

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UG 435**

In the Matter of	)	
	)	
NORTHWEST NATURAL GAS	)	<b>ALLIANCE OF WESTERN ENERGY</b>
CORPORATION, dba NW NATURAL,	)	<b>CONSUMERS' CLOSING BRIEF</b>
	)	
Request for a General Rate Revision.	)	
	)	
_____	)	

**I. INTRODUCTION**

Pursuant to the revised procedural schedule adopted by the Public Utility Commission of Oregon (“Commission”), Alliance of Western Energy Consumers (“AWEC”) submits this Closing Brief. As described more fully below, the majority of the issues in these consolidated dockets have been resolved in the Multi Party Stipulation, the Second Multi Party Stipulation and the Third Multi-Party Stipulation. AWEC has joined each of the stipulations and requests that the Commission approve the stipulations over the objections of the non-settling parties. AWEC provides its arguments on the remaining issues—prudence of the Lexington renewable natural gas project (“Lexington RNG Project”), rate spread of the Lexington RNG Project, NW Natural’s proposed automatic adjustment clause (“AAC”), and NW Natural’s Line Extension Allowance below.

**II. ARGUMENT**

**A. The Commission Should Approve the Settlement Stipulations.**

**1. Multi Party Stipulation.**

AWEC continues to urge that the Commission approve the May 31, 2022 Multi-Party Stipulation which reduced NW Natural’s requested rate increase from \$78.020 million to

\$62.654 million, and spread the costs consistent with the rate spread attached as Exhibit B to the Multi-Party Stipulation. The agreed upon rate spread was consistent with the results of NW Natural's long run incremental cost study ("LRIC") and AWEC's analysis, which demonstrated that many large volume rate schedules are paying rates that are nearly double their cost of service.<sup>1</sup> While the rate increase and rate spread will not necessarily move large volume customers closer to parity, the rate spread adopted in the stipulation will not move those customers further from parity as proposed in NW Natural's Initial Filing. AWEC requests that the Commission approve the May 31, 2022 Multi-Party Stipulation.

## **2. Second Multi-Party Stipulation.**

AWEC also continues to request that the Commission approve the June 29, 2022, Second Multi-Party Stipulation and reject the Small Business Utility Advocates ("SBUA") proposal to allocate the COVID-19 deferral costs included in that stipulation based on its alternative rate spread proposal. The parties entering into the Second Multi-Party Stipulation agreed that NW Natural will be allowed to amortize its 2020 and 2021 COVID-19 deferral balances, inclusive of interest accrued on those balances but subject to a negative adjustment of \$163 thousand.<sup>2</sup> The parties to the Second Multi-Party Stipulation also adopted a rate spread for the COVID-19 deferral that is consistent with the overall rate spread agreed to by parties in Appendix B to the Multi-Party Stipulation referenced above.<sup>3</sup> By doing so, the rate spread for the COVID-19 deferral recognizes the overall results of the LRIC study, which shows that large customer classes are paying rates that are significantly above their cost of service. By using the overall rate spread in Appendix B to the Multi-Party Stipulation, large customers still shared in

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<sup>1</sup> AWEC/100, Mullins/49, lines 1-13.

<sup>2</sup> UG 435 and UG 411, Second Partial Stipulation, p. 7 lines 3-5.

<sup>3</sup> *Id.* p. 7 lines 10-11.

contributing to the COVID-19 deferred costs in proportion to the overall revenue allocation agreed in the case. This rate spread resolution was agreed upon because it followed cost causation while recognizing the results of the LRIC study showing that some customers rates are above cost of service and some are below cost of service. The resolution also looked at the COVID-19 deferral costs in the context of NW Natural's overall rate increase, rather than a stand-alone issue which was important to AWEC. AWEC will not repeat its specific responses to SBUA's objection to the Second Multi-Party Stipulation which can be found in AWEC's Opening Brief.

