

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UG 221**

In the Matter of	)	
	)	CITIZENS' UTILITY BOARD
NORTHWEST NATURAL GAS COMPANY,	)	OF OREGON'S OPENING BRIEF
dba NW NATURAL	)	
	)	
<u>2011 General Rate Case</u>	)	

1    **I.    CUB'S PREHEARING BRIEF**

2            On August 20, 2012, in compliance with the "Notice of Pre-hearing Conference and  
3 Memorandum" issued by ALJ Hardie on August 1, 2012, the Citizens' Utility Board of Oregon  
4 ("CUB") submitted an extensive Pre-hearing Brief. Thereafter, on August 23, 2012, a Hearing  
5 was held in this matter. For ease of review, CUB's Opening Brief will follow the same structure  
6 as CUB's Pre-Hearing Brief, will discuss newly learned facts, and will expand upon and add to  
7 its legal arguments. To the extent that CUB does not respond in this Opening Brief to any  
8 arguments raised by NWN in its Prehearing Brief, CUB does so intentionally because, in CUB's  
9 opinion, CUB has addressed these issues sufficiently in CUB's Pre-Hearing Brief.

10    **II.   INTRODUCTION**

11            The underlying history of this docket has not changed. It remains CUB's position that the  
12 Company is trying in this docket to ensure that a regulatory structure that preserves structural  
13 over-earning remains intact. As CUB pointed out in its Pre-Hearing Brief, after years of over-

1 earning NWN is still trying to act the part of a shrunken, under fed little Oliver Twist, asking  
2 “Please, Sir, I want some more . . .”<sup>1</sup>

### 3 **III. THE SETTLED ISSUES**

4 CUB requests that the Commission take Administrative Notice of the Stipulation entered  
5 in this docket on August 10, 2012, and of the Settlement in Principle letter filed on August 14,  
6 2012.

### 7 **IV. THE UNSETTLED ISSUES**

8 CUB addresses the same unsettled issues in its Opening Brief.

### 9 **V. STANDARD OF REVIEW**

10 CUB set forth the Standard of Review in its Pre-Hearing Brief.

## 11 **VI. APPLICATION OF THE STANDARD OF REVIEW TO THE** 12 **UNSETTLED ISSUES IN THIS DOCKET**

### 13 **1. Cost of Capital**

14 Staff’s Opening Testimony was correct—NWN has been chronically over-earning, with  
15 an ROE above 11% in recent years.<sup>2</sup> It is time for the Commission to reset NWN’s Cost of  
16 Capital. Before we begin our review of NWN’s arguments, CUB wishes to point out factors that  
17 have played into the Company’s “extensive, and obvious over-earning.”<sup>3</sup>

#### 18 **A. The PGA, Storage, and WACOG**

19 CUB fundamentally disagrees with NWN’s argument that the Commission should ignore  
20 any over-earning due to the PGA because WACOG “gains and losses are not predictable, not

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<sup>1</sup> *Oliver Twist* by Charles Dickens, published by Richard Bentley in 1838.

<sup>2</sup> UG 221/Staff/200 Johnson/4 line 1 (table).

<sup>3</sup> UG 221/CUB/200/Jenks-Feighner/3 lines 19-20.

1 repeatable, and are driven by issues beyond the Company’s control.”<sup>4</sup> This is because NWN  
2 argued in the last review of the PGA mechanism (UM 1286) that:

3           NW Natural’s strategic use of its storage capacity represents its primary tool in  
4           pursuing lowest cost gas and in managing volatility. And the Company’s skill in  
5           managing that capacity has been judged by an independent evaluator to be “truly  
6           impressive.”<sup>5</sup>

7 NWN uses its storage not simply for reliability but as an arbitrage opportunity. When the market  
8 price of gas is below the WACOG used to establish base rates in the PGA, NWN keeps its stored  
9 gas in the ground and buys from the market, knowing that some of the difference between the  
10 WACOG and the market price will be retained as excess earnings.<sup>6</sup> When the market price of gas  
11 is greater than the WACOG, NWN then leans on its storage gas and avoids the higher-priced  
12 market purchases.<sup>7</sup> To this day, storage remains a tremendous tool that allows the Company to  
13 earn a return on its gas supply by using storage as an arbitrage opportunity and not simply for  
14 reliability purposes. These factors should be taken into account when making a holistic  
15 determination of where it is appropriate to set the Company’s Cost of Capital.<sup>8</sup>

16           **B. Oregon’s Regulatory System Allows NWN Four Opportunities to Earn a Return On**  
17           **Its Investment in Storage**

18           As stated in CUB’s Pre-Hearing Brief, customers also benefit when NWN uses its storage  
19 capacity to reduce its costs. But Oregon’s regulatory system allows NWN four opportunities to  
20 earn a return on its storage. First, it earns a rate of return on its invested rate base associated with  
21 storage. Second, it is allowed to retain some of the savings when the storage allows it to beat the  
22 WACOG in the PGA. Third, when the storage contributes to over-earning, the Company is

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<sup>4</sup> *Id.*

<sup>5</sup> UM 1286 – NW Natural Reply Comments, pg 11 (Jan. 28, 2008).

<sup>6</sup> *See* UM 1286/CUB/100/Jenks/8.

<sup>7</sup> *Id.*

<sup>8</sup> DR 10. UE 88 & 989 Order No. 08-487 at p. 64.

1 allowed to retain most of that over-earning through the earnings sharing mechanism. And fourth,  
2 the Company shares in the revenues that are generated through its commercial optimization of  
3 rate based storage.

4 There is also the Encana contract. The Company is also earning a return on the gas that it  
5 sells pursuant to that contract. These factors must also be taken into account when holistically  
6 determining where to peg the Company's Cost of Capital.<sup>9</sup>

7 **C. Programs Like Decoupling, SIP, and WARM All Reduce Regulatory Lag**

8 As discussed in CUB's Pre-Hearing Brief, the Commission has authorized many  
9 mechanisms since the last NWN rate case in order to help the Company avoid regulatory lag.<sup>10</sup>  
10 Those mechanisms include decoupling, WARM, and SIP, which have each helped improve the  
11 Company's earnings even in a depressed economy.<sup>11</sup> Each of these programs, subject to some  
12 tweaks, will continue after this rate case. And each of these programs benefits the Company  
13 through reducing risk and regulatory lag. SIP allows the Company to collect both a return of and  
14 return on certain rate base items without having to file for rate recovery through a general rate  
15 case, which would entail thoroughly reviewing all the elements of costs and expenses or  
16 subjecting these costs to an earnings test associated with a deferral.<sup>12</sup> It is CUB's position that all  
17 of these mechanisms must be taken into consideration when determining the level of risk  
18 remaining to the Company and thus the appropriate ROE/ROR.

19 **D. NWN's Request for 10.0% ROE is Still Too High**

20 As noted in CUB's Pre-Hearing Brief, CUB supports Staff's request for imposition of a

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<sup>9</sup> DR 10. UE 88 & 989 Order No. 08-487 at p. 64.

<sup>10</sup> UG 221/Staff/200 Johnson/3 lines 3-6.

<sup>11</sup> UG 221/Staff/200 Johnson/3 lines 19-20.

<sup>12</sup> UG 221/Staff/200 Johnson/3 lines 8-15.

1 9.4 percent ROE.<sup>13,14</sup> CUB also continues to agree with the other parties that a Capital Structure  
2 of 50 percent debt and 50 percent equity is appropriate.<sup>15</sup>

3 Mr. Jones set forth in his Pre-Hearing Brief a detailed discussion of all of the reasons that  
4 Staff's recommended ROE should be adopted. CUB was particularly taken with Mr. Jones's  
5 discussion of single-stage DCF models used by Mr. Hadaway and the Commission's previous  
6 rejection thereof.<sup>16</sup> CUB was also struck by the reference to "circular reasoning" and the  
7 Commission's prior statement that risk premium analysis "should not be used as an independent  
8 method on which to base" ROE authorizations.<sup>17</sup> Mr. Jones, in discussing an "implicit 'outboard'  
9 upward adjustment," further notes that removal of the "unwarranted and insufficiently  
10 substantiated adjustment immediately reduces the high-end of Dr. Hadaway's estimated ROE  
11 range to the 9.7 percent average result of his multistage DCF model."<sup>18</sup> He also notes that Dr.  
12 Hadaway's addition of the "30 basis points to the average estimated ROE of his multistage DCF  
13 model results [then] requires [Dr. Hadaway] to argue that the market assessment of the values of  
14 the peer utilities he employed in his sample selection [must have been] inaccurate and  
15 overstated."<sup>19</sup> CUB also notes that Mr. Jones and Staff disagreed with Dr. Hadaway in regard to  
16 his 5.7 percent historical growth rate.<sup>20</sup> CUB agrees with Staff on all of these issues. The  
17 appropriate ROE for NWN is 9.4 percent.

18 Before completing our review of cost of capital issues, CUB will address several new

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<sup>13</sup> UG 221/Staff/1600 Goodwin/2.

<sup>14</sup> UG 221/Staff/1601 Goodwin/1; UG 221/Staff/2200/Storm/3 lines 10-11.

<sup>15</sup> UG 221/Staff/2200/Storm/7 Table 1 with the exception of the long term cost of debt which was agreed to in the August Settlement in Principle.

<sup>16</sup> UG 221/Staff/Prehearing Brief at 2 lines 12-19.

<sup>17</sup> UG 221/Staff/Prehearing Brief 3 at lines 8 – 14.

<sup>18</sup> UG 221/Staff/Prehearing Brief at 3 lines 17-21.

<sup>19</sup> UG 221/Staff/Prehearing Brief at 4 lines 1-4.

<sup>20</sup> UG 221/Staff/Prehearing Brief at 4 lines 11-22.

1 arguments raised by NWN in its Pre-Hearing Brief. CUB turns first to the Company’s claim that,  
2 “The artificially low interest rates have caused income seeking investors to look to dividend-  
3 paying stocks, like utilities, which has in turn reduced the dividend yield percentage to  
4 historically low levels.”<sup>21</sup> Believe it or not, NWN makes this argument as a reason for why it  
5 should be awarded a higher ROE. CUB finds this argument both perplexing and humorous. In its  
6 Pre-hearing Brief, the Company cites “ongoing, unusual conditions in the financial markets”<sup>22</sup> as  
7 a bad thing but at the same time it argues that, because of these “ongoing, unusual conditions in  
8 the financial markets,” investors love utilities. How many ways does the Company want to slice  
9 and dice this? The fact that investors are turning to utilities as an investment vehicle supports a  
10 lower ROE.<sup>23</sup>

11 CUB also takes issue with NWN’s statement that Staff’s 9.4 percent recommendation is  
12 unreasonable because the lowest quarterly average LDC ROE that was authorized by a PUC was  
13 larger than this number, and the lowest annual average authorized LDC ROE ever recorded was  
14 9.92 percent in 2011.<sup>24</sup> First, it is important to note that the average authorized ROE in the first  
15 quarter of 2012 was 9.63, much closer to Staff’s proposal than to the Company’s.<sup>25</sup> Second,  
16 these figures are averages and do not prove that Commissions are not authorizing ROEs below  
17 9.4. While the Commission will not, and does not, rely on comparisons to other Commission-  
18 ordered ROEs alone in making its decisions,<sup>26</sup> these figures do not surprise CUB. What these  
19 figures demonstrate is regulatory lag in reverse. It takes time for the market to correct itself and it

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<sup>21</sup> UG 221/NW Natural’s Pre-hearing Brief/9 lines 9 – 11.

<sup>22</sup> UG 221/NW Natural’s Pre-hearing Brief/5 line 3.

<sup>23</sup> Section VII of CUB’s Pre-Hearing Brief at pages 43-45.

<sup>24</sup> NWN/2100/Hadaway/4.

<sup>25</sup> NWN/2100/Hadaway/1.

<sup>26</sup> UG 221/CUB/Pre-Hearing Brief/12-13.

1 takes time for Commissions to correct themselves. CUB understands that Commissions are  
2 nervous about being the first to drop ROE by a significant amount, but when the economy and  
3 the facts warrant such a drop, it would be grossly unfair to customers for Commissions not to.  
4 Here the facts show that Staff's 9.4 percent request is just and reasonable; that other  
5 Commissions are also cutting ROEs,<sup>27</sup> and that NWN has been chronically over-earning, with an  
6 ROE above 11 percent in recent years, even though its authorized ROE was 10.2 percent.<sup>28</sup>

7 CUB also wishes to address the Company's arguments related to what the Company  
8 terms "an environment of increasing risk."<sup>29</sup> Juxtaposed with the Company's list of woes should  
9 be a corresponding list of highs—more and cheaper gas than ever before with less volatility in  
10 the price of that gas; the long-term hedging contract it has with Encana; and all the insurance  
11 policies it holds for reimbursement of the costs of environmental damages.<sup>30</sup> But the Company  
12 deliberately ignores these facts, hoping that the Commission will, too. These facts must not be  
13 ignored. Customers cannot be required to bear all risk and investors none, but under NWN's  
14 theory of this case, that is exactly what the Company that already has everything it is entitled  
15 to—and more—would like to see happen.

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<sup>27</sup> UG 221/Staff/1300 Storm/65 Table 10 – the average authorized ROE has been falling since 2003 and in the first quarter of 2012 was at 9.63%. Moreover NWN was at 10.2 percent throughout the decline in average authorized ROE experienced by other utilities.

<sup>28</sup> UG 221/Staff/200 Johnson/4 line 1 (table).

<sup>29</sup> UG 221/NW Natural's Pre-hearing Brief/11/8-18.

<sup>30</sup> UG 221/NWN/1400/Hart/3 lines 13-15. "Based on the language of its policies, controlling Oregon law and the underlying facts, NW Natural believes that each of its historical policies provide coverage for the costs related to the environmental damage that NW Natural is investigating and remediating."

