



August 22, 2022

VIA ELECTRONIC FILING

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

RE: UG 435 – Coalition’s Closing Brief

Dear Filing Center:

Enclosed for filing in the above-referenced docket is the Closing Brief of Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (“Coalition”). This version is redacted and should be included in the public docket.

A confidential version of the Coalition’s Closing Brief will be transmitted under separate cover, pursuant to Protective Order No. 21-461.

Sincerely,

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UG 435**

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

REDACTED CLOSING BRIEF  
OF  
COALITION OF COMMUNITIES OF COLOR, SIERRA CLUB, COLUMBIA  
RIVERKEEPER, OREGON ENVIRONMENTAL COUNCIL, CLIMATE SOLUTIONS,  
VERDE, AND COMMUNITY ENERGY PROJECT

August 22, 2022

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## INTRODUCTION

NW Natural asks the Commission to prioritize the profit motive of its shareholders, to the detriment of ratepayers and the climate, by leaving in place customer growth subsidies that addict more Oregonians to fossil gas. But the Commission is bound to balance the interests of a utility *with that of ratepayers*—to protect the public, not tilt the playing field to NW Natural shareholders. In light of Oregon’s climate laws, including the Climate Protection Program, continuing to subsidize fossil gas customer growth through a line extension allowance (“LEA”) is unreasonable, imprudent, and contrary to the public interest. The Commission should revise the LEA to set recovery at \$0.

Next, NW Natural asks the Commission to allow it to recover costs from ratepayers associated with its anti-climate political lobbying and greenwashing advertising because some of the parties reached settlement on this issue. The Commission should reject this argument. Oregonians, including NW Natural ratepayers, overwhelmingly support climate action—as the company’s own polling data concluded. Allowing the company to recover costs associated with its lobbying and advertising campaigns to sway elected officials and the public in favor of fossil gas, and against climate action, harms ratepayer interests. Charging ratepayers for these costs is contrary to law and the public interest. The Commission should amend the First Partial Stipulation to deduct an additional <<Begin Confidential>> [REDACTED] <<End Confidential>> to account for these costs.

Finally, the Coalition reiterates that the Lexington RNG Project is not a prudent investment under S.B. 98, and it has not elected to forgo litigating this issue.

## ARGUMENT

### I. THE COMMISSION SHOULD END NW NATURAL'S LINE EXTENSION SUBSIDY NOW.

NW Natural urges the Commission to delay its review of Schedule X and its Line Extension Allowance (“LEA”) and open a separate policy docket before taking any action on the question of line extension subsidies. In the alternative, NW Natural urges the Commission to wait until after NW Natural completes its integrated resource planning (“IRP”) before addressing line extensions. There is measurable harm in delay. Waiting to open a new docket or for the completion of the IRP would mean charging \$25 million annually to rate base for these customer growth subsidies. NW Natural also claims that waiting until completion of the IRP would allow it to demonstrate that it can decarbonize its product at a reasonable cost, while still growing its customer base. Given the extensive evidentiary record here, and the fact that the company already claims it can decarbonize and grow its customers at the same time,<sup>1</sup> there is no need to wait. Indeed, if the prudence of the LEA needs further review, the Commission should disallow any recovery here in 2022 until NW Natural can demonstrate the prudence of its LEA. The Commission has the authority to revise the LEA in this rate case,<sup>2</sup> and it has done so previously, on a far less extensive record.<sup>3</sup> The Coalition urges the Commission to act without delay and prevent ratepayers from being saddled with this imprudent subsidy.

#### A. The Traditional Economic Rationale Underpinning Line Extension Allowances Is Fundamentally Flawed.

NW Natural asks the Commission to consider the harm that eliminating the LEA could have on shareholders' expectations, but the Commission cannot charge imprudent costs to

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<sup>1</sup> See NW Natural Opening Br. at 44 (citing NW Natural/1700, Heiting-Bracken/39–71).

<sup>2</sup> Coalition's Opening Br. at 10–12.

<sup>3</sup> Coalition/500, Burgess/16.

ratepayers to protect its shareholders from risk. The Commission must set the LEA based on the “principle and policy” of “prudent investment for the projected revenue,” when determining individual service line allowances.<sup>4</sup> The Commission looks to the “reasonableness of the action,” based on the information available, to determine prudence. In determining the reasonableness of the LEA, the Commission should look to the central theory of utility ratemaking: placing the “cost of providing service upon the cost causer and/or the class of customers benefiting from service that caused the cost.”<sup>5</sup> Costs should only be spread to all ratepayers if “a cost benefits all ratepayers in general[.]”<sup>6</sup> However, if a cost is “caused by a particular group of users and the benefits are primarily enjoyed by that group, then the cost should be assigned to that class or group of users. This is the *only way* that users of the service can make the necessary and rational economic choices.”<sup>7</sup>

No matter how many times NW Natural insists that LEAs seek to ensure equity between existing and new customers, in practice they do no such thing. Service lines connect main lines to individual customer homes, and as such this infrastructure only benefits the new customer receiving the service. Since service lines only benefit the new customer, under the cost causation theory, new customers should solely be responsible for the cost to extend service lines to new

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<sup>4</sup> *In re Proposed Rulemaking Opened as a Result of Ar 395 (Triennial Rules Rev.) to Amend Or. Admin. Rule 860-021-0050*, No. 01-1024, 2001 WL 1940838 (Dec. 3, 2001).

