



August 10, 2022

VIA ELECTRONIC FILING

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

RE: UG 435 – Coalition’s Opening Brief

Dear Filing Center:

Enclosed for filing in the above-referenced docket is the Opening 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 Opening Brief will be transmitted under separate cover, pursuant to Protective Order No. 21-461.

Sincerely,

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CERTIFICATE OF SERVICE
UG 435

I hereby certify that on August 10, 2022, I served an unredacted confidential version of COALITION'S OPENING 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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**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.)
_____)

OPENING BRIEF

OF

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

August 10, 2022

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INTRODUCTION

Humans have pushed the planet’s ecosystems to their breaking point—after which we will reach a point of no-return. The Intergovernmental Panel on Climate Change (“IPCC”) paints a dire portrait of our future. Increased frequency and intensity of climate and weather extremes contributing to wildfires, widespread deterioration of terrestrial, freshwater, and oceanic ecosystems, pestilence and disease, mass extinction of plant and animal species, mass mortality of trees, acute malnutrition, and water scarcity plague the globe as ice sheets melt, oceans rise, and sea and wind currents change meteorological patterns.¹ Those with the fewest resources bear the heartbreaking brunt of these challenges because they lack the resources to adapt to climate change.² Methane, the principal component of both fossil gas and renewable natural gas (“RNG”), is amongst the worst sources of greenhouse gas (“GHG”) pollution.³ To avoid climate catastrophe, the IPCC has urged governments to reduce global methane emissions by at least 34% within the next eight years.⁴

Oregon legislators and regulators at both the state and municipal levels have mobilized to shift state and local economies to reduce GHG pollution. They have focused on reducing GHG emissions from the electric sector, as well as from fossil fuel suppliers (including NW Natural). Governor Brown’s Executive Order No. 20-04 calls on state agencies, including the Public

¹ See, generally, IPCC, *Sixth Assessment Report: Impacts, Adaptation, and Vulnerability – Summary for Policy Makers* (2022), https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf.

² *Id.*

³ The principal component of fossil gas is methane, which has 27 to 30 times more potential to warm the planet, compared with carbon dioxide. U.S. Env’t Prot. Agency, *Understanding Global Warming Potentials* (2022), <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>.

⁴ Coalition/100, Apter/6.

Utility Commission, to help Oregon achieve its goal of reducing GHG emissions at least 45% below 1990 levels within the next thirteen years, and 80% below 1990 levels by 2050.⁵ In particular, EO 20-04 requires the Commission to “[p]rioritize proceedings and activities.... that advance decarbonization in the utility sector, and exercise its broad statutory authority to reduce GHG emissions, [and] mitigate energy burden[.]”⁶

In line with these policies, the Coalition of Communities of Color, Sierra Club, Columbia Riverkeeper, Oregon Environmental Council, Climate Solutions, Verde, and Community Energy Project (collectively the “Coalition”) intervened for the first time in a gas utility rate case to elevate the voices of communities who stand to lose the most from climate catastrophe. The Coalition asks the Commission to take action on the following issues: (1) eliminate ratepayer subsidies that fuel continued customer growth of fossil gas utility service; (2) disallow as imprudent the Lexington facility because it fails to deliver actual RNG to Oregon customers, as required by SB 98; (3) deduct costs from the First Partial Stipulation that NW Natural improperly charged to ratepayers for its political activities that sought to oppose climate action by municipal governments; and (4) deduct costs from the First Partial Stipulation for promotional and institutional advertising that misleads the public about the climate harms of gas utility service, greenwashes the Company’s image, and promotes purchase of gas-powered appliances. The Coalition also requests that the Commission open a new docket to review the policies of the Energy Trust of Oregon to ensure that incentives for home weatherization and energy efficiency promote cost-effective decarbonization.

⁵ Exec. Order 20-04, Office of the Governor, State of Oregon, https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf.

⁶ *Id.*

PROCEDURAL BACKGROUND

On December 17, 2021, Northwest Natural Gas Company (“NW Natural” or the “Company”) filed this request for a general rate revision. The Coalition intervened, and filed the Opening Testimonies of Nora Apter, Ed Burgess, Charity Fain, and Greer Ryan which raised issues including: (1) eliminating the subsidy for service line extensions; (2) challenging the prudence of the Lexington facility because it failed to comply with climate laws;⁷ (3) charging ratepayers for the Company’s political lobbying opposing climate action by cities; (4) misleading and promotional advertising improperly billed to ratepayers; and (5) improving low-income rates, weatherization programs, and energy efficiency.

Since that time, the parties to this proceeding have met several times to discuss potential settlement. All of the parties except for the Coalition reached resolution on NW Natural’s revenue requirement as detailed in the May 31, 2022, Multi-Party Stipulation Regarding Revenue Requirement, Rate Spread and Certain Other Issues (“First Partial Stipulation”).⁸ However, continued capital expenditures on the line extension allowance (“LEA”) for new gas service connections remained subject to litigation, as did the Coalition’s challenge to the management and distribution of funds associated with the OLIEE program. ALJ Lackey approved the parties’ joint request for a procedural schedule that allowed the Coalition to file its objection to the First Partial Stipulation on a schedule that overlapped with the existing litigation schedule.

⁷ The Coalition no longer argues in this rate case that the Lexington project fails to comply with the Climate Protection Program (“CPP”). Coalition/600, Apter/2.

⁸ NW Natural, Staff, AWEC, CUB, and SBUA agreed to the terms in the First Partial Stipulation.

The Coalition joined other parties, with the exception of the Small Business Utility Association (“SBUA”), in the June 29, 2022, Second Partial Stipulation. This agreement resolved the Coalition’s concerns, supported by the Testimony of Charity Fain, regarding the administration of the OLIEE program—NW Natural’s low-income weatherization and home repair program. The Second Partial Stipulation would increase the funding available per home and encourage adoption of cost-effective weatherization solutions including attic insulation, wall insulation, and smart thermostats.⁹ The Second Partial Stipulation reserved the LEA issue for litigation, as well as the prudence of the Lexington RNG project.

On June 30, 2022, the Coalition filed the Rebuttal Testimony of Nora Apter, Ed Burgess, and Brian Stewart supporting the Coalition’s recommendation that the Commission end customer growth subsidies by eliminating the LEA. The Coalition also filed the Objection and Rebuttal Testimony of Greer Ryan, requesting that the Commission deduct the following three categories of costs *in addition to* the agreement reached in the First Partial Stipulation:

- Deduct an additional <<Begin Confidential>> [REDACTED] <<End Confidential>> from Part(1)(n) to account for NW Natural’s political activities that it improperly billed to ratepayers;
- Deduct an additional \$183,512 from Part(1)(l) for misleading advertising that sought to greenwash NW Natural’s image, and;
- Deduct an additional \$482,882 from Part(1)(m) to account for the Company’s advertising that promotes purchase of gas-powered appliances.

⁹ As noted in the Second Partial Stipulation and the Testimony in Support of the Stipulation, the Coalition took no position on Part 4 related to the COVID-19 rate spread.

STANDARD OF REVIEW

“Utility regulation, including ratemaking, is a legislative function, and the legislature has granted broad power to [the Commission] to perform its delegated function.”¹⁰ The Commission must protect ratepayers from unfair rates and unreasonable exactions, by ensuring that utility rates are fair, just, and reasonable.¹¹ This standard requires the Commission to balance the public’s need for adequate service at fair and reasonable rates, while providing adequate revenue for the operating expenses and capital costs of the utility.¹² “[R]atemaking involves discretionary decisions that the legislature largely has entrusted to the PUC[,]” provided that the Commission’s decision does not violate a statute or the Constitution.¹³

NW NATURAL BEARS THE BURDEN OF PROOF

If a utility provider seeks to recover the revenue costs through rates, it is the utility provider’s burden during the hearing to demonstrate that the proposed rate increase is fair, just, and reasonable.¹⁴ The utility has both the burden of production to demonstrate rates are fair, and, if a party produces evidence challenging the proposed increase, the utility must demonstrate by the preponderance of evidence that the rate increase is just and reasonable.¹⁵

¹⁰ *Pac. Nw. Bell Tel. Co. v. Katz*, 116 Or. App. 302, 309–10 (1992).

¹¹ *Gearhart v. Pub. Util. Comm'n of Or.*, 356 Or. 216, 235 (2014) (*en banc*); see ORS § 756.040(1) (directing the PUC to protect the public from “unjust and unreasonable” exactions); ORS § 757.210(1)(a) (requiring the Commission to conduct a hearing and determine if the proposed rate is “fair, just, and reasonable”).

¹² *Gearhart*, 356 Or. at 235.

¹³ *Id.*

¹⁴ ORS § 757.210(1)(a).

¹⁵ *In the Matter of Portland General Electric Company Request for a General Rate Revision*, Docket No. UE 394, Order No. 22-129 at 16–17 (Apr. 25, 2022).

With regard to issues settled through stipulation, “[a] stipulation is not binding on the Commission.”¹⁶ The Commission has the power to “adopt or reject a stipulation, or propose that a stipulation be modified prior to approval.”¹⁷ Where a party opposes a settlement, the Commission reviews the evidence presented to determine whether “the settlement is not in the public interest, will not produce rates that are just and reasonable, or otherwise is not in accordance with law.”¹⁸

ARGUMENT

I. THE COMMISSION SHOULD SET THE LINE EXTENSION ALLOWANCE AT \$0.

The Coalition asks the Commission to opine on a centrally important question—should Oregon ratepayers continue to subsidize costs to connect new customers to fossil gas service when the impending climate crisis requires shifting away from continued reliance on fossil fuels? The Commission is not alone in facing this question; other states have tackled the issue in order to protect ratepayers. The Commission also has the authority and obligation to review Schedule X in this proceeding and should not be persuaded to kick the can down the road. The significant financial and social cost caused through burning fossil gas merits eliminating this customer growth subsidy. Further, economic rationales that once supported a subsidy for new customer service lines no longer apply, and the urgent climate imperative supports shifting away from fossil gas as an energy source. NW Natural has failed to persuasively rebut this showing.

Since 2001, new NW Natural customers who want gas service or gas appliances installed in their homes or businesses have enjoyed a subsidy: all ratepayers pay for a large portion of the

¹⁶ OAR § 860-001-0350(9).

¹⁷ *Id.*

¹⁸ *In the Matter of Portland General Electric Company Request for a General Rate Revision*, Docket No. UE 394, Order No. 22-129 at 16–17 (Apr. 25, 2022).

costs associated with installation of the new customer’s personal service line,¹⁹ and NW Natural earns a return on equity for this capital investment.²⁰ This subsidy called a Line Extension Allowance (“LEA”), is an exception to the cost causation principle that requires the “cost causer” to pay for new distribution facilities that solely benefit them.²¹ The Commission originally adopted this policy with the expectation that growing the customer base would benefit the system.²² But by shifting costs onto existing ratepayers through subsidies, LEAs now provide a perverse incentive of subsidizing fossil fuel infrastructure growth at a time when the financial and social costs of burning these carbon-intensive fuels pose existential risks.²³

A. Schedule X Provides a Significant Subsidy to Encourage Customer Growth for Fossil Gas Service in NW Natural’s Service Territory.

For residential customers, Schedule X provides a rebate of \$2,875 per premises for primary gas heating, \$2,100 for gas water heaters or gas fireplaces/wall heaters, and \$850 for gas ranges, cook tops, or clothes dryers.²⁴ Non-residential allowances are individually determined, but are “at a minimum” five times the annual margin revenue generated from the non-residential customer.²⁵ Schedule X also allows customers to seek a refund of costs they incur associated

¹⁹ Coalition/200, Burgess/8 (“In both the residential and non-residential cases, the line extension allowances amount to a cross-subsidy whereby the benefit to new gas customers is ultimately being paid for by other gas customers through base rates.”).

²⁰ Coalition/200, Burgess/28 (“Utilities have a financial incentive to provide an allowance because it effectively expands their ownership of the gas distribution system, by adding a greater share of the service line costs to the utility’s rate base.”).

²¹ Coalition/200, Burgess/12.

²² Coalition/200, Burgess/14–16.

²³ Coalition/200, Burgess/16–21; Coalition/100, Apter/5–18; Coalition/600, Apter/12.

²⁴ See Coalition/200, Burgess/7–8 (explaining the requirements of Schedule X).

