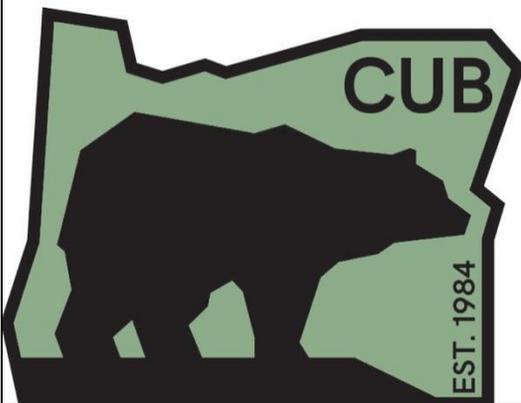


**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1804**

In the Matter of )  
)  
NORTHWEST NATURAL GAS )  
COMPANY dba NW NATURAL, )  
)  
Application for Approval of Corporate )  
Reorganization to Create a Holding )  
Company. )  
\_\_\_\_\_ )

**REPLY TESTIMONY  
OF THE  
OREGON CITIZENS' UTILITY BOARD**

June 16, 2017



**BEFORE THE PUBLIC UTILITY COMMISSION**  
**OF OREGON**  
**UM 1804**

In the Matter of	)	
	)	
NORTHWEST NATURAL GAS	)	REPLY TESTIMONY OF THE
COMPANY dba NW Natural,	)	OREGON CITIZENS' UTILITY
	)	BOARD
Application for Approval of Corporate	)	
Reorganization to Create a Holding	)	
Company.	)	
_____	)	

I. INTRODUCTION

1 My name is Bob Jenks, and I am the Executive Director of the Oregon Citizens'  
2 Utility Board ("CUB"). My qualifications are provided herein as CUB Exhibit 101.

3 In its application ("Application") before the Public Utility Commission of Oregon  
4 ("the Commission"), Northwest Natural Gas Company ("NW Natural" or "the  
5 Company") requests approval to implement a corporate reorganization ("the proposed  
6 reorganization") that will result in a holding company structure.<sup>1</sup> If approved by the  
7 Commission, the proposed reorganization would render NW Natural a wholly owned  
8 subsidiary of a newly formed holding company ("HoldCo").<sup>2</sup> Commission Approval is a  
9 necessary condition for the Company to form HoldCo and reorganize its corporate

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<sup>1</sup> *In re Northwest Natural Gas Company's Application for Approval of Corporate Reorganization to Create a Holding Company*, OPUC Docket No. UM 1804, Application of Northwest Natural Gas Company at 1 (Feb. 10, 2017) (hereafter "The Application").

<sup>2</sup> The Application at 1.

1 structure.<sup>3</sup> The Company is correct in asserting that Commission authorization is  
2 required under ORS 757.511.<sup>4</sup> Pursuant to ORS 757.511, the Company must  
3 demonstrate that the proposed reorganization “will serve the public utility’s customers  
4 and is in the public interest.”<sup>5</sup> To determine whether this standard has been met, the  
5 Commission applies a two part test: (1) the transaction must provide a net benefit to NW  
6 Natural customers; and (2) the transaction must pose no harm to Oregonians as a whole.<sup>6</sup>

7 Historically, CUB has been a party to a multitude of cases in which the ORS  
8 757.511 net benefit standard has applied.<sup>7</sup> To ensure that customers benefit from a  
9 transaction, the Commission typically imposes conditions designed to mitigate  
10 customers’ exposure to potential risks.<sup>8</sup> CUB appreciates the Company’s willingness to  
11 impose various conditions that seek to reduce the risk. To be clear, however, these risk-  
12 mitigating instruments are not considered benefits under the net benefit standard. As  
13 with any ORS 757.511 docket that does not implicate a specific transaction, merger, or  
14 acquisition with a known entity, the speculative nature of the risk structure of a  
15 hypothetical future transaction makes it extremely difficult to clearly articulate risks and  
16 benefits in a manner that meets the net benefit standard. The net benefit standard is a  
17 balancing test, and the articulable risks must be clearly outweighed by the benefits to the

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<sup>3</sup> UM 1804 – NWN/100/Filippi/7.

<sup>4</sup> The Application at 7.

