

BEFORE THE PUBLIC UTILITY COMMISSION

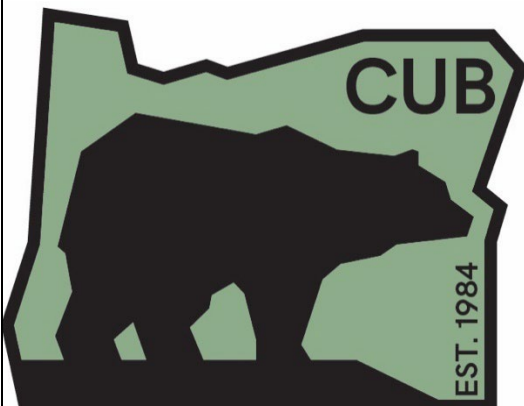
OF OREGON

UG 435, UG 411

In the Matter of)
)
NORTHWEST NATURAL GAS)
COMPANY, dba NW NATURAL,)
)
Request for a General Rate Revision (UG)
435),)
)
Advice No. 20-19, Schedule 198 Renewable)
Natural Gas Recovery Mechanism (ADV)
1215) (UG 411).)
_____)

**CLOSING BRIEF
OF THE
OREGON CITIZENS' UTILITY BOARD**

August 22, 2022



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I. INTRODUCTION

A. Background and Procedural Posture

Pursuant to Administrative Law Judge (ALJ) Spruce’s January 26, 2022 Amended Procedural Conference Memorandum and July 27, 2022 Ruling, the Oregon Citizens’ Utility Board (CUB) hereby submits its Closing Brief in the above-captioned consolidated proceedings. In this Brief, CUB responds to arguments raised by NW Natural (NWN or the Company) in its Opening Brief and throughout this proceeding. CUB also addresses arguments raised by Staff of the Public Utility Commission of Oregon (Staff), the Alliance of Western Energy Consumers (AWEC), and the Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (the Coalition).

Upon review of the various parties' Opening Briefs, CUB continues to respectfully urge the Public Utility Commission of Oregon (Commission) to adopt its recommendations as a fair resolution of relevant issues that will result in just and reasonable rates. If adopted, CUB's recommendations would strike a fair balance between the Company and its customers and ensure equitable treatment between customer classes. Conversely, proposals brought forth by NWN and AWEC fail to capture the realities of Oregon's dynamic regulatory structure and would inappropriately shift cost and risk associated with decarbonizing the natural gas sector. The evidentiary record contains substantial evidence in favor of a positive ruling on CUB's issues, and CUB has met its burden to produce sufficient evidence to support its arguments.

The Company has failed to meet its burden to prove that retaining its decade-old Line Extension Allowance (LEA) policy is reasonable in light of its inherent flaws and the marked changes brought by the Oregon Department of Environmental Quality's Climate Protection Program (CPP). Similarly, NWN has failed to prove that its one-sided renewable natural gas (RNG) automatic adjustment clause (AAC) proposal would result in just and reasonable rates. Further, AWEC has not carried its burden to produce sufficient evidence to demonstrate its proposal to unfairly shield its customers from system-wide regulatory compliance costs is reasonable. Finally, CUB believes the Company has appropriately and adequately conveyed a compelling rationale for Commission adoption of the First and Second Partial Stipulations in its Opening Brief. CUB continues to urge the Commission to adopt the First and Second Partial Stipulations as a reasonable compromise that furthers the public interest.

CUB's Opening Brief arguments provide the Commission with a sufficient platform upon which to justify a favorable ruling. Rather than reiterating those arguments, CUB incorporates

them here by reference. This Closing Brief will focus on bringing forth new arguments and rebutting those brought forward by adverse parties in their respective Opening Briefs.

