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May 22, 2020

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, Oregon 97308-1088

Re: UG 388 – NW Natural Request for a Rate Revision.

Attention Filing Center:

Attached for filing in the above-referenced docket is NW Natural's Objection to Community Action Partnership of Oregon's Petition to Intervene.

Sincerely,

/s/ Alisha Till

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 388

In the Matter of

NW NATURAL GAS COMPANY D/B/A NW
NATURAL

Request for a General Rate Revision.

**NW NATURAL'S OBJECTION TO
COMMUNITY ACTION PARTNERSHIP
OF OREGON'S PETITION TO
INTERVENE**

1 Pursuant to OAR 860-001-0300(5), Northwest Natural Gas Company ("NW Natural")
2 respectfully submits this objection ("Objection") to the petition to intervene ("Petition") of the
3 Community Action Partnership of Oregon ("CAPO") filed on May 13, 2020. Given the late
4 timing of CAPO's Petition and the tight procedural schedule in this docket, CAPO's
5 participation in this case would unreasonably broaden the scope of issues and delay this
6 proceeding. Accordingly, NW Natural recommends that the Commission deny CAPO's
7 Petition. If the Commission is nonetheless inclined to grant CAPO's Petition, the Commission
8 should limit the scope of CAPO's intervention to avoid unduly broadening and burdening this
9 proceeding—and to avoid the delays that would necessarily follow if CAPO were permitted to
10 raise new issues at this late stage. To achieve this end, if CAPO is permitted to intervene,
11 NW Natural recommends that the scope of CAPO's participation in this docket should be
12 limited to addressing the one issue identified in its Petition that has already been raised by
13 the other parties in this case, which is the necessity of raising rates at this time. The balance
14 of the issues raised in CAPO's Petition may be taken up in a separate proceeding, Docket
15 UM 2058.

1 **I. BACKGROUND**

2 **A. Rate Case Schedule.**

3 NW Natural initiated this proceeding on December 17, 2019 when it filed a Motion for
4 Protective Order, and shortly thereafter filed its Application for a General Rate Revision and
5 supporting testimony on December 30, 2019. The Oregon Citizens' Utility Board ("CUB") filed
6 its notice of intervention on December 18, 2019, and the Alliance of Western Energy
7 Consumers ("AWEC") filed their petition to intervene on December 30, 2019. Staff is a party
8 to this case as of right, and is not required to file a petition to intervene.¹ Beginning in early
9 January 2020, NW Natural, Staff, CUB, and AWEC (collectively, the "Parties") coordinated
10 regarding the schedule in this case, and at the Prehearing Conference held on January 30,
11 2020, agreed to the schedule that is memorialized in Administrative Law Judge ("ALJ")
12 Kirkpatrick's February 11, 2020 Errata Prehearing Conference Memorandum. For
13 convenience, a portion of that schedule relevant to the discussion in this Objection is set forth
14 below:

EVENT	DATE
Deadline to file Petitions to Intervene	February 27, 2020
Staff Workshop	March 3, 2020
Settlement Conference	April 6, 2020
Staff and Intervenors file Opening Testimony	April 17, 2020
Settlement Conference	April 29, 2020
Settlement Conference	May 6, 2020
NW Natural files Reply Testimony	May 29, 2020
Staff and Intervenors file Rebuttal Testimony	June 19, 2021
NW Natural files Surrebuttal Testimony	July 2, 2020

¹ OAR 860-001-0300(3).

All Parties file Prehearing Brief and Cross-Examination Statement	July 6, 2020
Hearing	July 9, 2020
Target Date for Final Order	September 30, 2020

1 Judge Kirkpatrick further noted the schedule “includes a requested date for petitions to
2 intervene, but by statute, a person may petition to intervene at any time before the close of
3 the record.”²

4 Consistent with the schedule outlined above, the Parties have been fully engaged in
5 this proceeding, and have conducted discovery, held workshops and settlement conferences,
6 and filed a Partial Stipulation and Supporting Testimony addressing one of the key issues in
7 this case, the Company’s cost of capital.³ Staff and Intervenors filed their Opening Testimony
8 over a month ago, and NW Natural will file its Reply Testimony on May 29, 2020.

