

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 903

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL

2011 Spring Earnings Review.

RULING

DISPOSITION: COMMENTS REQUESTED; SCHEDULE MODIFIED

The second round of comments in this docket is currently due on August 8, 2011. After review of the first round of comments, and after consultation with the Commissioners, I ask the parties to address three issues in their upcoming comments. To give the parties time to address these additional matters, I also extend the deadline for the second round of comments to **August 12, 2011**.

1. **Commission Discretion / Retroactive Ratemaking.** The parties propose two completely opposing outcomes to this dispute. One involves offsetting Northwest Natural's 2010 tax liability with the entire amount of the judgment, providing ratepayers with a larger amount of "sharing" than they would have otherwise received. The other involves ignoring the judgment completely, effectively crediting the entire amount to shareholders, on the theory that the judgment relates to prior tax periods and thus cannot be factored into the 2010 earnings review at all.

Are these two outcomes the only legally appropriate ones? Does the Commission have discretion to determine an equitable result based on the facts presented in a given docket? For example, rather than an all-or-nothing approach, may the Commission consider how ratepayers and shareholders would have been impacted had the tax refunds from this judgment been allocated to prior periods and the earnings reviews in those years reanalyzed? Would a decision based on such an analysis constitute retroactive ratemaking?¹

¹ Northwest Natural asserts that, in this case, the company would not have reached its earning threshold in prior periods even if the tax refund amounts had been included in each of the years to which they were attributable. In other words, under the facts presented here, if we went back and adjusted prior periods, ratepayers would not benefit. But alternative factual scenarios, perhaps applicable to a future docket, might yield different results and, under Northwest Natural's preferred policy, deny ratepayers sharing to which they would have otherwise been entitled.

2. **“Out-of-Period Adjustment.”** While not entirely clear, it appears that the parties may disagree about whether the tax judgment is properly considered an out-of-period adjustment. Northwest Natural argues that it clearly is. Staff, on the other hand, appears to argue that taxes in the company’s earnings reviews have historically been based on “actuals,” and that the tax refund is therefore properly considered an appropriate 2010 adjustment.

I ask Staff (or any of the parties supporting Staff’s position) to clarify whether it considers the tax judgment to be an “in-period” adjustment, properly attributed to the 2010 earnings review period under existing Commission precedent, or an out-of-period adjustment that should nevertheless be included in the 2010 earnings review period as an exception to existing Commission precedent.

3. **Precedent.** The parties are asked to provide citations to any relevant precedent, here or in other jurisdictions, that might inform the Commissioners’ analysis of how a court judgment should be treated for regulatory purposes. If the circumstances of the earnings-review process are so unique that precedent from other jurisdictions cannot provide meaningful guidance, please briefly explain.

Dated at Salem, Oregon, this 3rd day of August, 2011.



Lisa D. Hardie
Administrative Law Judge