



WENDY MCINDOO
Direct (503) 290-3627
wendy@mrg-law.com

VIA ELECTRONIC FILING

April 27, 2017

PUC Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, OR 97308-1088

**Re: UM 1804: In the Matter of NORTHWEST NATURAL GAS COMPANY dba NW
NATURAL, Application for Approval of Corporate Reorganization to Create a
Holding Company**

Attention Filing Center:

Attached for filing in docket UM 1804 is an electronic copy of Northwest Natural Gas Company's Response to Motions to Compel.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Wendy McIndoo
Office Manager

Attachments

1 to data requests. Their Motions seek presentations that were prepared and presented by NW
2 Natural's in-house attorneys to the NW Natural Board of Directors (Board) and the Officers
3 (Officer Team) to convey legal advice regarding the Reorganization and the anticipated
4 contested case hearing on the Application. Staff also seeks un-redacted versions of Board
5 minutes, which provide the Board with the analyses and advice developed by NW Natural's
6 attorneys. In addition, Staff seeks documents containing work product, prepared in anticipation
7 of the Company's next rate case, which is entirely unrelated to the issues raised in this docket.
8 These privileged and protected documents were properly withheld in the discovery process.
9 Staff's other requests regarding timeliness and completeness of production also lack merit.

10 Staff's and CUB's Motions to Compel seek disclosure of information that plainly falls
11 within the attorney-client privilege or work product protection, and they have failed to
12 demonstrate that NW Natural should be compelled to produce the information or that an *in*
13 *camera* review is necessary or appropriate. Requiring NW Natural to produce privileged
14 information would chill the Company's communications with its attorneys, thereby hampering
15 its ability to seek candid legal advice from counsel, and would significantly undermine the
16 contested case process. For the reasons discussed below, Staff's and CUB's Motions should
17 be denied.

18 II. LEGAL STANDARD

19 Both the attorney-client privilege and the work product doctrine apply in contested cases
20 before the Commission. The Commission applies the attorney-client privilege codified in
21 Oregon Evidence Code (OEC) 503,¹ which protects confidential communications "made for the
22 purpose of facilitating the rendition of professional legal services to the client."² The attorney-
23 client privilege is central to our system of justice, which recognizes that "full and frank
24

25 ¹ ORS 40.225; see, e.g., *Cent. Lincoln People's Utility Dist. v. Verizon Nw. Inc.*, Docket No. UM 1087,
26 Order No. 04-379 at 3-5 (July 8, 2004) (applying and analyzing OEC 503).

² ORS 40.225(2).

1 communication between attorneys and their clients . . . promote[s] broader public interest in the
2 observance of law and administration of justice.”³

3 The protection for work product also applies in contested cases before the Commission.
4 The Commission’s rules provide that the Oregon Rules of Civil Procedure (ORCP) apply in
5 contested cases unless they are inconsistent with the Commission’s rules, a Commission order,
6 or an ALJ’s ruling.⁴ ORCP 36 contains General Provisions Governing Discovery, and section
7 (B)(3) of this rule protects against the discovery of trial preparation materials, *i.e.* work product.

8 ORCP 36(B)(3) states that “documents and tangible things” “prepared in anticipation of
9 litigation or for trial” by or for a party or a party’s representative are discoverable “only upon a
10 showing that the party seeking discovery has substantial need of the materials in the preparation
11 of such party’s case and is unable without undue hardship to obtain the substantial equivalent
12 of the materials by other means.” In the event a party is required to produce its work product,
13 the rule requires the court ordering the discovery to “protect against disclosure of the mental
14 impressions, conclusions, opinions, or legal theories of an attorney or other representative of a
15 party concerning the litigation.”⁵ Several Commission orders, including protective orders,
16 address the work product doctrine, and all confirm that this doctrine applies in Commission
17 proceedings.⁶

18 A party who opposes an attorney-client privilege or work product claim and requests an
19 *in camera* review must “show a factual basis sufficient to support a reasonable, good faith belief
20
21

22 ³ *State ex rel. Or. Health Scis. Univ. v. Haas*, 325 Or 492, 500 (1997) (quoting *Upjohn Co. v. United*
23 *States*, 449 U.S. 383, 389 (1981)).

24 ⁴ OAR 860-001-0000(1).

25 ⁵ ORCP 36(B)(3).

26 ⁶ See, e.g., *In the Matter of Qwest Corp., dba CenturyLink QC, Petition for Approval of 2014 Additions to Non-Impaired Wire Center List*, Docket No. UM 1702, Order No. 14-244 at 3 (June 27, 2014); *In the Matters of Pacific Power & Light, dba PacifiCorp, Filing of Tariffs Establishing Automatic Adjustment Clauses under the Terms of SB 408*, Docket No. UE 177, Order No. 08-002 at 5 (Jan. 3, 2008); *Cent. Lincoln People’s Utility Dist.*, Order No. 04-379 at n.3.

1 that *in camera* inspection may reveal evidence that information in the materials is not
2 privileged.”⁷

3 **III. RESPONSES REGARDING SPECIFIC INFORMATION SOUGHT**

4 **A. Board of Directors and Officer Team Presentations**

5 The Company’s Board of Directors and Officer Team presentations all were redacted
6 appropriately to protect attorney-client communications and work product.

7 Staff data request (DR) 6 requests “all Board of Director’s material (including
8 subcommittees thereto) that discusses or deals with the planned Reorganization, including any
9 risk assessments prepared for NW Natural by third parties.”⁸ Staff DR 16 requests “copies of
10 any business and operational strategic plans prepared by or for the utility company, since
11 January 1, 2015, related to the proposed reorganization.”⁹ CUB DR 2 requests “copies of all
12 presentations and associated materials given to the Company’s Board of Directors regarding
13 the proposed corporate reorganization.”¹⁰ CUB DR 3 requests “all presentations and associated
14 materials given to the Company’s senior management regarding the proposed corporate
15 reorganization.”¹¹

16 In response to these requests, the Company provided Power Point presentations that
17 had been prepared by a team of NW Natural’s lawyers—and other personnel working with
18 them—led by NW Natural’s General Counsel MardiLyn Saathoff.¹² The primary goal of these
19 presentations was to provide NW Natural’s Board and Officer Team with legal advice as to the
20 best strategy for presenting the Application and the likely outcome of the approval process. The

21 ⁷ *IndyMac Res., Inc. v. Carter*, 2013 WL 12138727, at *2 (CD Cal Jan. 9, 2013) (quoting *In re Grand*
22 *Jury Investigation*, 974 F2d 1068, 1075 (9th Cir 1992)); see also *AT&T Corp. v. Microsoft Corp.*, 2003
23 WL 21212614, at *8 (ND Cal Apr. 18, 2003) (quoting *In re Grand Jury Investigation*, 974 F2d at 1072,
and applying the standard to both attorney-client privilege and work product claims).

24 ⁸ Staff DR 6 (Feb. 22, 2017), Ex. A at 3. Exhibit A contains the data requests and responses
25 referenced in this document, but, due to the volume of paper involved, Exhibit A does not contain the
26 attachments to the responses.

⁹ Staff DR 16 (Feb. 22, 2017), Ex. A at 6.

¹⁰ CUB DR 2 (Feb. 3, 2017), Ex. A at 1.

¹¹ CUB DR 3 (Feb. 3, 2017), Ex. A at 2.

¹² Declaration of MardiLyn Saathoff, Ex. B at 1 (hereinafter Saathoff Dec.).

1 advice regarding the expected outcome of the litigation focused on the conditions that likely
2 would be ordered by the Commission, or agreed to in the settlement process, and the impact of
3 those conditions on the Company.¹³ The presentations also included overviews of legal
4 research, options for different approaches to and strategies for the case, and a strategy for
5 drafting the Application and working with parties, including Staff and CUB.¹⁴

6 In preparing these presentations, Ms. Saathoff relied on her own legal expertise and
7 information and advice provided by the following lawyers:

- 8 • Zachary Kravitz – NW Natural’s in-house regulatory lawyer
- 9 • Shawn Filippi – NW Natural’s Vice President, Corporate Secretary, and Chief
10 Compliance
- 11 • Stoel Rives LLP – NW Natural’s outside business lawyers
- 12 • McDowell Rackner Gibson PC – NW Natural’s outside regulatory lawyers
- 13 • Alston & Bird LLP – NW Natural’s outside FERC lawyers
- 14 • Day Carter Murphy LLP – NW Natural’s outside California regulatory lawyers
- 15 • Mark Thompson – NW Natural’s Senior Director of Rates and Regulation.¹⁵

16 At Ms. Saathoff’s request, several non-lawyers also provided information for the
17 presentations:

- 18 • Brody Wilson – Interim Chief Financial Officer, Interim Treasurer, Chief Accounting
19 Officer, and Controller
- 20 • Jorge Moncayo – Senior Manager, Budgeting and Financial Planning
- 21 • Tobin Davilla – Financial Consultant, Budgeting and Financial Planning.¹⁶

22

23

24 ¹³ Saathoff Dec. at 1–2.

25 ¹⁴ Saathoff Dec. at 2.

26 ¹⁵ Saathoff Dec. at 2–3. Note that while Mr. Thompson serves as counsel for the Company, NW Natural is not claiming the attorney-client privilege for his communications.

¹⁶ Saathoff Dec. at 2.

