EARTHJUSTICE

August 26, 2024

VIA ELECTRONIC FILING

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

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

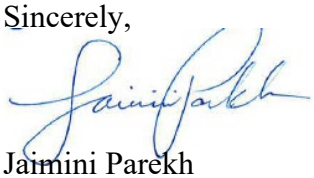
Dear Filing Center,

Enclosed for filing in Docket UG 490 is the Coalition's Closing 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

CLOSING BRIEF

OF

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

August 26, 2024

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INTRODUCTION

NW Natural asks the Commission to provide it with a golden parachute by doubling its subsidies for new customer growth, and more than doubling its fixed rate charges for new premises customers. It disguises this request as necessary to respond to new legal requirements that require the Company to reduce its GHG emissions and promote equity. Nothing could be further from the truth. The Company's proposals would increase costs for ratepayers and subject them to unreasonable risks of escalating rates and stranded assets as a consequence of higher GHG compliance costs created by imprudent customer growth subsidies. Worse yet, low-income ratepayers would bear the brunt of the irrational investment in growth, because they can least afford a transition away from gas utility service.

The Commission's must act in the public interest and protect the public from unjust and unreasonable exactions. This means: (1) disallowing imprudent subsidies for gas customer growth; (2) preventing the exaction of discriminatory charges against New Premises customers; (3) removing charges for service line extensions that exceeded published rate schedules; (4) disallowing political expenditures that the Company uses as a slush fund to burnish its image while fighting climate policies; and (5) creating a pathway for low-income customers to electrify and access the heating and cooling benefits of heat pumps, if they choose to do so.

ARGUMENT

I. SUBSIDIZING GAS GROWTH IS UNJUSTIFIED AND CONTRARY TO THE PUBLIC INTEREST.

NW Natural carries the burden of demonstrating that recovery of its Line Extension Allowance ("LEA") policy going forward—is reasonable.[1] The Company has failed to carry its

[1] *In the Matter of N.W. Nat. Gas Co.*, Dkt. No. UG 435, Order No. 22-388 at 52–53 (Oct. 24, 2022) (hereinafter "Order No. 22-388").

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burden. The Coalition, Staff, and CUB all demonstrated that NW Natural relied on unreasonable assumptions that artificially inflate the benefits of subsidizing growth through an LEA.[2] Applying three more reasonable assumptions—reducing the payback period, including a more conservative marginal compliance cost for GHG emissions reductions, and removing the New Premises Fixed Charge—results in a negative LEA.[3] Further, charging ratepayers for an LEA would likely result in high stranded asset costs.[4] In light of this, the LEA is unjustified and should be set at zero for all customer classes, and the Commission can look at precedent from other jurisdictions to support its decision.

NW Natural urges the Commission to do nothing, arguing that eliminating the LEA would "pre-judge the future of the gas system[.]"[5] This is hyperbole. Eliminating the LEA will not decide the future of the gas system, nor will it discourage making safety and reliability investments[6] as the Company implies. Further, inaction has a high cost. The Commission should eliminate the LEA to prevent imprudent, high-risk expenditures in growth.

NW Natural also argues for the first time in briefing that the Commission should not eliminate the LEA because the revised Climate Protection Program ("CPP") rules are not final. This argument is inconsistent with the Company's filed testimony stating that its LEA should integrate the cost of compliance with the CPP.[7] Indeed, doing so is required by the final order in

[2] Coalition Opening Br. at 5–19; CUB Opening Br. at 20–26; Staff Opening Br. at 8–17.

[3] Coalition Opening Br. at 16; Staff's Opening Br. at 24.

[4] CUB/200, Garrett/Page 26–27.

[5] NW Natural Opening Br. at 60.

[6] *See id.* at 8–9.

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

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UG 435.[8] While the CPP is not yet final, the Department of Environmental Quality ("DEQ") anticipates finalizing this regulation by the end of 2024,[9] with the new program largely adopting the same requirements as the original CPP.[10] NW Natural has not demonstrated its compliance obligations will be any different under the revised CPP. The Commission should act now to prevent further imprudent expenditures on growth that will remain in rates for decades to come.

Nor would the Company's proposal advance equity by making housing more affordable. Quite the opposite. The best way to "help[] control initial construction costs" and "support[] broader housing market goals by making homes more affordable"[11] is *not to build with gas at all*. "[A]ll-electric homes built with high efficiency heat pump technology save about $161 in annual energy bills as compared to a mixed-fuel home[,]" and "cost $1,600 less to build[.]"[12]

A. Precedent from Other Jurisdictions Supports Eliminating the LEA.

Precedent from this Commission and other jurisdictions supports phasing out the LEA, NW Natural's arguments to the contrary notwithstanding.[13] First, the Commission can look to its own precedent, where it approved a multi-party settlement in Dkt. No. UG 461, that phased down Avista's LEA to $0 by 2027.[14] Next, rulemakings and settlements in California and Washington provide persuasive authority this Commission can and should rely upon.

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[8] Order No. 22-388 at 51–52 (requiring NW Natural to demonstrate compliance with the CPP if it seeks to modify its LEA proposal).

[9] NW Natural Opening Br. at 8.

[10] *See* Coalition's Opening Br. at 6 (describing the Company's GHG reduction obligations under the CPP).

[11] NW Natural Opening Br. at 12.

[12] Public Comment by Zero Coalition, *In re NW Natural*, Dkt. No. UG 490, filed on June 6, 2024, https://edocs.puc.state.or.us/efdocs/HPC/ug490hpc329203033.pdf.

[13] NW Natural Opening Br. at 58–59.

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

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The California Public Utilities Commission ("CPUC"), through a rulemaking, ordered disallowance of LEAs across all customer classes for all gas utilities in the state.[15] The CPUC found that LEAs posed significant stranded asset cost risks, and low-income ratepayers would likely bear these costs.[16] Eliminating LEAs would reduce GHG emissions from buildings, avoid millions of dollars in imprudent expenditures, require builders or new customers to pay for their consumer preferences, incentivize all electric construction for new buildings, have minimal impacts on property prices[17] and, would advance equity for low-income customers who do not benefit from these subsidies, despite paying for them.[18] "Equity is advanced by revenue requirements being reduced for everyone, including low-income customers[.]"[19] All these reasons, likewise, support disallowance of NW Natural's LEA.

Further, contrary to the Company's representation, the California legislature did not mandate that the CPUC eliminate LEAs. Rather, the Commission instituted this rulemaking to promote decarbonization of buildings consistent with statewide goals to achieve carbon neutrality by 2045.[20] Similar to California, Oregon climate policy requires substantial reduction in GHG emissions within the next twenty years including in the utility sector[21] and Oregon law

[15] Staff/903, Dlouhy/Page 5.

[16] *Id.* at 19, 29–33 (agreeing with all of Staff's findings).

[17] *Id.* at 20–25; 29–33 (agreeing with all of Staff's findings).

[18] *Id.* at 33–34.

[19] *Id.*

[20] *Id.* at 6.

[21] Coalition Opening Br. at 6–7; *see also* ORS § 468A.205(1).

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also requires the Commission to consider GHG reduction goals in the regulation of energy efficiency in buildings.[22]

Precedent from Washington is similarly informative. In 2021, the Washington Utilities and Transportation Commission ("WUTC") lowered the LEA for all gas utilities statewide.[23] Then, through settlement, the WUTC eliminated LEAs for the vast majority of the state. In a rate case brought by the largest gas utility provider in the state, Puget Sound Energy ("PSE"), the WUTC approved a multi-party settlement that will eliminate *all* LEAs by January 1, 2025.[24] In another rate case brought by Avista Corporation, the WUTC again approved a multi-party settlement that would eliminate all LEAs by January 1, 2025,[25] finding that doing so would advance state climate laws, and promote "prudent planning[.]"[26]

These precedents illustrate how other commissions have minimized risk to gas utility ratepayers, all while advancing statewide climate goals. For the same reason, the Coalition urges the Commission to eliminate NW Natural's LEA for all customer classes.

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[22] *See* Coalition's Opening Br. at 49–50 (explaining the Commission's obligations under ORS § 469.763).

