IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

NICOLAS BLUMM and CLAIRE GATES, individually and on behalf of all others similarly situated, Plaintiffs, v. NORTHWEST NATURAL GAS COMPANY and NORTHWEST NATURAL HOLDING CO. Defendants.	Case No. **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL** **VIOLATION OF UNLAWFUL TRADE PRACTICES ACT; BREACH OF CONTRACT** CLAIMS NOT SUBJECT TO MANDATORY ARBITRATION Filing fee $1,178.00 pursuant to ORS 21.160(1)(e)

STATEMENT OF THE CASE

1.

Northwest Natural Gas Company ("Northwest Natural Gas" or "the Company") is a natural gas company in Oregon that has rebranded itself as a source of clean energy. In addition to selling natural gas (fossil fuel) to its customers, Northwest Natural Gas offers them a "carbon offset" product called Smart Energy. The Company tells customers that when they enroll in Smart Energy, Northwest Natural Gas will completely offset the carbon emissions attributable to their monthly natural gas use. Customers pay extra for that benefit. Northwest Natural Gas makes promises and representations about the program. But they do not perform on their promises, and the representations are false. Among other deceptive uses of Smart Energy funds, Northwest Natural Gas sends customers' "carbon offset" payment to industrial dairy farms that

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101 SW Main Street, Suite. 910 - Portland, Oregon 97204
Phone 503.228.6474 | Fax 503.228.2556

intentionally generate methane from cow manure and use technology to purportedly "capture" those emissions. Nicolas Blumm and Claire Gates are Northwest Natural Gas customers. Both enrolled in Smart Energy, and both paid extra every month. They bring this action on behalf of themselves and similarly situated customers.

PARTIES AND JURISDICTION

2.

Plaintiff Nicolas Blumm is a resident of Portland, Oregon. He has been a residential customer of Northwest Natural Gas since May of 2021, and enrolled in Northwest Natural Gas's Smart Energy program on October 1, 2021. Plaintiff Claire Gates is a resident of Portland, Oregon. Ms. Gates has been a residential customer of Northwest Natural since March of 2001. She also enrolled in the Smart Energy program.

3.

Northwest Natural Gas is a wholly owned subsidiary of Northwest Natural Holding Company, a publicly traded utility company headquartered in Portland, Oregon. Northwest Natural Gas provides natural gas service to approximately two million people in Oregon and Southwest Washington and owns and operates 21 billion cubic feet of underground gas storage capacity in Oregon. Northwest Natural Gas Company and Northwest Natural Holding Company do regular and sustained business in Oregon and in Multnomah County, and their headquarters and registered agents are located in Multnomah County; accordingly, jurisdiction and venue are proper in Multnomah County Circuit Court.

GENERAL ALLEGATIONS

A. Climate Change, Consumers, and Carbon Offsets

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4.

Like people across the globe, Oregonians are increasingly suffering the impacts of the climate crisis:[1] devastating wildfires becoming far too frequent, droughts growing in number and severity, seasonal temperatures soaring, mountain snowpack declining, and coastal towns facing erosion and flooding.[2]

5.

As the world inches closer to what climate scientists call "the point of no return"—atmospheric warming of 1.5-degree Celsius above pre-industrial levels, after which climate impacts are irreversible and catastrophic—Oregonians are not only demanding decarbonization from lawmakers and industry but are also changing their own habits and purchasing practices.[3]

6.

As a growing number of consumers seek out green products and show a willingness to pay more for products and services they perceive as sustainable or having a lighter climate impact, businesses have been quick to adjust their marketing—if not always their practices—accordingly.[4]

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[1] H. Lee & J. Romero eds., IPCC, *Climate Change 2023: Synthesis Report* 45-51 (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf (accessed Oct. 4, 2024).

[2] E. Fleishman ed., Oregon Climate Change Research Institute, *Sixth Oregon Climate Assessment* (2023), https://oregonstate.app.box.com/s/16fssk6i8wci5yhyttmrba60ce2b4maz (accessed Oct. 4, 2024).

[3] Tom Di Liberto, *What's in a number? The meaning of the 1.5-C climate threshold*, NOAA (Jan. 9, 2024), https://www.climate.gov/news-features/features/whats-number-meaning-15-c-climate-threshold (accessed Oct. 4, 2024); *World's largest survey of public opinion on climate change: a majority of people call for wide-ranging action*, U.N. Dev. Programme (Jan. 27, 2021), https://www.undp.org/press-releases/worlds-largest-survey-public-opinion-climate-change-majority-people-call-wide-ranging-action (accessed Oct. 4, 2024).

[4] Anne Field, *Study Finds An Inflection Point in Consumers' Green-Buying Behavior*, Forbes (Apr. 26, 2023), https://www.forbes.com/sites/annefield/2023/04/26/study-finds-an-inflection-point-in-consumers-green-buying-behavior/ (accessed Oct. 4, 2024).

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7.

Corporate claims regarding sustainability and lower climate impact are particularly difficult for consumers to verify. Consumers who seek green products must trust marketing statements.[5]

8.

Climate-conscious consumers are particularly vulnerable to climate-related "greenwashing"—the use false or misleading marketing to make products and services appear more environmentally beneficial than they actually are.[6]

9.

Carbon offsets, a market-based tool intended to counteract the greenhouse gas emissions associated with one activity via the purchase of credits generated by an equivalent reduction of emissions elsewhere, are particularly ripe for greenwashing.[7]

10.

Federal environmental marketing guidelines caution against marketing carbon "offsets" that are not based on reliable scientific and accounting methods, sell the same emissions reduction more than once, misrepresent emissions reductions as having already occurred or occurring in the immediate future, or claim reductions already required by law.

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[5] Fed. Trade Comm'n, Statement of Chair Lina M. Khan Regarding the Regulatory Review of the Guides For the Use of Environmental Marketing Claims, Commission File No. P954501 (Dec. 14, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/statement_of_chair_lina_m._khan_re_green_guides_-_final.pdf (accessed Oct. 4, 2024).

[6] *Greenwashing – the deceptive tactics behind environmental claims*, United Nations, https://www.un.org/en/climatechange/science/climate-issues/greenwashing#:~:text=Greenwashing%20presents%20a%20significant%20obstacle%20to%20tackling%20climate,distract%20from%20and%20delay%20concrete%20and%20credible%20action (accessed Oct. 4, 2024).

[7] *Carbon Offset,* Merriam-Webster.com, https://www.merriam-webster.com/dictionary/carbon%20offset (accessed Oct. 4, 2024).

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11.

According to the Biden Administration's recently published principles for certification of carbon credits,[8] to be legitimate, offsets must be:

- additional: the activity is not required by law or regulation and would not have occurred absent the incentives of the crediting mechanism;
- unique: one credit corresponds to only one ton of carbon dioxide (or its equivalent) reduced or removed from the atmosphere and is not double-issued;
- real and quantifiable: claimed emissions reductions or removals represent genuine atmospheric impact determined in a transparent and replicable manner using robust, credible methodologies, with activities designed to prevent "leakage" —emissions from occurring, being shifted, or intensifying beyond their boundaries due to the activity;
- verified: activity design is validated, and results are verified, by a qualified, accredited, independent third party;
- permanent: the emissions removed or reduced will be kept out of the atmosphere; and
- premised upon robust baselines: ones based on rigorous methodologies that avoid over-crediting.

12.

Something marketed as a "carbon offset" that lacks these attributes is deceptive—failing to live up to a seller's representations or to consumers' reasonable expectations of an offset based on those representations.

[8] White House, *Voluntary Carbon Markets Joint Policy Statement and Principles* (2024), https://www.whitehouse.gov/wp-content/uploads/2024/05/VCM-Joint-Policy-Statement-and-Principles.pdf (accessed Oct. 4, 2024).

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B. Dairies and Methane

13.

One sector under greater scrutiny for greenwashing its business practices is the food industry. Scientists, policymakers, and industry leaders are increasingly acknowledging the role of industrial agriculture – and industrial animal agriculture, in particular – in driving the climate crisis.

14.

According to recent estimates, animal agriculture is responsible for at least 14.5 percent of global anthropogenic greenhouse gas emissions annually.[9]

15.

While industrial animal agriculture produces an array of greenhouse gases and noxious air pollutants including carbon dioxide, nitrous oxide, ammonia, hydrogen sulfide, volatile organic compounds, and particulate matter, its outsized methane emissions are particularly staggering.[10]

16.

Methane is an incredibly potent greenhouse gas, with a global warming potential over 80 times that of carbon dioxide over a twenty-year time frame.[11]

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[9] Ruthie Lazenby, VT Law & Graduate Sch., *Rethinking Manure Biogas* (2022), https://www.vermontlaw.edu/wp-content/uploads/2024/07/Rethinking_Manure_Biogas-1.pdf (accessed Oct. 4, 2024); Chloë Waterman & Molly Armus, Friends of the Earth, *Biogas or Bull****? The Deceptive Promise of Manure Biogas as a Methane Solution* (2024), https://foe.org/wp-content/uploads/2024/03/Factory-Farm-Gas-Brief_final-0312.pdf (accessed Oct. 4, 2024) [hereinafter *Friends of the Earth Report*].

[10] *Air*, Nat'l Inst. Of Food & Agric., https://www.nifa.usda.gov/topics/air (accessed Oct. 4, 2024); Waterman & Armus, *Friends of the Earth Report*.

[11] Waterman & Armus, *Friends of the Earth Report*; *Methane and climate change*, International Energy Agency, https://www.iea.org/reports/methane-tracker-2021/methane-and-climate-change (accessed Oct. 7, 2024).

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17.

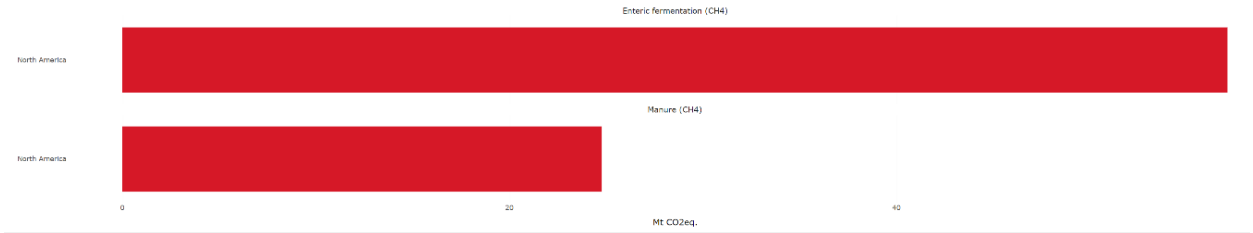
Animal agriculture is the largest source of anthropogenic methane emissions globally, contributing around 32 percent of total emissions each year. The vast majority of these methane emissions come from enteric fermentation, the digestive process by which cows and other ruminants break down plant matter.[12] Methane from enteric fermentation enters the atmosphere chiefly through cows' burps.[13]

18.

Enteric fermentation alone is estimated to account for a quarter of U.S. methane emissions—second only to those from fossil natural gas and petroleum production.[14]

19.

Methane emissions from enteric fermentation dwarf those associated with management of the animals' waste.[15] Indeed, the methane emissions from enteric fermentation in North American dairy cows more than double those from manure, as illustrated in the graph below.[16]



[12] *Methane emissions are driving climate change. Here's how to reduce them.*, United Nations Environment Programme (2021), https://www.unep.org/news-and-stories/story/methane-emissions-are-driving-climate-change-heres-how-reduce-them (accessed Oct. 4, 2024); *Sources of Greenhouse Gas Emissions*, Env't Prot. Agency (last updated July 8, 2024), https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions (accessed Oct. 4, 2024).