1    **2.     Hedging**

2            Like Staff, CUB thinks that “[t]he Company has additional fiduciary responsibilities,  
3 including consideration of protection of rate payers, that wouldn’t be present in the obligations of  
4 the investment bank.”<sup>31</sup>

5    **3.     Rate Base Issues<sup>32</sup> - Prudence of Monmouth Reinforcement and Perrydale to**  
6    **Monmouth (two sections of the Mid Willamette Valley Feeder)**

7  
8            Before delving into this topic, CUB would like to note that the Company is incorrect  
9 when it states in its Prehearing Brief at page 43, line 15 that: “No other party has testified on the  
10 issue.” CUB and NWIGU’s expert witness, Hugh Larkin, testified at length in regard to the  
11 prudence of the Monmouth Reinforcement and Perrydale to Monmouth projects.<sup>33</sup>

12           As discussed in CUB’s Pre-Hearing Brief, the Mid Willamette Valley Feeder Project is  
13 made up of four distinct sections. Only two of those sections remain at issue—Monmouth  
14 Reinforcement and Perrydale to Monmouth. The issue with both sections is one of prudence. The  
15 Company claims that, notwithstanding that the projects were included in the 2011 Modified IRP  
16 but not selected for the IRP Preferred Portfolio, the projects were nonetheless prudently begun  
17 and will be prudently completed during the test year, and should thus be included in rate base.<sup>34</sup>

18           As noted by the Company, Staff claims that the Company should not have developed the two  
19 projects on their current timeframe because the 2011 Modified IRP does not select the projects  
20 until 2019 (if checking reliability) and 2025-2026 (if checking load growth).<sup>35</sup> In response, the  
21 Company argues that the IRP Guidelines do not require the inclusion of distribution planning;

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<sup>31</sup> UG 221 Hearing Transcript at 92 lines 17-21; See also UG 221 hearing Transcript at 93 lines 10-14.

<sup>32</sup> The Testimony of Moshrek Sohby has been adopted by Ken Zimmerman UG 221/Staff/1900/Zimmerman/4 lines 20 – 22.

<sup>33</sup> UG 221/NWIGU/CUB/100 Larkin/pages 4-23.

<sup>34</sup> UG 221/NWN/3300/Yoshihara/2 lines 14-16; UG 221/NWN/2200/Yoshihara/1 lines 20-21.

<sup>35</sup> UG 221/NWN/2200/Yoshihara/3 lines 1-4; UG 221/Staff Prehearing Brief lines 1-8.



1 that the projects are needed to enhance the reliability of the system; that a modeled service  
2 outage would show the need; and that because bare steel has to be addressed anyway, it is cost  
3 effective to do it all now.<sup>36</sup> But the testimony of Mr. Zimmerman and Mr. Yoshihara refutes this.  
4 Mr. Zimmerman notes in response to a question from ALJ Hardie about whether it would be  
5 appropriate to run the model with the 2012-2013 dates if one were truly concerned about  
6 reliability: “It would be appropriate to run the model both with a date further out to see what  
7 happens and a current date, a more recent, yes, to do both.”<sup>37</sup> And Mr. Yoshihara admits in  
8 response to a question about bare steel that: “On those two segments there is not any bare  
9 steel.”<sup>38</sup> Thus, the Company’s argument fails on both grounds. Construction of these two projects  
10 was indeed premature. NWN has failed to meet the burden of proof.

11         Allowing the inclusion of these projects at this time, which are inconsistent with  
12         the conclusions of the Modified IRP and are not supported by any quantitative  
13         analysis, would send the wrong message that utilities could ignore the results of  
14         their recently acknowledged IRP, offer no quantitative support for deviating from  
15         the results of the IRP, and expect recovery based solely upon qualitative  
16         considerations.<sup>39</sup>

17         CUB also notes that even if as argued by the Company in its Pre-Hearing Brief, “the  
18         Company uses an entirely separate modeling software to model its distribution infrastructure  
19         requirements, and the discussion of that modeling has been limited to a short discussion in the  
20         IRP,”<sup>40</sup> the Company has included the discussion in its IRP and is required to show that the  
21         projects were the least cost/least risk option in the IRP, regardless of the modeling software used

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<sup>36</sup> UG 221/NWN/2200/Yoshihara/4 lines 17-18; UG 221/NWN/3300/Yoshihara/3 lines 2-3;  
NWN/3300/Yoshihara/4 lines 6-8; and NWN/600/Yoshihara/5 line 23.

<sup>37</sup> UG 221 Hearing Transcript at 201 lines 21 – 25 and at 202 line 1; see also ALJ Hardie’s Q and A with Mr.  
Yoshihara on UG 221 Hearing Transcript at 213 lines 8 – 16 where Mr. Yoshihara is asked why the Company did  
not run the models without being asked if it was also thinking about reliability at that time and he states that he  
cannot answer the question.

<sup>38</sup> UG 221 Hearing Transcript at 222 lines 2 – 9.

<sup>39</sup> UG 221/Staff/Prehearing Brief/22 lines 7-11.

<sup>40</sup> UG 221/NW Natural’s Prehearing Brief/46 lines 15-17.

1 or the length of discussion in the IRP. CUB also notes that the Company’s arguments that  
2 distribution reliability issues are not modeled in the IRP does not make sense because discussion  
3 of distribution reliability should have been included in the discussion of total load and what was  
4 needed to meet load and disburse load.

5 We note that Mr. Zimmerman stated that that an IRP should look at how the utility gets  
6 the gas to the boundary of its system and also how the Company will move it around. He states  
7 that the “IRP guidelines very clearly say that all resources should be considered. It doesn’t say  
8 just resources outside the boundaries. It says all resources.”<sup>41</sup> CUB further notes that the  
9 Company’s argument that its disruption scenario modeling selected the MWVF for 2019 for  
10 reliability<sup>42</sup> has no relevance to this case. The fact that the disruption modeling scenario selected  
11 the MWVF for 2019 does not provide proof that it is prudent to build it in the test year. And the  
12 fact that Staff had to request that the disruption scenario be modeled<sup>43</sup> does not mean that such  
13 modeling was unnecessary, it just means the Company had not done any modeling on this issue  
14 and Staff wanted to see the analysis. The fact that the Company could have conducted other  
15 model runs, reviewed other transport options, or conducted financial analyses that might have  
16 shown that it was prudent to build these sections of the line in this test year does not do anything  
17 to support the Company’s argument for prudence. The historical facts do not support the building  
18 of these lines in this test year, regardless of what the Company says it can show today.

19 **4. Operating Income – Out of Period Pension Costs**

20 In its Pre-Hearing Brief, CUB set forth a primer on current pension cost recovery. CUB

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<sup>41</sup> UG 221 Hearing Transcript at 203 lines 18-25 and 204 lines 1-19.

<sup>42</sup> UG 221/NW Natural’s Prehearing Brief/47 lines 12-13.

<sup>43</sup> UG 221/NW Natural’s Prehearing Brief/47 lines 17-19.

1 will not repeat that primer here, but will repeat its prior discussion of what NWN is seeking in  
2 this rate case and why it is not appropriate for the Commission to grant NWN’s request. In its  
3 current rate case, NWN is asking the Commission:

- 4 1) To continue to include the same annual amount for FAS 87 expense that was included in  
5 the 2002 Rate Case (\$3,796,000 allocated to Oregon), consistent with the agreement  
6 approved by the Commission in UM 1475,  
7
- 8 2) Continue with the pension balancing account for annual differences between actual FAS  
9 87 expense and the amount included in rates from the 2002 rate case,  
10
- 11 3) Add to rate base the average unrecovered investor contribution during the Test Year,  
12 which is equal to approximately \$21.9 million net of deferred taxes, and  
13
- 14 4) Include in rates an annual recovery requirement for the return of unrecovered investor  
15 contributions amortized over 8 years; annualized amount estimated to be \$4.5 million.  
16

17 The problem with requests three and four is that the Company did not file for a deferral of the  
18 monies that shareholders contributed between 2004 and 2011.<sup>44</sup> Pursuant to ORS 759.259 and  
19 OAR 860-027-0300(5), the Company is required to file for a deferral to start a deferral account  
20 or to add to one. The Company is, therefore, seeking recovery of contributions made to pension  
21 funds prior to the test year and asking the Commission to amortize into rates amounts that were  
22 not properly deferred. OAR 860-027-0300(9) states: “The Commission may authorize  
23 amortization of such amounts only for utility expenses or revenues for which the Commission  
24 previously has authorized deferred accounting.” Action contrary to this rule by the Commission  
25 would constitute retroactive ratemaking.<sup>45</sup> And, as discussed below with regard to the Bench  
26 Request, Commissions far and wide refuse to allow violation of the rule against retroactive  
27 ratemaking.

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<sup>44</sup> UG 221 Hearing Transcript at 152 lines 17 – 19 wherein Mr. Feltz admits that the Company: “had the ability to go file for a deferral order. We had talked about it. Did not file it.”

<sup>45</sup> UG 221/NWIGU/Prehearing Brief at 5; CUB Pre-Hearing Brief at 21.

1           **A. NWN’s Claims**

2           NWN continues to allege that its pre-paid pension costs are “assets” and not  
3 “expenses.”<sup>46</sup> It also claims that the rule against retroactive ratemaking does not apply because it  
4 has “pre-paid costs – investments that are financed by the Company like any other long-term  
5 asset,”<sup>47</sup> rather than the “expenses” contemplated by the deferral statute. It further argues that the  
6 Commission has allowed other intangible assets to be included in rate base, such as pre-paid  
7 insurance premiums.<sup>48</sup> And it claims that the plain language of ORS 757.259 supports the  
8 conclusion that pension contributions are not expenses and are therefore not subject to the rule  
9 against retroactive ratemaking.<sup>49</sup> It is important to note that the Company is not claiming that this  
10 Commission has treated pension cash contributions as rate base. However, it is because the  
11 Company claims rate base treatment that it can argue that these costs are not expenses and  
12 subject to retroactive ratemaking. But pension expenses are not rate base items,<sup>50</sup> so the  
13 Company’s argument is circular.

14           **B. Mr. Feltz Is Asking for Retroactive Ratemaking With an ROR**

15           As noted in CUB’s Pre-Hearing Brief, and detailed by Mr. Larkin in his Direct  
16 Testimony, the Company is proposing to add unrecovered pension plan contributions from  
17 investors to rate base.<sup>51</sup> Company witness Mr. Feltz states in his Direct Testimony that the  
18 Company has been required to pay cash contributions totaling \$57 million between 2009 and  
19 2011 to its pension plans to meet requirements of the Pension Protection Act (PPA) passed in

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<sup>46</sup> UG 221/NW Natural’s Prehearing Brief/37 lines 5-7.

<sup>47</sup> UG 221/NW Natural’s Prehearing Brief/37 lines 15-17.

<sup>48</sup> UG 221/NW Natural’s Prehearing Brief/38 lines 1-5.

<sup>49</sup> UG 221/NW Natural’s Prehearing Brief/38 lines 7-9.

<sup>50</sup> See NWIGU-CUB/200/Larkin/15.

<sup>51</sup> UG 221/NWN/2000/Feltz/25 lines 17 – 22 and 26 lines 1-2.

1 2006, and the Company now proposes to recover this money by adding these contributions to  
2 rate base:

3 The Company proposes to add the average unrecovered investor contribution  
4 amount during the Test Year, estimated at \$21,929,876 net of deferred taxes, or  
5 \$36,549,793 pre-tax, to rate base...The Company proposes to amortize the pre-tax  
6 amount over eight years...The revenue requirement impact of this proposal is  
7 estimated to be \$4,568,724, or \$36,549,793 divided by eight years.<sup>52</sup>

8 This is not correct. The revenue requirement impact of adding \$36.5 million to rate base and  
9 amortizing it over eight years is not the same as dividing it by eight. NWN is seeking a return on  
10 this rate base, which will increase its costs significantly. What Mr. Feltz is asking for is  
11 retroactive ratemaking with a rate of return.<sup>53</sup> If the Company truly believed special treatment  
12 should be allowed for the net excess contributions, the Company should have filed an application  
13 for deferral back in 2004.<sup>54</sup> It is CUB's position that this proposal is neither beneficial nor  
14 equitable to ratepayers.

### 15 **C. CUB Seeks Removal of the Unrecovered Investor Contributions**

16 Even if the Commission authorized the deferral of future contributions, it is not  
17 appropriate for ratepayers to fund these past contributions. As Staff notes, to include some prior  
18 expense increases while not fully examining all expenses and revenues for their respective

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<sup>52</sup> UG 221/NWN/400/Feltz/ 27-28.

<sup>53</sup> UG 221/NWIGU-CUB/200/Larkin/15 lines 3-12.

<sup>54</sup> UG 221/NWIGU-CUB/200/Larkin/15 lines 15-17; In Order No. 10-117, which relates to the environmental costs dealt with in a later section of CUB's Opening Brief, the Commission referred to NW Natural's acknowledgement that the Commission could not approve a request to defer costs that could occur prior to the application date:

Since Northwest Natural's original application was filed on January 21, 2010, and the investigation related to the soil and ground water was completed prior to December 31, 2009, the Company acknowledges that the Commission cannot approve a request to defer the \$117,000 of costs that occur prior to the application date.

Clearly, NW Natural knows how and when to file for deferrals. Even if it were appropriate to defer and amortize the pension contributions at issue in this docket, NW Natural failed to make appropriate applications in regard to pensions.

1 increases and decreases could lead to an overstatement of expenses as well as an understatement  
2 of revenues, and each time that occurred it could result in the Company over-earning its  
3 authorized return on equity.<sup>55</sup> Mr. Larkin recommends removing the unrecovered investor  
4 contribution of \$21,929,876 from rate base and removing the entire \$4,568,724 from amortizable  
5 expenses on an Oregon basis.<sup>56,57</sup> NWN is not Oliver Twist, and contrary to what the Company  
6 would have the Commission believe, the Company does not need any more.

