BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UG 490

In the Matter of	)
	)
NW NATURAL,	)
	)
NW NATURAL REQUEST FOR A GENERAL RATE REVISION	)
	)

CLOSING BRIEF

OF THE

OREGON CITIZENS' UTILITY BOARD

August 26, 2024

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INTRODUCTION

Pursuant to Administrative Law Judge (ALJ) Spruce's July 24, 2024 Ruling to Modify the Procedural Schedule, the Oregon Citizens' Utility Board (CUB) hereby submits its Closing Brief in the above-captioned consolidated proceedings. In this Brief, CUB responds to arguments raised by NW Natural (NWN or the Company) in its Opening Brief and throughout this proceeding. CUB also addresses arguments raised by Staff of the Public Utility Commission of Oregon (Staff), the Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (the Coalition), and Alliance of Western Energy Consumers (AWEC).

CUB's arguments brought forth in its Opening Brief provide the Commission with a sufficient platform to justify a ruling in favor. In Opening Briefs, other parties supported CUB's positions:

- Staff agrees with CUB that the Commission must adopt a standard Rate Shock Mechanism to mitigate the rate impact for residential customers.[1] Staff supports CUB's proposal to cap the total rate increases to the residential class at the lower of 10 percent, or 7 percent plus the Consumer Price Index.[2]
- CUB, Staff, and the Coalition oppose the Company's LEA policy proposal.[3]
- CUB, Staff, and the Coalition agree that the "New Premises" customer class is discriminatory and unsupported by the record.[4] And or these reasons, they continue to urge the Commission to reject the Company's New Premises Customer Charges.
- CUB and the Coalition agree that NWN has violated Schedule X, its tariff on file, by placing construction costs above the LEA cap into rate base.[5] This practice is not prudent and overcharges residential customers.[6]
- CUB, AWEC, and Staff do not support the Company's modification to the RNG AAC.[7]

Rather than reiterating those arguments, CUB incorporates the arguments made in its Opening Brief by reference. The remaining issues follow.

[1] Staff Opening Brief at 29.
[2] *Id.* at 25.
[3] *See* CUB Opening Brief at 20; Staff Opening Brief at 1,8; Coalition Opening Brief at 18.
[4] *See* CUB Opening Brief at 27-29; Staff Opening Brief at 23-24; Coalition Opening Brief at 22-23.
[5] *See* Coalition Opening Brief at 24.
[6] *Id.*
[7] *See* AWEC Opening Brief at 8; Staff Opening Brief at 4.

Statement of the Issues in Closing

Issue 1: Rate Shock Mechanism

CUB's Rate Shock Proposal is designed to provide certainty, balance interest, ensure a sustainable mechanism applicable here and in future years to mitigate rate shock for residential customers.

Issue 2: NWN's proposed LEA Policy

The Commission should reject the Company's proposed LEA Policy, as it did in UG 435, because the Company ignores its proposed policy's risk of stranded assets.

Issue 3: LEA Overspend

The record is clear. NWN violated its tariff by expanding the allowable LEA and placing excess construction costs into rate base rather than recovering these costs from the new customers who incurred them. CUB's recommendation is a prospective rate base reduction not a refund.

Issue 4: RNG AAC

- The Commission addressed many of the issues NWN raises in the prior rate case. The resolution of which was a compromise. The Commission should maintain the existing framework keeping the RNG AAC earnings test in place.

Issue 5: Multi-Year Ratemaking

For a robust and procedurally equitable discussion of Multi-year rate making, the Commission should decline NWN's request to address the issue here and instead take the question to an investigation at the Commission.

ARGUMENT

Issue 1: Rate Shock Mechanism

CUB's Rate Shock Proposal is designed to provide certainty, balance interest, ensure a sustainable mechanism applicable here and in future years to mitigate rate shock for residential customers.

A. The Commission should adopt a standard Rate Shock Mechanism to provide for when and how to mitigate rate shock.

CUB and Staff agree that the Commission must adopt a standard Rate Shock Mechanism to mitigate the rate impact for residential customers.[8] NWN continues to oppose CUB's proposal despite the compelling legal, economic, and equity reasons for the Commission to grant it.

CUB's proposed Rate Shock Mechanism is made of two parts:

The first part of CUB's proposal is a threshold by which to limit rate increases. CUB is proposing that the Commission cap the total rate increase to the residential class at the lower of 10 percent, or 7 percent plus the Consumer Price Index.[9] The total increase would include the GRC, PGA and other schedules that run concurrently with the PGA. [10] Staff supports CUB's proposal.[11] Staff agrees that it is appropriate for the Commission to protect customers by capping any rate increase for NWN customers going into the winter heating season at a reasonable level.[12]

[8] Staff Opening Brief at 29.
[9] CUB/300 Jenks/2.
[10] CUB/300 Jenks/10.
[11] Staff Opening Brief at 25.
[12] *Id.* at 26.

The second part of CUB's Proposal is the mitigation of rate shock. The mitigation element is only triggered if rates surpass the threshold.[13] CUB includes three mitigation tools available to the Commission. It's important to note that CUB's proposal is constructed with these tools that the Commission itself identified as available to mitigate rate shock.[14]

The three mitigation tools are as follows:

(1) CUB continues to recommend a gradual phase-in of the rate increase, otherwise discussed in testimony and CUB's Opening Brief as a delay of a portion of the rates above the threshold from a November 1, 2024 effective date, to an April 1, 2025 effective date.[15] This delay applies to the total increase, which combines the GRC, PGA and other schedules that run concurrently with the PGA.[16] The PGA is a forecast of the actual commodity costs that will be incurred over a 12-month period with a true up mechanism.[17] This can be contrasted to the NWN's general rate case, which projects one year of expenses as a "test year" which is used to set a rate level that is "just and reasonable" and will be ongoing. [18] There is no expectation that rates will reset in 12 months, and utilities are not required to have the test year match the first 12 months of rates. [19] With this in mind, CUB proposes that if total rates pass the threshold, then gas costs go into rates first. Base rates in the general rate case and increases due to single issue ratemaking are then allocated any remaining range under the threshold for a rate increase November 1. [20] The remaining total increase is delayed until April 1. [21]

[13] CUB/100 Jenks/12-14.
[14] CUB/300 Jenks/6.
[15] CUB/300 Jenks/2.
[16] CUB/300 Jenks/10. For example, if the total rate increase of the GRC, PGA, and associated filings was 13 percent, then 10 percent would go into rates in November and 3 percent would go into rates in April.
[17] CUB/100 Jenks/13.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

(2) CUB proposes that when on an annual basis, a utility goes over the cap, the Commission will moderate the increase by setting ROE at the lowest level that is still within a reasonable range.[22]

(3) CUB recommends the Commission require the Company to report on actions designed to mitigate rate shock, to implement a six month moratorium on disconnections, and to report additional information about arrearages. [23]

B. The Rate Shock Proposal is not moot.

According to NWN, the results of the Second Stipulation and PGA moot CUB's rate shock proposal.[24] This assertion is short-sighted, and for the following three reasons, fails to see that CUB proposes an annual mechanism applicable to rate increases beyond the present case whether rates go above the threshold or not.

First, when rates stay below the threshold, this suggests that the mechanism is working – not moot. A matter is moot when any issue not resolved has been eliminated.[25] According to NWN, the Second Stipulation and PGA reduced the customer bill impact to 7.0 percent for residential customers.[26] NWN argues CUB's proposal is now moot because the 7.0 percent rate increase would not trigger the Rate Shock Mechanism's threshold.[27] NWN is correct that this forecasted rate increase is below the CUB recommend threshold. But the rate shock mechanism is not mooted just because the increase is below the 10 percent threshold. All this means is that

[22] CUB/300 Jenks/2.
[23] *Id.*
[24] NWN Opening Brief at 124.
[25] UE 94 – Order No. 00-393.
[26] NWN Opening Brief at 124.
[27] *Id.*

the rate increase would not trigger the rate mitigation component if the increase remained at 7.0 percent. The mechanism itself continues to be relevant whether the rate increases above the threshold or not. In fact, a rate increase below the threshold suggests that the mechanism is working, not moot. In short, the mechanism is an annual device. Its significance is that it sets an affordability level that the utility can manage its system to and in doing so the mechanism protects ratepayers from rate shock in the winter when people are already struggling with managing costs and staying warm.

