

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1654

In the Matter of)	
)	
NORTHWEST NATURAL GAS)	CITIZENS' UTILITY BOARD OF
COMPANY, dba NW NATURAL)	OREGON'S AMENDED MOTION
)	TO COMPEL-REPLY
Investigation of Interstate Storage and)	
Optimization Sharing)	
_____)	

I. INTRODUCTION.

Pursuant to OAR 860-001-0500(7) and Administrative Law Judge Michael Grant's April 22, 2014 Memorandum and Ruling in docket UM 1654, the Citizens' Utility Board of Oregon ("CUB") moved the Commission to compel NW Natural Gas Company ("NW Natural" or "Company") to produce information concerning NW Natural's MIST (North Mist, Emerald, MIST Expansion, other name for same geographic area) storage responsive to CUB's data requests 33, 92 and 93 to NW Natural.¹ NW Natural has now responded to CUB's Motion to Compel and CUB herewith files its Reply to that Response.

CUB's Motion to Compel Attachment C contains the CUB Data Requests/NW Natural Data Responses and Objections related to CUB Data Requests 33, 92 and 93. All three of the data requests that NW Natural is objecting to, in whole or in part, "result[] from information discussed during the Commission Examination that took place on February 3, 2014" which are considered to be "within the scope of permissible discovery,

¹ CUB notes that the Company was also not responsive to CUB Data Requests 65-77, but CUB has determined, unlike the information sought in CUB Data Requests 33, 92 and 93, that this information is not critical to its analysis in this docket at this time.

regardless of whether that information could have been requested prior to the Commission Examination.”²

NW Natural persists with its objections in its Response to the Motion to Compel, stating first:

[w]hile the project was mentioned at the hearing, the details CUB seeks have no bearing on the issues the Commission must decide in this docket.³

And, second:

the project is not yet developed and the appropriate regulatory treatment of the North Mist project will be determined by the Commission at some point in the future.⁴

NW Natural conflates various arguments in its Response to CUB’s Motion to Compel. CUB will unwind the threads and answer the various arguments attempted by NW Natural.

II. ARGUMENT

1. This Docket Is An Investigation Into Storage and Optimization Sharing.

NW Natural attempts to narrow the scope of this docket by arguing that it is about “*current optimization* and interstate storage activities” only.⁵ This is incorrect. The purpose of an investigatory docket is to look at the methodology applied in the past and the consequences that have flowed from it, how that methodology is playing out in the present, and how/whether that methodology should be continued into the future.

² UM 1654 – ALJ Pines’ March 13, 2014 Ruling – Attachment B to this Motion to Compel.

³ Northwest natural Gas Company’s Response to CUB’s Amended Motion to Compel at 2 line 17 -19.

⁴ Northwest natural Gas Company’s Response to CUB’s Amended Motion to Compel at 2 line 19 -21.

⁵ Northwest natural Gas Company’s Response to CUB’s Amended Motion to Compel at 6 line 14-17 (*emphasis in original*).

2. Ratemaking is an inherently *future* looking process.

In addition to the fact that investigatory dockets are wide ranging proceedings, ratemaking itself is an inherently *future* looking process. Oregon operates with forward looking test years, and does 20 year Integrated Resource Plans which may acknowledge development of projects up to five years out. The proposition that the Commission would not find relevant to this proceeding NW Natural's future expansion plans for the storage facility principally at issue in this docket is meritless.

3. Theoretical Happenings Still Merit Data Requests/Responses.

The argument that the North Mist Expansion is still only theoretical and, therefore, not subject to data requests, is incorrect.⁶ Were such a theory to be applied to discovery, no one would ever be able to learn anything about a project for which a utility had not signed a construction contract. Clearly this would completely undermine both the investigatory process and the Integrated Resource Plan process.

