

Oregon Citizens' Utility Board

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May 25th, 2023

Via Electronic Filing and FedEx

Public Utility Commission of Oregon
201 High St SE, Suite 100
Salem, Oregon 97301-3398

Re: Docket No. UG 462– Opening Testimony of William Gehrke on Behalf of Oregon Citizens' Utility Board

To Whom It May Concern:

Please find enclosed the redacted Opening Testimony and Exhibits of William Gehrke in Docket No. UG 462 in the above-referenced docket.

Please do not hesitate to contact me via email if you have any questions or need other materials.

Sincerely,

/s/ Michael Goetz
Michael Goetz, General Counsel
Oregon Citizens' Utility Board
610 SW Broadway, Ste. 400
Portland, OR 97205
E. mike@oregoncub.org

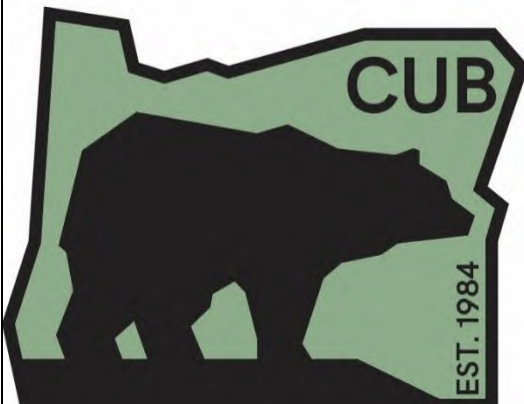
**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 462

In the Matter of)
)
NORTHWEST NATURAL GAS)
COMPANY, dba NW NATURAL,)
)
Renewable Natural Gas Adjustment)
Mechanism – Dakota City.)
_____)

**OPENING TESTIMONY
OF THE
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Renewable Natural Gas Adjustment)	
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I. INTRODUCTION

1 **Q. Please state your name, occupation, and business address.**

2 A. My name is William Gehrke. I am a Senior Economist employed by Oregon
3 Citizens' Utility Board (CUB). My business address is 610 SW Broadway, Ste.
4 400, Portland, Oregon 97205.

5 **Q. Please describe your educational background and work experience.**

6 A. My witness qualification statement is found in exhibit CUB/101.

7 **Q. What is the purpose of your testimony?**

8 A. My testimony responds to issues and arguments raised by NW Natural Gas
9 Company (NWN or NW Natural) in this proceeding and in other interrelated
10 proceedings before the Public Utility Commission of Oregon (Commission).
11 This testimony will address the reasonableness of NWN's Dakota City
12 renewable natural gas (RNG) project before discussing the interplay of SB 98's
13 permissive RNG targets with the binding decarbonization requirements of the
14 Oregon Department of Environmental Quality's Climate Protection Program

1 (CPP). While this issue has been touched upon in various Commission
2 forums—such as NWN’s most recent general rate case and Integrated Resource
3 Plan (IRP)—the Commission has not yet rendered a legal determination on the
4 interplay between the CPP and SB 98.

5 **Q. How is your testimony organized?**

6 **A.** My testimony is organized as follows:

7 II. Dakota City Project

8 III. The Interplay of CPP and SB 98

9 **II. DAKOTA CITY PROJECT**

10 **Q. What is CUB’s position on the Dakota City project?**

11 **A.** As filed, CUB finds the project to be reasonable at this time, but reserves the right
12 to respond to issues raised by other parties.

13 **Q. Please summarize the Dakota City project.**

14 **A.** The Dakota City project is an RNG development project that uses feedstock from
15 the Tyson Fresh Meats packaging plant in Dakota City, Nebraska.

16 **Q. What did CUB review during this proceeding to come to its initial position?**

17 **A.** CUB reviewed NWN’s analysis and due diligence for this project. From CUB’s
18 review, NW Natural’s decision to enter into an investment with Dakota City was a
19 reasonable action.

20 **Q. When did NWN make the decision to invest in the Dakota City project?**

21 **A.** NWN made the decision to invest in the Dakota City project in November 2021.
22 Therefore, NWN made the decision to invest in Dakota City prior to the enactment
23 of the CPP.

