)	PETITION TO INTERVENE
Request for a General Rate Revision.)	
_____)	

I. INTRODUCTION

Pursuant to OAR 860-001-0000(2), OAR 860-001-0300(5), and Administrative Law Judge (ALJ) Spruce's March 2, 2022 Memorandum, the Oregon Citizens' Utility Board (CUB) hereby files this Reply to Northwest Natural's (NW Natural, or the Company) February 28, 2022 Response to the Petition to Intervene filed by Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (Joint Petitioners) on February 16, 2022. Under OAR 860-001-0300(5) and the ALJ's Memorandum, the petitioning party may file a reply to an objection to its motion within seven days of the objection. Although CUB is not the petitioner in this matter, issues raised in NW Natural's Response have the potential to limit the scope of relevant and permissible testimony in a general rate case proceeding, thereby potentially affecting CUB's procedural rights in subsequent proceedings. General rate cases are typically appropriate venues for intervenors to raise a wide range of issues—including those not included in the utility's filing. If granted, the request in NW Natural's Response has the potential to chill the ability of intervenors to raise issues pertinent to prudent utility operations.

Under OAR 860-001-0000(2), the Commission or ALJ may modify or waive any of its Division 1 rules for limited purposes in specific proceedings for good cause shown. CUB requests a waiver or modification of OAR 860-001-0300(5) for leave to file this Reply as a non-petitioning party, for the limited purpose of this pleading and for good cause shown.

NW Natural does not object to the Joint Petitioners' Petition to Intervene but asks the ALJ to limit the scope of the Joint Petitioners' interests in the proceeding, pursuant to OAR 860-001-0300. NW Natural makes this argument based upon assumptions of the Joint Petitioners' future testimony. NW Natural's request is unprecedented and outside the scope of the rule and is, in effect, a pre-emptive motion to strike or limit testimony which is premature and inappropriate under the rules for intervention. The Joint Petitioners have significant interests in NW Natural's general rate case and their appearance and participation will not unreasonably broaden the issues, burden the record, or delay the proceedings. CUB supports their Petition to Intervene without conditions.

II. LEGAL STANDARD

Parties seeking intervention must include information to support their petition to intervene, including their interest in the proceedings and issues they intend to raise.¹ OAR 860-001-0300(5) allows a petitioner to file a reply to an objection to intervention within 7 days of the filing of the objection. OAR 860-001-0000(2) enables the Commission to waive any of its rules for good cause shown.

If an ALJ finds that parties petitioning for intervention have "a sufficient interest in the proceedings and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or delay the proceedings, then the Commission or ALJ must grant the

¹ OAR 860-001-0300(2)(c)(d).

petition.” The Commission or ALJ may impose appropriate conditions upon any intervenor's participation in the proceedings, such as restricted access to confidential information.² A showing of “interest in the proceedings” requires some stake in the outcome.³

III. ARGUMENT

1. NW Natural’s attempt to prematurely limit the scope of relevant testimony in a general rate case proceeding is unprecedented and outside the scope of Commission rules.

NW Natural requests the Commission limit the scope of the Joint Petitioners’ participation based upon arguments the utility assumes the Joint Petitioners will make. This request is outside the scope of OAR 860-001-0300. Further, its request sets a precedent that CUB finds extremely troubling. Based on a single paragraph stating legitimate concerns of the Petitioners, NW Natural wants to constrain their testimony. Prejudging a party’s case and rejecting it before it has been developed is inappropriate.

NW Natural asks the ALJ to limit the scope of the Joint Petitioners’ interests in the proceeding, pursuant to OAR 860-001-0300. Rather than respond to the interests stated by the Joint Petitioners in their Petition, NW Natural makes its argument based upon its assumptions of the Joint Petitioners’ future testimony, “Petitioners *appear* to question whether the Company should be continuing to invest in its natural gas distribution system.”⁴ In fact, the Joint Petitioners stated they are concerned with:

“significant proposed rate increases for gas utility customers proposed by NW Natural in its application for a general rate revision, and NW Natural’s failure to wait for differential rate requirements for low-income ratepayers as set out in HB 2475. Further, Petitioners are concerned with the significant capital expenditures proposed by NW Natural that would continue to build out fossil fuel infrastructure

² OAR 860-001-0300(6).

³ *In the Matter of Fish Mill Lodges Water Sys. Application for an Ord. Authorizing Abandonment of Water Serv...*, OPUC Docket No. UM 1489, Or. No. 11-179 at 2 (May 31, 2011).

