

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 435

In the Matter of)	
)	
NORTHWEST NATURAL GAS)	ALLIANCE OF WESTERN ENERGY
CORPORATION, dba NW NATURAL,)	CONSUMERS' OPENING BRIEF
)	
Request for a General Rate Revision.)	
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_____)	

I. INTRODUCTION

Pursuant to the revised procedural schedule adopted by the Public Utility Commission of Oregon (“Commission”), Alliance of Western Energy Consumers (“AWEC”) submits this opening brief.

Northwest Natural Gas Corporation (“NW Natural”) filed this rate case in late December 2021, proposing a \$78,030,413 revenue requirement increase, which would result in a 17.5% margin rate increase.¹ While NW Natural originally proposed a \$73,464,854 or 16.5% margin revenue requirement increase in its initial filing, on February 28, 2022, NW Natural identified an error in its initial filing and revised its calculation to a \$78,030,413 or 17.5% revenue requirement increase (“Errata filing”).

Since the original filing and the Errata filing, the settling parties have resolved most of the issues in this proceeding, as reflected in the May 31, 2022, Multi-Party Stipulation and the June 29, 2022, Second Multi-Party Stipulation.² AWEC requests that the Commission approve

¹ AWEC/100, Mullins/1, lines 13–14.

² The Coalition did not join the First Stipulation. On June 30, 2022, the Coalition filed testimony objecting to certain elements of the First Stipulation; similarly, the SBUA did not join the Second Stipulation, and filed Rebuttal and

both the May 31, 2022, Multi-Party Stipulation and the June 29, 2022, Second Multi-Party Stipulation over the objections of the non-settling parties.

The contested issues remaining in this proceeding include: (a) The Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club’s (collectively “Coalition”) objection to portions of the May 31, 2022, Multi-Party Stipulation; (b) Small Business Utility Advocates’ (“SBUA”) objection to the Covid Deferral settlement contained in the June 29, 2022 Second Multi-Party Stipulation; (c) issues related to the Lexington Renewable Natural Gas (“Lexington RNG”) production facility, (d) NW Natural’s proposed Automatic Adjustment Clause (“AAC”); and (e) NW Natural’s Line Extension Allowances.³ AWEC addresses each of these issues below.

II. EXECUTIVE SUMMARY

The parties in this consolidated proceeding have worked collaboratively to address NW Natural’s rate case request and to aid the Commission in establishing rates and terms and conditions of service for NW Natural that are fair, just, and reasonable. While the settling parties have resolved many of the issues in this proceeding, there are a few important issues where no settlement was reached. As explained more fully below, AWEC respectfully requests that the Commission:

1. Approve the May 31, 2022 Multi-Party Stipulation which reduced NW Natural’s requested rate increase from \$78.020 million to \$62.654 million, and spread the costs consistent with the rate spread attached as Exhibit B to the Multi-Party Stipulation;

Cross-Answering Testimony on June 30, 2022, and Objection Testimony on July 18, 2022, recommending in both filings that the Commission reject the portion of the Second Stipulation addressing the COVID-19 deferral.

³ AWEC/200, Mullins/1, lines 7–10.

2. Approve the June 29, 2022, Second Multi-Party Stipulation and reject the SBUA proposal to allocate the COVID deferral costs included in that stipulation based on its alternative rate spread proposal;
3. Approve ratemaking for the Lexington RNG production facility that is consistent with the requirements of Senate Bill (“SB”) 98, with no allocation to transportation customers;
4. Adopt a rate spread for the Lexington RNG production facility that considers the overall cost of service results and that is consistent with the rate spread agreed to in the Multi-Party and Second Multi-Party Stipulations—regardless of whether the Commission requires transportation customers to share in the Lexington costs;
5. Decline to amend special contracts for the Lexington RNG production facility in this proceeding;
6. Decline to consider amortization of 9 months of improper deferred Lexington RNG production facility costs in this proceeding;
7. Hold ratepayers harmless for the ownership of BioCross in the Lexington RNG production facility;
8. Hold ratepayers harmless for lost tax benefits resulting from the ownership structure of the Lexington RNG production facility;
9. If an AAC for RNG projects is approved, the Commission should require an earnings test for the AAC equal to 100 basis points less than NW Natural’s authorized return on equity; and
10. Open a new docket to address line extension allowances for gas utilities rather than address this policy issue in this docket.

