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April 22, 2015

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

Re: Dockets UM 1635 and UM 1706

Attention Filing Center:

Attached for filing in the above-captioned dockets is NW Natural's Motion for Leave to File Reply.

Please contact this office with any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Wendy McIndoo".

Wendy McIndoo
Office Manager

Enclosure

cc: Service List

**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)

**NW NATURAL'S
MOTION FOR LEAVE TO FILE REPLY**

I. INTRODUCTION

1 NW Natural Gas Company (“NW Natural” or “the Company”) respectfully requests
2 that the Public Utility Commission of Oregon (“Commission”) accept and consider NW
3 Natural’s timely filed Reply to the responses filed by the Commission Staff (“Staff”), the
4 Citizens’ Utility Board of Oregon (“CUB”), and the Northwest Industrial Gas Users
5 (“NWIGU”) regarding NW Natural’s Application for Reconsideration or, in the alternative,
6 for Clarification of Order No. 15-049 (“Application”). The Company requested
7 reconsideration of the Commission’s direction to the Company to place approximately
8 \$100.3 million in insurance proceeds (“Insurance Proceeds”) in a secure account.
9 Reconsideration is warranted in this case because the Company by necessity incurred an
10 approximate \$40 million tax obligation on the Insurance Proceeds, and therefore should
11 not be required to hold the full \$96.4 million (two-thirds of \$144.6 million available after the

1 adjustments described in the Application)¹ in cash in the account. Staff, CUB, and NWIGU
2 claim review of this issue should be denied because NW Natural could have disclosed
3 information about its tax obligations on the Insurance Proceeds earlier in the proceeding.
4 However, the Company's tax obligation was not applicable to any issue in the proceeding
5 until the Commission directed the Company to place \$100.3 million of the Insurance
6 Proceeds in a secure account. Therefore there is good cause for reconsideration.

II. REQUEST FOR LEAVE TO FILE REPLY

7 The Commission's rules do not provide for an automatic reply to a response to an
8 application for reconsideration; however, the Commission may accept a reply in its
9 discretion.² For example, the Commission has granted a motion for leave to file a reply
10 where the response raises factual questions about a party's conduct, and the party asserts
11 that additional information is necessary to provide a full record about the party's conduct.³
12 NW Natural seeks permission to file its Reply to address several points in the parties'
13 responses which require a response to correct the record. First, the parties mistakenly
14 assert that reconsideration is precluded because NW Natural could have provided
15 information about the Insurance Proceeds earlier in the proceeding. Second, the parties
16 mischaracterize the Company's intent regarding the disclosure of its tax obligations on the
17 Insurance Proceeds. NW Natural's Reply corrects the record on these important issues.
18 Accepting and considering NW Natural's Reply will not delay the Commission's review of
19 the Company's Application.

¹ See NW Natural's Application at 2-3 for a full description of the pre-tax adjustments to the Insurance Proceeds, reducing the total available amount to \$144.6 million reflecting additional amounts, inter-jurisdictional allocation, and direction from the Commission in Order No. 14-077.

² See, e.g., *PáTu Wind Farm, LLC v. Portland Gen. Elec. Co.*, Docket UM 1566, Order No. 14-425 (Dec. 8, 2014) (granting PáTu Wind Farm, LLC's request for leave to file reply comments).

³ *Re Pac. Power & Light Co.*, Docket UE 177, Order No. 08-002 (Jan. 3, 2008) (granting a request for leave to file a reply where the procedural rules do not provide an opportunity for reply in the context of a motion to amend a protective order).

1 **A. The Parties' Responses are Incorrect in Claiming that the Company Could**
2 **Reasonably have Raised the Tax Issue Prior to the Commission's Order.**

3 Staff, CUB, and NWIGU assert that the Commission's review of the Company's
4 Application is precluded because information regarding the Company's tax obligation on
5 the Insurance Proceeds could have been disclosed during the pendency of the
6 proceeding. NW Natural agrees that information regarding its tax obligation was available
7 during the proceeding; however, the Company's tax obligations became relevant only
8 through the Commission's direction to hold a portion of the Insurance Proceeds in a
9 secure account

10 As explained in more detail in NW Natural's Reply, throughout the proceedings in
11 this docket, the Company and the parties have assumed that a deferral account would be
12 the mechanism through which the Company would maintain and customers would receive
13 the benefit of the entire deferred balance⁴ of the Insurance Proceeds.⁵ When the
14 Company and the parties referred to the amount of Insurance Proceeds, they referred to
15 the amounts recorded in the deferral accounts.⁶ At no time did any party suggest that the
16 Company deposit cash in a secure account until the Commission directed the Company to
17 do so in its order. Moreover, the Company understood that regardless of the tax
18 obligation, customers would receive the full benefit of the deferred balance of the
19 Insurance Proceeds through offsets to the deferred environmental remediation expense

⁴ As adjusted, approximately \$144.6 million.