1 Ms. Saathoff, Mr. Kravitz, Ms. Filippi, and Mr. Thompson were responsible for
2 consolidating the advice into the presentations.¹⁷ Each of the presentations was labeled with a
3 caption conveying that the information was attorney-client privileged and confidential.¹⁸ The
4 Board presentations were delivered by Ms. Saathoff, with assistance from Ms. Filippi, at
5 regularly scheduled Board meetings.¹⁹ The Officer Team presentations were made at regularly
6 scheduled Officer Team meetings by Ms. Saathoff, Ms. Filippi, Mr. Kravitz, and Mr. Thompson.²⁰

7 In responding to the Staff and CUB requests for these presentations, NW Natural
8 reviewed each slide to determine whether it contained confidential attorney-client
9 communications or protected work product.²¹ Information was categorized as attorney-client
10 privileged only if it was provided by a lawyer—either inside or outside the Company—and
11 intended to convey legal advice, such as recommended strategy, potential litigation outcomes,
12 and analysis of relevant caselaw.²² Information was categorized as work product if it was
13 prepared either by an attorney or by another employee working in conjunction with NW Natural’s
14 attorneys in anticipation of litigating the Application.²³ Simple summaries of relevant cases or
15 black-letter statements of legal standards were not redacted on the principle that they did not
16 reveal “mental impressions, conclusions, opinions, or legal theories concerning the litigation.”²⁴

17 Staff and CUB make several arguments that the redacted material in these
18 presentations actually is discoverable. None are valid.

19 **1. Attorney-Client Privilege Arguments**

20 First, Staff questions whether NW Natural may have asserted the attorney-client
21 privilege over information provided by NW Natural’s in-house lawyers that did not constitute
22

23 ¹⁷ Saathoff Dec. at 3.

24 ¹⁸ Saathoff Dec. at 3. See *infra* Section II.A.1 for a discussion of the presentations’ labels.

25 ¹⁹ Saathoff Dec. at 3.

26 ²⁰ Saathoff Dec. at 3.

²¹ Saathoff Dec. at 4.

²² Saathoff Dec. at 4.

²³ Saathoff Dec. at 4.

²⁴ ORCP 36(B)(3); Saathoff Dec. at 4.

1 legal advice.²⁵ In support of its concern, Staff raises the fact that, during the process of
2 conferring on the privilege issues, NW Natural informed Staff that Mr. Thompson and Ms. Filippi
3 provided some information for the presentations.²⁶ Staff argues that Mr. Thompson is not
4 employed as a lawyer for NW Natural and that Ms. Filippi “was consulted for her ‘business’
5 advice.”²⁷ Staff’s concerns have no basis in fact. As NW Natural explained to CUB and Staff
6 during the process of conferring,²⁸ and as outlined above, the Company has **not** claimed
7 attorney-client privilege for **all** information provided by NW Natural’s lawyers but instead has
8 claimed privilege only for communications made to facilitate legal advice.²⁹ Applying this
9 standard, the Company properly claimed as privileged certain key communications from Ms.
10 Filippi, but did not claim attorney-client privilege for any of Mr. Thompson’s communications.³⁰

11 Staff also claims that NW Natural “appear[s] to be over asserting the privilege,” by
12 indicating that the Company applied the privilege to “slides containing financial metrics; slides
13 visually relaying the lawyer’s recommendation; a timeline and schedule that an attorney
14 predicted for this particular application; a list of analyses completed; discussions of other merger
15 or holding company dockets; etc.”³¹ Staff appears to be arguing that legal advice must be
16 provided in a particular format to retain its privileged status—suggesting, for example, that if a
17 slide contains financial information, then it must not be work product or attorney-client
18 privileged.³² Staff’s unduly narrow view of the privilege is at odds with modern legal practice
19 and the case law regarding attorney-client privilege, which recognizes that attorneys
20 communicate legal advice to their clients in many forms and that the information’s format does

21

22

²⁵ Staff’s Motion to Compel at 13–14.

23

²⁶ Staff’s Motion to Compel at 13.

24

²⁷ Staff’s Motion to Compel at 13.

25

²⁸ Declaration of Zachary Kravitz, Ex. C at 2 (hereinafter Kravitz Dec.)

26

²⁹ Saathoff Dec. at 4.

27

³⁰ Saathoff Dec. at 3. Importantly, however, several of Mr. Thompson’s contributions to the presentations are certainly covered by the work product doctrine.

28

³¹ Staff’s Motion to Compel at 10.

29

³² Staff’s Motion to Compel at 10.

1 not negate its identity as a privileged communication.³³ It would be impossible, for example, for
2 an attorney who is advising a client about the financial consequences of litigation to do so
3 without reference to financial information. And the fact that the attorney may employ the
4 assistance of others to help develop that financial information does nothing to lessen the
5 protections applicable to that advice.³⁴

6 In addition, Staff points out that the Company's initial redactions included words such as
7 "timing" and "and" that are not privileged.³⁵ Staff's concern arose after NW Natural, in the course
8 of conferring, agreed to "un-redact" the titles on many of the redacted slides, in an effort to help
9 Staff and CUB confirm the general content and privileged nature of the slides.³⁶ However, Staff
10 now relies on the un-redacted information to argue that the Company over-claimed the privilege,
11 suggesting that the Company should be required to un-redact any and all words that are not
12 inherently privileged.³⁷ This position is unsupported by the law and is utterly impractical and
13 illogical as well. If, as Staff suggests, the law required parties to perform redactions on a word-
14 by-word basis, no single word, standing alone, would be privileged, and no redactions would
15 remain.

16 Staff next speculates that, even if the redacted information is covered by attorney-client
17 privilege, that privilege *may* have been waived "if any third parties were present at any of the
18 meetings during which the slides were discussed."³⁸ Therefore, Staff states that it is "interested
19

20 ³³ See, e.g., *Fed. Trade Comm'n v. Boehringer Ingelheim Pharm., Inc.*, 180 F Supp 3d 1, 32 (DDC
21 2016) (finding PowerPoint presentations, charts, graphs, and tables that "describe how different
22 settlement and litigation outcomes would affect [the defendant] financially" to be attorney-client
23 privileged because legal advice was one of the significant purposes of the communications).

24 ³⁴ See *id.* at 30 (applying attorney-client privilege to financial spreadsheets, forecasts, and related
25 communications and noting that "facts collected at counsel's request for later use in providing legal
26 advice are protected" under the attorney-client privilege); see also ORS 40.225(2)(b) (stating that the
attorney-client privilege applies to communications between a lawyer and the lawyer's representative)
and ORS 40.225(1)(e) (defining "representative of the lawyer" to mean "one employed to assist the
lawyer in the rendition of professional legal services").

³⁵ Staff's Motion to Compel at 10.

³⁶ Kravitz Dec. at 3–4; Staff's Motion to Compel at 10.

³⁷ Staff's Motion to Compel at 10.

³⁸ Staff's Motion to Compel at 16.

1 in understanding who was present at the meetings.”³⁹ NW Natural agrees with Staff that the
2 attorney-client privilege can be waived under some circumstances if the privileged information
3 is disclosed to a third party.⁴⁰ However, in this case, NW Natural assures the Commission that
4 no third party was present during the confidential Board and Officer presentations.⁴¹

5 Staff also appears to argue that NW Natural waived any claim of attorney-client privilege
6 over the presentations by not including an “attorney-client privilege” label on each slide.⁴² Staff
7 notes that an “attorney-client privilege” label appears on the supplemental version of the slides,
8 produced on April 7, but not on the versions produced originally.⁴³ In fact, this label was included
9 on the original slides but was removed in error during the initial redactions that preceded the
10 first production of this material.⁴⁴ Thus, although Staff had no way of knowing, the slides were
11 labeled as attorney-client privileged when they were created and presented.⁴⁵

12 Moreover, as Staff correctly notes in its Motion, “[w]hether the communication is
13 ‘confidential’ depends on *the intent* of the client.”⁴⁶ Confidential communications need not bear
14 a specific “attorney-client privilege” label—or even any label at all—to maintain their privileged
15 character, so long as the intent to maintain the confidentiality of the documents is clear.⁴⁷ Here,
16

17 ³⁹ Staff’s Motion to Compel at 16.

18 ⁴⁰ ORS 40.280 (“A person upon whom ORS 40.225 [lawyer-client privilege] . . . confer[s] a privilege
19 against disclosure of the confidential matter or communication waives the privilege if the
20 person . . . voluntarily discloses or consents to disclosure of any significant part of the matter or
21 communication. This section does not apply if the disclosure is itself a privileged communication.”).

22 ⁴¹ To be clear, only the Board or select members of the Officer Team and those Company employees
23 necessary to make the presentations attended. Saathoff Dec. at 3.

24 ⁴² Staff’s Motion to Compel at 16.

25 ⁴³ Staff’s Motion to Compel at 3, 11, 16.

26 ⁴⁴ Kravitz Dec. at 2.

⁴⁵ Saathoff Dec. at 3.

⁴⁶ Staff’s Motion to Compel at 15 (emphasis original); see also Comment to ORS 40.225(b) (“A
confidential communication is defined in terms of intent. Intent is to be inferred from the circumstances,
e.g., taking or failing to take precautions. A communication made in public or meant to be relayed to
outsiders or which is divulged to third persons by the client or by the lawyer at the direction of the client
can scarcely be considered confidential. . . . Unless an intent to disclose is apparent, however, the
attorney-client communication is confidential.”).

⁴⁷ See *Se. Pa. Transp. Auth. v. Caremarkpcs Health, L.P.*, 254 FRD 253, 263 (ED Pa 2008) (holding
that failure to label a document “confidential” or “privileged” did not destroy the attorney-client privilege
where there was no evidence that the privilege holder intended to or did disclose the information).

1 Staff acknowledges that the presentations bore a “confidential” notation when originally
2 produced to Staff.⁴⁸ The “confidential” designation, along with the “attorney-client privileged”
3 notation, was included on the original document.⁴⁹ This fact clearly indicates NW Natural’s
4 intent to maintain the confidentiality of the information.

