

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1635 Phase II

In the Matter of)
)
)
NORTHWEST NATURAL GAS)
COMPANY, dba NW NATURAL)
)
Mechanism for Recovery of Environmental)
Remediation Costs)
_____)

**POST-HEARING BRIEF
OF THE
CITIZENS' UTILITY BOARD OF OREGON**

August 8, 2014



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1 I. Introduction

2 The Citizens' Utility Board of Oregon ("CUB") has said most all of what it
3 wishes to say on this matter. CUB writes now only to respond to a couple of points
4 mentioned by NW Natural ("Company" or "NWN"), OPUC Staff ("Staff") and the
5 Northwest Industrial Gas Users ("NWIGU") in their respective Pre-Hearing Briefs.

6 CUB takes this opportunity to reiterate its position that the costs at issue in this
7 docket are associated with the production of gas decades ago when gas was manufactured
8 from coal and petroleum. These are not costs associated with the provision of current
9 service. Therefore, NWN's current Oregon customers should not be required to shoulder the
10 burden of paying the environmental remediation costs alone. CUB believes that a fair
11 allocation of these costs would require the Company, Oregon customers and Washington

1 customers to share jointly in the burden of shouldering these environmental remediation
2 costs.¹

3 **II. The Commission Should Give Little Weight To PGE’s Brief Which**
4 **Is Not Based On Evidence In The Record**

5 While PGE has monitored this docket for some time, it did not present testimony
6 in this docket, and much of the information related in its brief about itself and its own
7 special circumstances are not in evidence in the record in this docket. For this reason
8 alone, the Commission should give little weight to PGE’s brief.

9 Notwithstanding the above, or perhaps in addition to the above, the comparison
10 that PGE tries to draw between its position and that of NWN is not appropriate. While
11 both may have contributed to pollution in the Portland Harbor, PGE did not submit
12 testimony that demonstrates that the facts of its situation are in any way similar to the
13 facts of NWN’s situation. NWN’s circumstances relate to the manufacture of gas
14 decades ago which seems unrelated to the operations of an electric utility. .

15 CUB strongly disputes that the laws and administrative rules developed in regard
16 to decommissioning have any place in consideration of what to do with the aftermath of
17 NWN’s MGPs. CUB also disputes the assertion made by PGE that it is not possible to
18 forecast environmental remediation costs but that it is possible to forecast
19 decommissioning costs. Both sets of costs can be estimated through engineering and
20 other studies.

¹ UM 1635 CUB/200/Jenks/1 lines 9-11 and 2 lines 1-2; UM 1635 CUB/200/Jenks/11 lines 1-17.

1 **III. Staff’s Brief Provides Some Interesting Alternatives.**

2 Like CUB, Staff believes that a portion of the insurance proceeds need to be
3 allocated to future customers to offset future expenses.² CUB can live with either of
4 Staff’s proposals for how to allocate these future expenses. CUB can also live with
5 Staff’s proposal on how to allocate the past expenses. Furthermore, Staff’s earnings test
6 proposal would also be acceptable to CUB as would Staff’s AMA proposal. CUB and
7 Staff disagree, however, on the historic allocation factor and also on rate spread. CUB
8 does, however, agree that the Commission needs to set, in its order, the next time for
9 review.

10 **IV. CUB Basically Agrees With NWIGU’s Briefing - With The Possible**
11 **Exception Of The Rate Spread Issue**

12 *i. By advocating for such a high cut-off level before any sharing kicks in, the*
13 *Company is severely limiting the chances that it would have to share in any*
14 *environmental remediation.*³

15 In its Pre-Hearing Brief NWN states:

16 By allowing the Company the opportunity to earn more than its authorized
17 ROE the Company’s proposal ensures that the Company is still incented to
18 pursue cost savings that ultimately benefit customers.⁴

19 In response, CUB wishes to highlight a section of NWIGU’s Pre-hearing Brief which
20 succinctly sets forth why NWN’s proposal is such a bad idea:

21 [B]y choosing 100 basis points above ROE as the cut-off, the Company’s
22 proposal makes it more likely that customers will indeed shoulder the
23 entire burden. As the Company’s testimony acknowledges, it earned
24 greater than its authorized ROE in four of the past ten years.⁵ Of those
25 four years, only once did the Company earn more than 100 basis points

² UM 1654 Staff’s Prehearing Brief/4 lines 6-8.