[23] Staff/903, Dlouhy/Page 99.

[24] Wash. Utilities and Transportation Comm'n, Docket No. UE-220066, Final Order 24/10 at 84-85 (Dec. 22, 2022), https://apiproxy.utc.wa.gov/cases/GetDocument?docID=3215&year=2022&docketNumber=220066 (last visited Apr. 18, 2024).

[25] Wash. Utilities and Transp. Comm'n, Docket No. UE-220053, Final Order 10/04 at 31 (Dec. 12, 2022), https://apiproxy.utc.wa.gov/cases/GetDocument?docID=1433&year=2022&docketNumber=220053 (last visited Apr. 18, 2024).

[26] *Id.* at 32.

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B. Subsidizing Growth Without a Feasible Decarbonization Plan Poses Unreasonable Risks.

While the Company claims it used "its best reasonable estimate of future Oregon GHG regulation compliance costs[,]"[27] to develop its LEA proposal, the evidence shows otherwise. NW Natural's LEA model contradicts findings in its 2022 Integrated Resource Plan ("IRP") as well as findings from the Commission regarding the feasibility and cost of the Company's long-term decarbonization plan. This fatal flaw highlights the uncertainty and irrationality of NW Natural's LEA proposal. Despite the importance of this issue, NW Natural never addressed it in either its testimony or briefing.

The Company's LEA proposal includes modeling assumptions that conflict with its 2022 IRP. The 2022 IRP modeled a decrease in gas demand, while the LEA proposal models a gradual increase in demand.[28] The model assumes unlimited supplies of RNG will be available to mitigate GHG emissions for the next twenty years.[29] This directly contradicts the 2022 IRP, which found that the Company must mitigate GHG emissions with hydrogen and synthetic methane starting in 2028, and 2034 respectively.[30] The Commission declined to acknowledge the Company's long term plan in its 2022 IRP because it contained unreasonably optimistic cost assumptions for future decarbonized fuels, and placed heavy reliance on technology that is not currently commercially available or market ready, specifically synthetic methane.[31]

[27] NW Natural Opening Br. at 49.

[28] Coalition's Opening Br. at 12.

[29] *Id.* at 12–13; Coalition/400, Cebulko/Page 13.

[30] Coalition's Opening Br. at 13–14; NW Natural 2022 Integrated Resource Plan at 329.

[31] Coalition's Opening Br. at 13–14.

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Similar to the Coalition, Staff also found that subsidizing growth would harm customers due to the uncertainty surrounding the Company's long-term decarbonization plan. The Commission's concerns with NW Natural's decarbonization plan "remain valid" and Staff "worries that a [LEA] policy … increases the potential for harm to befall the Company's customers through future stranded asset risk."[32] Further given the risks and costs, Staff's revised model indicated that "a line extension *disallowance* is more consistent with the state's decarbonization targets[.]"[33]

It is imprudent to continue subsidizing customer growth when the Company lacks a feasible plan for meeting decarbonization requirements for *existing* emissions. It is even more imprudent to adopt a LEA proposal that relies on a 25-year payback period, when the marginal cost of compliance with GHG reduction requirements is uncertain due to an increased reliance on hydrogen and synthetic methane starting within the next 10 years. For this reason and others, the Coalition recommends setting the LEA at $0.

C. The Marginal Cost of GHG Emission Reduction is Much Higher Than NW Natural Models.

NW Natural fails to rebut evidence from Staff and the Coalition showing its LEA proposal underestimated the marginal cost of GHG compliance. Staff's testimony reflected that the LEA model should use a cost of $30 per MMBtu for modeling RNG cost as a conservative estimate, based on cost ranges for RNG provided by EPA and S&P.[34] Instead of engaging with the data ranges referenced by Staff, NW Natural simply argued that its revised cost of $25 per MMBtu is reasonable because it is higher than the Company's RNG cost estimates in the 2022

[32] Staff/900, Dlouhy/Page 34.

[33] Staff/3200, Dlouhy/Page 16 (emphasis in original).

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

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IRP.[35] In briefing, the Company states no party "can say with certainty what the RNG pricing will be in the future[.]"[36] However, NW Natural's failure to rebut Staff's evidence provides further support for a shorter DCF analysis period given uncertainty in compliance costs.

Additionally, the Commission found that cost estimates for decarbonized fuels, including RNG, modeled in the Company's 2022 IRP "skew optimistic rather than presenting an objective view of the significant risks and uncertainties."[37] In light of this finding, the Commission should consider Staff's more conservative market-based cost estimate for RNG.

Lastly, NW Natural's LEA proposal fails to include the marginal cost of acquiring hydrogen and synthetic methane when the Company can no longer mitigate with RNG and purchasing Community Climate Investment ("CCI") credits. In its 2022 IRP, these resources were modeled as exceeding the cost of RNG.[38] This means that mitigating GHG emissions from subsidized customer growth will have higher and uncertain costs starting in 2028 for hydrogen, and 2034 for synthetic methane. In its response to this argument, NW Natural ignores these findings from the 2022 IRP, and instead argues that "RNG is the leading resource for the Company's compliance[.]"[39] While RNG may be part of the Company's compliance pathway, growth must be mitigated at the marginal cost—meaning the Company should model cost using the most expensive resource (synthetic methane) not the lowest (RNG).[40]

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[35] NW Natural/4000, Therrien/Page 14–15; NW Natural/4900, Therrien/Page 9–10.

[36] NW Natural Opening Br. at 68.

[37] In the Matter of Northwest Natural Gas Company, 2022 Integrated Resource plan, Docket No. LC 79, Order No. 23-281 at 9 (Aug. 2, 2023), https://apps.puc.state.or.us/orders/2023ords/23-281.pdf (hereinafter "Order No. 23-281").

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

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

[40] Coalition/400, Cebulko/Page 14–15.

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The Company also admits that the "cost of [GHG] compliance" is not yet certain,[41] and in briefing acknowledges that the costs of compliance are not yet "clear."[42] In light of such significant uncertainty regarding the future cost of GHG compliance, a shorter payback period is needed to mitigate risk.

D. Uncertainties Regarding the Cost of GHG Compliance Requires a Ten-Year Payback Period to Mitigate Risk.

NW Natural misunderstands the Coalition, CUB, and Staff's reasoning for a shorter payback period. The Company argues that because the parties have not put forward evidence of customer attrition currently occurring, a shorter payback period is unwarranted.[43] While the Coalition is concerned that existing customers will electrify as gas costs continue to rise, this is not the only reason for a short payback period. The high level of uncertainty in the parameters modeled in NW Natural's LEA proposal requires a short payback period to ensure investments are prudent—and the Company never responded to this critique. This approach is consistent with Commission precedent requiring that the payback period for LEAs consider "evolving customer preferences" and the "extremely dynamic and different environment for natural gas distribution," which requires the Company to change its business model to meet state decarbonization targets.[44]

As discussed above, the marginal cost of GHG compliance is uncertain starting in 2028, and highly uncertain by 2034, when hydrogen and synthetic methane are required to mitigate emissions. This alone merits a short payback period. NW Natural found that "declining costs and

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

[42] NW Natural Opening Br. at 69.

[43] NW Natural Opening Br. at 64–65.

[44] Order 22-388 at 49.

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alternatives to gas space heating" create risks for the Company and that a transition to electrification is already underway.[45] Gas customer bases are likely to shrink, putting existing customers at risk of a "death spiral" whereby they face increasing operation and maintenance costs spread over a shrinking customer base.[46] Despite this, the Company's model includes billions of dollars in non-growth capital spending. These costs are speculative and have not been approved by the Commission. Investing in infrastructure as modeled assumes the Company "will continue to grow forever" but as the Company acknowledges, a transition to electrification is already underway.[47] A shorter payback period limits the risk of overestimating the benefits of new customer additions.