[13] Giampiero Grossi *et al.*, *Livestock and climate change: impact of livestock on climate and mitigation strategies*, 9 Animal Frontiers 69 (2018), https://doi.org/10.1093/af/vfy034 (accessed Oct. 4, 2024); Waterman & Armus, *Friends of the Earth Report*.

[14] *Methane Emissions*, Env't Prot. Agency (Apr. 11, 2014), https://www.epa.gov/ghgemissions/overview-greenhouse-gases#methane (accessed Oct. 4, 2024).

[15] Grossi *et al*, 9 Animal Frontiers 69.

[16] *Global Livestock Environmental Assessment Model*, Food & Agric. Org. of the United Nations, https://foodandagricultureorganization.shinyapps.io/GLEAMV3_Public/ (accessed Oct. 4, 2024).

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20.

Methane emissions from the storage and processing of manure also vary greatly depending on how the waste is managed. Dry management systems, such as solid storage, dry lot, pasture, and composting, produce only trace amounts of methane. Wet management systems, by contrast, produce considerable methane.[17]

21.

Very large dairies produce a lot of waste, and most choose wet management systems: they use large quantities of water to flush manure from barns and funnel it into massive cesspools,

[17] *See* Waterman & Armus, *Friends of the Earth Report* at 28; *Practices to Reduce Methane Emissions from Livestock Manure Management*, Env't Prot. Agency (last updated July 30, 2024), https://www.epa.gov/agstar/practices-reduce-methane-emissions-livestock-manure-management#:~:text=In%20general%2C%20liquid%20manure%20management%20systems%20lead%20to,manure%20in%20drier%2C%20aerobic%20conditions%20reduces%20methane%20emissions (accessed Oct. 4, 2024).

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euphemistically called "lagoons." In these cesspools, organic matter breaks down in anaerobic (oxygen-free) conditions, which spews methane and other noxious gases into the atmosphere.[18]

22.

Wastewater is commonly applied to crop fields. When more wastewater is applied than the fields can productively use, it can run into streams, rivers, and lakes, dumping excess nutrients that foul water bodies, pollute wells, and harm neighboring communities.

23.

Oregon communities have experienced this firsthand, as dairies around them have gotten larger and larger. From 1997 to 2012, the average size of large dairy operations in Oregon nearly doubled, and the number of "mega-dairies"—those with over 1,000 cows—tripled.[19]

24.

Threemile Canyon Farms, in Boardman, is the largest dairy in Oregon and one of the largest in the country—permitted to house 70,000 cows.[20]

C. Digesters and Manure Methane

25.

Threemile is one of several large Oregon dairies that, years ago, installed a manure "digester." Indeed, decades ago, some large dairies using wet manure management systems began covering their cesspools with tarps or other covers, which creates an environment in which microorganisms that generate methane can thrive.

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[18] Donald L. Pfost *et al.*, *Lagoons for Storage/Treatment of Dairy Waste*, Univ. of Missouri Extension (last updated Oct. 1993), https://extension.missouri.edu/publications/wq304 (accessed Oct. 7, 2024).

[19] Food & Water Watch, *The Urgent Case for a Moratorium on Mega-Dairies in Oregon* (2019), https://www.columbiariverkeeper.org/wp-content/uploads/2024/06/moratorium-megadairy-2019-march-factsheet.pdf (accessed Oct. 4, 2024).

[20] Food & Water Watch, *The Urgent Case for a Moratorium on Mega-Dairies in Oregon.*

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26.

This anaerobic digestion creates a mix of greenhouse gases—primarily methane and some carbon dioxide.[21] The methane can thus be captured, processed, and used to generate electricity or even further refined for use as transportation fuel.

27.

The dairy and energy industries have referred to this manure-derived methane as "biogas" and "biomethane."

28.

Now, they call it "renewable natural gas"—RNG for short.

29.

Although manure digesters are not new, in recent years industrial dairies have aggressively promoted them as a solution to the industry's enormous climate footprint, claiming that digesters prevent methane emissions.

30.

That claim is problematic for many reasons. First, even if manure digesters did meaningfully reduce methane emissions associated with manure management—which is dubious, as explained below—digesters have no effect whatsoever on emissions from enteric fermentation, which far and away accounts for the greatest proportion of industrial dairies' emissions.

31.

Second, methane emissions from manure are largely a problem of the dairies' own choosing, because flushing and storing waste in open cesspools that vent methane is not inevitable, but a deliberate management decision.

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[21] Manure digestion produces a leftover solid-liquid slurry called digestate, a highly concentrated, nitrogen-rich byproduct that must be carefully managed to prevent nutrient pollution.

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32.

Digesters' climate bona fides are further undercut by the fact that, when the digester produces more gas than can be processed, the gas is flared or burned off. This releases nitrous oxide—a powerful greenhouse gas 300 times more potent that carbon dioxide—and carbon monoxide, a toxic gas that indirectly worsens climate change by contributing to the build-up of methane and atmospheric ozone. Flared digester gas also releases other air pollutants like sulfur dioxide and particulate matter.[22]

33.

Moreover, when manure methane is further processed to enable companies to inject it into natural gas pipelines, further climate risks ensue. Digesters and pipeline infrastructure used to carry natural gas are notoriously leaky. A recent report identified almost 2,600 natural gas pipeline incidents (leaks and explosions) between 2010 and 2021, which collectively released 26.6 billion cubic feet of methane, equivalent to the annual emissions of more than 2.4 million passenger vehicles.[23]

34.

Research demonstrates that in circumstances with high leakage, "biomethane, especially manure biomethane, would provide minimal to zero climate benefits on a 100-year timescale."[24]

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[22] Waterman & Armus, *Friends of the Earth Report* at 24; *Overview of Greenhouse Gases*, Env't Prot. Agency (Apr. 11, 2014), https://www.epa.gov/ghgemissions/overview-greenhouse-gases (accessed Oct. 4, 2024); *Carbon Monoxide*, Ctr. for Sci. Educ. (2017), https://scied.ucar.edu/learning-zone/air-quality/carbon-monoxide (accessed Oct. 4, 2024); Pep Canadell, *Nitrous oxide emissions 300 times more powerful than carbon dioxide are jeopardising Earth's future*, Phys.org (Oct. 8, 2020), https://phys.org/news/2020-10-nitrous-oxide-emissions-powerful-carbon.html (accessed Oct. 4, 2024).

[23] Waterman & Armus, *Friends of the Earth Report* at 24.

[24] Yuanrong Zhou *et al*, Int'l Council on Clean Transp., *Life-cycle greenhouse gas emissions of biomethane and hydrogen pathways in the European Union* 19 (2021), https://theicct.org/sites/default/files/publications/lca-biomethane-hydrogen-eu-oct21.pdf (accessed Oct. 4, 2024).

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35.

Any climate benefits of digesters are also called into question by the lack of comprehensive monitoring and analysis. Indeed, there is scant on-site measurement to verify that claimed emissions reductions—which are typically based on modeling that assumes continuously running equipment—are in fact happening. As EPA has noted, decision-makers lack "clear guiding principles for emissions measurement, reporting, and verification" for manure digester gas.[25] Northwest Natural Gas itself has suggested as much. In a recent interview, a Company executive stated there is no universal standard to measure how much a renewable natural gas project actually helps the climate, and admitted that claimed emissions reductions vary based on the accounting method used.[26]

36.

Independent research demonstrates that, at best, the climate benefits of manure digestion are not well studied and remain unclear.[27] At worst, emissions reductions are significantly overstated—due to flawed business-as-usual emissions baselines, leaky and malfunctioning equipment, and modeling that ignores emissions from manure production and from the storage and handling of the methane-rich byproduct (digestate) left over after the manure has been processed.[28]

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[25] Env't Prot. Agency, *Policy Maker's Handbook for Measurement, Reporting, and Verification in the Biogas Sector* 1 (2021), https://www.globalmethane.org/documents/GMI_MRV_Handbook_for_Biogas.pdf (accessed Oct. 4, 2024).

[26] McKenzie Funk, *Oregon's Largest Natural Gas Utility Hasn't Actually Gone Green*, ProPublica (Sept. 13, 2024), https://www.propublica.org/article/nw-natural-gas-oregon-fossil-fuel (accessed Oct. 4, 2024).

[27] Leslie Lipper *et al* eds., Food & Agric. Org. of the United Nations, *Climate Smart Agriculture* 397-98 (2018), https://link.springer.com/content/pdf/10.1007/978-3-319-61194-5.pdf (accessed Oct. 4, 2024).

[28] N.T. Vechi *et al, Ammonia and methane emissions from dairy concentrated animal feeding operations in California, using mobile optical remote sensing*, 293 Atmospheric Env't 119448 (2023), https://doi.org/10.1016/j.atmosenv.2022.119448 (accessed Oct. 4, 2024); Semra Bakkaloglu *et al, Methane emissions along biomethane and biogas supply chains are*

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D. Subsidies for Manure Digesters and Biomethane Create Perverse Incentives

37.

Despite the problems with treating manure digesters as a climate solution, a variety of state, federal, and private mechanisms have subsidized and incentivized them—and continue to do so.

38.

In addition to federal grants and guaranteed loan financing, there are state incentives like Oregon's Business Energy Tax Credit, which covers up to fifty percent of eligible project costs of constructing a digester.[29]

39.

Even more lucrative have been state and federal pollution-trading schemes, including the Federal Renewable Fuel Standard (RFS), California's Low Carbon Fuel Standard (LCFS), and Oregon's Clean Fuel Standard, which heavily reward the production of methane in manure digesters.[30]

40.

The LCFS program alone has spurred a boom in manure digester construction in recent years, as investors chase "brown gold."[31] Since digesters started generating credits in the

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underestimated, 5 One Earth 724 (2022), https://www.sciencedirect.com/science/article/pii/S2590332222002676 (accessed Oct. 4, 2024); Zara Qadir, *Methane emissions from biogas facilities are underestimated*, Sustainable Gas Institute Blog (May 13, 2021), https://blogs.imperial.ac.uk/sustainable-gas-institute/2021/05/13/methane-emissions-from-biogas-facilities-are-underestimated/ (accessed Oct. 4, 2024).

[29] Lazenby, *Rethinking Manure Biogas* at 10; Dan Sullivan, *Anaerobic Digestion In The Northwest*, 53 BioCycle 33 (2012), https://www.biocycle.net/anaerobic-digestion-in-the-northwest/ (accessed Oct. 4, 2024); OAR 330-091-0105.

[30] Lazenby, *Rethinking Manure Biogas* at 12-13.

[31] Fu, Jessica, *Brown Gold: the great American manure rush begins*, The Guardian (Feb. 2, 2023), https://www.theguardian.com/environment/2023/feb/02/manure-renewable-natural-gas-california (accessed Oct. 4, 2024).

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program in 2017, an estimated $1.1 billion has gone to participating manure gas producers nationwide.[32]

41.

As a biochemist and manure composition expert explained, as a result of the LCFS program, "by selling the environmental attributes of the biogas, farmers can get around five times as much money per energy unit as they can from selling just the gas." This was driving "out-of-state developers, gas companies, and even venture capital firms" to approach farmers on a weekly basis, seeking to install digesters on their properties.[33]

42.

The commodification of manure methane has created perverse incentives for some large dairies to increase their already-large greenhouse gas emissions.

43.

Some dairies using wet manure management systems have abandoned practices that reduce methane emissions from wet manure—such as separating solids from liquids before sending the waste to the digester—to increase methane production from the waste.

E. Northwest Natural Gas Goes All in for "Renewable Natural Gas"

44.

Few Oregon companies have done more to bolster the idea that manure digesters are a climate boon than Northwest Natural Gas.

