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August 23, 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 the Stipulating Parties' (Northwest Natural Gas Company, Staff of the Public Utility Commission, the Oregon Citizens' Utility Board, and the Alliance of Western Energy Consumers) Joint Brief in Support of the Third Partial Stipulation. 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
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).

**JOINT BRIEF IN SUPPORT OF THE
THIRD PARTIAL STIPULATION**

I. INTRODUCTION

1 Northwest Natural Gas Company, dba NW Natural (“NW Natural” or the
2 “Company”), Staff of the Public Utility Commission of Oregon (“Staff”), the Oregon
3 Citizens’ Utility Board (“CUB”), and the Alliance of Western Energy Consumers (“AWEC”)
4 (collectively the “Stipulating Parties”) respectfully request that the Commission approve
5 the Third Partial Stipulation (“Third Stipulation”) filed in this docket on August 19, 2022.¹
6 This brief will explain why the Third Stipulation is just and reasonable per OAR 860-001-
7 0350.

8 The Third Stipulation resolves all issues among the Stipulating Parties concerning
9 the Lexington Renewable Natural Gas (“RNG”) Project, except for rate spread.
10 Specifically, the Stipulating Parties agree to resolve the following issues:

¹ The Small Business Utility Advocates (“SBUA”) takes no position on the Third Stipulation. The Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (collectively “Coalition”) also take no position on the Third Stipulation and reserve the arguments regarding the Lexington RNG Project raised in the Coalition’s testimony and briefing.

- 1 1) The amortization of the Lexington RNG deferral; and
- 2 2) AWEC's proposed tax adjustment and its proposed adjustment based
- 3 on the ownership interest of BioCross, LLC ("BioCross").

II. LEXINGTON RNG ISSUES

A. Parties' Positions Prior to the Third Stipulation

4 In this proceeding, NW Natural requested that the Commission approve and
5 amortize the deferral associated with the Lexington RNG Project over the Test Year
6 (November 1, 2022 to October 1, 2023) without an earnings test.² The deferral, totaling
7 approximately [BEGIN CONFIDENTIAL] [REDACTED], [END CONFIDENTIAL] is for the
8 project's costs incurred prior to the rate effective date (November 1, 2022).³ During the
9 proceeding, Staff and AWEC opposed the Company's proposal. Staff argued that NW
10 Natural should not be allowed to defer the costs of any RNG project, including the
11 Lexington RNG Project, as part of the Company's proposed RNG automatic adjustment
12 clause ("AAC"), stating, among other things, that the lag between the online date and the
13 rate effective date would be less than a year.⁴ AWEC also opposed the Lexington RNG
14 deferral, arguing that NW Natural has not presented an earnings test to justify the
15 amortization and that such an earnings test will not be possible until mid-2023.⁵ In the
16 alternative, AWEC argued that if a deferral were granted, then it should be amortized over
17 the 15-year life of the Lexington RNG Project.⁶

18 CUB, on the other hand, believed a deferral was appropriate given the unique
19

² NW Natural's Opening Brief at 85 (Aug. 10, 2022). NW Natural filed its application to use deferred accounting for the Lexington RNG Project in docket UM 2145. See also NW Natural/3000, Walker-Wyman at 10 (summarizing the Company's proposal and updated revenue requirement).

³ *Id.*; NW Natural/2301, Walker-Wyman/1.

⁴ Staff's Opening Brief at 5-6 (Aug. 10, 2022).

⁵ AWEC's Opening Brief at 15 (Aug. 10, 2022).

⁶ *Id.* at 15-16.