Instead of managing risk by reducing the payback period, NW Natural sticks its head in the sand—arguing that a 25-year payback period is appropriately based on the lifecycle of a gas furnace.[48] This approach ignores Commission directives to consider business risk and consumer preferences and it conflicts with the Company's model that provides larger incentives to new residential customers who connect non-space heating appliances but rely on the electric system for heat.[49] For these customers, electrification may be as easy as replacing their gas stove with an induction stove.[50] Customers may make this choice to reduce their energy bill burden, especially

[45] Coalition Opening Br. at 16–17.

[46] *Id*.

[47] *Id.*

[48] NW Natural Opening Br. at 64 ("The 25-year period brings the payback period in closer alignment with a 2022 [US EIA] report on residential and commercial building technologies, which states that the typical life-cycle of a gas furnace is 22.5 years[.]"); NW Natural/4000, Therrien/Page 13 (same).

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

[50] Coalition Opening Br. at 18 (citing Coalition/400, Cebulko/Page 26–27; Coalition/400, Cebulko/Page 12–13).

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considering the increased fixed charge NW Natural wants to impose on New Premises customers. Given these risks and uncertainties, a 25-year payback period is unreasonable.

As both Staff and the Coalition showed, adjusting the payback period, the marginal cost of GHG compliance, and removing the New Premises Fixed Charge results in a negative LEA—even considering the other questionable assumptions in the Company's model. [51] This evidence, unrebutted by NW Natural, supports setting the LEA at $0.

E. Overspending On the LEA Highlights the Flaws with NW Natural's Model.

NW Natural's poor accounting practices and overspending militate against approving a tiered approach subsidizing customer growth.[52] The Company evaluates prudency of its investment in new gas connections through its portfolio approach, whereby it connects customers largely free of charge and regardless of cost and then evaluates whether its average expenditures system-wide per customer exceeded the LEA.[53] NW Natural's portfolio approach nullifies any conservation incentive created by the Company's LEA proposal. Given that customers already receive connections that vastly exceed allowances, a tiered LEA is unlikely to incent installation of fewer gas appliances because customers will likely get connected for free anyway.

Finally, NW Natural has not explained how it will administer a tiered LEA. The Company has not introduced evidence showing that it will track the types of appliances installed per customer. Nor has it explained how it can apply its portfolio approach that averages costs systemwide to a subsidy with multiple tiers. This absence of accounting transparency creates the risk that new customers will receive the most generous tier of the subsidy, even if they are not

[51] Coalition Opening Br. at 16; Staff Opening Br. at 24.

[52] *See* Coalition Opening Br. at 24–33 (recommending disallowance of overspending on service lines from 2018 through 2023).

[53] *Id.*

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limiting gas usage. Failures in the administration of Schedule X support eliminating the LEA going forward, and certainly discourage increasing the subsidy and making it more complex with tiered allowances.

II. THE COMMISSION SHOULD REJECT NW NATURAL'S DISCRIMINATORY NEW PREMISES FIXED RATE CHARGE.

In the Coalition's Opening Brief, we recommended that the Commission reject the Company's proposal to radically alter rate design for residential customers by creating a new customer class for new premises residential customers and increasing their fixed rate charge by more than 200% for the following five reasons:

(1) Charging different rates for residential customers based on home vintage constitutes arbitrary and prohibited intraclass discrimination.

(2) The New Premise Fixed Rate would radically alter rate design toward fixed rate recovery, away from the decoupling mechanism. This in turn would reduce the customer's incentive to conserve energy. The *de minimis* intraclass subsidy identified by NW Natural does not warrant this major policy change.

(3) The proposed LEA and new fixed rate send conflicting signals that encourage developers to connect homes to gas service, but then charges the new customer much higher costs than other ratepayers. This transfer of cost is deceptive and inequitable.

NW Natural fails to rebut any of these arguments in its Opening Brief. Lastly, the Coalition supports Staff's recommended adjustment to the decoupling mechanism.

A. <u>The New Premises Fixed Charge is Unfairly Discriminatory.</u>

NW Natural argues that distinguishing customers based on the date the new premises connected to the gas system tends to indicate that these customers use less gas on average,

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justifying creating a new rate sub-class.[54] The Company also argues that testimony from Staff in UG 435 likewise indicates that Staff agrees with its position.[55] Neither of these arguments have merit. Charging new premise customers a fixed rate over 200% higher than existing residential customers would unfairly discriminate against new customers.

First, Staff made clear in testimony and at the Evidentiary Hearing that discriminating between residential customers based on home vintage is not an appropriate basis for creating a new rate class.[56] Staff's testimony in UG 435 indicated that due to the average difference in energy usage between new and existing customers, the Company should adjust the decoupling mechanism to ensure it forecasts revenue appropriately.[57] Staff's decoupling proposal in this case does exactly that, and as discussed further below the Coalition supports Staff's proposal.

Second, distinguishing between residential customers based on when they connected to gas utility service is not a reasonable basis for creating a new customer class.[58] State law prohibits the Commission from imposing different rates for "like and contemporaneous service," though it makes an exception for customers that are segregated into different rate schedules.[59] In determining whether it is appropriate to categorize ratepayers into different classes, the

[54] NW Natural Opening Br. at 32.

[55] *Id*.

[56] Staff/4100, Shierman/Page 21, 24–45; Transcript of August 1, 2024, Evidentiary Hearing, UG 490 ("Evidentiary Hearing Tr.") at 40.

[57] NW Natural/4803, Wyman-Walker/Page 2–4 ("[U]nder declining use per new customers, and an increased number of customers, the decoupling mechanism may cause significant over-collection of fixed generation revenue.").

[58] *See Barendse v. Knappa Water Ass'n*, 260 Or. 356, 365 (1971) (finding that distinguishing between customer is not appropriate when "the material billing factors" such as the cost to provide service to new customers is "substantially the same.").

[59] ORS § 757.310(2).

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Commission cannot choose any arbitrary variable for distinguishing service.[60] Rather it must identify meaningful differences in the conditions of service.[61]

The Court of Appeals has held that the Commission may reasonably distinguish between ratepayers on the basis of a long-run incremental cost ("LRIC") study, because this estimates the differential costs incurred by each customer class, and projects what the future demands for energy and infrastructure will be for each rate case.[62] However, the Company has not identified any differences in the cost to provide service to new premise versus existing residential customers in its LRIC study, or anywhere else in testimony. In fact, the Company admits that the costs to serve each type of customer are *the same*. "New and Existing Premises are generally served by the same type (size and operating pressure) and length of service line, similar type of meter and regulator, and have the same or similar customer service, meter reading, billing, and administrative costs."[63] This testimony is inconsistent with the argument made in briefing that "without rate design intervention, the new premises cohort does not cover its cost to serve[.]"[64]

NW Natural's proposal for a new rate case has nothing to do with the cost of service. Rather, the basis for distinguishing between new premise and existing customers is a small difference in average energy use, which results in a *de minimis* intraclass subsidy. This is exactly the type of arbitrary discrimination prohibited by state law.

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[60] *Kliks v. Dalles City*, 216 Or. 160, 178, 335 P.2d 366, 375 (1959) (finding that distinguishing between apartments and hotels was an arbitrary basis for charging different rates).

[61] *Id*.

[62] *Publishers Paper Co. v. Davis*, 28 Or. App. 189, 192 (1977).

[63] NW Natural/3900, Wyman/Page 38.

[64] NW Natural Opening Br. at 38.

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NW Natural also points to the existing difference in fixed rates for multi-family versus single family dwellings as evidence that differentiating within a rate class is appropriate. However, multi-family dwellings incur fewer costs than single family dwellings, justifying a lower fixed rate—as the Company demonstrated through its LRIC study.[65] The small $2 difference in rates is justified by the lower cost to serve multifamily dwellings.[66] The parties stipulated to the bifurcation of rates between single family and multifamily dwellings in the Second Stipulation.[67]

More than doubling the fixed rate for New Premises Customers would harm ratepayers. NW Natural argues customers are not harmed by its new charge because the total average bill for these customers is less than the total average bill for existing customers—since new customers use less energy.[68] This argument misunderstands case law that prohibits unfair discrimination in rates. In considering harm, the Commission looks at whether the utility charges different rates for like or contemporaneous service.[69] As the Company admits, new premises residential customers and existing residential ratepayers have the same cost of service, and as such receive like or contemporaneous service. Accordingly, the Commission must look at how much each pays for the same service. The New Premise Fixed Charge would increase bills by at least 24%

[65] "[T]he bifurcated UG 435 LRIC Study suggests that the fixed cost rate component for [multifamily] premises could be roughly 18.6 to 23.8 percent lower compared to the fixed cost rate for single-family residential premises based on two scenarios: A customer using 450 and 350 therms annually, respectively." NW Natural/1800, Wyman/Page 72.