III. ARGUMENT

A. The Commission Should Adopt the May 31, 2022 Multi-Party Stipulation

AWEC supports the May 31, 2022 Multi-Party Stipulation and recommends that the Commission approve it in its entirety. The Multi-Party Stipulation is a reasonable compromise of cost of capital, revenue requirement and rate spread and design issues that were presented in NW Natural’s initial filing, the Errata Filing and the Parties’ opening testimony. The Multi-Party Stipulation reduced NW Natural’s requested increase from \$78.020 million to \$62.654 million, and spread the costs consistent with a rate spread reflecting the results of the long run

incremental cost (“LRIC”) study, which demonstrated that large customer classes are paying rates far exceeding their cost of service. As AWEC demonstrated in its opening testimony, many large volume rate schedules are paying rates that are nearly double their cost of service, and therefore, those customers’ rates would need to be reduced by approximately 50 percent to get close to parity.⁴ To be clear, the rate increase and rate spread contained in the Multi-Party Stipulation allocated to large customers will not necessarily move large volume customers closer to parity, but the rate spread adopted in the stipulation will not result in moving those customers further from parity to the degree proposed in NW Natural’s Initial Filing. AWEC recommends the Commission find that the May 31, 2022 Multi-Party Stipulation results in rates that are fair, just and reasonable and approve it.

B. The Commission Should Adopt the June 29, 2022, Second Multi-Party Stipulation

The June 29, 2022, Second Multi-Party Stipulation resolved certain issues including decoupling, residential customer deposits, the Oregon Low Income Energy Efficiency Program (“OLIEE”), and NW Natural’s COVID-19 deferral.⁵ AWEC supports the June 29, 2022, Second Multi-Party Stipulation and recommends that the Commission approve it in its entirety.

SBUA has objected to the COVID-19 deferral portion of the settlement, an issue that was first raised by Staff in its opening testimony. Staff originally recommended that NW Natural begin amortizing the total amount in the COVID-19 deferral through 2021, plus interest, over a two-year period as a temporary increment in its Purchased Gas Adjustment (“PGA”), effective November 1, 2022.⁶ Staff also proposed some adjustments to the deferred costs and timing,

⁴ AWEC/100, Mullins/49, lines 1-13.

⁵ UG 435 and UG 411, Second Partial Stipulation, p. 3 line 15 through p. 7 line 13.

⁶ Staff/1500 Dlouhy – Fox – Storm/2, lines 1-6.

which would have slightly reduced the deferred amount, and proposed dividing the costs in different groups and allocating costs to those groups.

As a result of multiple settlement discussions, the parties entering into the Second Multi-Party Stipulation agreed that NW Natural will amortize its 2020 and 2021 COVID-19 deferral balances, inclusive of interest accrued on those balances but subject to a negative adjustment of \$163 thousand.⁷ The parties to the Second Multi-Party Stipulation also adopted a rate spread for the COVID-19 deferral that is consistent with the overall rate spread agreed by parties in Appendix B to the Multi-Party Stipulation.⁸ By doing so, the rate spread for the COVID-19 deferral recognizes the overall results of the LRIC study, which shows that large customer classes are paying rates that are nearly double their cost of service. By using the overall rate spread in Appendix B to the Multi-Party Stipulation, large customers still shared in contributing to the COVID-19 deferred costs in proportion to the overall revenue allocation agreed in the case.

SBUA raises several objections to the COVID-19 deferral portion of the Second Multi-Party Stipulation. First, SBUA claims it did not have adequate notice of the COVID-19 deferral issue and opportunity to audit the costs associated with the deferral because these issues were not in NW Natural's initial filing, and instead proposed by Staff in its opening testimony.⁹ This argument, however, is nonsense since SBUA had almost 3 months to review, investigate and respond to the proposal.¹⁰ Second, SBUA argues the costs included in the COVID-19 deferral inappropriately groups dissimilar costs together for the use of a single allocator.¹¹ While AWEC

⁷ *Id.* p. 7 lines 3-5.

