McDOWELL RACKNER GIBSON PC
419 SW 11th Ave, Suite 400 | Portland, OR 97205

ALISHA TILL
Direct (503) 290-3628
alisha@mrg-law.com

August 22, 2022

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
P.O. Box 1088
201 High Street SE, Suite 100
Salem, Oregon 97308-1088

Re: Consolidated UG 435 / UG 411 / Application of NW Natural for a General Rate Revision / Schedule 198 Renewable Natural Gas Recovery.

Attention Filing Center:

Attached for filing in the above-referenced docket is Northwest Natural Gas Company's Closing Brief. Confidential material in support of the filing will be provided to qualified parties under Protective Order No. 21-461 via encrypted zip file.

Please contact this office with any questions.

Sincerely,

Alisha Till

Alisha Till
Paralegal

Attachment

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UG 435 AND UG 411

In the Matter of NW NATURAL GAS COMPANY D/B/A NW NATURAL Request for a General Rate Revision (UG 435), and Advice 20-19, Schedule 198 Renewable Natural Gas Recovery Mechanism (ADV 1215) (UG 411).	**NORTHWEST NATURAL GAS COMPANY'S CLOSING BRIEF**

REDACTED

August 22, 2022

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Public Utility Commission of Oregon Orders

Other State Commission Orders

FERC Decisions

Statutes

Other Authorities

I. INTRODUCTION

Northwest Natural Gas Company, dba NW Natural ("NW Natural" or "Company") respectfully requests that the Public Utility Commission of Oregon ("Commission") approve the three stipulations entered into in these consolidated proceedings,[1] without modification. Though the Coalition[2] and Small Business Utility Advocates ("SBUA") objected to certain elements of the First Stipulation and Second Stipulation, respectively, the Commission should nonetheless approve those stipulations because they are integrated settlement agreements, and when viewed holistically, will produce just and reasonable rates and result in a fair resolution of most of the issues in this case. Additionally, the Commission should conclude that the objections raised by the Coalition and SBUA are not persuasive, and thus should be rejected.

While the issues in this case have been significantly narrowed, there remain three disputed issues that were not addressed via settlement:

First, NW Natural asks that the Commission reject the proposals advanced by the Coalition and Oregon Citizens' Utility Board ("CUB") to eliminate or phase out the Company's Line Extension Allowance ("LEA"). If the Commission is inclined to consider this issue further, it should do so in a generic proceeding that would provide adequate notice to all interested stakeholders and the opportunity to fully explore the relevant issues.

---

[1] Multi-Party Stipulation Regarding Revenue Requirement, Rate Spread and Certain Other Issues (May 31, 2022) ("First Stipulation"); Multi-Party Second Partial Stipulation Regarding Decoupling, Residential Customer Deposits, the Oregon Low-Income Energy Efficiency Program, and COVID-19 Deferral Costs (June 29, 2022) ("Second Stipulation"); Multi-Party Third Partial Stipulation Addressing Lexington RNG Deferral (August 19, 2022) ("Third Stipulation").

[2] The Coalition consists of the Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club.

Second, NW Natural asks that the Commission approve the Company's proposed Schedule 198, which is a Renewable Natural Gas Automatic Adjustment Clause ("RNG AAC"). The Company's proposed RNG AAC will allow for timely recovery of the costs associated with the Company's RNG investments, consistent with Senate Bill ("SB") 98.

Third, the Company seeks cost recovery for its Lexington RNG Project, and asks that the Commission (1) find that the Lexington RNG Project is prudent because it is consistent with the Commission's current rules allowing book-and-claim accounting, which were in effect at the time NW Natural decided to proceed with the project; (2) approve the amortization of the Lexington deferral as described in the Third Stipulation; and (3) reject AWEC's proposal to consider the cost of the Lexington RNG Project in the context of the overall cost of service and rate spread, and instead spread the revenue requirement associated with the Lexington RNG Project on an equal cents per therm basis to all customer classes, including customers with whom NW Natural has special contracts.

II. ARGUMENT REGARDING CONTESTED STIPULATIONS

In this case, the Commission must consider two contested stipulations. When evaluating a contested stipulation, the Commission considers the stipulation as a whole and determines whether the resulting rates are just and reasonable.[3] The Commission sets rates within a reasonable range to balance and protect "the competing interests of

[3] *In re PacifiCorp, dba Pac. Power 2012 Transition Adjustment Mechanism*, Docket UE 227, Order No. 11-435 at 20 (Nov. 4, 2011) ("As we have noted, in reviewing a contested stipulation, we may focus on the reasonableness of the overall stipulated rates."); *see also In re Portland Gen. Elec. Co., Request for a Gen. Rate Revision*, Docket UE 394, Order No. 22-129 at 16 (Apr. 25, 2022) ("We review settlements to determine whether, on a holistic basis, they serve the public interest and result in just and reasonable rates.").

the utility and its customers," and does so under a comprehensive and flexible regulatory scheme.[4] The validity of the rates the Commission sets "rests on the reasonableness of the overall rates, not the theories or methodologies used or individual decisions made" in setting those rates, and the Commission has great freedom in selecting which method it will use to determine just and reasonable rates.[5]

While a stipulation is not entitled to deference, the Commission can and should consider that the signatory parties to the stipulations carefully negotiated the resolution of the issues addressed therein and worked collaboratively to achieve compromises that those parties believe will result in rates that are just and reasonable. In each of the stipulations, there was a substantial amount of give and take from each of the parties to achieve the stipulated result.[6] Each party contesting the First Stipulation and Second Stipulation, the Coalition and SBUA, respectively, does not address the reasonableness of either stipulation as an integrated document. Instead, they address discrete issues that they argue were not resolved in a manner consistent with their particular views in this case. However, the Commission can and should overcome these objections and conclude that the outcomes produced by the First Stipulation and Second Stipulation constitute a just and reasonable resolution of the issues addressed therein.

---

[4] *See* ORS 756.040(1).
[5] *See Fed. Power Comm'n v. Hope Natural Gas Co.,* 320 US 591, 602 (1944) ("[t]he fact that the method employed to reach that result may contain infirmities is not then important").
[6] Joint Testimony in Support of Stipulation, NW Natural-Staff-CUB-AWEC-SBUA/100, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermode/ 5-6; Joint Testimony in Support of Second Partial Stipulation, NW Natural-Staff-CUB-AWEC-Coalition/100 Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/18-19.

A. First Stipulation

1. The Coalition's Proposed Incremental Reduction to NW Natural's Advertising Expense is Unnecessary to Achieve a Reasonable Resolution of This Category of Expense.

The Coalition objects to Paragraph 1(l) based on arguments that the Company's advertising is misleading and inappropriately booked as Category A or B expense, and proposes an incremental reduction of $183,512.[7] NW Natural disagrees with the Coalition's allegations and unsupported attempt to challenge the appropriate classification of the Company's advertising expenses.[8] The First Stipulation includes a significant reduction—$1.0 million—to this category of expense and should be approved without further modification because it will lead to just, fair and reasonable rates. Moreover, the Company has demonstrated that, taking into account corrections to the calculation of the Coalition's adjustment, it would amount to less than the $1.0 million agreed to in Paragraph 1(l) of the First Stipulation.[9] Thus, the Commission should reject the Coalition's recommended incremental $183,512 reduction to the Company's advertising expense and instead approve the First Stipulation, including Paragraph 1(l), without further modification.

a) The Company's Advertising Is Not Misleading.

The Coalition alleges that NW Natural engaged in misleading advertising campaigns and seeks to charge customers for it.[10] In fact, NW Natural's advertising is truthful and accurate, and its primary purpose is to share information with customers

[7] Coalition's Opening Brief at 39-40, 50-51 (Aug. 10, 2022).
[8] NW Natural's Opening Brief at 15 (Aug. 10, 2022).
[9] NW Natural/2700, Beck/1-2, 21.
[10] Coalition's Opening Brief at 39-40.

about important topics like RNG and the Company's decarbonization plans[11] and the use of proper ventilation while cooking.[12] The Company seeks to recover its Category A utility information advertising expenses[13] that include conservation[14] and energy efficiency advertising[15] related to its indoor air quality and RNG advertising. The Commission should reject the Coalition's proposed incremental reduction to the Company's advertising expense beyond the reduction agreed to in the First Stipulation because the First Stipulation allows NW Natural to recover a reasonable advertising budget that includes Category A expenses[16] at the amount presumed reasonable by rule[17] and also includes an adjustment to Category B expense.

The Coalition asserts that the Commission "previously held that untruthful *and misleading* information does not further the public interest" and is therefore not just and reasonable or recoverable from ratepayers.[18] However, in the case at issue, the Commission did not determine that the advertising was "misleading," which arguably may

---

[11] NW Natural/2700, Beck/17.
[12] NW Natural/1900, Beck/19.
[13] OAR 860-026-0022(1)(g) defines Utility Information Advertising Expenses as advertising expenses, "the primary purpose of which is to increase customer understanding of utility systems and the function of those systems, and to discuss generation and transmission methods, utility expenses, rate structures, rate increases, load forecasting, environmental considerations, and other contemporary items of customer interest[.]"
[14] OAR 860-026-0022(1)(b) defines Conservation Advertising Expenses as advertising expenses, "the primary purpose of which is to decrease the total consumption of utility services."
[15] OAR 860-026-0022(1)(j) defines Energy Efficiency Advertising Expenses as advertising expenses, "the primary purpose of which is to promote energy efficiency, as defined in OAR 860-026-0005(7)."
[16] OAR 860-026-0022(2)(a) defines Category A advertising expense as "[e]nergy efficiency or conservation advertising expenses that do not relate to a Commission-approved program, utility service advertising expenses, and utility information advertising expenses."
[17] OAR 860-026-0022(3)(1) dictates that Category A advertising expenses are presumed to be just and reasonable for ratemaking purposes to the extent that the expenses are 0.125 percent or less of NW Natural's gross retail operating revenues. The reduction to the Company's advertising expense agreed upon in the First Stipulation brings the amount included in rates for Category A down to the amount presumed reasonable under administrative rule. NW Natural-Staff-CUB-AWEC-SBUA/100, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermode/22-23.
[18] Coalition's Opening Brief at 44 (*emphasis added*).

be a subjective inquiry, and instead considered whether advertisements promoting natural gas over oil heating were untruthful.[19] In that case, the Commission agreed that "untruthful advertisements are neither necessary nor reasonable and their costs should not be passed on to ratepayers,"[20] but ultimately concluded that the record was inadequate to determine that the advertisements at issue were untruthful.[21] The Commission also declined Staff's request to add a new standard to the criteria used in deciding whether to pass advertising costs on to ratepayers that sought to require "objective" and "accurate" content,[22] suggesting that the Commission likely recognized there may be a degree of subjectivity in advertising that would be difficult to regulate.

Thus, while the Commission precedent indicates that "untruthful advertisements" are not necessary or reasonable and are therefore nonrecoverable[23]—the Coalition has not shown or even alleged that NW Natural's RNG advertising is untruthful. For example, the Coalition takes issue with the Company's advertising regarding the Lexington RNG Project that states, "once fully operational, this project is expected to generate enough renewable natural gas each year to heat 18,000 *homes we serve in Oregon*," because the RNG molecules from the Lexington RNG Project, which is located in Nebraska, will not be delivered directly to Oregon customers.[24] However, the Coalition is missing the point. As explained in Section III.C below, the Lexington RNG Project, and other RNG procurement the Company has undertaken, is producing RNG for our customers per the

---

[19] *In re Revised Tariff Schedules Filed by NW Nat. Gas Co. for a Gen. Rate Increase*, Docket UG 81, Order No. 89-1372 at 9 (Oct. 18, 1989).
[20] Order No. 89-1372 at 9.
[21] Order No. 89-1372 at 9.
[22] Order No. 89-1372 at 10.
[23] Order No. 89-1372 at 9.
[24] Coalition's Opening Brief at 44-46 (quoting Coalition/405, Ryan/58) (emphasis added by the Coalition).

SB 98 rules and the Commission has already approved two such RNG procurement contracts.[25] To inform its customers regarding these efforts, the Company's communications provide illustrative examples to demonstrate how much RNG is being acquired.[26] The text of the advertising in question does not claim that the physical gas molecules produced by the Lexington RNG Project are being delivered to homes in Oregon—instead it explains the capacity of the project in terms that will likely be understandable to customers.[27] Therefore, the Coalition's reliance on the Commission's order in docket UG 81—addressing untruthful advertisements—is entirely misplaced.

The Commission should also reject the Coalition's unsupported claim that the primary purpose of the Company's RNG advertising is to "dissuade Oregonians from disconnecting their gas utility service due to concerns about the climate."[28] The Coalition repeatedly reads NW Natural's intent—or what the Coalition imagines NW Natural's intent to be—into the Company's advertisements, and then argues that the ads are misleading because they are not consistent with the Coalition's own preferences and worldview. Case in point, the Coalition argues that certain RNG advertisements are misleading because NW Natural does not disclose that residential and commercial customers do not currently receive physical molecules of RNG.[29] Yet customers are in fact receiving RNG consistent with the Commission's rules.[30] Moreover, the primary purpose of these

---

[25] *In re NW Nat. Gas Co., dba, NW Nat., Request for Amortization of Certain Deferred Accounts Related to Gas Costs, Schedules P, 162, 164*, Docket UG 432, Order No. 21-376 (Oct. 28, 2021).
[26] NW Natural/1900, Beck/13.
[27] NW Natural/1900, Beck/13.
[28] Coalition's Opening Brief at 44.
[29] Coalition/400, Ryan/28.
[30] Order 21-376, App. A at 6-7 ("NW Natural engaged in a competitive request for proposal (RFP) solicitation for RNG offtake/Renewable Thermal Certificate (RTC) agreements," and "Staff finds the proposed RNG offtake agreements included with year's PGA to be prudent.").

advertisements—despite the Coalition's implication to the contrary—is to raise awareness about RNG and educate customers about the Company's plans to add more RNG resources to its fuel mix, not to suggest that customers are already directly receiving the physical gas associated with RNG projects.[31] Additionally, even if the advertisements in some way were to influence customers to choose to retain their natural gas service, the advertising rule defines advertisements according to their primary purpose—not their secondary effects.[32] The Commission should reject the Coalition's baseless attempts to recharacterize the primary purpose of the Company's truthful advertising and deem it misleading, and instead should approve the reasonable resolution of this category of expense reflected in Paragraph 1(l) of the First Stipulation.

b) The Coalition's Proposed Recategorization of NW Natural's Advertising Expenses Is Unsupported by the Record and Should Be Rejected.

