EARTHJUSTICE

August 15, 2024

VIA ELECTRONIC FILING

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

Re: UG 490: Opening Brief by Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club ("Coalition")

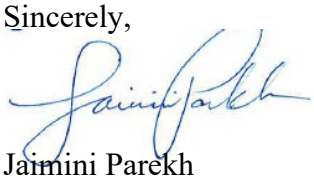
Dear Filing Center,

Enclosed for filing in Docket UG 490 is the Coalition's Opening Brief. This version is redacted and should be included on the public docket.

A confidential version of this brief will be transmitted under separate cover pursuant to Protective Order 23-132.

If you have questions or need any additional information, please do not hesitate to contact me.

Sincerely,



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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UG 490

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

REDACTED

OPENING BRIEF

OF

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

August 15, 2024

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TABLE OF CONTENTS

INTRODUCTION 1

PROCEDURAL BACKGROUND 2

STANDARD OF REVIEW 4

NW NATURAL BEARS THE BURDEN OF PROOF 4

ARGUMENT 5

I. THE COMMISSION MUST SET THE LEA AT $0 TO PREVENT IMPRUDENT INVESTMENT IN GAS CUSTOMER GROWTH THAT HARMS OUR CLIMATE. 5

A. State Law and Commission Precedent Requires NW Natural to Reduce Its GHG Emissions. 6

1. State Law Requires NW Natural to Decarbonize. 6

2. The Commission Found in UG 435 That Subsidizing Growth Through an LEA Conflicts with the Legal Mandate to Reduce Emissions. 8

3. Precedent from Other Jurisdictions Supports Commission Action. 8

B. NW Natural's New Proposed LEA. 9

C. NW Natural Has Not Met Its Burden of Persuasion to Justify Its Current or Proposed LEA Policy. 11

1. The Commission Should Not Subsidize Gas Customer Growth When the Utility Lacks a Feasible Plan to Meet State GHG Emission Reduction Requirements. 11

2. Relying On Artificially Low Costs for RNG Underestimates Compliance Costs. 13

3. Even Using the Company's Model LEA is Unjustified. 16

D. The LEA Policy Going Forward Should be Set at $0, and Test Year Customer Growth Costs Excluded from Rates. 18

II. NW NATURAL'S PROPOSED FIXED RATE CHARGE FOR NEW PREMISES CUSTOMERS IS UNJUSTIFIED 20

III. THE COMMISSION SHOULD DISALLOW OVERSPENDING THAT EXCEEDED THE RESIDENTIAL CONSTRUCTION ALLOWANCE. 24

A. Schedule X Provides for a Per Dwelling Construction Allowance for New Service Lines. 25

B. From 2018 through 2023, NW Natural Charged Ratepayers $16 Million in Excess of Residential Construction Allowances described in Schedule X. 25

C. Charging Ratepayers for New Customer Connections That Exceed the LEA Cap Violates State Law. 27

D. The Commission Should Remove Illegal LEAs Expenses from Rate Base and Audit NW Natural. 32

IV. POLITICAL SPENDING SHOULD BE TAKEN OUT OF RATES 33

A. Oregon Law, Federal Regulation, and Commission Precedent Prohibit Recovery of Utility Lobbying Expenditures from Ratepayers. 34

Earthjustice
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1. The Commission Previously Directed NW Natural to Increase Transparency Surrounding Its Lobbying Activities. 36
2. NWN Natural Seeks Recovery from Ratepayers for Its Lobbying Expenses. 37
B. NW Natural's Lobbying Policy is Too Narrow. 37
C. NW Natural Inconsistently Applies its Already Too-Narrow Lobbying Policy. 41
D. NW Natural's Lobbying Policy Does Not Provide Sufficient Transparency to Ensure Compliance with Lobbying Restrictions. 43
E. The Commission Should Disallow NW Natural's Government Affairs Budget from Ratepayer Recovery. 45
V. LEGAL EXPENSES TO UNDERMINE CLIMATE LAWS IN THE PACIFIC NORTHWEST. 46
VI. LOW-INCOME RATEPAYERS SHOULD HAVE AN OPPORTUNITY TO ELECTRIFY SPACE HEATING WITH OLIEE FUNDS 46
1. Installing Heat Pumps with OLIEE Funds Is an Appropriate and Necessary Expense to Help Low-Income Customers Reduce Energy Use and GHG Emissions. 52
2. Gas Customers Are Paying for Energy Efficiency and Heat Pumps Are the Most Efficient Space Heating Equipment Available. 54
CONCLUSION 56

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INTRODUCTION

NW Natural wants to increase subsidies for customer growth—placing the risk of those questionable subsidies and related investments on ratepayers, and the climate impacts of that increased energy use on future generations, all while the Company profits. Home builders support the proposal because they want to install luxury consumer appliances like fireplaces, and gas stoves without paying the infrastructure cost. However, ratepayers bear the risk that customer growth-related infrastructure investments will become a stranded asset as more ratepayers choose to partially or fully electrify. Further, our society and especially our children bear the risk of unabated climate change that threatens to upend our way of life and the survival of our planet's ecosystems.

Providing a line extension allowance ("LEA")—i.e., the subsidy in question—for new gas connections is economically unjustified, as the Coalition, Staff, and CUB all explain in testimony. Subsidizing customer growth for gas utility service is not a prudent investment, nor is it in the public interest given the Commission's mandate to reduce GHG emission from the utility sector. For this reason, gas utilities in Oregon, Washington, and California have phased out line extension allowance policies—either through Commission order or settlement. The Company's LEA proposal is especially problematic in light of evidence showing that for years it overcharged customers for new service line connections in excess of published rate schedules. The Commission should eliminate LEAs for all customer classes going forward and refund ratepayers for overcharges on past service line connections.

Next, in an attempt to overcome the adverse economics of its LEA proposal, NW Natural proposes a radical new policy change to rate design that discriminates against new premises customers by more than doubling their fixed rate charge. The Company's approach would discourage energy conservation and undermine the decoupling mechanism by shifting cost

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recovery into fixed rates. Further, it would substantially increase bills for new premises customers. Resolving approximately one million dollars of intraclass subsidy does not merit adoption of an unfair rate design that is untethered from Oregon regulatory practice.

Further, contrary to the Commission's mandate in its last rate case, NW Natural continues to charge ratepayers for lobbying expenditures. While it now has a lobbying policy that policy is too narrow and the Company's accounting lacks the necessary transparency to ensure these costs are removed from rates. Even in this rate case, NW Natural solicited public comments from a range of stakeholders to curry support for its LEA proposal, but argues that this activity is not lobbying—contrary to prevailing law. For this reason, and others, the Coalition recommends denying recovery from ratepayers for the Company's government affairs expenses.

Lastly, we urge the Commission to provide a pathway for low-income ratepayers to electrify their home energy use, if they choose to do so, by amending the language of Schedule 320, which governs the Oregon Low Income Energy Efficiency Program ("OLIEE") program. Doing so is consistent with Commission precedent, and its obligation to consider GHG impacts when regulating energy efficiency programs.

PROCEDURAL BACKGROUND

In its opening testimony requesting a revision to rates, NW Natural sought to increase its revenue requirement by $154.9 million dollars. The Coalition intervened in the case, and in opening testimony challenged the Company's line extension allowance proposal and advocated for eliminating this policy altogether. The Coalition also recommended disallowance of millions of dollars in historic over-spending on line extensions, and advocated for removing millions of dollars in expenditures on political activities, promotional advertising, anti-climate policy legal activities, and political influence spending on memberships and dues. Lastly, the Coalition

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raised environmental justice issues including recommending changes to the OLIEE program, increasing discounts for low-income ratepayers, procedural equity, and changes to the verification process for the bill discount program.

The parties have substantially narrowed the issues before the Commission through settlement. All parties agreed to the Second Partial Stipulation that substantially lowered the revenue requirement from the Company's filed case to $95 million. The Second Partial Stipulation also increases discounts for low-income ratepayers, thereby reducing energy burden for these individuals. Lastly, the Coalition reached resolution with NW Natural on the issues related to post-enrollment verification, as described in the Third Partial Stipulation.

The Second Partial Stipulation preserved certain issues for litigation, as described in Paragraphs 8 through 10 of the agreement. The following issues remain contested and are addressed by the Coalition in briefing: (1) NW Natural's LEA policy going forward, (2) illegal expenditures on line extensions in excess of the allowance described in Schedule X (3) the proposed new premises customer fixed rate charge (4) the adequacy of NW Natural's lobbying policy and expenditure of ratepayer money on NW Natural's political activities, (4) creating customer choice for low-income individuals by using OLIEE program funds to allow electrification of home heating.

Lastly, while the Second Partial Stipulation also preserved the Coalition's recommended disallowance of legal expenses to undermine climate policies in Oregon and Washington,[1] in its Surrebuttal Testimony filed on July 24, 2024, NW Natural conceded this issue[2]—which the Coalition addresses briefly below.

[1] Second Partial Stipulation § 8(a).

[2] NW Natural/4400, Kravitz/Page 34–35.

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STANDARD OF REVIEW

"Utility regulation, including ratemaking, is a legislative function, and the legislature has granted broad power to [the Commission] to perform its delegated function."[3] The Commission must protect ratepayers from unfair rates and unreasonable exactions, by ensuring that utility rates are fair, just, and reasonable.[4] This standard requires the Commission to balance the public's need for adequate service at fair and reasonable rates, while providing adequate revenue for the operating expenses and capital costs of the utility.[5] "[R]atemaking involves discretionary decisions that the legislature largely has entrusted to the PUC[,]" provided that the Commission's decision does not violate a statute or the Constitution.[6]

NW NATURAL BEARS THE BURDEN OF PROOF

If a utility provider seeks to recover the revenue costs through rates, it is the utility provider's burden during the hearing to demonstrate that the proposed rate increase is fair, just, and reasonable.[7] The utility has both the burden of production to demonstrate rates are fair, and, if a party produces evidence challenging the proposed increase, the utility must demonstrate by the preponderance of evidence that the rate increase is just and reasonable.[8]

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

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

[5] *Gearhart*, 356 Or. at 235.

[6] *Id.*

[7] ORS § 757.210(1)(a).

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

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ARGUMENT

I. THE COMMISSION MUST SET THE LEA AT $0 TO PREVENT IMPRUDENT INVESTMENT IN GAS CUSTOMER GROWTH THAT HARMS OUR CLIMATE.

The evidence in this case demonstrates that providing gas customers with an LEA is unreasonably risky for existing customers, bad policy in light of state law requirements to mitigate GHG emissions, and contrary to the public interest. The Commission should revise Schedule X and set all LEA amounts to $0 for all customer classes. In UG 435, the Commission required a phased reduction in the residential LEA, in light of evidence showing that subsidizing residential customer growth no longer provided a financial benefit to ratepayers once the costs to decarbonize are included.[9] Further, the Commission ordered NW Natural to integrate the cost of compliance with the Climate Protection Program ("CPP") into any future LEA proposal put forth by the Company.[10]

In its new LEA proposal, NW Natural attempts to comply with this requirement, but even evidence presented by the Company shows that continuing to provide an LEA to subsidize customer growth is unjustified. The Company's counterintuitive LEA ignores cost-causation principles, and is higher than what the Commission ordered in UG 435.

The Company does not have a feasible plan for meeting its GHG reduction requirements, which is why Commission refused to acknowledge NW Natural's long-term plan in its 2022 Integrated Resource Plan ("IRP"). The Commission should not subsidize customer growth when the Company's pathway to decarbonizing *existing* emissions is speculative, and lacks a reasonable degree of certainty regarding cost. Doing so runs the risk that the Company fails to

[9] *In the Matter of N.W. Nat'l Gas Co.*, Dkt. No. UG 435, Order No. 22-388 at 48-51 (Oct. 24, 2022) (hereinafter "Order No. 22-388").

[10] Order No. 22-388 at 48-51.

