BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UG 221

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

I. CUB'S CLOSING BRIEF

CUB's Closing Brief will follow the same structure as CUB's Pre-Hearing and Opening briefs and will expand upon and add to CUB's legal arguments. To the extent that CUB does not respond in this Closing Brief to any arguments raised by NW Natural in its Pre-Hearing Brief or Opening Brief, CUB does so intentionally because, in CUB's opinion, CUB has already addressed these issues sufficiently in prior briefs.

II. INTRODUCTION

It remains CUB's position that the Company is fighting to retain a regulatory structure that promotes structural over-earning.

III. THE SETTLED ISSUES

CUB continues to request that the Commission take Administrative Notice of the Partial Stipulation entered in this docket on August 10, 2012, and of the Settlement in Principle letter filed on August 14, 2012.

IV. THE UNSETTLED ISSUES

CUB detailed the still unsettled issues in its prior briefs and now adds to its arguments.

V. STANDARD OF REVIEW

Please see CUB's Pre-Hearing Brief.

VI. APPLICATION OF THE STANDARD OF REVIEW TO THE UNSETTLED ISSUES IN THIS DOCKET

NW Natural commences its Posthearing Brief arguments at "II. Discussion, A.," with an exposition of why "[t]he Company's [e]arnings [s]hould [n]ot [s]erve as a [j]ustification for the [d]isallowance of [p]rudently-[i]ncurred [c]osts."[1] Given that NW Natural's statement contains two incorrect assumptions, CUB finds this to be an important place to commence its Closing Brief rebuttal of NW Natural's claims.

A. The Out-of-Period Costs at Issue in This Docket Have Never Been Found Prudent

The first assumption contained in NW Natural's statement is that the costs in question have already been determined to be prudently incurred, or that such a determination is guaranteed as part of this rate case. This is not correct. There has been no determination, at this time, as to whether the costs for which the Company is seeking to establish recovery mechanisms for in this docket—pensions, taxes and environmental remediation costs—are in fact costs that have been found to have been prudently incurred. There is no legal basis for making such determinations in this rate case.[2]

B. The Company's Earnings Were Sufficient to Absorb the Out-of-Period Costs

[1] UG 22/ NW NATURAL/Posthearing Brief at 1.
[2] *See* Staff Post-hearing Brief at 37, line 13; CUB's Opening Brief at 32-33; UG 221 Hearing Transcript/17 line 23 – 18, line 1.

The Company's second incorrect assumption is that CUB is arguing that NW Natural should not be allowed to recover costs that are ultimately found to be prudent. What CUB actually arguing is that the Commission should set aside the argument about whether the costs being requested were prudently incurred and should focus instead on whether, at the time these prior-period pensions, taxes, and environmental remediation costs were incurred, the Company's earnings were sufficient to absorb them. If the rates in effect at the time that NW Natural's requested out-of-period costs were incurred were in fact sufficient to allow the Company—because of the over-earnings that the rates produced—to absorb the out-of-period costs now in question, then no further recovery need be considered. This is why this case is all about NW Natural's over-earning and not about which of the past pension, tax, and environmental costs are prudent. In addition to the above, it is also important to remember that the Company's desire to place costs in automatic adjustment mechanisms that are removed from any earnings reviews belies any intent on the part of the Company for it to truly obtain rates that are fair, just, and reasonable. If the Company was seeking rates that were fair, just, and reasonable, then it would not be objecting to the imposition of earnings tests.

To support its argument that over-earning should not be at issue in this rate case, NW Natural next tries to de-emphasize the level of its prior over-earning. The Company does this by looking at the last eight years of earnings and attempting to remove over-earnings associated with gas purchases from the calculation. But there is no rational reason to remove the over-earning associated with gas purchasing, since it is NW Natural's ratepayers who funded that over-earning. And the eight year review obscures the fact that the over-earning has grown over time and in the last two years averaged 95 basis points of ROE. In conducting earnings reviews,

regulators typically look at the earning during the time period that the cost was incurred because this informs the regulator as to whether rates were sufficient; regulators typically do not look at periods of time that span almost a decade. In this case, the out-of –period costs that the Company is trying to bring into this case reflect years where the Company was over-earning. So, contrary to the Company's position, the over-earning is an issue relating to costs that were incurred during the period of over-earning. And, over-earning is a reason to "disallow" those costs regardless of whether the costs were prudent because rates were sufficient to cover those costs at the time they were incurred.

1. Cost of Capital

As pointed out by Staff in its Post-Hearing Brief, "between rate cases NW Natural [has] actually improved earnings even in a depressed economy."[3] And as pointed out by NWIGU in its Initial Post-Hearing Brief, "The cost of money is at an historic low point and NW Natural's ROE must reflect that reality."[4] Pursuant to the pending Partial Stipulation and Settlement In Principle documents, the other parties are also supporting the continuation of decoupling and the Weather Adjusted Recovery Mechanism (WARM), as well as favorable regulatory lag reducing programs such as the System Integrity Program (SIP). Much of the regulatory risk facing the Company has therefore already been eliminated.[5] All of these factors together mean that, "NW Natural's ratepayers [will not be] properly protected . . . if the Company is authorized to earn a return that is higher than necessary to attract capital in today's equity markets."[6]

CUB respectfully requests that the Commission employ its sound judgment in properly

[3] UG 221/Staff's Post-hearing Brief at 2 lines 8-9.
[4] UG 221/NWIGU's Initial Post-hearing Brief at 5 lines 5-6.
[5] UG 221/Staff's Post-hearing Brief at 2 lines 10-20.
[6] UG 221 NWIGU's Initial Post-hearing Brief at 4 lines 3-5.

balancing the shareholders' interests in being fairly compensated for their investments with the Commission's duty to protect ratepayers from excessive rates,[7] and award NW Natural the cost of capital that is appropriate—Staff's recommended 9.4 percent ROE with 50 percent debt and 50 percent equity.

C. The PGA, Storage, and WACOG

See arguments in CUB's Pre-Hearing and Opening Briefs.

D. Oregon's Regulatory System Allows NW Natural Four Opportunities to Earn a Return On Its Investment in Storage

See CUB's arguments in its Pre-Hearing and Opening Briefs.

E. Programs Like Decoupling, SIP, and WARM All Reduce Regulatory Lag

See arguments above and in CUB's Pre-Hearing and Opening Briefs.

F. NW Natural's Request for 10.0% ROE is Still Too High

CUB relies on the arguments in its, Staff's, and the other Intervenors' previously filed briefs in this docket, and also adds the following to CUB's prior arguments on this topic.

NW Natural, in its Posthearing Brief at "II. Discussion, B." states that, "The Company's Request of a 10.2 Percent ROE Should Be Granted."[8] NW Natural's briefing title thus suggests that NW Natural is continuing to shoot for the outer reaches of the ROE universe, but thankfully the briefing text reverts to the Company's slightly downsized request for a 10.0 percent ROE, demonstrating that the Company is now only reaching for the ROE stars. NW Natural then argues, in an attempt to show it is being reasonable in asking for something near the top of Dr. Hadaway's ROE range, that in its last rate case it asked only for an ROE near the bottom of Dr.

[7] *See also* UG 221/NWIGU's Initial Post-hearing Brief at 4 lines 5-7.
[8] UG 221/NW Natural's Posthearing Brief at 3.

Hadaway's ROE range —11.2 percent.[9] Given that the Company was awarded 10.2 percent in its last general rate case and that it subsequently earned as high as 11.2 percent of its authorized ROE, CUB is not buying the argument that what Dr. Hadaway and the Company are offering this time is any more reasonable than the last time. And, the fact that using Dr. Hadaway's peer utilities in each of Mr. Storm's two multistage DCF models, with the 5.8 percent growth rate used in Dr. Hadaway's Opening Testimony, results in the same 9.6 percent average ROE really seals the case for CUB.[10] CUB has been confident throughout this proceeding that Staff's calculations were correct and that Staff and the Intervenors had pegged the correct ROE for the Company at 9.4 percent. To the extent that anyone had any remaining doubts, CUB hopes that Staff's additional analysis will pour cold water on those doubts.

CUB also hopes that Staff's discussion, in its Post-Hearing Brief, as to how Dr. Hadaway's 5.7 percent growth rate can be decomposed into a 2.62 percent average annual growth rate in real GDP and a 3.0 percent inflation rate will help the Commission see the errors of Dr. Hadaway's incorrect analysis.[11] The fact that Dr. Hadaway's estimate of long-term inflation is between 25 and 67 percent higher than the forecasts of professional economists should give the Commission cause for concern.[12] Further concern should also be engendered by the fact that Dr. Hadaway's estimated long-term inflation rate of 3.0 percent is 87 basis points (0.9 percent) higher than investors' collective expectation for inflation, as measured by the GDP Price Deflator, over the 20 year period beginning May 2022.[13] In addition, Staff brings to light the fact that

[9] UG 221/NW Natural's Posthearing Brief at 4.
[10] UG 221/Staff's Post-hearing Brief at 5, lines 8 – 17.
[11] UG 221/Staff's Post-hearing Brief at 17, lines 17-21.
[12] UG 221/Staff's Post-hearing Brief at 23, lines 7-8.
[13] UG 221/Staff's Post-hearing Brief at 23, lines 9-11.

> [I]nflation will be low (lower than 2.0 percent) this year, inflation over the medium – to longer-term will be low, expectations of longer-term inflation are stable, short-term interest rates will be low through at least a year past the end of the first 12 months of the proposed rate effective period in the current proceeding, and the Federal Reserve will work to keep long-term rates low through its maturity extension program through at least the end of 2012.[14]

Staff also notes that the Company's Pre-Hearing Brief claims that Staff's 9.4 percent ROE recommendation is unreasonable, in part, because it is 52 basis points lower than the 9.92 percent average gas utility ROE awarded in 2011. But, as Staff opines in response, NW Natural's current 10.2 percent ROE, awarded in 2003, was 83 basis points lower than the 11.03 percent average gas utility ROE awarded in 2002.[15] While CUB is content to request a 9.4 percent ROE for this docket, the Commission should feel free to award an ROE with a discount commensurate to that of the difference between the 2002 average gas utility ROE then current in 2002 and the actual ROE awarded to NW Natural in 2003.

