



250 SW Taylor Street  
Portland, OR 97204

503-226-4211  
nwnatural.com

Nels Johnson  
Director of State & Federal Affairs  
NW Natural  
250 SW Taylor Street  
Portland, Oregon 97204

March 5, 2025

The Honorable Janeen Sollman, Chair  
The Honorable David Brock Smith, Vice Chair  
Senate Committee on Energy and Environment  
Oregon State Legislature  
900 Court Street NE  
Salem, Oregon 97301

RE: Opposition to Senate Bill 88

Dear Senator Sollman, Senator Smith, and Members of the Senate Committee on Energy and Environment,

NW Natural appreciates the opportunity to submit written testimony regarding Senate Bill 88 (“SB 88”), in addition to our verbal testimony at the March 3, 2025 meeting of the Senate Committee on Energy and Environment. As the largest standalone gas utility in the Pacific Northwest, NW Natural serves more than 2 million people in Oregon and southwest Washington. Our employee base of approximately 1,300 dedicated employees provides more energy to Oregonians than any other utility—gas or electric. We serve over 700 thousand Oregon customer accounts in 126 cities in 15 different counties, representing approximately 88% of our total gas system customer base.

NW Natural is opposed to SB 88. We recognize that Oregonians are feeling the pressure of increasing costs, driven by inflation and supply chain constraints that were particularly elevated through the COVID-19 global pandemic. As a result, the cost of rent, groceries, and other essentials have increased in the last several years. However, the average residential bill of a NW Natural customer is currently lower than it was 20 years ago – without adjusting for inflation. The current regulatory structure where utilities have a reasonable opportunity to recover their prudently incurred costs—and have those costs scrutinized by the Public Utility Commission of Oregon (“Commission”) and intervenors, such as the Oregon Citizens’ Utility Board (“CUB”) and the Alliance of Western Energy Consumers (“AWEC”)—has resulted in residential bills that are lower than they were two decades ago despite the significant increase in inflation we have experienced in recent

years. This type of long-term cost stability is a testament to the steadfast management of our costs, the abundance of low-cost natural gas, and the collaborative work of the Commission, its Staff, CUB, AWEC, and other stakeholders.

### **SB 88 Will Not Provide Customers with Meaningful Rate Relief**

Although the average NW Natural residential customer pays less than they did twenty years ago, we acknowledge that our rates have increased in recent years due to a number of factors, many of which are outside of our control. However, as even its proponents acknowledged at the March 3, 2025 meeting of the Senate Committee on Energy and Environment, SB 88 will not meaningfully reduce customers' costs. The cost categories covered by the bill are not the principal drivers of recent general rate increases. As described in a subsequent section of our comments, there is well-developed Commission precedent for each of the areas covered by the bill and no one—not even SB 88 proponents—has argued that the costs covered by the bill has materially contributed to recent rate pressure.

NW Natural's recent cost drivers are associated with providing safe and reliable utility service. We must replace critical, end-of-life equipment and facilities to provide safe and reliable service to the two million people we serve in Oregon. We must protect our public utility from cybersecurity attacks, which is mandated by the federal government. We must perform routine safety inspections of our pipeline distribution and storage systems. We are required to work with local jurisdictions when they inform us that our infrastructure must be relocated in furtherance of public works projects. These costs represent a sample of non-discretionary costs that NW Natural, as a public utility, must incur for the continued operation of our utility system.

As opposed to SB 88, which will not meaningfully address affordability, NW Natural has taken real and aggressive steps to mitigate cost pressure impacts on our most vulnerable customers. In 2021, the legislature passed House Bill 2475, which, among other things, allowed public utilities to offer a discount program based on our residential customers' income. NW Natural's bill discount program offers low-income residential customers up to an 85% discount off their bills. Based on an assessment from a third-party expert, 78% of eligible customers for the program are participating, in part due to our outreach efforts. NW Natural works with community partners throughout its service territory, such as community action agencies, community-based organizations, housing networks, places of worship, food banks, culturally specific organizations, and healthcare networks. Leveraging these relationships and networks are especially meaningful and allows us to reach customers we may not otherwise have been able to reach and deliver bill discount program information

from other important and trusted resources. The bill discount program has provided over \$14 million in bill discounts since its inception.