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meet its CPP compliance obligations—contrary to state policy and results in long-term costs and risks for customers.

Further, the Company's LEA uses several erroneous assumptions that overinflate the benefits of providing an LEA to new customers. It assumes an infinite supply of artificially low RNG costs for all years of compliance. It also includes speculative non-growth capital expenditures of over $4 billion that have not yet been approved by the Commission and assumes artificially and static low operation & maintenance costs. These erroneous assumptions overinflate the value of adding a new customer to the system, and burdens existing customers with significant long-term costs and risks. Changing just two of the Company's variables results in a negative LEA—reducing the discounted cash flow analysis from twenty-five to ten years, and revising the residential customer charge to reflect existing rates rather than the Company's proposed inflated customer charge for new premises.

For all these reasons, NW Natural fails to meet its burden of proof to justify an LEA for any of its customer groups. The Company's LEA is risky for customers and contrary to state policy. Consistent with precedent in other states, and the Avista Settlement approved by the Commission in its Final Order dated October 26, 2023, in Docket UG 461, the Commission should set the LEA at $0.

A. State Law and Commission Precedent Requires NW Natural to Reduce Its GHG Emissions.

1. State Law Requires NW Natural to Decarbonize.

Oregon legislators and regulators have mobilized to shift state and local economies to reduce GHG pollution. Governor Brown's Executive Order No. 20-04. EO 20-04 calls on state agencies, including the Public Utility Commission, to help Oregon achieve its goal of reducing GHG emissions at least 45% below 1990 levels within the next thirteen years, and 80% below

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1990 levels by 2050.[11] In particular, EO 20-04 requires the Commission to "[p]rioritize proceedings and activities…. that advance decarbonization in the utility sector, and exercise its broad statutory authority to reduce GHG emissions, [and] mitigate energy burden[.]"[12] EO 20-04 also tasked the Commission with "[d]etermin[ing] whether utility portfolios and customer programs reduce risks and costs to utility customers by making rapid progress toward reducing GHG emissions consistent with Oregon's reduction goals[.]"[13] Further, when setting rates, the Commission should consider "differential energy burdens on low-income customers and other economic, social equity or environmental justice factors that affect affordability for certain classes of utility customers, and any other reasonable consideration."[14]

Though not yet adopted as final, the revised Climate Protection Program ("CPP") will place binding obligations on NW Natural to reduce its GHG emissions beyond the targets in EO 20-04. Specifically, it will require emissions from covered fuel suppliers to average 50% below 1990 levels by 2035, and 90% by 2050.[15] NW Natural is a covered entity under the CPP.[16] NW Natural agrees that its LEA proposal should integrate compliance with the CPP.[17]

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[11] Exec. Order 20-04, Office of the Governor, State of Oregon, https://www.oregon.gov/gov/eo/eo_20-04.pdf.

[12] *Id.*

[13] *Id.* at § (5)(B)(1).

[14] ORS § 757.230.

[15] OAR § 340-271-9000, Table 2; Coalition/100, Apter/Page 8; Or. Dep't of Env't Quality, Fact Sheet: Climate Protection Program, https://www.oregon.gov/deq/ghgp/Documents/CPP2024ChangesFactSheet.pdf. ("2024 CPP Fact Sheet")

[16] OAR § 340-271-0020(15)(a); OAR § 340-271-0110(4)(a); *see* 2024 CPP Fact Sheet.

[17] NW Natural/2000, Kravitz-Therrien/Page 15–17.

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2. The Commission Found in UG 435 That Subsidizing Growth Through an LEA Conflicts with the Legal Mandate to Reduce Emissions.

In UG 435, the Commission found that "when accurately accounted for" the costs "associated with greenhouse gas emission abatement obligations placed on the company under the CPP" could "result in no or negligible economic benefit being brought to the system from the addition of new customers[.]"[18] In light of this evidence, the Commission required a phased reduction to NW Natural's LEA for residential customers described in Schedule X.[19] Pursuant to the Commission's order, starting on November 1, 2024, the LEA will be three times margin.[20]

Next, the Commission held that if NW Natural requests a modification to its LEA proposal in future proceedings it must demonstrate the following: (1) a reasonable estimate of system wide present and future CPP compliance costs, (2) an analysis of the marginal cost of complying with CPP for each new customer addition, (3) analysis supporting the expected timeframe new customers will remain on the system and considering changing policy dynamics, and lastly (4) a year-by-year economic impact calculation showing the "breakeven year" and "a demonstration of when rate-based investments for customer additions are depreciated and removed[.]"[21] Despite the Commission's clear directions, NW Natural failed to carry its burden of demonstrating these elements for its LEA proposal.[22]

3. Precedent from Other Jurisdictions Supports Commission Action.

In jurisdictions with local and state policies supporting GHG emissions reductions, public utilities commissions are reducing or eliminating LEAs because they provide an inappropriate

[18] Order No. 22-388 at 48.

[19] Order No. 22-388 at 51.

[20] Order No. 22-388 at 51.

[21] Order No. 22-388 at 52.

[22] Coalition/100 Cebulko/Page 7.

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subsidy for fossil fuel growth, harming ratepayers and climate goals. The Washington Utilities and Transportation Commission accepted a settlement eliminating both Avista's and Puget Sound Energy's LEAs, and Avista agreed to a stipulated phaseout of its LEA policy in an Oregon PUC rate case last year.[23] In September of 2022, the California Public Utilities Commission eliminated all gas line extension allowances for all the natural gas utilities operating in the state.[24] On the other side of the country, the Massachusetts Department of Public Utilities recognized the need to address its LEA policies in its December 2023 finding from its Investigation into the role of Gas Local Distribution Companies.[25] Finally, the Connecticut Public Utilities Regulatory Authority directed the elimination of incentives to new customers.[26] Just as these utilities have set the LEA at $0, the Commission should act to protect our climate and stop NW Natural from continuing to subsidize fossil fuel infrastructure growth.

B. NW Natural's New Proposed LEA.

In this case, NW Natural proposes to revise its LEA to adopt a "tiered allowance structure that provides a larger allowance to customers that consume fewer therms."[27] The allowance amount for each tier was revised in the Company's Reply and again in its Surrebuttal Testimony. As updated in its Surrebuttal Testimony, NW Natural recommends the following:[28]

Proposed allowance by residential consumption level				
Use per customer in annual therms	< 250	251 – 450	451 -650	> 650
Allowance	$2,950	$2,300	$1,650	$500

[23] Coalition/100, Cebulko/Page 20.

[24] *Id.*

[25] *Id.* at 20–21.

[26] *Id.* at 21.

[27] *Id.* at 6.

[28] NW Natural/4900, Therrien/Page 3.

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The Company's proposed LEA is unreasonably risky for existing customers.[29] The proposal incents homebuilders and conversion customers to "connect only non-space heating appliances and rely on the electric system for heating, thereby contributing to the electric system peak that witnesses Palfreyman and Kravitz identify as concerning in their testimony."[30] Further, customers that connect incur all the infrastructure costs of connecting, but are not efficiently using the system—meaning it will take longer to recover the LEA from participating customers and thus increase the risk to the existing customers.[31] Lastly, non-heating appliances (like a stovetop or a fireplace) are less expensive and easier to convert to electric appliances—increasing the stranded asset risk.[32]

Further, even assuming that the Company's inputs and assumptions are reasonable, which many are not, the Company's proposal would not make existing customers whole until the twenty-fifth year. Starting in year 10 or 11, a new customer starts providing "positive annual benefit," but existing rate payers are not made 'whole' or 'indifferent' until year 25.[33] In a rapidly changing energy landscape, one in which the gas utility must substantially decarbonize, a twenty five-year payback period is unreasonably risky for existing customers.

[29] Coalition/100, Cebulko/Page 26.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.* at 33.

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C. NW Natural Has Not Met Its Burden of Persuasion to Justify Its Current or Proposed LEA Policy.

1. The Commission Should Not Subsidize Gas Customer Growth When the Utility Lacks a Feasible Plan to Meet State GHG Emission Reduction Requirements.

Subsidizing customer growth when NW Natural does not have a realistic plan for meeting statewide GHG emission targets increases the risk that NW natural will fail to meet state GHG reduction requirements, and leave customers stranded with costs for new infrastructure that may be retired early as Oregon advances toward its climate goals.[34] For this reason alone, the Commission should eliminate the LEA for all customer classes.

In its order on NW Natural's 2022 IRP, the Commission declined to acknowledge the Company's "long-term analysis and selection of a preferred portfolio."[35] The Commission found the IRP did not "adequately assess cost and risk" and did not "include reasonably accurate assessments of all relevant inputs, including the uncertainty surrounding them."[36] The Commission wrote that it was concerned with the IRP's assumptions about the future cost and availability of decarbonized fuels and agreed with Staff and interested parties that the assumptions were not realistic.[37] The Commission raised concerns about the Company's decision to rely heavily on alternative fuels to achieve its decarbonization targets without evaluating whether relying on CCIs and electrification could result in a least-cost and least-risk

[34] *Id.* at 13.

[35] *In the Matter of Northwest Natural Gas Company*, 2022 Integrated Resource plan, Docket No. LC 79, Order No. 23-281 at 7 (Aug. 2, 2023) https://apps.puc.state.or.us/orders/2023ords/23-281.pdf (hereinafter "Order No. 23-281").

[36] *Id*.

[37] *Id.* at 8–9.

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decarbonization in the long-term.[38] Further, the Commission found that relying on "CCIs instead of RNG in the near term, resulting in a PVRR savings of about $150 million."[39]

Yet, despite the Commission's refusal to acknowledge the Company's long-term plan that is premised on relying on unproven alternative fuels, NW Natural's new LEA proposal assumes that gas demand continues to grow at 0.15% annually for the next twenty years.[40] This conflicts with its statements in testimony that it "NW Natural expects that customers will use less of our product through hybrid space-heating systems" and that "overall gas delivery throughput will decrease"."[41] It also conflicts with projections that the Company will need to reduce overall gas demand to meet CPP compliance targets.[42]

Witness Cebulko found that according to the LEA proposal, NW Natural "does not expect to meet the emissions reduction limit through direct reduction of emissions nor through the purchasing of Community Climate Investments (CCI)."[43] Data from the LEA proposal shows that "the Company does not anticipate reducing its direct emissions to meet state targets."[44] Further, while it will rely on CCI credits to comply with the CPP until 2029, Witness Cebulko found that the Company "does not anticipate that it will be able to purchase sufficient CCIs for meeting the CPP beyond 2029."[45] The Company instead assumes in its LEA

[38] *Id.* at 7–12.

[39] *Id.* at 11.

[40] NW Natural/2003, Kravitz-Therrien/Page 1.

[41] NW Natural/2200, Kravitz/Page 20.

[42] Order 23-281 at Appendix A, Page 10 (showing that regardless of the decarbonization portfolio, gas demand declines).

[43] Coalition/100, Cebulko/Page 28.

[44] *Id.* at 29.

[45] *Id.*

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methodology that there is an unlimited supply of RNG available that can mitigate emissions.[46] However, this assumption conflicts with the 2022 IRP which shows the Company intends to rely on green hydrogen and synthetic methane, as discussed below.

2. Relying On Artificially Low Costs for RNG Underestimates Compliance Costs.

Relying on an infinite amount of relatively low-cost RNG costs for the duration of the twenty five-year analysis period in unrealistic, departs from the preferred decarbonization portfolio in NW Natural's 2022 IRP, and underestimates the marginal cost of how adding new customers will impact costs for all customers. This in turn artificially inflates the benefits of subsidizing growth through an LEA for new customers.