[66] *See generally*, NW Natural/1800, Wyman/Page 67–76.

[67] NW Natural-Staff-CUB-AWEC-Coalition/100 Kravitz, Muldoon, Jenks, Mullins, Fain/Page 15–16.

[68] NW Natural Opening Br. at 27–28 (finding New Premises customers will pay less annually on a "total billing basis" because they use at least 200 therms less energy).

[69] "If [material billing factors] are substantially the same for the customers placed in separate classes, the classification cannot be sustained." *Kliks v. Dalles City*, 216 Or. 160, 186 (1959).

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annually.[70] There is no justification for such a substantial difference in rates between new and existing customers, when they both receive the same service.

B. Shifting Cost Recovery Away from Decoupling and Toward Fixed Rates to Resolve a Small Intraclass Subsidy Is Unjustified.

Using less is not a reason to charge customers more. Doing so would be contrary to the fundamental premise of the decoupling mechanism—to decouple the Company's profit motive from the usage of gas. By separating gas usage from the revenue requirement, decoupling encourages utilities to promote energy conservation through efficiency upgrades that reduce energy use.[71] This is consistent with statewide policy to promote energy conservation.[72]

In testimony, NW Natural summarily dismissed the Coalition's evidence showing that its proposed New Premises Fixed Charge would constitute a new policy approach to cost recovery that relies heavily on fixed charges and moves away from the existing decoupling policy.[73] While it claims that its proposed charge "is not about fixed cost recovery" and is not a "new policy framework for fixed cost recovery[,]"[74] evidence presented by both parties shows the opposite. NW Natural admits that the New Premises Fixed Charge would substantially increase the amount of revenue recovered through the fixed rate charge. "[I]f the Company's New Premises Customer Charge is approved, the Company would collect about *32 percent* of the annual rate for New Premises customers on the fixed charge."[75] In contrast, "[a]ccording to the

[70] "As the Company previously pointed out, for some customers, this could result in an increase in bills of 24.3 percent up to 37.0 percent more annually." Staff/4100, Shierman/Page 25.

[71] *See* Coalition/100, Cebulko/Page 49–53.

[72] Coalition's Opening Br. at 49–50 (explaining the requirements of ORS § 469.763).

[73] *See* NW Natural/3900, Wyman/Page 66; NW Natural Opening Br. at 14–38.

[74] NW Natural/3900, Wyman/Page 66.

[75] NW Natural/4800, Wyman-Walker/Page 42 (emphasis added).

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Company's estimates of average bills in their proposed rates, *roughly 10% of revenues* would be recovered through the fixed charge for existing premise customers."[76] Although currently a small portion of customers, over time the new premises customer class will become a much larger portion of ratepayers, and these ratepayers will experience a substantial shift in rate design.

Nor has the Company responded to evidence from the Coalition showing that its proposal would discourage energy efficiency and conservation because ratepayers have a much weaker financial incentive to conserve energy.[77] In briefing, Staff echoes the Coalition's concern.[78] The Company argues that without a new premise fixed rate charge, more costs will be recovered through the volumetric charge—placing more costs on higher usage customers. However, this argument "misses the point that a higher fixed charge hurts customers' ability to control their bill *even more* than a higher volumetric rate, as a customer cannot take any action to avoid the fixed charge, other than disconnecting from the system."[79]

NW Natural has not provided any justification for its marked shift in cost recovery, other than a *de minimis* intraclass subsidy.[80] The exact amount of this subsidy also appears unclear, as the Company argues in briefing it is only $612 thousand.[81] "[T]here will always be some level of

[76] Coalition Opening Br. at 21 (citing Staff/4100 (Amended), Shierman-Dlouhy/Page 28) (emphasis added).

[77] Coalition/100, Cebulko/Page 49, *see* NW Natural/3900, Wyman/Page 66 (ignoring the issue).

[78] Staff's Opening Br. at 23–24.

[79] Coalition/100, Cebulko/Page 49 (emphasis added).

[80] "[T]he near-term impacts to the decoupling mechanism of adding new premise customers will be *de minimis*." Coalition/100, Cebulko/Page 51.

[81] NW Natural Opening Br. at 36.

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intra-class subsidization in every customer class."[82] This small intraclass subsidy does not justify shifting rate design away from a decoupled approach toward fixed cost recovery.

C. The New Premise Fixed Charge and the Proposed LEA Would Harm Customers.

Lastly, the New Premises Customer Charge is unreasonable and unfair because when coupled with the Company's LEA proposal it would subsidize growth but with high expense for the new customer, and because the purpose of the charge is really to justify the Company's LEA proposal. The Coalition presented evidence showing that the New Premises Fixed Charge would harm ratepayers because the Company's proposed LEA would subsidize new customer connections, but then the new charge would leave those customers with much higher costs.[83] The Company does not respond to this argument except to argue that the proposals are distinct and should not impact one another.[84]

It is not reasonable to ignore the anticipated combined impact of adopting both the Company's proposed LEA and its fixed rate charge when the real purpose of the new charge is to justify adoption of the Company's LEA proposal. "[O]ne effect of the New Premises Customer Charge is to juice the Company's [LEA] model[.]"[85] Subsidizing growth that foists high discriminatory charges on new customers is deceptive and will harm ratepayers, especially renters who will never see the benefit of the LEA subsidy.[86] "[T]his bait-and-switch may hide the true costs of the LEA in the New Premises Customer Charge."[87] "Staff finds this to be an

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

[83] Coalition Opening Br. at 23.

[84] NW Natural Opening Br. at 37–38.

[85] Staff/4100, Shierman/Page 27.

[86] Coalition Opening Br. at 23; *see also* Staff's Opening Br. at 24.

[87] Staff/4100, Shierman/Page 28.

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entirely inequitable transfer of costs that raises serious cost causation and equity concerns."[88] Staff's findings are unequivocal.

* * *

For all the reasons described herein, the Coalition recommends the Commission reject NW Natural's proposal to bifurcate rates between new and existing customers, and nearly double the fixed rate charge for new premises customers. The Company's proposal unfairly discriminates against new premise customers, would radically shift the rate design for cost recovery away from promoting energy efficiency through decoupled rates, and would provide free construction costs to builders while making new ratepayers shoulder the cost of this subsidy.

D. The Coalition Supports Staff's Decoupling Proposal.

Lastly, the decoupling proposal put forward by Staff would appropriately resolve the concerns they raised in UG 435, by adjusting the decoupling mechanism to minimize the amount of the revenue requirement that is deferred for later cost recovery.[89] The Coalition supports Staff's decoupling proposal. In its Opening Brief, the Coalition implied that there may be a way to resolve the intraclass subsidy identified by NW Natural through the decoupling mechanism.[90] However, Staff's proposal does not seek to resolve the intraclass subsidy identified by NW Natural.[91] The Coalition agrees with Staff's analysis that it is not necessary to resolve the *de minimis* subsidy identified by NW Natural, for all the reasons described above.[92] The Commission should approve Staff's decoupling proposal.

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[88] *Id.*

[89] Staff's Opening Br. at 20–21.

[90] Coalition's Opening Br. at 22–23.

[91] Staff Opening Br. at 17–22.

[92] *Id*.

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III. HISTORIC OVERSPENDING ON NEW RESIDENTIAL CONNECTIONS REQUIRES DISALLOWANCE.

NW Natural illegally charged ratepayers for 19% of its new customer connections between 2018 and 2023 that exceeded the LEA cap described in Schedule X.[93] NW Natural does not contest that it charged ratepayers for service line connections that exceeded allowances described in Schedule X. Rather it defends its past spending, by arguing its portfolio approach to evaluating prudency is supported by Schedule X.