<sup>5</sup> ORS 757.511(4)(a).

<sup>6</sup> The Application at 8.

<sup>7</sup> See, e.g. *In the Matter of AVISTA CORPORATION, dba Avista Utilities Application for an Order Approving a Corporate Reorganization to Create a Holding Company*, OPUC Docket No. UM 1250; *In The Matter Of The Application Of Idaho Power Company For An Order Authorizing The Formation Of A Holding Company And The Execution Of A Share Exchange Agreement*, OPUC Docket No. UM 877; *In the Matter of OREGON ELECTRIC UTILITY COMPANY, LLC, et al.*, OPUC Docket No. UM 1121; *In the Matter of the Application of PACIFICORP HOLDINGS, INC. and PACIFICORP for an Order Authorizing PACIFICORP HOLDINGS, INC. to Exercise Substantial Influence Over the Policies and Actions of PACIFICORP*, OPUC Docket No. UM 1021; *In the Matter of an Investigation into the Legal Standards for Approval of Mergers*, OPUC Docket No. UM 1011.

<sup>8</sup> The Application at 8.

1 Company's customers. The Commission may consider all relevant facts, and has  
2 discretion to make a determination whether the proposed reorganization is in the public  
3 interest on a case-by-case basis.<sup>9</sup>

4 At this phase in the proceeding, absent additional, clearly articulated benefits for  
5 NW Natural's customers that will flow from the proposed reorganization, CUB believes  
6 that Commission approval would be premature and unwarranted. Approving the  
7 proposed reorganization would effectively grant NW Natural pre-approval to acquire an  
8 out of state utility or entity in a transaction that would not be subject to Commission  
9 approval.<sup>10</sup> The risk profile of a transaction that would affect NW Natural's customers  
10 and would not be subject to Commission oversight concerns CUB. NW Natural is, and  
11 always has been, a company that primarily serves Oregon customers—to the tune of 89%  
12 of its total customer base.<sup>11</sup> Removing a potential future transaction from Commission  
13 oversight can have potentially dangerous consequences.

14 CUB is sympathetic to the Company's position. This is a challenging time for a  
15 gas-only utility. Public policies developed in response to a carbon constrained world  
16 have the potential to reduce the market for natural gas through increased efficiency and  
17 substitution of cleaner fuels. Eugene has a climate policy that sets a target of reducing  
18 the community's use of fossil fuels by 50% between 2010 and 2013 and sees shifting  
19 home heating from natural gas to electric heat pumps as a part of this strategy.<sup>12</sup> Looking  
20 for new business opportunities may be necessary to project future shareholder earnings.

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<sup>9</sup> UM 1804 – NWN/100/Filippi/12.

<sup>10</sup> UM 1804 – Staff/100/Muldoon/4, lines 8-10 *and* fn. 2.

<sup>11</sup> *In re NW Natural 2016 Integrated Resource Plan*, OPUC Docket No. LC 64 at 1.1, *available at* <https://www.nwnatural.com/uploadedFiles/LC64-Errata.pdf> (“Approximately 89 percent of NW Natural's customers reside in Oregon, with the other 11 percent in the state of Washington.”).

<sup>12</sup> Ashland, Eugene Ponder Fuel Switching for Carbon Reduction Goals, *Clearing Up* (June 9, 2017) at 9.

1 But CUB’s analysis of this filing is not based on our view of the future of NW Natural, it  
2 is based on whether the application meets the net benefit standard required under the  
3 statute.

4 CUB organizes its testimony as follows:

- 5 1. History and the Public Utility Holding Company Act;
- 6 2. Benefits, Risks, and Oregon’s Net Benefit Standard;
  - 7 a. The Company’s Description of Benefits of the Proposed
  - 8 Reorganization;
  - 9 b. Risks of the Proposed Reorganization;
  - 10 c. The Proposed Reorganization Fails to Meet the Net Benefit
  - 11 Standard;
- 12 3. The Proposed Reorganization May Radically Alter the Commission’s
- 13 Ability to Provide Effective Oversight;
- 14 4. Practical Recommendations.