⁸ *Id.* p. 7 lines 10-11.

⁹ SBUA/200 Kermod/3.

¹⁰ NW Natural-Staff-CUB-AWEC-Coalition/200, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/7.

¹¹ SBUA/300 Kermod/3.

could make a similar argument with certain cost categories, AWEC found the overall settlement to be reasonable and in the public interest even though large customers still shared in the COVID-19 deferral costs in proportion to the overall revenue allocation contained in the original Multi-Party Stipulation. While SBUA has a different rate spread proposal, SBUA has not demonstrated that its proposal better reflects cost causation than the agreed upon rate spread and should therefore be rejected.

Finally, SBUA asserts that the stipulated cost allocation methodology is based erroneously on a forward looking allocation factor rather than a historical one, which SBUA argues violates the matching principle.¹² SBUA provides an alternative cost allocation proposal in which it excludes the small business customer class from the COVID-19 Bill Assistance Program cost category and allocates costs for each of the remaining cost categories separately and based on historical marginal revenue rather than Test Year revenue. SBUA, however, appears to be confused about the cost allocation agreed to in the Second Multi-Party Stipulation. The stipulating parties simply agreed to apply a rate spread allocation consistent with Appendix B to the Multi-Party Stipulation, which was consistent with the results of the LRIC study. The cost allocation for the deferral is not based on or calculated using proposed Test Year margin revenue as SBUA contends. Rather, the deferral amount allocated to each rate schedule, as a relative percentage, is equal to the same percent of incremental margin revenue that was allocated to it by the Multi-Party Stipulation. There is simply no reason to treat the COVID-19 deferral costs differently from the other costs in this proceeding.

AWEC recommends that the Commission find that the Second Multi-Party Stipulation is in the public interest and approve it.

¹² *Id.*

C. Lexington Renewable Natural Gas Production Facility

NW Natural acquired the Lexington RNG production facility for compliance with Senate Bill (“SB”) 98, enacted in 2019. Under the groundbreaking 2019 law, natural gas utilities were allowed to break from the traditional least cost least risk paradigm and allowed those utilities to acquire RNG “for distribution to retail natural gas customers in Oregon”¹³ Prior to SB 98, utilities were unable to prudently purchase renewable natural gas for retail customers. Under SB 98, by 2050, thirty percent of gas purchased for retail customers may be RNG.¹⁴ Additionally, SB 98 caps a natural gas utility’s costs of complying with the Commission’s RNG program at five percent of revenue requirement.¹⁵ AWEC provided comments and supported SB 98.

Despite SB 98’s express purpose of purchasing RNG for retail customers and its five percent cap, NW Natural has proposed allocating the costs of the Lexington RNG facility to all customers on an equal cents per therm basis, resulting in a 9.33% rate increase for transportation customers—in addition to the rate increases from the May 31, 2022, Multi-Party Stipulation and the June 29, 2022, Second Multi-Party Stipulation. NW Natural, the Oregon Citizen’s Utility Board (“CUB”), and Staff argue that such cost allocation is appropriate in light of the recently enacted Climate Protection Program (“CPP”), which targets a 90% reduction in emissions by 2050, “[b]ecause CPP compliance is based on carbon dioxide emissions associated with therms of natural gas consumed, it makes sense to allocate cost in the same way (i.e., equal cents per therm).”¹⁶ However, allocation of costs in such a way not only violates SB 98—the law that all parties agree authorized NW Natural’s acquisition of Lexington in the first place—but also flies

¹³ ORS 757.396(1) (emphasis added).

¹⁴ ORS 757.396(1)(f).

¹⁵ ORS 757.396(5).

¹⁶ NW Natural/3000, walker-Wyman/3, lines 16–18.

in the face of a holistic, uniform approach to allocating costs of CCP compliance, which has yet to be developed. In this same vein, the Commission should also decline to amend special contracts to pay for Lexington RNG costs and instead adopt a uniform approach that would allow contracting customers the opportunity to establish their role in NW Natural's CPP obligations, as opposed to an ad hoc, project-by-project process.

