

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 490

In the Matter of)	OPENING BRIEF OF THE OREGON
)	CITIZENS' UTILITY BOARD
NW NATURAL,)	
)	
NW NATURAL REQUEST FOR A)	
GENERAL RATE REVISION)	
_____)	

Pursuant to Administrative Law Judge (ALJ) Spruce’s July 24, 2024 Ruling to Modify the Procedural Schedule, the Oregon Citizens’ Utility Board (CUB) hereby submits its Opening Brief in the above-captioned consolidated proceeding.

I. STATEMENT OF THE ISSUES

Issue 1: Rate Shock Mechanism

At the core of the Commission’s powers is the responsibility to protect utility customers from unreasonable practices and to ensure that rates are just and reasonable. But record-breaking disconnections and public backlash to rising utility rates in the face of elevated prices for basic needs are clear ratepayer indicators of rate shock. The Commission has the authority to adopt CUB proposed a Rate Shock Mechanism that provides incentives for the utility to manage its costs. CUB urges the Commission to adopt the Mechanism now to mitigate substantial residential rate increases in the winter heating season.

Issue 2: LEA Policy and Stranded Assets

Just two years ago the Commission concluded that a reasonable LEA policy must account for Climate Protection Program (CPP) compliance costs and the risk of stranded assets. NWN has not shown that its proposed new LEA policy incorporates this directive. Accordingly, the LEA Policy adopted in UG 435 should be maintained on its downward trajectory.

Issue 3: “New Premises” residential customer class discrimination

The Commission should reject NW Natural’s proposal to create a new residential customer class based on the vintage of customer’s the home. This proposal is discriminatory in violation of Oregon’s statutes.

Issue 4: LEA Overspend & a prospective reduction to rate base for tariff violations

The record reveals that, from at least 2018, NWN has been charging customers for line extensions costs in violation of the tariff on file. As a remedy, CUB recommends the Commission remove \$13.7 million of undepreciated LEA overages from rate base. This is a prospective rate change that would allow present and future residential ratepayers a fair reduction to their rates.

Issue 5: Renewable Natural Gas Automatic Adjustment Clause

The Commission should reject the Company’s proposal to relitigate its Renewable Natural Gas (RNG) Automatic Adjustment Clause (AAC). Many of the issues were addressed in the last rate case. Instead, the Commission should maintain the existing RNG AAC, which balances the interests of ratepayers and the utility.

II. STATEMENT OF THE CASE

A. Background

On November 1, 2021, NW Natural’s (NWN or the Company) Purchase Gas Adjustment (PGA) update increased residential customer’s rates 13.2%.¹ Subsequently, on December 17, 2021, NWN filed a general rate case, UG 435, with the Oregon Public Utility Commission (PUC or Commission) requesting an another 9.9% increase,² later filing an errata requesting to raise the revenue requirement and revising the rates to request a 10.56% increase collected from customers’ base rates.³ In addition to opposing this rate increase, CUB argued that the Company

¹ CUB/100 Jenks/2 (citing UG 432 – Staff Report RA 2 & RA 6, Special Public Meeting October 20, 2021, p. 11)

² UG 435 – CUB Opening Brief at 2 (citing UG 435 – Application of NW Natural for a General Rate Revision (Dec. 17, 2021)). The Commission consolidated the Company’s request to establish a Renewable Natural Gas (RNG) Automatic Adjustment Clause (AAC) (UG 441) with UG 435.²

³ UG 435 – CUB Opening Brief at 2 (citing UG 435 – ERRATA NW Natural/100/Anderson-Kravitz/17).

had “failed to demonstrate that the investments served by its LEA—and the LEA itself—[were] prudent in [that] proceeding or its two prior general rate cases.”⁴ Regarding the Company’s request to establish a Renewable Natural Gas (RNG) Automatic Adjustment Clause (AAC), CUB urged the Commission to take a balanced approach to the Company’s proposed RNG AAC.⁵ After multiple rounds of settlement, the parties were able to settle Revenue Requirement, Rate Spread, and certain Other Issues through First and Second Partial Stipulations.⁶ CUB signed onto the stipulations as they represented a reasonable comprise of the issues.⁷ Accordingly, after settlements, the hearing, and briefings, the resolution of UG 435 provided for a general rate increase of 8.46%⁸ and two issues now disputed in the present proceeding before the Commission: the Company’s downward-adjusting LEA policy and the RNG AAC. The proceeding resolved with a rate effective date of November 1, 2022.⁹

After the parties had settled the revenue requirement in UG 435, NWN published its final PGA in September 2022.¹⁰ The cumulative effect of the PGA and GRC resulted in a 25% increase to residential ratepayers that would have gone into effect November 1, 2022.¹¹ As a result, CUB and NWN negotiated a rate mitigation deferral with a temporary bill credit to residential customer rates for the period November 1, 2022, through March 14, 2023.¹² Rates went into effect November 1, 2022, but this deferral delayed a portion of the PGA

⁴ UG 435 – CUB Opening Brief at 16 (citing UG 435 – CUB/613/1-2).

⁵ UG 435 – CUB Opening Brief at 17.

⁶ *Id.* at 2-3.

⁷ *Id.* at 3 (citing UG 435 – CUB/613/1-2).

⁸ UG 490/CUB/100 Jenks/2 (citing OPUC Order No 22-388 p. 1).

⁹ In the Matter of NORTHWEST NATURAL GAS COMPANY, dba NW NATURAL, Request for a General Rate Revision, Docket No. UG 490, Order No. 22-388 (Oct. 24, 2022).

¹⁰ See UG 490/CUB/100 Jenks/2 (citing UG 459 – Staff Report RA 5, Special Public Meeting, October 25, 2022, p 5).

¹¹ UG 490/CUB/100 Jenks/2 (citing UG 459 – Staff Report RA 5, Special Public Meeting, October 25, 2022, p 5).

¹² UG 490/CUB/300 Jenks/4; see also UG 459 – Staff Report RA 5, Special Public Meeting, October 25, 2022, p.5).

filing rate increase until after the winter heating season, resulting in a 15% increase in January of 2023 and an additional increase in March.¹³

On December 29, 2023, NW Natural filed a request for a general rate increase with a requested November 1, 2024, rate effective date.¹⁴ The filing requested increase that included a revision to customer rates that would increase revenues by \$154.9 million and an approximately 16.62 % increase to current customer rates.¹⁵ On February 5, 2024, Administrative Law Judge (ALJ) Sarah Spruce issued a memorandum establishing the procedural schedule. This was followed by multiple rounds of formal and informal settlement conferences and multiple rounds of testimony. On February 26, 2024, NW Natural, Commission Staff (Staff), CUB, and AWEC reached a partial settlement on the cost of long-term debt and filed the First Partial Multi-Party Stipulation (“First Stipulation”) and Joint Testimony in Support.¹⁶ Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (the Coalition) did not join but did not oppose the First Stipulation.¹⁷ On July 24, 2024, the parties entered the Second Stipulation.¹⁸ The Second Stipulation resolved the Company’s revenue requirement; cost of capital and capital structure; capital projects and capital additions, including officer attestations; rate spread and aspects of rate design; and the Bill Discount Program, the Arrearage Management Program (“AMP”) for Tier 0 customers, and cost recovery for the Bill Discount Program. The result was an 11.05%

¹³ UG 490/CUB/100 Jenks/2 (citing UG 459 – Staff Report RA 5, Special Public Meeting, October 25, 2022, p 5).

¹⁴ NW Natural-Staff-CUB-AWEC-Coalition/100 Kravitz, Muldoon, Jenks, Mullins, Fain2-/4

¹⁵ UG 490– Initial Filing, Executive Summary at 1.

¹⁶ UG 490 – First Partial Multi-Party Stipulation and Supporting Joint Testimony (Feb. 26, 2024) (subject to OPUC review).

¹⁷ NW Natural-Staff-CUB-AWEC-Coalition/100 Kravitz, Muldoon, Jenks, Mullins, Fain/4.

¹⁸ UG 490– Stipulating Parties Second Partial Stipulation and Attachment 1 Settlement Rate Spread (July 24, 2024) Errata (July 25, 2024) (subject to OPUC review).

increase for residential ratepayers. At the time of filing, the impact of the PGA and single-issue filings was estimated to reduce residential rates 3.2%, for a cumulative increase of 7.8% to residential ratepayers.¹⁹ NW Natural, Staff, CUB, the Coalition, and AWEC supported the terms in the Second Stipulation, with the limited exceptions of the agreements relating to the Bill Discount Program discount levels and cost recovery, which Staff did not join but did not oppose. On August 12, 2024, NW Natural, the Coalition, and CUB filed the Third Stipulation and brief in support.²⁰ The Third Stipulation resolved all issues related to the post-enrollment income verification in the Company's bill discount program raised in this case.²¹ On August 5, 2024, NWN responded to the bench request of ALJ Spruce in this docket with an update on the rate impact of the stipulated revenue requirement combined with PGA and other filings. The combined effects were a 7.5% revenue increase, and a 7.0% average bill increase for residential ratepayers.²² On August 14, 2024, NWN announced in the Oregonian that it intends to file another update in September 2024. Rates will be higher or lower depending on changes to the market price of natural gas and other factors.