## 15 II. HISTORY AND THE PUBLIC UTILITY HOLDING COMPANY ACT

16 The Public Utility Holding Company Act (“PUHCA”) was enacted in response to  
17 the collapse of holding companies in the 1930s. PUHCA was designed to prevent the  
18 corporate abuse of utilities that led to this collapse by prohibiting the structures and  
19 practices that allowed the abuse in the first place.

20 Though PUHCA has been repealed, there is little reason to believe that the  
21 concerns of the enactors of PUHCA have dissipated. What has changed since PUHCA’s  
22 enactment that gives the states the tools they need to effectively regulate multi-state  
23 holding companies? Those who fought to repeal PUHCA argued that state regulation has

1 matured and is more robust than it was in the 1930s. While this may be true, the problem  
2 with this argument is that state regulation has not developed to deal with multi-state  
3 holding companies, because, for the past 70 years, it hasn't had to.

4 Lynn Hargis, a utility consumer advocate, detailed lost consumer protections  
5 resulting from PUHCA repeal in her comments on behalf of CUB in prior merger case:

- 6 • LOST: Prohibition on most foreign companies/countries owning US utilities
- 7 • LOST: Limit on number of utility systems in a single holding company
- 8 • LOST: Limit on geographic spread of utilities
- 9 • LOST: The watchdog provisions
- 10 • LOST: Limit on utility size
- 11 • LOST: Limits on corporate complexity
- 12 • LOST: Bankruptcy protection
- 13 • LOST: Authority to require maintenance of books and records <sup>13</sup>

14 Additionally, when PUHCA was repealed, a number of valuable consumer  
15 protections were lost and risks to utilities from acquisitions under holding companies  
16 reemerged. While the Company's application does not include a request to acquire a non-  
17 regulated business, it is a feasible next step after the formation of a holding company.

18 Ms. Hargis' contribution to CUB's testimony in UM 1209 also included a list of  
19 lost specific consumer protections:

- 20 • LOST: Prohibition of non-utilities owning utilities
- 21 • LOST: Prohibition of utilities diversifying into non-utility businesses
- 22 • LOST: Limits on financial transactions with a utility

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<sup>13</sup> *In the Matter of MIDAMERICAN ENERGY HOLDINGS COMPANY and PACIFICORP Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp*, OPUC Docket No. UM 1209, CUB Opening Testimony (Nov. 21, 2005) at 37.

1 • LOST: Limits on affiliate transactions<sup>14</sup>

2 These four protections were adopted under PUHCA to address the problems that  
3 arise when a regulated utility and non-regulated business are part of the same corporate  
4 structure. One of these problems is a conflict of interest. It is important to note, when a  
5 corporate parent controls a regulated utility and non-regulated businesses, there will be  
6 conflicts of interest. Whether these conflicts are allowed to affect utility operations or  
7 Oregon ratepayers remains to be seen. At a minimum, a comprehensive master services  
8 agreement will be needed to protect the utility from other non-regulated HoldCo  
9 subsidiaries.

10 III. BENEFITS, RISKS, AND OREGON’S NET BENEFIT STANDARD

11 The balance of the risks and benefits of the Company’s proposed reorganization  
12 fails to meet the net benefit standard. Given the Commission’s discretion in considering  
13 all relevant facts and circumstances in making a net benefit determination, CUB believes  
14 it is paramount that the risks of potential *future* transactions also be considered, in  
15 addition to what the Company has discussed on record in this case thus far. To grant the  
16 Company’s Application now would amount to pre-approval of a future acquisition of any  
17 non-Oregon utility because the transaction between HoldCo and the given target would  
18 not require Commission review.<sup>15</sup> This concerns CUB. 89% of the Company’s  
19 customers reside in Oregon.<sup>16</sup> These customers deserve Commission oversight of a  
20 potential future transaction that may shift risk onto them and bring debt into the  
21 Company’s structure. The uncertainty surrounding the terms of a potential future  
22 transaction inherently brings risk into the Company’s HoldCo application.

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<sup>14</sup> *Id.* at 35.

<sup>15</sup> UM 1804 – Staff/100/Muldoon/4, lines 8-10 *and* fn. 2.

<sup>16</sup> NW Natural’s 2016 IRP, *supra*, note 11.