5 Furthermore, the presentations at issue in this case were accorded the same
6 confidential treatment as all of NW Natural’s Board and Officer Team materials. NW Natural
7 maintains its Board materials in a locked room to which only certain NW Natural employees
8 have access.⁵⁰ Attorney-client privileged Board materials are available only to the Board,
9 certain members of the Officer Team, and employees who created the materials or attended
10 the Board meeting where the materials were presented.⁵¹ In the event an employee without
11 access wishes to obtain Board materials, those materials are provided only on a limited, need-
12 to-know basis, after approval from the Company’s Corporate Secretary or General Counsel, to
13 ensure the security and confidentiality of such materials.⁵² The Officer Team presentations
14 were available only to Officers or other NW Natural employees who are on an approved list of
15 employees with access to confidential materials related to the Reorganization.⁵³ NW Natural
16 has taken appropriate precautions to protect the confidentiality of the presentations, and it has
17 not demonstrated the intent to waive its claim of attorney-client privilege.

18 Staff next expresses the concern that NW Natural “may be conflating the broad ethical
19 duty of confidentiality with the more narrow evidentiary component of the privilege.”⁵⁴ This
20 concern appears to be purely hypothetical. As the Company explained to Staff during multiple
21

22 ⁴⁸ Staff’s Motion to Compel at 16.

23 ⁴⁹ Saathoff Dec. at 3.

24 ⁵⁰ Saathoff Dec. at 3.

25 ⁵¹ Saathoff Dec. at 3. For public accounting purposes, NW Natural’s Board materials also are made
26 available to the Company’s auditors from Price Waterhouse Coopers, LLP, although, it is our policy not
to provide them with attorney-client privileged information.

⁵² Saathoff Dec. at 3.

⁵³ Saathoff Dec. at 3.

⁵⁴ Staff’s Motion to Compel at 17.

1 meetings,⁵⁵ it redacted as attorney-client privileged **only** those communications intended to
2 provide legal advice.⁵⁶ NW Natural specifically explained that it was **not** redacting information
3 provided by lawyers that would be fairly categorized as business information, separate from
4 legal advice, or even simple restatements of well-known legal standards.⁵⁷ The Company well
5 understands the scope of the attorney-client privilege and the distinction between privileged and
6 confidential material, and it has redacted documents in accordance with that understanding.
7 Staff’s concern is unfounded.

8 Finally, Staff points out that, in the PacifiCorp and Scottish Power merger case, Scottish
9 Power agreed to provide attorney-client privileged information with additional protections
10 “necessary to preserve the privileges.”⁵⁸ Staff appears to be suggesting that NW Natural could
11 voluntarily disclose privileged information through the discovery process without waiving the
12 privilege—which is plainly incorrect, regardless of Scottish Power’s view of the law. In fact, Staff
13 acknowledges as much in its Motion when it states that the privilege can be waived by voluntary
14 disclosure.⁵⁹ For this reason, the Company declines to voluntarily disclose attorney-client
15 privileged information.

16 **2. Work Product Arguments**

17 Relying on *City of Portland v. Nudelman*,⁶⁰ Staff argues that the presentations were not
18 prepared in anticipation of litigation, and therefore the work product doctrine is inapplicable.⁶¹
19 Staff asserts that there was no threat of litigation when the presentations were prepared—five
20 to fourteen months prior to the filing of the Application.⁶² Staff is mistaken, both in its
21
22

23 ⁵⁵ Kravitz Dec. at 2.

24 ⁵⁶ Saathoff Dec. at 4.

25 ⁵⁷ Kravitz Dec. at 2–3; Saathoff Dec. at 4.

26 ⁵⁸ Staff’s Motion to Compel at 17.

⁵⁹ Staff’s Motion to Compel at 16 n.29.

⁶⁰ 45 Or App 425 (1980).

⁶¹ Staff’s Motion to Compel at 19.

⁶² Staff’s Motion to Compel at 19.

1 interpretation of *Nudelman*, and in its understanding of why the presentations at issue in Staff's
2 Motion were prepared.

3 In *Nudelman*, an appeal of a jury verdict in a condemnation proceeding, the Court of
4 Appeals considered whether the testimony of an appraiser was inadmissible hearsay because
5 it was based in part on an appraisal report previously prepared by another appraiser.⁶³ The
6 court determined that the testimony was not inadmissible hearsay and then went on to opine
7 that neither the "attorney-client [n]or work-product privileges" applied to the report because it
8 was not prepared in anticipation of the current litigation.⁶⁴ The court noted that the report was
9 prepared "nine months prior to the commencement of the condemnation proceeding in this case
10 and seven months prior to the City's resolution to acquire the subject property," which was "long
11 before any steps toward preparing litigation were made."⁶⁵ In *Nudelman*, the timing of the
12 preparation of the report was relevant because it preceded the events precipitating the litigation,
13 and therefore the report could not have been prepared in anticipation of litigation. However,
14 *Nudelman* cannot be read to create a nine-month cut-off, prior to which materials can never be
15 found to have been prepared in anticipation of litigation.

16 In fact, depending on the facts of the particular case, work product protection may cover
17 documents created even years in advance of the anticipated litigation.⁶⁶ According to Wright
18 and Miller,⁶⁷

19 Prudent parties anticipate litigation, and begin preparation prior to the time suit
20 is formally commenced. Thus the test should be whether, in light of the nature of
21 the document and the factual situation in the particular case, the document can
fairly be said to have been prepared or obtained because of the prospect of

22 ⁶³ *Nudelman*, 45 Or App at 432.

23 ⁶⁴ *Id.* at 432–33.

24 ⁶⁵ *Id.*

25 ⁶⁶ See, e.g., *Ring v. Commercial Union Ins. Co.*, 159 FRD 653, 654 (MDNC 1995) (finding that the
defendants anticipated litigation and therefore the work product protection applied to documents
created as early as October 17, 1991, even though the case was not filed until 1994).

26 ⁶⁷ Charles Wright and Arthur Miller are the original authors of the esteemed civil procedure treatise
Federal Practice and Procedure, which is cited often by both the Oregon and United States Supreme
Courts.

1 litigation. And litigation should be understood generally to include proceedings
before administrative tribunals if they are of an adversarial nature.⁶⁸

2 Here, the presentations were prepared in anticipation of litigation; the entire purpose of
3 the redacted material was to develop strategy for and predict the outcome of the current
4 litigation, which clearly was anticipated.⁶⁹ No party could seriously assert that the Company did
5 not anticipate a proceeding at the Commission when it was preparing the actual Application that
6 would initiate that proceeding.

7 Staff and CUB suggest that, even if the work product protection applies, it should be
8 overcome because the parties have a substantial need for the information contained in the
9 presentations and cannot obtain the information in any other way.⁷⁰ Staff's and CUB's
10 substantial need arguments miss the mark, however, because they are mistaken about the
11 contents of the presentations, and they have not shown a substantial need.

12 Throughout the conferral process and in their Motions, Staff and CUB continually have
13 argued that they need to see the presentations to understand the risks and benefits of the
14 Reorganization so that they can protect customers.⁷¹ It appears that they believe that the
15 redacted material contains information about the risks to customers posed by the
16 Reorganization.⁷² However, as NW Natural has informed them, this simply is not the case.⁷³
17 On the contrary, the privileged information details NW Natural's lawyers' strategy for presenting
18 the case and their forecasts of the outcome—such as the conditions that will be adopted and
19 the impact of those conditions on the Company.⁷⁴ This easily falls within the protection for work
20 product.⁷⁵ Additionally, courts find that a party has a substantial need for a document only
21 where there is no alternative source for information that is crucial to the case—such as, for
22

23 ⁶⁸ 8 Fed. Prac. & Proc. Civ. § 2024 (3d ed.).

24 ⁶⁹ Saathoff Dec. at 4.

25 ⁷⁰ Staff's Motion to Compel at 20; CUB's Motion to Compel at 8.

26 ⁷¹ Staff's Motion to Compel at 20; CUB's Motion to Compel at 8.

⁷² Staff's Motion to Compel at 20; CUB's Motion to Compel at 8.

⁷³ Kravitz Dec. at 3.

⁷⁴ Saathoff Dec. at 4.

⁷⁵ ORCP 36(B)(3).

1 example, a document that recounts an interview with a deceased witness.⁷⁶ In contrast, a desire
2 to obtain information about the other party's case does not constitute substantial need.⁷⁷ Here,
3 Staff and CUB have demonstrated no legitimate need for the information in the presentations,
4 much less a substantial need.

5 The redacted portions of the presentations are protected by the work product doctrine
6 and the attorney-client privilege, and the Commission should deny Staff's and CUB's Motions
7 to Compel production of this information.

8 **B. Rating Agency Presentations**

9 Staff DR 15 requests presentations "regarding NW Natural common stock, preferred
10 stock, debt, operations or the strategic restructure" that were "made by NW Natural to any rating
11 agencies, investment banks or investors, or by such an external entity to NW Natural."⁷⁸ In
12 response, NW Natural provided several presentations made by the Company to the investor
13 community and to rating agencies.⁷⁹ Attached to some of NW Natural's presentations to rating
14 agencies was a financial forecast, prepared by NW Natural's Finance and Budget department.⁸⁰
15 This financial forecast relies on and incorporates an analysis undertaken by Mr. Thompson, Mr.
16 Kravitz, external counsel, and other Company employees in anticipation of the Company's next
17 rate case, regarding the Commission's likely resolution of the case's critical issues, such as
18 return on equity.⁸¹ The financial forecast was included in the presentations to the rating
19 agencies to share with them the potential or likely impact of a rate case on the Company.⁸² The
20

21 ⁷⁶ See, e.g., *In re Grand Jury Investigation (Sun Co.)*, 599 F2d 1224, 1232 (3d Cir 1979) (finding
substantial need for memorandum containing information from an interview with a deceased individual).

22 ⁷⁷ See, e.g., *United States v. Chatham City Corp.*, 72 FRD 640, 644 (SD Ga 1976) ("Defendants have
23 shown a general, not a particularized, need for the materials they seek. The claim of necessity for the
intrusion into the investigative file appears to be little more substantial than a desire to learn what kind
of a case the Government has.").