⁵ See Staff's Response Brief at 5 (proposing that interest accrue at the Company's authorized rate of return); CUB's Pre-Hearing Brief at 25 (agreeing with Staff's proposal that interest accrue at the Company's authorized rate of return); NWIGU/100, Gorman/5 (proposing to track insurance proceeds in an accounting deferral balancing account).

⁶ See NW Natural's Pre-Hearing Brief at 7 ("The Company has now resolved all of its insurance claims, with recoveries totaling approximately \$150 million. Thus, the total insurance proceeds recorded in the Company's deferral account exceed total environmental remediation expenditures by approximately \$35 million, and the Company is no longer requesting amortization of the deferred amounts.").

1 account. For these reasons, the fact that that the Company had incurred a tax obligation
2 on the Insurance Proceeds was not directly relevant to the issues raised in the case.

3 Staff claims that “NW Natural had notice since at least the time Staff filed its May 2,
4 2014 testimony, that the Commission might adopt Staff’s recommendation to have NW
5 Natural use \$50 million of the insurance proceeds to offset existing deferred expenses and
6 place \$100 million of the proceeds in a secure account to offset future environmental
7 remediation expense.”⁷ Staff is incorrect. While Staff did recommend that the Company
8 allocate approximately \$50 million to existing deferred expenses and allocate
9 approximately \$100 million to future remediation expenses, Staff specifically proposed that
10 “[t]he remaining insurance proceeds should be held by the Company *in an account that*
11 *accumulates interest at the Company’s authorized rate of return* and be used to pay a
12 portion of each future year’s environmental remediation costs.”⁸ This recommendation
13 makes no mention of the use of a secure account. Moreover, the specification that the
14 account would earn interest at the Company’s authorized rate of return, suggests that
15 Staff was contemplating a deferral account, as opposed to a secure account.

16 **B. NW Natural Has At All Times Intended to Provide Customers the Full Pre-Tax**
17 **Benefit of the Insurance Proceeds, and the Parties’ Suggestions to the**
18 **Contrary are Erroneous.**

19 Staff suggests that the Company’s testimony regarding the amount it had available
20 to offset environmental remediation expense was misleading, pointing to the Company’s
21 statements that it had approximately \$150 million to offset the deferral balance.⁹ There is,
22 however, nothing misleading about the Company’s testimony. At the time the Company
23 filed its testimony, it had a deferred balance of approximately \$150 million of Insurance
24 Proceeds, plus interest. As described in the Application, the Company continues to

⁷ Staff’s Response to Application at 13.

⁸ Staff/200, Johnson-Bahr/5 (emphasis added.)

⁹ Staff’s Response to Application at 9.

1 maintain a deferred balance, which has been adjusted to \$144.6 million, plus interest. It
2 has always been the Company's understanding that the full amount of the deferred
3 balance would be used to offset the environmental remediation costs—regardless of the
4 amount of taxes incurred on the Insurance Proceeds. The Company does not need to
5 maintain that amount in cash in order to deliver the benefit to customers.

6 **C. NW Natural's Reply Will Not Further Delay the Commission's Review of the**
7 **Application.**

8 In its Order No. 10-400, the Commission explained that its administrative rules
9 regarding reconsideration do not provide for a reply unless requested by the ALJ due to
10 the "limited time allowed for the Commission to act on an application for rehearing or
11 reconsideration."¹⁰ In accordance with OAR 860-001-0720(6), the Commission has 60
12 days to make a determination on an application for reconsideration, and as provided in the
13 schedule in this proceeding, the Commission will make its determination on
14 reconsideration on May 27, 2015. As NW Natural's Reply was submitted on April 22,
15 2015, the Commission will still have a full 35 days to make its determination. NW
16 Natural's Reply does not raise new issues, and should not extend the time required for the
17 Commission's review. Instead, the Company's Reply merely serves to correct the record
18 where the parties' responses have mischaracterized NW Natural's intent regarding the
19 Application and mischaracterized the record.

III. CONCLUSION

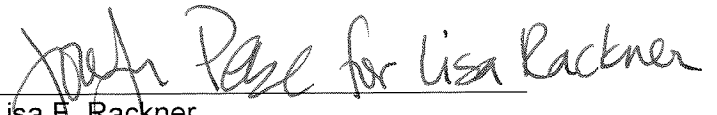
20 For the foregoing reasons, NW Natural requests that the Commission accept and
21 consider the Reply filed with this Motion.

22

¹⁰ *Re Revisions to Administrative Rules re Practice and Procedure*, Docket AR 535, Order No. 10-400 at 21 (Oct. 14, 2010).

DATED: April 22, 2015

MCDOWELL RACKNER & GIBSON PC



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