²⁵ Coalition/200, Burgess/8.

with main extensions.²⁶ The current residential subsidies described in Schedule X were last updated in 2014 through stipulated settlement in NW Natural’s 2011–2012 general rate case.²⁷

On an annual basis, costs associated with line extension allowances amount to \$26 million, which is charged by NW Natural as a capital expenditure to rate base.²⁸ In 2021, the LEA subsidy accounted for 65% of NW Natural’s total customer growth related capital expenditures of \$39.4 million.²⁹ Ultimately, ratepayers finance the cost of these subsidies because they are incorporated into the retail rates.³⁰ In the absence of the Schedule X subsidies, these line extension costs would simply have been the responsibility of the connecting customers who solely benefit from the service line and would not need to be recovered through base rates.³¹ Under such a scenario, NW Natural’s revenue requirement would have been lower by approximately 6%.³²

B. Public Utilities Commissions Nationwide Are Eliminating Subsidies for Gas Customer Growth to Achieve Decarbonization Goals.

In jurisdictions with local and state policies supporting GHG emissions reductions, public utilities commissions are reducing or eliminating LEAs because they provide an inappropriate subsidy for fossil fuel growth. In a proposed decision recently issued, the California Public

²⁶ The amount of the refund is determined based on the number of additional customers that are added to the same main extension within a 3-year period. Coalition/200, Burgess/9. If many new customers are added in short succession (e.g., for a master planned housing development), then a substantial portion of the main extension costs would likely be subsidized for the developer. *Id.*

²⁷ Coalition/200, Burgess/7.

²⁸ Coalition/200, Burgess/10; *see also* First Partial Stipulation at 3.

²⁹ Coalition/200, Burgess/10 (“New customer contributions defrayed these costs, but only to a very small degree, accounting for about \$1.7 million of the total construction costs in 2021.”).

³⁰ Coalition/200, Burgess/24.

³¹ Coalition/200, Burgess/12, 24.

³² Coalition/200, Burgess/10–11.

Utilities Commission (“CPUC”) eliminated LEAs statewide for the residential and non-residential sector effective July 1, 2023, saving ratepayers \$124 million in costs annually, and \$1.4 billion in costs over a 10-year period.³³ The CPUC rejected arguments from industry calling for further delay through a phaseout, holding that eliminating this fossil fuel subsidy would align with statewide climate goals, provide greater equity for low-income customers, and greater certainty for builders.³⁴

Further, last year, the Washington UTC revised its approach to calculating gas line extension allowances, limiting recovery only to costs recoverable over a seven-year timeframe to achieve policy goals and standards set out in Washington climate laws.³⁵ The UTC reduced Avista’s LEA from \$4,678 to \$2,143 last year,³⁶ and this year Avista agreed to a stipulated phaseout of its LEA policy.³⁷ The Colorado Public Utility Commission also recently issued a proposal to amend the gas rules to limit line extensions and to require new customers to bear the costs of any line extension.³⁸

³³ Cal. Pub. Util. Comm’n, Proposed Decision on Rulemaking 9-01-011 (Aug. 8, 2022), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M496/K415/496415627.PDF>.

³⁴ *Id.* at 26.

³⁵ Wash. Util. & Trans. Comm’n, Docket No. UG 210729, Order No. 1, at 6 (Oct. 29, 2021).

³⁶ Avista Corporation, Docket No. UG 210729, Compliance Filing, <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=70&year=2021&docketNumber=210729>; Coalition/200, Burgess/13.

³⁷ *In the Matter of the Electric Service Reliability Reporting Plan of Avista Corporation*, Full Multiparty Settlement, Dkt. Nos. UE-220053, UG-220054, and UE-210854 (June 28, 2022).

³⁸ Colo. Pub. Util. Comm’n, No. 21R-0449G, D. C22-0427-I (July 22, 2022), https://www.dora.state.co.us/pls/efi/EFI_Search_UI.Show_Decision?p_session_id=&p_dec=29265.

C. The Commission Has the Authority and Obligation to Revise Schedule X in This Rate Case to Eliminate Line Extension Subsidies.

Consistent with its mandate to protect ratepayers from unjust, unfair, and unreasonable exactions, the Commission has ample authority to revisit this policy of subsidizing gas customer growth. Pursuant to OAR § 860-021-0050, the Commission sets a policy individually for each gas utility regarding whether it should recover any costs associated with service line extensions to connect new customers.³⁹ The Commission promulgated this regulation pursuant to its authority to set fair, just, and reasonable rates.⁴⁰ The Commission has used this authority in the past *in a NW Natural rate case* to approve a stipulated agreement to adjust the tariffs set out in Schedule X to change the amounts recoverable through residential LEAs.⁴¹

The Commission also has an obligation to review the evidence put forth by the Coalition and CUB in this case, and not push it to another proceeding. Line extension subsidies contribute \$26 million per year to rate base and constitute 6% of the revenue requirement in this case.⁴² Given these substantial costs to ratepayers, the Commission must determine whether continuing to subsidize fossil gas customer growth benefits ratepayers.⁴³ While Commission Staff do not oppose changing NW Natural's LEA, they instead recommend opening a separate docket to address the policy. This is an unnecessary and time-wasting step, and conflicts with findings in

³⁹ OAR § 860-021-0050(1) (“Each gas utility shall develop, with the Commission’s approval, a uniform policy governing the amount of service extension that will be made free to connect a new customer.”).

⁴⁰ See *In the Matter of a Proposed Rulemaking to Amend OAR 860-021-0050*, Appendix A, OPUC Order No. 01-1024 (Dec. 3, 2001) (noting that ORS § 756-040 provides implementing authority for the regulation).

⁴¹ *Nw. Nat. Gas*, OPUC Docket No. UG 221, Order No. 12-408 at 8 (Oct. 26, 2012).

⁴² Coalition/200, Burgess/10–11.

⁴³ *Calpine Energy Sols. LLC v. Pub. Util. Comm'n of Or.*, 298 Or. App. 143, 162–63 (2019).

the Natural Gas Fact Finding (UM 2156) Draft Report—wherein Staff recommended resolving concerns regarding LEAs in rate cases.⁴⁴

The Coalition urges the Commission to address NW Natural’s LEA in this rate case because doing so serves the Commission’s goal of prioritizing near-term actions in existing dockets rather than opening larger, time-consuming investigations. Moreover, each of Oregon’s three gas utilities currently have different LEAs that serve the very different needs of each of the utilities serving different kinds of populations.⁴⁵ Staff has supplied no reasoning to support its implied suggestion that a larger investigation involving all utilities would better serve the differing circumstances and needs of each utility—especially since OAR § 860-021-0050 requires setting these policies individually for each utility. Nor will changing the line extension subsidy in Schedule X affect revenues for any other gas utility, as Schedule X only applies in territory served by NW Natural.⁴⁶

NW Natural’s primary response on this issue is also one of delay, asking the Commission to take no action, and arguing that the Commission lacks authority to rule on its LEA policy. NW Natural is wrong. State law prohibits the Commission from simply deferring to its past

⁴⁴ Coalition/200, Burgess/14; Coalition/204, Burgess/28; <https://edocs.puc.state.or.us/efdocs/HAH/um2178hah155046.pdf> at page 2 (table 1), 19, 24, 28 (table 9).

⁴⁵ See, e.g., Avista, Or. Pub. Util. Comm’n Rule No. 15, Gas Main Extensions, https://www.myavista.com/-/media/myavista/content-documents/our-rates-and-tariffs/or/or_15.pdf (providing that LEAs should not exceed three times the estimated annual gross revenue derived from new customers); Cascade Natural Gas, Or. Pub. Util. Comm’n Rule No. 10, Main Installations, <https://www.cngc.com/wp-content/uploads/PDFs/Rates-Tariffs/Oregon/10-main-installations.pdf> (providing that ratepayers subsidize an LEA that is 4.5 times the *estimated annual gross margin* derived from each additional customer).

⁴⁶ NW Natural, Schedule X at 1, CUB/100, Jenks/15–17; CUB/400, Jenks/16–22 (comparing differential line extension subsidies offered by NW Natural versus Avista).

decisions approving recovery of LEAs.⁴⁷ Rather, the Commission has an affirmative obligation to rule in this case based on the record developed.⁴⁸

NW Natural also argues that the Commission should not reach the issue of line extension subsidies because it relates to broad overarching policy issues about the future of gas. However, the Oregon Supreme Court held that the Commission has quasi-legislative authority to make delegated policy choices within its broadly stated authority to set rates that are just, fair, and reasonable.⁴⁹ EO 20-04 mandates that the Commission use this “broad statutory authority” to “advance decarbonization in the utility sector[.]”⁵⁰ Lastly, NW Natural itself has asked for an increase to the LEA in a rate case, meaning it believed the Commission has the authority to change Schedule X.⁵¹ Eliminating the line extension subsidy and reducing the financial incentive to connect to fossil gas service is exactly the type of policy issue the Commission should reach in a rate case because this subsidy harms ratepayers and the public.

D. Continuing to Subsidize Customer Growth Harms Ratepayers, Promotes Free-Ridership, and Conflicts with Oregon Climate Policy.

The Commission should eliminate NW Natural’s LEA policy for two primary reasons: (1) it no longer provides a financial benefit to ratepayers, and (2) subsidizing customer growth for fossil gas undermines Oregon’s climate laws and decarbonization targets. In doing so, the Commission is guided by its own regulations and the EO 20-04 directives. Specifically, any line extension subsidy should be related to “the investment that can prudently be made for the

⁴⁷ *Calpine Energy Sols. LLC v. Pub. Util. Comm'n of Or.*, 298 Or. App. 143, 162–63 (2019).

⁴⁸ *Id.*

⁴⁹ *Gearhart*, 356 Or. at 221.

⁵⁰ *Id.*

⁵¹ *Nw. Nat. Gas*, OPUC Docket No. UG 221, NW Natural Opening Petition at NWN/1700, King/7–9.

probable revenue” generated from new customer connections.⁵² When setting rates, the Commission should consider “differential energy burdens on low-income customers and other economic, social equity or environmental justice factors that affect affordability for certain classes of utility customers, and any other reasonable consideration.”⁵³ Additionally, EO 20-04 requires the Commission to “exercise any and all authority and discretion vested in [it] by law” to achieve Oregon’s statewide GHG reduction goals.⁵⁴ The Executive Order also declared it in the public interest for the utility sector to take actions that “result in rapid reduction of GHG emissions, at reasonable costs[.]”⁵⁵

1. Subsidizing gas customer growth harms ratepayers.

Significant new concerns have emerged in recent years that suggest the rules and practices for line extensions must be revisited. These concerns include: increased cost and volatility of gas prices, stranded cost risk, greenhouse gas emissions and climate policy, availability and affordability of gas alternatives, and indoor air quality.⁵⁶ The Testimony of Ed Burgess explores the traditional rationales for LEAs, as well as the countervailing factors that should lead the Commission to eliminate or limit line extension subsidies.⁵⁷ Moreover, the core economic rationale for continued line extension allowances is largely unsupported and likely results in windfall subsidies to new gas customers.

⁵² OAR § 860-021-0050(1).

⁵³ ORS § 757.230(1).

⁵⁴ 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.

⁵⁵ *Id.* at 8.

⁵⁶ Coalition/200, Burgess/22.

⁵⁷ Coalition/200, Burgess/9–30.

The economic rationale supporting NW Natural’s LEA was conducted 10 years ago under differing circumstances, but considering the cost to decarbonize gas, this rationale no longer supports subsidizing customer growth. First, even under the traditional economic rationale, existing customers will not benefit from the additional revenue generated by new customers for at least thirty years.⁵⁸ Further, the cost calculation for the current LEA turns a blind eye to the financial costs of decarbonizing new customers. These costs are significant and erode the economic rationale for subsidizing customer growth.⁵⁹ While costs incurred to comply with the CPP should be treated as pass-through costs, they are relevant to the economic rationale for LEAs because “any near-term growth in the gas distribution system that is exacerbated by new customer additions may still cause the Company’s near-term emissions to increase.”⁶⁰ This in turn would increase the costs to comply with the CPP.⁶¹ Passing the cost of RNG investments on to customers through rates increases may also reduce demand as customers try to lower their gas bills or electrify—meaning additional revenue benefits would take even longer to accrue.⁶²

Second, widespread electrification poses the risk that ratepayers would not even realize their 30-year payoff, because electrification would turn these investments into stranded costs.⁶³ Electrification, especially for new buildings, is cheaper than gas in terms of up-front costs, 15-year net present costs, and the 15-year GHG emissions—assuming that new buildings install

⁵⁸ Coalition/500, Burgess/9.

⁵⁹ CUB/400, Jenks/12–13.

⁶⁰ Coalition/500, Burgess/19.

⁶¹ CUB/400, Jenks/12–13.