7 **D. Over-Earning of Pension Funding**

8 From 2004 to 2010, while the Company was accumulating the \$12,923,909 in cash  
9 contributions to its pension, in excess of its NPPC and including the weighted cost of gas, the  
10 Company was at the same time earning \$20,048,000 in excess of its authorized 10.2 percent  
11 ROE. These excess earnings have provided NWN the flexibility it needed to fund its pensions.<sup>58</sup>  
12 NWN’s proposal amounts to allowing the Company to spend some of its over-earning on  
13 pensions. Rather than recognizing that the over-earning demonstrates that rates were adequate to  
14 fund the Company’s costs inclusive of pension contributions, the Company is asking to earn a  
15 rate of return on this over-earning as “rate base” so customers have to pay even more. As Staff  
16 points out in its Prehearing Brief:

17 NW Natural’s proposal would take out-of-period cash contributions – ignoring  
18 both the financial stability of the Company at the time the case contributions were  
19 made and ignoring every other aspect that made up past rates – and collect these  
20 past cash contributions from future customers, including a rate of return.

21 \* \* \* \* \*

22 It is not appropriate to choose a single expense category, while ignoring all other  
23 categories, and argue that because that single item increased it should be  
24 amortized in future rates with a rate of return, even though at the time the item

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<sup>55</sup> UG 221/Staff/900 Cimmiyotti/5 lines 5-9.

<sup>56</sup> UG 221/NWIGU-CUB/100 Larkin 47 lines 12-23, 48 lines 1 – 24, and 49 lines 1-6.

<sup>57</sup> UG 221/NWIGU-CUB/200 Larkin 13 line 11 through page 16 line 17.

<sup>58</sup> UG 221/Staff/900/Cimmiyotti/6 lines 1-6.

1 increased the Company was financially stable and doing financially well overall.  
2 Rate-making is holistic in nature and the Commission should decline to consider a  
3 single cost item in a vacuum.<sup>59</sup>

4 As noted by both CUB and Staff in their Pre-Hearing Briefs, changing Commission policy on an  
5 issue that has far-reaching impacts on other Oregon rate-regulated utilities and customers of  
6 those utilities should not be done without extensive review and should not be done in the context  
7 of NWN’s General Rate Case.<sup>60</sup> As Staff states, “[i]f the Commission were inclined to give NW  
8 Natural special treatment for past cash contributions to pensions, it is probable that other utilities  
9 will request similar treatment. At a minimum the Commission should consider the impact that  
10 this decision may apply as well to other utilities.”<sup>61</sup>

#### 11 **E. Other Utilities’ Pension Filings**

12 On August 22, 2012, Portland General Electric (PGE) filed its “Application for Deferral  
13 Accounting of Excess Pension Costs and Carrying Costs on Cash Contributions,” docketed as  
14 UM 1623. NWN would have the Commission believe that this filing is similar in nature to the  
15 request being made by NWN in this docket, but there are some very significant differences:

- 16 1) The PGE filing is prospective in nature only—PGE is not seeking to include costs  
17 already incurred.
- 18 2) The PGE filing seeks a deferral only and not an automatic adjustment clause (although  
19 PGE would like its deferral to have a balancing account and does not believe that it  
20 should be subject to an earnings test).  
21  
22

23 CUB will not speak to the PGE balancing account and earnings test issues at this time  
24 and will not address CUB’s position as to that filing, but CUB does note that PGE is at least not  
25 seeking to recoup costs already incurred—PGE’s request does not on its face, therefore, run

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<sup>59</sup> UG 221/Staff/Prehearing Brief at 18 lines 8 – 11 and 20 – 26.

<sup>60</sup> UG 221/CUB/Pre-Hearing Brief at 26; UG 221/Staff/Prehearing Brief at 19 lines 1-18.

<sup>61</sup> UG 221/Staff/Prehearing Brief at 19 lines 8-11.

1 afoul of the rule against retroactive ratemaking. If new policy is set in this docket—which CUB  
2 does not think it should be—it is very important that this issue be thoroughly vetted to ensure  
3 that the playing-field is fair to other utilities and their customers.

4 **F. NW Natural’s Out-of-Period Pension Contributions Are Not Pre-Paid Costs Akin to**  
5 **Other Long-Term Assets**

6 Several commissions have described pension costs as expenses, rather than “pre-paid  
7 obligations”<sup>62</sup> appropriately included in rate base.<sup>63</sup> As stated by the Pennsylvania Public Utility  
8 Commission, “[i]t is an axiom of ratemaking that pension fund costs are recurring and are a  
9 traditionally claimed expense item in any and all base rate filings made by jurisdictional utilities  
10 which provide such pension benefits.”<sup>64</sup> The Maryland and the District of Columbia  
11 commissions have found that pension costs were “classic, ongoing costs of running a utility  
12 company” and did not qualify for “specialized ratemaking treatment.”<sup>65</sup> Even utilities themselves  
13 have described pension costs as expenses appropriate for deferral. In arguing that deferral and  
14 amortization of its out-of-period pension loss was appropriate, Delmarva Power & Light  
15 Company likened pension expenses to expenses incurred in restoring the system after a major  
16 storm.<sup>66</sup>

17 Additionally, the mere fact that pension expenses may be considered “pre-paid” does not

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<sup>62</sup> UG 221/NW Natural/400/Feltz/27, lines 17-18.

<sup>63</sup> See e.g.: *Re: Application of San Diego Gas & Electric Company (U902M) for authority to update its gas and electric revenue requirement and base rates effective on January 1, 2008*, Application 06-12-009, Decision 09-09-011 (Cal. PUC Sept. 10, 2009)(discussing SDG&E pension contributions as expenses that would impact revenue requirement); *Re: Delmarva Power & Light Company for an Increase in Electric Base Rates and Miscellaneous Tariff Changes, et al.*, Docket No. 09-414 and 09-276T, Order No. 8011 at 56 (Del. PSC Aug. 9, 2011).

<sup>64</sup> PA PUC at 35-36.

<sup>65</sup> *Re: Application of Delmarva Power & Light Company for an Increase in its Retail Rates for the Distribution of Electric Energy*, Case No. 9192, Order No. 83085 at 15-16 (Md. PSC Dec. 30, 2009); see also *Re: Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Formal Case No. 1076, Order No. 15710 (D.C. PSC Mar. 2, 2011).

<sup>66</sup> *Re: Delmarva Power & Light Company for an Increase in Electric Base Rates and Miscellaneous Tariff Changes, et al.*, Docket No. 09-414 and 09-276T, Order No. 8011 at 56 (Del. PSC Aug. 9, 2011)(The Commission ultimately denied Delmarva’s request for deferral and amortization of its out-of-period pension losses.).



1 mean that they should be included in rate base. As stated by the West Virginia Public Service  
2 Commission:

3 The Companies proposed that the amounts placed in their Pension Funds as  
4 prepayments be included in rate base. Staff and CAD proposed that the so-called  
5 Prepaid Pension Asset not be included in rate base.

6 *The Commission will not include the amounts recorded by the Companies as*  
7 *Prepaid Pension Assets in Rate Base. We do not agree with the Companies’*  
8 *arguments that these Pension Assets represent payments by the Companies upon*  
9 *which they are entitled to earn a return in the same manner as we provide a*  
10 *return on Utility Plant in Service that is used and useful for the provision of utility*  
11 *service. We recognize that pension accounting is a complex area and that*  
12 *providing funds to build up pension assets that will provide for future pension*  
13 *benefits that have been promised to employees is an important and prudent thing*  
14 *to do. We cannot presume, however, that because pension costs are “prepaid” in*  
15 *the sense that money is deposited into a separate pension fund, the pension assets*  
16 *represent prepaid expenses that either require or deserve rate base treatment. We*  
17 *must be careful of including any and all prepayments in rate base.*

18 Prepayments should be subject to the same review as any other investment or  
19 expense of a utility. Inclusion of prepayments in rate base should not be used for a  
20 utility to find a convenient place to deposit funds and then expect to earn a return  
21 on those funds. (emphasis added).<sup>67</sup>

22 In addition, NWN’s reliance on the fact that PacifiCorp has some pre-paid assets,  
23 including pre-paid insurance, taxes, etc., as part of rate base is misplaced.<sup>68</sup> Notably, PacifiCorp  
24 does *not* have pre-paid pension assets in any of the six states that it operates.<sup>69</sup> Though it does  
25 include certain “intangible assets” in rate base, PacifiCorp’s total Oregon allocated share for *all*  
26 pre-paid assets is just over \$5.9 million dollars<sup>70</sup>—a paltry amount when compared to the \$39.2  
27 million that NWN is seeking to add to rate base for pensions alone. Moreover, intangible assets  
28 such as pre-paid insurance premiums are typically very small amounts and are associated with

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<sup>67</sup> Appalachian Power Company and Wheeling Power Company, Both dba American Electric Power Case No. 10-0699-E-42T at 38-39.

<sup>68</sup> See UE 246 PAC/1102/Dalley/Tab B.15 Miscellaneous Rate Base

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 3.

1 known and measurable recurring expenses that are sometimes funded in advance—traits that  
2 NWN’s pension contributions do not have.

3 **G. Inclusion of NW Natural’s Out-of-Period Pension Contributions Would Violate the**  
4 **Rule Against Retroactive Ratemaking**

5 NWN argues that its out-of-period pension contributions are pre-paid costs rather than  
6 accounting expenses reflected on the Company’s income statement, and therefore are not subject  
7 to the rule against retroactive ratemaking.<sup>71</sup> As discussed above, NWN’s contributions were to  
8 fund ordinary and recurring expenses that are, in fact, subject to the rule against retroactive  
9 ratemaking.

10 Though the Oregon courts have yet to explicitly adopt a rule prohibiting retroactive  
11 ratemaking, the Oregon Attorney General has argued that such a rule applies in Oregon,<sup>72</sup> and  
12 the Commission extensively discussed the Rule in Order No. 08-847.<sup>73</sup> In OPUC Order No. 08-  
13 487, the Commission decided on a narrow application of the Rule in Oregon.<sup>74</sup> The Commission  
14 noted that the intent behind the rule is “to ensure that customers are paying rates that reflect the  
15 cost of service at the time service is rendered.”<sup>75</sup> As stated by the Commission, the Rule  
16 explicitly prohibits: (1) consideration of past losses or past profits in future rates, and (2)  
17 retroactively adjusting past rates to “true-up” the estimated expenses and revenues used in the  
18 rate case test year to a utility’s actual expenses and revenues.<sup>76</sup> The Commission acknowledged  
19 two statutory exceptions to the Rule—ORS 757.259 and ORS 757.268.<sup>77</sup> ORS 757.259, also

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<sup>71</sup> NWN Opening Brief at 37, lines 15-20; NWN/400/Feltz/27 lines 15-20.

<sup>72</sup> AG Opinion, 1987 WL 278316.

<sup>73</sup> *Re: Portland General Electric*, Docket Nos. DR 10/UE 88/UM 989, Order No. 08-487 (Oregon PUC Sept. 30, 2008). Please note this order is currently on appeal before the Oregon Court of Appeals.

<sup>74</sup> *See* Order No. 08-847, pg. 36-41 (September 30, 2008).

<sup>75</sup> *Id.* at 36.

<sup>76</sup> *Id.* at 40-41.

<sup>77</sup> *Id.*

1 referred to as the deferral statute, informs the case at hand.

2           ORS 757.259(2)(e) allows for deferral of “[i]dentifiable utility expenses or revenues, the  
3 recovery or refund of which the commission finds should be deferred in order to minimize the  
4 frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs  
5 borne by and the benefits received by ratepayers.”<sup>78</sup> Therefore, in order to capture utility  
6 expenses or revenues to be addressed in future rate proceedings, a deferral application must be  
7 filed with the Commission prior to the time that the expense is incurred or revenue is received.<sup>79</sup>

8           In order to capture the pension expense at issue in this case, NWN should have filed an  
9 application for deferral with the Commission prior to making cash contributions to offset its  
10 pension expense. Because NWN did not file such an application and the Commission did not  
11 grant approval to defer these expenses prior to the time that they occurred, recovery of NWN’s  
12 out-of-period contributions in this case would violate the rule against retroactive ratemaking.

13           **H. UM 1475**

14           When adopting that balancing account in the UM 1475 docket in 2011, the Commission  
15 discussed the history of the previous agreement on pensions. It is clear that, pursuant to the 2003  
16 settlement, the parties agreed that NWN could file an application seeking a deferral if its pension  
17 expenses were greater than FAS 87:

18           The stipulation is informed by the current state of affairs. NW Natural is  
19 prohibited by Order No. 07-426 from filing a new rate case until September 2011.  
20 It currently handles its pension expense in accordance with Order No. 03-507. In  
21 that order, the Commission adopted a party settlement that allowed NW Natural  
22 to collect in rates approximately \$3.8 million in FAS 87 pension expense  
23 annually. The parties to the 2003 settlement also agreed that NW Natural would

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<sup>78</sup> ORS 757.259(2)(e).

<sup>79</sup> *Re: PacifiCorp, Portland General Electric Co., and Idaho Power Company*, Dockets UM 1256/1257/1259, Order No. 06-483 at 2 (Aug. 2, 2006)(“[I]n order to be eligible for deferral, expenses must be incurred after the applications for deferral are submitted.”).

1 implement deferred accounting to provide customer credits in the event that the  
2 actual pension expenses are less than those agreed to in the settlement. *In the*  
3 *event that pension expenses turned out to be greater than those included in the*  
4 *settlement, the parties agreed that NW Natural could file an application seeking*  
5 *deferral of those expenses.* (emphasis added).<sup>80</sup>

6 NWN should not seem surprised that parties are arguing that it needed to file a deferral for the  
7 expenses. That has been the agreement since 2003.

