

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1744**

In the Matter of )  
 )  
 )  
NORTHWEST NATURAL GAS )  
COMPANY, dba NW NATURAL )  
 )  
Application for Approval of an Emission )  
Reduction Program )  
\_\_\_\_\_ )

**CROSS-REPLY BRIEF OF THE  
CITIZENS' UTILITY BOARD OF OREGON**

February 10, 2016



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NORTHWEST NATURAL GAS	)	CITIZENS' UTILITY BOARD
COMPANY, dba NW NATURAL	)	OF OREGON
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Application for Approval of an Emission	)	
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_____	)	

1 **I. Introduction**

2 Pursuant to Administrative Law Judge (“ALJ”) Rowe’s Ruling issued October 20,  
3 2015, the Citizens’ Utility Board of Oregon (“CUB”) submits its Cross-reply Brief in  
4 docket UM 1744.

5 As stated in CUB’s testimony and briefs filed in this docket, CUB recommends  
6 that the Commission reject NW Natural’s CHP Program as designed by NW Natural (or  
7 “Company”). Based on review of testimony and briefs filed by Commission Staff, the  
8 Northwest Industrial Gas Users (“NWIGU”), Portland General Electric (“PGE”) and  
9 PacifiCorp, not one non-Company party to this case believes that the CHP Program  
10 should be approved as designed by NW Natural. If the Commission determines that a  
11 version of the CHP Program should move forward pursuant to SB 844, it should structure  
12 the program in accordance with the recommendations generally supported by CUB,  
13 Commission Staff and NWIGU.

1           Furthermore, the Commission should not be persuaded by PGE’s and  
2 PacifiCorp’s arguments that the CHP Program falls within NW Natural’s ordinary course  
3 of business, and PGE’s arguments that the CHP Program would constitute inappropriate  
4 fuel-switching and its proposal about the source for ETO incentives.

## 5   **II. Argument**

### 6   **A. There is general consensus among CUB, Commission Staff and NWIGU on** 7   **several major elements of program design.**

#### 8    1. *Earnings Test*

9           CUB, Staff, and NWIGU all agree that deferred costs from the CHP Program,  
10 with the exception of the Company incentive, should be subject to a deferral earnings  
11 test.<sup>1</sup> CUB and Staff further agree that the Commission has broad discretion in  
12 determining the appropriate structure of earnings tests for deferred amounts.<sup>2</sup> Although  
13 Staff has declined to propose a specific structure for an earnings test for program costs in  
14 this case,<sup>3</sup> CUB continues to argue that all program costs, other than the Company  
15 incentive, should be subject to an earnings test. Doing so ensures that customers are not  
16 overly compensating NW Natural when rates were otherwise sufficient to cover program  
17 costs.

#### 18   2. *Company Incentive*

19           CUB, Commission Staff, NWIGU and PacifiCorp agree that NW Natural’s  
20 requested \$10/MTCO<sub>2</sub>(e) Company incentive is both unsupported and too high.<sup>4</sup> CUB,

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<sup>1</sup> Staff’s Post-hearing Brief at 15; NWIGU Post-hearing Brief at 10-11; CUB’s Post-hearing Brief at 10-14.

<sup>2</sup> Staff’s Post-hearing Brief at 15.

<sup>3</sup> Staff’s Post-hearing Brief at 15.

<sup>4</sup> Staff’s Post-hearing Brief at 11-12; NWIGU Post-hearing Brief at 2-8; PacifiCorp’s Prehearing Brief at 3-4.

1 Staff and NWIGU support a \$5 Company incentive,<sup>5</sup> while PacifiCorp believes that it  
2 may not be necessary to provide the Company with an incentive above and beyond what  
3 might occur in the ordinary course of business.<sup>6</sup> No party to this proceeding, other than  
4 NW Natural, believes that the Company has met its burden in justifying a \$10 Company  
5 incentive.

6 *3. Emissions Reduction Methodology*

7 CUB, NWIGU, Commission Staff and PGE all argue that the Northwest Power  
8 and Conservation Council's ("NWPC") emissions reduction model would provide the  
9 most appropriate basis for calculating emissions reductions for the CHP Program.<sup>7</sup> While  
10 not in agreement in principle, NW Natural is accepting of calculating emissions  
11 reductions using the NWPC model.<sup>8</sup>

12 PacifiCorp does not make an explicit recommendation about the use of eGRID  
13 versus NWPC for the calculation of emissions reductions, but notes that accurate  
14 calculation of emissions reduction is an important component to any emissions reduction  
15 program.<sup>9</sup> CUB agrees.

16 Accordingly, it appears that no party to this docket has an outright objection to the  
17 use of NWPC numbers.

18 *4. Customer Benefits*

19 Staff argues that "the CHP Program's benefits, both economic and non-economic,  
20 pale in comparison to its costs."<sup>10</sup> CUB shares Staff's concern. While CUB accepts the

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<sup>5</sup> Staff's Post-hearing Brief at 12-13; NWIGU's Post-hearing Brief at 2-8; CUB's Post-hearing Brief at 7-10.

<sup>6</sup> PacifiCorp Post-hearing Brief at 3-4.

<sup>7</sup> PGE's Post-hearing Brief at 6-7.

<sup>8</sup> NW Natural's Post-hearing Brief at 18.

<sup>9</sup> PacifiCorp's Post-hearing Brief at 4.

<sup>10</sup> Staff's Post-hearing Brief at 5.