9 **B. CAPO’s Petition and Related Activities at the Commission.**

10 On May 13, 2020, CAPO filed its Petition seeking to intervene in this proceeding—
11 over two and half months after the requested date for interventions in this case. In its Petition,
12 CAPO did not acknowledge the late timing for its request or provide any explanation of why it
13 could not intervene in the case sooner. CAPO states that the issues it intends to raise include:

- 14 (1) Administration of the low-income assistance and weatherization programs;
- 15 (2) An increase in funding for low-income programs in parity with electric programs;
- 16 (3) Updated low-income requirements; and
- 17 (4) What is the necessity of raising rates during the beginning of a recession.⁴

18 Prior to filing its Petition, however, CAPO had been engaged in both formal and

² Errata Prehearing Conference Memorandum at 2 (Feb. 11, 2020) (citing ORS 756.525).

³ See Partial Stipulation, filed on March 12, 2020, and supporting testimony filed on May 13, 2020.

⁴ CAPO’s Petition at 3 (May 13, 2020).

1 informal discussions related to these issues with NW Natural and Commission Staff.
2 Specifically, on February 12, 2020, CAPO filed a letter with the Commission requesting “an
3 investigation be opened of gas energy assistance programs with the proposed goal of
4 changing current customer eligibility practices,” and again at the February 13, 2020 Public
5 Meeting, CAPO provided oral comments addressing low-income program eligibility
6 requirements and other issues impacting low-income communities. In response, the
7 Commission has docketed a proceeding, UM 2058, to investigate eligibility requirements, and
8 Staff has commenced discovery in that proceeding.

9 Additionally, in March 2020, CAPO reached out to Commission Staff to request that
10 Staff explore relaxing the eligibility requirements for the low-income programs in response to
11 the COVID-19 pandemic. On March 26, 2020, the Office of Housing and Community Services
12 (“OHCS”) filed a temporary administrative order implementing revised protocols for
13 documenting eligibility for the Oregon Energy Assistance Program (“OEAP”) in response to
14 the COVID-19 pandemic. These revised measures ensure that verification of eligibility can
15 be performed safely via remote intake appointments, and to the extent that a customer does
16 not have access to resources allowing for remote intake, that an application may be taken
17 verbally as a hardship case and then verified after social distancing restrictions have been
18 relaxed. NW Natural immediately notified the Oregon Low-Income Gas Assistance (“OLGA”)
19 Advisory Council (of which CAPO is a member) and agency staffs that the same temporary
20 protocols implemented by OHCS would also apply to NW Natural’s OLGA program.

21 Finally, there are additional forums for discussion of COVID-19 related issues planned
22 in the near term. The Commission scheduled a special workshop to consider the impacts of
23 COVID-19 on utilities and their customers, which will be held on June 9, 2020. NW Natural
24 understands that CAPO intends to participate in that workshop.

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II. LEGAL STANDARD

The procedural schedule for a major case, such as this one, typically includes a requested deadline for filing a petition to intervene. By statute, however, a person may file a petition to intervene any time before the close of the evidentiary record.⁵ The requested deadline is included “because it is helpful if parties are identified early in the proceedings.”⁶ In accordance with ORS 756.525(2) and OAR 860-001-0300(6), the Commission may grant a petition filed before the close of the evidentiary record provided that doing so will not unreasonably broaden the issues, burden the record, or delay the proceedings. Additionally, the Commission may grant a petition to intervene subject to conditions to ensure that the party’s participation will not unreasonably broaden the issues or burden the record, and otherwise may deny the petition.⁷ The Commission has also considered whether the petitioning party has established good cause to support a late intervention, and has denied a petition where the intervention would broaden the issues and burden the proceeding, and where the petitioner does not provide any reason justifying a late intervention.⁸

III. ARGUMENT

As discussed in greater detail below, the procedural schedule in this case does not allow for new issues to be raised at this time, and the issues CAPO proposes to raise about the low-income eligibility requirements and administration of the low-income programs would be better addressed in UM 2058, which is an open proceeding at the Commission that is looking into those exact issues. With respect to that proceeding, NW Natural looks forward to expeditiously working with our stakeholders for our low-income programs to find

⁵ ORS 756.525(2).
⁶ *In the Matter of Nw. Natural Gas Co., dba NW Natural, Request for a Gen. Rate Revision*, Docket UG 344, Prehearing Conference Memorandum at 2 (Feb. 2, 2018).
⁷ ORS 756.525(2).
⁸ *In the Matter of the Revised Tariff Schedules in Or. filed by PacifiCorp, dba Pac. Power and Light Co.*, Docket UE 111, Order No. 00-427 at 3 (Aug. 7, 2000).