Accordingly, the remaining issues that CUB will address in this brief include:

- Whether the Commission should adopt CUB's Rate Shock Mechanism to mitigate substantial residential rate increases in the winter heating season;
- Whether the Commission should replace the Company's its current downward adjusting margin LEA policy adopted in UG 435, with NWN proposed tiered usage LEA policy;
- Whether NW Natural's proposed monthly fixed rate charge for new residential premises customers connected on or after November 1, 2024, discriminates by bifurcating the residential class based on past usage and the vintage of the home;

¹⁹ UG 490 – NW Natural's Errata to Attachment 1 of 2nd Partial Stipulation (July 25, 2024). (subject to OPUC review).

²⁰ UG 490 – Application of NW Natural for a General Rate Revision Joint Brief in Support of the Third Partial Stipulation (August 12, 2024). (subject to OPUC review).

²¹ *Id.* at 1.

²² UG 490 – NW Natural's Request for a General Rate Revision Response to Bench Request – UPDATE (August 5, 2024).

- Whether it is appropriate to implement \$13.7 Million Rate Base Adjustment to account for the Company’s LEA Overspend placed in Rate Base between 2018-2023; and
- Whether the Company’s proposal to change the RNG AAC adopted through comprising in UG 435 will result in just and reasonable rates.

B. Burden of Proof

In a utility dispute before the Commission, the burden of proof consists of two discrete components—the burden of persuasion and the burden of production.²³ In a utility proceeding, the burden of persuasion and the ultimate burden of producing sufficient evidence to support its claims is always with the utility.²⁴ Other parties to the proceeding have the burden of producing evidence to support their argument in opposition to the utility’s position.²⁵ In a case in which a utility is requesting a change in rates or a schedule of rates—such as a general rate case—the utility bears the burden of showing that its proposed change will result in rates that are fair, just, and reasonable.²⁶

III. ARGUMENT

Issue 1: Rate Shock Mechanism

At the core of the Commission’s powers is the responsibility to protect utility customers from unreasonable practices and to ensure that rates are just and reasonable. But record-breaking disconnections and public backlash to rising utility rates in the face of elevated prices for basic needs are clear ratepayer indicators of rate shock. The Commission has the authority to adopt CUB proposed a Rate Shock Mechanism that provides incentives for the utility to manage its costs. CUB urges the Commission to adopt the Mechanism now to mitigate substantial residential rate increases in the winter heating season.

²³ *In re Portland General Electric Company Application to Amortize the Boardman Deferral*, OPUC Docket No. UE 196, Order No. 09-046 at 7 (Feb. 5, 2009).

²⁴ *Id.*

²⁵ *Id.* at 7-8.

²⁶ ORS § 757.210(1)(a).

A. The Commission can Issue a Rate Shock Mechanism to Protect the Public Health and Safety of Oregonians.

Since January 2022, NW Natural's residential customers have had rates increase by at least 38%.²⁷ Here the Company is asking to increase residential customer rates by another 18.1% on November 1, 2024.²⁸ Rate shock occurs when there is a sudden, large rate increase which is significant enough that customers find it difficult to adjust their budgets to absorb the increase.²⁹ Rate shock is particularly concerning when large rate increases are implemented in the winter season when utility bills are at their highest, as NW Natural is asking here.³⁰ CUB recommends the Commission adopt a mechanism that would protect residential ratepayers from this significant rate increase intended to be implemented in the winter heating season.

CUB proposes a Rate Shock Mechanism for a total residential rate increase capped at 10% or 7% plus the rate of inflation.³¹ If the percentage rate increase went over this cap, the mechanism would take effect. Amounts up to the threshold would be placed into rates effective November 1. Amounts over that threshold would be placed into rates effective April 1.

In discussing this proposal, this Brief first affirms that the Commission has the authority to implement the Mechanism. The Brief then explains how CUB designed the proposal by keeping in mind the operations of a gas distribution company. Finally, the brief discusses the urgency of this proposal to protect the health, safety, and financial stability of residential ratepayers.

²⁷ CUB/100/Jenks/2.

²⁸ *Id.*

²⁹ *Id.* at 4.

³⁰ *Id.*

³¹ *See* CUB/100/Jenks/7-18.

1. ***The Commission has the authority to take action to mitigate the impact of a rate increase.***

Since 1911, the Oregon legislature has delegated the authority to regulate public utilities exclusively to the Commission.³² A key component of this regulatory authority is the responsibility to protect public utility customers. Specifically, the Commission:

is expressly charged with representing utility customers and the public generally ‘in all controversies respecting rates, valuations, service, and all matters of which the commission has jurisdiction,’ and to use those powers ‘to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.’³³

Therefore, at the core of the Commission’s legislatively-delegated general powers is the responsibility to protect utility customers from unreasonable practices and to ensure that rates are just and reasonable. This core function is distilled into the Commission’s mission “[t]o ensure Oregon utility customers have access to safe, reliable, and high quality utility services at just and reasonable rates.”³⁴

The “just and reasonable” standard was articulated in a landmark U.S. Supreme Court case entitled *Federal Power Commission v. Hope Natural Gas Co.*³⁵ As described by the Court, this standard generally requires that the Commission balance the interests of the customer and investor. This means Commission-approved rates must be affordable to the customer to the extent that they do not qualify as an unreasonable exaction, but the rates must also provide the

³² OPUC Order No. 08-487 at 4.

³³ *Id.* citing ORS 756.040(1).

³⁴ Oregon Public Utility Commission, About Us, *available at* <https://www.oregon.gov/puc/aboutus/Pages/default.aspx>.

³⁵ *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (hereinafter *Hope*).

utility with sufficient revenue for both operating expenses and to cover the capital costs of the business. The Commission has acknowledged this balance:

[t]he 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.³⁶

In reaching a determination that utility rates are set at a just and reasonable level, the Commission has significant flexibility. The Court in *Hope* found that “under the statutory standard of ‘just and reasonable,’ it is the result reached, not the method employed, that is controlling.”³⁷ This allows regulators like the Commission tremendous flexibility to employ a variety of ratemaking tools, as long as they reach a just and reasonable result.³⁸ The Commission has addressed this flexibility, acknowledging that it:

sets rates under a comprehensive and flexible regulatory scheme. The legislature has expressed no specific process or method the Commission must use to determine the level of just and reasonable rates, and the Commission has great freedom to determine which of the many possible methods it will use.³⁹

And this flexibility provides that the Commission can take action to mitigate rate shock for customers.

To expand the authority of the Commission, Oregon’s legislature introduced HB 3575 into the 2003 regular session. Specifically, the bill proposed to allow the Commission to

Adjust rates to mitigate or phase in an increase in rates if the increase is of such magnitude that, if applied at the higher rate or all at one time, the in-crease would affect the ability of customers to maintain adequate utility service or could materially affect the economy of the state.⁴⁰

³⁶ OPUC Order No. 08-487 at 5.

³⁷ *Hope* at 602.

³⁸ *Id.*

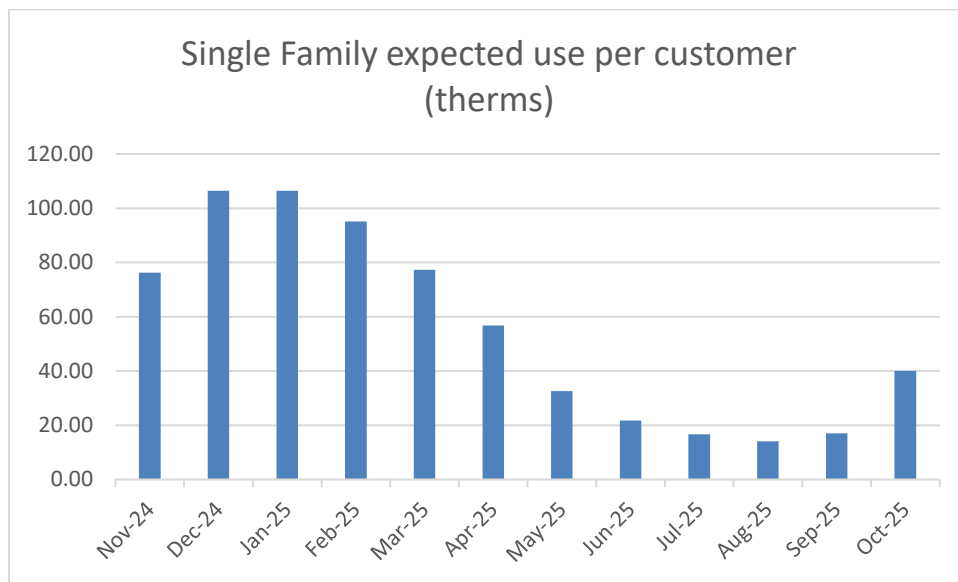
³⁹ OPUC Order No. 08-487 at 5.

⁴⁰ H.B. 3575, 72nd OREGON LEGISLATIVE ASSEMBLY § 9 (2003).

In response, Commission Chair Lee Beyer testified to the Oregon legislature that the Commission already had the tools to address rate shock.⁴¹ He explained that adopting explicit legislation that would allow the Commission to use these three tools was redundant, because the Commission already had the authority to use these tools -- and would utilize those tools.⁴²

If NW Natural's current rate increase request is approved, residential customers will have experienced a 56% rate increase in the last three years.⁴³ NW Natural is asking that one-third of that increase be placed on customers this winter. This sudden, large rate increase will inevitably be very difficult for customers, especially low-income customers, to absorb coming into the time of year when their utility bills are at their highest.⁴⁴

Table 1: Monthly Natural Gas Usage⁴⁵



⁴¹ UG 490/CUB/100 Jenks/5.

