BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UG 435

In the Matter of NORTWEST NATURAL GAS COMPANY, dba NW NATURAL, Request for a General Rate Revision	)))))))))	ALLIANCE FOR WESTERN ENERGY CONSUMER'S RESPONSE IN OPPOSITION TO CUB'S APPLICATION FOR CLARIFICATION AND RECONSIDERATION

I. INTRODUCTION

Pursuant to OAR 860-001-0720(4), and Administrative Law Judge Spruce's Ruling dated January 4, 2023, Alliance for Western Energy Consumers ("AWEC") responds in opposition to Oregon Citizens' Utility Board's ("CUB") Application for Clarification or Reconsideration of Order No. 22-388 ("Application") in the above-captioned proceeding. AWEC opposes CUB's Application because Public Utility Commission of Oregon ("Commission") Order No. 22-388 (the "Order") was clear and based on substantial evidence and substantial reason regarding the rate spread associated with Northwest Natural Gas Company's ("NW Natural") Lexington renewable natural gas project ("Lexington Project"). While CUB may disagree with portions of the Order, the Order was not in error and CUB has not demonstrated good cause to further examine the issue. Further, CUB's argument that "the Lexington project's capital costs will be disproportionately borne by sales customers for the useful life of Lexington project"[1] is

[1] Application at 4.

misleading, because capital costs are only one component of the Lexington Project's revenue requirement, and the rate impact to transportation customers is significantly more than the rate impact to residential customers from the project.[2] For these reasons, the Commission should deny CUB's Application.

II. STANDARD OF REVIEW

After the Commission has made an order in any proceeding, any party thereto may apply for rehearing or reconsideration of the order.[3] The Commission may only grant the request if sufficient reason for reconsideration is shown.[4] The applicant must show one or more of the following specific grounds for reconsideration to be warranted: (a) new evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order; (b) a change in the law or policy since the date the order was issued relating to an issue essential to the decision; (c) an error of law or fact in the order that is essential to the decision; or (d) good cause for further examination of an issue essential to the decision.[5]

The Commission's orders must be "supported by substantial evidence in the record."[6] A final order must also be supported by "substantial reason," which "requires an agency to provide 'some kind of an explanation connecting the facts of the case (which would include the facts found, if any) and the result reached.'"[7]

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[2] UG 435 – NW Natural Rate Spread Workpaper FOR FNL ORDER 22-388 COMPLIANCE 2022 10 26.xlsx, UG 435 Combined GRC Rate Effect, columns U, V, W, and X.
[3] ORS 756.561(1).
[4] *Id.*
[5] OAR 860-001-0720(3).
[6] ORS 183.482(8)(c); *see also Calpine Energy Solutions, LLC v OPUC*, 298 Or App 143, 156 (2019).
[7] *Jenkins v. Bd. of Parole & Post-Prison Supervision*, 356 Or 186, 197, 335 P3d 828 (2014) (internal citations omitted).

III. ARGUMENT

A. The Commission Correctly Applied the Fair, Just and Reasonable Standard

The Commission should deny the Application because CUB has failed to demonstrate that clarification or reconsideration is warranted due to an error of law or fact or other good cause.[8] CUB seeks clarification or reconsideration of the following language in the Order with respect to the Lexington Project:

> "that costs incurred for the Lexington project prior to 2022 should be allocated to retail customers consistent with our interpretation of SB 98, and not allocated to transportation and special contract customers."[9]

In its compliance filing, NW Natural, consistent with the Order, allocated the Lexington Project's capital costs so that costs incurred before the Climate Protection Plan ("CPP") rules were in effect are allocated to sales customers under Senate Bill 98 ("SB 98"), and costs incurred after the CPP rules were in effect apply to all customers under the CPP. This outcome should not be surprising because: (1) the Lexington Project was developed as an SB 98 project; (2) the Lexington Project was almost completed prior to the CPP, with an in service date of January 24, 2022; (3) SB 98 and the CPP significantly changed the regulatory landscape for natural gas utilities in Oregon; and (4) the Lexington Project is the only project that staddles both SB 98 and the CPP.

CUB ignores these facts and exaggerates the actual rate implication of the Order, arguing that, "under the matching principle, cost causation, and equitable ratemaking theory, costs should not be allocated when they are incurred by investors."[10] CUB further argues: "Under the established principle of cost causation and the matching principle, the Lexington project's costs

[8] OAR 860-001-0720(3).
[9] *In the Matter of Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision*, OPUC Docket No. UG 435, Order No. 22-388 at 79 (Oct. 24, 2022).
[10] Application at 3.

should be allocated in a manner consistent with how its benefits flow."[11] But if CUB is correct, the Commission's Order is meaningless because all costs would be deemed incurred on the in-service date, which was on or about January 24, 2022.[12] Ironically, while complaining that transporation customers are not paying enough for the project, CUB ignores the fact that transportation customers are already facing a significantly higher rate increase than residential customers from the Lexington Project.[13] The Commission's Order allocates costs appropriately and properly reflects the fact that the Lexington Project is unique because it is the only project that straddles SB 98 and the CPP programs.