Specifically, the Company points to this language in Schedule X: "Construction costs for Service Line installations are based upon the Company's historical system average costs, except the Company may use a site-specific cost estimate if extraordinary construction conditions exist at the site."[94] It argues that this language allows consideration of construction estimates when calculating construction costs, and because the Company relied on a construction estimate it could then charge existing ratepayers for cost overruns on actual construction costs.

This argument is flawed for three reasons: (1) Schedule X does not allow the company to charge ratepayers for construction costs that exceed the construction allowance; (2) the portfolio approach used by the Company to evaluate prudency does not rely on construction estimates, but actual construction costs; and (3) the Company's reliance on construction estimates regardless of actual cost places all the risk on existing customers, even though the Company is the only entity that can control costs.

A. Schedule X Prohibits Charges in Excess of Prescribed LEAs.

First, Schedule X prohibits NW Natural from charging existing ratepayers for costs that exceed the allowance amounts. Schedule X requires a customer contribution if the "Construction

[93] Coalition's Opening Br. at 25–27, 32.

[94] NW Natural, Schedule X at X-3.

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Allowance applicable to an Applicant is less than the construction cost[.]"[95] The schedule prohibits the Company from connecting a new customer to service without first receiving the contribution from the new customer.[96] The requirement for a customer contribution indicates that the purpose of Schedule X is to limit expenditures on new customer connections to the allowance amounts described therein. The prohibition on installing a new line without first receiving a contribution further makes clear that charging ratepayers for costs in excess of the LEA cap is prohibited.

In opposition, NW Natural points to language in Schedule X that provides for a refund to the new customer, in the event that the actual costs of construction are less than the contribution paid. It argues that providing for a refund to new customers when actual costs are less then estimated, but not including language in other circumstances means it is appropriate to charge ratepayers for cost overruns. This argument is flawed because it assumes that ratepayers must bear the cost of expenditures made in excess of the LEA, which is prohibited by Schedule X. Instead, it is the Company's responsibility to control costs to ensure they do not exceed prescribed allowances. It alone must bear the loss when construction estimates are exceeded. This is consistent with Oregon law which requires the Company to bear its own losses when the revenues generated by rates are insufficient to cover costs.[97] "[T]he rule against retroactive ratemaking prohibits: … retroactively adjusting past rates to 'true-up' the estimated expenses and

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

[96] *Id.* ("The Company will not schedule any installation until the required Construction Contribution is paid.").

[97] *Gearhart v. Pub. Util. Comm'n of Or.*, 356 Or. 216, 237 (2014) (holding that the Commission is prohibited from "setting future rates to allow a utility to recoup past losses[.]").

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revenues used in the rate case test year to a utility's actual expenses and revenues."[98] But, that's exactly what NW Natural has been doing for years by charging ratepayers for its spending that exceeded the LEA cap.

B. NW Natural's Portfolio Approach Is Not an Allowable Construction Estimate.

Second, the Company's portfolio approach to evaluating prudency does not rely on construction estimates, but rather looks at actual construction costs. The Company states that "[t]he company computes the average costs of all residential connections by service type, so a new premises will use the historical average construction costs for the same type of service line."[99] The Company has stated that to evaluate prudency for new service line connections, the Company averages construction costs across all customers to determine whether they are less than the construction allowance—the portfolio approach.[100] Specifically, "[f]or each year in the analysis, the results indicate that the portfolio of line extension investments were both financial prudent for the Company … and beneficial for the existing customers[.]"[101] To determine the prudency of its past service line connections, the Company evaluates whether the "portfolio of customers do not create a burden for existing ratepayers[.]"[102] In doing so, the Company looks at actual construction costs on an annual basis averaged across the thousands of new customer additions to evaluate prudency, and is not relying on construction estimates.[103]

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[98] *In the Matters of the Application of Portland Gen. Elec. Co*, 269 P.U.R.4th 1 (Sept. 30, 2008) (emphasis added).

[99] NW Natural Opening Br. at 74.

[100] Coalition Opening Br. at 30.

[101] Coalition/106, NW Natural Response to OPUC DR 138.

[102] NW Natural/4100, Zaubi/Page 14.

[103] Coalition Opening Br. at 31.

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Schedule X provides that future construction costs may be estimated using past costs. Such an approach is logical, and consistent with the requirement to prepare a site-specific cost estimate for extraordinary construction conditions. Based on its past expenditures, the Company should estimate the cost of a new connection and can rely on that construction estimate when offering to build a new line. But this is not what the Company is doing.

The Company is not looking at historical costs to develop an estimate for what a new connection will cost. Rather, the Company is evaluating the prudency of its investments by averaging actual construction costs for all its new customer connections to ensure they do not exceed the LEA. Doing so means the Company will routinely exceed the LEA cap in Schedule X, because "[t]his is the very nature of averages."[104] Averaging costs across the entire system also justifies charging ratepayers for costs that vastly exceed the LEA cap by tens of thousands of dollars and require little or no contribution from the new customer. This is prohibited by Schedule X, which requires customer contributions when construction costs exceed the LEA.

C. NW Natural Illegally Placed the Risk of Its Overspending on Ratepayers.

Third, NW Natural's portfolio approach places all the risk of inaccurate construction estimates on existing customers instead of the Company who is best positioned to control costs. Before building a new service line NW Natural provides the new customer with a construction estimate.[105] However, "[i]f the actual cost of construction is ultimately higher than the estimated construction costs, the Company honors the estimate and does not require an additional customer contribution."[106] In other words, no matter how wildly inaccurate its construction estimate, new

[104] NW Natural/5000, Zaubi-Kravitz/Page 15.

[105] NW Natural Opening Br. at 75.

[106] *Id.*

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customers will not have to pay for actual construction costs that exceed the LEA cap. Further, by "honor[ing] the estimate" the Company means it charges existing ratepayers for its cost overruns. However, this approach places the risk of overspending exclusively on existing customers who have no control over spending rather than on the Company who can control the risk by developing more accurate construction estimates.[107] Placing all the risk of cost overruns on existing ratepayers is unjust, because it is in effect a true-up of past losses.

Lastly, removing $13.7 million in LEA overspending from rates does not violate the rule against retroactive ratemaking. The Coalition is not asking the Commission to refund the Company's past profits.[108] Rather, it asks the Commission to remove illegal charges that exceeded published rate schedules, which the Company unjustly included in rates. NW Natural admits that the Commission has authority to refund unjust or unreasonable costs charged to ratepayers.[109] Further, the Coalition is not asking for a full refund of past expenditures, but rather is asking for disallowance of the undepreciated over-charges on LEAs which remain in rates.

In the alternative, the Coalition respectfully requests that at minimum the Commission remove Test Year expenditures associated with anticipated overspending. Witness Cebulko estimated that Test Year expenses associated with LEA overspending amounted to $2,222,531.[110] The Coalition recommends removing these costs from rates, and finding it illegal to charge existing ratepayers for costs in excess of the LEA cap.

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[107] Coalition Opening Br. at 31–32; Coalition/100, Cebulko/Page 38–39 (finding that placing the risk of overspending on customers is bad policy and encourages cost-overruns).

[108] *See Gearhart v. Pub. Util. Comm'n of Or*, 356 Or. 216, 237 (2014) (describing the rule against retroactive ratemaking).

[109] NW Natural Opening Br. at 83–84.

[110] Coalition/100, Cebulko/Page 43; *see also* Coalition/400, Cebulko/Page 25–26 (rebutting arguments by NW Natural's challenging a small portion of these costs).

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IV. NW NATURAL SHOULD NOT RECOVER ITS POLITICAL SPENDING.