The Brief will address the following:

- A. LEA Policy
- B. RNG AAC
- C. RNG Rate Spread

II. ARGUMENT

A. LEA Policy

CUB continues to urge the Commission to adopt its proposals around NWN's LEA.¹ CUB's proposal to reduce and gradually phase out the Company's LEA would immediately reduce risk to NWN's customers and would not impact the Commission's ability to concurrently examine broader policy issues. Further, CUB's proposal would enable the Company to continue to grow its system while properly assigning costs of new service to the new customers that drive them. The evidence before the Commission regarding the flaws inherent to NWN's LEA Internal Rate of Return (IRR) model and new CPP compliance costs incurred in the test year support a ruling in CUB's favor. While NWN asserts that retaining its antiquated LEA is appropriate because it recognizes expected incremental revenue benefits,² the evidentiary record demonstrates that the Company's LEA calculation fails to account for incremental CPP costs brought by new customers and fails to recognize the long useful life—and potential stranded

¹ See UG 435 – CUB's Opening Brief at 5-7. First, CUB recommends immediately reducing NWN's LEA to \$2,200 to address flaws in the calculation of its Internal Rate of Return. Second, CUB recommends reducing the LEA by 50% in 2024 and eliminating it in 2025. Finally, CUB recommends that the Commission eliminate the presumption of prudence regarding LEAs and associated investments, and require NWN to demonstrate that its growth-related investments are prudent.

² UG 435 – NW Natural's Opening Brief at 33.

costs—associated with the LEA investment.³ Evidence provided by CUB regarding test year and near-term CPP compliance costs altering the economics of the LEA is uncontroverted.⁴

CUB continues to agree with NWN that the goal of an LEA is to ensure equity between existing and new customers.⁵ NWN notes that LEAs are “calculated to ensure that existing customers are not harmed by the addition of new customers to the utility’s system,” and that this calculation is “[b]ased on the *assumption* that existing customers benefit over time from the addition of new customers.”⁶ As CUB and the Coalition have demonstrated, this assumption is no longer valid.⁷ NWN’s Opening Brief provides no new arguments to bolster its position. The Company therefore failed to meet its burden of proof that retaining its current LEA would result in just and reasonable rates. The Company’s unpersuasive arguments that seek to retain a valuable profit stream for its shareholder should be rejected.

1. ***The Commission should not consider the speculative impact to the investment community and should act on the LEA in this proceeding.***

In its Opening Brief, the Company argues eliminating the LEA will discourage new customers from joining the system, which will send a negative signal to the investment community.⁸ While the Company’s Opening Brief fails to create an articulable link between an investment community reaction and setting a justified LEA, it insinuates that the Commission should not act on CUB’s proposal due to a potential negative future reaction from Wall Street.

³ UG 435 – Coalition’s Opening Brief at 18-19; CUB’s Opening Brief at 14-16.

⁴ UG 435 – CUB’s Opening Brief at 11 (“Incremental energy efficiency costs to comply with the CPP are projected to increase from approximately \$10 million in 2023 to approximately \$140 million in 2025.”). While CUB filed an errata to revise these figures from a previously outdated chart in CUB/Jenks/400/13, Figure 1, CUB inadvertently neglected to update the accompanying text. CUB apologizes for any confusion this may have created. However, no party disputes that there are incremental CPP compliance costs in the test year.

⁵ UG 435 – NW Natural’s Opening Brief at 33.

⁶ *Id.* at 34 (emphasis added).

⁷ UG 435 – CUB’s Opening Brief at 11-12; Coalition’s Opening Brief at 16.

⁸ UG 435 – NW Natural’s Opening Brief at 58.

The Commission should reject this assertion. The purpose of a general rate case proceeding, and the Commission's role therein, is to establish just and reasonable rates based upon the cost and risk incurred in the test year.⁹ Rates approved under this mandate must be affordable to customers to the extent they do not qualify as an unreasonable exaction.¹⁰ The Commission is in no way beholden to the whims of a speculative future Wall Street reaction when setting rates. Further, the Company retains the burden to prove that its proposals in a general rate case are prudent. Suggesting that prudence does not need to be established due to a speculative "signal to the investment community" is misguided.