As mentioned above, CUB's Application complains about disproportionate costs for residential customers. But even using the rate spread adopted in the Commission Order, transportation customers are still allocated a rate increase that is an order of magnitude larger than residential customers for the Lexington Project.[14] Further, the capital costs in question represent just a portion of the total costs associated with Lexington Project, and all customers are allocated a portion of the operations and maintenance expense.[15]

CUB disagrees with the Order because the majority of the capital costs are being allocated under SB 98. But as mentioned above, transportation customers are still receiving a significantly higher rate increase from the Lexington Project because capital costs are only one component of the project's costs paid by customers. And this is not an exaggeration. Under the Order, Schedule 32 interruptible industrial transportation customers are allocated a 2.5% margin

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[11] *Id.* at 4.
[12] NW Natural/2100, Chittum/16.
[13] UG 435 - Rate Spread Workpaper FOR FNL ORDER 22-388 COMPLIANCE 2022 10 26.xlsx, UG 435 Combined GRC Rate Effect, columns U, V, W, and X.
[14] *Id.*
[15] UG 435, Exh 2301-WP1-Lexington RNG COS – CONFIDENTIAL – compliance filing.xlsx

rate increase for the Lexington Project.[16] In contrast, Schedule 2 residential customers are allocated a 0.23% margin rate increase for the Lexington Project.[17] CUB's repeated statements, such as "[s]ales customers would be inappropriately charged a disproportionate share of the Lexington project's costs"[18] are, therefore, not supported by the facts or the record and not grounds for clarification or reconsideration of the Commission Order.

In its Application, CUB dedicates a significant amount of time attempting to reargue its case because it simply does not agree with the Commission's order. But that is not a basis for clarification or reconsideration. At the heart of the Application, CUB seems to argue that transportation customers are somehow escaping CPP compliance costs. But nothing could be further than the truth. On November 1, 2022, Schedule 32 interruptible industrial transportation customers received a 12.6% rate increase under NW Natural's 2022 Schedule 171, Transportation Customer Renewable Natural Gas Offtake Costs. This amount is above and beyond the base rate increase approved in this docket, including the rate impact from the Lexington Project.

1. The Commission's Order Is Based On Substantial Evidence And Substantial Reason

The Order is based on substantial evidence and substantial reason. The Lexington Project was started under SB 98, which allows large natural gas utilities to make qualified investments and recover costs to procure renewable natural gas for retail customers. Under the groundbreaking 2019 law, natural gas utilities were allowed to break from the traditional least

[16] UG 435 - Rate Spread Workpaper FOR FNL ORDER 22-388 COMPLIANCE 2022 10 26.xlsx, UG 435 Combined GRC Rate Effect, columns U, V, W, and X.
[17] *Id.*
[18] Application at 5.

cost least risk paradigm and acquire RNG "for distribution to retail natural gas customers in Oregon."[19]

NW Natural, CUB, Commission Staff, and AWEC acknowledged in Docket UI 451 that "the sole purpose" of the Lexington RNG facility was "to assist the Company in investing in RNG infrastructure under SB 98."[20] The Lexington Project was originally selected in the spring of 2021. The CPP rules were not enacted until months later, in December 2021.[21] Therefore, the purpose of developing the Lexington Project could not have been for CPP compliance, since the CPP did not exist when the Lexington Project was acquired.[22] The text of ORS 757.396(a) is clear: large natural gas utilities "may make qualified investments and procure [RNG] from third parties to meet [the portfolio targets] for the percentage of gas purchased by the large natural gas utility for distribution to *retail customers* in Oregon that is [RNG]." (emphasis added).

CUB argued in its Opening Brief for the "Commission to allocate RNG costs on an equal cents per therm basis to all customers."[23] While the Commission found merit in some of CUB's arguments, the Commission did not accept CUB's recommendation for Lexington Project costs prior to December 31, 2022.[24] The Commission made this decision in part because parties "initially approached the Lexington project from a SB 98 frame and reasonably relied on the cost allocation provisions of that law, at least up until the first CPP compliance period began in 2022."[25] Ignoring the reasoning in the Commission's Order, CUB now requests the Commission clarify its Order in a manner that would render the Commission's decision meaningless,

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[19] ORS 757.396(1).
[20] *In the Matter of Northwest Natural Gas Company, dba NW Natural, Request for Approval of an Affiliated Interest Agreement with Lexington Renewables, LLC*, OPUC Docket No. UI 451, NWN-Staff-CUB-AWEC/100, Kravitz-Muldoon-Gehrke-Mullins/3.
[21] *See* DEQ Order 27-2021, available at https://www.oregon.gov/deq/rulemaking/Pages/rghgcr2021.aspx.
[22] *Id.*
[23] CUB Opening Brief at 30.
[24] Order at 85.
[25] *Id.*

requiring transportation customers to pay for the majority of the capital costs on an equal cents per therm basis, as CUB previously argued. Under CUB's theory, there were no capital costs prior to January 1, 2022, since the Lexington Project went into service 23 days later. This interpretation, however, is contrary to the reasoning described in the Order as well as the evidence presented in the proceeding and, therefore, should be rejected.