The Commission should reject the Coalition's characterization of NW Natural as a spreader of disinformation and propaganda,[33] and reject the Coalition's unsupported attempts to reclassify the Company's Category A and B advertising expenses as Category C.[34] The Coalition argues that the Company charged ratepayers for promotional and institutional advertising that encouraged customers to use gas stoves,[35] stay on gas service,[36] and taught children about the benefits of natural gas.[37] The Coalition's attempt to recharacterize legitimate Category A and B advertising expenses

[31] NW Natural/1900, Beck/14.
[32] *See* OAR 860-026-0022(1); Order No. 89-1372 at 9.
[33] Coalition's Opening Brief at 39-40.
[34] Coalition's Opening Brief at 51.
[35] Coalition's Opening Brief at 42.
[36] Coalition's Opening Brief at 44.
[37] Coalition's Opening Brief at 47.

as Category C and increase the reduction to advertising expense reflected in Paragraph 1(l) of the First Stipulation is not supported by the record in this proceeding. In fact, the Coalition's proposed recategorizations are incorrect and its calculation for a further reduction is full of errors.[38] Therefore, the Commission should dismiss the Coalition's request for an additional reduction to the Company's Category A and B advertising expense budgets beyond the $1.0 million expense reduction in the First Stipulation.

The Company is relying on RNG as part of its efforts to decarbonize and comply with SB 98 and the Climate Protection Program ("CPP").[39] The Company knows its customers are concerned about climate change[40] and has relied on its RNG advertising to explain how it is responding to new policies aimed at reducing emissions, such as SB 98.[41] The Company's efforts to truthfully educate its customers about RNG are recordable as Category A advertising expense because they relate to "environmental considerations" and "contemporary items of customer concern" (i.e., Utility Information Advertising Expense).[42] Furthermore, the Coalition's proposed disallowance of approximately 61 percent ($390,286) of the total salary cost in NW Natural's Category A advertising budget for its estimate of staff time and overhead allocated to RNG advertising should be rejected outright—because RNG advertising is Category A advertising.[43] In

---

[38] NW Natural/2700, Beck/20-21.
[39] NW Natural/1700, Heiting-Bracken/56-57, 67.
[40] NW Natural/1900, Beck/9-10.
[41] NW Natural/1900, Beck/10.
[42] OAR 860-026-0022(2)(a) (classifying "utility information advertising expense" as Category A); OAR 860-026-0022(1)(g) (defining "utility information advertising expense").
[43] NW Natural/2700, Beck/19-20. Additionally, NW Natural provided testimony explaining that even if the Commission were inclined to consider this adjustment it should be reduced by at least $137,173 because the Coalition inappropriately included costs *wholly unrelated* to RNG in its calculation, and the total Coalition adjustment for advertising would amount to less than the $1.0 million included in the First Stipulation. NW Natural/2700, Beck/19-21.

short, the Company's RNG advertising is truthful and intended to inform its customers and therefore is appropriately recoverable as Category A advertising expense.

Similarly, the Company's advertising regarding indoor air quality and proper use of ventilation is also appropriately recoverable as Category A advertising expense because the Company uses these customer communications to encourage customers to use proper ventilation while cooking[44] and cooking is a "contemporary item of customer interest" (i.e., Utility Information Advertising Expense).[45] The Coalition rejects this explanation and again recharacterizes the Company's customer communications to fit its narrative, alleging that the Company "seeks to encourage the public to continue to use gas stoves despite the known risks[.]"[46] The Commission should reject this unfounded assertion and the Coalition's requested reduction of $104,889.[47]

The Coalition's claim that NW Natural used ratepayer funds to "publish and disseminate propaganda to school children"[48] is both untrue and offensive. As NW Natural has explained—multiple times—its safety booklets are appropriately charged to Category B as a legally mandated safety expense to provide safety information to the "affected public" in compliance with federal regulations.[49] The Company does not seek to "influence the next generation," but to educate them on how to recognize and react to a gas leak.[50] NW Natural is required by federal regulations to establish continuing education programs related to gas safety and to make the safety messages available to

---

[44] NW Natural/1900, Beck/19; NW Natural/2700, Beck/17-18.
[45] OAR 860-026-0022(2)(a) (classifying "utility information advertising expense" as Category A); OAR 860-026-0022(1)(g) (defining "utility information advertising expense").
[46] Coalition/900, Ryan/17.
[47] Coalition's Opening Brief at 50.
[48] Coalition's Opening Brief at 47.
[49] NW Natural/1900, Beck/25-33; NW Natural/2700, Beck/17.
[50] NW Natural/1900, Beck/28.

"the affected public."[51] The Company distributes its age-appropriate safety booklets to schools to help ensure the safety of the general public during a potential gas-related incident.[52] NW Natural appropriately categorized its expenses associated with the safety booklets as Category B, and these costs are recoverable from ratepayers.

In sum, the Commission should reject the Coalition's proposed reductions to the Company's Category A and Category B advertising expense and its recommendation to increase the $1.0 million adjustment for NW Natural's advertising expense by $183,512. Each adjustment within the First Stipulation to NW Natural's request for a general rate revision—including the reduction to advertising expense—is supported by substantial evidence in the record, whereas the Coalition's proposed incremental reduction is not. The Commission should reject the Coalition's attempts to disturb the balancing of interests reflected in the First Stipulation and instead adopt the First Stipulation in its entirety.

2. The Coalition's Proposed Reduction to the Company's Customer Account and Sales Expense Is Unnecessary to Achieve a Fair Resolution of This Category of Expense.

The Coalition recommends an additional reduction of $482,882 for NW Natural's customer account and sales expense—beyond the $292 thousand reduction to expense agreed to in Paragraph 1(m) of the First Stipulation—to reflect the entire Oregon Test Year Budget for advertising in Federal Energy Regulatory Commission ("FERC") Accounts 908 and 912 that referenced shareholder incentives for gas appliances, which the Coalition alleges is promotional (Category C) in nature.[53] The Company recognizes

[51] NW Natural/1900, Beck/26.
[52] NW Natural/1900, Beck/29.
[53] Coalition's Opening Brief at 53-54.

that certain advertisements included content that addressed shareholder incentives, in addition to providing information about Energy Trust of Oregon ("Energy Trust") efficiency-based incentive measures, income-qualified Savings Within Reach offers, and contractor discounts.[54] However, the $292 thousand expense adjustment contained in Paragraph 1(m) of the First Stipulation constitutes a fair resolution of this issue and will result in just and reasonable rates. Conversely, the Coalition's proposed incremental reduction of $482,882 overstates the advertising expense the Company incurred related to shareholder incentives by including costs unrelated to the incentives and is unnecessary in light of the reasonable settlement of this issue reflected in the First Stipulation.[55]

Additionally, the Coalition's issue was raised in the Coalition's Objection Testimony late in the proceeding, which was filed at the same time as the fourth round of testimony, limiting the amount of time available to perform a detailed review and inquiry into the Coalition's concern. However, in the Company's Surrebuttal Testimony, the Company indicated that before filing its next general rate case, it would perform a comprehensive review of its advertising expenses charged to FERC Accounts 908 and 912 to determine whether certain advertising should be regarded as Category A, B, or C advertising.[56]

The Coalition argues that any settlement that lets NW Natural recover costs for promotional advertising without first meeting its burden of showing that the costs were just and reasonable is contrary to the public interest.[57] The Company disagrees. The

---

[54] NW Natural/2800, Frankel-Moerlins/8.
[55] NW Natural/2800, Frankel-Moerlins/9.
[56] NW Natural/2800, Frankel-Moerlins/9.
[57] Coalition's Opening Brief at 54.

Commission reviews settlements holistically to determine whether the rates produced from the settlement are just and reasonable. The First Stipulation is a balanced set of compromises on many issues that, in totality, result in fair and reasonable rates for customers.[58]

The Coalition further claims that NW Natural is using Energy Trust incentives to promote fuel switching and asks the Commission to open a new docket to align Energy Trust incentives with Oregon's current emissions regulations and goals.[59] However, the investigation the Coalition proposes is unnecessary and should be rejected because the Energy Trust incentives already align with Oregon's new climate laws and Governor Brown's Executive Order No. 20-04.[60] The Energy Trust incentives promote the installation of higher efficiency equipment—which will necessarily result in carbon reduction and further the State's climate goals—and prior Commission investigations and studies do not support the Coalition's claim that the incentives are leading to fuel-switching.[61] Moreover, NW Natural's own data indicate that fuel-switching from electric to natural gas is generally not occurring as a result of the incentives.[62] Thus, neither NW Natural nor the First Stipulation Parties support the Coalition's recommendation to open a new docket to investigate the Energy Trust incentives.[63]

As a result of their settlement discussions, the First Stipulation Parties agreed to a reduction to customer account and sales expense of $292 thousand.[64] While the First

---

[58] NW Natural/2800, Frankel-Moerlins/8.
[59] Coalition/900, Ryan/34.
[60] NW Natural/2800, Frankel-Moerlins/10.
[61] NW Natural/2800, Frankel-Moerlins/11-12.
[62] NW Natural/2800, Frankel-Moerlins/12-14.
[63] NW Natural-Staff-CUB-AWEC-SBUA/200, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermode/13-14.
[64] NW Natural-Staff-CUB-AWEC-SBUA/100, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermode/24.

Stipulation Parties have different views regarding the nature of customer account and sales expense, they agree that this adjustment is a compromise that contributes to a fair and reasonable resolution of the issues in this case.[65]

3. The Commission Should Reject the Coalition's Request for an Additional Reduction to the Salary and Benefits Expense for the Community and Government Affairs Employees.

The Commission should reject the Coalition's proposed disallowance of the entirety of NW Natural's Community and Government Affairs expense because NW Natural already allocates a portion of the expense for Community and Government Affairs to shareholders, and seeks recovery only for time spent on core utility activities that are necessary to provide safe and reliable gas service.[66] The Coalition argues that costs for lobbying and other similar political activities are not recoverable from customers—but the Company does not dispute this fact. However, the Company does steadfastly oppose the Coalition's attempt to have the Commission disallow recovery of costs reasonably incurred to engage with Oregon cities and counties on matters that impact the Company and its customers. Participating in discussions with municipalities about significant climate change issues and potential policy changes that could profoundly alter a public utility's statutory obligation to serve its existing customers and potential customers is the right thing to do, and benefits both the Company and its current and potential future customers.

---

[65] NW Natural-Staff-CUB-AWEC-SBUA/100, Kravitz, Fjeldheim, Gehrke, Mullins, and Kermode/24.
[66] NW Natural/2400, Heiting-Bracken, 41.

The Commission has previously disallowed costs associated with lobbying and political activities.[67] Accordingly, the Company recognizes that attempts to influence a legislative action constitute lobbying[68] and records lobbying and related political activity expense allocations (inclusive of salary and overheads) to non-recoverable accounts.[69]

Importantly, the Company is not seeking recovery for lobbying or similar political activities in this case.[70] In fact, the Company produced records during discovery showing that the Company allocates **[BEGIN CONFIDENTIAL]** [redacted] — **[END CONFIDENTIAL]** to lobbying and books these expenses to nonrecoverable accounts.[71] In all, for the Oregon-allocated Community and Government Affairs payroll expense, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**—is assigned outside the utility to non-recoverable accounts.[72]

Additionally, in docket RG 37, the Company recently filed its annual FERC Form 2 Report showing publicly that the Company booked nearly $1.2 million to FERC Account 426.4 (Expenditures for Certain Civic, Political and Related Activities) in 2021.[73] Thus, the Company has done more than make a general assertion that it "always charges

---

[67] *In re Pac. Nw. Bell Tel. Co., Am. Network, Inc. et al.*, Docket UT 43, Order No. 87-406, 1987 ORE. PUC LEXIS 2 at *60 (Mar. 31, 1987); *In re Portland Gen. Elec. Co.*, *Request for a Gen. Rate Revision*, Docket UE 197, Order No. 09-020 at 21 (Jan. 22, 2009).
[68] NW Natural/1700, Heiting-Bracken/82.
[69] NW Natural/1700, Heiting-Bracken/78.
[70] NW Natural/1700, Heiting-Bracken/78.
[71] *See* NW Natural/1710, Heiting-Bracken (Confidential response to UG 435 Coalition DR 158); NW Natural/1700, Heiting-Bracken/78.
[72] *See* NW Natural/1710, Heiting-Bracken (Confidential response to UG 435 Coalition DR 158).
[73] *In re NW Nat. Gas Co. dba NW Nat. 2011 FERC Form 2 with Or. Supplement*, Docket RG 37, NW Natural's FERC FORM 2 with Oregon Supplement at 116 A (Apr. 29, 2022). Pursuant to OAR 860-001-0460, NW Natural requests that the Commission take official notice of the Company's 2021 FERC Form 2 filing.

lobbying costs below the line"[74]—the record shows that the Company is charging a portion of the Community and Government Affairs positions out of the utility, and that it is recording costs in FERC Account 426.4.[75]

The Coalition also questions the Company's support for its allocation of lobbying expense to shareholders, and references a Portland General Electric Company ("PGE") case in which the Commission concluded that a bare assertion that the costs are charged outside the utility is inadequate.[76] However, unlike in the PGE case, NW Natural has done more than make the general assertion that it always charges lobbying costs below the line. In fact, the Company has offered testimony related to the amount of employee compensation for which it does not seek recovery[77] and provided the Coalition with supporting data during the discovery phase of this proceeding.[78] NW Natural acknowledges that it engaged in conversations with cities about how the Company can help meet targeted emissions-reductions goals,[79] to explain the importance and value of the Company's gas service,[80] and to express concerns about the negative implications of prohibiting their citizens from receiving natural gas service[81]—all related to policies that could drastically affect customers and which are therefore critical to the Company's delivery of utility service.[82]

---

[74] *In re Portland Gen. Elec. Co.'s Proposal to Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149*, Docket UE 115, Order No. 01-777 at 14 (Aug. 31, 2001).
[75] NW Natural/1700, Heiting-Bracken/78; NW Natural/1710, Heiting-Bracken (Confidential response to UG 435 Coalition DR 158).
[76] Coalition's Opening Brief at 37 (citing Order No. 01-777 at 14).
[77] NW Natural/1700, Heiting-Bracken/78, 80, 83-84.
[78] NW Natural/1710, Heiting-Bracken is the Company's confidential response to UG 435 Coalition DR 158.
[79] NW Natural/1700, Heiting-Bracken/79.
[80] NW Natural/1700, Heiting-Bracken/81.
[81] NW Natural/1700, Heiting-Bracken/79.
[82] NW Natural/2400, Heiting-Bracken/39.