4. Discovery Requests/Responses Are Not Limited To Single Dockets.

The argument that CUB should not be permitted to seek discovery of any matter in advance of a proceeding which might also include data related to that matter is incorrect. Again, were such a discovery theory adopted by the Commission then even if a utility had signed a contract to construct something in the future no one would be able to review that contract prior to the utility company filing for recovery in a rate case.

Examples of the radical changes this would have wrought on recent cases can be seen in dockets LC 48 (Portland General Electric's ("PGE") 2009 Integrated Resource Plan, LC 57 PacifiCorp's ("PAC") 2013 Integrated Resource Plan and UM 1635 In the Matter of NORTHWEST NATURAL GAS COMPANY, dba NW NATURAL Mechanism for

⁶ Northwest Natural Gas Company's Response to CUB's Amended Motion to Compel at 6 line 15-17.

Recovery of Environmental Remediation Costs. Implementation of such a discovery process in those dockets would have prevented the OPUC and Intervenors from reviewing PGE's and PAC's proposed pollution control plans and Northwest Natural's proposed environmental remediation plans. To allow what NW Natural is arguing for in this docket would set a terrible precedent for discovery in all future utility dockets.

5. North Mist/Mist Expansion/Emerald...Is Not Theoretical.

On May 5, 2014, NW Natural made Advice Filing No. 14-7. Advice Filing No. 14-7 pertains directly to two new tariff schedules, schedules 90 and 91. Schedule 90 is entitled "Firm Storage Service with No-Notice Withdrawal." Schedule 90 pertains to delivery of gas to PGE.

The Rate Schedule 90 service would apply where the storage service is provided from entirely new and separate facilities resulting from an expansion of the Company's Mist Underground Natural Gas Storage Facility ("Mist Facility"). These facilities would include a new compression station, a new pipeline, and new storage reservoirs ("Non-Core Mist Storage"), and would require and rely on an expansion beyond the current 520,000 Dth/d of deliverability at Miller Station (and its related facilities) that were developed for core customer use, or in advance of core customer need, and that are subject to future recall by core customers. Importantly, the customer's site to be served in Oregon must have a direct interconnection with the new pipeline.⁷

The approval of Rate Schedule 90 by the Public Utility Commission of Oregon ("OPUC") is a condition precedent under the terms of a Precedent Agreement between the Company and Portland General Electric ("PGE") for service to the Port Westward 2 generating plant for which PGE was awarded the construction bid. The Precedent Agreement between the Company and PGE documents an agreement that the Rate Schedule 90 Service Agreement with PGE will be for a 30+ year term. In the case of PGE, the new Non-Core Mist Storage facilities to be constructed are known as the North Mist expansion.⁸

⁷ NWN OPUC Advice No. 14-7 at 2.

⁸ NWN OPUC Advice No. 14-7 at 2.

Customer may make injections designated for Firm Storage Service under this Rate Schedule during a “pre-fill period.” While the Company will endeavor to designate a date that provides the most flexibility and lead time possible for Customer, the pre-fill period shall be defined as a period of time to begin at a date determined by the Company when sufficient Non-Core Mist Storage infrastructure (reservoirs, wells and gathering lines) is in place to enable injections, *and if applicable, without having the compressor station or the associated pipeline construction completed.* Such pre-fill period start date shall be communicated to Customer as soon as such date is reasonably possible when such date is known.⁹

NWN’s Schedule 90 filing further states that:

[t]hese new Non-Core Mist Storage facilities are not shared with nor are they required to meet core customer needs today or for at least 30 years into the future. NW Natural notes that for these reasons:

- Revenues from Rate Schedule 90 service are not subject to sharing under Rate Schedule 185, and
- The new storage capacity built in order to serve PGE should not be subject to recall for core customer use.