In addition, NW Natural has several other assistance programs:

- The Oregon Gas Low-Income Assistance program (“OLGA”), which provides energy-assistance grants to income-qualified customers. For the 2023-2024 program year, OLGA provided \$3.7 million in assistance to 6,783 residential customers.
- The Gas Assistance Program (“GAP”), which is a supplemental grant assistance program funded by NW Natural shareholders, employees, retirees, and customers. For the 2023-2024 program year, GAP delivered \$133,000 in grant support to 1,104 customers.
- The Oregon Low-Income Energy Efficiency (“OLIEE”) program provides low-income eligible customers energy efficiency and weatherization services, in partnership with community action agencies and community-based organizations. For the 2023-2024 program year, OLIEE provided \$6.1 million in funding for low-income weatherization projects.

These programs have made a real difference in helping customers with their bills. NW Natural’s percentage of residential customers disconnected due to non-payment in 2024 was 1.43% -- down from 2.0% in 2019.

### **SB 88 Will Not Increase Transparency or Efficiency**

As we stated in our verbal testimony, Commission regulation is intended to be a proxy for competition. In determining whether to permit the recovery of costs in a rates, Commission regulation attempts to determine whether a competitive, non-utility business incurs these costs and whether they are reasonable. Sizeable, publicly traded competitive business would have no choice but to incur legal fees, business travel, and a board of directors, the latter of which is a requirement of the New York Stock Exchange. Many of the costs SB 88 seeks to bar from rates are legitimate costs of doing business. Other costs are those which NW Natural does not seek to recover, such as lobbying costs, our political or charitable contributions, and our corporate image advertising, even though, arguably, a competitive enterprise would build those costs into its prices.

SB 88 will not provide additional transparency to customers regarding these costs. Unlike other competitive enterprises, a public utility already goes through a public, transparent process before it is allowed to change its prices. During the general rate case process,

public utilities carry the burden the proof to justify their costs. In a general rate case, NW Natural files approximately 3,000 pages of testimony and analysis to support its general rate case requests. We typically answer over 1,000 requests for data and analysis from the rate case parties. Commission Staff and rate case intervenors file two rounds of testimony, two legal briefs, and have the opportunity to cross-examine all public utility witnesses.

Even with SB 88, costs must be continued to be scrutinized through this exhaustive process. Many of the categories included in this bill, such as “political influence activity,” are only vaguely defined. Others, such as “[c]ompensation to a person if any portion of the compensation is for work to influence a decision by a federal, state or local government official,” are breathtakingly broad where rate case intervenors may take the position that any communication between an employee and a government official, even a Commission employee, should result in a disallowance of their entire salary.

These broad, ill-defined categories will create the need for time-consuming, expensive, and contentious proceedings at the Commission to determine what each of these categories mean and what is and what is not permitted. This inefficient process will likely be extremely difficult because gas and electric companies will be subject to mandatory penalties under SB 88, even if those companies have a good faith belief that the costs they are seeking recovery of are not covered by SB 88.

The result of this process is not transparency. Rather it is a vague law that will require protracted litigation at the Commission to understand and implement it. This process is extremely inefficient because there is already Commission precedent on all of the topics covered by the bill that seeks to balance the interests of customers and gas and electric companies. The Commission will have to re-examine all of its existing precedent based on the provisions of SB 88, not the terms and concepts it has already relied upon for many years. And, as stated above, even the proponents of the bill agree that SB 88 will not result in meaningful cost savings to customers.

If greater transparency of what is included in rates is the goal, we can work on developing an annual requirement where gas and electric companies would disclose the major cost categories they are recovering in rates, such as commodity costs, operation and maintenance expense, transmission and distribution costs, and any applicable environmental compliance costs, among others.

