

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UE 435 & UG 411**

1 In the Matter of: )

2 NORTHWEST NATURAL GAS )  
COMPANY, DBA NW NATURAL )

3 Request for General Rate Revision )  
4 )

OPENING BRIEF OF  
SMALL BUSINESS UTILITY  
ADVOCATES

5 **I. INTRODUCTION**

6 In this docket, Small Business Utility Advocates (“SBUA”) has focused primarily, though  
7 not exclusively, on whether the proposed rate increase proposed by Northwest Natural Gas Com-  
8 pany (“the Company” or “NW Natural”) is fair and reasonable for the Company’s small com-  
9 mercial customers, that is, those customers taking services under Rate Schedule 3 Basic Firm  
10 Sales Service—Non Residential (“RS3”).<sup>1</sup> During the course of discovery SBUA’s expert found  
11 an intraclass cross-subsidization by some of the rate payers in RS3.<sup>2</sup> This issue was resolved by  
12 the First Partial Stipulation. SBUA was among the parties in the First Partial Stipulation that ad-  
13 dressed 17 adjustments to rate spread and rate design in this general rate case.<sup>3</sup>

14 Following SBUA’s and other parties’ filing of Opening Testimony, SBUA learned of the  
15 intention of the Staff of the Oregon Public Utility Commission (“Staff”) to also bring into this  
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<sup>1</sup> SBUA/100 Kermode/2

18 <sup>2</sup> SBUA’s expert for this docket is Danny P. Kermode C.P.A.-Retired and qualifications are found  
in SBUA/100 Kermode/101.

19 <sup>3</sup> Other topics SBUA engaged on in this docket was cost of capital, rate base, advertising, inter-  
20 venor funding and other topics related to rates and terms and conditions of service of Schedule 3  
Small Commercial customers.

1 rate case certain COVID-19 deferred costs, and the allocation proposed for those costs.<sup>4</sup> Neither  
2 did the Company include these costs in its initial filing, nor did the Administrative Law Judge  
3 consolidate the relevant deferral docket<sup>5</sup> into this rate case. Staff and other parties negotiated a  
4 Second Partial Stipulation wherein a proposal was developed to allocate costs of COVID-19. In  
5 addition to objecting on grounds of insufficient notice of adding these COVID-19 deferred costs  
6 into this rate case, SBUA which had otherwise participated in the negotiation of the Second Par-  
7 tial Stipulation, objected to the allocation of COVID-19 costs otherwise agreed to by the other  
8 parties. SBUA did not join that Second Stipulation and filed its objection maintaining that the  
9 allocation of the COVID-19 costs, which are substantial, were not fair and reasonable because  
10 the allocation was not consistent with standard ratemaking principles of cost causation and  
11 matching, and the allocations improperly lumped different costs together and spread them over  
12 rate classes apportioning an unfair amount resulting in a 10.3% increase for small business cus-  
13 tomers. The rates resulting from the allocation in the Second Stipulation results in rates that do  
14 not meet the just and reasonable standard for rate making. SBUA asks the Commission to deal  
15 with these costs in a different docket, or in the alternative, to apply standard ratemaking princi-  
16 ples to the allocation of COVID-19 deferred costs.

## 17 **II. STANDARD OF REVIEW**

18 In a case in which a utility is requesting a change in rates or a schedule of rates, such as a  
19 general rate case, the utility bears the burden of showing its proposed change will result in rates

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21 <sup>4</sup> Staff/1500 Dlouhy-Fox-Storm/8-12

22 <sup>5</sup> UM 2068

1 that are fair, just, and reasonable.<sup>6</sup> In a utility dispute before the Commission, the burden of proof  
2 consists of two discrete components—the burden of persuasion and the burden of production.<sup>7</sup>  
3 The burden of persuasion and the ultimate burden of producing sufficient evidence to support its  
4 claims is always with the utility.<sup>8</sup> Other parties to the proceeding have the burden of producing  
5 evidence to support their argument in opposition to the utility’s position.<sup>9</sup>