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[32] David Wakeman & Kevin Fingerman, *Waste Stream to Revenue Stream: calculating the costs and climate impact of California's investments in dairy digester infrastructure* 7 (2023), https://www.centerforfoodsafety.org/files/waste-stream-to-revenue-stream_final_35719.pdf (accessed Oct. 4, 2024).

[33] Rachel Cohen, *Why there's a 'gold rush' to build dairy digesters in Idaho,* Boise State Public Radio (Feb. 11, 2022), https://www.boisestatepublicradio.org/news/2022-02-11/why-theres-a-gold-rush-to-build-dairy-digesters-in-idaho (accessed Oct. 4, 2024).

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45.

As Oregon's largest natural gas utility, the Company was known as Northwest Natural Gas Company until 1998, when it shed the word "gas" from its name but not its business model.

46.

The Company sells natural gas, which is composed almost entirely of the climate super-pollutant methane.

47.

This has become increasingly problematic, as Oregonians have demanded climate action and the state has adopted aggressive climate change mitigation policies.

48.

Northwest Natural Gas has known for years how much its customers care about addressing the climate crisis. It conducted a series of consumer perception and awareness surveys and found that, as of 2018, 71 percent of its customers reported being "extremely" or "very" concerned about climate change.[34]

49.

Its 2018 survey had another purpose, however: to assess its customers' familiarity with RNG.

50.

Northwest Natural Gas's survey found that 52 percent were "not familiar at all" or only "slightly familiar" with "renewable natural gas" or RNG. Only 14 percent of customers reported being "extremely" or "very" familiar with RNG.[35]

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[34] Direct Testimony of Cory A. Beck, Before the Public Utility Commission of Oregon, NW Natural/900, Beck/Page 13 (PDF page 649) (Dec. 17, 2021), https://edocs.puc.state.or.us/efdocs/UAA/ug435uaa161326.pdf (accessed Oct. 4, 2024).

[35] *Id.* at NW Natural/904, Beck/Page 3 (PDF page 639) .

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51.

Northwest Natural Gas's survey followed a successful, decades-long campaign by the natural gas industry to use terminology meant to downplay the climate harms and fossil origins of its product.

52.

Indeed, even though natural gas is almost entirely methane, one recent consumer study found that over half of participants (54 percent) viewed "natural gas" positively, whereas only a quarter (25 percent) viewed "natural methane gas" positively. Less than a quarter viewed "fossil gas" or "fracked gas" positively, and only 15 percent viewed "methane" positively.

53.

Some 67 percent of respondents in this survey "underestimated" the relationship between natural gas and methane.[36] Many survey participants associated "natural gas" with words like "clean," but associated methane with words like "pollution" and "global warming."[37]

54.

Despite the industry's long game to downplay the climate impacts of natural gas, policymakers in Oregon and beyond have brought them to light. In 2020, Governor Kate Brown signed an executive order directing state agencies to develop rules capping greenhouse gas emissions from fossil fuels like natural gas and reducing them over time.

55.

Increasingly aggressive climate policies and consumer sentiment in favor of climate action threatened Northwest Natural Gas's fossil fuel-dependent business. Northwest Natural Gas's ace in the hole was Oregonians' lack of familiarity with RNG.

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[36] Karine Lacroix *et al*, *Different names for "natural gas" influence public perception of it*, 77 J. Env't Psych. 101671 (2021), https://www.sciencedirect.com/science/article/abs/pii/S0272494421001249 (accessed Oct. 4, 2024).

[37] *Id.*

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56.

Northwest Natural Gas thus embarked on a marketing blitz to shore up customer affinity for natural gas—dampening the growing trend of electrification and new gas hookup bans starting to gain traction Oregon communities—while capitalizing on customers' widespread concern about climate but lack of knowledge about RNG.

57.

Northwest Natural Gas needed to convince Oregonians that RNG was the climate solution they were looking for, both in state policy and with respect to their own decisions as natural gas consumers.

58.

As an advertising agency that Northwest Natural Gas engaged for this work explained, the "challenge" was that, "While [the Company] wanted to convey their commitment to sustainability and clean energy, they needed an effective way to communicate how natural gas could be a clean, efficient, and reliable source of energy."[38]

59.

The "solution" was a "a comprehensive campaign that highlighted both individual and [Northwest Natural Gas's] corporate efforts to combat climate change and promote sustainability," which "positioned natural gas as a clean and reliable energy source."[39]

60.

"By educating their customers about the benefits of natural gas and their own commitment to sustainability," the ad agency explained, Northwest Natural Gas "empowered individuals and communities to take action against climate change."[40]

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[38] Yoshini White, *NW Natural – Less We Can*, Yoshini White, https://perma.cc/B4B3-EP9P (accessed Oct. 7, 2024).
[39] *Id.*
[40] *Id.*

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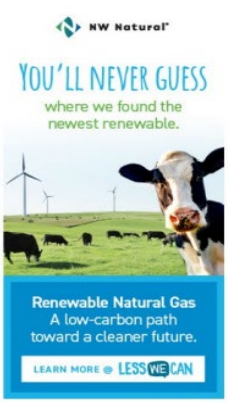
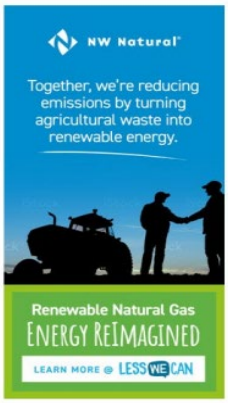
61.

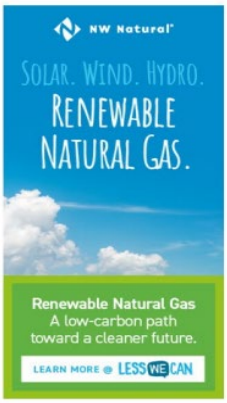
The tagline for this campaign: Less We Can.

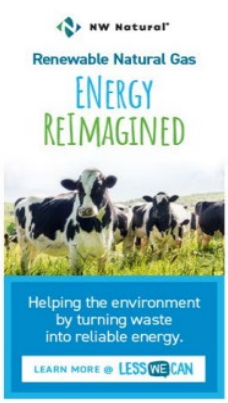
62.

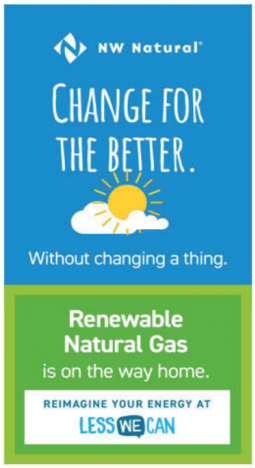
Northwest Natural Gas trumpeted about RNG in Less We Can flyers, ads, and mailers, through a new campaign website, and through commercials, equating RNG with solar, wind, and hydroelectric energy. Northwest Natural Gas promised that RNG was "on its way" to customers' homes, and suggested customers wouldn't have to "chang[e] a thing" (i.e. switch their natural gas appliances to electric) to have "renewable" energy:











63.

In a video posted on the Company's YouTube channel on June 7, 2021, and currently featured on the "Renewable Natural Gas" page of its Less We Can website, Northwest Natural

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Gas states that it has "begun to convert waste into Renewable Natural Gas to help reduce emissions from the air and provide a net zero carbon energy for the future."[41]

64.

Another video advertisement shows cows grazing in a green field and claims RNG is "Sustainably reducing emissions and closing the loop on waste," with "over 80% carbon reduction" (from what baseline is unclear).[42]

65.

Northwest Natural Gas spread its gospel about RNG everywhere—in customer newsletters and prerecorded messages while customers waited on hold to talk with a Northwest Natural Gas representative.

---

[41] NW Natural Gas, *Renewable Natural Gas Is on Its Way Home*, YouTube (June 7, 2021), https://www.youtube.com/watch?v=TVyFGexQYEY (accessed Oct. 7, 2024); NW Natural, *Renewable Natural Gas,* https://www.lesswecan.com/renewable-natural-gas (accessed Oct. 7, 2024).

[42] NW Natural Gas, *Renewable Natural Gas | Less We Can*, YouTube (Oct 18, 2017), https://www.youtube.com/watch?v=CnwOJjIRqnQ (accessed Oct. 7, 2024).

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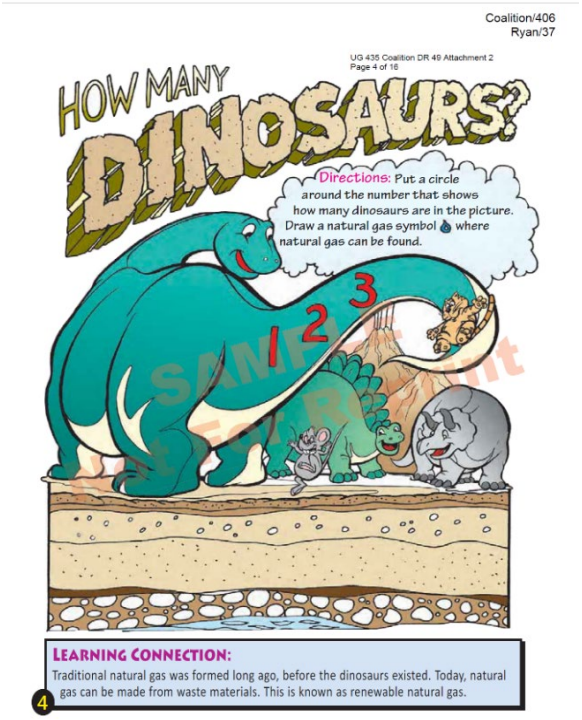
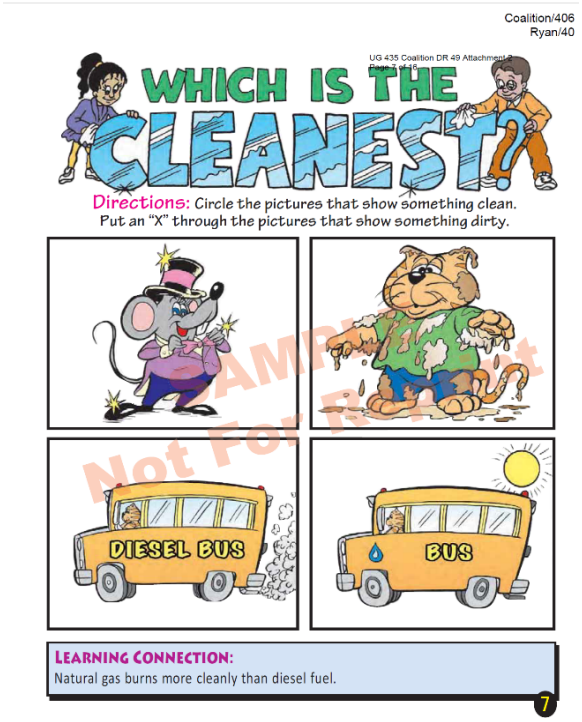
66.

Northwest Natural Gas even tried to influence its future customers—Oregon schoolchildren—with its messages of "clean" natural gas and RNG. In an activity book marketed to educators, Northwest Natural Gas told kids, "Today, natural gas can be made from waste materials. This is known as renewable natural gas."





67.

Northwest Natural Gas's RNG marketing blitz paid dividends. One of the Company's studies showed that between March 2020 and September 2021, customer awareness of RNG increased each quarter, to nearly half (48 percent) of those surveyed.[43]

[43] Direct Testimony of Cory A. Beck, Before the Public Utility Commission of Oregon, NW Natural/900, Beck/Page 15 (PDF page 651).

