

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 23

In the Matter of

NORTHWEST NATURAL GAS COMPANY,
d/b/a NW NATURAL

Petition for a Declaratory Ruling Regarding
Whether Joint Bypass By Two Or More
Industrial Customers Violates ORS 758.400 Et
Seq.

**WITHDRAWAL OF PETITION –
MOTION TO DISMISS**

Petitioner Northwest Natural Gas Company (“NW Natural”) withdraws its amended petition for declaratory ruling in the above matter and moves the Board for an order dismissing the above declaratory ruling proceeding. NW Natural and TDY Industries, Inc., dba Wah Chang, have reached a settlement of issues between them relating to the application of the Territorial Allocation Law, ORS 758.400 to 758.475. The decision of the Court of Appeals in this proceeding, *Northwest Natural Gas Co. v. PUC*, 195 Or App 547, 99 P3d 292 (2004) provides guidance on the operation of the Territorial Allocation Law and partially obviates the need for any further ruling by the Commission.

NW Natural filed a petition for declaratory ruling on March 19, 1999. The petition was allowed by the Commission on April 20, 1999. An amended petition was filed on July 2, 1999. The amended petition sought rulings from the Commission on whether the facts stated in paragraph 7 set out a violation of ORS 758.450(2), and whether allegations about two described “condominium bypass distribution systems” (Willamette Industries/Ormet-Wah Chang (the “Santiam Pipeline System”) and Ormet/Oregon Freeze Dry) stated a violation of that statute. The Commission decided the applicability of ORS 758.450(2) to

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the assumed facts in paragraph 7. Orders Nos. 00-306 and 01-719. Following circuit court review, these orders were reversed by the Oregon Court of Appeals in *Northwest Natural Gas Co. v. PUC, supra*. The petition is pending before the Commission on remand.

Following remand, NW Natural began discussions with Wah Chang and Weyerhaeuser on settling issues with respect to past and future operations of the Santiam Pipeline System as it is currently configured. An agreement was reached between NW Natural and Wah Chang. Under the terms of the agreement, NW Natural pledged to withdraw its amended petition for a declaratory ruling and seek dismissal of the proceedings in DR 23.

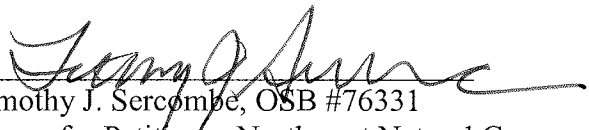
The Commission and NW Natural would not benefit from continued litigation. The purpose of the declaratory ruling proceedings was to determine if jointly owned pipelines could be used to provide natural gas to two or more industrial consumers, whether this constituted “utility service” under ORS 758.410. The Court of Appeals determined that an arrangement among joint owners of a bypass pipeline creates an “association” under the Territorial Allocation Law, and an entity separate from the individual users who use the bypass pipeline. In the view of NW Natural, the Court also found that “utility service” means the “physical act of distribution to . . . more than one consumer of natural gas” and that its provision does not require “service to the general public.”

These determinations satisfy the need for declaratory relief. In light of the Court of Appeals decision, it is not likely that any condominium bypass distribution system will be created and its potential creation could not be used to justify the provision of lower rates in a special contract.

Because the previous orders of the Commission were reversed, because further orders will not be cost beneficial to the Commission or NW Natural, and in light of the withdrawal of the amended petition and the settlement between the parties, NW Natural respectfully seeks an order from the Commission terminating the proceedings in DR 23.

DATED this 19th day of January, 2006.

PRESTON GATES & ELLIS LLP

By 
Timothy J. Sercombe, OSB #76331
Attorneys for Petitioner Northwest Natural Gas

CERTIFICATE OF SERVICE

I certify that on January 19, 2006, I served the foregoing **WITHDRAWAL OF PETITION – MOTION TO DISMISS** on the parties listed below, by mailing, postage prepaid, a true, complete and correct copy by U.S. mail and electronic mail.

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