³ UM 1635 Northwest Industrial Gas Users’ Phase II Prehearing Brief/4 lines 9-16.

⁴ UM 1654 NWN’s Pre-Hearing Brief/3 lines 18-20.

⁵ UM 1635 NWN/900, Miller/24 at line 1.

1 over its authorized ROE.⁶ By advocating for such a high cut-off level
2 before any sharing kicks in, the Company is severely limiting the chances
3 that it would have to share in any environmental remediation.⁷

4 CUB has previously indicated its concern with NWN's apparent plan to shirk its financial
5 responsibilities and to pass them all onto customers.

6 CUB is still firmly of the belief that any of the Intervenor's or Staff's proposals
7 would be better than NWN's, though of course in CUB's opinion CUB's fifth and final
8 proposal would be the best of all.

9 ***ii. CUB and NWIGU Disagree About Rate Spread***

10 NWIGU supports using an equal percent of margin to allocate costs to customers
11 in this docket and claims that "no party objected to" this rate spread proposal.⁸

12 However, this is not an accurate reflection of CUB's position. CUB recognizes that equal
13 percentage of margin is the typical method of allocating costs in gas cases. But that
14 method includes distribution plant and the costs at issue in this docket relate to energy
15 production, not distribution. Therefore, CUB also recognizes that equal percentage of
16 margin may not be the appropriate methodology for a cost related to the gas commodity
17 itself.⁹ CUB's position is that in the context of a robust sharing mechanism (includes all
18 customer classes, shareholders and Washington customers) CUB can accept the
19 misallocation of costs that come with an equal percent of margin. However, because the
20 Company's proposal is not robust enough, CUB opposes using equal spread to allocate
21 the costs associated with NW Natural's proposal.

⁶ See Staff/200, Johnson-Bahr/13 at line 1, Table 1.

⁷ UM 1635 Northwest Industrial Gas Users' Phase II Prehearing Brief/4 lines 9-16.

⁸ UM 1635 Northwest Industrial Gas Users' Phase II Prehearing Brief/ 8, lines 18-23 and /9 lines 1-3.

⁹ UM 1635 CUB's Prehearing Brief/ 16 Lines 15-21

1 **V. Northwest Natural’s Pre-Hearing Brief**

2
3 *i. Earnings tests should be tailored to the circumstances of each case.*

4 In Order No. 93-257 the Commission issued guidelines for earnings
5 review for deferrals, clarifying that the type of earnings review would be
6 tailored to the costs under consideration. The Commission indicated that
7 for deferrals of amounts that should be included in rates but are deferred to
8 better match costs and benefits, it is reasonable to allow amortization up to
9 the top of a reasonable range.¹⁰

10 Order 93-257 was the result of a complex case being settled by a Stipulation. Noting this,
11 the Commission also stated that “[i]n any event, the Commission will not now establish
12 an earnings test standard with implications beyond this docket.”¹¹ The Commission
13 provided some examples of how it might “tailor earnings tests to fit the type of deferral”
14 in the future.¹² The Commission emphasized that “the earnings test should be designed
15 to further the purpose of the deferral in the first instance. Because deferral and
16 amortization is an extraordinary proceeding, the earnings test could well vary with the
17 circumstances of each case.”¹³ CUB emphasizes this fact too. The Commission should
18 have, and has, the freedom to develop the perfect earnings test for each individual docket.
19 There was nothing hard and fast about the examples provided they were just possible
20 examples. The wording of the examples was all “if” and “might.”¹⁴ There was nothing
21 in the UM 1078 docket orders that would require or limit the taking of specific actions by
22 the Commission in this UM 1635 docket.