### 6 **III. BACKGROUND**

7 Northwest Natural Gas Company, dba NW Natural (“NW Natural” or the “Company”)  
8 NW Natural is an Oregon corporation whose principal place of business is 250 SW 3 Taylor  
9 Street, Portland, Oregon, 97204. NW Natural is a public utility providing natural gas service in  
10 Oregon within the meaning of ORS 757.005, and is subject to the jurisdiction of this Commis-  
11 sion. NW Natural has approximately 688 thousand customers in Oregon, consisting of approxi-  
12 mately 632 thousand residential, 57 thousand commercial, and 812 industrial customers.<sup>10</sup> Ap-  
13 proximately 88 percent of NW Natural’s 8 customers are in Oregon.<sup>11</sup>

14 NW Natural filed a general rate revision with the Public Utility Commission of Oregon  
15 (“Commission”), in accordance with ORS 757.205, 757.215 and 757.220, to revise its schedules  
16 of rates and charges for natural gas service in Oregon to become effective with service provided  
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18 <sup>6</sup> ORS § 757.210(1)(a)

19 <sup>7</sup> In re Portland General Electric Company Application to Amortize the Boardman Deferral, OPUC Docket No. UE  
196, Order No. 09-046 at 7 (Feb. 5, 2009).

20 <sup>8</sup> *Id.*

21 <sup>9</sup> *Id.* at 7-8

22 <sup>10</sup> Staff/1302 Scala/91

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

1 on and after November 1, 2022.<sup>12</sup> With this filing, the Company originally requested a revision to  
2 customer rates that will increase the Company’s annual Oregon jurisdictional revenues by \$73.5  
3 million, or an approximately 9.9 percent increase over current customer rates. This has subse-  
4 quently changed in the most recent filing of NW Natural's Surrebuttal Testimony filed  
5 07/20/2022 (“Surrebuttal”). The current rate of 10.56% or a \$78.020 million increase.<sup>13</sup> In its  
6 Surrebuttal, the Company did not include the deferral of costs pertaining to COVID-19 deferrals.

7 The Administrative Law Judge (“ALJ”) consolidated the docket UG 411 Renewable Nat-  
8 ural Gas Recovery Mechanism with this rate case on January 26, 2022. The ALJ issued on May  
9 13, 2022 a Bench Memorandum to the Company asking for an update on all deferrals and identi-  
10 fying timeline for the Company to respond and other parties to reply. In its Response the Com-  
11 pany identified the UM 2068 COVID-19 deferral costs as amounting to \$10,675,512 but provid-  
12 ing no other detail in this Response.<sup>14</sup> No party replied.

#### 13 **IV. ARGUMENT**

14 In a General Rate Case the utility bears the burden to show that its rates are fair, just and  
15 reasonable.<sup>15</sup> The Commission is charged with establishing fair and reasonable rates for the pro-  
16 vision of services by public utilities in Oregon.<sup>16</sup> Including COVID-19 costs in this rate case ac-  
17 cording to the Second Partial Stipulation yield unjust and unreasonable rates for the Company’s-  
18 RS3 customers.

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19 <sup>12</sup>UG 435 Northwest Natural Company Request for General Rate Revision, filed 12/17/21.

20 <sup>13</sup> NW Natural-Staff-CUB-AWEC-Coalition/100 Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/3

21 <sup>14</sup> NW Natural Response to Second Bench Request, filed 5/27/22.

22 <sup>15</sup> ORS 756.040(1), ORS 757.210(1)(a), Pacific Northwest Bell Tel. Co. v. Sabin, 21 Or App 200, 213-214 (1975).