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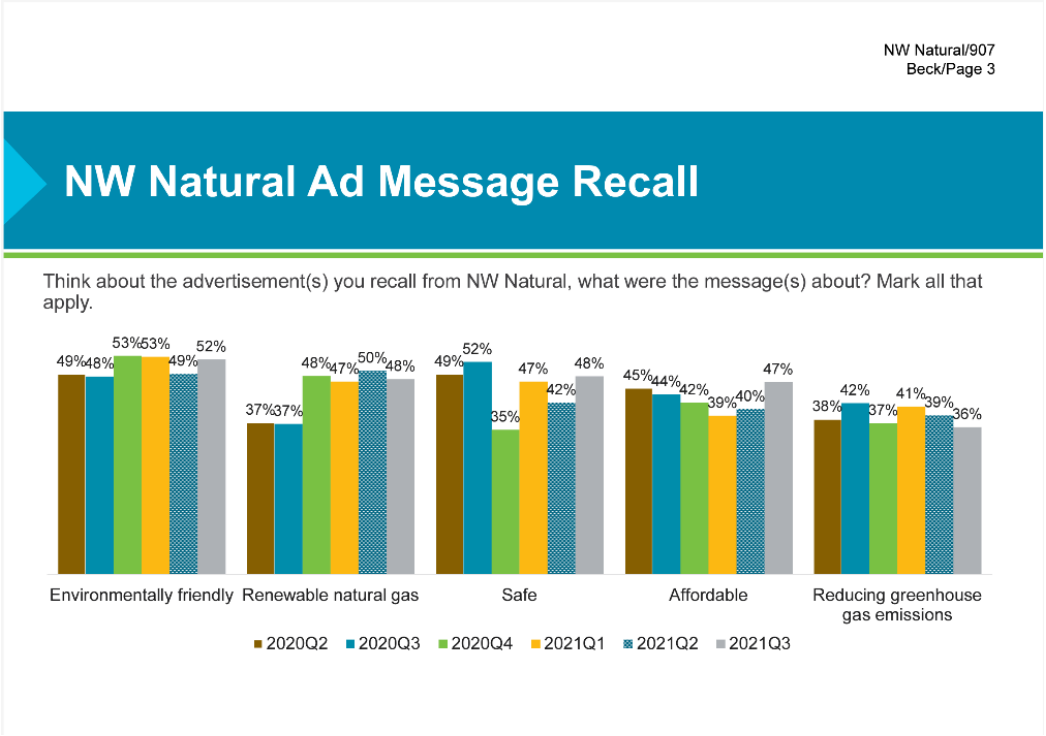
68.

Northwest Natural Gas studies showed that the percentage of customers who recalled advertisements with "[r]enewable natural gas" messaging grew from 37 percent in the second quarter of 2020 to 50 percent little over a year later, with customers remembering the key messages the Company tried to convey:[44]

69.

In response to growing public pressure to decarbonize and state agency mandates to slash its emissions 90 percent by 2050, Northwest Natural Gas heavily prioritized RNG acquisition and development, while continuing to fight electrification. It also asked customers to fund its controversial investment in methane "capture" and processing at two large Tyson Foods cattle slaughterhouses in Nebraska.



[44] *Id*. at NW Natural/907, Beck/Page 3 (PDF page 639).

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70.

And Northwest Natural Gas promoted its Smart Energy program as the way customers could do *their* part to combat climate change—to "Use less" and "Offset the rest."

F. The Smart Energy Program

71.

Northwest Natural Gas started Smart Energy in 2007, and the program has grown significantly in the past few years, from nearly 58,000 participating customers in 2019[45] to nearly 85,000 in 2022.[46]

72.

As of May 2023, Northwest Natural Gas reported that 13 percent of its Oregon residential customers were enrolled in Smart Energy.

73.

Northwest Natural Gas heavily courts its customers to join Smart Energy—to pay a voluntary fee each month to "offset the carbon emissions" from their natural gas use—with images like the below.[47]

[45] *Smart Energy Progress Report 2019*, NW Natural (2020), https://perma.cc/NSR4-HTVL.
[46] *Smart Energy Progress Report 2022*, NW Natural (2023), https://perma.cc/SJ7H-TGH8.
[47] *Address Your Environmental Impact with Smart Energy*, NW Natural, https://perma.cc/PL3L-2EZ3 (accessed Oct. 4, 2024).

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74.

Northwest Natural Gas advertises the Smart Energy program across many platforms. It sends customers promotional inserts in their utility bills, calling on them to "mitigate the carbon emissions from their natural gas use through a mix of carbon offsets and renewable natural gas."

75.

On its website, Northwest Natural Gas invites customers to work with the Company to "address climate change" and the customer's "environmental impact." It boasts, "Smart Energy has purchased carbon offsets from 19 projects across Oregon, Washington, Idaho, California, Utah, Alaska and British Columbia. Some of these projects use captured methane, a potent greenhouse gas, as a renewable energy source—now that's smart!"

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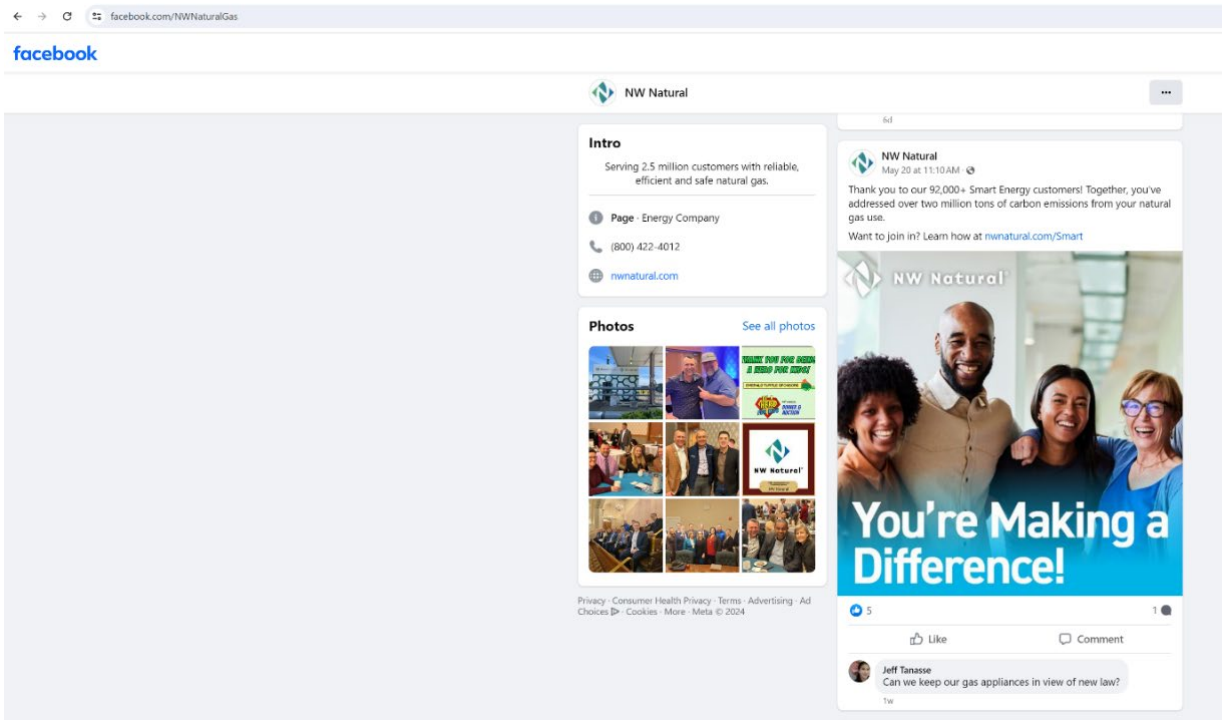
76.

Northwest Natural Gas displays a map of these "projects" and claims that Smart Energy offsets save as much greenhouse gas emissions as taking nearly half a million gas-powered cars off the road for a year.

77.

Northwest Natural Gas makes similar claims in videos on its social media pages. It recently thanked its Smart Energy customers for "making a difference," claimed customers have "addressed over two million tons of carbon emissions from your natural gas use," and invited newcomers to sign up for Smart Energy.



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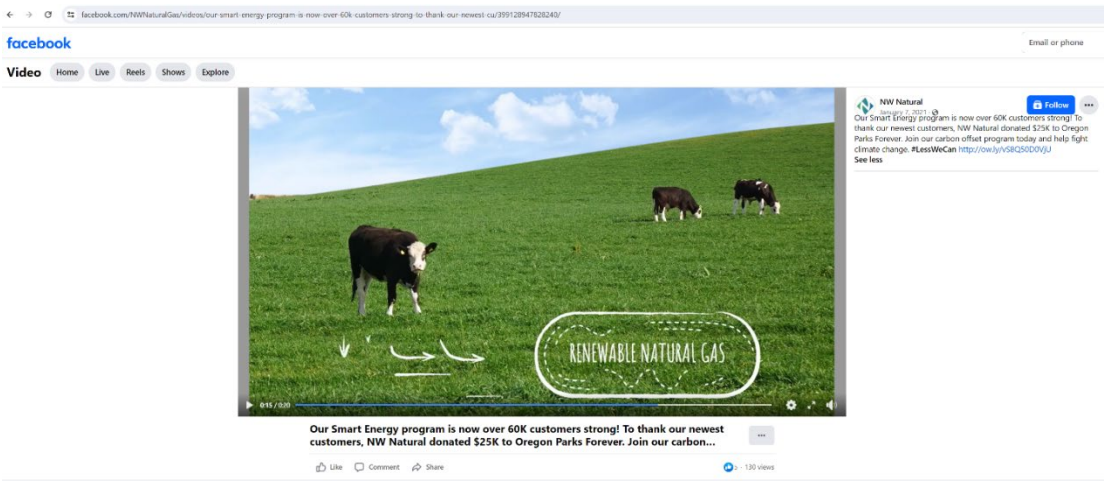
78.

Similarly, a video posted to its Facebook page[48] in 2021 describes Smart Energy as a voluntary program in which customers can "offset some or all of the CO2 produced from their natural gas use," and portraying "renewable natural gas" as a clean, climate-friendly fuel that comes from animal waste.



79.

Northwest Natural Gas makes very similar representations in its customer newsletter, *Comfort Zone*:

June/July 2023 newsletter

[48] NW Natural, *Our Smart Energy program is now over 60K customers strong!,* Facebook (Jan. 7, 2021), https://www.facebook.com/NWNaturalGas/videos/our-smart-energy-program-is-now-over-60k-customers-strong-to-thank-our-newest-cu/399128947828240/ (accessed Oct. 4, 2024).