The Coalition further asserts that the Company's engagement with cities constitutes lobbying.[83] However, the Coalition's Opening Brief includes overblown assertions that the Company was "relentless" in its efforts to engage and pressure policymakers to reject climate change measures.[84] Contrary to these claims, it is the cities that expect the Company to be actively engaged in discussions regarding policies that will affect our customers and it is the cities that routinely seek our input on various measures.[85] Moreover, it is the Company's responsibility to engage these cities when they attempt to solicit input from the Company, and it would be irresponsible—and detrimental to both the Company and its customers—to fail to engage with the cities. The Company strongly disagrees that its engagements with local jurisdictions to respond to requests for input and to discuss climate change policies constitute lobbying.[86]

The Commission's rationale for excluding lobbying expenses from customer rates is based on an understanding that a "utility's lobbying program can actually harm ratepayers" because shareholder interests may conflict with customer interests and a utility can be expected to give preference to shareholder interests when conflicts arise.[87] The Coalition alleges that NW Natural's interests may not be aligned with those of its customers—specifically, that NW Natural is asking its customers to contribute to the advancement of political positions with which they disagree—but the Coalition offers no evidence on this point beyond assertions that NW Natural's customer surveys show

---

[83] Coalition's Opening Brief at 31-32.
[84] Coalition's Opening Brief at 31-32.
[85] NW Natural/2400, Heiting-Bracken/39.
[86] NW Natural/1700, Heiting-Bracken/78.
[87] Order No. 87-406, 1987 ORE. PUC LEXIS at *69-70 (In the *Pacific Nw. Bell Tel. Co.* case, the Commission disallowed expenses (salary and other) for lobbying activities that included opposing measures that would raise taxes paid by Pacific Nw. Bell, or increase its operating expenses, because the company failed to identify any specific activities that should be supported by ratepayers.).

Oregonians maintain broad concerns about climate change and the need to take action to alleviate it.[88] In fact, NW Natural also maintains broad concerns about climate change and the actions necessary to alleviate it and has engaged cities to discuss how the Company can help meet targeted emissions reductions goals[89] and what the Company is doing to decarbonize.[90] In short, NW Natural must engage cities related to the Company's role in providing natural gas service while still meeting state and local climate goals, and its interests are not in conflict with its customers interests when it does so.

The Coalition also heavily relies on FERC precedent to support its assertion that the Company's Community and Government Affairs expense should be regarded as lobbying.[91] However, the Company does not disagree with FERC that "[e]xpenditures to influence the opinion of the public [that] have little or no benefit to the ratepayers … must be borne by stockholders."[92] Instead, the Company maintains that the purpose of its engagement with Oregon cities was to respond to requests for information and discuss the continued provision of safe and reliable gas service—a core utility activity—and the expenses are therefore recoverable in rates.[93]

The adjustment to wages and salaries in the Paragraph 1(n) of the First Stipulation represented a significant compromise on wages and salaries—amounting to a total Test Year adjustment of $5.25 million.[94] The Commission should conclude that this amount is a fair and reasonable compromise on the issues raised concerning Salary, Wages, Stock

---

[88] Coalition/900, Ryan/40-41.
[89] NW Natural/1700, Heiting-Bracken/79.
[90] NW Natural/1700, Heiting-Bracken/81.
[91] Coalition's Opening Brief at 30-31.
[92] *Alaskan Nw. Nat. Gas Transp. Co.*, 19 FERC P 61,218, 61,429 (1982).
[93] NW Natural/2400, Heiting-Bracken/39-41.
[94] First Stipulation at 5.

Expense, Incentives, and Medical Benefits, and reject the Coalition's proposed reduction to Paragraph 1(n). The Company has demonstrated in this case that it records lobbying expenses to a nonrecoverable account, and the municipal engagement activities associated with the Community and Government Affairs staff are an integral part of the Company's core utility service.

B. Second Stipulation

In its Opening Brief, SBUA raises two arguments regarding the COVID-19 Deferral addressed in the Second Stipulation: (1) that SBUA did not have adequate notice regarding the inclusion of the COVID-19 Deferral in this case, and (2) that the Commission should reject the allocation of the COVID-19 Deferral costs included in the Second Stipulation.[95] Regarding the allocation, SBUA argues that the allocation to all customer classes is inconsistent with ratemaking principles regarding cost-causation, and the allocation is contrary to the matching principle.[96] The parties to the Second Stipulation ("Second Stipulation Parties") responded to these arguments in detail in their Joint Reply Testimony to SBUA's Objection to the Second Stipulation.[97] However, SBUA did not reference the Joint Reply Testimony at all in its Opening Brief, nor has SBUA substantively engaged with any of the counterarguments presented by the Second Stipulation Parties in their Joint Reply Testimony. As NW Natural and the Second Stipulation Parties explained in the Joint Reply Testimony, SBUA's contentions should be

[95] SBUA's Opening Brief at 1-2 (Aug. 10, 2022).
[96] SBUA's Opening Brief at 6-8.
[97] Joint Reply Testimony to SBUA's Objections to Second Stipulation, NW Natural-Staff-CUB-AWEC-Coalition/200 Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/9-15.

rejected, and the Commission should adopt the Second Stipulation in its entirety without modification.[98]

1. SBUA Had Ample Notice of the Inclusion of the COVID-19 Deferral in This Case.

SBUA argues that it did not have enough time to review the COVID-19 Deferral costs because amortization of the COVID-19 Deferral was not part of the Company's Initial Filing and instead was proposed for the first time in Staff's Opening Testimony.[99] SBUA also argues that the COVID-19 Deferral proceeding was never consolidated with the rate case proceeding.[100]

SBUA's claims that it had inadequate time to review the COVID-19 Deferral costs are simply not credible. As the Second Stipulation Parties explained in their Joint Reply, SBUA had nearly three months to review and audit the COVID-19 Deferral costs, and did in fact conduct discovery on issues related to the COVID-19 Deferral.[101] Additionally, the Commission recently rejected a similar argument in the PGE docket UE 394 general rate case, and specifically concluded that PGE would have adequate time to respond to a proposal regarding a deferral that was raised for the first time in intervening parties' opening testimony.[102]

---

[98] NW Natural-Staff-CUB-AWEC-Coalition/200 Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/19.
[99] SBUA's Opening Brief at 5-6.
[100] SBUA's Opening Brief at 5.
[101] NW Natural-Staff-CUB-AWEC-Coalition/200, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/7-8.
[102] Docket UE 394, Order No. 21-436 at 4 (Nov. 24, 2021) ("[T]he issues regarding these deferrals were timely raised by the intervening parties in their opening testimony in UE 394, providing PGE with adequate time to respond under the procedural schedule, just as with any other issue raised in opening testimony that the company may not have anticipated.").

Further, the fact that the docket UM 2068 COVID-19 Deferral proceeding was not consolidated with the rate case proceeding has no bearing on the ability of the parties to resolve the issue in the rate case. The Commission routinely considers proposals for amortization of deferrals in rate case proceedings,[103] and consolidation of a deferral with the proceeding in which amortization is being considered is not a legal or even practical prerequisite to the Commission approving amortization.[104]

Finally, in connection with its "notice" argument, SBUA incorrectly asserts that NW Natural sought to increase its request for recovery from $73.5 million to $78.020 million in its Surrebuttal Filing (filed on July 20, 2022).[105] This statement is false and needlessly confuses the record—instead NW Natural updated its Initial Filing via an errata filing in this proceeding on February 28, 2022.[106]

2. The Commission Should Reject SBUA's Criticisms regarding the Cost Allocation for the COVID-19 Deferral in the Second Stipulation.

a) The Commission Should Find That All Customer Classes Benefited from the COVID-19 Rate Relief and Thus It Is Appropriate to Allocate a Portion of the COVID-19 Deferral to All Customer Classes.

In its Opening Brief, SBUA asserts that the "cost-causation" principle requires that all approved rates reflect to some degree the costs caused by the customer who must

---

[103] ORS 757.259(5); Docket UE 394, Ruling Denying Motion to Consolidate at 3 (Oct. 25, 2021) (In declining a request to consolidate a rate case docket with a deferral, Administrative Law Judge Lackey commented: "While I decline to consolidate these two dockets, I recognize that deferrals and their associated amortizations are often addressed within the context of a GRC. Even absent consolidation, the parties remain free to address any number of pending deferrals or amortizations within a comprehensive settlement process in this proceeding.").

[104] *See, e.g., In re Idaho Power Co., 2021 Annual Power Supply Expense True-Up*, Docket UE 401, Order No. 22-192 (May 31, 2022) (addressing the amortization of various deferrals, none of which were formally consolidated with the Docket UE 401 proceeding).

[105] SBUA's Opening Brief at 4.

[106] NW Natural's Errata Sheets to Initial Filing (Feb. 28, 2022) (NW Natural voluntarily limited its recovery of incremental revenue requirement in the case to the initially filed amount of $73.5 million).

pay them.[107] The Company does not disagree with this basic premise; however, in its Opening Testimony, Staff presented evidence that all customers benefited from the costs at issue in the COVID-19 Deferral.[108] The Second Stipulation Parties did not adopt the precise proposal advanced by Staff, but generally agreed with the premise that all customers should bear cost recovery for the COVID-19 Deferral.[109]

SBUA also asserts that under Oregon law, the Commission can order, and has ordered, certain expenses to be paid by a specific set of ratepayers.[110] However, this point of law is not in dispute. Instead, the facts are in dispute—specifically, whether small businesses in Tariff Rate Schedule 3 Non-Residential (Commercial) benefited from the rate relief measures that are included in the COVID-19 Deferral. SBUA claims Staff questioned why small businesses should "foot the bill."[111] However, SBUA's assertion is not supported by the reference it provided,[112] and indeed, is plainly contradicted by the fact that it was Staff that initially provided the analysis demonstrating that all customers benefited from the COVID-19 rate relief, either directly or indirectly—and thus that costs should be allocated to all customers.[113] NW Natural, along with the Second Stipulation Parties, agreed with Staff's reasoning that all customers benefited to some degree from

---

[107] SBUA's Opening Brief at 6.
[108] Staff/1500, Dlouhy-Fox-Storm/25.
[109] NW Natural-Staff-CUB-AWEC-Coalition/200 Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/17-18.
[110] SBUA's Opening Brief at 7 (citing *Multnomah County v. Davis*, 35 Or App 521, 581 P2d 968 (1978)).
[111] SBUA's Opening Brief at 7.
[112] SBUA's Opening Brief at 7 (citing Staff/100, Muldoon/38). Although SBUA included quotation marks and provided a page reference, the reference does not support the quoted text, and instead is a generic article about inflation. SBUA's statement does not appear to be supported in the record.
[113] Staff/1500, Dlouhy-Fox-Storm/25-44.

the rate relief measures included in the COVID-19 Deferral, even though certain measures were primarily targeted to residential customers.[114]

Finally, this Commission has already approved a rate spread proposal that assigned costs to all customers in connection with the amortization of Idaho Power's COVID-19 deferral.[115] Specifically, the parties to that Stipulation acknowledged that while parties did not agree on the specific method or theory, the parties specifically acknowledged that "the proposed [rate] spread does allocate a portion of the deferred Arrearage Management Program expenses and associated accrued interest to all classes of customers."[116] While the Idaho Power rate spread proposal was achieved through an uncontested stipulation, this outcome clearly demonstrates that the Commission has the authority to approve a rate spread allocating costs to all customers as contemplated in the Second Stipulation—and NW Natural urges the Commission to do so in this case.

b) SBUA's Arguments regarding the Matching Principle / Use of a Forward-Looking Allocator Are without Merit and Should Be Rejected.

Per the Second Stipulation, the agreed-upon rate spread for the COVID-19 Deferral is the rate spread that was negotiated as part of the First Stipulation (and memorialized in Appendix B).[117] SBUA claims that the proposed use of the rate spread from Appendix B violates the matching principle because it applies a "forward-looking allocator" and is based on "proposed marginal revenues."[118] However, as NW Natural and the Second Stipulation Parties have previously explained, SBUA misunderstands the

---

[114] NW Natural-Staff-CUB-AWEC-Coalition/200, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/11-12.
[115] Order No. 22-192.
[116] Order No. 22-192, App. A at 7-8.
[117] Second Stipulation at 7.
[118] SBUA's Opening Brief at 8.

proposed rate spread for the COVID-19 Deferral.[119] The Second Stipulation Parties simply agreed to apply a rate spread allocation consistent with Appendix B to the First Stipulation.[120] Thus, the COVID-19 Deferral allocation follows in the same manner as the rate spread agreed to in the First Stipulation of this proceeding; the deferral cost allocation is neither based on nor is it calculated using proposed Test Year margin revenue as SBUA contends.[121] Rather, the COVID-19 Deferral rate spread is calculated and allocated to each rate schedule on a proportional basis.[122] Per the Second Stipulation, the deferral amount allocated to each rate schedule, as a relative percentage, is equal to the same percent of incremental revenue requirement that was allocated to each rate schedule in accordance with Appendix B to the First Stipulation.