### **3. Third Multi-Party Stipulation.**

Since the parties filed their Opening Briefs, the parties engaged in further settlement negotiations on August 16, 2022 and August 17, 2022 and entered into a Third Multi-Party Stipulation resolving issues related to the Lexington RNG project, with the exception of rate spread. The Third Stipulation provided:

- a. NW Natural will be authorized to amortize over a three (3) year period the deferral portion of the Lexington RNG Project surcharge, beginning on November 1, 2023.
- b. During calendar year 2022, the deferral will accrue interest at the Company's authorized rate of return. The deferral will be subject to an earnings test at the Company's then effective authorized return on equity using the 2022 Results of Operations Report.
- c. Starting on January 1, 2023, the deferral will accrue interest at the modified blended treasury rate plus 100 basis points. There will be no earnings test for the interest accrual portion.
- d. AWEC agrees to withdrawal of its proposed tax adjustment and its proposed adjustment based on the ownership interest of BioCross LLC for the life of the Lexington RNG project. This Third Stipulation does not modify the tax condition contained in the Stipulation in Docket UI 451, NW Natural's affiliated interest docket for the Lexington RNG Project.

AWEC supports the Third Stipulation that resolved all issues regarding the Lexington RNG Project with the exception of rate spread. While AWEC originally opposed a deferral for the Lexington RNG Project in testimony, or in the alternative suggested a 15-year amortization for any deferral, and raised an adjustment based on the ownership interest of BioCross LLC and a separate tax adjustment, AWEC joined the Third Stipulation because it was a fair resolution of the issues. Specifically, AWEC determined that the amortization of the deferral portion of the Lexington RNG Project surcharge over 3 years, starting on November 1, 2023, will help mitigate the project's impact on customer rates. Further, the tax condition in NW Natural's affiliated interest filing in UI-451 remains unchanged which further protects ratepayers. Finally, the parties recognized that Lexington RNG Project is unique since it is NW Natural's first RNG project under SB 98, started before the CPP was adopted, and that the Third Multi-Party Stipulation should not be used as precedent for how other RNG projects should be treated. Finally, the parties all preserved their arguments regarding the AAC. AWEC Requests that the Commission approve the Third Multi-Party Stipulation.

**B. Lexington RNG Project.**

**1. Prudency of Lexington RNG Project.**

AWEC generally supports NW Natural investing in cost effective measures to reduce carbon emissions, including the competitive procurement of renewable natural gas. Accordingly, AWEC recommends that the Commission find that the Lexington RNG Project was a prudent investment. The Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (collectively "Coalition"), on the other hand, challenge the prudency of the Lexington RNG Project in Nebraska, arguing that it fails to comply with the requirements of SB 98 or the

implementing regulations.<sup>4</sup> According to the Coalition, the plain language of ORS § 757.390 – 757.396 encourages gas utilities to decarbonize their product by delivering an increasing percentage of RNG to their Oregon customers.<sup>5</sup> The Coalition argues that the company is not delivering any RNG to its Oregon customers—only renewable thermal credits (RTCs) and therefore the project is not authorized under SB 98.<sup>6</sup> Specifically, the Coalition argues that the plain language of the statute limits cost recovery to instances when the natural gas utility’s RNG—the gas itself and not the environmental attribute alone—is provided to Oregonians for their use because, the capital investment in equipment must “furnish” RNG “to Oregon customers” “for the purpose of providing natural gas service.”<sup>7</sup>

AWEC does not read SB 98 with the same literal limitation. First, the Coalition’s interpretation of SB 98 is contrary to how gas and electric systems operate. When gas is purchased and placed on a pipeline, the specific gas molecules are not earmarked for an individual customer who may be hundreds or even thousands of miles away. A gas consumer may purchase gas in Wyoming for the delivery and use in Oregon, but the actual gas that is purchased may not ever be delivered or used in Oregon. The same goes for electricity. Electrons are not tracked from a generating project to a specific customer. Customers that purchase bundled renewable energy from a specified generating project may not actually be consuming that renewable energy.

The Coalition argues that SB 98 was intended to help decarbonize the natural gas system and reduce greenhouse gas emissions in *Oregon*. But, that is precisely what the Lexington RNG

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<sup>4</sup> Coalition Opening Brief pp. 20-28.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; see also ORS 757.396(1)

project does. Emissions and greenhouse gases do not know borders, and an emission reduction program in Nebraska, California or Idaho benefits customers in those states as well as in Oregon. It would be bad policy to limit RNG projects and purchases to those with physical deliveries in Oregon. There is a finite universe of RNG projects in the United States, and only a subset of those exist in Oregon. If the Coalition is correct, it could cut off the availability to pursue less expensive projects that provide more environmental benefits out of state. Finally, AWEC understands that the book and claim method of accounting is accepted in Oregon.<sup>8</sup> Based on the plain language in SB 98, there is no reason to believe that the legislature decided to preclude the use of the book and claim method of accounting for renewable natural gas.