Another way to think of this is through a comparison of the threshold in the Rate Shock Mechanism to the deadband in the PCAM.[28] One of the primary purposes of the deadband is to incentivize the utility to control its costs.[29] When the PCAM is in the deadband that doesn't mean that it is moot, it means that it is working. The same thing is true here. CUB is proposing to establish an ongoing mechanism that provides utilities an incentive to manage their costs. Like the deadband, our rate shock proposal provides a sustaining incentive to keep rates affordable.

Second, in arguing that the mechanism is moot, NWN does not account for the full picture of its fuel costs. In the above assertion, the Company relies on its August PGA forecast.[30] But as noted in opening testimony, this is just a forecast; the Company will update the PGA in

[28] *See* CUB/300 Jenks/13.
[29] UE 180/ UE 181/ UE 184 - Order No. 07-015 at 27 (When the Commission first approved the PCAM for PGE is stated that the sharing of power costs "should provide it with an incentive to manage its costs effectively, while sharing costs that are beyond normal business risk.").
[30] NWN Opening Brief at 124.

September.[31] We won't know what final rate increase until later this year. [32] Until then, storms in the gulf or other market fluctuations could increase natural gas costs and by extension rates.[33]

Moreover, in making this argument, NWN fails to consider the uncertainty of its exotic fuel investments on future rates. [34] Even if the price of natural gas declined, according to its IRP, NWN plans to replace natural gas with costly RNG and hydrogen-based fuels.[35] These decisions have the potential to increase fuel costs and therefore rates.[36] As natural gas is replaced by more expensive fuels, the costs could cause rates to breach the threshold – even in years without a GRC. As the Commission considers the practical significance of the Rate Shock Mechanism, it is important to keep in mind how these future fuel costs of the utility may change. The PGA is where the annual RNG tariff is implemented. The Rate Mechanism applies the threshold to the total rate increase, i.e., the PGA and GRC.[37] By design, the Rate Shock mechanism is built to handle fluctuations in fuel costs each year.[38] This year's negative PGA does not render the Mechanism moot, particularly in light of the future outlook of expensive fuel costs.

Third, NWN argues the mechanism is mooted because, "if the Commission approves the Company's proposed rate increase as reflected in the Second Stipulation, the average NW Natural residential customer bill is 12.8 percent lower than it was 15 years ago after adjusting for

[31] CUB Opening Brief at 5.
[32] *See* CUB/100 Jenks/6.
[33] *Id.*
[34] CUB/400 Garrett/38 (citing LC 79, *In the Matter of Northwest Natural Gas Company, 2022 Integrated Resource Plan* at 71 (Sept. 23, 2022)).
[35] *Id.*
[36] CUB/400 Garrett/37-39.
[37] *See* CUB/400 Garrett/37-39.
[38] *See* CUB/100 Jenks/13-14.

inflation."[39] This argument is either a fundamental misunderstanding of rate shock or it shows a concerning disconnect between the utility and the struggles of its customers. CUB's Rate Shock Mechanism is not designed to apply NWN's retroactive accounting. That would be like using a hammer to go fly-fishing.

What's more, NWN's argument misses the issue at hand: rate decreases do not create the same problem as rate increases. Rate shock is concerned with sudden, large rate increases which are significant enough that customers find it difficult to adjust their budgets to absorb the increase.[40] This shock is pronounced in the wintertime, which can make a 15 percent to 20 percent increase, when gas use it at its highest,, stressful for residential customers, particularly those living paycheck-to-paycheck.[41] Decreases don't create the same kind of hardship for customers.[42] Accordingly, this kind of accounting does not eliminate the Rate Shock issue and therefore does not render the mechanism moot.

C. The Commission must adopt a standard threshold for rate increases to know when to mitigate rate shock.

CUB and Staff urge the Commission to set a threshold for a rate increase. Fundamentally, CUB is requesting that the Commission predetermine what amount of a rate hike is large enough to trigger mitigation of rate shock. While CUB is open to other threshold caps,[43] CUB recommends a cap of 10 percent or 7 percent plus the Consumer Price Index, whichever is

[39] NWN Opening Brief at 124. NWN makes a similar argument when it claims that there can be no rate shock because the total increase over the 2023 to 2024 period is only 2 percent: the 11 percent increase from this year's GRC offset by the 9 percent decrease the year prior. *Id.* at 128.
[40] CUB/100 Jenks/4; CUB/300 Jenks/13.
[41] *See* CUB/100 Jenks/3-5; CUB/300 Jenks/7.

[43] *See* CUB Opening Brief at 19.

lower.[44] This rate threshold is not arbitrary, but rather derived from the Oregon Legislation that places a cap on increases to rental housing.[45] Establishing a threshold is necessary, as it will establish the tipping point that sets in place the mitigation aspect of the Mechanism. That is, if the Company's rate increase goes above this threshold it would trigger the mitigation component of the Mechanism.

The Company has repeatedly criticized CUB for looking to the Oregon Legislature's cap on rent increases to determine the threshold's limit.[46] These repeated criticisms amount to an argument that witness Bob Jenks just doesn't understand how regulated utilities work. Given witness Jenks expertise on the subject of Oregon utilities,[47] this is laughable, nonetheless, we reiterate here that CUB looked to the Legislature's approach for the limited purpose of setting a threshold amount, but beyond that, CUB uses the tools that Commission Beyer described to address rate shock – they are tools that are applied by a regulator to a regulated monopoly.[48] Counter to NWN's arguments, CUB's proposal did not ignore the differences between regulated utilities and the rental marketplace.[49] Instead, CUB designed its proposal to fit the circumstances of a regulated utility overseen by a state regulatory body.[50]

NWN also argues that CUB ignores that the Company's rates fluctuate and omits prior decreases from consideration of rate shock.[51] This is incorrect. In determining that his residential rate had increased by 42.7 percent since October of 2021, witness Jenks included in the total both

[44] CUB/100 Jenks/7.
[45] CUB/100 Jenks/7 (citing Kyra Buckley, New rental cap kicks in, limiting hikes to 10 percent next year for some Oregonians, Or. Pub. Broad. (Sept. 26, 2023, 5:02 PM), https://www.opb.org/article/2023/09/26/oregon-rent-increase-caps/).
[46] *See e.g.*, NWN Opening Brief at 126-27.
[47] *See* CUB/101.
[48] CUB/100 Jenks/5; CUB/103 Jenks.
[49] NWN Opening Brief at 126-27.
[50] UG 490/CUB/300 Jenks/6.
[51] NWN Opening Brief at 124, 127.

increases and the decreases he is accused of ignoring.[52] Rates are just increasing at such an unsustainable level, that it appears even the Company believes a 42.7 percent increase is unrealistic.

Finally, CUB addresses what appears to be NWN's coy suggestion that the Commission could again adopt a deferral to address rate shock.[53] In sum, CUB finds that its proposed delay is more appropriate than a deferral.[54] In a deferral, a set of costs are put aside, tracked, and later added into rates with a carrying charge.[55] In the interest of protecting customers from rate shock, if the Commission adopted a deferral system, it would be making customers pay more in total costs to the utility then they would have done without any rate shock mitigation.[56] In essence, when you institute a deferral to mitigate rate shock, customers are using the utility to finance a rate decrease and paying the utility back with interest. This amounts to the Company giving customers a loan rather than actually reducing costs.[57]

CUB is also concerned that a deferral removes the incentive in the rate shock mechanism for the Company to manage its costs.[58] This incentive is a key component of how the mechanism operates: if the Company knows that mismanaged costs lead to rate shock, and that recovery of some dollar might be delayed a few months, this provides the Company with an incentive to try to manage the timing of its investments and avoid a

[52] CUB/300 Jenks/11-12.
[53] *See e.g.,* NWN Opening Brief at 130.
[54] *See* CUB/300 Jenks/3-5.
[55] CUB/300 Jenks/4
[56] CUB/300 Jenks/5.
[57] *Id.*
[58] *Id.*

regulatory delay in cost recovery.[59] A deferral, on the other hand, end-runs this incentive component. If costs get out of hand and lead to rate shock, NWN knows it gets to finance a deferral to temporarily lower rates but is fully paid back with interest.[60] Thus, a deferral provides no incentive to the Company to manage its costs.[61] Accordingly, CUB requests that the Commission look past the Company's hints at a deferral, and instead adopt CUB recommended delayed approach to any rate increase above the threshold.