24 ⁷⁸ Staff DR 15 (Feb. 22, 2017), Ex. A at 4.

25 ⁷⁹ NW Natural Response to Staff DR 15 (Mar. 15, 2017), Ex. A at 4–5.

26 ⁸⁰ Declaration of Mark Thompson, Ex. D at 2 (hereinafter Thompson Dec.).

⁸¹ Thompson Dec. at 1–2. See the Declaration of Mark Thompson for additional detail about the
development of the rate case analysis and the financial forecast.

⁸² Thompson Dec. at 2.

1 financial forecast is not in any way related to the proposed Reorganization or the Application.⁸³
2 It just happened to be appended to a document that was requested by Staff in discovery in this
3 case.

4 NW Natural redacted the financial forecast from the documents it produced because the
5 forecast reflects confidential work product prepared in anticipation of litigation and is not relevant
6 to any matter at issue in this proceeding.⁸⁴ Disclosure of this analysis would reveal the
7 Company's attorneys' and analysts' predictions and recommendations regarding the potential
8 resolution of issues in its upcoming rate case,⁸⁵ which, in accordance with Commission rules,
9 will be a contested case proceeding in which both Staff and CUB will be parties. Moreover, the
10 financial forecast does not include any assumptions regarding the Reorganization or this
11 Application⁸⁶ and is thus neither relevant nor likely to lead to admissible evidence in this
12 proceeding.⁸⁷ Its disclosure would significantly prejudice NW Natural while providing no
13 information pertinent to this case.⁸⁸ For that reason, Staff's request must be denied.

14 Staff claims that it was told that the financial forecast was not produced because it was
15 protected by the attorney-client privilege and argues that this privilege was waived when the
16 financial forecast was provided to the rating agency.⁸⁹ On the contrary, in the process of
17 conferring, NW Natural explained that the redacted portion of the rating agency presentations
18 was protected by the work product doctrine, which is **not** automatically waived by disclosure to
19

20 ⁸³ Thompson Dec. at 2 (“The financial forecast does not encompass any assumptions or predictions
21 about the outcome of NW Natural’s Application.”).

22 ⁸⁴ Saathoff Dec. at 5; Thompson Dec. at 2.

23 ⁸⁵ Saathoff Dec. at 5; Thompson Dec. at 1–2.

24 ⁸⁶ Thompson Dec. at 2.

25 ⁸⁷ ORS 40.150 (defining relevant evidence). Staff indicates that its purpose in seeking the rating agency
26 presentations is to understand “how [NW Natural’s] ratings will be affected by the holding company
structure.” Staff’s Motion to Compel at 20. It is not clear whether this statement is intended as a
demonstration of “substantial need.” At any rate, the financial forecast has no bearing on this question,
and, in fact, is irrelevant to this docket.

⁸⁸ ORS 40.160 (stating that even relevant evidence may be excluded if its “probative value is
substantially outweighed by the danger of unfair prejudice”).

⁸⁹ Staff’s Motion to Compel at 4.

1 third parties.⁹⁰ Instead, the work product protection is waived only if the disclosure to a third
2 party will enable an adversary to access the information.⁹¹ Here the rating agencies with whom
3 the Company works are bound by confidentiality provisions, which ensure that they will not
4 disclose NW Natural's confidential information outside of the Company.⁹² Thus, the Company's
5 provision to the rating agencies of its financial forecast does not negate the work product
6 protection accorded to that document.

7 Staff notes that they have never encountered redaction to this type of document in the
8 past.⁹³ This fact has no bearing on the determination as to whether *this particular* document
9 is even relevant to a matter at issue in this docket, let alone protected by the work product
10 doctrine. In sum, the financial forecast prepared in anticipation of the Company's next rate case
11 is protected from production. Therefore, the Commission should deny Staff's Motion to Compel
12 production of this document.

13 **C. Board of Directors Meeting Minutes**

14 Staff DR 43(a) seeks "a complete and un-redacted copy of the September 22, 2016
15 minutes (a redacted excerpt of these minutes was provided in response to OPUC DR 21)."⁹⁴
16 Staff DR 43(c) seeks "information from other minutes, or other document sources, concerning
17 'the objectives of establishing a holding company, including facilitating the Company's growth
18 strategy.'"⁹⁵ NW Natural previously had provided a copy of the September 22, 2016, minutes
19

20 ⁹⁰ Kravitz Dec. at 3. See, e.g., *Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F2d 1414,
21 1428 (3d Cir 1991) ("A disclosure to a third party waives the attorney-client privilege unless the
22 disclosure is necessary to further the goal of enabling the client to seek informed legal assistance.
23 Because the work-product doctrine serves instead to protect an attorney's work product from falling into
24 the hands of an adversary, a disclosure to a third party does not necessarily waive the protection of the
work-product doctrine. Most courts hold that to waive the protection of the work-product doctrine, the
disclosure must enable an adversary to gain access to the information.") (citing 8 Wright & Miller,
§ 2024 at 210).

24 ⁹¹ *Id.*

25 ⁹² Saathoff Dec. at 5; Thompson Dec. at 2.

25 ⁹³ Staff's Motion to Compel at 4.

26 ⁹⁴ Staff DR 43(a) (Mar. 24, 2017), Ex. A at 12.

26 ⁹⁵ Staff DR 43(c) (Mar. 24, 2017), Ex. A at 12.

1 in response to Staff DR 21 with work product and attorney-client privileged information
2 redacted.⁹⁶

3 In its response, NW Natural objected to DR 43(a) “because it requests attorney-client
4 privileged information and attorney work-product” and to DR 43(c) “to the extent it requests
5 attorney-client privileged information and attorney work-product.”⁹⁷ Without waiving its
6 objections, NW Natural provided redacted September 22 Board minutes, Board presentations,
7 Officer Team meeting presentations, and consultant materials regarding acquisition strategy in
8 response to other data requests.⁹⁸ NW Natural supplemented its response to DR 43(c) after
9 Staff’s Motion to Compel was filed by producing additional Board minutes, some of which
10 contain redactions.⁹⁹ Although Staff’s request was extremely broad, NW Natural nevertheless
11 believes that it now has provided all documents responsive to Staff DR 43(c).¹⁰⁰

12 Staff appears to argue both that the redacted information in the September 22 minutes
13 is not attorney-client privileged or work product and that NW Natural has waived any privilege
14 because NW Natural did not inform Staff that the information was privileged when it responded
15 to DR 21 with a redacted copy of the minutes.¹⁰¹ Staff also seems to assert—by referring to the
16 docket in which Oregon Electric Utility Company (TPG) sought to acquire Portland General
17 Electric—that meeting minutes typically do not contain attorney-client privileged information,
18 and therefore the September 22 meeting minutes must not be privileged.¹⁰²

19 As an initial matter, the fact that PGE’s meeting minutes were found not to be highly
20 confidential in an unrelated case has no bearing on whether NW Natural’s meeting minutes from
21

22 ⁹⁶ NW Natural Response to Staff DR 21 (Mar. 15, 2017), Ex. A at 7.

23 ⁹⁷ NW Natural Response to Staff DR 43 (Apr. 7, 2017), Ex. A at 12.

24 ⁹⁸ NW Natural Supplemental Response to Staff DR 43 (Apr. 21, 2017), Ex. A at 14.

25 ⁹⁹ NW Natural Supplemental Response to Staff DR 43 (Apr. 21, 2017), Ex. A at 14.

26 ¹⁰⁰ After the April 11 meeting, NW Natural informed Staff that there were some additional highly confidential documents that it had not yet produced, which could be considered responsive to this broad request, and offered to make them available. Staff is considering the offer but has not informed NW Natural of its decision.

¹⁰¹ Staff’s Motion to Compel at 5.

¹⁰² Staff’s Motion to Compel at 22.

1 September 22, 2016, contain privileged or protected information. The question of whether a
2 particular document contains privileged or protected information is a factual one,¹⁰³ and it cannot
3 be resolved by comparison to unrelated documents in other dockets, or by reference to a
4 different company's decision not to assert its privilege.

5 Here, the redacted portions of the meeting minutes are privileged because they capture
6 NW Natural's attorneys' legal advice regarding seeking regulatory approval of the
7 Reorganization.¹⁰⁴ Specifically, at the September 22, 2016, Board meeting, Ms. Saathoff
8 provided an overview of advice previously provided to the Board regarding the Application.¹⁰⁵
9 Ms. Saathoff's overview was included in the meeting minutes,¹⁰⁶ and then, appropriately,
10 redacted as attorney-client privileged. Moreover, by redacting the documents and declining to
11 reveal the confidential portions in response to DR 21, the Company demonstrated its intent to
12 maintain the confidentiality of this information and did not waive the attorney-client privilege.¹⁰⁷

13 Therefore, the Commission should deny Staff's Motion to Compel this document.

14 **D. Information Regarding Net Benefits and Harm to Oregonians**

15 **1. Staff DR 37 Regarding Net Benefits**

16 Staff DR 37 requests that NW Natural "identify and describe in detail all net benefits to
17 Oregon NW Natural (NWN) ratepayers that will result from the HoldCo structure, that are not
18 currently available today without the HoldCo structure," including quantitative, financial,
19 legal/structural, qualitative, and "any other" benefits.¹⁰⁸ NW Natural responded by referring Staff
20 to the Direct Testimony of Brody Wilson and the Direct Testimony of Shawn M. Filippi, which
21 were filed on March 30 (the same day that the Company's response to the DR was filed) and

22 ¹⁰³ *In re Avantel, S.A.*, 343 F3d 311, 318 (5th Cir 2003) ("[t]he application of the attorney-client privilege
23 is a question of fact").

24 ¹⁰⁴ Saathoff Dec. at 4.