These are the very assets about which CUB has been seeking information and about which NW Natural has been arguing “the project is not yet developed.”¹⁰ Not only is the project being developed it is developed enough that the Company is making Tariff filings for it. And CUB’s concerns are displayed front and center in this filing. In the Pre-In-Service Injection Phase it states that PGE may be able to pre-inject whether or not the new compressor is in place. CUB is entitled to ask what compressors the Company would then be using, whether those are core customer owned compressors because gas cannot be injected without compressors. And again the Company is stating that no shared resources will be used but no proof is laid out that the wells that will be used were not originally production wells for customers paid for by customers, an asset of

⁹ NWN OPUC Advice No. 14-7 at Original Sheet 90-17 (emphasis added).

¹⁰ NWN Response to CUB’s Motion to Compel at 2 line 19.

customers for use for storage if customers paid for their development, and that none of the remaining equipment at the site was paid for by core customers.

6. The Implications of Advice Filing No. 14-7 Schedule 91 Are Directly Relevant to Core Customer Sharing Percentages in Docket UM 1654.

And in regard to Schedule 91, the Company states that “[b]ecause Rate Schedule 91 will use facilities that are shared with core customers, the Company contemplates that revenues from Rate Schedule 91 service will be subject to sharing under Rate Schedule 185 in the same manner as Rate Schedule 80 storage service.”¹¹

Clearly, NW Natural’s future plans for MIST are relevant to the docket at hand, and any interstate/intrastate storage and optimization sharing. NW Natural’s plans for MIST should be subject to discovery in this UM 1654 docket. No less so should they be subject to discovery in any dockets arising from Advice Filing 14-7.

7. Information Relevant to More Than One Docket May Be Requested In Both Dockets.

The discovery rules do not in any way limit the number of dockets to which one set of discoverable information may be relevant. Information relevant to one docket may be just as relevant to another docket even though the litigation theories at play, statutes under review etc. are entirely different. What is relevant, and when it should be admitted into the record, are decisions to be made by the ALJ. It is not within the purview of an individual party to determine what is or is not relevant to an opponents’ claim or defense; that decision is to be left entirely with the ALJ.

¹¹ NWN OPUC Advice No. 14-7 at 3.

8. Discovery Rules Permit Review of “any matter” which is relevant to a claim or defenses of “the party” or of “any other party.”

ORCP 36B discusses the scope of discovery, stating, in relevant part:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

B(1) In general. For all forms of discovery, parties may inquire regarding *any matter*, not privileged, *which is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party*, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. *It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears to be reasonably calculated to lead the discovery of admissible evidence.*¹²

CUB is claiming that the optimization sharing percentages should be changed because insufficient sharing goes to customers. The Company states that it is making changes to MIST storage – a new expansion. MIST storage has and is being used for interstate/intrastate storage and optimization. Moreover, the Company states that in the future sharing percentages are likely to change over time.

That 47/53 changes through time, because we basically back in 2007 fully built out Mist, if you will. And so we’ve been recalling capacity, basically the –cut—the percent in rates is going up and the percent not in rates is going down. So the 53/47 is the snapshot as of today, but two years from now it will be – it will be different.¹³

The Company says customers should not worry about the proposed MIST expansion because those changes will not affect customers since they will not result in use of customer assets, but that seems to be contradicted by proposed Schedule 91.¹⁴ So CUB’s claim is CUB thinks NWN maybe using customer assets for all aspects of its business related to interstate/intrastate storage and optimization including those portions NW

¹² ORCP 36B (emphasis added).

¹³ UM 1654 February 3, 2014 Hearing Transcript 36 at lines 5-11.

¹⁴ NW Natural’s own Advice Filing 14-7 demonstrates that customers assets will likely be used by both Schedule 90 and 91 entities at some point. CUB is entitled to know at what point and to what extent.

Natural claims do not use customer assets. NWN's claim is no, the Company does not and will not use customer assets for Mist expansion. This means that the documents that CUB is seeking are relevant to both CUB's claim and NW Natural's defense.