<sup>5</sup> *In re PacifiCorp, DBA Pac. Power, Investigation of Mun. Exaction Adjustment for the City of Redmond*, Docket No. UE 253, Order No. 12-453, 2012 WL 5899412, at \*1 (Nov. 21, 2012); *see also In re J.M.G.*, Docket No. UCR 191, Order No. 18-430, 2018 WL 5883902, at \*4 (Nov. 5, 2018) (“In ratemaking, utilities and regulators strive to allocate costs according to causation, meaning that customers should be charged for the costs they cause to the system. The cost-causation principle compares “the costs assessed against a party to the burdens imposed or benefits drawn by that party.”).

<sup>6</sup> *In re PacifiCorp*, Docket No. UE 253, Order No. 12-453 at \*1.

<sup>7</sup> *Id.* (emphasis added).

customers. However, currently that's not the case. Existing customers not only subsidize the addition of new customers, but they do not see the full benefit of their contribution for 30 years.

NW Natural strenuously argues that the LEA is not a cross-subsidy, but testimony by its own witness undermines that argument. Mr. Taylor opines that a "cross-subsidy exists when a company artificially lowers prices for one group of customers by charging higher prices to another group."<sup>8</sup> Mr. Taylor then argues that the LEA is not a subsidy because the new customer is "responsible for paying for incremental costs through current rates[.]"<sup>9</sup> However, this analysis paints an incomplete picture. Mr. Taylor also opines that "existing customers are not required to contribute to the cost of the addition of new customers[.]"<sup>10</sup> but this is plainly incorrect. As Mr. Burgess explains, the LEA is a cross-subsidy because this infrastructure that solely benefits the new customer, the service line, is ultimately paid for by all ratepayers.<sup>11</sup> While new customers do incrementally contribute toward the cost of their service line, they are not solely responsible for these costs because they are included in rate base.<sup>12</sup> Since the LEA lowers the cost to connect new customers to the gas system by charging these costs to all ratepayers, it is, in fact, a cross-subsidy.<sup>13</sup>

Further, under NW Natural's internal rate of return calculation, existing ratepayers would not see the benefits of providing an LEA for thirty years. NW Natural states that "The IRR was

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<sup>8</sup> NW Natural/1800, Taylor/37.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Coalition/200, Burgess/8.

<sup>12</sup> Coalition/200, Burgess/24 ("Since the allowance has no bearing on the [new] customer's decision, all it accomplishes is to shift a portion of the line extension costs from the new customer to the utility's rate base and its existing customers.").

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

calculated over 30 years, recognizing both the useful life of utility assets and the time a new customer is expected to remain on the system. In other words, an allowance of \$2,900 results in an IRR of 6.9 percent over 30 years.”<sup>14</sup> Thirty years is a long time for customers to see any benefit from their investment. Further, given that Oregon seeks to reduce GHG emissions 80% below 1990 emission levels, Oregonians may transition away from gas utility service before the thirty-year mark, creating the risk of stranded assets.<sup>15</sup>

Mr. Taylor also argues that eliminating the LEA would cause inequity to new customers because it would force them to subsidize costs of existing customers. However, this flawed logic fails to take into account that “service line extensions are not joint use facilities since they only serve a single customer.”<sup>16</sup> As Mr. Burgess explained:

Under my recommendation, both new and existing customers would continue to pay base rates, including the recovery of annual revenue requirements associated with capital projects. I am simply making a distinction between capital projects that are truly common costs, and those that only serve one customer (i.e., service lines). It is not unreasonable or unprecedented to expect new customers to pay for their own individual service lines, rather than socialize those costs through allowances.<sup>17</sup>

Other than the LEA, the costs included in rate base are common costs that provide benefits to all ratepayers making it appropriate for all ratepayers to pay for them.<sup>18</sup> For this reason, requiring new customers to pay gas service rates, without subsidizing the cost of connecting them to gas utility service, would not create inequity or constitute an inappropriate subsidy.

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<sup>14</sup> NW Natural Opening Br. at 37–38.

<sup>15</sup> See Coalition/200, Burgess/17; Coalition/500, Burgess/15–16.

<sup>16</sup> Coalition/500, Burgess/4.

<sup>17</sup> Coalition/500, Burgess/7–8.

<sup>18</sup> See *In re J.M.G.*, Docket No. UCR 191, Order No. 18-430 (holding that charging costs for common facilities to all customers is fair).



Further, while the LEA subsidy could theoretically unlock additional incremental revenues for all ratepayers promoting customer growth, as Mr. Burgess explains, this theory rests on the faulty premise that customers would not connect to gas utility service absent a subsidy.<sup>19</sup> As explained in the Coalition’s opening brief, NW Natural has not presented any evidence showing that new service line costs are a major economic barrier to connecting new customers to the gas system.<sup>20</sup> NW Natural itself claims that eight in ten homeowners prefer gas stoves, and are willing to pay up to \$50,000 more for a home with a gas stove.<sup>21</sup> Since new customers are willing to pay for the installation of service lines that they solely benefit from, foisting the cost of connecting these customers on all ratepayers encourages free ridership at ratepayer expense.<sup>22</sup> Eliminating the line extension subsidy would realize greater cost savings to existing customers from this additional revenue growth.<sup>23</sup>

Many customers would connect to gas utility service, even in the absence of a subsidy, and in fact currently do. NW Natural offers hyperbolic projections of future rate increases in the absence of a line extension subsidy, based on assumptions that getting rid of the subsidy would fully curtail future customer growth and cause existing customers to “rapidly” leave the gas system.<sup>24</sup> However, eliminating the LEA would not encourage existing customers to leave the gas system, because it exclusively promotes customer growth. Additionally, according to NW

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<sup>19</sup> Coalition/200, Burgess/23–24.

<sup>20</sup> Coalition Opening Br. at 15; *see* Coalition/200, Burgess/23.

<sup>21</sup> Coalition/405, Ryan/49.