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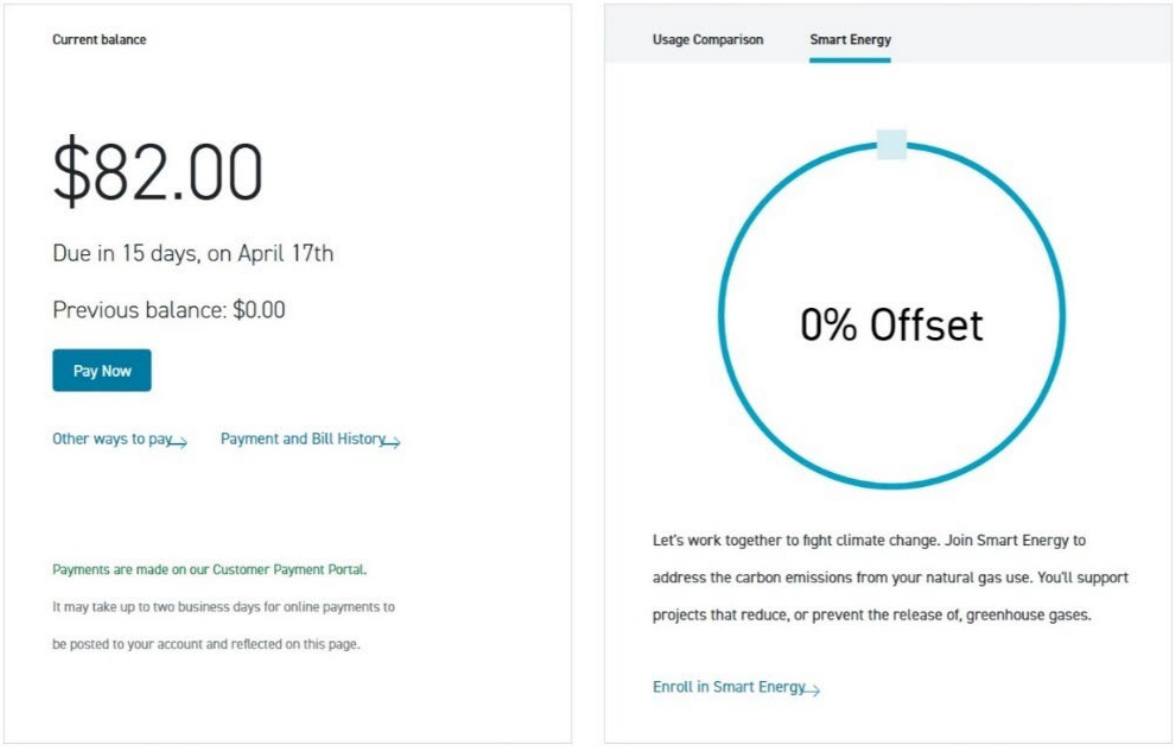
80.

Northwest Natural Gas customers are prodded to join Smart Energy *every time they sign into their accounts*, as they're shown a prominent graphic reminding that they have "offset" 0 percent of their natural gas use, and invited to "fight climate change" by joining Smart Energy:



Account Overview - Before Smart Energy Enrollment:

81.

The sign-up process for Smart Energy continues to emphasize these same messages. Customers are prompted to "address the carbon emissions from *your* natural gas use through (1) carbon offsets from projects that reduce, or prevent, the release of greenhouse gases, or (2) a mix of carbon offsets and renewable natural gas projects." (Emphasis added).

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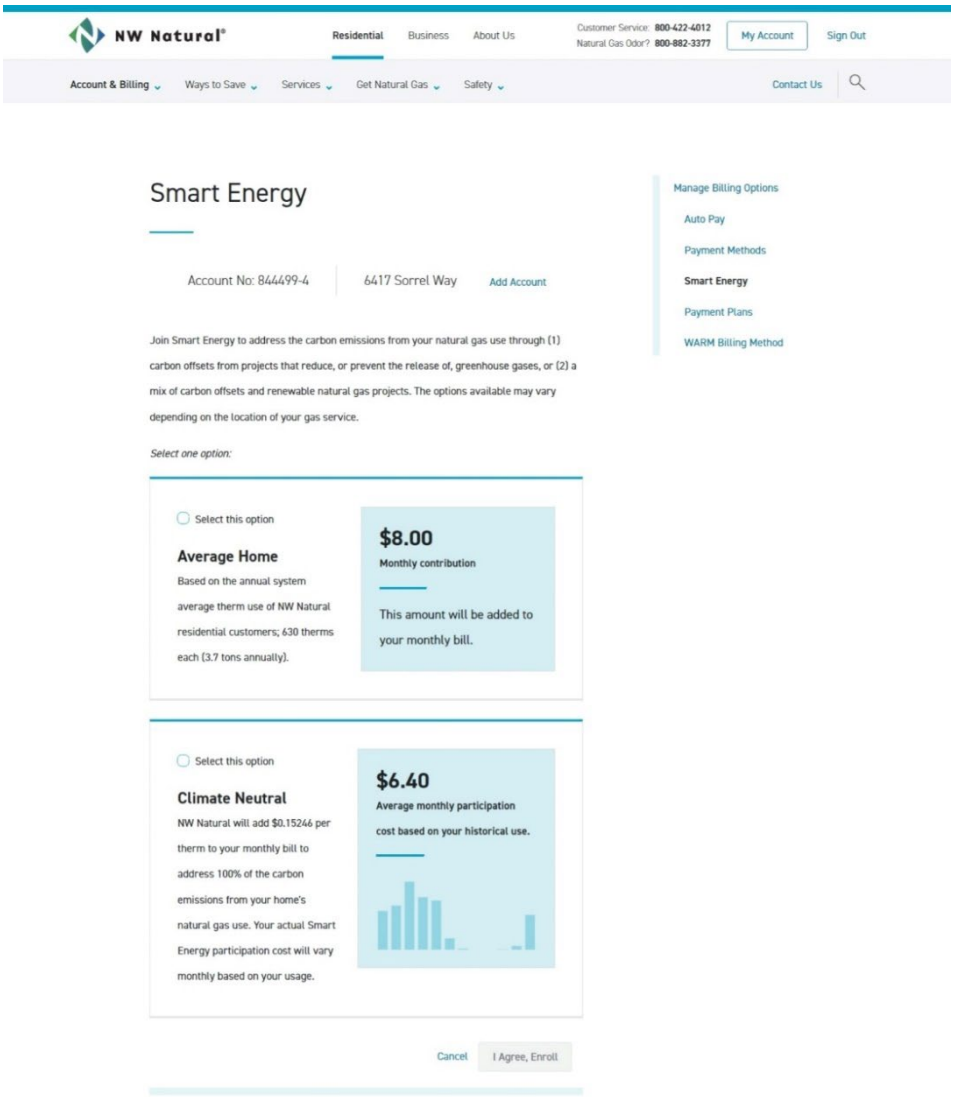
82.

Customers can select "Average Home" for a fixed $8 per month, or the "Climate Neutral" option, "to address 100% of the carbon emissions from your home's natural gas use," for a cost based on the customer's actual natural gas use.



83.

Once enrolled, Northwest Natural Gas continues to personalize the "offset" representation, providing customers with the specific amount of carbon dioxide emissions they have supposedly offset each month as a result of the customer's enrollment in Smart Energy, and

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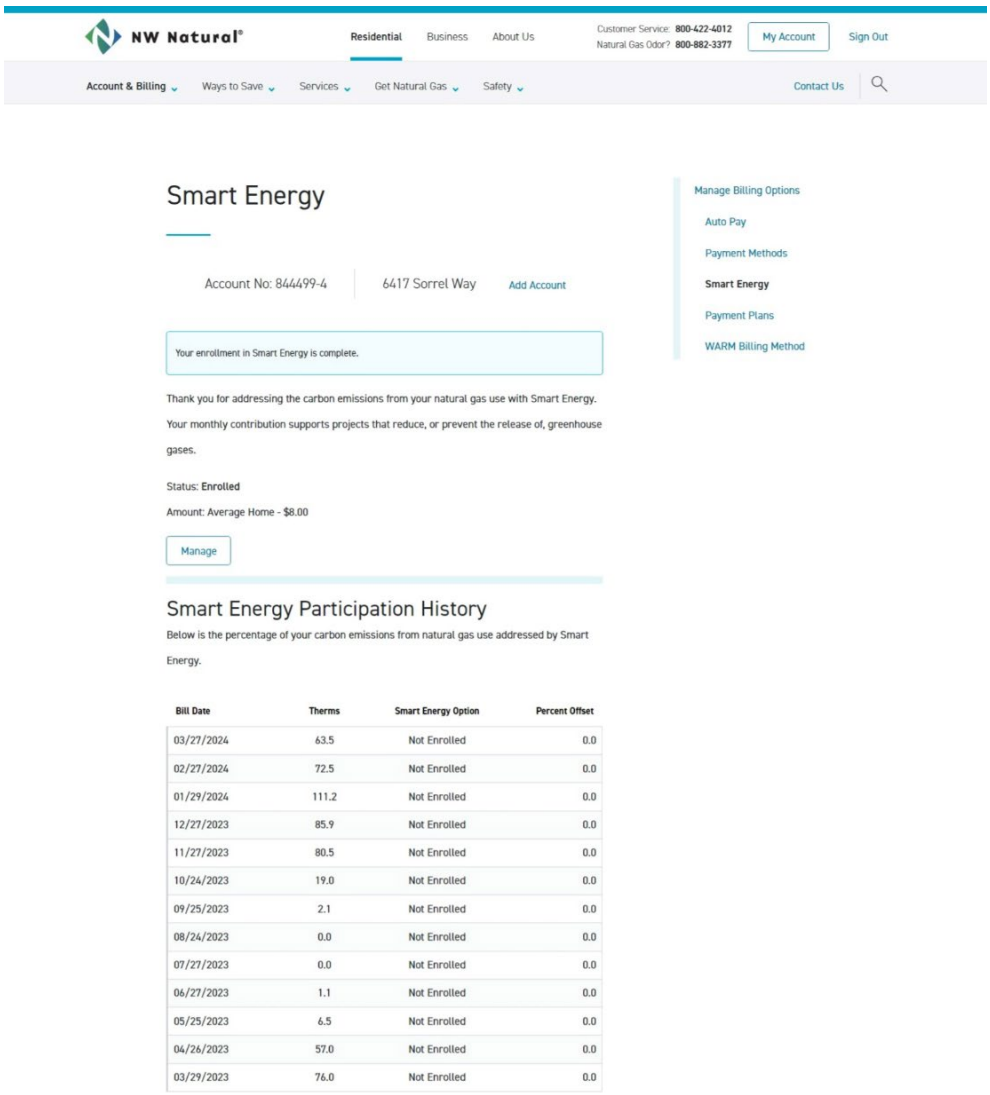
encouraging customers to "Keep up the good work!" and to "Stay enrolled and keep making a difference!"



Account Overview - After Smart Energy Enrollment:

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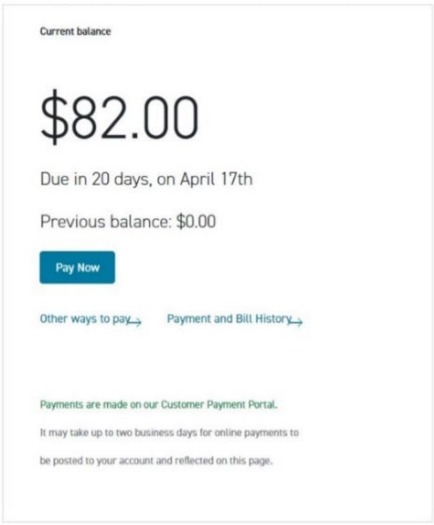

84.

Like the video advertisement shown above, the dairy cows grazing under an open sky in this graphic associate the Smart Energy offset projects with pasture-based dairies.

G. Smart Energy Funds Manure Digesters, Which Fail to Zero Out Customers' Climate Pollution as Northwest Natural Gas Promises

85.

Northwest Natural Gas uses customers' monthly payments to purchase what it describes as "offsets" from manure digesters. But these "offsets" lack the core attributes of a bona fide offset: additionality, uniqueness, measurability, verifiability, and permanency.[49]

86.

Northwest Natural Gas does not disclose to customers that the "carbon offsets" it sells do not verifiably remove specific quantities of CO_2 emissions from the atmosphere. It fails to disclose to customers that they are not funding new, permanent reductions of greenhouse gas emissions that would not have otherwise occurred.

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[49] White House, *Voluntary Carbon Markets Joint Policy Statement and Principles* (2024), https://www.whitehouse.gov/wp-content/uploads/2024/05/VCM-Joint-Policy-Statement-and-Principles.pdf (accessed Oct. 4, 2024).

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87.