D. CUB's proposal to mitigate rate shock does not deny NWN an opportunity to earn a reasonable return.

To mitigate rate shock, CUB recommends the Commission delay the rate effective date for the portion of the rates that surpass the threshold. In this proceeding, the delay would be from November 1, 2024, to April 1, 2025. NWN argues that this delay or adjustment of the total rate increase would cause the Company to under recover during the winter heating season. Therefore, NWN asserts the delay denies the Company an opportunity to earn a reasonable return.[62] NWN further argues the Commission is limited to considering rate shock "only in the rate spread and rate design stage—and not in determining revenue requirement."[63]

The Commission does not require precise calculations of actual costs.[64] Instead in a GRC, a test year is used to allow us to forecast the utility's costs.[65] But the purpose of these set

[59] *Id.*
[60] CUB/300 Jenks/5
[61] *Id.*
[62] NWN Opening Brief at 130; *see also id.* at 132 (delaying rate increases prevents utilities from timely recovering prudently incurred costs in violation of the regulatory compact).
[63] NWN Opening Brief at 125.
[64] CUB/300 Jenks/2; *see also* UE 374, *In the Matter of Pacificorp, DBA Pac. Power*, Order No. 21-090 at 8-9 (Mar. 29, 2021) (citing Order No. 08-487 ("*Trojan Remand Order*") at 7).
[65] *Id.*

rates is not to guarantee cost recovery for the test year.[66] It's important to remember that, even if a rate increase does not trigger the rate shock mechanism, it is possible that the Company could over or under recover, that does not mean it has been denied the opportunity to earn a reasonable return.[67]

In setting these rates under a comprehensive and flexible regulatory scheme, the Commission can consider the rates included in the Second Stipulation alongside its consideration of CUB's Rate Shock Proposal. With multiple cost recovery mechanisms, customers must be able to afford all the investments – all of the cost increases – that the Commission approves.[68] And the prudent management of a utility should recognize this. [69] If a utility cannot keep its cost increases below the threshold, then some of the increase will be delayed.[70] If a utility can successfully manage the timing of its investments and cost increases in order to avoid rate shock, then there will not be any delay. [71] If a utility comes close, but occasionally goes over the threshold by a small amount, only that small amount would be delayed. [72] The fact remains that approval of the rates generally does not guarantee recovery, and approval of rates is certainly not a guarantee of specific monthly recovery.[73]

Of course, it's not lost on CUB that NWN accrues higher revenues in the winter than in other months.[74] As CUB has explained, this is when people are running their heaters to stay warm and, in turn, need relief from winter rate increases. But while CUB's proposal may shift

[66] CUB/300 Jenks/2.
[67] CUB/300 Jenks/2.
[68] CUB/300 Jenks/8.
[69] *Id.*
[70] CUB/300 Jenks/9.
[71] CUB/300 Jenks/8.
[72] *Id.*
[73] *Id.*
[74] NWN Opening Brief at 130.

when the Company expects to recover costs and could lead to some regulatory lag, the proposal neither changes the revenue requirement nor denies cost recovery.[75] Earning below the forecast recovery is not the same as being denied the opportunity to earn a reasonable return.

Similarly, setting the rate at a level that is not lower than the lowest reasonable rate does not deny NWN an opportunity to earn a reasonable return. This mitigation response recognizes that there is normally a range of reasonableness when rates are established centering around the utility's ROE.[76] For example, in Rebuttal testimony, Staff observed a range of reasonable ROEs of 9.18 percent to 9.40 percent, with a mean ROE of 9.29.[77] As witness Jenks explains, if "the Commission is setting rates that seek to allow the utility to receive earnings that are within this range, the rates are reasonable."[78] Counter to NWN's arguments, [79] by definition, setting the ROE at the lowest *reasonable* amount meets the *Hope* and *Bluefield* standards for reasonable rates.[80] For example, if the Commission sets a reasonable range of ROEs as between 9.1 percent and 10.0 percent, as long as the Commission is setting rates that seek to allow the utility to receive earnings within this range, the rates are reasonable.[81] If the Commission set the ROE at 9.4 percent, then there is still room where the Commission could reduce the ROE, *i.e.*, down to 9.1 percent, and maintain a reasonable return for NWN's shareholders.[82]

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[75] CUB/300 Jenks/10.
[76] *Id.* ("When establishing ROE, most expert witnesses first determine a reasonable range of ROEs and then make a recommendation as to where within this reasonable range to set the ROE. This ROE range can be viewed as the range of reasonableness for rates, generally. As long as the Commission is setting rates that seek to allow the utility to receive earnings that are within this range, the rates are reasonable. Because of this range, the Commission can reduce rate shock by setting rates at the lowest level that is reasonable but still in the reasonable range.").
[77] Staff/2400 Muldoon/14.
[78] CUB/100 Jenks/10.
[79] NWN Opening Brief at 134.
[80] *See* CUB/300 Jenks/15.
[81] CUB/100 Jenks/10.
[82] CUB/100 Jenks/10; CUB/300 Jenks/15.

By signing onto the Second Stipulation with a 9.4 percent ROE, this is not a signal that this mitigation tool is inapplicable to address rate shock or otherwise "moot". As discussed throughout this proceeding, CUB's Rate Shock Proposal is a sustaining mechanism designed to be applicable to the present case and to rate increases in future years. Lowering the ROE to the lowest reasonable level remains an effective way to encourage utilities to prevent rate shock. Utilities currently have a great deal of incentives to spend money, to make investments, to ask for new ratemaking mechanisms, and to seek higher rates. [83] But incentives to hold down rates are particularly non-existent. [84] Even a small ten basis point reduction in ROE will get a utility's attention and could lead to more focus on controlling costs.[85]

Finally, although CUB's rate shock proposal takes place outside of the determination of the revenue requirement, CUB challenges the Company's assumption that the Commission's authority is so limited that it cannot consider rate shock in the context of the revenue requirement and instead may only consider rate shock in the limited scope of rate spread and rate design.[86] The Commission has broad authority to determine just and reasonable rates.[87] And yet, like other Oregon utilities before it, NWN references the infamous Order No. 01-988 to impede any discussion of implementing rate shock mitigation.[88] Notably, the Commission issued this order in 2001, two years before Commissioner Beyer testified to the Oregon Legislature that the

[83] CUB/300 Jenks/15-16.
[84] *Id.*
[85] *Id.*
[86] NWN Opening Brief at 124-25.
[87] *Trojan Remand Order* at 5 ("[t]he Commission sets rates under a comprehensive and flexible regulatory scheme. The legislature has expressed no specific process or method the Commission must use to determine the level of just and reasonable rates, and the Commission has great freedom to determine which of the many possible methods it will use.") and *id.* at 4 (The legislature has provided the Commission with "the broadest authority—commensurate with that of the legislature itself—for the exercise of [this] regulatory function.").
[88] NWN Opening Brief at 124-25 (citing Docket UE 115, *in re Portland Gen. Elec. Co.'s Proposal to Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149*, Order No. 01-988 at 5 (Nov. 20, 2001)).

Commission had tools to mitigate rate shock – tools not limited to rate design and rate spread. Indeed, its telling that this order stands alone, without other supporting decisions that would reinforce the Company's assertion that the Commission's authority is limited when it considers rate shock.[89] The determination of just and reasonable rates is based on the end result. CUB thus challenges this assumption that, when setting the just and reasonable rate, the Commission cannot consider rate shock under *all* the components of ratemaking under its authority.