¹⁰ Northwest Natural Gas Company’s Pre-Hearing Brief/2 at lines 16-21.
¹¹ UE 82/UM 445 Order No. 93-257, dated February 22, 1993 at page 11.
¹² UE 82/UM 445 Order No. 93-257, dated February 22, 1993 at page 11.
¹³ UE 82/UM 445 Order No. 93-257, dated February 22, 1993 at page 11.
¹⁴ UE 82/UM 445 Order No. 93-257, dated February 22, 1993 at pages 11-12.

1 The Commission, in Order No. 93-257, left itself plenty of room to maneuver and
2 to truly design an appropriate earnings test for every circumstance. CUB encourages the
3 Commission to do so in regard to this environmental remediation docket.

4 ***ii. Other parties have the right to ask for amortization and the Commission has every***
5 ***right to conduct an earnings review.***

6 The Company has . . . stated that it is no longer seeking amortization of
7 deferred expenses, and there is no reason for the Commission to conduct
8 an earnings review.¹⁵

9 NWN is searching for reasons as to why the Commission may not require an
10 earnings test in this docket. NWN misses four crucial points: 1) OAR 860-027-0300(9)
11 provides that parties other than the company can ask for amortization (and CUB is), 2)
12 OAR 860-027-0300(9) also provides that upon a request made by any party the utility
13 “shall” “[i]n the case of ongoing balancing accounts . . . request amortization at least
14 annually”¹⁶ 3) that the Commission relied upon NWN’s statements in, for example,
15 its January 21, 2010, UM 1078 filing in which NWN stated “[a]t the time of
16 consideration for incorporation into rates, NW Natural will propose an appropriate
17 amortization period for the Environmental Costs for the Commission’s consideration”¹⁷
18 and that 4) NWN cannot now withdraw from the Stipulation it entered into in the UG 221
19 docket – the time for challenging the Stipulation has passed. The Commission has every
20 reason to conduct an earnings review.

21 ***iii. NWN’s interpretation of the UM 1078 Order language misses the mark.***

22 The Commission orders have always made clear that the Company is to
23 defer environmental remediation expenses only to the extent that they
24 exceed recoveries and that continued deferrals were conditioned on the

¹⁵ UM 1635 Phase II Northwest Natural Gas Company’s Pre-Hearing Brief/2 at lines 12-14.

¹⁶ OAR 860-027-0300(9).

¹⁷ UM 1078 Application for Reauthorization to Defer Certain Expenses/4 lines 17-19 and dated January 21, 2010.

1 Company demonstrating that it was aggressively pursuing and maximizing
2 its insurance recoveries.¹⁸

3 The first UM 1078 Order was issued on May 27, 2003. Every year thereafter,
4 NWN filed to renew the environmental cost recovery deferral, and almost every year it
5 added another project into the mix. The early orders simply state things like “Northwest
6 Natural should file for recovery of these costs only in the context of future general rate
7 cases.”¹⁹ Such statements continued until UM 1078 Order No. 06-211 entered on April
8 27, 2006. At that time the language changed to “[t]he company will be allowed to
9 accrue interest on deferred balances provided it demonstrates to the Commission’s
10 satisfaction, at its annual program audit, that it has maximized its insurance recovery or
11 made substantial progress in securing insurance recovery for unrecovered environmental
12 expenses.”²⁰ Thus, NWN’s statement above is not accurate. Nothing was stated in the
13 orders about “defer[ing] environmental remediation expenses only to the extent that they
14 exceed recoveries” or to the effect that “deferrals were conditioned on the Company
15 demonstrating that it was aggressively pursuing and maximizing its insurance
16 recoveries.” The stress in the orders was on ratemaking treatment having to happen in
17 rate cases and upon NWN only being allowed to accrue interest on these accounts if it
18 was working to maximize insurance recovery - the interest accrual concern came from
19 the fact that NWN was earning interest at its authorized Rate of Return of 8.62%.²¹

20 *iv. UG 221 Order 12-408 Set forth the requirement for an earnings test: NWN should*
21 *not be permitted to collaterally attack that order in this UM 1635 docket.*

22 NWN has now received more money in insurance recoveries than it has
23 incurred in environmental expense and thus has no net expense today and

¹⁸ UM 1635 Phase II Northwest Natural Gas Company’s Pre-Hearing Brief/2 at lines 6-10.