The Company accuses Staff of omitting a reference to Docket UE 180, claiming that in that docket "the Commission relied upon an ROE recommendation based on the constant growth DCF model." The Company fails to disclose that the Commission relied on the constant growth DCF model *in part* as a *starting point* for determining the appropriate ROE in PGE's 2006 rate case. Interestingly, the Company has no problem relying on an electric case when it supports its own position, but chastises Staff for relying on earlier electric cases (UE 115 and 116).

[14] UG 221/Staff's Post-hearing Brief at 26, lines 6-11.
[15] UG 221/Staff's Post-hearing Brief at 21, lines 21-24 and 22 lines 1-2.

2. Hedging

OPUC Order No. 07-032 deferred consideration of prudence regarding hedging actions taken until rate recovery is requested.[16] Rate recovery has been requested here and the parties have reviewed this transaction for prudence.

As stated by Staff in its Post-hearing Brief, "NW Natural tries to create an umbrella of prudence over both a process riddled with imperfections and a failed outcome."[17] The Company argues that "[i]n order for the Company to have foreseen the unfortunate outcome of the interest rate hedge, it would have needed to predict the financial crisis—something it could not have done."[18] While CUB recognizes that few people predicted the financial crisis, it does not accept that NW Natural would have had to predict the crisis in order to take appropriate measures to protect itself from an economic downturn or other calamity. Like Staff, CUB thinks that "[t]he Company has additional fiduciary responsibilities, including consideration of protection of rate payers, that wouldn't be present in the obligations of the investment bank[19]… A reasonably prudent financial expert would have taken certain steps that NW Natural did not to inform the financial hedging decision[20] …Reasonably prudent financial experts never presume, prior to entering into a complex financial contract placing millions of dollars at risk, that they do not need to do analysis of the sort recommended by Staff because 'it wouldn't make any difference.'"[21] The Company needed to do more than take the bank's research at face value.[22] CUB agrees with Staff that because NW Natural had just one financial hedge, and no portfolio of

[16] OPUC Order No. 07-032.
[17] UG 221/Staff's Post-hearing Brief at 35 lines 10-11.
[18] UG 221/NW Natural's Prehearing Brief at 12, lines 17-19.
[19] UG 221/Hearing Transcript at 92 lines 17-21 ; *See also* UG 221/Hearing Transcript at 93 lines 10-14.
[20] UG 221/Staff's Post-hearing Brief at 29, lines 23-24.
[21] UG 221/Staff's Post-hearing Brief at 30, line 24 and 31 lines 1-2; NWN/2000 Feltz/13 at lines 4-5.
[22] UG 221/Staff's Post-hearing Brief at 30, lines 1-17.

offsetting financial hedges, NW Natural needed to do its own cost and risk analysis of alternatives, including cost and risk analysis associated with non-hedging alternatives.[23] And the Company should have documented that analysis for presentation to the Commission in this rate case.[24] Thus the Company was insufficiently diligent in conducting its analysis prior to entering into the hedge. "[R]easonably prudent financial experts in regulated utility transactions know that 'lucking' upon a good decision may excuse slight imperfections in a jurisdictional utility's analytical framework and process, but an unsupported bad decision excuses nothing in a prudence review."[25]

As argued by Mr. Muldoon, the Company's policy is broad enough to drive a bus through without so much as a traffic light to impede its travel:

> I believe that the Company's internal policy is extremely broad, and seen in the right light it could probably look at any outcome, any decision as within that policy. For example, were the decision to have led to a decision which had absolutely no protection, absolutely no termination, and absolutely no provision to avoid full 100 percent loss of the amount of the underlying basis for the hedge, I think that the Company policy could be interpreted as having no protections which would cause it to particularly find that unreasonable.
>
> Throughout this review I found that there was an awful lot of room for improvement, and I would suggest the commission may want to ask the Company to relook at its policy based on what it's learned from this process.[26]

Because of the above, Staff proposes that shareholders should share equally with ratepayers the financial hedging loss by the removal of half of the amount from the Company's cost of long term debt. CUB agrees with Staff that the hedge in question was imprudent because

[23] UG 221/Staff's Post-hearing Brief at 33, lines 1-3.
[24] UG 221/Staff's Post-hearing Brief at 33, lines 5-6.
[25] UG 221/Staff's Post-hearing Brief at 30, lines 18-21.
[26] UG 221/Hearing Transcript at 101, lines 5-20.

the Company did not—and the historic facts prove this—conduct independent, unbiased analysis and due diligence prior to the Company making its decision to execute the hedge.[27]

CUB thus agrees with Staff that "[t]he Commission should disallow up to one-half of the interest rate hedge loss to establish that NW Natural did not conduct the required level of risk analysis when entering into its first financial hedge."[28] CUB also agrees that the Commission should order the Company to review and update its policy to ensure that no bus can ever drive through it again.

3. Rate Base Issues[29]—Prudence of Monmouth Reinforcement and Perrydale to Monmouth (Two Sections of the Mid Willamette Valley Feeder)

In its Posthearing Brief, the Company once again claims that it is building the sections of the MWVF, that are at issue in this docket, now because it was concerned about the reliability of service in the Albany/Corvallis area.[30] But as CUB has previously noted, the historic facts show that the Company was not really concerned about system reliability, otherwise it would have conducted analysis and modeled to prove that if needed to build these sections of the line now. Staff asked the Company to run reliability models; the Company did not run them until Staff submitted its request, and then the Company ran them for dates far in the future. As stated by Mr. Zimmerman, "It would be appropriate to run the model both with a date further out to see what happens and a current date, a more recent, yes, to do both."[31] CUB agrees with Mr. Zimmerman.

[27] UG 221/Staff/1200/Muldoon/4 lines 11-17 and at 13 – 16; see also UG 221 Hearing Transcript at 98 lines 18-21.
[28] UG 221/Staff/Prehearing Brief at 8 lines 21-22 and 9 at line 1; UG 221 Hearing Transcript at 86 lines 4 – 25 and also UG 221 Hearing Transcript at 99 lines 16-21; UG 221 Staff Post-hearing Brief/34 lines 12-19.
[29] The Testimony of Moshrek Sohby has been adopted by Ken Zimmerman UG 221/Staff/1900/Zimmerman/4 lines 20 – 22.
[30] UG 221/ NW Natural's Posthearing Brief at 38.
[31] 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.

If the Company was truly concerned about reliability, it would have done its own modeling to show whether reliability was a problem that needed to be addressed. It is also inappropriate for the Company to ridicule Mr. Zimmerman's attempts on the stand to come up with a study that the Company might have conducted for purposes of determining its costs. The Company had years to come up with a study and to carry it out. The historical facts demonstrate that no such study or modeling was carried out in this case, "Instead, it built the segments based upon its purely qualitative judgment on system reliability and reinforcement."[32] And, "NW Natural did not offer any quantitative evidence that these projects were the least cost/least risk alternative."[33] The burden of proof and persuasion is not Mr. Zimmerman's to carry; rather, it is the Company's. The Company has failed to provide any proof that it conducted the appropriate financial analysis or considered appropriate alternative methods to alleviate any reliability or other problems prior to deciding to build these two sections of the MWVF. The Company's decision was imprudent.

The bottom line is that the Company is attempting to rely on an after–the-fact reliability argument because no study of reliability went into the decision to build. It is clear that the historic facts do not support a finding of objective reasonableness for the Company's decision to build these segments of the MWVF at this time. Construction of these two projects was indeed premature. NW Natural has failed to meet the burden of proof.

[32] UG 221/Staff's Post-hearing Brief at 44, lines 22-23.
[33] UG 221/Staff's Post-hearing Brief at 48, lines 2-3.

> Allowing the inclusion of these projects at this time, which are inconsistent with the conclusions of the Modified IRP and are not supported by any quantitative analysis, would send the wrong message that utilities could ignore the results of their recently acknowledged IRP, offer no quantitative support for deviating from the results of the IRP, and expect recovery based solely upon qualitative considerations.[34]

The Company also continues to argue that its disruption scenario modeling selected the MWVF for 2019 for reliability.[35] This has no relevance to the docket at hand. The fact that the disruption modeling scenario selected the MWVF for 2019 does not provide proof that it is prudent to build it during this docket's test year. And the fact that Staff had to request that the disruption scenario be modeled[36] does not mean that such modeling was unnecessary, it just means the Company had not done any modeling on the issue and Staff needed to see the analysis. The fact that the Company could have conducted other model runs, reviewed other transport options, or conducted financial analyses that might have shown that it was prudent to build these sections of the line in this test year does not do anything to support the Company's argument for prudence. The historical facts do not support the building of these lines in this test year, regardless of what the Company says it can show today. CUB respectfully requests the Commission find that the Company's decision was imprudent when it decided to build these sections of the MWVF.