1. Lexington RNG Project Is a SB 98 Investment

Under SB 98, codified at ORS 757.390–398, large natural gas utilities may make qualified investments and recover costs to procure renewable natural gas for retail customers. By 2050, thirty percent of gas sold to retail natural gas customers may be RNG. NW Natural acquired the Lexington RNG facility under the authority of SB 98. In fact, as NW Natural, CUB, Commission Staff and AWEC acknowledged in Docket UI 451, “the sole purpose” of the Lexington RNG facility was “to assist the Company in investing in RNG infrastructure under SB 98.”¹⁷ The purpose of the project was not intended to address the CPP.¹⁸ The Lexington RNG facility was originally selected in the spring of 2021. The CPP rules were not enacted until later, in December 2021.¹⁹ Therefore, the purpose of acquiring the Lexington RNG facility could not have been for CPP compliance, since the CPP did not exist when the Lexington RNG facility was acquired.²⁰ However, despite this and SB 98's explicit limitation authorizing sales of RNG to “retail natural gas customers,” NW Natural has proposed allocating costs of the Lexington RNG project to transportation customers and on an equal cents per therm basis.

¹⁷ AWEC/100, Mullins/32, lines 7–13.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

2. The Plain Text of SB 98 Limits RNG Purchases to Retail Customers

The “‘cardinal rule’ of statutory construction [is] that a court ‘shall pursue the intention of the legislature if possible.’” *State v. Gaines*, 346 Or 160, 165 (2009) (quoting *Holman Transfer Co. v. City of Portland*, 196 Or 551 (1952)). To do so, courts first examine the statutory text as evidence of the legislature’s intent. *Elkhorn Baptist Church v. Brown*, 366 Or 506, 522, 466 P3d 30 (2020). To “inform [courts’] understanding of the text, [they] consider its context, which includes related statutes and the statutory framework within which the statute was enacted.” *Id.* Courts also “consider any relevant legislative history.” *Id.* Legislative history is examined “even if the court does not perceive an ambiguity in the statute’s text.” *Gaines*, 346 Or at 172. The statute’s purpose is also relevant to gleaning legislative intent. *Bartz v. State*, 314 Or 353, 358, 839 P2d 217 (1992). Finally, if the legislature’s intent “remains unclear after examining text, context, and legislative history, the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty.” *Gaines*, 346 Or at 172.

The text of ORS 757.396(a) is clear: large natural gas utilities “may make qualified investments and procure [RNG] from third parties to meet [the portfolio targets] for the percentage of gas purchased by the large natural gas utility for distribution to *retail customers* in Oregon that is [RNG].” (emphasis added). Consequently, SB 98 is concerned with natural gas utilities’ investment in and procurement of RNG for Oregon retail customers. *This is appropriate because natural gas utilities do not purchase gas for transportation customers.* Charging transportation customers for a service the legislature did not intend for them to receive would violate the Commission’s primary duty to ensure that utilities charge fair, just, and reasonable rates.

3. It Is Inappropriate to Allocate Costs or Benefits of the Lexington RNG Facility to Transportation Customers Notwithstanding the CPP

The CPP represents a sweeping regulatory regime and was only recently enacted. The Commission, utilities and stakeholders are still evaluating the methods and costs of complying with the CPP in UM 2178, in Integrated Resources Plans and other dockets. It is important to note that there is no evidence in this proceeding about what the appropriate CPP compliance cost, if any, would be for any class of customer. In order to do this, an examination of the baseline throughput established in 2017, 2018, and 2019 would be required, and a demonstration that loads of a particular rate class have increased such that a CPP surcharge would be appropriate. And, while it is true that the CPP is currently in effect and NW Nature is subject to its compliance requirements,²¹ that fact does not mean that the Commission should engage in hasty rate-making decisions. Neither does AWEC suggest, as CUB implies it does, that the use case for utility assets cannot evolve time.²² AWEC seeks only to affirm that the Lexington RNG project was authorized under a program intended to benefit Oregon retail customers and that those benefits and costs should therefore not be attributed to transportation customers. Evaluation of the equitable allocation of CPP compliance costs necessarily is best considered on a holistic basis, not on a one-off basis for individualized projects acquired for another purpose.