In the 2022 IRP, NW Natural identified a preferred portfolio that assumes a reduction in overall gas demand over the next twenty years.[47] Starting around 2028, the Company starts relying on hydrogen, and around 2034, starts relying on synthetic methane as alternative lower-carbon fuels.[48]

In its order on the 2022 IRP, the Commission declined to acknowledge the Company's long-term resource plan in part because of its concerns about the Company's assumptions on synthetic methane, which appeared "very optimistic, given the technology pathway needed to produce synthetic gas from green hydrogen, followed by a methanation process that involves carbon capture, and the associated expenses that would be reasonable to assume would attend those processes and technologies."[49] The Commission's prior ruling is important because NW

[46] Coalition/400, Cebulko/Page 13.

[47] NW Natural 2022 Integrated Resource Plan at 346; *See also* Order No. 23-281, Appendix A at 10.

[48] *Id.*

[49] Order No. 23-281 at 9.

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Natural cannot achieve the state's decarbonization goals "without significant amounts of synthetic methane."[50]

NW Natural's model assumes that for the first three years the Company will purchase CCI credits to mitigate for GHG emissions, and then for the duration of the model it mitigates for GHG emissions by purchasing RNG at $22/MMBtu.[51] The Company revised its RNG cost estimate to $25/MMBtu in its rebuttal.[52] Staff challenged the Company's cost assumptions as overly optimistic, and instead recommended a more conservative assumption of $30/MMBtu.[53] This figure is more realistic particularly in later years when more RNG is relied on to comply with GHG targets.[54]

Further by only modeling RNG, the model departs from the preferred portfolio for CPP compliance identified in the Company's 2022 IRP, because it fails to include hydrogen and synthetic methane in the compliance cost. As Witness Cebulko explains:

> [A]s there is a finite amount of RNG, the utility would have to move onto more expensive compliance methods, like green hydrogen and synthetic methane. Approving the LEA would in effect acknowledge the questionable assumptions regarding future costs that NW Natural made in its 2022 IRP.[55]

The Company's forecast of RNG cost is a considerably cheaper than its estimates for the cost of synthetic methane.[56] To incorporate the cost of compliance for emissions reductions from *new customers*, the "more appropriate price is the marginal cost of compliance in each year.

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[50] Coalition/100, Cebulko/Page 15; *see also* NW Natural 2022 Integrated Resource Plan at 346.

[51] Coalition/100, Cebulko/Page 15.

[52] NW Natural/4000, Therrien/Page 14.

[53] Staff/900, Dlouhy/Page 38.

[54] Coalition/400, Cebulko/Page 13.

[55] Coalition/100, Cebulko/Page 31.

[56] NW Natural 2022 Integrated Resource Plan Table 6.6.

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Particularly after 2030, the marginal compliance resource is hydrogen and then synthetic methane."[57] Relying exclusively on RNG to mitigate new customer emissions underestimates the marginal cost of compliance and inappropriately assumes an infinite amount of a finite resource.

In Surrebuttal Testimony, NW Natural does not meaningfully respond to this critique except to state that "RNG is the leading resource for the Company's compliance," and acknowledges the uncertainty of its analysis stating that "the cost of compliance in Oregon is in the development stages[.]"[58] Witness Therrien neither refers to nor explains his analysis, in light of the Company's projections in its 2022 IRP.[59] The Company's response itself supports a shorter time period for evaluating prudency, because it is unwilling to rely on the more speculative resources in its planning model—even though it modeled those resources are necessary to achieve decarbonization targets.

In the absence of a feasible plan to meet state GHG emission targets, and in light of a proposed LEA premised on core assumptions that directly conflict with the Company's existing IRP, it is imprudent to continuing to subsidizing customer growth through an LEA. Doing so places an unjustifiable risk of stranded assets on ratepayers, especially when distribution system investments remain in rates for decades after the initial investment.[60] NW Natural has failed to

[57] Coalition/400, Cebulko/Page 14.

[58] NW Natural/4900, Therrien/Page 20.

[59] *Id.*

[60] Coalition/100, Cebulko/Page 12 (stating that service lines have a service life of 40–60 years, and mains 55–70 years, and these service lives typically are the basis for depreciation schedules).

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demonstrate the "best reasonable estimate of present and future CPP compliance costs[,]" which the Commission required to justify recovery of an LEA.[61]

3. Even Using the Company's Model LEA is Unjustified.

Using the Company's model, adjusting just two variables, the DCF analysis period and the fixed rate revenue, results in a negative LEA value. First, the Coalition recommends changing the analysis period from 25-years to 10-years to reduce risks to ratepayers given the uncertain transforming the energy sector, and in light of the Company's failure to demonstrate a feasible pathway to achieving decarbonization targets. Second, for reasons described in Section II, the Coalition recommends removing the New Premises Customer Fixed Charge from the LEA model. Modifying just these two assumptions leads to a negative LEA.[62]

NW Natural admits that gas system investments are risky in light of market trends and policies supporting building electrification. The Company testified that "[d]eclining costs and alternatives to gas space heating have created risks for natural gas utilities."[63] Heat pumps outsold gas furnaces for the second year in a row, and this trend will likely accelerate with federal and state tax credits and rebates that accelerate the adoption of electric appliances.[64] Citing a report by the Brattle group, NW Natural testified that the transition is already underway, and the number of homes with electric space heating could exceed the number of homes with gas space heating by 2032.[65] This same report found that "[u]tilities will likely continue investing in their existing system for safety and reliability but need to recover those costs from a shrinking

[61] Order No. 22-388 at 52.

[62] Coalition/100, Cebulko/Page 27–28.

[63] NW Natural/400, Coyne-Nelson/Page 47.

[64] Coalition/100, Cebulko/Page 10–11.

[65] NW Natural/400, Coyne-Nelson/Page 47.

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customer base" which "puts remaining customers at risk, a 'death spiral' trend pushing more customers to electrification."[66] While the Coalition does not know the exact pace at which electrification will proceed in NW Natural's service territory, the transition is undeniably underway as the Company itself recognizes.

A ten-year planning period is more appropriate because of the substantial level of uncertainty about inputs into the model, and the feasibility of the Company's decarbonization plan. The model assumes artificially low operations & maintenance costs that remain static throughout the entire 25-year analysis period—thereby inflating the value of the LEA.[67] Even more questionable, the variable "non-growth capex" assumes new customers will benefit existing customers by paying $4.86 billion dollars in new capital spending that over the next 25 years has not yet been approved by the Commission.[68] This variable is the primary reason that adding a new premises customer results in a positive LEA.[69] Forecasts of these capital expenditures are "highly speculative[,]" "not reasonably verifiable by intervenors in a rate case" and risky for customers in light of the decision by the Commission not to recognize the Company's long-term (20 year) plan in its 2022 IRP.[70] This spending assumption shows that "despite all the warning signs that the gas demand will decrease due to market trends and state policy," NW Natural plans to "build out its delivery system as if it will continue to grow forever."[71]

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[66] Coalition/100, Cebulko/Page 12–13.

[67] *Id.* at 36.

[68] *Id.* at 34; *see* NW Natural/1904.

[69] "Based on my analysis of the Company's LEA model, using all of the Company's favorable assumptions, the net benefit of adding a new premises customer is largely due to the expected contribution to the rapidly escalating future capex costs." Coalition/100, Cebulko/Page 34.

[70] Coalition/400, Cebulko/Page 15.

[71] Coalition/400, Cebulko/Page 9.

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NW Natural has not carried its burden of persuasion in responding to critiques by Staff, CUB and the Coalition related to the analysis period. The Company based its 25-year DCF analysis period on the expected life of gas appliances.[72] It argues that conversion of a home from gas to electricity is expensive, and a homeowner is unlikely to transition until the gas heating appliance breaks down.[73] This argument ignores the fact that the Company's proposed LEA approach provides the highest incentive to customers with non-heating end-use appliances (like a stove or fireplace), and costs to electrify these appliances may be "as minimal as disconnecting the gas fireplace insert or converting a gas stove to an induction stove."[74]

Reducing the time period for evaluating prudency to ten-years is a more reasonable assumption given the uncertainty of assumptions in the Company's model and its decarbonization strategy. Applying a ten-year analysis period and adjusting the fixed rate charge to reflect existing rates results in a negative LEA—meaning at minimum the Commission should set the allowance for residential LEAs at $0.

D. The LEA Policy Going Forward Should be Set at $0, and Test Year Customer Growth Costs Excluded from Rates.

In light of the evidence showing NW Natural lacks a feasible decarbonization plan, and that its LEA model relies on inputs that vastly inflate the value of providing an LEA, the Coalition recommends setting the LEA for residential customers at $0. The Commission should also require that any main extension built exclusively to benefit new customers are likewise not recoverable.[75]

[72] NW Natural/4000, Therrien/Page 12–14.

[73] *Id.*

[74] Coalition/100, Cebulko/Page 26–27; Coalition/400, Cebulko/Page 12–13.

[75] Coalition/400, Cebulko/Page 18 (recommending that the Commission revise Schedule X to clarify that the LEA includes the costs to extend main lines to a new customer).

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Further, while much of the evidence presented has focused on the residential LEA, the same evidence supports eliminating allowances for commercial and industrial customers. Subsidizing growth increases GHG emissions thereby increasing the Company's reliance on highly speculative alternative fuels like green hydrogen and synthetic methane, exacerbating the costs risks to customers and making it harder for the Company to comply with state emission reduction goals. Providing a subsidy for any customer growth is unreasonably risky and contrary to the Commission's Order in UG 435, because NW Natural has failed to provide a reasonable estimate of system wide present and future CPP compliance costs.[76] Accordingly, the Coalition recommends setting the LEA for residential customers at $0.

Setting the LEA at $0 requires removing Test Year customer growth related expenditures from rates.[77] The Company forecasts spending <<BEGIN CONFIDENTIAL>> [redacted] <<END CONFIDENTIAL>> in gross additions to ratebase for all line extensions.[78] The Coalition recommends disallowance of this entire amount from ratebase.

[76] Order No. 22-388 at 51-52.

[77] The Company also forecasts <<BEGIN CONFIDENTIAL>> [redacted] <<END CONFIDENTIAL>> in gross additions for residential line extensions. Coalition/400, Cebulko/Page 17.

[78] Coalition/400, Cebulko/Page 17; *see also* CONFIDENTIAL Exhibit Coalition/403, NW Natural Response to Coalition DR 364 Attachment 1. See tab "To adjust out of RB" at pages 10–11.

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II. NW NATURAL'S PROPOSED FIXED RATE CHARGE FOR NEW PREMISES CUSTOMERS IS UNJUSTIFIED

The Commission should reject NW Natural's proposal to increase the customer charge for new premise customers by more than 200%, because it is contrary to the public interest. The Company's the proposal shifts cost recovery away from the existing decoupling policy, and instead relies heavily on fixed charges. This in turn would reduce the incentive for customers to conserve energy, and disproportionately impact lower income customers. The Company's concern about a relatively small intra-class subsidy is minor and out of step with such a radical shift in rate design for residential customers. When combined with the LEA, the New Premises Fixed Charge would encourage builders to connect homes to gas service, but require the actual homeowners to pay much higher rates.[79] Lastly, such a high fixed charge for new premises customers unreasonably inflates the benefits of the Company's proposed LEA.

NW Natural's proposed fixed charge for new premise customers is a radical departure from existing rate design, and would undermine the efficacy of the decoupling mechanism. In the last rate case, UG 435, Staff expressed concerns that the Company's decoupling mechanism does not distinguish between new and existing customers, and this may "overstate the impact of lower average use per customer" because new customers use less gas on average than existing customers.[80] NW Natural's new premises customer charge seeks to remedy this concern raised by staff in the last case.[81] However, increasing the fixed rate charge by more than 200% for new premises customers is a "radical step" because it is a "massive increase in the customer charge

[79] Coalition/100, Cebulko/Page 47–54; Coalition/400, Cebulko/Page 28–33.

[80] NW Natural/4803, Wyman-Walker/Page 3–4.

[81] NW Natural/100, Palfreyman-Kravitz/Page 29 ("The proposed fixed charge for new customers is designed to address intra-class equity concerns between our existing and new residential customers[.]").

