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May 2, 2014

VIA ELECTRONIC FILING AND FIRST CLASS MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97302-1088

Re: Docket UM 1654 – In the Matter of Northwest Natural Gas Company - Investigation of Interstate Storage and Optimization Sharing

Attention Filing Center:

Enclosed for filing in the above-referenced docket is an original and one copy of Northwest Natural Gas Company's Response to CUB's Amended Motion to Compel.

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,

A handwritten signature in blue ink, appearing to read "Vimla Mathi".

Vimla Mathi
Administrative Assistant

Enclosure

cc: Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1654**

4
5 In the Matter of

6 PUBLIC UTILITY COMMISSION OF
7 OREGON,

8 Investigation into Interstate Storage and
9 Optimization Sharing.

**NORTHWEST NATURAL GAS
COMPANY'S
RESPONSE TO CUB'S AMENDED
MOTION TO COMPEL**

10 **Introduction**

11 After the hearing conducted in this docket on February 3, 2014, the Citizens'
12 Utility Board of Oregon ("CUB") served on Northwest Natural Gas Company ("NW
13 Natural" or "Company") 80 data requests—many of them multi-part. NW Natural
14 objected to this additional discovery, based on its belief that the Public Utility
15 Commission of Oregon ("Commission") had intended that CUB be allowed to inquire
16 about only new matters raised at the time of hearing that it could not have been
17 expected to inquire about before the hearing. NW Natural also pointed out that the
18 answers to a great number of the requests had already been provided through
19 testimony or responses to earlier data requests, and that several of the new requests
20 were duplicative of each other. In the Administrative Law Judge's ("ALJ's") Ruling
21 dated March 13, 2014 ("ALJ Ruling"), the ALJ clarified that CUB was entitled to ask
22 about matters raised at the hearing, regardless of whether they could have asked
23 about the topic prior to the hearing.

24 In accordance with the ALJ Ruling, NW Natural served responses to 74 data
25 requests. Accounting for those that were multi-part, NW Natural responded to a total
26 of 145 questions. Including exhibits, NW Natural's responses to CUB's data requests

1 constituted 310 pages. In providing responses to these questions, NW Natural did
2 object to a handful of requests, three of which are the subject of CUB's Motion to
3 Compel.

4 In particular, NW Natural objected to CUB Data Request Nos. 33, 92 and 93,
5 which seek detailed information regarding the storage project that NW Natural is
6 planning to construct in order to serve Portland General Electric Company's ("PGE's")
7 proposed Port Westward II generating plant. This project is currently referred to by
8 the Company as the North Mist expansion. NW Natural's objection to these questions
9 explained that the information requested is not relevant to the issues in this case, that
10 the project that is the subject of these questions is currently under development, and
11 further that the details of the project are not yet finalized and that in any event would
12 be the subject of a future filing seeking Commission approval to offer the proposed
13 services.¹ CUB filed a Motion to Compel, arguing that NW Natural is required to
14 provide the information.

15 The Commission should deny CUB's motion. CUB's main contention is that it
16 is entitled to seek discovery about the North Mist expansion in this docket simply
17 because the project was mentioned at the hearing. While the project was mentioned
18 at the hearing, the details CUB seeks have no bearing on the issues the Commission
19 must decide in this docket. Moreover, the project is not yet developed and the
20 appropriate regulatory treatment of the North Mist project will be determined by the
21 Commission at some point in the future. Thus, CUB's request is not reasonably
22 calculated to lead to admissible evidence in this docket.

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26 ¹ See CUB's Motion to Compel, Attachment C.

1 **ARGUMENT**

2 NW Natural agrees with CUB that in accordance with ORCP 36, the scope of
3 discovery is broad. However, the scope is not unlimited. Requests that are not
4 reasonably calculated to lead to admissible evidence will not be allowed.² Moreover,
5 discovery must be “commensurate with the needs of the case” and “the importance of
6 the issues to which the discovery relates.” Discovery must not be “unreasonably
7 burdensome, duplicative or overly broad.”³ CUB’s data requests do not satisfy these
8 standards.

9 **1. CUB’s Requests are Not Reasonably Calculated to Lead to Admissible**
10 **Evidence.**

11 This docket was opened to examine the appropriate sharing percentages for
12 revenues resulting from NW Natural’s Storage Services and Optimization Activities.
13 The current sharing framework establishes two different sharing allocations: (1) 20
14 percent customers/80 percent company for activities relying on shareholder funded
15 assets; and (2) 67 percent customer/33 percent company for activities relying on utility
16 assets. CUB has proposed that those sharing percentages be changed.

17 During the hearing, Chairwoman Ackerman asked NW Natural witness J. Keith
18 White whether the Company planned any future build-out at Mist.⁴ In response to her
19 question, Mr. White explained some of the challenges of additional development,
20 including the fact that Mist is fully built-out in terms of compression, that take-away
21 capacity is maxed out, and that reservoir development is currently more expensive.⁵
22 In making these points, Mr. White mentioned the planned North Mist project, making

23 ² ORCP 36B(1).