## **Legislative Counsel Has Concluded that SB 88 Has Serious Constitutional Issues**

In a December 16, 2024 legal opinion, legislative counsel has concluded that SB 88 “seeks to burden and effectively prevent an electric or gas company from advertising or engaging in political influence activity, activities that are protected under the First Amendment to the United States Constitution.” Legislative counsel goes on to say that SB 88 may result in gas and electric companies not being able to recover expenses that are a regular and necessary part of doing business, potentially creating a situation where the Takings Clause of the Fifth Amendment is violated. In addition, SB 88 “is putting a limit on the extent to which an electric or gas company may engage in regulatory procedures and contested hearings” through limits on expenses associated with participating in contested cases. Legislative counsel concludes that “the state is at a minimum burdening and at most preventing the public utility from doing that activity,” concluding that a court may conclude that SB 88 also violates the Due Process Clause of the Fourteenth Agreement.

Even one of these serious constitutional concerns should be more than enough to rethink the aim of SB 88. However, in this case, there are three serious constitutional concerns, involving the most fundamental rights that this country has to offer—free speech, property rights, and due process. These concerns, taken together, should ensure that SB 88 never becomes law.

## **Commission Precedent Already Addresses the Issues Covered by SB 88**

The Commission already has well developed precedent that seeks to balance the interests of customers and gas and electric companies without creating serious constitutional issues. Each category covered by SB 88 is discussed briefly.

### *1. Membership Dues*

The Commission already has a presumption that allows utilities to recover only 75% of trade association dues on the basis that certain activities are promotional or lobbying in nature, or otherwise do not benefit ratepayers.

This precedent is in contrast to SB 88, which would prevent electric and natural gas companies from recovering all membership dues in a trade association if any part of those dues is used to “advertise or support a political influence activity.”

SB 88's approach is unduly punitive because it would prevent any recovery of membership dues, even if only a portion of those dues have an advertising or lobbying component. Trade associations are a way for utilities to collaborate with peers on best practices for safety and reliability. Preventing recovery of all such costs if there is any sort of advertising or "political influence activity" is overly harsh and not in the best interest of customers.

## *2. Charitable Giving*

SB 88 would prevent gas and electric companies from recovering the cost of charitable giving in rates. However, NW Natural does not seek to recover these costs in rates today.

## *3. Political Influence Activity*

The Commission already requires utilities to follow 18 CFR § 367.4264, referring to it "as the prevailing standard for differentiating recoverable from non-recoverable activities."<sup>1</sup> There is no need to introduce a new standard that differs from the federal rule in substantive ways that can be difficult to apply. Moreover, OAR 860-026-0022 already presumes political advertising, which attempts to influence public opinion, to not be just and reasonable and, therefore, not recoverable in rates. Under that rule, "political advertising" means "advertising expenses, the primary purpose of which is to state or imply that persons should take a specific political action such as influencing public opinion on utility rates."

## *4. Advertising*

The Commission already has extensive rules regarding advertising (OAR 860-026-0022). These rules permit a utility to recover a limited amount for "[e]nergy efficiency or conservation advertising expenses that do not relate to a Commission-approved program, utility service advertising expenses, and utility information advertising expenses." Only expenditures equaling 0.125% of gross retail operating revenues are presumed just and reasonable, and these expenses specifically exclude corporate imaging or non-utility advertising.

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<sup>1</sup> *In the Matter of Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision*, Docket No. UG 490, Order No. 24-359 at 39 (Oct. 25, 2024).

SB 88 may prevent, among other things, gas and electric companies from recovering any customer communications regarding how to contact them, such as online customer service options and information, as well as payment options and programs for customers (unless tied to a specific Commission income-based program).

- 5. 100% of an employee's compensation if any portion of that compensation is for work to influence a decision by a federal, state or local government that would not be recoverable in rates.*

The Commission already prevents recovery of any portion of a person's compensation that meets the definition of lobbying under 18 CFR § 367.4264. Not allowing any recovery of that person's compensation, even if the rest of that person's time is not engaged in lobbying and is rather spent addressing concerns raised by localities and customers is unduly punitive and harsh. More troubling, as stated above, this prohibition is incredibly broad and rate case intervenors may argue that it should apply to every employee's salary who has any interaction with federal, state, or local government, including the Commission.