⁴ UG 435 - NW Natural’s Response at 1–2 (emphasis added).

during the climate crisis when the State of Oregon is seeking to dramatically reduce its carbon emissions and transition away from reliance on fossil fuels.”⁵

NW Natural jumps the gun and defends itself against the arguments it assumes the Joint Petitioners will make, stating:

“HB 2475 provides statutory authority for differential rates for low-income customers, but does not prohibit utilities from filing rate cases or include any mandate that utility rate case filings must be delayed pending implementation of differential rates.”⁶

This filing sets a precedent that CUB finds extremely troubling and, accordingly, good cause exists for CUB to file a Reply to NW Natural’s Response. NW Natural’s request is akin to a motion to strike testimony and is inappropriate before that testimony has even been developed. Based on a single paragraph stating legitimate concerns of the Joint Petitioners, NW Natural wants to constrain their testimony and arguably the testimony of other parties to the proceeding. Prejudging a party’s case and rejecting it before it has been developed is inappropriate and inconsistent with the Commission’s rules. The Joint Petitioners expressed legitimate concerns in their petition. They did not make specific ratemaking adjustments, or disallowances—nor should they have at this early phase of the proceeding. Rather, the Joint Petitioners’ concerns flag legitimate issues that should be addressed in this proceeding, including scrutinizing the utility’s capital expenditures in light of a changing regulatory climate. Their concerns are valid and directly related to rate increases requested in this proceeding’s test year. The Commission and the parties to this proceeding should wait to see what they propose based on those concerns.

⁵ UG 435 – Petition to Intervene at 5.

⁶ *Supra*, note 4.

2. The Joint Petitioners’ have significant interests in the proceeding and the scope of their participation should not be limited.

The Joint Petitioners’ interests are relevant to a general rate case: 1) concerns over NW Natural’s request for a rate increase when statutory low-income customer protections are not in place and 2) concerns about NW Natural’s proposed investment in fossil fuel infrastructure when existing Oregon law directs energy production away from fossil fuel infrastructure, which could leave Oregon ratepayers on the hook for stranded fossil fuel assets. The Joint Petitioners represent the interests of individuals and community groups that the 2021 Oregon Legislature recognized as experiencing historical disparate energy burdens and lack of access to utility decision-making in HB 2475. Accordingly, the Petitioners have a sufficient interest in NW Natural’s rate increase request and their participation should not be limited.

a. The economic risk associated with the State of Oregon’s changing regulatory environment is within the scope of this general rate case.

Joint Petitioners state they are “concerned with the significant capital expenditures proposed by NW Natural that would continue to build out fossil fuel infrastructure during the climate crisis when the State of Oregon is seeking to dramatically reduce its carbon emissions and transition away from reliance on fossil fuels.”⁷ This is again a well-founded concern. Carbon regulation, including the Climate Protection Program (CPP) of the State of Oregon, creates economic risk to NW Natural’s customers. CUB has raised concerns related to the economic risk of new utility investments due to changing regulations in a variety of settings. Utility capital investments must be prudent in order to be recovered from customers. The Commission evaluates the prudence of a decision based on what the utility knew or should have known at the time of the decision.⁸ When NW Natural made the capital expenditures that it seeks recovery for

⁷ UG 435 – Petition to Intervene at 5.

⁸ *In re PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, OPUC Docket No. UE 374, Order No.

in this case, it knew, or reasonably should have known, that changing carbon regulation in the state would create new risk for its customers. NW Natural is correct that ORS § 757.020 requires it to provide safe and adequate service at just and reasonable rates.⁹ However, it is possible that at least some of the capital investments it seeks recovery for are related to future growth that it perceives will accrue on its system, but may not eventually materialize.¹⁰ Therefore, some of the capital investments may not be related to the provision of safe and reliable service as NW Natural contends.

In order to more fully explore this issue, the Joint Petitioners' petition should be granted in full. If NW Natural has made significant investments that are arguably not necessary to provide utility service, they should be scrutinized accordingly. As Joint Petitioners cite, the risk of stranded assets on NW Natural's system under a changing regulatory climate are real. NW Natural should seek to minimize capital expenditures until the future regulatory paradigm is more reasonably known. Failure to do so has the potential to lead to significant stranded costs and rate increases for NW Natural's customers. NW Natural's low-income customers will feel the brunt of these rate increases.

NW Natural claims that the "question Petitioners apparently seek to raise – whether any investment in natural gas infrastructure should be made at all – is not appropriate and outside the scope of NW Natural's rate case." This is at best a red herring and is undoubtedly premature. The Joint Petitioners have not said that they intend to oppose all gas infrastructure investment and there is nothing in their statement of concern that implies that they will advocate that position.

20-473 at 55 (Dec. 18, 2020)

⁹ UG 435 – NW Natural's Response at 2.

¹⁰ At this phase in the proceeding, CUB has not conducted a prudence review of all of NW Natural's proposed capital investments.

The Commission is well-versed in utility regulation and prudence reviews. There is no reason the Commission cannot evaluate the evidence and make a reasoned decision based on any future arguments made. The Joint Petitioners are concerned about investments that “build out” fossil fuel infrastructure which suggests Joint Petitioners might be considering the difference between investments to meet service requirements of existing customers and investment to grow the system, recognizing that there is significant carbon regulatory risk associated with those new loads under the CPP.

b. Energy affordability is an issue inherent in a utility’s request for a rate increase.