The Commission should not allow NW Natural to recover its Government Affairs budget of $1,714,350 from ratepayers.[111] The Company's definition of "lobbying" under the General Procedure is inadequate in identifying what activities are political. Similarly, the General Procedure suffers from deficient exception time tracking. These crucial issues were previously brought to the Company's attention in UG 435[112] and, given the lack of progress by NW Natural on this front, and the potential that customers may be unknowingly paying for political spending, strong action is necessary from the Commission to establish protections. As such, the Commission should disallow the entirety of NW Natural's Government Affairs budget. Staff agrees that excluding the Government Affairs budget is appropriate as a policy matter.[113]

A. The General Procedure Is Inadequate as a Guide for NW Natural Employees in Identifying Political Activities for Exception Time Reporting.

Both the Commission's precedent and FERC's regulations require that "utilities are not permitted to recover expenses associated with political lobbying."[114] NW Natural's General Procedure, containing definitions, policies, and procedures for employee exception time tracking of political activities, is inadequate under both the Commission's order and FERC's regulations for delineating between recoverable time and unrecoverable political activity.

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[111] NW Natural originally proposed a Government Affairs budget of $1,725,922, to which Staff recommended an adjustment of $11,572 for the Test Year to exclude "104 lobbying transactions" recorded to cost elements titled "Meals and Entertainment" and "Business Travel." Staff/1700, Rossow/Page 4. NW Natural does not oppose Staff's adjustment.

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

[113] Staff Opening Br. at 26.

[114] Order No. 22-388 at 23; *see also* 18 CFR § 367.4264.

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1. The General Procedure's definition of lobbying communications is not consistent with 18 CFR § 367.4264 and Order No. 22-388.

NW Natural's General Procedure defines "lobbying communications" as communications intended to influence the decisions of any member or employee of a legislative body, or with any governmental official or employee who may participate in the formulation of legislation.[115] However, under the Commission's expansive description of lobbying in Order No. 22-388[116] and FERC's broad definition of lobbying in 18 CFR § 367.4264,[117] the boundaries of unrecoverable political activity are not confined to the legislative process. NW Natural's argues its General Procedure is not limited to only legislative bodies because it also applies to communications directed at officials who may formulate legislation.[118] This is a distinction without a difference. The scope of unrecoverable political activity is broader than just legislative matters, and both the Commission and FERC recognize that conclusion in their precedent and regulation.

NW Natural attempts to address the limited scope of the General Procedure, arguing that it extends beyond legislative matters. The Company points to its definition of "lobbying communication," which includes communications intended to influence the general public with

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

[116] Order No. 22-388 at 23 (describing lobbying to include engaging with local governments with an intention to advocate against particular policies and develop support for others).

[117] 18 CFR § 367.4264(a) ("This account must include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials.").

[118] NW Natural Opening Br. at 110; *see also* NW Natural 4600, Williams/7, 12; NW Natural/3300, Williams/Page 12.

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respect to legislation, elections, or initiatives and referendums.[119] While this may broaden the universe of communications covered under the General Procedure, it remains facially inadequate to satisfy Commission Order No. 22-388 and 18 CFR § 367.4264 as, under the policy, it may recover for communications with not only the public, but also judicial, executive, and administrative bodies like DEQ, ODOE, the Governor's Office, local school boards, zoning boards, and sewer and water districts, even when aiming to influence them to NW Natural's benefit.

Finally, while NW Natural claims it no longer opposes Staff's recommendation to broaden the General Procedure to include communications with the administrative and executive agencies mentioned above, [120] the Company's concession is insufficient alone to remedy the Company's behavior. For example, NW Natural explains that the Company *already* interprets the General Procedure to include such communications.[121] However, throughout this proceeding, NW Natural has contradicted this position it purportedly holds—most notably, with respect to its communications with homebuilders, chambers of commerce, and developers regarding the LEA and the Commission's public hearing on the topic. NW Natural conceded it contacted those groups and defended the activity on the basis that it constituted "core utility business," yet nonetheless decided to charge the costs below the line.[122] This situation exemplifies why further direction from the Commission is necessary; NW Natural's lobbying policy does not cover communications to administrative or executive agencies or communications to the public

[119] NW Natural Opening Br. at 110–11 (citing NW Natural/4600, Williams/Page 7–8; NW Natural/1200, Williams/Page 4).

[120] *Id.* at 112.

[121] *Id.*

[122] NW Natural/3300, Williams/Page 14–15.

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encouraging political engagement on the Company's behalf before such institutions. Yet, despite claiming that it views such activities as lobbying under its policy, it then defends its behavior as merely "informational" and "core utility business."[123]

Directing the public to engage in political action is lobbying, because it is a communication intended to influence a public official. While NW Natural may have charged costs below the line for its solicitations to influence this rate case, it is uncertain how similar activities will be expensed in the future because the Company's policy does not categorize these communications as lobbying. For example, during the pendency of this case, NW Natural solicited ratepayers to oppose the revised CPP rulemaking.[124] Ratepayers should not be charged for this lobbying activity, but again, there is no way to verify the exclusion of these costs.

2. Proactive "informational" communications may constitute lobbying.

The Commission was abundantly clear in Order No. 22-388 that NW Natural's lobbying policy was inadequate since it did not cover the Company's proactive communications with public officials regarding topics like gas bans.[125] While the Commission recognized that communications intended to provide public officials routine information do not qualify as lobbying expenses,[126] many of NW Natural's communications went "well beyond" informational purposes and had intent to influence.[127] The Commission reiterated that NW Natural must be clear whether it is engaging primarily in an informational capacity in response to local

[123] NW Natural/3300, Williams/Page 14.

[124] Coalition Opening Br. at 41–42, n.192.

[125] Order No. 22-388 at 22–23.

[126] *Id.* at 23.

[127] *Id.*

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government requests for assistance in developing and meeting climate policies, versus advocating for or against particular policies.[128]

NW Natural attempts to avoid this directive by arguing that there are scenarios where it proactively provides information to public officials, and may even be required to do so by law.[129] This includes correcting misinformation or inaccurate data provided to officials by a third party or providing certain information to public officials even if no specific request was made.[130] Neither the Coalition, in its testimony, nor the Commission in its order, draw the bright line distinction that *all* proactive communications are *per se* lobbying. Instead, the Coalition explained that proactively reaching out to officials to "educate" them with information they did not request and is not required by law for the Company to provide, often is made with the intent to influence the decisionmaker and is thus political in nature.[131]

It is this type of behavior the Commission addressed in its order, directing the Company to provide greater clarity whether it is engaging in an informational role—typically indicated by responding to local governments—versus in a political capacity with an intent to advocate for certain policies. The Commission alerted the Company of the need to address this issue in the previous rate case, and NW Natural did not act. There is no way to identify what time was spent educating versus persuading officials from the Company's outreach and it should not be able to recover any associated costs as a result.

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[128] *Id.*

[129] NW Natural Opening Br. at 113–14.

[130] *Id.*

[131] Coalition/500, Apter-Connolly/Page 31–32.

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3. Recoverable communications with public officials are limited to those that are required to provide safe and adequate service to customers.

The Coalition's testimony identified and supported Commission Staff's description of the "safe and adequate service" issue as a "key factor" in determining whether the communication is political activity or core utility business.[132] NW Natural's arguments to the contrary, the Coalition does not argue that recoverable communications with public officials include *only* those "required to provide safe and adequate service to customers."[133] Appearing before regulatory bodies or providing educational information to public officials[134] is, of course, recoverable under 18 CFR § 367.4264(b), and, further, complying with the law and providing accurate information to officials regarding the utility's operations reasonably fall under the ambit of what is necessary to provide safe and adequate service.

B. The Company Has Not Properly Tracked Exception Time.

NW Natural's exception time tracking policy, methodology, and results are inadequate. Consequently, the Company's time tracking reports make it impossible to accurately assess whether customers are being charged for political activities. In order to protect customers from the considerable risk of paying for NW Natural's political spending, the Commission should not only disallow recovery of the Government Affairs budget but instruct the Company on the detailed reporting necessary to provide such assurances in the future.

[132] *Id.* at 33.

[133] NW Natural Opening Br. at 114.

[134] *Id.* at 114–15.

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1. NW Natural's exception time tracking contains insufficient information to clarify the nature of NW Natural's communications.

