

ENTERED: JAN 26 2016

**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: ORDER NO. 15-049 CLARIFIED AND AFFIRMED

I. INTRODUCTION

In Order No. 15-049, we resolved a number of issues relating to the implementation of Northwest Natural Gas Company's Site Remediation and Recovery Mechanism (SRRM) and directed the company to make a compliance filing to implement our decision. NW Natural's subsequent compliance filing elicited responses from the Commission Staff (Staff), the Citizens' Utility Board of Oregon (CUB) and the Northwest Industrial Gas Users (NWIGU), objecting to various elements of the company's filing. After several months of workshops and negotiations, the parties resolved most of their disagreements. However, several issues remained unresolved.

The parties agreed that the issues could be addressed through briefs. In their briefs, the parties address three issues: (1) the allocation of remediation costs between Oregon and Washington customers; (2) whether the \$15 million disallowance adopted by the Commission should include interest on that amount; and (3) whether the base rate adjustment for 2013, 2014, and 2015 is contrary to the order and violates the rule against retroactive ratemaking.

II. STATE ALLOCATION OF EXPENSES

A. Positions of Parties

1. *NW Natural*

In Order No. 15-049 we adopted the parties' initially agreed-upon state allocation of environmental remediation costs (referring to the stipulation that we rejected in Order No. 13-424) "which relies on historic operations to determine the allocation of costs between Oregon and Washington."¹ In its compliance filing, NW Natural applied the historical operations allocation factor (96.68 percent to Oregon) to clean-up costs related only to the Gasco site, the only manufactured gas plant that historically served both Washington and Oregon customers. The company proposed that the costs related to other sites – which served only Oregon customers – be allocated entirely to Oregon.

NW Natural acknowledges that in the rejected stipulation the parties had agreed to allocate the costs 96.68 percent to Oregon customers and 3.32 percent to Washington. NW Natural explains, however, that the stipulation was the result of a compromise, and one provision by itself could not be assumed to be fair and reasonable in isolation.

NW Natural also argues that there is no evidence in the record to support the allocation of all costs based on the 96.68 percent allocation factor. The company had proposed to allocate 100 percent of the costs incurred to remediate Oregon specific sites only to Oregon customers, while CUB had proposed a 90 percent allocation to Oregon customers, treating the remediation costs as "current" costs, not "historical" costs. Because we had before us only the two proposed allocation methods, NW Natural argues that our reference to "historical operations" indicates that we intended that, to the extent historic operations served only Oregon customers, the costs to clean up those sites should be allocated to only Oregon customers.

Finally, NW Natural argues that the allocation of a portion of all of the costs to Washington customers would be inconsistent with our three basic principles for interstate allocation.² According to NW Natural, the allocation proposed by the other parties would violate each of these principles, which are to (1) allow the utility an opportunity to recover its prudently incurred costs; (2) ensure that Oregon's share of the utility's costs is "equitable;" and (3) meet the public interest standard.

2. *Staff and CUB*

Staff and CUB argue that there is no ambiguity regarding our decision in Order No. 15-049 – we explicitly adopted the allocation factor specified in the stipulation, where the parties agreed that 96.68 percent of the costs to be amortized through the

¹ Order No. 15-049 at 6.

² Citing *PacifiCorp Request to Initiate an Investigation of Multi-Jurisdiction Issues and Approve Inter-Jurisdictional Cost Allocation Protocol*, Docket No. UM 1050, Order No. 05-021 (Jan 12, 2015).

SRRM would be allocated to Oregon customers. According to Staff, our use of the term “historic operations” to describe the allocation does not change the substance of our action.

Staff summarizes the record to show that, while parties referred to historic operations and historical allocation for purposes of cost allocation, they did not refer to NW Natural’s proposal to allocate costs associated with multiple sites to only Oregon customers as “historic operations” or the “historic allocation approach.” Staff argues that our reference to “historic operations” does not mean that we intended to adopt the company’s proposed allocation method.