1 circumstances surrounding the Lexington RNG Project and the Company's proposed
2 RNG AAC. Specifically, NW Natural filed its proposed RNG AAC in March 2021⁷ and
3 CUB noted that NW Natural "could have forced a tariff investigation and a decision on its
4 mechanism [the RNG AAC]."⁸ But, "[i]nstead, the Company has diligently worked with
5 AWEC, Staff, and CUB, and has delayed the effective date of its ratemaking mechanism
6 for RNG projects several times to accommodate feedback from the Oregon utility
7 regulatory community."⁹ Therefore, CUB stated that a deferral was appropriate in this
8 instance.¹⁰ However, CUB believes that cost recovery for the Lexington facility should be
9 treated differently and continues to oppose deferrals between the in-service and rate
10 effective date for ongoing RNG investments.

11 AWEC also argued that NW Natural should be required to hold ratepayers
12 harmless from any tax benefits lost as a result of the ownership structure¹¹ and for
13 BioCross's ownership interest.¹² AWEC recommended an adjustment of approximately
14 \$50,000 to reflect its calculation of the return NW Natural would otherwise receive for the
15 portion of the Project owned by BioCross.¹³ AWEC viewed the tax condition in the
16 Lexington RNG Project affiliated interest docket as separate and distinct from AWEC's
17 proposal in this ratemaking docket.

18 Regarding AWEC's concern about lost tax benefits, the Company took the position
19 that the settlement in the Lexington RNG Project affiliated interest docket addressed

⁷ The RNG AAC docket (UG 411) was consolidated with this docket. See *In re NW Nat. Request for a Gen. Rate Revision (UG 435), and Advice 20-19, Schedule 198 Renewable Nat. Gas Recovery Mechanism (ADV 1215 UG 411)*, Amended Procedural Conference Memorandum (Jan. 26, 2022).

⁸ CUB/200, Gehrke/26.

⁹ *Id.*

¹⁰ *Id.* at 27.

¹¹ AWEC's Opening Brief at 16-17.

¹² AWEC/200, Mullins/12.

¹³ AWEC/200, Mullins/13; AWEC's Opening Brief at 17.

1 AWEC's concern.¹⁴ Regarding the ownership structure and distributions to BioCross,
2 NW Natural argued that BioCross was vital to the completion of the Lexington RNG
3 Project, which the Company found to be the least cost/least risk project it could pursue,
4 and that NW Natural was only seeking to earn a return on the amount the Company
5 directly invested in the project, consistent with ORS 757.396(3).¹⁵ No other party took a
6 position on these issues.

7 **B. Resolution of Lexington RNG Issues in the Third Stipulation**

8 The Stipulating Parties agree that the Commission should approve and amortize
9 the Lexington RNG Project deferral, subject to the following conditions: 1) a three-year
10 amortization period, starting on November 1, 2023, 2) during calendar year 2022, the
11 deferral will accrue interest at the Company's authorized rate of return and be subject to
12 an earnings test at the Company's then effective authorized return on equity using the
13 2022 Results of Operations Report, 3) starting on January 1, 2023, the deferral will accrue
14 interest at the modified blended treasury rate plus 100 basis points and this interest
15 accrual portion will not be subject to an earnings test, and 4) AWEC withdraws its
16 proposed tax adjustment (without modification to the tax condition contained in the
17 Stipulation in Docket UI 451, NW Natural's affiliated interest docket for the Lexington RNG
18 Project) and its proposed adjustment based on the ownership interest of BioCross for the
19 life of the Lexington RNG Project.¹⁶

20 The Third Stipulation reflects a reasonable compromise of the parties' positions on

¹⁴ NW Natural Opening Brief at 90-91.

¹⁵ ORS 757.396(3) states: "When a large natural gas utility makes a qualified investment in the production of renewable natural gas, the costs associated with the qualified investment shall include the cost of capital established by the commission in the large natural gas utility's most recent general rate case."

¹⁶ Third Stipulation at 3-4.

