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June 5, 2013

VIA ELECTRONIC FILING & U.S. MAIL

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street, N.E., #215
P.O. Box 2148
Salem, Oregon 97308-2148


Re: In the Matter of Oregon Public Utility Commission –
Investigation into Treatment of Pension Costs in Utility Rates
Docket No. UM 1633

Dear Filing Center:

Enclosed please find the original and five (5) copies of the Northwest Industrial Gas Users' Answering Brief. A copy is being served on all parties to this docket listed on the attached Certificate of Service.

Thank you for your assistance with this filing. Should you have any questions, please feel free to contact me.

Very truly yours,


Tommy A. Brooks

TAB:sk
Enclosures

cc: UM 1633 Service List

4849-2703-4900, v. 1

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **UM 1633**

4 In the Matter of

5 OREGON PUBLIC UTILITY
6 COMMISSION

7 Investigation into Treatment of Pension
8 Costs in Utility Rates

NORTHWEST INDUSTRIAL GAS
USERS' ANSWERING BRIEF

9 **Introduction**

10 Pursuant to Chief Administrative Law Judge Michael Grant's Prehearing
11 Conference Memorandum dated April 9, 2013, the Northwest Industrial Gas Users
12 ("NWIGU") file this Answering Brief relating to the Commission's proposal to bifurcate
13 this proceeding. On May 7, 2013, Avista Corporation, Cascade Natural Gas, NW Natural
14 Gas Company, PacifiCorp, and Portland General Electric (the "Joint Utilities") filed a
15 joint Opening Brief objecting to the bifurcation of this proceeding.¹ The Joint Utilities'
16 Opening Brief essentially argues that all issues in this docket must proceed together
17 because the utilities' "past costs" are at issue in both of the proposed phases of the
18 proceeding. NWIGU supports the Commission's proposal to bifurcate this docket into
19 two phases and believes that doing so will promote administrative efficiency without
20 impacting the Joint Utilities' due process rights.

21 **Points and Authorities**

22 The Commission proposes that the first phase of this docket would address how
23 the Commission should treat pension costs when setting rates on a going-forward basis.
24 The second phase would address how the Commission should resolve requests by utilities
25 to recover pension costs incurred in the past. This approach is consistent with the
26

¹ Idaho Power also filed an opening brief seeking to withdraw from this proceeding.

1 Commission’s earlier decision in Docket UG 221, which initiated this proceeding. It also
2 recognizes the fact that each phase of the proposed process will rely on a different kind of
3 record.

4 As part of its general rate case in Docket UG 221, NW Natural sought recovery of
5 out-of-period pension contributions and characterized those contributions as “pre-paid
6 assets.” Relying on that characterization, NW Natural argued that the contributions
7 should be allowed in rate base. The Joint Utilities echo that same argument here and
8 intend to pursue a similar proposal in this generic docket.² The Opening Brief fails to
9 acknowledge, however, that the Commission expressly ruled on this very point for the
10 contributions that had been made as of the date of the order in NW Natural’s general rate
11 case. In its discussion of the pension issue, the Commission stated the following:

12 As Staff and others have noted, the Commission used the
13 same methodology for calculating a utility's pension costs
14 since 1986. **That method**, which allows the utility to
15 collect its FAS 87 expense in rates, **treats pension costs as
ordinary, recurring expenses**, rather than assets to be
included in rate base.³

16 Based on that conclusion, the Commission rejected NW Natural’s request to
17 recover its past pension contributions in rate base. Thus, the state of the current law and
18 policy is unequivocally that past pension contributions in excess of FAS 87 expense are
19 ordinary, recurring expenses. As the Commission implied in its UG 221 order, out-of-
20 period pension contributions are recoverable only through a deferral order or an
21 accounting order.

22 Having clarified the state of the existing law and policy, the Commission went on
23 to indicate that it would open up a generic investigation into the treatment of pension
24 costs *on a going-forward basis* for all utilities:

26 ² Opening Brief at 4:14.

³ *In the Matter of Northwest Natural Gas Co. dba NW Natural, Request for a General Rate Revision*,
Docket UG 221, Order 12-437 (Nov. 16, 2012) (“UG 221 Order”) at p.21 (emphasis added).

1 The Commission may conclude during the generic
2 investigation that including such assets in rate base is an
3 appropriate policy to apply to all utilities **going forward**.
4 Should that occur, NW Natural would be able to seek
5 inclusion of an appropriate prepaid pension asset in rate
6 base in a future rate proceeding.⁴

7 The Commission's order did not indicate in any way that it would reconsider NW
8 Natural's position with respect to the prior contributions at issue in that case, and that
9 issue is now settled. Instead, the Commission desired to open a generic document so that
10 if it were to change the Commission's long-standing policy, it would do so in a way that
11 makes sense for all utilities.

12 If the Commission changes its policy – after consideration of the record – with
13 regard to pension contributions in this docket, only then would utilities be able to start
14 treating their excess pension contributions differently under a new policy. At that time,
15 when utilities have some certainty about how the new policy will be implemented, they
16 will be free to argue that contributions they have already made, which would have been
17 made under the Commission's current policy, should be treated differently. However,
18 unlike the one-size-fits-all approach that the Commission may seek going forward, the
19 recovery of past contributions will necessarily differ on a utility-by-utility basis and will
20 be a fact-intensive process. That is, the reason for and the size of each utility's
21 contribution will have been different. For example, one utility may have been affected by
22 the downturn in the economy more than another utility. Similarly, one utility may have
23 had an internal policy that resulted in higher funding of a pension plan than another
24 utility and, therefore, may not have had to make as large of a contribution to meet federal
25 standards regarding funding levels. Each of these utility-specific factors would have to
26 be taken into consideration. The Commission would therefore have to develop a unique

⁴ UG 221 Order at p.22.

1 record before deciding whether past contributions should be treated differently than the
2 current policy under which they were made.

3 It would be burdensome on the Commission and other parties to have to address
4 up to four unique records relating to past pension contributions, especially to do so *in*
5 *addition to* the policy record that will need to be built for the Commission to decide how
6 pension contributions should be treated going forward. Moreover, NWIGU represents
7 the interests of large-volume gas users and therefore would have no particular interest in
8 participating in a proceeding that addresses a specific request by an electric utility to
9 recover past pension contributions, but does have an interest in the generic policy docket
10 that applies to all utilities, including gas utilities, going forward. For this reason, the
11 Commission is right to seek more efficiency through bifurcation of the process.

12 Finally, the Joint Utilities assert in the Opening Brief that bifurcating the process
13 would deprive them of due process rights. This claim is unfounded. Even if the
14 Commission does bifurcate the process, no utility will be prevented from seeking a
15 specific methodology from the Commission or setting forth any facts it deems relevant to
16 the issues. The Joint Utilities can pursue their interests in each phase of the proceeding.

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Conclusion

Based on the foregoing, the Commission should bifurcate this process. Phase one of the process should address a statewide policy for the treatment of pension contributions. Phase two, if necessary, should consist of utility-specific requests to recover past pension contributions made under the Commission’s existing policy.

Dated this 5th day of June 2013.

Respectfully submitted,

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Northwest Industrial Gas Users

CERTIFICATE OF SERVICE

I CERTIFY that I have on this day served the foregoing document upon all parties of record in this proceeding via electronic mail and/or by mailing a copy properly addressed with first class postage prepaid.

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Dated in Portland, Oregon, this 5th day of June 2013.

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