1 improvements and efficiencies that benefit our customers and stakeholders. NW Natural will
2 be reaching out to interested parties in UM 2058 to pursue these goals.

3 With respect to this proceeding, NW Natural recommends that the Commission deny
4 CAPO's Petition given the late timing of CAPO's Petition in this proceeding. To the extent the
5 Commission decides to grant CAPO's Petition, NW Natural requests that its participation
6 should be limited in scope, and that CAPO's participation should not result in any modifications
7 to the existing procedural schedule.

8 **A. It is Too Late for New Issues to be Raised in this Proceeding.**

9 As described above, the Company initiated this case in December 2019, and is now
10 only one week away from filing its Reply Testimony. At this stage in the proceeding, the issues
11 in dispute among the Parties have been identified, and are being narrowed, and the Parties
12 are quickly moving toward a hearing date of July 9, 2020. The introduction of new issues at
13 this late time will unreasonably broaden the issues and delay the proceedings.

14 The Commission has previously stressed the importance of the procedural schedule
15 in developing parties' arguments and the evidentiary record, noting that a schedule providing
16 five rounds of testimony allows for parties to increasingly focus and narrow their arguments.⁹
17 To that end, the Commission stated that it expected to see five rounds of testimony in future
18 general rate case proceedings, which would allow for evidence and arguments to become
19 more sharply focused in each round.¹⁰ Consistent with that direction, the Parties to this case
20 negotiated a schedule with five rounds of testimony, with decreasing intervals of time between
21 each round based on the understanding that the scope of issues will also be narrowing with
22 each additional round of testimony.

⁹ *In the Matters of Avista Corp., dba Avista Utils., Request for a Gen. Rate Revision and Application for Authorization to Defer Expenses or Revenues Related to the Natural Nat. Gas Decoupling Mechanism*, Dockets UG 288 and UM 1753, Order No. 16-109 at 22 (Mar.15, 2016).

¹⁰ *Id.*

1 The Commission has also commented that “[d]ue process [] requires that all issues to
2 be examined in a proceeding during a suspension period, be raised as early as possible, so
3 that all parties may have a reasonable opportunity to respond via the submission of testimony,
4 the cross-examination of witnesses of opposing parties in a public forum and the presentation
5 of legal argument.”¹¹ While the Commission in that case was responding to an issue that the
6 Industrial Customers of Northwest Utilities had raised for the first time very late in the case,
7 less than one month prior to rate effective date, the principle applies equally in this case.
8 Given the late stage of this proceeding, there is simply not time for CAPO to introduce any
9 new issues—which would also likely require discovery by CAPO and NW Natural and
10 potentially the other parties—without significantly delaying this proceeding to allow for
11 additional rounds of testimony. Indeed, the Commission has previously rejected a petition to
12 intervene that was filed late in the proceeding and close in time to the hearing, noting that the
13 proposed intervention in that case would “undoubtedly raise issues that should have been
14 addressed in discovery, direct testimony, and settlement conferences,” and the “time for those
15 activities has passed.”¹² The circumstances in this case are quite similar, as the time for
16 raising new issues in this case has clearly passed.

17 **B. No Modifications to the Procedural Schedule Should be Made to**
18 **Accommodate CAPO’s Late Petition.**

19 The Commission is limited by ORS 757.215(1) as to the amount of time it can suspend
20 and investigate proposed rates and tariffs filed by the utilities that it regulates,¹³ and must
21 complete its review within ten months.¹⁴ The Parties negotiated a procedural schedule that

¹¹ *In the Matter of Portland Gen. Elec. Co. Request for a Rate Increase in the Co.’s Or. Annual Revenues of \$13,000,000 for Biglow Canyon*, Docket UE 188, Order No. 07-573 (Dec. 21, 2007) (addressing issue raised by the Industrial Customers of Northwest Utilities for the first time very late in case, less than one month prior to rate effective date).

¹² Order No. 00-427 at 2.

¹³ Order 07-573 at 6.

¹⁴ ORS 757.215.

1 would fit within the suspension period and provide adequate time for five rounds of testimony,
2 a hearing, and briefing, and also allow adequate time for the Commission's consideration of
3 the case. While CAPO has not requested any changes to the procedural schedule, the new
4 issues that CAPO proposes to address would necessarily require modifications to the
5 procedural schedule to allow for discovery on those issues and potentially additional rounds
6 of testimony. As noted above, the Parties agreed to the now looming July 9, 2020 hearing
7 date months ago in January 2020. Following the hearing and post-hearing briefing, the
8 Commission will have only six weeks to consider the case before the target date for the order.
9 There is no room within this procedural schedule to accommodate the introduction of new
10 issues—and necessarily, additional time for discovery and new rounds of testimony—this late
11 in the case.