⁴² *Id.*

⁴³ *See* CUB/100/Jenks/2.

⁴⁴ CUB/100 Jenks/3-4

⁴⁵ CUB/102 Jenks/1.

CUB believes this rate shock will significantly harm NW Natural's most vulnerable customers not only in terms of their ability to pay their utility bills, which may mean they keep their home temperature unreasonably low in order to keep their bills low, or worse, be at risk of being disconnected.⁴⁶

If customers cannot afford their utility bills, they are not receiving fair and reasonable rates. It is an unjust and unreasonable practice to place this burden on customers, especially when it means putting people at risk of losing heat in the coldest month of the year with increasing extreme cold weather events. With a Rate Shock Mechanism, the Commission can justly and reasonably implement rate increases, while still allowing the Company to recover those costs the Commission finds prudently incurred. CUB is not asking the Commission to limit prudently incurred costs a utility can recover, only that it is just and reasonable to mitigate rate shock to NW Natural's residential customers by phasing in those rate increases. CUB argues that the utility's burden of carrying this regulatory lag outweighs the risk of its customers having to make sacrifices when it comes to heating their homes during the coldest time of the year.

2. This General Rate Case Proceeding is the Appropriate Venue to Order a Rate Shock Mechanism.

The Commission can appropriately adopt CUB's Rate Shock Mechanism in this matter. The Commission has the authority to and should adopt this proposal in this proceeding just as it adopts a rate effective date or other rate adjustment mechanisms such as a tracker presented in a GRC.⁴⁷ Under this proposal, the Rate Effective date adopted in the joint stipulation⁴⁸ could

⁴⁶ See CUB/100/Jenks/4-5.

⁴⁷ UG 490/CUB/300 Jenks/9.

⁴⁸ UG 490– Stipulating Parties Second Partial Stipulation and Attachment 1 Settlement Rate Spread (July 24, 2024) Errata (July 25, 2024) (subject to OPUC review).

continue to exist, and, if the Rate Shock Mechanism is triggered, the subsequent rate effective date of April 1 would co-exist. Contrary to NWN’s assertion, the Commission does not need to set aside a separate forum to address this mechanism. The Rate Shock Mechanism presented here is specific to NWN’s operation⁴⁹ and has been discussed in multiple rounds testimony by both CUB and the Company. Moreover, delaying adoption of the mechanism would put customers at a continuing risk of unaffordable bills and increased disconnections at a time when the Commission has noticed that rising disconnections mean an immediate change is warranted.⁵⁰

3. *The Rate Shock Mechanism is aligned with existing mechanisms designed regularly adopted by this Commission.*

Just and reasonable rates include a temporal element. Here, CUB has entered into a stipulation on the revenue requirement.⁵¹ That stipulation includes an agreed upon ROE and rate spread. CUB is now asking the Commission to consider the temporal qualities of a just and reasonable rate. CUB’s Rate Shock Mechanism is triggered if the total annual rate increase goes beyond a certain threshold. The Commission has adopted other rate mechanisms that similarly address this temporal aspect, primarily by adjusting the relationship between rates and the test year or rate effective date or otherwise introducing a rate in phases. As discussed below, the Rate Shock Mechanism shares similar traits as these existing methods frequently used by the Commission including trackers and adjustment clauses to recover for various expenses.

- **Trackers.** The Commission has frequently allowed utilities to use single-issue trackers to recover costs, taxes, and revenues without going through a general rate

⁴⁹ CUB/100 Jenks/9.

⁵⁰ See UM 2211- HB 2475 Implementation of Differential Rates and Programs in Oregon, Phase 2 Work Plan Update (August 2024).

⁵¹ UG 490– Stipulating Parties Second Partial Stipulation and Attachment 1 Settlement Rate Spread (July 24, 2024) Errata (July 25, 2024) (subject to OPUC review).

case.⁵² Trackers allow the utility to adjust rates to account for such things as new infrastructure between rate cases or a refund ordered by the Commission. Trackers allow the Commission to approve a rate increase outside of the normal rate case suspension period. If the Commission will allow the utility to use a tracker to adjust rates to increase costs, the Commission should permit ratepayers the same tool to adjust rates downward to account for rate shock.⁵³

- **Recovery Adjustment Mechanisms.** CUB’s proposal would operate akin to the cost recovery mechanisms the Commission has already adopted for NWN.⁵⁴ Like an automatic adjustment clause, if the total rates triggered the Rate Shock Proposal threshold established by the Commission, rates would automatically be adjusted out of the winter heating season to provide relief to ratepayer.

B. The Rate Shock Mechanism is carefully designed to balance the interests of the Company’s ratepayers and the shareholders.

1. *CUB’s comparison to Rent Cap is illustrative.*

A significant portion of NWN’s Surrebuttal Testimony is dedicated to discussing CUB’s inspiration from Oregon’s legislative rent cap.⁵⁵ In this regard, NWN attempts to counter CUB’s Rate Shock Proposal by repeating that the market in which regulated utilities operate is distinct from the competitive rental market.⁵⁶ This distinction was never lost on CUB.

Moreover, CUB’s use of the rent cap was illustrative. CUB used the rent cap for the limited purpose of establishing that the Commission could use a threshold under which the Commission could act. CUB explained that the authority for CUB’s Rate Shock Proposal,

⁵² See UG 490/CUB/300 Jenks/9 (“NWN’s belief in the sanctity of the suspension period cannot be taken seriously. Utilities in Oregon regularly request trackers to bring in costs that become used and useful well after the rate effective date.”).

⁵³ UG 490/CUB/300 Jenks/9 (“The Company seems to be taking the position that utilities can request rate increases occur outside of the suspension period, but customers cannot.”).

⁵⁴ UG 490/CUB/300 Jenks/6.

⁵⁵ NW Natural/4400 Kravitz/Page 25-27.

⁵⁶ *Id.*

however, is based on the Commission’s authority as confirmed by Commissioner Beyer’s testimonial to the Oregon Commission had in 2003.⁵⁷

2. ***CUB’s proposal is curated to the nuances of the gas utility.***

To be clear, CUB is asking to delay part of the rate increase, not defer cost recovery.⁵⁸ CUB would like the Commission to move the rate effective dates associated with the portion of the Commission-approved prudently incurred costs that are above the Mechanism’s threshold out of the winter heating season. While CUB believes that the Commission can institute a Rate Shock Mechanism for all investor-owned utilities in Oregon – and advocates for a Rate Shock Mechanism in each of the general rate cases filed this year – CUB recognizes the distinction between a gas and electric company in its testimony. As Witness Jenks explained, “gas utilities are different – so much of a gas [utility’s] revenue from residential customers comes from winter space heating. This means that the Commission can provide a great deal of relief to customers by delaying the amounts above the cap until after the winter heating season.”⁵⁹

Because of these differences, CUB curated the Rate Shock Mechanism it proposes for NWN in line with the characteristics of a gas company.⁶⁰ The Rate Shock Mechanism would apply to the cumulative rate increase for residential ratepayers each year, in other words, it would apply to the total increase of the both the general rate case combined with any other increase or decrease from other filings that year including the PGA.⁶¹ The Rate Shock Mechanism uses a 10% threshold or 7% plus the rate of inflation, whichever is lower.⁶² This

⁵⁷ See CUB/100/Jenks/5 (referencing *HB 3575 Testimony of Lee Beyer, Commissioner, Oregon Public Utility Commission*, House Committee on Business, Labor & Consumer Affairs (Apr. 14, 2003)).

⁵⁸ See UG 490/CUB/300 Jenks/2-5 (discussing how the delay would operate with the test year and operating costs).

⁵⁹ CUB/100 Jenks/9.

⁶⁰ See CUB/100 Jenks/9.

⁶¹ See UG 490/CUB/300 Jenks/9-10.

⁶² CUB/100 Jenks/7.

means that once the revenue requirement associated with various ratemaking mechanisms is identified, the amount above the 10% trigger should be set aside.⁶³ For electric utilities, CUB has recommended that the amount above the threshold be recovered in a future year.⁶⁴ In the case of a gas utility, however, where so much of the usage is for winter space heating, delaying the increase until bills drop in the spring may be adequate.⁶⁵ Below are three scenarios showing how CUB’s Rate Shock proposal could be implemented using the 10% threshold.

Table 1: Rate Shock Mechanism Scenarios

	GRC (margin)	PGA (gas supply costs)	Total	Rate Shock Mechanism Triggered?
Scenario 1	10.5%	(3.7%)	6.8%	No
Scenario 2	8.5%	1.2%	9.7%	No
Scenario 3	10.5%	1.2%	11.7%	Yes

- **Scenario 1:** Here the Rate Shock mechanism is not triggered because the cumulative rate increase is 6.8%. Accordingly, the total rate increase of 6.8% would go into effect November 1st.
- **Scenario 2:** Where the PGA is positive, indicating gas costs have increased compared to the previous year, the Rate Shock Mechanism would not apply because the total cumulative rate increase of 9.7% is below the trigger. Accordingly, the total rate increase of 9.7% would go into effect November 1st.
- **Scenario 3:** The Rate Shock Mechanism would be triggered because the total cumulative cost at 11.7 % is above the 10% threshold. In this case, CUB’s proposal prioritizes recovery of the utility’s gas costs before recovery of the margin revenues (the non-gas revenues). Accordingly, the PGA increase at 1.2% and a rate increase from the GRC of 8.8% would go into November 1, 2024 rates. On April 1, 2025, the remaining GRC increase would go into rates.