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and a substantial departure [from] existing Oregon regulatory practice[,]" which encourages customers to conserve energy via the decoupling mechanism.[82]

As Witness Cebulko explained, "[a] higher fixed charge reduces customers' ability to control their bills through energy efficiency, conservation, demand response, and other demand-side management opportunities."[83] Instead, "the Company's proposal, in essence, seeks to move away from the existing decoupling policy in favor of a new policy framework for fixed cost recovery – one that relies heavily on fixed charges."[84] In its Rebuttal Testimony, Staff shows how dramatically cost recovery would shift for new customers:

> Company's proposed change would have far-reaching impacts on the balance of fixed vs. volumetric cost recovery going forward. According to the Company's estimates of average bills at their proposed rates, roughly 10 percent of revenues would be recovered through the fixed charge for existing premise customers. *For New Premises customers, this amount would be nearly 40 percent*. It is impossible to ignore the dramatic change in cost recovery and business risk faced by the Company due to this change.[85]

Such a drastic shift in rate design should merit a showing of "imminent financial harm without intervention[,]" but the Company's proposal at most shows a *de minimis* impact on revenue generation from its new premise customer charge.[86] New premises customers are "less than 1% of [the Company's] current residential customer base"[87] and revenue generated from "New Premise Customer revenue is forecasted to be 0.488 percent of total residential revenue."[88] In its Surrebuttal Testimony, NW Natural found that the intra-class subsidy from existing

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[82] Coalition/100, Cebulko/Page 50–51.

[83] *Id.* at 49.

[84] *Id.* at 52.

[85] Staff/4100 (Amended), Shierman-Dlouhy/Page 28 (emphasis added).

[86] Coalition/100, Cebulko/Page 50–51.

[87] *Id.* at 51.

[88] *Id.* at 32.

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customers to new customers is only $1.2 million.[89] It is contrary to the public interest to change the structure of rate design and recovery, for such a small intra-class subsidy. As Staff explained, "there will always be some level of intra-class subsidization in every customer class."[90]

The new premise customer charge would also create unfair discrimination within the residential class, and could result in higher bills for ratepayers that are energy burdened. Discrimination based on "vintage of the dwelling" would be "arbitrary" and "unfairly distinguish[] customers by their status as new or existing customers[.]"[91] It would also harm energy burdened ratepayers. Lower income customers that move into new premises that are connected after November 1, 2024, "will experience a customer charge increase from $8 to either $24.25 or $26.25[92] depending on if the building is a multi-family or single family residence.[93] "[F]or some customers, this could result in an increase in bills of 24.3 percent up to 37.0 percent more annually."[94]

As explained by both Staff and the Coalition, resolving the intra-class subsidy identified by NW Natural is best addressed through modifying the decoupling mechanism. Resolving any

[89] NW Natural/4800, Wyman-Walker/Page 48.

[90] Staff/4100, Shierman/Page 24.

[91] *Id.* at 18, 24; *See also* Transcript of August 1, 2024, Evidentiary Hearing, UG 490 ("Evidentiary Hearing Tr.") at 40 (Witness Dlouhy for Staff testified that the Company's proposal would "discriminatorily charg[e] new customers and existing customers a different rate.")

[92] NW Natural adjusted its new premises charge downward in light of the revenue requirement settlement in the Second Stipulation to $24.50 for new premises single family, and $22.50 for new premises multifamily customers. NW Natural/4800, Walker-Wyman/Page 6.

[93] Coalition/100, Cebulko/Page 50.

[94] Staff/4100, Shierman/Page 25.

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intra-class subsidy issue through the decoupling mechanism would, "set[] a baseline for a fair and reasonable decoupling that applies to all customers[.]"[95] As explained by Witness Cebulko:

> [T]he Company could modify its expected residential use-per-customer in the decoupling mechanism to account for the impact of the new premises residential customers. This would be a relatively straightforward, incremental step that does not require a radical new rate design. It would also build upon the existing decoupling policy framework that the Commission has already approved.[96]

The new charge coupled with the LEA proposal would harm new ratepayers because "the Company is providing a direct financial incentive to housing developers to connect the gas system," but, the new gas customer "would be 'locked in' to a high fixed charge that does not encourage lower consumption. In some cases, those new customers may be better off not taking any gas service as a means to avoid the very high fixed charge."[97] For renters, the impacts are even worse because they would be "faced with an exceptionally high and discriminatory customer charge" while landlords and apartment owners "pocket the generous LEA without passing any of the savings onto their tenants."[98]

Lastly, an unreasonably high fixed charge directly underpins the analysis that led NW Natural to propose an unreasonably high LEA. The new fixed rate substantially impacts the prudency of the Company's proposal. "The *only* way that Staff found a non-negative or trivially small LEA could be justified in the Company's DCF model is through the inclusion of an exceptionally high fixed charge for customers living in newly constructed premises."[99] Staff

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[95] Evidentiary Hearing Tr. at 53.

[96] Coalition/100, Cebulko/Page 52.

[97] *Id.* at 53.

[98] Staff/4100, Shierman/Page 27–28.

[99] *Id.* at 27.

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testified that "we think that [the new premises customer fixed charge] is at least partially targeted towards juicing the line extension allowance."[100]

For all the above reasons, the Coalition urges the Commission to reject NW Natural's proposed new premises customer charge.

III. THE COMMISSION SHOULD DISALLOW OVERSPENDING THAT EXCEEDED THE RESIDENTIAL CONSTRUCTION ALLOWANCE.

From 2018 through 2023, NW Natural charged ratepayers for new service line and main line costs that exceeded the construction allowances for residential customers described in Schedule X.[101] Instead of placing a cap on recovery at the allowance level described in Schedule X, [102] NW Natural billed ratepayers for numerous service lines that exceeded the LEA, cumulatively costing ratepayers over $16 million in costs.[103] NW Natural defends its actions, stating that it evaluates prudence based on a portfolio approach that averages costs across the thousands of new customers added.[104] NW Natural's portfolio approach is illegal, and violates the plain terms of Schedule X. The Coalition recommends removing from rates the remaining undepreciated cost of overspending on LEAs to remedy this unreasonable exaction.

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[100] Evidentiary Hearing Tr. at 34.

[101] Coalition/100, Cebulko/Page 37–45; Coalition/400, Cebulko/Page 19–28.

[102] Coalition/100, Cebulko/Page 8; Schedule X at X-5, X-6.

[103] Coalition/100, Cebulko/Page 39–44.

[104] NW Natural Response to OPUC DR 138 ("For each year in the analysis, the results indicate that the portfolio of line extension investments were both financially prudent for the Company … and beneficial for the existing customers[.]"); *See* Coalition/400, Cebulko/Page 21–22 (explaining NW Natural's portfolio approach to prudency evaluation for new service line connections).

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A. Schedule X Provides for a *Per Dwelling* Construction Allowance for New Service Lines.

Currently, Schedule X provides that new customers may receive a line extension allowance to subsidize the cost of their connection to gas utility service. For residential connections, the revised Schedule X provides that a construction allowance is provided "*per residential dwelling*[,]" based on the "annual estimated therm usage attributable to the Applicant's *particular installation*."[105] This "construction allowance" is referred to as a line extension allowance or LEA. The LEA places a cap on the overall construction cost to connect a new customer to the gas system, including the cost to install the service line, cost of the meter, and any main extension as needed.[106]

Schedule X requires that the new customer pay for construction costs in excess of the LEA. "Construction costs" are defined as "all costs associated with the extension of the Company's Distribution[.]"[107] The tariff provides that "[i]f the Construction Allowance applicable to an Applicant is less than the construction cost, then a Construction Contribution will be required."[108] As Witness Cebulko explains, Schedule X "clearly requires the customer to pay for any costs in excess of the LEA, if they want to connect to gas utility service."[109]

B. From 2018 through 2023, NW Natural Charged Ratepayers $16 Million in Excess of Residential Construction Allowances described in Schedule X.

From 2018 through 2023, NW Natural charged ratepayers for new residential gas connections that exceeded the construction allowance for residential service connections

[105] NW Natural Schedule X at Sheet X-5 (emphasis added).

[106] NW Natural/1900, Therrien/Page 5 ("Expected construction costs include the service line, meter, and if necessary, gas main extension costs.").

[107] NW Natural Schedule X at X-3.

[108] *Id.* at X-6.

[109] Coalition/400, Cebulko/Page 22.

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described in Schedule X. Witness Cebulko found that "individual customers are receiving allowances that exceed the margin factor identified in Schedule X, in some cases by tens of thousands of dollars per customer."[110] In his testimony, he identified particularly egregious exceedances:

> In 2023, one new construction residential customer received a Company contribution of $20,503 and contributed $0. Another customer in 2023 received a contribution of $14,389 while also contributing $0 . . . Examining further back than 2023, there are examples of individual residential customers receiving LEAs tens of thousands of dollars above the then-existing threshold. One customer in 2020 converting their existing residential home received $64,687 in value while contributing $0.[111]

Further, main extensions are included within the definition of construction costs to connect a new customer, and therefore are subject to the LEA's cap on investment.[112] Despite, that Witness Cebulko found that "[i]n dozens of cases the Company has included main extensions that exceed the individual customer LEA where there is little or no customer contribution."[113] "In several cases, customers are receiving the benefit of more than $20,000" for main extensions.[114] "If a main extension is required to connect a new customer to the system, then the costs of the Main Extension should be included in the LEA[.]"[115] Charging ratepayers with main extension costs in excess of the LEA was unjustified.

The Company's workorders also contained serious errors. In one example, a residential conversional customer in 2021 is listed as receiving a service line valued at $85,553, while only

[110] Coalition/100, Cebulko/ Page 37.

[111] *Id.* at 39.

[112] NW Natural Schedule X at X-3 ("Construction costs include all costs associated with the extension of the Company's Distribution Facilities.").

[113] Coalition/100, Cebulko/Page 41.

[114] *Id*.

[115] *Id.* at 42.

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contributing $1,353, but NW Natural stated that of the total $85,108.98 in costs was for tools and equipment that "had nothing to do with [the] underlying line extension."[116] To carry its burden of proof in this case, NW Natural must prove its expanses are justified. Failing to provide clear and accurate information for review shows the imprudence of these expenditures. [117]

Witness Cebulko summed the exceedances of line extension allowances to calculate the overage for service line expenditures in 2018 through 2023.[118] In total, "the Company spent $16,232,335 on residential customer allowances that exceeded the individual customer allowance."[119] NW Natural does not contest the Coalition's calculation of costs in either its Reply or Surrebuttal Testimony,[120] and in fact concedes that, "[t]he $16.2 million represents all 7,599 line extensions from 2018 to 2023 where total costs minus the customer contribution was greater than the LEA."[121]

C. Charging Ratepayers for New Customer Connections That Exceed the LEA Cap Violates State Law.

Charging ratepayers for costs that exceed published rate schedules is illegal. "A public utility may not charge a customer a rate or an amount for a service that is different from the rate

[116] *Id.* at 40.

[117] *Id.*

[118] For the Base Year alone, Witness Cebulko found that "the Company spent $2,222,531" on residential service line connections that exceeded the individual customer allowance. Coalition/100, Cebulko/Page 43.

[119] *Id.*

[120] NW Natural stated in its discovery responses that some of these costs may be coded across multiple premises, but the Company has not provided verifiable data demonstrating this to be the case. Coalition/106, Cebulko/Page 2. Of the thousands of new service lines added from 2018 through 2023, to date, NW Natural has only identified *one work order* that was coded across multiple premises. *See* Coalition/100, Cebulko/Page 40.

[121] NW Natural/5000, Zaubi-Kravitz/Page 18.

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or amount prescribed in the schedules or tariffs for the public utility."[122] Similarly, ORS § 757.225 provides that:

> No public utility shall 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 any rate not specified in such schedule.