1. The Commission must act on the record before it and not the whims of a speculative future Wall Street.

NWN provides case law and assertions on the Commission's duty to balance the interests of ratepayers and the Company's shareholders.[90] But at no point does the Company's Opening Brief create an articulable link between an investment community's reaction and the proposed delay to mitigate rate shock. Nor does the Company's testimony provide any economic analysis showing a material change in shareholder profits from CUB's proposals to mitigate rate shock. Instead, the Commission has said of regulatory lag, which is similar to CUB's proposal to delay recovery, that this lag "does not necessarily prevent a utility from maintaining a healthy credit rating or attracting capital. The risk and extent of the effect of regulatory lag is commonly evaluated and understood by those who invest capital in utilities." [91] Yet the Company insinuates that the Commission should not act on CUB's proposal due to a potential negative future reaction.

[89] NWN Opening Brief at 125.
[90] *See* NWN Opening Brief at 130-32.
[91] UM 1909 – Order No. 20-147 at 13.

Utilities cannot continue to raise the specter of a dissatisfied investor community to justify unsustainable spending, particularly when the record shows it is the financial security of ratepayers which is in jeopardy. As witness Jenks testified,

> Rate shock is a big problem for customers that live paycheck-to-paycheck. Adjusting to rate shock means adjusting how much a person pays for food, medicine, other utilities, and other expenses in order to make up for the increase in their [gas] bill. For customers who live paycheck-to-paycheck, absorbing a $40 to $60 increase in one bill can be very difficult, and absorbing a bill that is more than $100 above normal due to a combination of rate increases and cold weather can be nearly impossible.[92]

Just as ratemaking has a capital attraction function, it also has an income transfer function.[93] The income transfer function considers the customer's ability to pay and in turn, the ability of customers to maintain safe and reliable utility service.[94] Here, the record is devoid of the actual impacts to shareholders, but full of the impacts to ratepayers from an increase in rates.[95] Public Comments submitted to the Commission and memorialized in Staff Opening testimony reflect concerns about affordability.[96] "Commenters often discuss how these increases could stretch their monthly budgets, emphasizing the significant financial impact on households. Some comments directly appeal to the [Commission] asking for consideration of the financial burden on customers and urging the [C]ommission to take action to mitigate these impacts."[97] Accordingly, the Commission must act on the record before it and not the whims of a speculative future Wall Street.

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[92] CUB/100 Jenks/5.
[93] See JAMES BONBRIGHT, PRINCIPLES OF PUBLIC UTILITY RATES 58-62 (1961).
[94] *Id.*
[95] *See* Staff/2200 Nottingham (documenting public comments the Commission received as part of Staff's Opening Testimony).
[96] Staff/2200 Nottingham/2.
[97] Staff/2200 Nottingham/2-3.

2. CUB's proposal does not violate the 10-month suspension period of ORS 757.215.

ORS 757.215(1) provides:

> The Public Utility Commission may, pending such investigation and determination, order the suspension of the rate or schedule of rates, provided the initial period of suspension shall not extend more than six months beyond the time when such rate or schedule would otherwise go into effect. If the commission finds that the investigation will not be completed at the expiration of the initial suspension, the commission may enter an order further suspending such rate or schedule for not more than three months beyond the last day of the initial suspension.

NWN argues CUB's proposed delay violates the suspension period of ORS 757.215.[98] As the record shows, this is incorrect.[99] The final Commission order would determine the rates that go into effect on November 1, which combine the GRC, PGA and other schedules that run concurrently with the PGA.[100] November 1 is the rate effective date the utility requested in its initial filing.[101] If the total rate increase would surpass the threshold, the Commission's order could delay a portion the total rate increase above the threshold.[102] CUB questions whether a delay of the rate effective date is the same as a suspension of the rates. That is, it's reasonable to interpret the statute as: after the Commission issues its final order setting the two sequential rate effective dates, the investigation into the rates would no longer be pending and the rates thus no longer suspended. Regardless, the Commission does not need to determine the distinction here because, should the rate increase trigger the delay, a portion of the rates would go into effect on November 1, the requested rate effective date, and the remainder would go into effect six months later on April 1.

[98] NWN Opening Brief at 129 -130.
[99] CUB/300 Jenks/9.
[100] CUB/300 Jenks/10.
[101] UG 490 – NWN Initial Filing.
[102] CUB/300 Jenks/10.

Moreover, CUB notes that the Commission has previously allowed rate increases with sequential rate effective dates.[103] In the consolidated docket UE 180/UE 181/UE 184, the Commission adopted a stipulation where rates related to the Resource Valuation Mechanism (RVM) would go into effect January 1, followed by rates from the general rate case effective January 14, supplanting the RVM rates.[104] CUB's proposal to delay a portion of the rates can be viewed along similar lines. Rates up to the threshold would become effective November 1. Then on April 1, the total rate increase would supplant the November 1 rate increase.

Finally, CUB questions the sincerity of NWN's challenge. As noted in Opening testimony, utilities have several mechanisms to adjust rates outside of the general rate case and thus outside of the "suspension period". Most notably, the tracker. Utilities in Oregon regularly request trackers to bring in costs that become used and useful well after the rate effective date.[105] NWN's testimony discusses how in its next general rate case it is going to propose a multiyear rate case that authorizes a series of rate increases over multiple years. [106] The Company seems to be taking the position that utilities can request rate increases that occur outside of the suspension period, but customers cannot. [107]

Recommendation

The problem of rate shock associated with large increases has never been higher.[108] In providing this Rate Shock Proposal, CUB recommends the Commission adopt a standard mechanism that would establish both a threshold for rate increases and mitigation when rates

[103] See UE 180/UE 181/UE 184 – Order No. 06-575 at 1-2; *see also* UE 188 - Order No. 07-573 at 4.
[104] UE 180/UE 181/UE 184 – Order No. 06-575 at 2.
[105] CUB/300 Jenks/9.
[106] *Id.*
[107] *Id.*
[108] CUB/300 Jenks/7.

surpass the threshold. As discussed here and in CUB's Opening Testimony, many of the Company's arguments against adopting a standard mechanism mischaracterize the proposal and are not supported by the record. Rather CUB believes that a standard mechanism would provide winter relief to ratepayers and certainty to both ratepayers and the Company on how much and when rates will increase.

Under CUB's proposal:

- Residential rates would be capped at 10 percent or 7 percent + the Consumer Price Index.
- When on an annual basis, a utility goes over the cap, the Commission will moderate the increase by setting ROE at the lowest level that is still within a reasonable range.
- If the rate increase is above this cap, the Commission should delay part of this GRC increase until Spring to keep rates under the cap.
- The Company should be required to report on actions designed to mitigate rate shock, should be required to implement a six-month moratorium on disconnections, and should be required to report additional information about arrearages.

Issue 2: NWN's proposed LEA Policy

The Commission should reject the Company's proposed LEA Policy, as it did in UG 435, because the Company ignores the policy's risk of stranded assets.

A. The proposed LEA Policy does not comply with the Commission's directive in UG 435 because the proposed policy risks stranded assets.

Staff, CUB, and the Coalition oppose the Company's LEA policy proposal.[109] In this closing brief, CUB addresses NWN's opening testimony assertion that the Company's proposed

[109] *See* CUB Opening Brief at 20, Staff Opening Brief at 1,8; Coalition Opening Brief at 18.

LEA complies with the Commission's directive in UG 435, Order No. 22-388.[110] As demonstrated below, the record does not support this statement.

In Order No. 22-388 the Commission found three elements problematic with NWN's historic LEA policy. First, the Commission found the Company's LEA policy failed to consider decarbonization costs brought to NW Natural's system from new customers associated the Company's CPP obligations.[111] Here, NWN argues its proposed LEA policy complies with the Order by reflecting these compliance costs in its LEA.[112] According to the Company, the proposed LEA policy provides a higher allowance for customers with lower-than-average usage, allowing the Company to continue to grow its system while meeting decarbonization goals.[113] CUB disputes whether the LEA is properly designed to encourage this kind of efficiency[114] and whether the proposed LEA policy has reasonably accounted for decarbonization compliance costs in line with the Commission's directive.[115]

Second, even if the Commission finds that the Company's proposed LEA policy accounts for decarbonization compliance costs, the proposed LEA policy ignores the risk of stranded assets. In Order No. 22-388 the Commission raised the issue of stranded costs. The Commission noted that unrecovered rate base investment from the new customer plant additions that remained even after 30 years of continued service were "indicative of the LEA being currently too generous and saddling existing customers with increased costs for a period of time that is

[110] *See* NWN Opening Brief at 47.
[111] UG 435 - Order No. 22-388 at 48.
[112] NWN Opening Brief at 46.
[113] NWN Opening Brief at 47.
[114] CUB/400 Garrett/22 – 28; *see also* CUB/200 Garrett/18.
[115] CUB/400 Garrett/37-39.

unreasonably long."[116] Here, the record shows the Company's proposed LEA policy suffers the same flaws.