25 ¹⁰⁵ Saathoff Dec. at 4.

26 ¹⁰⁶ Saathoff Dec. at 4.

¹⁰⁷ See ORS 40.225(b) and comment thereto ("Unless an intent to disclose is apparent, however, the
attorney-client communication is confidential."); see also ORS 40.280 (providing that waiver occurs
when the privilege holder "voluntarily discloses or consents to disclosure of" the privileged material).

¹⁰⁸ Staff DR 37 (Mar. 16, 2017), Ex. A at 9.

1 contain “the Company’s description of the benefits to NW Natural’s consumers.”¹⁰⁹ Staff asks
2 the Commission to “order NW Natural to provide complete responses to discovery requests in
3 order to develop a full evidentiary record.”¹¹⁰

4 In its testimony, the Company explains the benefits that would accrue from the
5 Reorganization, including enhancing the legal and financial separations between NW Natural
6 and its non-utility subsidiaries, protecting the Company’s strong debt rating and investment
7 profile, and positioning the entity to pursue appropriate growth to keep NW Natural a strong,
8 independent, and local company.¹¹¹ The testimony also identifies 14 separate commitments
9 made by NW Natural to address perceived risks of a holding company structure and ensure
10 additional benefits to customers,¹¹² including:

- 11 • access-to-records commitments, which ensure the Commission’s continued access
12 to information it may need to regulate NW Natural;
- 13 • cost-allocation commitments, which ensure appropriate allocation of costs among
14 NW Natural and its affiliates; and
- 15 • financial commitments, which ensure that NW Natural will remain financially strong
16 after the Reorganization.¹¹³

17 The Company’s testimony also conveys its conclusion that the Reorganization will result in net
18 benefits.¹¹⁴

19 Staff argues that the Company’s testimony does not adequately answer its request
20 because the testimony does not identify any risks and therefore “could not have answered the
21 net benefits question.”¹¹⁵ This argument is perplexing because NW Natural’s testimony explains
22 ***in detail*** how the conditions it proposes mitigate the types of risks that the Commission and

23 ¹⁰⁹ NW Natural Response to Staff DR 37 (Mar. 30, 2017), Ex. A at 9.

24 ¹¹⁰ Staff’s Motion to Compel at 8.

25 ¹¹¹ NW Natural/100, Filippi/2, 11–13; NW Natural/200, Wilson/2, 6, 9–10, 13.

26 ¹¹² NW Natural/200, Wilson/2; NW Natural/100, Filippi/2.

¹¹³ NW Natural/200, Wilson/3.

¹¹⁴ NW Natural/100, Filippi/2, 13–14; NW Natural/200, Wilson/2, 6, 9–11, 13.

¹¹⁵ Staff’s Motion to Compel at 7.

1 parties generally perceive as arising in a reorganization.¹¹⁶ Furthermore, in response to Staff
2 DR 38, the Company did list theoretical risks that commitments like those proposed are intended
3 to guard against and explained how those commitments would operate.¹¹⁷

4 To the extent that Staff wishes to assert that the Company’s proposed commitments fail
5 to mitigate for some risk, that issue is more properly addressed in Staff’s response testimony
6 than through a motion to compel. The Company should not be “compelled” through discovery
7 to articulate its case under a framework imposed or advocated for by another party. The
8 Commission’s discovery rules specifically provide that “[a] party will not be required to develop
9 information or prepare a study for another party, unless the capability to prepare the study is
10 possessed uniquely by the party from whom discovery is sought, the discovery request is not
11 unduly burdensome, and the information sought has a high degree of relevance to the issues
12 in the proceedings.”¹¹⁸ Here, Staff has the same ability as the Company to analyze risks and
13 benefits in light of the proposed commitments.¹¹⁹ NW Natural believes that its response to DR
14 37 fully answers Staff’s question about net benefits.

15 **2. Staff DR 39 Regarding Harm to Oregonians**

16 Staff DR 39 asks the Company to “explain in detail how the proposed HoldCo structure
17 will not harm Oregon citizens as a whole.”¹²⁰ In response, NW Natural referred Staff to its
18 response to DR 38 and to Ms. Filippi’s and Mr. Wilson’s Direct Testimony.¹²¹ The Company’s
19 response to DR 38 contains a detailed discussion of theoretical risks and how the proposed
20 conditions would mitigate them and describes that, “NW Natural does not believe there will be
21

22 ¹¹⁶ NW Natural/100, Filippi/13; NW Natural/200, Wilson/2, 3, 10, 13.

23 ¹¹⁷ NW Natural Response to Staff DR 38 (Mar. 30, 2017).

24 ¹¹⁸ OAR 860-001-0500(4).

25 ¹¹⁹ See, e.g., *In the Matter of Avista Corp. Application for an Order Approving a Corporate*
Reorganization to Create a Holding Company, Docket No. UM 1250, Staff/100, Morgan/7–9 (conveying
Staff’s conclusion that, although Avista’s proposed reorganization could benefit customers, the risks it
poses are not adequately mitigated by the proposed conditions).

26 ¹²⁰ Staff DR 39 (Mar. 16, 2017), Ex. A at 11.

¹²¹ NW Natural Response to Staff DR 39 (Mar. 30, 2017), Ex. A at 11.

1 any harm to the State as a result of the Company’s plan to reorganize.”¹²² In Ms. Filippi’s Direct
2 Testimony, she states that the holding company structure and commitments “will not harm
3 Oregonians as a whole.”¹²³ She explains:

4 There is no means by which the proposed Reorganization will harm Oregonians
5 as a whole, because it will not negatively affect the natural gas utility operation
6 of NW Natural (and will in fact benefit it), and does not impose other burdens or
7 obligations on Oregonians in general. Although not necessary to demonstrating
8 compliance with the Commission’s rules or regulations, NW Natural hopes that
the Reorganization will **benefit** Oregonians as a whole, by helping ensure the
financial strength of a long-lived Oregon-based company, and expanding the
Company’s influence and efficiencies to other investments within the state and
region.¹²⁴

9 Ms. Filippi also points out that the Reorganization is more likely to maintain NW Natural as a
10 financially sound, independent utility.¹²⁵ This testimony clearly explains how Oregonians will not
11 be harmed.

12 Staff appears to assert that NW Natural’s response to DR 39 is inadequate.¹²⁶ On the
13 contrary, NW Natural believes that its testimony and the Company’s response to DR 38 provide
14 a strong basis for finding that the Reorganization will not harm Oregonians as a whole. By
15 pointing Staff to these documents—a common and efficient discovery practice—NW Natural
16 fully and fairly responded to Staff’s request.

17 Staff also takes issue with the Company’s reservation of the right to supplement its
18 response.¹²⁷ Specifically, NW Natural noted in its response that it “reserve[d] its right to provide
19 additional evidence in the record, as the breadth of this data request requires the Company to
20 provide a narrative response and legal argument that may more appropriately be developed
21 throughout the record in this docket, in response to positions taken by, or evidence provided by
22

23
24 ¹²² NW Natural Response to Staff DR 38 (Mar. 30, 2017), Ex. A at 10.

¹²³ NW Natural/100, Filippi/2.

¹²⁴ NW Natural/100, Filippi/14 (emphasis original).

¹²⁵ NW Natural/100, Filippi/14.

¹²⁶ Staff’s Motion to Compel at 8.

¹²⁷ Staff’s Motion to Compel at 8.

1 parties.”¹²⁸ Staff asserts that it is unfair for the Company to reserve the right to respond further
2 to this broad data request because Staff is diligently trying to gather evidence for its only round
3 of testimony.¹²⁹ However, when Staff poses a broad data request that assumes the applicable
4 legal standard and asks the Company to provide an explanation that requires legal argument,
5 the Company must reserve the right to respond further. In responding to Staff’s request to state
6 the entirety of its case at a time when it is not clear what arguments may be asserted by other
7 parties, NW Natural appropriately reserved the right to respond to other parties’ cases, which it
8 has not yet seen.

9 **E. Timely Production of Highly Confidential Information**

10 In DRs 31, 33, 34, 35, and 44, Staff seeks information regarding NW Natural’s strategies
11 for corporate growth, which is highly confidential. Responses to DRs 31, 33, 34, and 35 were
12 due on March 30, and the response to DR 44 was due on April 7. The responsive information
13 was voluminous, highly business-sensitive, and confidential, and also would have been difficult
14 to accurately piece together without a concurrent discussion of the materials. Therefore, as
15 discussed in Staff’s Motion, NW Natural arranged for an in-person meeting at which Company
16 executives—including the Chief Executive Officer—explained NW Natural’s highly confidential
17 strategies for corporate growth in an effort to put the strategies and the documents in context to
18 assist the parties with their review. Immediately following the meeting, the parties requested
19 and were provided with additional documents relevant to the Company’s corporate growth
20 strategy. The parties remain in communication about production of any additional information
21 that Staff may require.

22 The present Motion does not seek to compel production of additional documents related
23 to these DRs. Instead, Staff asks the Commission to order the Company to produce highly
24 confidential material on the due date.¹³⁰ The Company was not aware of Staff’s view that it had

25 ¹²⁸ NW Natural Response to Staff DR 39 (Mar. 30, 2017), Ex. A at 11.

26 ¹²⁹ Staff’s Motion to Compel at 8.

¹³⁰ Staff’s Motion to Compel at 7.

1 violated a due date until it received Staff’s Motion to Compel. The requested order is not
2 necessary. Given that the Modified Protective Order is in place and the parties’ meeting
3 regarding highly confidential material already has occurred, the Company anticipates that future
4 production of highly confidential material will occur on or before the due date, absent agreement
5 between the parties.

