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April 22, 2015

VIA ELECTRONIC FILING

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

Re: Dockets UM 1635 and UM 1706

Attention Filing Center:

Attached for filing in the above-captioned dockets is NW Natural's Reply in Support of Application for Reconsideration.

Please contact this office with any questions.

Very truly yours,

Handwritten signature of Wendy McIndoo in cursive script.

Wendy McIndoo
Office Manager

Enclosure

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1635 PHASE II & UM 1706

In the Matters of
NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL,
Mechanism for Recovery of
Environmental 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)

**NW NATURAL'S
REPLY IN SUPPORT OF APPLICATION
FOR RECONSIDERATION**

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I. INTRODUCTION

In accordance with ORS 756.561, OAR 860-001-0720, and OAR 860-001-0420, on March 31, 2015, Northwest Natural Gas Company (“NW Natural” or “the Company”) timely filed an Application for Reconsideration or, in the alternative, for Clarification of Order No. 15-049 (“Application”) in this proceeding. On April 15, 2015, the Commission Staff (“Staff”), the Citizens’ Utility Board of Oregon (“CUB”), and the Northwest Industrial Gas Users (“NWIGU”) filed responses to the Company’s Application. The Public Utility Commission of Oregon’s (“Commission”) administrative rules regarding reconsideration provide that a reply is permitted only if requested by the Administrative Law Judge (“ALJ”).¹ Because there are several issues raised in the parties’ responses that require clarification to correct the record, NW Natural has concurrently filed a request for leave to file this Reply. The Commission should grant the Company’s Application for the following reasons:

¹ OAR 860-001-0720(4).

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II. DISCUSSION

A. The Parties' Assertions that NW Natural Should Have Provided Tax Information Earlier are Unfounded Because the Commission's Order to Hold Cash in a Secure Account Raised the Tax Issue for the First Time.

The Company requests reconsideration or clarification of the portion of Order No. 15-049 in which the Commission directs the Company to hold cash of approximately \$100.3 million of the insurance proceeds and other environmental recovery proceeds ("Insurance Proceeds") in a secure account for customers' benefit. The Company has explained that there is good cause for the Commission to grant reconsideration of its order for NW Natural to hold approximately \$100.3 million in cash in a secure account because, the Company by necessity has incurred an approximate \$40 million tax obligation on the insurance proceeds and therefore the Company should not be required to hold the full \$100.3 million, now \$96.4 million (two-thirds of \$144.6 million available after the adjustments described in the Application)² of cash in the account. The Company further explained that the balance net of taxes and other adjustments described in the Application is \$57.2 million, thus in order to satisfy the Commission's order, it would be required to borrow an additional \$40 million to achieve the required funding of the secure account, incurring financing costs that would appropriately be recovered from customers and likely cost significantly more than the interest that would be earned on the account.

In their responses to the Company's Application, Staff, CUB, and NWIGU all argue that NW Natural could have disclosed information about its tax obligations on the Insurance Proceeds earlier in the proceeding, and therefore reconsideration should be denied or the Commission should reopen the record and rehear the issue. This argument misses the mark, because prior to the Commission's order, no party had raised any

² See NW Natural's Application at 2-3 for a full description of the pre-tax adjustments to the Insurance Proceeds, reducing the total available amount to \$144.6 million reflecting additional amounts, inter-jurisdictional allocation, and direction from the Commission in Order No. 14-077.

1 arguments or questions that implicated NW Natural holding cash in a secure account or
2 the associated tax issue. Rather, the use of the secure account was not introduced in the
3 proceeding until the Commission's order.

4 Normally, in Commission orders addressing a utility's accounting and ratemaking,
5 tax effects are not an issue. In most instances, when cash is required to satisfy a
6 regulatory requirement, both taxable revenues and tax-deductible expenses are recorded
7 in the same period, which offsets the tax effects for the Company. This is why, for
8 example, utility O&M expenses are not "grossed up" for tax purposes. On the other hand,
9 under the Commission's ordered application of Insurance Proceeds, NW Natural's
10 recognition of revenue and expense is separated by many years. Specifically, NW Natural
11 received most of the Insurance Proceeds in 2014, and therefore, NW Natural recognized
12 those revenues and the tax obligation of the Insurance Proceeds in 2014. However, NW
13 Natural will not recognize the offsetting expenses (i.e. NW Natural's future environmental
14 expenditures), and the offsetting tax deductions, until the Company actually incurs the
15 expenses over the next 20 years.