⁶³ *Id.* at 7-8.

⁶⁴ *Id.* at 9.

⁶⁵ *Id.*

In practice, as illustrated by these scenarios, CUB's Rate Shock proposal means that in times of rising gas costs, NWN should be incentivized to control non-gas costs and in periods with stable or falling gas prices the Company would have more room for spending. Because margin is the cost of pipes, employees, and other non-gas costs, these are costs that are largely under NWN's control.⁶⁶ There is no reason that these costs should be growing at a rate of three, four or five times the rate of inflation.⁶⁷ On the other hand, increasing gas costs could provide an incentive to limit the ability for non-gas costs to also increase. CUB's proposal is not an attempt to harm the company. Instead, it is designed to protect customers by keeping bills affordable and providing an incentive for the company to manage its costs.

3. ***The current PGA does not moot CUB's proposal.***

On April 1, 2024, NWN filed its PGA in UM 1496. The PGA rate decrease, combined with the rate increase for residential ratepayers agreed to by stipulation in this proceeding, is below the 10% threshold of CUB's proposed Rate Shock Mechanism. Accordingly, as it stands, it would not appear that the Rate Shock Mechanism would be triggered this year. That does not mean that CUB's proposal is moot or that the Commission should otherwise refuse to apply the mechanism going forward. While the Rate Shock may not end up being applicable in this instance, it applies in future years where the PGA and other automatic rate increases (not a GRC) raise rates beyond the 10% threshold. Importantly, the Rate Shock Mechanism is not solely designed for years when there is a rate case filing. CUB can address rate shock arising from a GRC through stakeholder testimony, but it is the rate shock that comes from multiple rate

⁶⁶ See CUB/200 Garrett/30.

⁶⁷ CUB/200 Garrett/30 ("NW Natural's rate request indicates its margin revenue (i.e. cost to provide service without considering changes in fuel costs) rose ~30%, or an average of 15% per year. This is notably higher than the inflation rate in the same period, and while there are legitimate reasons that a utility's rates could exceed the rate of inflation, I CUB is concerned that they cannot fully account for this difference.").

changes through various single issue ratemaking tools automatically applied each year that are problematic and require the Commission to set a standard which it can then apply annually.

Moreover, though the PGA is showing a decrease now, the PGA could still increase if, for example, storms in the gulf push gas prices up. An increase to rates in mid-September would leave little time for the Company and stakeholders to come together on a resolution before the November 1 rate effective date. On the other hand, implementing CUB's Rate Shock proposal now would establish an efficient method that provides assurances to both the Company and ratepayers and avoids this last-minute scramble.

C. The Rate Shock Mechanism is necessary to protect the health, safety, and financial integrity of Oregon's residential ratepayers.

CUB asks the Commission to critically consider the health and safety of residential ratepayers when determining just and reasonable rates. Extreme cold puts affordability, health, and safety pressures on Oregon's residents as they try to keep warm during the winter months of November through March.⁶⁸ This is a time when people are most vulnerable to skyrocketing bills due to the culmination of cold weather and rising energy rates – whether that be for gas or electric.⁶⁹ This is the onus behind the Rate Shock Mechanism proposal. Moving the rate effective date out of the winter months would help avoid creating circumstances where the rate increase combined with cold weather make bills unaffordable for customers with space heating.⁷⁰ As explained by CUB Witness Jenks, rate shock is a particular concern for large increases that come in the winter when energy bills are at their highest to account for heating.⁷¹ These large increases

⁶⁸ CUB/100 Jenks/3-5; *see also* UM 2211- HB 2475 Implementation of Differential Rates and Programs in Oregon, Phase 2 Work Plan Update (August 2024).

⁶⁹ *Id.*

⁷⁰ CUB/100 Jenks/3-5.

⁷¹ *Id.* at 4-5.

fall on residents who may also be struggling under a tightened budget due to job loss or limited hours and accumulated holiday debt.⁷² By moving the rate effective date into the spring, customers can better manage costs.

In this docket, CUB has tailored rate implementation dates to NWN's cumulative rate increases that would lessen the health and safety risk that results from residential ratepayers trying to balance competing basic needs. During the months of November through April, CUB's Rate Shock proposal eases residents' concern between staying warm and other basic needs. And can prevent utility disconnections that may otherwise have occurred because high utility bills forced residential customers to make the difficult decision to pay for basic needs overpaying the heating bill.

This proposal is not taken lightly. CUB recognizes that timely cost recovery of prudently incurred costs is important to maintaining the utility's financial integrity to attract capital at lower cost interest rates, which benefits customers. However, as Staff acknowledged in testimony, "Staff notes that exceptionally high residential rates may lead to higher rates of disconnections or bad debt, which ultimately affects the utility's actual net income."⁷³ That said, even the Commission has realized that Oregonians are in a crisis. Commission Staff recently filed an update in Docket UM 2211, the PUC docket investigating implementation of HB 2475 (2021), the Energy Affordability Act.⁷⁴ The update stated that "Staff believes that there is an immediate need to take action to address rising disconnections and arrearages observed in 2024."⁷⁵

⁷² *Id.* at 4.

⁷³ Staff/4100/Shierman/8.

⁷⁴ See UM 2211- *HB 2475 Implementation of Differential Rates and Programs in Oregon* (Aug. 6, 2024).

⁷⁵ *Id.* at 1 (referencing the utilities disconnections docket RO 12).

D. CUB's Rate Shock Recommendation

CUB recommends a Rate Shock Mechanism that caps residential rates at 10% or 7% plus the rate of inflation, whichever is lower. That said, the Commission is not precluded from opening a broader investigation in the future, or otherwise revising the cap, if it adopts CUB's recommendation in this proceeding. CUB is open to revising that cap if the Commission finds the threshold proposed to be unreasonable. For example, in the concurrent PGE rate case proceeding, UE 435, Staff has proposed capping residential rate increases at 3%.⁷⁶

As explained by Commissioner Beyer, the Commission has identified three tools to address rate shock: a rate cap with a delayed implementation date; adjusting the ROE to the lowest reasonable level; and adjusting rate spread. This Opening Brief focuses on the rate cap proposal, as ROE and rate spread have been agreed to in stipulations, not because CUB believes these tools are less worthy.

Finally, CUB ends by making a recommendation as to the Commission's role when a utility goes beyond the Rate Shock Threshold. In these instances, as laid out in CUB's testimony⁷⁷ the Commission should require the Company to the following actions:

- The rate effective date associated with costs that do not need to be recovered during the winter months should be delayed and not placed on winter bills. This would help avoid creating circumstances where the increase combined with cold weather make bills unaffordable for customers with space heating.
- The Company should be required to submit a plan to the Commission outlining what it is doing to mitigate the rate shock. This plan should include increasing efforts to educate customers about its Bill Discount Program (BDP), equal pay, energy efficiency and other options that might help the customer deal with the impact.
- A shut-off moratorium should be implemented for a 6-month period, allowing customers some time to manage the increase.

⁷⁶ See UE 435, Staff/200, Scala/38. (recommending of a cap on a residential increase of 3% of PGE's overall revenue requirement).

⁷⁷ CUB/300 Jenks/8-9.

- For 12 months after the increase, the Company should be required to report to the Commission the number of customers, by zip code, who have 30-day arrearages, the number that have 60-day arrearages, the number that have received shut off notices, the number that have been shut off and any other information the Commission believes will be helpful in understanding the impact of the increase.
- The Commission could order the Company to suspend or reduce the amortization of certain deferred accounts or other single issue ratemaking mechanisms, to reduce the impact of the rate increase.

Issue 2: LEA Policy and Stranded Assets

Just two years ago the Commission concluded that a reasonable LEA policy must account for Climate Protection Program (CPP) compliance costs and the risk of stranded assets. NWN has not shown that its proposed new LEA policy incorporates this directive. Accordingly, the LEA Policy adopted in UG 435 should be maintained on its downward trajectory.

A. NW Natural's Proposed Line Extension Allowance Policy Should be Rejected.

NW Natural has failed to meet its burden of proof to demonstrate that its proposed LEA policy is prudent and would result in fair, just, and reasonable rates. Less than two years ago, the Commission found the Company's future costs of Oregon's Climate Protection Program (CPP) compliance and risks of stranded fossil fuel assets to be significant and included them into the existing LEA design, most noticeably, when revising the LEA downward.⁷⁸ It is reasonably expected that the costs will increase if and when new customers are added to NW Natural's system as it proposes.⁷⁹

The Company has not presented sufficient evidence to show that its new LEA policy proposal addresses CPP compliance costs nor the risk of stranded asset costs. Moreover, CUB's

⁷⁸ See UG 435 - Order 22-388 at 48-54 (Oct. 24, 2022).