⁶² Coalition/200, Burgess/26–27.

⁶³ Coalition/200, Burgess/17–18.

energy efficient electric appliances like heat pumps.⁶⁴ The Inflation Reduction Act recently passed by Congress would provide a federal rebate of up to \$8,000 to install heat pumps, and a rebate of up to \$1,750 for heat pump water heaters—substantially accelerating deployment of this technology.⁶⁵ Subsidizing the continued growth of NW Natural’s customer base would cumulatively contribute to the climate crisis because affordable electric alternatives for home energy use exist that that emit far fewer greenhouse gas emissions.⁶⁶

Lastly, subsidizing gas customer growth is unjustified because new customers are willing to pay to connect to gas utility service. NW Natural has not presented any evidence showing that new service line costs are a major economic barrier to new customers.⁶⁷ To the contrary, in 2021, over a quarter of new customers connected to gas utility service even without an LEA subsidy, and some individuals were willing to pay over \$37,000 for gas service.⁶⁸ According to NW Natural customer surveys, homeowners are willing to pay as much as \$50,000 for a home with gas utility service.⁶⁹ Eliminating the LEA subsidy would: “1) avoid ratepayer-funded windfall payments to wealthy customers whose decisions are unimpacted by the presence of the subsidy, and 2) encourage the overall market to adopt fossil-free solutions over time.”⁷⁰

⁶⁴ Coalition/200, Burgess/20; *see also* Coalition/700, Stewart/5–7.

⁶⁵ Z. Hirji, et al., “Here’s How the New US Climate Deal Could Make Energy Bills Cheaper,” *Bloomberg*, Jul. 28, 2022, <https://www.bloomberg.com/news/articles/2022-07-28/here-s-how-manchin-s-climate-deal-could-make-energy-bills-cheaper>.

⁶⁶ Coalition/200, Burgess/19–20; Coalition/700, Stewart/5–8.

⁶⁷ Coalition/500, Burgess/11.

⁶⁸ Coalition/200, Burgess/24 (“In such instances, it is not clear that the existence of a relatively small allowance is a determining factor for unlocking new customer revenue.”).

⁶⁹ Coalition/405, Ryan/49.

⁷⁰ Coalition/500, Burgess/11.

2. *Subsidizing gas customer growth conflicts with state decarbonization mandates.*

Oregon climate policy calls for rapid decarbonization of the state's economy. Governor Brown's executive order calls on the State of Oregon to rapidly reduce GHG emissions.⁷¹ Additionally, the Climate Protection Program ("CPP") requires statewide covered emissions to average 50% below 1990 levels by 2035, and 90% by 2050.⁷² The CPP sets a statewide cap on GHG emissions that ratchets down year after year.⁷³ NW Natural is a covered entity under the CPP, because it is a fuel supplier.⁷⁴

Meeting CPP targets requires reducing gas demand, but adding customers achieves the opposite result. Customer growth is the main factor driving an increase in volumetric sales of fossil gas by NW Natural. Even though the CPP requires NW Natural to decrease its emissions by 4% per year starting this year, the company plans to expand its operations and increase total fossil gas sales by 2.5% per year.⁷⁵ NW Natural projects this increase in gas sales, even though per customer gas usage has declined, because it anticipates growing its customer base by approximately 2% per year.⁷⁶ In its 2022 Draft IRP, NW Natural assumes that demand for gas stays constant through 2024, and then declines, in order to meet CPP compliance deadlines.⁷⁷ However, analysis by CUB shows that by continuing to grow and add customers to the system, NW Natural will increase load growth and, therefore, increase the total amount of GHG

⁷¹ Exec. Order 20-04, Office of the Governor, State of Oregon, *infra* note 5.

⁷² OAR § 340-271-9000, Table 2; Coalition/100, Apter/8.

⁷³ OAR § 340-271-0410; OAR § 340-271-9000, Table 2.

⁷⁴ OAR § 340-271-0020(15)(a); OAR § 340-271-0110(4)(a).

⁷⁵ Coalition/200, Burgess/18–19.

⁷⁶ *Id.*

⁷⁷ NW Natural, *2022 Draft IRP*, Executive Summary at 1, <https://www.nwnatural.com/about-us/rates-and-regulations/resource-planning>.

emissions by an additional 19%.⁷⁸ Promoting customer growth by subsidizing service line extensions through an LEA, will make it far more difficult for NW Natural to comply with the CPP targets. Subsidizing new gas lines works against the very progress the CPP mandates.

Further, the Coalition provides testimony showing that NW Natural’s proposals to decarbonize rely on untested technology. NW Natural assumes that it can achieve this goal using a combination of energy efficiency, RNG and hydrogen blending.⁷⁹ Hydrogen blending poses pipe corrosion, and other major technical challenges to residential and commercial use, as does the use of synthetic gas.⁸⁰ Electrification is a known and cost-effective decarbonization strategy.⁸¹ Eliminating the LEA allows the market to adopt fossil-free solutions over time.

3. *Recommendation*

In light of the financial harms to ratepayers, and the significant climate harms associated with continuing to subsidize gas utility customer growth, the Coalition recommends that the Commission reduce NW Natural’s residential and non-residential customer allowances under Schedule X to \$0.

E. NW Natural Fails to Bear Its Burden of Proof on LEAs.

Both the Coalition and Oregon Citizens’ Utility Board (“CUB”) have submitted testimony questioning NW Natural’s justifications for its line extension subsidies, as well as evidence about increasing compliance costs. NW Natural, however, has failed to meet its burden of proof that its current LEA should be maintained.

⁷⁸ CUB/400, Jenks/12.

⁷⁹ *See generally*, NW Natural/100, Anderson-Kravitz/12–14.

⁸⁰ Coalition/600, Apter/5–8.

⁸¹ *See generally*, Coalition/700.

First, Mr. Taylor fails to address NW Natural’s financial incentive to advocate for LEAs.⁸² As Mr. Burgess points out, “All else being equal, it would be in the utility’s best interest to propose higher allowance values since that would increase its capital expenditures and overall rate base upon which it earns a rate of return.”⁸³

Further, neither Mr. Taylor nor Mr. Heiting nor Ms. Bracken provide any data or support for their claims that eliminating the LEA would likely reduce the number of new customers.⁸⁴ The Heiting-Bracken Testimony implies that without a LEA policy, all gas customer growth would cease.⁸⁵ However, these blanket assumptions lack basis in fact. In his Rebuttal Testimony, Mr. Burgess opined that even with an existing LEA policy, approximately 27% of new customer additions in 2021 connected to gas utility service even though they would not receive an allowance.⁸⁶ None of the Company’s witnesses responded to this analysis.⁸⁷

Further, while Mr. Burgess agreed in part that theoretically an LEA could provide a financial benefit to existing customers through new customer additions,⁸⁸ he raised important caveats to that assumption that Mr. Taylor recognized in reply⁸⁹ but failed to rebut or address. These caveats are vital to an understanding of why NW Natural’s line extension subsidy would not reduce costs for new customers: (1) the LEA benefit would only materialize for existing

⁸² Coalition/500, Burgess/3.

⁸³ Coalition/500, Burgess/3.

⁸⁴ Coalition/500, Burgess/4; NW Natural/1800, Taylor/29.

⁸⁵ NW Natural/2400, Heiting-Bracken/17–18 (referencing analysis that the company performed that assumes no new growth in gas utility customers).

⁸⁶ Coalition/500, Burgess/10.

⁸⁷ NW Natural/2600, Taylor/26–38; NW Natural/2400, Heiting-Bracken/17–18.

⁸⁸ Coalition/500, Burgess/4.

⁸⁹ NW Natural/1800, Taylor/27–28.

customers if NW Natural applied for a future rate decrease (or a more limited future rate increase) that reflected such a reduction in average costs; (2) this reduction in average costs is really only applicable to joint use facilities or common costs; and (3) adding new customers also increases overall demand for gas supply, which could in turn increase commodity prices in the region, thereby offsetting benefits to existing customers.⁹⁰

Nor is it inconsistent to argue that line extension subsidies are not an economic barrier, and that reducing them could result in customers choosing electric (as opposed to gas) appliances. As Mr. Burgess explained:

As with any marketplace, each potential customer will have a different ability to pay for a desired good or service, and therefore would have different responses to the presence of a subsidy. In the case of NW Natural's line extension subsidies, it appears evident (as I explained in my opening testimony) that some customers' decisions are not contingent on the presence of the subsidy, and the subsidy simply presents a windfall payment. Meanwhile, other customers' decisions could be affected by the presence of the subsidy, however the magnitude of this is difficult to gauge *since NW Natural hasn't provided any concrete evidence on how many of its new customer connections are contingent on the subsidy*. To be clear, I am not disputing the fact that some of its customers might find line extension costs to be a barrier that is alleviated by the subsidy, but it is not clear how many. In light of the fact that these two possibilities coexist, I still maintain that the elimination of the line extension subsidy is warranted to simultaneously achieve two worthy outcomes: 1) avoid ratepayer-funded windfall payments to wealthy customers whose decisions are unimpacted by the presence of the subsidy, and 2) encourage the overall market to adopt fossil-free solutions over time. I do not believe these goals are inconsistent with one another.⁹¹

In testimony on its behalf, NW Natural suggests—if not outright states—that existing customers will see benefits from line extension subsidies sooner than 30 years, the payback period used by NW Natural in its analysis.⁹² But this analysis is flawed. In Mr. Taylor's

⁹⁰ Coalition/500, Burgess/4.

⁹¹ Coalition/500, Burgess/11.

⁹² Coalition/500, Burgess/7.

updated calculations he omitted calculations for 5-, 10-, and 15-year time horizons, choosing to focus solely on longer periods.⁹³ While Mr. Taylor now claims that customers see a benefit by year 13, this analysis fails to take into account the rate of return earned by NW Natural, and the time value of money.⁹⁴ Further, the original analysis for the existing LEA “clearly shows for the \$2,900 allowance level, that existing customers are actually *worse* off for about 15 years, and only achieve the expected return on investment around the 30-year mark.”⁹⁵

In sum, NW Natural has failed to meet its burden of proof to maintain the existing LEA. The Coalition reiterates its request that the Commission reduce NW Natural’s LEA for residential and non-residential customers to \$0.

II. THE LEXINGTON PROJECT IS NOT A “QUALIFIED INVESTMENT IN RNG INFRASTRUCTURE” PURSUANT TO SB 98 AND, AS A RESULT, IS NOT A PRUDENT INVESTMENT.

The Coalition requests that the Commission deny the Lexington Project in Nebraska as imprudent because it fails to comply with the requirements of SB 98 or the implementing regulations. The plain language of ORS § 757.390 – 757.396 (hereinafter “SB 98”) encourages fossil gas utilities to progressively decarbonize their product by delivering an increasing percentage of Renewable Natural Gas (“RNG”) to their Oregon customers. Contrary to the statute’s directives, the company is not delivering any RNG to its customers—only renewable thermal credits (RTCs). As Ms. Apter explained in her Opening Testimony, NW Natural’s Lexington Project operates like an offset scheme, which is not permitted by the statute, misleads

⁹³ Coalition/500, Burgess/12.

⁹⁴ See NW Natural/2600, Taylor/31–32.

⁹⁵ Coalition/500, Burgess/8–9; see also *id.* (“In fact, existing customers might be better off if NW Natural had simply invested the same money into a mutual fund, rather than subsidize allowances for new customer connections.”).

ratepayers about the product they are paying for, implies that emissions reductions are occurring in Oregon when they are not, and delays real climate action in Oregon.⁹⁶

NW Natural explains that it is “acquiring both the energy content of the RNG and the RTCs for the Lexington RNG project.”⁹⁷ It then “injects the gas into a common carrier pipeline (the Black Hills Energy pipeline system),”⁹⁸ and “[a]fter NW Natural injects the RNG into the common carrier pipeline, it sells the energy content of the gas (without the environmental attribute) to a gas marketer in Nebraska that has transportation rights on the Black Hills pipeline system.”⁹⁹

However, the statute is clear. The legislation 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”¹⁰⁰—to be “furnished to Oregon customers.”¹⁰¹ Notably, the statute references “environmental attributes” only once, and in a context underscoring that the environmental attributes associated with RNG was a legislative afterthought, and not intended to be the method of “delivering” “RNG” to Oregon customers. Since NW Natural has designed its Lexington investment to retain only the RTCs while selling the energy content of the gas to an out-of-state buyer, no RNG is being “furnished to Oregon customers.” Additionally, NW Natural cannot rely on the regulations implementing

⁹⁶ Coalition/100, Apter/19–20.