<sup>16</sup> ORS 756.040; Gearhart v. Public Utility Commission of Oregon, 255 Or.App. 58, 60 (Or. App. 2013)

1           A.     INSUFFICIENT NOTICE FOR INCLUDING COVID-19 DEFERRALS

2           The Commission’s duty to set fair and reasonable rates in all rate cases under ORS  
3 756.040 must involve rate spread considerations under ORS 757.230, so if rates are adjusted for  
4 one customer class, this does not cause rates for other customer classes to become unjust and un-  
5 reasonable. *Wah Chang v. Public Utility Commission*, 256 Or. App. 151, 158 (2013).

6           COVID-19’s significance is well-known and documented.<sup>17</sup>

7           With SBUA’s necessarily included reviewing much more closely the the \$10,675,512 in  
8 COVID-19 Deferrals as of December 31, 2021 with the Company’s Reply Testimony.<sup>18</sup> The  
9 change proposed in Staff’s Opening Testimony for a 10.3% increase for Schedule 3C Small  
10 Commercial customers for just deferrals alone<sup>19</sup> which is only 1.5% less than the residential  
11 group of customers that are the chief causers of these costs. These costs were never formally  
12 consolidated into this docket<sup>20</sup>, reducing time to sufficiently review closely fair apportionment.<sup>21</sup>

13           The Company in its 12/17/2021 initial filing, Request for a General Rate Revision specif-  
14 ically chose not to include the COVID-19 Deferrals, citing the potential for increased hardship to  
15 ratepayers.<sup>22</sup> It was not until 4/22/2022 in Staff’s Opening Testimony, that COVID-19 deferrals  
16 were proposed to be included in UG 435 by Staff. According to OAR 860-001-0460 (1)(b), it is  
17 up to the Commission or ALJ to provide official notice of, “Rules, regulations, administrative

18           <sup>17</sup> Staff/108 Muldoon/1

19           <sup>18</sup> NW Natural/2000 Faulk/3 Line 13-14

20           <sup>19</sup> Staff/1300 Scala/43 Table 7

21           <sup>20</sup> SBUA/200 Kermode/3

22           <sup>21</sup> See OAR 860-001-0460(f)(2)

<sup>22</sup> NW Natural/100 Anderson-Kravitz/Page 7 Lines 10-15

1 rulings, and reports of the Commission and other governmental agencies;”. No such administra-  
2 tive ruling has been made to consolidate COVID-19 deferrals into the UG 435 docket.<sup>23</sup> Even  
3 then though there are doubts as to whether or not that would constitute proper notice since it is  
4 ultimately up to the Commissioners to decide what is going to be included in the final approved  
5 rates.<sup>24</sup>

6 B. THE DIVERSION OF THE SECOND PARTIAL STIPULATION AWAY FROM  
7 APPLYING STANDARD RATEMAKING PRINCIPLES TO ALLOCATE COVID-19 COSTS  
8 ACHIEVES RATES THAT ARE NOT JUST AND REASONABLE

9 Without the buffer of working capital and reasonable financing options in times of low or  
10 negative cash-flow, the smallest increase in costs can lead a company to failure resulting in the  
11 small business shutting of its doors for good.<sup>25</sup> This is important context for the Commission to  
12 analyze when examining how costs should be allocated for COVID-19 Deferrals.

13 1. Cost Causation

14 Simply put, according to the "cost-causation" principle all approved rates reflect to some  
15 degree the costs actually caused by the customer who must pay them.<sup>26</sup> Other states have recog-  
16 nized that cost causation principles are important when determining the allocation of costs, espe-  
17 cially in instances where one class receives the greatest benefit. For example, “OSBA pointed out  
18 that although only residential customers may participate in the CAP, PGW's business customers

19 <sup>23</sup> OAR 860-001-0600 Consolidation of Proceedings

20 <sup>24</sup> OAR 860-001-0600

21 <sup>25</sup> Staff/108 Muldoon/6

22 <sup>26</sup> *KN Energy, Inc. v. F.E.R.C.* 968 F.2d 1295 (D.C. Cir. 1992); *Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982). P 16

