EARTHJUSTICE

April 23, 2024

VIA ELECTRONIC FILING

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

RE: UG 490 – Errata to Apter-Connolly Testimony by Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club ("Coalition")

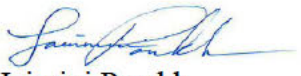
Dear Filing Center:

Enclosed for filing in the above-referenced docket is an Errata to the Redacted and Non-Confidential Opening Testimony of Nora Apter and Meredith Connolly, filed as Exhibit Coalition/200 on April 18, 2024.

The Coalition identified typographical errors in the table of contents and on one topic heading. A redline version of corrected Coalition/200, Apter-Connolly/Pages 2, 18, 20, 27, 31 is attached. A corrected version of the Confidential pages will be transmitted separately.

Please do not hesitate to contact me with any questions about this filing.

Sincerely,



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[redacted]

[redacted] <<END CONFIDENTIAL>>

A. NW NATURAL MAY HAVE BILLED RATEPAYERS FOR ITS LEGAL FEES CHARGED BY BAKER BOTTS AND SNELL & WILMER.

Q. What financial information is NW Natural required to disclose to the Commission regarding its expenses?

A. The Federal Energy Regulatory Commission ("FERC") has created a Uniform System of Accounts, and gas utilities with interstate operations are required to annually file their financial statements with FERC consistent with this accounting system. By regulation, FERC determines which accounts may be billed to ratepayers and which must be billed to shareholders. Oregon has adopted FERC's accounting system to regulate its public utilities and to set fair, just, and reasonable rates.[20] As a regulated entity, NW Natural must disclose its transaction record for costs billed to regulated accounts, for which it seeks reimbursement from ratepayers.

Q. How does NW Natural recover legal fees associated with its business operation?

A. NW Natural charged numerous invoices for its legal fees to FERC Account 921.[21]

Q. Who pays for costs incurred to FERC Account 921?

A. Oregon ratepayers are charged for invoices billed to FERC Account 921, because these costs are considered part of the regulated utility's administrative costs.[22]

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[20] OAR 860-027-0055(1).

[21] Exhibit Coalition/226.1, NW Natural Response to Coalition DR 121, Attachment 1 (complete spreadsheet).

[22] NW Natural/1401, Davilla/Page 1 (describing Base Year Costs for FERC Account 921); NW Natural/1402, Davilla/Page 1 (describing and seeking recovery for Test Year expenses for FERC Account 921).

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Q. Of the legal fees billed to FERC Account 921, are there particular expenses that you have concerns with?

A. Yes. NW Natural billed invoices to FERC Account 921 from the following law firms: Baker Botts LLP, and Snell & Wilmer LLP. Both these law firms represented NW Natural in its litigation challenging the CPP. Baker Botts also represented NW Natural and several other utilities in litigation to overturn amendments to the State of Washington's Building Code. We discuss each of these lawsuits in turn below. Lastly, NW Natural hired Baker Botts to <<BEGIN CONFIDENTIAL>> [redacted] <<END CONFIDENTIAL>> NW Natural has provided a general description of services provided by Baker Botts and Snell & Wilmer during the course of 2023.[26] However, for reasons described below, this description falls short of the minimal requirements of federal accounting regulations, meaning the company has failed to meet its burden of proof that would allow recovery of these costs from ratepayers.

B. NW NATURAL MAY HAVE CHARGED RATEPAYERS WITH THE COSTS OF ITS LAWSUIT TO INVALIDATE THE CLIMATE PROTECTION PROGRAM.

Q. Was the Climate Protection Program subject to litigation?

A. Yes. As we explained above, on March 18, 2022, NW Natural, Avista Utilities, and Cascade Natural Gas filed a lawsuit against the Oregon DEQ in the Oregon Court of Appeals, asking the court to vacate the CPP.[27] In this litigation, NW Natural was represented by the law

[25] Confidential Exhibit Coalition/251, NW Natural Confidential Response to Coalition DR 220.

[26] *Id.*

[27] Exhibit Coalition/208, Petition for Review, *NW Natural Gas Co. v. Env't Quality Comm'n*, A178216 (Mar. 18, 2002).

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interest of utility customers, because it conflicts with the Commission's directive in Executive Order 20-04.

Further, when setting rates, the Commission should consider "differential energy burdens on low-income customers and other economic, social equity or environmental justice factors that affect affordability for certain classes of utility customers, and any other reasonable consideration."[42] Given that the CPP aims to mitigate the impacts of climate change and facilitate clean energy investments to improve economic and social equity in environmental justice communities, NW Natural's efforts to overturn this program directly and adversely harmed these ratepayers.

Q. If the Commission allows gas utilities to recover their costs associated with invalidating the CPP, what precedent would that set for utilities?

A. Allowing gas utilities to recover their litigation costs to invalidate the CPP would open the door to legal advocacy by Oregon utilities to undermine climate laws and regulations in the State of Oregon. Allowing gas utilities to recover legal fees in this manner would, in effect, offer utilities a blank check to charge ratepayers for any legal advocacy they undertake to undermine state climate law or regulations.

C. NW NATURAL MAY HAVE CHARGED OREGON RATEPAYERS FOR LITIGATION AGAINST THE WASHINGTON BUILDING CODE AMENDMENTS.

Q. Could you please describe the Washington regulations, which were subject to litigation by NW Natural.

A. Recognizing the need to take urgent measures to combat climate change, the Washington legislature directed the State Building Code Council ("the Council" or "SBCC") to amend the

[42] ORS 757.230(1).

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cannot be billed to Oregon ratepayers. Oregon ratepayers derived no benefit from a lawsuit against policies in Washington, and as such cannot be billed for these costs.

Q. Did NW Natural charge Oregon ratepayers for its litigation to undermine the Washington State building codes?

A. The company states that it has not charged ratepayers for these costs, but does not provide any accounting to demonstrate that legal fees paid to Baker Botts for this lawsuit have not been charged to ratepayers.[52] For reasons described below, we recommend disallowance of all legal fees paid to Baker Botts that were billed to FERC Account 921, to ensure that ratepayers do not pay for NW Natural's legal advocacy against the Washington State building codes.

D. THE COMMISSION SHOULD DISALLOW RECOVERY OF NW NATURAL'S LEGAL FEES FOR ANTI-CLIMATE POLICY LEGAL ADVOCACY

Q. What costs would you recommend the Commission deduct to ensure that ratepayers are not charged for NW Natural's lawsuits to overturn climate policy in Oregon and Washington?

A. As discussed above, public records show that NW Natural retained Baker Botts LLP and Snell & Wilmer LLP to litigate two lawsuits in state and federal court with the goal of invalidating the CPP and the Washington Building Code amendments during 2023, the Base Year. During the Base Year, January 1, 2023 through December 2023, NW Natural incurred $795,787.83 in legal fees from Baker Botts LLP and Snell & Wilmer LLP.[53] Of this total, NW Natural billed 88% of these costs to Oregon ratepayers, in the amount of $701,290.23.[54] While

[52] Exhibit Coalition/237, NW Natural Response to Coalition DR 218.

[53] Exhibit Coalition/226, NW Natural Response to Coalition DR 121, Attachment 1 (excerpts).

[54] *Id.*

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