6 **IV. CONCLUSION**

7 The information that NW Natural redacted from its discovery responses is covered by
8 the attorney-client privilege and/or work product protection. The Company has sought to
9 answer data requests timely and completely, to provide Staff and CUB with as much information
10 as possible, and to redact only that information necessary to protect and maintain the privileged
11 and protected nature of the material. Despite these efforts—and with no basis other than
12 conjecture and suppositions—Staff and CUB have asked that privileged documents be provided
13 for *in camera* review. As the Ninth Circuit Court of Appeals recognizes, an *in camera* review “is
14 an intrusion which must be justified.”¹³¹ Staff’s and CUB’s Motions to Compel have not provided
15 sufficient bases to justify the intrusion in this case. Therefore, NW Natural respectfully requests
16 that the Commission deny Staff’s and CUB’s Motions to Compel.

17 Alternatively, if the Commission were to decide that an *in camera* review were required,
18 the Company would make appropriate arrangements to provide un-redacted copies of the

19 /////
20 /////
21 /////
22 /////
23 /////
24 /////

25
26

¹³¹ *In re Grand Jury Investigation*, 974 F2d at 1074.

1 documents at issue to the Commission immediately in order to facilitate a speedy resolution of
2 these Motions and preserve the schedule in this docket.

3
4 DATED: April 27, 2017.

MCDOWELL RACKNER GIBSON PC

5
6 

Lisa F. Rackner
Jordan R. Schoonover

7
8 **NORTHWEST NATURAL GAS COMPANY**

9 Zachary D. Kravitz
Associate Counsel
10 220 NW Second Ave
Portland, OR 97209

11
12 Attorneys for NW Natural

13
14
15
16
17
18
19
20
21
22
23
24
25
26

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1804

NORTHWEST NATURAL GAS COMPANY

Exhibit A to Response to Motions to Compel

Relevant Data Request Responses

April 27, 2017



Rates & Regulatory Affairs

UM 1804

Data Request Response

Request No. UM 1804-CUB-DR 2:

Please provide copies of all presentations and associated materials given to the Company's Board of Directors regarding the proposed corporate reorganization.

Response:

NW Natural objects to this request to the extent it requests attorney-client privileged information and/or attorney work-product. Without waiving this objection, the Company will provide the requested materials with the attorney-client privileged information and attorney work-product redacted from the materials.

The information contained in the materials provided with this response is confidential and subject to protection under Order No. 17 052.

Please see "CUB DR 2- Confidential Attachment 1", "CUB DR 2 – Confidential Attachment 2", and "CUB DR 2 – Confidential Attachment 3".



Rates & Regulatory Affairs

UM 1804

Data Request Response

Request No. UM 1804-CUB-DR 3:

Please provide copies of all presentations and associated materials given to the Company's senior management regarding the proposed corporate reorganization.

Response:

NW Natural objects to this request to the extent it requests attorney-client privileged information and/or attorney work-product. Without waiving this objection, the Company will provide the requested materials with the attorney-client privileged information and attorney work-product redacted from the materials.

The information contained in the materials provided with this response is confidential and subject to protection under Order No. 17 052.

Please see "CUB DR 3 – Confidential Attachment 1" and "CUB DR 3 – Confidential Attachment 2".



Rates & Regulatory Affairs
UM 1804
Application to Create a Holding Company
Data Request Response

Request No. UM 1804-OPUC-DR 6:

Please provide a copy of all Board of Director's material (including subcommittees thereto) that discusses or deals with the planned reorganization, including any risk assessments prepared for NW Natural by third parties.

Response:

Please see "Confidential UM 1804 CUB DR 2 Attachment 2" and "Confidential UM 1804 OPUC DR 21 Attachment 3".



Rates & Regulatory Affairs
UM 1804
Application to Create a Holding Company
Data Request Response

Request No. UM 1804-OPUC-DR 15:

From January 1, 2015, please provide copies of any and all presentations made by NW Natural to any rating agencies, investment banks or investors, or by such an external entity to NW Natural, regarding NW Natural common stock, preferred stock, debt, operations or strategic restructure.

Response:

Investor Presentations

NW Natural regularly provides presentations to the investor community on a variety of topics; however, none of these presentations include materials on a strategic restructure. Presentations made by the Company to investors are available on the Company's website on the "Investors" page and "Presentations" tab (<http://www.snl.com/irweblinkx/presentations.aspx?iid=4057132>). In addition to the presentations on the website, NW Natural also made two additional presentations to sell-side analysts and potential investors during the equity offering process. Those presentations are attached as:

"OPUC DR 15 Attachment-1" - NWN Sell-Side Analyst Presentation Oct 2016
"OPUC DR 15 Attachment-2" - NWN Investor Presentation Equity Offering Nov 2016

Rating Agency Presentations

NW Natural also routinely provides presentations to its ratings agencies regarding operations, risk management, and financing plans. To date, the Company has not included materials on a strategic restructure in these presentations. Attached are the confidential rating agency presentations, with privileged portions excerpted, that relate to NW Natural's common stock, debt and operations.

Please see attached files:

"Confidential OPUC DR 15 Attachment-3" - 2015 May Rating Agency
"Confidential OPUC DR 15 Attachment-4" - 2015 Dec Rating Agency
"Confidential OPUC DR 15 Attachment-5" - 2016 May Rating Agency
"Confidential OPUC DR 15 Attachment-6" -2016 Dec Rating Agency

Banking Presentations

Banks regularly provide NW Natural advisory presentations regarding economic conditions, financing, and other items. Attached is a listing of the presentations from January 1, 2015 through March 13, 2017. These presentations are retained in central files at NW Natural. Many of these presentations are not available in electronic form, and due to the volume and confidential nature of the presentations, we invite Staff to review the presentations in our offices in Portland, Oregon.

Please see "Confidential OPUC DR 15 Attachment-7"- for a detailed list of these presentations.



Rates & Regulatory Affairs
UM 1804
Data Request Response

Request No. UM 1804-OPUC-DR 16:

Please provide copies of any business and operational strategic plans prepared by or for the utility company, since January 1, 2015, related to the proposed reorganization.

Response:

Please see NW Natural's responses to UM 1804-CUB-DR 2 and UM 1804-CUB-DR 3.



Rates & Regulatory Affairs
UM 1804
Application to Create a Holding Company
Data Request Response

Request No. UM 1804-0PUC-DR 21:

Pursuant to the requirements of OAR 860-027-0030, please include the name and address of any person receiving or entitled to a fee for service (other than attorneys, accountants and similar technical services) in connection with the negotiation or consummation of the issuance or sale of securities, or for services in securing underwriters, sellers or purchasers of securities, other than fees included in any competitive bid; the amount of each such fee, and facts showing the necessity for the services and that the fee does not exceed the customary fee for such services in arm's length transactions and is a reasonable cost of rendering the service and any other relevant factors.

Please also include:

- a. A copy of HoldCo's charter or articles of incorporation with amendments to date; (Including prospective changes as a result of the reorganization);
- b. A copy of the bylaws of NW Natural and of each subdivision thereto with amendments to date; (Including prospective changes as a result of the reorganization);
- c. A copy of each resolution of directors authorizing the issue in respect to which the application is made and, if approval of stockholders has been obtained, copies of the stockholder resolutions should also be furnished;
- d. A copy of registration statement proper, if any, and financial exhibits made a part thereof, filed with the Securities and Securities and Exchange Commission.

Response:

As of the date of this response, there is no person receiving or entitled to receive a fee for service in connection with the negotiation or consummation of the issuance or sale of securities, other than attorneys, accountants and similar technical services. Further, the reorganization does not contemplate the sale of securities. The reorganization as proposed would involve the exchange of shares on a one to one basis such that the shareholders of Northwest Natural Gas Company, an Oregon corporation, and the entity in which the utility resides (NW Natural) would hold the same percentage of the newly formed Holdco immediately after the reorganization as they held in NW Natural immediately prior to the reorganization.

- a. A proposed draft of HoldCo's articles of incorporation is attached hereto as "OPUC DR 21 Attachment-1". As of the date of this response, HoldCo has not yet been formed and there are no prospective changes to such draft as a result of the reorganization.
- b. A copy of the bylaws of Northwest Natural Gas Company, an Oregon corporation and the entity within which the utility resides (NW Natural) with amendments to date is attached as "OPUC DR 21 Attachment-2". There are no prospective changes currently contemplated to the attached bylaws as a result of the reorganization.
- c. A copy of an excerpt from the minutes of the meeting of the NW Natural Board of Directors held on September 22, 2016, whereby the Board of Directors authorized the application to the OPUC to form Holdco, is attached as "Confidential OPUC DR 21 Attachment-3". The Board of Director has not yet approved the formation of Holdco and no stockholder approval has yet been obtained with respect to the formation of Holdco.
- d. NW Natural has not filed a registration statement with the Securities and Exchange Commission in connection with the formation of Holdco. NW Natural has previously submitted to the OPUC all registration statements filed with the Securities and Exchange Commission in connection with the public issuance of its securities, including most recently in connection with Docket UF 4299.



Rates & Regulatory Affairs
UM 1804
Application to Create a Holding Company
Data Request Response

Request No. UM 1804-OPUC-DR 37:

Please identify and describe in detail all net benefits to Oregon NW Natural (NWN) ratepayers that will result from the HoldCo structure, that are not currently available today without the HoldCo structure. Please describe:

- a. Quantitative benefits
- b. Financial benefits
- c. Legal/structural benefits
- d. Qualitative benefits
- e. Any other benefits

Response:

Please see the Direct Testimony of Brody Wilson and the Direct Testimony of Shawn M. Filippi filed on March 30, 2017 for the Company's description of the benefits to NW Natural's consumers that will result from the Company's request to reorganize its corporate structure to create a holding company.