Rather than providing evidence to meet its burden of proof, NWN argues that the Commission cannot alter the LEA, "even on an interim basis," because it "could signal that it has pre-decided a diminished role for gas utilities" which could "impair the Company's financial health."¹¹ The Company offers no evidence that any of these speculative outcomes are likely. Instead, it offers this incredibly improper statement. The Company's annual report to shareholders is clear that there is a risk to gas utilities due to climate change regulations and technological innovations such as heat pumps.¹² By arguing that the Commission cannot act to protect customers from a real risk and because doing so signals that the risk is indeed real, the Company is attempting to disempower the Commission and absolve NWN of its requirement to bear the burden of proof.

⁹ See ORS § 756.040(1) ("The commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates."); see also OPUC Order No. 08-487 at 5 ("The Commission sets rates within a reasonable range that protects the competing interests of the utility and its customers. To protect customers, the rates must be set at a level sufficiently low to avoid unjust and unreasonable exactions. To protect the utility investor, the rates must provide sufficient revenue not only for operating expenses, but also for the capital costs of the business.").

¹⁰ *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

¹¹ UG 435 – NW Natural/1700/Heiting-Bracken/8-9.

¹² UG 435 – CUB/400/Jenks/3-4.

The Commission should reject this argument. Not only would the argument be improper to consider in the context of setting just and reasonable rates, NWN’s investment community is already aware of this risk.¹³ Rather than altering the LEA to appropriately reduce this risk for customers, the Company would prefer to shift the entirety of this risk onto its customer base while its shareholders continue to earn a rate of return on LEA-funded investments.

2. ***Incremental CPP compliance costs incurred in the test year and throughout the LEA’s amortization window warrant the policy’s re-examination.***

According to NWN, CUB’s proposal will charge new customers for CPP compliance costs twice.¹⁴ NWN also asserts that for new compliance costs brought by new customers “the new customer will pay for these costs on a per-therm basis, like every other NW Natural customer.”¹⁵ It is surprising to see NWN bring forth arguments in briefing that have already been thoroughly rebutted on the record. No party to this proceeding is proposing a mechanism that allocates CPP compliance costs to individual customers.¹⁶ The incremental CPP compliance costs included in the test year and in near-term years will be assigned to all customers.¹⁷ Due to this well-established paradigm, it is necessary to reconsider whether the current LEA achieves the goal of ensuring growth benefits all customers as a whole.

CUB’s proposal will not result in double counting, as has already been established.¹⁸ NWN asserts that customers would be paying for CPP compliance costs twice—once through the “offset to their LEA and a second time through per-therm rates.”¹⁹ CUB is unsure how the

¹³ *Id.*

¹⁴ UG 435 – NW Natural’s Opening Brief at 54.

¹⁵ *Id.* at 55.

¹⁶ UG 435 – CUB/400/Jenks/24.

¹⁷ *Id.*

¹⁸ *Id.* at 25.

¹⁹ UG 435 – NW Natural’s Opening Brief at 54.

Company believes customers would be paying for CPP compliance costs as an “offset to their LEA.” Reducing and eventually eliminating the LEA is indeed based on the fact that new customers bring with them incremental CPP compliance costs, but these costs are not recovered through the LEA. They are recovered by all customers.²⁰

Further, reducing the LEA based on new, incremental costs incurred in the test year both serves to further the purpose of an LEA²¹ as well as aligns with established Commission precedent. When faced with increasing customer costs, such as the uncontroverted costs new customers bring via CPP compliance, the Commission has held:

[r]educing current allowances will act to reduce utility plant investment and, to some extent, ameliorate upward pressure on utility rates. A reduced allowance multiple will also strike an equitable balance between new and existing customers.²²

CUB’s proposal to reduce and eventually eliminate the Company’s LEA strikes an equitable balance between new and existing customers and will mitigate upward pressure on rates.