Importantly, the Joint Petitioners have requested the opportunity to participate in the proceeding to raise pertinent issues, not reject the utility’s filing altogether. To CUB, NW Natural’s plan to implement differential rates pursuant to HB 2475—including whether such a plan should have been filed before this general rate case—represents an issue that merits being addressed in this proceeding. NW Natural raises the issue of whether or not HB 2475 prohibits a utility from filing a rate case prior to the implementation of differential rates. The Joint Petitioners’ properly expressed concern that NW Natural failed to consider implementing differential rates before filing this rate case. Given that this is NW Natural’s second double-digit rate request in less than 12 months, this issue is well placed in CUB’s mind. The Joint Petitioners should retain the procedural right in this proceeding to address NW Natural’s plan to comply with HB 2475.

The individuals that Joint Petitioners represent include low-income communities of color, who will be affected by an increase in NW Natural’s natural gas rates in a disparate manner. HB 2475 was passed in the 2021 General Legislative Session in recognition that energy costs disproportionately burden low-income communities. It also recognized that community members turn to grassroots organizations for support because these community members and their

representative organizations have historically struggled to have their voices heard. HB 2475 provided funding to groups like the Joint Petitioners *specifically* to intervene in utility proceedings affecting customer rates for greater equity in decision-making that directly impacts these utility customers.

In her testimony to the Senate Committee on Energy and Environment, Rep. Khanh Pham, one of the sponsors of HB 2475, stated the “need for HB 2475 [is] clear -- low-income payers need relief from high energy bills,” and through HB 2475, Oregon can “address the high utility bills that burden low-income families and make a stronger, more equitable Public Utilities Commission that is informed by the communities who are among the most impacted by the PUC’s decisions.”¹¹ Rather than representing an issue that should not be addressed in this proceeding, as NW Natural posits, HB 2475 demonstrates the need for intervenors like the Joint Petitioners to have the full ability to raise pertinent issues as they see fit. NW Natural’s position is inequitable and runs counter to HB 2475’s purpose.

HB 2475 was passed last May. Last Fall, NW Natural raised residential rates significantly. Now it is now proposing a general rate case that will raise rates by 11.8%. Energy from NW Natural is less affordable for low-income customers than it was when the Legislature granted the Commission authority to address energy affordability. Affordability of rates is a legitimate concern to raise in any rate case.

NW Natural states it plans to develop an interim differential low-income rate offering which it will share it in late March or early April and request be implemented to correspond to the timing of this rate case’s rate effective date. However, whether its proposal will adequately address issues for its low-income customers is completely unknown. NW Natural points out that

¹¹ Khanh Pham, Testimony in Support of HB 2475 (Apr. 22, 2021) *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Testimony/HB2475>.

there is a separate proceeding that is looking at energy affordability rate differential proposals. That is true, but it doesn't mean energy affordability is not an issue inherently in a rate case with a proposed double-digit increase. At a minimum, the Commission should grant the Joint Petitioners Petition to discern their position on the issue.

NW Natural asks the ALJ to clarify that HB 2475 does not prohibit a utility from filing a rate case prior to the implementation of differential rates. The ALJ should not do so, as it would prematurely deprive the Joint Petitioners—and, indeed, all parties—of their procedural rights in this case. No party has argued that HB 2475 prohibits a utility from filing a rate case. NW Natural has prematurely defended this argument based upon its assumption of future testimony. The Joint Petitioners have not asked the Commission to reject this case, they have asked to Commission to allow them to participate in the proceeding.

CUB does not know what adjustments or policy changes the Joint Petitioners plan to raise in their testimony. At this point in the discovery phase of the docket, CUB is unsure about all the issues we intend to raise. However, NW Natural's efforts to limit the Joint Petitioners' participation, based on its assumptions of the Petitioners' arguments before there has been an opportunity to sign protective orders, conduct discovery, and arrive at position, is highly inappropriate and sets a precedent that should worry all who intervene in utility proceedings.

IV. CONCLUSION

As representatives of individuals and community groups that the Oregon Legislature recognized as experiencing historical disparate energy burdens and lack of access to utility decision-making, the Joint Petitioners have a sufficient interest in NW Natural's rate increase request and their participation should not be limited. Rather than focusing on the statement of interests made by the Petitioners, NW Natural exaggerates and presupposes what the Petitioners

might say and asks the Commission to limit it. The Company's request should be denied. Its request is outside the scope of the Commission's rules and has the potential to set a precedent that should worry all who intervene in utility proceedings. For the reasons discussed above, CUB respectfully urges the Commission to grant CUB leave to Reply to NW Natural's Response and grant the Joint Petitioners the right to intervene in this matter without limitations.

Dated this 7th Day of March, 2022.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Michael P. Goetz".

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