1 the Company's Lexington Project RNG deferral and amortization for several reasons.
2 First, granting and amortizing the Lexington RNG Project deferral reflects a unique
3 circumstance, as described by CUB in testimony. NW Natural could have sought a
4 Commission decision on its proposed RNG AAC after it was filed in March 2021. Instead,
5 in the interest of working collaboratively with stakeholders, the Company delayed the
6 effective date of its ratemaking mechanism for RNG projects while working with parties
7 to address their concerns and issues related to the RNG AAC.¹⁷ While these efforts did
8 not end in an RNG AAC settlement, the willingness of the parties to collaborate to address
9 their varying interests and concerns should be encouraged, which supports approval of
10 the Lexington RNG Project deferral and associated conditions reflected in the Third
11 Stipulation. However, the Stipulating Parties recognize that this is a unique circumstance
12 and, as such, that the Third Stipulation cannot be used as precedent to support the
13 deferral of other RNG projects.

14 Second, the Third Stipulation is a reasonable compromise on the amortization
15 period. NW Natural originally proposed a one-year amortization period, starting on
16 November 1, 2022. However, given the combined rate impact of this proceeding and the
17 Purchased Gas Adjustment on November 1, 2022, the Stipulating Parties agreed to delay
18 the amortization until November 1, 2023, consistent with AWEC's alternative proposal
19 above.¹⁸ The Stipulating Parties also agreed to modify NW Natural's proposed one-year
20 amortization period in favor of a three-year amortization period, thereby also reducing the
21 bill impact, and representing a reasonable compromise between NW Natural's original

¹⁷ CUB/200, Gehrke/26.

¹⁸ Third Stipulation at 3.

1 proposal and AWEC’s 15-year amortization period alternative proposal.¹⁹

2 Third, the Stipulating Parties agreed that the deferral should earn interest at the
3 Company’s authorized rate of return during 2022.²⁰ Starting on January 1, 2023, the
4 deferral will earn interest at the modified blended treasury rate plus 100 basis points.²¹
5 This approach permits the Company to earn at its authorized rate of return in 2022, prior
6 to amortization, which is consistent with Commission precedent.²² Given that
7 amortization would not begin until over a year from now, the Stipulating Parties
8 compromised and agreed that the Company would reduce the amount of interest it was
9 earning to the modified blended treasury rate plus 100 basis points beginning on January
10 1, 2023.

11 Fourth, the deferral of costs incurred through 2022 is subject to an earnings test
12 set at the Company’s authorized return on equity and based on the results of the 2022
13 Results of Operations Report.²³ The Company originally argued that this deferral should
14 not be subject to an earnings test because it is associated with an automatic adjustment
15 clause per ORS 757.259(5). The other Stipulating Parties, however, believe that an
16 earnings test is appropriate to ensure that the Company does not earn in excess of its
17 authorized ROE. The Stipulating Parties compromised and agreed to the earnings test
18 described herein to address this concern. Moreover, the Stipulating Parties agreed to no
19 earnings test in subsequent years for the accrued interest. This treatment reflects the

¹⁹ Third Stipulation at 3.

²⁰ Third Stipulation at 3.

²¹ Third Stipulation at 3.

²² *In re Portland Gen. Elec. Co., Request for a Gen. Rate Revision*, Docket UE 394, Order No. 22-129 at 53 (Apr. 25, 2022) (“Deferrals are subject to interest at AROR [authorized rate of return] until deemed subject to amortization. Until the costs are reviewed and determined to be eligible for amortization, the risk of nonrecovery remains.”).

²³ Third Stipulation at 3.

1 fact that NW Natural will not use this deferral to defer any additional costs past the rate
2 effective date of the Lexington RNG Project (November 1, 2022). It also reflects NW
3 Natural's agreement to use a lower interest rate (modified blended treasury rate plus 100
4 blended basis points) starting on January 1, 2023, and that interest is not typically part of
5 an earnings test.