2. CUB Presumes That All Lexington Project And CPP Costs Should Be Allocated On An Equal Cents Per Therm Basis

In the Application, CUB appears to argue that SB 98 is irrelevant because the laws have changed under the CPP.[26] While AWEC does not agree with CUB, AWEC does agree that the CPP represents a sweeping regulatory regime that has changed natural gas rate regulation in Oregon. The Commission, utilities, and stakeholders are still evaluating the methods and costs of complying with the CPP, as well as the most appropriate way to allocate such costs. CUB's Application presumes that CPP compliance costs must be allocated on an equal cents per therm basis without considering any other factors, such as cost causation, overall cost of service results, and changes to load from energy efficiency, demand loss, and new customers. Notwithstanding, several different methods for allocating Lexington RNG costs were presented in this docket and the Commission considered them in its decision. It is important to note that there is no evidence in this proceeding about what the appropriate CPP compliance cost, if any, would be for any class of customer.[27] In fact, the evidence in this proceeding demonstrates that transportation customers are paying, in some cases, nearly double the cost of service.[28] Allocating a disproportionate amount of the Lexington Project costs and other projects on an equal cents per

[26] Application at 4–5.
[27] AWEC/100, Mullins/33.
[28] AWEC/200, Mullins/5.

therm basis as a separate rate schedule and ignoring the overall cost of service results undermines the concept of gradualism and the fair, just and reasonable standard.

The Commission already considered alternative arguments in crafting its decision, including AWEC's proposal that, if any Lexington Project costs were to be allocated to Transportation customers, the rates should be allocated in proportion to the allocation of the base margin rate increase.[29] The Commission also already considered CUB's position that 100% of the cost of the Lexington Project should be allocated to all customers as a CPP project on an equal-cents-per therm basis. There is not good cause for the Commission to grant clarification or reconsideration to consider CUB or any other parties' arguments again.

CUB does not take issue—factual, legal, or otherwise—with the substance of the Commission's decision that found "SB 98 is the proper framework under which to allocate costs incurred before 2022 for the Lexington project"[30] Instead, CUB expresses its view that there were no Lexington Project costs incurred prior to 2022 and therefore all costs should be considered under the CPP. Not only is this an improper interpretation of the Order, but it is also an invalid reason to grant clarification or reconsideration. Under the Order, the rate impact of the Lexington Project on transportation customers (2.5%) is significantly greater than on residential customers (0.23% increase).[31] There is no reason to tilt the scale further. The Order is supported by substantial reason and substantial evidence because it matched the facts of this case to the interplay between SB 98 and the industry restructuring that is taking place because of the CPP.

[29] AWEC Closing Brief at 8–11.
[30] Order at 85.
[31] UG 435 - Rate Spread Workpaper FOR FNL ORDER 22-388 COMPLIANCE 2022 10 26.xlsx, UG 435 Combined GRC Rate Effect, columns U, V, W, and X.

IV. CONCLUSION

AWEC respectfully requests that the Commission deny CUB's Application. Clarification or reconsideration is not warranted in this matter because the Commission did not commit an error of law or fact in its Order.[32] The Commission correctly applied the law governing its review of the evidence presented and determined that the Order resulted in rates that are fair, just and reasonable. Similarly, there is not good cause for further examination of this issue[33] because the Commission's order is supported by substantial evidence and "substantial reason," as its decision follows the evidence that "connects the facts found to the ultimate conclusion."[34] As such, clarification or reconsideration is not warranted. For the foregoing reasons, AWEC respectfully request that the Commission deny the Application.

Dated this 19th day of January, 2023.

Respectfully submitted,

s/ Chad M. Stokes
Chad M. Stokes, OSB No. 004007
Cable Huston LLP
1455 SW Broadway, Suite 1500
Portland, OR 97201-3412
Telephone: (503) 224-3092
E-Mail: cstokes@cablehuston.com
Attorneys for Alliance of Western Energy Consumers

[32] OAR 860-001-0720(3)(c).
[33] *Id*. at (3)(d).
[34] *Calpine*, 298 Or App at 159.