SBUA again argues that "[t]he use of the proposed marginal revenues causes a mismatch of costs and periods violating the matching principle and producing a flawed cost recovery."[123] However, contrary to SBUA's assertion, it is entirely appropriate in ratemaking to weigh the allocation and recovery of historical costs against the Long-Run Incremental Cost ("LRIC") study-indicated parity ratios at *present* rates.[124] Indeed, the First Stipulation Parties considered these same parity ratios among many other factors to reach a rate spread settlement position regarding incremental revenue requirement, which includes recovery associated with historical Base Year capital investments and

---

[119] NW Natural-Staff-CUB-AWEC-Coalition/200, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/12.
[120] NW Natural-Staff-CUB-AWEC-Coalition/200, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/12.
[121] SBUA/300, Kermode/3.
[122] NW Natural-Staff-CUB-AWEC-Coalition/200, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/12.
[123] SBUA's Opening Brief at 8.
[124] NW Natural-Staff-CUB-AWEC-Coalition/200, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/14-15.

expenses, and which is memorialized in Appendix B to the First Stipulation to this proceeding.[125] SBUA, which was a party to the First Stipulation, did not similarly object to the use of the Company's LRIC study-indicated parity ratios at *present* rates to inform the incremental revenue requirement rate spread allocation, nor did SBUA argue at the time that the parties' agreement was "flawed."[126] SBUA's contention that the rate spread proposal violates the matching principle is without merit and should be rejected.

III. ARGUMENT REGARDING OTHER LITIGATED ISSUES IN THIS CASE

A. Line Extension Allowances

CUB and the Coalition have both asked the Commission to eliminate NW Natural's LEA in this case. CUB proposes an immediate reduction in the amount followed by a phase-out over the next two years.[127] Specifically, CUB proposes to immediately return to the five-years-margin approach NW Natural used prior to 2012.[128] Then, by year three, CUB proposes that the LEA be entirely offset by the CPP-compliance costs that CUB calculates would be incurred on behalf of that new customer over a 20-year period.[129] The Coalition proposes to immediately reduce the LEA to $0.[130] The Commission should reject the parties' proposals for several reasons.

First, the parties' proposals are not consistent with the Commission's rules because they are not based on economic analysis of the prudent investment for the probable revenue from a new customer, and the Commission cannot simply depart from

---

[125] NW Natural-Staff-CUB-AWEC-Coalition/200, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/13-15.
[126] NW Natural-Staff-CUB-AWEC-Coalition/200, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/14-15.
[127] CUB's Opening Brief at 6-7 (Aug. 10, 2022).
[128] CUB's Opening Brief at 6, 17.
[129] CUB's Opening Brief at 5-6; CUB/100, Jenks/16-17.
[130] Coalition's Opening Brief at 17.

its rule in this general rate case ("GRC"). Second, CUB's criticisms of the Company's internal rate of return model ("IRR Model") do not justify abandoning the model, and NW Natural showed that revising the model inputs to address CUB's concerns supports the existing allowance, because the updated inputs would ultimately result in a higher—not lower—LEA. Third, the Commission could address concerns regarding CPP-compliance costs by updating the IRR Model to include CPP-compliance costs and revenues, which would have a neutral impact on the LEA, but CUB's proposal to eliminate the LEA entirely to offset total compliance costs is inappropriate and discriminatory. Finally, the Commission does not have the authority to determine, as the Coalition advocates,[131] that building electrification is Oregon's policy, and the record in this case would not support such a conclusion in any event. Therefore, the Commission should decline to eliminate or otherwise revise NW Natural's LEA in this case.

1. The Commission Must Consider Changes to its LEA Policy in a Generally Applicable Docket Where All Interested Parties Have Notice and the Opportunity to Participate.

The Commission's long-standing rules governing gas service and main extensions, OAR 860-021-0050 and 0051, require each utility to develop a uniform policy governing the LEA amount, and provide that the policy "should be related to the investment that can prudently be made for the probable revenue."[132] In other words, the

---

[131] *See* Coalition's Opening Brief at 14, 17.

[132] OAR 860-021-0050; OAR 860-021-0051. The Commission originally adopted this policy with respect to gas main extensions in 1974. *In re the Proposed Revision of Division II of the Rules and Regulations of the Pub. Util. Commissioner of Or.*, Docket R-08-U, Order No. 74-307 (Apr. 18, 1974). The Commission extended the same framework to gas service extensions in 2001. *In re a Proposed Rulemaking Opened as a Result of AR 395 (Triennial Rules Review) to Amend Or. Admin. Rule 860-021-0050*, Docket AR 420, Order No. 01-1024 (Dec. 3, 2001). The Commission recently reaffirmed its policy of setting LEAs on an economic basis and not based on policy considerations. *In re Portland Gen. Elec. Co., Advice No. 20-14 (ADV 1130), Schedule 300 Line Extension Allowance*, Docket UE 385, Order No. 20-483, App. A at 8 (Dec. 23, 2020).

LEA must be based on *economic* considerations—specifically, a comparison of the costs to serve the new customer with the revenue reasonably expected from the new customer. Clearly, CUB's and the Coalition's proposals to eliminate the LEA altogether, made in the absence of any credible evaluation of costs and revenues, are a radical departure from the Commission's current policies, and more importantly, are inconsistent with its applicable rules. The Commission should reject the parties' proposals because the Commission may not change a rule or long-established policy without providing adequate notice and opportunity to comment to all interested parties.[133]

In its Opening Brief, the Coalition acknowledges that its proposal represents a departure from the Commission's current rules, arguing that the Commission's rules and practices for LEAs must be revisited in light of cost, climate, and stranded-cost concerns.[134] However, the existence of these concerns cannot justify a departure from Commission rules without appropriate process, and the Coalition cites no precedent to suggest otherwise.

CUB argues that its criticisms of the Company's LEA model should be addressed in this case because they are specific to NW Natural.[135] However, NW Natural disagrees that CUB's proposal is so narrowly focused, or that the implications of the proposal would impact only NW Natural. On the contrary, CUB's proposal to adjust NW Natural's LEA to incorporate 20 years of emissions-reduction costs[136] would reflect a major policy choice

---

[133] *See Harsh Inv. Corp. v. State*, 88 Or App 151, 157 (1987) (agencies must follow their own rules until the rules are properly amended or repealed); ORS 183.335 (agency must give notice as provided in its rules and provide interested persons with reasonable opportunity to submit data or views before adopting, amending, or repealing a rule).
[134] Coalition's Opening Brief at 13.
[135] CUB's Opening Brief at 9.
[136] *See, e.g.*, CUB/100, Jenks/16-17.

that, if adopted, would be equally applicable to any other gas utility—and presumably to electric utilities as well. Moreover, unlike the Coalition, CUB does not even address the fact that its proposal is inconsistent with the Commission's existing rules or explain how its adoption would be possible in light of applicable law. Regardless of this fact, as noted above, CUB's proposal cannot reasonably be presented as an economic analysis of the costs and revenues of a customer addition, and adoption would require a change to the Commission's current line extension rules.

Similarly, the Commission should reject the Coalition's argument that it is appropriate to revise LEA policies in this rate case because each of Oregon's gas utilities has a different LEA.[137] In particular, the Coalition argues that OAR 860-021-0050 requires the Commission to set individual LEA policies for each utility.[138] However, nothing about the rule's text suggests that the Commission must set LEA policy in separate, utility-specific dockets. In fact, as noted above, the Commission cannot change its generally applicable rule in a GRC in which only one affected utility has had the opportunity to participate.[139] Moreover, it is relevant that the Coalition's only justification for its proposal regarding climate change, stranded assets, and compliance costs would theoretically apply equally to all local distribution companies ("LDCs") in Oregon and therefore must be addressed in a generic docket.

Given the scope of the potential impacts of CUB's and the Coalition's proposals, Staff and AWEC have joined NW Natural in recommending that the Commission consider the relevant issues in a generic docket, rather than in this GRC. Staff explains that the

---

[137] Coalition's Opening Brief at 11.
[138] Coalition's Opening Brief at 11.
[139] *See supra* note 133.

issues raised by the Coalition and CUB are "complex matters applicable to all natural gas utilities," and recommends that the Commission not make a policy determination in this docket in which Avista and Cascade Natural Gas Company have not had an opportunity to participate.[140] AWEC agrees, noting that the Commission should make broadly applicable policy decisions before implementing new policy in a rate case.[141] And CUB itself acknowledges, "[t]his is a general rate case—the goal is not to set a statewide policy."[142] For all of these reasons, NW Natural urges the Commission to reject the CUB and Coalition LEA proposals, and instead to consider them in an appropriate docket, if desired.

2. CUB's Proposal to Abandon the IRR Model and Return to Five-Times-Margin Is without Basis.

CUB claims the Company's IRR Model is fundamentally flawed because it does not align the IRR calculation period (30 years), the window over which the LEA is amortized (40 years), the time a new customer will likely remain on the system (20 years or less), and the useful life of the assets (58 years).[143] CUB is concerned this mismatch may result in stranded costs should customers leave the system before the asset is fully depreciated.[144] To rectify the perceived flaws in the IRR Model inputs, CUB argues that the Commission should require NW Natural to abandon the IRR Model entirely and return to the five-times-margin LEA methodology used prior to 2012, which CUB calculates would reduce the LEA to $2,200.[145] CUB's primary proposal is to use this methodology

[140] Staff's Opening Brief at 12 (Aug. 10, 2022).
[141] AWEC's Opening Brief at 19-20 (Aug. 10, 2022).
[142] CUB's Opening Brief at 10.
[143] CUB's Opening Brief at 6, 14; CUB/100, Jenks/16.
[144] CUB's Opening Brief at 14.
[145] CUB's Opening Brief at 6.

for 2023 only and then to phase out the LEA, but CUB's Opening Brief also seems to suggest that retaining the LEA at $2,200 into the future could be a compromise solution.[146] NW Natural disagrees with both proposals.

As NW Natural explained in its Opening Brief, the Company disagrees with CUB's assumption that new customers are likely to remain on the system for twenty years or less[147] because they will leave the gas system entirely when their natural gas furnaces need to be replaced.[148] In addition, CUB's emphasis on the 58-year life of a service drop is misplaced.[149] The IRR Model reasonably uses the weighted average of the book depreciation rates approved by the Commission for the classes of assets covered by the LEA (service drops, meters, and meter installations).[150]

However, even if CUB's criticisms were valid, the appropriate response would not be to abandon the economic analysis embodied in the IRR Model entirely, but rather to revise the assumptions in the model—something that CUB makes no attempt to do. Importantly, in an effort to respond to CUB's concerns, NW Natural provided two illustrative analyses in which it aligned the IRR analysis term and depreciation rate at 20 or 30 years such that there is no remaining LEA asset at the end of the LEA term; the result of those analyses is that the LEA *increases* in comparison to the analyses using the book depreciation rates.[151] CUB responds that the Company's illustrative analyses do not assuage CUB's concerns because the IRR would still be negative if a customer

---

[146] CUB's Opening Brief at 6.
[147] *See* CUB/100, Jenks/12-13; CUB/400, Jenks/29.
[148] NW Natural's Opening Brief at 47-49.
[149] CUB's Opening Brief at 8, 11, 14-15.
[150] *See* CUB/403, Jenks/1; NW Natural/2600, Taylor/22-23. The depreciation rate used in the IRR Model is a blend of the depreciation rates in effect in 2012 when the model was first used. CUB/403, Jenks/1.
[151] NW Natural's Opening Brief at 56-57; NW Natural/2601; NW Natural/2602.

disconnects within *10 years*.[152] However, there is no rational basis on which to assume that a new customer will put in a gas furnace and then seek to replace it after just 10 years—a fact that suggests that CUB is not interested in revising the IRR Model or any other LEA model to reflect its view of appropriate inputs. Indeed, CUB's unwillingness to offer reasonable revisions to the IRR Model and its rejection of NW Natural's illustrative analyses reveal that CUB's goal remains elimination of the LEA for policy reasons.

Rather than grapple with potential revisions to the IRR Model or the impacts of those revisions, CUB proposes to abandon the model entirely in favor of a five-times-margin approach, which the Company used prior to 2012.[153] However, CUB's recommendation ignores that a margin revenue multiplier is generally the result of a robust analysis as opposed to a substitute for one,[154] and adoption of a multiplier in the absence of a robust analysis—as CUB appears to propose—is inferior to use of an IRR Model, like NW Natural's. On this point, CUB does not explain why a five-times-margin approach is superior to the IRR Model, nor does CUB explain why a margin revenue multiplier of 5 more accurately reflects the "investment that can prudently be made for the probable revenue"[155] than the 6.2 margin revenue multiplier represented by the Company's current LEA,[156] or any other multiplier.[157]

Even if the Commission were to conclude that a five-times-margin approach is preferable to continued use of the IRR Model, CUB's calculation of the resulting LEA is

---

[152] CUB's Opening Brief at 15.
[153] CUB's Opening Brief at 6 & n.21.
[154] NW Natural/1800, Taylor/11-12 (explaining that utilities often use an investment analysis to inform revenue multipliers and ascertain if the LEA results in economically efficient outcomes).
[155] OAR 860-021-0050; OAR 860-021-0051.
[156] NW Natural's Opening Brief at 38; NW Natural/1800, Taylor/18-19.
[157] In fact, NW Natural showed that based on the current cost of service, the margin revenue multiplier would be higher. NW Natural/2600, Taylor/9.

incorrect. CUB claims that using a five-times-margin approach results in an LEA of $2,200.[158] However, CUB's calculation relies on a usage per customer of 593 therms, which CUB obtained from the Company's docket UM 2178 analysis.[159] Using the correct updated annual usage per customer of 531 therms and the margin rates resulting from the First Stipulation in this GRC results in margin revenue of $461.80,[160] which would yield a five-times-margin LEA of $2,309. To be clear, however, NW Natural maintains that the robust economic analysis embodied in the IRR Model remains the proper approach for establishing an LEA (and determining a resulting margin revenue multiplier) that complies with the Commission's rules.