3. ***The Commission should act now to rectify flaws in NWN’s IRR methodology.***

Despite CUB conclusively demonstrating the obvious flaws in NWN’s IRR methodology, the Company continues to erroneously assert that it “calculates expected revenues over a 30-year period, recognizing both the useful life of utility assets and the period of time the customer is expected to remain on the system.”²³ Again, the Company’s service drop has a useful life of 58 years.²⁴ Further, while the Company’s LEA model calculates the IRR on a 30-

²⁰ UG 435 – CUB/400/Jenks/30-31. The largest portion of currently projected CPP compliance costs is related to energy efficiency investments. These costs are collected as a percentage of a customer’s bill, including margin. See ADV 681, Staff Report.

²¹ UG 435 – CUB/400/Jenks/24, lines 19-21. The LEA should “ensure that growth of the system benefits customers as a whole.”

²² *In re Investigation of System Expansion Charges*, OPUC Order No. 81-041 at 10 (Jan. 16, 1981).

²³ UG 435 – NW Natural’s Opening Brief at 55.

²⁴ UG 435 – CUB/400/Jenks/26.

year basis, the IRR assumes that NWN is amortizing the LEA over 40 years.²⁵ While this has already been established on the record, it warrants reiteration because NWN continues to fail to address CUB's arguments. To rectify this flaw, CUB continues to urge the Commission to adjust the Company's LEA to \$2,200 immediately by returning to the pre-2012 methodology based on five years of margin.²⁶ The record demonstrates this approach is appropriate and will immediately help shield NWN's customers from cost and risk.

NWN asserts that "CUB makes no attempt to explain [] why the assumptions inherent in its approach are more reasonable than the Company's current IRR Model."²⁷ Not only has CUB made an effort, CUB has provided unrebutted evidence that returning to the five years margin approach significantly reduces the risk of stranded assets funded by the LEA.²⁸ Further, this approach is preferable to the utility's current LEA, wherein the useful life of the underlying assets and the time a customer remains on its system are out of step with the recovery period.²⁹ Finally, returning to the approach used before 2012 will more closely align NWN's LEA with that of its peer utilities.³⁰ The Company has utterly failed to meet its burden of proof to demonstrate that retaining its current LEA is reasonable given the obvious flaws in its methodology.

²⁵ *Id.*

²⁶ UG 435 – CUB/400/Jenks/33, lines 19-20. CUB notes that the Company inaccurately portrayed CUB's LEA proposal to reduce it to \$2,330. *See* UG 435 – NW Natural's Opening Brief at 39. While that was CUB's proposal in Opening Testimony, CUB altered its proposal in Rebuttal Testimony based on updated information. UG 435 – CUB/400/Jenks/11.

²⁷ UG 435 – NW Natural's Opening Brief at 56.

²⁸ UG 435 – CUB's Opening Brief at 15-16.

²⁹ *Id.* at 14.

³⁰ *See* UG 435 – CUB/400/Jenks/22 and CUB/100/Jenks/16. Avista's methodology supports a \$2,000 LEA and is limited to three times the estimated revenue expected to be received from the new customer. Cascade's allowance is 4.5 times the estimated gross margin to be derived from the customer. These LEAs are nearly identical to CUB's proposal to reduce NWN's LEA to five times margin.

At a minimum, the Commission should adopt CUB's proposal to rectify these flaws. Doing so would immediately reduce cost and risk to NWN's customers while making NWN's LEA comparable to that of its peer utilities. The Commission would not be precluded from conducting a broader investigation after addressing the flaws that are unique to NWN's LEA in this case.

4. ***Recommendation***

CUB continues to advocate that the current LEA be reduced immediately and phased out over time. First, the Commission should reject the Company's IRR methodology and return to the pre-2012 methodology. This would set the LEA at \$2,200. CUB respectfully urges the Commission to then reduce the LEA by fifty percent in 2024 and eliminate it in 2025. Additionally, CUB continues to urge the Commission to require NWN to demonstrate the prudence of its LEA and related investments in future general rate case proceedings.

It is also important to recognize that CUB is making this recommendation based on the current CPP rules and the current costs of compliance tools. If the cost of compliance tools change, the LEA can be revisited in future rate case. Adopting CUB's recommendations would shield customers from a substantial level of cost and risk while still enabling the Company to grow its system.