8 **I. The Plain Language of the Deferral Statute Does Not Support NW Natural’s Claim**  
9 **That Its Cash Contributions Are Not Subject to the Rule Against Retroactive**  
10 **Ratemaking**

11 NWN’s argument that the plain language of the deferral statute supports its conclusion  
12 that the pension contributions are not expenses, and are therefore not subject to the rule against  
13 retroactive ratemaking, is a red herring. The simple fact is that NWN’s cash contributions were  
14 made for the purpose of reducing an ordinary and recurring utility expense to meet the federal  
15 standards for minimum contribution (or funding) requirements. Even if NWN’s argument that its  
16 cash contributions amount to a pre-paid asset hold water, it is the *function* that those  
17 contributions have served that matters under the deferral statute, not specific accounting  
18 treatment of the contributions themselves. Simply put, whether or not a pre-paid asset was  
19 created from shareholders’ cash contributions is immaterial to determining whether or not the  
20 use of those funds is serving to reduce an identifiable utility expense for the purposes of  
21 retroactive ratemaking.

22 **J. Response to the Commission’s Bench Request**

23 On August 28, 2012, the Commission submitted a bench request to the parties in UG 221,  
24 which includes a briefing request to provide additional information about recovery of past

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<sup>80</sup> OPUC Order 11-051 at page 2.

1 pension contributions in other jurisdictions.<sup>81</sup> In its briefing request, the Commission noted that  
2 NWN had pointed to a number of gas utilities that have been allowed to implement ratemaking  
3 methodologies other than pure FAS 87 recovery and asked the parties whether these gas utilities  
4 were limited to recovery of cash contributions that have been deferred through a deferral  
5 mechanism or included in a test year. The Commission also asked the parties to “point to any  
6 state Commission orders or legal decisions that allow a gas utility to recover cash contributions  
7 such as those at issue in this docket that (1) have not been the subject of a deferral order, or, if in  
8 a rate case, that (2) are outside the applicable test year.” CUB was unable to find an example of  
9 either scenario. Of the cases that CUB reviewed, CUB was also unable to find an example of a  
10 utility that was permitted to address pension contributions on a retroactive basis.

11 CUB assumes that the Commission’s question arose from the Direct Testimony of Mr.  
12 Feltz (wherein he claimed that “[a] trend seems to be developing” that permits recovery of  
13 prepaid pension expenses) and also from NWN’s Prehearing Brief at 37.<sup>82</sup> Mr. Feltz listed three  
14 utilities that were allowed to recover costs related to contributions in excess of FAS 87 expense:  
15 Hawaii Electric Company, Pacific Gas & Electric Company, and Wisconsin Electric Power  
16 Company.<sup>83</sup> But other than requesting recovery mechanisms different from the FAS 87  
17 mechanism, these utilities situations had nothing in common with NWN. These three utilities  
18 were not seeking to recover past cash contributions or to deal with pension expenses on a  
19 retroactive basis.<sup>84</sup>

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<sup>81</sup> Bench Request and Briefing Request August 28, 2012.

<sup>82</sup> NWN/400/Feltz/28, line 19; NW Natural’s Prehearing Brief at 37.

<sup>83</sup> NWN/400/Feltz/28, lines 12-21.

<sup>84</sup> See *Re: Hawaii Electric Light Company, Inc.*, Docket No. 05-0315, Order Issued Oct. 28, 2010 (Hawaii PUC); *Re: Pacific Gas & Electric Company*, Application 09-03-003 (filed March 2, 2009), Decision 09-09-020 (California PUC Sept. 10, 2009); *Re: Wisconsin Electric*, Docket No. 05-UR-105 (WI PSC)(final order pending, but pension recovery not a direct issue in the case).

1           In an attempt to bolster its proposal to be allowed a recovery mechanism other than FAS  
2 87, Mr. Feltz, in NWN Exhibit 2008, provided a survey of utilities that “receive recovery for  
3 pension contributions beyond FAS 87 expense.”<sup>85</sup> The survey in question contained a total of 17  
4 responses to the survey (two remain anonymous and one is not named) that receive some type of  
5 rate recovery for pension costs.<sup>86</sup> Of the 14 named respondents, 12 cite the basis of recovery as  
6 FAS 87. Gazmetro, a Canadian gas company, is listed in the survey as recovering contributions,  
7 but is not subject to the Pension Protection Act of 2006 or other U.S. federal laws, rules, and  
8 regulations and does not report recovering its pension expense based on FAS 87. Of the utility  
9 companies in the survey that are subject to US laws, only one, Pacific Gas & Electric (PG&E),  
10 reports recovering its pension expense based on something other than FAS 87.

11           Of the 7 named American utilities in the survey reporting pension recovery based on  
12 contributions and/or pre-paid assets, CUB was unable to find a single Commission order  
13 allowing the utility to recover cash contributions that were not the subject of a deferral order or  
14 were outside of the applicable test year in the context of a rate case. In fact, CUB was unable to  
15 locate an example of *any* utility receiving recovery for out-of-period pension contributions  
16 absent a deferral or inclusion in a test year.

17           Contrary to what NWN is arguing, Commissions have been unwilling to allow such  
18 contributions into rates due to violation of the rule against retroactive ratemaking. For example,  
19 the California Public Utilities Commission (CPUC) denied San Diego Gas & Electric’s

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<sup>85</sup> NWN/2000/Feltz/29, lines 18-19. The actual source of the information contained in the exhibit is unclear to CUB. There is no source information contained in the Exhibit itself, and Mr. Feltz does not explain whether the survey comes directly from the AGA, or whether NWN simply surveyed AGA Companies and compiled the information on its own.

<sup>86</sup> NWN/2008/Feltz/1-3.

1 (SDG&E) request to recover past pension contributions because it would constitute retroactive  
2 ratemaking.<sup>87</sup> SDG&E sought to recover two corporate surety bonds and a letter of credit that it  
3 purchased in order to avoid violating the Pension Protection Act.<sup>88</sup> The Company argued that it  
4 should be permitted to recover the annual expenses associated with these measures because it  
5 had previously settled a case that allowed the Company to recover its pension expenses and other  
6 benefits.<sup>89</sup> The Commission noted, however, that the settlement agreement contained “specific  
7 funding” provisions for recovery that did not include procuring a letter of credit or purchasing  
8 corporate surety bonds.<sup>90</sup> Therefore, the expenses at issue could not be recovered absent a  
9 Commission order to increase rates, and accordingly, “SDG&E cannot seek recovery of expenses  
10 already incurred for the surety bonds or the letters of credit because such recovery violates the  
11 prohibition on retroactive ratemaking.”<sup>91</sup> The Commission then stated that “[n]o expense can be  
12 recovered from ratepayers if it is incurred before the Commission approves recovery in  
13 subsequent rates,” but noted that SDG&E could file an application for prospective authority to  
14 recover any future expenses of the surety bond or letters of credit.<sup>92</sup>

15 Another example is contained in a 2009 Delaware Public Service Commission rate case  
16 docket, wherein the Commission declined to permit a return of, and on, Delmarva’s 2008  
17 pension loss.<sup>93</sup> Among the many policy reasons for denying Delmarva’s request that were  
18 discussed, the Commission included retroactive ratemaking, stating that “[u]nder accounting

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<sup>87</sup> *Re: Application of San Diego Gas & Electric Company (U902M) for authority to update its gas and electric revenue requirement and base rates effective on January 1, 2008*, Docket A.06-12-009 and A.06-12-010, Decision 09-09-011 (California PUC Sept. 10, 2009).

<sup>88</sup> *Id.* at 4.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 5.

<sup>92</sup> *Id.*

<sup>93</sup> *Re: Delmarva Power & Light Company for an Increase in Electric Base Rates and Miscellaneous Tariff Changes, et al.*, PSC Docket No. 09-414 and 09-276T, Order No. 8011 (Delaware PSC Aug. 9, 2011).

1 rules, Delmarva was required to receive approval in order to record the pension expense on its  
2 books as a regulatory asset before the end of 2009. We did not grant such approval.”<sup>94</sup>

3 In terms of pension contributions outside of a test year and prior to the filing of a deferral,  
4 CUB cites to the Pennsylvania Public Utility Commission docket related to Aqua Pennsylvania  
5 (AP).<sup>95</sup> AP requested to defer, for accounting purposes, certain unanticipated employee pension  
6 expenses and requested recovery of these amounts in the concurrent rate base proceeding.<sup>96</sup> On  
7 March 13, 2003, AP filed a Petition to defer the unanticipated employee pension expenses it  
8 would be required to contribute for the 2003 calendar year; in the same application, AP also  
9 sought to amortize over two years the annual expense related to the deferral.<sup>97</sup> The deferral  
10 application was subsequently consolidated with the rate base case in January 2004.<sup>98</sup> The test  
11 year for the rate base case was June 30, 2003 through June 30, 2004.<sup>99</sup> Therefore, AP was  
12 seeking deferral of funds outside of the test year, and approximately 3.5 months prior to filing an  
13 application for deferral of those funds. The Commission ultimately rejected AP’s proposal to  
14 defer and amortize the unanticipated pension costs for 2003, finding that AP did not establish  
15 that the relevant costs were both extraordinary and non-recurring, which is required in order to  
16 prevail on an exception to the rule against retroactive ratemaking in Pennsylvania.<sup>100</sup> The  
17 Commission noted that “[i]t is an axiom of ratemaking that pension fund costs are recurring and  
18 are traditionally claimed expense item in any and all base rate filings made by jurisdictional  
19 utilities which provide such pension benefits” and that the fact that publicly traded stocks went

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<sup>94</sup> *Id.* at 59.

<sup>95</sup> *Re: Aqua Pennsylvania*, Docket No. R-00038805, Order Entered Aug. 5, 2004 (PA PUC).

<sup>96</sup> *Id.* at 30.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 33.

<sup>100</sup> *Id.* at 35-36.



1 down in value is not extraordinary, as “the stock market has historically gone up and down.”<sup>101</sup>  
2 Additionally, the Pennsylvania PUC has explicitly ruled that it will not allow the rate recovery of  
3 pension expense absent a finding that a payment obligation will incur during the test year at  
4 issue.<sup>102</sup> Thus, despite all of NWN’s claims and arguments to the contrary, what NWN is  
5 requesting amounts to retroactive ratemaking.<sup>103</sup>

6 **K. NWN’s Alternative Proposals for Recovery**

7 In closing out this topic, CUB also notes that NWN’s Pre-Hearing Brief discusses  
8 alternative proposals for recovery.<sup>104</sup> But these again fail to recognize that the Company was  
9 over-earning when it made the cash contributions and that the Company did not file a deferral to  
10 allow for future recovery of these costs. For example, the Company proposes that the current  
11 balancing account could be revised “so that once the balance turns negative, the Company could  
12 suspend refunds to customer and allow the negative account balance to equal the excess  
13 shareholder contributions.”<sup>105</sup> This is still retroactive ratemaking designed to allow the Company  
14 to recover costs that it has already paid, but failed to defer. Suspending refunds to customers to  
15 pay for an item that is not eligible for recovery is not fair, just, and reasonable. Combined with a  
16 deferral when the costs were incurred, this ratemaking might be reasonable, but without the  
17 deferral, it is still retroactive ratemaking. In summary, CUB’s position on out-of-period pension  
18 expenses remains the same. CUB agrees with Staff that the Commission’s historic reliance on  
19 NPPC and FAS 87 to determine the appropriate pension expense to be included in customer rates

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<sup>101</sup> *Id.*

<sup>102</sup> *Pennsylvania Public Utility Commission, et al., v. West Penn Power Company*, 119 P.U.R.4th 110, 144 (PA PUC Dec. 14, 1990) *Affirmed Pennsylvania PUC et al., v. West Penn Power Company*, Docket Nos. R-00942986 et al., Order entered Dec. 29, 1994, pg. 25.

<sup>103</sup> See NWIGU-CUB/200/Larkin/15.

<sup>104</sup> UG 221/NWN/Pre-hearing Brief at 41.

<sup>105</sup> UG 221/NWN/Pre-hearing Brief at 41.

1 should remain in effect. CUB also agrees that removing one expense that increased between rate  
2 cases without considering expenses that decreased is inappropriate and unfair to future ratepayers  
3 and constitutes single issue ratemaking. And, through the use of the current balancing account,  
4 NWN is able to reasonably recover pension accounts going forward above and beyond that  
5 present in rates.<sup>106</sup>

6 **5. Environmental Remediation/Cost Recovery**

7 CUB greatly appreciated the succinct description of the environmental remediation issues  
8 set forth in NWIGU's Pre-Hearing Brief and begins its review here with citations thereto:

9 [T]he Company's proposal is unreasonable and unfair to customers because it  
10 attempts to force today's ratepayers to indemnify NW Natural from any liability  
11 associated with these sites. First the proposal does not account for the fact that  
12 today's customers did not cause the contamination or benefit from the historic  
13 operations associated with the contamination. NW Natural's investors reaped the  
14 benefits and took on the risks of the utility's historical operations. For years, the  
15 Company and its shareholders received the upside of that risk because the  
16 Company incurred no remediation costs for the contamination it caused. Now that  
17 there is a significant and quantifiable liability for the years of contamination  
18 caused by the Company or its predecessors, the Company proposes that its  
19 shareholders be isolated from any of these costs by shifting the entire burden to  
20 ratepayers. This proposal seeks to protect the Company's shareholders to the  
21 detriment of NW Natural's customers.<sup>107</sup>

22 Further,

23 NW Natural's proposal gives it no incentive to control costs. At its core, NW  
24 Natural is asking for a blank check that will be included in customers' rates for  
25 the foreseeable future.<sup>108</sup>

26 In CUB's opinion, no truer words have been spoken in this docket. Truly, what NWN  
27 seeks is a blank check from its customers, customers who had nothing to do with the causation of  
28 the environmental damage, who did not benefit from the environmental damage, and likely were

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<sup>106</sup> UG 221/Staff/Prehearing Brief at 19 lines 12-18.