1 are required to pay a portion of the costs related to that program, and, therefore, the proposed  
2 changes would affect the rates of those businesses. Accordingly, OSBA stated its intent to partic-  
3 ipate in the proceedings to protect the interests of PGW's small business customers."<sup>27</sup> In the UG  
4 435 rate case residential customers received far greater protections than small business cus-  
5 tomers. As Staff noted, "Why should small businesses foot the bill while attempting to recover  
6 from ongoing extraordinary economic circumstances?"<sup>28</sup> Under Oregon law, the Commission  
7 can order, and has ordered, expenses like these to be paid by a specific set of rate payers.<sup>29</sup>

## 8 2. The Matching Principle and Grouping Unrelated COVID-19 Costs

9 SBUA acknowledges that this does not need to be done uniformly but finds that it makes  
10 the most sense to do so, particularly when the COVID-19 deferrals are actually six different costs  
11 categories.<sup>30</sup> In its Order approving the UM 2114 Stipulation, the Commission created six clear  
12 and distinct categories of costs: (a) Direct Costs, Savings, and Benefits, (b) Late Payment Fees  
13 Not Assessed, (c) Bad Debt Expense Above Baseline, (d) Reconnections and Field Visits Apr. 1,  
14 2021-Oct. 1, 2022, (e) Foregone Reconnection Charges through Nov. 15, 2020 13 (f) COVID-19  
15 Bill Payment Assistance Program.<sup>31</sup> In the creation of these categories, the Commission con-  
16 veyed that each would have a different cost treatment, otherwise they would have created just a

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17 <sup>27</sup> *Evans v. Pa. PUC*, 2021 Pa. Commw. Unpub. LEXIS 511, 519 Commonwealth Court September 29, 2021

18 <sup>28</sup> Staff/108 Muldoon/38

19 <sup>29</sup> *Multnomah County v. Davis*, 35 Or App 521, 581 P2d 968 (1978), Sup Ct

20 <sup>30</sup> The Commissioner 'is not obligated to employ any single formula or combination of formulas to determine what  
21 are in each case 'just and reasonable' rates.' *Pacific N. W. Bell* at 224, 534 P.2d at 996. Thus the Commissioner has  
22 great discretion to determine which of the many possible methods of cost allocation he will utilize in ascertaining a  
just and reasonable rate spread. (216)  
*Am. Can Co. v. Davis*, 28 Or. App. 207, 216 P.2d 898 (1977)

<sup>31</sup> In the Matter of Public Utility Commission of Oregon, Investigation into the Effects of the COVID-19 Pandemic  
on Utility Customers, Docket UM 2114, Order No. 20-401 (Nov. 5, 2020)

1 single category for all deferred costs related to COVID-19.<sup>32</sup> It may be expedient to group the  
2 costs and ignore their distinctions, but SBUA suggests it sets bad precedent for the other filings  
3 that will be coming before the Commission in the near future.<sup>33</sup>

4 Other jurisdictions recognize the matching principle. The Commission follows a "general  
5 ratemaking principle" of "matching," by which ratepayers are charged with the costs of produc-  
6 ing the service they receive. 61 F.E.R.C. at 62,214. The Commission's overall goal in authorizing  
7 the switch to accrual accounting is to conform the practice to the matching principle.<sup>34</sup>

### 8 3. Improper Use of a Forward-Looking Allocator

9 The problem with using proposed marginal revenues for spreading the costs associated  
10 with the COVID-19 deferrals is that rate case costs reflected in the LRIC, and the proposed mar-  
11 ginal revenues are future costs expected to be incurred in the test year, they are forward  
12 looking,<sup>35</sup> whereas the COVID-19 costs are deferred historical costs; costs that were incurred and  
13 deferred in 2020 and 2021.<sup>36</sup> The use of the proposed marginal revenues causes a mismatch of  
14 costs and periods violating the matching principle and producing a flawed cost recovery.<sup>37</sup> As  
15 Kermode points out, the use of forward-looking vs historical marginal revenue is not a difference  
16 without a distinction. The use of a forward-looking allocator to allocate historical deferred costs

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18 <sup>32</sup> SBUA/200 Kermode/20

19 <sup>33</sup> Id.

