

McDowell Rackner & Gibson PC



WENDY MCINDOO
Direct (503) 595-3922
wendy@mcd-law.com

October 9, 2012

VIA ELECTRONIC FILING AND FIRST CLASS MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket UG 221 – Northwest Natural Gas Company Application for a General Rate
Revision

Attention Filing Center:

Enclosed for filing in the above-captioned docket are an original and five copies of NW Natural's Response to Staff's and CUB/NWIGU's Supplemental Briefs.

A copy of this filing has been served on all parties to this proceeding as indicated on the enclosed Certificate of Service.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo
Office Manager

Enclosure

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UG 221

In the Matter of
NORTHWEST NATURAL GAS COMPANY
Application for a General Rate Revision.

NW NATURAL'S
RESPONSE TO STAFF'S AND
CUB/NWIGU'S SUPPLEMENTAL
BRIEFS

In accordance with Administrative Law Judge Hardie's Prehearing Conference Memorandum of September 20, 2012, NW Natural offers the following brief response to the Northwest Industrial Gas Users' and Citizens' Utility Board of Oregon's Joint Supplemental Post-Hearing Brief, and the Staff Supplemental Brief.

I. RESPONSE TO NWIGU AND CUB'S JOINT SUPPLEMENTAL BRIEF

A. NW Natural's Proposals Related to Pension Cost Recovery are Supported by the Record and Sound Regulatory Principles.

In their Supplemental Brief, CUB/NWIGU argue that the Company's responses to the Second Bench Request (1) reinforce that NW Natural's proposals are attempts to recover "out-of-period pension expenses;" (2) overstate the impact of NW Natural's pension contributions on its FAS 87 expense; and (3) improperly seek to expand the basis for recovery that NW Natural originally sought in this proceeding.¹

NW Natural refutes each of these arguments below. However, in order to avoid repetition of what NW Natural's proposal *is*, and to allow for efficient review by the Commission of CUB/NWIGU's latest arguments, NW Natural first briefly recaps its proposal in this case related to pension cost recovery, and the evidence that supports those proposals.

¹ NWIGU-CUB Joint Supplemental Posthearing Brief at 1.

1 **1. NW Natural’s Proposal:**

2 In its case, NW Natural is proposing to add amounts to rate base that reflect the
3 contributions that NW Natural has made to its pension fund in excess of FAS 87 expenses
4 since the last rate case, which is also referred to as the contribution to prepaid assets over
5 that time.² In this way, NW Natural is seeking to recover a return on its prepaid pension
6 contributions.³ NW Natural also proposes to amortize the prepaid pension asset, so that it can
7 realize a recovery “of” this investment.⁴

8 **2. Evidence Supporting NW Natural’s Proposal:**

9 In this proceeding, NW Natural has offered evidence showing: (1) what the
10 Company’s pension contributions have been; (2) what FAS 87 expense has been; and (3) that
11 the difference constitutes a prepaid asset, which many other jurisdictions have found to be
12 appropriately added to rate base, and which NW Natural believes the Commission should
13 allow into rate base in this case.⁵ Furthermore, in its response to the Second Bench Request,
14 NW Natural offered evidence that illustrates how these contributions have served to *reduce*
15 FAS 87 expenses, reducing the cost to customers of NW Natural’s closed pension plans.⁶

16 **B. CUB/NWIGU’s Supplemental Brief Proffers Incorrect Conclusions and Analyses,**
17 **Mischaracterizes NW Natural’s Request in this Proceeding, and Does Not**
18 **Support a Denial of NW Natural’s Requests in this Case.**

19 **1. NW Natural’s Response Does Not Overstate the Impact to Test Year FAS**
20 **87 Expense.**

21 CUB/NWIGU contend that NW Natural’s response to the bench request over-estimates
22 the effect on Test Period FAS 87 expense of the contributions it has made to its pension
23 funds. CUB/NWIGU’s position is based on its perception that NW Natural used an

24 ² NW Natural’s Posthearing Brief at 29.

25 ³ NWN/400, Feltz/27, lines 14-16.

26 ⁴ NWN/400, Feltz/27, line 18-Feltz/28, line 3.

⁵ NWN/2000, Feltz/ 17, lines 2-11; NWN/2000, Feltz/21, lines 3-12; NW Natural’s Reply Brief at 28.

⁶ NW Natural’s Response to Second Bench Request at 3.

1 inappropriate rate to calculate the return on its pension fund assets. Their argument,
2 however, does not make any sense.

