1	<b>BEFORE THE PUBLIC UTILITY COMMISSION</b>				
2	<b>OF OREGON</b>				
	UM 1744				
3					
4	In the Matter of				
5	NORTHWEST NATURAL GAS COMPANY, dba NW NATURUAL	STAFF'S CROSS-REPLY BRIEF			
6 7	Application for Approval of an Emission Reduction Program.				
8					
9	1. Introduction				
10	Staff of the Public Utility Commission of Oregon (Commission) submits its Cross-Reply				
11	Brief in response to the Post-Hearing Briefs filed by Northwest Industrial Gas Users (NWIGU);				
12	PacifiCorp; the Citizens' Utility Board of Oregon (CUB); and Portland General Electric				
13	Company (PGE).				
14	Staff either supports, or does not disagree with, the arguments on the primary outstanding				
15	issues submitted by NWIGU and CUB. Having said that, it is important to note that while Staff				
16	generally agrees with the positions taken by CUB and NWIGU in their respective Post-Hearing				
17	Briefs, to the extent Staff's Post-Hearing Brief presents a different analysis or recommendation				
18	on a particular issue, Staff's Post-Hearing Brief represents Staff's position on the issue. Most				
19	notably, Staff has a different recommendation on the scope and application of an earnings test				
20	than does CUB.				
21	Further, Staff would like to expressly st	ate that it agrees with NWIGU's position that the			
22	CHP Program should be reevaluated whenever major assumptions change, such as the enactment				
23	of new comprehensive carbon regulation. See NWIGU Post-Hearing Brief at 9-10. This				
24	approach is a sensible one that Staff believes NWN likely supports as well.				
25	The remainder of this Cross-Reply Brief will concern Staff's disagreement with the				
26	positions taken by PGE and PacifiCorp on the following issues:				

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1	А.	Whether the CHP Program constitutes unlawful fuel switching;
2	В.	The use of Energy Trust of Oregon (ETO) funds collected from electric utility
3		ratepayers for Northwest Natural Company's (NWN or Company) Combined
4		Heat and Power (CHP) Program; and
5	C.	Whether NWN has shown that it would not invest in the CHP Program in its
6		ordinary course of business without the mechanisms provided by ORS 757.539.
7	For the reasons stated below, Staff concludes that: (A) NWN's CHP Program does not	
8	constitute unlawful fuel switching; (B) NWN's reliance on ETO funds as support for part of its	
9	CHP Program is not unlawful and not inconsistent with Commission policy; and (C) The	
10	Company has presented sufficient evidence to show that it would not offer its CHP Program in	
11	its ordinary course of business.	
12	2. Argument	
13	А.	NWN's CHP Program does not constitute unlawful fuel switching.
14	PGE a	rgues that the Company's CHP Program constitutes unlawful fuel switching. See
15	PGE Post-Hea	aring Brief at 3-6. In PGE's opinion, the Program constitutes "fuel switching"
16	because it will cause customers to switch from electric service to gas service for all or a portion	
17	of their load.	Id. After warning the Commission to carefully consider the underlying fuel
18	switching pol	icy involved with NWN's CHP Program (PGE Post-Hearing Brief at 4), PGE ends
19	by asserting that, should the Commission find the Program acceptable, then the Commission	
20	"should not object if PGE proposes fuel switching incentives to natural gas customers as part of	
21	future programs" PGE Post-Hearing Brief at 9.	
22	Staff discussed this issue both in its Prehearing Brief and in its Post-Hearing Brief. See	
23	Staff Prehearing Brief at 13-14; Staff Post-Hearing Brief at 14-15. Staff's position remains the	
24	same as stated	l previously: ORS 757.539 authorizes a gas utility to propose a program to reduce
25	carbon emissi	ons through the use of natural gas to displace a higher-carbon emitting fuel source.
26	In this way, P	GE's fuel switching issue is made moot by the statute. Regardless of whether a

Page 2 - UM 1744 STAFF'S CROSS-REPLY BRIEF MTW/pjr/#7148383 Depa project constitutes "fuel switching" as the concept has been explored by the Commission in the
 past, if the project meets the ORS 757.539 criteria, it is not unlawful simply because it promotes
 the use of natural gas in place of another fuel source. *See, e.g.*, ORS 757.539(3)(a) (expressly
 requiring that a project involve the use of natural gas).

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## *B.* <u>Use of ETO funds collected from electric utility ratepayers for NWN's CHP</u> <u>Program is consistent with past Commission precedent.</u>

PGE argues that use of ETO funds to provide part of the incentives to CHP Program
participants (Participants) would be poor policy for the Commission to adopt. PGE Post-Hearing
Brief at 8. PGE goes on to explain that "If the Commission were to decide that the proposed
program should be eligible for ETO incentives, those incentives should rightly be sourced from
funds collected from NWN customers for natural gas efficiency, not electric efficiency funds." *Id.*

While Staff has not previously weighed-in on this issue in its briefs, CUB and NWN havedone so. Staff agrees with their respective analyses.