Instead, as detailed below, Northwest Natural Gas uses customers' Smart Energy dollars to fund existing manure digesters at large, industrial dairies in Oregon, Washington, Idaho, and California.

88.

Those mega-dairies produce enormous amounts of methane emissions from enteric fermentation—emissions in no way reduced or avoided by customers' Smart Energy dollars. Indeed, without the methane-generating cows, there would be no manure to put into digesters.

89.

And rather than avoid or reduce emissions, the manure digesters to which Northwest Natural Gas directs Smart Energy dollars entrench the ongoing production of excess methane from cow waste—methane that is deemed to be "captured" and treated as an environmental benefit the digester's operator can sell. Awarding carbon credits for methane from cow waste, as Smart Energy does, may even incentivize the *increased* production of that waste.

90.

Many of the digesters the Smart Energy program funds have been operating for years, supported by a raft of supports and subsidies and generating offset credits for *other* programs besides Smart Energy.

91.

One of the digesters to which Northwest Natural Gas has directed Smart Energy dollars even predates the Smart Energy program itself, belying any notion that the digester's purported "offsets" were made possible by the program.

92.

Another Smart Energy-supported digester is TMF Biofuels Boardman. Northwest Natural Gas claims that thanks to Smart Energy, TMF Biofuels Boardman "[c]aptured methane from co-

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digested organic waste and cow manure," which Northwest Natural Gas says "generates about 4.8 million megawatts of renewable electricity annually."

93.

But "TMF Biofuels" is the manure digester for Threemile Canyon Farms.[50] And as of August 2023, Threemile had over *61,000* cows.

94.

Those tens of thousands of cows produce huge amounts of methane pollution: between 154 to 264 pounds of methane gas per year from enteric fermentation alone. [51]

95.

Before installing its manure digester in 2009, Threemile used solid-liquid separation (SLS), a practice that reduces methane emissions at facilities using wet manure management by partially removing organic and inorganic solids from manure before it is stored in the cesspools.

96.

But once Threemile installed a digester and began participating in the California LCFS program, it stopped using SLS, thereby maximizing the methane emissions that could be generated, "captured," and sold as credits.

97.

Indeed, since 2009, Threemile's digester has been reaping significant financial gains through pollution-trading regimes. From 2013 to 2020 TMF Biofuels received over 238,000 "offset" credits through California's legacy cap-and-trade program.

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[50] Tracy Loew, *Manure Is Big Business at Oregon's Largest Dairy with Conversion to Natural Gas*, Statesman Journal (Mar. 31, 2019), https://www.statesmanjournal.com/story/tech/science/environment/2019/03/31/oregon-threemile-canyon-farms-dairy-natural-gas-manure/3247197002/ (accessed Oct. 4, 2024).

[51] *Agriculture and Aquaculture: Food for Thought*, Env't Prot. Agency (Oct. 2020), https://www.epa.gov/snep/agriculture-and-aquaculture-food-thought#:~:text=A%20single%20cow%20produces%20between,(Our%20World%20in%20Data) Given Threemile's herd size, this means its cows produce between 9.3 and 16 million pounds of methane gas per year.

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98.

And in 2019, Threemile received regulatory approval to build a publicly subsidized gas treatment system so that it could pipe manure-derived methane to fuel vehicles in California and take advantage of the even more lucrative crediting regime, LCFS.

99.

By 2021, TMF Biofuels was one of the largest dairy manure-to-"RNG" facilities in the country.

100.

That same year, Oregon's Department of Environmental Quality (DEQ) fined Threemile's digester nearly $20,000 for violating emissions limits for fine particulate matter by "overusing a natural gas burner at the digester facility to dry manure so it could be reused as animal bedding."

101.

As DEQ explained, excessive emissions of particulate matter "can contribute to respiratory distress in people, … affect[ing] the heart and lungs" and "causing serious health problems."[52]

102.

The Threemile digester was again issued a civil penalty in January 2023, for failing to test engines at the facility to ensure they were not exceeding pollution limits.[53]

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[52] Letter from DEQ to WOF PNW Threemile Project re: Notice of Civil Penalty Assessment and Order (Oct. 27, 2021), https://www.oregon.gov/deq/nr/102721wofPNW.pdf (accessed Oct. 7, 2024).

[53] Letter from DEQ to WOF PNW Threemile Project re: Notice of Civil Penalty Assessment and Order (Jan. 19, 2023) https://www.oregon.gov/deq/nr/012023WOFPNW.pdf (accessed Oct. 4, 2024).

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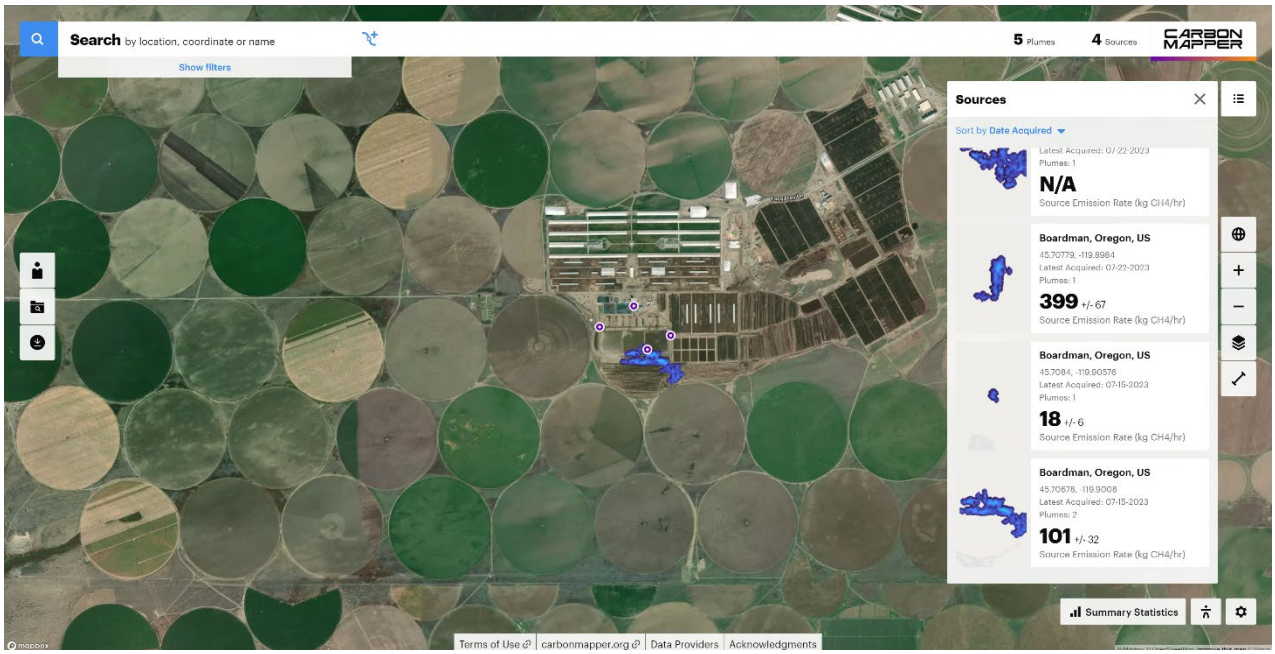
103.

Moreover, recently published data documented methane pluming from Threemile and its digester. Carbon Mapper, "a collaboration that uses airborne and satellite imaging from NASA and Arizona State University's Global Airborne Observatory to detect carbon dioxide and methane plumes from point sources,"[54] identified five methane plumes from four sources at Threemile. Carbon Mapper identifies sources with average plume rates exceeding 10 kilograms of methane per hour as "super-emitters." Plumes at Threemile were documented emitting up to 399 kilograms of methane per hour.



[54] Carbon Mapper, *About*, https://carbonmapper.org/about (accessed Oct. 7, 2024). A recent analysis by Food & Water Watch, which overlaid Carbon Mapper data on methane plumes with the list of digesters generating LCFS credits, showed the digesters generate major methane pluming, including Threemile's. *See* Food & Water Watch, *The Proof Is in the Pluming: Factory Farm Biogas Has no Place in the Low Carbon Fuel Standard* (2024), https://www.foodandwaterwatch.org/wp-content/uploads/2024/01/RB_2401_LCFS_Methane.pdf (accessed Oct. 4, 2024).

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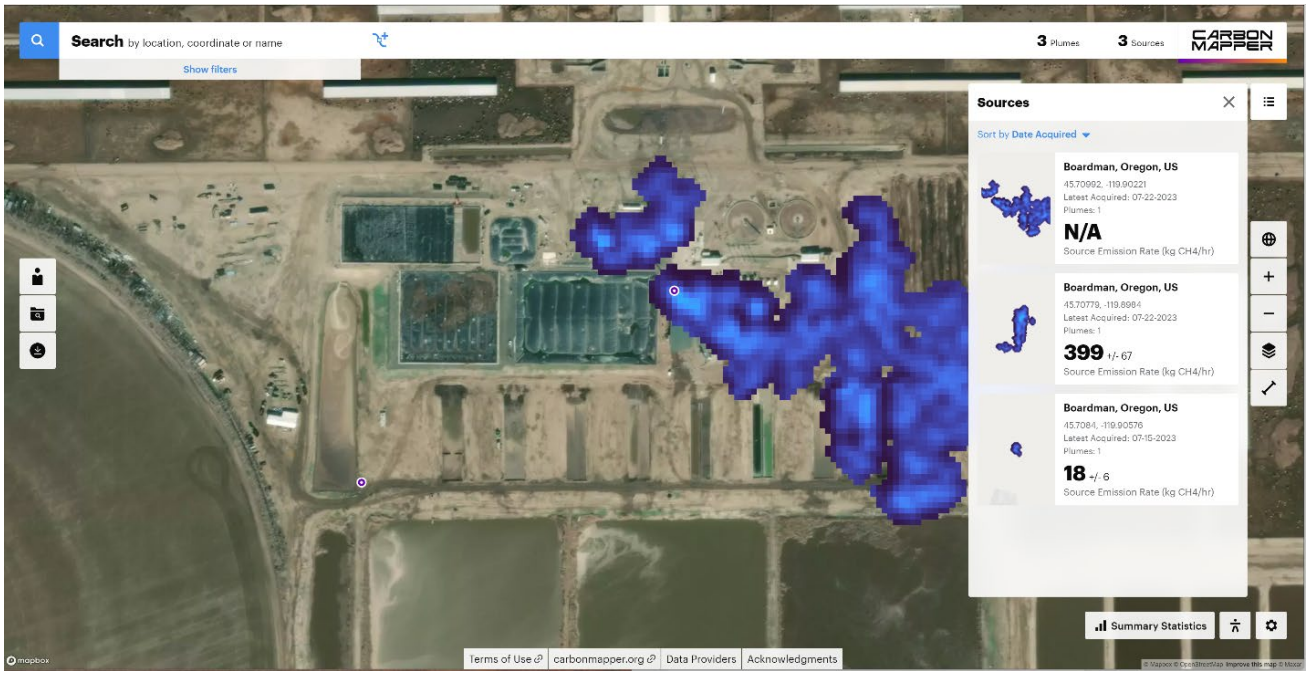
104.

One methane plume was documented over Threemile's digester itself:



105.

Even separate and apart from the staggering enteric emissions of over 60,000 cows, a facility that spews avoidably-created methane into the atmosphere could not possibly be doing what Northwest Natural Gas claims Smart Energy does: offsetting or mitigating the carbon emissions attributable to customers' natural gas usage.

106.

Northwest Natural Gas also directs its customers' Smart Energy "carbon offset" dollars to Farm Power Northwest, LLC, which operates several manure digesters in Oregon and Washington.

107.