"Rate" is defined broadly as "any fare, charge, joint rate, schedule or groups of rates or other remuneration or compensation for service."[123] " 'Service' is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served."[124] "The printed rate schedules prescribe the permissible charges for services rendered by the utility."[125]

As the Oregon Supreme Court explained, the "primary purpose of the statutory prohibition" in ORS § 757.310(1) is to "prevent the utility from giving some customers preferential rates."[126] The purpose of ORS § 757.225 and 757.310 "is not to make it illegal for a public utility to make an inadvertent billing error, but to protect the utility's customers from excessive or discriminatory charges."[127]

Under the definition of ORS § 756.010(9), Schedule X is a rate. Specifically, a rate that applies "to the installation of Distribution Facilities required to provide utility service" to a new property "where gas-fired equipment is committed to be installed and used in a residential

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[122] ORS § 757.310(1).

[123] ORS § 756.010(9).

[124] ORS § 756.010(10).

[125] *Holman Transfer Co. v. Pac. Nw. Bell Tel. Co.*, 287 Or. 387, 401 (1979) (hereinafter "*Holman*").

[126] *Holman*, 287 Or. at 403.

[127] *Holman*, 287 Or. at 400.

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dwelling(s), commercial building(s), or industrial plant(s)[.]"[128] Further, installation of equipment and lines calls within the broad definition of "service" described in ORS § 756.010(10). Accordingly, Schedule X is a rate that pursuant to *Holman*, prescribes the "permissible charges" to provide service to new premises customers.[129]

The language of Schedule X is unambiguous. It provides that the construction allowance to connect a new residential customer applies "per dwelling[,]" and requires a contribution from the customer to cover the remaining costs when the costs of construction exceed the LEA.[130] As explained by Witness Cebulko, Schedule X provides an "individual customer cap[.]" There is no language in Schedule X that implies the Company can take a portfolio approach and average costs across all new customer additions.[131]

Charging existing customers for service line connections that exceed the residential allowance described in Schedule X violates the statutory prohibitions in ORS § 757.310(1) and ORS § 757.225, and harms ratepayers. NW Natural admits it charged existing customers for costs that exceed the amount described in Schedule X,[132] and this is the logical outcome of a portfolio averaging approach. By overspending on LEAs, the Company under-collected the contributions that new customers should have been making towards their own line extensions—thereby providing a preferential rate to new customers. This preferential treatment harmed existing customers—by unfairly shifting those under-collected costs to them, and charging them costs in excess of published rate schedules. Existing customers will never receive the return on

[128] NW Natural Schedule X at X-1.

[129] *See Holman*, 287 Or. at 401.

[130] NW Natural Schedule X at X-5, X-6.

[131] Coalition/400, Cebulko/Page 22.

[132] NW Natural/5000, Zaubi-Kravitz/Page 18.

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their investment for the service lines provided to these new customers in excess of the LEA—and that "makes these investments imprudent and harmful to ratepayers."[133]

Further, by overspending on service line additions, the Company increased additions to its rate base, thereby inflating subsequent revenue requirement calculations. As a result, the Company received greater compensation for the service of connecting new customers than allowed through its return on capital investments, in direct violation of ORS § 757.225—which prohibits the Company from receiving a greater compensation than allowed in published rates.

NW Natural justifies this overspending by arguing that prudency of LEAs should be evaluated by averaging costs across the entire portfolio of new customers to determine whether they are equal to or less than the residential LEA.[134] "[W]hen assessing prudency" the Company "perform[s] an overall portfolio analysis over the thousands of annual new connections it has installed."[135] As explained above, the portfolio approach is illegal because it justifies charging costs in excess of Schedule X.

Nor can it be the basis for evaluating prudency because allowances specified in Schedule X are the prudency determination for service line extensions. As explained by Witness Therrien, the LEA is developed through a "financial calculation that compares the expected future revenues of that single new customer to the construction cost to connect that customer over a set period to determine if an allowance is justified[.]"[136] That is why, "[i]f expected construction

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[133] Coalition/400, Cebulko/Page 24.

[134] Coalition/100, Cebulko/Page 37–38; Coalition/106, Cebulko/Page 2, NW Natural Response to OPUC DR 138 ("For each year in the analysis, the results indicate that the portfolio of line extension investments were both financially prudent for the Company … and beneficial for the existing customers[.]").

[135] NW Natural's Reply in Support of Motion to Strike CUB's Additional Exhibits, Aug. 5, 2024, UG 490, at 13.

[136] NW Natural/1900, Therrien/Page 5.

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costs exceed the calculated allowance … then the customer must pay a [construction contribution] to connect to the system."[137] As explained by Witness Cebulko:

> The LEA policy describes the amount of capital expenditure deemed prudent for each service line. If the company charges ratepayers for LEA costs more than the allowed costs, the Company is charging ratepayers for imprudent expenditures. That is what NW Natural has done here. It has charged costs for service lines in excess of its allowed LEA policy to ratepayers, in violation of the clear terms of Schedule X."[138]

NW Natural argues that Witness Cebulko's interpretation of Schedule X is punitive, and evaluates prudency in hindsight because it looks at actual construction costs to determine prudency and not the cost estimates. But, the portfolio approach taken by the Company also considers actual construction costs for all new residential connections on an annual basis.[139] Nor is an individual cap punitive. It is simply the plain language of Schedule X.[140] Any reasonable customer reading this language would expect to receive an LEA up to the specific amounts set forth in Schedule X, but no more than that.

Nor should the Commission be persuaded that relying on construction estimates is reasonable under the Company's portfolio approach.[141] Using construction estimates "shifts the entirety of the risk of the Company's estimated costs onto existing customers … Regardless, [of] whether the estimate is accurate or not, the Company's shareholders benefit[,]"[142] and ratepayers

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[137] NW Natural/1900, Therrien/Page 5.

[138] Coalition/400, Cebulko/Page 23.

[139] NW Natural/5000, Zaubi-Kravitz/Page 21–22; NW Natural's Reply in Support of Its Motion to Strike CUB's Additional Exhibits at 13–14 (stating the portfolio analysis is conducted to determine prudency "after construction is complete").

[140] Coalition/400, Cebulko/Page 2223; NW Natural Schedule X at X-5, X-6.

[141] NW Natural/4100, Zaubi/Page 11–14.

[142] Coalition/100, Cebulko 38–39.

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are left holding the bag. Further, given that 19% of service lines exceeded the allowance cap,[143] the Company's construction estimates are clearly inaccurate.

NW Natural argues that customers have not been harmed because numerous service line expenditures cost less than the residential construction allowance, but this argument is circular.[144] The fact that ratepayers benefit from new customer connections that cost less than the allowance cap does not mean that cost over-runs on for other work orders are prudent.

D. The Commission Should Remove Illegal LEAs Expenses from Rate Base and Audit NW Natural.

To provide restitution to ratepayers, the Commission must remove the overcharges on past residential line extensions from rates, because they exceed published rate schedules and as such are an unjust and unreasonable exaction. The Commission has authority to "supervise and regulate every public utility" in the state and "to do all things necessary and convenient in the exercise of such power and jurisdiction." ORS § 756.040(2). Pursuant to that authority, the Supreme Court has held that the PUC has the power to issue refunds to uphold "its duty to protect ratepayers by obtaining adequate service at fair and reasonable rates [.]" *Gearhart v. Pub. Util. Comm'n of Oregon*, 356 Or. 216, 244 (2014). A refund is appropriate to "to correct legal errors that lead to 'unjust and unreasonable exactions.'"[145]

Here, the Coalition is not asking for a refund of all excess costs, but rather asks that the Commission remove what remains in rates of the undepreciated $16.2 million in excess charges

[143] NW Natural/5000, Zaubi-Kravitz/Page 18.

[144] NW Natural/5000, Zaubi-Kravitz/Page 18-19, 23.

[145] *Gearhart v. Pub. Util. Comm'n of Oregon*, 356 Or. 216, 244 (2014).

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on LEAs from 2018 through 2023.[146] The Commission has authority to remove these costs from rates pursuant to its broad authority and mandate to protect ratepayers. In its Rebuttal Testimony, CUB agreed with the Coalition's recommendation to remove LEA overspend from rates.[147] CUB calculated that $13.7 million in overspending on LEAs remains in rates.[148] Accordingly, the Coalition recommends removing $13.7 million from the Company's ratebase. Further, the Coalition recommends that the Commission order an "audit into the Company's historic line extension allowances, including its nonresidential line extension allowances" to ensure all excess charges have been removed from rates.[149]

IV. POLITICAL SPENDING SHOULD BE TAKEN OUT OF RATES

NW Natural's lobbying policy narrowly limits what political activities constitute "lobbying" and are unrecoverable from ratepayers.[150] A limited policy directly harms ratepayers because an underinclusive definition of lobbying means that ratepayers are unlawfully left on the hook for the costs of the Company's political expenditures. Furthermore, NW Natural's recordkeeping policy for tracking the time its employees spend lobbying does not provide the necessary assurances to the Commission and the public that the Company is adhering to its own lobbying policy. Given the inadequacies of NW Natural's newly adopted lobbying policy and its ineffective implementation of said policy, as its behavior in this very case has exhibited, more substantial action is needed from the Commission to protect ratepayers from being forced to pay

[146] NW Natural argues that the Commission cannot remove costs for LEA expenditures that were approved in past rate cases, but this argument ignores case precedent that provides the Commission with the authority to remove unjust and unreasonable exactions from rates.

[147] CUB/400, Garrett/Page 18.

[148] CUB/403.

[149] Coalition/400, Cebulko/Page 6, 27.

[150] *See* NW Natural/1200, Williams/Page 4 (Company's policy).

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Seattle, WA 98104
(206) 343-7340

for NW Natural's political activities. As such, the Coalition recommends the Commission disallow the Company's government affairs budget from recovery in this rate proceeding.

A. Oregon Law, Federal Regulation, and Commission Precedent Prohibit Recovery of Utility Lobbying Expenditures from Ratepayers.

NW Natural has the burden of demonstrating its costs are reasonable, and a general assertion that activities were not lobbying costs charged below-the-line "is not, by itself, a sufficient justification for the expense."[151] NW Natural has failed to provide accounting evidence that it in fact charged lobbying costs below-the-line, the Commission should disallow these costs. For this reason, the Coalition recommends disallowance of the Company's Government Affairs budget.

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

> Ratepayers should not be required to contribute to the advancement of political position[s] in which they may not believe. Exclusion of political expenditures is even more important than exclusion of community affairs expenditures because a utility's lobbying program can actually harm ratepayers. Stockholder interests with respect to issues such as the nature and scope of regulation often conflict with ratepayer interests. A utility's lobbying program can be expected to give preference to stockholder interests when issues such as those arise.[152]

The Commission has further reiterated that it "does not require customers to support causes in which they do not believe."[153] This policy prohibits utilities from recovering costs associated

[151] *In re Portland Gen. Elec. Co.*, UE 115, Order No. 01-777, 212 P.U.R. 4th 36 (Aug. 31, 2001).

[152] *In re Pac. Nw. Bell Tel. Co., Am. Network, Inc., et al.*, UT 43, Order No. 87–406, 82 P.U.R. 4th 293, 320 (Mar. 31, 1987).

[153] *In re Portland Gen. Elec. Co.*, UE 197, 2009 WL 214804 at *16 (Jan. 22, 2009).