<sup>22</sup> Coalition/200, Burgess/23–24.

<sup>23</sup> ” Coalition/500, Burgess/6 (“[I]t is not clear to me why customers should settle for the bare minimum, rather than seeking maximize these benefits by reducing the cost of the subsidy.”).

<sup>24</sup> NW Natural/2400, Heiting-Bracken/18 (stating that under its modeling scenario no new customers join the gas system, and existing customers *rapidly* decline); NW Natural Opening Br. at 50 (noting bill increases of up to 300 percent if customers stop joining the gas system).

Natural’s own data responses, eliminating the LEA would not end gas customer growth. Data from NW Natural shows that 27% of new residential customers connected to gas utility service *without* receiving a LEA.<sup>25</sup> NW Natural’s expert initially contested this fact, opining that only 50 residential customers connected to gas service without an LEA subsidy,<sup>26</sup> but this analysis was based on faulty math. As Mr. Burgess explained in response:

There appears to be some inconsistencies either in the information provided by NW Natural in DRs 24 and 100, or in the way Mr. Taylor interpreted this information. In support of his claim, Mr. Taylor’s testimony includes Table 4, which shows Residential Customer Count by Allowance Amount. While Mr. Taylor does not specify which year this refers to, I assume it reflects customer additions in 2021, which is the year provided in NW Natural’s responses to DRs 24 and 100. However, the total customer additions in Table 4 (i.e., 6,914 customers) is significantly lower than the total residential customer additions shown in NW Natural’s Response to DR 24 (i.e., 9,589 customers). If the customer counts in DRs 24 and 100 are both accurate, then it appears there are a significant number of customers who did not apply for a line extension allowance through Schedule X.<sup>27</sup>

In surrebuttal testimony, Mr. Taylor never responds to this analysis—effectively conceding that without the LEA, customer growth could continue at significant rates.<sup>28</sup>

Lastly, Mr. Taylor opines that eliminating the LEA subsidy would make it more difficult for lower-income households to access to gas utility service, leading to an inequitable result.<sup>29</sup> However, lower-income households rarely benefit directly from the LEA subsidy, “since low-income customers are much more likely to be renters,” and even if they are homeowners, they are unlikely to be “making investment decisions for a newly constructed home (e.g., service line

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<sup>25</sup> Coalition/200, Burgess/23.

<sup>26</sup> NW Natural/1800, Taylor/47.

<sup>27</sup> Coalition/500, Burgess/10.

<sup>28</sup> See NW Natural/2600, Taylor/29 (stating generally that eliminating the LEA would end customer growth).

<sup>29</sup> NW Natural/2600, Taylor/12.

extensions).”<sup>30</sup> Encouraging the market to promote non-gas options for lower-income households would “avoid the risk of leaving low-income customers on a system with declining use and increasing rates[.]”<sup>31</sup>

Further, while NW Natural claims that gas is a lower-cost fuel, this fails to take into account significant increases in the price of fossil gas due to shortages in Europe associated with the war in Ukraine. NW Natural is preparing to submit another proposed increase to rates due to the rise in gas prices. These changes will likely continue to make gas utility service more expensive in the long-term.

B. The LEA Is an Imprudent Subsidy in Light of the Substantial Cost Necessary to Decarbonize Gas Utility Service.

In addition to the flaws in the traditional economic logic supporting line extension allowances, new legal mandates require NW Natural to decarbonize the gas it sells to customers. Distorting market signals by promoting customer growth through a LEA will make it more expensive for ratepayers because existing ratepayers would not only have to foot the bill for the subsidy, but also pay for the costs to decarbonize the additional growth in gas sales volume associated with each additional customer.

NW Natural misconstrues the Coalition’s argument as an attack on whether the company can decarbonize its business in a cost-effective manner, and the Commission should ignore this red herring. The Coalition has not requested that the Commission end gas customer growth; rather, the Coalition has asked the Commission to end an imprudent subsidy for customer growth that harms present ratepayers’ financial interests. As explained by CUB, starting next year, each new residential customer added to the system would use 593 therms of gas utility service on

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<sup>30</sup> Coalition/200, Burgess/27.

<sup>31</sup> *Id.*

average.<sup>32</sup> Each new therm added to the system must be accounted for *and* decarbonized. Even assuming advances in energy efficiency, each new residential customer added to the system would conservatively add at least \$4,500 in additional decarbonization costs over 20 years.<sup>33</sup>

It is imprudent to require ratepayers to subsidize customer growth, when customer growth would also add substantial new decarbonization costs. It is the equivalent of paying NW Natural to break a window and then paying them to fix it—rewarding the accelerated growth in the company’s GHG emissions and then requiring the decarbonization of increased emissions.

Finally, the LEA prevents builders from adopting the dual fuel home heating solutions that NW Natural promotes as a critical component of a decarbonized future.<sup>34</sup> A home that installs a dual fuel heat pump and gas stove, with gas providing backup power, only receives \$850 as a line extension subsidy while a builder must install a gas-powered furnace to receive the full subsidy of \$2,875—which is only available to customers who use gas for their primary space heating.<sup>35</sup> Eliminating the LEA would remove this perverse incentive.

C. NW Natural’s Proposed Decarbonization Approaches Expose Ratepayers to Unfairly High Risks.

NW Natural “agrees that there is a moral imperative to radically decarbonize,”<sup>36</sup> yet hesitates to take even the small step of eliminating the LEA. NW Natural cautions the Commission that the electric system cannot currently handle shifting all of Oregon’s building

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<sup>32</sup> CUB/400, Jenks/11.

<sup>33</sup> CUB/100, Jenks/12; *see also* CUB/105.