4. Operating Income—Out-of-Period Pension Costs

A. The Parties Do Not Agree That There Is a Problem

NW Natural boldly claims that through all of the controversy surrounding the pension

[34] UG 221/Staff's Pre-hearing Brief at 22, lines 7-11.
[35] UG 221/NW Natural's Posthearing Brief at 44.
[36] UG 221/NW Natural's Prehearing Brief at 47, lines 17-19.

issues in this docket, the parties actually agree "quite substantially"[37] on the problem, and that the Company is "proposing a solution"[38] while Staff and intervenors "recommend that the Commission do nothing."[39] NW Natural is mistaken. While it is true that CUB, NWIGU, and Staff have testified and briefed extensively on the pension issue, the parties have not agreed that there is a "problem" with pension recovery in Oregon. In fact, the reverse is true—CUB, NWIGU, and Staff have recommended that the Commission continue with its long-standing pension recovery policy that, in the words of NW Natural, has "served utilities and customers well over many years."[40] The reasons for recommending that the Commission stay the course relate to the fact that the parties do not believe that the long-standing pension recovery process is broken. Rather, the parties believe that NW Natural simply failed to file the appropriate deferrals in an attempt to avoid an earnings test. Of course, filing a deferral does not guarantee recovery, but it allows the expense to be considered without violating the ban on retroactive ratemaking. Financial markets go up and down—this is nothing new and is a trend that will continue to occur. The Company did not complain that the pension recovery process in Oregon was "broken" when the markets were in its favor, but now that the markets are no longer in its favor, the Company is less content. As stated by NWIGU-CUB Witness Hugh Larkin, Jr., the pension deficit "is a temporary issue that should be corrected over time without adjustments to ratemaking procedures."[41] The Company is the only party proposing a solution because it is the only one that sees a "problem."

CUB agrees with NW Natural that the Company has made pension contributions in

[37] UG 221/NW Natural's Posthearing Brief at 29.
[38] UG 221/NW Natural's Posthearing Brief at 31.
[39] UG 221/NW Natural's Posthearing Brief at 31.
[40] UG 221/NW Natural's Posthearing Brief at 29.
[41] NWIGU-CUB/100/Larkin/48, lines 18-19.

excess of FAS 87 expense. However, CUB does not agree that the result of those contributions is a pre-paid asset that is appropriately included in rate base, which is the Company's position in this case. As CUB pointed out in its Opening Brief, merely depositing funds in a separate pension fund prior to the time that benefits must be paid does not a pre-paid asset make.[42]

NW Natural also overstates the parties' "agreement" that the Company "can never recover the prepaid pension asset."[43] To support this proposition, NW Natural relies on the oral testimony of Staff Witness Mr. Cimmiyotti, who testified over the phone during the hearing because he was on medical leave.[44] Mr. Cimmiyotti clearly had difficulty hearing the questions during the phone call and also had trouble finding the appropriate exhibits (in some instances, he did not find them at all). It should also be noted that the parties present at the hearing were having similar difficulties hearing and understanding Mr. Cimmiyotti's responses to the questions.[45] Accordingly, CUB does not believe that it is appropriate to give Mr. Cimmiyotti's oral testimony much weight. If the Commission does rely on Mr. Cimmiyottie's oral testimony elicited at the hearing, CUB would request that the Commissioners personally read the transcript, as it appears the Company misunderstands Mr. Cimmiyotti's testimony.[46] The Commission should rely most heavily on Mr. Cimmiyotti's pre-filed testimony, which states that:

> [W]hile the Company accumulated $12,923,909 in cash contribution to pensions in excess of their NPPC, including the weighted average cost of gas, at the same time NW Natural earned $20,048,000 in excess of their authorized 10.2 percent return-on-equity (ROE). More importantly, [t]hese excess earnings provided NW

[42] UG 221/CUB's Opening Brief at 16-18.
[43]UG 221/NW Natural's Posthearing Brief at 30.
[44] UG 221/NW Natural's Posthearing Brief at 30.
[45] UG 221/Hearing Transcript at 114-138.
[46] UG 22/ NW Natural's Posthearing Brief at 33 "Mr. Cimmiyotti agreed, first that under FA 87, pension contributions in excess of FAS 87 expense are prepaid assets" What Mr. Cimmiyotti said was "Actually, I look at it as a prepaid expense." UG 221/Hearing Transcript at 133, lines 8-9; *see also* UG 221/NW Natural's Posthearing Brief at 33-34 related to Mr. Cimmiyotti's familiarity with Hahne and UG 221/Hearing Transcript at 135 "I am not aware of it."

Natural the flexibility needed to fund their pension.[47]

Therefore, it is clear that Mr. Cimmiyotti believes that the Company should have taken advantage of its over-earnings to remedy, at least in part, its pension funding issue—over-earnings that came from ratepayers' pockets.[48] Thus, it is not appropriate for the Company to state that there is agreement among the parties that the Company could never recover its prepaid asset. Clearly, what the parties actually feel is that the Company should have taken advantage of its over-earnings and could have addressed the pension issue in a timely manner. This is because, as pointed out in CUB's Opening Brief, "In the event that pension expenses turned out to be greater than those included in [UG 152], the parties agreed that NW Natural could file an application seeking deferral of those expenses."[49] In other words, in UM 1475, NW Natural, Staff and the customer groups agreed to a process for exactly this circumstance but NW Natural apparently decided that it would rather retain its over-earning by avoiding an earning test required of a deferred account and instead attempt to create a new process for cost recovery, by defining this as a pre-paid asset, and not as an expense.

Finally, the Company states that the parties agree that the Company's contributions have been prudently made for customers' benefit.[50] This is not correct. The prudence of those costs was not analyzed in this case by any party. If the Company had filed a deferral, a prudence review would be conducted before amortization. Now, because the Company failed to seek a deferral (or interim rates, or tracker or any other prospective ratemaking tool), it is no longer

[47] Staff/900/Cimmiyotti/6, lines 1-6.
[48] *See also* UG 221/Staff's Post-hearing Brief at 42, lines 17-19 ("The Commission should decline to consider NW Natural's pension expenses inside a vacuum and should, instead, consider why future ratepayers should pay for expenses that the Company paid while earning its authorized return on equity.").
[49] OPUC Order No. 11-051 at 2.
[50] UG 221/NW Natural's Posthearing Brief at 31.

possible for NW Natural to legally recover these costs. Prudence is not relevant.

The Company's attempt to redefine ratemaking to require retroactive dollar-for-dollar recovery of all prudently incurred costs is inappropriate. The Commission sets rates on a prospective basis in a manner to allow the utility an ***opportunity*** to recover its prudently incurred costs and earn a reasonable return. After the rate case, costs will vary from what was used to set rates. It is irrelevant whether this variation is caused by prudent or imprudent activity, because with the exception of deferred accounting, retroactive ratemaking is prohibited.

B. UM 1293

NW Natural states that "contrary to certain inferences in Staff's and CUB's filings in this case, the Commission *did* authorize the Company to record the prepaid asset as a regulatory asset."[51] The Company elaborates that "In Docket UM 1293, the Commission approved the Company's application for an accounting order to record its Accumulated Other Comprehensive Income (AOCI) related to its pension accounts as on ongoing regulatory liability."[52] The Company is attempting to make it sound like the Commission has already granted the cash contributions at issue in this docket regulatory asset treatment that should inform its ratemaking treatment in this general rate case. This is not correct.

Accounting standards for pensions changed in 2006 and NW Natural was required to change how it accounted for the underfunded/overfunded status of its plan. In docket UM-1293, the Commission approved the Company's request to record as a regulatory asset or liability, the over/underfunded status of its benefit plan pursuant to the revised accounting requirements of FAS 158. This is simply a bookkeeping entry reported on the Company's balance sheet and does

[51] UG 221/NW Natural's Posthearing Brief at 33.
[52] UG 221/NW Natural's Posthearing Brief at 33.

involve any cash expended. Under FAS 158, the over/under funded status is the difference between the fair value of the plan and the Projected Benefit Obligation (PBO).[53] Prior to FAS 158, the underfunded/overfunded status was based on the difference between the fair value of the plan and the Accumulated Benefit Obligation (ABO) which is based on current and past compensation levels.

The Commission approved this accounting change as part of the Consent Agenda at the January 23, 2007 Public Meeting. It had no effect on rates. It did not implicate retroactive or prospective ratemaking. It was so lacking in controversy that no one testified for or against it and in adopting it, the Commission clearly stated in its order:

> Approval is for accounting purposes only, and does not impact the level of pension expenses included in the company's cost of service or net income, nor does it constitute authorization of any future ratemaking treatment of the costs associated with the regulatory asset.[54]

According to the Staff Report for the Public Meeting, NW Natural agreed that this was not the basis for ratemaking treatment:

> ***Staff and NW Natural both acknowledge that there should be no rate change, now or in the future, associated with the requested regulatory asset***.[55]

[53] According to the Financial Accounting Standards Board (FASB): "The Board issued this Statement to address concerns that prior standards on employers' accounting for defined benefit postretirement plans failed to communicate the funded status of those plans in a complete and understandable way. Prior standards did not require an employer to report in its statement of financial position the overfunded or underfunded status of a defined benefit postretirement plan. Those standards did not require an employer to recognize completely in earnings or other comprehensive income the financial effects of certain events affecting the plan's funded status when those events occurred… *This Statement results in financial statements that are more complete because it requires an employer that sponsors a single-employer defined benefit postretirement plan to report the overfunded or underfunded status of the plan in its statement of financial position rather than in the notes.*"
http://www.fasb.org/summary/stsum158.shtml

[54] OPUC Order No 07-030, page 2.

[55] *Id.* At Appendix A, 2 NW Natural (Docket No. UM 1293) Application for an Accounting Order Regarding Treatment of Accumulated Other Comprehensive Income for Funded Status of Pension and Other Postretirement Benefit Obligations2 (emphasis added).

