

BEFORE THE PUBLIC UTILITY COMMISSION

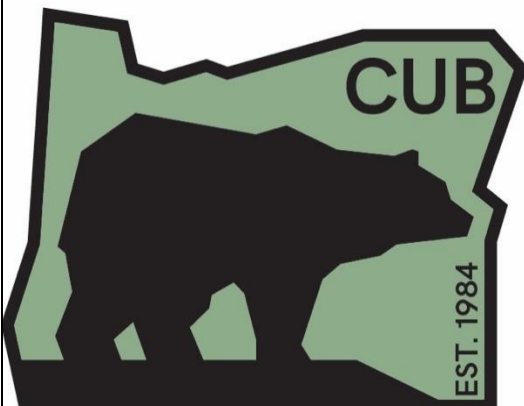
OF OREGON

UG 435

In the Matter of)
)
NORTHWEST NATRAL GAS)
COMPANY, dba NW NATURAL,)
)
Request for a General Rate Revision.)
_____)

OREGON CITIZENS' UTILITY BOARD'S
REDACTED APPLICATION FOR
CLARIFICATION AND RECONSIDERATION

December 23, 2022



**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

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In the Matter of)	
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NORTHWEST NATURAL GAS)	OREGON CITIZENS' UTILITY
COMPANY, dba NW NATURAL,)	BOARD'S REDACTED
)	APPLICATION FOR
Request for a General Rate Revision.)	CLARIFICATION AND
_____)	RECONSIDERATION

I. INTRODUCTION

Pursuant to Oregon Administrative Rule (OAR) 860-001-0720 and Oregon Revised Statute (ORS) 756.561(1), the Oregon Citizens' Utility Board (CUB) submits this Application for Clarification and/or Reconsideration, asking the Public Utility Commission of Oregon (Commission) to clarify and potentially reconsider a portion of Order No. 22-388 (Order) issued on October 24, 2022. Under OAR 860-001-0720(4), any party may file a response to this application within 15 days. However, CUB recognizes this timeline may be difficult given the proximity to the holiday season. Therefore, CUB contacted counsel for the subset of parties that addressed the issue in this application in the above-captioned proceeding—Commission Staff (Staff), the Alliance of Western Energy Consumers (AWEC), and the Northwest Natural Gas Company (NWN or the Company). CUB, Staff, AWEC, and NWN have collaboratively agreed to request waiver of the response timeline set in OAR 860-001-0720(4) and believe a January 19,

2023 response deadline is reasonable. Further, should the Administrative Law Judge request a reply to any response under OAR 860-001-0720(4), CUB will oblige.

In CUB’s review of NWN’s October 26, 2022 compliance filing, an issue arose related to an ambiguous term in the Order whose interpretation has a material impact on the proceeding’s outcome. In reference to NWN’s Lexington renewable natural gas (RNG) project’s rate spread, the Order found “that costs incurred for the Lexington project prior to 2022 should be allocated to retail customers consistent with our interpretation of SB 98, and not allocated to transportation and special contract customers.”¹ CUB believes NWN’s interpretation of this language—which would allocate the vast majority of the Lexington project’s capital costs to sales customers only for the life of the project—may depart from the Order’s intent.

In its compliance filing, NWN interprets this language in a manner that allocates capital costs based on a snapshot in time when its investors outlaid capital to finance the Lexington project. Under the Company’s interpretation, **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** of Lexington’s capital costs have been solely allocated to sales customers.² Therefore, the Company allocated **[BEGIN CONFIDENTIAL]** [REDACTED] **END CONFIDENTIAL]** of Lexington’s depreciation expense, property taxes, income taxes, return on and return of capital solely to sales customers.