1 **Q. Does CUB disagree with any statements that NWN made about Schedule**
2 **198?**

3 **A.** Yes. NW Natural made the following statement: “Schedule 198 shifts a significant
4 portion of the risk of higher-than-expected operating costs to the Company.”¹ CUB
5 disagrees with this statement. Under Schedule 198, the Company is allowed to
6 update its forecasted costs on an annual basis. Therefore, there is not a significant
7 risk shift occurring since the Company is allowed to annually update O&M cost
8 changes. Over the life of RNG projects, customers bear the longer-term risk of
9 changes in operating costs. CUB disagrees with the Company’s statement in
10 testimony. This RNG AAC was fully litigated in the Company’s last rate case and
11 CUB commends the Commission for resolving the dispute by ordering a balanced
12 and reasonable mechanism.

13 **Q. Do you recommend an adjustment regarding the revenue requirement of**
14 **Dakota City currently?**

15 **A.** No. CUB does not propose an adjustment to the amount of costs NW Natural seeks
16 to recover for the Dakota City project. However, CUB reserves the right to
17 recommend adjustments based upon any issues that may be raised by other parties
18 during the remainder of this proceeding.

19 **II. SB 98 and the CPP**

20 **Q. What is SB 98?**

21 **A.** SB 98 arose from the 2019 Oregon Legislative Session and allows for RNG to
22 be potentially used by natural gas distribution companies. SB 98 establishes

¹ UG 462 – NW Natural/100/Chittum/61, lines 5-7.

1 voluntary, permissive RNG procurement quantities for Oregon natural gas
2 distribution companies, such as NWN.

3 **Q. What is the CPP?**

4 **A.** The CPP is a binding set of rules that set mandatory greenhouse gas emissions
5 reduction targets for certain covered entities in the state of Oregon, such as NWN.
6 The CPP was enacted by the Oregon Department of Environmental Quality on
7 January 1, 2022. The CPP uses a declining limit from a historic baseline to set
8 mandatory greenhouse gas emissions reductions throughout Oregon. The CPP
9 requires covered entities, such as NW Natural, to annually reduce emissions. NW
10 Natural's emissions from sales and transport customers are subject to binding
11 reductions over time.

12 **Q. What is NW Natural's strategy for complying with the CPP while**
13 **considering the voluntary RNG standards found in SB 98?**

14 **A.** NW Natural's plan, which has not been approved by the Commission, first seeks
15 to procure RNG under SB 98's voluntary targets before looking at other, more cost-
16 effective means to reduce emissions.² After reaching SB 98's non-binding goals,
17 NW Natural seeks to procure incremental actions to comply with the CPP.

18 **Q. Is this a least-cost least risk approach to comply with the CPP?**

19 **A.** In the short term, Community Climate Investment credits have potential to be a
20 cost-effective tool to help NWN meet its CPP compliance obligations. NW
21 Natural's position that SB 98 targets must be met prior to complying with CPP
22 precludes compliance pathways that could minimize costs for NW Natural's

² UG 462 – NW Natural/100/Chittum/8-9.

1 customers. RNG procurements are not well established and illiquid; there are
2 limited feedstocks with which to produce the fuel.

3 **Q. What is NW Natural's position on SB 98 and CPP?**

4 **A.** NW Natural's position is that the CPP does not prevent it from meeting the targets
5 in SB 98.³

6 **Q. What is CUB's position on SB 98 and CPP?**

7 **A.** CUB position is that the targets in SB 98 are voluntary, while the CPP emissions
8 reduction targets are binding. The Commission has the authority to determine the
9 best pathway to comply with the CPP while protecting customers from unnecessary
10 cost and risk. The best pathway for customers may not include closely following
11 the voluntary procurement targets for RNG. Customers should not have to pay for
12 RNG procurement that does not fit into a least cost, least risk plan to meet
13 applicable emissions reductions *mandates* from the CPP. As CUB will
14 appropriately address in legal briefing in this proceeding, the Company is parsing
15 the language from SB 98 and the CPP in an incorrect manner to create a valuable
16 profit stream for shareholders via RNG investment that is not in the interest of
17 customers. CUB's position is buttressed by language from the Commission in the
18 Order concluding NWN's last general rate case:

19 SB 98 is a legislatively approved but voluntary RNG procurement target,
20 while the CPP is a comprehensive, mandatory greenhouse gas emissions
21 cap and reduction regime adopted by administrative rule. Under the
22 requirements of the CPP, any emissions reduction measure the utility
23 takes, which may include RNG procurement, will necessarily be in service
24 of CPP requirements. At the same time, the magnitude of the CPP's
25 emissions reduction requirements and potential customer rate impacts
26 require us to apply a high level of scrutiny to whether the utility is
27 pursuing the least cost, least risk portfolio of emission reduction measures.