## **2. The Rate Spread NW Natural Proposed Is Inconsistent With SB 98.**

AWEC acknowledges that the regulation of and use of natural gas has significantly changed with the adoption of the Climate Protection Plan (“CPP”). AWEC is not arguing that transportation customers are somehow exempt from CPP surcharges and costs. Indeed, CPP compliance will be very expensive for all natural gas customers—including transportation customers.

The Lexington RNG Project—NW Natural’s first renewable natural gas project—is different. Unlike renewable natural gas projects going forward, the cost allocation of the Lexington RNG Project should not be viewed under the CPP because it is a SB 98 project. The Lexington RNG Project was started under SB 98, which allows large natural gas utilities may make qualified investments and recover costs to procure renewable natural gas for retail customers. Under the groundbreaking 2019 law, natural gas utilities were allowed to break from

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<sup>8</sup> In the Matter of Rulemaking Regarding the 2019 Senate Bill 98 Renewable Natural Gas Programs, Docket AR 632, Staff Report, at 7, available at: <https://edocs.puc.state.or.us/efdocs/HAU/ar632hau151952.pdf>

the traditional least cost least risk paradigm and allowed those utilities to acquire RNG “for distribution to retail natural gas customers in Oregon . . . .”<sup>9</sup>

Since its inception the parties viewed and analyzed the Lexington RNG Project as a SB 98 project. NW Natural, CUB, Commission Staff and AWEC acknowledged in Docket UI 451, “the sole purpose” of the Lexington RNG facility was “to assist the Company in investing in RNG infrastructure under SB 98.”<sup>10</sup> The purpose of the project was not intended to address the CPP.<sup>11</sup>

The Lexington RNG facility was originally selected in the spring of 2021. The CPP rules were not enacted until later, in December 2021.<sup>12</sup> Therefore, the purpose of acquiring the Lexington RNG facility could not have been for CPP compliance, since the CPP did not exist when the Lexington RNG facility was acquired.<sup>13</sup> The text of ORS 757.396(a) is clear: large natural gas utilities “may make qualified investments and procure [RNG] from third parties to meet [the portfolio targets] for the percentage of gas purchased by the large natural gas utility for distribution to *retail customers* in Oregon that is [RNG].” (emphasis added).<sup>14</sup> However, despite this and SB 98’s explicit limitation authorizing sales of RNG to “retail natural gas customers,” NW Natural has proposed allocating costs of the Lexington RNG project to transportation customers and on an equal cents per therm basis.

Staff argues that the legislative findings of SB 98 “make clear the legislature’s goals for the RNG Program are not to directly benefit NWN’s distribution customers with service of a particular kind of gas, but to promote lower carbon emissions for “natural gas utility customers

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<sup>9</sup> ORS 757.396(1) (emphasis added).

<sup>10</sup> AWEC/100, Mullins/32, lines 7–13.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

and the public. There is no reason that costs of these intended benefits should be exclusively borne by NWN's distribution customers."<sup>15</sup> AWEC disagrees. SB 98 simply gave gas utilities the ability to purchase renewable natural gas for core customers. Utilities purchase gas for core customers only. Utilities do not purchase gas for transportation customers. Further, SB 98 did not eliminate the concept of cost causation or principles of fairness. While the CPP may have changed how to allocate costs for natural gas carbon reduction, SB 98 did not. Transportation customers do not purchase gas from and are not able to purchase RNG through NW Natural's Lexington RNG project in Nebraska. Charging transportation customers for a service the legislature did not intend for them to receive would violate the Commission's primary duty to ensure that utilities charge fair, just, and reasonable rates. Further, the generic findings in the preamble of the statute relied on by Staff are merely informative and provide context but do not give any directives about cost allocation or the Legislature's intent to significantly change the traditional ratemaking paradigm under Oregon law.

**3. If a CPP Project, the Lexington RNG Project Rate Spread Should Consider the Overall Marginal Cost of Service Study Results.**

The purpose and scope of SB 98 and the CPP are different, leading to a different allocation depending on which program is used to allocate the Lexington RNG Project costs. While SB 98 was adopted for the narrow purpose of allowing gas utilities the ability to acquire renewable natural gas for retail customers, and should be allocated to retail customers, the CPP has the goal of reducing greenhouse gas emissions, the cost of which will be allocated to all customers. Accordingly, the costs allocations of the two programs are different. Therefore,

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<sup>15</sup> UG 435 Staff Opening Brief, p. 10.



when establishing cost responsibility for the CPP, it is reasonable to consider the allocation in the context of the overall marginal cost of service study results.