3 In making its calculation, NW Natural used the *actual* returns that were realized on its
4 pension fund investments.⁷ CUB/NWIGU state that NW Natural should not have used the
5 actual return on assets, because “using actual returns ignores the fact that more recent
6 investments would be receiving a lower rate of return, which in turn would lower the
7 Company’s pension contributions and cause a corresponding increase in FAS 87 expense
8 from the Company’s current estimates.”⁸ There are two serious defects in this statement.
9 First, CUB/NWIGU are, in essence, arguing that using actual returns does not take into
10 account what recent returns would be. By definition, though, the actual returns take into
11 account the “lower rate of return” that CUB/NWIGU postulate exists for recent investments.
12 Second, the statement reveals that CUB/NWIGU do not understand the impact of
13 contributions on FAS 87 and actually has the relationship exactly backwards. CUB/NWIGU
14 incorrectly state that a lower rate of return reduces contributions, when in fact it serves to
15 increase the Company’s liability and therefore the requirement to make increased pension
16 contributions in accordance with Pension Protection Act rules.⁹ CUB/NWIGU’s arguments on
17 this point should be disregarded, as they only serve to confuse the issues through erroneous
18 assertions.

19 Similarly, CUB/NWIGU state that the Company should have calculated the impact on
20 FAS 87 by using the “lowest rate of return on investment” that existed during 2008-2011,
21 because they assert that “the incremental pension contribution investments were made during
22 the recession and would have received a much lower rate of return than the embedded assets
23

24 ⁷ See Pension Contributions Impact on FAS 87.xls (attachment to NW Natural's Responses to Second
25 Bench Request).

26 ⁸ NWIGU-CUB Joint Supplemental Posthearing Brief at 2.

⁹ NWN/400, Feltz/23, lines 18-21

1 from previous years.”¹⁰ Again, this point overlooks that NW Natural used the *actual* returns,
2 so any lower rate of return caused by the recession was already taken into account.. At best,
3 CUB/NWIGU’s assertion appears to be based on an erroneous assumption that contributions
4 to the pension fund earn a fixed, vintaged rate that remains with those specific dollars over
5 time. This is not the case. The pension fund earns a return each year based on the total
6 amount invested in it, and the return earned on those assets in those years.¹¹

7 **2. NW Natural Has Not Changed the Scope of its Requested Recovery.**

8 CUB/NWIGU argue that because the Company’s response describes the impacts from
9 contributions made in 2004 and 2005, that NW Natural is making a “last minute attempt to
10 expand the basis for its request.”¹² This is simply untrue.

11 As explained above, NW Natural is seeking (and has been ever since its initial
12 application) an addition to rate base equal to the contributions it has made since its last rate
13 case, minus the FAS 87 expenses since that time—in other words, its prepaid pension asset.
14 The 2004 and 2005 contributions contributed to that amount, and NW Natural has contended
15 all along that, as is done in many jurisdictions, this amount is appropriately added to rate
16 base.

17 The passage of the Pension Protection Act is relevant because it accelerated
18 contributions, and causes a corresponding decrease in FAS 87 expense, to an extent that
19 would preclude NW Natural from ever recovering its pension contributions over time through
20 FAS 87.¹³ This effect applies to NW Natural’s entire prepaid asset (which includes the prepaid
21 asset associated with the 2004 and 2005 contributions), not just the portion related to
22 contributions made since its passage.

23

24 ¹⁰ NWIGU-CUB Joint Supplemental Posthearing Brief at 2.

25 ¹¹ NWN/400, Feltz/22, lines 3-15.

26 ¹² NWIGU-CUB Joint Supplemental Posthearing Brief at 3.

¹³ NWN/2000, Feltz/19, line 20-Feltz/21, line 12.

1 CUB/NWIGU also offer a confused argument about their suspicion that the 2004 and
2 2005 contributions were already “used to meet pension fund obligations”¹⁴ and therefore
3 should not be considered. NW Natural does not know exactly what to make of this argument.
4 As explained above, NW Natural seeks to add to rate base the contributions it has made since
5 its last rate case, minus FAS 87 pension expense since that time. In that regard, the
6 Company is not seeking to recover pension expense it has already incurred. To the extent
7 CUB/NWIGU are trying to hint at a double-recovery, their argument should be disregarded.

8 **3. NW Natural’s Balancing Account Stipulation Does Not Dispose of the**
9 **Issues in this Case.**

10 CUB/NWIGU also argue, for this first time in this entire proceeding, and in the last
11 paragraph of their Supplemental Brief, that NW Natural is somehow precluded from seeking
12 the recovery it seeks because of the stipulation in UM 1475.¹⁵ In support of that argument,
13 they offer a provision that states that NW Natural is free to argue in this rate case that the
14 Commission should give consideration to the effect of its pension contributions in setting the
15 Company’s capital structure.¹⁶

16 Nothing in the stipulation states that this is the only approach to addressing past
17 pension contributions that would be available to NW Natural or the Commission.¹⁷ And, NW
18 Natural’s proposal in this case is likely more in line with standard regulatory practices and
19 precedent throughout the country than would be an argument that its capital structure should
20 be adjusted to recognize its past pension contributions. CUB/NWIGU’s late argument that
21 NW Natural is precluded from recovery because of the stipulation implementing its FAS 87
22 balancing account should be rejected.

23 _____
24 ¹⁴ NWIGU-CUB Joint Supplemental Posthearing Brief at 4.

25 ¹⁵ *Id.* at 5.

