

ENTERED: SEP 11 2015

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1635 (Phase II), UM 1706

In the Matters of

NORTHWEST NATURAL GAS COMPANY,
dba NW NATURAL,Mechanism for Recovery of
Environmental Remediation Costs (UM 1635)

and

Request for Determination of the Prudence
of Environmental Remediation Costs for
the Calendar Year 2013 and the First Quarter
of 2014 (UM 1706)

ORDER

DISPOSITION: STIPULATION ADOPTED

I. INTRODUCTION

By Order No. 15-049 (dated February 20, 2015), we resolved issues relating to Northwest Natural Gas Company's request for recovery of environmental remediation costs associated with cleanup efforts related to the historic operation of manufactured gas plants. Among other things, we determined that insurance proceeds recovered by NW Natural (\$150.5 million) should be allocated pro-rata between the "prior period" (\$50.2 million) and the "future period" (\$100.3 million), and directed the company to hold the future period portion of the insurance proceeds in a secure account, with interest to accrue "at the highest rate the company is able to obtain while reasonably minimizing the risk to principal."¹ The proceeds would be used to offset future remediation costs.

On March 31, 2015, NW Natural filed an application for reconsideration or clarification of Order No. 15-049. The company asked that we reexamine that portion of the order that directed the company to hold the \$100.3 million in a secured account. NW Natural noted that it had incurred a tax liability on the insurance proceeds and requested that we confirm that only the after-tax balance need be held in a secure account.

On April 15, 2015, the Commission Staff, the Citizens' Utility Board of Oregon (CUB), and the Northwest Industrial Gas Users (NWIGU) all filed responses opposing the application. Generally, these parties argued that NW Natural's application was not

¹ See Order No. 15-049 at 7.

legally sufficient and that reconsideration of the order was procedurally and substantively inappropriate because the information contained in the application had been available to the company during the proceeding. On April 22, 2015, NW Natural filed a reply, arguing that while the information had been available to the company during the proceeding, the information was not relevant until the Commission prescribed the specific treatment of the insurance proceeds adopted in the decision.

Following informal discussions with the parties, NW Natural withdrew its application for reconsideration, stating that the parties had reached agreement regarding how the insurance proceeds should be held and that the parties intended to request that we amend Order No. 15-049. On July 31, 2015, the parties filed a stipulation requesting that we amend Order No. 15-049 under ORS 756.568, together with a joint explanatory brief. The stipulation is attached as Appendix A to this order.

In their stipulation and brief, the parties do not discuss the implications for the adopted ratemaking treatment in Order No. 15-049 of NW Natural's tax payment. On August 31, 2015, we convened a status conference in these dockets. The purpose of the status conference was to determine whether NW Natural's previously unknown tax liability would have any material effect on the availability of the insurance proceeds to offset remediation expenses for either the prior period or the future period.

II. THE STIPULATION

NW Natural's application addressed the amount of the insurance proceeds available. First, it described several non-tax related adjustments that reduced the amount of the available proceeds to \$96.4 million, from the original balance of \$100.3 million cited in the order.² Second, the company explained that it had incurred a tax liability of 39.5 percent on the insurance proceeds, leaving an after-tax amount of \$57.3 million. NW Natural asked that we modify the order to confirm that only this after-tax balance be held in the secure account.

In their stipulation, the parties agree that it is not necessary for NW Natural to hold insurance proceeds in a secure account and ask that we amend the order to eliminate that condition. Instead, they agree that interest on the pre-tax insurance proceeds will accrue at the Prudence-Reviewed Unamortized Remediation Expense (PURE) rate beginning on the date of Order No. 15-049. The PURE rate is established yearly by the Commission Staff and represents the 5-year U.S. Treasury rate plus 100 basis points.

The parties agree that the value of the pre-tax insurance proceeds will be used as an offset against prudently incurred deferred environmental remediation costs before the application of earnings tests. NW Natural will annually credit (prior to the application of the earnings test) \$5 million plus interest, an offset against the remediation costs.

² These adjustments include the receipt of an additional \$1.685 million in insurance proceeds, applying Commission-approved state allocation, applying \$2.5 million to expenditures associated with the Gasco Upland Pumping Station, and applying \$1.8 million to 2013 environmental expenditures. *See* Stipulation at 3.