#### *6. Political Contributions*

SB 88 would prohibit the recovery of political candidate contributions in rates. NW Natural does not seek recovery of these costs.

#### *7. Litigation Expense Associated with Challenging Local, State, and Federal Law*

The Commission currently gives public utilities the opportunity to recover these costs. This does not mean that all litigation costs are ultimately recoverable in rates. Rather, it just means that a public utility can explain why such costs should be included in rates during a Commission rate proceeding.

For example, litigation may result in outcomes that save customers' money. By not allowing the recovery of litigation costs in rates, this provision of the bill is acting contrary to the bill's purported purpose of controlling costs. Instead, it is encouraging public utilities to not engage in litigation, even if the result would be customer savings.

### *8. Any Product Not Regulated by the Commission*

NW Natural believes that this subsection is referencing non-utility products or services being included in utility rates. However, such costs are not included in rates today. The Commission's cost-of-service regulation model only allows a utility to recover the reasonable and prudent costs associated with utility service.

### *9. Penalties or Fines*

SB 88 would prevent utilities from recovering the cost of penalties and fines of any type in rates. This provision does not account for the fact that a gas or electric company could be acting reasonably and prudently in its decision-making in a particular area of its business, but ultimately be subject to a fine or penalty that is outside the company's control. These are difficult, fact-based situations. The Commission should have the discretion to determine cost recovery without prescriptive laws, especially because there is no historical evidence that the Commission has used its existing discretion to rubber stamp the recovery of penalties and fines.

### *10. Travel and Lodging*

The Commission's current treatment is arguably more punitive than what is provided in this bill. It disallows 50% of all such costs, not 100% of costs in narrow categories applying to directors and officers. This 50% disallowance even includes travel and meals for workers restoring utility service after a major outage.

### *11. Aircraft*

NW Natural does not own, lease, or charter aircraft and, therefore, does not seek recovery of any such costs.

### *12. Investor Relations*

The Commission currently gives public utilities the opportunity to recover investor relations costs. Public utilities need investor relations employees in order to raise debt and equity to invest in safe and reliable energy systems. In other words, effective investor relations benefit customers by ensuring that public utilities have access to cost-effective capital to finance their investments necessary to provide safe and reliable service. Furthermore, investor relations may result in outcomes that save customers' money through lower



financing costs of debt and equity. By not allowing the recovery of these costs in rates, this provision of the bill is acting contrary to the bill's purported purpose of controlling rates. More importantly, recovery of investor relation costs, like any cost, is not automatic. Utilities must demonstrate that its costs are reasonable and prudent in order to obtain recovery.

### *13. Director Fees*

In a recent Portland General Electric Company (PGE) case, the Commission recently permitted recovery of 25% of director fees, which is less than the 50% recovery contemplated by SB 88.<sup>2</sup> NW Natural, however, respectfully disagrees with the disallowance of prudently incurred director fees because a publicly traded company is required to have a board of directors, and it is a reasonable and prudent cost for any company to incur.

### *14. Mandatory Report of Non-Recoverable Items*

The Commission allows gas and electric companies to recover the cost of state-mandated reports. Even Section 1(5)(b) of SB 88 would permit the recovery of costs associated with required appearances before the Commission, as well as any other state agency or governmental body. Such appearances may include the preparation of reports required or requested by the Commission and other governmental bodies. However, this subsection specifically prevents utilities from preparing a required report in this instance. It is unclear why gas and electric companies could not recover the costs of state mandated activities and raises serious concerns.

### *15. Contested Case Expense*

The Commission should be allowed to continue its approach of determining the appropriate amount of rate case expense on a case-by-case basis, not by statute. Gas and electric companies must participate in contested cases at the Commission and have the burden of proof to justify any rate increase. Such participation is vital to ensure that the utility can recover its costs to provide safe and reliable service. Automatically denying the recovery of such costs by statute, even if they were prudently incurred, is arbitrary and serves to limit the development of a robust administrative record for the Commission to base its decisions.

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<sup>2</sup> *In the Matter of Portland General Electric Company, Request for a General Rate Revision*, Docket No. UE 435, Order No. 24-454 at 33 (Dec. 20, 2024).