<sup>34</sup> NW Natural/1700, Heiting-Bracken/46 (“we can work to encourage the adoption of dual-fuel “hybrid” heating systems[.]”); *see also* NW Natural/2400, Heiting-Bracken/2.

<sup>35</sup> CUB/400, Jenks/31–32.

<sup>36</sup> NW Natural Opening Br. at 43.

load away from gas utility service—but the Coalition is not advocating for such a change.<sup>37</sup> Eliminating the LEA for future NW Natural gas customers would not cause all existing ratepayers to electrify, because the LEA is a customer growth subsidy that targets new customers not currently receiving gas utility service. Further, as explained above, gas customer growth will not end if the Commission eliminates the LEA.

At the core of NW Natural’s arguments in support of maintaining the LEA is the presumption that the Commission should treat gas and electric utilities the same because they both have obligations to decarbonize, but this presumption ignores fundamental differences between the two types of utilities. While both gas and electric utilities have legal obligations to decarbonize, electric utilities can do so using known technologies and achieve rapid reductions in GHG emissions.<sup>38</sup>

Zero emission electric sources including on-shore wind, utility scale photovoltaics, and hydroelectric resources currently exist, and have been rapidly deployed around the nation, including here in Oregon. HB 2021 requires that electric utilities in Oregon reduce GHG emissions to 80% below 1990 levels within the next eight years and achieve 100% clean energy by 2040.<sup>39</sup> Based solely on the current electric grid-mix in Oregon, an all-electric home reduces

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<sup>37</sup> NW Natural Opening Br. at 51 (“The gas system in Oregon currently serves roughly 70 percent of Oregon’s space heating needs, and shifting this load to the electric system increases the risk that Oregonians’ energy needs will not be met.”).

<sup>38</sup> Additionally, electric utilities do not need to grapple with the problem of indoor air pollution from gas stoves. NW Natural’s protestations that there are “no documented risks to respiratory health from the proper use of natural gas stoves by the government agencies and advisory committees responsible to protecting residential consumer health and safety,” NW Natural Opening Br. at 64, is far too narrow a response—there are studies linking gas stoves with harmful indoor air pollution and no less than prestigious an organization than the American Medical Association adopted a resolution recognizing the link between gas stoves and asthma. Coalition/900, Ryan/17, nn.50–52.

<sup>39</sup> ORS 469A.410(1).

GHG pollution by 50% compared to a mixed-fuel home over a 15-year period.<sup>40</sup> In Eugene, an all-electric home reduces GHG pollution by 74% compared to a mixed-fuel home.<sup>41</sup>

Further, high-efficiency electric appliances such as electric heat pumps are commercially available, more efficient, and provide significant GHG reductions compared to gas space heating alternatives.<sup>42</sup> NW Natural claims that building electrification would increase GHG emissions relative to gas because of the GHG emissions associated with inefficient electric resistance heating.<sup>43</sup> However, eliminating the LEA would not result in the installation of more electric resistance heating. The Commission granted the petition to increase to electric LEAs for newly constructed homes with electric heating contingent upon the exclusion of electric resistance heating as the primary heating source—making it more costly to install electric resistance heating.<sup>44</sup> Electric resistance heating also doesn't provide the air conditioning unlike heat pumps, making them less attractive to future residents.<sup>45</sup> Further, while switching to gas furnaces away from electric resistance heating would reduce GHG emissions, installing high-efficiency electric heat pumps would achieve steeper reductions in GHG emissions.<sup>46</sup> “[F]or Oregon, a heat pump installed in 2022 would produce over 70% fewer carbon emissions over its 15-year lifetime than a ‘high efficiency’ gas furnace.”<sup>47</sup> Incentives available through the ETO,

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<sup>40</sup> Coalition/704, Stewart/2.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> NW Natural Opening Br. at 52, citing NW Natural/1700, Heating-Bracken/17–18.

<sup>44</sup> Coalition/700, Stewart/9, citing *In re Portland Gen. Elec.*, OPUC Docket No. UE 385, Order No. 20-483 (Dec. 23, 2020), <https://apps.puc.state.or.us/orders/2020ords/20-483.pdf>.

<sup>45</sup> Coalition/700, Stewart/9.

<sup>46</sup> Coalition/700, Stewart/11–12.

<sup>47</sup> Coalition/700, Stewart/12.

and now through the Inflation Reduction Act, make heat pumps a more economically accessible option. Further, many homes with electric resistance heating also lack duct work, making it difficult and costly to convert to gas furnaces.<sup>48</sup>

In contrast, the technologies relied upon by gas utilities to decarbonize are expensive, untested, or are not currently commercially available. On the demand-side, NW Natural proposes to install gas heat pumps to reduce gas use for home heating,<sup>49</sup> but gas heat pumps are not a currently commercially viable technology.<sup>50</sup> NW Natural also proposes promoting adoption of dual fuel heat pumps, but as explained above, the LEA currently discourages adoption of this technology. NW Natural aims to rely on RNG for only 15% of gas deliveries by 2050,<sup>51</sup> and this technology is expensive, costing at least double the cost to acquire fossil gas.<sup>52</sup> Lastly, NW Natural aims to rely on hydrogen to reach decarbonization targets set out in the Climate Protection Program, but hydrogen blending is once again not currently commercially viable, especially not for residential energy use. Making “green hydrogen,” meaning producing hydrogen using renewable electricity, takes an enormous amount of power and would use far more energy than powering heat pumps with renewable technology.<sup>53</sup> “[I]t takes five times more wind or solar energy to create enough hydrogen to heat a home than it takes to heat that home with a heat pump.”<sup>54</sup> Further, since green hydrogen is not available currently, NW Natural

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<sup>48</sup> Coalition/700, Stewart/10.