4. In the Alternative, If Costs Are Allocated to Transportation Customers, the Commission should Consider the Overall Cost of Service Study Results

AWEC recommends that, if some of the Lexington RNG production facility costs are imposed on transportation customers, that the cost allocation be evaluated consistent the overall cost-of-service results, which shows that large customers are already paying rates that are nearly

²¹ NW Natural/2300, Walker-Wyman/6, lines 10–11.

²² CUB/500, Gehrke/5, line 6.

double their cost-of-service rates.²³ NW Natural and the other parties propose a cost allocation on an equal cents per therm basis to all customers, including transportation customers.²⁴ This would result in large volume customers being assigned a significantly higher allocation of costs for the Lexington RNG production facility—which was developed for sales customers.²⁵ The divergent results by rate schedule are shown below.²⁶

Rate Schedule	Lexington Percentage Increase from Equal Cents Per Therm
02R	0.37%
03C	0.50%
03I	0.71%
27R	0.46%
31CSF	0.75%
31CTF	0.79%
31ISF	1.13%
31ITF	1.06%
32CSF	1.09%
32ISF	1.69%
32CTF	1.91%
32ITF	3.75%
32CSI	3.20%
32ISI	3.28%
32CTI	3.92%
32ITI	9.33%
33T	0.00%

Imposing a 9.33 percent rate increase on customers that are already paying rates that are approximately 190% higher than the cost of service is not fair, just and reasonable, especially when compared to the .37 percent increase to residential customers.²⁷ If the Commission is inclined to allocate some Lexington RNG facility costs to transportation customers, instead of viewing the Lexington RNG facility surcharge in isolation as a stand alone issue, the Commissions should approve an allocation method that is consistent with the overall rate spread

²³ AWEC/200.

²⁴ AWEC/100, Mullins/31, lines 13–14.

²⁵ *Id.* at lines 14–16.

²⁶ AWEC/100 Mullins/30.

²⁷ AWEC/100 Mullins/50

already approved for all other revenue requirement items in this docket. Using NW Natural’s filed case for Lexington without AWEC’s proposed adjustments, the chart below shows the difference between allocating the cost of the Lexington RNG production facility on an equal cents per therm basis and allocating the cost based on the rate spread contained in the Multi-Party Stipulation and Second Multi-Party Stipulation:

Rate Schedule	Lexington Equal Cents Per Therm	Lexington Appendix B To 1st Stip.
02R	0.37%	0.65%
03C	0.50%	0.73%
03I	0.71%	0.55%
27R	0.46%	0.74%
31CSF	0.75%	0.52%
31CTF	0.79%	0.55%
31ISF	1.13%	0.55%
31ITF	1.06%	0.55%
32CSF	1.09%	0.52%
32ISF	1.69%	0.13%
32CTF	1.91%	0.13%
32ITF	3.75%	0.14%
32CSI	3.20%	0.52%
32ISI	3.28%	0.13%
32CTI	3.92%	0.13%
32ITI	9.33%	0.13%
33T	0.00%	0.00%

This approach is also consistent with how the parties agreed to allocate the Horizon deferral and the COVID-19 deferral in the First and Second Multi-Party Partial Stipulations. As AWEC explained with respect to the COVID-19 deferral, the Second Partial Stipulation adopted a rate spread that is consistent with the overall rate spread agreed by parties in Appendix B to the First Stipulation. By doing so, the rate spread for the COVID-19 deferral recognizes the overall

results of the cost of service study, which shows that large customer classes are paying rates that are nearly double their cost of service.²⁸

NW Natural argues that, because CPP compliance costs are “tied directly to emissions associated with natural gas consumption . . . it is reasonable to spread the CPP costs based on the number of therms used.” However, NW Natural’s proposal is not supported by any evidence that the cost allocation is consistent with any actual CPP compliance costs in 2022. Indeed, CPP compliance costs and allocations are still being developed. As AWEC explained in Rebuttal Testimony, the actual drivers of CPP compliance costs are more complex than just throughput. The cost of CPP compliance will be influenced by *changes* in throughput.²⁹ The throughput for a customer class may be declining, for example, which would be a reason to allocate no CPP compliance costs to that rate class, even though cost would be allocated under a volumetric rate.³⁰ And further, as mentioned above, there has been no demonstration that a CPP surcharge is appropriate for transportation customers in 2022, given that there has not yet been a demonstration of concrete CPP compliance obligations for 2022 or 2023. AWEC recommends the Commission avoid approving a one-off methodology in this docket, especially considering the “economic impacts for Oregon businesses”³¹ that this cost allocation methodology will have.