The CPP represents a sweeping regulatory regime and was only recently enacted in December 2021. The Commission, utilities and stakeholders are still evaluating the most cost effect methods and evaluating the costs of complying with the CPP. Simply assuming that CPP compliance costs are allocated on an equal cents per therm basis without considering overall costs, benefits and changes to load from energy efficiency, demand loss and new customers would be imprudent and could have a devastating impact on the business section of Oregon's economy. The evidence in this proceeding demonstrates that transportation customers are paying in some cases more than double the cost of service. Allocating Lexington and other projects on an equal cents per therm basis as a separate rate schedule and ignoring the overall cost of service results undermines the fair, just and reasonable standard and will perpetuate the rate subsidies that currently exist in rates.

AWEC recommends that, if some of the Lexington RNG production facility costs are imposed on transportation customers, that the project not be viewed in isolation. Specifically, the Lexington RNG project cost allocation should be evaluated consistent the overall cost-of-service results, which shows that large customers are already paying rates that are nearly double their cost-of-service rates.<sup>16</sup> This approach is also consistent with how the parties agreed to allocate base rates, the TSA deferral, the Horizon deferral and the COVID-19 deferral in the First and Second Multi-Party Partial Stipulations. By spreading the costs of the TSA deferral, the Horizon deferral and the COVID-19 deferral in that manner, the parties recognized the overall

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<sup>16</sup> AWEC/200, Mullins/5 line 14 through p. 6 line 3.

results of the cost of service study. There is no reason to treat the Lexington RNG Project differently.

NW Natural argues that, because CPP compliance costs are “tied directly to emissions associated with natural gas consumption . . . it is reasonable to spread the CPP costs based on the number of therms used.” However, NW Natural’s proposal is not supported by any evidence that the cost allocation is consistent with any actual CPP compliance costs in 2022. Indeed, the most cost effective way to comply with the CPP is still being developed. As AWEC explained in Rebuttal Testimony, the actual drivers of CPP compliance costs are more complex than just throughput. The cost of CPP compliance will be influenced by *changes* in throughput.<sup>17</sup> The throughput for a customer class may be declining, for example, which would be a reason to allocate no CPP compliance costs to that rate class in a particular year, even though cost would be allocated under a volumetric rate.<sup>18</sup> Under Staff’s, NW Natural’s and CUB’s proposal, even if the transportation class reduced usage by four percent in a year due to energy efficiency, and residential usage went up, the transportation class would still pay the majority of costs under the cents per therm allocation. And further, as mentioned above, there has been no demonstration that a CPP surcharge is appropriate for transportation customers in 2022, given that there has not yet been a demonstration of concrete CPP compliance obligations for 2022 or 2023. AWEC recommends the Commission avoid approving the simplistic equal cents per therm allocation in this docket especially considering the economic impacts for Oregon businesses that this cost allocation methodology will have.

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<sup>17</sup> AWEC/200, Mullins/6:21-7:1.

<sup>18</sup> AWEC/200, Mullins/7:1-3.

Similarly, CUB's proposal to allocate Lexington RNG costs to special contract customers should be similarly rejected. In its Opening Testimony, CUB recommended that special contract customers pay higher rates for Lexington RNG production facility costs. However, such a recommendation is unpractical, misguided and unfair for several reasons as described in AWEC's Opening Brief. CUB has not shown that special contract customers have throughput that increased in 2022 compared to the baseline established in 2017, 2018 and 2019 resulting in any incremental CPP compliance costs to NW Natural. Instead, the Commission should open a new docket to determine the role and responsibilities of special contract customers in meeting NW Natural's CPP obligations.