1 Company's proposal to defer and pass on to customers increased margin, CUB agrees  
2 with Staff that the Company has failed to appropriately focus on customer benefits in the  
3 context of this proceeding and has fallen woefully short of identifying other benefits of  
4 the CHP Program.<sup>11</sup>

5 *5. Customer Incentive*

6 CUB has reviewed the testimony and briefing from other parties on the issue of  
7 the customer incentive, and agrees with the general sentiments from Staff and NWIGU  
8 that the customer incentive structure is overly generous, and may not be structured in a  
9 way that would best ensure that customers are not over-paying for program  
10 participation.<sup>12</sup> These apprehensions are particularly compelling in light of shared  
11 concerns about the significant overall cost of this program.

12 PacifiCorp argues that locking in either the eGRID number or NWPCC number  
13 for purposes of the customer incentive would likely mean that emissions reductions are  
14 overstated.<sup>13</sup> As discussed in CUB's Post-hearing Brief, we share this concern.<sup>14</sup> While  
15 NW Natural's commitment to provide measurement and verification information to the  
16 Commission in the same form and on the same timeline as that information is provided to  
17 the Company by a third party, this does not go far enough in providing transparency to  
18 the Commission, parties to this case, and program participants in carbon emissions  
19 reductions achieved. CUB shares PacifiCorp's inquiry as to whether transparency and  
20 accuracy in calculating emissions reductions should come second to the structure of  
21 customer incentives.

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<sup>11</sup> Staff's Post-hearing Brief at 5.

<sup>12</sup> Staff's Prehearing Brief at 6-11; NWIGU's Prehearing Brief at 4-5.

<sup>13</sup> PacifiCorp's Post-hearing Brief at 4-5.

<sup>14</sup> CUB's Post-hearing Brief at 4-5.

1 **B. Response to PGE and PacifiCorp**

2 *I. Ordinary Course of Business*

3 CUB has reviewed PacifiCorp’s and PGE’s post-hearing briefs on the issue of  
4 whether NW Natural has an ordinary course of business incentive to pursue the CHP  
5 Program, and remains unpersuaded by these arguments for the reasons discussed in our  
6 previous briefs in this docket.<sup>15</sup>

7 Furthermore, CUB specifically takes issue with PacifiCorp’s interpretation of the  
8 requirement that “the public utility, without the emission reduction program, would not  
9 invest in the project in the ordinary course of business.”<sup>16</sup> PacifiCorp argues that the  
10 CHP Program’s incentives (both to the Company and to the participant) alone are not  
11 enough to overcome the ordinary course of business requirement in ORS 757.539(3)(d)—  
12 rather, the utility must demonstrate that there are additional barriers to pursuing the  
13 program other than incentivizing the participant and incentivizing the Company in order  
14 for the requirement to be met.<sup>17</sup>

15 PacifiCorp’s interpretation improperly reads a requirement into the statute.<sup>18</sup>  
16 Nothing in the language of ORS 757.539 requires a demonstration that customer  
17 incentives, if proven necessary to make the SB 844 program work, are not enough to  
18 overcome a presumption that the utility would not otherwise engage in the program in the  
19 ordinary course of business. While CUB agrees that NW Natural at one point felt that  
20 there was enough of an incentive (for itself and for customers) to pursue CHP through its  
21 now canceled Schedule 31-CHP and 32-CHP, it is compelling that these tariffs were

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<sup>15</sup> See CUB’s Prehearing Brief at 14-16; CUB’s Post-hearing Brief at 18-20.

<sup>16</sup> ORS 757.259(3)(d).

<sup>17</sup> PacifiCorp’s Post-hearing Brief at 3.

<sup>18</sup> See ORS 174.010.

1 canceled and there were no participants. In order to make CHP viable on its system, and  
2 to achieve greenhouse gas emissions, the Company has been clear that customer  
3 incentives are a necessary component of the CHP Program design. This appears to be  
4 confirmed by the Company's prior history with CHP on its system.

5 In sum, there is no evidence in the record of this case that supports the notion that  
6 NW Natural would invest in this CHP Program (which requires customer incentives),  
7 even with the design changes advocated for by Staff, CUB and NWIGU, independent of  
8 the SB 844 legislation that authorizes the recovery of these costs. CUB disagrees that  
9 NW Natural has not met its burden on this requirement.

10 2. *Fuel-switching*

11 CUB continues to be unconvinced of PGE's argument that the CHP Program  
12 constitutes inappropriate fuel-switching, a position that is shared by NWIGU,  
13 Commission Staff and NW Natural.<sup>19</sup>

14 3. *ETO Incentives*

15 CUB continues to believe that a change in the funding source for ETO incentives  
16 paid to CHP Program participants would require a broader, more holistic review of policy  
17 than is appropriate within the context of this docket.<sup>20</sup>

18 **III. Conclusion**

19 In conclusion, CUB joins with other parties in recommending that the  
20 Commission reject NW Natural's CHP Program as proposed by the Company. If the  
21 Commission determines that a CHP program should move forward pursuant to SB 844, it  
22 should structure the program in accordance with the recommendations generally

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<sup>19</sup> Staff's Post-hearing Brief at 14-15; NW Natural's Post-hearing Brief at 30; NWIGU's Prehearing Brief at 6.

<sup>20</sup> CUB's Post-hearing Brief at 18.

1 supported by CUB, Commission Staff and NWIGU, as discussed above. The  
2 Commission should not be persuaded by PGE's and PacifiCorp's arguments that the CHP  
3 Program falls within NW Natural's ordinary course of business, or PGE's arguments that  
4 the CHP Program would constitute inappropriate fuel-switching and its proposal about  
5 the source for ETO incentives.

Dated this 10<sup>th</sup> day of February, 2016.

Respectfully submitted,



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