1 A. *The Company's Description of Benefits of the Proposed Reorganization*

2 Throughout its Application, the Company asserts that its proposal meets the net  
3 benefit standard.<sup>17</sup> According to the Company, it does so by creating benefits in the form  
4 of: “(1) separating and insulating NW Natural more strongly from the consolidated  
5 organization’s non-gas utility businesses; (2) protecting NW Natural’s strong debt rating  
6 and investment profile; and (3) positioning the consolidated entity to pursue [ ]  
7 appropriate growth.”<sup>18</sup> Apart from these benefits that the Company believes are  
8 “inherent [to a] holding company structure,” it makes commitments that it proposes to be  
9 adopted as conditions to approval.<sup>19</sup> In its Application, NW Natural addresses 14  
10 separate commitments that, it asserts, are designed to mitigate risk, insulate the utility,  
11 and offer customer benefits.<sup>20</sup> The Company broadly divides the commitments into four  
12 distinct categories: access to records commitments, cost allocation commitments,  
13 financial commitments, and a commitment that HoldCo will abide by all commitments.<sup>21</sup>  
14 Additionally, the Company asserts that the proposed reorganization will provide benefits  
15 to NW Natural’s customers without altering the Commission’s ability to effectively  
16 regulate the Company’s utility operations.<sup>22</sup> As will be discussed, CUB takes issue with  
17 this statement. A thorough discussion of Company-envisioned benefits can be found in  
18 its Application and testimony.

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<sup>17</sup> UM 1804 – NWN/100/Filippi/12 at line 25.

<sup>18</sup> UM 1804 – NWN/100/Filippi/12-13.

<sup>19</sup> UM 1804 – NWN/100/Filippi/13.

<sup>20</sup> UM 1804 – NWN/200/Wilson/3.

<sup>21</sup> UM 1804 – NWN/200/Wilson/3.

<sup>22</sup> The Application at 2.

1 B. *Risks of the Proposed Reorganization*

2 While the Company asserts that the commitments it offers in its Application are  
3 “designed to mitigate any potential risks associated with the Reorganization,”<sup>23</sup> the  
4 Company has failed to clearly articulate any tangible risks associated with the proposed  
5 reorganization to date. The Company recognizes that corporate reorganizations can  
6 create customer risk, and that conditions imposed by the Commission are typically  
7 designed to mitigate these risks.<sup>24</sup> To CUB, the question is how much weight, if any,  
8 should be given to the Company’s commitments and articulated benefits if it fails to  
9 delineate any real risks? Where do the risks lie? CUB believes that the real risks  
10 associated with the proposed HoldCo reorganization reside in allowing the Company to  
11 enter into a hypothetical future transaction that would not be subject to Commission  
12 oversight. Conditions and commitments are useful when there are real risks to weigh  
13 them against from an actual, proposed transaction. Absent a concrete transaction to  
14 balance the benefits and risks under Oregon’s net benefit standard, the Company’s  
15 assertions and commitments are largely meaningless.

16 Approving the Company’s Application as currently proposed would pre-approve  
17 it to enter into a merger or acquisition with a non-Oregon utility without Commission  
18 oversight, which may bring in a number of unknown risks. Therefore, the Commission  
19 should not only consider what the risks are to this specific Application. Rather, it should  
20 take into consideration the risks that may be shifted to NW Natural’s Oregon customers  
21 down the line due to a potential future transaction. At this point, we have no idea what  
22 those are.

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<sup>23</sup> The Application at 2.

<sup>24</sup> The Application at 9.

1 In 2001, NW Natural proposed a \$3 billion purchase of Portland General  
2 Electric.<sup>25</sup> While that deal fell through before it got to an OPUC decision,<sup>26</sup> it was  
3 approved by FERC.<sup>27</sup> The docket ended before CUB filed testimony, but CUB filed an  
4 Issues Lists that shows our concerns. This was a small fish trying to eat a much bigger  
5 fish. It was not clear that conditions (including establishing a Holding Company) could  
6 protect NW Natural customers from the massive debt they were taking on, as can be seen  
7 by CUB's Issue #7 from the Issues List:

8 7. Under the proposed application, NW Natural Holdco will assume a  
9 significant debt.

10 a. What is the effect of this debt load on both utilities ability and cost of  
11 raising capital to maintain normal investment and service to customer  
12 during an emergency or an unexpected weather event?