⁹⁷ NW Natural/2100, Chittum/8.

⁹⁸ *Id.*

⁹⁹ *Id.* at 8–9.

¹⁰⁰ ORS 757.392(7).

¹⁰¹ ORS 757.392(9) defines “Renewable natural gas infrastructure” to be all the equipment and facilities necessary for the “production, processing, pipeline interconnection and distribution of renewable natural gas to be *furnished* to Oregon customers.” (Emphasis added).

SB 98; they must be read in a manner that implements the statute. Accordingly, since NW Natural’s Lexington investment does not comply with the provisions of SB 98, it was not a prudent investment, and the company cannot recover its costs from ratepayers.

A. SB 98 Requires NW Natural to Provide Actual RNG to Its Customers, and Not the Environmental Attributes Associated with the Gas Alone.

The plain text of SB 98 demonstrates that the Oregon legislature intended cost recovery for investments in RNG delivered to Oregon customers, finding that RNG provides benefits to customers and to the public, and that the development of RNG would “support a smooth transition to a low carbon energy economy in Oregon.”¹⁰² Under Oregon rules of statutory interpretation, the Commission must begin its statutory analysis with the text of the statute in context.¹⁰³ The Commission may also look at legislative history offered by the parties, “keeping in mind that ‘there is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes.’”¹⁰⁴

I. *“Renewable natural gas” is defined by the statute to be the physical product providing energy and not the environmental credit alone.*

As an initial matter, RNG is defined in the statute as a physical substance. RNG is defined to mean biogas that can be blended or substituted for geologic natural gas, as hydrogen, and as methane gas that is derived in one of the specified manners, that is processed to meet pipeline quality standards or transportation fuel grade requirements.¹⁰⁵ The definition cannot be

¹⁰² ORS 757.390(1)(a) and (b).

¹⁰³ ORS 174.020(a) (“In the construction of a statute, a court shall pursue the intention of the legislature if possible.”); *State v. Gaines*, 346 Or. 160, 171 (2009) (“The first step remains an examination of text and context”), citing *PGE v. Bureau of Labor & Indus.*, 317 Or. 606, 610–12 (1993).

¹⁰⁴ *SAIF Corp. v. Ward*, 369 Or. 384, 392 (2022), quoting *Gaines*, 346 Or. at 171.

¹⁰⁵ ORS 757.392(7).

read to mean the environmental attribute—the RTC—without the accompanying energy content of the gas.¹⁰⁶ Accordingly, when the provisions of the statute refer to investing in or procuring RNG, the legislature intended the purchase or provision of a physical product delivering energy to Oregon ratepayers.

Notably, the statute refers once to “environmental credits” in prescribing the manner of cost recovery, demonstrating two important things.¹⁰⁷ First, the legislature knew that environmental credits could be generated from RNG production, and second, the legislature could have, but did not, design a program authorizing cost recovery for investments in environmental credits alone.

2. *The text of SB 98 demonstrates that NW Natural must “provide or supply” RNG to Oregon customers—and not the RTC alone—if it seeks to recover its investment from them.*

The plain text 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. To constitute an authorized investment under SB 98, the capital investment in equipment must “furnish[.]” RNG “to Oregon customers” “for the purpose of providing natural gas service[.]”¹⁰⁸

SB 98 permits NW Natural to “make qualified investments and procure [RNG] from third parties to meet” targets set in the statute.¹⁰⁹ A “qualified investment” is specifically defined as

¹⁰⁶ ORS 757.392(7).

¹⁰⁷ ORS 757.396(6) (“The total incremental annual cost to meet the targets . . . must account for: (a) Any value received by a large natural gas utility upon any resale of renewable natural gas, including any environmental credits that the renewable natural gas producer chooses to include with the sale of the renewable natural gas to the large natural gas utility”).

¹⁰⁸ ORS 757.392(5) and (8).

¹⁰⁹ ORS 757.396(1).

“any capital investment in renewable natural gas infrastructure incurred by a natural gas utility *for the purpose of providing natural gas service* under a renewable natural gas program described in ORS 757.396 (participating large natural gas utilities)[.]”¹¹⁰ “Renewable natural gas infrastructure” in turn, means “all equipment and facilities for the production, processing, pipeline interconnection and distribution of renewable natural gas *to be furnished to Oregon customers.*”¹¹¹

These definitions are critical. First, the statute authorizes cost recovery for infrastructure necessary to provide natural gas service. Second, the statute describes what infrastructure would qualify for cost recovery, detailing all the processes necessary to prepare a physical product for use. Finally, that physical product must then be “furnished to Oregon customers.”

Use of the words “renewable natural gas to be furnished to Oregon customers” reflects that a physical product must be provided to Oregon customers. While “furnished” is an undefined term, the Commission should give the words of a statute their “plain, natural and ordinary” meaning.¹¹² Referring to *Webster’s Third International Dictionary*, the Oregon Supreme Court has interpreted the word “furnish” to mean “in its ordinary usage, ‘to provide or supply with what is needed, useful or desirable.’”¹¹³ Accordingly, “renewable natural gas to be furnished to Oregon customers” refers to RNG “to be provided or supplied” to Oregon customers. The definition of RNG—which is a physical product and not the RTC alone¹¹⁴—

¹¹⁰ ORS 757.392(5)(a)(1).

¹¹¹ ORS 757.392(8) (emphasis added).

¹¹² *SAIF Corp. v. Ward*, 369 Or. at 394.

¹¹³ *Id.* at 394–95 (defining “furnish” using *Webster’s Third New Int’l Dictionary* 923 (unabridged ed 2002)).

¹¹⁴ ORS 757.392(7).

together with the requirement that capital investments in “renewable natural gas infrastructure” “furnish[]”¹¹⁵ RNG to Oregon customers, means that it was imprudent for NW Natural to invest in an out-of-state facility that does not deliver any RNG to its customers. The statute cannot be read to permit NW Natural to recover its costs for furnishing RTCs to Oregon ratepayers without the associated energy content of the gas. NW Natural’s decision to invest in a project that does not provide or supply RNG to any Oregon customers was imprudent.

3. *The legislative declaration supports the plain meaning that SB 98 is a tool for NW Natural to provide RNG for use by Oregon customers.*

The Commission may consider the meanings of “qualified investment” and “renewable natural gas infrastructure” in the context of other provisions of the same statute and other related statutes.¹¹⁶ Here, the legislature declared that “the development of renewable natural gas resources should be encouraged to support a smooth transition to *a low carbon energy economy in Oregon.*”¹¹⁷ The legislative declaration in SB 98 supports the plain meaning of these provisions to mean the actual delivery of RNG to customers in Oregon.

NW Natural’s interpretation of SB 98 instead encourages it to develop the very cheapest RNG out-of-state, strip the gas of its RTCs and sell the gas to an out-of-state buyer, which does nothing to encourage the decarbonization of gas running in the pipelines in Oregon or combusted in the homes and businesses of Oregonians, and, consequently, does nothing to support a transition to a “low carbon energy economy in Oregon.” Such a reading effectively “omit[s]” the

¹¹⁵ ORS 757.392(8).

¹¹⁶ *Id.* at 395.

¹¹⁷ ORS 757.390(1)(b) (emphasis added).

legislature’s desire to create a low-carbon energy economy in Oregon, ignoring the legislative intent expressed through those words.¹¹⁸

4. *Witness testimony, the legislature’s amendment to the bill, and the purpose of the statute underscore that more is required than “delivering” RTCs to Oregon ratepayers.*

The plain language of the statute requires providing a physical product to Oregon customers. However, if the Commission finds it helpful in understanding the meaning of the SB 98 provisions, it may examine the statute’s legislative history, including testimony from committee members from the House or Senate as well as other witnesses.¹¹⁹

According to testimony from several stakeholders, including NW Natural itself, the Oregon State Legislature created the bill as a tool to promote the use of RNG in Oregon by Oregon utility customers.¹²⁰ After hearing this testimony, the Legislature amended the proposed

¹¹⁸ See ORS 174.010 (“In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.”).

¹¹⁹ *State v. Gaines*, 346 Or. at 172 (“a party is free to proffer legislative history to the court, and the court will consult it after examining text and context, even if the court does not perceive an ambiguity in the statute’s text, where that legislative history appears useful to the court’s analysis.”). *Dep’t of Consumer & Bus. Servs. v. Muliro*, 359 Or. 736, 753 (2016).

¹²⁰ O.R. S.B. 98 Reg. Sess. 2019 (2019). (Testimony of Kathryn Williams, NW Natural) (describing the program within SB 98 as a “voluntary program [that] would enable gas utilities like NW Natural to begin acquiring RNG *on behalf of Oregon customers*” [emphasis added]); (Testimony of Mark Jockers) (describing SB 98 as enabling “RNG to be sold by the gas utilities to *Oregon customers* for a variety of uses” [emphasis added]); (Testimony of Ryan Kenny) (describing one of the policy goals of SB 98 as “providing just and reasonable investments necessary to connect biomethane production facilities with the central *natural gas distribution system in Oregon*” [emphasis added] and explaining that “utilities should be enabled to invest in infrastructure necessary to *bring more RNG into the Oregon market*” [emphasis added]); (Testimony of Catherine MacDonald) (describing SB 98 as playing “an important role in beginning to overcome many of the hurdles to expanding the *use of RNG in Oregon* [emphasis added]”); (Testimony of Adam Capage) (describing SB 98 as reducing “key barriers to producing and *utilizing* biogas and RNG in the state” [emphasis added]).

legislation and added the definition of “renewable natural gas infrastructure” in ORS 757.392, which includes the phrase “renewable natural gas to be furnished to Oregon customers.”¹²¹ The Oregon State Legislature’s amendment, after hearing testimony by stakeholders, further supports the analysis above.

B. The Regulations Require NW Natural to “Produce” or “Purchase” RNG for Its Customers in Oregon.

The Commission’s regulations implementing SB 98 also require NW Natural to produce or purchase RNG—the physical product—for its Oregon customers, and not RTCs alone. Accordingly, NW Natural may not sell to a local buyer in Nebraska the product it is producing and processing and have it “count” under SB 98.

The regulations adopt the definition of RNG set out in the statute, so that every time RNG is used in the regulations it means the physical product processed to meet pipeline quality standards.¹²² Accordingly, although the regulations set forth the method of producing, tracking, and reporting the environmental credits associated with the RNG, the regulations maintain the statutory criteria that RNG be provided to Oregon customers. For example, the regulations require NW Natural to use RTCs “to track the chain of custody of the environmental attributes of RNG that is produced or purchased *for the utility’s retail natural gas customers in Oregon.*”¹²³ The carbon intensity of the pathway “utilized to *produce, transport, and deliver RNG to a retail natural gas customer*” must also be tracked.¹²⁴ The rules also require that NW Natural demonstrate it has delivered RNG to an injection point on a natural gas common carrier

¹²¹ Or. S. Amends. to S.B. 98, 2019 Reg. Sess. S.B. 98, <https://olis.oregonlegislature.gov/liz/2019R1/Downloads/ProposedAmendment/14169>.

¹²² OAR 860-150-0010(15).

¹²³ OAR 860-150-0050(2) (emphasis added).

¹²⁴ OAR 860-150-0050(1) (emphasis added).

pipeline.¹²⁵ To be consistent with the statute, the rules must be read to require delivery to Oregon customers on that natural gas common carrier pipeline, such that the physical product processed to meet pipeline standards will have been “furnished to Oregon customers.”¹²⁶ NW Natural’s sale of that gas to a local buyer in Nebraska does not comply.

C. An Investment that Does Not Comply with the Statute and Regulations Authorizing the Action Is Not a Prudent Investment.

The Commission is tasked with determining whether NW Natural’s actions and decisions, based on what it knew or should have known at the time, were prudent. The question is “whether the utility exercised the standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time the decision had to be made.”¹²⁷ This is an objective standard.¹²⁸

A utility exercising the appropriate standard of care would proceed cautiously in implementing SB 98 and would be guided first and foremost by the statutory language permitting the RNG investments. Given the unique risks presented by the Lexington project—first of its kind by this utility, out-of-state, operated by a third party—it was not sufficiently prudent for NW Natural to proceed with an investment that does not result in the delivery of RNG to its customers. For that reason, the Coalition requests the Commission deny NW Natural’s request for cost recovery of its investment in the Lexington Project.

¹²⁵ OAR 860-150-0050(7).

¹²⁶ ORS 757.932(8); *see Avis Rent a Car Sys. v. Dep’t of Revenue*, 330 Or. 35, 41 (2000) (explaining that rules may not be inconsistent with the legislative intent, and that an administrative agency may not change or revise the terms of a law).