<sup>107</sup> UG 221/NWIGU'S Prehearing Brief at 3.

<sup>108</sup> UG 221/NWIGU'S Prehearing Brief at 3.

1 not alive at the time of the environmental damage, and are struggling in the current economy.  
2 The bottom line is that the Company that has it all, and then some, still wants more.

3 **A. Oregon Has a Long History of Sharing Costs**

4 NWN would have the Commission believe that it was shocked that Commission Staff  
5 wanted to require it to share costs in this docket. But this cannot be the case. As Staff Witness  
6 Johnson noted: “[W]e have a long history with Northwest Natural, as well as other utilities, of  
7 sharing costs. And, you know, it’s not a brand-new concept in any stretch of the imagination.”<sup>109</sup>

8 **B. The SRRM Is Designed to Shift Risk to Customers**

9 CUB also appreciates Staff’s Pre-Hearing Brief, wherein Mr. Jones succinctly dealt with  
10 what NWN proposes to call the “Site Remediation Recovery Mechanism (SRRM).” As stated by  
11 Mr. Jones, “Staff . . . was generous in its overall support for a mechanism that would  
12 substantially lower NW Natural’s risk.”<sup>110</sup> CUB agrees. CUB did not think that Staff’s proposal  
13 was fair to customers or that it placed enough risk and incentive upon the Company to  
14 appropriately manage its remediation costs while at the same time maximizing insurance  
15 proceeds. CUB appreciates that Staff has moderated its position in its brief and that it now  
16 recommends that “[i]f the Commission was to approve an environmental remediation cost  
17 recovery mechanism, it should apply sharing percentages within the range suggested by the  
18 parties in this proceeding.”<sup>111</sup> CUB of course thinks that the number within the range should  
19 result in 50/50 sharing, at most, to customers.

20 **C. Staff’s Proposal Has Conditions, Including an Earnings Test**

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<sup>109</sup> UG 221 Hearing Transcript at 22 lines 1-5.

<sup>110</sup> UG 221/Staff/Prehearing Brief at 10 lines 18-19.

<sup>111</sup> UG 221/Staff/Prehearing Brief at 13 lines 15-17.

1 CUB also recognizes that even before Staff moderated its position, Staff sought  
2 conditions before the currently deferred environmental remediation accounts could be considered  
3 for amortization. Staff sought to have both the currently deferred costs and proceeds of the  
4 environmental remediation deferral, and the future amounts that go into the SRRM deferral,  
5 made subject to an earnings test using the years when the costs were incurred.<sup>112</sup> NWN argued in  
6 response that automatic adjustment clauses do not require earnings tests. But the Company is  
7 clearly aware that putting an earnings test on an automatic adjustment clause is not unusual. For  
8 example, PGE's and Idaho Power's PCAMs are automatic adjustment clauses that include  
9 deadbands and earnings tests. The current PGA mechanism includes an earnings sharing  
10 component. While not required, it is not unusual for the Commission to have an earnings  
11 component associated with an automatic adjustment clause. Automatic adjustment clauses are  
12 not "exempt"<sup>113</sup> from earnings tests, as claimed by the Company; the Commission simply has  
13 discretion to impose them. In addition, nothing requires that the Commission agree to an  
14 automatic adjustment clause of the type requested by the Company. Staff has stated that its  
15 support of the automatic adjustment clause only applies if Staff's conditions are included in the  
16 implementation of such an adjustment clause.<sup>114</sup> But Staff's support for sharing applies whether  
17 or not there is an automatic adjustment clause.<sup>115</sup>

18 As Staff argued in its Pre-Hearing Brief,  
19 NW Natural misconstrues the purpose of an earnings test in that an earnings test is  
20 necessary to determine whether or not expenses incurred outside of a general rate  
21 review could or should have been absorbed by the utility because overall rates

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<sup>112</sup> UG 221/Staff/Prehearing Brief at 12 lines 1- 2.

<sup>113</sup> UG 221 NW Natural's Pre-hearing Brief/30 at line 15.

<sup>114</sup> UG 221 Hearing Transcript at 46 lines 13-19.

<sup>115</sup> UG 221 Hearing Transcript at 40 lines 9 -10.

1 were sufficient to satisfy ORS 756.040. The entire objective is an overall review  
2 of earnings, not an account-by-account comparison.<sup>116</sup>

3 And, as Staff also notes, “[i]t is specifically because NW Natural is requesting a special  
4 regulatory mechanism that does not contain the protections of a deferred accounting or general  
5 rate revisions that Staff recommends the Commission require an earnings test on the future  
6 amounts in an SRRM, if it establishes such a mechanism.”<sup>117</sup>

7 In regard to the recovery of future environmental remediation costs, Staff also  
8 recommended that if an automatic adjustment clause was ordered, it also be subject to an  
9 earnings test.<sup>118</sup> Staff made this recommendation because without such a condition, NWN would  
10 be able to recover its prudently incurred remediation costs regardless of its overall earnings.  
11 CUB agrees with Staff that it would be inappropriate to create an automatic cost recovery  
12 mechanism that substantially reduces NWN’s risk and at the same time allows recovery  
13 regardless of total earnings.<sup>119</sup>

#### 14 **D. The Commission Has No Lawful Option But to Require an Earnings Test**

15 As noted by Staff, as of September 30, 2011, NWN had approximately \$64.5 million in a  
16 deferred account related to environmental remediation costs and proceeds. There is no automatic  
17 adjustment clause for those proceeds and no legal reason to adopt one.<sup>120</sup> “Even if the  
18 Commission creates an automatic adjustment clause in the future, it cannot lawfully move  
19 previously deferred accounts into a newly established automatic adjustment clause account

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<sup>116</sup> UG 221/Staff/Pre-hearing Brief at 14 lines 15 – 19; see also UG 221/NW Natural’s Prehearing Brief/30/lines 8-23 and /31 lines 1-4.

<sup>117</sup> UG 221/Staff/Pre-hearing Brief at 15 lines 6-9.

<sup>118</sup> UG 221/Staff/Prehearing Brief at 13 lines 18-23 and 14 lines 1-2.

<sup>119</sup> UG 221/Staff/Prehearing Brief at 13 lines 2-4.

<sup>120</sup> UG 221/Staff/Prehearing Brief at 12 lines 3- 10.

1 without following the legal requirements of ORS 757.259(e)(5).”<sup>121</sup> As Mr. Jones concludes,  
2 “[t]he commission has no lawful option but to require an earnings review prior to amortizing the  
3 deferred amounts.”<sup>122</sup>

#### 4 **E. Debunking NWN’s Arguments**

5 Notwithstanding all of the above, the Company continues to argue that it should be  
6 permitted one hundred percent recovery of these costs from customers. The Company cites the  
7 following three reasons:

8 *First*, the environmental deferral is already large and is increasing, and further  
9 delay on recovery will only increase the burden on customers. *Second*, timely  
10 recovery of environmental remediation costs is important to the Company’s  
11 financial health and stability. . . *Third*, establishing a mechanism now furthers the  
12 goal of providing for intergenerational equity by more closely matching the time  
13 when the expenditures are made and the time they are collected.<sup>123</sup>

14 CUB will debunk these myths in the same order as presented by NWN. *First*, while CUB  
15 agrees that the environmental deferral is already large and increasing in size, NWN has insurance  
16 policies that it has told the Commission will cover all of its costs,<sup>124</sup> and the ever increasing size  
17 of the expense is not grounds to ignore the law.<sup>125</sup>

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<sup>121</sup> UG 221/Staff/Prehearing Brief at 12 lines 10 - 13.

<sup>122</sup> UG 221/Staff/Prehearing Brief at 12 lines 13- 14.

<sup>123</sup> UG 221/NW Natural’s Prehearing Brief/20 lines 19-21 and 21 lines 1-5 (citations omitted).

<sup>124</sup> UG 221/NWN/1400/Hart/3 lines 13-15. “Based on the language of its policies, controlling Oregon law and the underlying facts, NW Natural believes that each of its historical policies provide coverage for the costs related to the environmental damage that NW Natural is investigating and remediating.” See also UG 221 Hearing Transcript at 58 line 25 and 59 at line 1: “[W]e recently got a fairly large insurance amount.” See also UG 221 Hearing Transcript at 68 lines 12 -19 where Mr. Miller stated that environmental insurance costs were included in customer rates and customer should get the benefits of those. Additionally, NWN Reported in its Form 10-Q for the Quarterly Period Ended March 31, 2009, stated: We consider insurance recovery of most of our environmental costs probable based on a combination of factors including: a review of the terms of our insurance policies; the financial condition of the insurance companies providing coverage; a review of successful claims filed by other utilities with similar gas manufacturing facilities; and Oregon law that allows an insured party to seek recovery of “all sums” from one insurance company.” NWN/Hearing Exhibit/4317 at 21.

<sup>125</sup> “Even if the Commission creates an automatic adjustment clause in the future, it cannot lawfully move previously deferred accounts into a newly established automatic adjustment clause account without following the legal requirements of ORS 757.259(e)(5).” UG 221/Staff/Prehearing Brief at 12 lines 10 - 13.

1           *Second*, little weight should be given to the Company’s arguments about its financial  
2 health when the Company has been over-earning for the last decade with an ROE above 11  
3 percent in recent years<sup>126</sup> and is in good financial health, as demonstrated by the credit agency  
4 report findings set forth in section VII of CUB’s Pre-Hearing Brief. As discussed in CUB’s Pre-  
5 Hearing Brief, the Company is retaining all of the mechanisms that were sustaining its financial  
6 health<sup>127</sup> and it has the aforementioned insurance policies. Why does the Company need  
7 customers to pay even 50 percent of these costs? CUB thinks that the CUB/NWIGU offer of  
8 50/50 sharing is more than generous for a Company that has everything but still wants more.<sup>128</sup>  
9 And, Staff notes in its Pre-Hearing Brief that it “does not believe a mechanism that substantially  
10 reduces NW Natural’s risk of future recovery [of environmental remediation costs] but limits  
11 recovery of such expenses if the Company is exceeding its return in equity is inappropriate or  
12 punitive in a regulated environment.”<sup>129</sup>

13           *Third*, the Company’s arguments about intergenerational equity are absurd. Few, if any,  
14 customers being asked to cover these environmental costs were even born at the time the  
15 environmental damage occurred. How can there be any intergenerational equity in asking today’s  
16 customers to pay for yesterday’s costs when they did not cause the damage and did not reap any  
17 of the rewards, unlike the Company and its shareholders. The Company’s proposed SRRM  
18 mechanism is designed to reward the Company that caused the damage and to protect it from any  
19 of the liability. Mr. Miller’s testimony on the Company’s view of earnings tests fully

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<sup>126</sup> UG 221/Staff/200 Johnson/4 line 1 table; see also UG 221 Hearing Transcript at 65 lines 1 -3 where Mr. Miller admitted that the Company has earned above its rate of return.

<sup>127</sup> UG 221/CUB/Pre-Hearing Brief/42.

<sup>128</sup> UG 221 Hearing Transcript at 65 lines 19 – 25 and at 66 lines 1-3 where Mr. Miller admits that some of the costs that the Company wants to include in the SRRM were incurred in 2010 ( a year in which the company over-earned) and that if the SRRM mechanism that the Company is proposing was imposed a situation could occur in which the Company’s customers would be paying remediation costs in the year that the Company over-earned.

<sup>129</sup> UG 221/Staff/Prehearing Brief at 14 lines 5-11.

1 demonstrates the brash, cold, unfair manner in which the Company is proposing in its SRRM.

2 Mr. Miller states:

3 Lastly, I would say that if you sort of took a different view of the earnings test and  
4 said you get to earn up to your authorized return and, you know, up to then you  
5 can collect your environmental dollars but above that you stop. This is going to go  
6 on for the next 10 to 15 years. Okay. It's going to take at least that long for both  
7 the environmental remediation to be effected and for the five or seven years after  
8 that to be concluded, and there's going to be monitoring expenses probably  
9 forever, and forever is a long time, but certainly for a lot of number of years after  
10 that. So if you build something like that sort of earnings test in, it's effectively  
11 capping us at ten point -- well, whatever the authorized rate of return is . . . .<sup>130</sup>

12 The Company that has it all wants to keep it all, and then some, with no regard to what is  
13 fair to customers. This is wrong. What message would the granting of the SRRM send to the  
14 Company? "Go out and do it again, ratepayers will foot the bill!" This is not the message that  
15 this Commission should be sending. The message should be "you caused it, you clean up the  
16 mess," but if the Commission cannot get there, then the message should only be, "we will help  
17 you this once (50/50 sharing), but don't ever do this again."

18 **F. The Issue at Hand Is Who Pays, Not Whether Remediation Is Necessary or Prudent**

19 CUB also wants to deal here with some very broad and extremely incorrect statements  
20 made by the Company's counsel in its brief. There, the Company states that "no party objects to  
21 the implementation of a mechanism for recovery of environmental remediation expenses."<sup>131</sup> The  
22 NWN Pre-Hearing Brief also states that "no party has questioned the prudence of the  
23 expenses."<sup>132</sup> NWN is mistaken. CUB has done nothing but object to the Company's proposed  
24 mechanism which, as proposed, would give the Company a blank check to pay for un-reviewed  
25 remediation costs and remove CUB's ability to appropriately object to the prudence of these and

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<sup>130</sup> UG 221/ Hearing Transcript at 59 line 25 and at 60 lines 1-16.

<sup>131</sup> UG 221/NW Natural's Prehearing Brief/21/lines 16-17.