<sup>49</sup> NW Natural/1700, Heiting-Bracken/46 (“[W]e can work to encourage the adoption of dual-fuel “hybrid” heating systems and high-efficiency natural gas heat pumps[.]”).

<sup>50</sup> Coalition/700, Stewart/15, 22–23.

<sup>51</sup> NW Natural Opening Br. at 45.

<sup>52</sup> Coalition/600, Apter/5.

<sup>53</sup> Coalition/600, Apter/7–8.

<sup>54</sup> Coalition/600, Apter/6.

proposes to initially rely on fossil-fuel produced hydrogen, which would not decarbonize the company's fossil gas sales.<sup>55</sup> Hydrogen-blending could also increase NOx emissions from gas stoves.<sup>56</sup>

While NW Natural claims it can fully decarbonize its service within the timelines set out by the Climate Protection Program, to date NW Natural has decarbonized less than 2% of its total gas sales volume through RNG production.<sup>57</sup> Continuing to subsidize customer growth through a LEA places the risk of untested technologies on ratepayers, because if NW Natural cannot achieve decarbonization targets in a cost-effective manner ratepayers would still remain on the hook for both the decarbonization costs and the subsidy itself.<sup>58</sup>

## II. THE COMMISSION SHOULD UPHOLD THE COALITION'S OBJECTION TO THE FIRST PARTIAL SETTLEMENT.

The Commission should uphold the Coalition's objection to the First Partial Settlement and deduct costs from sub-item (1)(l), (1)(m), and (1)(n) to accurately reflect improper billing for political activities, promotional advertising, and promotional concessions advertising. NW Natural misconstrues the Coalition's objection to the First Partial Stipulation as a request to reject the entire settlement agreement. To the contrary, the Coalition respects the agreement reached by the parties on the issues identified in the First Partial Stipulation and has raised a limited objection to sub-items (1)(l), (1)(m), and (1)(n) of the agreement. Even regarding those

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<sup>55</sup> Coalition/600, Apter/6–7.

<sup>56</sup> Coalition/600, Apter/11.

<sup>57</sup> NW Natural/1100, Chittum/30 (“RNG will comprise 1.64 percent and 1.46 percent of overall Oregon sales during the years 2022 and 2023, respectively, with these purchases and the Lexington RNG project.”).

<sup>58</sup> See Coalition/200, Burgess/17; Coalition/500, Burgess/15–16; see also Coalition/600, Apter/4 (“NW Natural is relying on untested and speculative technologies that pose a risk to ratepayers if they do not work.”).



sub-items, the Coalition does not seek to wholly upend the agreed-upon reductions. Rather, the Coalition recommends additional, narrowly tailored deductions to remove costs that NW Natural should not recover pursuant to state and federal law as they are not in the public interest.<sup>59</sup>

A. Objection to Sub-Item (1)(n): NW Natural Cannot Charge Ratepayers for Its Political Activities.

Regarding salary costs in sub-item (1)(n) spent on political activities, NW Natural doubles down on incorrect legal conclusions stated in testimony by arguing that opposing gas bans for new construction, rewriting local climate action plans, opposing legislative efforts to reduce carbon emissions from buildings, and challenging proposals to amend franchise agreements are not “political activities.”<sup>60</sup> NW Natural cites *no* Commission precedent, case law, state or federal regulations, or any state or federal statutes to support this conclusion.<sup>61</sup> NW Natural claims its actions are not political and that the company merely seeks to provide data in response to inquiries by municipal governments. However, under the plain language of 18 C.F.R. § 367.4264(a), if NW Natural provides information to a public official “for the purpose” of influencing the outcome of their decision, then it has engaged in lobbying.<sup>62</sup> In its testimony, NW Natural admits that it contacted municipal public officials for the purpose of preventing them from adopting policies that would hinder gas utility service expansion:

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<sup>59</sup> “A stipulation is not binding on the Commission.” OAR § 860-001-0350(9). The Commission has the power to “adopt or reject a stipulation, or propose that a stipulation be modified prior to approval.” *Id.*

<sup>60</sup> NW Natural Opening Br. at 22 (“Company employees discussing GHG emission strategies—including potential “gas bans”—with cities, and responding to municipal-level climate-action-planning requests for data, are not engaged in political activities.”).

<sup>61</sup> NW Natural Opening Br. at 20–23 (failing to provide any legal citations in support of its argument that influencing municipal legislators to oppose climate action is not a “political activity”).

<sup>62</sup> Coalition’s Opening Br. at 29–31.

We have attempted to work with the cities to explain to them the importance and value of the energy we provide and what we plan to do to decarbonize, as well as the implications of a “gas ban.” *Importantly, no city has advanced a gas ban for new customers.* We expect that cities will continue to have these conversations, and that we will need to demonstrate to them the value of our service, the role our infrastructure currently plays, as well as our ability to meet the State’s decarbonization goals. *We remain optimistic that when in possession of the relevant information, recommendations to limit gas service will be unsuccessful.*<sup>63</sup>

Review of the extensive public records from local governments likewise affirms this intent.<sup>64</sup>

Next, NW Natural argues incongruously both that it deducted *all* costs associated with its political activities,<sup>65</sup> and at the same time requests reimbursement from ratepayers for staff time spent opposing climate action by local governments. NW Natural has provided no evidence demonstrating it charged shareholders for the costs of the political activities challenged by the Coalition. Indeed, the evidence shows quite the opposite: the company admits that it seeks recovery from ratepayers for all costs associated with its attempts to influence the decisions of municipal governments on their climate action policies and other related decisions.