Rates & Regulatory Affairs
UM 1804
Application to Create a Holding Company
Data Request Response

Request No. UM 1804-OPUC-DR 38:

Conversely, please identify and describe in detail the potential risks and harms to Oregon NW Natural (NWN) ratepayers that could or will result from the HoldCo structure. Please describe:

- a. Quantitative risks or harms
- b. Financial risks or harms
- c. Legal/structural risks or harms
- d. Qualitative risks or harms
- e. Any other risks or harms

Response:

Under a holding company structure there is a theoretical risk that the management of the holding company could exert pressure to cause the utility to dividend cash to the holding company in an amount that causes the utility's level of equity to fall below a reasonable level, or when the utility's credit rating is below an investment grade. The Company has mitigated these risks with its two ring-fencing commitments: (1) ensuring that the Company will not issue dividends to the holding company unless, on the date of the distribution, the utility's common equity ratio after giving effect to the distribution is not less than 40 percent of total utility capital; and (2) ensuring that the utility will not issue dividends to the holding company in the event that the utility's credit rating is below investment grade. Both of these risks are also mitigated by the fact that the holding company's officers and board of directors will be comprised of current utility officers and directors, who have expertise in managing the utility operations at NW Natural and will continue to be embedded in the utility's day-to-day operations. This continuity will provide customers with significant assurance that the management will continue to act as prudent stewards of the utility, and presents a much different situation than one where an outside entity is acquiring a utility and the new management's philosophy may be unknown to the company being acquired and its regulators.

Based on the evaluation of these risks and the Company's mitigation of the risks, NW Natural does not believe there will be any harm to the State as a result of the Company's plan to reorganize.

Please also see the Direct Testimony of Brody Wilson and the Direct Testimony of Shawn M. Filippi for further development of issues responsive to this data request.



Rates & Regulatory Affairs
UM 1804
Application to Create a Holding Company
Data Request Response

Request No. UM 1804-OPUC-DR 39:

Please explain in detail how the proposed HoldCo structure will not harm Oregon citizens as a whole.

Response:

Please see NW Natural's response to UM 1804-OPUC-DR 38, NW Natural's Application, the Direct Testimony of Shawn M. Filippi and the Direct Testimony of Brody Wilson. NW Natural reserves its right to provide additional evidence in the record, as the breadth of this data request requires the Company to provide a narrative response and legal argument that may more appropriately be developed throughout the record in this docket, in response to positions taken by, or evidence provided by parties.



Rates & Regulatory Affairs
UM 1804
Application to Create a Holding Company
Data Request Response

Request No. UM 1804-OPUC -DR 43:

43. Regarding the minutes from the Northwest Natural Gas Company Regular Meeting of the Board of Directors held on September 22, 2016:

- a. Please provide a complete and un-redacted copy of the September 22, 2016 minutes (a redacted excerpt of these minutes was provided in response to OPUC DR 21).
- b. Please provide a copy of the HoldCo benefits and disadvantages information that Ms. Saathoff referenced in the September 22, 2016 minutes, specifically, "Management previously provided information to the Board regarding the benefits and disadvantages of a holding company structure."
- c. Please provide information from other minutes, or other document sources, concerning "the objectives of establishing a holding company, including facilitating the Company's growth strategy."

Response:

- a. NW Natural objects to this request because it requests attorney-client privileged information and attorney work-product. Without waiving its objection, NW Natural provided the minutes from the September 22, 2016 Board of Directors meeting with the attorney-client privileged information and attorney work-product redacted in response to UM 1804-OPUC-DR 21.
- b. NW Natural objects to this request to the extent it requests attorney-client privileged information and attorney work-product. Without waiving its objection, NW Natural provided these materials with the attorney-client privileged information and attorney work-product redacted in response to UM 1804-OPUC-DR 6/UM 1804-CUB-DR 2.
- c. NW Natural objects to this request to the extent it requests attorney-client privileged information and attorney work-product. Without waiving its objection, NW Natural has provided the requested information in response to data requests in this docket, but to the extent this request calls for highly confidential information, that information will be provided at the meeting scheduled with Staff on April 11, 2017 to discuss highly confidential materials.



Rates & Regulatory Affairs
UM 1804
Application to Create a Holding Company
Data Request Response

Request No. UM 1804-OPUC -DR 43:

43. Regarding the minutes from the Northwest Natural Gas Company Regular Meeting of the Board of Directors held on September 22, 2016:

- a. Please provide a complete and un-redacted copy of the September 22, 2016 minutes (a redacted excerpt of these minutes was provided in response to OPUC DR 21).
- b. Please provide a copy of the HoldCo benefits and disadvantages information that Ms. Saathoff referenced in the September 22, 2016 minutes, specifically, "Management previously provided information to the Board regarding the benefits and disadvantages of a holding company structure."
- c. Please provide information from other minutes, or other document sources, concerning "the objectives of establishing a holding company, including facilitating the Company's growth strategy."

Supplemental Response:

DR 43(c) NW Natural supplements its response to UM 1804-OPUC-DR 43 with the following response:

Without waiving its objections made when the Company first responded to this data request, NW Natural is supplementing its response to this data request, which include all relevant excerpts from Board of Directors minutes from meetings held on December 17, 2015, February 25, 2016, and December 16, 2016 attached as Confidential OPUC DR 43 Supplemental attachments 1-3. Portions are being withheld because they constitute attorney-client or work-product privileged materials are redacted. Please also see the redacted excerpts of minutes from the Board of Directors meeting held on September 22, 2016, submitted in response to UM 1804-OPUC-DR 21 and the minutes from Board of Directors meeting held on July 26, 2016 submitted in response to UM 1804-OPUC-DR 43. The proposed reorganization was also discussed at the February 23, 2017 meeting of the Board of Directors, but those minutes are currently in the process of being completed.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1804

NORTHWEST NATURAL GAS COMPANY

Exhibit B to Response to Motions to Compel

Declaration of MardiLyn Saathoff

April 27, 2017

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

3 **UM 1804**

4 In the Matter of
5 NORTHWEST NATURAL GAS
6 COMPANY,
7 Application for Approval of Corporate
8 Reorganization to Create a Holding
Company.

**DECLARATION OF
MARDILYN SAATHOFF**

9
10 I, MardiLyn Saathoff, declare under penalty of perjury under the laws of the state of
11 Oregon:

12 1. My full name is MardiLyn Saathoff. I am employed by Northwest Natural Gas
13 Company (NW Natural or the Company) as Senior Vice President, Regulation and General
14 Counsel, and I make this Declaration in support of NW Natural's Response to Staff's and CUB's
15 Motions to Compel. In particular, this Declaration responds to Staff's and CUB's Motions to
16 Compel an *in camera* review of documents responsive to Staff data requests (DRs) 6, 15, 16,
17 and 43 and CUB DRs 2 and 3.

18 2. In my capacity as General Counsel, I oversee all of NW Natural's legal affairs.
19 Specifically, with respect to NW Natural's Application to Create a Holding Company
20 (Application), I have been responsible for ensuring that the NW Natural Officer Team and the
21 Board of Directors (Board) receive full and accurate legal advice sufficient to make informed
22 decisions about the Application. Toward this end, in preparation for filing NW Natural's
23 Application, I led a team of lawyers, assisted at times by other NW Natural personnel, in
24 developing presentations for NW Natural's Board and Officer Team. The primary goal of these
25 presentations was to provide NW Natural's Board and Officer Team with legal advice as to the
26 best strategy for presenting the Application and the likely outcome of the Commission approval

1 process, including the conditions that likely would be ordered by the Commission—or agreed to
2 in the settlement process—and the impact of those conditions on the Company. The
3 presentations include overviews of legal research, options for different approaches to and
4 strategies for the case, and a strategy for drafting the Application and working with all parties,
5 including Staff and CUB. In an effort to make the information as accessible as possible to all
6 Board and Officer Team members, we included written text, illustrations, matrices, tables, and
7 quantification of impacts.

8 3. In developing these presentations, I relied on my own legal expertise and legal
9 advice provided by:

- 10 • Zachary Kravitz – NW Natural’s in-house regulatory lawyer
- 11 • Shawn Filippi – NW Natural’s Vice President, Corporate Secretary, and Chief
12 Compliance Officer
- 13 • Stoel Rives LLP – NW Natural’s outside business lawyers
- 14 • McDowell Rackner Gibson PC – NW Natural’s outside regulatory lawyers
- 15 • Alston & Bird LLP – NW Natural’s outside FERC lawyers
- 16 • Day Carter Murphy LLP – NW Natural’s outside California regulatory lawyers

17 4. In addition, at my request, several other Company employees assisted in
18 providing information for the presentations:

- 19 • Brody Wilson – Interim Chief Financial Officer, Interim Treasurer, Chief Accounting
20 Officer, and Controller
- 21 • Jorge Moncayo – Senior Manager, Budgeting and Financial Planning
- 22 • Tobin Davilla – Financial Consultant, Budgeting and Financial Planning
- 23 • Mark Thompson – Senior Director of Rates and Regulation

24
25
26

1 Mr. Thompson is a lawyer for the Company whose primary duties are not legal, but who reports
2 to me and provides legal advice when called upon to do so. We are not claiming that he
3 provided legal advice for these presentations.

4 5. Mr. Kravitz, Ms. Filippi, and Mr. Thompson assisted me with consolidating the
5 advice and information into the presentations. All presentations were labeled as “confidential”
6 and “attorney-client privileged” because they conveyed legal advice and constituted work
7 product and the Company intended to keep them confidential.

8 6. Prior to and after the delivery of the presentations, NW Natural maintained its
9 Board materials in a locked room to which only certain NW Natural employees have access.
10 Board materials also are maintained electronically on a restricted drive and in Diligent, a Board
11 material delivery platform. Board materials are available only to the Board, certain Officers, and
12 the employees who created the materials or attended the Board meeting where the materials
13 were presented. Additionally, for public accounting purposes, our Board materials are available
14 to auditors from Price Waterhouse Coopers, LLP, but it is our policy not to provide attorney-
15 client privileged materials to them. In the event an employee without access wishes to obtain
16 Board materials, those materials are provided only on a limited, need-to-know basis, after
17 approval from Ms. Filippi or me, to ensure the security and confidentiality of such materials. The
18 Officer Team presentations were available only to Officers or other employees who are
19 approved for access to confidential materials related to our corporate reorganization.