CUB has the right to probe the truth of any matter which is relevant to the claim or defense of itself or the opposing party. That is exactly what CUB is attempting to do. CUB should be permitted to review the documents related to its data requests at issue in this Motion To Compel and should be allowed to determine for itself what if any customer assets are being used by the Company, now or in the future to: 1. provide service to others (including PGE): 2. engage in interstate/intrastate storage, and also for storage optimization. And then 3. whether any such usage of customer assets should be reflected in the interstate/intrastate storage sharing percentage and the optimization sharing percentage.

CUB does not want to be told in a future docket, that it should have addressed any storage and optimization sharing issues in docket UM 1654. CUB strongly believes that this UM 1654 docket is the better docket to address any possible sharing of storage and optimization revenues associated with future Mist expansion.

9. The Discovery Theories Being Advanced By NWN Are Radical.

The theories being advanced by NW Natural in this UM 1654 docket are extremely radical and not in compliance with Oregon's Rules of Civil Procedure (ORCP 36 et seq.) and the Commission's rules on Discovery (OAR 860-001-0500) and Evidence (860-001-0450).

III. CONCLUSION.

All of the information necessary to determine the appropriate sharing percentages related to NW Natural's storage and optimization activities is in NW Natural's possession

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and control. The Commission is deciding now, not at a later date, how the revenues from NW Natural's storage and optimization activities are to be shared among the parties. CUB, as well as the Commission, needs the ability to analyze the information that exists with regard to NW Natural's current and future use of the Mist Storage complex (meaning all names by which this complex has or will be known), and its use of customer assets in the past and future. Contrary to NW Natural's objections, the information sought by CUB is calculated to lead to the discovery of admissible evidence, as required by ORCP 36(B)(1), and is within the scope of discovery ordered by ALJ Pines in her March 13, 2014 Ruling.

CUB respectfully moves the Commission to compel NW Natural to respond to CUB Data Requests 33, 92 and 93.

DATED this 9th day of May, 2014.

Respectfully submitted,



G. Catriona McCracken, Attorney #933587
General Counsel/Regulatory Program Dir.
Citizens' Utility Board of Oregon
610 SW Broadway Ste 400
Portland, OR 97205
(503) 227-1984
Catriona@oregoncub.org

UM 1654 – CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of May, 2014, I served the foregoing **Citizens' Utility Board of Oregon's Amended Motion to Compel - Reply** in docket UM 1654 upon each party listed in the UM 1654 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and two copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

W **CABLE HUSTON BENEDICT**
C **HAAGENSEN & LLOYD**
TOMMY A BROOKS (HC)
1001 SW FIFTH AVE, STE 2000
PORTLAND OR 97204-1136
tbrooks@cablehuston.com

W **CABLE HUSTON BENEDICT**
C **HAAGENSEN & LLOYD**
CHAD M STOKES (HC)
1001 SW 5TH - STE 2000
PORTLAND OR 97204-1136
cstokes@cablehuston.com

W **MCDOWELL RACKNER & GIBSON**
LISA F RACKNER
419 SW 11TH AVE., SUITE 400
PORTLAND OR 97205
dockets@mcd-law.com

W **NORTHWEST NATURAL**
C **MARK R THOMPSON (HC)**
220 NW 2ND AVE
PORTLAND OR 97209
mark.thompson@nwnatural.com

W **NORTHWEST NATURAL**
E-FILING
220 NW 2ND AVE
PORTLAND OR 97209
efiling@nwnatural.com

W **PUC STAFF--DOJ**
C **JASON W JONES (HC)**
1162 COURT ST NE
SALEM OR 97301-4096
jason.w.jones@state.or.us

W **OREGON PUC STAFF**
C **ERIK COLVILLE (HC)**
PO BOX 1088
SALEM OR 97308-1088
erik.colville@state.or.us

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Respectfully submitted,

A handwritten signature in black ink that reads "Sommer Templet". The signature is written in a cursive, flowing style.

Sommer Templet, OSB #105260

Staff Attorney

Citizens' Utility Board of Oregon

610 SW Broadway, Ste. 400

Portland, OR 97205

(503) 227-1984 phone

(503) 224-2596 fax

sommer@oregoncub.org