C. NW Natural's Proposal to Include Out-of-Period Cash Contributions In Rate Base Constitutes Retroactive Ratemaking

CUB has already argued extensively, in its Pre-Hearing and Opening Briefs, that NW Natural's pension recovery proposal constitutes retroactive ratemaking under Oregon law. CUB has also refuted the Company's arguments that its pension contributions are not expenses subject to the deferral statute,[56] and that just because the Commission has allowed certain prepaid assets into rate base, NW Natural's pension contributions should also be included into rate base.[57]

The Company's latest argument is that CUB has "completely misconstrued the facts and conclusions" from the Delmarva case,[58] and that the case is actually supportive of the Company's position in this docket.[59] The Company misconstrues CUB's purpose in citing to the Delmarva case.[60] CUB's point was that Commissions have been willing to deny recovery of pension-related expenses resulting from market losses as bad policy. Obviously, each Commission has different facts and circumstances before it and a different regulatory construct in which it must apply the law and dictate policy.[61] This is a concept with which NW Natural

[56] UG 221/CUB Opening Brief at 18-19. CUB also notes that Mr. Feltz conceded at the hearing that "And, yes, it's true that we could have – we had the ability to go file for a deferral order. We had talked about it. Did not file it." UG 221/Hearing Transcript at 152, lines 17-19.

[57] UG 221/CUB Opening Brief at 17-18. CUB would also briefly note that prepaid assets, such as insurance premiums, are small, fixed amounts generally amortized over the year in which the "expense" occurs and are often associated with discounts for paying premiums in advance. Though pension expenses are a recurring utility expense, required contributions fluctuate from year to year due to multiple variables, some market driven and others not, and they are not amortized over the year in which the "expense" occurs. The characteristics of each type of expense are truly in stark contrast.

[58] UG 221/NW Natural's Posthearing Brief at 34.

[59] UG 221/NW Natural's Posthearing Brief at 35.

[60] *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 (DE PSC Aug. 9, 2011).

[61] Staff also cautioned that the cases from varying jurisdictions should not be taken to a granular level :

> Every state has a distinct regulatory framework and pension cost recovery is potentially a small portion of a whole in how this issue is handled in other jurisdictions. For example, resolution of pension expenses could come through settlement of issues, be related to complicated sharing mechanisms, or pension expenses could be considered in the context of a utility that is chronically under-earning.

should be familiar, as it has cited to cases with distinct factual patterns from its own in responding to the Commission's bench request. But as Staff cautioned in its Post-Hearing Brief, the Commission should not lose sight of the underlying policy consideration in this docket, which is whether including past pension contributions in future rates at a time when a Company is over-earning is good regulatory policy.[62] As CUB cited in its Pre-Hearing Brief, in the Delmarva case the Commission adopted the reasoning of the Hearing Examiner, who stated that:

> [T]he Company's proposal in this instance gives me the unpleasant feeling that Delmarva believes its ratepayers should be its private insurance company. Whenever there is a financial downturn or an unfortunate economic event, the Company appears to believe the ratepayers should bail it out and make it whole. What Delmarva experienced with the recent economic downturn is nothing more than the vicissitudes of business (as painful as they may be) that all companies in the United States are grappling with – nothing more. Although Delmarva's ratepayers are captive customers; they are not hostages who should be required to open their wallets every time the Company suffers an economic setback.[63]

In its response to the Commission's bench request, the Company cites to six cases in six different jurisdictions.[64] Based on the information provided by NW Natural, CUB notes that there appear to be several jurisdictions that allow some type of pension asset in rate base, but there is little to no discussion as to the context of that regulatory treatment (i.e., the cases cited show that the prepaid asset is there, but not how it was determined). The information provided by the Company in Attachments A, B, and C does not provide any useful context for the respective commissions to include the prepaid pension asset in rate base. Interestingly, Attachment D is a Missouri case in which AmerenUE stipulates to a tracker for pension and other post-employment benefits on a *prospective* basis which does not violate the prohibition on retroactive

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UG 221/Staff Post-hearing Brief at 40, lines 14-18.

[62] UG 221/Staff's Post-hearing Brief at 40, lines 18-21.
[63] *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 at 54 (DE PSC Aug. 9, 2011).
[64] UG 221/NW Natural's Posthearing Brief at Appendix A.

ratemaking.[65]

With regard to NW Natural's citation to the Public Service Company of New Mexico (PNM) case,[66] CUB finds that it too is distinguishable on several important grounds. The case was filed in 2007, prior to the economic crash that gave rise to the circumstances in NW Natural's present case, and the contributions at issue in the PNM case were voluntary, meaning that they were not required to meet federal laws such as the PPA, ERISA, etc.[67] CUB also notes that a strong basis for the New Mexico Public Regulation Commission granting PNM's request to include *voluntary* contributions in rate base was the fact that PNM was able to show that there was a substantial benefit to ratepayers that resulted from early *voluntary* contribution to the pension fund—namely, reduced revenue requirement.[68] The Commission also noted its continuing concern that PNM is "contributing a *discretionary* amount in excess of what is required by SFAS 87; i.e., this is not a required investment" and that "the benefits of prepayments turn on the company's ability to realize a high rate of return on the additional funds"[69]—something that NW Natural has not been able to do. In closing, the Commission stated that PNM "would continue to bear the burden of proof in future rate cases that any prepayments claimed for rate base treatment result in lower cost of service than the pay-as-you-go approach."[70]

Finally, with regard to the AEP Texas Central Company (TCC) case cited by NW Natural,[71] the case before the Public Utility Commission of Texas was for authority to change

[65] UG 221/NW Natural's Posthearing Brief, Appendix A at Attachment D.
[66] UG 221/NW Natural's Posthearing Brief, Appendix A at Attachment E.
[67] UG 221/NW Natural's Posthearing Brief, Appendix A at Attachment E.
[68] UG 221/NW Natural's Posthearing Brief, Appendix A at Attachment E.
[69] UG 221/NW Natural's Posthearing Brief, Appendix A at Attachment E.
[70] UG 221/NW Natural's Posthearing Brief, Appendix A at Attachment E.
[71] UG 221/NW Natural's Posthearing Brief, Appendix A at Attachment F.

rates for transmission and distribution (T&D) rates, not retail electric customer rates.[72] In the Texas case, the Commission allowed the requested pension prepayment asset into rate base, but did not discuss whether these contributions were made outside of a test year or whether this represented a departure from traditional ratemaking in Texas.[73]

The fact that NW Natural can find only a few examples that marginally support its proposed novel treatment of pension recovery, in which the facts are much different than those presently before the Commission, further supports CUB's position that recovering pensions through expensing FAS 87 contributions (with the normal regulatory tools for unusual circumstances such as deferrals, interim rates, etc.) is in fact the best and most routinely followed practice. As Staff notes, "all Oregon regulated utilities do currently follow FAS 87."[74] There are 51 Public Utility Commissions in the USA (50 states plus Washington DC). It would be surprising if NW Natural could not come up with one case to help facilitate its novel proposal, but one or two cases do not a majority make.

Furthermore, it should be of no surprise that there are some non-Oregon commission decisions that are outliers on this issue. There have always been, and will always be, some commissions that appear to give utilities everything that they ask for. The Oregon Commission and Staff, on the other hand, have done a good job in the past of balancing the interests of customers and shareholders alike. Current policy reflects that, and pension expenses here are included in rates on a forecasted basis. When such treatment does not afford the utility a reasonable opportunity for recovery, other ratemaking tools can be used, such as deferrals, automatic adjustments, and, under certain circumstances that must be justified, interim rates. As

[72] UG 221/NW Natural's Posthearing Brief, Appendix A at Attachment F.
[73] UG 221/NW Natural's Posthearing Brief, Appendix A at Attachment F.
[74] UG 221/Staff's Post-hearing Brief at 43 line 6.

stated by Staff, "the fundamental issue related to pension expense is that the Commission should not go all the way back to 2004 and include those out-of-period single issue costs in future rates without a consideration of earnings at the time the contributions were made."[75]

D. To the Extent That the Commission Believes That Departing From Its Long-Standing Pension Recovery Policy Is warranted, It Should Do So on a Prospective Basis Only

From the outset, the Company's distinction between dollars associated with the FAS 87 expense and dollars associated with shareholder investments to meet PPA requirements[76] has been ridiculous. NW Natural is attempting to define these shareholder contributions as an investment, when historically they are an expense. The fact is that NW Natural has an annual funding requirement that it must meet under the PPA (a pension expense). NW Natural currently funds its pension requirement in part with ratepayer dollars collected at FAS 87 levels (ratepayer contributions) and has *chosen* to make up the difference between those two amounts with cash contributions. Without a deferral to allocate these costs to customers, shareholders are funding them. But, that was a *choice* on NW Natural's part, as acknowledged by Mr. Feltz at the hearing.[77] The Company could have chosen to file for a deferral order to capture those funds, but it *chose* not to.[78]

Now, even though the Company has been substantially over-earning, it wants the Commission to go against traditional ratemaking principles,[79] overlook the fact that the Company did not deal with this issue proactively, and allow the Company to recover from ratepayers amounts that customers are not legally obligated to pay under the regulatory scheme.

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[75] UG 221/Staff's Post-hearing Brief at 43, lines 13-15.
[76] UG 221/NW Natural's Posthearing Brief at 35.
[77] UG 221/Hearing Transcript at 152, lines 17-19("And, yes, it's true that we could have – we had the ability to go file for a deferral order. We had talked about it. Did not file it.").
[78] OPUC Order No. 11-051 at 2.
[79] *See also* UG 221/Staff's Post-hearing Brief at 42-43.

Allowing an over-earning utility to avoid the earnings test associated with deferred accounting by redefining a traditional expense as an investment will undermine the deferral statue, which CUB notes is already a one-sided regulatory tool because it is easier for utilities to identify costs that have increased between rate cases than it is for customers to identify costs that have declined.

