

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1635 & UM 1706

In the Matter of)	
)	
NORTHWEST NATURAL GAS COMPANY,)	CUB’S RESPONSE TO NW
dba NW NATURAL)	NATURAL’S APPLICATION FOR
)	RECONSIDERATION AND/OR
Mechanism for Recovery of Environmental)	CLARIFICATION
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))	
)	

I. Introduction

Pursuant to OAR 860-001-0720(4), the Citizens’ Utility Board of Oregon (“CUB”) submits its response to Northwest Natural Gas Company’s (“NW Natural” or “Company”) Application for Reconsideration and/or Clarification (“Application”), filed March 31, 2015.

In its Application, NW Natural argues that there is “good cause” for reconsideration and/or clarification of Order No. 15-049 because “the Commission may have inadvertently failed to consider NW Natural’s income tax obligations resulting from the insurance settlements” when it ordered the Company to “place its insurance proceeds in a secure account.”¹ In support of its Application, NW Natural inappropriately relied on a number of alleged facts not previously in

¹ UM 1635 - NW Natural’s Application for Reconsideration and/or Clarification at pg. 1, filed March 31, 2015.

the record in this proceeding—facts that no party has had the opportunity to investigate and that were not contemplated by the Commission.

For the reasons discussed below, the Commission should deny NW Natural's Application.² If the Commission determines that the income tax obligations warrant further consideration, it should suspend its order pursuant to ORS 756.568, order supplemental investigatory process to address the questions raised by NW Natural's Application, and amend its order as necessary or appropriate.³

II. Discussion

ORS 756.561(1) provides the Commission with authority to grant applications for rehearing or reconsideration “if sufficient reason therefor is made to appear.” OAR 860-001-0720(3) requires an application for rehearing and/or reconsideration to establish one of the following: (a) there is new evidence, essential to the decision, that was previously unavailable and not discoverable prior to the issuance of the order, (b) there has been a change in law or policy, related to an issue essential to the decision, since the date the order was issued, (c) there was an error of law or fact in the order that is essential to the decision, or (d) “good cause for further examination of an issue essential to the decision.”⁴

² In this Response, CUB's arguments apply equally to the Company's alternative request for clarification—namely, that NW Natural's Application has not established that there is “good cause” to clarify OPUC Order No. 15-049 and that the Company's inclusion of extra-record facts as a basis for requesting clarification is inappropriate and should not be relied upon by the Commission.

³ ORS 756.568 provides “The Public Utility Commission may at any time, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend, or amend any order made by the commission. Copies of the same shall be served and take effect as provided in ORS 756.558 for original orders.”

⁴ OAR 860-001-0720(3).

NW Natural argues that “good cause” exists for further reconsideration and/or clarification because “the Commission may have inadvertently failed to consider NW Natural’s income tax obligations resulting from the insurance settlements.”⁵ If the Commission did not consider NW Natural’s tax obligations resulting from the insurance settlements,⁶ it is likely due to the fact that the Company never raised this issue during the pendency of this case or offered any evidence related to this issue. To raise the issue now, after the record has closed and in an application for reconsideration and/or clarification, is inappropriate.

1. NW Natural has not established that there is “good cause” for reconsideration in this case.

The Commission has found that “good cause” exists for reconsideration of an order in several dockets.⁷ CUB, however, is not aware of any case where the Commission granted reconsideration when the utility failed to put forth evidence that was previously available and discoverable during the pendency of the proceeding. In fact, the Commission has affirmatively stated that there is no basis for granting applications for reconsideration when the applicant had sufficient time to raise its issue in a timely fashion, but did not do so.⁸ NW Natural has been

⁵ UM 1635 - NW Natural’s Application for Reconsideration and/or Clarification at pg. 1, filed March 31, 2015.

⁶ CUB’s use of the terms “insurance settlements” and “insurance proceeds” also includes “other environmental recovery proceeds.” (see NW Natural’s Application at 2).

⁷ See e.g. *In re Portland General Electric Company*, OPUC Docket No. UE 102, Order No. 99-339 (May 18, 1999)(finding good cause for reconsideration in light of the general nature of the order and PGE’s need for further detail in order to decide whether to move forward); *In re Verizon Northwest, Inc.*, OPUC Docket No. UD 13, Order No. 02-639 (Sept. 12, 2002)(granting reconsideration in part and denying in part; the Commission granted reconsideration of its decision to price list operator services, finding that further investigation was necessary before it could address whether a service was subject to competition); *In re Universal Service in the State of Oregon*, OPUC Docket No. UM 731 (Phase II), Order No. 98-430 (Oct. 14, 1998)(granting reconsideration in order to align the Commission’s decision with federal policy regarding the inclusion of white page directory listings in the universal service program).