5. AWEC Recommends the Commission Decline to Amend Special Contracts

In its opening testimony, CUB recommended that special contract customers pay higher rates for Lexington RNG production facility costs.³² However, such a recommendation is

²⁸ NW Natural-Staff-CUB-AWEC-Coalition/100, Kravitz, Wyman, Fjeldheim, Scala, Jenks, Mullins, and Fain/23:21-25.

²⁹ AWEC/200, Mullins/6:21-7:1.

³⁰ AWEC/200, Mullins/7:1-3.

³¹ NW Natural/2300, Walker-Wyman/9, lines 19–20.

³² AWEC/200, Mullins/7, lines 11–13.

unpractical, misguided and unfair for several reasons. First, special contract customers are transportation customers that have demonstrated a competitive alternative to service from NW Natural and received a special contract. CUB has not shown that special contract customers have throughput that increased in 2022 compared to the baseline established in 2017, 2018 and 2019 resulting in any incremental CPP compliance costs to NW Natural. Second, each contract is unique, subject to different terms and conditions established under different circumstances. Amending each contract in light of one RNG project would require consultation with each contracting customer—a truly unsustainable practice in light of future SB 98 and procurements and CPP compliance. Additionally, new costs do not necessarily require modification of a contract—costs are typically fixed subject to an inflationary escalator.³³ Instead, the Commission should open a new docket to determine the role and responsibilities of special contract customers in meeting NW Natural’s CPP obligations. Finally, special contract customers received a special contract demonstrating that they had a competitive alternative to service from NW Natural. If the Commission is inclined to allocate costs to special contract customers, these customers should have the option to explore whether a competitive alternative to service from NW Natural would be appropriate, which if exercised, would increase the rates of all remaining customers. CUB’s proposal should be rejected.

6. Deferred Lexington RNG Costs Cannot be Evaluated in This Docket

AWEC recommends that the Commission reject nine (9) months of improperly included revenue requirement in the Lexington RNG production facility surcharge in this case. When calculating the revenue requirement of the Lexington RNG production facility recoverable in this proceeding, NW Natural’s included 21 months of revenue requirement compressed into a 12-

³³ *Id.* at Mullins/8, lines 20–21.

month period.³⁴ NW Natural did not explain why it chose to include more than 12-months of revenue requirement in the Lexington RNG production facility surcharge, nor did it respond to AWEC's concern raised with respect to the Lexington production facility surcharge in Sur-rebuttal Testimony. AWEC suspects that the inclusion of additional 9 months of revenue requirement prior to the rate effective date in this proceeding was to have the effect of a deferral, although this was never confirmed.³⁵

AWEC recommends that the Commission reject the inclusion of the additional 9 months of revenue requirement in the Lexington RNG production facility surcharge in this case. While NW Natural is proposing to include a deferral in the AAC, the Lexington RNG production facility is being considered outside the AAC. Therefore, the AAC does not provide NW Natural with the ability to defer the additional 9-months of Lexington revenue requirement. Further, AWEC has been unable to identify any docket where NW Natural has requested to defer the revenue requirement of the Lexington RNG production facility prior to the rate effective date, nor did NW Natural identify any such docket in its Sur-rebuttal Testimony.

Finally, even if a deferral were to exist, amortization of such a deferral cannot be considered in this docket because NW Natural has not presented an earnings test to justify the amortization.³⁶ Such an earnings test will not be possible until mid-2023, after NW Natural finalizes its results of operations for calendar year 2022.³⁷ It is also necessary to establish separate accounts, with a specified amortization term, rather than lumping the revenue requirement into a single surcharge rate.³⁸ AWEC recommends that any such deferral be spread

³⁴ AWEC/200, Mullins/10:6-8.