I disagree that employees participating in discussions with cities about their GHG emissions strategies, including “gas bans,” and responding to municipal-level climate-action-planning requests for data, are engaged in political activities. On the contrary, discussions with our jurisdictions regarding policies that will affect our customers are crucial to our delivery of utility service, *and therefore the costs of such discussions are recoverable in utility rates.*<sup>66</sup>

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<sup>63</sup> NW Natural/1700, Heiting-Bracken/81 (emphasis added).

<sup>64</sup> Coalition’s Opening Br. at 31–35.

<sup>65</sup> “The Company has specific cost allocations for employees that are engaged in lobbying and/or political activity. These allocations (inclusive of salary and overheads) are recorded to non-recoverable expense.” NW Natural/1700, Heiting-Bracken/78. *See also* NW Natural-Staff-CUB-AWEC-SBUA/200, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermoder/17. NW Natural filed a Notice of Errata on August 19, 2022, to the Reply Testimony of Kimberly A. Heiting and Ryan J. Bracken to correctly refer to NW Natural/1710, a confidential exhibit that describes the budget for its Government Affairs program.

<sup>66</sup> NW Natural/2400, Heiting-Bracken/39 (emphasis added).

NW Natural plainly states that it seeks recovery of these costs because it views them as “core utility activities that are necessary to provide safe and reliable gas service[.]”<sup>67</sup> Since NW Natural currently seeks recovery from ratepayers for all its political activities at issue in this case, the fact that it deducted some other costs as lobbying is irrelevant.

In reply testimony, the parties to the First Partial Stipulation urge the Commission to reject the Coalition’s objection because they reached agreement on deducting executive bonuses. However, the Commission cannot approve a settlement that is contrary to the public interest. As documented in both the Opening and the Rebuttal testimony in support of the First Partial Stipulation, the parties’ agreed deduction in Part(1)(m) focused on eliminating executive bonuses.<sup>68</sup> None of the supporting testimony describes any agreement reached by the parties to deduct costs associated with NW Natural’s political activities.<sup>69</sup>

It is illegal for NW Natural to use the public’s funds to advance its own agenda at the people’s expense. Oregonians stand to lose their lives, and livelihoods, from climate change-induced devastation including increased wildfires that directly endanger communities and contaminate air quality.<sup>70</sup> Climate change imposes innumerable hardships. As stream temperatures rise, salmon struggle to survive in warmer rivers affecting fishing communities; higher temperatures increase the amount of precipitation that falls as rain—increasing the risk of

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<sup>67</sup> NW Natural/2400, Heiting-Bracken/41.

<sup>68</sup> NW Natural-Staff-CUB-AWEC-SBUA/100, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermodé/23–24; NW Natural-Staff-CUB-AWEC-SBUA/200, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermodé/14–17.

<sup>69</sup> *Id.*

<sup>70</sup> U.S. Global Change Research Program, *4<sup>th</sup> Nat’l Climate Assessment*, “Chapter 24: Northwest,” <https://nca2018.globalchange.gov/chapter/24/>, (stating that “wildfires are projected to increase 160% by mid-century” in the Pacific Northwest).

floods and reducing snowpack, and the list goes on.<sup>71</sup> The use of ratepayer funding for the company’s lobbying activities has *already* harmed ratepayers by delaying and obstructing climate action. The public interest, Commission precedent, and federal law prohibit NW Natural from continuing to charge ratepayers for these costs. The Commission should send a strong message and reject recovery of NW Natural’s Government Affairs budget.<sup>72</sup>

B. Objection to Sub-Item (1)(l): NW Natural’s Advertising Is Promotional and Unrecoverable.

With regard to Category A & B advertising recouped under sub-item (1)(l) of the First Partial Stipulation, NW Natural argues that its RNG advertising campaign is merely informational. Prior public statements by the company belie this argument. In a panel presentation last year, Mr. Anderson explained NW Natural’s marketing by asking the audience to “think about it as a political campaign.” In its 2020 annual report to shareholders, NW Natural put a finer point on the issue:

[I]f the cost, environmental impact or public perception of such other energy sources improves relative to natural gas, it may affect NW Natural’s ability to attract new customers or retain our existing residential, commercial and industrial customers, which could have a negative impact on our customer growth rate.<sup>73</sup>

These statements, taken together with the RNG advertisements and internal market research data,<sup>74</sup> lead to the unmistakable conclusion that NW Natural sought to assuage public concern about the climate harms of its product to continue growing its customer base—making it promotional advertising.

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<sup>71</sup> *Id.*

<sup>72</sup> Coalition Opening Br. at 29–39.

<sup>73</sup> CUB/400, Jenks/4.

<sup>74</sup> Coalition Opening Br. at 44–47.

With regard to the propaganda targeting school children, NW Natural claims that this material was safety-related because it included one or two pages describing the odors associated with a gas leak. To determine how to categorize any publication, the Commission should look at its primary purpose.<sup>75</sup> Here, the booklets overwhelmingly promoted fossil gas as a beneficial energy source, with little, if any, educational content.<sup>76</sup>

The figures below document how NW Natural used these purported safety education booklets to market the benefits of its product to children. The activities inform children that fossil gas is used to bake pizza, cook food in restaurants, build baseball bats, provide heating and cooling to businesses—including popcorn plants—and provide transportation fuel to buses. The “learning objective” is to inform children about the benefits of gas utility service, not provide information on the safety hazards of an indoor gas leak. Publications that encourage the reader to view NW Natural’s fossil gas utility service favorably constitutes promotional and institutional advertising.<sup>77</sup> Targeting the children with these messages is disturbing and inappropriate.