Northwest Natural Gas claims that five dairies in Tillamook County "pipe manure from about 2,500 cows to" one of these Farm Power digesters. Another of the Smart Energy-funded

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Farm Power digesters is located on one of the ten largest dairies in the state, a facility that had 4,224 cows as of January 2023.

108.

Both Farm Power digesters have been operating for over a decade (since 2012),[55] and have received significant federal funding, undercutting Northwest Natural Gas's representation that they are "carbon offsets"—greenhouse gas emissions reductions that would not have otherwise occurred but for Smart Energy.[56]

109.

Like Threemile's digester, both Farm Power digesters have been cited for violating air contaminant discharge permits. In November 2021, DEQ fined Farm Power Misty Meadow nearly $19,000 for failing, for nearly a two-year period, to consistently operate the manure gas combustion flare.[57] DEQ found the digester had been noncompliant for 13 percent of its total operating time during the period.

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[55] USDA Rural Development, *The Sweet Scent of Economic Progress Replaces Animal Waste Odors in Tillamook, Oregon*, Farmpower (Mar. 27, 2012), https://www.farmpower.com/Archived%20external%20pages/USDA%20Rural%20Development-SuccessStory.htm (accessed Oct. 7, 2024); Kevin Maas, *Farm Power Tillamook is Up and Running*, Farm Power Northwest Facebook (Sept 22, 2012), https://www.facebook.com/groups/23928536584/posts/10151167732776585/ (accessed Oct. 7, 2024); Dan Sullivan, *Anaerobic Digestion In The Northwest*, 53 BioCycle 33 (Mar. 14, 2012), https://www.biocycle.net/anaerobic-digestion-in-the-northwest/ (accessed Oct. 7, 2024).

[56] One Farm Power digester received a $100,000 grant in 2011 from the federal Rural Energy for America Program, along with a federally guaranteed loan valued at $2.65 million. The other has received 13 grants totaling $511,382, and two guaranteed loans valued at $1.5 million. *Farm Power Misty Meadow LLC*, USAspending, https://www.usaspending.gov/recipient/2f640d01-66e3-c7f1-ac7e-41b2756fd75a-R/all (accessed Oct. 7, 2024).

[57] Letter from DEQ to Farm Power Misty Meadow LLC re: Notice of Civil Penalty Assessment and Order (Nov. 10, 2021), https://www.oregon.gov/deq/nr/111021farmPower.pdf (accessed Oct. 7, 2024).

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110.

The agency said Farm Power allowed volatile organic compounds and methane to be emitted from the digester "at uncontrolled rates," and that it produced high levels of hydrogen sulfide emissions whose "foul odors" could "be a public nuisance."[58]

111.

Only a few months later, in April 2022, DEQ fined the other Smart Energy-funded Farm Power digester over $20,000 for this same conduct—failing to consistently operate its manure gas combustion flare, this time for nearly a three-year period.[59]

112.

The agency again warned Farm Power that it had allowed uncontrolled venting of volatile organic compounds, methane, and hydrogen sulfide, for 13 percent of the digester's operating time.[60] The failure to flare the digester resulted in increased greenhouse gas emissions, not their cancelling out. Northwest Natural Gas did not disclose this failure to customers. Instead, it led them to believe that this and other Smart Energy "projects" were offsetting customers' monthly natural gas emissions in a reliable, consistent manner.

113.

Northwest Natural Gas also directs customers' Smart Energy "carbon offset" dollars to manure digesters out of state—at large dairies in California and Idaho, including the Van Warmerdam Dairy outside Sacramento, California, which houses approximately 1,500 cows.

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[58] George Plaven, *Oregon DEQ fines Tillamook digester for air quality violations*, Capital Press (May 20, 2022), https://www.capitalpress.com/ag_sectors/dairy/oregon-deq-fines-tillamook-digester-for-air-quality-violations/article_74d20f78-d85b-11ec-9ec2-6bbb5f4a3ad4.html (accessed Oct. 7, 2024).

[59] Letter from DEQ to Farm Power Misty Meadow LLC re: Notice of Civil Penalty Assessment and Order (Apr. 12, 2022), https://www.oregon.gov/deq/nr/042022FarmPowerMistyMeadow.pdf (accessed Oct. 7, 2024).

[60] Media reported that regulators "identified 13,402 periods…when the Tillamook digester's flare was not working," which "added up to an equivalent of 141 days." *See* George Plaven, *Oregon DEQ fines Tillamook digester for air quality violations.*

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114.

This digester, too, is a long-operational facility whose construction was enabled by federal grants over a decade ago.[61] And like Threemile, Van Warmerdam Dairy has long reaped gains from California's cap-and-trade and LCFS programs, generating credits for over a decade.[62]

115.

Despite Northwest Natural Gas representing to Smart Energy customers that they are funding the Van Warmerdam Dairy methane capture "project," the Sacramento Municipal Utility District (SMUD) made the same representation about the very same digester, in its 2019 application for LCFS credits.[63] Thus even if the digester could be said to reduce emissions, another entity entirely made those reductions possible—not Smart Energy.

116.

Yet another out-of-state mega-dairy digester into which Northwest Natural Gas plows Smart Energy dollars is Bettencourt B6 Dairy in Idaho, which confines approximately 7,200

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[61] The Sacramento Municipal Utility District (SMUD) received $5.5 million in grants from the federal Department of Energy and the California Energy Commission to help "bankroll" construction of the Van Warmerdam and New Hope (2G Energy) digesters. *New Hope Farm*, 2G Energy, https://www.2g-energy.com/projects/new-hope-farm (accessed Oct. 7, 2024).

[62] *Maas Energy Works Van Warmerdam Dairy Digester, Car998*, The Reserve, https://thereserve2.apx.com/mymodule/reg/TabDocuments.asp?r=111&ad=Prpt&act=update&type=PRO&aProj=pub&tablename=doc&id1=998 (accessed Oct. 7, 2024); Cal. Air Res. Bd., *Staff Summary: SMUD Van Warmerdam Dairy Farm Application No. B0037* (Dec. 31, 2019), https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0037_summary.pdf (accessed Oct. 7, 2024).

[63] Indeed, SMUD claimed that its digester "project" at Van Warmerdam Dairy "adds a cover to the conventional lagoon allowing the methane to be captured rather than released to the atmosphere." In reality, the digester had been in existence "capturing" methane, generating offset credits, and receiving Smart Energy funds, for years already. *See* Letter from SMUD to Cal. Air Res. Bd. in response to comments on LCFS app (Dec. 26, 2019), https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0037_smud.pdf (accessed Oct. 7, 2024).

SUGERMAN DAHAB
101 SW Main Street, Suite. 910 - Portland, Oregon 97204
Phone 503.228.6474 | Fax 503.228.2556

cows.[64] This digester was built in 2009 and operated by the Environmental Finance group of Cargill,[65] the biggest private company in the U.S.[66] and largest agribusiness in the world by revenue.[67] Cargill viewed the digester as an opportunity to participate in the burgeoning "environmental attribute" commodity market.[68]

H. Northwest Natural Gas's Other Deceptive Uses of Smart Energy Program Funds

117.

Customers would not expect that, in addition to supporting long-existing manure digesters, Northwest Natural Gas uses funds it promises customers are zeroing out their monthly natural gas emissions to (misleadingly) market Smart Energy. Moreover, customers would not expect that a program marketed as funding precise monthly greenhouse gas reductions for customers would hold customers' Smart Energy money in a Northwest Natural Gas bank account for up to two years. And customers would not expect that what Northwest Natural Gas represents to them as new greenhouse gas emissions reductions, personalized and specific to the customer's natural gas use, might also be claimed by the Company itself, to meet Northwest Natural Gas's own emissions reductions obligations under Oregon law. Yet Northwest Natural Gas is doing all those things.

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[64] *Bettencourt Dairy #6 Wendell Idaho*, Digested Organics, https://digestedorganics.com/bettencourt-dairy6-wendell-idaho/ (accessed Oct. 7, 2024).

[65] Milk Editors, *Cargill Launches Second Idaho Power-Producing Digester*, Dairy Herd Management (Mar. 26, 2010), https://www.dairyherd.com/news/cargill-launches-second-idaho-power-producing-digester (accessed Oct. 7, 2024).

[66] Cargill had revenues of $177 billion in 2023.

[67] *Empty promises: Cargill, soy, banks and the destruction of Bolivia's Chiquitano forest*, Global Witness (Sept. 6, 2023), https://www.globalwitness.org/en/campaigns/forests/empty-promises-cargill-soy/ (accessed Oct. 7, 2024).

[68] As a Cargill representative explained at the time, the company invested in the digester after seeing that "[e]nvironmental attributes were a new commodity that entered the market," which could be an area of investment "from a trading standpoint." *See* Diane Greer, *Digester Developers In The Agricultural Sector*, 52 BioCycle 36 (July 18, 2011), https://www.biocycle.net/digester-developers-in-the-agricultural-sector/ (accessed Oct. 7, 2024).

SUGERMAN DAHAB
101 SW Main Street, Suite. 910 - Portland, Oregon 97204
Phone 503.228.6474 | Fax 503.228.2556

118.

Northwest Natural Gas spends almost a quarter of customers' Smart Energy "carbon offset" payment (22 percent) not to purchase carbon offsets, but on the Company's own marketing and program administration for Smart Energy. Once collected, customers' "carbon offset" payments can sit in a Northwest Natural Gas bank account doing nothing but collecting interest for up to two years—in no way combatting the climate crisis.

119.

Finally, it is unclear that Northwest Natural Gas is not also piggy-backing on Smart Energy customers' supposed greenhouse gas reductions to attempt to meet the Company's own regulatory obligations under the Oregon Climate Protection Program—or that it does not intend to do so in the future.

120.

In a response to a Frequently Asked Question on its website, until recently Northwest Natural Gas said, "Only participating customers will benefit from carbon offsets purchased by Smart Energy. These carbon offsets will not count against any emissions Northwest Natural Gas is responsible for as a natural gas utility."[69]

121.

Now, the Company says that it "currently" isn't using "Smart Energy carbon offsets or renewable thermal certificates for compliance requirements in Oregon or Washington."[70] But last year Northwest Natural Gas told regulators it wanted to do exactly that, writing that "[a]dding RNG sources that are eligible for [Climate Protection Program] compliance to the Smart Energy program is an obvious choice for Northwest Natural Gas and our customers."

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[69] Internet Archive, *Smart Energy Frequently Asked Questions.*, NW Natural (captured Aug. 13, 2022), https://web.archive.org/web/20220813210940/https://www.nwnatural.com/about-us/smart-energy-program/smart-energy-faqs

[70] *Smart Energy Frequently Asked Questions.*, NW Natural, https://www.nwnatural.com/about-us/smart-energy-program/smart-energy-faqs (accessed Oct. 7, 2024).

SUGERMAN DAHAB
101 SW Main Street, Suite. 910 - Portland, Oregon 97204
Phone 503.228.6474 | Fax 503.228.2556

I. Northwest Natural Gas Misled Plaintiffs About Smart Energy and Fails to Deliver the Carbon Offsets it Promises

122.

Northwest Natural Gas is misleading consumers and not delivering what it promises. Its Smart Energy program does not deliver "offsets" that "mitigate" the carbon emissions from customers' fossil natural gas, and its "offsets" are not equivalent to taking hundreds of thousands of gasoline-powered cars off the road every year, as the Company claims in ubiquitous marketing to prospective customers. The Company reinforces the perception that Smart Energy customers are verifiably cancelling out all (or a specified portion) of their natural gas emissions by showing customers the specific number of pounds of CO_2 they are supposedly offsetting each month. But Northwest Natural Gas directs Smart Energy customers' money to manure digesters on climate-harming mega dairies that, for all the reasons explained above, cannot in any way be considered a bona fide "carbon offset" – an offset that meets the criteria of additionality, uniqueness, measurability, verifiability, and permanency. The ultimate irony of a natural gas company marketing dairy manure digesters as "carbon offsets" is that what the offsets incentivize the production of is, of course, methane—the climate super-pollutant whose continued production and distribution props up the natural gas infrastructure Oregonians and their lawmakers are seeking to disinvest from as they pursue a clean energy future.