<sup>132</sup> UG 221/NW Natural's Prehearing Brief/21/lines 20-21; see also page 22 lines 1-4.



1 future expenses.<sup>133</sup> It is the proposed change in the mechanism that is the single biggest issue  
2 here. The intensity and breadth of CUB’s arguments are clear proof of its vehement  
3 disagreement with the Company’s proposals for how to handle the environmental remediation  
4 costs the Company faces. The issue for this docket is not whether the remediation is necessary,  
5 but who should pay for these remediation expenses. Arguments about whether the expenses are  
6 prudent are for other dockets.

7 **G. Determination of Disallowances and Penalties is for Other Dockets**

8 From page 24 to page 26 of its Pre-Hearing Brief, the Company expounds as to why it  
9 should not be subject to what it terms a “disallowance.”<sup>134</sup> CUB finds these arguments interesting  
10 and unsettling. *First*, one can only suffer a disallowance if one was otherwise entitled to receive  
11 something. NWN has no automatic entitlement to funds from customers for environmental  
12 remediation costs, especially customers who had no part in causing the damage and who  
13 received no benefit therefrom. *Second*, NWN argues that it should not be subject to a  
14 “penalty.”<sup>135</sup> This surely means that NWN and its shareholders would not be subject to any  
15 penalty, but its customers would effectively be subject to a one hundred percent penalty for  
16 damage done by the Company on behalf of a prior set of customers, with no benefit and only  
17 harm to them. NWN tries to flesh out its argument by way of an example, but its example  
18 assumes that one of the actions taken that incurred the costs was prudent.<sup>136</sup> It is inappropriate to

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<sup>133</sup> UG 221 Hearing Transcript at 18 lines 16-19. Staff has noted that it would have no call at this time to object to prudence because: “Typically we do not review for prudence until it begins to be amortized. I’ve reviewed what - - I’ve reviewed what was in testimony, but I’m not prepared at this time to pass judgment on whether it’s prudent or not.”

<sup>134</sup> UG 221/NW Natural’s Prehearing Brief/24/line 13.

<sup>135</sup> UG 221/NW Natural’s Prehearing Brief/25/line 3.

<sup>136</sup> UG 221/NW Natural’s Prehearing Brief/24/line 16 and 25/lines 1-2.

1 assume that any remediation action taken is prudent when no such cases have been brought  
2 before the Commission.

3 As previously noted, the issue for this docket is not whether the remediation is necessary,  
4 but which party should pay for these remediation expenses. Arguments about whether the  
5 expenses are prudent are for other dockets. NWN is mixing two different scenarios together to  
6 muddy the waters. This docket is not meant to determine disallowances or penalties, it is to  
7 determine which party should have to pay what proportion of any later determination as to what  
8 was in fact prudent and should be recoverable. It certainly does not seem appropriate to CUB  
9 that NWN’s current shareholders should get a free pass on environmental remediation when, at  
10 the same time, the Company proposes to make current customers, who did not cause the damage,  
11 pay for it all. After all, as Mr. Miller admitted on the witness stand, being a shareholder for a  
12 regulated company includes potential for risk as well as gain.<sup>137</sup> He also admitted that under the  
13 regulatory compact, the Company takes the risk of under-earning and has the opportunity to  
14 over-earn<sup>138</sup> and that recovery of environmental costs is one of the risks facing the Company  
15 today.<sup>139</sup>

16 **H. NWN’s Kitchen Sink Arguments**

17 Another unsettling argument made by the Company is that “Staff’s mechanism is  
18 intended to encourage the utility to spend as little as possible on environmental remediation and  
19 to put off expenses as long as possible . . .”<sup>140</sup> This is clearly not the intent of Staff’s argument,  
20 and if the Company should take this foolhardy position, CUB will be there to argue that its

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<sup>137</sup> UG 221 Hearing Transcript at 63 lines 16-19.

<sup>138</sup> UG 221 Hearing Transcript at 68 lines 20-23.

<sup>139</sup> UG 221 Hearing Transcript at 68 lines 24-25 and 69 lines 1-49.

<sup>140</sup> UG 221/NW Natural’s Prehearing Brief/25/lines 6-7.

1 actions added imprudence on top of imprudence. NWN compounds the strangeness of this  
2 argument by adding that, “Staff’s mechanism is comparable to imposing sharing on utilities’ tax  
3 payments to incentivize the utility to pay as little taxes as possible . . .”<sup>141</sup> The Commission could  
4 not in fact impose such sharing. The law requires that all utilities pay taxes and that customers  
5 fund the actual cost of current taxes on a forecasted basis. The law does not require customers to  
6 fund decades old environmental costs caused by a utility. The Company also argues that  
7 customers should be required to pay for all costs of all types, whether they know about them or  
8 not.<sup>142</sup> The Company cites for examples to franchise taxes and pipeline fees, but these are fees  
9 incurred for provision of service to today’s customers. What NWN wants to impose on today’s  
10 customers in this docket is payment for damage caused decades ago, before most of today’s  
11 customers were even born. To argue that the expenses are being incurred because of today’s laws  
12 and today’s cleanup completely ignores the fact that the costs have nothing to do with provision  
13 of service to today’s customers and everything to do with provision of service to customers that  
14 are gone, and likely deceased; there is no intergenerational equity here. Today’s customers do  
15 not buy manufactured gas from NWN because NWN quit the business of selling manufactured  
16 gas decades ago.

### 17 **I. What Other Commissions Have Ordered**

18 NWN argues that “all” commissions across the country have found that there is sufficient  
19 nexus between current remediation expenses and utility service to support the recovery of these  
20 costs through rates. This is patently untrue.<sup>143</sup> The Maryland Public Service Commission denied

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<sup>141</sup> UG 221/NW Natural’s Prehearing Brief/25/lines 11-12.

<sup>142</sup> UG 221/NW Natural’s prehearing Brief/27/lines 2-6; UG 221 Hearing Transcript at 63 lines 3-6.

<sup>143</sup> UG 221/NW Natural’s Prehearing Brief/26/lines 15-18 – NWN, in an aside, does acknowledge that some Commissions have found that specific facts can belie the nexus argument.

1 Delmarva Power & Light’s request to recover environmental remediation costs from its current  
2 customers for manufactured gas plants operated by a predecessor company, stating: “[w]e cannot  
3 and will not saddle Delmarva’s modern-day electric customers with the cost of cleaning up a  
4 predecessor gas company’s mess when the company cannot draw at least some connection  
5 between the remediated property and the service today’s customers will receive.”<sup>144</sup>

6 Commissions in other jurisdictions have imposed the following sharing mechanisms:

- 7 • Delaware PUC: Delmarva Power & Light Co.’s ratepayers pay the annual amortized account  
8 balances over a 5 year period, and its shareholders bear the burden of carrying costs on the  
9 unamortized balances.<sup>145</sup>
- 10 • District of Columbia PSC: Washington Gas Light Company’s ratepayers are to be credited  
11 with at least 50% of any net revenues flowing from the reuse of the property.<sup>146</sup>
- 12 • Iowa Dept. of Commerce: Interstate Power and Light Company’s ratepayers are responsible  
13 for clean-up costs amortized over five years, and shareholders are not given recovery for  
14 carrying costs on the unrecovered balance.<sup>147</sup>
- 15 • Michigan PSC: Michigan Consolidated Gas Co.’s ratepayers bear the O&M expense portion  
16 of the deferred remediation costs; the deferred and amortized amounts do not earn a return as  
17 a working capital component, nor are deferred amounts recovered until the Commission  
18 reviews the costs. The inability to earn on the deferred amount or recover deferred amounts

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<sup>144</sup> *Re: Delmarva Power & Light Co.*, Case No. 9192, Order No. 83085 at 12 (MD PSC Dec. 30, 2009).

<sup>145</sup> *Re: Delmarva Power & Light Co. for a Change in the Gas Environmental Surcharge Rider Rate*, Docket No. 05-356, Order No. 6889 (DE PUC Apr. 25, 2006).

<sup>146</sup> *Re: Application of Washington Gas Light Company District of Columbia Division for Authority to Increase Existing Rates and Charges for Gas Service*, Case No. FC922, Order No. 10307 (D.C. PSC Oct. 8, 1993).

<sup>147</sup> *Re: Northern Utilities, Inc. Proposed Environmental Response Cost Recovery*, Docket No. 1996-678, Order entered Apr. 28, 1997 (IA Sept. of Commerce).

1 prior to Commission review is burden to shareholders and acts as an incentive for the utility  
2 to aggressively minimize all deferred amounts.<sup>148</sup>

- 3 • New Hampshire PUC: Energy North Natural Gas, Inc. dba Keyspan Energy Delivery New  
4 England's shareholders bear the carrying costs of environmental remediation costs.<sup>149</sup>

5 There is no one size fits all approach, no one right way to do this. Each case is fact-  
6 specific and the Commission crafts an appropriate order. In this NWN docket, there is no nexus  
7 between current remediation expenses and utility service to support the recovery of these costs  
8 through rates.

### 9 **J. Customers Should Not Be Saddled With 100 Percent of Remediation Costs**

10 NWN tries to discredit CUB and NWIGU's witness by saying he has no experience  
11 related to MGPs. Mr. Larkin has never claimed to have extensive experience related to MGPs; he  
12 has claimed, and does have, a real depth of experience related to environmental and other cost  
13 recovery, as demonstrated by his testimony before several other jurisdictions on that subject  
14 matter.<sup>150</sup> The quotation that the Company so vehemently attacks was offered in regard to  
15 whether it is appropriate to push 100 percent of the cost of environmental remediation onto  
16 customers. Clearly Mr. Larkin and CUB think it is not, and many other states, as noted above,  
17 have agreed.

18 It is common for experts to disagree, and it is not a crime. That the Company should hire  
19 an expert witness willing to support its point of view is not surprising. That CUB and NWIGU  
20 should hire an expert that supports their point of view is normal. And, while the NWN witnesses

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<sup>148</sup> *Re: Michigan Consolidated Gas Company*, Case No. U-13898 and U-13899, Order entered April 28, 2005 at p. 23-30 (MI PSC).

<sup>149</sup> *Re: Order Regarding the Cost of Gas Rates, Local Distribution Adjustment Clause Rates and Other Rates*, Docket No. DG 07-093, Order No. 24,797 (NH PUC Oct. 31, 2007).

<sup>150</sup> UG 221 – NWIGU-CUB Response to NW Natural's Motion to Strike at 9-10.

1 and counsel stretch for supportive historical facts, beneficial to their investors’ needs, it is not  
2 unusual for CUB and NWIGU to focus on the effect of the Company’s proposals on public  
3 policy and ratepayer pocketbooks. The Commission must weigh the record before it and  
4 determine what is fair, just, and reasonable in a situation where today’s customers were likely  
5 not alive at the time the damage was done, when today’s customers reaped no benefit from the  
6 damage done, and when the Company benefited from the damage done, has insurance policies to  
7 cover its costs, and has been over-earning for a decade. And, as previously noted, the  
8 Commission should not at this time be determining whether what the Company did then was  
9 prudent or what it is doing now is prudent. The sole issue at hand with regard to environmental  
10 remediation is whether it is appropriate for customers to pay 100 percent of the cost of the  
11 remediation work, less insurance payments. It is CUB’s position that it is not.

12 **K. Applicable Interest Rates: The Debt Rate**

13 As for the arguments about the interest rate to apply to deferrals under the SRRM, CUB  
14 thinks only a debt rate should be applied. Staff has requested the MBTR and the Company wants  
15 its authorized ROR.<sup>151</sup> If CUB’s debt rate proposal should fail, CUB supports the use of Staff’s  
16 MBTR. For the Company to get any profits at all here shifts unwarranted risk to customers. It is  
17 CUB’s opinion that the Company recognizes that thinking, as to whether utilities should be  
18 reimbursed by customers for environmental remediation costs, is shifting; the Company notes  
19 there is the risk that “a future Commission could change the recovery mechanism—resulting in  
20 less reliable recovery.”<sup>152</sup> CUB encourages this Commission to lead from the front and find that  
21 customers should, at most, share environmental remediation costs 50/50 with the utility.

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<sup>151</sup> UG 221/NW Natural’s Prehearing Brief/29/lines 2-5.

<sup>152</sup> UG 221/NW Natural’s prehearing Brief/29/lines 21-22.

1           **L. NWN’s Reference to “Powerdale” Is Inappropriate**

2           The Company’s newest argument is that because PacifiCorp was able to obtain recovery  
3 of environmental costs associated with the decommissioning of its Powerdale plant, NWN  
4 should be allowed to obtain recovery for environmental remediation in this docket. These two  
5 dockets present entirely different circumstances for the recovery of “environmental costs.” In the  
6 Powerdale case, PacifiCorp sought an accounting order to address, in part, typical environmental  
7 mitigation costs associated with the decommissioning of a hydro plant as required by FERC.<sup>153</sup>  
8 PacifiCorp filed its application for an accounting order with the Commission in January 2007,  
9 following a flood in late 2006 that severely damaged the dam to the point that significant funds  
10 were needed for repair. In its Application, PacifiCorp explained that after a net benefits analysis  
11 the Company had determined there was an economic benefit to an early shutdown of the plant  
12 rather than completing the repairs that would be required to operate the plant until its 2010  
13 decommissioning date. PacifiCorp’s application was timely and did not relate to decades old  
14 costs. In short, the circumstances could not be more different.

15           In addition, CUB takes issue with NWN’s attempt to use Staff witness Judy Johnson to  
16 insert information about Powerdale into the record. CUB respectfully requests that the  
17 Commission give short shrift to this testimony and that it does not give it any weight. On cross  
18 examination from CUB it was established that Ms. Johnson had not been involved in the  
19 docket.<sup>154</sup> No witness for the Company or Staff involved in the docket appeared at the UG 221  
20 hearing. If the Commission is interested in the Powerdale docket, CUB would refer the

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<sup>153</sup> UM 1298, *Application for an accounting order regarding closure of the Powerdale Hydro Generation Plant* at Appendix B: Decommissioning Plan at 11; Hearing Transcript at 24, line 17 to 25, line 1.