3. Concerns about CPP Compliance Costs Do Not Justify Eliminating the LEA.

Throughout this case, CUB has sought to support elimination of the LEA by pointing to the fact that NW Natural will incur CPP-compliance costs related to new customer additions. However, CUB's actual rationale as to ***how and why*** CPP-compliance costs justify its proposal has been a moving target. First, in Opening Testimony, CUB argued that the Commission should subtract 20 years of CPP-compliance costs for a new customer (between $4,500 and $5,600, according to CUB) from a five-times-margin LEA, which would yield a negative LEA.[161] Next, when NW Natural pointed out that new customers will pay their fair share of CPP-compliance costs in their rates over time and therefore CUB's proposal would result in double-charging new

[158] CUB/400, Jenks/11.
[159] CUB/400, Jenks/11.
[160] *See* NW Natural/1800, Taylor/19.
[161] CUB/100, Jenks/17.

customers for compliance costs,[162] CUB claimed that it was not actually seeking to charge customers for CPP compliance in the LEA.[163] Rather, CUB asserted that its proposal was intended to recognize the fact that adding new customers would increase CPP-compliance costs for everyone—although CUB provided no actual calculations to show how this fact might be accounted for in the LEA.[164] Most recently, in its Opening Brief, CUB seems to have revised this argument, arguing that the Commission must eliminate the LEA to insulate existing customers from CPP-compliance costs incurred in the Test Year and "in near-term years."[165] Significantly however, CUB fails to quantify such costs.[166]

CUB's arguments on CPP-compliance costs are not only hard to track, but also are internally inconsistent:

- CUB asserts that the Company's LEA no longer holds existing customers harmless because the LEA analysis does not include CPP-compliance costs.[167] But CUB also says it is not recommending that CPP-compliance costs be placed in the LEA.[168]
- CUB claims that its LEA recommendation does not require the Commission to assess the Company's CPP-compliance strategy.[169] But CUB presents

[162] NW Natural/1800, Taylor/4, 28.
[163] CUB/400, Jenks/23-25, 30.
[164] *See* CUB/400, Jenks/30.
[165] CUB's Opening Brief at 6-7.
[166] CUB's Opening Brief at 6-9.
[167] CUB's Opening Brief at 12.
[168] CUB/400, Jenks/30.
[169] *See* CUB's Opening Brief at 8-9.

recommendations that assume CUB's calculation of CPP-compliance costs over a 20-year period is accurate.[170]

- CUB claims that it is not seeking to charge CPP-compliance costs to new customers.[171] But CUB proposes to phase out the LEA because total CPP-compliance costs more than offset the LEA amount.[172]

CUB's various statements and positions cannot be reconciled. If CUB is not seeking to charge compliance costs directly to new customers, then it has articulated no basis for eliminating the LEA to account for CPP costs—nor has CUB quantified incremental or Test Year CPP-compliance costs. If CUB *is* seeking to eliminate the LEA to offset CPP-compliance costs, then CUB's proposal would inappropriately charge new customers twice, as NW Natural explained in its Opening Brief.[173] Alternatively, CUB's proposal may simply be designed as a penalty to dissuade new customers from joining the system—which would also be inappropriate and inconsistent with the Commission's current LEA rules and policy.[174]

In any event, CUB's proposal to eliminate the LEA to account for CPP-compliance costs is unnecessary. NW Natural agrees that, in the future, the LEA analysis could have a cost component for allocated CPP costs. However, if CPP-compliance costs were to be incorporated into the calculation of the costs to serve new customers, then the revenue

---

[170] CUB's Opening Brief at 5-6; CUB/100, Jenks/16-17.
[171] CUB/400, Jenks/24.
[172] CUB's Opening Brief at 5-6 ("Although truly accounting for requisite carbon reduction costs would create a negative LEA, CUB's proposal to gradually phase out the LEA over time is offered as a reasonable compromise…"); CUB/100, Jenks/17 ("CUB believes that the LEA should recognize that new fossil fuel load will require the system to fund carbon reduction. We calculated these costs above as between $4,500 and $5,600. These costs should be incorporated when determining a LEA.").
[173] NW Natural's Opening Brief at 54-55.
[174] NW Natural's Opening Brief at 54-55. Discouraging economic and population growth in the state also would be detrimental to the state's economy. *See* NW Natural/1700, Heiting-Bracken/71.

component would also need to reflect the higher customer contribution for CPP recovery,[175] and the impact on the LEA would be neutral. Thus, CPP-compliance costs can be included in the LEA calculation, but accounting for CPP-compliance costs by subtracting total compliance costs from the LEA at the outset, as CUB proposes, is wholly inappropriate.

Moreover, any increase to CPP-compliance costs due to the addition of customers is not properly allocated to those customers alone. First, the parties have provided no principled basis on which to treat new customers differently and effectively seek to punish new customers for joining the gas system later than existing customers; to do so would be discriminatory.[176] It is important to note that electric utilities are also facing absolute emissions caps,[177] meaning that adding customers to their systems will likely increase compliance costs for their customers as well. However, these facts do not suggest that either new gas customers ***or*** new electric customers should be assessed higher compliance costs than those already on the system. Second, NW Natural's preliminary analysis provided in docket UM 2178 shows that customer additions likely *reduce* the bill impact on all customers as the Company works to meet the CPP requirements, because incremental system costs are spread over a larger customer base.[178]

CUB also argues that it would be more cost-effective to reduce therms by eliminating the LEA than to require customers to pay for additional energy efficiency

---

[175] *See* NW Natural/2600, Taylor/18.
[176] *See* ORS 757.310; *see also* Order No. 20-483, App. A at 4 ("Since all residential customers have likely been eligible for line extensions, there should be a consideration of equity among customers for the line extension allowances they received.").
[177] NW Natural's Opening Brief at 43; NW Natural/2400, Heiting-Bracken/32.
[178] NW Natural's Opening Brief at 50.

measures.[179] As an initial matter, this argument reflects CUB's clear recognition that eliminating the LEA will in fact result in fewer customers joining NW Natural's system—despite earlier arguments suggesting otherwise.[180] Regardless, CUB's analysis on this point is flawed because it is based on CUB's assertion that the $8 monthly service charge pays back the LEA[181]—an observation that entirely ignores the fact that fixed costs are also recovered through the volumetric base margin rate.[182] Moreover, the gas system provides enormous benefits of reliability and resilience to individual customers and to the energy system as a whole.[183] If the Company can continue to serve new customers while complying with the CPP—which its analysis indicates it can[184]—that is a goal to be pursued. And as noted above, the bill impacts are likely to be lower as the Company spreads costs over more customers.[185] For all of these reasons, CPP compliance costs do not require eliminating the LEA.

4. Even If the Commission Possessed Authority to Determine That Building Electrification Should Be Oregon's Policy—Which It Does Not—the Record in This Case Would Not Support Such a Decision.

In their Opening Briefs, both CUB and the Coalition assert that NW Natural believes that the Commission lacks the authority to adopt their proposals in this GRC.[186] This claim, however, is a mischaracterization of NW Natural's advocacy. The Commission certainly has the authority to revise the LEA calculation to reflect expected

[179] CUB's Opening Brief at 11, 13.
[180] CUB/400, Jenks/16 (stating there is no evidence that phasing out the LEA equates to elimination of growth); CUB/400, Jenks/25 ("I feel compelled to state that the purpose of reducing and eliminating the LEA is not an expectation that doing so will eliminate any and all growth in new customers.")
[181] CUB's Opening Brief at 13.
[182] NW Natural/2600, Taylor/10-11.
[183] NW Natural's Opening Brief at 51-52.
[184] NW Natural/1700, Heiting-Bracken/39-40.
[185] NW Natural's Opening Brief at 50.
[186] CUB's Opening Brief at 10; Coalition's Opening Brief at 11.

prudent investment and expected revenues, consistent with its rules. What NW Natural has argued, and continues to maintain, is that the Commission lacks authority to adopt policies specifically intended to discourage gas customer additions and drive electrification—as such a policy decision is the province of the Legislature.[187] And yet that is precisely what the Coalition is asking this Commission to do.

Even if the Commission had the requisite authority, the record in this case would not support eliminating the LEA to drive building electrification. The Coalition claims that the Commission must promote utility actions that "result in rapid reduction of GHG emissions, at reasonable costs,"[188] and that electrification is a "known and cost-effective decarbonization strategy."[189] However, NW Natural provided substantial evidence in the record raising serious questions about the ability of the electric system to reliably and cost-effectively serve new building load—especially during winter peak space-heating needs—with less emissions than the gas system.[190] At a minimum, the Commission would require more information before it could possibly conclude that eliminating the LEA and promoting building electrification would reduce GHGs at a lower cost than continued use of the gas system.[191]

To the extent the Coalition's concern is that adding new customers will result in higher GHG emissions, this concern is misplaced. The CPP imposes an absolute

---

[187] NW Natural/1700, Heiting-Bracken/9, 12, 14; *see also Wah Chang v. PacifiCorp, dba Pac. Power*, Docket UM 1002, Order No. 09-343 at 12 (Sept. 2, 2009) (recognizing that public utilities are subject to "economic" regulation by the Commission); *In re Guidelines for the Treatment of External Envtl. Costs*, Docket UM 424, Order No. 93-695 (May 17, 1993) (conveying the Commission's and Department of Justice's understanding that the Commission's authority to consider environmental externalities is limited).
[188] Coalition's Opening Brief at 13 (citing Executive Order 20-04).
[189] Coalition's Opening Brief at 17.
[190] NW Natural's Opening Brief at 50-53.
[191] NW Natural's Opening Brief at 42.

emissions-reduction cap with which NW Natural must comply no matter how many new customers it adds.[192] Under the CPP, NW Natural must reduce emissions, not load, and emissions reductions will occur through energy efficiency measures and renewable gas supplies.[193] In other words, adding customers will not increase GHGs over what is required to meet the CPP because the CPP will not allow it.

Finally, the Coalition's citation to other state commission decisions regarding LEAs is unpersuasive because this Commission is required to follow its own rules and to implement the policy decisions made by the Oregon Legislature. As discussed above, the parties' proposals in this case are contrary to this Commission's own rules and precedent. NW Natural addresses each of the examples referenced by the Coalition only briefly:

- NW Natural's Opening Brief explained that the Washington Utilities and Transportation Commission order on which the Coalition relies did not adopt drastic changes to LEA policy like those proposed in this case.[194]
- Avista's agreement to eliminate its LEA as part of a stipulation resolving its electric and natural gas rate cases in Washington has no bearing on the appropriate LEA for NW Natural in Oregon.[195]

[192] NW Natural's Opening Brief at 43.
[193] NW Natural/2600, Taylor/3; NW Natural/1700, Heiting-Bracken/46-64.
[194] NW Natural's Opening Brief at 61.
[195] Coalition's Opening Brief at 9.

- The California and Colorado decisions referenced by the Coalition are both *proposed* orders issued in generally applicable dockets initiated specifically to implement direction from the respective state legislature.[196]

In sum, the Coalition's and CUB's requests that the Commission adopt and implement new state policy in NW Natural's GRC are not analogous to the cases from other states cited by the Coalition.

5. Responses to Other Inaccurate Statements by the Coalition and CUB.

Throughout their testimony and briefing, the Coalition and CUB use the term "subsidy" to refer to the LEA[197]—a term that is defined as a grant or gift to promote something in the public interest.[198] The parties' use of the term "subsidy" conveys their assumption that new customers benefit from the LEA at the expense of existing customers. This usage, however, is in direct conflict with both the purpose and function of the LEA under this Commission's precedents. Specifically, the LEA is set with due consideration of the expected revenues attributable to the new customer and designed to

---

[196] *In re Proposed Amendments to the Commission's Rules Regulating Gas Utilities*, Colorado Public Utilities Commission Proceeding No. 2R-0449G, Decision No. C22-0427-I at 5 (July 22, 2022) ("[T]he Commission opened this rulemaking to implement numerous statutory changes and additions adopted in the 2021 Colorado legislative session[.]"); *Phase III Decision Eliminating Gas Line Extension Allowances, Ten-Year Refundable Payment Option, And Fifty Percent Discount Payment Option Under Gas Line Extension Rules,* California Public Utilities Commission Rulemaking 19-01-011, Proposed Decision of Commissioner Rechtschaffen at 2-3 (Aug. 8, 2022) (explaining that rulemaking was initiated in response to SB 1477, which promotes building electrification).

[197] CUB's Opening Brief at 17; Coalition's Opening Brief at 6-9, 11-12, 15, 18-19.

[198] *Black's Law Dictionary* at 1565 (9th ed. 2009) (defines "Subsidy" as:

> "A grant, made by the government, to any enterprise whose promotion is considered to be in the public interest. Although governments sometimes make direct payments (such as cash grants), subsidies are [usually] indirect. They may take the form of research-and-development support, tax breaks, provision of raw materials at below-market prices, or low-interest loans or low-interest export credits guaranteed by a government agency.");

Webster's Third New Int'l Dictionary at 2279 (unabridged ed 2002) (defines "Subsidy" as: "a grant or gift of money…").

treat customers equitably.[199] And in fact, NW Natural's updated analysis demonstrates that an LEA calculated using current inputs would be significantly higher than the existing LEA.[200] This fact demonstrates that the only subsidy created by the LEA is from new customers to existing customers—not vice versa—and that eliminating the LEA would only increase that subsidy to existing customers.[201] The parties' insistence on repeatedly referring to the LEA as a subsidy to new customers does not make it so.

The Coalition argues that the LEA is unnecessary because new customers are willing to pay to connect to the gas system.[202] However, the Coalition's evidence on this point is simply incorrect. The Coalition claims that 27 percent of new customers connected to the gas system without receiving an LEA, but NW Natural's Reply Testimony clearly states that the percentage of residential customers who did not receive any LEA was 0.43 percent—not 27 percent.[203] It appears that the Coalition's incorrect conclusion resulted from a misunderstanding of the referenced data responses.[204] In any event, it is not appropriate to set rates and charges based on the amount customers are willing to pay.[205]

---

[199] OAR 860-021-0050; OAR 860-021-0051; Order No. 20-483, App. A at 4.
[200] NW Natural/1800, Taylor/18.
[201] NW Natural/1800, Taylor/19.
[202] Coalition's Opening Brief at 15.
[203] NW Natural/1800, Taylor/46.
[204] After NW Natural provided the correct 0.43% figure in Reply Testimony, the Coalition's Rebuttal Testimony stated that the 0.43% figure does not seem right and raised questions regarding the accuracy of the information provided in NW Natural's responses to Coalition data request numbers 24 and 100. Coalition/500, Burgess/10. However, the Coalition misunderstands these data responses. Data Response 24 provides the number of Oregon residential *customers* that participated in Schedule X in 2021 (6,914), Coalition/210, Burgess, and NW Natural provided a further breakdown in its testimony showing how many of those customers received a $0 LEA (30 customers, or 0.43%). NW Natural/1800, Taylor/46. Data Response 100 provides data regarding residential *service lines* installed throughout the Company's service territory—not just in Oregon. Coalition/206, Burgess. Thus, the Coalition's effort to calculate the number of customers who did not receive LEAs by comparing the information provided in the two data responses compares apples to oranges and yields an incorrect result.
[205] NW Natural/2600, Taylor/33.