¹²⁷ *In the Matter of PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 374, Order No. 20-473 at 138 (Dec. 18, 2020).

¹²⁸ *In the Matter of the Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs*, Docket No. UM 995/UE 121/UC 578, Order No. 02-469 at 8 (July 18, 2002).

III. THE COMMISSION SHOULD DISALLOW THE COMPANY'S EXPENDITURES ON POLITICAL ACTIVITIES AS REQUIRED BY STATE AND FEDERAL LAW.

The Coalition objects to Part(1)(n) of the First Partial Stipulation because it allows NW Natural to recover costs for its political lobbying activities that sought to prevent the adoption of municipal climate legislation, bans on gas hook ups for new building construction, modifications to gas franchise agreements, and taxes on fossil gas utility service—all activities that advance NW Natural's business interests while harming ratepayers. Federal law and Commission precedent prohibit recovery for these types of political expenditures. Yet, NW Natural openly admits it seeks reimbursement from ratepayers for these costs—and believes it is entitled to this recovery. Allowing recovery of these costs—and accepting the statement that these costs are merely part of an “integrated settlement”¹²⁹—would violate state and federal law and be contrary to the public interest.¹³⁰ The Commission should disallow <<Begin Confidential>> [REDACTED] <<End Confidential>> from the revenue requirement to account for these costs.

A. Federal Law and Commission Precedent Prohibit Recovery of Costs Incurred to Advance NW Natural's Political Agenda

In Oregon, the Commission prohibits recovery of ratepayer funds to pay for political activities. The Commission previously held that:

Ratepayers should not be required to contribute to the advancement of political positions in which they may not believe. Exclusion of political expenditures is even more important than exclusion of community affairs expenditures because a utility's lobbying program can *actually harm ratepayers*. Stockholder interests with respect to issues such as the nature and scope of regulation often conflict with ratepayer interests. A utility's lobbying program can be expected to give preference to stockholder interests when issues such as those arise.¹³¹

¹²⁹ NW Natural-Staff-CUB-AWEC-SBUA/200, Kravitz, Fjelheim, Gehrke, Mullins, and Kermod/15–16.

¹³⁰ *In re Portland General Electric Company*, *infra* note 18, Order No. 22-129 at 16–17.

¹³¹ *Re Pac. Nw. Bell Tel. Co., Am. Network, Inc.*, et al., UT 43, Order No. 87–406, 82 P.U.R. 4th 293, 320 (Mar. 31, 1987) (emphasis added).

The Commission has emphatically stated that it “*does not* require customers to support causes in which they do not believe.”¹³² This policy prohibits utilities from recovering costs associated with “legislative activities” and “governmental affairs.”¹³³

Federal regulations likewise prohibit recovery of political activity costs.¹³⁴ FERC has declared that expenditures utilities put towards lobbying activities “may not, *under any circumstances*, be included in the utility’s cost of service.”¹³⁵ FERC requires utilities to record their political expenditures in Account No. 426.4 to “provid[e] the basis in rate proceedings for such expenses to be borne by the shareholders and not the consumers.”¹³⁶ As FERC has explained:

[Political expenditures] by their nature . . . have a doubtful relationship to rendering utility service, Hence, the classification of such expenditures routinely to operating expenses *would not be consistent* with the objectives of utility accounting regulation, which aims at the separate disclosure and classification of all such controversial items.¹³⁷

For this reason, FERC requires utilities to “isolate[e] and identif[y] these controversial expenditures” because utilities are not entitled to “charge against the ratepayer the cost of

¹³² *In re Portland Gen. Elec. Co.*, UE 197, 2009 WL 214804 at *16 (May 19, 2009) (emphasis added).

¹³³ *Re Cascade Nat. Gas Co.*, UF 3094, UF 3129 Order No. 74–898, 8 P.U.R. 4th 19, 27 (Nov. 21, 1974); *See Re Portland Gen. Elec. Co.*, 212 P.U.R. 4th at 10 (affirming that political activities are not recoverable costs from ratepayers).

¹³⁴ *See, e.g., Alaskan Nw. Nat. Gas Transp. Co.*, 19 FERC ¶ 61,218, 61,428 (1982); *Sw. Elec. Power Co. v. F.P.C.*, 394 F.2d 29, 33 (5th Cir. 1962).

¹³⁵ *Delmarva Power & Light Co.*, 58 FERC ¶ 61,169, 61,509 (1992) (emphasis added).

¹³⁶ *Re Appalachian Power Co.*, 51 F.P.C. 1906, 1941 (1974).

¹³⁷ *Sw. Elec. Power Co.*, 394 F.2d at 33 (emphasis added).

political programs favored by the company but possibly opposed by those who must pay the cost of supporting” the utilities.¹³⁸

Federal regulations define political expenditures as costs incurred when “influencing public opinion with respect to ... legislation, [adoption or repeal of] ordinances ... or approval, modification, or revocation of franchises[.]”¹³⁹ Political expenditures also include any activity undertaken “for the purpose of” influencing any “decision[.]” of a “public official[.]”¹⁴⁰ This includes any activity that directly or indirectly could affect the decision of a public official, and is not limited to decisions on proposed legislation.¹⁴¹ For example, the D.C. Circuit held that actions to encourage public utility commissioners to issue certificates of public convenience constituted political lobbying under FERC’s regulations.¹⁴² It also includes unsuccessful attempts at influencing the decisions of a public official.¹⁴³ The *purpose* of influencing decisions of public officials is the “touchstone” and the “definitional boundary” of the policy.¹⁴⁴

B. NW Natural’s Contacts with Municipal Officials Were Extensive and Relentless.

NW Natural engaged in numerous political activities for the purpose of influencing the decisions of public officials in Oregon cities on proposed climate policies, franchise agreements, and taxes on gas utility service.¹⁴⁵ NW Natural repeatedly interfered with attempts to pass decarbonization and electrification initiatives that would financially impact the natural gas

¹³⁸ *Alaskan Nw. Nat. Gas Transp. Co.*, 19 FERC ¶ 61,218, 61,428 (1982).

¹³⁹ 18 C.F.R. § 367.4264(a).

¹⁴⁰ *Newman v. FERC*, 27 F.4th 690, 702 (D.C. Cir. 2022).

¹⁴¹ *Newman v. FERC*, 27 F.4th 690, 702 (D.C. Cir. 2022).

¹⁴² *Id.*

¹⁴³ *Id.* at 700.

¹⁴⁴ *Id.* at 698.

¹⁴⁵ Coalition/400, Ryan/38–48; Coalition/900, Ryan/34–43.

industry in Eugene, Portland, Milwaukie, Multnomah County, and Lane County.¹⁴⁶ NW Natural states that it undertook these activities with the purpose of preventing municipal governments from adopting prohibitions on connecting new buildings to gas utility service.¹⁴⁷ NW Natural’s advocacy efforts included employees in its highest ranks. Public records from the municipalities of Lane County, Portland, Multnomah County, the City of Milwaukie and the City of Eugene indicate these communications involved numerous staff members, including the company’s CEO and its most senior managing officers.

NW Natural admitted that it spent the last three years attempting to influence municipal policy in Eugene, relating to the Company’s “many concerns about the negative implications of prohibiting [Eugene’s] citizens from receiving natural gas utility service.”¹⁴⁸ NW Natural’s staff repeatedly contacted Eugene city councilmembers and their staffers to advocate against adoption of a proposed electrification ordinance, which aimed to ban natural gas infrastructure in newly constructed buildings.¹⁴⁹ NW Natural emailed councilmembers the results of a survey it conducted that sought to gauge Eugene voters’ views on limiting natural gas expansion.¹⁵⁰ The company pressured the City Council against adopting the ordinance by suggesting their survey showed that Eugene voters wanted local government to support renewable natural gas.¹⁵¹ NW Natural also publicly testified in opposition to the policy, sent a letter to the City Manager to debunk allegedly false claims about natural gas, and emailed local media to criticize a proposed

¹⁴⁶ *Id.*

¹⁴⁷ NW Natural/2400, Heiting-Bracken/38–39.

¹⁴⁸ NW Natural/1700, Heiting-Bracken/87.

¹⁴⁹ Coalition/408, Ryan/179–84.

¹⁵⁰ *Id.* at 180.

¹⁵¹ *Id.*

resolution on electrification.¹⁵² Finally, NW Natural had “extensive conversations with staff at the Eugene Water & Electric Board (“EWEB”)” about issues like greenhouse gas emissions and renewable natural gas.¹⁵³ NW Natural staff also helped EWEB staff prepare for presentations to the EWEB Board of Commissioners on important policy issues.¹⁵⁴ Separately, NW Natural also engaged in extensive advocacy around Eugene’s franchise agreement with the Company.¹⁵⁵

NW Natural admits that it also engaged in similar political advocacy in several Oregon cities, opposing plans to limit “the growth of the gas system.”¹⁵⁶ In Portland, NW Natural “contacted elected officials on a range of matters” including the City’s proposed tax on the fossil fuel industry and the Portland Public School Board’s decision to adopt a Climate Crisis Response Policy, which sought to phase out fossil fuel use in public schools.¹⁵⁷ NW Natural also contacted Portland Commissioners Rubio and Perez with comments on the City’s proposed Right of Way Ordinance that would impact the Company’s franchise agreement with Portland.¹⁵⁸ NW Natural’s staff regularly emailed elected officials about these policies and submitted letters expressing opposition to the policies or redline edits to draft policies.¹⁵⁹ The company requested meetings with Portland City Commissioners to discuss those policies or to gain favor with commissioners, all in an attempt to sway elected officials against enacting policies that would

¹⁵² Coalition/400, Ryan/38; Coalition/408, Ryan/190.

¹⁵³ Coalition/924, Ryan/1–65.

¹⁵⁴ Coalition/900, Ryan/36–37; Coalition/924, Ryan/1–65.

¹⁵⁵ NW Natural/1700, Heiting-Bracken/87.

¹⁵⁶ NW Natural/1700, Heiting-Bracken/81.

¹⁵⁷ Coalition/408, Ryan/187; Coalition/900, Ryan/38; Coalition/400, Ryan/38.

¹⁵⁸ Coalition/923, Ryan/115.

¹⁵⁹ Coalition/408, Ryan/185–89; Coalition/923, Ryan/1–128

hurt gas utility customer growth.¹⁶⁰ NW Natural even requested a meeting between its CEO, David Anderson, and Commissioner Carmen Rubio to give the Commissioner “a direct line to [Mr. Anderson],” since he likes to establish connections with commissioners in case “there is something they need from him.”¹⁶¹ NW Natural aimed to water down Portland’s proposed climate policies to ensure any proposed legislation or city policy would not impose limits on NW Natural’s expansion plans.¹⁶²

In Milwaukie, NW Natural “contacted and corresponded with city council members” to influence their votes on an electrification resolution put forth by the mayor.¹⁶³ The resolution would have required new city-owned buildings to be built all-electric and would have kickstarted discussions about prohibiting gas on all newly constructed buildings in the city.¹⁶⁴ The company initiated meetings with multiple councilmembers in advance of the planned vote on that resolution.¹⁶⁵ NW Natural also sent a representative to publicly testify against the electrification resolution during a city council meeting.¹⁶⁶ NW Natural staff told councilmembers that the Council should not yet put the resolution to a vote, and the company’s advocacy indeed postponed the vote on the resolution.¹⁶⁷

¹⁶⁰ Coalition/923, Ryan/45–64, 74–96, 110–13, 119–28.

¹⁶¹ Coalition/923, Ryan/57, 74.

¹⁶² Coalition/408, Ryan/187–89; Coalition/923, Ryan/2–31, 115–18.

¹⁶³ Coalition/400, Ryan/38; Coalition/900, Ryan/38.

¹⁶⁴ Agenda Item No. 7b, City of Milwaukie, Council Regular Session, Jan. 18, 2022, https://www.milwaukieoregon.gov/sites/default/files/2022-0118-rs_packet.pdf.

¹⁶⁵ Coalition/925, Ryan/14.

¹⁶⁶ Coalition/925, Ryan/45.

¹⁶⁷ City of Milwaukie, City Council Regular Session, Jan. 18, 2022, <https://www.youtube.com/watch?v=YDvcjxt1580>.