¹⁹ UM 1078 Application for Deferred Accounting Order No. 03-328/2.

²⁰ UM 1078 Application for Deferred Accounting Order No. 06-211/2 (**emphasis added**).

²¹ UM 1078 Application for Deferred Accounting Order No.11-336/Appendix A/3.

1 does not expect to have a net expense for some number of years. This
2 means that the Company is not requesting amortization of the historical
3 deferrals. Therefore it is improper to apply the earnings test today²²

4 The UG 221 Order No. 12-408 set forth the initial decision on the process to be
5 followed with regard to recovery of environmental remediation costs. In that order, the
6 Commission stated as follows:

7 We agree with the company that deferral of environmental remediation
8 expenses should continue as they are now, with appropriate offsets when
9 insurance proceeds are recovered.

10 The majority of Commissioners believe that use of an earnings test (with
11 deadbands) coupled with the Commission's ongoing prudence review will
12 provide an effective incentive for the company to manage its costs.
13 Further, the majority adopts an earnings test but no sharing mechanism.
14 An earnings test may operate as a *de facto* sharing mechanism.²³

15 Moreover, in its February 19, 2013 Application for Deferral filing, NWN noted that
16 during the UG 221 rate case it had "requested authorization to begin amortizing
17 environmental remediation costs deferred in accordance with the authorization granted
18 under this docket, UM 1078."²⁴ NWN has been deferring costs and accruing interest
19 since 2003. NWN should not be allowed to declare that it is suddenly taking its football
20 and going home.²⁵ NWN is the one who selected a deferral process and the one which
21 has pursued a deferral process for 10 years. NWN cannot suddenly now deselect itself
22 and state that it is no longer asking for amortization and therefore there is no reason to
23 conduct an earnings test. The entire 12-408 and 12-437 orders are based on an SRRM
24 process that functions with a deferral and earnings test; NWN has been accumulating
25 interest based on its claims that it would aggressively seek out insurance and then file for

²² UM 1635 NWN's Prehearing Brief/18 lines 15 -19.

²³ UG 221 Order No. 12-408/5.

²⁴ UM 1078 Application for Deferral dated February 19, 2013 at 3. See also 2014 Application.

²⁵ UM 1654 NWN's Pre-Hearing Brief/18 lines 16-21.

1 amortization; and the Commission has the authority under the statutes (ORS 756.040,
2 757.210 and 757. 259) to tell NWN when the insurance proceeds will be subject to
3 amortization.

4 ***v. Whether NWN earns above its authorized rate of return in any year depends on***
5 ***relative sizes of the environmental remediation costs and the earnings above what***
6 ***is authorized in each year.***

7 NWN argues in its Post-Hearing Brief that both Staff and CUB’s proposals would
8 result in a *de facto* cap on the Company’s earnings.²⁶ The Company is wrong. CUB’s
9 first proposal in Phase I of this UM 1635 docket contained an earning test at allowable
10 ROE..²⁷ This is a reflection of the principle that if a utility is covering all of its costs,
11 including the incremental environmental remediation costs at issue here, then it has been
12 fully compensated and there is no basis to defer costs to add to customer rates. Whether
13 the Company earns above its authorized rate of return in any year depends on relative
14 sizes of the environmental remediation costs and the earnings above what is authorized in
15 each year.

16 ***vi. The SRRM and PGA are not the same; their basis point ranges should not be the***
17 ***same.***

18 NWN argues in its Pre-Hearing Brief that,

19 [w]hile there are many characteristics that differ between the SRRM and
20 the PGA, both earnings reviews address the same fundamental question –
21 at what level are the Company’s earnings unreasonable and subject to
22 sharing? Thus, the range of reasonable earnings for both mechanisms
23 should logically be the same.²⁸

24 But this statement is highly illogical. The PGA is designed to be a pass through and true
25 up of current gas costs and one would expect current customers to have to foot the

²⁶ UM 1654 NWN’s Pre-Hearing Brief/3 lines 25-26.

²⁷ UM 1635 CUB/200 Jenks/13 lines1-19.

²⁸ UM 1635 NWN’s Pre-Hearing Brief/9-10.