B. RNG AAC

CUB continues to respectfully urge the Commission to adopt its proposal to create a balanced RNG AAC that provides the Company the opportunity to recover prudently incurred costs while treating NWN's customers fairly.³¹ CUB's proposal is brought forward as a

³¹ UG 435 – CUB's Opening Brief at 17-20.

reasonable compromise that is sensitive to the Company's cost recovery concerns while ensuring it retains adequate performance incentives. In its Opening Brief, NWN argues that its proposal to include a deferral between a project's in-service and rate effective dates fairly balances the mechanism between the Company and its customers.³² To the contrary, such a proposal would improperly benefit the Company by enabling it to enjoy dollar-for-dollar cost recovery in a manner that departs from legislative intent.³³ As CUB has detailed, the Company retains the opportunity to recover its prudently-incurred costs absent such a deferral.

As Staff astutely notes, the Commission has held that traditional ratemaking through a general rate case is sufficient for recovery of RNG-related costs.³⁴ The RNG AACs proposed by Staff and CUB would both benefit NWN by allowing it to recover the costs of a new RNG investment without the opportunity to fully review its other expenditures, as is typical in a general rate case.³⁵ Further, even without a deferral between the in-service and rate effective date, the Company is given certainty around the agreed-upon November 1 rate effective date. NWN can manage regulatory lag with this predictable annual rate change by aligning the in-service date with the rate effective date.³⁶ The deferral is not needed to address the minimal regulatory lag the Company will incur, as it would only apply to the first year of lengthy RNG project amortization windows.³⁷ Under similar circumstances, the Commission has recently held that a minimal amount of regulatory lag is appropriately borne by shareholders in PacifiCorp's

³² UG 435 – NW Natural's Opening Brief at 75.

³³ UG 435 – CUB's Opening Brief at 23-25.

³⁴ UG 435 – Staff's Opening Brief at 7-8.

³⁵ UG 435 – Staff's Opening Brief at 6.

³⁶ *Id.* at 5.

³⁷ *See* UG 435 – Staff/1800/Muldoon/24.

wildfire cost recovery mechanism.³⁸ CUB's RNG AAC proposal treats the Company more favorably than traditional ratemaking would, and NWN cannot demonstrate that a deferral between the in-service and rate effective dates is necessary.

NWN believes its proposal matches the benefits customers will receive with the costs it will incur.³⁹ However, absent the powerful incentive to control costs brought by Staff and CUB's proposals to include an earnings test and/or a deadband for the deferral that trues up forecasted costs to actuals, customers may incur costs that exceed the benefits they receive. Further, CUB's deadband proposal ensures fair treatment for the Company and its customers while minimizing the administrative burden on parties that an annual true-up would bring. If the Company's costs fall below its forecast—but within the 100 basis point deadband—it can retain those benefits. This not only provides a powerful incentive to control costs that has been deemed reasonable by the Commission,⁴⁰ its symmetrical nature provides valuable protections to the Company and its customers.

CUB's proposal was brought forward in the spirit of compromise and fairly balances the interests of the Company, its customers, and all affected stakeholders. CUB's proposal promotes judicial efficiency by providing a predictable timeline and allowing for the RNG AAC to be

³⁸ *In re PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, OPUC Docket No. UE 374, Order No. 20-473 at 122-123 (Dec. 18, 2020) (“As proposed, the mechanism provides for the deferral of the revenue requirement effects of wildfire mitigation capital investments between the in-service date and rate-effective date. We determine that such a deferral has not been justified. Annual rate changes under the WMVM will allow PacifiCorp to decrease the regulatory lag for wildfire mitigation capital investments made between general rate cases. PacifiCorp has not addressed the rationale for also deferring the revenue requirement effects of capital investments eligible for recovery through the mechanism between the in-service date and the annual rate effective date, nor has PacifiCorp addressed the interest rate applicable to these costs in light of docket UM 1909. We find that this minimal amount of regulatory lag between annual rate changes continues to be appropriately borne by shareholders.”).

³⁹ UG 435 – NW Natural's Opening Brief at 72.