NW Natural contends that the Commission could not have intended to require that the Company detail the substance of its political activities in the time tracking reports.[135] It warns that such a requirement would set a troubling precedent by which the Commission could demand to review and audit costs for which the utility is not seeking recovery, and that simply could not have been the Commission's intent.[136] Not only is the Company overstating the concerns surrounding the Commission's review of utility costs, but it ignores the plain language in Order No. 22-388 that directly calls for expense reporting with enough detail to clarify the nature and subject of the communications.[137] Specifically, the Commission stated it expected NW Natural to provide expense information that categorizes the activity and provides enough information to distinguish whether the Company is engaging in non-political informational activities versus engaging local governments with the intention of advocating for or against certain policies.[138] This language contradicts NW Natural's stance on the level of detailed the Order requires. Because the current exception time reporting does not provide enough information to make such distinctions, NW Natural has not met the Commission's requirements in Order No. 22-388.

2. NW Natural cannot claim to be robustly tracking exception time given entries including blank "notes" fields in exception time reports.

NW Natural admits that where its employees leave exception time memo notations blank, it "lacks the detail that is required by the Company's policy[.]"[139] However, according to NW

[135] NW Natural Opening Br. at 116.

[136] *Id.*

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

[138] *Id.*

[139] NW Natural Opening Br. at 117.

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Natural, while Company policy may be violated, such information is not required in Order No. 22-388.[140] This is incorrect. Order No. 22-388 explains that NW Natural was not providing any expense information "detailed enough to separate out lobbying expenses from non-lobbying expenses" and that moving forward the Company must provide "detailed expense information" that clearly categorizes and describes the activity. Given the requisite detail necessary to assess exception time reporting per the Commission's Order, blank notations fail to meet that standard and illustrate the inadequacy of the Company's lobbying policy and time reporting requirements. Absent more stringent standards and information from NW Natural, it is impossible to separate out lobbying expenses from non-lobbying expenses, as was the case in Order No. 22-388.

3. The Commission should require NW Natural's Government Affairs team to track and report time associated with its core utility activities.

NW Natural objects to the Coalition's suggestion that Government Affairs employees track time engaging in recoverable activities.[141] According to the Company, such a requirement is unjustified and would place a significant burden on the employees, increasing costs to customers.[142] However, time tracking is not as onerous as the Company suggests, and any increased burden is appropriate where a company charges ratepayers for its political activity as NW Natural has repeatedly done. The Commission is obligated to assure transparency and compliance with regulations and given NW Natural's track record and continued production of insufficient time reporting, greater safeguards are necessary. NW Natural's Government Affairs team are sophisticated employees with the skills and ability to accurately keep records of time spent engaging in political activities as well as core utility business. Employers across many

[140] *Id.*

[141] *Id.* at 118.

[142] *Id.* (citing NW Natural/4600, Williams/Page 14; NW Natural/3300, Williams/Page 17–18).

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fields require detailed tracking from their employees, including attorneys. Alternatively, NW Natural could require its employees to track only their non-political activity time, excepting the rest from recovery as political activity and still providing the detailed reporting necessary for the Commission to assess whether any costs should be classified as political.

4. The Commission should adopt the Coalition's recommendation to require an additional annual reporting requirement.

NW Natural urges the Commission to reject the Coalition's request for additional annual reporting in all rate cases about: (1) expenses for the purpose of influencing regulation or legislation; (2) expenses for the purpose of influencing public opinion about policy issues or about the Company's reputation; (3) regulatory Commission expenses, including how much the Company spent on different proceedings; (4) contributions to 501(c)(3) and 501(c)(4) non-profits; and (5) any litigation the Company files to overturn rules or statutes.[143] According to NW Natural, because the Company implemented new policies for lobbying and tracking and reporting exception time, it has done enough to satisfy the issues raised in Commission Order No. 22-388.[144] The Coalition's requests demanding additional reporting from the Company it argues, are discriminatory, overly burdensome, punitive, and not justified in the record.[145] NW Natural cites no evidence regarding the supposed burden such requirements would impose or why, in the Company's view, the record does not justify such changes. This broad, out of hand dismissal of the Coalition's suggestions as redundant, useless, and burdensome is disappointing and inaccurate. As the Coalition provided in its testimony, many similar requirements have been

[143] *Id.* at 119 (citing Coalition/200, Apter-Connolly/Page 83).

[144] *Id.*

[145] *Id.*

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imposed on utilities in other states,[146] undermining NW Natural's protests regarding the burden and infeasibility of asking the utility to do more. As explained throughout the Coalition's testimony and brief, NW Natural has not fulfilled what the Commission asked of it in Order No. 22-388, necessitating greater reporting requirements—ones that have been proven to work in other states—in order to promote greater transparency and safeguard customers.

C. The Commission Should Disallow NW Natural Recovery for Its Government Affairs Team Budget.

The Coalition recognizes that Government Affairs employees have a variety of roles, and not all of their time is spent on political activities. [147] However, the division of roles actually underscores the necessity of utilities having sufficient exception time policies. Absent adequate policies, it becomes *impossible* to guarantee with any degree of certainty that customers are not being charged for the Company's political expenditures. As established above, not only is NW Natural's lobbying underinclusive, its exception time reporting policy is ineffective and unclear, and the Company has a track record of seeking recovery for its political expenditures in rate cases as documented by the Commission in Order No. 22-388.[148] The consequences of NW Natural's underinclusive lobbying policy are compounded by its weak exception time policy. As a result, the Commission and the Coalition lack the information necessary to verify which expenses were political and which were core utility business. Given these circumstances, disallowing the entire Government Affairs budget is the only solution that *guarantees* the Company is not recovering ratepayer funds for its political activities.

[146] Coalition/200, Apter-Connolly/Page 83–88.

[147] *See* NW Natural Opening Br. at 120.

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

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V. THE COMMISSION SHOULD PROTECT LOW-INCOME RATEPAYERS BY ALLOWING USE OF OLIEE FUNDS FOR HEAT PUMP INSTALLATION.

The Commission should amend the Community Action Program described in Schedule 320 to allow community action agencies to replace red tagged furnaces with electric heat pumps if the customer prefers. Currently, the Oregon Low Income Energy Efficiency ("OLIEE") program requires Community Action Program ("CAP") agencies to replace a non-functioning gas furnace with new high efficiency gas furnaces.[149] The Coalition recommends changing this language to allow low-income ratepayers to electrify their home heating needs.

NW Natural's under-utilization of the funds in its OLIEE program is problematic. The Coalition understands that the Company recognizes the need to engage with CAP agencies and its customers to better implement the OLIEE program. The Coalition also appreciates Staff's urgency in asking the utility to "be proactive, both with direct outreach to customers and CAP Agencies, to help ensure successful and robust implementation of the OLIEE program."[150] However, neither effort is sufficient to satisfy the Commission's legal obligation to ensure its regulatory oversight of energy efficiency programs results in cost savings for low-income customers, achieves greenhouse gas emissions reductions, and reaches the "greatest available energy efficiency" outcomes.[151]

A. The Commission Has the Authority to Direct NW Natural to Use Customer Funds for Electrification.

Pursuant to its general authority to regulate utilities, the Commission has the authority to amend the OLIEE program to allow low-income customers to install electric heat pumps instead

[149] NW Natural Schedule 320 at 320-4 (allowing for "[t]he replacement of non-functioning or red-tagged heating equipment with a high efficiency gas furnace.")

[150] Staff Opening Br. at 28.

[151] ORS § 469.763(2)(c).

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of gas furnaces if they choose to do so.[152] Doing so is consistent with the Commission's statutory obligation under ORS § 469.763 to reduce greenhouse gas emissions in the energy efficiency programs it regulates and 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."[153] The Oregon Legislature declared that electric heat pumps are the "most energy efficient space heating option available in the market."[154] Further, because heat pumps are so cost-effective to operate, revising the OLIEE program to allow heat pumps in lieu of red-tagged furnaces would be consistent with ORS § 757.315, the statute under which OLIEE was adopted.