20 <sup>34</sup> [Town of Norwood v. FERC, 311 U.S. App. D.C. 306, 53 F.3d 377 \(1995\)](#)

21 <sup>35</sup> SBUA/200 Kermode/19

22 <sup>36</sup> SBUA/200 Kermode/20

<sup>37</sup> SBUA/200 Kermode/.



1 has a material impact on who pays and how much.<sup>38</sup> The use of the forward-looking allocator is  
2 improper. It incorrectly matches costs and periods while creating a substantial subsidy to the  
3 large commercial and industrial classes from small business.<sup>39</sup>

4 The Second Partial Stipulation proposal erroneously uses the forward-looking allocation  
5 factor to spread the costs to each rate schedule.<sup>40</sup> Using a forward-looking allocator to recover  
6 deferred historical costs violates the matching principle resulting in costs that were incurred by  
7 one customer class, now being paid by different customer class, and in this case, that would most  
8 likely be the small business class since the small business class paying 3.3 percent more solely  
9 because the settlement uses the incorrect forward-looking test-year allocator.<sup>41</sup> SBUA urges the  
10 commission to look closely at these proposed increases because they are discriminatory to  
11 schedule 3 rate payers.<sup>42</sup> We encourage the Commission to reject the Company's and Staffs latest  
12 rate proposals for Covid-19 deferrals.<sup>43</sup>

## 13 **V. CONCLUSION**

14 SBUA supports certain points of agreement resolving this rate case. In addition to other  
15 rate adjustments supporting fair and reasonable rates, the First Partial Stipulation entails the  
16 Company's commitment to review in the next rate case what SBUA has identified as an intra-

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17 <sup>38</sup> Exhibit SBUA/206

18 <sup>39</sup> SBUA/200 Kermode/20

19 <sup>40</sup> SBUA/300 Kermode/3

20 <sup>41</sup> Id.

21 <sup>42</sup> Public Utility Commissioner has [the] power ... to determine unwarranted rate discrimination. *American Can Co.*  
22 *v. Davis*, 28 Or App 207, 559 P2d 898 (1977).

<sup>43</sup> The Public Utility Commissioner has authority to impose rate design different from that proposed by utility. *Cascade Natural Gas Corp. v. Davis*, 28 Or App 621(1977) Sup Ct ; *Cent. Power & Light Co./Cities of Alice v. Pub. Util. Comm'n of Texas*, 36 S.W.3d 547 (Tex. App. 2000)

1 class subsidy within the RS 03, and to respond to this in a future rate case. SBUA does not, how-  
2 ever, agree that the allocation of COVID-19 deferred costs are just or reasonable. The current  
3 proposals that have been presented by Staff and the Company regarding COVID-19 Deferrals are  
4 inconsistent with key principles of ratemaking and improperly subsidize other rate classes. Fur-  
5 ther, the amount involved impacts rates and was insufficiently noticed, having not been noticed  
6 by the Company and later lacking consolidation by the decision maker, that is the ALJ. SBUA  
7 respectfully requests that the OPUC accept the First Partial Stipulation, and deny the COVID-19  
8 cost provisions of the Second Partial Stipulation, keeping COVID-19 deferrals out of this rate  
9 case and put them into a separate docket so that they may be examined timely and more thor-  
10 oughly. Alternatively, SBUA asks the Commission require the Company to apply standard  
11 ratemaking principles to these costs and direct allocation among rate classes accordingly.

12 Respectfully submitted,

s/ Diane Henkels

13 \_\_\_\_\_  
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