13 b. Considering this high debt load of the resulting utility, can the  
14 Commission effectively enforce strict service quality standards?<sup>28</sup>

15 If NW Natural's current HoldCo application is approved, a transaction such as  
16 their proposed purchase of PGE would not have to be approved by the Commission, as  
17 long as the asset they are acquiring is not a regulated Oregon utility.

18 In addition, there is no guarantee that NW Natural will enter into a transaction  
19 with another utility. The HoldCo could be used to enter a non-regulated business. NW

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<sup>25</sup> Brian J. Back, *Federal Agency OKs NW Natural's PGE Purchase*, PORTLAND BUS. JOURNAL (Feb. 13, 2002, 3:55 PM), <http://www.bizjournals.com/portland/stories/2002/02/11/daily35.html>.

<sup>26</sup> *In the Matter of the Application of NORTHWEST NATURAL HOLDCO and NORTHWEST NATURAL GAS COMPANY for an Order Authorizing NORTHWEST NATURAL HOLDCO to Exercise Substantial Influence Over the Policies and Actions of PORTLAND GENERAL ELECTRIC COMPANY and NORTHWEST NATURAL GAS COMPANY*, OPUC Docket No. UM 1045, Order No. 02-358 available at <http://apps.puc.state.or.us/orders/2002ords/02-358.pdf>.

<sup>27</sup> *FERC Approves NW Natural Purchase of Portland General Electric*, ELECTRIC LIGHT & POWER (Feb. 13, 2002), <http://www.elp.com/articles/2002/02/ferc-approves-nw-natural-purchase-of-portland-general-electric.html>

<sup>28</sup> CUB Exhibit 102.

1 Natural could use this structure to invest in oil and gas extraction which has a much  
2 different set of risks that would need to be examined.<sup>29</sup>

3           NW Natural wants to acquire something. There may be a significant risk  
4 associated with that acquisition. Whether that is related to too much debt, environmental  
5 concerns, operational risks, exchange rate risk, or something else is unknown. Whether  
6 the risk can be eliminated through ring fencing or other financial conditions is unknown.  
7 Without knowing the acquisition, CUB cannot determine whether the acquisition's risks  
8 can be reduced through conditions.

9 *C. The Proposed Reorganization Fails to Meet the Net Benefit Standard*

10           Typically, in merger, acquisition, or corporate reorganization cases that fall within  
11 the ORS 757.511 net benefit standard, a determination of whether a net benefit exists  
12 begins with an articulation of real, concrete benefits. These are typically tangible  
13 benefits to the utility's system that inherently flow to customers from reduced overhead  
14 cost due to sharing such corporate offices as payroll, taxes, and financing with a merged  
15 or acquired entity often times guaranteed with a rate credit. After that, stakeholders  
16 review the risks of the proposed reorganization, and, if they are not completely offset by  
17 the benefits in a manner that renders a net benefit, the stakeholders can suggest, and the  
18 Commission can impose, adequate customer safeguards in the form of conditions that  
19 result in a net benefit. The purpose of conditions is to reduce the risks to the point that  
20 the benefits outweigh the risks. The conditions are not the benefit, they are a tool to  
21 reduce the risk. In this case, absent tangible articulated benefits, even if the conditions  
22 could eliminate the risks, the Company's proposed reorganization does not meet the  
23 criteria under ORS 757.511.

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<sup>29</sup> See UE 308 – CUB's Redacted Opening Brief 14-18.

1 CUB's idea of what constitutes a benefit *to customers* under ORS 757.511 clearly  
2 differs from the Company. As stated previously, two of the stated "benefits" according to  
3 the Company are "separating and insulating NW Natural more strongly from the  
4 consolidated organization's non-gas utility businesses" and "protecting NW Natural's  
5 strong debt rating and investment profile."<sup>30</sup> These are not benefits to customers. These  
6 are manners through which the Company can mitigate risk, not concrete benefits that  
7 would flow to customers. The third "benefit" articulated by the Company is "positioning  
8 the consolidated entity to pursue [ ] appropriate growth."<sup>31</sup> Once again, this is not a  
9 tangible benefit to customers. Rather, this is a means through which the Company can  
10 create growth and for its shareholders. The Company clearly envisions using the HoldCo  
11 platform as an opportunity to grow through future mergers, acquisitions, or capital  
12 investments.<sup>32</sup> It is inappropriate for the Company's shareholders to benefit without  
13 tangible benefits that will pass to customers while proposing a corporate reorganization  
14 that would allow for a potentially risky future transaction to take place without  
15 Commission oversight. As filed, the Company's Application and proposed  
16 reorganization fails to meet the net benefit standard under ORS 757.511.