26 ¹⁶ *Id.*

¹⁷ *Re NW Natural’s Application to Defer Pension Costs*, Docket UM 1475, Order No. 11-051, Appendix
A (Feb. 10, 2011).

1 **II. RESPONSE TO STAFF’S SUPPLEMENTAL BRIEF**

2 In its Supplemental Brief, Staff states that it is “interested in pursuing whether or not
3 FASB-87 pension costs is the appropriate pension expense for NW Natural going forward.”¹⁸
4 Staff recognizes that NW Natural’s past contributions “have lowered the FASB-87 calculated
5 expense in the test year,”¹⁹ and that “NW Natural currently does not receive a return on its
6 past pension contributions.”²⁰

7 NW Natural interprets these statements as an expression of openness by Staff to
8 considering changes to NW Natural’s recovery of pension costs. While NW Natural is
9 encouraged by these expressions, the Company finds Staff’s proposed process for
10 implementing a solution problematic. Staff argues that the Commission should reject NW
11 Natural’s proposal—not because it is unworkable or inappropriate—but because it would be
12 “unfair [to make changes] . . . in this docket without a fully developed record on this aspect of
13 the pension expenses and without a process to allow the other parties to fully vet and respond
14 to alternative proposals.”²¹ Staff also argues that “a change in pension policy may also have
15 far-reaching impacts for other utilities.”²² For these reasons, Staff argues that “such
16 alternatives should be carefully weighed and vetted in a future proceeding and not in this
17 case.”²³

18 First, NW Natural takes issue with Staff’s characterizations of this docket as not
19 creating a “fully developed record” on the treatment of pension expenses. NW Natural’s
20 proposed treatment has been demonstrated to be based on factual evidence and precedent.
21 All parties have had the opportunity to offer its own evidence and argumentation concerning
22 these proposals, and in fact Staff, CUB and NWIGU have all offered extensive evidence and

23

¹⁸ Staff Supplemental Brief at 1.

24 ¹⁹ *Id.*

25 ²⁰ *Id.* at 2.

26 ²¹ *Id.*

²² *Id.*

²³ *Id.*

1 argumentation. Staff's proposal to now, at this late date, kick this issue into another
2 proceeding would serve only to delay NW Natural's appropriate recovery of the carrying costs
3 associated with its prepaid pension obligations, and would be unjustified.

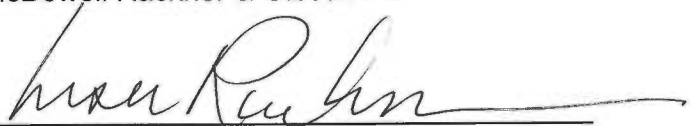
4 Second, NW Natural's recovery proposal is based on its specific situation, which
5 includes a significant prepaid pension asset, along with a balancing account that precludes
6 the Company from ever recovering that amount. Thus, the Company sees no reason why the
7 Commission should require input from other utilities before it addresses the problem.

8 And third, NW Natural is currently financing its significant prepaid asset with no
9 corresponding compensation. Thus, each month that goes by under the current framework is
10 another month that NW Natural is denied a reasonable opportunity to earn a return on
11 investments made on behalf of its customers. For this reason, if the Commission does decide
12 to consider the issue in a future proceeding, it should, in the interim, allow the Company to
13 recover its capital costs associated with the prepaid asset.

14
15
16
17
18
19
20
21
22
23
24
25
26

DATED: October 9, 2012

McDowell Rackner & Gibson PC



Lisa F. Rackner
Amie Jamieson
Of Attorneys for NW Natural

NORTHWEST NATURAL GAS COMPANY
Mark Thompson
Manager, Rates and Regulatory
220 NW Second Ave
Portland, OR 97209

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UG 221 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

OPUC Dockets
Citizens' Utility Board Of Oregon
dockets@oregoncub.org

G. Catriona Mccracken
Citizens' Utility Board Of Oregon
catriona@oregoncub.org

Judy Johnson
Public Utility Commission of Oregon
judy.johnson@state.or.us

Douglas C. Tingey
Portland General Electric
doug.tingey@pgn.com

Tommy A. Brooks
Cable Huston Benedict Haagensen & Lloyd
tbrooks@cablehuston.com

Teresa Hagins
Northwest Pipeline GP
teresa.l.hagins@williams.com

Jess Kincaid
Community Action Partnership Of Oregon
jess@caporegon.org

Robert Jenks
Citizens' Utility Board Of Oregon
bob@oregoncub.org

Jason W. Jones
PUC Staff
Department Of Justice
jason.w.jones@state.or.us

Wendy Gerlitz
NW Energy Coalition
wendy@nwenergy.org

Randy Dahlgren
Portland General Electric
pge.opuc.filings@pgn.com

Chad M. Stokes
Cable Huston Benedict Haagensen & Lloyd Llp
cstokes@cablehuston.com

Stewart Merrick
Northwest Pipeline GP
stewart.merrick@williams.com

Paula E. Pyron
Northwest Industrial Gas Users
ppyron@nwigu.org

Dated: October 9, 2012



Wendy McIndoo,
Office Manager