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810 Third Ave. Suite 610
Seattle, WA 98104
(206) 343-7340

with "legislative activities" and "governmental affairs"[154] and includes expenses like researching legislative issues and opposing policies financially detrimental to the utility.[155]

Federal regulation also prohibits utilities from recovering costs of political activity.[156] FERC has declared that expenditures put toward lobbying "may not, *under any circumstances*, be included in the utility's cost of service."[157] FERC requires utilities to record their political expenditures in Account No. 426.4 to "provid[e] the basis in rate proceedings for such expenses to be borne by the shareholders and not the consumers."[158] As FERC explained:

> Political expenditures] by their nature . . . have a doubtful relationship to rendering utility service, Hence, the classification of such expenditures routinely to operating expenses *would not be consistent* with the objectives of utility accounting regulation, which aims at the separate disclosure and classification of all such controversial items.[159]

For this reason, FERC requires utilities to "isolate[e] and identif[y] these controversial expenditures" because utilities are not entitled to "charge against the ratepayer the cost of political programs favored by the Company but possibly opposed by those who must pay the cost of supporting" the utilities.[160]

Federal regulations define "political expenditures" as costs incurred when "influencing public opinion with respect to ... legislation, [adoption or repeal of] ordinances ... or approval,

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

[155] *In re Pac. Nw. Bell Tel. Co., Am. Network, Inc.*, et al., 82 P.U.R. 4th at 320.

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

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

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

[159] *Sw. Elec. Power Co. v. F.P.C.*, 394 F.2d 29, 33 (5th Cir. 1962) (emphasis added).

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

Earthjustice
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Seattle, WA 98104
(206) 343-7340

modification, or revocation of franchises[.]"[161] Political expenditures also include any activity undertaken "for the purpose of" influencing any "decision[]" of a "public official[.]"[162] This includes any activity that directly or indirectly could affect the decision of a public official and is not limited to decisions on proposed legislation.[163] For example, the D.C. Circuit held that actions encouraging public utility commissioners to issue certificates of public convenience constituted political lobbying under FERC's regulations.[164] It also includes unsuccessful attempts at influencing a public official's decisions.[165] The *purpose* of influencing decisions of public officials is the "touchstone" and the "definitional boundary" of the policy.[166]

1. The Commission Previously Directed NW Natural to Increase Transparency Surrounding Its Lobbying Activities.

In NW Natural's previous rate case, UG 435, the Commission concluded that the Company had charged ratepayers for activities that were "political in nature, and deducted $356,106 in improper lobbying expenditures from the settlement stipulation.[167] In reaching its conclusion, the Commission expressed its expectation that in the future, NW Natural would provide "detailed expense information that clearly categorizes its activity."[168] The Commission found that responding in an "informational capacity" to local government requests for assistance in developing and meeting climate policies would be acceptable. However, "engaging with local

[161] 18 C.F.R. § 367.4264(a).

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

[163] *Id.*

[164] *Id.* at 705.

[165] *Id.* at 700–01.

[166] *Id.* at 697–98.

[167] *In re NW Natural Request for a General Rate Revisio*n, Docket No. UG 435, Order No. 22-388 at 22.

[168] *Id.* at 23.

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Seattle, WA 98104
(206) 343-7340

governments with an intention to advocate against particular policies and develop support for others" would not.[169] The Commission commented that its "precedent is similar to FERC's regulations prohibiting political activities and lobbying."[170]

2. NWN Natural Seeks Recovery from Ratepayers for Its Lobbying Expenses.

In this case, NW Natural seeks to recover $1,725,922 in its Test Year for its public policy and government affairs office staff,[171] and the Coalition recommends disallowance of this entire budget. Despite the Commission's explicit identification of actions "intended to influence the decisions of public officials" as unrecoverable lobbying expenses in UG 435,[172] NW Natural flouts this conclusion in its new policy and does not categorize attempts to influence non-legislative public officials under its definition of lobbying. Nor has the Company provided the detailed accounting required by the Commission in its last order to permit recovery of these costs.[173] In light of the Company's underinclusive lobbying policy, and its inadequate timekeeping records, it is impossible to determine what percentage of this budget involved political expenditures. Disallowance of the entire budget is therefore necessary because the Company has not demonstrated that cost recovery is justified.

B. <u>NW Natural's Lobbying Policy is Too Narrow.</u>

NW Natural's lobbying policy requires employees to except their time from ratepayer recovery if they are engaged in a "lobbying communication" with a "legislative body."[174] Under

[169] *Id.* (emphasis added).

[170] *Id.* at 22, *citing* 18 C.F.R. § 367.2464(a).

[171] Exhibit Coalition/242, NW Natural Response to OPUC DR 343, Attach. 1.

[172] Order No. 22- 388 at 23.

[173] *Id.*

[174] NW Natural/1200, Williams/Page 4.

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Seattle, WA 98104
(206) 343-7340

this policy, a "legislative body" does not include a "judicial, executive, or administrative body (e.g., Department of Environmental Quality, Department of Energy, Treasury, school boards, housing authorities, sewer and water districts, zoning boards), whether elected or appointed."[175] The Company's policy defines "lobbying communication" as:

> any communication with any member or employee of a legislative body, or with any governmental official or employee who may participate in the formulation of legislation. A lobbying communication includes communications intended to influence the general public, or any segment, with respect to elections, legislation, or initiatives/referendums. This includes attempts to urge or encourage the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. A lobbying communication must include an attempt to influence and does not include communications intended to educate or inform (unless that communication also includes support or opposition).[176]

By confining the policy to "legislative bodies" and excluding other executive and governing actors often involved in formulating and implementing relevant regulations and policies, NW Natural allows for the recovery of a wide array of activities that would otherwise constitute lobbying communications if made before a legislator as opposed to an executive or administrative official.

NW Natural repeatedly claims that its policy is not as limited as the Coalition describes.[177] The Company points out that under the General Procedure, lobbying includes communications intended to influence legislative bodies as well as "any governmental official or employee who may participate in the formulation of legislation."[178] However, this response does not provide the kinds of reassurances requested by the Commission in UG 435.[179] Under its

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[175] *Id.*

[176] *Id.*

[177] NW Natural/3300, Williams/Page 12–13; *see also* NW Natural/4600, Williams/Page 12.

[178] *Id.*; *see also* NW Natural/1200, Williams/Page 4.

[179] Order No. 22-388 at 22–23.

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Seattle, WA 98104
(206) 343-7340

policy, NW Natural artificially confines lobbying to only those activities concerning legislative matters, and as a result, identical communications are categorized differently depending on whether directed at those crafting legislation versus an administrative or executive actor such as DEQ, DOE, PUC, local boards or even the Governor's office.

Under NW Natural's constrained definition of lobbying, the policy does not apply to employees' attempts influence public officials, such as the Public Utilities Commission, even when they are soliciting third parties to influence the outcome of the Commission's decision. The Company admits that its policy does not apply to this activity, and in argues that this activity is "core utility business."[180] However, the D.C. Circuit has held that this is exactly the kind of activity that constitutes an unrecoverable political activity.[181] Excluding regulators, such as the Department of Environmental Quality, or the Public Utilities Commission from its definition of "influenc[ing] the decisions of public officials"[182] in its lobbying policy allows the Company to recover these costs from ratepayers—contrary to state and federal law.

The Coalition is not asserting that representations before "before regulatory or other governmental bodies in connection with an associate utility company's existing or proposed operation" is lobbying, because that activity is clearly excepted by federal law.[183] However, soliciting public officials, or soliciting others to contact public officials "with an intention to advocate against particular policies and develop support for others" is lobbying.[184] Thus, for example, the Company's representation by counsel in this rate case proceeding is appropriately

[180] NW Natural/4600 Williams/Page 25; *see also* NW Natural/3300, Williams/Page 19.

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

[182] *Id.*

[183] 18 CFR § 367.4264.

[184] *See* Order No. 22-388 at 23.

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Seattle, WA 98104
(206) 343-7340

charged to ratepayers pursuant to 18 CFR § 367.4264. In contrast, its activities to solicit third parties to submit comments in support of its line extension proposal or, for that matter, object to the Climate Protection Program, as discussed further below, is not recoverable. This is exactly the type of political activity that should be excluded from rates, and documented through exception time reporting pursuant to a lobbying policy.

When ratepayers have no alternative to a utility monopoly, they should not be required to pay for any political activity, no matter to whom it is directed. The Commission is the first defense to protect customers from being forced to pay for political activities and should exercise its discretion here to ensure Oregon customers are not financially on the hook for NW Natural's political efforts and disallow the Company's government affairs budget.

Finally, the Commission, in UG 435, specifically distinguished between utility activities "responding" to government inquiries with a company affirmatively approach an agency or official.[185] As the Commission rightfully noted, this distinction is significant. Efforts to proactively "educate" a government official about utility gas service by offering information that was not requested from the Company is an attempt to influence that decisionmaker. NW Natural's lobbying policy is ultimately too narrow and not responsive to the concerns already expressed by the Commission about the Company's attempts to recover lobbying funds from ratepayers in UG 435. Absent greater safeguards and actions to remedy these issues previously brought to its attention, the Commission should not only establish guardrails as to what constitutes lobbying with which NW Natural must comply, but ensure it is not recovering lobbying expenditures in its government affairs budget in this rate case.

[185] *Id*.

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C. NW Natural Inconsistently Applies its Already Too-Narrow Lobbying Policy.

The need for Commission intervention in this matter is best demonstrated by NW Natural's actions surrounding the April 16, 2024 public hearing on its proposed rate increase. At that meeting, numerous organizations, including homebuilders, developers, and chambers of commerce, testified in favor of the Company's proposed LEA.[186] As the Coalition identified in its testimony, the comments from such organizations were remarkably similar and seemingly choreographed to focus solely on issues such as energy choice and reliability.[187] NW Natural admits that it solicited these organizations to participate in the public hearing.[188] However, NW Natural has taken the position that while such communication is not lobbying, it has decided to, in this instance, not charge ratepayers for time spent soliciting participation in the public hearing for the rate case.[189] Instead, the Company argues these activities constitute "core utility business[.]"[190] The Company made this same argument in Dkt. No. UG 435 for activities that the Commission ultimately deemed political activities.[191]

Here, the flaws in NW Natural's policy are on full display. The Company argues that soliciting the public to take action to influence a public official—here, the utility's own regulator, the Commission—is not lobbying.[192] Not only did NW Natural ask these

[186] Coalition/200, Apter-Connolly/Page 62–63.

[187] *Id.*

[188] Exhibit Coalition/502, NW Natural Response to Coalition DR 270.

[189] *Id.*

[190] NW Natural/4600, Williams/Page 25; *see also* NW Natural/3300, Williams/Page 19.

[191] UG 435 NW Natural/2400, Heiting-Bracken/Page 40–41.

[192] As recently as this week, NW Natural continues to lobby its customers to advocate political positions on the Company's behalf, but has relied on misinformation in its communications, falsely alleging the State's proposed carbon crediting program might not lead to direct greenhouse gas emission cuts. Baumhardt, *Environmental regulators say NW Natural misleading*

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organizations to support a policy before the PUC that benefitted the Company, but that position was directly opposed to the interest of ratepayers, who would otherwise be on the hook for those costs. However, despite arguing that such activity is "core utility business," NW Natural asserts it is nonetheless charging these costs below-the-line in this proceeding—yet it has not provided any detailed accounting to verify this statement.[193] By doing this, the Company highlights the inadequacies of its policy; not only is it inconsistent and relies on individual decisions about when an activity that does not otherwise meet the definition of lobbying should be excepted from recovery, but because such actions are not lobbying according to NW Natural, there is no record of the time spent by its employees on that matter, as exception time tracking is only required for lobbying activities under the policy.[194] Further, even if these costs may have been charged below-the-line, future similar activities *can* be charged to ratepayers under the Company's lobbying policy.

As a result, the Coalition and the Commission are left with merely the claims of the Company that it actually did book these costs below-the-line and is not recovering them from customers. Absent clear direction from the Commission on this issue, the public is left in a state of limbo, with no assurances or accountability that the Company will not engage in similar activity in the future, using ratepayer dollars to fuel its interests and political agenda in activities outside the purely legislative context and then seek recovery from ratepayers. These kinds of

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customers about state climate credit program, Oregon Capital Chronicle (Aug. 13, 2024), https://oregoncapitalchronicle.com/2024/08/13/environmental-regulators-say-nw-natural-misleading-customers-about-state-climate-credit-program/.

