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October 1, 2012

**VIA ELECTRONIC FILING  
& FIRST CLASS MAIL**

Oregon Public Utility Commission  
Attn: Filing Center  
550 Capitol Street N.E., #215  
P.O. Box 2148  
Salem, Oregon 97308-2148

Re: In the Matter of Northwest Natural Gas Company –  
Application for a General Rate Revision  
**Docket No. UG-221**

Dear Filing Center:

Enclosed are an original and one copy of Northwest Industrial Gas Users' and Citizens Utility Board of Oregon's Joint Motion to Strike Portions of NW Natural's Response to Second Bench Request.

The motion is being filed electronically and served accordingly. Please do not hesitate to contact our office with any questions.

Very truly yours,



Tommy A. Brooks

TAB:tjb  
Enclosures

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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UG 221**

In the Matter of	)
	) NORTHWEST INDUSTRIAL GAS
NORTHWEST NATURAL GAS	) USERS' AND CITIZENS' UTILITY
COMPANY	) BOARD OF OREGON'S JOINT
	) MOTION TO STRIKE PORTIONS OF
Application for a General Rate Revision	) NW NATURAL'S RESPONSE TO
	) SECOND BENCH REQUEST

**MOTION**

The Northwest Industrial Gas Users ("NWIGU") and the Citizens' Utility Board of Oregon ("CUB") hereby move the Commission to strike portions of NW Natural's Response to Second Bench Request ("Response") from the record in this matter. As explained below, portions of the Response go beyond the scope of the questions in the Second Bench Request ("Bench Request") by both including information not sought in the Bench Request and making additional arguments in support of the superfluous information provided.

**ARGUMENT**

The record in this matter is closed with the exception of some very limited matters that Administrative Law Judge Hardie (the "ALJ") expressly allowed the parties to continue to address after the hearing. That is, at the conclusion of the hearing live testimony was concluded,<sup>1</sup> objections to the admission of cross exhibits were resolved,<sup>2</sup> and the ALJ set a time frame for parties to clarify any answers that were "subject to check" by a witness.<sup>3</sup> The only remaining evidentiary issues left related to questions the Commission had surrounding environmental remediation insurance,<sup>4</sup> NW Natural Exhibit

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<sup>1</sup> Transcript 228:17.  
<sup>2</sup> Transcript 258:25 through 259:20.  
<sup>3</sup> Transcript 257:6.  
<sup>4</sup> Transcript 155:16.

1 4315,<sup>5</sup> and the Commission’s anticipation that it would issue a bench request relating to  
2 pension contributions, which is the subject of the Second Bench Request and this Motion.

3 The Commission initially identified the purpose of the Bench Request during the  
4 hearing. Specifically, the ALJ inquired from NW Natural witness Mr. Phelps about the  
5 “dates that the Company made each of those [pension] contributions in 2008, 2009, 2010  
6 and ’11.”<sup>6</sup> Because Mr. Phelps did not know those dates from memory, the ALJ then  
7 stated “I think we will probably send a bench request that just asks for the dates and the  
8 amounts of the contributions for that time period.”<sup>7</sup> Consistent with those statements, the  
9 Bench Request then sought information about the Company’s pension contributions from  
10 2008 through 2011 and some of the impacts from those specific contributions.<sup>8</sup> Nothing  
11 in the ALJ’s discussion at the hearing or in the Bench Request indicates that the ALJ was  
12 leaving the record open for information outside of the 2008 to 2011 time period identified  
13 during the hearing.

14 Notwithstanding the clear time period encompassed by the Bench Request, NW  
15 Natural went beyond the scope of that request and provided evidence not sought by the  
16 Commission. Moreover, NW Natural made specific arguments for why the information  
17 included in its response should be taken into consideration by the Commission. NWIGU  
18 and CUB request that the Commission strike the following information included in NW  
19 Natural’s response:

- 20 1. **Bench Request No. 1** – Page 2, lines 20 through 22, of NW Natural’s response  
21 identifies pension contributions the Company made in 2012. The Bench Request  
22 did not seek the date for any contributions made in 2012.
- 23 2. **Bench Request No. 2** – Page 3, line 15, 3 of NW Natural’s response estimates an  
24 impact on the Test Period for FAS Expense in 2012. Page 3, line 17 through page  
25 4, line 6, also report contributions in 2004 and 2005, well before the 2008  
timeframe for which the Commission was seeking information. That portion of  
the response also goes beyond merely providing data and instead presents NW

26 <sup>5</sup> Transcript 244:11 *et seq.*

<sup>6</sup> Transcript 153:16-19.

<sup>7</sup> Transcript 155:5-7.

<sup>8</sup> Second Bench Request, UG 221 (Sep. 14, 2012).

1 Natural's argument for why the Company believes those "amounts should be  
2 considered in this proceeding."

- 3 3. **Bench Request No. 3** – Page 4, lines 14-17 (beginning after the first sentence in  
4 that portion of the response) contain NW Natural's view of the combined impact  
5 of pension contributions made during calendar years 2004, 2005 and 2012, all of  
6 which are outside of the 2008-2011 timeframe described in the Bench Request.

7 It is clear from NW Natural's response that the information identified above for  
8 2004, 2005, and 2012 was not necessary to provide because, for each response, the  
9 Company first provided information relating only to the time period described in the  
10 Bench Request (2008-2011) and then tacked on the additional information in the hope of  
11 filling gaps in the record after each of the requested answers.

12 NWIGU and CUB will take the opportunity to make *arguments* relating to the  
13 Commission requested information in the Bench Request as part of a supplemental brief.<sup>9</sup>  
14 CUB and NWIGU are concerned, however, that no party was provided the opportunity to  
15 add additional testimony to the record as NW Natural has done. If the Commission  
16 allows this additional evidence to be included in the record at this late stage when three  
17 rounds of briefing have already been filed, it will set poor precedent for parties in the  
18 future who may seize on opportunities to stack the record even after the hearing when the  
19 record is supposed to be closed. NWIGU and CUB do not seek to limit the  
20 Commission's authority to issue bench requests, which aid in the Commission's ability to  
21 understand the record. However, the Commission should have a clear policy for not  
22 allowing parties to take advantage of those requests by using them as a vector for getting  
23 more information in front of the Commission that other parties have no ability to  
24 contradict through their own testimony.

### 25 **CONCLUSION**

26 In summary, NWIGU and CUB request that the Commission strike all of the  
information contained in NW Natural's Response to Second Bench Request relating to

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<sup>9</sup> Corrected Prehearing Conference Memorandum, UG 221 (Sep. 21, 2012).

1 the years 2004, 2005 and 2012. In the alternative, NWIGU and CUB ask that the  
2 Commission conclude that the information cannot be admitted into the record because it  
3 was submitted after the record was closed and exceeded the scope of the Second Bench  
4 Request.

5  
6 Respectfully submitted this 1st day of October, 2012

7  
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**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served the foregoing *NWIGU'S AND CUB'S JOINT MOTION TO STRIKE* via electronic mail and, where paper service is not waived, via postage-paid first class mail upon the following parties of record:

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Dated in Portland, Oregon, this 1st day of October 2012.

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