⁷⁹ See CUB/400 Garrett/15; see also CUB/200 Garrett/11 -12 (discussing stranded assets); CUB/400 Garrett/35 (discussing electrification).

testimony discredits the presumptions about efficiencies the Company proports its new design incents.⁸⁰ Additionally, CUB is concerned that the Company has not acknowledged nor planned for the risk of stranded assets from customer attrition in developing these incentives, despite the Commission recognizing the “robust record in [UG 435] about the policy changes taking place in the natural gas distribution business.”⁸¹

1. ***The proposed LEA policy does not consider CPP Compliance costs as required in UG 435.***

In UG 435, the Commission found NWN’s existing LEA was too high and did not adequately capture the costs and risk of Oregon’s energy future.

We find the record in these proceedings adequately demonstrates that NW Natural's current LEA is too high and should be adjusted downward and that NW Natural has not met its burden of proof that the LEA should remain unchanged. We also find that delaying an adjustment to the LEA would put customers at a continuing risk of unreasonable costs. As NW Natural itself has stated elsewhere in these proceedings, the CPP is in effect and the company must comply with it now,¹⁷⁷ and we find that an immediate change is therefore warranted.⁸²

Accordingly, the Commission ordered the Company to decrease its LEA from \$2,875 to \$2,300 beginning on November 1, 2022, and then to revise the LEA downward each year thereafter through November 1, 2024, to reflect a prescribed lower amount, unless and until further proceedings establish that a different LEA is appropriate.⁸³ The Commission ordered the LEA downward after considering the significant costs and risks associated with CPP compliance.⁸⁴

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⁸⁰ CUB/200 Garrett/13-14; CUB/208 Garrett.

⁸¹ UG 435 -- Order 22-388 at 50.

⁸² *Id.* (referencing NW Natural Closing Brief at 62; NW Natural/2300, Walker-Wyman/8).

⁸³ UG 435, Order 22-338 at 51; UG 490 - CUB/400 Garrett/46.

⁸⁴ Order 22-388 at 48 (citing UG 435 CUB/100, Jenks/12, 13 (identifying costs of compliance associated with new customers added to the system)).

Figure 1: NWN’s Schedule X Current Construction Allowance Policy⁸⁵

Residential

The Construction Allowance per residential dwelling will be equal to the factor shown below times the annual margin using the Base Rate and Base Adjustment from the applicable Rate Schedule times the annual estimated therm usage attributable to the Applicant’s particular installation. For example, on November 2, 2022, the construction allowance for an Applicant expected to use 531 therms annually would be \$2,300. The Calculation of the estimated therm usage assumes usage in a permanent structure occupied 12 months per year and may be adjusted where service is requested where occupancy is known or expected to be less than 12 months per year. The estimated therm usage is determined from structure characteristics, demographics, heating degree days and type and number of appliances to be installed.

Effective Period	Margin Factor
November 1, 2022 – October 31, 2023	5 times
November 1, 2023 – October 31, 2024	4 times
November 1, 2024	3 times

NWN’s new LEA Policy proposal is divorced from the Commission’s directive in UG 435. To begin, the Company’s LEA proposal breaks from the ordered downward trajectory shown above. Instead, NWN proposes a tiered system, with a reduction in the tiers for increased gas use but with an *increased* LEA cap from that currently on file.⁸⁶ The tables below show the Company’s proposed new LEA Policy and DCF model results.

Table 2: NWN’s Proposed LEA Policy⁸⁷

UPC (therms)	0-250	251-450	451-650	651+
LEA cap	\$2,950	\$2,300	\$1,650	\$500

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⁸⁵ CUB/402 Garrett/10.

⁸⁶ Compare NW Natural/4900 Therrien/Page 3 and NW Natural/4901 Therrien/Page 1 with CUB/402 Garrett/10.

⁸⁷ NW Natural/4900 Therrien/Page 3.

Table 3: NWN DCF Model Results at Proposed Consumption Levels (Therms)⁸⁸

Model Results at Proposed Consumption Levels (Therms)				
UPC (Therms)	0-250	251-450	451-650	650-1000+
LEA	\$2,950	\$2,297	\$1,644	\$502
Times Margin	6.0	3.5	2.0	0.5
Rev Req B/E Year	Year 11	Year 11	Year 12	Year 12

The new LEA cap is \$2,950 for 0-250 therms. As an initial matter, this proposed LEA is higher than what the current LEA policy permits.⁸⁹ In fact, this allowance is higher than the prior LEA on file from 2012 to 2022, which the tariff capped at \$2,875 per premises for the highest assumed usage.⁹⁰ The Commission found this prior LEA cap of \$2,875 failed “to take into account any of the costs that are brought to NW Natural’s system from new customers associated with greenhouse gas emission abatement obligations placed on the company under the CPP.”⁹¹ NWN has not offered any evidence to show that this new LEA of \$2,950 accounts for the costs of CPP compliance.

The next tier, 251-450 therms, would retain the \$2,300 LEA cap into 2025 instead of continuing downward on Nov. 1, 2024, as the Commission has directed.⁹² What’s more, an LEA cap at \$2,300 is outdated. As introduced in UG 435, for LEA allowed during Nov. 1 2022- Oct. 31, 2023, was \$2,300 per residential dwelling.⁹³ That LEA was based on 5 times the annual

⁸⁸ NW Natural/4901 Therrien/Page 1.

⁸⁹ CUB/402 Garrett/10 (showing current Schedule X on file, which caps the construction allowance per residential dwelling based on declining annual margin factor).

⁹⁰ CUB/402 Garrett/6 (showing 2012-2022 Schedule X cap on the construction allowance per premises for primary space heating in a residential dwelling).

⁹¹ UG 435 Order No. 22-388 at 48.

⁹² See UG 435 Order No. 22-388 at 48 (ordering NWN to set its LEA at \$2,300 beginning on November 1, 2022, and then revise it each year thereafter through November 1, 2024, to reflect a prescribed lower amount’); see also *id.* at 51 (“We find that the LEA should not remain static at \$2,300, in light of the demonstration that has been made that a more significant downward adjustment is ultimately warranted in order to appropriately balance the costs associated with new customers.”)

⁹³ CUB/402 Garrett/10.

margin.⁹⁴ Today, the LEA cap is \$1,850, based on 4 times the margin.⁹⁵ And, under the current LEA policy, on Nov. 1, the cap will decline again to 3 times the margin.⁹⁶ If we assume the Company's use per customer of 449.4 therms for a new customer connecting to the system,⁹⁷ then that new customer would receive an allowance of \$2,300 instead of a reduced LEA under the current LEA policy.

By any reasonable standard, NWN's proposal is out of step with the Commission's directive. In UG 435, the Commission found that the Company could not justify an LEA that did not account for CPP compliance costs. At the most basic level, NWN argues for higher LEAs without offering any evidence to overcome the Commission's previous Order on LEAs in UE 435. NWN appears to be ignoring the Commission's reasoning, doubling down on expanding its LEA without providing any evidence to support the proposed change. The Commission should similarly reject NWN's proposed LEA policy here as it does not actually account for CPP compliance costs, and therefore is not just and reasonable.

2. ***The proposed LEA policy will increase the likelihood and costs of stranded assets.***

It is pressing that, in an era where both the federal government and the state have decarbonization incentives, the Commission considers both the lifetime costs of LEAs and who will bear those costs now and into the future. Historically, LEAs benefited customers by easing construction costs for new customers and sharing the fixed costs of the gas system among a larger number of customers. Gas LEAs made sense when natural gas costs were low and prior to

⁹⁴ CUB/402 Garrett/10.

⁹⁵ Coalition/100 Cebulko/7; *see also* CUB/402 Garrett/10.

⁹⁶ CUB/402 Garrett/10.

⁹⁷ Transcript for the August 1 2024, UG 490 Hearing at 34 ("Tr.").

implementation of decarbonization policies in Oregon and nationwide. Given the policy shift away from fossil fuel generation, adding on a layer of carbon regulation costs changes this basic paradigm and it no longer makes sense to incentive fossil fuel energy expansion.

In UG 435, the Commission found the Company’s LEA problematic because of the unrecovered rate base investment associated with new customer plant additions even after the 30 years of continued service.⁹⁸ The Commission explained that this indicated the LEA of \$2,850 per customer was “too generous and saddling existing customers with increased costs for a period of time that is unreasonably long.”⁹⁹ An LEA should be set so that existing customers are held harmless from the effects of adding new customers. By providing LEAs at this level, and particularly providing LEAs *above* what was offered in the past, the Company is doing the opposite. Incentivizing new natural gas customers comes at a cost. These costs will be added to rate base and be financed by all customers over the lifetime of the underlying assets – for service pipes this can be more than 60 years.¹⁰⁰ Shareholders will earn a return on these assets and customers will still be paying for them in 2080. Though the Company argues it would use different modeling inputs than that used by CUB,¹⁰¹ this does not change this underlying long-term risk. As the Commission has previously acknowledged, policy and market trends are moving away from fossil fuel energy generation. It no longer makes economic sense to subsidize

⁹⁸ UG 435 Order No. 22-388 at 49.

⁹⁹ *Id.*

¹⁰⁰ CUB/400 Garrett/45.

¹⁰¹ *See e.g.*, NW Natural/5000 Zaubi-Kravitz/Page 26 (claiming there will be zero O&M costs for a pipeline if that customer leaves the system).

this type of generation; national and state policies have shifted to incentivize clean energy.¹⁰² To continue to incentivize growing the natural gas system will result in NWN's customers paying for a system they can no longer use. This is neither just nor reasonable.