To ensure that all uncredited insurance proceeds will be available to offset future costs, in the event that NW Natural's credit rating drops below investment grade, the company agrees to secure and maintain a satisfactory letter of credit for the uncredited balance of pre-tax insurance proceeds. The costs of the letter of credit will be borne by customers.

The parties do not necessarily agree to all of the non-tax-related adjustments to the insurance proceeds that will be available to be credited as an offset to deferred environmental expenses. The amount of insurance proceeds subject to the rate treatment described in the stipulation will be resolved in the pending compliance process for Order No. 15-049.³ The parties do agree that the total amount of pre-tax insurance proceeds may need to be adjusted for the following: (1) the amount applied to offset the cost of the Gasco Station; (2) the applicable state allocation factor; and (3) the correct application of interest, all of which are at issue in the compliance process.

III. JOINT BRIEF

The stipulating parties believe that our adopted treatment of the uncredited insurance proceeds was intended to further two goals: (1) the secure account would ensure that the insurance proceeds would be available to offset prudently incurred environmental remediation costs, and (2) the secure account would yield customers a reasonable rate of interest. In their view, adoption of the stipulation would maintain and advance these goals.

With respect to the first goal, they believe that the proposed letter of credit, in the event NW Natural's credit rating drops below investment grade, assures customers that the remediation expenses will be offset by the full amount of the insurance proceeds. With regard to the second goal, they note that NW Natural will pay a higher rate of interest to customers than they would receive under the original order. In the unlikely event that a letter of credit should be required, that cost will be more than offset by the higher accrued interest.

IV. DISCUSSION

In Order No. 15-049, we adopted a treatment of the insurance proceeds based on the information in the record. As noted by NW Natural in its application for reconsideration or clarification, we did not account for the company's income tax obligations associated with the insurance settlements. Further, as noted by the company in its reply to the responses to its application, those tax obligations were not relevant until we prescribed the secure account treatment of those proceeds.

In their explanatory brief, the parties accurately state our intent with respect to the treatment of the insurance proceeds allocated to the "future period" adopted in Order No. 15-049. Their proposed treatment satisfies our objectives while also addressing NW Natural's concerns. The stipulation is adopted.

³ Staff identified issues related to compliance with Order No. 15-049 in its report presented at our May 19, 2015 Public Meeting: <http://edocs.puc.state.or.us/efdocs/HAU/um1635han111141.pdf>

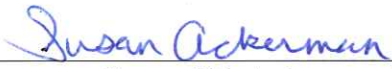
At the status conference, we determined that NW Natural's payment of income taxes on the insurance proceeds would not reduce the availability of the funds to be used to offset the remediation expenses. We confirmed that the tax payment would be fully offset by future tax deductions attributable to remediation expenses so that, over time, the ratepayers would be credited with the full amount of the insurance proceeds as a credit against the expenses. We further confirmed that there is no net present value diminution in the value of the insurance proceeds to ratepayers because interest will accrue on the pre-tax amount of the insurance.

We recognize that the amount of the tax deductions associated with remediation expenses likely will exceed the amount necessary to offset the tax liability. We understand that those additional deductions will be applied by NW Natural to offset its rate base in future rate proceedings. In its next general rate case filing, we ask the company to present evidence confirming our understanding.

V. ORDER


IT IS ORDERED that the stipulation between Northwest Natural Gas Company, dba NW Natural; the Citizens' Utility Board of Oregon; the Northwest Industrial Gas Users; and the Staff of the Public Utility Commission of Oregon, attached as Appendix A, is adopted.

Made, entered, and effective SEP 11 2015.


Susan K. Ackerman
 Chair


John Savage
 Commissioner




Stephen M. Bloom
 Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

BEFORE THE PUBLIC UTILITY COMMISSION
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UM 1635 PHASE II & UM 1706

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Prudence of Environmental Remediation
Costs for the Calendar Year 2013 and the
First Quarter of 2014
(UM 1706)

**STIPULATION RE: PARTIES REQUEST
TO AMEND ORDER NO. 15-049
PURSUANT TO ORS 756.568**

This Stipulation ("Stipulation") is entered into for the purpose of resolving disagreements among the parties regarding NW Natural Gas Company's (NW Natural, or the Company) Application for Reconsideration and/or Clarification filed on March 31, 2015, in which it requested that the Public Utility Commission of Oregon ("the Commission") reconsider or clarify that portion of its Order No. 15-049 ("Order") in which it directed NW Natural to hold approximately \$100.3 million in insurance proceeds to be applied to future remediation costs "in a secure account, with interest accruing at the highest rate the company is able to obtain while reasonably minimizing the risk to the principal"¹ (hereinafter, "the Application"). The Company pointed out that it had incurred a tax liability of 39.5 percent on the insurance proceeds and therefore asked the Commission to issue an order