CUB urges the Commission to consider the precedent that NW Natural's proposed treatment would set. To illustrate, imagine that the Commission grants NW Natural's pension proposal in this case, and then it turns out that the parties' and Commission's forecasts of NW Natural's costs and revenues in this case are wrong and that the Company again earns above its rate of return in the test year that we are currently forecasting. Realizing this mid-year, the Company then "invests" some of its over-earnings in its pension plan. At the next rate case, would NW Natural be permitted to come back and ask customers to pay them a return of and a return on this excess earning? Because regulation is imperfect and cannot accurately forecast rates, customers pay more in the test year than they should. The consequence of this under NW Natural's proposal is that customers would have to over-pay even more. This may play in states like Texas, but it should not fly here.

Finally, CUB notes that it is not supportive of the Company's newest request to "at least grant the Company return on the prepaid pension asset, pending the outcome of a generic proceeding"[80] if the Commission decides that it cannot make a decision to allow the Company to recover the return of its prepaid pension asset at this time.

> NW Natural's proposal to recover pension expenses seeks to shift the risks associated with pension funds to customers. The evidence in the record demonstrates that NW Natural's proposal is unlawful because it seeks to obtain

[80] UG 221/NW Natural's Posthearing Brief at 38.

recovery for deferred expenses that the Commission never authorized the Company to defer. The Commission, therefore, should reject NW Natural's proposed recovery of those expenses.[81]

5. Environmental Remediation/Cost Recovery

NW Natural has clearly made a tactical decision to always use some combination of the phrases "environmental remediation" and "prudently incurred" in the same sentence in an apparent attempt to redefine ratemaking to guarantee retroactive dollar-for-dollar recovery of prudently incurred expenses. CUB assumes that the Company is hoping to lull the Commission into the false belief that it should rule in the Company's favor on the issue of the prudence of past *and future* environmental remediation without the parties ever having had the opportunity to analyze those costs. It is also important to note that there are two parts to the prudence review: a review of the costs associated with environmental remediation, and a review of the Company's handling of recovery of those costs from insurance companies. For example, the Commission could find that all the costs were prudently incurred, but the Company mishandled the insurance recovery, and require effectively disallow some level of environmental recovery on that basis.

But the primary issue in this case is not prudence of those costs, it is who will pay if such costs are later determined to have been prudently incurred.[82] The Commission must not let itself be fooled by NW Natural's dance of smoke and mirrors. What NW Natural seeks is approval of all past environmental costs and preapproval for all future environmental remediation costs and then a blank check from its customers to pay for those costs.[83] NW Natural would have the Commission ignore the fact that the customers from whom it is seeking cost recovery had

[81] UG 221/NWIGU's Initial Post-Hearing Brief at15, lines 7-11.
[82] UG 221/CUB Opening Brief at 32 lines 18 – 25 and 33 lines 1-6.
[83] UG 221/NW Natural's Posthearing Brief at12 and 13 – the Company claims that this docket is about prudence review and that no other party has challenged the prudence of the Company's actions. This is completely untrue. All of the active parties have objected to the prudence of these costs being determined in this docket.

nothing to do with the causation of the environmental damage, did not benefit from the environmental damage, and likely were not alive at the time the environmental damage occurred.

The Company has repeatedly stated that no party has objected to the prudence of the environmental costs incurred to date, and in some places it even says the parties have not objected to the prudence of any costs that might ever come under the jurisdiction of its proposed SRRM.[84] As noted in CUB's Opening Brief, nothing could be further from the truth.[85] Notwithstanding Staff's and the intervenors' briefing to the contrary, the Company kept on trying to put words in Staff's mouth at the hearing. But Staff stuck to its position—this is not the time for a prudence review. CUB sets forth the hearing colloquy:

> Q. And Staff has not raised any questions in this case about the prudence of the costs that the Company has expensed today on this subject?
>
> A. Excuse me. Typically prudency is not raised until amortization begins, so as long as it's in a deferred account and it is not being currently amortized, there's usually no prudence review.
>
> Q. But again, Staff has not raised any question --
>
> A. We have not. We have not.
>
> Q. -- about prudence. So at least as far as the approximately $64 million that the Company has spent to date on environmental remediation, Staff has no reason to believe that the Company has acted imprudently, has it?
>
> A. Without having reviewed it for prudency, I couldn't say yes or no.
>
> Q. So are you saying today that you haven't reviewed the Company's cost documentation that it provided to Staff?
>
> A. Typically we do not review for prudency 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

[84] *See e.g.* UG 221/NW Natural's Posthearing Brief at 12.
[85] UG 221/CUB's Opening Brief at 32-33.

on whether it's prudent or not.[86]

In response to questions from ALJ Hardie, Staff went on to discuss when in the future would be the time to conduct a prudence review. . Again CUB sets forth the colloquy:

> Q. Okay. So some of these questions – I will also have the Company's -- to give, you know, both sides sort of a chance to answer these fairly general questions.
>
> So I have a question about how the prudence review might work under this. We have right now $64.5 million sitting in this deferral account. More being added annually. I think we have annual reauthorizations of the deferral since 2003, and so every year more dollars come into this account. And I know they are reviewed at some level before they come into the deferral account, but I'm wondering how this prudence review happens. Do we do -- will we do a review of the full $64.5 million first and then incrementally each year we review the incrementally added amounts for every year for prudence?
>
> And, I mean, I'll ask the Company this as well. I'm just trying to get a feel for how this might work.
>
> A. Typically what we do with the deferral account is we do not look at it for prudence until it's begun to be amortized, but typically a deferral account is amortized over one year. This is unique in that this will be several years into the future amortization ongoing. So my recommendation would be that we look at the whole bucket as it sits right now less the interest, which I think is about 54 million or something -- that we look at that for prudence right now. And then as they add increments to it, we can look at those as they -- especially if they have an automatic adjustment clause -- look at them as they will be going out and being amortized.
>
> Q. Okay. Thank you. And I think the Company has proposed doing the sort of annual amortization as part of the PGA. Did I get that right?
>
> A. Yes.[87]

Following this colloquy, Staff and ALJ Hardie engaged in another discussion over whether there would be enough time during a PGA for Staff to conduct the necessary prudence

[86] UG 221/Hearing Transcript at 17 lines 20-25 and 18 lines 1-19.
[87] UG 221/Hearing Transcript at 36 lines 19-25 and 37 lines 1-25 and 38 lines 1-5.

review or whether some other process would be necessary.[88] Given how much time was devoted in pre-filed testimony, the hearing, and briefing as to how this is not the proceeding in which to determine prudence, NW Natural's continued devotion to this argument has in turn "mystified" CUB (to use the Company's turn of phrase). CUB's collective jaws hit the floor when reading that, notwithstanding that no party has reviewed the environmental costs, past, present and future, for prudence, the Company still thinks that the Commission should rule on those issues in this docket.[89] The audacity of that request is mind-`numbing. CUB respectfully requests that the Commission deny the Company's request.

A. Oregon Has a Long History of Sharing Costs[90]

The Company states that Commission precedent indicates that all prudently-incurred remediation costs are recoverable in rates, not just a portion.[91] The Company is arguing for two things here: the first is recovery of remediation costs, and the second is recovery of all of those costs without sharing. The Company also claims that it is clear that utilities in Oregon do not share costs as a general matter, and that they certainly do not share environmental costs.[92] This is not correct. The Company further states that "decommissioning costs, which generally include substantial costs for environmental remediation – are routinely included in customer rates."[93] This is true only up to a point, and that point is that remediation costs are routinely included in rates only during the life of the plant, otherwise they would run afoul of the Oregon "used and

[88] UG 221/Hearing Transcript at 38 lines 6-25 and 39 lines 1-6.
[89] UG 221/NW Natural's Posthearing Brief at 16.
[90] For additional arguments on this topic see UG 221/CUB's Opening Brief.
[91] UG 221/NW Natural's Posthearing Brief at 21.
[92] UG 221/NW Natural's Posthearing Brief at18.
[93] UG 221/NW Natural's Posthearing Brief at21.

useful" standard. The Company also states that there is no basis for disallowing costs on CUB's intergenerational equity argument.[94]

CUB refers the Commission back to its earlier intergenerational arguments, but also notes that costs associated with plants that are no longer used and useful are treated differently. To give one example, CUB refers the Commission to the Trojan docket. After Trojan was shut down, the Commission did a net benefit test and required the Company to write-off 13 percent of the remaining investment, which included the costs of the environmental controls which were part of the original Trojan investment. The Commission did not find that PGE was imprudent when it shut Trojan down, but it still required the Company to absorb a share of the cost.[95]

The Company argues that "[f]urthering the policy of intergenerational equity at the expense of the Commission's statutory ratemaking responsibility is unlawful."[96] But the Company ignores the fact that the statutes are set up to regulate the cost of provision of current service to current customers and not for the regulation of past, unrelated services that are no longer operational. Indeed, the statutes are set up to prohibit charging customers for costs related to properties that are no longer presently used to serve customers.[97] There can be few cases where this could be more clearly appropriate than this one. The costs the Company is seeking to recover are related to the cleanup of manufactured gas plants, which have never been used to provide service to modern day natural gas ratepayers who simply do not, and never have, purchased manufactured gas.

[94] UG 221/NW Natural's Posthearing Brief at19.
[95] Order No. 95-322, page 52.
[96] UG 221/NW Natural's Posthearing Brief at 19.
[97] ORS 757.355(1) "a public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property *not presently used for providing utility service to customers*." *(emphasis added)* ORS 756.040 "to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates"

Next, the Company cites to Docket No. UE 230, regarding PGE's treatment of its Boardman plant.[98] CUB finds this curious since Boardman is still operating and the costs there are being recovered during the life of the plant pursuant to an IRP analysis that found that closing the plant was more economic than keeping it open. The whole purpose of that docket was to match the recovery of the plant, including its decommissioning costs, to the operation of the plant. For that docket to have any relation to NW Natural's rate case, NW Natural would have had to try to collect the costs of decommissioning the MGPs during the operating life of those plants.

