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July 15, 2005

Via Electronically and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol Street N.E. #215
PO Box 2148
Salem OR 97308-2148

Re: In the Matter NORTHWEST NATURAL GAS COMPANY Petition for a
Declaratory Ruling pursuant to ORS 756.450 Regarding Whether Joint Bypass to
Two or More Industrial Customers Violates ORS 758.400 et seq.
Docket No. DR 23

Dear Filing Center:

Enclosed please find an original and six copies of the Response to Issues Lists on
behalf of Oregon Steel Mills (“OSM”) in the above-captioned docket.

Please return one file-stamped copy of the Response in the self-addressed,
stamped envelope provided. Thank you for your assistance.

Sincerely yours,

/s/ Ruth A. Miller
Ruth A. Miller

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Response to Issues Lists on behalf of Oregon Steel Mills upon the parties, on the official service list for Docket No. DR 23, by causing the same to be electronically served, to those parties who have an email address, as well as mailed postage-prepaid through the U.S. Mail.

Dated at Portland, Oregon this 15th day of July, 2005.

/s/ Ruth A. Miller

Ruth A. Miller

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 23

In the Matter of)
NORTHWEST NATURAL GAS COMPANY)
)
Petition for a Declaratory Ruling Pursuant to) **OSM RESPONSE TO ISSUES LISTS**
ORS 756.450 Regarding Whether Joint Bypass)
by Two or More Industrial Customers Violates)
ORS 758.400 Et Seq.)
_____)

Pursuant to the Administrative Law Judge’s Memorandum, dated July 6, 2005, Oregon Steel Mills (“OSM”) submits the following response to the issues proposed by Wah Chang (“Wah Chang”) / Northwest Industrial Gas Users (“NWIGU”) and Northwest Natural Gas Company (“NNG”). OSM proposes that the Commission reject the issues proposed by Wah Chang and NNG and address the following issues in this proceeding:

- 1) Do the facts alleged in the Amended Petition constitute “the distribution of natural or manufactured gas to consumers through a connected and interrelated distribution system” under ORS § 758.400(3)?
- 2) Does Federal law preempt the application of the territorial allocation law to the jointly owned bypass facilities described in the Amended Petition for Declaratory Ruling?
- 3) Does the resolution of issue number one require the determination of specific evidentiary facts, which are inappropriate for resolution in a Petition for Declaratory Ruling?

On July 5, 2005, Wah Chang and NWIGU filed a list of 13 proposed issues.

Issues 1, 2, 4, 6, and 9 appear to address concerns that exceed the scope of the facts assumed in NNG’s Amended Petition for Declaratory Ruling. A declaratory ruling is limited to the assumed facts, and it is binding only between the petitioner and the Commission. ORS § 756.450; Re NW

Natural Petition for Declaratory Ruling, OPUC Docket No. 23, Order No. 00-306 at 11 (Jun. 9, 2000). The remaining issues raised by Wah Chang and NWIGU should be consolidated into the three issues proposed above.

On July 5, 2005, NNG filed its own Statement of Legal Issues, identifying one narrowly defined issue. The Commission should reject NNG's proposed issue, because it is unduly narrow, and it does not reflect an accurate reading of the decision of the Court of Appeals' order remanding DR 23 to the Commission. The Court of Appeals' primary criticism of the Commission's order in this case was "its failure to recognize the ordinary meaning of the words that the legislature used in ORS 748.400(2)." Northwest Natural Gas Co. v. OPUC, 195 Or App 547, 556 (2004). Thus, on remand, the Commission should focus on interpreting all of the words of the statute.

NNG attempts to limit the issue in this case to whether the facts alleged in the Amended Petition for Declaratory Ruling constitute a "connected and interrelated" system. NNG Statement of Legal Issues at 1. NNG states its issue in a way that reads the two uses of the word "distribution" out of ORS § 758.400(3). NNG claims that this is justified because the Court of Appeals decided what constitutes "distribution." NNG Statement of Legal Issues at 6.

NNG overreads the decision of the Court of Appeals. The Court of Appeals focused on the terms "association" and "consumers," it did not define the term distribution. 195 Or App at 558-59. The Trial Court appropriately recognized that the term distribution is a term of art. NW Natural Gas v. OPUC, Marion County Circuit Court Case No. 01C18514, Opinion Letter at 4-5 (Jun. 10, 2002). However, since the Commission did not decide the meaning of the term "distribution" in its orders, that issue was not properly before the Court of Appeals. To the

extent that the Court of Appeals did discuss the term distribution, it is dicta which is not central to its decision. The Commission should consider all of the language of ORS § 758.400(3) as posed in Issue Number 1 above.

In interpreting ORS § 758.400(3) in the context of this declaratory ruling, there are two other issues that the Commission should consider. The Commission should evaluate whether its proposed interpretation conflicts with Federal Law. If such a conflict is present, it could have two impacts. First, the Commission could conclude that where there are two equally plausible interpretations of a statute, the legislature likely intended the interpretation that does not conflict with Federal Law. In this regard, it is notable that the Trial Court focused on the preemptive effect of Federal Law in evaluating the Commission's orders in this case. Marion County Circuit Court Case No. 01C18514, Opinion Letter at 5. Second, the Commission also might conclude that due to the possibility that its jurisdiction in this case is preempted by Federal Law, it would be inappropriate to issue a declaratory order in this case.

A final issue that the Commission should consider is whether the interpretation of ORS § 758.400(3) is inappropriate for resolution in a declaratory ruling proceeding because it requires the determination of specific evidentiary facts. It is apparent that NNG initiated this proceeding to seek an enforcement action against specific bypass arrangements. *See* OPUC Docket No. 23, Order No. 00-306 at 10-11. The Commission rejected this request, stating that it was limiting its decision to a ruling on the assumed facts. *Id.* at 11. The resolution of proposed Issue No. 1 above appears to require a factual determination which is inappropriate for resolution in a declaratory ruling (i.e., whether a particular bypass arrangement constitutes distribution of

gas through a connected and interrelated distribution system). The Commission might conclude that it would be misleading to issue a declaratory ruling under these circumstances.

For the reasons stated above, the Commission should examine the three issues noted above in this proceeding.

DATED this 15th day of July, 2005.

Respectfully submitted,

/s/ S. Bradley Van Cleve

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