

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: April 2, 2024

REGULAR  CONSENT  EFFECTIVE DATE \_\_\_\_\_ N/A

DATE: March 5, 2024

TO: Public Utility Commission

FROM: Ted Drennan

THROUGH: Caroline Moore and Scott Gibbens **SIGNED**

SUBJECT: ALLIANCE OF WESTERN ELECTRIC CONSUMERS:  
(Docket No. UM 2309)  
Application for an Accounting Order Requiring Northwest Natural Gas Company to Defer Expenses and Costs associated with the Climate Protection Plan Costs for Transportation and Special Contract customers.

**STAFF RECOMMENDATION:**

Staff recommends the Public Utility Commission of Oregon (Commission) issue an accounting order requiring Northwest Natural Gas Company (NWN or Company) to defer costs and expenses of the Climate Protection Plan (CPP) allocated to Transportation and Special Contract (T/SC) customers and the revenues collected from these customers for these costs and expenses.

**DISCUSSION:**

Issue

Whether the Commission should approve the request made by the Alliance of Western Electric Consumers (AWEC) to require NWN to defer, for the 12-month period beginning December 27, 2023, the CPP costs allocated to T/SC customers in current rates, as well as the revenues collected from these customers for possible reallocation.

Applicable Rule or Law

Under ORS 757.259(2) the Commission may, upon application of a utility or ratepayer, or on its own motion, authorize deferral of amounts for later incorporation into rates. Subpart (e) covers the identifiable utility expenses or revenues to be deferred in order

to, “minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.”

## Analysis

### *Background*

In 2019, Senate Bill (SB) 98 was signed into law. SB 98 established voluntary renewable natural gas (RNG) portfolio targets for large natural gas utilities to make investments in RNG for distribution to retail customers, along with cost guardrails to protect consumers. Requirements were codified at ORS 757.390 to ORS 757.398 and the Commission adopted administrative rules to implement SB 98 in Oregon Administrative Rules (OAR), Chapter 860, Division 150 in 2020.<sup>1</sup> NWN began making investments in RNG in 2020<sup>2</sup> and continues to seek to acquire RNG through a portfolio acquisition approach.

The Oregon CPP rules, as established in OAR 340 Division 271, were first adopted by the Oregon Environment Quality Commission (EQC) in Administrative Order No. EQC 27-2021 and effective on December 16, 2021.<sup>3,4</sup> The CPP, in part, required natural gas utilities to meet declining greenhouse gas emissions limits. RNG is one mechanism available to natural gas utilities to meet this compliance obligation. While the natural gas utilities are only acquiring RNG to serve their retail customers under SB 98, the natural gas utilities are also the point of regulation for T/SC customers under the CPP.

In 2022, the Commission reviewed NWN’s first request to recover costs for an RNG investment, the Lexington Project.<sup>5</sup> Given that the Lexington Project was acquired prior to the existence of the CPP but would be used for compliance with the CPP, the Commission considered the appropriate allocation of costs between retail customers and all customers, including T/SC customers. The Commission was not persuaded that

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<sup>1</sup> See Docket No. AR 632, Order No. 20-227.

<sup>2</sup> See NWN Affiliated interest Report for 2020, page 6 which states: “In December 2020, NW Natural exercised its option for the first development project in Nebraska, initiating investment in an estimated \$8 million project, which is expected to begin producing RNG in late 2021.”  
<https://apiproxy.utc.wa.gov/cases/GetDocument?docID=13&year=2021&docketNumber=210288>.

<sup>3</sup> See DEQ Greenhouse Gas Emissions Program 2021 Rulemaking, filed with the Secretary of State, <https://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/8581825>.

<sup>4</sup> These rules were amended and approved by the EQC in Order No. 17-2023 and effective on November 16, 2023.

<sup>5</sup> See Advice No. 21-21 / UG 435 filed 12/17/2021. NW Natural/1100 which “provides testimony about NW Natural’s first renewable natural gas (“RNG”) investment under the requirements of ORS 757.396” Case Summary, page 9 lines 2-3.  
<https://edocs.puc.state.or.us/efdocs/UAA/ug435uaa161326.pdf>.

costs that are exclusively for use under SB 98 can be shared with customers not receiving retail service i.e., T/SC customers;<sup>6</sup> however, the Commission also determined that:

While the Lexington project was originally proposed as an SB 98 project, as we recognized above, NW Natural has stated clearly that Lexington will be used to achieve the emissions reductions required by the CPP. Because NW Natural is the point of regulation for all customers on its distribution system that emit carbon through natural gas, including those customers who procure gas from sources other than NW Natural, it is appropriate to allocate to those customers costs associated with NW Natural's CPP compliance strategy [...].<sup>7</sup>

The Commission ruled that the costs incurred for the Lexington Project prior to 2022 (when the CPP was established) would be treated as exclusively SB 98 costs and only recoverable from retail customers. The Commission also determined that costs for Lexington incurred in 2022 and beyond would be borne by all customers for which NWN is the point of regulation.<sup>8</sup> In 2023, the Commission adopted parties' stipulated agreement that NWN would recover the costs of its second RNG investment, the Dakota Project, from all customers for which NWN is the point of regulation for the CPP, including T/SC customers, on an equal cents per therm basis.<sup>9</sup>

On December 20, 2023, the Oregon Court of Appeals issued an opinion that the EQC had failed to comply with heightened disclosure requirements in the rulemaking and invalidated the CPP rules.<sup>10</sup>

On December 27, 2023, AWEC filed an Application for Deferred Accounting for costs and expenses associated with NWN's RNG resources used for compliance with CPP that are being incurred by T/SC customers. In its initial application, AWEC asserts that 1) RNG costs associated with the CPP are no longer recoverable from customers; 2) it is still appropriate for the costs to continue to be recovered from retail customers as SB 98 costs; and 3) it is therefore unlawful to recover RNG costs from T/SC customers.<sup>11</sup>

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<sup>6</sup> See Docket No. UG 435, Order No. 22-388, p. 85.