16 NW Natural's approach in this proceeding is consistent with the Company's
17 recording of all other funds deferred for customers' benefit. As the Commission is aware,
18 deferrals are creatures of regulatory accounting, and there are always differences
19 between a utility's regulatory accounts for ratemaking treatment and actual cash in or out
20 of the utility. As an example of the difference between the treatment of cash and
21 regulatory accounting, to implement its Purchase Gas Adjustment, the Company records
22 any benefits accruing to customers on its books rather keeping the benefits for customers
23 in cash. After truing up the estimated gas costs with actual costs, if a credit is owed to
24 customers, the Company determines the amount of the credit based on the record in its
25 books, rather than the balance of a secure account. Likewise, NW Natural has accounted
26 for the entire pre-tax amount of the Insurance Proceeds on its books in a liability account

1 for a future credit – dollar for dollar – back to customers. When the Commission approved
2 the Company’s request to defer the Insurance Proceeds, the deferral account—as
3 opposed to a cash account—became the mechanism by which the Commission ensured
4 that customers will receive the benefit of the recoveries.³ Consistent with this regulatory
5 treatment, when discussing the Insurance Proceeds, NW Natural has always referred to
6 the amount recorded in the deferral account,⁴ which, after the latest recoveries was
7 approximately \$150 million plus interest. As described in the Application, the deferred
8 balance is now \$144.6.

9 The recommendations made by the other parties throughout the proceeding all
10 appeared to assume that the mechanism for maintaining and recording insurance
11 proceeds would be a deferral account.⁵ No party has ever suggested that the proceeds
12 would be accounted for or maintained on a cash basis. This fact is reinforced by the
13 Commission’s statement in adopting the secure account: “We do not adopt any of the
14 parties’ arguments regarding which interest rate should be applied to the insurance

³ *In the Matter of Nw. Natural Gas Co. Application for Reauthorization of Deferred Accounting*, Docket UM 1078, Order No. 15-059, App. A at 2-3 (Feb. 24, 2015) (“Recoveries from insurance are, and will continue to be recorded in the 186160 accounts and will offset the recorded expenses for the purpose of amortization, as determined by the Commission’s Order.”); *In the Matter of Nw. Natural Gas Co. Application for Reauthorization of Deferred Accounting*, Docket UM 1078, Order No. 12-090, App. A at 2 (Mar. 13, 2012) (“NW Natural has recorded amounts estimated as insurance receivables or reimbursements, Account 143008—Insurance Recovery for Gasco and Portland Harbor and Account 186160—OR Environ Recovery and Reimbursement. Recoveries from insurance are, and will continue to be recorded in the 143008 or 186160 accounts and will offset the recorded expenses for the purpose of amortization as determined by the Commission in the currently filed rate case UG 221.”)

⁴ See NW Natural’s Pre-Hearing Brief at 7 (“The Company has now resolved all of its insurance claims, with recoveries totaling approximately \$150 million. Thus, the total insurance proceeds recorded in the Company’s deferral account exceed total environmental remediation expenditures by approximately \$35 million, and the Company is no longer requesting amortization of the deferred amounts.”).

⁵ See Staff’s Response Brief at 5 (proposing that interest accrue at the Company’s authorized rate of return); CUB’s Pre-Hearing Brief at 25 (agreeing with Staff’s proposal that interest accrue at the Company’s authorized rate of return); NWIGU/100, Gorman/5 (proposing to track insurance proceeds in an accounting deferral balancing account).

1 proceeds. Instead we direct NW Natural to hold the proceeds in a secure account, with
2 interest accruing at the highest rate the company is able to obtain while minimizing the risk
3 to the principal.”⁶ Thus, the first indication that the Commission might order a secure
4 account requiring actual cash funding came in the Commission order itself.

5 As explained in the Company’s Application, regardless of the amount of cash the
6 Company might maintain, customers will have the benefit of the full amount of Insurance
7 Proceeds,⁷ and the environmental remediation expenses incurred by the Company will be
8 offset by the full amount of the Insurance Proceeds. Therefore, given that customers will
9 receive the full benefit of the proceeds, and given that no party had raised the concept of a
10 secure account, or any other cash approach to the Insurance Proceeds, the Company had
11 no reason to believe that its tax obligation was relevant. NW Natural certainly realizes
12 now that this information would have been helpful to the Commission given that the
13 Commission ordered cash treatment of the Insurance Proceeds; however, as discussed
14 above, neither the evidence or briefing in the case raised the secure account and
15 therefore the Company’s failure to discuss its tax obligation should not serve as the basis
16 to deny reconsideration.