12 Moreover, it would be especially inappropriate to consider altering the procedural
13 schedule to accommodate the introduction of new issues where, as here, the intervenor
14 provides no justification for its late petition. In fact, in rejecting a petition to intervene that
15 proposed to introduce new issues late in the proceeding, the Commission concluded that the
16 intervention would “unreasonably broaden the issues and burden the proceeding,” and also
17 found that the petitioner had not provided any justification for its late intervention.¹⁵ Here,
18 CAPO did not provide any explanation for its late-filed petition. The Parties to this case should
19 not be penalized for CAPO's late intervention.

20 **C. CAPO's Petition Should be Denied.**

21 In its Petition at Paragraph 5, CAPO proposes to address four different topics in this
22 proceeding. If the Commission permits CAPO to address all four issues at this late stage of
23 the case, the scope of this proceeding would be expanded and there could be significant delay
24 associated with performing discovery and including additional rounds of testimony dedicated

¹⁵ Order No. 00-427 at 2-3.

1 to those topics. Moreover, CAPO provided no reason justifying the late timing of its Petition,
2 nor any explanation as to why CAPO could not have timely filed their Petition by the requested
3 deadline. To avoid unreasonably broadening the scope of this proceeding this close to the
4 hearing date, at a time when the issues are instead being narrowed, NW Natural recommends
5 that the Commission should deny CAPO's Petition.

6 **D. If CAPO's Petition is Granted, the Commission Should Narrow the Scope**
7 **of its Participation in this Proceeding.**

8 To the extent that the Commission is inclined to grant CAPO's Petition, however, NW
9 Natural urges that CAPO's participation should be narrow in scope and that the procedural
10 schedule should not be adjusted this late in the proceeding. Specifically, NW Natural
11 proposes that CAPO's participation should be limited to the one issue included in CAPO's
12 Petition that has already been raised in this case related to the timing of the rate increase
13 when the economy is facing a downturn. Accordingly, NW Natural urges that to the extent the
14 Commission is inclined to grant CAPO's Petition, the Commission should limit its participation
15 to this single issue.

16 **E. UM 2058 is the Appropriate Forum for Eligibility Concerns**

17 To the extent that CAPO desires to address the remaining issues raised in its Petition,
18 such as the eligibility requirements for low-income programs, the appropriate forum for those
19 issues is the on-going generic investigation, Docket UM 2058. It bears noting that all of the
20 gas utilities currently use the same eligibility requirements for their low-income programs, so
21 it would be appropriate for any potential changes to these requirements to be considered in
22 one forum for all gas utilities. Additionally, the Company expects that CAPO will have an
23 opportunity to voice any concerns related to the low-income programs in the context of the
24 COVID-19 pandemic at the Commission's workshop on this topic on June 9, 2020.

1 **IV. OTHER MATTERS**

2 Since 2002, NW Natural’s OLGA program has provided \$33 million in energy
3 assistance to over 104,000 customers and the Oregon Low Income Energy Efficiency
4 (“OLIEE”) program has provided reimbursement for weatherization measures to over 5,100
5 customers. The OLGA Advisory Council and OLIEE Advisory Committee, made up of
6 members from the Company, CAPO, Commission Staff, OHCS and others, meet regularly to
7 ensure that processes remain streamlined and any other concerns are managed to achieve
8 the common goal of providing assistance to qualifying customers.

9 CAPO’s Petition includes several unsupported statements disparaging NW Natural,
10 the Company’s engagement with low-income communities and communities of color, and the
11 Company’s response to these communities during the COVID-19 pandemic. CAPO’s
12 statements have no basis in fact. NW Natural has a strong track record of prioritizing the
13 needs of low-income customers and communities of color, and the Company has been
14 actively working with our stakeholders to remove barriers to our low-income programs that
15 have been caused by social-distancing measures during the COVID-19 pandemic. The
16 Company will look forward to continued engagement on these issues with CAPO in UM 2058.

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V. CONCLUSION

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For the foregoing reasons, NW Natural respectfully requests that the Commission
3 deny CAPO's Petition

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DATED this 22nd day of May 2020.

McDOWELL RACKNER GIBSON PC



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