[193] In fact, it is entirely possible the Company seeks to avoid the Commission's review of its communications to these customers by voluntarily foregoing recovery of any costs associated with the activity.

[194] *See* Exhibits Coalition/502–504, NW Natural Response to Coalition DR 270, 273 & 274 (refusing to state whether the Company logged exception time for this activity). *See also* Exhibit Coalition/521, NW Natural Response to Coalition DR 369.

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Seattle, WA 98104
(206) 343-7340

decisions should not be left to *ad hoc* determinations by the Company. Instead, they fall squarely within the Commission's description of utility actions that advance its "political position" with which customers may not agree.[195] As such, such actions must be properly categorized as non-recoverable lobbying activity and demonstrate the flaws in NW Natural's policy as currently written.

D. NW Natural's Lobbying Policy Does Not Provide Sufficient Transparency to Ensure Compliance with Lobbying Restrictions.

The Commission was explicit in its Order No. 22-388 in UG 435 that "[g]oing forward, we expect NW Natural to provide detailed expense information that clearly categorizes its activity."[196] This conclusion was reached after the Commission determined that NW Natural had inaccurately interpreted what activities constituted "core utility business" and as a result was charging ratepayers for the Company's political activity.[197] The Commission explained that the Company needs to be clear whether it is engaging "primarily in an informational capacity in *response* to local government requests for assistant in developing and meeting climate policies, versus engaging with local governments with an intention to advocate against particular policies and develop support for others."[198] Absent such clarity, meaningful stakeholder and Commission review of the Company's political activity is impossible.[199]

[195] *In re Pac. Nw. Bell Tel. Co., Am. Network, Inc., et al.*, UT 43, Order No. 87–406, 82 P.U.R. 4th 293, 320 (Mar. 31, 1987).

[196] *In re NW Natural Request for a General Rate Revisio*n, Docket No. UG 435, Order No. 22-388 at 23.

[197] *Id.* at 22.

[198] *Id* at 23 (emphasis added).

[199] *Id.*

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Seattle, WA 98104
(206) 343-7340

Despite the Commission's clear directive in Order No. 22–388, NW Natural's methods for tracking and accounting the time its employees spend engaging in lobbying activities is inadequate and does not satisfy the Commission's expectation that the Company provide "detailed expense information that clearly categorizes its activity."[200] NW Natural's current tracking mechanism reveals only records for the narrow universe of activities the Company believes to be lobbying, leaving no means by which the Commission or stakeholders can confirm whether NW Natural's employees have properly characterized their time. Because the Company does not track its employees' non-excepted time, there is no way for stakeholders or the Commission to cross-reference the records to ensure that NW Natural is abiding by state and federal law. Not only does the Company not track non-exception time, but the exception time memo notations are often blank.[201] Additionally, NW Natural's new policy does not expressly indicate the Company will only bill time "responding" to inquiries, as opposed to proactively approaching officials, a distinction the Commission identified as significant in UG 435.[202] Absent such changes to the lobbying policy and modifications to the way the Company requires its employees to track their time, the Commission cannot be assured that ratepayers are not being charged for impermissible lobbying expenses.

Not only is NW Natural's lobbying policy under-inclusive of likely lobbying activities, but the Company has ignored explicit directives from the Commission regarding the kind of employee time tracking necessary to reassure the public that ratepayers are not paying for political activities. The Company's underinclusive lobbying policy, its inadequate record

[200] *Id.*

[201] Coalition/500, Apter-Connolly/Page 34.

[202] *See* Order No. 22-388 at 23.

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Seattle, WA 98104
(206) 343-7340

keeping, and its defense of political activities as "core utility business" make it impossible to determine what portion of the $1.7 million is justifiably recoverable from ratepayers. NW Natural's failure to comply with the Commission's directive means it has not met its burden of proof to justify recovering $1.7 million in expenses to influence public policies through its Government Affairs department. For this reason, the Coalition recommends disallowance of this entire amount.

E. The Commission Should Disallow NW Natural's Government Affairs Budget from Ratepayer Recovery.

NW Natural has failed to meet its burden of proof to show the expenses for its government affairs employees are just and reasonable. As a result, the Coalition urges the Commission to disallow recovery of the Company's government affairs budget in the amount of $1,725,922.[203] NW Natural had the opportunity when adopting its new lobbying policy to demonstrate that it took Commission Order No. 22-388 seriously. Instead, the Company adopted an overly narrow policy that allowed it to continue charging ratepayers for its political activities unrelated to the provision of safe and adequate service to customers. Absent decisive action from the Commission on this issue, it is likely that NW Natural will continue to apply its inadequate lobbying policy and skirt the acceptable boundaries of what it can properly recover from ratepayers. NW Natural's policy and ensuing behavior are especially concerning given the Company's inadequate recordkeeping of employee time—making it impossible for the Commission to develop an understanding of what activities NW Natural is or is not charging to ratepayers and if that is consistent with state and federal lobbying requirements. Such concerns have already transpired in this proceeding, with the Company only deciding not to recover time associated with its solicitation of business organizations to take political action in support of the

[203] Exhibit Coalition/242, NW Natural Response to OPUC DR 343, Attach. 1.

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Seattle, WA 98104
(206) 343-7340

proposed LEA, after the Coalition discovered it. Disallowing costs associated with NW Natural's Governmental Affairs department is supported by Commission precedent and is a reasonable estimate of the total costs in staff time associated with NW Natural's political activities given the documented and extensive nature of those communications.

V. LEGAL EXPENSES TO UNDERMINE CLIMATE LAWS IN THE PACIFIC NORTHWEST.

NW Natural's concession has resolved the Coalition's concern related to certain legal expenses for the law firm, Baker Botts LLP. In testimony, the Coalition recommended disallowance of $720,000 in legal fees for Baker Botts LLP, because the evidence demonstrated that NW Natural hired this firm to undermine climate laws in the Pacific Northwest, including but not limited to the Climate Protection Program and Washington's amendments to its building codes.[204] In its Surrebuttal Testimony, NW Natural conceded this issue. Specifically, the Company stated, "In the interest of narrowing the disputed issues remaining in the case, the Company has chosen not to continue pursuing recovery of these expenses in this case."[205] The Company's decision to forgo recovery resolves this issue. The Coalition agrees with NW Natural's analysis that its concession of this issue does not decrease the revenue requirement, according to the terms of the Second Stipulation.[206]

VI. LOW-INCOME RATEPAYERS SHOULD HAVE AN OPPORTUNITY TO ELECTRIFY SPACE HEATING WITH OLIEE FUNDS

Conveniently, NW Natural argues for energy choice, except when it comes to its low-income customers who qualify for OLIEE (NW Natural's Oregon Low-Income Energy

[204] Coalition/500, Apter-Connolly/Page 8–14.

[205] NW Natural/4400, Kravitz/Page 35.

[206] *See* NW Natural/4400, Kravitz/Page 34–35.

Earthjustice
810 Third Ave. Suite 610
Seattle, WA 98104
(206) 343-7340

Efficiency program).[207] Schedule 320, which governs NW Natural's OLIEE program, currently requires red-tagged furnaces to be replaced with another gas furnace. Replacing a furnace with another furnace ties the customer to the natural gas system for at least an additional 15 years.[208] Replacing a furnace with a furnace requires the continued combustion of gas that, unlike heat pumps, pollutes indoor air quality and offers no cooling capability despite the need for increased resilience in a warming climate. Further, replacing a furnace with another furnace precludes the possibility to meaningfully reduce greenhouse gas emissions.[209] Finally, NW Natural's own evidence demonstrates cost savings flow from a heat pump.[210] Setting aside the health, climate, and resilience, and cost benefits that flow from allowing a customer to select a heat pump over a furnace, refusing to allow customers to use OLIEE funds to replace a gas furnace with a heat pump is inconsistent with state law under ORS § 757.315 and 469.763. Alternatively, given the language of ORS § 469.763, the Commission must address low-income electrification in a policy docket, such as UM 2211.

A. The OLIEE Program is an Additional Source of Funding for Heat Pumps Should the Customer Seek It.

NW Natural's OLIEE program operates under ORS § 757.315. The provision allows natural gas investor owned utilities to include in residential rates "amounts for the purpose of

[207] See NW Natural/4500, Tanaka/Page 13 ("Oregonians want to retain the ability to choose the energy system and products they install in the homes we serve").

[208] CUB/200, Garrett/Page 26 (15 years is about the time a customer replaces a gas furnace); *see also* Coalition/300, Fain-Segovia Rodriguez-Daryanani/Page 45, citing Center for American Progress publication on the need for incentives for electric appliances ("Every time a gas furnace breaks and is not replaced with an electric heat pump, that home loses the chance to be all electric for another two decades.").

[209] Coalition/600, Daryanani-Fain/Page 14.

[210] NW Natural/2300, Tanaka/Page 46–47 (citing Anne Lauer, Natural Gas Heat vs Electrical Heat – Which is Cheaper – 2024, SHRINK THAT FOOTPRINT (Jan. 2024), https://shrinkthatfootprint.com/natural-gas-heat-vs-electrical-heat/.

Earthjustice
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Seattle, WA 98104
(206) 343-7340

generating funds to be used for bill payment assistance to low-income residential customers of the utility."[211] In 2002 and 2003, NW Natural sought and received authorization to implement its OLIEE program, which had three components paid for with money collected pursuant to ORS § 757.315(c): (1) bill payment assistance, (2) weatherization assistance, and (3) energy efficiency programs.[212] NW Natural administers the OLIEE program under the supervision of the Commission through Schedules 301 and 320. The former designates a "Public Purpose Funding Surcharge" and earmarks some of those funds to the OLIEE program. The latter governs the OLIEE program itself, including its energy efficiency measures.

To qualify for benefits under the OLIEE program, households must meet the following requirements: (1) have a gas service line installed in the home, (2) the primary space heating equipment is powered by gas, and (3) the premises currently has or will have an active account with NW Natural. Funds are distributed through one of two mechanisms: the Community Action Program ("CAP") or the Open Solicitation Program. Under the CAP, NW Natural reimburses qualified CAP Agencies that perform home energy efficiency evaluations and home weatherization services for low-income ratepayers. Under the Open Solicitation Program, NW Natural invites "proposals that include projects for new affordable housing, existing retrofit opportunities, and owner-occupied or rental dwellings."[213] The Company may allocate program funds to a project when it determines a proposal would increase the number of households being served by the OLIEE program.

[211] ORS § 757.315(c).

[212] Oregon Public Utility Commission, Order 02-634.

[213] NW Natural, Schedule 320, Third Revision of Sheet 320-1.

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Seattle, WA 98104
(206) 343-7340

Generally, OLIEE allows for funds to go to "cost-effective" energy efficiency measures. Additionally, however, OLIEE funds may be used to replace "red-tagged" furnaces—those that are no longer safe to function. As it stands, however, red-tagged furnaces may only be replaced with another gas furnace.

NW Natural has chronically underspent its OLIEE funds and as a result, denied low-income ratepayers deep cost savings through energy efficiency measures. The OLIEE program received $15,461,226.87 in revenue in the 2022–2023 Program Year, but NW Natural only expensed $3,878,048.00, resulting in a carryover of $11,583,178.87—nearly three times the annual budget for the program.[214] Put another way, NW Natural expensed only one-fourth of the OLIEE program's revenue despite many low-income households needing weatherization and other energy efficiency measures.[215] Further, due to its underspending, the Company has stopped collecting revenue to fund the program through a public purpose charge given the program's surplus budget.[216]

In 2023, the Oregon Legislature, passed energy efficiency legislation that directly implicates NW Natural's OLIEE program. ORS § 469.763 sets certain requirements for the Commission (among other state agencies) in carrying out programs "related to the promotion, implementation, incentivization or regulation of energy efficiency in buildings."[217] One such requirement is to reduce or eliminate from such programs barriers to "energy efficiency

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[214] OLIEE Program Report (Dec. 28, 2023) at 6, https://edocs.puc.state.or.us/efdocs/HAQ/rg13haq325867054.pdf.