15 In reviewing this issue, it is important to know that the Oregon Department of Justice 16 (DOJ) previously concluded that the law does not preclude the use of funds collected for electric efficiency to be used for CHP programs. See PGE/101, Barra/1-4 (DOJ advisory letter dated 17 May 18, 2005).<sup>1</sup> And, CUB correctly observes that the Commission *already* allows ETO funds 18 19 to be spent to incentivize CHP projects. CUB/200, McGovern/2-3; CUB Prehearing Brief at 15. 20 Staff agrees with CUB that, in light of these circumstances and history, the Commission should 21 not use the current docket to change its current policy of allowing ETO funds to be used to incentivize CHP facilities. CUB Post-Hearing Brief at 18. 22

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<sup>&</sup>lt;sup>1</sup> PGE witness Barra testified that "PGE does not question the legal underpinnings [of the DOJ advisory letter] but rather questions as a matter of policy, whether this should be the sanctioned policy approach." PGE/100, Barra/3.

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NWN presented a similar analysis and conclusion in its prior briefings. *See* NWN
 Prehearing Brief at 16-17; NWN Post-Hearing Brief at 30. Staff agrees with the Company's
 analysis of this issue.

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С.

## Whether NWN has shown that it would not invest in the CHP Program in its ordinary course of business without the mechanisms provided by ORS 757.539.

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6 PacifiCorp correctly states that ORS 757.539(3)(d) requires NWN to show that it would 7 not invest in the CHP Program in the "ordinary course of business" without the emission 8 program and mechanisms provided by the statute. PacifiCorp then walks through a statutory 9 analysis of ORS 757.539(3)(d) and concludes that, if a program increases utility margin revenue, the proposing utility "has an ordinary course of business interest in pursuing the program." 10 PacifiCorp Post-Hearing Brief at 3. PacifiCorp concludes its discussion by stating "Ultimately, 11 12 the question comes down to establishing the correct level of incentive and whether it is sufficient 13 to incentivize the utility to invest in the program or engage in certain behavior that it would not otherwise invest or engage in." PacifiCorp Post-Hearing Brief at 3-4.<sup>2</sup> 14

15 Staff is uncertain of what to make of PacifiCorp's argument on this issue. PacifiCorp 16 seems to be trying to be careful to avoid directly asserting that NWN failed to establish that it 17 would not invest in the CHP Program in the ordinary course of its business. As such, it can 18 fairly be said that PacifiCorp is merely presenting what it views as a *possible* issue. PacifiCorp 19 certainly has not made a convincing case to support its hypothesis on this matter.

Having said this, Staff recognizes that in its Prehearing Brief, PacifiCorp made an additional assertion: that NWN had previously attempted to invest in CHP as part of its ordinary business by means of a former tariff offering to its customers. PacifiCorp Prehearing Brief at 3-4. PacifiCorp goes on to note, as it must, that NWN's prior attempt in the CHP-promotion area ended when no customer requested service under the former tariffs. PacifiCorp Brief at 4,

25 footnote 2.

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<sup>26 &</sup>lt;sup>2</sup> Staff notes that PGE made similar arguments in its Prehearing Brief but, for unclear reasons, did not repeat them in its Post-Hearing Brief.

Nevertheless, Staff did look at this issue in considering NWN's filing and determined it
 was not a matter for concern. NWN has repeatedly stated, as it does most recently in its Post Hearing Brief, that it would not, and did not, develop its CHP Program in the course of its
 ordinary business. NWN Post-Hearing Brief at 31.

5 Further, Staff agrees with CUB, NWIGU and NWN that increased margin from increased 6 customer load, by itself, is very likely not a sufficient incentive for NWN to create and promote 7 its CHP Program as part of its ordinary business model. If it was, the Company would already 8 be providing such incentives on its own outside of ORS 757.539.

ORS 757.539 allows the Commission the discretion to permit NWN to receive an
incentive for running its CHP Program. ORS 757.539 further allows NWN to obtain cost
recovery for a program that includes both incentives to participants and, within the
Commission's discretion, to the Company. Staff is convinced by the Company's testimony and
argument that, without the cost-recovery and incentive mechanisms provided by ORS 757.539,
NWN would not be proposing its CHP Program.

This leads then to the issue that PacifiCorp posited as the "ultimate" one: what is the appropriate amount of the incentive to NWN to encourage it to create, promote and oversee its CHP Program? The answer to this question is, of course, not to conclude that NWN failed to establish that its CHP Program is not part of its ordinary business model. Rather, the answer to the Company incentive issue has been thoroughly addressed by the parties in other parts of their testimony and briefs.

20	estimony and briefs.	
21	DATED this day of February, 2016.	
22	Respectfully submitted,	
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24	Attorney General	_
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