17 In its response, Staff suggests that the Company cannot assert that it was unaware
18 that the Commission might require NW Natural to place a specific amount of insurance
19 proceeds in a secure account “because this is precisely what Staff recommended.”⁸ In
20 support of its statement, Staff refers to its recommendation that after applying an amount
21 of insurance proceeds to historic deferrals, “[t]he remaining insurance proceeds should be
22 held by the Company ***in an account that accumulates interest at the Company’s***
23 ***authorized rate of return*** and be used to pay a portion of each future year’s

⁶ Order No. 15-049, at 7(citations omitted.)

⁷ Application at 5-6.

⁸ Staff’s Response to Application at 13.

1 environmental remediation costs.”⁹ In fact, Staff’s recommendation contradicts its notion
2 that it recommended a secure account—there is no secure account that would offer an
3 interest rate at a utility’s regulated rate of return. It appears instead that Staff is not
4 referring to a secure account, but rather to a deferral account, which is consistent with the
5 Company’s actions and understanding throughout the proceeding.

6 Staff’s response also suggests that the Company’s testimony regarding the
7 amount it had available to offset environmental remediation expense was misleading,
8 pointing to the Company’s statements that it had approximately \$150 million to offset the
9 deferral balance.¹⁰ There is, however, nothing misleading about the Company’s
10 testimony. At the time the Company filed its testimony, it had a deferred balance of
11 approximately \$150 million of Insurance Proceeds, plus interest. As described in the
12 Application, the Company continues to maintain a deferred balance, which has been
13 adjusted to \$144.6 million, plus interest. It has always been the Company’s understanding
14 that the full amount would be used to offset the environmental remediation costs. The
15 Company does not need to maintain that amount in cash in order to deliver the benefit to
16 customers.

17 **B. In Arguing that Reconsideration is Inappropriate, Staff Misconstrues the**
18 **Facts and Oregon Law.**

19 In its response, Staff relies on the Supreme Court’s interpretation of “good cause”
20 in *State v. Johnson*, to assert that the Company cannot establish that good cause for
21 reconsideration exists as a matter of law.¹¹ Staff’s claim that the Commission is

⁹ Staff/200, Johnson-Bahr/5 (emphasis added).

¹⁰ Staff’s Response to Application at 9.

¹¹ *State v. Johnson*, 339 Or 69, 85-87 (2005). In *State v. Johnson*, the Supreme Court construed the state’s speedy trial statutes. Staff suggests “good cause” in OAR 860-001-0720(3)(d), like “sufficient reason” for delay in trial under the speedy trial statutes (ORS 135.750), is a legal standard defined by context and legislative intent and not for subjective determination by the adjudicator.

1 constrained in interpreting “good cause” in its own administrative rules based on a case
2 construing language in a speedy trial statute is tenuous. The underlying statute providing
3 for rehearing, ORS 756.561, states the Commission *may* grant reconsideration *if sufficient*
4 *reason is made* to appear.¹² Moreover, the Commission has found that good cause for
5 reconsideration of an order exists where the Commission determined that it was “not so
6 certain that [its] decision was correct” and agreed with the party petitioning for
7 reconsideration that “further investigation is necessary.”¹³ Thus, whether good cause
8 exists is a matter of discretion for the Commission, and NW Natural urges the Commission
9 to agree that good cause exists for further examination of the amount of the Insurance
10 Proceeds allocated to future remediation expenses to reflect the Company’s tax obligation.

11 Staff further argues that “good cause” in OAR 860-001-0720(3)(d) should be
12 interpreted in the context of the other permissible bases for reconsideration—new
13 information not previously available, changed law, and error of law or fact—such that
14 reconsideration for “good cause” would not be permissible if information was previously
15 available. *First*, there is no reason why the failure to satisfy one of the specifically-
16 enumerated bases for reconsideration should preclude a request for reconsideration for
17 good cause; Staff’s interpretation would effectively eliminate the availability of good cause
18 as an independent basis for reconsideration. Staff’s argument that the Company’s tax
19 obligation was previously known and would contravene a request for reconsideration on
20 the basis of new information, has no bearing on whether good cause for reconsideration
21 exists in this case. *Second*, Staff’s claim that the tax information was available earlier in
22 the proceeding misses the point. As discussed above, the Company’s tax obligation was
23 not relevant to the issues that had been raised by the parties in the case. That

¹² Emphasis added.