¹ *In the Matters of Northwest Natural Gas Company, dba NW Natural, Mechanism for Recovery of Environmental Remediation Costs and Request for Determination of the Prudence of Environmental Remediation Costs for the Calendar Year 2013 and the First Quarter of 2015*, Dockets UM 1635 and UM 1706, Order No. 15-049 at 7 (Feb. 20, 2015).

confirming that only the after-tax balance need be held in a secure account.² This Stipulation reflects the parties' agreement that instead of continuing litigation of the Application, NW Natural would withdraw its Application and the parties would instead request that the Commission amend its Order under its authority pursuant to ORS 756.568 consistently with the terms of agreement below.

This Stipulation is supported by the concurrently-filed Brief in Support of Stipulation.

PARTIES

1. The parties to this Stipulation are NW Natural, Commission Staff ("Staff"), the Citizens' Utility Board of Oregon ("CUB"), and the Northwest Industrial Gas Users ("NWIGU") (collectively, "Parties").³

BACKGROUND

2. On February 20, 2015, the Commission issued the Order in this docket. That Order states in relevant part:

We do not adopt any of the parties' arguments regarding which interest rate should be applied to the insurance proceeds. Instead, we direct NW Natural to hold the insurance proceeds in a secure account, with interest accruing at the highest rate the company is able to obtain while reasonably minimizing the risk to principal.⁴

As we discussed earlier, recognizing that the remediation work at issue here may continue for as long as twenty years, we allocate approximately \$100.3 million of the insurance proceeds for future remediation work, and will apply \$5 million in insurance proceeds to each year moving forward, plus

² Application, pp. 3-5.

³ Portland General Electric Company is a party to this docket but did not participate in the settlement discussions.

⁴ *In the Matters of Northwest Natural Gas Company, dba NW Natural, Mechanism for Recovery of Environmental Remediation Costs and Request for Determination of the Prudence of Environmental Remediation Costs for the Calendar Year 2013 and the First Quarter of 2015*, Dockets UM 1635 and UM 1706, Order No. 15-049 at 7 (Feb. 20, 2015).

interest accrued on the entire outstanding insurance proceeds balance over the previous 12 months.⁵

3. On March 31, 2015, Northwest Natural filed the Application. In the Application, NW Natural stated that it interpreted the Order to require the Company to place in a secure account \$100.3 million in insurance proceeds to be credited as an offset to future remediation costs.⁶ The Company pointed out that it had incurred a tax liability of 39.5 percent on the insurance proceeds and therefore asked the Commission to issue an order confirming that only the after-tax balance need be held in a secure account.⁷

4. The Application also provided additional detail as to the amount of insurance proceeds available to be credited toward past and future environmental remediation expenses.⁸ In the Order, the Commission referred to the approximately \$150.5 million in insurance proceeds. NW Natural asserted that the actual total amount of insurance proceeds and other environmental recovery proceeds available to NW Natural for past and future periods was actually \$147.1 million. NW Natural asserted that it arrived at this adjustment from \$150.5 million of insurance proceeds as follows: First, NW Natural had received an additional \$1.685 million of insurance proceeds in December 2014, which increased the total insurance proceeds from \$150.5 million to \$152.2 million. Next, NW Natural allocated \$147.1 million of the \$152.2 million of insurance proceeds to Oregon customers based upon the Commission-approved state allocation. Pursuant to Order No. 14-077 in Docket UG 263, the Commission authorized NW Natural to apply \$2.5 million of

⁵ *Id.* at 11 (emphasis added).

⁶ Application, at p. 2.

⁷ Application, pp. 3-5.