3. ***The Commission should reject the Company's LEA proposal.***

The Girl Scout motto is to always be prepared. Planning for stranded assets of the gas system should take place before we are confronted with the costs and a declining set of remaining customers captive on the gas system. CUB recommends the Commission reject the Company's proposal because the Company failed to provide evidence to overcome the Commission's reasoning in Order No. 22-388. Instead, CUB recommends the Commission maintain the existing Schedule X, with an update such that the prescribed phase down of the LEA continue downward and would be eliminated by 2027.¹⁰³ This would result in an LEA that is 3 time margin beginning in November 1, 2024; two times the margin November 1, 2025, the margin in November 2026, and \$0 by November 2027.¹⁰⁴ CUB maintains its reasoning introduced in UG 435 for this recommendation, which the Commission found persuasive: reducing therms by not subsidizing growth via the LEA is more cost effective as compared to

¹⁰² UG 435 Order No. 22-388 at 49-50 ("In essence, the current methodology would assume a "business as usual" approach well into the future, while the record in these proceedings shows the future is more likely to be an extremely dynamic and different environment for natural gas distribution, including evolving customer preferences and state and local mandates regarding restrictions on service. Most of these changes point toward a trend where at least some existing and future customers are likely to respond to the changes by modifying equipment or taking other purposeful measures to change their fuel consumption. Or, in some cases, their continued usage may be directly impacted by a policy initiative. We find the company's arguments to the contrary not persuasive, given the robust record in these proceedings about the policy changes taking place in the natural gas distribution business. These changes, including the CPP and activities of municipalities or other jurisdictions in potentially enacting limitations on natural gas, point to a reasonable possibility that the company will encounter a trend of decreasing gas usage, potentially driven by economic signals toward fuel switching.").

¹⁰³ CUB/400 Garrett/46.

¹⁰⁴ *Id.*

paying incentives to get customers to reduce usage.¹⁰⁵ The Company has offered no supporting evidence for the Commission to change the existing LEA policy.

Issue 3: “New Premises” residential customer class discrimination

The Commission should reject NW Natural’s proposal to create a new residential customer class based on the vintage of customer’s the home. This proposal is discriminatory in violation of Oregon’s statutes. NWN’s “New Premises” customer classification is impermissible rate discrimination.

A. The “New Premises” customer classification discriminates against residential customers based on the vintage of their home despite receiving “like and contemporaneous service under substantially similar circumstances.”

NWN proposes to create a new classification of residential customers labeled “New Premises” customers. Any residential ratepayer who connects to the gas system after November 1st, 2024 would be placed into the “New Premises” class simply by virtue of the vintage of their connection to the system.¹⁰⁶ Under the Company’s proposal, these “New Premises” customers would pay usage rates of the residential class, but would pay a higher fixed monthly charge of \$24.50 compared to the remaining members of the residential class, consequently “Old Premises” customers.¹⁰⁷

NWN’s bifurcation of the residential customer class based on the vintage of the customer’s home is impermissible discrimination. ORS 757.325 prohibits the utility from undue or unreasonable discrimination of a particular person or locality.¹⁰⁸ As such, ORS

¹⁰⁵ UG 435 - CUB Opening Brief at 13.

¹⁰⁶ Tr. at 33 (Aug. 1, 2024).

¹⁰⁷ *Id.*

¹⁰⁸ ORS 757.325 (1) states that “[n]o public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.” ORS 757.325(2), states that “[a]ny public utility violating this section is guilty of unjust discrimination.”

757.325 prohibits rate discrimination within customer classes. Likewise, ORS 757.310(2) prohibits a utility from charging its customer a rate different from that charged to a customer for “like and contemporaneous service under substantially similar circumstances.”¹⁰⁹ There are three exceptions to ORS 757.310(2), two of which are largely inapplicable to the issue at hand and will not be discussed.¹¹⁰ Exception ORS 757.310(3)(A) for service classification under ORS 757.230, allows the Commission to adopt classifications that “may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration.”¹¹¹ Such classification must have a “reasonable relationship” to the purpose for the classification.¹¹² Past usage is not a permissible classification.¹¹³

Analyzing the above statutes the Commission posed a hypothetical of two lumber mills. Under this scenario, one of the mills receives a discounted rate for incremental usage intended to reduce excess capacity by encouraging increased consumption, whereas the other does not. As the Commission explained:

One mill is better managed than the other and is able to operate at capacity during a recession. The other mill reduces production by one half. After the recession, the poorly managed mill increases production to capacity and qualifies for a discount on its “incremental” usage even though it would have consumed the energy at the full tariffed rate. The well managed mill, receiving the same service in the same economic environment, does not receive a discount. The result is a rate difference

¹⁰⁹ The Commission has interpreted these provisions to allow for classes to be based on factors other than cost of service finding that the phrase “like and contemporaneous service” to focus on the characteristics of the service. While the phrase “under substantially similar circumstances” regards “the environment in which the transaction takes place.”

¹¹⁰ ORS 757.310(3) (“A difference in rates or amounts charged does not constitute a violation of subsection (2) of this section if the difference is based on: Service classification under [ORS 757.230 \(Control of commission over classification of services and forms of schedules\)](#); Contracts for services under [ORS 757.516 \(Contracts between natural gas utilities and customers for commodity and services\)](#); or An optional schedule or tariff for the provision of energy service that takes into account a customer’s past energy usage and provides price incentives designed to encourage changes in the customer’s energy usage that correspond to changes in the cost of providing energy.

¹¹¹ ORS 757.230(1).

¹¹² UG 23 -- Re Incentive Rates for Elec. Serv., Oregon Dep’t of Just., Oregon Dep’t of Energy, Order No. 87-402 (Mar. 31, 1987) (citing *Kliks v. Dalles City*, 335 P.2d 366 (1959)).

¹¹³ *Id.*

for two customers receiving “like and contemporaneous service under substantially similar circumstances” in violation of ORS 757.310.¹¹⁴

Like the story of the two lumber mills, these New Premises customers would be penalized for efficient energy use compared to the past usage of residents in the “Old Premises” class. New Premises customers would continue to be penalized even as Old Premises reduced their usage to the same level by investing in energy efficiency or converting gas appliances to electric. In the end, despite everything else the same, customers in new houses would be paying significantly more than those in old houses.¹¹⁵

NWN’s proposal to bifurcate the residential rate class based on the vintage of the house is impermissible under ORS 757.325 as it is discrimination within the residential customer classes. That said if we were to accept that the vintage of the house is just a proxy for usage, the bifurcation of the residential class into the “New Premises” class and, consequently, the “Old Premises” class would violate both ORS 757.310 as an impermissible classification based on past usage and ORS 757.325 for treating differently residential ratepayers with “like and contemporaneous service under substantially similar circumstances.” Accordingly, CUB recommends that the Commission maintain the existing residential rate class and reject this new classification and accompanying fixed charge.

Issue 4: LEA Overspend & a prospective reduction to rate base for tariff violations

The record reveals that, from at least 2018, NWN has been charging customers for line extensions costs in violation of the tariff on file. As a remedy, CUB recommends the Commission remove \$13.7 million of undepreciated LEA overages from rate base. This

¹¹⁴ *Id.*

¹¹⁵ CUB/400 Garrett/51-52.

is a prospective rate change that would allow present and future residential ratepayers a fair reduction to their rates

A. The record shows the Company unlawfully overspent on LEAs and then unlawfully placed those costs into rates.

Commission rules require each gas utility to 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.¹¹⁶ A line extension allowance (LEA) fully or partially covers the costs of connecting to the utility system and is captured in a utility tariff.¹¹⁷ Since 2012, NWN has had a cap or maximum amount of service line extension, the “construction allowance”, that the Company can provide to new residential customers to connect to its gas system. Correspondingly, it provides that no more than this maximum LEA can be placed into rates. Schedule X does not establish a cap or other limit on the nonresidential LEA.¹¹⁸

In 2012, the Commission adopted a stipulation establishing NW Natural's Line extension allowance policy (“2012 LEA Policy”). The 2012 LEA Policy was set forth in tariff Schedule X and was in place until 2023. The applicable LEA under Schedule X for a residential customer is based on usage. Schedule X then sets the monetary amount for a “Construction Allowance (per Premise).” Schedule X states that the Construction Allowance is “per residential dwelling.” This LEA cap was \$2875 per individual customer with the highest usage.

In 2022, the Commission revised NW Natural’s LEA policy downward (“2022 LEA Policy”) and established a declining allowance based on the margin.¹¹⁹ This is the present LEA policy, also as Schedule X. Like its predecessor, this new tariff provides for a construction

¹¹⁶ UG 435 -- Order No. 22-388 at 31 (referencing OAR 860-021-0050).

¹¹⁷ CUB/502 at 56.

¹¹⁸ *Id.*; see also CUB/400/Garrett/4-6.

¹¹⁹ See UG 435 -- Order No. 22-388.

allowance per residential dwelling.¹²⁰ For rates in 2023, the LEA cap was \$2,300 per individual customer.