20 7. With the assistance of Ms. Filippi, I delivered the presentations to the Board at
21 their regularly scheduled meetings on December 17, 2015; September 22, 2016; December 15,
22 2016; and February 23, 2017. With assistance from Mr. Kravitz, Ms. Filippi, and Mr. Thompson,
23 I also delivered the presentations to the Officer Team on November 3, 2015, and August 23,
24 2016. No one other than Board or select Officer Team members and the Company employees

25

26

1 necessary to make the presentations attended these presentations or otherwise observed the
2 confidential communications.

3 8. Filing of the Application was approved at the September 22, 2016, Board
4 meeting, and the redacted portions of these minutes contain a summary of legal advice, which I
5 provided to the Board, regarding seeking regulatory approval of the Reorganization. Some
6 minutes from other meetings at which I gave presentations regarding the Reorganization and
7 the Application also contain confidential privileged and protected information.

8 9. When the Company received CUB DRs 2 and 3, and Staff DRs 6, 16, and 43, we
9 immediately recognized that the responsive documents contained attorney-client privileged
10 communications and protected work product, which would need to be redacted in order to
11 preserve its privileged and protected nature. Therefore, Mr. Kravitz, Ms. Filippi, Mr. Thompson,
12 and I carefully reviewed each responsive document, page by page and line by line, to determine
13 whether the information contained therein could be provided to Staff and CUB or whether it was
14 attorney-client privileged or work product and needed to be redacted. Our goal in this exercise
15 was to provide Staff and CUB with the most information possible while still maintaining
16 privileges. We redacted information as attorney-client communications only if it was provided by
17 a lawyer—either inside or outside the Company—and intended to convey legal advice, such as
18 recommended strategy, potential litigation or settlement outcomes, and analysis of relevant
19 caselaw. We redacted information as work product if it was prepared either by an attorney or by
20 another employee working in conjunction with an attorney in anticipation of litigating the
21 Application (or, in one case discussed in the Declaration of Mark Thompson, the Company's
22 upcoming rate case). Some information provided by lawyers—such as simple summaries of
23 relevant cases or black-letter statements of legal standards—was not redacted on the principle
24 that, while it reasonably could be categorized as work product (because it was prepared in
25
26

1 anticipation of litigation), it did not reveal an attorney's mental impressions, conclusions,
2 opinions, legal theories, or advice concerning the litigation.

3 10. In their DRs, Staff also requested production of presentations that NW Natural
4 gave to rating agencies. Attached to some of these presentations was a financial forecast. As
5 discussed in more depth in the Declaration of Mark Thompson, we redacted this forecast from
6 the presentations produced to Staff because the forecast contains confidential work product
7 prepared in anticipation of litigating the Company's upcoming rate case. Disclosure of this
8 analysis would reveal the Company's attorneys' and analysts' predictions and recommendations
9 regarding what the Company should seek and could receive in its upcoming rate case.
10 Although the Company disclosed the financial forecast to rating agencies, it was confident that
11 the rating agencies would not disclose the financial forecast to others because the rating
12 agencies are bound by confidentiality provisions in their agreements with NW Natural.

13 I hereby declare that the above statement is true to the best of my knowledge and belief,
14 and that I understand it is made for use as evidence before the Public Utility Commission of
15 Oregon and is subject to penalty for perjury.

16 SIGNED this 27 day of April, 2017, at Portland, Oregon.

17
18
19 Signed:



**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1804

NORTHWEST NATURAL GAS COMPANY

Exhibit C to Response to Motions to Compel

Declaration of Zachary Kravitz

April 27, 2017

1 concerns. Ms. Klein mentioned that CUB had similar concerns, so they agreed to include
2 CUB's lawyer, Mike Goetz, in the discussion. Accordingly, on April 3, 2017, NW Natural hosted
3 a teleconference at which Ms. Rackner and I reviewed the documents containing redactions,
4 page by page, and provided explanations of each redaction, including the subject matter of the
5 information that had been redacted, who had provided the information, and the privilege
6 involved. Because the group could not get through all of the redacted material during the first
7 call, we set up and held a follow-up call on April 7, 2017.

8 4. In the course of conferring, Ms. Klein expressed concern that NW Natural may
9 have improperly claimed attorney-client privilege for information that was provided by non-
10 lawyers or for information provided by lawyers that did not constitute legal advice. In response,
11 I explained that the Company categorized information as attorney-client privileged and redacted
12 it only if it was provided by a lawyer—either inside or outside the Company—and intended to
13 convey legal advice, such as recommended strategy, potential litigation outcomes, and analysis
14 of relevant caselaw. It should be noted here that the attorney-client privilege label was removed
15 from the Board of Directors and Officer Team presentations, in error, during the redaction
16 process that preceded the initial disclosure of the redacted presentations. When the error was
17 recognized, the “attorney-client privilege” label was replaced on the presentations. The
18 “confidential” label remained continuously in place, and NW Natural always intended that the
19 presentations would remain confidential, privileged, and protected.

20 5. Also during the conferral process, I specifically acknowledged that, although
21 Mark Thompson is a lawyer, much of his work for the Company is not legal in nature and that
22 his contributions to the documents at issue were not claimed as attorney-client privileged
23 communications. On the other hand, I also explained that Mr. Thompson participated in
24 preparing work product. In response to questions about Shawn Filippi, I explained that Ms.
25 Filippi is a lawyer, is employed by the Company as a lawyer, and that we had claimed attorney-
26

1 client privilege for information that she provided in the documents only if that information was
2 fairly characterized as legal (as opposed to business or other) advice.

3 6. With respect to work product, we informed Staff and CUB that the Company
4 categorized information as work product and redacted it only if it was prepared either by an
5 attorney or other employee in conjunction with an attorney, in anticipation of litigating the
6 Application or—as discussed below—the Company’s 2017 rate case. We explained that some
7 information provided by lawyers—such as simple summaries of relevant cases or black-letter
8 statements of legal standards—was not redacted on the principle that, while it reasonably could
9 be categorized as work product (because it was prepared in anticipation of litigation), it did not
10 reveal mental impressions, conclusions, opinions, or legal theories concerning the litigation.

11 7. We also explained the reason that the Company had redacted several slides in
12 the rating agency presentations that were produced in response to Staff DR 15. We explained
13 that the documents that had been redacted from these presentations were not related in any
14 way to this docket, but rather were prepared in anticipation of another contested case. We also
15 explained that, unlike the attorney-client privilege, the work product doctrine is not automatically
16 waived by disclosure to third parties, and therefore disclosure of the documents to rating
17 agencies did not negate the work product protection. These work product documents are
18 explained in more detail in the Declaration of Mark Thompson.

19 8. In the course of conferring, Staff and CUB stated that they needed to review the
20 redacted information in the Board of Directors and Officer Team presentations in order to
21 evaluate the risks of the Reorganization to NW Natural’s customers. I explained to Staff and
22 CUB that the redacted documents do not relate to or disclose risks to customers, but rather, the
23 risks related to litigation strategy and outcomes of litigation. Staff and CUB were not convinced.
24 And, in an effort to help Staff and CUB understand the general content and privileged nature of

25

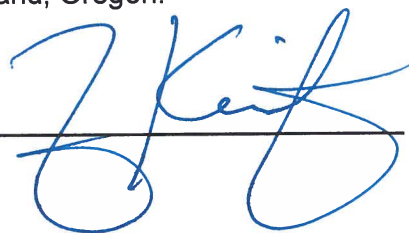
26

1 the slides, NW Natural agreed to “un-redact” the titles on many of the redacted slides to provide
2 additional context for the materials that were redacted.

3 I hereby declare that the above statement is true to the best of my knowledge and belief,
4 and that I understand it is made for use as evidence before the Public Utility Commission of
5 Oregon and is subject to penalty for perjury.

6 SIGNED this 27th day of April, 2017, at Portland, Oregon.

7
8 Signed: _____

A handwritten signature in blue ink, appearing to read 'Z. Kravitz', is written over a horizontal line. The signature is fluid and cursive.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1804

NORTHWEST NATURAL GAS COMPANY

Exhibit D to Response to Motions to Compel

Declaration of Mark Thompson

April 27, 2017

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

3 **UM 1804**

4 In the Matter of

5 **NORTHWEST NATURAL GAS**
6 **COMPANY,**

7 Application for Approval of Corporate
8 Reorganization to Create a Holding
9 Company.

DECLARATION OF
MARK THOMPSON

10 I, Mark Thompson, declare under penalty of perjury under the laws of the state of
11 Oregon:

12 1. My full name is Mark Ryan Thompson. I am employed by Northwest Natural Gas
13 Company (NW Natural or the Company) as Senior Director of Rates and Regulation.

14 2. In early 2014, NW Natural began considering the timing of its next general rate
15 case in Oregon. To assist the company in determining what that timing would be, I began an
16 effort to understand the likely and potential outcomes of the rate case and how those outcomes
17 would vary depending on the timing of the case. The effort involved working with my employees
18 and regulatory counsel (both external counsel and later in-house counsel Zachary Kravitz) to
19 identify and research specific issues that we believed could be raised in the context of a rate
20 case by parties to that proceeding, and the likely and potential decisions that could be made by
21 the Commission or the likely and potential outcomes that could result from a settlement.

22 3. NW Natural has used our analysis, which is updated from time to time, to
23 continue to plan for and review the likely outcome of its next rate case in an effort to determine
24 the timing of that case. NW Natural has consistently intended our analysis to be privileged and
25 confidential and has handled it accordingly.

26