However, under the matching principle, cost causation, and equitable ratemaking theory, costs should not be allocated when they are incurred by investors. Rather, costs should be allocated to customer classes based on when the customer receives the benefit from the

¹ *In re Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision*, OPUC Docket No. UG 435, Order No. 22-388 at 79 (Oct. 24, 2022) (emphasis added).
² UG 435 – CUB’s Application for Clarification and Reconsideration Attachment A. This confidential attachment is a worksheet filed by the Company with its October 26, 2022, compliance filing that details the Lexington project’s rate spread.

investment. The Order affirmed this theoretical principle, stating that “generally costs are allocated to the customer class that incurs them or otherwise benefits from those costs.”³ Under NWN’s proposal, transport customers will receive decarbonization benefits for years without being allocated many of Lexington’s capital costs.

According to the Order, all post-2022 Lexington costs “shall be allocated to all non-storage customers” due in part to the fact “that the use and benefits of a resource change over time, warranting changes in cost allocation.”⁴ Under the Company’s interpretation, the Lexington project’s capital costs will be disproportionately borne by sales customers for the useful life of Lexington project. This interpretation is at odds with equitable ratemaking principles. The Lexington project will provide decarbonization benefits to all of NWN’s customers post-2022 when the Climate Protection Program (“CPP”) was enacted.⁵ Under the established principle of cost causation and the matching principle, the Lexington project’s costs should be allocated in a manner consistent with how its benefits flow.

Since Lexington’s costs will depreciate and be collected over its useful life, CUB respectfully requests that the Commission clarify that the Order’s was not to allocate almost all of Lexington’s capital costs to sales customers only. Rather, the Commission should be clear that associated capital expenses collected post-2022 be allocated to all non-storage customers because the asset’s use case changed since its inception with the advent of the CPP.⁶ In CUB’s

³ OPUC Order No. 22-388 at 29.

⁴ OPUC Order No. 22-388 at 79.

⁵ See OPUC Order No. 22-388 at 81 (“Under the requirements of the CPP, any emissions reduction measure the utility takes, which may include RNG procurement, will necessarily be in service of CPP requirements.”).

⁶ OPUC Order No. 22-388 at 79.

view, such a rate spread would not only comport with sound and equitable ratemaking policy, it would align with the spirit of the Commission's decision.

However, if the Order's intent aligns with the rate spread allocation in NWN's compliance filing,⁷ CUB respectfully requests that the Commission reconsider its decision. Good cause for further examination of this issue exists under OAR 860-001-0720(3)(d) because, unless rectified, Lexington's current proposed rate spread would proceed largely unchanged for the asset's entire useful life. This would result in many years of transport customers underpaying while Lexington provides these customers decarbonization benefits through system-wide CPP compliance. Sales customers would be inappropriately charged a disproportionate share of the Lexington project's costs despite the project helping all of NWN's customers comply with CPP.⁸ Not only would such a rate spread be inequitable by failing to match customer costs and benefits,⁹ additional justification exists because this result would arguably fail to meet the Commission's mandate to establish just and reasonable rates.¹⁰

II. STANDARD OF REVIEW

CUB's application meets the legal standard for the Commission to consider an application for clarification and reconsideration. Under the legal standards articulated in OAR 860-001-0720(2), an application for reconsideration must specify:

- (a) The portion of the challenged order that the applicant contends is erroneous or incomplete;
- (b) The portion of the record, laws, rules, or policy relied upon to support the application;
- (c) The change in the order that the Commission is requested to make;
- (d)

⁷ See UG 435 – CUB's Application for Clarification and Reconsideration Attachment A.

⁸ See, e.g., *supra*, note 5.

⁹ *Supra*, note 3.

¹⁰ ORS 756.040(1) (“[T]he commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. The commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates.”). CUB believes an inequitable rate spread as proposed in NWN's compliance filing may not meet the just and reasonable standard by failing to balance customer interests.

How the applicant’s requested change in the order will alter the outcome; and (e) One or more of the grounds for rehearing or reconsideration in section (3) of this rule.