<sup>7</sup> Id.

<sup>8</sup> Id., pp. 85-86.

<sup>9</sup> See Docket No. UG 462, Commission Order No. 23-367.

<sup>10</sup> Natural Gas Company, Avista, et al. v. Environmental Quality Commission, 329 Or.App. 648 (2023).

<sup>11</sup> See Docket No. UM 2309, AWEC's Initial Application, pp. 3-4.

This was followed by AWEC's January 16, 2024, filing, recognizing that the invalidation may be temporary and clarifying that:

Now that the CPP has been determined by the Oregon Court of Appeals to be invalid, RNG related costs for CPP compliance, or under SB 98, should be tracked and accounted for during the pendency of the CPP litigation. If the Oregon Court of Appeals' decision is upheld, RNG related cost for CPP compliance, or RNG cost under SB 98, would no longer be authorized for transportation and special contract customers, and therefore a deferral is necessary to minimize the frequency of rate changes and to appropriately match costs and benefits.<sup>12</sup>

On January 22, 2024, the DEQ stated they would, "begin the process to reinstate the CPP in the first quarter of 2024."<sup>13</sup> The proposed rulemaking includes a stated goal to, "[r]eestablish a climate program with comparable scope and emissions reduction ambitions as the previously adopted Climate Protection Program," and an engagement schedule that begins in April 2024 and concludes in June 2024.<sup>14</sup>

#### *Proposed Accounting*

AWEC proposes accruing deferred revenues as a regulatory liability to FERC Account 254 Other regulatory liabilities, and a corresponding entry to Account 186 Miscellaneous deferred debits, an approach that will result in refunds for the T/SC customers that are paid by NWN's retail customers.

#### *Estimated Deferrals in Authorization Period*

AWEC did not provide a point estimate of the deferral amounts, but estimates the amount is in excess of one million dollars.

#### *Staff Review*

The Commission typically performs a two-step analysis when reviewing a request to defer under ORS 757.259(2)(e). In the first step, the Commission determines whether to exercise its discretion to grant the application, considering the type of event that caused the request for deferral and the magnitude of that event's effect on the utility.<sup>15</sup> If the Commission decides a request is justified, the Commission determines whether the

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<sup>12</sup> See Docket No. UM 2309, AWEC CPP Rule Status and Rule Litigation Clarification, page 2.

<sup>13</sup> See statement, "DEQ moves to re-establish the Climate Protection Program in wake of recent court ruling", at <https://www.oregon.gov/newsroom/pages/newsdetail.aspx?newsid=215174>.

<sup>14</sup> See DEQ's Climate Protection Program 2024 rulemaking website, at: <https://www.oregon.gov/deq/rulemaking/Pages/PPP2024.aspx>.

<sup>15</sup> *In the Matter of the Public Utility Commission of Oregon Staff Request to Open an Investigation Related to Deferred Accounting*, Docket No. UM 1147, Order No. 05-1070 (October 5, 2005).

proposed deferral is legally authorized under [ORS 757.259](#).<sup>16</sup> [ORS 757.259\(2\)\(e\)](#) sets out a two-prong test, in which the proposed deferred account must either minimize the frequency or fluctuations of rate changes or match the costs and benefits received by ratepayers.<sup>17</sup>

Here, whether the Commission should exercise its discretion to approve the deferral does not turn on the impact of the costs and expenses at issue, but is more a question of the appropriate allocation of RNG costs. Staff acknowledges the nuanced decisions the Commission made about the interaction of SB 98 and CPP in the recovery of RNG investments and the challenge that uncertainty surrounding the future of the CPP creates when applying the Commission's previous direction. However, Staff does not believe it is necessary to resolve the question for purposes of resolving this deferral request. Instead, Staff believes it is appropriate for the Commission to exercise its discretion to allow the deferral so that there can be future examination, if necessary, when more is understood about the use of these RNG investments to comply with the CPP.

Staff also concludes the application passes the second step because it could satisfy the requirements of ORS 757.359(2)(e) by matching costs and benefits of RNG investments.

This application will not result in rate changes for any customer but will create a regulatory liability and asset that could be refunded to T/SC customers and collected from retail ratepayers, respectively, in a future rate proceeding.

### Conclusion

Staff believes the criteria for deferral are satisfied by AWEC's request.

### **PROPOSED COMMISSION MOTION:**

Staff recommends the Public Utility Commission of Oregon issue an accounting order requiring Northwest Natural Gas Company to defer costs and expenses of the Climate Protection Plan allocated to Transportation and Special Contract customers and the revenues collected from these customers for these costs and expenses.

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<sup>16</sup> Id.

<sup>17</sup> Id.