17 IV. THE PROPOSED REORGANIZATION MAY RADICALLY ALTER THE  
18 COMMISSION'S ABILITY TO PROVIDE EFFECTIVE OVERSIGHT

19 Contrary to the Company's assertions, the proposed reorganization may likely  
20 have profound, negative impacts on the Commission's ability to provide effective  
21 oversight of NW Natural. In numerous places throughout its Application and testimony,

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<sup>30</sup> UM 1804 – NWN/100/Filippi/12-13.

<sup>31</sup> UM 1804 – NWN/100/Filippi/13.

<sup>32</sup> UM 1804 – NWN/100/Filippi/10 ("the consolidated organization would also seek to expand its business growth by making investments in new business opportunities. . . . These new investments might be made through developing new business or *possible acquisitions*." (emphasis added)).

1 the Company asserts that the proposed reorganization will have no impact on the  
2 Commission’s ability to effectively regulate the Company’s utility operations.<sup>33</sup> At one  
3 point, the Company states that its proposed commitments actually “provide the  
4 Commission with expanded authority to regulate NW Natural.”<sup>34</sup> One specific  
5 commitment that the Company may be referencing here is its set of access to records  
6 commitments. Within those, the Company provides a commitment to enable its directors  
7 and agents to be able to “testify before the Commission to provide information relevant to  
8 a matter *within the jurisdiction of the Commission.*”<sup>35</sup>

9 While this commitment may sound promising from a high level, the gigantic  
10 carve out for only matters that fall within the jurisdiction of the Commission renders it  
11 meaningless for any potential future transaction in which the Company may seek to  
12 acquire an out-of-state utility or entity. As mentioned, any transaction, merger, or  
13 acquisition between HoldCo and an out-of-state entity would not be subject to  
14 Commission approval or jurisdiction.<sup>36</sup> This same concern can be applied to all of the  
15 Company’s assertions that the regulatory oversight of the Commission would be  
16 unchanged. While this oversight may be unchanged in regards to the Company, NW  
17 Natural will undoubtedly use the to-be-formed HoldCo to enter into transactions in order  
18 to sidestep this necessary and effective regulatory oversight. In that regard, the  
19 regulatory oversight towards the Company and HoldCo would change significantly. This  
20 oversight is necessary to mitigate risk and protect NW Natural’s Oregon ratepayers. In

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<sup>33</sup> The Application at 2; *see also* The Application at 5 (“NW Natural will continue to operate as a regulated utility under the jurisdiction of the Commission.”); *see also* The Application at 14 (“[T]hese direct benefits come without any change in the Commission’s ability to regulate NW Natural.”).

<sup>34</sup> UM 1804 – NWN/100/Filippi/8.

<sup>35</sup> The Application at 9 (emphasis added).

<sup>36</sup> UM 1804 – Staff/100/Muldoon/4, lines 8-10 *and* fn. 2.

1 CUB's eyes, this is essential, especially given the uncertainty surrounding potential  
2 future transactions.

3 V. PRACTICAL RECOMMENDATIONS

4 A. *Bring the HoldCo Application Concurrently with a Proposed Transaction*

5 Absent a more clear articulation of the benefits and risks of allowing the proposed  
6 reorganization, CUB cannot endorse the Application for Commission approval.  
7 However, CUB may be able to find that the proposed reorganization is in the public  
8 interest under a different set of circumstances. Utilities are able to bring holding  
9 company applications before the Commission concurrently with a specific merger or  
10 acquisition with a known entity. There, the known entity can bring a number of known  
11 benefits and risks to the table. Stakeholders and the Commission are then able to put  
12 adequate ring-fencing provisions and protections in place to ensure that the net benefit  
13 standard is met. In this Application, the Company is effectively putting the cart before  
14 the horse. A proposed reorganization coupled with a specific transaction would enable  
15 much greater vetting of the risks and benefits to determine whether it meets the net  
16 benefit standard. As discussed previously, approving the Company's application would  
17 enable it to enter into a potential future transaction that could be subject to a wide range  
18 of risks. Without knowing what those are, it is difficult for parties to adequately ring-  
19 fence to meet the net benefit standard.