In Multnomah County, NW Natural repeatedly contacted the Board of County Commissioners through email and text message about a proposed resolution to move toward “fossil free buildings.”¹⁶⁸ That resolution would have committed the county to updating its LEED Gold and High Performance Green Building Policy to exclude the use of fossil fuels in new buildings or major renovations.¹⁶⁹ NW Natural submitted redline edits to the draft resolution, and among other changes, the Company asked the county to redefine fossil fuels as not including renewable natural gas.¹⁷⁰ Despite NW Natural’s advocacy, the Multnomah County Board of Commissioners ultimately passed the resolution.¹⁷¹ The Company shared in its testimony that it expects to continue meeting with cities to “demonstrate to them the value of [NW Natural’s] service.”¹⁷²

C. NW Natural Misunderstands the Standards and the First Partial Stipulation Inappropriately Authorizes Recovery for Political Expenditures.

NW Natural now seeks to recover the costs of this political engagement from ratepayers, which the Joint Reply Testimony in Opposition to the Coalition’s Objections suggests is “fair and reasonable.”¹⁷³ Not only did NW Natural seek to thwart climate change initiatives across the state of Oregon—it attempted to do so on their customers’ dollar, charging years of work on

¹⁶⁸ Coalition/900, Ryan/38.

¹⁶⁹ Coalition/922, Ryan/7.

¹⁷⁰ Coalition/922, Ryan/27.

¹⁷¹ *Multnomah County First in the State to Restrict Fossil Fuel Use*, Multnomah County (May 5, 2021), <https://www.multco.us/sustainability/news/multnomah-county-board-first-state-restrict-fossil-fuel-use#:~:text=The%20Board%20of%20County%20Commissioners,and%20remodeled%20Multnomah%20County%20buildings.>

¹⁷² NW Natural/1700, Heiting-Bracken/81.

¹⁷³ NW Natural-Staff-CUB-AWEC-SBUA/200, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermode/17.

these issues to ratepayers. NW Natural concedes that it seeks reimbursement for political engagement in the City of Eugene,¹⁷⁴ and other cities.¹⁷⁵ Even more problematic, Ms. Heiting claims that communicating with municipal elected officials with the purpose of influencing their decision-making on proposed legislation, or other policy matters is not a “political activity[.]”¹⁷⁶ However, the law states otherwise. The Company cannot spend years lobbying public decisionmakers and charge ratepayers for the costs.

Engaging in activities undertaken for the purpose of “influencing the decision of public officials[.]” is considered a political activity under the FERC accounting regulations, and any expenditures associated with these activities must be billed to shareholders—not ratepayers.¹⁷⁷ Likewise, the Commission itself prohibits utilities from recovering costs for their “political activities,” which includes expenses like researching legislative issues and opposing policies financially detrimental to the utility.¹⁷⁸

As detailed above, NW Natural routinely contacted public officials in Oregon cities through meetings, emails, letters, and public comments, advocating against policies that would restrict the growth of fossil gas utility service, or impose additional cost on such service, through taxes or changes to franchise agreements.¹⁷⁹ The company also contacted public officials in Portland and Eugene with the purpose of influencing changes to the proposed franchise

¹⁷⁴ Coalition/400, Ryan/40; NW Natural/1700, Heiting-Bracken/80.

¹⁷⁵ NW Natural/2400, Heiting-Bracken/39.

¹⁷⁶ “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.” *Id.*

¹⁷⁷ 18 C.F.R. § 367.4264(a); *Alaskan Nw. Nat. Gas Transp. Co.*, 19 FERC ¶ 61,218, 61,428 (1982).

¹⁷⁸ *Re Pac. Nw. Bell Tel. Co., Am. Network, Inc.*, et al., 82 P.U.R. 4th at 320.

¹⁷⁹ *See* Coalition/408; Coalition/923; Coalition/924; Coalition/925.

agreements in these cities.¹⁸⁰ Federal regulations explicitly label any activity to influence the “approval, modification, or revocation of franchises” as political lobbying activities.¹⁸¹

When a utility seeks to recover the cost of an activity from ratepayers, it is the utility’s burden to demonstrate that the cost is fair, just, and reasonable such that it can be charged to ratepayers.¹⁸² A party challenging the recovery of costs may provide persuasive evidence that an activity is not recoverable, but the burden to show that an expense is just and reasonable “is borne by the utility *throughout the proceeding*.”¹⁸³ A general assertion that the company charged lobbying costs below-the-line “is not, by itself, a sufficient justification for the expense.”¹⁸⁴ When a utility fails to demonstrate that it charged lobbying costs below the line, the Commission should adopt the reduction proposed by the party challenging recovery of costs.¹⁸⁵

NW Natural has failed to provide any evidence or data documenting the cumulative cost of its political activities. The company generally states that it charged lobbying costs below-the-line.¹⁸⁶ However, other than this general statement, NW Natural has not provided the Commission with any information regarding specific costs that it billed to FERC Account 426.4

¹⁸⁰ NW Natural/1700, Heiting-Bracken/87; Coalition/923, Ryan/115–18.

¹⁸¹ 18 C.F.R. § 367.4264(a).

¹⁸² Or. Rev. Stat. § 757.210(1)(a) (2021).

¹⁸³ *In Re Portland Gen. Elec. Co.*, 212 P.U.R.4th 4 (Aug. 31, 2001) (emphasis added).

¹⁸⁴ *Id.* at 10.

¹⁸⁵ *Id.* at 1.

¹⁸⁶ *See*, NW Natural/1700; NW Natural/2400.

related to its lobbying activities.¹⁸⁷ NW Natural also openly admits that it charged ratepayers for all of its advocacy before municipal governments.¹⁸⁸

D. A Stipulation that Allows NW Natural to Recover Costs for its Political Expenditures is Contrary to the Public Interest.

NW Natural and the other stipulating parties¹⁸⁹ ask the Commission to deny the Coalition's request to deduct political expenditures because this relief would conflict with the agreement in the First Partial Stipulation. However, allowing NW Natural to use ratepayer funds to engage in political activities is contrary to the public interest. Testimony in support of the First Partial Stipulation does not deduct costs associated with political activities, from its settlement of salary costs in Part(1)(n).¹⁹⁰ Yet, federal law and Commission precedent prohibit the recovery of expenditures on political activities. Allowing NW Natural to circumvent these laws through settlement is contrary to the public interest.¹⁹¹

¹⁸⁷ *See id.* In the Joint Reply Testimony to the Coalition's Objections to the First Stipulation indicates that NW Natural's Reply testimony explains that cost allocations for employees engaged in lobbying and/or political activity are recorded to non-recoverable expense, referring to a DR response to the Coalition. NW Natural-Staff-CUB-AWEC-SBUA/200, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermod/17. However, the cited DR response, located at NW Natural/1711, Heiting-Bracken, *does not* address this issue. That document responds to the Coalition's inquiry about industry association dues.

¹⁸⁸ NW Natural/1700, Heiting-Bracken/80.

¹⁸⁹ NW Natural, OPUC Staff, CUB, SBUA, and AWEC all agreed to the First Partial Stipulation.

¹⁹⁰ NW Natural-Staff-CUB-AWEC-SBUA/100, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermod/24–28.

¹⁹¹ *In Re Mcimetro Access Transmission Servs., L.L.C.*, OPUC Order No. 04-661, 2004 WL 2725033 (Nov. 9, 2004) (vacating contractual agreement because it was contrary to law and therefore contrary to the public interest).

The Coalition recommends the Commission disallow NW Natural’s Government Affairs budget to account for the costs of this extensive political campaign.¹⁹² The Company has repeatedly stonewalled any attempt from the Coalition to discover records related to NW Natural’s lobbying and political activities—making it impossible for the Coalition to develop a line-item budget for costs associated with NW Natural’s municipal lobbying.¹⁹³ Nor has NW Natural carried its burden of proof by providing a line item accounting for the total costs of activities associated with its political campaign to influence municipal legislation in Portland, Milwaukie, Eugene, Multnomah County, and Lane County.¹⁹⁴ Further, the Commission has previously held that utilities should not recover costs associated with “community and governmental affairs.”¹⁹⁵ Disallowing costs associated with NW Natural’s Governmental Affairs department is supported by Commission precedent and is a reasonable estimate of the total costs in staff time associated with NW Natural’s political activities given the documented and extensive nature of those communications.

IV. THE COMMISSION SHOULD DISALLOW COSTS FOR NW NATURAL’S MISLEADING ADVERTISING THAT SOUGHT TO ASSUAGE PUBLIC CONCERN ABOUT THE CLIMATE AND HEALTH IMPACTS OF CONTINUED GAS USE.

Lastly, the Coalition objects to Parts(1)(l) and (1)(m) of the First Partial Stipulation because it would allow NW Natural to charge ratepayers for: advertising promoting disinformation that misleads the public about the climate harms caused by fossil gas, propaganda directed at school children that trumpets the benefits of fossil gas , and advertising that promotes

¹⁹² *Re Cascade Nat. Gas Co.*, Docket Nos. UF 3094, UF 3129 Order No. 74–898, 8 P.U.R. 4th 19, 27 (Nov. 21, 1974) (holding that “governmental affairs” is not a reasonable cost to recover from ratepayers).

¹⁹³ Coalition/1000, Coalition/1001, Coalition/1002.

¹⁹⁴ See NW Natural/1700; NW Natural/2400.

¹⁹⁵ *Re Cascade Nat. Gas Co.*, 8 P.U.R. 4th at 27, *infra* note 192.

gas-powered appliances for which NW Natural offered shareholder-financed rebates to encourage new gas utility connections. None of this advertising is “informational” or “legally mandated,” and yet the First Partial Stipulation would allow the Company to recover these costs as Category A and B advertising from ratepayers and allowable customer sales expenses under the theory that the “give and take” of a settlement makes it acceptable.

The Commission has the authority to reject a stipulation, or propose modifications to the settlement, and may determine that the settlement is not in the public interest, will not produce rates that are just and reasonable, or otherwise is not in accordance with the law. It is not in the public interest to allow NW Natural to hide its problematic accounting, propaganda to children, and inappropriate promotional advertising in an omnibus settlement. To encourage NW Natural to apply the rules appropriately moving forward, the Commission should disallow the costs itemized below.

A. Oregon’s Legal Standards for Advertising Expenses

The Oregon Administrative Rules govern energy utilities’ ability to recover advertising expenses in utility rate cases in front of the Commission. Advertising expenses include “expenses for communications which inform, influence, and/or educate customers.”¹⁹⁶ To determine whether advertising expenditures are recoverable, the Oregon Administrative Rules categorize them depending on their primary purpose.¹⁹⁷ To determine the “primary purpose,” of

¹⁹⁶ OAR § 860-026-0000(1); OAR § 860-026-0022(1)(a) (2001).

¹⁹⁷ *In the Matter of Revised Tariff Schedules Filed by Nw. Nat. Gas Co. for a Gen. Rate Increase*, Docket No. UG 81, No. 89-1372 (Oct. 18, 1989).

an advertisement the Commission looks to the intended impact of the advertisement.¹⁹⁸

“[A]dvertisements should be placed in the appropriate category for analysis.”¹⁹⁹

The Commission’s regulations allow utilities to recover some costs for informational advertising. Category A advertising expenses include “utility information advertising expenses[,]”²⁰⁰ and “energy efficiency or conservation advertising expenses.”²⁰¹ “Utility information advertising” are advertising expenses that have a primary purpose of “increas[ing] customer understanding of utility systems and the function of those systems, and [] discuss[ing] [...] environmental considerations, and other contemporary items of customer interest[.]”²⁰² “Energy efficiency or conservation advertising expenses” include advertising with a primary purpose of decreasing the total consumption of utility services.²⁰³ Category A advertising expenses are presumed to be just and reasonable if they do not exceed “0.125 percent or less of the gross retail operating revenues determined in that proceeding.”²⁰⁴

Category B advertising includes “legally mandated advertising expenses,” meaning advertising required by local, state, or federal statutes, ordinances, rules, or regulations, and Court or Commission's orders.²⁰⁵ Category B expenses are also presumed just and reasonable.²⁰⁶

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ OAR § 860-026-0022(2)(a) (2001).

²⁰¹ *Id.*

²⁰² OAR § 860-026-0022(1)(g).

²⁰³ OAR § 860-026-0022(1)(b).

²⁰⁴ OAR § 860-026-0022(3)(a).

²⁰⁵ OAR § 860-026-0022(1)(d).

²⁰⁶ *Id.*

While the Commission’s regulations also allow utilities to recover the costs of promotional or institutional advertising, under Category C, utilities must demonstrate that these costs provide “specific ratepayer benefits[.]”²⁰⁷ Institutional advertising burnishes a company’s image,²⁰⁸ and promotional advertising either (1) promotes increased or continued usage of gas or promotes use of gas utility service rather than a competing form of energy,²⁰⁹ or (2) advertises promotional concessions offered by NW Natural that provide financial incentives for installation of gas-powered appliances.²¹⁰ NW Natural has not sought recovery of any Category C advertising in this case.