<sup>154</sup> UG 221 Hearing Transcript at 43 lines 10 – 25 and at 44 lines 1-10.

1 Commissioners to the Powerdale Order and request that they read that rather than Ms. Johnson’s  
2 testimony.

3 **M. NWN’s Reference to the Idaho Power Docket is also Inappropriate**

4 CUB will also review the reason for the modifications made to the IPCO order in UM  
5 1147, in which NWN expressed interest during the Hearing. In OPUC Order No. 08-263, the  
6 Commission established a specific interest rate, the Blended Treasury Rate plus 100 basis points  
7 (MBTR), with guidelines for application to deferred accounts during amortization.<sup>155</sup> The  
8 Commission indicated that exceptions to the application of the MBTR to amortized deferred  
9 account balances could be made if warranted by certain circumstances and evidence.<sup>156</sup> In OPUC  
10 Order No. 08-477, the Commission granted IPCO’s Petition for Exception from the MBTR  
11 adopted in Order No. 08-263, finding that an exception was appropriate given the fact that Idaho  
12 Power (IPCO)’s existing fixed amortized deferred accounts were not short-term in nature.<sup>157</sup> The  
13 Commission ordered IPCO and Staff to work together to adopt an appropriate interest rate,  
14 noting that the MBTR was also not appropriate given the length of the deferrals, but that  
15 applying IPCO’s average rate of return was not appropriate given IPCO’s decreased risk with  
16 regard to the deferrals at hand.<sup>158</sup> Thus, contrary to what NWN would suggest, the Commission  
17 has already recognized that ROR would not be appropriate given a company’s decreased risk  
18 with regard to deferrals.

19 **N. Summary of CUB’s SRRM-Related Positions**

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<sup>155</sup> OPUC Order No. 08-263.

<sup>156</sup> *Id.*

<sup>157</sup> OPUC Order No. 08-477 at 3.

<sup>158</sup> *Id.* at 3.



1           In summary, CUB’s bottom line remains the same here as in its Pre-Hearing Brief. CUB  
2 does not agree that it is appropriate to convert currently deferred costs into an automatic  
3 adjustment clause without an earnings test. All deferred costs are subject to an earnings test.  
4 CUB believes the earnings test exists for a reason: if the Company is over-earning at a level that  
5 allows it to recover the deferred cost, then ratepayers are paying rates that allow the Company to  
6 recover its costs and earn a reasonable rate of return. NWN’s overuse of automatic adjustment  
7 clauses allows for costs to be assigned to customers even when customers are already fully  
8 covering the Company’s costs and paying it a reasonable return. The Company’s proposal is not  
9 equitable. This proposal illustrates the Company’s apparent desire to protect its over-earnings  
10 through use of automatic adjustment clauses in order to ensure even more over-earning for  
11 shareholders at the expense of customers. And, NWN already has insurance policies to cover all  
12 of its costs, but still wants customers to pay.

13           The Company is only entitled to recovery of prudent costs incurred for serving *current*  
14 customers. There is no intergenerational equity here. The costs at issue here were incurred  
15 because of antiquated manufacturing practices and do not relate in any way to provision of  
16 service to *current* customers. Today’s customers did not benefit in any way from the  
17 manufacturing of gas, or the sale of MGP byproducts. They also did not cause the environmental  
18 damage that needs to be remediated.<sup>159</sup>

19           In addition, CUB notes that when the Company receives a return on equity from its  
20 investments, that return reflects a risk factor. There are risks associated with the operation of any  
21 business, both competitive and regulated.<sup>160</sup> The equity return reflects a risk factor associated

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<sup>159</sup> UG 221/NWIGU-CUB/200/Larkin/32 lines 7-13.

<sup>160</sup> UG 221/NWIGU-CUB/100/Larkin/51 lines 15-16.

1 with the operation of a business.<sup>161</sup> This risk factor is related to unknown factors, such as the  
2 assessment by the environmental agencies of remediation costs against the owners of the land  
3 that was contaminated.<sup>162</sup> Even though a regulated entity has substantially less risk than a  
4 competitive company, the return it receives still reflects a component related to risk, otherwise it  
5 would receive a return on its investment somewhat closer to government bonds.<sup>163</sup> In the case of  
6 contaminated property, only the Company's management, who were employed by the  
7 shareholders, could have affected the outcome of the initial contamination of this property.<sup>164</sup>  
8 The owners and operators of these facilities should have been, or could have been, aware that by-  
9 products were either being dumped or stored on site, and only they could have affected the  
10 amount and type of contamination done to these properties.<sup>165</sup> It seems apparent that the  
11 Company's management accepted the risk from the operation of manufactured gas plants that  
12 was reflected in the rate of return that they received.<sup>166</sup>

13         It is likely not appropriate for ratepayers to bear any of the cost of remediation for these  
14 contaminated sites,<sup>167</sup> and it is certainly not appropriate for ratepayers to bear the full cost of the  
15 remediation<sup>168</sup> and have the Company earn a full rate of return on those costs until they are  
16 reflected in the Company's proposed recovery mechanism.<sup>169</sup> The Company's argument that  
17 customers should pay for past contamination would be a real departure from the regulatory

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<sup>161</sup> UG 221/NWIGU-CUB/100/Larkin/51 lines 16-17.

<sup>162</sup> UG 221/NWIGU-CUB/100/Larkin/51 lines 17-19.

<sup>163</sup> UG 221/NWIGU-CUB/100/Larkin/51 lines 19-22.

<sup>164</sup> UG 221/NWIGU-CUB/100/Larkin/51 line 22 to 52 line 2.

<sup>165</sup> UG 221/NWIGU-CUB/100/Larkin/52 lines 2-5.

<sup>166</sup> UG 221/NWIGU-CUB/100/Larkin/52 lines 5-7.

<sup>167</sup> UG 221/NWIGU-CUB/200/Larkin/32 lines 1-6.

<sup>168</sup> UG 221/NWIGU-CUB/200/Larkin 30 lines 13 – page 31 line 27.

<sup>169</sup> UG 221/NWIGU-CUB/100/Larkin 52 lines 10-12.

1 compact.<sup>170</sup> Utility companies accept a rate of return as part of the regulatory compact, which  
2 includes compensation for unknown risks of running a utility. If it was not for this, utilities'  
3 return on equity would be the same as government securities.<sup>171</sup>

4 CUB's evidence demonstrates, as does Staff's, that in the cases it has reviewed, in regard  
5 to the subject of environmental cost recovery, some level of sharing was authorized, and that in  
6 at least one state, the utility's shareholders were directed to pick up all of the costs.<sup>172</sup> NWN's  
7 arguments that it will suffer grave financial consequences as a result of the NWIGU-CUB  
8 proposals have no merit.<sup>173</sup> Utilities can only recover prudently incurred costs that are necessary  
9 for the provision of current services; this does not increase their risk. This is the deal they signed  
10 up for.<sup>174</sup>

11 CUB recommends that the Commission allocate 50 percent of the total environmental  
12 remediation costs to shareholders.<sup>175</sup> In addition, the Company should only earn a debt rate of  
13 return on the balance reflected in the Deferred Environmental Cost Account.<sup>176</sup> Once the  
14 Commission has issued an order stating what amount NWN would recover as a reimbursement  
15 for environmental remediation costs, that amount would be a guaranteed recovery amount.<sup>177</sup>  
16 There would be no risk associated with the recovery of this amount by the Company, and  
17 therefore no equity investment would be necessary.<sup>178</sup> The Commission's Order would guarantee  
18 the return of the environmental remediation costs, and therefore only a debt return should be

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<sup>170</sup> UG 221/NWIGU-CUB/200/Larkin 27 lines 19-24.

<sup>171</sup> UG 221/NWIGU-CUB/200/Larkin 28 lines 14-17.

<sup>172</sup> UG 221/Staff/200 Johnson/11 lines 23; Staff Exhibit 202 pages 12-15; UG 221/NWIGU-CUB/200 Larkin 30 lines 12 – 22 and 31 lines 1-27; UG 221 NWIGU-CUB/200 Larkin 32 lines 1-6.

<sup>173</sup> UG 221/NWIGU-CUB/200/Larkin/27 lines 12-18.

<sup>174</sup> UG 221/NWIGU-CUB/200/Larkin/30 lines 11-12.

<sup>175</sup> UG 221/NWIGU-CUB/100/52 lines 23-24.

<sup>176</sup> UG 221/NWIGU-CUB/100/52 lines 24-25.

<sup>177</sup> UG 221/NWIGU-CUB/200/Larkin/30, lines 2-4

<sup>178</sup> UG 221/NWIGU-CUB/200/Larkin 30 lines 2-7.

1 recovered by the Company, because no risk would be involved in the recovery of the authorized  
2 amount.<sup>179</sup> See CUB’s Pre-Hearing Brief for rate spread arguments.<sup>180</sup>

3 **6. Amortization of Out of Period State Tax Change – Deferred Taxes**

4 As detailed in CUB’s Pre-Hearing Brief, in 2009, the State of Oregon increased its state  
5 tax rate from 6.6% to 7.9%.<sup>181</sup> As a result of the tax change, the Company recorded a regulatory  
6 asset of \$5,834,389.<sup>182</sup> In 2010, the state tax rate decreased from 7.9% to 7.6%.<sup>183</sup> The  
7 incremental change as a result of this was \$1,354,558.<sup>184</sup> The net of these two items is  
8 \$4,479,831, which the Company is proposing to amortize over five years and has reflected as a  
9 decrease of \$895,966 to miscellaneous revenues in the test year.<sup>185</sup> Here, the Company did not  
10 have an Order from the Commission giving it the right to record the tax balance in question as a  
11 regulatory asset in 2009.<sup>186</sup> Pursuant to ORS 759.259 and OAR 860-027-0300(5), the Company  
12 is required to file an application for deferral to start a deferral account or to add to one. And, as  
13 OAR 860-027-0300(9) states: “The Commission may authorize amortization of such amounts  
14 only for utility expenses or revenues for which the Commission previously has authorized  
15 deferred accounting.”

16 Clearly NWN knows that it has to file for deferrals even when dealing with taxes,  
17 because it filed for one in regard to the ORS 291.349 Oregon “Tax Kicker” Savings.<sup>187</sup> NWN  
18 was subject to a deferral based on CUB’s motion after Ballot Measure 5 reduced its property tax

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<sup>179</sup> UG 221/NWIGU-CUB/100/53 lines 3-4

<sup>180</sup> UG 221/CUB Pre-Hearing Brief/36-37.

<sup>181</sup> UG 221/NWIGU-CUB/100/Larkin/27 line 19.

<sup>182</sup> UG 221/NWIGU-CUB/100/Larkin/27 lines 19-20.

<sup>183</sup> UG 221/NWIGU-CUB/100/Larkin/27 line 21

<sup>184</sup> UG 221/NWIGU-CUB/100/Larkin/27 line 21 to 28 line 1.

<sup>185</sup> UG 221/NWIGU-CUB/100/Larkin/28 lines 1-3.

<sup>186</sup> UG 221/NWIGU-CUB/200 Larkin/2 lines 6-8; ORS 757.259(2) (e).

<sup>187</sup> OPUC Docket UM 1245 Application for Authorization of Deferred Accounting of Oregon “Tax Kicker” Income Tax Reduction dated January 26, 2006.

1 payments in 1990.<sup>188</sup> Based on the above, it is CUB’s position that a utility cannot “update” a  
2 deferred tax balance if it has not filed for a deferral in the first place. In fact, during the 2009 tax  
3 year, Senate Bill 408 was still in effect.<sup>189</sup> “When SB 408 was in effect, there were automatic  
4 adjustment clause mechanisms that were responsible for establishing the appropriate tax expense.  
5 This process was used for NW Natural’s 2009 tax year and the appropriate tax expense was  
6 established in Order No. 11-117.”<sup>190</sup> The Company therefore has no legitimate basis on which to  
7 bring this issue before the Commission in this rate case.

8 **A. NWN is Attempting Single-Issue Ratemaking**

9 As both CUB and Staff addressed in their Pre-Hearing Briefs, this is an example of  
10 single-issue ratemaking, where the Company has singled out an item and is reaching back and  
11 requesting special cost recovery for this item.<sup>191</sup> As Staff stated in its Pre-Hearing Brief:

12 Similar to out-of-period pension expenses, NW Natural requests that the  
13 Commission allow recovery for a regulatory asset that occurred between rate  
14 cases. As discussed regarding out-of-period pension expenses, the Commission  
15 should not allow NW Natural to self-select single issues where the cost increased  
16 between rate cases and strip them out for future recovery. The exception to  
17 collecting expenses between rate cases is deferred accounting. But here, NW  
18 Natural did not file an application for a deferral to create this regulatory asset.  
19 Furthermore, at the time the regulatory asset was created SB 408 and its automatic  
20 tax adjustment clause was in effect. Finally the Commission should not allow NW  
21 Natural to self-select single items where expenses increased between rate cases  
22 and provide for future recovery when NW Natural’s overall earnings at the time  
23 the expenses were incurred is ignored.<sup>192</sup>  
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<sup>188</sup> *Re: Citizens’ Utility Board for Deferred Accounting Treatment*, Docket No. UM 374, Order No. 91-830 (OR PUC Jul. 1, 1991).

<sup>189</sup> UG 221/Staff/1800 Garcia/13, lines 12-13.

<sup>190</sup> UG 221/Staff/Prehearing Brief at 20 Liens 3-7.

<sup>191</sup> UG 221/NWIGU-CUB/200 Larkin/7 lines 8-21 and 8 lines 1-20 and 9 lines 1-12.