20 B. *Require Commission Oversight of any Future Transaction*

21 The concern that approval of this application will prevent the Commission from  
22 reviewing future transactions could be fixed with a condition that requires Commission  
23 oversight of any potential future merger or acquisition. This is a condition that the

1 Commission and stakeholders have utilized in the past in order for a proposed  
2 reorganization or transaction to meet the net benefit standard.<sup>37</sup> Due to the risks that may  
3 shift to customers as the result of a future unknown transaction—and the sheer number of  
4 NW Natural’s customers that reside in Oregon—it is appropriate for the Commission and  
5 stakeholders to monitor and regulate that transaction. While this condition would go a  
6 long way towards reducing the risk associated with this HoldCo application, it would still  
7 need to be accompanied by some type of benefit in order for the transaction to pass the  
8 net benefits test.

## 9 VI. CONCLUSION

10 For the foregoing reasons, CUB cannot endorse the proposed reorganization for  
11 Commission approval as currently filed. The proposed reorganization fails to meet the  
12 Oregon net benefit standard.

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<sup>37</sup> See, e.g. UM 1250 – Staff/102/Morgan/9 (“Avista Utilities or AVA will notify the Commission, and other parties to this Docket upon request, subsequent to AVA's or Avista Utilites' board approval and as soon as practicable following any public announcement of: (1) any acquisition of a regulated or unregulated business representing 5 percent or more of the equity book value capitalization of AVA; or (2) the change in effective control or acquisition of any material part or all of Avista Utilities by any other firm, whether by merger, combination, transfer of stock or assets . . .”); and *In The Matter Of The Application Of Idaho Power Company For An Order Authorizing The Formation Of A Holding Company And The Execution Of A Share Exchange Agreement*, OPUC Docket No. UM 877, Order No. 98-056 (Feb. 17, 1998) at Appendix A (“Within 90 days after IPHC acquires or creates a new subsidiary entity, IPHC shall file with the Commission a statement that provides the name of the subsidiary, the total value of its assets, the nature of the subsidiary’s business and whether it will do business with IPC.”).

### WITNESS QUALIFICATION STATEMENT

**NAME:** Bob Jenks

**EMPLOYER:** Citizens' Utility Board of Oregon

**TITLE:** Executive Director

**ADDRESS:** 610 SW Broadway, Suite 400  
Portland, OR 97205

**EDUCATION:** Bachelor of Science, Economics  
Willamette University, Salem, OR

**EXPERIENCE:** Provided testimony or comments in a variety of OPUC dockets, including UE 88, UE 92, UM 903, UM 918, UE 102, UP 168, UT 125, UT 141, UE 115, UE 116, UE 137, UE 139, UE 161, UE 165, UE 167, UE 170, UE 172, UE 173, UE 207, UE 208, UE 210, UE 233, UE 246, UE 283, UG 152, UM 995, UM 1050, UM 1071, UM 1147, UM 1121, UM 1206, UM 1209, UM 1355, UM 1635, UM 1633, and UM 1654. Participated in the development of a variety of Least Cost Plans and PUC Settlement Conferences. Provided testimony to Oregon Legislative Committees on consumer issues relating to energy and telecommunications. Lobbied the Oregon Congressional delegation on behalf of CUB and the National Association of State Utility Consumer Advocates.

Between 1982 and 1991, worked for the Oregon State Public Interest Research Group, the Massachusetts Public Interest Research Group, and the Fund for Public Interest Research on a variety of public policy issues.