The last docket that NW Natural cites, UP 168, relates to PacifiCorp's sale of its share of the Centralia plant and its coal mine. Again, CUB is puzzled as to why NW Natural would choose to cite to that docket since the Commission adopted a sharing mechanism requiring PacifiCorp to retain 5 percent of the gain from the sale of the rate based asset. And the statement that NW Natural cites—"[t]he risk associated with the environmental mitigation and mine reclamation are supposedly the risks PacifiCorp is trying to avoid by the sale. The risks associated with replacement power are also risks PacifiCorp is voluntarily opting for by pursuing this sale. In any event, those costs are recoverable in rates . . . ."—is misinterpreted by NW Natural. The statement about recoverable costs referred only to the replacement power costs, not environmental mitigation as claimed by the Company. PacifiCorp was protected from the costs of environmental remediation through its share of the gain from the sale of the plant. Transalta, which purchased the plant and coal mine, took on significant liability relating to environmental remediation of the coal mine.

[98] UG 221/NW Natural's Posthearing Brief at 21.

NW Natural's citation to these dockets does nothing to support its case. There is no precedent in Oregon for the inclusion in rates of environmental remediation costs from investments that are no longer used and useful, let alone without sharing.

B. The SRRM Is Designed to Shift Risk to Customers

In making its arguments that customers should pay for decades-old damage caused by manufactured gas plants not used in any way to provide service to today's natural gas customers, the Company tries to compare payment by today's customers for mitigation of today's natural gas pipelines. This analogy fails. New for new makes sense, but new for old does not.[99] Today's natural gas pipelines are built to transport natural gas to today's customers, so it makes sense that customers would pay to support infrastructure requirements for that service. It makes no sense for today's customers to be forced to pay to repair damage caused by manufactured gas plants that are no longer functioning and were never used to produce gas for today's customers, or used in any other way to provide service for today's customers. Just because NW Natural still owns the land that housed the old manufactured gas plants is no reason to force today's customers to bear the full cost of cleaning them up. Today's customers did not and do not receive services from either the old manufactured gas plants or the land on which they sat. Today's customers should not be saddled with 100 percent of the risk and 100 percent of the bill.

Typically, a prudence review occurs when costs go into rates. Many of the costs that would go into rates under the Company's proposed SRRM mechanism have yet to be incurred

[99] UG 221/NW Natural's Posthearing Brief – CUB notes that at pg. 13 the Company states that "the Commission will include operating expenses in rates to the extent it finds them prudent. (citation omitted)" This is generally a true statement, but only for forecasted costs that are necessary for current service. But even here there are exceptions. In Order 95-322 (page 5) the Commission imposed a 1% disallowance on PGEs discretionary costs (O&M excluding Trojan O&M, amortization of energy efficiency balances, uncollectable accounts, regulatory expenses and rents) without finding any cost to be imprudent. In Order 01-777 the Commission ordered PGE to reduce customer service costs by $3.5 million without finding any particular cost to be imprudent. .

and some that have been incurred should be covered by insurance, not customers. Until the necessary remediation action is determined, the costs for carrying it out are accrued, insurance claims are made for those costs, and those costs and insurance proceeds are reviewed for prudence by the Commission, nothing should be going into rates.

The Company argues that it has been working diligently to obtain insurance settlements for the already-incurred costs. However, giving the Company a blank check now when only one (unknown in total amount) insurance settlement has been reached for past costs incurred would be a serious mistake on the part of the Commission, especially when other insurance claims for past costs are pending and future claims have yet to be filed. CUB respectfully requests that the Commission find that the Company should, for a multitude of reasons including, but not limited to, those already set forth above, be subject to 50 percent sharing of all environmental remediation costs that are determined to be prudent in future proceedings..

C. Staff's Proposal Has Conditions, Including an Earnings Test

See CUB's Pre-Hearing and Opening Briefs.

D. The Commission Has No Lawful Option But to Require an Earnings Test[100]

The Company argues that its proposed SRRM should not be subject to an earnings test.[101] In making this argument it states that "one potential proposal is that the Commission deny recovery of prudently incurred remediation costs in years where their recovery would take the Company over its allowed ROE."[102] No party has argued for that position, and CUB knows of no earnings test that operates that way. Earnings tests are typically applied to the year the expense is incurred, not to the year the expense is recovered, and do not deny all recovery of costs, only

[100] See CUB's Pre-hearing and Opening Briefs in docket UG 221.
[101] UG 221/NW Natural's Posthearing Brief at 25.
[102] UG 221/NW Natural's Posthearing Brief at 25.

recovery to the extent of the over-earning. The question that should be posed instead is whether the Company's revenues were adequate to cover some or all of the costs.

The Company argues that if the Commission does impose an earnings test, it should include remediation expenses and other deferred amounts that the Company expended in the years at issue. It claims that "[i]t would be inappropriate to ignore these significant investments and expenses if the goal is to determine whether the Company could have absorbed the environmental remediation expenses in a given year and remained at its authorized ROE."[103] To CUB, this is a sign that the Company already has too many deferred accounts. Looking at each deferred account and comparing it discretely to earnings is appropriate. This process discourages ever-accumulating layering of accounts.

The Company also argues that it would be almost impossible to rationally apply an earnings test to the environmental remediation amounts at issue because they also include insurance proceeds. CUB has a potential solution. Typically, each year an earnings test would be applied only to the deferred costs. Only costs that are above over-earning would go into the automatic adjustment clause. Insurance proceeds would also go into the automatic adjustment clause and the amount in the account would be subject to sharing. In other words, customers would only pay for environmental costs to the degree that current rates were not adequate (earnings test) and insurance proceeds were not sufficient.

E. Debunking NW Natural's Arguments

The Company argues that allowing recovery of environmental remediation expenses through an automatic adjustment clause is not a basis for imposing a sharing requirement.[104]

[103] UG 221/NW Natural's Posthearing Brief at26.
[104] UG 221/NW Natural's Posthearing Brief at23.

CUB agrees that it is not required, but sharing of costs in an automatic adjustment clause such as a PCAM is not unusual. See also CUB's Opening Brief.

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

See CUB's Opening Brief.

G. Determination of Disallowances and Penalties is for Other Dockets

See CUB's Opening Brief.

H. NW Natural's Kitchen Sink Arguments

In its Posthearing Brief, NW Natural goes back to its argument that sharing will provide the Company no incentive to curb its costs because it has already incurred $64.5 million of those costs.[105] The Company cites to a statement by Staff Witness Judy Johnson to support the fact that it has been chasing the insurance companies for costs it has already incurred.[106] But the sharing of past costs creates a big incentive to maximize the insurance proceeds because if the proceeds are large enough, there are no costs left to share. To say that imposing sharing will provide no incentive to the Company to keep costs down makes no sense. If the Company knows that its investors will have to share 50/50 in the recovery of all environmental remediation costs—past, present, and future—the Company will have every incentive to keep those costs down and to maximize insurance claims.

To date, the Company has provided a long list of insurers and has told us on one hand it is sure it has coverage for all of these costs and expects to recoup them, and then on the other hand that it does not know if it will recover all of its costs, so it needs a blank check for 100 percent of these expenses from customers. The Company thus recognizes that recovery may be

[105] UG 221/NW Natural's Posthearing Brief at 17-18.
[106] UG 221/NW Natural's Posthearing Brief at 17.

uncertain. There has been recovery from only one insurance company so far, out of a long list, and that is only for what has been spent to date, not what has yet to occur, which, as the Company notes, could take a long time and cost a lot of money.

Rates are set on a forward-looking basis by means of a forecast, with an expectation that the utility can earn a return. Mechanisms like the one the Company is requesting operate outside of the normal ratemaking system and are unusual. For that reason, these mechanisms should be subject to sharing and an earnings test. PGE's and Idaho Power's PCAMs are subject to both a sharing mechanism and an earnings test. CUB thinks that applying an earnings test and a sharing mechanism provides an incentive to the Company to engage in good company management and keep its costs down. It is also fair when costs fall outside of the normal forecasted ratemaking mechanics.

I. What Other Commissions Have Ordered[107]

NW Natural states that "the Company's review shows that the *majority* of state public utility commissions allow such costs to be recovered in rates with no sharing."[108] This is a bold claim in light of the fact that not even its witness, Mr. Miller, went so far in his testimony as to argue that the list was representative of a *majority* of commissions.[109] The companies cited in NWN/2600/Miller/15-16, represent *at most* 12 commissions—hardly a "majority" of the commissions in the United States. More importantly, at least half of the commissions cited have in fact ruled contrary to NW Natural's position, meaning that they have required sharing in some

[107] Please see CUB's arguments in its Prehearing and Opening Briefs in docket UG 221.
[108] UG 221/NW Natural's Posthearing Brief at 22 *(emphasis added)*.
[109] NWN/2600/Miller/15 ("NW Natural is aware of many utilities that are allowed to recover the costs of environmental remediation through rates. Examples of utilities that are allowed recovery of environmental remediation costs related to MGP operations without sharing include…").

cases.[110] This makes clear the fact that, similar to pensions, regulatory treatment of environmental remediation costs is necessarily fact-specific.