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<sup>75</sup> *In re Revised Tariff Schedules Filed by Nw. Nat. Gas Co. for a Gen. Rate Increase*, Docket No. UG 81, No. 89-1372 (Oct. 18, 1989). *See also*, Coalition Opening Br. at 40–41.

<sup>76</sup> Coalition/400, Ryan/12–20; Coalition/406, Ryan/18–89.

<sup>77</sup> Coalition Opening Br. at 47–49.

Figure 1<sup>78</sup>

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**COUNT AND WRITE**

**Directions:** Count the number of people who are using natural gas in each box. Write that number in the box in each picture. Which picture shows an office? \_\_\_ A restaurant? \_\_\_ A factory? \_\_\_ A kitchen? \_\_\_



**LEARNING CONNECTION:**  
Natural gas can be used in offices for heating and cooling, in restaurants for cooking and baking, and in factories for manufacturing goods.

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Figure 2<sup>79</sup>

**Activity**  
Who says what? Match the people's statements with their descriptions.

A. Office building owner	D. Bus rider
B. Pizza restaurant manager	E. Popcorn plant manager
C. Hotel manager	

\_\_\_ "We use natural gas here for cooking."  
\_\_\_ "It is efficient for heating and cooling our offices and it saves us money."  
\_\_\_ "Our guests like the temperature and humidity controls in their rooms."  
\_\_\_ "It's a safe, efficient fuel to use in our plant."  
\_\_\_ "I commute to work using a natural gas vehicle."

The Commission should amend the First Partial Stipulation to deduct an additional \$183,512 from Part (1)(l) for these promotional advertising costs.

C. Objection to Sub-Item (1)(m): NW Natural Incorrectly Accounted for Promotional Concessions Advertising.

Lastly, with regard to advertisements promoting gas-powered appliances for which NW Natural offered shareholder-financed rebates, the Company now admits it charged these costs to ratepayers,<sup>80</sup> even though in the Reply Testimony of Cory Beck, it initially claimed it charged

<sup>78</sup> Coalition/406, Ryan/44.

<sup>79</sup> Coalition/406, Ryan/84.

<sup>80</sup> NWN Opening Br. at 18–19.

these costs below the line.<sup>81</sup> Now, however, the Company argues that it should nevertheless recover costs associated with this promotional advertising campaign because some of the advertisements included offers for energy efficient appliances. Yet even for advertisements promoting energy efficient appliances, the black-letter law of OAR § 860-026-0022(1)(f) is clear. If an advertisement promotes purchase of appliances using shareholder financed rebates, it constitutes Category C promotional advertising.<sup>82</sup> NW Natural cannot recover costs associated with this advertising unless it shows specific ratepayer benefits. NW Natural has made no such showing here, and it has not sought recovery of any Category C advertising costs.<sup>83</sup>

It is also important to note that costs associated with this promotional concessions advertising campaign was not an issue settled and resolved in the First Partial Stipulation. The stipulation was filed with the Commission on May 31, 2022. On June 6, 2022, NW Natural filed testimony claiming that it never charged these costs to ratepayers, since they were deducted as Category C advertising costs.<sup>84</sup> On June 8, 2022, the stipulating parties filed testimony in support of the settlement agreement that resolved customer sales expenses, as described in Part (1)(m), but nowhere does the supporting testimony refer to promotional advertising for

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<sup>81</sup> NW Natural/1900, Beck/22.

<sup>82</sup> “Promotional Advertising Expenses means advertising expenses, the primary purpose of which is to communicate with respect to an energy or large telecommunications utility’s ... promotional concessions.” OAR § 860-026-0022(1)(f). “Promotional concession means any consideration offered or granted by an energy ... utility ... to any person with the object, express or implied, of inducing such person to ... select or install any appliance or equipment designed to use such utility service.” OAR § 860-026-0015(1).

<sup>83</sup> “An amount of \$600,000 in administrative, marketing and advertising activities is budgeted in Category C during the Test Year period, *none of which is proposed to be included in rates.*” NW Natural/900, Beck/20 (emphasis added).

<sup>84</sup> NW Natural/1900, Beck/22.

shareholder financed rebates.<sup>85</sup> Since the settling parties have not considered and resolved this issue in the First Partial Stipulation, and since NW Natural has not met its burden of proof to recover these costs, the Coalition recommends amending the stipulation to deduct an additional \$482,882 from Part (1)(m) to account for these costs.

D. The Commission Should Open a Docket to Investigate Whether ETO Incentives Align with Decarbonization Goals Set Out in State Climate Laws.

As part of its objections to the First Settlement, the Coalition asked the Commission to open a docket to investigate alignment of Energy Trust of Oregon (“ETO”) incentives with applicable climate laws. The recent passage of the federal Inflation Reduction Act, combined with the expected costs arising from CPP implementation, requires careful analysis of the incentives ETO offers to customers, the ways in which ETO advertises those incentives, and how the ETO educates Oregon ratepayers on the implications of their fuel and appliance choices. NW Natural rejects this request, asserting that ETO incentives are already aligned with climate goals, and customers are not, in fact, fuel-switching from electric to natural gas.<sup>86</sup> These excuses to avoid further investigation are easily rebutted.

While it is true that ETO incentives are intended to promote replacement of older appliances with higher efficiency equipment, the incentives do not necessarily maximize GHG emissions reductions, and, in some cases, actually incentivize the installation of appliances that increase emissions. For example, ETO’s website offers incentives for new gas fireplaces without requiring that they replace a less efficient fireplace,<sup>87</sup> and it offers whole home air conditioning

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<sup>85</sup> NW Natural-Staff-CUB-AWEC-SBUA/100, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermode/21–23.

<sup>86</sup> NW Natural’s Opening Br. at 19–20, citing NW Natural/2800, Frankel-Moerlins/10.