⁴⁰ *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1286, Order No. 08-504 at 17-18 (Oct. 21, 2008).

revisited once the Senate Bill (SB) 98 cost cap has been revisited.⁴¹ CUB respectfully urges the Commission to adopt its RNG AAC proposal as detailed in its Opening Brief.⁴²

C. RNG Rate spread

CUB, NWN, and Staff all agree that RNG costs should be allocated to all customers, including special contracts customers, on an equal cents per therm basis.⁴³ AWEC opposes this treatment for unpersuasive reasons that have been sufficiently rebutted in CUB's Opening Brief. AWEC believes such an allocation would violate the terms of SB 98, the legislation that the Lexington RNG project was brought forth under.⁴⁴ However, Staff believes spreading RNG costs to all customers furthers SB 98's legislative findings and declarations.⁴⁵ Regardless of the effect and intent of the legislature in promulgating SB 98, CUB continues to believe the Commission can adopt its proposal because the regulatory climate in Oregon has shifted with the advent of the CPP. The Company believes that Lexington will help it meet CPP compliance obligations,⁴⁶ and, to demonstrate prudence, all future NWN RNG projects should meet the compliance requirements of the CPP.

AWEC's proposal to allocate RNG costs based on the cost-of-service study results should also be rejected.⁴⁷ CPP compliance costs are tied to the emissions that each customer drives on the system. Recovering the costs on an equal cents per therm basis therefore follows established regulatory principles of cost causation. To push back on this argument, AWEC asserts that it is

⁴¹ Under ORS 757.210(1)(b), any automatic adjustment clause is "subject to review by the commission at least once every two years." CUB's proposal enables parties to continue to use the AAC if it is functioning as intended and the SB 98 cost cap has not been reached, thereby obviating the need for Commission review if it is not necessary.

⁴² UG 435 – CUB's Opening Brief at 17-20.

⁴³ UG 435 – CUB's Opening Brief at 30; Staff's Opening Brief at 11; NW Natural's Opening Brief at 91.

⁴⁴ UG 435 – AWEC's Opening Brief at 7.

⁴⁵ UG 435 – Staff's Opening Brief at 11.

⁴⁶ UG 435 – NW Natural's Opening Brief at 82.

⁴⁷ UG 435 – AWEC's Opening Brief at 12.

premature to allocate CPP compliance costs in this manner because actual CPP compliance costs are still being developed.⁴⁸ However, the proposal supported by CUB, Staff, and NWN allows for flexibility to account for varying levels of RNG and can adapt to changes in throughput attributable to individual end users.

Finally, the Commission should not be persuaded by AWEC’s argument that the Commission should consider the “economic impacts for Oregon businesses” that this cost allocation methodology will have.⁴⁹ Considerations related to economic development are generally outside the scope of the Commission’s regulatory authority.⁵⁰ Instead, the Commission must act on the record before it and adopt a rate spread proposal that aligns with bedrock ratemaking principles of cost causation and fairness. By allocating RNG costs to all customers to the extent they drive compliance costs, the proposal supported by CUB, NWN, and Staff achieves this end goal. CUB respectfully requests that the Commission adopt its proposal to equitably spread the costs of RNG to all NWN customers on an equal cents per therm basis.

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⁴⁸ *Id.* at 13.

⁴⁹ *Id.*

⁵⁰ *In re Petition for Extended Area Serv. By the Amity Tel. Exch.*, OPUC Order No. 96-041 at 4 (Feb. 14, 1996) (“The Commission, however, previously addressed the business testimony in support of EAS, noting that it was primarily based on a desire for future economic development and job creation. These economic factors are legitimate concerns. Nonetheless, *the Commission’s role is to protect all utility customers, not create economic development incentives for local businesses.* See ORS 756.040(1). For that reason, the Commission will not consider prospective economic development as a factor to support EAS implementation.”) (emphasis added).

III. CONCLUSION

For the foregoing reasons, CUB respectfully recommends that the Commission adopt its proposals in this proceeding.

Dated this 22nd day of August, 2022.

Respectfully submitted,



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