Since at least 2018, NWN has been giving customers much higher allowances for line extensions than Schedule X allows, overspending the LEA allowance by upwards of \$16 million. LEA overspend occurs when a utility provides LEAs for new customers that exceed its LEA policy's LEA cap.¹²¹ When LEA overspend is placed into rate base it means that residential customers will pay more than what the tariff permits the utility to lawfully recover through rates.

1. ***NWN recovered LEA charges that were higher than authorized by the Commission in violation of the Filed Rate Doctrine.***

The Filed Rate Doctrine, embodied in ORS 757.225, provides that that the only legal rate is the rate on file with the Commission.¹²² The utility cannot charge rates other than those on file, nor modify the terms of the tariff, beyond the process described in statute.¹²³ The statute provides that a utility shall not “charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive

¹²⁰ CUB/402 Garrett/10.

¹²¹ CUB/400 Garrett/7.

¹²² ORS 757.225; See *Keogh v. Chi. & Nw. Ry. Co.*, 260 U.S. 156,163 (1922); UM 1002 -- WAH CHANG, Petitioner, vs. PACIFICORP, dba PACIFIC POWER, Respondent. In The Matter of the Petition to Protect WAH CHANG from paying unjust and unreasonable costs for power thru PACIFICORP, filed pursuant to OAR 860-013-0020 and ORS 756.040(1), Order No. 09-343 at 14-16 (Sept. 2, 2009) (“ WAH CHANG Petition order”) (explaining Filed Rate Doctrine’s Application); DR 10 *et al.*, *In the Matter of the Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement*, Order No. 08-487 at 32 (“Trojan Remand Order”) (finding the filed rate doctrine directly relevant to the Commission’s jurisdiction over rates).

¹²³ *Pacific Northwest Bell v. Eachus* 135 Or App 41, 49 898 P2d 774, rev den, 322 Or 193 (1995) (affirming that “rates that have been approved and are in force may be adjusted only pursuant to the process described in the statutes”).

any rate not specified in such schedule.”¹²⁴ The utility cannot modify or suspend that tariff without Commission approval.¹²⁵

The Supreme Court of Oregon has reasoned that the Filed Rate Doctrine establishes that the rate on file serves as a “contract” between the utility and its customer; the utility is obligated to charge only that rate in providing service to its customers.¹²⁶ Correspondingly, the utility cannot modify or suspend that tariff without Commission approval.¹²⁷ The doctrine applies not just to rates, but also to the services, practices, and charges included in the filed tariff.¹²⁸

The record makes clear that the Company repeatedly spent above this cap and included that overspend in residential customer rates.¹²⁹ During discovery, Staff requested that the Company provide, for each residential line extension since 2018, the total cost of the line extension, the amount provided by the customer (i.e., the Customer Contribution), and the amount not provided by the customer.¹³⁰ Reviewing this response, Coalition Witness Cebulko followed up requesting clarification on the costs, namely when total costs are over the maximum LEA provided in the tariff and the customer contribution, who pays the difference?¹³¹ The Company explained

¹²⁴ ORS 757.225

¹²⁵ See ORS 756.565; see also WAH CHANG Petition order; Trojan Remand Order at 33 (“The doctrine reflects the fundamental premise that a person challenging the reasonableness of rates, including the utility, must do so before the regulatory body that approved the rates in the first instance. In other words, the filed rate doctrine recognizes that the Commission has exclusive jurisdiction to determine just and reasonable rates. Thus, any challenge to rates, whether by the utility or a customer, must be brought before this Commission.”). *Pacific Northwest Bell v. Eachus*, 135 Or App 41, 49 898 P2d 774, rev den, 322 Or 193 (1995) (affirming that “rates that have been approved and are in force may be adjusted only pursuant to the process described in the statutes”).

¹²⁶ Trojan Remand Order at 32; *Dreyer v. Portland General Elec. Co.*, 142 P.3d 1010, n.10.

¹²⁷ See ORS 756.565; see also WAH CHANG Petition order; Trojan Remand Order at 33; *Pacific Northwest Bell v. Eachus*, 135 Or App 41, 49 898 P2d 774, rev den, 322 Or 193 (1995).

¹²⁸ *E & J Gallo Winery v. EnCana Corp.*, 503 F.3d 1027, 1040 (9th Cir. 2007).

¹²⁹ See CUB/400/Garrett/7-18 and Coalition/100/Cebulko/37-43.

¹³⁰ CUB/403 (NWN Response to OPUC DR 138); see also Exhibit Coalition/106.

¹³¹ See Exhibit Coalition/106; Coalition/100 Cebulko/37-38.

The Company seeks customer contributions when the estimate exceeds the line extension allowance. As noted above, these estimates are determined upfront, before the line extension is installed. *Unforeseen expenses above the estimate are recovered through general rates, not the specific customer requesting service.*¹³²

In other words, the Company has a practice of disregarding the LEA cap and putting excess construction costs into rate base. To justify shifts these costs onto existing ratepayers, The Company argues that it would be “unfair” to require the customers who have received the above-the-cap LEA to pay the additional construction costs because the new customer has relied on the cost estimate of the cap amount.¹³³ Notably, the Company says nothing about the fairness to existing customers to have to cover those above-the-cap LEA costs or future customers who will be paying for these costs for decades. Under contract law generally, if someone takes steps or “changes his position” in reliance on the other’s promise or claim, then they may have an enforceable contract or claim against the person making the claim. But this does not apply in the case of a filed tariff. The courts have found that a customer cannot make a reliance claim that would be counter to the tariff on filed.¹³⁴ To be clear, CUB is not arguing whether the construction overages should be covered by the new customer or NWN’s shareholders. But these overages cannot be placed into rates.

The Company also tries to justify its LEA overspend through a “portfolio approach”. According to NWN, its portfolio approach takes the average cost of line extensions each year, averages them, and if the average is below the LEA cap, the Company has followed its tariff.¹³⁵ NWN claims to use a “portfolio approach” to evaluate whether the allowance is fair to both

¹³² Exhibit Coalition/106 (emphasis added).

¹³³ NW Natural/ 5000 Zaubi-Kravtz/ Page 10.

¹³⁴ *Perla Development Co. v. PacifiCorp*, 727 P.2d 149, 151 (Or. Ct. App. 1986 (citing *See Dorsey v. Oregon Motor Stages*, 194 P.2d 967 (1948)).

¹³⁵ See NW Natural/5000 Zaubi-Kravitz/Page 15-16, 21-22.

existing and new customers.¹³⁶ As discussed below, there are three glaring issues with this approach:

First, the Company has not pointed to any language in the tariffs that would permit the Company to use this averaging approach. In fact, the language of the tariff, that provides a capped LEA per customer is in stark contrast to an LEA permitted based on averages. If the tariff intended otherwise, it would be clearly stated—like the tariff language that provides no LEA cap for nonresidential customers.

Second, as discussed above, it is the Commission who has the authority to decide what is a “fair” allowance, not the utility. The Commission has already made this decision in approving the tariffs, the Company cannot now modify the methodology of its LEA.

Third, the Company has not shown that its portfolio approach aligns with Schedule X.¹³⁷ NWN has mischaracterized and abused the tariff to gain an advantage. It is unlawfully justifying much more expensive connections and LEAs so long as other new connections are lower than the LEA cap, stating this average LEA meets the terms of the tariff. The plain language of the tariff clearly indicates that the allowance is based upon estimated therm usage per individual residential dwelling.

The Construction Allowance per residential dwelling will be equal to the factor shown below times the annual margin using the Base Rate and Base Adjustment from the applicable Rate Schedule times the annual estimated therm usage attributable to the Applicant’s particular installation.¹³⁸

The tariff does not permit a LEA beyond the cap set for the dwelling as indicated above.

¹³⁶ NW Natural/4900 Therrien/Page 23; see also NW Natural/5000 Zaubi-Kravitz/Page 3.

¹³⁷ See CUB/400/Garrett/14.

¹³⁸ NWN Schedule X-5.

The Company admits in Surrebuttal Testimony that in cases where the construction costs went over the LEA cap and customer contribution “it is possible that costs exceeded the line extension allowance.”¹³⁹ In fact, not only is it possible, but actually occurred. The data shows that between the years 2018 and 2023, the Company covered construction costs above the LEA cap 7,599 times.¹⁴⁰ By providing new customers with construction allowances beyond the maximum amount legally allowed by the terms of Schedule X, the Company violated the Filed Rate Doctrine embodied in ORS 757.225.

2. *The Commission has the authority to grant CUB’s request to reduce rate base by the undepreciated amounts.*

The Commission may disallow the undepreciated amounts of LEA overspend from rate base – even where it has previously allowed these costs into rate base. NWN suggests that CUB’s proposal is retroactive ratemaking because it would disallow costs already placed into rate base and otherwise “unwind” prior rate case orders.¹⁴¹ The courts, however, have found that the Commission’s authority to disallow an expenditure prospectively is no different from its authority to set rates prospectively in any other general rate case proceeding, even where the Commission previously approved rates inclusive of those costs.¹⁴² As such, the Commission can disallow the LEA overspend costs here.

For example, In *Pac. Nw. Bell Tel. Co. v. Sabin*, the Oregon Court of Appeals addressed whether the Commission had appropriately disallowed the utility’s “overearnings” from rate base. These “overearnings” represented an amount that PNB’s affiliate manufacture had gained

¹³⁹ NW Natural/ 5000 Zaubi-Kravtz/ Page 15.