[215] Coalition/300, Fain-Segovia Rodriguez-Daryanani/Page 15 (discussing NW Natural's Low Income Needs Assessment and the ways in which it identifies the value energy efficiency can offer low-income customers by freeing up money to spent for other essentials and debts).

[216] Coalition/600 Daryanani-Fain/Page 12

[217] ORS § 469.763(1)(a).

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measures or appliances that will result in the greatest available energy efficiency and reductions of greenhouse gas emissions."[218] Under the statute, the Commission has an obligation to both "consider[] greenhouse gas emissions reduction goals" in its regulatory decisions and "align[] the creation or operation of new or existing designated state agency programs with greenhouse gas emissions reduction goals."[219] The Legislative Assembly concluded in the same statutory scheme that "*heat pumps [are] the most energy efficient space heating option available in the market*."[220]

While the focus of ORS § 757.315 is directed toward bill payment assistance, the Commission has repeatedly framed energy efficiency as a measure that offers a form of bill payment assistance, a finding inherent to the construction of the OLIEE program and one that the Coalition views as appropriate. In doing so, the Commission must now align the energy efficiency programs it regulates with its legal obligation to "reduce or eliminate within programs financial or nonfinancial barriers to accessing energy efficiency measures or appliances that will result in the greatest available energy efficiency and reductions of greenhouse gas emissions."[221] Allowing the use of OLIEE funds to replace red-tagged gas furnaces with electric heat pumps achieves the dual-mandate of the OLIEE program by offering bill-assistance to low-income households and increasing the energy efficiency of said households. Heat pumps are the least expensive and most efficient heating option available on the market.[222] Thus, regardless of whether the Commission regulates the OLIEE program as a cost-savings program under ORS

[218] ORS § 469.763(2)(c).

[219] ORS § 469.763(2)(a) and (b).

[220] ORS § 469.760(1)(d) (emphasis added).

[221] ORS § 469.763(2)(c).

[222] ORS § 469.760((1)(d).

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757.315 or as an energy efficiency program under ORS § 469.763, it has the authority to require NW Natural to allow customers to use OLIEE funds to replace gas furnaces with heat pumps.

In short, the legislature:

(1) allows the Commission to authorize a public purpose charge for energy efficiency activities pursuant to ORS § 757.315,

(2) finds heat pumps to be "the most energy efficient space heating option available in the market" under ORS § 469.760((1)(d),

(3) directed the Commission in its regulation of energy efficiency in buildings to consider and align its energy efficiency programs with greenhouse gas emissions reduction goals under § ORS § 469.763(2)(a) and (b),

(4) and, most importantly, directed the Commission to "reduce or eliminate within programs financial or nonfinancial barriers to accessing energy efficiency measures or appliances that will result in the greatest available energy efficiency and reductions of greenhouse gas emissions" under ORS § 469.763(2)(c).

Accordingly, Schedule 320 must be revised to allow customers to replace red-tagged gas furnaces with a heat pump that provides efficient heating and cooling, and that reduces greenhouse gas emissions, if they choose to do so. NW Natural's OLIEE funds must be available to assist in that effort. The Company's "principled opposition" to taking such measures is not grounded in any legal authority, and is actually contradicted by ORS § 757.315 and ORS § 469.763.

B. <u>The Commission Should Amend Schedule 320 to Allow OLIEE Funds to be Used to Install Heat Pumps.</u>

Section 320 should be amended to allow customers to use OLIEE funds to replace red-tagged furnaces with heat pumps. Doing so is consistent with the Commission's legal obligation

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under ORS § 469.763 to deploy the most energy efficient space heating technology that also reduces Oregon's greenhouse gas emissions. It is also consistent with Commission precedent supporting customer fuel-choice. Given that the Oregon Legislature[223] and independent analysts[224] have both found that heat pumps are the most cost effective and energy efficient method of heating one's home, low-income households should be given the choice to replace their old, decaying furnaces with a cleaner, more efficient alternative. If NW Natural is so sure that customers will continue to choose natural gas, it should not be concerned about what its customers will do if offered the choice to replace a furnace with a heat pump.[225]

1. Installing Heat Pumps with OLIEE Funds Is an Appropriate and Necessary Expense to Help Low-Income Customers Reduce Energy Use and GHG Emissions.

Despite deep discounts available through state and federal tax credits, low-income customers often still convert their home heating appliance to a furnace because labor and installation costs are expensive for heat pumps. Federal and state rebates substantially reduce the cost of purchasing heat pumps, but the labor costs of installing this equipment is still very high—often costing thousands of dollars.[226] For this reason, low-income customers often still cannot afford to transition their home heating to an electric appliance. That is why making OLIEE program funds available to retrofit homes with these upgrades is so important. The whole home weatherization and energy efficiency upgrades provided through the OLIEE Program is best

[223] ORS § 469.760(1)(d).

[224] *See* Coalition/300, Fain-Segovia Rodriguez-Daryanani/Page 43–44, citing Center for American Progress report on the need for incentives for electric appliances (describing combined $15 billion per year energy bill savings nationally with electric space and water heaters).

[225] NW Natural/4500, Tanaka/Page 12 ("[C]ustomers continually choose natural gas service due to its efficiency, reliability, resilience, and affordability."

[226] NW Natural/4501, Tanaka/Page 2–3.

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suited to simultaneously upgrade homes with an electric heat pump—thereby reducing building envelope energy use and GHG emissions. Such an approach would also help NW Natural achieve its own GHG emission reduction targets through investing in energy efficiency and conservation. The Commission has held that NW Natural should consider electrification as a GHG reduction resource in its integrated resource planning.[227]

The availability of outside funding for electrification upgrades is irrelevant to whether OLIEE funds should support customer fuel choice. In overseeing the administration of the OLIEE program through NW Natural's Schedules, the Commission must comply with existing precedent and statutory obligations, including ORS § 469.763. The Legislative Assembly concluded that heat pumps are the "most energy efficient space heating option available in the market."[228] The Oregon Legislature also directed the Commission to align programs with greenhouse gas emissions reduction goals and "reduce or eliminate" barriers to providing access to appliances that "will result in the greatest available energy efficiency" and measures that reduce emissions.[229] Heat pumps are "the most energy efficient space heating option available on the market,"[230] and accordingly, low-income customers *must* have the choice to replace a red-tagged furnace with a heat pump using available OLIEE funds.

Moreover, the Coalition offered testimony disputing the availability of sufficient outside funding for electrification.[231] As the Coalition's experts pointed out, "Our organizations encounter obstacles when trying to do what is in the best interest for both our clients and the

[227] Order No. 23-281 at 9–10.

[228] ORS § 469.760(1)(d).

[229] ORS § 469.763(2)(a), (b), and (c).

[230] ORS § 469.760(1)(d).

[231] Coalition/600, Daryanani-Fain/Page 11.

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Seattle, WA 98104
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environment because of outdated restrictions that prevent us from using energy efficiency dollars to support electrification[.]"[232] In response, NW Natural offered speculation regarding the sources and amounts of funding available, and its unsupported conclusion that it will "likely" cover the entire cost of heat pump installation.[233] The Company's speculation is insufficient to rebut the testimony of the organizations working hard to serve low-income Oregonians in NW Natural's service territory.

2. Gas Customers Are Paying for Energy Efficiency and Heat Pumps Are the Most Efficient Space Heating Equipment Available.

The allocation of OLIEE funds for heat pumps directly supports the program's primary purpose of delivering energy efficiency benefits to low-income households.[234] In NW Natural's own words, the purpose of the OLIEE program is to "promote energy equity, energy affordability and health outcomes for income-eligible customers through energy efficiency upgrades."[235] As noted above, the OLIEE program is subject to a dual-mandate of sorts. On the one hand, the OLIEE program is born from ORS § 757.315(c), allowing for rate schedules that create funds for bill payment assistance benefiting low-income residential customers. On the other hand, ORS § 469.763 requires state agencies, including the Commission, to reduce or eliminate financial barriers to accessing efficient appliances from new and existing energy efficiency programs. Heat pumps are perhaps singularly suited to meet these varying purposes and mandates.

[232] Coalition/300, Fain-Segovia Rodriguez-Daryanani/Page 46.

[233] NW Natural/4500, Tanaka/Page 11.

[234] ORS § 757.315(c).

[235] NW Natural/2300, Tanaka/Page 44.

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Heat pumps promote energy equity and affordability. NW Natural asserts it provided "compelling evidence demonstrating that natural gas remains significantly more affordable than electricity."[236] In fact, it did the opposite. The "compelling evidence" involved an article finding natural gas heat costs in Oregon are roughly 40 percent the cost of electric heat. The article, however, noted that its analysis applied only to traditional electric heaters, and stated that "*[h]eat pumps are another story.*"[237] That very article, relied on by NW Natural, stated that "*heat pumps are even more efficient than natural gas cost-wise.*"[238] This is consistent with the Oregon Legislature finding that "heat pump technologies can help people to save money on household energy bills."[239] NW Natural has selectively chosen its facts here in support of its intransigent position.

In fact, *nothing* in ORS § 757.315 requires that the public purpose charge be used to fund only equipment that uses natural gas. Instead, the passage of ORS § 469.763 creates an affirmative mandate to remove from programs like OLIEE barriers to acquiring appliances like heat pumps. Further, allowing OLIEE funds to replace a furnace with a heat pump *will* benefit natural gas customers. The customer receives the most energy efficient space heating appliance available in the market today while benefiting from cooling in a warming climate.

According to NW Natural, using OLIEE funds to pay for electrification upgrades will harm natural gas customers because "[i]t would remove customers from the system, creating a smaller pool of customers contributing to fixed charges on the system, and driving upward rate

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[236] NW Natural/4500, Tanaka/Page 7.

[237] Anne Lauer, *Natural Gas Heat v. Electrical Heat - Which is Cheaper - 2024*, Shrink that Footprint (2024) https://shrinkthatfootprint.com/natural-gas-heat-vs-electrical-heat/; See NW Natural/2300, Tanaka/Page 46 n.92.

[238] *Id.*

[239] ORS § 469.760(1)(e).

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pressure." The Coalition does not disagree with NW Natural's admission that its current customers face a difficult situation in the face of other households opting to electrify, leaving a smaller customer base to pay for NW Natural's fixed costs. The solution to that problem, however, is not to hold low-income households—those least able to electrify without financial assistance—hostage to a gas furnace, but to allow NW Natural's most vulnerable customers to escape this financial "death spiral."

Accordingly, Schedule 320 must be revised to allow customers to replace red-tagged gas furnaces with a heat pump that provides efficient heating and cooling, and that reduces greenhouse gas emissions, if they choose to do so. NW Natural's OLIEE funds must be available to assist in that effort.

CONCLUSION

For the foregoing reasons, the Coalition respectfully requests that the Commission revise Schedule X and set the LEA at $0 for all customer classes. Consistent with this finding, the Commission should remove <<BEGIN CONFIDENTIAL>> [redacted] <<END CONFIDENTIAL>> from ratebase for Test Year line extension costs currently included in rates. Next, the Coalition respectfully requests removal of $13.7 million from ratebase for overspending on service lines from 2018–2023. To remove costs for political activities from rates the Coalition respectfully requests disallowance of $1.7 million from the revenue requirement. Lastly, the Coalition respectfully requests that the Commission amend Schedule 320 to allow for installation of heat pumps, when replacement of a red-tagged furnace is required.

Dated this 15th day of August, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE
UG 490

I hereby certify that on August 15, 2024, I served an unredacted CONFIDENTIAL version of COALITION'S OPENING BRIEF upon the Commission and each party designated to receive Confidential information pursuant to General Protective Order 23-132 through an encrypted email attachment.

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