³ See NW Natural OPUC LC 79 Final Reply Comments, pp. 2-7.

1 It is possible that a prudent strategy may include RNG, but this will
2 depend on the costs and risks relative to alternatives. We are concerned
3 about the potential incentive created by the availability of an AAC to skew
4 the company's analysis of costs and risks of alternative CPP compliance
5 measures towards RNG projects. Specifically, we are concerned about the
6 potential for RNG to be automatically eligible for more favorable cost
7 recovery up to the SB 98 spending limits without a demonstration that
8 RNG at that level is least cost, least risk relative to other CPP compliance
9 portfolio configurations.⁴

10
11 **Q. What is CUB asking for in this proceeding in regards to this issue?**

12 A. CUB is asking the Commission to make a legal determination regarding the
13 interplay between the CPP and SB 98, and rule that NW Natural should only be
14 permitted to pursue SB 98's voluntary standards to the extent that they fit within a
15 least cost, least risk compliance plan to comply with the CPP. CUB believes this
16 discussion is appropriate for this venue because this is a contested case that is
17 examining costs related to RNG procurement. While NWN has raised legal
18 arguments in its ongoing IRP, that is an improper venue to do so since it is a non-
19 contested case and parties do not submit legal arguments and briefs. In this
20 proceeding, CUB will appropriately address the legal implications of the interplay
21 of SB 98 and the CPP in legal briefing.

22
23 When establishing reasonable rates, the Commission balances the interests of
24 several parties. Customers require reliable and affordable service. Oregon state
25 government requires pursuit of public goals such as decarbonization, affordability
26 and reliability of Oregon's energy system. Under the regulatory compact, utility
27 investors provide capital to fund energy systems, for which they require a fair

⁴ OPUC Order No. 22-388 at 81.

1 opportunity to recover costs and earn a return on their investment. The utility is
2 also tasked with managing and developing energy systems in accordance with the
3 Commission's guidance, which balances the needs of all parties. Clear guidance
4 from the Commission and regulatory predictability are essential to this
5 framework. CUB is asking the Commission to provide clear guidance around the
6 SB 98 standards being voluntary, and believes this venue is appropriate to address
7 this issue.

8

9 The Commission also appears to believe that this AAC proceeding is an
10 appropriate venue to address this issue due to the interplay between the IRP and the
11 Company's RNG procurement plans:

12 We also note that NW Natural representatives confirmed at the oral
13 argument that RNG projects proposed for recovery through an AAC
14 would be part of an overall strategy supported by prior analysis of CPP
15 compliance pathways in the company's IRP. In adopting an AAC for
16 future RNG projects, we caution NW Natural to ensure that it has allowed
17 enough time and stakeholder engagement for a critical analysis and vetting
18 of the prudence of any RNG project proposed for recovery through the
19 AAC, including a demonstration of how the project fits into its CPP
20 compliance strategy. We reserve our discretion to insist on such analyses
21 prior to including any future RNG projects costs in the AAC.⁵
22

23 **Q. What are the options that NW Natural that are available to comply with**
24 **CPP?**

25 **A.** NW Natural can comply with CPP through the following methods:

- 26 1. Community Climate Investments
27 2. Renewable Thermal Credits from Renewable Natural Gas
28 3. Reducing Load through Energy Efficiency and/or Electrification

⁵ *Id.* at 81-82.

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Q. What economic principle is relevant to NW Natural complying with CPP?