NW Natural calls it "inappropriate"[155] for the Coalition to suggest that low-income customers be provided the opportunity to select an efficient heat pump that will help to keep bills lower, provide lifesaving heating and cooling benefits, while reducing emissions. Inappropriate is not the same as unlawful. NW Natural has pointed to *nothing* in the law or in its tariffs that prohibit OLIEE funds to pay for an energy efficient heat pump instead of a furnace if the customer wants it. Rather, it is inappropriate for the gas utility to keep low-income customers captive to the gas system when, by its own evidence, heat pumps are "even more efficient than natural gas cost-wise."[156]

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[152] *See also* ORS § 757.315 (authorizing the OLIEE program and creating funds for bill payment assistance benefitting low-income residential customers).

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

[154] ORS § 469.760(1)(d).

[155] NW Natural Opening Br. at 100.

[156] *See* NW Natural/2300, Tanaka/Page 46 n.92 (citing 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/).

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NW Natural also "questions whether the Commission has the authority to divert natural gas customer funds"[157] to replace a furnace. Again, NW Natural has pointed to nothing in the law precluding fuel switching should the customer seek it—especially where the appliance in question provides benefits to the ratepayer, the climate, and NW Natural's own greenhouse gas emissions reduction obligations.

To the contrary, as the Coalition set forth above, the Commission must comply with ORS § 757.315, allowing for rate schedules that create funds for bill payment assistance benefitting low-income residential customers, and ORS § 469.763, requiring regulation of energy efficiency programs in line with greenhouse emissions reduction goals while providing the greatest energy efficiency options. Offering the option to low-income customers to use OLIEE funds to install heat pumps satisfies both of these statutory directives.

B. NW Natural's Arguments Implying Harm, Additional Funding Opportunities, and Anticipated Failures of Electrification are Unpersuasive in the Face of Actual Evidence of Cost and Emissions Benefits from Heat Pumps.

1. Using customers funds to electrify protects low-income customers from the financial "death spiral."

NW Natural suggests that allowing low-income customers to switch their space heating to a heat pump will harm existing customers.[158] However, the Company has not provided any evidence of financial harm to ratepayers or the Company in its testimony or briefing. To the contrary, allowing low-income ratepayers to electrify their heating appliance is consistent with the Company's obligation to "incrementally reduce its emissions of conventional natural gas by approximately 41.7 million therms in order to not exceed the declining [CPP] cap."[159] Further,

[157] NW Natural Opening Br. at 100.

[158] *Id.* at 101.

[159] NW Natural/100, Palfreyman-Kravitz/Page 9.

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the OLIEE program only services a few hundred customers annually,[160] which is dwarfed by the thousands of new customers added annually. If NW Natural is confident that it will continue to grow, then a few hundred low-income ratepayers potentially choosing to replace their red-tagged furnace with a heat pump should be of little concern to the Company.

It appears the Company's vision for the future is new customers[161] paying for gas service to power luxury appliances like gas ranges and fireplaces (all of whom have a heat pump or air conditioner), [162] while low-income customers are stuck indefinitely with gas furnaces because they cannot afford to install heat pumps in their homes. But, as Staff and the Coalition have raised, leaving low-income customers stranded on a shrinking gas system is a very real prospect with potentially devastating economic consequences.[163] The solution to the problem is to allow NW Natural's most vulnerable customers the opportunity to electrify.

2. The existence of other funding sources is unpersuasive.

NW Natural suggests that it makes "little practical sense to divert funds that are dedicated to low-income customers to obtain high-efficiency natural gas furnaces."[164] There are numerous reasons why it makes practical sense to allow low-income customers the option to replace a

[160] NW Natural OLIEE Program Report for 2022–2023 (reporting that it helped 175 people through its CAP program), https://edocs.puc.state.or.us/efdocs/HAQ/rg13haq325867054.pdf.

[161] According to the Company's testimony, new premises customers are most likely to live in census tracts with a median household income 29% higher than the state average. NW Natural/4800, Wyman-Walker/Page 26.

[162] NW Natural/1900, Therrien/Page 31 (describing low-use resilience appliances); NW Natural/2200, Kravitz/Page 20 (describing future with hybrid heat pumps).

[163] Staff/900, Dlouhy/Page 45–46 (noting, in the context of NW Natural's LEA, that "customers who have the means to switch away from natural gas will choose to do so for economic reasons or other personal preferences. In effect, this may result in only customers with the lowest ability to leave the natural gas system stuck paying for system costs that they may not have had a part in.").

[164] NW Natural's Opening Br. at 102.

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furnace with a heat pump.[165] Community Energy Project offers just one example of a customer who, while recovering from cancer, found physical comfort and financial relief by switching to a heat pump and decreased their energy bills—from $1,022 with gas heating to $734 with a heat pump.[166] Further, while NW Natural suggests there is a limitless source of funds that will help low-income customers obtain a heat pump, Coalition witnesses discussed the overwhelming need for funding and the importance of eliminating old-fashioned barriers to fuel switching when customers want a more efficient option.[167]

3. Rising costs of the gas system support using OLIEE funds for electrification.

Rising costs of the gas system is a real and concerning prospect. NW Natural's own LEA model recognizes "that the addition of new customers increases the Company's [climate policy] compliance costs."[168] The Company proposes to accelerate spending by subsidizing growth and decarbonizing its GHG emissions by relying on expensive and commercially unavailable alternative fuels. Low-income ratepayers should have the same opportunity as more affluent customers to *opt-out* and control their bills by electrifying their home energy appliances.

4. The best way to achieve greenhouse gas emission reductions is with heat pumps.

NW Natural suggests the Coalition confuses decarbonization with electrification. The Coalition is not confused, but rather is recommending adoption of one of the most cost-effective

[165] *See* Coalition/300, Fain-Segovia Rodriguez-Daryanani/Page 43–46 (citing GHG emissions, health, safety, and cost reasons to electrify); Coalition/600, Daryanani-Fain/Page 12–15 (describing safety, health, and cost benefits of electrification).

[166] Coalition/600, Daryanani-Fain/Page 13.

[167] *Id.* at 7.

[168] NW Natural's Opening Br. at 54 (citing NW Natural/1900, Therrien/Page 33, NW Natural/2000, Kravitz-Therrien/Page 28, NW Natural/2004, Kravitz-Therrien/Page 2).

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methods for decarbonization—electrification of home heating and cooling. As both Coalition and CUB witnesses have offered, heat pumps are cost-effective and climate-friendly, no matter how long it takes for the electric system to decarbonize.[169] In short, reducing gas demand by helping low-income individuals to access heating and cooling for their homes presents a win for climate and equity, could be a far more reasonable investment to meet CPP compliance requirements than speculative alternative fuels.[170] While NW Natural suggests that it is a proponent of hybrid heating and ground source heat pumps, it is not offering those options to its low-income customers through its OLIEE program. Until it does, low-income customers should have a choice to install a heat pump.

CONCLUSION

For the foregoing reasons, the Coalition respectfully requests the following relief from the Commission:

- Set the LEA at $0 for all customer classes and remove <<BEGIN CONFIDENTIAL>> [redacted] <<END CONFIDENTIAL>> from ratebase in customer growth costs.
- Remove $13.7 million from ratebase for overspending on service lines from 2018–2023.
- Disallow $1.7 million in political expenses from the revenue requirement.
- Amend Schedule 320 to allow replacement of red-tagged furnaces with electric heat pumps.
- Approve the Second and Third Stipulations for the reasons described in the briefing and testimony in support of those agreements.

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[169] CUB/400, Garrett/Page 27, quoting Crownhart, Casey, *Everything You Need to Know about the Wild World of Heat Pumps*, MIT Technology Review (Feb. 14, 2023), https://www.technologyreview.com/2023/02/14/1068582/everything-you-need-to-know-about-heat-pumps/ ("with the current energy mix in all major markets, heat pumps are better for the climate than directly fossil-fuel-powered heating"); Coalition/600, Daryanani-Fain/Page 14.

[170] Order No. 23-281 at 9–10.

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Dated this 26th day of August, 2024.

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CERTIFICATE OF SERVICE
UG 490

I hereby certify that on August 26, 2024, I served an unredacted CONFIDENTIAL version of COALITION'S CLOSING 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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