Finally, the Coalition references the recently passed Inflation Reduction Act to argue that new rebates for electric heat pumps and water heaters will accelerate gas customer defections.[206] However the Coalition ignores that the new law also includes incentives for hydrogen, RNG, and efficient natural gas appliances—including natural gas heat pumps—that will help lower the cost of decarbonizing the gas system.[207] While no party had an opportunity to discuss the implications of the Inflation Reduction Act in its testimony, the Coalition's claim that the Act supports its own position is clearly flawed.

In sum, neither the specific criticisms of the Company's IRR Model, nor the broader concerns raised by the parties warrants eliminating or otherwise revising the LEA in this case.

B. RNG AAC (Schedule 198)

In 2019, the Oregon State Legislature adopted SB 98, in which it declared its support for renewable natural gas, finding that RNG "provides benefits to natural gas utility customers and to the public," and further that, "[n]atural gas utilities can reduce emissions from the direct use of natural gas by procuring renewable natural gas and investing in renewable natural gas infrastructure."[208] Accordingly, the Legislature adopted a framework allowing natural gas utilities to invest in renewable natural gas infrastructure and purchase renewable natural gas, and to recover all prudently incurred costs to do so.[209] As to cost recovery, the Legislature directed the Commission to "adopt

---

[206] Coalition's Opening Brief at 15.
[207] *See* Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. § 13202 (2021-2022) (available at: https://www.congress.gov/bill/117th-congress/house-bill/5376/text) (new incentive for RNG facilities); *Id.* § 13204 (new incentives for hydrogen gas facilities); *Id.* § 13301 (incentives for high-efficiency appliances, including natural gas heat pumps, water heaters, furnaces, and boilers).
[208] ORS 757.390 (SB 98 refers to ORS 757.390-398).
[209] ORS 757.396(1).

ratemaking mechanisms that ensure the recovery of all prudently incurred costs that contribute to the . . . natural gas utility's meeting the targets" set forth in the statute.[210]

The Legislature did not dictate the type of ratemaking mechanism to be used—other than to suggest that both qualified investments and operating costs, and costs of procurement of RNG from third parties, "may" be recovered through an automatic adjustment clause.[211] The only requirement is that the **"mechanism" "ensure"** the recovery of **"all"** prudently incurred costs.[212] This language clearly is intended to provide the gas utility a high level of certainty that it will recover all of its costs associated with its purchase of and investment in RNG. In fact, the language of SB 98 provides a more emphatic charge to the Commission than rate recovery provisions in analogous statutes, for instance the electric utility Renewable Portfolio Standards[213] ("RPS"), the Wildfire Mitigation statute,[214] and the Solar PV Program statute[215]—each of which states that the covered utilities may recover "all" prudently incurred costs, but none of which explicitly require a mechanism that "ensures" such recovery.

Given the statutory language, NW Natural has requested treatment for its RNG costs similar to that provided in the Renewable Adjustment Clauses ("RACs") that the Commission has granted the electric utilities for the costs they incur to comply with the RPS.[216] Specifically, NW Natural has asked for a mechanism allowing it to track and

---

[210] ORS 757.396(2).
[211] ORS 757.396(2).
[212] ORS 757.396(2) (emphasis added).
[213] ORS 469A.120.
[214] ORS 757.963(8).
[215] ORS 757.365(10).
[216] NW Natural/1500, Kravitz/7 ("NW Natural has modeled Schedule 198 after the RACs that electric utilities have used for a number of years to recover the cost of their renewable energy investments.").

record costs associated with its RNG investments for later recovery through an AAC.[217] The requested mechanism allows NW Natural to forecast revenue requirement associated with the new RNG investments in rates by February 28 of each year,[218] and to update that forecast on August 1.[219] The rate effective date of new investments will be November 1 of each year—unless NW Natural can demonstrate that a different date is in the public interest.[220] Importantly, NW Natural has requested the ability to defer for later recovery with no earnings review: (1) the difference between forecast and actual costs; and (2) the revenue requirement associated with new investments between the in-service date and the rate effective date of the RNG projects. The deferrals are similar to the features stipulated by the parties and adopted by the Commission for the electric utilities' RACs.[221]

Staff, CUB, and AWEC all oppose aspects of NW Natural's proposal, and each advocates for its own modifications. Staff and CUB reject the requested deferral between the in-service date and the rate effective date and insist that rate changes be allowed only once a year in all circumstances.[222] Both Staff and CUB agree to a deferral of the differences between forecasted and actual costs but propose that an earnings review be conducted prior to recovery, with slightly different terms.[223] Staff proposes that the earnings review threshold be set at 100 basis points ("bps") below the Company's

---

[217] NW Natural proposed Schedule 198 in Advice No. 20-19, subsequently docketed as UG 411 and consolidated with UG 435 on January 26, 2022.
[218] NW Natural/2500, Kravitz/5.
[219] NW Natural/2500, Kravitz/3.
[220] NW Natural/2500, Kravitz/5.
[221] *In re Investigation of Automatic Adjustment Clause Pursuant to SB 838*, Docket UM 1330, Order No. 07-572, App. A at 5-6 (Dec. 19, 2007). As discussed below, one distinction between the RACs and NW Natural's requested ACC is the treatment of variable costs.
[222] Staff's Opening Brief at 5-6; CUB's Opening Brief at 21.
[223] Staff's Opening Brief at 5; CUB's Opening Brief at 20.

authorized return on equity ("ROE") with no recovery within a deadband equal to plus or minus 50 bps (which they argue is necessary to incentivize the Company to operate efficiently).[224] CUB proposes that the earnings review be set to 100 bps above or below the Company's ROE.[225] AWEC does not support the AAC but advocates that if an AAC is adopted, the Commission should set an earnings test threshold for the deferrals of costs between the in-service date and the rate effective date at 100 bps below ROE.[226] These proposals contradict the law and are inconsistent with the treatment accorded costs of other legislatively supported investments.

First, as explained in the Company's testimony, RNG projects are typically developed by utilities together with "partners" and therefore the utility does not control the timing of these projects.[227] For this reason, the CUB and Staff proposals to eliminate the deferral of RNG project costs incurred between the in-service and effective dates, as well as eliminate the Company's ability to select a rate effective date other than November 1 where appropriate, would virtually guarantee that the Company never fully recovers its costs of qualified investment. Such under recovery is contrary to the clear language of the statute.[228]

Second, the earnings reviews proposed by Staff and CUB for the deferral between forecast and actual costs are particularly problematic, given that they seek to set the threshold for recovery below the Company's authorized ROE. If adopted, this proposal would ensure that the Company is ***not*** allowed to recover prudently incurred costs unless

---

[224] Staff's Opening Brief at 5.
[225] CUB's Opening Brief at 28.
[226] AWEC's Opening Brief at 18-19.
[227] NW Natural/2900, Chittum/3-4.
[228] ORS 757.394; ORS 757.396

it is significantly underearning. This result is clearly contrary to the statute, which not only provides for the recovery of *all* prudently incurred costs, but also defines these costs to "include the cost of capital established by the commission in the large natural gas utility's most recent general rate case."[229]

Third, all of these proposals represent major departures from the precedent set by the Commission in its adoption of electric utility RACs—which allow for deferrals.[230] It is worth noting that Staff, CUB, and the Industrial Customers of Northwest Utilities (AWEC's predecessor), all stipulated to the AACs adopted for the electric utility RACs,[231] and the parties have provided no rationale as to why they are proposing significantly less favorable recovery for RNG projects.

Staff and CUB both argue that NW Natural is insisting on "dollar-for-dollar" recovery, which they claim is inconsistent with the Commission's precedent interpreting the RAC in docket UM 1662.[232] However a close reading of the Commission's order in that docket, as well as the underlying RPS statute interpreted by the Commission, proves rather than undermines NW Natural's position in this case.

The cost recovery provisions of the RPS statute state in relevant part that "all prudently incurred costs associated with complying with . . . . [SB 838's provisions] are recoverable in the rates of an electric company . . ."[233] In addition, the statute provides that the Commission "shall establish an automatic adjustment clause . . . or another

---

[229] ORS 757.396(3).
[230] Order No. 07-572 at 4.
[231] Order No. 07-572, App. A at 12-14.
[232] *In re Portland Gen. Elec. and PacifiCorp dba Pac. Power Request for Generic Power Cost Adjustment Mechanism Investigation*, Docket UM 1662, Order No. 15-408 at 6 (Dec. 18, 2015).
[233] ORS 469A.120(1).

method that allows timely recovery of costs prudently incurred by an electric company to construct or otherwise acquire facilities that generate electricity from renewable energy sources . . ."[234] In other words, while the RPS statute states that all prudently incurred costs are "recoverable" in utility rates, it directs the Commission to adopt a special ratemaking mechanism—in this case either an AAC or "another method"—only for the recovery of capital costs.[235] Based on its review of the statutory language, the Commission concluded that dollar-for-dollar recovery is mandated for capital costs, which is something that both Staff and CUB fail to acknowledge or address in their Opening Briefs.[236] Therefore, allowing the Company to defer these costs between the in-service date and the rate effective date without an earnings review is entirely consistent with the Commission's previous interpretation of the RPS statute that ensures dollar-for-dollar recovery of capital costs.

However, NW Natural should be entitled to fully recover its operating costs as well. CUB and Staff maintain that the Commission should limit recovery of NW Natural's "variable" costs, which they claim is consistent with the Commission's interpretation of the RPS statute.[237] But both Staff and CUB fail to recognize that, as shown above, the AAC under the RPS statute applies only to capital costs, whereas the cost recovery provisions of SB 98 direct the Commission to adopt "ratemaking mechanisms" for **all** RNG costs and specify that those ratemaking mechanisms must "ensure" recovery of "all prudently

---

[234] ORS 469A.120(2)(a).
[235] ORS 469A.120.
[236] Order No. 15-408 at 7 ("[T]he legislature explicitly mandated the use of an automatic adjustment clause to provide dollar-for-dollar recovery for fixed capital costs associated with RPS compliance.").
[237] Staff's Opening Brief at 7; CUB's Opening Brief at 24.

incurred costs."[238] Unlike the RPS statute, this mandate does not apply to only capital costs. Rather, SB 98 states that the Commission may adopt AACs for qualified investments **and operating costs** from qualified investments.[239] And while the Legislature did use permissive language, the "may" must be read together with the preceding language requiring the Commission to adopt specific ratemaking "mechanisms." When all provisions of the statute are read together—as they must be[240]—it is clear that the Legislature intended the Commission to adopt ratemaking mechanisms that ensure full recovery of capital and operating costs, while that mechanism might be an AAC or some other method.

It is important to bear in mind that such treatment does not result in "guaranteed" or "automatic" cost recovery;[241] NW Natural must demonstrate that all of these costs are prudently incurred, just like any other cost. Rather, the deferrals in this instance are simply ratemaking mechanisms that ensure NW Natural has the opportunity to demonstrate that these costs were prudently incurred during a subsequent AAC proceeding. The deferrals are not a replacement for a prudence review.

Finally, CUB takes issue with the Company's statement that the Commission has determined the legislative intent of SB 98. CUB points to the portion of Mr. Kravitz's testimony where he quotes the Commission as stating in docket AR 632 (the rulemaking opened by the Commission to implement SB 98): "The legislature directed us . . . to adopt rules to establish a process for natural gas utilities to fully recover the costs associated

---

[238] ORS 757.396(2).
[239] ORS 757.396(2)(a).
[240] ORS 174.010 ("…where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.").
[241] CUB/500, Gehrke/19; Staff/1800, Muldoon/25.

with a large or small renewable natural gas program."[242] CUB argues that this statement could not have constituted the Commission's interpretation of the statute because the Commission did not expressly explain its reasoning by walking through each and every step of its analysis under Oregon's approach to statutory construction.[243] Moreover, without citation, CUB makes the incorrect statement that "[a] legal determination to discern the legislature's intent must be made in a contested case or declaratory ruling proceeding where parties can make legal arguments for the Commission to rule upon in its quasi-judicial capacity."[244] CUB is wrong on both counts.

First, the quoted statement by the Commission as to the meaning of SB 98 is in fact a paraphrase of clear and direct statutory language—which can be interpreted based on the plain language of the statute without resort to any other rules of construction. There is simply no support for CUB's purported requirement that the Commission would need to articulate the steps of statutory construction in order to discern the meaning of SB 98. Moreover, CUB's view that the Commission cannot interpret a statute it is charged with administering in a rulemaking is illogical and contrary to settled law. The Oregon Supreme Court has stated that agencies may interpret the laws they are charged with administering by rulemaking, adjudication (that is by issuing orders in contested cases), or both.[245] Consistent with this ruling, the Commission has frequently interpreted

---

[242] CUB Opening Brief at 22 (citing NWN/2500, Kravitz/9).
[243] CUB Opening Brief at 22 (citing *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or 606, 610-612 (1993)).
[244] CUB Opening Brief at 23.
[245] *Trebesch v. Emp't Div.*, 300 Or 264, 273 (1985).

legislative intent in rulemaking dockets.[246] Moreover, given that rulemakings are the administrative proceedings in which agencies implement legislative mandates, CUB's argument makes little sense. Accordingly, the Commission's interpretation of SB 98 made in docket AR 632 should be accorded due deference.

For all of these reasons, this Commission's precedents require that NW Natural be granted an AAC or another ratemaking mechanism that allows for the deferral and later recovery of capital and operating costs, without an earnings review. Additionally, for the reasons discussed in NW Natural's Opening Brief, the Company can agree to forego deferral of differences between the annual forecasted and actual variable costs—except for deferrals of costs related to physical gas sales—if it is allowed to adjust the rate effective date in certain cases.[247]

C. Prudency of Lexington RNG Project

In its Opening Brief, the Coalition argues that the Lexington RNG project is imprudent because it relies on a book-and-claim accounting approach to complying with SB 98, instead of physically delivering the RNG to NW Natural customers.[248] This position rests on the Coalition's belief that SB 98 requires NW Natural to ensure that the actual physical gas molecules produced by an RNG facility end up at the burner tips of

---

[246] *See In re Small-Scale Renewable Energy Projects Rulemaking*, Docket AR 622, Order No. 21-464 at 5-6, 12-15 (Dec. 15, 2021) (considering the legislative intent of SB 399 and HB 2021 in the rulemaking for the small-scale renewable energy projects) and *In re Rulemaking to Amend OAR Chapter 860, Divisions 023 and 034 to Adopt Rule Changes to Implement SB 622, Section 29, Minimum Serv. Quality Standards for Providing Retail Telecommunications Services*, Docket AR 375, Order No. 00-303 at 10-16 (June 8, 2000) (considering legislative intent of SB 622 in rulemaking on minimum service quality standards for telecommunication services).