A rushed and hurried process can lead to rush and hurried decisions, especially in an industry that is rapidly evolving and increasingly complex. Moreover, the Commission can benefit from the expertise of both utility and intervenor third-party experts and attorneys. Their use should not be artificially limited by SB 88. Instead, the Commission should evaluate the prudence of rate case expense and deny recovery of those expenses that are dilatory or excessive.

### **SB 88 Differs in Substantial Ways from Colorado Legislation**

Proponents of SB 88 cite a law that was recently passed in Colorado as support for similar legislation in Oregon. However, SB 88 differs in substantial ways from Colorado legislation. In Colorado Senate Bill 23-291,<sup>3</sup> there is no corresponding definition of “political influence activity.” Instead, the Colorado bill applies to “lobbying,” which is defined much more narrowly than “political influence activity” in SB 88. In Colorado, lobbying is defined as “communicating with a person that is in a position to make a policy decision in order to influence the outcome of local, state, or federal legislation.” Political influence activity is much broader. It includes “research, analysis, preparation or planning activity” to influence laws, regulations, and ordinances, which the Colorado bill does not. It also includes attempting to influence public opinion, which the Colorado bill also does not include.

Perhaps the biggest difference between Colorado Senate Bill 23-291 and SB 88 concerns limits on expenses for contested cases. Colorado Senate Bill 23-291 calls for the Commission to consider a “symmetrical incentive.” A symmetrical incentive would provide a financial benefit to the utility if it limited contested case expense. There is no such incentive in SB 88. Colorado Senate Bull 23-291 also calls for limits to discovery that can drive up a utility’s costs in processing a rate case. A utility can face thousands of requests for data and the Colorado bill seeks to limit this cost driver. Again, there are no limits placed on discovery in SB 88.

Advertising is also considerably different. The corresponding section only prohibits recovering “advertising and public relations expenses that do not directly relate to a purpose or program that is required or authorized under statute or Commission rule or order” (emphasis added). This makes SB 88 much more restrictive than the Colorado bill, which does not permit recovery of advertising expenses authorized by the Commission.

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<sup>3</sup> A copy of the Colorado Senate Bill 23-291 is available at the following link:  
[https://leg.colorado.gov/sites/default/files/2023a\\_291\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2023a_291_signed.pdf).

Colorado Senate Bill 23-291 does not include SB 88's vague bar on recovering any compensation to a person if any portion of the compensation is for work to influence a decision by a federal, state or local government official. As explained above, this prohibition is extremely problematic.

Colorado Bill Senate Bill 23-291 only prevents the recovery of tax penalties, whereas SB 88 would prevent the recovery of all penalties, not just tax penalties.

Most importantly, Colorado Senate Bill 23-291 does not require utilities to face Commission penalties if they include costs in good faith for recovery in a rate proceeding and it is subsequently determined that such costs are unable to be recovered due to the Colorado law. SB 88, on the other hand, requires the Commission to issue such penalties, even if the gas or electric company is acting in good faith seeking to apply an unclear law.

While NW Natural believes that Colorado Senate Bill 23-291 suffers from the same issues as SB 88, SB 88 is much more problematic both because it is much more expansive than Colorado Senate Bill 23-291 and because it imposes mandatory penalties for failing to follow the vague and ill-defined terms of the bill.

### **Reporting Requirement is Onerous and Irrelevant**

The SB 88 reporting requirement would require utilities to spend a considerable amount of time and money on a report that is irrelevant and of no practical value. As an economic regulator, the Commission is charged with establishing rates based on costs that are allowed in rates. Costs that are not in rates and for which a gas or electric company is not seeking recovery of has no bearing on what customers ultimately pay. NW Natural also has serious legal concerns with having to disclose all of this information to the Commission when it is not seeking cost recovery of any of these items.

Please let us know if we can provide additional information or answer questions.

Thank you for your time.

Respectfully Submitted,

*/s/ Nels Johnson*

Nels Johnson  
Director of State & Federal Affairs  
NW Natural