³⁵ AWEC/200, Mullins/10:9-12.

³⁶ AWEC/200, Mullins/11:4-10.

³⁷ *Id.*

³⁸ AWEC/200, Mullins/11:15-12:2.

over the life of the RNG facility, or 15-years, subject to interest at the modified blended treasury rate.³⁹

7. NW Natural Should Hold Ratepayers Harmless for the Ownership interest of BioCross and any Lost Tax Benefits

Instead of traditional, 100% utility ownership, NW Natural has developed the Lexington RNG production facility with its partners BioCarbN and Cross River Partners (“BioCross”), contributing a portion of the assets to BioCross as part of the development transaction. So, even though NW Natural does not own 100% of Lexington RNG, it is being compensated on 100% of project assets.⁴⁰ Regardless of how the Commission allocates the costs of the Lexington RNG production facility, NW Natural should be required to hold ratepayers harmless for the ownership interests of BioCross. While NW Natural steadfastly suggests that this arrangement is typical, that does not mean that Oregon ratepayers should be required to provide a non-regulated entity with a preferential rate of return. Because BioCross is not regulated by the Commission, Oregon ratepayers should not subsidize its revenues and the Lexington RNG revenue requirement calculation should be limited to the return that NW Natural would have received on an equivalent basis.⁴¹

NW Natural is being compensated on 100% of project costs even though it only owns a fraction of the Lexington RNG project.⁴² It is not reasonable to require ratepayers to finance profits to BioCross when NW Natural could have paid it an upfront fee and financed the project at a lower rate.

³⁹ *Id.*

⁴⁰ AWEC/200, Mullins/13, lines 13–14.

⁴¹ *Id.* at Mullins/12, lines 21–22.

⁴² *Id.* at Mullins 13, lines 13–14.

NW Natural responds to AWEC's concerns by arguing that it had no choice but to grant BioCross a development share and that it is only proposing to rate base the capital it invested in the project.⁴³ The fact remains, however, that NW Natural does not own 100% of the project, treating distributions to BioCross as an operating expense.⁴⁴ Consequently, NW natural is earning a return on assets it does not own, feeding those returns to BioCross. This effectively results in Oregon rate payers subsidizing BioCross' investment. The profits recovered to pay for distributions to BioCross should be limited to the return that NW Natural would otherwise earn on the portion of the facility that it does not own.

Finally, NW Natural is required to hold ratepayers harmless from any tax benefits lost as a result of the ownership of the Lexington RNG production facility.⁴⁵ Based on NW Natural's workpapers, however, the amount of Accumulated Deferred Income Taxes ("ADIT") that will accrue to ratepayers will be limited in future years, as tax benefits are allocated to BioCross.⁴⁶ Since some of the reduced tax depreciation may occur in the next five-year period, and the parties agreed in Paragraph 3 of the UI 451 stipulation not to oppose or seek any changes to the Lexington's ratemaking treatment for a period of five years,⁴⁷ AWEC recommends that the ratemaking approved in this case be designed to hold customers harmless with respect to the complex ownership structure that NW Natural has proposed.⁴⁸ Specifically, AWEC recommends

⁴³ NW Natural/2900, Chittum/11, lines 7–16.

⁴⁴ AWEC/100, Mullins/35–36, lines 22–3.

⁴⁵ In re NW Natural, Requesting Approval of an Affiliated Interest Agreement with Lexington Renewables, LLC Docket No. UI 451, Comprehensive Stipulation, p 5.

⁴⁶ AWEC/100 Mullins/37, lines 15-24.

⁴⁷ *Id.* at p. 5.

