

McDowell Rackner & Gibson PC



WENDY MCINDOO
Direct (503) 290-3627
wendy@mcd-law.com

October 29, 2015

VIA ELECTRONIC FILING

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

Re: Dockets UM 1635 - Phase II and UM 1706

Attention Filing Center:

Attached for filing in the above-captioned dockets is an electronic copy of Northwest Natural Gas Company's Opening Brief.

Please contact this office with any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Wendy McIndoo".

Wendy McIndoo
Office Manager

Enclosures

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 In the Matter of:

**NORTHWEST NATURAL GAS
COMPANY'S OPENING BRIEF**

4 NORTHWEST NATURAL GAS
5 COMPANY, dba NW NATURAL

6 Mechanism for Recovery of
7 Environmental Remediation Costs

8 (UM 1635 – Phase II)

9 and

10 Request for Determination of Prudence of
11 Environmental Remediation Costs for the
12 Calendar Year 2013 and the First Quarter
13 of 2014

14 (UM 1706)

15 **I. INTRODUCTION**

16 On February 20, 2015, the Public Utility Commission of Oregon (“Commission”)
17 issued Order No. 15-049 (the “Order”), which resolved a number of outstanding issues
18 relating to the implementation of Northwest Natural Gas Company’s (“NW Natural”) Site
19 Remediation and Recovery Mechanism (“SRRM”)¹. In the Order, the Commission directed
20 NW Natural to make a compliance filing to demonstrate how “it will implement both the
21 historic and the future decisions reached in th[e] order.”²

22 NW Natural made its original compliance filing on March 31 2015, (“March 31
23 Compliance Filing”).³ Following its submission, Staff, and the other parties—Citizens’

24 ¹ The Commission approved the SRRM in NW Natural's last general rate case, *In the Matter of Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision*, Docket UG 221, Order 12-437 at 31-32 (Nov. 16, 2012).

25 ² Order 15-049 at 20.

26 ³ On March 19, 2015, NW Natural filed a petition for extension of time to move the compliance filing from March 23, 2015 to March 31, 2015, which was approved by the Commission on March 20, 2015.

1 Utility Board of Oregon (“CUB”) and Northwest Industrial Gas Users (“NWIGU”)—raised
2 several issues concerning the Company’s proposed methods for complying with the Order.
3 The parties discussed the issues over the course of several constructive workshops, and
4 resolved numerous issues. As a result, NW Natural made its September 18, 2015
5 compliance filing (“Revised Compliance Filing”), which includes modifications reflecting
6 those discussions. The cover letter to the Revised Compliance Filing describes in detail
7 the complex workings of the SRRM, and the changes made to the original filing in
8 accordance with the discussions with the parties.

9 Despite the parties’ best efforts, however, they were unable to reach complete
10 agreement on each and every aspect of the filing. For that reason, when NW Natural
11 made the Revised Compliance Filing, it asked the Commission to set a schedule to allow
12 the parties to brief the disputed issues. This Opening Brief of NW Natural, directed by the
13 Ruling of the Administrative Law Judge dated October 13, 2015, will address two points of
14 dispute specified by Staff in discussions leading up to the prehearing conference held on
15 that date. NW Natural understands that the parties may raise additional issues in their
16 responsive briefs.

17 The first issue is whether the Commission’s ruling on the state allocation of
18 environmental expenses intended to allow NW Natural to recover only 96.68% of its
19 environmental remediation expenses from all remediation sites, even though some of
20 those sites were dedicated 100% to serving Oregon customers. The Company believes
21 that the only reasonable interpretation of the Commission’s order is that the Commission
22 intends NW Natural to allocate to Oregon 96.68% of the costs to remediate sites that
23 served *both* Oregon and Washington, and to allocate all costs to remediate sites that
24 served only Oregon to Oregon.

25 The second issue is whether, in addition to the \$15 million disallowance specified
26 in the Order, the Commission intended to disallow interest accrued on that amount of

1 deferred expenses from the beginning of 2013 to the date of the Order on February 20,
2 2015. The Company believes that the Commission correctly and accurately specified the
3 total amount it intended to disallow, and that parties' attempt to increase this disallowance
4 by adding "interest" on the \$15 million is improper.

5 For these reasons, the Company requests that the Commission approve the
6 Revised Compliance Filing, as filed.

7 II. DISCUSSION

8 A. Whether the Commission's ruling on state allocation of environmental 9 expenses intended to allow NW Natural to recover only 96.68% of its 10 environmental remediation expenses from all remediation sites, even 11 though some of those sites were dedicated 100% to serving Oregon customers.

12 In the Order, the Commission stated that it was adopting the parties' initially
13 agreed-upon state allocation of environmental remediation costs (referring to the
14 stipulation rejected by the Commission in Order No. 13-424) "which relies on historic
15 operations to determine the allocation of costs between Oregon and Washington."⁴ That
16 stipulation specifies 96.68% of the costs will be allocated to Oregon customers—using, but
17 not referring to by name, the historical allocation factor.

18 The parties now argue that in referring to the historic operations approach
19 employed in the stipulation, the Commission intended that **all** environmental remediation
20 costs should be allocated 96.68% to Oregon and 3.32% to Washington—**regardless of**
21 **whether the sites remediated were used to serve Washington customers.** This
22 interpretation should be rejected.

23 A review of the evidence and advocacy in the record is critical to understanding
24 this issue:

25
26 ⁴ Order 15-049 at 6.