<sup>87</sup> See ETO Webpage on Fireplaces, <https://energytrust.org/residential/incentives/fireplace>.



incentives for use with gas furnaces without including incentives for central heat pumps or portable heat pumps for cooling.<sup>88</sup>

NW Natural also asserts that fuel-switching from electric to natural gas is not occurring as a result of the Energy Trust incentives.<sup>89</sup> The language of NW Natural’s advertisements indicates just the opposite: the series of ads asserting that “a house just isn’t a home without it,” and “natural gas delivers more control for precise cooking”<sup>90</sup> are premised on convincing customers to switch from electric to gas fuel. More directly, NW Natural ran ads on social media and other platforms offering rebates if customers “switch to natural gas and get up to \$3,000 back.”<sup>91</sup> Finally, whether the percentage of customers in 2021 switching from electric to gas is low<sup>92</sup> is irrelevant to whether ETO’s incentives are maximizing emissions reductions. It is not clear what NW Natural fears from an investigation; opening a docket to explore the best way for ETO to maximize emissions reductions is a prudent way for the Commission to fulfill its mandate under EO 20-04<sup>93</sup> and ensure that ratepayers are getting clear, accurate, unbiased information from a trusted source.

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<sup>88</sup> See ETO Webpage on Air Conditioning, <https://energytrust.org/residential/incentives/air-conditioning> (“Central air conditioners are a perfect addition to your existing gas-furnace heating system.”).

<sup>89</sup> NW Natural’s Opening Br. at 20, citing NW Natural/2800, Frankel-Moerlins/12.

<sup>90</sup> Coalition/400, Ryan/34–38, citing Coalition/403, Ryan/10, 12.

<sup>91</sup> Coalition/400, Ryan/37–38, citing Coalition/403, Ryan/17.

<sup>92</sup> NW Natural/2800, Frankel-Moerlins/12–14.

<sup>93</sup> EO 20-04 directs the PUC to “prioritize and expedite any processes and procedures . . . that could accelerate reductions in GHG emissions[.]” “consider and integrate climate change, climate change impacts, and the state’s GHG emissions reduction goals into their planning, budgets, investments, and policy making decisions,” and “[p]rioritize actions that will help vulnerable populations and impacted communities adapt to climate change impacts[.]”

Exec. Order 20-04 at 5, Office of the Governor, State of Oregon, [https://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_20-04.pdf](https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf).

### III. THE LEXINGTON FACILITY IS AN IMPRUDENT INVESTMENT UNDER SB 98.

In its opening brief, NW Natural incorrectly asserted that no party questioned the prudence of the Lexington RNG project.<sup>94</sup> To the contrary, while the Coalition initially made prudence arguments under both SB 98 and the Climate Protection Program (CPP), the Coalition withdrew its prudence argument under the CPP only, leaving the question of prudence under SB 98 for the Commission.<sup>95</sup>

The Lexington Project is an imprudent investment because it fails to comply with the requirements of SB 98. The statute provides cost recovery for investments in infrastructure producing renewable natural gas—defined to be an actual product processed to “meet pipeline quality standards or transportation fuel grade requirements”<sup>77</sup>—that will be “furnished to Oregon customers.”<sup>78</sup> The Lexington Project does not deliver a physical product to NW Natural’s Oregon customers, and, in fact, it is selling the physical product to a Nebraska buyer.

NW Natural is playing fast and loose with the statutory requirements, testifying that other programs work this way and that language in a PUC staff report supports its interpretation.<sup>96</sup> However, the company has not addressed how the Lexington project complies with the specific language of SB 98.<sup>97</sup> Consistency with other programs, like the law creating the Oregon Clean Fuels Program, which specifically directs the adoption of rules that accommodate flexible implementation approaches to minimize compliance costs,<sup>98</sup> says nothing about the meaning of

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<sup>94</sup> Coalition/100, Apter/19.

<sup>95</sup> Coalition/600, Apter/2.

<sup>96</sup> NW Natural/2100, Chittum/8.

<sup>97</sup> NW Natural/2100, Chittum/9 (discussing SB 98 rules).

<sup>98</sup> ORS 468A.266(4)(c).

SB 98. Similarly, reliance on a staff report<sup>99</sup> that explained the interpretive rules, without referencing the statutory grounds for the interpretation, cannot supplant the meaning of the statute itself. Agency interpretations of statutes must be consistent with the legislature’s intent.<sup>100</sup>

As set out at length in our Opening Brief, the Lexington RNG Project is not a “qualified investment in RNG infrastructure” pursuant to SB 98. Under the objective prudence standard, the Commission should find that it was not prudent for NW Natural to proceed with an investment that does not result in the delivery of RNG to its customers.

#### CONCLUSION

For the reasons discussed above, in our opening brief, and in testimony sponsored by the Coalition, we respectfully ask the Commission to eliminate the LEA, adjust the First Partial Settlement to account for the Coalition’s objections, open a docket to ensure ETO’s energy efficiency incentives aligns with Oregon’s climate laws, and find the Lexington RNG Project not prudent.

Dated this 22nd day of August, 2022.

Respectfully submitted,

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<sup>99</sup> NW Natural/2103, Chittum/5, n.20.

<sup>100</sup> *Blachana LLC v. Bureau of Labor & Indus.*, 354 Or. 676, 687 (2014).

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CERTIFICATE OF SERVICE  
UG 435

I hereby certify that on August 22, 2022, I served an unredacted confidential version of COALITION'S CLOSING BRIEF upon the Commission and each party designated to receive confidential information pursuant to Order 21-461 through a secure, encrypted e-mail attachment.

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