**C. If Approved, the AAC Requires Better Customer Protections.**

To recover the costs of RNG projects, and now for CPP compliance, NW Natural has proposed Schedule 198, which contains an AAC. As proposed, the AAC mechanism will be filed by February 28 each year and will establish rates for new and existing RNG investments on a going-forward basis on October 1 of each year, corresponding to the timing of the Purchased Gas Adjustment ("PGA"). However, without modifications, the Commission should continue to avoid single-issue ratemaking and decline to adopt NW Natural's proposal. ORS 757.396(2)(a) does not mandate use of an AAC, and the Commission should review NW Natural's rates, especially in light of the sweeping changes presented by SB 98 and the CCP, in the overall context of a general rate case at least until the first compliance period under the CPP is completed.

An ACC essentially amounts to single-issue ratemaking, allowing a utility to adjust rates outside of the general rate case process, which typically benefits shareholders because it ignores other factors that otherwise influence the utility's operating results. NW Natural controls the

timing of its investments and has the opportunity to file a rate case at any time, leading to an unbalanced approach where it can avoid filing a rate case when its revenue requirement may have decreased, while still recovering additional revenues through the ACC.<sup>19</sup>

If use of an AAC is approved, AWEC supports the AAC modifications of Staff and CUB. AWEC also recommends that NW Natural be required to file a rate case within 4 years of the date the AAC is adopted to prevent NW Natural from recovering a significant portion of its capital through the AAC and overearning without the ability to review NW Natural's overall results of operations. Specifically, an AAC should contain the following elements:

- Annual filing of forecasted RNG costs submitted by February 28 of each year, including details of any new projects that may be in service after February 28;
- Updates to forecasted costs filed on August 1 of each year;
- RNG projects must be operational by October 1 for cost recovery under the AAC;
- Updates to rates under AAC to occur on November 1, only;
- No deferrals for capital costs of new projects; if deferrals are allowed, any deferred costs in the AAC should be subject to an earnings test with a benchmark set to authorized return on equity minus 100 bps; spread over at least three years and accrue interest at the Modified Blended Treasury Rate;
- Deferral of variance between forecasted and actual costs (other than capital costs associated with new investments) and amortization in future update subject an earnings test with benchmark set to authorized return on equity minus 100 bps; and
- NW Natural Attestation that all RNG projects are currently operating and providing utility service to Oregon customers prior to the November 1 rate change.

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<sup>19</sup> AWEC/100, Mullins/40, lines 7–19.

As provided above, AWEC also requests that if the Commission approves an AAC, that it requires NW Natural to file a rate case within 4 years after the adoption of the AAC. It is likely that a significant portion of the capital costs for the utility will run through an approved AAC, and AWEC would be concerned with NW Natural's ability to automatically recover these costs without the parties' ability to review other costs that may decline.

**D. Line Extension Allowances are Better Considered in a Separate Docket.**

AWEC appreciates that the parties have provided extensive arguments regarding NW Natural's line extension policy in light of the recently adopted CPP. AWEC agrees that this policy needs to be reviewed because of the stringent carbon reduction mandates in the CPP, but continues to believe that broader policy issues like this should be decided by the Commission with input from Avista, Cascade and other stakeholders before a specific policy is implemented in a rate case. AWEC recommends that the Commission open a docket to discuss line extensions for gas utilities at the conclusion of this docket.

**III. CONCLUSION**

AWEC urges the Commission to approve the May 31, 2022, Multi-Party Stipulation, the June 29, 2022, Second Multi-Party Stipulation, and the August 19, 2022 Third Multi-Party Stipulation because they result in rates that are fair, just and reasonable.

The Lexington RNG Project was NW Natural's first renewable natural gas project authorized under SB 98 for the benefit of sales customers. AWEC recommends that the Commission find the Lexington RNG Project to be a prudent investment.

The Lexington RNG Project was developed under SB 98, and not developed to comply with the CPP, and should therefore be treated differently than other future renewable natural projects. For the reasons described above, AWEC recommends that no costs or benefits of the

Lexington RNG Project be allocated to transportation customers. Alternatively, if the Commission allocates costs to transportation customers, the Commission should approve a cost allocation methodology for the Lexington RNG Project consistent with the rate spread contained in the Multi-Party and Second Multi-Party Stipulations. But under no circumstances should any Lexington RNG Project costs be allocated to special contract customers because any such proposal is unsupported by the record and contrary to the purpose and intent of SB 98. The Commission should also decline to approve the ACC without ratepayer protections, as single-issue ratemaking benefits shareholders and not customers. Finally, the Commissions should consider line extension allowances in a separate docket.

Dated this 22<sup>nd</sup> day of August, 2022.

Respectfully submitted,

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