Section three of this rule explains that the Commission “may grant an application for ... reconsideration if the applicant shows that there is ... [g]ood cause for further examination of an issue essential to the decision.”¹¹

Motions for clarification are distinct from applications for reconsideration or rehearing. While there is no Commission rule for motions for clarification, the Commission has recognized and ruled on many such motions. The Commission requires a party seeking clarification to “cite to provisions in an order that are fatally vague or ambiguous and propose changes that correct those deficiencies.”¹² In addition, the Commission “may not authorize a rate or schedule of rates that is not fair, just and reasonable.”¹³

III. ARGUMENT

CUB requests clarification to discern to the Commission’s intent in establishing rate spread for the Company’s Lexington RNG project. Depending on the result of the clarification, CUB respectfully requests that the Commission reconsider a ruling that the majority of the Lexington project’s capital costs be allocated solely to sales customers for the asset’s useful life. Good cause exists for further examination of this issue because the cost allocation as interpreted by NWN would inequitably impose costs on sales customers when a wider subset of customers benefit from the project for the majority of its existence. Further, such a cost allocation would

¹¹ OAR 860-001-0720(3)(d).

¹² *In re PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, OPUC Docket No. UE 374, Order No. 21-090 at 2 (Mar. 29, 2021) (internal citations omitted).

¹³ ORS 757.210(1)(a).

arguably fail to meet the Commission’s mandate to establish just and reasonable rates. This cost allocation issue is essential to the decision surrounding the Lexington project’s cost allocation.¹⁴

A. The Commission should clarify that the Lexington project’s costs must be spread in a manner corresponding with customer benefit.

In the Order, the Commission found that “costs incurred for the Lexington project prior to 2022 should be allocated to retail customers consistent with our interpretation of SB 98, and not allocated to transportation and special contract customers.”¹⁵ This portion of the Order is ambiguous because it does not clarify whether costs incurred in a snapshot of time be allocated in a consistent manner for the lifespan of the asset, despite the evolution of the asset’s use case.

In its compliance filing, it is apparent that NWN interprets “incurred” as the period in which its investors outlaid capital to finance the Lexington project prior to the project’s in-service date.¹⁶ CUB interprets the Order in a different manner—that costs should be allocated in a manner corresponding to customer benefit. Therefore, the Order is ambiguous and may be susceptible to more than one reasonable interpretation. CUB requests that the Commission clarify its intent regarding this specific portion of the Order.

Should the Commission’s clarification align with NWN’s interpretation—which would allocate [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of Lexington project costs to sales customers—CUB respectfully requests reconsideration. If, after clarification, the Commission’s intent aligns with CUB’s interpretation that Lexington’s costs be spread in a manner corresponding with customer benefit, CUB does not request reconsideration. The Commission can and should clarify that post-January 2022 costs may be spread to all of NWN’s

¹⁴ OAR 860-001-0720(3)(d).

¹⁵ OPUC Order No. 22-388 at 79.

¹⁶ UG 435 – CUB’s Application for Clarification and Reconsideration Attachment A.

non-storage customers. According to the Order, these costs “shall be allocated to all non-storage customers on an equal cents per therm basis.”¹⁷

CUB recognizes the immense amount of work the Company undertook to ensure its required compliance filing was put before the Commission a mere two days after the Order. Errors occur in ratemaking and it is not necessary to immediately rectify this issue. Should the Commission’s clarification align with CUB’s understanding, CUB is comfortable with NWN addressing this issue in its 2023 RNG automatic adjustment clause filing and future deferral amortization filing rather than immediately requiring the Company to re-issue its compliance filing.