⁸ The amounts listed in this paragraph do not include accrued interest on the insurance proceeds. Importantly, as explained in paragraph 11 below, the parties do not agree on NW Natural's calculations.

the insurance proceeds to the expenditures associated with the Gasco Upland Pumping Station.⁹ NW Natural, therefore, deducted this \$2.5 million from the \$147.1 million of Insurance Proceeds for an adjusted total of \$144.6 million of insurance proceeds. After allocating one third of this amount to historical deferrals (incurred through December 31, 2012), and applying \$1.8 million in insurance proceeds to 2013 environmental expenditures, NW Natural asserted that \$96.4 million remains available to be credited against future environmental remediation expenses as opposed to the \$100.3 million figure cited in the Order.

5. On April 15, 2015, Staff, NWIGU, and CUB all filed responses opposing NW Natural's Application. Generally, these parties argued that NW Natural's Application was not legally sufficient and that reconsideration of the Order is procedurally and substantively inappropriate because the information contained in the Application had been available to the Company during the proceeding. NW Natural filed a Reply on April 22, arguing that while the information contained in the Application had been available to the Company during the proceeding, no party had proposed that the Company deposit the insurance proceeds in a secure account, and therefore the information was not relevant until the Commission directed the Company to use a secure account in the Order. On May 1st, Administrative Law Judge Pines instructed the parties to "meet and confer" regarding the issues raised in the Application and in the responses to the Application and to report back to the Commission on any agreement they might be able to reach.¹⁰

6. On May 19, 2015, and again on May 22, 2015 the Parties met at the Commission offices to discuss settlement as directed by Judge Pines. As a result of those

⁹ *In the Matter of NW Natural Gas Company, dba, NW Natural, Investigation into the Prudence of Gasco Site Capital Costs*, Docket UG 263, Order No. 14-077 (Mar. 5, 2014).

¹⁰ ALJ Ruling, Issued May 2015.

discussions, the Parties agreed that NW Natural would withdraw its Application and that the Parties would settle their differences on the following terms:

AGREEMENT

7. The Parties do not necessarily agree to all of the non-tax-related adjustments to the insurance proceeds NW Natural asserted should apply as described in paragraph 4. The amount of insurance proceeds subject to the rate treatment described in this Stipulation will be resolved in the compliance process for Order No. 15-049 ("Compliance Process"). The amount of insurance proceeds that will be determined in the Compliance Process and that will be subject to the rate treatment described in this Stipulation is referred to as the "pre-tax insurance proceeds" in this Stipulation.

8. The value of the pre-tax insurance proceeds as ordered by the Commission will be used as an offset against prudently incurred deferred environmental remediation costs before the application of earnings tests. In the Order, the Commission stated that Northwest Natural "will apply \$5 million in insurance proceeds to each year moving forward, plus interest accrued on the entire outstanding insurance proceeds balance over the previous 12 months."¹¹ NW Natural will accomplish this by annually crediting (prior to the application of the earnings test) \$5 million plus the interest that accrued on the entire pre-tax insurance proceeds for the preceding 12 months, at the rate described below in Paragraph 11, as an offset against prudently incurred deferred environmental remediation costs.

9. It is unnecessary for the Company to hold insurance proceeds in a secure account in order to ensure that the funds are protected from loss of principal. For that reason, the Parties agree that the Commission should amend the Order to eliminate the

¹¹ Order 15-049 at 11. Note that the issue in this Stipulation, related to the Application, is the interest on a going-forward basis. CUB's Public Meeting letter, May 25, 2015, also raised a concern about how the interest that has already accumulated was handled in the Company's Compliance filing, which the Commission declined to approve on May 19, 2015.

direction to NW Natural to hold insurance proceeds for future environmental remediation costs in a secure account.

10. In order to ensure that all uncredited insurance proceeds will be available to offset prudently incurred deferred environmental remediation costs regardless of the Company's financial condition, in the event that the Company's credit rating drops below investment grade, the Company will secure a letter of credit from an accredited institution agreed to by the Parties for the uncredited balance of pre-tax insurance proceeds, including any unapplied interest.¹² The Company will maintain and renew annually the letter of credit in the amount of the uncredited balance, unless or until relieved of that obligation by the Commission. As the balance declines, the Company will ensure that the letter of credit always sufficiently matches that balance. The cost of the letter of credit will be borne by customers. The Parties further agree that if the Commission directs Northwest Natural to obtain a letter of credit on the pre-tax insurance proceeds notwithstanding Northwest Natural's credit rating, and so long as the costs of the letter of credit are borne by ratepayers, such Commission decision, in this docket or another docket, does not constitute a "material" change to the Stipulation that triggers a Party's ability to withdraw from the Stipulation under paragraph 16 below.

