

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 435

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW Natural,

Request for a General Rate Revision (UE
435),

Advice 20-19, Schedule 198 Renewable
Natural Gas Recovery Mechanism (ADV
1215) (UG 411).

RULING

DISPOSITION: PETITION TO INTERVENE GRANTED

I. INTRODUCTION

On February 16, 2022, Coalition for Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (Coalition) filed a petition to intervene in this docket under ORS 756.525 and OAR 860-001-0300(2). On February 28, 2022, Northwest Natural Gas Company, dba NW Natural, filed a response to the Coalition's petition seeking to limit the scope of the Coalition's participation. On March 7, 2022, the Coalition filed a reply to NW Natural. Additionally, on March 7, 2022, the Oregon Citizen's Utility Board (CUB) filed a motion for leave to file a reply and a reply to NW Natural's response.

II. COALITION PETITION TO INTERVENE

The Coalition states that it represents a broad coalition of environmental, climate, environmental justice, and community-led social justice organizations and many of their members are gas utility ratepayers in NW Natural's service territory. The Coalition asserts that it is concerned about NW Natural's proposed rate increase, its proposed capital expenditures to build out its fossil fuel infrastructure, and the fact that it filed this rate case before implementing new low-income requirements established by House Bill 2475, among other issues. The Coalition states that it will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding.

III. NW NATURAL RESPONSE

NW Natural does not object to the Coalition's petition to intervene but requests that the Commission determine that two of the specific interests that the Coalition identified are outside the scope of this proceeding. First, NW Natural states that nothing in HB 2475 obligates a utility to wait to file a rate case until it has implemented differential rates for low-income customers. Additionally, NW Natural asserts that there is an ongoing docket regarding the implementation of HB 2475, docket UM 2211, and that the company is conducting its own low-income needs assessment. NW Natural states that it plans to file a tariff by mid-April 2022 with a requested effective date of November 1, 2022, to coincide with the effective date for any rate change in this proceeding. NW Natural also argues that the Coalition's arguments about its continued infrastructure investments are outside the scope of this proceeding, contending that the Coalition appears to be raising concerns about whether NW Natural should invest in its system at all rather than whether a specific investment is prudent. NW Natural asserts that it has a statutory obligation to provide safe and adequate service and addressing such arguments in this proceeding would burden the record with irrelevant testimony.

NW Natural requests that the Commission define the scope of the Coalition's participation to exclude these two issues and clarify that HB 2475 does not prohibit a utility from filing a rate case prior to implementing differential rates.

IV. COALITION REPLY

The Coalition reiterates that its petition was timely filed, that it will not unreasonably broaden the issues in the case, and that it brings directly relevant interests into the proceeding. The Coalition asserts that both the issues identified by NW Natural are directly relevant to this proceeding. The Coalition states that the Commission should consider both issues to responsibly discharge its obligation to ensure any rate increase is just, fair, and reasonable. Specifically, the Coalition argues that the fairness of NW Natural's proposed rate increase in the absence of affordable rates for low-income ratepayers and the prudence of NW Natural's capital expenditures in light of climate change and state and local decarbonization policies are both issues the Commission should consider when setting gas utility rates.

The Coalition asserts that HB 2475 requires the Commission to consider the differential energy burdens on low-income customers and other economic, social equity, or environmental justice factors that affect affordability and argues that NW Natural's failure to consider such affordability concerns could be a basis for denying the petition. Additionally, the Coalition argues that barring it from raising evidence on whether low-income customers can afford NW Natural's rate increase because it is addressing the

diversified rates elsewhere is contrary to the legal standard. Additionally, the Coalition states that NW Natural seeks over \$50 million of capital expenditures for customer growth. The Coalition argues that NW Natural's proposal to continue investing in fossil gas infrastructure is directly relevant to this proceeding because NW Natural seeks to recover those investments from ratepayers.

V. CUB REPLY¹

CUB states that it supports the Coalition's petition to intervene. CUB argues that NW Natural's argument is based on assumptions about the Coalition's future testimony and is essentially a preemptive motion to strike or limit testimony that is premature and inappropriate under the rules for intervention. CUB asserts that permitting such a preemptive strike based on assumed testimony would set a troubling precedent. CUB states that the Coalition raised legitimate issues and concerns that should be addressed in this proceeding and the Commission and parties should wait to see what the Coalition proposes based on those concerns. Further, CUB asserts that the Coalition has significant, relevant interests in this proceeding, including the question of filing the rate increase before statutory low-income customer protections are in place and the proposed investments in fossil fuel infrastructure in light of decarbonization policies.

VI. RULING

Upon review of the petition, I find that the Coalition has sufficient interest in the proceedings to participate and that its participation will not unreasonably broaden the issues, burden the record, or delay the proceedings.² The petition to intervene is therefore granted. Regarding NW Natural's request to limit the scope of the Coalition's participation, I find that there is no basis for imposing such a limitation at this time. The Coalition has not filed any testimony and has only identified issues of interest, none of which are obviously outside the scope of this proceeding. To the extent that the Coalition or any other party files testimony that addresses issues or proposals that NW Natural believes to be outside the scope of the proceeding, it may file the appropriate motion at that time. I recognize that ultimately the Commission may address some issues of interest to the Coalition in docket UM 2211, or a separate tariff filing, but that does not foreclose related arguments in this rate proceeding. That noted, given NW Natural's stated intent to address differential rate issues in docket UM 2211, I encourage the Coalition to at a minimum monitor docket UM 2211 in order to potentially engage with a

¹ CUB requests a waiver of OAR 860-001-0300(5) to file a reply to NW Natural's response. I grant CUB's motion for a waiver of OAR 860-001-0399(5) for good cause shown.

² See OAR 860-001-0300(6).

formal or informal proposal when filed or provided to Staff and stakeholders by NW Natural.³

Additionally, under OAR 860-001-0180(1)(a), each party may identify no more than three representatives to receive service. Here, where seven organizations will be participating together, represented by the same counsel, I find good cause to waive this rule to provide for the inclusion of a fourth representative on the service list.

Dated this 9th day of March, 2022, at Salem, Oregon.



Sarah Spruce
Administrative Law Judge

Attachment: Notice of Contested Case Rights and Procedures

³ See February 28, 2022 letter filed in docket no. UM 2211, “NW Natural’s Interim Action Plan,” in which the company briefly outlines future activities on its Arrearage Management Program, an Interim Low-Income Bill Discount Program, collaboration with a third-party consultant to conduct a Low-Income Needs Assessment, and the ultimate development of a “potentially comprehensive long-term low-income rate program” beginning in 2023.

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at <https://www.oregon.gov/puc/Pages/default.aspx>. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Notice to Active Duty Servicemembers: Active Duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Notice of Contested Case Rights and Procedures continued

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.