B. NW Natural Charged Ratepayers for Promotional and Institutional Advertising.

1. *Cooking with Gas campaign*

NW Natural admitted that it improperly charged ratepayers for promotional advertising costs to produce a television advertisement that encourages the public to use gas stoves for home cooking needs.²¹¹ Further, NW Natural improperly charged ratepayers for the media buying costs to publish its Cooking with Gas advertisements in various media outlets.²¹² NW Natural contracted with Affiliated Media LLC to perform its media buying for all its advertising, including its Cooking with Gas campaign.²¹³ However, as explained in the Objection Testimony of Greer Ryan, the Company never deducted costs associated with its media buying for its

²⁰⁷ *In re NW Natural Gas Co.*, Docket No. UG 81, Order No. 89-1372 (Oct. 18, 1989).

²⁰⁸ OAR § 860-026-0022(1)(c) (2001).

²⁰⁹ OAR § 860-026-0022(1)(f); OAR § 860-026-0010.

²¹⁰ OAR § 860-026-0022(1)(f); OAR § 860-026-0015(1).

²¹¹ NW Natural/1900, Beck/22.

²¹² *See* Coalition/900, Ryan/4–7.

²¹³ Coalition/900, Ryan/6; Coalition/932, Ryan/1–3, NWN Response to Coalition DR No. 208, Attachment 1; Coalition/931, Ryan/1–3, NWN Response to Coalition DR No. 11, Attachment 1.

Cooking with Gas campaign.²¹⁴ Instead, the Company billed all costs associated with its media buying contract with Affiliated Media LLC to FERC Account No. 909—which is used only for educational outreach categorized as A or B advertising.²¹⁵

In Surrebuttal Testimony, NW Natural claims that it erred in its disclosures to data request responses that it submitted to OPUC Staff regarding its Cooking with Gas expenditures.²¹⁶ And since that error, the Company has corrected the itemized budget for Category C costs going forward.²¹⁷ However, correcting accounting into the future does not address the revenue requirement for this case, because NW Natural based its budget for Category A costs on Base Year costs that it estimated at the time of its initial filing.²¹⁸ Failing to deduct media buying costs for the Cooking with Gas campaign from the Company’s Category A budget means that NW Natural still seeks to recover those costs from ratepayers, even though it is no longer using them. Accordingly, the Coalition recommends that the Commission deduct \$122,250 in media buying costs for this promotional advertising campaign, in addition to \$124,221 in production costs for the television advertisement that the Company improperly billed to ratepayers for its Cooking with Gas media campaign.²¹⁹

²¹⁴ Coalition/900, Ryan/6.

²¹⁵ Staff/1002, OPUC SDR Response No. 57 Attachment 1 (electronic spreadsheet); *see* Coalition/901, Ryan/1, Excerpts OPUC SDR Response No. 57 (documenting the entries in NW Natural’s Response to Staff SDR 57 to for receipts from Affiliated Media LLC). *See also*, 18 CFR § 367.9090 (describing Account 909 as including costs for informational and educational materials).

²¹⁶ NW Natural/2700, Beck/12–13.

²¹⁷ NW Natural/2700, Beck/12–13.

²¹⁸ NW Natural Executive Summary at 3.

²¹⁹ Coalition/900, Ryan/7.

2. RNG advertising

While NW Natural claims that its advertisements about its RNG investments are Category A “informational” advertising, internal strategy documents and misleading omissions regarding the Company’s investments indicate that the primary purpose of this advertising was to dissuade Oregonians from disconnecting their gas utility service due to concerns about the climate.²²⁰

NW Natural’s RNG advertising campaign does not have a primary purpose of informing its customers about “the Company’s energy supply strategy, emissions reduction goals, opportunities for emissions reductions, and the benefits of RNG.”²²¹ Instead, the advertisements are misleading, provide incomplete information about the company’s investments, and are intended to promote the company. The Commission previously held that untruthful and misleading information does not further the public interest, is not a “just and reasonable” expense, and is not recoverable from ratepayers.²²²

NW Natural’s RNG advertising campaign includes statements implying that Oregon residential and commercial customers are receiving RNG from NW Natural when, in reality, they are receiving fossil gas.²²³ For example, when describing the Lexington Project NW Natural stated that “once fully operational, this project is expected to generate enough renewable

²²⁰ Coalition/900, Ryan/9–15; Coalition/400, Ryan/24–32.

²²¹ NW Natural/1900, Beck/8.

²²² *In the Matter of Revised Tariff Schedules Filed by Northwest Natural Gas Company for a General Rate Increase*, 1989 WL 1793934 at *5.

²²³ Coalition/400, Ryan/23–27; Coalition/405, Ryan/42; Coalition/405, Ryan 25–26; Coalition/405, Ryan/54; Coalition/405, Ryan/42; Coalition/405, Ryan/58.

natural gas each year to heat 18,000 *homes we serve in Oregon*.”²²⁴ However, Ms. Chittum states that the Company is selling all gas produced from the Lexington Project to a *local gas marketer in Nebraska*.²²⁵ In another example, NW Natural told the public that its Mist Storage Facility provides “6 million megawatt hours of renewable storage capability,” however, it admitted in discovery that *none* of the gas stored at the Mist facility is renewable.²²⁶

NW Natural spent at least one-third of its Category A advertising budget on RNG advertising,²²⁷ where it told the public and ratepayers that the company provides “renewable” energy that “help[s] the environment[.]”²²⁸ However, none of these advertisements—including the company’s newsletters—actually inform the public or ratepayers that less than 2% of total gas sales to Oregon gas utility customers are offset with RTCs, and that customers are not actually receiving any RNG.²²⁹

Advertisements that suggest customers are receiving a type of service, which they are not, do not “increase customer understanding of [the] utility system[.]”²³⁰ Nor does this advertising inform customers of “environmental considerations,”²³¹ related to their gas utility service because it fails to inform ratepayers of the significant carbon footprint of their continued

²²⁴ Coalition/405, Ryan/58 (emphasis added); *see* Coalition/400, Ryan/23–28 (describing additional examples).

²²⁵ NW Natural/2100, Chittum/9.

²²⁶ Coalition/400, Ryan/25, 27; Coalition/405, Ryan/73; *see* Coalition/902, Ryan/1, Coalition DR Response No. 165.

²²⁷ *See* Coalition/900, Ryan/31–32.

²²⁸ Coalition/400, Ryan/26–30.

²²⁹ *See* Coalition/400, Ryan/28–29 (documenting a graph introduced in Ms. Chittum’s testimony of Anna that describes NW Natural’s investments into RNG).

²³⁰ OAR 860-026-0022(1)(g)

²³¹ OAR § 860-026-0022(1)(g) (2001).

home energy use. If the primary purpose of the company’s RNG advertising campaign was to inform ratepayers about NW Natural’s investments, then it would state that none of the RNG produced by NW Natural is delivered to Oregonians, and that RNG constitutes only a tiny fraction of gas utility service. The misleading nature of the advertisements themselves makes the campaign unjust, unreasonable, and not in the public interest.²³²

Further, internal advertising planning documents show that NW Natural launched its RNG advertising campaign to assuage public concern about the climate impacts of their continued use of gas utility service.²³³ Through customer surveys, NW Natural learned that Oregonians had serious concerns about the climate crisis and the role fossil fuel usage played.²³⁴ The company’s initial surveys documented that people perceived “environmental concerns” and “safety” as the principal drawbacks of gas utility service.²³⁵ The company’s advertising consultant recommended “[p]osition[ing] natural gas as cost effective/consistent/safe while also developing and promoting the benefits of Renewable Natural Gas.”²³⁶ As explained by Ms. Ryan in the Coalition’s Objection Testimony:

These surveys indicate the purpose of NW Natural’s RNG advertising campaign is to disassociate gas utility service from the image of “fossil fuels” or “dirty fuels,” and instead associate it with responding to the climate crisis, when in fact, methane—the principal component of RNG—is a primary driver of the climate crisis.²³⁷

²³² *In the Matter of Revised Tariff Schedules*, 1989 WL 1793934 at *5.

²³³ Coalition/400, Ryan/30.

²³⁴ NW Natural/1900, Beck/9–10; Coalition/400, Ryan/31.

²³⁵ Coalition/900, Ryan/13–14.

²³⁶ *Id.*

²³⁷ *Id.*

Subsequent customer survey results indicate that NW Natural’s campaign successfully shifted public perceptions regarding the climate harm caused by its product. Among those who recalled seeing NW Natural’s RNG advertisements, “close to half saw Natural Gas [as] Safe or Natural Gas [as] environmentally friendly.”²³⁸ Additionally, the survey results indicate that “a majority value either the affordability and reliability of natural gas (40%) or believe it can help achieve climate goals (38%).”²³⁹ Misleading the public to make them believe that continuing to burn fossil fuels will avert climate change does not serve the public interest, and ratepayers should not be forced to pay for this climate disinformation campaign.

As clearly indicated from internal surveys, and the advertisements themselves, the goal of NW Natural’s RNG campaign was to prevent gas utility customers from disconnecting their service due to concerns about climate change, and to burnish the company’s image. This type of advertising is promotional or institutional, and it is not recoverable absent a showing of specific ratepayer benefits. The Coalition recommends deducting \$381,906 for professional services, production, and media costs for the RNG advertising campaign.²⁴⁰

3. *Propaganda to school children*

NW Natural also used ratepayer funds to publish and disseminate propaganda to school children describing the benefits of fossil gas.²⁴¹ This particularly insidious communications campaign qualifies as both promotional and institutional advertising because it sought to influence the next generation to positively view fossil gas, while also promoting NW Natural’s public image.

²³⁸ Coalition/405, Ryan/81.

²³⁹ *Id.* at 105.

²⁴⁰ Coalition/900, Ryan/31.

²⁴¹ Coalition/900, Ryan/18–22; Coalition/400, Ryan/12–20.

The Opening Testimony of Ms. Ryan describes mailers and booklets that NW Natural distributed to all school districts in its service territory targeting children in grades K–6.²⁴² These booklets included positive messages about gas utility service including that “natural gas is an efficient fuel for buses, trucks, and cars;” “natural gas burns more cleanly than diesel fuel;” natural gas is “a clean-burning form of energy that is found deep in the earth,” “natural gas can be used by industry to manufacture products like video games and baseball bats;” “natural gas is a safe form of energy[.]”²⁴³ They also encouraged children to associate fossil gas with baking cookies, pizza, clean clothes, and dinosaurs.²⁴⁴

NW Natural claims that these schoolchildren booklets are recoverable Category B expenses because federal regulations require the company to send this material to schoolchildren. NW Natural is wrong. Federal regulation regarding public awareness requires pipeline operators to “educate the public, appropriate government organizations, and persons engaged in excavation related activities” regarding “possible hazards associated with unintended releases from a gas pipeline facility[.]”²⁴⁵ “Pipeline facility means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.”²⁴⁶ A pipeline facility does not include gas powered appliances used in a home; advertising to children about leaks of equipment in their home is not required by PHMSA’s regulations. The PHMSA also requires informing the public about

²⁴² Coalition/400, Ryan/10–16.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ 49 C.F.R. § 192.616(d).


²⁴⁶ 49 C.F.R. § 192.3.

“[p]ossible hazards associated with unintended releases from a gas pipeline facility[.]”²⁴⁷

Contrary to this disclosure mandate, the booklets fail to explain that methane leakage in an enclosed space, such as a home, could explode.^{248, 249} Lastly, PHMSA requires utilities to advise “affected municipalities, *school districts*, businesses, and residents of pipeline facility locations[.]”²⁵⁰ Federal regulations require informing school districts, because they are places of public gathering. The regulations plainly do not require advertising to school children. The Commission should disallow the \$60,000 in annual costs for NW Natural’s advertising campaign to school children.²⁵¹

4. *Gas stoves and indoor air pollution*

Lastly, NW Natural’s advertising campaign about indoor air pollution impacts associated with gas cooking is also promotional, because the primary purpose of this advertising is to encourage the continued use of gas for home cooking needs.²⁵² These ads encouraged the public to “breathe easy” because “[a]ny type of food preparation can affect indoor air quality ... even toasters contribute to indoor air pollution[.]”²⁵³ The company also drafted advertisements that

<<Begin Confidential>> 

²⁴⁷ 49 C.F.R. § 192.616(d)(1).

²⁴⁸ Coalition/900, Ryan/21–22.