To begin, while the initial cost of a Tier 2 LEA presented in the Company's reply testimony was capped at $2,900,[117] the total cost of that LEA, inclusive of financing costs, taxes, and other expenses, is approximately $15,431.[118] The LEA subsidizes capital investments with useful lives of 65 years or more.[119] These capital investments are depreciated over that lifespan, with the depreciation expense included in rates to recover the investment. This corresponds with a long pay-back period for residential customers.[120] In Order No. 22-388 the record showed "a reasonable possibility that the company will encounter a trend of decreasing gas usage, potentially driven by economic signals toward fuel switching."[121] Here, CUB shows that the trend is continuing, with the market as well as state and federal policies favoring electrification.[122] If we assume a conservative 1 percent attrition rate to model this trend, the Company's Tier 2 ($2,900) LEA results in a net stranded investment of approximately $40.8 million after ten years.[123]

The Company's proposed LEA policy ignores this risk.[124] Instead, NWN criticizes CUB's use of a depreciation study with a 60-year time horizon rather than using the Company's 25-year timeline in its DCF model.[125] NWN argues that a new customer that remains on the

[116] UG 435 - Order No. 22-388 at 49.
[117] NW Natural/4400 Kravitz/7 (In its surrebuttal testimony, the Company reduced its proposed Tier 2 LEA from $2,900 to $2,300 to align with the updated modeling explained in NW Natural/4900, Therrien).
[118] CUB/400 Garrett/5-6; CUB/404 Garrett/4.
[119] CUB/400 Garrett/33; CUB/406 Garrett – "Data Requests", NWN Response to CUB DR 32; *see also* UM 2312 - NW Natural's Updated Depreciation Study at IX-75 (Jan. 2, 2024).
[120] CUB/400 Garrett/35
[121] UG 435 - Order No. 22-388 at 50.
[122] *See* CUB/200 Garrett/20-27.
[123] CUB/400 Garrett/34; CUB/404 Garrett – "Stranded LEA Costs".
[124] *See* CUB/400 Garrett/39-40.
[125] UG 490 – NW Natural/4000 Therrien/33, 35; CUB/400 Garrett/35.

system for 25 years of continued service will contribute enough margin to offset the cost of the LEA.[126] NWN's analysis, however, does not reflect the remaining investment costs of LEA through time.[127] An asset with a 65 year lifespan means that even after NWN assumes the margin costs will be covered, for the next 40 years customers will continue to pay for the depreciation costs and return on that investment.[128] Unless the Company accelerates depreciation, paying off these LEAs provided in 2025 will still burden customers in 2090.[129] This risk mirrors the concerns raised by the Commission in Order No. 22-388.

Third, in Order No. 22-388 the Commission criticized the Company's assumption that customers would remain on the system for 30 years as "too optimistic" given the reasonable possibility of a trend of decreasing gas usage and fuel switching.[130] Here, NWN's model assumes customers will remain on the system for 25 years to justify the Company's proposed LEA.[131] This is a full decade after new gas heating appliances will need to be replaced.[132] If a new customer discontinues service after 15 years, for example, by replacing their gas furnace with an electric heat pump, the total LEA cost invested to serve that new customer will be paid by existing customers.[133] Accordingly this 25-year customer preference is also "too optimistic."

[126] NW Natural/4000 Therrien/Page 33; CUB/400 Garrett/35.
[127] CUB/400 Garrett/35.
[128] *Id.*
[129] CUB/400 Garrett/40. While CUB's testimony does not go into the details of accelerated depreciation of this nature, we note that the Company to make no proposal to shorten the useful life or depreciation period (and investment value) of the LEAs. Nevertheless, the Company claims the usefulness of the LEA past 25 years is essentially irrelevant beyond the time horizon of its DCF analysis. This is a dangerous position to take as the purpose of aligning depreciable lives with useful lives is to prevent scenarios where LEAs are financed now without regard for the people who will be paying off the investment decades into the future. CUB/400 Garrett/36.
[130] UG 435 - Order No. 22-388 at 49.
[131] NWN/4000 Therrien/33.
[132] CUB/400 Garrett/34.
[133] See CUB/400 Garrett/33-24.

By identifying these three issues as failings of the Company's prior LEA policy at issue in UG 435, the Commission has signaled the Company must consider not just CPP compliance costs, but also customer attrition and the risk that stranded costs will be placed on a shrinking customer base. Unfortunately, instead of addressing stranded assets in its proposed LEA policy, NWN argues that Staff's, CUB's, and Coalition's concerns are "speculative and unsupported."[134] Ignoring this key concern is contrary to the Commission's directive in Order No. 22-388 and the record in this proceeding. Accordingly, the Commission should reject the Company's proposed LEA policy because the evidence on the record shows the proposed LEA policy overlooks the risks of stranded costs.

Recommendation

In UG 435, the record established that the Company's LEA should be revised downward, and thus the Commission adopted the existing LEA policy.[135] In closing CUB makes two recommendations:

1. CUB continues to urge the Commission to maintain the existing downward-adjusting LEA policy such that there is a complete phase out by 2027.[136]
2. In light of the past LEA overspend evidenced in the record, and addressed in the following section, CUB makes a belt and suspenders request that the Commission direct the Company to adhere to the LEA cap for each new customer and every LEA.[137]

Issue 3: LEA Overspend

> The record is clear. NWN violated its tariff by expanding the allowable LEA and placing excess construction costs into rate base rather than recovering these costs

[134] NWN Opening Brief at 43, 55, 65.
[135] UG 435 Order No. 22-388 at 48.
[136] CUB/400 Garrett/46.
[137] *Id.*

from the new customers who incurred them. CUB's recommendation is a prospective rate base reduction not a refund.

A. The record makes clear that the Company violated the tariff on file.

CUB and the Coalition agree that NWN has violated its tariff. It is surprising to see NWN bring forth arguments in briefing that have already been thoroughly rebutted on the record. Namely the record shows that NWN violated the clear terms of its tariff by placing excessive line extension allowances into rate base rather than recovering these costs from the new customers who incurred them. The record also shows that CUB is not asking for a refund to remedy the violation. Rather CUB proposes a prospective resolution. CUB urges the Commission to reduce rate base by $13.7 million in this proceeding to account for the undepreciated LEA overspend.

B. Reading Schedule X to permit the Company to shift construction cost overages into rate base, and therefore onto existing ratepayers, defies the Commission's Line Extension Principles.