[247] NW Natural's Opening Brief at 75-79.

[248] *See* Coalition's Opening Brief at 20, 28.

NW Natural's customers' appliances. The Coalition's argument should be rejected for three reasons.

First, in making this argument, the Coalition improperly relies on portions of the Opening Testimony of Nora Apter that the Coalition subsequently withdrew. Those portions of the Coalition's brief should be stricken from the record, or in the alternative, be given no weight.

Second, the Oregon Administrative Rules adopted by this Commission make clear that natural gas utilities may use Renewable Thermal Credits, or RTCs, to comply with SB 98—as opposed to requiring physical delivery of specific gas molecules to customers. NW Natural's decision to invest in the Lexington RNG Project relied on those rules and cannot now be second-guessed based on the Coalition's claim that the rules do not comply with SB 98. Moreover, the Coalition's argument constitutes an inappropriate collateral attack on the Commission's RNG rules and should be disregarded entirely.[249]

Finally, if the Commission decides to reach the merits of the Coalition's arguments, it should find that its rules, which require natural gas utilities to use RTCs to meet ORS 757.396 targets and do not require tracking the physical gas molecules, are entirely consistent with ORS 757.390-398.

---

[249] *See In re Or. Pub. Util. Comm'n Staff Requesting the Comm'n to Direct PacifiCorp, dba Pac. Power, to File Tariffs Establishing Automatic Adjustment Clauses Under the Terms of SB 408,* Docket UE 177, Order No. 08-176 (Mar. 20, 2008) at 3 ("Evidence tending to show the infirmities of the rule's expression of the intent of SB 408 is properly offered in support of a petition to amend the existing rule in a separate rulemaking proceeding" and "is not appropriate for this docket, whose purpose is to determine whether Pacific Power's 2006 tax report complies with OAR 860-022-0041.").

1. The Commission Should Strike or Give No Weight to the Portion of the Coalition's Opening Brief That Refers to Withdrawn Testimony.

In her Opening Testimony, Coalition witness Nora Apter argued that the Lexington RNG Project is imprudent because it does not comply with either the CPP or SB 98.[250] However, in her Rebuttal Testimony, Ms. Apter, withdrew all of her testimony on this topic,[251] and for that reason, NW Natural understood that the Coalition was no longer making this argument,[252] and provided no further testimony or briefing on the subject. However, in its Opening Brief, the Coalition has reprised the same legal argument that Ms. Apter made in her Opening Testimony and later withdrew, and in the process, the Coalition cites to Ms. Apter's withdrawn testimony.[253] While NW Natural does not object to the Coalition making any legal argument it wishes in its briefing, any references to withdrawn testimony should be stricken, or given no weight, as such references are not supported by evidence in the record.[254]

2. The Commission Should Find That the Lexington RNG Project Is Prudent Because It Is Consistent with the Commission's RNG Rules.

In July 2020, the Commission adopted comprehensive rules implementing SB 98.[255] Those rules, and the Commission's order adopting those rules, very plainly allow

---

[250] Coalition/100, Apter/2.
[251] Coalition/600, Apter/2.
[252] NW Natural acknowledges that the text of Ms. Apter's testimony explicitly stated it was no longer making an argument about the CPP, but given the withdrawal of all testimony on SB 98 as well, NW Natural believed that compliance with SB 98 was no longer an issue that would be raised by the Coalition.
[253] In particular, on pages 20-21 of the Coalition's Opening Brief, the Coalition summarizes Ms. Apter's withdrawn testimony in which she alleges that "NW Natural's Lexington Project operates like an offset scheme […], implies that emissions reductions are occurring in Oregon when they are not, and delays real climate action in Oregon."
[254] *In re Qwest Corp.'s Petition to Exempt from Regulation Qwest's IntraLATA Toll Serv., Operator Serv. Charges, and 800 Serv. Line Option,* Docket UX 28, Order No. 03-609 at 16 (Oct. 16, 2003) ("We make decisions based on the record in each case before us.").
[255] *In re Rulemaking Regarding the 2019 SB 98 Renewable Nat. Gas Programs*, Docket AR 632, Order No. 20-227 (July 16, 2020).

gas utilities to comply with SB 98's RNG targets using a book-and-claim accounting approach—and conversely, those rules do not require physical delivery of RNG molecules to NW Natural's customers. Therefore, the Lexington RNG Project complies with the Commission's rules, which were already in effect when NW Natural decided to invest in the project in late 2020.[256] Because NW Natural relied on the Commission's rules in making its decision to invest in the Lexington RNG Project, that decision cannot be found imprudent now on the basis of the Coalition's claim that the rules actually do not comply with SB 98.[257] The Commission should find that the Lexington RNG Project is prudent and decline to entertain the Coalition's inappropriate collateral attack on the Commission's rules.

a) Nothing in the Commission's Rules Requires That RNG Must Be Physically Delivered to Customers in Oregon.

The Commission's regulations do not require a natural gas utility to physically deliver the energy content of the RNG to the utility's customers. Instead, OAR 860-150-0050(7) states:

> Upon the Commission's request, each large natural gas utility and each small natural gas utility that participates in the RNG program must provide documentation to demonstrate that, for each RTC the natural gas utility purchased or otherwise acquired, one dekatherm of RNG was delivered to an injection point on a natural gas common carrier pipeline.

[256] *See* NW Natural/2100, Chittum/12 ("NW Natural made the decision to pursue the Lexington RNG project in late 2020.").
[257] *In re PacifiCorp, dba Pac. Power, Request for a Gen. Rate Revision*, Docket UE 246, Order No. 12-493 at 25 (Dec. 20, 2012) (prudence is assessed based on what the utility knew or should have known at the time it made the decision).

Thus, the RNG must be injected into a common carrier pipeline, and the natural gas utility must retain the RTCs associated with that gas to meet ORS 757.396 targets.[258]

These rules very clearly do not require that the utility demonstrate that RNG molecules are being delivered to its customers. On the contrary, the logic of the rule assumes that the physical gas need not be delivered to the utility's customers, and in that context, the demonstration that the RNG has been injected into "a" common carrier pipeline serves two critical purposes: (1) it ensures that the RNG displaces conventional natural gas in the natural gas system; and (2) it obviates the need to procure incremental pipeline capacity, which reduces costs to customers. To the extent the Coalition expects gas utilities to track the physical RNG molecules in the pipeline system, this reflects a fundamental misunderstanding of the energy system because as the Coalition states, RNG is "chemically indistinguishable" from conventional natural gas.[259] Just as the Company cannot track specific conventional natural gas molecules purchased from gas suppliers throughout North America, it is a physical impossibility to track specific molecules of RNG from their production sites. Any interpretation that the gas must be delivered to the utility's customers would render OAR 860-150-0050(7) meaningless—contrary to Oregon's fundamental rules of statutory construction.[260] That is, if utilities were required to deliver RNG molecules to customers, there would be no reason to

---

[258] *See* OAR 860-150-0050(8) ("A large natural gas utility must retire one RTC in the M-RETS system for each dekatherm of RNG counted towards the annual targets for a large natural gas utility established in ORS 757.396.").

[259] Coalition/100, Apter/15. *See also* NW Natural/2100, Chittum/2-3. The environmental benefit of RNG is that it captures methane from agriculture, landfills, or other sources that would otherwise be released into the atmosphere, thereby reducing GHG emissions while alleviating an existing waste problem.

[260] ORS 174.010 ("...where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."); *see also*, *State v. Gaines*, 346 Or 160, 171 (2009) (In interpreting a statute, "the first step remains an examination of text and context.").

require that the RNG be injected into a common carrier pipeline in the first place. Thus, the Coalition's legal argument is contrary to the only reasonable interpretation of the Commission's rules and should be rejected.

Moreover, the Commission's order in its rulemaking docket makes clear that it did not intend to require that the energy content of the gas be delivered to customers; instead, the rules are founded on the requirement that natural gas utilities retain the RTCs, which represent the environmental attributes of the RNG.[261] In its report on the draft rules, Staff stated that:

> The draft rules do not distinguish between "bundled" [physical gas delivered plus environmental attributes] or "unbundled" [only environmental attributes] RTCs. Instead, the draft rules establish a "book-and-claim" accounting system, whereby RTCs and the associated attestations regarding environmental claims about the RNG the RTCs were originally associated with can be tracked electronically from the point in time when the RNG is injected into a common carrier pipeline, with no need to track the physical gas itself. **The chain of custody of the RTCs – which represent all of the environmental attributes of the RNG and the rights to all environmental claims – is the lynchpin of this methodology**.[262]

The Commission summarized this methodology in its order adopting the RNG rules, stating that it "utilizes a 'book and claim' accounting approach for RTCs, which tracks an RTC's chain of custody, rather than the physical gas, starting from injection into a common carrier pipeline."[263]

This form of book-and-claim accounting was strongly supported during the rulemaking process by diverse parties. NW Natural, Avista, and 3Degrees supported it, as did the Oregon Department of Environmental Quality ("ODEQ").[264] Specifically, ODEQ

---

[261] OAR 860-150-0050(8).
[262] Docket AR 632, Staff Report at 7 (emphasis added).
[263] Order No. 20-227 at 5.
[264] Order No. 20-227 at 5.

stated that “the book and claim accounting function of the proposed rules,” is “consistent with how RNG is tracked in the Oregon Clean Fuels Program, as well as in the California Low Carbon Fuel Standard, and the federal Renewable Fuel Standard,” and that “the flexibility of the approach helps the development of projects that would otherwise be uneconomic if physical delivery was required.”[265] The Commission subsequently adopted Staff’s proposed book-and-claim methodology in its final rules.[266]

Since adopting the rules, the Commission has found RNG projects that do not require the physical delivery of the gas to customers to be consistent with its rules. Specifically, the Commission approved the recovery of costs from two RNG purchases in NW Natural’s Purchased Gas Adjustment.[267] In these purchases, NW Natural delivers RTCs to its customers, but not the physical gas.[268] The Commission should similarly approve the Company’s investment in the Lexington RNG Project because qualified investments in RNG infrastructure are subject to the same requirements found in ORS 757.390-398 and the associated rules (OAR 860-0150) and should be treated in the same manner.

Because the rules, the rulemaking record, and the Commission’s subsequent precedent are clear, there is simply no basis to do what the Coalition suggests and now interpret the Commission’s RNG rules to somehow require the physical delivery of the gas to customers.[269]

---

[265] Order No. 20-227 at 5.
[266] Order No. 20-227 (adopting OAR 860-150-0050(7)-(8) as proposed by Staff).
[267] Order No. 21-376.
[268] Order No. 21-376, App. A at 6-7 (“NW Natural engaged in a competitive request for proposal (RFP) solicitation for RNG offtake/Renewable Thermal Certificate (RTC) agreements,” and “Staff finds the proposed RNG offtake agreements included with year's PGA to be prudent.”). In its order, the Commission adopted Staff’s recommendation.
[269] Coalition’s Opening Brief at 21-22.

b) The Company Invested in the Lexington RNG Project in Reliance on the Commission's Rules, and the Investment Is Therefore Prudent.

In assessing prudence, the Commission considers "whether the company's actions, based on all that it knew or should have known at the time, were reasonable and prudent in light of the circumstances which then existed . . . such a determination may not properly be made on the basis of hindsight judgments, nor is it appropriate for the [Commission] to merely substitute its best judgment for the judgments made by the company's managers."[270] At the time the decision was made to invest in the Lexington RNG Project at the end of 2020, the Commission's RNG rules were in effect and the Company reasonably relied on these rules and the extensive discussion in the RNG rulemaking record regarding book-and-claim accounting, discussed above, when making the decision to invest. Therefore, the Commission should find that NW Natural's investment in the Lexington RNG Project was prudent.

c) The Coalition's Arguments Constitute an Inappropriate Collateral Attack on the Commission's Rules.

The Coalition's argument that physical delivery of RNG molecules is required for SB 98 compliance, while styled as an argument regarding the prudency of NW Natural's investment in the Lexington RNG Project, is actually a challenge to the validity of the Commission's RNG rules themselves. As such, the Coalition's argument constitutes an inappropriate collateral attack on these rules, is outside the scope of a GRC, and should be rejected.[271] As discussed above with regards to the LEA, if the Commission decides

---

[270] Order No. 12-493 at 25.
[271] See Order No. 08-176 (affirming ruling of Administrative Law Judge striking testimony attacking validity of Commission rule).

to change its rules, it first must provide adequate notice and an opportunity to comment to all interested parties.[272]

In sum, there is simply no basis on which to conclude that the Commission's RNG rules somehow require the physical delivery of gas to customers. The text of the Commission's rules does not require it. The rulemaking record reflects specific consideration of this issue, and yet Staff did not recommend and the Commission did not adopt such a requirement. Because NW Natural reasonably relied on both the rules and the rulemaking record, the Company's decision to invest in the Lexington RNG Project is prudent. The Coalition's request to "interpret" the Commission's RNG rules in a contrary manner is meritless when weighed against all of this evidence and is actually an inappropriate collateral attack on the rules themselves. The Commission should reject the Coalition's argument.