11. The Parties agree that interest on the pre-tax insurance proceeds will accrue at the Prudence-Reviewed Unamortized Environmental Remediation Expense ("PURE") rate beginning on the date the Commission issued its Order in this proceeding. The PURE rate will accrue on all remaining insurance proceeds that have not been credited against prudently incurred deferred environmental remediation costs. The PURE rate is established early each year by OPUC Staff and represents the 5-year US Treasury rate plus 100 basis points.

¹² A letter of credit provides the company access to the stated level of monies, at the company's discretion, regardless of the company's financial condition.

12. Prior to February 20, 2018, no Party will seek to change the ratemaking treatment of the pre-tax insurance proceeds agreed to in this Stipulation or ask the Commission to include in rates a deferred tax asset associated with the taxes paid on the insurance proceeds. Subsequent to February 20, 2018, if any Party seeks to modify any provision of this Stipulation, all Parties are no longer bound to this Stipulation's treatment of insurance proceeds and may propose for Commission consideration any ratemaking mechanisms, and interest, on a going-forward basis, related to insurance proceeds, as that Party deems appropriate.

13. The Parties do not agree with all aspects of NW Natural's calculation of the pre-tax insurance proceeds available to be credited as an offset to deferred environmental expenses, as described in paragraph 4 of this Stipulation; however, they do recognize that the total amount of pre-tax insurance proceeds available to be credited as an offset to environmental expenses may need to be adjusted for the following: (1) the amount applied to offset the cost of the Gasco Pumping Station; (2) the applicable state allocation factor; and (3) the correct application of interest,, all of which are at issue in the compliance filing process.

GENERAL PROVISIONS

14. This Stipulation will be offered into the record as evidence pursuant to OAR 860-001-0350(7). The Parties agree to support this Stipulation throughout this proceeding and any appeal, provide witnesses to sponsor this Stipulation at hearing, if needed, and recommend that the Commission issue an order adopting the Stipulation.

15. If this Stipulation is challenged by any other party to this proceeding, the Parties agree that they will continue to support the Commission's adoption of the terms of this Stipulation. The Parties reserve the right to cross-examine witnesses and put in such evidence as they deem appropriate to respond fully to such issues presented including the right to raise issues that are incorporated in the settlements embodied in this Stipulation.

16. The Parties have negotiated this Stipulation as an integrated document. If the Commission rejects all or any material portion of this Stipulation or imposes additional material conditions in approving this Stipulation, any Party shall have the right to withdraw from the Stipulation, along with any other rights provided in OAR 860-001-0350(9), including the right to present evidence and argument on the record in support of the Stipulation, and shall be entitled to seek reconsideration pursuant to OAR 860-001-0720.

17. By entering into this Stipulation, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed by any other Party in arriving at the terms of this Stipulation, other than as specifically identified in the body of this Stipulation. No Party shall be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding, except as specifically identified in this Stipulation.

18. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

This Stipulation is entered into by each Party on the date entered below such Party's signature.

NW NATURAL

By: Lisa Rackner
Printed Name: Lisa Rackner
Date: 7/30/15

STAFF

By: _____
Printed Name: _____
Date: _____

CUB

By: _____
Printed Name: _____
Date: _____

NWIGU

By: _____
Printed Name: _____
Date: _____

This Stipulation is entered into by each Party on the date entered below such Party's signature.

NW NATURAL

By: _____

Printed Name: _____

Date: _____

CUB

By: _____

Printed Name: _____

Date: _____

STAFF

By: _____

Printed Name: _____

Date: _____

NWIGU

By: _____

Printed Name: _____

Date: _____

for Stephenie Andrews

Mike

Mike Weirich

7/30/15

This Stipulation is entered into by each Party on the date entered below such Party's signature.

NW NATURAL

STAFF

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____

CUB

NWIGU

By: Bob Jenkins

By: _____

Printed Name: Bob Jenkins

Printed Name: _____

Date: 7-30-15

Date: _____

This Stipulation is entered into by each Party on the date entered below such Party's signature.

NW NATURAL

STAFF

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____

CUB

NWIGU

By: _____

By:  _____

Printed Name: _____

Printed Name: Chad Stokes

Date: _____

Date: 7/31/15