Additionally, the Public Service Commission of New York has recently instituted an investigation into sharing mechanisms:

> Further, we direct advisory staff to present us with a proposal for a proceeding to examine this issue on a statewide basis. That proceeding should develop a comprehensive record to describe the scope of the utility [Site Investigation and Remediation] programs in our State and their anticipated scope in the future, review the processes used by our utilities to develop and implement the SIR implementation plans, and review existing and alternative cost sharing mechanisms or other forms of incentive that could be adopted to further the goal of accomplishing thorough, timely clean-ups with the least impact on ratepayers.[111]

J. Small Customers Should Not Be Saddled With 100 Percent of Remediation Costs

See CUB's Pre-Hearing and Opening Briefs. In addition, CUB would also like to address NWIGU's rate spread proposal here. CUB wishes to build on what it stated in its Pre-hearing and Opening Briefs as to why NWIGU's proposal for rate spread should not be adopted. NWIGU continues to argue against applying any costs associated with environmental remediation to industrial customers, specifically Schedules 31 and 32.[112] NWIGU bases its argument on the Company's Long Run Incremental Cost Study (LRIC).[113] In addition, NWIGU claims that CUB is raising a red herring by arguing that there is no way to fairly allocate these historic costs to

[110] *See e.g. Re: Delmarva Power & Light Co. for a Change in the Gas Environmental Surcharge Rider Rate*, Docket No. 05-356, Order No. 6889 (DE PSC Apr. 25, 2006); *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 (DC PSC Oct. 8, 1993); *Re: Application of Delmarva Power and Light Company for an Increase in its Retail Rates for the Distribution of Electric Energy*, Case No. 9192, Order No. 83085 at 9-12 (MD PSC Dec. 30, 2009); *Re: Michigan Consolidated Gas Company*, Case No. U-13898 and U-13899, Order entered April 28, 2005 at p. 23-30 (MI PSC); *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); *Re: Niagara Mohawk Power Corporation dba National Grid*, Case 10-E-0050, Order No. 08-E-0827 (NY PSC Jan. 24, 2011).

[111] *Re: Niagara Mohawk Power Corporation dba National Grid*, Case 10-E-0050, Order No. 08-E-0827 at 85 (NY PSC Jan. 24, 2011).

[112] UG 221/NWIGU's Initial Post-hearing Brief at 10.

[113] UG 221/NWIGU's Initial Post-hearing Brief at 10-12.

customers based on the principle of cost causality.[114]

It is not a red herring to acknowledge that the costs associated with environmental remediation are unrelated to the LRIC of providing natural gas to existing customers. This is an unusual situation. The Company is facing potentially significant costs that are related to service that was provided decades ago to residential, commercial, and industrial customers. There is no evidence on the record concerning whether any customers overpaid or underpaid for the manufactured gas associated with environmental remediation.

The Company's position is that everyone but the Company should pay for these costs. Likewise, NWIGU argues that everyone but industrial customers should pay these costs. CUB, on the other hand, is arguing that everyone should share these costs: residential customers, industrial customers, commercial customers, and shareholders. CUB believes that sharing the costs as widely as possible is the only fair approach.

K. GASCO is Not Used and Useful

NW Natural argues that because it has proposed an attestation mechanism in its draft Schedule 184, the Commission and CUB do not need to worry about whether the GASCO plant will be used and useful. In this simple way, the Company is trying to get pre-approval for a project that is not yet built,[115] is not used and useful,[116] and may not be used and useful during the periods that rates associated with this rate case will be in effect. To quote the Company exactly, its Schedule 184 provides the following:

[114]UG 221,/NWIGU's Initial Post-Hearing Brief at 12.
[115] UG 221/NWN/1500 Miller/19. "NW Natural is currently seeking final sign-off from DEQ *on plans to construct* a hydraulic containment system for groundwater source control at the Gasco Site."*(emphasis added)*
[116] ORS 757.355(1).

Special Conditions:

1. The pumping station shall be considered in service for rate recovery purposes on the date that the Company submits an attestation to the Commission that the Pumping sate is completed and operational.
2. * * * The capital structure and the cost of long term debt and common equity to be used in the calculation of the return-on-rate-base will be that which is established in the Company's most recent general rate case.[117]

So not only is NW Natural trying to get this facility approved for rate base now, without it being built and without a prudence review, but NW Natural is also putting in a placeholder, just in case it is not built and used and useful at all within the duration of the rate period for this rate case, so that it can receive whatever the rate-of-return may be in a future rate case without having to undergo a prudence review at that time. CUB can think of little else to say other than "Wow, that was creative!" CUB respectfully requests that NW Natural's proposal for the GASCO plant be denied.

L. Applicable Interest Rates: The Debt Rate

The Company argues that Staff has presented no basis for applying a return lower than the rate of return on deferred amounts before amortization for environmental remediation costs. CUB would argue in response that the Company's entire case is an argument for why application of the MBTR is appropriate. The Company is arguing that it should get preapproval for all kinds of costs; if the Company succeeds, it will face little risk. Even if the Company only succeeds in part, any risks facing it will be greatly decreased. Because of this, CUB reiterates its argument for application of the debt rate.

M. NW Natural's Reference to "Powerdale" Is Inappropriate

See CUB's Opening Brief.

[117] NWN/1701/King /184-1

N. NW Natural's Reference to the Idaho Power Docket is also Inappropriate

See CUB's Opening Brief.

O. Summary of CUB's SRRM-Related Positions

The Company's environmental remediation costs have never been subject to review for prudence and should not be subject to review for prudence in this docket.

CUB does not agree that it is appropriate to convert currently deferred costs into an automatic adjustment clause without an earnings test. All deferred costs are subject to an earnings test unless the deferral is part of an automatic adjustment clause. The current deferral was not established as part of an automatic adjustment clause and to go back in time and retroactively create an automatic adjustment clause to protect the Company's over-earning is not appropriate. CUB believes the earnings test exists for a reason: if the Company is over-earning at a level that allows it to recover the deferred cost and still earn a reasonable return, then ratepayers are already paying rates that are sufficient to allow the Company to recover its costs and earn a reasonable rate of return. This proposal illustrates the Company's apparent desire to protect its over-earnings through use of automatic adjustment clauses in order to ensure even more over-earning for shareholders at the expense of customers.

The Company is only entitled to recovery of prudent costs incurred for serving *current* customers. There is no intergenerational equity here. The costs at issue here were incurred because of antiquated manufacturing practices and do not relate in any way to provision of service to *current* customers. Today's customers did not benefit in any way from the

manufacturing of gas or the sale of MGP byproducts. They also did not cause the environmental damage that needs to be remediated.[118]

In addition, CUB notes that when the Company receives a return on equity from its investments, that return reflects a risk factor associated with the operation of a business.[119] This risk factor is related to unknown factors, such as the assessment by the environmental agencies of remediation costs against the owners of the land that was contaminated.[120] Even though a regulated entity has substantially less risk than a competitive company, the return it receives still reflects a component related to risk, otherwise it would receive a return on its investment somewhat closer to government bonds.[121] In the case of contaminated property, only the Company's management, who were employed by the shareholders, could have affected the outcome of the initial contamination of this property.[122] The owners and operators of these facilities should have been, or could have been, aware that by-products were either being dumped or stored on-site, and only they could have affected the amount and type of contamination done to these properties.[123] It seems apparent that the Company's management accepted the risk from the operation of manufactured gas plants that was reflected in the rate of return that they received.[124]

While a strong argument exists that it is not fair for ratepayers to bear any of the cost of remediation for these contaminated sites,[125] CUB is attempting to be reasonable and has taken the position that it is certainly not appropriate for ratepayers to bear the full cost of the

[118] UG 221/NWIGU-CUB/200/Larkin/32 lines 7-13.
[119] UG 221/NWIGU-CUB/100/Larkin/51 lines 16-17.
[120] UG 221/NWIGU-CUB/100/Larkin/51 lines 17-19.
[121] UG 221/NWIGU-CUB/100/Larkin/51 lines 19-22.
[122] UG 221/NWIGU-CUB/100/Larkin/51 line 22 to 52 line 2.
[123] UG 221/NWIGU-CUB/100/Larkin/52 lines 2-5.
[124] UG 221/NWIGU-CUB/100/Larkin/52 lines 5-7.
[125] UG 221/NWIGU-CUB/200/Larkin/32 lines1-6.

remediation[126] and have the Company earn a full rate of return on those costs until they are reflected in the Company's proposed recovery mechanism.[127] Instead, CUB supports sharing the costs between shareholders and customers on a 50/50 basis and sharing the costs between customer classes. Only by spreading the costs as widely as possible can a result be achieved that is the "least unfair result."

In addition, the Company should only earn a debt rate of return on the balance reflected in the Deferred Environmental Cost Account.[128] Allowing the Company to make a profit on this as if it is an investment related to current service to current customers does not seem reasonable. Because this is not a cost that is subject to normal rate case forecasting, there will be little risk associated with recovery and therefore no equity investment would be necessary.[129] The Commission's Order would guarantee the return of the environmental remediation costs, and therefore only a debt return should be recovered by the Company, because no risk would be involved in the recovery of the authorized amount.[130]

6. Amortization of Out-of-Period State Tax Change—Deferred Taxes

As stated by Staff in its Post-hearing Brief,

> NW Natural did not propose to change its deferred taxes based upon changes to its deferred tax expense, but instead created a $4.48 million regulatory asset in 2009, which it now wants to amortize over a five year future period. These facts demonstrate that this issue is not establishing the appropriate deferred tax expense going forward. Rather, it is an attempt to collect in a future test year a regulatory asset created in 2009, without any Commission approval or a request for deferred accounting. This rate case is to set future rates, not reconcile previous rates.[131]

[126] UG 221/NWIGU-CUB/200/Larkin 30 lines 13 – page 31 line 27.
[127] UG 221/NWIGU-CUB/100/Larkin 52 lines 10-12.
[128] UG 221/NWIGU-CUB/100/52 lines 24-25.
[129] UG 221/NWIGU-CUB/200/Larkin 30 lines 2-7.
[130] UG 221/NWIGU-CUB/100/53 lines 3-4
[131] UG 221/Staff Post-hearing Brief at43, lines 17-22.