6 Finally, the Third Stipulation resolves the Stipulating Parties' disagreements about
7 certain potential rate impacts associated with the Company's co-ownership of the
8 Lexington RNG Project with BioCross. As part of the compromise in connection with
9 Lexington RNG deferral amortization period, earnings, and interest, AWEC agrees to
10 withdraw its proposed tax adjustment and its proposed adjustment based on the
11 ownership interest of BioCross for the life of the Lexington RNG Project.²⁴ AWEC's tax
12 concern has not yet materialized.²⁵ If it were to occur in the future, the condition approved
13 in the UI 451 affiliated interest docket would address this concern. That condition states:

14 If partnership allocations of income tax losses from Lexington Renewable
15 LLC to NW Natural RNG Holding Company LLC are limited/reduced on
16 an annual basis compared to traditional utility ownership, NWN will notify
17 interested parties in the annual affiliated interest report in Docket RG 8
18 and present a plan to address the matter. In future ratemaking
19 proceeding parties will be free to propose adjustments holding
20 ratepayers harmless as if the assets were under traditional utility
21 ownership.²⁶

22 The Third Stipulation does not modify the tax condition contained in the Stipulation in
23 Docket UI 451, NW Natural's affiliated interest docket for the Lexington RNG Project,²⁷
24 and it gives AWEC the ability to propose specific adjustments should its tax concerns

²⁴ Third Stipulation at 3.

²⁵ AWEC/200, Mullins/15 ("I agree that there is no harm in this proceeding . . .").

²⁶ *In re NW Nat., Request for Approval of an Affiliated Interest Agreement with Lexington Renewables, LLC*, Docket UI 451, Order No. 22-211 at 3 (June 7, 2022).

²⁷ Third Stipulation at 3.

1 materialize. In light of the compromises reached on these issues, AWEC further agreed
2 to withdraw its proposed adjustment of approximately \$50,000 based on the ownership
3 interest of BioCross for the life of the Lexington RNG Project.

4 Collectively, the compromises contained in the Third Stipulation regarding
5 amortization of the Company's Lexington RNG Project deferral represent a reasonable
6 resolution of this issue.

7 Importantly, pursuant to paragraphs 2 and 7 of the Third Stipulation, the resolution
8 of the treatment of the deferred costs of the Lexington RNG Project is not indicative of the
9 appropriate treatment of other RNG project costs that may be eligible for recovery under
10 the RNG AAC. Whether it is appropriate to defer and amortize costs of projects that come
11 on-line between annual updates to rates under the AAC is an unresolved issue in this
12 case. Although AWEC, CUB, and Staff support recovery of deferred costs of the
13 Lexington RNG Project, these parties do not support deferral and amortization of costs of
14 future RNG Projects.

III. CONCLUSION

15 The Stipulating Parties agree that the Third Stipulation reflects a reasonable
16 compromise of the parties' positions on the Company's Lexington RNG Project deferral—
17 other than rate spread—and will result in just and reasonable rates and is therefore in the
18 public interest. The Stipulating Parties respectfully request that the Commission approve
19 the Third Stipulation in its entirety and without modification.

20 *////*

21 *////*

22 *////*

Respectfully submitted this 23rd day of August, 2022.

NW NATURAL COMPANY D/B/A NW
NATURAL

By:  _____

Date: 8/23/2022 _____

STAFF OF PUBLIC UTILITY
COMMISSION OF OREGON

By: /s/ Stephanie S. Andrus _____

Date: 8/23/2022 _____

OREGON CITIZENS' UTILITY
BOARD

By: /s/ Michael P. Goetz _____

Date: 8/23/2022 _____

ALLIANCE OF WESTERN ENERGY
CONSUMERS

By: /s/ Chad M. Stokes _____

Date: 8/23/2022 _____

CERTIFICATE OF SERVICE

UG 435 / UG 411

I hereby certify that on August 23, 2022, I have served the unredacted, and confidential versions of THE STIPULATING PARTIES' JOINT BRIEF IN SUPPORT OF THE THIRD PARTIAL STIPULATION upon parties of record in docket UG 435 by electronic mail.

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