1 majority of the bill for the price of current gas. The SRRM on the other hand deals with
2 historical environmental costs which given their age are not logically passed through to
3 the current generation of customers. In addition, the earnings review threshold set in the
4 PGA (100 basis points or 150 basis points) is directly tied to a cost sharing mechanism:

5 LDCs should be allowed to make an annual election whether to choose
6 90/10 sharing, or 80/20 sharing, with the corresponding earnings review
7 thresholds.²⁹

8 NWN is not proposing a cost sharing mechanism, which in the PGA is directly tied to the
9 earning review threshold. At best, the PGA provides some guidance to what an
10 appropriate earnings review level is associated with a 90/10 cost sharing and with an
11 80/20 cost sharing. It tells us little about the appropriate earnings test level associated
12 with the cost sharing proposed by the Company, 100/0.

13 **VI. Conclusion.**

14 As stated in CUB's Pre-Hearing Brief, the Commission should adopt a
15 mechanism from the smorgasbord offered by CUB, Staff and the Intervenors. Any one of
16 these alternate proposals would lead to a better result than that which the Company is
17 proposing. Whether or not a utility's earnings are excessive depends upon the factual
18 situation at the time of review. Were it not for the fact that NWN built MGP gas plants
19 and then allowed them to pollute, NWN's excess earnings might appear reasonable – a
20 result of good management. But, when you factor in the clean-up cost for management,
21 allowing the MGPs to pollute then allowing the Company to keep these excess earnings
22 does not seem appropriate – current customers did not cause this pollution or benefit from
23 it. Why then should current customers have to pay but, current shareholders should not?

²⁹ OPUC Order No. 08-504, page 18.

1 CUB continues to believe that all of the proposals it has presented to the
2 Commission concerning these environmental remediation costs would represent
3 reasonable results but now favors CUB's own final proposal – that the mechanism
4 developed for this docket be developed in the context of other property that was once
5 used to produce gas for customers. The application of the principles of fairness; the
6 requirement to forecast used and useful costs; the principle of monopoly regulation being
7 a substitute for the competitive market; that reaching into customers' deeper pockets
8 should be a rare occurrence; that deferrals and automatic adjustments are one-sided
9 regulatory tools; that earnings tests are critical when working with deferrals and
10 automatic adjustment clauses; that all utility earnings should be included in earnings
11 tests; that intergenerational equity matters; that customers should get what they pay for;
12 and that all principles should be applied with a dose of pragmatism, discussed in CUB's
13 Pre-hearing Brief, all steer CUB in this direction. CUB is now proposing that the historic
14 earnings test be run on a year-to-year basis with a threshold set at authorized ROE, after
15 insurance is applied. CUB proposes applying the insurance receipts equally to all past
16 and future costs, but to assume the upper end of the current range of costs outstanding.
17 This is based on the intergenerational equity principle, CUB's concerns that these
18 amounts can grow significantly, and CUB's belief that future customers deserve their
19 share of the insurance proceeds. In final summary, CUB's proposal remains:

20 1. Deferred Costs (2003-2011)

21 *Apply insurance proceeds to reduce each year's deferral by 1/3.

22 *Apply year-to-year earnings test at authorized ROE which results in a Company write-
23 off of approximately \$21.3 million and a customer allocation of \$26 million plus interest.

1 2. Future Costs (2014 and beyond)

2 *Costs remaining after insurance are placed in a balancing accounting where they are
3 offset with net revenues earned from Mist Storage and Mist Optimization after allowing
4 the Company to earn its authorized ROE on its investment in Mist Storage.

5 *This would continue until the costs were fully paid, the fund was sufficient to pay the
6 remaining anticipated costs, or the balancing account had grown to more than \$50 million
7 and the Company believed that it would not rebalance in 5 years.

8 3. Costs Incurred Between These Periods (2012-2013)

9 *Apply either of the approaches above after the application of insurance receipts.

Dated this 8th day of August, 2014.

Respectfully submitted,



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UM 1635 – CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of August, 2014, I served the foregoing **POST-HEARING BRIEF OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UM 1635 upon each party listed in the UM 1635 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

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