1 Throughout this case, NW Natural has advocated for a state allocation of
2 environmental remediation costs based on the service customers received from the
3 manufactured gas plants at the time of their operation. The parties referred to this
4 approach as the “historic operations” or “historic allocation” approach. Consistent with this
5 approach, NW Natural has argued that the costs to remediate sites related to the Gasco
6 plant, which served both Oregon and Washington customers, should be split in
7 accordance with an allocation factor applicable during the time period the manufactured
8 gas plants were operational—96.68% to Oregon, and 3.32% to Washington. Because
9 certain other sites, however, such as the Portland Gas Manufacturing (“PGM”) site, served
10 only Oregon customers, NW Natural argued the costs to remediate those sites should be
11 allocable 100% to Oregon.⁵ NW Natural believes the Commission’s use of the term
12 “historic operations” in the Order suggests that the Commission agrees with NW Natural
13 that to the extent historic operations served Oregon customers, then costs to clean up
14 those sites should be allocated to Oregon customers.⁶

15 CUB has consistently opposed the historic operations approach, arguing the
16 remediation expenses are current costs due to current environmental regulations, and that
17 therefore the current Washington/Oregon allocation factor (roughly 90% Oregon, 10%
18 Washington) should be used for all costs.⁷ Importantly, Staff has supported the
19 Company’s use of the historical allocation approach—although it has not commented on
20 NW Natural’s differentiation between the Gasco plant and other sites.⁸

21 Thus, the result advocated by the parties now (to use the 96.68% allocation for *all*
22 sites) is unsupported by any testimony or argument submitted in the docket. It is true the

23 ⁵ See NWN/100, Miller/26-27 (Phase I Testimony); and NWN/900, Miller/42 (Phase II Testimony).

24 ⁶ Conversely, were the Company required to remediate environmental damage to a site that was
used to serve Washington customers only, those costs should all be allocated to Washington.

25 ⁷ CUB/100, Jenks/21 (Phase I Testimony); CUB/200, Jenks/29-20 (Phase II Testimony).

26 ⁸ Staff/100, Johnson/16 (Phase I Testimony); Staff/200, Johnson-Bahr/4 (Phase II Testimony).

1 rejected stipulation does not on its face differentiate between sites that served Washington
2 and Oregon customers and sites that solely served Oregon. However, that stipulation was
3 the result of a compromise. It is notable that no party has ever explicitly argued – either in
4 Phase I or Phase II of this case – that it was fair or appropriate for the Commission to
5 apply the historic allocation factor to sites that did not serve Washington customers. NW
6 Natural thus interprets the Commission’s order as providing for an allocation of costs
7 based on historic usage of the sites, and not ordering an allocation of only 96.68% of costs
8 to Oregon for sites that are related wholly to Oregon service.

9 **B. Whether, in addition to the \$15 million disallowance, the Commission**
10 **intended to disallow interest that accrued on that amount of deferred**
11 **expenses from 2013 to the date of the Order, February 20, 2015.**

12 In the Order, the Commission adjusted the disallowance of the earnings test for the
13 past period downward from a calculated amount of \$30.4 million to \$15 million.⁹ The
14 parties are now seeking to increase the \$15 million disallowance, by asking the
15 Commission to disallow an additional \$2.8 million they claim represents interest on the \$15
16 million, accrued from January 1, 2013 to the time the Order was issued on February 20,
17 2015. NW Natural believes that when the Commission ordered a \$15 million disallowance
18 it intended a \$15 million disallowance, and the additional disallowance proposed by the
19 parties is contrary to the Order.

20 In determining the application of the earnings test for the past period, the
21 Commission evaluated the reasonableness of the earnings test by “appropriately
22 balanc[ing] the circumstances of the deferral, the utility’s earnings, and the benefits and
23 costs to customers.”¹⁰ In evaluating these criteria the Commission considered several
24 discrete factors. *First*, the Commission considered the unique circumstances of the
25 Company’s deferral and found NW Natural was required to incur these costs, the costs

25 ⁹ Order 15-049 at 17-18.

26 ¹⁰ *Id.* at 17.

1 were deferred over a 10 year period, and during much of that period NW Natural was not
2 permitted to bring a rate case.¹¹ *Second*, the Commission considered the utility's earnings
3 and found an adjustment to the earnings test was "necessary to protect NW Natural's
4 long-term financial health."¹² *Third*, the Commission determined the financial hardship of a
5 \$30.4 million write-off in one year would "likely increase [the Company's] financing costs,
6 which would ultimately be borne by ratepayers."¹³ The Commission balanced these varied
7 considerations and decided to impose a one-time disallowance in 2015 of \$15 million –
8 which it presented as a total sum. Importantly, the Commission did not specify – or give
9 any indication – that the disallowance represented only the principal, and that a further
10 disallowance of interest would be required. The parties' attempt to "re-balance" the
11 Commission's analysis to place a higher financial burden on the Company does not
12 comply with the Order and should be rejected.

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25 ¹¹ *Id.* at 18.

26 ¹² *Id.*

¹³ *Id.*

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III. CONCLUSION

For all of these reasons, the Company requests that the Commission approve its Revised Compliance Filing.

Date: 10-29-15

MCDOWELL RACKNER & GIBSON PC



Lisa F. Rackner
Adam Lowney
Attorneys for Northwest Natural Gas Company

NORTHWEST NATURAL GAS COMPANY
Zachary Kravitz
Associate Counsel
220 NW Second Ave
Portland, OR 97209