123.

Northwest Natural Gas misled Plaintiff Blumm. Mr. Blumm enrolled in Smart Energy to mitigate his household's carbon footprint. Before enrolling, Mr. Blumm visited Northwest Natural Gas's website and saw the Company's representation that Smart Energy "offsets" or "mitigates" customers' fossil natural gas emissions. Mr. Blumm initiated the Smart Energy enrollment process through the website. There, he was presented with two subscription options: "Average Home" or "Climate Neutral." Northwest Natural Gas represented to Mr. Blumm that by selecting the "Climate Neutral" option, he would pay a variable amount each month

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101 SW Main Street, Suite. 910 - Portland, Oregon 97204
Phone 503.228.6474 | Fax 503.228.2556

($0.15246 per therm) to offset all (100 percent) of the carbon emissions associated with his fossil natural gas use.

124.

Nearly three years later, in May 2024, Mr. Blumm visited his online account dashboard on Northwest Natural Gas's website. There, Northwest Natural Gas congratulated Mr. Blumm, urging him to "keep up the good work" and continue "making a difference" for the climate by staying enrolled in Smart Energy. Northwest Natural Gas again reiterated that by participating in the program, Mr. Blumm was addressing 100 percent of the carbon emissions from his natural gas use, and "supporting projects that reduce, or prevent the release of, greenhouse gases." Mr. Blumm, like all Smart Energy customers, understood that he was purchasing, in Smart Energy, a product that aligned with his values. Had he known the truth, he would have never enrolled.

125.

Like Mr. Blumm, Plaintiff Gates enrolled in Smart Energy to mitigate her household's carbon footprint through Northwest Natural Gas's "Climate Neutral" option. Northwest Natural Gas represented and promised Ms. Gates that it intended to zero out the carbon emissions associated with her natural gas use.

J. CLASS ACTION ALLEGATIONS

126.

Plaintiffs bring this action as a class action pursuant to ORCP 32 for the time period beginning six years from before the date of filing of this action to the date on which a class is certified ("Class Period").

127.

Plaintiffs seek to represent an Oregon class consisting of: All residential Northwest Natural Gas customers who were enrolled in Smart Energy during the Class Period. Excluded from the Class are Defendants' officers and directors and the immediate families of Defendants' officers and directors. Also excluded from the Class is Defendants and its subsidiaries, parents,

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affiliates, joint venturers, any entity in which Defendants have or have had a controlling interest, class counsel and their immediate families, any judge who rules on any matter connected to this case, and any juror who sits on this case at trial.

128.

The class is so numerous that joinder is impracticable. ORCP 32A(l).

129.

This action involves one or more common questions of law and fact because each Class Member's claims derive from the same deceptive practices and the same breach of contract. ORCP 32A(2). The common questions of law and fact involved predominate over questions that affect only Plaintiffs or individual Class Members. ORCP 32B(3). Common questions of law or fact include:

- Whether Northwest Natural Gas causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of the Unlawful Trade Practices Act, ORS 646.608(1)(b);
- Whether Northwest Natural Gas misrepresents the qualities and characteristics of the Smart Energy program marketed to Plaintiffs, and those similarly situated, in violation of the Unlawful Trade Practices, ORS 646.608(1)(e);
- Whether Northwest Natural Gas omits information to consumers regarding the qualities and characteristics of the Smart Energy program marketed to Plaintiffs, and those similarly situated, in violation of the Unlawful Trade Practices, ORS 646.608(1)(e);
- Whether Northwest Natural Gas represents that goods or services are original or new if the goods or services are reclaimed, used, or secondhand, in violation of the Unlawful Trade Practices Act, ORS 646.608(1)(f);
- Whether one or more of Northwest Natural Gas's violations caused ascertainable losses to Plaintiffs and the class;

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- Whether Plaintiffs and members of the class are entitled to recover punitive damages;
- Whether Northwest Natural Gas delivered carbon offsets as it promised in its agreement with Smart Energy customers;
- Whether Northwest Natural Gas mitigated customers' natural gas emissions as it promised in its agreement with Smart Energy customers;
- Whether Smart Energy customers have incurred damages as a result of Northwest Natural Gas's breach of its agreement with them; and
- Whether, and to what extent, injunctive relief should be imposed on Northwest Natural Gas to prevent such conduct in the future.

130.

Plaintiffs' claims are typical of the Class. ORCP 32A(3). Plaintiffs' claims are identical to the claims asserted by the Class. All Class Members enrolled in Smart Energy, which Northwest Natural Gas marketed deceptively. All Class Members paid for Smart Energy to "offset" some or all of their natural gas emissions but did not receive the benefit of that bargain.

131.

Plaintiffs will fairly and adequately protect the interests of all Class Members. ORCP 32A(4). The class shares a common interest in monetary and injunctive relief for Northwest Natural Gas's violations. Plaintiffs also have no interests that conflict with or are antagonistic to the interests of Class Members. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and that of the Class.

132.

Plaintiffs gave notice as required by ORCP 32A(5) and 32H.

133.

A class action is superior. ORCP 32B. There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual actions by members of the Class will tend to establish inconsistent standards of conduct for Northwest Natural Gas

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and result in the impairment of Class Members' rights and disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the injury suffered by each individual member of the Class may be relatively small, the expenses and the burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action.

134.

The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to ORCP 32 are met as Northwest Natural Gas has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

FIRST CLAIM FOR RELIEF

VIOLATION OF UNLAWFUL TRADE PRACTICES ACT

Count 1 - Willful Violation

135.

Northwest Natural Gas willfully violated the Unlawful Trade Practices Act, ORS 646.605 *et seq.* in one or more of the following ways that caused ascertainable losses to Plaintiff Blumm and the Class:

A. In causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of the Unlawful Trade Practices Act, ORS 646.608(1)(b);

B. In misrepresenting the qualities and characteristics of the Smart Energy program marketed, in violation of the Unlawful Trade Practices, ORS 646.608(1)(e);

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C. In omitting information to consumers regarding the qualities and characteristics of the Smart Energy program marketed to Plaintiffs, and those similarly situated, in violation of the Unlawful Trade Practices, ORS 646.608(1)(e); and

D. In representing that the carbon offsets were new offsets and not old, used, or secondhand, in violation of the Unlawful Trade Practices Act, ORS 646.608(1)(f).

136.

Plaintiff Blumm and members of the class suffered ascertainable losses in one or more of the following ways:

A. They did not get the benefit of the bargain; and/or

B. They would not have enrolled in and paid for the Smart Energy program had they known the truth about the program.

137.

Plaintiff Blumm and the class seek equitable relief, an injunction, and attorneys' fees. ORS 656.638; ORS 646.636. At the conclusion of the time set forth in ORCP 32, Plaintiffs will amend to seek actual damages.

Count 2 – Reckless or Knowing Violation

138.

Plaintiffs incorporate and re-allege ¶¶1-136.

139.

Northwest Natural Gas knowingly or recklessly violated ORS 646.608 in one or more of the ways described, and as a result Plaintiff Blumm and the class suffered the previously described ascertainable losses.

140.

Plaintiff Blumm and the class seek equitable relief, an injunction, and attorneys' fees. ORS 656.638; ORS 646.636. At the conclusion of the time set forth in ORCP 32, Plaintiffs will amend to seek statutory damages.

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101 SW Main Street, Suite. 910 - Portland, Oregon 97204
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SECOND CLAIM FOR RELIEF

BREACH OF CONTRACT

Following the Restatement (Second) Contracts, Oregon law recognizes that, once an offer has been accepted in accordance with its terms, the terms of the offer become those of the contract. *See* Restatement (Second) Contracts § 24 comment a (1979) (an offer is "revocable until accepted"); *id.* § 42 comment c.

141.

A breach of contract is the nonperformance of a duty due under a contract. *Id.* § 235(2).

142.

Throughout the class period, for a flat rate of between $5 and $8 per month for the "Average Home," Northwest Natural Gas offered, and continues to offer, to "mitigate the carbon emissions" from a customer's natural gas use "through a mix of carbon offsets and renewable natural gas."

143.

In this same period, Northwest Natural Gas offered, and continues to offer, customers a "Climate Neutral" option, for a variable fee of $0.15246 per therm, for which it says it will "offset 100 percent of the carbon emissions from your home's natural gas use."

144.

Plaintiff Blumm accepted Northwest Natural Gas's offer: he enrolled in Smart Energy on October 1, 2021, choosing the "Climate Neutral" option.

145.

Plaintiff Gates likewise accepted Northwest Natural Gas's offer when enrolling in Smart Energy, choosing the "Climate Neutral" option.

146.

Members of the Class likewise accepted Northwest Natural Gas's offer when they enrolled in Smart Energy.

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101 SW Main Street, Suite. 910 - Portland, Oregon 97204
Phone 503.228.6474 | Fax 503.228.2556

147.

Plaintiffs and members of the Class, on the one hand, and Northwest Natural Gas, on the other, are parties to a contract under which Plaintiffs and members of the Class agreed to pay the Company a fee in exchange for Northwest Natural Gas offsetting specific quantities of greenhouse gas emissions attributable to Plaintiffs' and class members' natural gas use.

148.

Northwest Natural Gas breached that contract. Although Plaintiffs and class members paid for carbon offsets guaranteed to mitigate specific quantities of carbon emissions from their natural gas use, Northwest Natural Gas failed to deliver such offsets, as described above.

149.

As a result of Northwest Natural Gas's breach, Plaintiffs and the class were denied the benefit of the bargain. At the conclusion of the time set forth in ORCP 32, Plaintiffs will amend to seek damages.

PRAYER FOR RELIEF

Plaintiffs pray for relief as follows:

1) An order allowing this case to proceed as a class action;

2) Judgment in their favor;

3) On Plaintiffs' First Claim for Relief Count 1: injunctive relief, equitable relief, actual damages in amounts to be proved at trial, prejudgment interest, and attorney fees and costs and disbursements;

4) On Plaintiffs' First Claim for Relief Count 2: injunctive relief, equitable relief, statutory damages in amounts to be proved at trial, prejudgment interest, and attorney fees and costs and disbursements;

5) On Plaintiffs' Second Claim for Relief: actual damages, prejudgment interest, and costs and disbursements.

SUGERMAN DAHAB
101 SW Main Street, Suite. 910 - Portland, Oregon 97204
Phone 503.228.6474 | Fax 503.228.2556

JURY DEMAND

Plaintiffs, by counsel, demand a trial by jury.

DATED this 9th day of October, 2024.

By: /s/ David F. Sugerman

David F. Sugerman, OSB No. 862984
Nadia H. Dahab, OSB No. 125630
SUGERMAN DAHAB
101 SW Main Street, Ste. 910
Portland, OR 97205
Tel: (503) 228-6474
nadia@sugermandahab.com
david@sugermandahab.com

Kelsey R. Eberly, VT No. 6126*
Skye M. Walker, OSB No. 230953
FarmSTAND
712 H Street, NE, Suite 2534
Washington, DC 20002
Tel: (202) 630-3095
kelsey@farmstand.org
skye@farmstand.org

**Pro hac vice application forthcoming*

Counsel for Plaintiffs and the Proposed Class