⁸ See e.g. *In re Portland General Electric and In re Stephen Forbes Cooper, LLC on behalf of Reserve for Disputed Claims*, OPUC Docket No. UF 4218 and UM 1206, Order No. 06-156 at 4, 5, 7, and 8 (Apr. 10, 2006).

receiving insurance proceeds for the past several years, which would imply that it has ample experience with the tax treatment of the insurance proceeds. CUB does not believe that NW Natural can fairly claim that it did not know that its tax obligations on the insurance proceeds would be an important issue for consideration in this docket. Notably, NW Natural did not assert that it was previously unaware of its tax obligations related to the insurance proceeds.

Furthermore, it is counter-intuitive that there could be “good cause” for reconsideration when the underlying circumstance (i.e., evidence that was known, but not offered, at the time of the Commission’s order) is directly contrary to proper basis for rehearing or reconsideration—where *new* evidence, essential to the decision, was *previously unavailable and not discoverable prior to the issuance of the order*.⁹

2. *Extra-record evidence is not appropriately considered in an application for reconsideration.*

As previously stated, NW Natural did not raise the issue of tax obligations for its insurance proceeds while the record was open in this case. As acknowledged by the Commission, “[r]econsideration occurs when, *based on the existing record in the case*, an agency reexamines the factual or legal basis for its order or reexamines the adequacy of its findings of fact, conclusions of law, or its order.”¹⁰ NW Natural has not alleged that Order No. 15-049 is inconsistent with prior Commission practice, or that the Commission misinterpreted the law or

⁹ OAR 860-001-0720(3)(a).

¹⁰ *In re Wah Chang v. PacifiCorp*, OPUC Docket No. UM 1002, Order No. 04-305 at 9 (May 27, 2004)(emphasis in original)(citing *Gritter v. Adult & Family*, 183 Or App 578 (2002)(later vacated for mootness)(citing *The Oregon Attorney General’s Administrative Law Manual* (2004)).

misstated the facts in this case.¹¹ Again, the tax implications for the insurance proceeds are not discussed anywhere on the record in this case. Therefore, it is not proper for the Commission to examine this evidence now in the context of an application for reconsideration, or to rely on them in clarifying its Order.

3. *The Commission has the authority to address the tax issue under ORS 756.568.*

NW Natural's attempt to assure the Commission and parties that, despite its alleged tax obligations on the proceeds, "customers will receive the benefit of the entire pre-tax amount of Insurance Proceeds allocated to the future"¹² merely serves to raise more issues, including: whether the appropriate tax obligation to apply, if any, on the insurance proceeds is 39.5 percent; whether the alleged tax treatment is proper; why the Company did not raise the tax issue while the record in this case was still open; how the Company accounted for taxes with the "historic" insurance proceeds; what the interstate allocation method is for these taxes because current taxes are allocated between Oregon and Washington on a different basis than the Company is proposing for either insurance proceeds or remediation costs,¹³ etc. There is no basis in the current record of this proceeding for the Commission to address these questions. Accordingly, the Commission should deny NW Natural's Application because it cannot grant the relief sought in an application for reconsideration.

¹¹ See Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedures Act at pg. 173 (2014) ("A petition for reconsideration is appropriate when, for example, the order seems inconsistent with prior agency practice, but does not explain why; the order seems to misinterpret the law; or the order misstates the facts.").

¹² UM 1635 - NW Natural's Application for Reconsideration and/or Clarification at pg. 5, filed March 31, 2015.

¹³ See NWN Advice 15-03.

To the extent that the Commission finds it necessary to consider the alleged tax implications, along with the many questions surrounding this issue, it should suspend its order pursuant to ORS 756.568 and order a supplemental investigatory process that includes additional fact-finding. That process should begin with NW Natural putting forth evidence regarding its alleged income tax obligations, and should include opportunity for cross-examination through a hearing. The Commission has previously relied on ORS 756.568 to reopen proceedings and further examine matters essential to the decisions when “changed circumstances, ratepayer interest, Commission failure to express its intent clearly in a previous order, and correction of a prior erroneous conclusion”¹⁴ dictate such action. CUB is not arguing that the circumstances in this case meet these standards, but believes that to the extent that Commission agrees with NW Natural that it is necessary to address the tax issue, reopening the proceeding is the appropriate course.

III. Conclusion

The Commission should deny NW Natural’s Application for Reconsideration and/or Clarification as it does not establish that “good cause” exists for reconsideration of NW Natural’s tax obligations, if any, on the insurance proceeds and inappropriately relies on extra-record facts as a basis for its request. If the Commission finds that consideration of NW Natural’s income tax obligations is warranted, it should suspend its order pursuant to ORS 756.568, order supplemental process to address the questions raised by NW Natural’s Application, and then amend its order only as necessary or appropriate.

¹⁴ See *In re PacifiCorp*, OPUC Docket Nos. UE 121/UE 127, Order No. 02-853 (Dec. 10, 2002)(citing to several other cases in which the Commission found “good cause” to reconsider its order).

Dated this 15th day of April, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sommer Templet". The signature is written in a cursive, flowing style.

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