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February 20, 2024

VIA E-MAIL TO

Public Utility Commission of Oregon
Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: Docket UG 490 – In the Matter of Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision

Attached for filing in the above-referenced docket, please find NW Natural's Comments Regarding Format for Evidentiary Hearing and Oral Argument.

Please contact this office with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Cole Albee".

Cole Albee
Paralegal
McDowell Rackner Gibson PC

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 490

In the Matter of
NORTHWEST NATURAL GAS COMPANY,
dba NW Natural
Application for a General Rate Revision

**NW NATURAL'S COMMENTS REGARDING
FORMAT FOR EVIDENTIARY HEARING
AND ORAL ARGUMENT**

In accordance with Administrative Law Judge (“ALJ”) Spruce’s Memorandum dated February 5, 2024, Northwest Natural Gas Company d/b/a NW Natural (“NW Natural” or “Company”) provides the following comments regarding the Company’s request to retain the option for in-person appearances for the evidentiary hearing and oral argument.

Over decades of practice before the Public Utility Commission of Oregon (“Commission”), Commissioners, ALJs, utilities, and parties to a contested case have met in person at the Commission’s Salem offices for important proceedings—including evidentiary hearings and oral arguments. On occasion, a party with an out-of-state witness or counsel would be allowed by the Commission to participate by phone, but in general, remote participation was the exception rather than the rule. With the onset of the pandemic in March 2020, and direction from the Governor’s Office and Oregon Health Authority to avoid meeting in person unless required, the Commission and its stakeholders quickly pivoted to participating in entirely remote proceedings through virtual meeting technologies. Though stakeholders may now be accustomed to the convenience afforded by remote attendance, in NW Natural’s view, the shift to remote-only proceedings has come at a significant cost.

While NW Natural recognizes that virtual meetings, workshops and settlement conferences are productive and efficient, the virtual format is not a substitute for in-person engagement in litigated contested cases. In-person proceedings allow parties to better understand each others’ questions and verbal and non-verbal cues, and generally enhance the

flow of the proceeding. The work of fact-finding has always been directly related to determining witness credibility through live testimony. While remote hearing tools have been useful, they do not fully replicate the dynamics of in-person cross-examination. Fact-finders can draw important evidence of credibility from the overall demeanor, reactions, and body language of witnesses subject to cross-examination. Similarly, counsel's advocacy can be shaped by what she or he experiences from live interactions with witnesses and the adjudicator. Those dynamics cannot be fully replicated through purely on-screen witness presentations and oral arguments. It is for all these reasons that, prior to the emergency conditions driven by the pandemic, remote participation was the exception rather than the rule in Commission proceedings.

In-person and hybrid proceedings also mitigate the distractions, delays, and other glitches inherent in relying on remote communications platforms. In-person hearings allow for immediate reactions without needing to find the "unmute" button. In remote proceedings, reaction times may be slowed and the subtleties of interpreting reactions to questions or legal arguments may sometimes be lost. Additionally, any technological difficulties may make the proceeding more halting and stilted, and in NW Natural's view, may impair the Company's advocacy. While remote proceedings may be adequate for more routine activities, such as prehearing conferences, critical events such as evidentiary hearings and oral arguments warrant in-person appearances.

Importantly, the Commission recognized the need to accommodate a return to in-person and hybrid proceedings and it is NW Natural's understanding that the Commission upgraded its facilities to allow for such events. In a recent stakeholder communication, the Commission describes changes that were made to the hearing room, including the installation of additional cameras and microphones to allow for speakers to communicate without a wireless microphone during hybrid meetings.¹ Thus, from a technical standpoint, the Commission has made the

¹ PUC Update, Volume 1, page 4 April 2023, available on line at <https://www.oregon.gov/puc/news-events/Documents/StakeholderNewsletter-2023v1.pdf>.

upgrades necessary to allow for in-person and hybrid events and there is no technological barrier to holding an in-person proceeding, especially one as important as a general rate case hearing. To be clear, though, the Company is not advocating that the evidentiary hearing and oral argument be held without the option for remote participation. Furthermore, NW Natural is not attempting to demand an in-person proceeding regardless of the scope of the case. This proceeding is in its early stages, and it is unknown what issues will ultimately be fully litigated. NW Natural believes it is premature to make a final decision on the appropriate format, but a live and in-person proceeding in a contested case should be the expectation.²

Finally, NW Natural understands that one party, the Alliance of Western Energy Consumers (“AWEC”), uses an expert witness who resides in Finland. Additionally, the Company understands that the Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (collectively, the “Coalition”), in addition to retaining the Portland-based Green Energy Institute, is also working with attorneys located in Seattle. If AWEC and the Coalition elect to involve witnesses and counsel for which in-person attendance may be difficult or more expensive, that is their choice. However, their preference to use non-local witnesses and counsel should not lower the standard of participation for all, nor should it prejudice NW Natural’s right to effective advocacy.

Critically, in a rate case proceeding, the Company bears the burden of proof.³ NW Natural believes it can be most effective in-person, and respectfully requests that the Commission allow for in-person appearances.

² The Oregon Supreme Court has returned to in-person proceedings as the default for oral argument (see Oregon Rules of Appellate Procedure 6.30(3)(a)), and several of the Commission’s sister agencies, such as the Oregon Energy Facility Siting Council, the Oregon Fish and Wildlife Commission, the Oregon Liquor and Cannabis Commission, and the Oregon Government Ethics Commission are conducting their proceedings in a hybrid format, with both in person and remote attendance options available.

³ ORS 757.210(1)(a) (“At the hearing the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable.”)

Respectfully submitted on February 20, 2024.

By: **McDOWELL RACKNER GIBSON PC**



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