¹³ *Re Verizon Nw. Inc.*, Docket UD 13, Order No. 02-639 (Sept. 12, 2002).

1 information became relevant only after the Commission directed the Company to hold a
2 portion of the Insurance Proceeds in a secure account.¹⁴

3 **C. It is Not Necessary to Reopen the Record or Rehear this Case.**

4 Staff, CUB, and NWIGU assert that the Commission cannot reconsider an issue
5 based on extra-record evidence,¹⁵ and request that if the Commission does entertain NW
6 Natural's request for reconsideration, that it also reopen the proceeding for additional
7 investigatory process to allow the Company to put forward additional evidence and to
8 allow the parties to verify the Company's evidence.¹⁶ The Company does not believe it is
9 necessary to prolong this proceeding further with an additional time-consuming
10 investigatory process to address the narrow issue presented on reconsideration. Instead,
11 the Company suggests that the Commission order the Company to place into a secure
12 account the after-tax balance of the insurance proceeds. Through the compliance filing
13 process the Commission and the parties can review the Company's information relevant to
14 its tax obligation and determine whether the Company's filing is acceptable. If the
15 Commission prefers, NW Natural will file an affidavit attesting to the amount of Insurance
16 Proceeds paid, consistent with the applicable tax rate, that are allocable to future
17 environmental remediation expenses.

¹⁴ Staff also analogizes a previous Commission order addressing a request for reconsideration, in which the Commission rejected Portland General Electric Company's ("PGE") application for reconsideration. PGE "alleged that procedural flaws in the underlying proceeding, including insufficient notice of issues to be considered by the Commission and a lack of a hearing, were good cause to reconsider the order." Staff's Response to Application at 7, citing *Re Portland Gen. Electric Co.*, Docket UM 1071, Order No. 04-357 (June 25, 2004). Yet Staff ignores a material difference between that case and this proceeding—in that case, Staff developed a white paper on the issue the Company disputed, and the parties in that case had an opportunity for comment on the issue. In this proceeding, no party presented evidence regarding the secure account or the Company's tax obligations, yet those same topics were put at issue for the first time in the Commission's Order No. 15-049, with no further opportunity for response or comment.

¹⁵ Staff's Response to Application at 14; CUB's Response to Application at 4; NWIGU's Response to Application at 2-3.

¹⁶ Staff's Response to Application at 15-16; CUB's Response to Application at 6; NWIGU's Response to Application at 3.

1 The Company strongly prefers to avoid delay in implementation of the
2 Commission's Order No. 15-049. As indicated in the Company's compliance filing, filed on
3 March 31, 2015, NW Natural requested that the tariff sheets implementing Order No. 15-
4 049 become effective June 1, 2015 to coincide with the June Interstate Storage Credit in
5 order to minimize the rate impact on customers. The Company is optimistic that the
6 Commission can resolve this issue in an expedited fashion, including issuance of an order
7 on reconsideration by May 27, 2015 in accordance with the current schedule. To the
8 extent that the Commission may be inclined to open this issue up for rehearing, the
9 Company respectfully requests that any additional process be provided on an expedited
10 basis that would allow for the Commission to issue an order consistent with the existing
11 schedule.

12 **D. There is No Reason to Hold Review of the Company's Compliance Filing in**
13 **Abeyance.**

14 NWIGU asserts that the Commission should hold the review of the Company's
15 compliance filing, filed on March 31, 2015, in abeyance pending the outcome of this
16 matter. It is not necessary to delay review of the compliance filing, as the bulk of the
17 issues addressed in the compliance filing do not hinge on the outcome of the Company's
18 Application. To the extent that it is necessary to update the compliance filing, NW Natural
19 will file a supplement to the compliance filing to reflect the Commission's determination on
20 the issue presented in the Company's Application.

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III. CONCLUSION

Consistent with OAR 860-001-0720(3), the foregoing reasons demonstrate good cause for further examination of the amount to be placed in a secure account. The Company respectfully requests that the Commission reconsider or clarify Order No. 15-049 to reflect that the amount of the Insurance Proceeds to be placed in a secure account is an after-tax amount, \$57.2 million.

DATED: April 22, 2015

McDOWELL RACKNER & GIBSON PC



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