**MEMBERSHIP:** National Association of State Utility Consumer Advocates  
Board of Directors, OSPIRG Citizen Lobby  
Telecommunications Policy Committee, Consumer Federation of America  
Electricity Policy Committee, Consumer Federation of America  
Board of Directors (Public Interest Representative), NEEA

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1045

In the Matter of the Application of	)	
Northwest Natural Holdco and Northwest	)	
Natural Gas Company for an Order	)	Issues List of the
Authorizing Northwest Natural Holdco	)	Citizens' Utility Board
To Exercise Substantial Influence over the	)	of Oregon
Policies and Actions of Portland General	)	
Electric Company and Northwest Natural	)	
Gas Company.	)	

The Citizens' Utility Board of Oregon (CUB) proposes the following as a list of issues that should be resolved as part of this docket.

1. The rate plan freezes PGE's rates (with the exception of power costs) at current levels (UE 115) for the next six years with cost reductions during this period assumed to be acquisition-related synergies and used to pay down the debt associated with the acquisition.
  - a. Is it appropriate for the efficiencies and economies of scale related to PGE's recent increased expenditures associated with customer service (UE/115/PGE/2100/Barnes-McArthur-Ryder/12 ) to be declared an acquisition-related "synergy" and used to pay off NW Natural's debt associated with this merger.
  - b. UE 115 used a 2002 test year to set rates for 2002. Is this test year the appropriate basis for setting rates through 2009?
  - c. Is it in the public interest to preclude the reduction of rates following the reduction of a utility's costs as proposed in the proposed conditions?
  - d. During the rate freeze the Company would be allowed to file for deferred accounts. Should there be conditions on the use of deferred accounting to ensure that the rate freeze is not undermined?

- e. When conducting an earnings review for the purpose of a deferred account, will the Commission use the Company's actual earnings or will it assume the customer cost levels from UE 115?
  - f. Should the applicant bear the burden of proof to show that savings identified as merger-related "synergies" are there and are related to this transaction?
2. Customers receive little benefit from this acquisition until after 2008. How are customers assured that the utility (through its now enhanced political clout) will not change state law in the interim to capture these benefits and prevent them from flowing to customers?
3. Does the merger as proposed create risks to current ratepayers, while providing benefits to future ratepayers in a way that is an inappropriate matching of benefits and risks?
4. Given the tenuous nature of "benefits" that begin in six years, how does the Commission value these for the purpose of evaluating the net benefits standard?
5. Given the financial risk to customers due to increased debt load, the loss of expected rate reductions reflecting efficiencies from PGE's UE 115 investments, the tenuous nature of economic benefits that will not begin until after 2008, the lack of a commitment from NW Natural to hold natural gas rates steady for the same period that PGE rates are held steady, the ability by PGE to raise rates 6% through deferred accounting during the PGE "rate freeze," the ability of the combined companies to avoid proving that the synergies are really merger-related and not stand along PGE efficiencies:
  - a. Is there a net benefit to customers?
  - b. If on a financial level there is a net harm, what are the non-economic benefits that could overcome the net economic harm?
  - c. Does the net benefits test apply to both PGE and NW Natural customers?
6. Should NW Natural Holdco file a separate 511 application to exercise influence over NW Natural?
7. Under the proposed application, NW Natural Holdco will assume a significant debt.
  - a. What is the effect of this debt load on both utilities ability and cost of raising capital to maintain normal investment and service to customer during an emergency or an unexpected weather event?

- b. Considering this high debt load of the resulting utility, can the Commission effectively enforce strict service quality standards?
8. Should customers pay income taxes on income at the utility level if the Holding Company's income taxes are less than the utility collects from customers?
9. With regards to the base projection assumptions in the rate plan and financing agreements with lenders:
  - a. What happens if after resetting power cost rates in 2003, the power cost adjustment is not continued?
  - b. How does the base projections work if ongoing valuation does not continue for a set of large industrial customers?
  - c. What happens if the customer load growth in the base projections does not happen?
11. With regards to the proposed acquisition conditions:
  - a. Can the Commission bind future Commissions and arbitrarily dismiss the substance of a party's overearning complaint by agreeing to use only the UE 115 per customer costs, regardless of actual costs, in a complaint review or investigation until 2009 (5.d.i.)?
  - b. If not, what does this do to the applicant's and the lenders assumptions with regard to base projection cash flows?
  - c. Whether or not the Commission can assume per customer costs do not change for six years, is it in the public interest to allow PGE and NW Natural to use false inputs in their earnings reports (5.f.)