NW Natural accuses CUB of being confused about deferred taxes and deferrals because the words are similar.[132] This is ridiculous. If CUB thought deferred taxes were so named because they are costs that have been deferred, then we would not criticize the Company for failing to file a deferral. CUB understands that deferred taxes arise out of the timing difference between the accounting used for tax purposes, which include accelerated depreciation and bonus depreciation, and the accounting systems used for regulatory purposes that do not include accelerated depreciation and bonus depreciation.[133]

CUB also recognizes that NW Natural is attempting to confuse everyone else, when this issue is really quite simple. As CUB-NWIGU witness Hugh Larkin, Jr. testified, NW Natural is seeking recovery of costs that are outside of the test period.[134] When tax rates changed, the proper procedure should have been for NW Natural to file a deferral application in order to establish the regulatory account at issue here. CUB thinks the Company did not file for a deferral then because it would have been at risk of an earnings test. CUB thinks the Company rolled the dice, hoping that in a general rate case it could somehow change the mechanism and avoid the application of the earnings test. The regulatory asset at issue here was not properly authorized for later inclusion in rates, is related to tax changes from a previous year, and is not related to any costs associated with the test year. Since it is an out-of-period adjustment, the regulatory asset should simply be rejected on that basis.

NW Natural cites to several cases in support of its argument that amortization of the deferred tax balance does not constitute retroactive ratemaking because "the deferred tax

[132] UG 221/NW Natural's Posthearing Brief at 49.
[133] CUB notes that deferred taxes were one of the items that was included in the Trojan settlement CUB negotiated in 2000 that removed Trojan's investment (return of and return on) prospectively from rates. See Commission Order Number 00-601.
[134] UG 221/NWIGU-CUB/200/Larkin/10, line 14 – 11, line 2.

balances at issue in this case reflect taxes that will be paid in the future."[135] CUB argues instead that these cases do not, in fact, support the Company's positions at all.

First, the Company cites to a Texas Court of Appeals decision in which the Court held that "[t]he true effect of the…adjustment is to allow the utility to obtain from present and prospective ratepayers its actual ***current*** and ***future*** tax expenses. Consequently, this adjustment to the deferred-tax account does not, in any way, constitute retroactive ratemaking."[136] The Company focuses on the last sentence, and then would have the Commission believe that the reasoning in this case should apply to the ***prior*** tax expenses at issue in UG 221 (i.e., 2009-2012 expenses). The Texas Court of Appeals does not go that far. The fact is that this case dealt with a "depreciation add-back," the "purpose of which was to account for [the Company's] transition from a 'flow-through' system of tax accounting to a 'normalization' system."[137] The Court explained that:

> As a result [of the accounting method switch in the middle years of the useful lives of its assets], the utility had not built up a deferred-tax account with which to pay its taxes during the later years in which its actual tax liability will exceed the tax payments ratepayers will be making under normalization. The utility therefore faces an increasing tax liability without a means of recovering the increased expense; yet, in spite of the deficiency of funds available to satisfy the tax liability, the utility must pay its taxes as they become due. Consequently, in this case, the Commission has included in cost of service a ***onetime adjustment*** to put [the Company] in the position it ***would have occupied had it used normalization all along***.[138]

Contrary to NW Natural's assertion, there is absolutely no discussion of a tax *rate* change in the

[135] UG 221/NW Natural's Posthearing Brief at 48.
[136] UG 221/ NW Natural's Posthearing Brief at 47; *El Paso v. Pub. Util. Comm'n of Texas*, 839 S.W.2d 895, 930 (Tex. App. 1992)(affirmed in part, reversed in part not relevant to deferred taxes).
[137] *Id.* at 929.
[138] *Id.* at 930 (emphasis added).

Texas case;[139] as made clear above, the issue in this case dealt with a tax *accounting* change. The facts in this case are grossly different from those in NW Natural's case. This case does not support NW Natural's argument.

Next, the Company cites to a Vermont Supreme Court case.[140] In that case, as stated by the Company, the Court upheld the Vermont Commission's order that required the utility to *refund* to customers amounts that the utility had been collecting for deferred taxes.[141] The Court's reasoning was that the utility "has been collecting funds from ratepayers for an income-tax expense it did not and will not incur; that the ADIT balance represents ratepayer funds collected in the past; and that these funds should be returned to ratepayers."[142] CUB would note that this case addresses a *refund* of *actual dollars* collected from ratepayers *in the past* (presumably at the appropriate rate each year) for a non-existent tax liability.

Finally, the Company cites to an Illinois Supreme Court case.[143] In that case, at issue was the 1986 federal tax rate reduction, which the commission (as well as everyone else) was aware of and which benefitted ratepayers. The Illinois utility did not set up a an unauthorized regulatory asset and attempt to recover the cost from ratepayers. Rather, the parties agreed that a refund was due to customers but differed on the appropriate time period for amortization. In this case, the Company set up a regulatory asset without Commission approval, during a period when it had sufficient earnings, which was several years outside the test year and is now trying to recover that cost from ratepayers.

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[139] UG 221/NW Natural's Posthearing Brief at 47.
[140] UG 221/NW Natural's Posthearing Brief at 47-48; *Re Appeal of Investigation into Existing Rates of Shoreham Tel. Co., Inc.*, 915 A.2d 197, 207-208 (Vt. 2006).
[141] *Id.*
[142] *Shoreham Tel. Co., Inc.* at 207-208.
[143] UG 221/NW Natural's Posthearing Brief at 48. *Bus. And Professional People for the Pub. Interest v. Ill. Commerce Comm'n*, 146 Ill.2d 175, 256-258 (1991).

CUB respectfully requests that the Commission deny NW Natural's request to be allowed to amortize its unauthorized, self-created regulatory asset.

VII. CONTRARY TO NW NATURAL'S PRONOUNCEMENTS, STAFF AND THE INTERVENORS' PROPOSALS ARE UNLIKELY TO IMPOSE ANY FINANCIAL HARM ON THE COMPANY

Please see CUB's arguments in CUB's Pre-Hearing Brief.

VIII. ADDITIONAL RECOMMENDATIONS

Notwithstanding that Staff, Intervenors, and NW Natural have now settled both rate design and the requested increase to the customer charge, CUB respectfully requests that the Commission outline a requirement that any future rate design proposals must be vetted in IRP proceedings if those proposals are expected to have a significant effect on energy efficiency.[144] This is necessary to ensure that any proposed rate deign is vetted for its effects on supply and demand before it is considered in a rate case.

IX. CONCLUSION

In conclusion, CUB does not support any of the requests being made by the Company with regard to the "unsettled issues." From CUB's point of view, all of these items are being requested by the Company for one simple reason—to beef up its already large over-earning. NW Natural is not Oliver Twist, and it does not deserve any more.

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

- That the Commission set the Company's ROE at 9.4 percent and the Company's capital structure at 50 percent equity and 50 percent debt.

[144] UG 221/CUB/100 Jenks-Feighner/2 at 11-13.

- That the Commission adopt Staff's position regarding the financial hedge.
- That the Commission find that the Company was not prudent in moving forward with either the Monmouth Reinforcement or Perrydale to Monmouth sections of the Mid-Willamette Valley Feeder project at this time, and that the costs of those projects should be removed from the test year.
- That the Commission find that including past pension contributions in future rates would constitute retroactive ratemaking and that these costs may not be included in the test year. Also, that the Commission order the removal of the unrecovered investor contribution of $21,929,876 from rate base and the removal of the entire $4,568,724 from amortizable expenses. That the Commission find that the Company has failed to meet the burden of proof for its claim that its proposals for environmental remediation costs are prudent. The request for the GASCO pumping station is being made for a plant that is not yet used and useful. The request is also retroactive in nature because it seeks recovery based on damages caused long ago, which have no relation to provision of service to current ratepayers. The SRRM proposal fails for the same reason—the costs relate to damage from long ago, with no connection to current ratepayers. In the case of the SRRM, the Commission should also find it is not appropriate for a deferral to be converted to an automatic adjustment clause in order to avoid an earnings test. The Commission should find that it is more than equitable for NW Natural's shareholders to share 50/50 with its customers the costs of environmental damage caused decades ago, and that the Company should apply the debt rate, rather than its rate of return to this account.

- That the Commission find the Company's out-of-period tax adjustments are not reasonable because they are examples of both single issue-rate making and retroactive ratemaking. The Company needed to file for a deferral if it wanted to recover these costs. The Commission should therefore find that the Company's proposed $895,966 reduction to miscellaneous revenues should be disallowed.

Dated this 19th 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

UG 221 – CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of September 2012, I served the foregoing **CITIZENS' UTILITY BOARD OF OREGON'S CLOSING 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

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

W **NW NATURAL**
REGULATORY AFFAIRS E-FILING
220 NW SECOND AVENUE
PORTLAND OR 97209-2516
efiling@nwnatural.com

W **PUBLIC UTILITY COMMISSION**
C JUDY JOHNSON **(HC)**
PO BOX 2148
SALEM OR 97308-2148
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

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

W **COMMUNITY ACTION**
PARTNERSHIP OF OREGON
JESS KINCAID
PO BOX 7964
SALEM OR 97301
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

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

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

W **NORTHWEST PIPELINE GP**
TERESA HAGINS
8907 NE 219TH STREET
BATTLE GROUND WA 98604
teresa.l.hagins@williams.com

W **NORTHWEST PIPELINE GP**
STEWART MERRICK
295 CHIPETA WAY
SALT LAKE CITY UT 84108
stewart.merrick@williams.com

W **PORTLAND GENERAL ELECTRIC**
RANDY DAHLGREN
121 SW SALMON ST - 1WTC0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com

W **PORTLAND GENERAL ELECTRIC**
DOUGLAS C TINGEY
121 SW SALMON 1WTC13
PORTLAND OR 97204
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