Interpreting Schedule X to allow the Company to shift excess construction costs into rate base defies the Line Extension Principles adopted by the Commission.[138] The Commission's Line Extension Allowance Principles provide that, while the utility is obligated to serve all customers in its service territory, "this obligation does not exempt the new customer from bearing the costs incurred to connect the customer to the system."[139] To reduce the expense, the utility may provide a line extension allowance credited against the new customer's construction cost.[140] The existing customer provides this credit in recognition that the new customer will

[138] See generally UE 385 - *In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Advice No. 20-14 (ADV 1130), Schedule 300 Line Extension Allowance*, Order No. 20-483 Adopting Staff's Recommendation with Modifications (December 23, 2020) ("Line Extension Principles").
[139] Line Extension Principles, Appendix A at 3.
[140] *Id.*

contribute revenues to the system, which help pay for common costs.[141] Importantly, the Principles require that the Commission applies a "limiting factor" on the credit amount to ensure that the amount of the line extension does not result in higher rates to other customers since the LEA credit is included in revenue requirements.[142] Thus the Principles establish both a limited line extension credit, i.e., LEA cap, and the "customer contribution," i.e., the new customer's payment for the remainder of the costs the new customer incurs that are not offset by the credit. Under this framework, the Commission holds existing customers harmless by only placing the limited LEA credit into rate base.[143]

NWN is not administering its tariff consistent with these Principles. NWN does not limit the LEA dollar amount credited to each new customer.[144] Instead, NWN explains in its opening brief that it limits the Customer Contribution from each new customer based on a construction *estimate* net the LEA credit.[145] Then, after building the line extension to the property, dumps all the accrued costs over the customer contribution into rate base.[146] In this way, NWN's practice has shifted its LEA policy from capping each LEA credit to capping each new customer contribution.[147]

[141] Line Extension Principles, Appendix A at 3.
[142] *Id.*at 3-4.
[143] *Id. at* Appendix A at 4 (explaining the goal of Commission staff is to hold existing customers harmless from the impacts of the line extension costs).
[144] NW Natural/4900 Therrien/ 23: 8- 23.
[145] *See* NWN Opening Brief at 75 ("The full construction costs are included in plant whether or not construction costs are higher than estimated."); The Company defines Construction Contribution as the "amount that an Applicant or Customer must pay toward the cost of construction of Distribution Facilities." NWN – General Rules and Regulations, Definitions. P.U.C. Or. 25., https://www.nwnatural.com/about-us/rates-and-regulations/oregon-tariff-book.
[146] *Id.*
[147] *See e.g.*, NWN Opening Brief at 73 (asserting Schedule X provides a methodology to limit amount of the construction contribution that the customer must pay when the estimated costs of construction exceed the construction allowance.).

Anyone who has worked in construction knows there's a high likelihood actual costs will exceed the estimate. Indeed, the record shows that from 2018 to 2023 NWN's practice resulted in over 7,000 incidences of NWN providing new customers with line extension allowances over the limit in order to cover construction cost overruns.[148] And in many cases, even requiring the new customer to contribute nothing toward the construction cost.[149] In turn, the Company placed approximately $16 million of impermissible construction overages into rate base.[150]

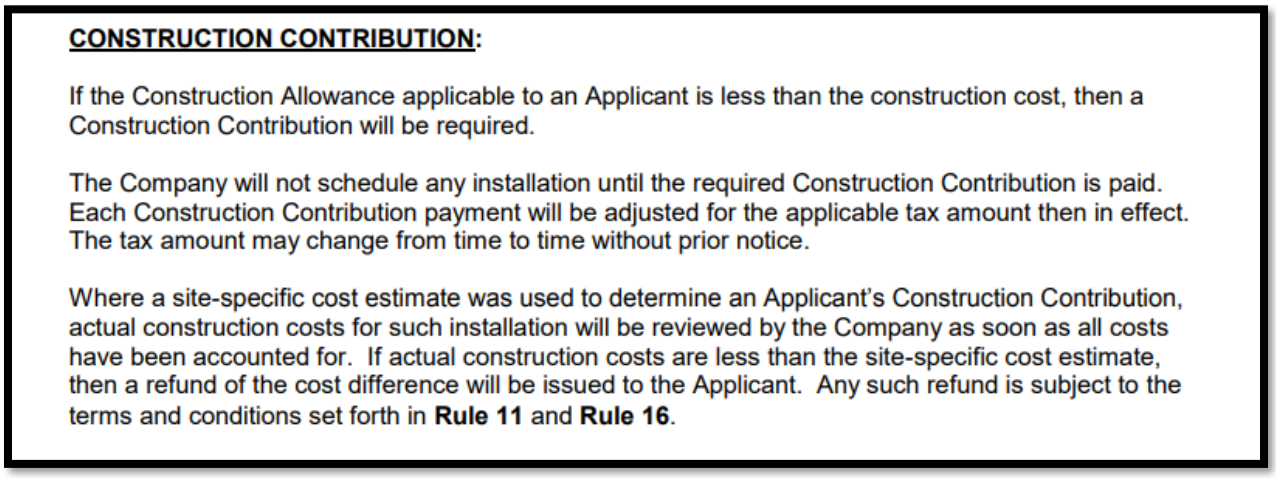
NWN argues Schedule X permits this transgression. According to NWN, the text of Schedule X, shown in Figure 1 below, that reads "If the Construction Allowance applicable to an Applicant is less than the construction cost, then a Construction Contribution will be required" only applies to *estimated* construction costs.[151] As such, NWN asserts that the new customer is only responsible for estimated costs over the LEA, not the *actual* costs the new customer incurs.[152] NWN maintains that once it has entered into a contract with the new customer based on the estimated costs, "[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."[153]

These excuses are not supported. To begin, NWN should not be drafting contracts that limit its ability to fully recover costs.[154] Moreover, NWN is not legally bound to contracts that conflict with the filed tariff. As explained in CUB's Opening Testimony, the Oregon Court of Appeals

[148] CUB/400 Garrett/11.
[149] CUB/403 Garrett.
[150] *Id.*
[151] NWN Opening Brief at 75; CUB/402 Garrett/7.
[152] NWN Opening Brief at 75.
[153] *Id.*
[154] CUB/400 Garrett/13.

has held that customer contracts due not trump the utility's tariff on file.[155] Similarly, in Order No. 05-726, the Commission explained its broad ratemaking power could not be limited by a private contract between the utility and its customer.[156] Finally, as shown in Figure 1 below, the sentence NWN refers to in Schedule X does not use the word "estimated." Instead, the word "estimated" is read into the text by the Company. As such the plain language of the tariff makes clear that new customers must pay the costs they incur on the system net of the LEA. The Company cannot rely on contracts between it and the customer to exempt the customer from bearing the actual costs they incur to connect to the system.

Figure 1: Excerpt from Schedule X, Issued October 31, 2012, Sheet X-6



CONSTRUCTION CONTRIBUTION:

If the Construction Allowance applicable to an Applicant is less than the construction cost, then a Construction Contribution will be required.

The Company will not schedule any installation until the required Construction Contribution is paid. Each Construction Contribution payment will be adjusted for the applicable tax amount then in effect. The tax amount may change from time to time without prior notice.

Where a site-specific cost estimate was used to determine an Applicant's Construction Contribution, actual construction costs for such installation will be reviewed by the Company as soon as all costs have been accounted for. If actual construction costs are less than the site-specific cost estimate, then a refund of the cost difference will be issued to the Applicant. Any such refund is subject to the terms and conditions set forth in **Rule 11** and **Rule 16**.

Similarly, NWN argues that while Schedule X requires the Company to refund customer contributions where actual costs are less than the site-specific estimate, the Company posits, Schedule X does not include language that would require the reverse.[157] The Commission should reject this evasive reading of the tariff. As shown in Figure 1 above,[158] the first sentence in the

[155] CUB Opening Brief at 33 (citing *Perla Development Co. v. PacifiCorp*, 727 P.2d 149, 151 (Or. Ct. App. 1986)).
[156] UE 171 – Order No. 05-726 at 4 (citing *American Can Co., v. Davis*, 28 Or App 207, rev den 278 Or 393 (1977)).
[157] NWN Opening Brief at 76 (citing NW Natural/5001, Zaubi-Kravitz/6-7).
[158] NW Natural/5001 Zaubi-Kravitz/ 6.

referenced Schedule X provision requires that the new customer pay for construction costs the customer incurs in excess of the LEA.[159] The sentence following NWN cite references the terms the Refund is subject to.[160] Thus, it is more appropriate to read this refund provision as explaining the conditions of a refund rather than exempting the customer from paying their actual construction costs.

Likewise, NWN argues Schedule X does not require a "true-up" of the customer contribution to reflect actual costs, which the Company argues would be "overly complex" to administer.[161] The record does not support this assertion. As the American Gas Association reports LEAs require that the "customer must pay the costs that are above the fixed cap."[162] This July 10, 2024 report on the Current State of Natural Gas Utility Line Extension Policies, provides that, across the United States, utilities routinely recover excess construction costs from new customers through either a monthly surcharge on the new customer's bill or through a Contribution In Aid of Construction (CIAC), [163] which is "a payment made by a new customer for the portion of the line extension that is not covered by an allowance."[164] NWN has the tools to implement such a system; recovery is not "overly complex."