Staff also believes that the 96.68 percent allocation factor for all costs is supported by the record. According to Staff, while the gas produced at Gasco was sold only to Oregon customers, NW Natural did not demonstrate that system benefits from those sales did not flow to Washington customers.

CUB also characterizes NW Natural’s interpretation as illogical, because we could not have adopted the shared allocation of costs as specified in the stipulation and also have intended to allocate the costs of some sites entirely to Oregon. CUB states that the company has an incentive to shift more of its costs to Oregon customers, because the Washington Commission has not yet resolved the cost allocation issue.

Staff and CUB also recommend that we confirm that NW Natural should use the same allocation factor to allocate the insurance proceeds that it uses to allocation costs.

B. Discussion

The decision in the order is clear. We adopted the inter-jurisdictional allocation factors proposed by the parties in their stipulation. That allocation – initially proposed by NW Natural in its opening testimony – is supported by the record, and is not based solely on the stipulation. We considered a range of outcomes – from the proposal made by NW Natural in its reply testimony to the proposal made by CUB and found that the order is equitable and in the public interest.

If NW Natural believed we erred in adopting the allocation factors proposed in the stipulation, it should have filed an application for reconsideration or rehearing under ORS 756.561(1). A compliance filing is not the appropriate procedural vehicle to request a modification to an order.

We also agree with Staff and CUB that NW Natural should use the same allocation factors for insurance proceeds.

III. INTEREST ON THE \$15 MILLION DISALLOWANCE

We decided issues related to NW Natural’s recovery of past and future remediation expenses after dividing the costs into two periods: (1) past (2003 to December 31, 2012);

and (2) future (January 1, 2013 and onward). For the past period, we applied an earnings test to determine how much of the deferral balance NW Natural should share. We set the balance at \$94.3 million as of December 31, 2012, and applied insurance proceeds to reduce that balance to \$44.2 million. We then required NW Natural to bear \$15 million of the deferral and provided that the company would amortize the remaining \$29.2 million through the SRRM.

A. Positions of Parties

1. NW Natural

NW Natural implemented the disallowance by subtracting the \$15 million from the deferral account as of the date of the order (February 20, 2015). The company's approach allows it to retain the interest on the \$15 million from January 1, 2013 to the date of the order. The amount of the interest is \$2.8 million.

NW Natural explains that when we ordered a \$15 million disallowance, we intended solely a \$15 million disallowance and did not intend to disallow the interest that accrued on that amount from the beginning of 2013 to the date of the order (February 20, 2015). NW Natural emphasizes that, when we considered the circumstances of the deferral and decided to impose the disallowance of \$15 million, we did not specify – or give any indication – that the disallowance represented only the principal and that a further disallowance of interest would be required.

NW Natural dismisses concerns that its interpretation sets a precedent for utilities earning interest on amounts disallowed. NW Natural explains that, in this case, we did not apply a specific earnings review to disallow specific costs and, instead, adopted a flat disallowance reflecting the unique circumstances of the case.

2. Staff and Intervenors

Staff, CUB, and NWIGU contend NW Natural's proposed implementation is contrary to the terms of our order. All three parties argue that, if NW Natural is allowed to recover interest on the disallowed \$15 million earned between the end of the designated "past period" and the date of Order No. 15-049, the company will recover more than the amount intended by the order. They explain that NW Natural's proposed implementation would, in effect, be as if we had determined that the \$15 million adjustment should have been made to the deferral balance as of the date of the order – February 20, 2015 – instead of the end of the past period – December 31, 2012.

To give effect to the order to disallow \$15 million of the deferral balance of \$44.2 million, the parties maintain that NW Natural must remove from the account \$15 million plus any associated return earned from January 1, 2013 to February 20, 2015. CUB explains that the \$15 million should be subtracted from the deferral period with which it is associated. Only after the insurance proceeds and the disallowance are subtracted from the deferral account should NW Natural be allowed to earn interest.