B. Should the Commission’s clarification align with NWN’s interpretation, CUB respectfully requests reconsideration.

Should the Commission’s clarification align with NWN’s interpretation, good cause exists for the Commission to reconsider the Order. Absent reconsideration, the Order would inequitably allocate the lion’s share of Lexington project costs to sales customers in contravention of the Commission’s just and reasonable mandate. In the Order, the Commission stated:

[w]e find that SB 98 is the proper framework under which to allocate costs incurred before 2022 for the Lexington project . . . because the law states that procurement under SB 98 is ‘for distribution to *retail* natural gas customers’ (emphasis added), we are not persuaded that costs should be allocated to customers that do not procure natural gas from NW Natural. Therefore, we accept AWEC's position on cost allocation with respect to Lexington project costs incurred before 2022.¹⁸

The Commission’s language here is telling. The decision appears to hinge, in part, on the fact that transport customers “do not procure natural gas” from the Company. However, while this is

¹⁷ *Id.*

¹⁸ OPUC Order No. 22-388 at 85 (emphasis in original).

true pre-2022 before the advent of the CPP, it is not the case for the bulk of Lexington capital expenses that will be collected after 2022. All of NWN’s distribution system customers—including transport customers—are now required to reduce emissions associated with their energy usage to meet the CPP’s mandates. After 2022, transport customers will benefit from RNG procured by the Company on their behalf.

The cost recovery provisions of SB 98 do not apply to CPP cost recovery.¹⁹ Lexington entered service during the 2022-calendar year—the CPP’s first compliance year. For the expected [BEGIN CONFIDENTIAL ██████████ END CONFIDENTIAL] years of Lexington production, the project is expected to help all of NW Natural’s sales *and* transport customers comply with Oregon’s carbon reduction policy and mandates.²⁰ Under rate regulation, capital investments are not paid off by customers in the same year that the Company makes the capital investment. Instead, customers make payments through rates to cover the costs associated with the capital investments and buy down the utility investors’ capital investments as ratepayer assets over the life of the asset. Rates are created from the annualized cost of service associated with providing a service to customers. The allocation of rates for Lexington between customer classes should be based on the benefit in the test year (CPP Compliance) rather than on the single year the investment was made.

In the Order, the Commission stated, “[w]e agree with CUB that just because a project was initiated for a specific purpose does not mean that the project may only be used for the purpose in the future.”²¹ If the Commission intended to allocate Lexington based on the period

¹⁹ OPUC Order No. 22-388 at 81 (“[T]he cost recovery provisions of SB 98 do not apply to the CPP . . .”).

²⁰ UG 435 – NW Natural/1106/Chittum/2.

²¹ OPUC Order No. 22-388 at 85.

in which NW Natural made the capital investment, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of Lexington’s capital costs would be allocated only to sales customers over the expected [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] year life of Lexington project. This result is contrary to equitable ratemaking principles and fails to align with the Order’s recognition that an asset’s use case changes over its life.

This allocation does not recognize the benefits that the Lexington project has for CPP compliance. Rather than allocating Lexington’s capital costs based on the year it was funded by the Company, the Commission should consider that Lexington is a resource that being used to comply with Oregon’s carbon regulation for several years, and that capital investments are recovered over an asset’s life. Therefore, CUB recommends that the Commission alter its order to explicitly allocate post-2022 revenue requirement associated with Lexington on an equal cents per therm basis to all distribution customers. This change will alter Lexington’s rate spread outcome in a manner that aligns with equitable ratemaking principles and corresponding customer benefit.

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IV. CONCLUSION

For the foregoing reasons, CUB respectfully requests that the Commission clarify its intent in ruling on the Lexington project's rate spread. If the Commission's clarification aligns with the interpretation in NWN's compliance filing, CUB respectfully requests reconsideration because good cause for further examination of the issue has been demonstrated in this application. Should the Commission find CUB's arguments addressed herein compelling, CUB is comfortable with NWN rectifying Lexington's rate spread in its next RNG automatic adjustment clause filing.

Dated this 23rd day of December 2022.

Respectfully submitted,



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CUB's Attachment A is Confidential and has been served upon the Commission and each party designated to receive confidential information pursuant to Order 21-461.

UG 435– CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of December, 2022, I served the **Confidential Application for Clarification and Reconsideration** in docket UG 435 upon the Commission and each party designated to receive confidential information pursuant to Order 21-461 through a secure, encrypted attachment to an e-mail.

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Dated this 23rd day of December, 2022.



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