24 ³ OAR 860-01-0500(1)-(2).

25 ⁴ Tr. 90.

26 ⁵ Tr. 90-92.

1 the point that “it will be a whole new development that won’t make any use of shared
2 facilities.”⁶

3 NW Natural acknowledges that Mr. White mentioned the North Mist project at
4 the time of hearing. However, NW Natural does not believe that the ALJ intended that
5 any topic mentioned at the hearing was *necessarily* an appropriate topic of discovery.
6 Instead, the normal limitations for relevance would continue to apply. In this case, the
7 information sought by CUB is not reasonably calculated to lead to admissible evidence
8 in this case.

9 As Mr. White stated at hearing, the project will be built specifically for PGE
10 relying on assets that are entirely separate from existing facilities.⁷ Moreover, the
11 project is intended to provide utility service to PGE. As such, the revenues from the
12 North Mist service to PGE will be credited as utility revenues and will not be subject to
13 the sharing frameworks that are under investigation in this docket.

14 Moreover, the North Mist project has not been built. And before NW Natural
15 can provide any service from the project, or collect any revenues from the project
16 through rates to PGE, the project’s regulatory treatment will be submitted to the
17 Commission for approval. Even if NW Natural were required to respond to the
18 disputed data requests, the information would be provisional and as such would only
19 confuse the matters. Thus, the details as to how the project will be constructed and
20 built, the costs and financing for the project, and how NW Natural will staff the project,
21 are all far beyond the issues presented in this case. For these reasons, details CUB
22 seeks about the project will not lead to evidence relevant to the issues to be decided
23 in this docket.

24 ⁶ Tr. 92.

25 ⁷ Tr. 92 (“It will be a whole new compression station, new reservoir, and a new pipeline going from Mist up
to Port Westward.”).

26

1 CUB argues that information it seeks could have some bearing on storage
2 sharing and optimization. Specifically, CUB states that, “It is necessary for CUB to
3 obtain information related to plans for storage expansion and sharing so that CUB can
4 analyze for itself the implications that such planning may have on customers now and
5 in the future . . .”⁸ However, CUB’s posited application of the information would relate
6 only to a future proceeding, where CUB would be reviewing the proposed project to
7 serve PGE. CUB does not provide any rational explanation as to how this information
8 could possibly be relevant in this case. On the contrary, in lieu of an explanation, CUB
9 quotes *Vaughn v. Taylor* for the proposition that “the significance of the requested
10 materials cannot always be determined until it has been inspected.”⁹ However, CUB’s
11 reliance on *Vaughn* is misplaced. *Vaughn* concerned a question as to whether a
12 subpoena for bank records was proper. In finding that the subpoena was in fact
13 appropriate, the Court of Appeals explained that the requested records would reflect
14 directly on a primary issue in the case—whether the business at issue was in fact in
15 financial distress.¹⁰ In no way did that decision relieve parties of the obligation to
16 explain how the requested documents might lead to admissible evidence. Indeed,
17 without such a requirement, discovery would devolve into nothing more than “fishing
18 expeditions.”

19 As NW Natural pointed out in its response to data requests, prior to providing
20 service to PGE, it will need to make a tariff filing. At that time, CUB will have the
21 opportunity to request any relevant information, and to make any proposals it deems
22 appropriate with respect to the treatment of revenues from the project. The outcome
23

24 ⁸ CUB Motion to Compel, p. 9.

25 ⁹ *Vaughan v. Taylor*, 79 Or App 359, 364-65 (1986).

26 ¹⁰ *Id.* at 365.

1 of the current proceeding will or will not govern the revenues from the future project as
2 determined by the Commission in the future, and CUB will have every opportunity to
3 engage at that time.

4 **2. CUB's Requests are Not Commensurate with the Needs of the Case**

5 CUB's requests are especially inappropriate given the procedural posture of this
6 case. This case was set for hearing on February 3, 2014. Prior to hearing, CUB
7 waived cross examination of NW Natural witnesses. It was only after the
8 Commissioners' examination of Company witnesses that CUB claimed that it needed
9 to serve data requests on NW Natural to determine whether it might have cross
10 examination at some later date. The ALJ granted this highly unusual request by CUB,
11 and for that reason, it appears that there is a chance that there may be some
12 additional cross examination by CUB before the record is closed. That said, the
13 issues in the case have clearly been established already, and they relate to the
14 appropriate treatment of revenues from NW Natural's *current optimization and*
15 *interstate storage activities*. The project about which CUB seeks information is of a
16 different nature, is in the future, and will be the subject of Commission review in a
17 future proceeding. Using this case to seek discovery in advance of a future
18 proceeding—the only proceeding where it would be relevant—should not be allowed,
19 and is not commensurate with the needs of this case.

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CONCLUSION

For all of the above reasons, CUB's Motion to Compel should be denied.

DATED: May 2, 2014.

Respectfully submitted,

MCDOWELL RACKNER & GIBSON PC



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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UM 1654 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.

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Dated: May 2, 2014



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