¹⁴⁰ CUB /403.

¹⁴¹ NW Natural/5000 Zaubi-Kravitz/Page 7.

¹⁴² See *Pac. Nw. Bell Tel. Co. v. Sabin*, 534 P.2d 984 (Or. Ct. App.)

as a return on the investments devoted to PNB in excess of the rate of return that the Commission granted PNB itself.¹⁴³ PNB challenged the disallowance and argued that Commission's prior approvals of the supply contracts and the past approval of the utility's annual budgets should prevent the Commission from disallowing the amounts in rate base. The Court of Appeals disagreed and affirmed the Commission's order. The court reasoned that the Commission can disallow overcharges from rate base and this treatment is no different from a proceeding where the Commission may disagree with the utility on the reasonableness of an expenditure, and the utility otherwise concludes that it is a good business judgement to make the payments from its profits despite the fact that the utility cannot recoup them from ratepayers.¹⁴⁴ The court further explained that the Commission's approval of a budget item initial does not limit the Commission's authority or prevent the Commission from later reopening the issue and making a different determination based upon more information in a subsequent rate case.¹⁴⁵ The court reasoned that the Commission had previously approved the contracts and the budget without knowledge of the prices paid and rate of return enjoyed by the affiliate. That prior approval did not then bar the Commission from exercising its full rate-making authority to disallow the overearnings. Without evidence sufficient to prove the payments to the affiliate had been "reasonable", the court found the disallowance supported by the evidence and within the scope of the Commission's statutory authority.¹⁴⁶ So too, the Commission here has the authority to

¹⁴³ 534 P.2d 984, 988-89 (Or. Ct. App. 1975) (The Commission justified the disallowance explaining that "Oregon ratepayers should not be required to pay rates which yield a greater return on the assets of (or investment in) one part of the Bell System than on another simply because the assets are employed in a function undertaken by a non-jurisdictional arm of the system rather than by PNB.").

¹⁴⁴ 534 P.2d 984, 997 (Or. Ct. App. 1975) (referring to [Matter of General Tel. Co. v. Lundy, 17 N.Y.2d 373, 380, 271 N.Y.S.2d 216, 222, 218 N.E.2d 274, 278 \(1966\)](#)).

¹⁴⁵ *Id.* at 998.

¹⁴⁶ *Id.*

disallow the undepreciated amounts of LEA overspend from rate base – even where it has previously allowed these costs into rate base.

1. CUB’s Recommendation is an efficient solution allowing present and future residential ratepayers to realize a fair reduction to their rates.

As discussed above, the overspend included in rate base violated the terms of Schedule X. And by nature of violating the terms of Schedule X, these charges added to rate base have produced will continue to produce unlawful rates if not otherwise remedied.

Here the evidence shows that NWN did in fact provide certain new customers more than the maximum permitted.¹⁴⁷ The total overspend for the years 2018-2023 was \$16,232,335.¹⁴⁸ So far, \$2,490,463 of the total has been depreciated,¹⁴⁹ that is to say, so far, customers have overpaid by about \$2.5 million. This leaves \$13,741,872 remaining that is undepreciated.¹⁵⁰ CUB is recommending that the Commission remove the undepreciated \$13,741,872 from rate base in this proceeding.¹⁵¹ CUB views this as a fair compromise that offers a resolution on the matter today with the effect of providing residential customers relief going forward.

Accordingly, CUB recommends a reduction of the undepreciated LEA overspend (\$13.7 million) placed in rate base. In sum, CUB believes this is the appropriate remedy for the following reasons:

- First, by reducing the rate base by \$13.7 million, present and future residential ratepayers will realize a fair reduction to their rates.

¹⁴⁷ See CUB Exhibit 403; see also CUB/400 Garrett/7 (LEA overspend occurs when a utility provides LEAs for new customers that exceed its LEA policy’s LEA cap.).

¹⁴⁸ CUB/400Garrett/11 Table 2; CUB Exhibit 403.

¹⁴⁹ See CUB Exhibit 403; CUB/400Garrett/11 Table 2.

¹⁵⁰ CUB/400 Garrett/11; CUB/403 Garrett - “LEA Overspend”

¹⁵¹ *Id.* at 16.

- Second, this proposal is aligned with how rates are established, that is, on a prospective basis.
- Third, this would be a clear signal to the utility that it cannot apply various accounting practices or additional tests to its LEA policy.
- Fourth, this approach encourages administrative efficiency and provides certainty to the parties. It would require a reduction to the rate base proposed in this proceeding and would be addressed in this proceeding rather than a loner-term investigation.

Issue 5: Renewable Natural Gas Automatic Adjustment Clause

The Commission should reject the Company's proposal to relitigate its Renewable Natural Gas (RNG) Automatic Adjustment Clause (AAC). Many of the issues were addressed in the last rate case. Instead, the Commission should maintain the existing RNG AAC, which balances the interests of ratepayers and the utility.

B. NWN's Renewable Natural Gas Automatic Adjustment Clause Proposal is not Just and Reasonable.

NWN is requesting to revise its Schedule 198 RNG AAC to 1) allow for a deferral between the in-service and rate effective dates of RNG AAC-eligible investments; and 2) alter the Commission-approved earnings test to remove the current deadband of 50 basis points below and 50 basis points above authorized Return on Equity (ROE), and set the earnings test at NW Natural's authorized ROE.¹⁵² According to the Company, these changes are warranted because it has shifted its approach to procuring RNG, and it is seeking a simpler framework for its RNG investments to lead to faster regulatory approval.¹⁵³

¹⁵² UG 490, *In the Matter of NORTHWEST NATURAL GAS COMPANY, dba NW NATURAL, Request for a General Rate Revision*, NW Natural's Executive Summary and Direct Testimony and Exhibits, NW Natural/2000/Kravitz-Therrien/11, lines 2-7.

¹⁵³ UG 490 – NW Natural/1500, Kravitz-Chittum/12–3.

CUB recommends that the Commission decline to adopt the Company’s proposed changes to its RNG AAC. The Company has failed to present adequate evidence to justify the changes it seeks for the following reasons.

First, the company is seemingly trying to relitigate UG 435. The Commission was clear about the interplay of the CPP and SB 98 as it pertains to the RNG AAC.

We are concerned about the potential incentive created by the availability of an AAC to skew the company’s analysis of costs and risks of alternative CPP compliance measures towards RNG projects. Specifically, we are concerned about the potential for RNG to be automatically eligible for more favorable cost recovery up to the SB 98 spending limits without a demonstration that RNG at that level is least cost, least risk relative to other CPP compliance portfolio configurations.¹⁵⁴

Second, the proposals NWN makes will unfairly shift the risks of RNG procurement onto customers. For example, CUB Witness Jenks testified that “NWN’s proposal for a deferral to track RNG costs between the in-service date would result in an inequitable distribution of cost and risk, with the Company’s customers holding the short end of the stick.”¹⁵⁵ Similarly, NWN’s arguments on the impacts of weather variation and load growth are simply attempts to shift normal business risk to customers.¹⁵⁶

Third, the Company has not shown that this is the least cost/least risk plan nor does the Company have an RNG procurement strategy in place that has been acknowledged by the Commission as reasonable.¹⁵⁷ The Company reasons its request is necessary to shift its RNG procurement strategy to comply with the CPP and SB 98, but that procurement strategy is not at

¹⁵⁴ CUB/100 Jenks/22-39 (citing OPUC Order No. 22-388 at 81).

¹⁵⁵ CUB/100 Jenks/39

¹⁵⁶ CUB/100 Jenks/8.

¹⁵⁷ CUB/100 Jenks/39 *In the Matter of NORTHWEST NATURAL GAS COMPANY, dba NW NATURAL, 2022 Integrated Resource Plan*, Docket No. UE 435, Order No. 23-281, 11 (Aug. 2, 2023) (“Without an analysis that demonstrates that the level of RNG procurement proposed is the least-cost, least-risk way to meet the company’s compliance needs, we cannot acknowledge [RNG procurement]”).

issue in this rate case. Rather, the Company’s long-term RNG procurement strategy should be examined in the IRP setting, and the Company should be required to bring forward a fulsome analysis in its next IRP once the new CPP rules have been enacted.¹⁵⁸ As of this date, NWN has failed to do so.¹⁵⁹

Finally, the existing mechanism is the result of a significant compromise among the parties to balance competing interests. Its contours were fully litigated in the last rate case.¹⁶⁰ It appears that NWN is now trying to relitigate issues (e.g., proposal to allow flexibility in the RNG AAC to allow a change to the filing date each year) that were recently decided to get more favorable treatment without sufficient evidence to support a change is just and reasonable. CUB recommends that the Commission reject NWN’s proposal and maintain the existing RNG AAC design.

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¹⁵⁸ CUB/100 Jenks/23-25.

¹⁵⁹ *Id.*; see generally LC 79.

¹⁶⁰ CUB/100 Jenks/19 (citing *In the Matter of NORTHWEST NATURAL GAS COMPANY, dba NW NATURAL, Request for a General Rate Revision*, Docket No. UG 435, OPUC Order No. 22-388, 79–86 (Oct. 24, 2022)).

II. CONCLUSION

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

Dated this 15th day of August 2024.

Respectfully submitted,

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