²⁴⁹ NW Natural recognizes this risk, noting an explosion in East Harlem in 2014 was a motivating factor for its advertising campaign, because none of the residents called the gas company after they smelled a leak. NW Natural/1900, Beck/28. However, perhaps residents did not call for assistance because they were never informed of the fire or explosion risks associated with a gas leak.

²⁵⁰ 49 C.F.R. § 192.616(e).

²⁵¹ Coalition/900, Ryan/33.

²⁵² Coalition/900, Ryan/16–18; Coalition/400, Ryan/21–23.

²⁵³ Coalition/400, Ryan/21–24.

██████████ <<End Confidential>>. These advertisements sought to discredit scientific information regarding the air pollution impacts of gas stoves, including findings published in peer-reviewed scientific publications finding that gas stoves emit harmful air pollutants including carbon monoxide, NOx, and formaldehyde and fans/hoods are not sufficient to address the pollution.²⁵⁵ Promoting continued use of gas stoves by misinforming the public about health harms posed by pollutants emitted by these appliances should not be a recoverable advertising expense.²⁵⁶ Further, advertisements that encourage continued use of gas stoves constitute promotional advertising, for which NW Natural has not demonstrated any specific ratepayer benefits.²⁵⁷ Accordingly, the Commission should deduct \$104,889 in costs associated with this air pollution advertising campaign.²⁵⁸

C. Deducting All Costs Associated with Gas Promotion Advertising Requires Removing an Additional \$183,512 from Part(1)(l) of the First Partial Stipulation.

In its initial filing, NW Natural requested \$1,847,073 for Category A advertising, and \$1,080,000 million for Category B advertising, for a total of \$2,927,073 for its annual advertising budget.²⁵⁹ NW Natural based its budget for its Category A and B advertising expenditures on the total expenditures incurred during the Base Year. The First Stipulated Settlement reduced the total annual budget for Category A and Category B advertising by \$1

²⁵⁴ Coalition/900, Ryan/17–18.

²⁵⁵ Coalition/400, Ryan/21–24.

²⁵⁶ See *In the Matter of Revised Tariff Schedules*, 1989 WL 1793934 at *5 (misleading or untruthful advertising is not a recoverable expense).

²⁵⁷ OAR § 860-026-0022(1)(f); OAR § 860-026-0010.

²⁵⁸ Coalition/900, Ryan/18.

²⁵⁹ Coalition/400, Ryan/10.

million, in Part(1)(l) of the First Partial Stipulation.²⁶⁰ NW Natural has not sought to recover any Category C costs in its application for a rate increase.²⁶¹

The Coalition recommends that the Commission amend Section(1)(l) of the First Partial Stipulation to deduct an additional \$183,512 from the advertising budget for Category A and B advertising expenditures, because the Company improperly used \$1,183,512 in funds from these budgets to pay for the above-described promotional and institutional advertising.²⁶² Of this total, NW Natural expended \$733,226 in professional services, production and media costs for its Cooking with Gas, RNG, Indoor Air Pollution, and its School Children Propaganda advertising campaigns.²⁶³ Further, NW Natural stated that it does not track salary costs associated with its advertising campaign, but it does seek recovery from ratepayers for staff salary time and costs.²⁶⁴ Accordingly, to calculate the salary time for both the Category A budget, Ms. Ryan determined that professional services, production, and media costs for improperly billed promotional advertising constituted 61% of the total cost for this line item.²⁶⁵ She determined that NW Natural used \$390,286 in salary costs from its Category A budget, by multiplying 61% with the total salary budget for Category A.²⁶⁶ In total, Ms. Ryan recommends reducing the Category A budget by \$1,123,512, to account for improperly billed promotional advertising, and she recommended reducing the Category B budget by \$60,000 to deduct the costs of the school

²⁶⁰ First Partial Stipulation at 5.

²⁶¹ Coalition/400, Ryan/9.

²⁶² Coalition/900, Ryan/33.

²⁶³ *Id.* at 31.

²⁶⁴ *Id.* at 32.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

children propaganda—in total \$1,183,512. While NW Natural claims that the Coalition has overestimated certain costs, such as the costs for staff salary time, it admitted that the Company does not track salary expenses by advertisement.²⁶⁷

Deducting additional costs, as recommended by the Coalition, is appropriate in light of NW Natural’s accounting inaccuracies and its failure to disclose political advertising costs. The Commission’s regulations require that all utilities keep accurate accounts, and segregate costs as required by state and federal accounting requirements for utilities.²⁶⁸ Contrary to this legal mandate, NW Natural admitted that it incorrectly billed numerous costs to ratepayers associated with its Cooking with Gas advertising campaign, including television production of an advertisement, media buying costs, and placement of ads on Bing and Google.²⁶⁹ Further, although NW Natural published advertisements that sought to influence municipal climate campaigns, it never disclosed these advertisements as Category D political advertising costs.²⁷⁰

D. NW Natural Improperly Billed Ratepayers for Advertising About Shareholder Financed Rebates on Gas-Powered Appliances.

NW Natural’s advertisements offering rebates financed by shareholders for gas-powered appliances constitute promotional advertising. In addition to the definitions set forth above, promotional advertising also includes advertising that offers rebates, financial incentives, or other consideration that would encourage a person to select or use a utility’s service, or install any appliance or equipment powered by the utility’s service; these sorts of expenditures should

²⁶⁷ Coalition/900, Ryan/16; Coalition/907, Ryan/1, Coalition DR Response No. 191.

²⁶⁸ ORS § 757.125(1) (“[E]very public utility is required to keep and render its accounts and records accurately and faithfully in the manner prescribed by the commission and to comply with all directions of the commission relating to such accounts and records.”).

²⁶⁹ NW Natural/2700, Beck/11–16.

²⁷⁰ Coalition/900, Ryan/29–30.

be billed as Category C costs.²⁷¹ NW Natural published numerous advertisements that encouraged the public to purchase gas-powered appliances, for which it offered substantial shareholder-financed incentives.²⁷² Costs for advertising to sell appliances that are not regulated by the PUC should not be passed on to ratepayers.²⁷³

Cumulatively combined with rebates financed by NW Natural, the appliance manufacturers, and in some cases the Energy Trust of Oregon, NW Natural offered significant financial incentives to install gas-furnaces, gas-powered water-heaters, gas-powered air conditioners, and fireplaces.²⁷⁴ In one example, the Company offered \$3,000 in rebates to individuals who “convert” their heating system to a “new high-efficiency natural gas furnace, water heater and central air conditioner[,]” which included \$1,500 in shareholder incentives, \$500 from the preferred contractor, and \$1,000 in ETO incentives.²⁷⁵ NW Natural admitted that it provided these “incentives and rebates for customers that wish to switch from oil and electric heating.”²⁷⁶ Financial incentives such as the above-described rebates constitute promotional concessions, and advertising offering these rebates to the public should be treated as Category C.

In his Reply Testimony, Mr. Beck initially claimed that the Company charged advertising related to promotional concessions to its Category C advertising budget,²⁷⁷ but the Frankel-Moerlins Surrebuttal Testimony acknowledges that it charged ratepayers for these costs when it

²⁷¹ OAR § 860-026-0022(1)(f); OAR 860-026-0015(1).

²⁷² Coalition/400, Ryan/37-38; Coalition/900, Ryan/22-26.

²⁷³ *In re NW Natural Gas Co.*, Docket No. UG 81, Order No. 89-1372 (Oct. 18, 1989).

²⁷⁴ Coalition/403, Ryan/13-19; Coalition/402, Ryan/2-5.

²⁷⁵ Coalition/403, Ryan/18-19.

²⁷⁶ *Id.* at 17.

²⁷⁷ NW Natural/1900, Beck/22.

billed them to FERC Accounts No. 908 and 912.²⁷⁸ In contrast, NW Natural billed all of its Category C advertising costs below-the-line to FERC Account 913.²⁷⁹

The plain language of OAR § 860-026-0022 requires categorizing advertising for shareholder financed rebates on appliances as promotional advertising. Absent a showing of specific ratepayer benefit, NW Natural cannot charge ratepayers for these costs.²⁸⁰ And, NW Natural has made no such showing in this case.

The company projects that the Test Year costs for its advertising campaign for shareholder financed rebates on gas-powered appliances would cost \$482,882.²⁸¹ The Coalition recommends that the Commission disallow this entire Oregon Test Year Budget. Even though the Stipulating Parties have agreed to only disallow certain costs in Part(1)(m),²⁸² permitting NW Natural to recover any costs for promotional advertising when it has not met its statutorily mandated burden of production is contrary to the public interest.

E. The Coalition Urges the Commission to Open a Docket to Explore These Percolating Questions About How to Align Energy Trust of Oregon Incentives with Oregon’s Climate Goals.

The Coalition also recommends that the Commission open a docket to align the Energy Trust of Oregon’s (ETO) incentives and programs with Oregon’s new climate laws and Governor Brown’s Executive Order No. 20-04. The Commission last evaluated the ETO’s

²⁷⁸ NW Natural/2800, Frankel-Moerlins/9 (“The Coalition raises a fair point regarding the classification of certain marketing materials as advertising”); *see also* Staff/1002, Jent/25–28, NW Natural Response to OPUC DR 421.

²⁷⁹ Staff/1002, Jent/2–3 (providing an itemized budget of Category C advertising costs).

²⁸⁰ *In re NW Natural Gas Co.*, Docket No. UG 81, Order No. 89-1372 (Oct. 18, 1989).

²⁸¹ Coalition/900, Ryan/23; Coalition/919, Ryan/1, Coalition DR Response No. 203.

²⁸² NW Natural-Staff-CUB-AWEC-SBUA/200, Kravitz, Fjeldheim, Gherke, Mullins, and Kermod/11.

policies in 2013, prior to adoption of Oregon’s prevailing climate laws including HB 2021, the Climate Protection Program, and Executive Order No. 20-04 where Governor Brown tasked the Commission with “[d]etermin[ing] whether utility portfolios and customer programs reduce risks and costs to utility customers by making rapid progress toward reducing GHG emissions consistent with Oregon’s reduction goals[.]”²⁸³ However, contrary to Oregon’s climate goals, NW Natural is offering ETO-funded financial incentives along with shareholder incentives to encourage Oregonians to install gas appliances instead of electric appliances, a switch that would increase GHG emissions from home energy use.²⁸⁴ Further, according to its investor presentation, NW Natural estimates that 0.5% of its annual growth in new customers will come from customers that fuel switch to gas utility service.²⁸⁵

Opening a docket to align ETO’s incentives with Oregon’s climate laws would ensure customers are getting the best information about efficiency and emissions of appliances, and how best to decarbonize their homes. For example, in California, the Public Utilities Commission recently released a proposed rule for public comment that would begin a phase-out of incentives and rebates for new gas appliances.²⁸⁶ NW Natural argues that the Commission should reject this request because it involves new policy issues, however, the Coalition raised concerns regarding NW Natural’s use of advertising to promote fuel switching in opening testimony.²⁸⁷ Requesting that the Commission open a new docket proceeding to investigate the issue is not a

²⁸³ Exec. Order No. 20-04 § (5)(B)(1), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf.

²⁸⁴ Coalition/700, Stewart 11-13

²⁸⁵ Coalition/1003.

²⁸⁶ ALJ Ruling Inviting Comment on Staff Proposal for Gas Energy Efficiency Incentives (Aug. 2, 2022), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M496/K396/496396749.PDF>.

²⁸⁷ Coalition/400, Ryan/37–38.

new policy issue, but rather a request for relief. Given the substantial reductions in GHG emissions that efficient appliances can achieve,²⁸⁸ the Commission should ensure that the ETO is rapidly deploying appliances, such as electric heat pumps, to decarbonize the building sector.

CONCLUSION

For the reasons discussed above, based on the testimony and evidence presented by Coalition witnesses, the Coalition respectfully asks the Commission to eliminate the line extension allowance, deem the Lexington Project imprudent, and deduct an additional <<Begin Confidential>> [REDACTED] <<End Confidential>> from Part(1)(n) to account for NW Natural's political activities, an additional \$183,512 from Part(1)(l) for misallocated promotional advertising, and an additional \$482,882 from Part(1)(m) to account for advertising of shareholder-financed promotional concessions.

Dated this 10th day of August, 2022.

Respectfully submitted,

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²⁸⁸ Coalition/704, Stewart/2 (“Using the [Eugene Water and Electric Board’s] 2021 published emissions intensity, the emissions reduction for an all-electric home was 74%, a reduction of 30 metric tons of CO₂ over a 15-year period.”).

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