⁴⁸ *Id.*

that the Commission require NW Natural to impute any amount of ADIT which has been limited as a result of the portion of the Lexington facility owned by BioCross.⁴⁹

D. The AAC as Proposed by NW Natural Should Be Rejected

To recover the costs of RNG projects, NW Natural has proposed Schedule 198, which contains an automatic adjustment clause (“AAC”). As proposed, the AAC mechanism will be filed by February 28 each year and will establish rates for new and existing RNG investments on a going-forward basis on October 1 of each year, corresponding to the timing of the Purchased Gas Adjustment (“PGA”). However, without modifications, the Commission should continue to avoid single-issue ratemaking and decline to adopt NW Natural’s proposal. ORS 757.396(2)(a) does not mandate use of an AAC, and the Commission should review NW Natural’s rates, especially in light of the sweeping changes presented by SB 98 and the CCP, in the overall context of a general rate case at least until the first compliance period under the CPP is completed.

NW Natural seeks to use an AAC to recover all prudently incurred costs associated with SB 98 pursuant to ORS 757.396(2)(a). AWEC would not necessarily oppose an AAC that was designed to accommodate SB 98 projects. Notwithstanding, NW Natural is proposing ratemaking for the cost of SB 98 projects differently than envisioned in SB 98 based on the issuance of the CPP regulations. NW Natural may already recover these costs in the general rate case process and through its general ability to request deferrals.⁵⁰ An ACC essentially amounts to single-issue ratemaking, allowing a utility to adjust rates outside of the general rate case process, which typically benefits shareholders because it ignores other factors that otherwise

⁴⁹ *Id.*

⁵⁰ AWEC/100, Mullins/39, lines 16–16.

influence the utility's operating results. NW Natural controls the timing of its investments and has the opportunity to file a rate case at any time, leading to an unbalanced approach where it can avoid filing a rate case when its revenue requirement may have decreased, while still recovering additional revenues through the ACC.⁵¹

If use of an AAC is approved, an earnings test should apply to deferrals that is 100 basis points lower than NW Natural's authorized return on equity. The purpose of the earnings test is prevent a utility from recovering additional deferred costs that it is already reasonably recovering through general rates.⁵² The deferral portion of the AAC allows NW Natural to recover costs incurred between the in-service date and the rate effective date of the AAC, eliminating regulatory lag. However, this benefit is only reasonably provided when the investment contributed to NW Natural underearning, otherwise it would be provided a windfall.⁵³ NW Natural does not have a guarantee that it will always earn its precise authorized rate of return. Accordingly, setting the earnings test at 100 basis points below the authorized return on equity is a reasonable threshold to apply before deferring the impacts of regulatory lag associated with RNG projects in the AAC.⁵⁴ Finally, any deferred costs in the AAC should be spread over the life of the underlying facility and accrue interest at the Modified Blended Treasury Rate.⁵⁵

E. Line Extension Allowances are Better Considered in a Separate Docket

The policy around line extensions was raised in Docket No. UM 2178. Broader policy issues should be decided by the Commission before a specific policy is implemented in a rate

⁵¹ *Id.* at Mullins/40, lines 7–19.

⁵² AWEC/200, Mullins/17, lines 12–13.

⁵³ *Id.* at Mullins/17, lines 15–21.

⁵⁴ *Id.* at Mullins/18, lines 3–8.

⁵⁵ *Id.* at Mullins/19, lines 2–3.0

case. AWEC recommends that the Commission open a docket to discuss line extensions for gas utilities at the conclusion of UM 2178.

IV. CONCLUSION

AWEC urges the Commission to approve both the May 31, 2022, Multi-Party Stipulation and the June 29, 2022, Second Multi-Party Stipulation because they result in rates that are fair, just and reasonable.

It is undisputed that the Lexington RNG production facility was authorized under SB 98 for the benefit of sales customers. Because of the unambiguous language in SB 98, and because natural gas utilities do not acquire natural gas for transportation customers, the Commission should not allocate costs or benefits of the Lexington RNG production facility to transportation customers. Alternatively, the Commission should approve a cost allocation methodology for the Lexington RNG production facility consistent with the rate spread contained in the Multi-Party and Second Multi-Party Stipulations. But under no circumstances should any Lexington RNG production facility costs be allocated to special contract customers because any such proposal is unsupported by the record and contrary to the purpose and intent of SB 98. The Commission should also decline to approve the ACC without ratepayer protections, as single-issue ratemaking benefits shareholders and not customers. Finally, the Commissions should consider line extension allowances in a separate docket.

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Respectfully submitted,

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