<sup>192</sup> UG 221/Staff/prehearing Brief at 20 lines 8 – 18.

1           The Company could have petitioned the Commission to issue an Accounting Order  
2 regarding the treatment of this issue when it occurred, but it did not.<sup>193</sup> The Company should not  
3 now be permitted to single out and charge ratepayers for this state tax change, especially when it  
4 occurred during a period when the Company was otherwise earning a reasonable return.<sup>194</sup>The  
5 Company’s argument that only the Commission can engage in single-issue ratemaking is  
6 absurd—Commissions don’t request specific ratemaking, utilities do.<sup>195</sup> Were the Commission to  
7 take up NWN’s request, it too would then be engaging in single-issue ratemaking. This is why  
8 CUB recommends against it.<sup>196</sup>

9           **B. NWN Is Attempting to Engage in Retroactive Ratemaking**

10           This is also an example of retroactive ratemaking, and to state otherwise “flies in the face  
11 of common sense.”<sup>197,198</sup> The adjustment that the Company made on its books was to adjust  
12 deferred taxes for 2007 and 2008 as a result of these state tax rate changes.<sup>199</sup> This is clearly  
13 retroactive ratemaking, which is a violation of ratemaking principles and should be disallowed.  
14 The Company tries in its Pre-Hearing Brief to use accelerated depreciation to confuse this  
15 issue<sup>200</sup>—the Commission should not be taken in by this argument.

16           **C. NWN’s Kitchen Sink Tax Arguments**

17           As to the other issues raised by the Company in its Pre-Hearing Brief, CUB has already  
18 addressed the Company’s argument related to UG 55 and will not address it again here, other

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<sup>193</sup> UG 221/NWIGU-CUB/100/Larkin/28 lines 20-21; *See also* UG 221/Staff/1800/Garcia/11 lines 14-16.

<sup>194</sup> UG 221/Staff/1800/Garcia/12 lines 8- 9.

<sup>195</sup> UG 221/NW Natural’s Prehearing Brief/53 liens 18-22.

<sup>196</sup> OPUC Docket DR10 et al. Order No. 04-597 at 6; *American Can v. Lobdell*, 55 Or App 451, 454-55, 638 P2d 1152 (1982).

<sup>197</sup> UG 221/NWIGU-CUB/200 Larkin 3 lines 12-14.

<sup>198</sup> UG 221/NWIGU-CUB/200 Larkin 10 lines 11 – 22 and 11 lines 1-2.

<sup>199</sup> UG 221/NWIGU-CUB/100/Larkin/29 lines 7-9.

<sup>200</sup> *See* UG 221/NWN Natural’s Pre-hearing Brief/52, lines 14-23 and 53, lines 1-15

1 than to note that the stipulation in that docket applied to what would happen in the “future” and  
2 *not* in the past.<sup>201</sup> As for the Company’s citation to IRS general guidance for support of its  
3 position,<sup>202</sup> CUB notes that the issue in this case relates to Oregon state taxes, not federal taxes,  
4 and other states’ interpretation of taxes and deferrals are irrelevant.

5 The Company next brings up UM 1147. In UM 1147, the Commission: “retain[ed its]  
6 discretion to review deferred accounts based on the nature of the event and the magnitude of the  
7 event’s impact on a utility’s costs or revenues. [It] also affirm[ed] the use of a flexible, fact-  
8 specific review approach that acknowledges the wide range of reasons why deferred accounting  
9 might be beneficial to customer and utilities.”<sup>203</sup> That docket does not support NWN’s position.  
10 The Company also cites to SB 967 (ORS 757.269(1)) for support of its claims,<sup>204</sup> but this citation  
11 does nothing to support NWN because NWN did not file for a deferral. The bottom line remains  
12 that the Company had to file for a deferral.

13 It is also important to remember that the Company’s request in this rate case is based  
14 entirely upon accounting entries and not upon any cash payment to the state of Oregon.<sup>205</sup> If  
15 NWN is awarded what it is requesting, it would receive double recovery.<sup>206</sup> Equally important is  
16 the fact that the Company earned close to, or over, its authorized return on equity in the majority  
17 of the years since 2001, and especially in 2009, the year of the tax change, when the Company  
18 had record earnings. Clearly the Company had the financial capability to absorb the effect of the

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<sup>201</sup> *Re: Investigation into the Effect of the Federal Income Tax Reform Act of 1986 on NW Natural*, Docket No. UG 55, Order No. 87-721 (OR PUC Jun. 29, 1987).

<sup>202</sup> UG 221/NWN Natural’s Pre-hearing Brief/51 lines 17 – 21 and 52/ lines 1-8.

<sup>203</sup> UM 1147 Order No. 05-1070 at 1.

<sup>204</sup> UG 221/NW Natural’s Pre-Hearing Brief/55 lines 4-9.

<sup>205</sup> UG 221/NWIGU-CUB/200 Larkin 4 lines 18-20.

<sup>206</sup> UG 221/NWIGU-CUB/200 Larkin 5 lines 11-13.

1 non-cash tax change in that year.<sup>207</sup> CUB and NWIGU’s expert witness, Hugh Larkin Jr.,  
2 recommends disallowance of the Company's proposed \$895,966 reduction to miscellaneous  
3 revenues.<sup>208,209</sup> Staff is also recommending disallowance of this adjustment.<sup>210</sup> The Company  
4 should have filed for a deferral in this matter, but did not. The Company is not entitled to have  
5 these funds deferred and therefore is not entitled to have them amortized, no matter the  
6 amortization period.

7 **VII. CONTRARY TO NWN’S PRONOUNCEMENTS, STAFF AND THE**  
8 **INTERVENORS’ PROPOSALS ARE UNLIKELY TO IMPOSE ANY**  
9 **FINANCIAL HARM ON THE COMPANY**

10 Please see CUB’s arguments in CUB’s Pre-Hearing Brief.

11 **VIII. ADDITIONAL RECOMMENDATIONS**

12 Notwithstanding that Staff, Intervenors, and NWN have now settled both rate design and  
13 the requested increase to the customer charge, CUB respectfully requests that the Commission  
14 outline a requirement that any future rate design proposals must be vetted in IRP proceedings if  
15 those proposals are expected to have a significant effect on energy efficiency.<sup>211</sup> This is  
16 necessary to ensure that any proposed rate design is vetted for its effects on supply and demand  
17 before it is considered in a rate case.

18 **IX. CONCLUSION**

19 In conclusion, CUB does not support any of the requests being made by the  
20 Company with regard to the “unsettled issues.” From CUB’s point of view, all of these items are

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<sup>207</sup> UG 221/NWIGU-CUB/200 Larkin 11 lines 8-14.

<sup>208</sup> UG 221 NWIGU-CUB/100 Larkin 27 lines 16 – 21, 28 lines 1 – 26, and 29 lines 1-13.

<sup>209</sup> UG 221/NWIGU-CUB/200 Larkin 2 lines 6 to page 13 line 10.

<sup>210</sup> UG 221/Staff/500 Garcia/9 lines 1-14.

<sup>211</sup> UG 221/CUB/100 Jenks-Feighner/2 at 11-13.



1 being requested by the Company for one simple reason—to beef up its already large over-  
2 earning. NWN is not Oliver Twist, and it does not deserve any more.

3 CUB’s specific requests to the Commission, in regard to this docket, remain as follows:

- 4 • That the Commission set the Company’s ROE at 9.4 percent.
- 5 • That the Commission set the Company’s capital structure at 50 percent equity and 50 percent  
6 debt.
- 7 • That the Commission adopt Staff’s position regarding the financial hedge.
- 8 • That the Commission find that the Company was not prudent in moving forward with either  
9 the Monmouth Reinforcement or Perrydale to Monmouth sections of the Mid-Willamette  
10 Valley Feeder project at this time, and that the costs of those projects should be removed  
11 from the test year.
- 12 • That the Commission find that to include past pension contributions in future rates would  
13 constitute retroactive ratemaking and that these costs may not be included in the test year.  
14 Also, that the Commission find that removal of the unrecovered investor contribution of  
15 \$21,929,876 from rate base and the removal of the entire \$4,568,724 from amortizable  
16 expenses on an Oregon basis is appropriate.
- 17 • That the Commission find that the Company has failed to meet the burden of proof that its  
18 proposals for environmental remediation costs are prudent. The request for the GASCO  
19 pumping station is being made for a plant that is not yet used and useful. The request is also  
20 retroactive in nature because it seeks recovery based on damages caused long ago, which  
21 have no relation to provision of service to current rate payers. The SRRM proposal fails for  
22 the same reason—the costs relate to damage from long ago, with no connection to current

1 ratepayers. In the case of the SRRM, the Commission should also find it is not appropriate  
2 for a deferral to be converted to an automatic adjustment clause in order to avoid an earnings  
3 test. The Commission should find that it is more than equitable for NWN's shareholders to  
4 share 50/50 with its customers the costs of environmental damage caused decades ago, which  
5 have no relation to the present provision of gas service to the Company's current customers.  
6 • That the Commission find the Company's out-of-period tax adjustments are not reasonable  
7 because they are examples of both single issue-rate making and retroactive ratemaking. The  
8 Company needed to file for a deferral if it wanted to recover these costs. The Commission  
9 should therefore find that the Company's proposed \$895,966 reduction to miscellaneous  
10 revenues should be disallowed.

Dated this 12<sup>th</sup> day of September, 2012.

Respectfully submitted,



G. Catriona McCracken, OSB #933587  
General Counsel, Regulatory Program Director  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 400  
Portland OR 97205  
(503) 227-1984 ph  
(503) 274-2956 fax  
[Catriona@oregoncub.org](mailto:Catriona@oregoncub.org)

## UG 221 – CERTIFICATE OF SERVICE

I hereby certify that, on this 12<sup>th</sup> day of September 2012, I served the foregoing **CITIZENS' UTILITY BOARD OF OREGON'S OPENING BRIEF** in docket UG 221 upon each party listed in the UG 221 Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

**(W denotes waiver of paper service)**

**(C denotes service of Confidential material authorized)**

**W MCDOWELL RACKNER &  
C GIBSON PC**  
LISA F RACKNER **(HC)**  
419 SW 11TH AVE., SUITE 400  
PORTLAND OR 97205  
[lisa@mcd-law.com](mailto:lisa@mcd-law.com)

**W NORTHWEST NATURAL  
C MARK R THOMPSON (HC)**  
220 NW 2ND AVE  
PORTLAND OR 97209  
[mark.thompson@nwnatural.com](mailto:mark.thompson@nwnatural.com)

**W NW NATURAL  
REGULATORY AFFAIRS E-FILING**  
220 NW SECOND AVENUE  
PORTLAND OR 97209-2516  
[efiling@nwnatural.com](mailto:efiling@nwnatural.com)

**W PUBLIC UTILITY COMMISSION  
C JUDY JOHNSON (HC)**  
PO BOX 2148  
SALEM OR 97308-2148  
[judy.johnson@state.or.us](mailto:judy.johnson@state.or.us)

**W PUC STAFF--DOJ  
C JASON W JONES (HC)**  
1162 COURT ST NE  
SALEM OR 97301-4096  
[jason.w.jones@state.or.us](mailto:jason.w.jones@state.or.us)

**W CABLE HUSTON BENEDICT  
C HAAGENSEN & LLOYD**  
TOMMY A BROOKS **(HC)**  
1001 SW FIFTH AVE, STE 2000  
PORTLAND OR 97204-1136  
[tbrooks@cablehuston.com](mailto:tbrooks@cablehuston.com)

**W COMMUNITY ACTION  
PARTNERSHIP OF OREGON**  
JESS KINCAID  
PO BOX 7964  
SALEM OR 97301  
[jess@caporegon.org](mailto:jess@caporegon.org)

**W CABLE HUSTON BENEDICT  
C HAAGENSEN & LLOYD LLP**  
CHAD M STOKES **(HC)**  
1001 SW 5TH - STE 2000  
PORTLAND OR 97204-1136  
[cstokes@cablehuston.com](mailto:cstokes@cablehuston.com)

**W NORTHWEST INDUSTRIAL GAS  
C USERS**  
PAULA E PYRON **(HC)**  
4113 WOLF BERRY CT  
LAKE OSWEGO OR 97035-1827  
[ppyron@nwigu.org](mailto:ppyron@nwigu.org)

**W NW ENERGY COALITION  
C WENDY GERLITZ (HC)**  
1205 SE FLAVEL  
PORTLAND OR 97202  
[wendy@nwenergy.org](mailto:wendy@nwenergy.org)

**W NORTHWEST PIPELINE GP**  
TERESA HAGINS  
8907 NE 219TH STREET  
BATTLE GROUND WA 98604  
[teresa.l.hagins@williams.com](mailto:teresa.l.hagins@williams.com)

**W NORTHWEST PIPELINE GP**  
STEWART MERRICK  
295 CHIPETA WAY  
SALT LAKE CITY UT 84108  
[stewart.merrick@williams.com](mailto:stewart.merrick@williams.com)

**W PORTLAND GENERAL  
ELECTRIC**  
RANDY DAHLGREN  
121 SW SALMON ST - 1WTC0702  
PORTLAND OR 97204  
[pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com)

**W PORTLAND GENERAL  
ELECTRIC**  
DOUGLAS C TINGEY  
121 SW SALMON 1WTC13  
PORTLAND OR 97204  
[doug.tingey@pgn.com](mailto:doug.tingey@pgn.com)

Respectfully submitted,



Sommer Templet, OSB #105260  
Staff Attorney  
Citizens' Utility Board of Oregon  
610 SW Broadway, Ste. 400  
Portland, OR 97205  
(503) 227-1984 phone  
(503) 224-2596 fax  
[sommer@oregoncub.org](mailto:sommer@oregoncub.org)