Moreover, NWN cannot justify its conduct by pointing to the many customers it would need to bill for the work. The Company has touted its growth strategy, but now uses its expanded service as an excuse for failing to recover the construction costs. Further, these workload issues

[159] Coalition Opening Brief at 35; Coalition/400, Cebulko/Page 22.
[160] NW Natural/5001 Zaubi-Kravitz/ 6.
[161] NWN Opening Brief at 76-77.
[162] CUB/502/41 - American Gas Association, *The Current State of Natural Gas Utility Line Extension Policies*, July 10, 2024.
[163] CUB/502/42, 59-63.
[164] CUB/502/55.

have not prevented the Company from taking on its own construction projects, collecting payments from existing customers, or initiating this rate case. The Commission should expect that the Company would take all steps necessary to meet its regulatory obligations to recover costs it now claims are prudent rather dumping those costs into rate base.

In sum, reading into the tariff zero responsibility for the new customer to cover the costs they incur is out of line with the Commission's principles. Schedule X establishes the "Construction Allowance" as the cornerstone upon which other components of the LEA policy are derived. If NWN can simply place all construction costs incurred above the estimate into rate base, not only does it harm existing ratepayers, but it renders the LEA obsolete.

C. LEA overspend is not prudent

NWN argues that "the unrebutted evidence in the record demonstrates that the Company's LEA administration and the resulting rate base are prudent."[165] This is false. In the past three general rate cases, dockets UG 344, UG 388, and UG 435, CUB argued that NW Natural failed to provide any testimony on the prudency of its LEA investments and yet those amounts were allowed into rates.[166] At the time, it was assumed NWN adhered to the tariff on file when it included the LEA costs in rate base. As such the LEA investments were presumed prudent.[167] But the record here demonstrates that this was not the case. It's not prudent to spend above the capped amount.[168] Likewise, NWN's arguments that 80 percent of LEAs in 2023 were below the LEA cap is irrelevant.[169] The LEA cap is the maximum dollar amount the utility can credit to the

[165] NWN Opening Brief at 76.
[166] *See generally* UG 435 – CUB Opening Brief.
[167] *Id.*
[168] *See* CUB/400 Garrett/7, 14; Coalition/400 Cebulko/Page 23-24.
[169] NWN Opening Brief at 77.

new customer.[170] Thus, 100 percent of LEAs must be at or below the LEA cap. In determining the financial benefits of the LEA to ratepayers it's assumed that some customer's allowances will be below the cap, and that no customer allowances will exceed the cap.[171] As witness Cebulko explains:

> Contrary to the assertions of [NWN] Witness Zaubi, there is no excess benefit accruing to existing customers if connection costs for new customers do not exceed the LEA—this is simply the policy as described in Schedule X. Quite the opposite, it is not to the benefit of existing customers to bring on new customers whose cost exceed the LEA cap—doing so incurs costs that are imprudent and harms ratepayers.[172]

Moreover, the Commission should not afford NWN's PVRR analysis any weight. According to NWN, it has shown that the Company's excessive spending on the LEAs is prudent because "the present value revenue requirement ("PVRR") was negative—meaning that existing customers were not harmed by including the LEA amounts in rate base."[173] Fundamentally, a PVRR analysis where the LEA is appropriately capped according to the tariff would show an *even greater* benefit to existing customers because the construction costs included in rate base would be lower.[174]

Finally, NWN's "Portfolio Approach" cannot be used to justify the prudency of the expenditures.[175] Under the Portfolio Approach, the Company annually assess whether the net capital cost of LEAs is below the per-residence cap in Schedule X.[176] NWN argues the prudency of LEAs should be evaluated by averaging costs across the entire portfolio of new customers to

[170] *See* CUB/402/ Garrett 6, 10.
[171] *See* Coalition/400 Cebulko/Page 23.
[172] *Id*.
[173] NWN Opening Brief at 77; *see also* NW Natural/5000, Zaubi-Kravitz/21.
[174] *See* CUB/400 Garrett/14; Coalition/400 Cebulko/ 23-24.
[175] CUB/400 Garrett/14.
[176] *See* NWN Opening Brief at 77; CUB Opening Brief at 33.

determine whether they are equal to or less than the residential LEA.[177] Under this method, it would seem the Company constructs the line extension, covers the total cost net the customer contribution, and then, at the end of the year the Company finds the "net capital cost" of the LEAs and *hopes* that this net capital cost is under the LEA cap. NWN argues this method is prudent because so far, the net costs have been below the cap each year.[178] CUB would call this luck, not prudent business decision making.

Additionally, the portfolio approach is not found within the four corners of the tariff. Instead, Schedule X provides a clear per-residence LEA cap on the credit each customer can expect to receive. If NWN wants to request the Commission change its tariff on file to incorporate a Portfolio Approach it may do so,[179] but it must do so preemptively, the Company cannot rely on this Portfolio Approach now to justify the prudency of its spending after the fact.

D. CUB's proposal to reduce rate base prospectively is not a refund.

NWN continues to mischaracterize CUB's proposal as a refund.[180] Though a refund is a legally available remedy,[181] in this proceeding CUB is asking for a prospective adjustment to rate base to resolve the issue now. This adjustment is consistent with the Commission's ratemaking

[177] Coalition Opening Brief at 30 (citing Coalition/100, Cebulko/37–38; Coalition/106, Cebulko/2).
[178] *See* NWN/ 5000 Zaubi-Kravitz/3 ("The average construction cost for all residential customers over that period is $2,246, which is demonstrably lower than the $2,875 LEA in place before November 1, 2022 and the $2,300 LEA in place between November 1, 2022 and October 31, 2023.").
[179] ORS 757.210 (Hearing to establish new schedules); *see also* ORS 757.225 (embodying Oregon's Filed Rate Doctrine).
[180] *See e.g.*, NWN Opening Brief 80-83 ("Although they seek to adjust rates prospectively, their requested remedy is prohibited retroactive ratemaking.")
[181] *See Trojan Remand Order* at 42 (Where a ratemaking order is appealed and ultimately overturned, refunds are not appropriate unless the Commission finds that "the error identified by the reviewing court rendered rates unjust and unreasonable or unjustly discriminatory.").

practice.[182] The $13.7 million reduction is undepreciated, meaning it has not yet been added into rates.[183] NWN references Order No. 08-487, the *Trojan Remand Order*, as prohibiting CUB's request.[184] But the referenced decision in the *Trojan Remand Order* is inapposite to this prospective rate base adjustment. There the Commission addressed how to issue a fair refund after the courts remanded the case following a legal error.[185] Here CUB's request for a reduction to rate base is a prospective adjustment based on the record in this proceeding, not a refund determination based on a remand.

Recommendation

CUB continues to urge the Commission to resolve the issue in this proceeding with CUB's recommended prospective $13.7 million adjustment to rate base. While this is not the only remedy available, this remedy is a fair compromise to resolve the issue now. CUB's proposal provides certainty to the Company and ratepayers, uses the Commission's traditional ratemaking practice of setting rates prospectively, and would grant immediate relief to residential customers on the rate effective date.

Issue 4: RNG AAC

> The Commission addressed many of the issues NWN raises in the prior rate case. The resolution of which was a compromise. The Commission should maintain the existing framework keeping the RNG AAC earnings test in place.

[182] *See* UG 435 - Order No. 22-388 (Applying a $4.5 million reduction to NWN's Test Year rate base in recognition of past capitalized financial performance-based incentives. This rate base offset would carry over to future rate cases); UE 283 Order No. 14-442 (Reducing the Test year rate base by $80 million, of which $32.7 million related to a correction of deferred taxes included in rate base and $10 million in recognition of past capitalized financial performance-based incentives).
[183] CUB/400 Garrett/16.
[184] NWN Opening Brief at 83.
[185] *See generally, Trojan remand Order*.

A. The Commission adopted an AAC for RNG projects but rejected a deferral of costs before the annual rate effective date.