3. The Commission's RNG Rules Are Consistent with ORS 757.390-398.

Contrary to the Coalition's argument, there is no need to re-examine the Commission's RNG rules, which are entirely consistent with SB 98. SB 98 recognizes that RNG has both a physical gas component and an environmental attribute—but does not indicate a preference for a specific approach for demonstrating compliance. Instead, the Legislature provided the Commission with express statutory authority to "adopt by rule a large renewable natural gas program for large natural gas utilities . . . ."[273] and further directed that the "[r]ules adopted by the commission under this section shall include . . . rules for reporting requirements under the large renewable natural gas

[272] *See supra* footnote 133.
[273] ORS 757.394(1).

program . . ."[274] The Commission reasonably determined that the Legislature's direction was best implemented through a book-and-claim approach without the need for physical delivery of RNG molecules.[275]

In recommending the book-and-claim compliance approach, Staff noted that SB 98 provided "little to no statutory guidance" as to the definition, tracking, and transfer of legitimate claims for the environmental attributes of RNG.[276] However, Staff reasoned that environmental credits are the "attributes [of RNG that] distinguishes pipeline-quality biogas or 'biomethane' . . . from any other methane in the natural gas pipeline system."[277] In other words, Staff attached significance to the fact that, without the environmental attribute, RNG is indistinguishable from conventional natural gas.[278] The benefit of RNG—capturing methane that would otherwise be released into the atmosphere—occurs whether or not the energy content of the Lexington RNG Project serves Oregon customers. And by injecting the RNG into a common carrier pipeline per OAR 860-150-0050(7), NW Natural ensures that the RNG displaces conventional natural gas. Based on this reasoning, Staff recommended that the Commission adopt book-and-claim accounting as the basis for SB 98 compliance, as discussed above. Staff's recommendation, and the Commission's adoption of the current rules, which do not

---

[274] ORS 757.394(3).
[275] *Cf. Pulito v. Or. State Bd. Of Nursing*, 366 Or 612, 618 (2020) (rule is invalid if it exceeds the statutory authority of the agency, including the agency's overall jurisdiction and the policy directive contained in the statute being administered); *see also, e.g.*, *Chase Gardens v. Or. Pub. Util. Comm'n*, 131 Or App 602, 607-09 (1994) (discussing ORS 757.325, finding legislature granted Commission broad power to do "all things necessary" to supervise and regulate public utilities and specifically to make policy decisions regarding what constitutes undue discrimination under ORS 757.325, and upholding Commission's interpretation of delegative terms in that statute because the interpretation was within the range of discretion allowed by the policy of the statute).
[276] Docket AR 632, Staff Report at 7.
[277] Docket AR 632, Staff Report at 7.
[278] *See* NW Natural/2100, Chittum/2-3.

require physical delivery of the RNG molecules to a utility's customers, appropriately give effect to the Legislature's intent.

Nevertheless, the Coalition points to two sections of SB 98 that it believes indicate a legislative intent that the actual RNG molecules be tracked and delivered to NW Natural's customers. These references are unpersuasive. First, the Coalition points to ORS 757.392(5), which defines a "qualified investment" in RNG for the purpose of providing "gas service."[279] And the second reference is to the definition of "renewable natural gas infrastructure" in ORS 757.392(8) as "the facilities for the production, processing, pipeline interconnection and distribution of renewable natural gas to be furnished to Oregon customers."[280] However, these definitions do not indicate that the RNG's physical molecules (as opposed to the RTC) must be delivered to Oregon customers. On the contrary, these definitions are simply an attempt to define what the physical RNG product is—nothing about the definitions suggests that the RNG needs to be delivered in that physical form to Oregon customers. In fact, the Legislature delegated authority to the Commission to develop a program to implement SB 98, including rules for reporting requirements;[281] had the Legislature intended to limit that authority by requiring that specific physical gas molecules be tracked and delivered to Oregon customers, it would have clearly stated that was the case.[282] There is, however, no such directive anywhere in the statute.

---

[279] Coalition's Opening Brief at 23-24.
[280] Coalition's Opening Brief at 24.
[281] ORS 757.394.
[282] *See, e.g.*, *L.L. v. State*, 301 Or App 222, 227 (2019) ("Had the legislature intended to impose that limitation, it would have said so expressly, and, as all parties now seem to recognize, we may not rewrite the statute to include a limitation that the legislature itself did not include.").

The Coalition also points to the fact that the statute does not explicitly allow for use of environmental attributes to comply with the law's targets—and recognizes the existence of environmental credits only once.[283] This observation, however, does not advance the Coalition's argument. It is true that the Legislature did not explicitly adopt a tracking or reporting framework allowing compliance through the use of RTCs—just as the Legislature did not explicitly adopt a tracking or reporting framework requiring compliance only through the physical delivery of RNG gas molecules. As noted above, the Legislature did not intend to adopt *any* tracking or compliance framework and instead directed the Commission to do so. Similarly, contrary to the Coalition's claim, the fact that the Legislature refers to the environmental attributes of RNG only once in the statute does not dictate a conclusion that compliance through environmental attributes is impermissible.[284] On the contrary, the statute does recognize the existence and value of environmental credits,[285] and it can fairly be assumed that the Legislature would expect the Commission to consider the value of environmental credits in adopting a compliance framework.

Next, the Coalition claims that the Lexington RNG Project does nothing to encourage a low carbon economy in Oregon or the decarbonization of gas running in the pipelines in Oregon or combusted in the homes and businesses of Oregonians.[286] However, this argument is contrary to the view of ODEQ in the Commission's RNG rulemaking. DEQ stated that the proposed rules would "spur[] the development of more

---

[283] Coalition's Opening Brief at 21-23.
[284] *See* Coalition's Opening Brief at 21.
[285] ORS 757.396(6)(a) ("Any value received by a large natural gas utility upon any resale of renewable natural gas, including any environmental credits…").
[286] Coalition's Opening Brief at 25.

renewable natural gas" and that the flexibility of the book-and-claim approach would help the development of projects that would otherwise be uneconomic.[287]

Finally, the Coalition cites excerpts from the legislative history of ORS 757.390-398 in which various stakeholders describe the benefits of RNG being acquired "on behalf of" or "provided to" Oregon customers—arguing that these statements prove that physical delivery is required.[288] This argument is equally unconvincing, because it is entirely reasonable to understand those statements as referring to the environmental attributes of RNG, as opposed to the actual gas molecules that are identical to conventional natural gas. Therefore, the Commission's RNG rules are consistent with SB 98.

D. Lexington RNG Rate Spread, Deferral, and Other Issues

In addition to the Coalition's prudency argument regarding the Lexington RNG Project, parties raised other concerns related to the project regarding rate spread, the deferral for costs incurred prior to the in-service date, the project's co-owner, BioCross, LLC, and a tax concern. NW Natural, Staff, CUB, and AWEC ("Third Stipulation Parties") entered into Multi-Party Partial Stipulation ("Third Stipulation") on August 19, 2022 that resolves all of these additional issues among the Third Stipulation Parties concerning the Lexington RNG Project, except for rate spread. Specifically, the Third Stipulation Parties agree to resolve: (1) the amortization of the Lexington RNG deferral; and (2) AWEC's proposed tax adjustment and its proposed adjustment based on the ownership interest of

[287] Order No. 20-227 at 5 ("[T]he flexibility of the approach helps the development of projects that would otherwise be uneconomic if physical delivery was required.").
[288] Coalition's Opening Brief at 26-27.

BioCross, LLC. Thus, the only remaining issue among the Third Stipulation Parties is the Lexington RNG Project rate spread.

On that issue, NW Natural continues to believe that the costs of the Lexington RNG Project should be allocated to all non-storage customers, including transportation customers. As explained in the Company's Opening Brief, under the CPP, NW Natural is the point of regulation for all non-storage customers, and therefore all non-storage customers benefit from the Lexington RNG Project because it helps NW Natural comply with the CPP.[289]

AWEC argues that the costs of CPP compliance should be allocated only to sales customers because "[t]he Commission, utilities and stakeholders are still evaluating the methods and costs of complying with the CPP in UM 2178, in Integrated Resource[] Plans and other dockets," and "there is no evidence in this proceeding about what the appropriate CPP compliance cost, if any, would be for any class of customer."[290] While NW Natural understands AWEC's concern, these dockets are still ongoing. Meanwhile, NW Natural must comply with the CPP right now.[291] Accordingly, all non-storage customers benefit from NW Natural's RNG acquisitions and, therefore, all non-storage customers should pay CPP-compliance costs. Contrary to AWEC's arguments, SB 98 does not prevent allocation of RNG acquisition costs to transportation customers given the RNG's CPP-compliance benefits.[292] In short, no customer class should be able to avoid paying for investments that benefit them.

---

[289] NW Natural's Opening Brief at 91.
[290] AWEC's Opening Brief at 10.
[291] NW Natural's Opening Brief at 91.
[292] *See* AWEC's Opening Brief at 9.

Moreover, NW Natural continues to believe that the Lexington RNG Project costs should be allocated on a per-therm basis. Stated another way, the cost of CPP compliance should directly follow the cost causer on an equal basis (i.e., every customer should pay the same amount for the emissions caused by every therm consumed, regardless of that customer's contribution to the system's overall distribution and capacity costs).

AWEC argues that the Company's proposed allocation is not based on "any actual CPP compliance costs in 2022."[293] Again, this argument ignores the fact that the CPP went into effect during this rate proceeding, and NW Natural must comply with the CPP right now. It is unrealistic to expect NW Natural to have "actual" CPP compliance costs or to condition cost allocation on this data.[294] AWEC's argument that CPP costs are based on changes to a customer's throughput is equally unpersuasive.[295] NW Natural is the point of regulation for all of its non-storage customers, and CPP compliance is based on the overall emissions of all customers, regardless of customer class. Under the CPP, emissions caused by a transportation customer consuming a therm of natural gas are no different than emissions caused by a residential customer consuming a therm of natural gas.

With respect to AWEC's concern regarding special contracts, NW Natural continues to believe that these customers should also pay CPP-compliance costs

---

[293] AWEC's Opening Brief at 13.
[294] NW Natural filed its initial testimony in this proceeding on December 17, 2021. The CPP was adopted the previous day, December 16, 2021, and went into effect on January 1, 2022. *See* Oregon Department of Environmental Quality, *Greenhouse Gas Emissions Program 2021*, https://www.oregon.gov/deq/rulemaking/Pages/rghgcr2021.aspx.
[295] AWEC's Opening Brief at 13.

because the Company is the point of regulation for these customers' emissions under the CPP. Because NW Natural cannot amend these special contracts prior to the rate effective date in this proceeding, the Company proposed filing a deferral application that would be amortized at a later time, after the contracts themselves have been updated.[296] None of AWEC's arguments, such as difficulty amending contracts or the possibility that customers may have a competitive alternative to service from NW Natural,[297] provide any basis for why the Company should not seek to amend these contracts in order to ensure that these customers pay the costs associated with their emissions.

IV. CONCLUSION

For the reasons set forth above, NW Natural respectfully requests that the Commission: (1) reject the Coalition's request for additional incremental reductions to NW Natural's requested revenue requirement beyond what the First Stipulation Parties agreed to in the First Stipulation and approve the First Stipulation in its entirety; (2) reject SBUA's proposed alternative cost allocation proposal for the Company's COVID-19 Deferral and adopt the Second Stipulation in its entirety; (3) find that NW Natural's GRC is not the appropriate forum in which to consider CUB's and the Coalition's LEA proposals; (4) approve NW Natural's proposed Schedule 198, allow the Company to defer the costs between the in-service date of a new qualified RNG investment and the rate effective date, do not subject the deferred amounts to an earnings test, and let NW Natural defer the difference between forecasted and actual RNG operating costs also without an earnings test; (5) find that NW Natural's investment in the Lexington RNG Project was

[296] NW Natural/2300, Walker-Wyman/10.
[297] AWEC's Opening Brief at 13-14.

prudent; and (6) adopt the Third Stipulation and adopt the Company's proposal to spread the revenue requirement associated with the Lexington RNG Project on an equal cents per therm basis to all customer classes (except storage), including customers with whom NW Natural has special contracts, and reject AWEC's proposal to consider the cost of the Lexington RNG Project in the context of the overall cost of service and rate spread.

Respectfully submitted this 22nd day of August, 2022.

Lisa F. Rackner
Jocelyn C. Pease
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
Telephone: (503) 595-3922
dockets@mrg-law.com

Attorneys for Northwest Natural Gas Company

CERTIFICATE OF SERVICE
UG 435 / UG 411

I hereby certify that on August 22, 2022, I have served the unredacted, and confidential versions of NW NATURAL'S CLOSING BRIEF upon parties of record in docket UG 435 by electronic mail.

FILING CENTER (C)(HC)
PUBLIC UTILITY COMMISSION OF OREGON
201 High Street SE, Ste. 100
Salem, Oregon 97301
puc.filingcenter@puc.oregon.gov

MATTHEW MULDOON (C)(HC)
PUBLIC UTILITY COMMISSION OF OREGON
201 High Street SE, Ste. 100
Salem, Oregon 97301
matt.muldoon@puc.oregon.gov

STEPHANIE ANDRUS (C)(HC)
DEPARTMENT OF JUSTICE
1162 Court St. NE
Salem, Oregon 97301
stephanie.andrus@doj.state.or.us

CHAD M. STOKES (C)(HC)
CABLE HUSTON LLP
1455 SW Broadway, Ste. 1500
Portland, Oregon 97201
cstokes@cablehuston.com

MICHAEL GOETZ (C)(HC)
OREGON CITIZENS' UTILITY BOARD
610 SW Broadway, Ste. 400
Portland, Oregon 97205
mike@oregoncub.org

WILLIAM GEHRKE (C)(HC)
OREGON CITIZENS' UTILITY BOARD
610 SW Broadway, Ste. 400
Portland, Oregon 97205
will@oregoncub.org

CARRA SAHLER (C)
LEWIS & CLARK LAW SCHOOL
10101 S. Terwilliger Blvd.
Portland, Oregon 97219
sahler@lclark.edu

JAIMINI PAREKH (C)
EARTHJUSTICE
810 Third Ave., Ste. 610
Seattle, Washington 98104
jparekh@earthjustice.org

KRISTEN BOYLES (C)
EARTHJUSTICE
810 Third Ave., Ste. 610
Seattle, Washington 98104
kboyles@earthjustice.org

ADAM HINZ (C)
EARTHJUSTICE
810 Third Ave., Ste. 610
Seattle, Washington 98104
ahinz@earthjustice.org

DANNY KERMODE (C)
5553dkcpa@gmx.us

DIANE HENKELS (C)
SMALL BUSINESS UTILITY ADVOCATES
621 SW Morrison St., Ste. 1025
Portland, Oregon 97205
diane@utilityadvocates.org

DATED August 22, 2022, Portland, Oregon.

/s/ Alisha Till
Alisha Till
Paralegal