In CUB's view, NW Natural's approach would set a bad precedent by allowing a utility to earn a return on amounts that were otherwise disallowed. A utility should not be allowed to earn interest on amounts that were deemed already recovered by an earnings test.

B. Discussion

We agree with Staff and intervenors that NW Natural's proposed implementation would allow the company to recover more than our order intended. We required that \$15 million be deducted from the \$44.2 million balance as of December 31, 2012. Having been deducted from the account, it could not accrue interest. The company cannot earn interest on an amount that has been disallowed.

IV. RETROACTIVE RATEMAKING

In addressing the future environmental remediation costs (after December 31, 2012) we directed NW Natural to file a compliance tariff rider to collect \$5 million per year in base rates intended to help prevent the accumulation of an excessively large deferral balance. In its initial compliance filing, the company proposed to collect \$5 million each year for 2013 and 2014 and a prorated amount for 2015 (for a total of \$13.8 million). Several parties objected to the proposed collection method. In its revised compliance filing, NW Natural proposes to put the \$13.8 million in the SRRM amortization account, to be amortized over five years.

A. Positions of Parties

1. CUB

CUB objects to NW Natural's proposal. CUB argues that because we did not direct NW Natural to apply a base rate tariff adjustment for the years in question, the company's proposal exceeds the authority conferred by the order. CUB relies on language in the order that the tariff rider was to apply on a "going forward" basis. According to CUB, "[a]lthough the Commission Order did not explicitly describe how an earnings test should apply to the years of 2013, 2014 and 2015, absent a base rate charge of \$5 million, CUB believes that the earnings test that was described in the order, with the exception of the base rate charge, is appropriate."³

CUB further argues that NW Natural's proposed treatment would violate the rule against retroactive ratemaking. According to CUB, the company's proposal would have future customers paying rates related to an expense that was theoretically in base rates in 2013, 2014, and 2015, absent a deferral.

³ CUB Response Brief at 11.

2. *NW Natural and Staff*

NW Natural argues that its proposal is consistent with the order, which explicitly directs the company to include \$5 million per year in base rates for remediation expenses incurred after December 31, 2012. NW Natural adds that CUB's retroactive ratemaking claim is off-base because the amounts at issue have been deferred, and that all of the costs incurred in the period are eligible for amortization.

Staff supports NW Natural's proposed treatment of the accrued tariff rider balance. Although NW Natural will recover these costs by amortizing the amounts under the SRRM rather than by offsetting them with the \$5 million collected annually in base rates, Staff states that the company is not required to assume that there is no offset for purposes of applying the earnings test adopted in the order.

B. Discussion

We reject CUB's claim that NW Natural's proposal to put \$13.8 million into the SRRM amortization account, to be amortized over five years, does not comply with the order. There was clearly a timing issue raised when we issued the order on February 20, 2015, starting the "future period" on January 1, 2013 and prescribed the implementation of the \$5 million annual base rate tariff rider beginning at that time. The company's proposal is consistent with the treatment adopted in the order.

With respect to the future period, we decided that "NW Natural will continue to defer its remediation expenses."⁴ The remediation expenses incurred in 2013, 2014, and 2015 are recoverable in rates, subject to the earnings test adopted in the order. The only issue is the timing. We adopted the tariff rider to prevent the accrual of an excessively large deferral balance. Rejection of NW Natural's proposal would not reduce the company's recovery of its remediation costs, it would only increase the amount of money in the deferral balance.

Because we found that NW Natural would continue to defer its remediation expenses and established an earnings test for recovery, there is no retroactive ratemaking issue.

⁴ Order No. 15-049 at 13.

V. ORDER

IT IS ORDERED that Northwest Natural Gas Company, dba Northwest Natural, shall make an amended compliance filing consistent with this order within 30 days of the date of this order.

Made, entered, and effective JAN 26 2016.




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.