CUB, AWEC, and Staff do not support the Company's modification to the RNG AAC.[186] The Commission approved an AAC for SB 98 and CPP programs, but was careful to modify the AAC to provide protections for ratepayers. Now NWN is seeking to modify the RNG AAC, raising the same issues the Commission addressed in UG 435. As CUB, AWEC, and Staff explained in testimony and opening briefs, the Company has failed to present adequate evidence to justify this change.[187]

B. NWN is timely recovering its RNG project costs under its current RNG AAC and traditional ratemaking principles.

In UG 435 the Commission found that SB 98 created a *process* for gas utilities to recover RNG costs; it does not guarantee RNG investments and costs can be recovered from customers, only that they *may*.[188] The Commission expressed concerns about an AAC for RNG acquired for CPP purposes, but adopted a modified version of an AAC. Those modifications included prohibiting a deferral between the rate effective date and November 1, and implementing a earning test that includes deadbands at 50 basis points below and above authorized ROE.

NWN is again arguing that without the ability to defer cost of service for its RNG projects between the in-service date and the rate effective date, it will be unable to recover those

[186] AWEC Opening Brief at 8; Staff Opening Brief at 4.
[187] *See* UG 490 – CUB Opening Brief, 38-40 (Aug. 15, 2024); CUB/100/Jenks/19-31.
[188] Order 22-388 at 80; *In the Matter of Rulemaking Regarding the 2019 Senate Bill 98 Renewable Natural Gas Programs*, Docket No. AR 632, Order No. 20-227, 14 (July 16, 2020).

costs.[189] The Company also argues regulatory lag prevents the Company from fully recovering its RNG acquisition costs and disincentivizes projects to be in-service as soon as possible.[190]

NWN further argues Schedule 198 should include a deferral, like the Renewable Resources Adjustment Clauses ("RRACs") for electric utilities. It claims its proposal seeks to "balance the interests of the Company and customers while also recognizing that NW Natural ***must*** acquire RNG to meet emissions reductions goals."[191] But the Commission already addressed these arguments. In UG 435 the Commission found that the restrictions on deferrals were necessary to address the Commissions concerns and "achieve a reasonable risk balance, smooth rate changes, and improve administrative efficiency."[192]

NWN has not shown a compelling reason to change its AAC. The record does not overcome the Commission's concern over "numerous, frequent, and confusing rate changes."[193] It still remains the case that NWN's proposal for a deferral to track RNG costs between the in-service date would result in an inequitable distribution of cost and risk, with the Company's customers holding the short end of the stick.[194] After significant deliberation and compromise in UG 435, the Commission reached an approach that balances the interests of the Company and ratepayers. The Company's attempt to relitigate this issue and upend the work of the parties should be rejected.

[189] NWN Opening Brief at 88; NW Natural/1500, Kravitz-Chittum/15.
[190] NWN Opening Brief at 88.
[191] *Id.* at 91.
[192] Order 22-388 at 80; *In the Matter of Rulemaking Regarding the 2019 Senate Bill 98 Renewable Natural Gas Programs*, Docket No. AR 632, Order No. 20-227, 82 (July 16, 2020).
[193] Order 22-388 at 83.
[194] CUB/100 Jenks/27.

C. The RNG AAC earnings test should remain in place.

The Commission should maintain the earnings test established in NWN's last rate case which it found to be "necessary to achieve a reasonable balance."[195] An earnings test is necessary to incentivize NW Natural to operate efficiently, otherwise the Company would have no incentive to keep costs in check. The deadband on the earnings test ensures that customers will not see increased costs when the Company's earnings are reasonable.

NWN opposes the current earnings test. It argues the test "inadvertently creates a disincentive to producing more RNG than forecasted, even when it is cost-effective and for the benefit of customers."[196] The record does not support this statement. NWN has not shown that changing the earnings test would change the output of a project to match what its earnings were in a given year. The Company does not know what its earnings in a year are until it publishes its ROO at the end of the year. NWN's argument that it would be able to see what they were earning and then changing production at a plant is thus untenable. Further, NWN is engaged in complex agreements with third parties[197] (i.e. Tyson) for the facilities and it is in the interest of its counterparties to produce as much as possible. NWN cannot change what they are producing to match earnings.

While a specific targeted ROE is usually established to set rates in a general rate case, returns for a utility are considered reasonable if they are within a range.[198] The Commission found that the 100 basis point deadband was a sufficient buffer barely six months ago.[199] NWN has not shown that this should change. CUB maintains that an earnings test preserves this

[195] UG 435 – Order No. 22-388 at 82.
[196] NWN Opening Brief at 94.
[197] NW Natural/1500, Kravitz-Chittum/12.
[198] CUB/300 Jenks/15.
[199] *See* UG 435 – Order No. 22-388, APPENDIX A at 34.

incentive to control costs, aligns with Commission precedent, is durable, and can accommodate changes in NW Natural's ROE over time.[200]

ORS 757.396(2) does not mandate dollar-for-dollar recovery. [201] The plain language of ORS 757.396 does not indicate any clear legislative intent to fundamentally change the Commission's ratemaking task. Further, ORS 757.963(8) includes the term "prudently" in regard to cost recovery, which provides the Commission greater discretion to decide that dollar-for-dollar cost recovery is not necessary to establish just and reasonable rates. The Commission should find that there is no clear intent in either the plain language or legislative history of SB 98 that would somehow absolve the Commission of its core ratemaking function. This function must account for the impact of overall rates on both customers and shareholders, and CUB's earnings test at authorized ROE achieves this purpose.

Recommendation

The Commission should maintain the existing framework and keep the RNG AAC earnings test in place.

Issue 5: Multi-year Rate Plan

> For a robust and procedurally equitable discussion of multi-year rate making, the Commission should decline NWN's request to address the issue here and instead take the question to an investigation at the Commission.

[200] CUB/100, Jenks/30.

[201] OPUC Order No. 15-408 at 6-7 (In applying *State v. Gaines* to ORS 469A.120(1) in Order No. 15-408, the Commission held that, "[b]ased on our plain reading of the statute, we agree . . . that ORS 469A.120(1) does not mandate dollar-for-dollar recovery of all RPS costs, but rather allows the utilities the opportunity to recover their variable costs."); see also UE 407 – CUB/100/Jenks/13, lines 16-19; OPUC Order No. 22-388 at 80 (In interpreting the language of ORS 757.396(2), the Commission rejected NW Natural's assertion that it be granted dollar-for-dollar cost recovery through its RNG AAC).

A. The Commission should reject NWN's request for direction on a multi-year rate plan based on the record in this proceeding. Instead the Commission should open the question to a broader group of stakeholders.

The Company has not proposed a multi-year rate plan in this proceeding. Instead, NW Natural is asking the Commission to direct the Company to file a multi-year rate plan in its next general rate case.[202] NW Natural wants the Commission to offer guidance on such a plan, but limit the guidance to the record developed in this case.[203] CUB opposes this request. CUB believes that if the Commission were to implement multi-year rate cases, the process should also encourage a utility to become more efficient with its costs with a goal of seeing increases below the rate of inflation.[204] Not only is CUB concerned that the Company's proposal for a multi-year plan will favor raising rates over improving efficiency, but CUB has concerns that limiting the discussion to the record in this case will leave out important voices from this much larger discussion. Accordingly, for a robust and procedurally equitable discussion of multi-year rate making, the Commission should decline NWN's request to address the issue through this rate case proceeding and instead take the question to an investigation at the Commission.[205]

Recommendation

CUB recommends an investigation of a multi-year plan for three reasons:

1. If the Commission initiates an investigation, we avoid the suspension period of a rate case, so the development of a process designed for the future will not be cut short by an artificial timeline.

[202] NWN Opening Brief at 137.
[203] *Id.* at 139.
[204] CUB/300 Jenks/18-19.
[205] CUB/300 Jenks/19-20.

2. Because the plan does not begin with a self-serving utility proposal, stakeholders can approach the proceeding with an open mind.
3. An investigation would allow Staff or a third-party consultant to examine the designs and allow Oregon to begin its discussion by identifying the best practices from around the country.[206]

CONCLUSION

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

Dated this 26th day of August 2024.

Respectfully submitted,

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[206] CUB/300 Jenks/20.