A. NW Natural is a for-profit local distribution company. NW Natural has a fiduciary obligation to maximize profit for its shareholders. Seeking to maximize RNG investment at the expense of customers fits within this framework. As a for-profit corporation, NW Natural will respond to incentives. NW Natural is subject to rate of return regulation. In the ratemaking formula, NW Natural's profits are a function of its approved rate base. Therefore, all things equal, NW Natural has an incentive to pursue capital projects, because it increases the Company's profitability. While RNG can be procured through offtake agreements, NW Natural-financed RNG projects are an earning opportunity for the Company.

Conversely, in the ratemaking formula energy efficiency programs and Community Climate Investments are characterized as operating expenses, and therefore do not impact NW Natural's profitability. As such, from the standpoint of maximizing profitability of the business, NW Natural has an incentive to procure RNG over other compliance methods.

Q. When was SB 98 passed by the legislature?

A. The Oregon Legislature enacted SB 98 in 2019.

Q. Was carbon regulation in place for NW Natural in 2019, prior to SB 98's passage?

A. No. Prior to SB 98 being enacted, sales and transport customers of NW Natural were not subject to carbon regulation.

1 **Q. From a cost and risk perspective, was it reasonable to allow NW Natural to**
2 **procure RNG for customers prior to 2019 and the passage of SB 98?**

3 **A.** No. RNG was, and remains, significantly more expensive than conventional
4 geologic natural gas. Therefore, it would not have been prudent for the Company to
5 invest in RNG. In the absence of carbon regulation, SB 98 set voluntary targets to
6 enable NW Natural to procure lower emissions fuels on behalf of customers.

7 **Q. What happened after SB 98 occurred?**

8 **A.** The CPP was enacted, which established binding carbon regulations on NW
9 Natural. The policy environment for carbon regulation has changed since SB 98's
10 voluntary targets were established.

11 **Q. In this proceeding, CUB has testified that the Dakota City project was**
12 **reasonable. In addressing SB 98 procurement, CUB is asking the**
13 **Commission to limit NWN's ability to meet SB 98's voluntary targets. Are**
14 **those two positions contradictory?**

15 **A.** No. NW Natural made the decision to invest in the Dakota City project on
16 November 2021, prior to the enactment of the CPP. CUB is not recommending a
17 disallowance on costs associated with Dakota City because, in 2021, Dakota City
18 was pursued as an SB 98 project. This is not contradictory, because NW Natural
19 made the decision to invest in Dakota City prior to the CPP being in place.
20 However, looking forward, with the establishment of the CPP, NW Natural should
21 focus on compliance with the CPP in a least cost manner, rather than complying
22 with a voluntary renewable natural gas standard that was enacted prior to carbon
23 regulation being in place.

24 **Q. Why is CUB raising this issue in this proceeding?**

1 **A.** RNG cost recovery is reviewed in two proceedings. The first proceeding is the
2 purchased gas adjustment (PGA) process. In the PGA process, RNG offtake costs
3 are tracked and reviewed on an accelerated procedural schedule. The second
4 proceeding is NW Natural's RNG AAC. Further, as discussed, this contested case
5 is an appropriate venue to raise legal issues related to the interplay of SB 98 and the
6 CPP. This issue is ripe for the Commission to rule upon because NW Natural has
7 indicated in both its IRP and this proceeding that it intends to maximize SB 98
8 RNG investments despite the sweeping regulatory changes brought by the CPP.

9 **Q. Does this conclude your testimony?**

10 **A.** Yes.

WITNESS QUALIFICATION STATEMENT

NAME: William Gehrke

EMPLOYER: Oregon Citizens' Utility Board

TITLE: Economist

ADDRESS: 610 SW Broadway, Suite 400
Portland, OR 97205

EDUCATION: MS, Applied Economics
Florida State University, Tallahassee, FL

BS, Economics
Florida State University, Tallahassee, FL

EXPERIENCE: Provided testimony for the Oregon Citizens' Utility Board in numerous dockets such as UE 335, UE 374, UG 344, UG 347, UG 366, UG 388, UE 374, UG 388, UE 391, UE 394 and UE 406. Worked as an Economist for the Florida Department of Revenue. Worked as Utility Analyst at the Florida Public Service Commission, providing advice on electric rate cases. Attended the Institute of Public Utilities Annual Regulatory Studies program in 2018.