ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 19, 2015

REGULAR X CONSENT ___ EFFECTIVE DATE N/A

DATE: May 12, 2015

TO: Public Utility Commission

FROM: Stephanie Andrus and Judy Johnson

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: NORTHWEST NATURAL: (Docket No. ADV 18/Advice No. 15-03) Requests approval of Order No. 15-049 Compliance Filing.

STAFF RECOMMENDATION:

Staff recommends the Commission deny NW Natural's request to approve Advice No. 15-03 and order additional proceedings to resolve issues related to compliance with Order No. 15-049.

INTRODUCTION/SUMMARY OF ISSUES:

On February 15, 2015, the Commission issued Order No. 15-049 resolving several issues related to Northwest Natural Gas Company's rate recovery of environmental remediation costs the Company has already incurred, and that the Company anticipates incurring in the future. In the Order, the Commission directed NW Natural to "submit a filing in [the] docket demonstrating how it will implement both the historic and the future decisions reached in [the] order."[1] On March 31, 2015,[2] NW Natural filed Advice Filing No. 15-03, providing its demonstration of how it proposed to implement the Order, including new and modified tariffs.

Staff, the Citizens' Utility Board of Oregon (CUB), and the Northwest Industrial Gas Users (NWIGU) disagree with certain aspects of NW Natural's proposed implementation of Order No. 15-049, believing that NW Natural's compliance filing is not consistent with the Commission's order. Staff recommends that the Commission deny NW Natural's

[1] Order No. 15-049, p. 20.
[2] In the Order, the Commission required the filing within 30 days. NW Natural subsequently filed a motion to extend the date to March 31, which was granted.

request to allow its compliance filing go into effect. Staff also recommends that the Commission schedule additional proceedings to allow an opportunity for parties to develop and support their recommendations and rate mechanisms for compliance with Order No. 15-049.

APPLICABLE STATUTES, RULES AND POLICIES:

"Compliance tariffs are not defined in statute or rule, but are a mechanism used to implement a rate change resulting from a Commission decision."[3] Compliance filings are not subject to the file and suspend procedures of ORS 757.210-.215.[4]

Staff reviews a compliance filing to determine whether it is consistent with the resolutions and determinations made by the Commission in its final order.[5] Typically compliance filings are not controversial and Staff sends correspondence to the company after review of the compliance filing confirming that the filing is consistent with the respective Commission order and the tariffs filed by the company will go into effect with no other official action by the Commission. In rare circumstances, the Commission has previously rejected compliance filings that are inconsistent with the final order and ordered utilities to submit new compliance filings.[6]

BACKGROUND:

Order No. 15-049

In Order No. 15-049, the Commission resolved issues related to NW Natural's $94.3 million balance of environmental remediation expense and accrued interest deferred

---

[3] *See In the Matters of Portland General Electric Request for a General Rate Revision; (UE 180) Request for a General Rate Revision relating to the Port Westward Plant (UE 184),* Order No. 08-118 (2008 WL 484327).

[4] *Id.*

[5] See e.g., *In re PacifiCorp,* Order No. 10-260 (Staff stating its standard of review for a compliance filing is whether the advice filing is consistent with resolutions and determinations made by the Commission in its final order.)

[6] *See e.g., Re Portland Extended Area Service Region,* 91-1140 (1991 WL 53227 at Section III(1))(Staff noting that only issue before Commission when reviewing compliance tariffs is "whether the tariffs should be accepted and allowed to go into effect, or rejected, and the company required to submit a new tariff.")

between 2003 and December 31, 2012, ("past costs"), environmental remediation costs incurred between January 1, 2013 and March 31, 2014, costs incurred on or after April 1, 2013, and $150.5 million in insurance proceeds received by NW Natural. [7]

First, the Commission determined that NW Natural's environmental remediation costs deferred through December 31, 2012, were prudent with the exception of $33,400 in expenses, and that all the costs deferred from January 1, 2013 to March 31, 2014, were prudent.[8]

The Commission applied $50.2 million of NW Natural's $150.5 million in insurance proceeds to the $94.3 deferral balance existing as of December 31, 2012, leaving "deferrals of approximately $44.2 million" for the period between 2003 and December 31, 2012.[9] The Commission then reviewed NW Natural's earnings during the deferral period and based on this review and other considerations, determined that NW Natural's share of the $44.2 million balance is $15 million.[10] The Commission authorized NW Natural to amortize the remaining $29.2 million through the previously-ordered Site Remediation Recovery Mechanism (SRRM).[11]

With respect to costs incurred from January 1, 2013 to March 31, 2015, the Commission adopted a stipulation in Docket No. UM 1706 "recommending that [the Commission] find prudent NW Natural's remediation costs for calendar year 2013 and the first quarter of 2014[,]" and "that these remediation expenses be subject to the future earnings test [the Commission adopt[ed] in [Order Nos. 15-049] and reflected in rates through the SRRM."[12]

For future costs, the Commission determined that the remaining $100.3 million in insurance proceeds would be allocated across a twenty-year period "for future remediation work."[13] The Commission ordered NW Natural to place $100.3 million of insurance proceeds in a secure account to earn interest at the highest rate NW Natural could obtain while minimizing the risk to principal.[14] The Commission ordered NW Natural to apply $5 million of the proceeds, plus "interest accrued on the entire

---

[7] Staff will not summarize all the elements of Order No. 15-049. Instead, this summary discusses the Commission's determinations that are pertinent to the parties' disputes regarding Advice No. 15-03.
[8] Order No. 15-049 at 6.
[9] Order No. 15-049 at 17.
[10] Order No. 15-049 at 17-18.
[11] Order No. 15-049 at 18.
[12] Order No. 15-049 at 7.
[13] Order No. 15-049 at 11.
[14] Order No. 15-049 at 7.

outstanding insurance proceeds balance over the previous 12 months[,]" to environmental remediation costs incurred each year.[15]

The Commission also authorized NW Natural to collect from ratepayers $5 million a year in revenue in base rates.[16] For these rates and rates to amortize the deferred costs, the Commission adopted "the parties" initial rate-spread proposal based on an equal percent of margin basis.[17] And, the Commission adopted "the parties initially-agreed upon interstate allocation, which relies on historic operations to determine the allocation of costs between Oregon and Washington."[18]

On March 31, 2015, NW Natural asked the Commission to reconsider, or alternatively clarify, its order to place $100.3 million in insurance proceeds in a secure account.[19] NW Natural explained that it had only $58.3 million of the $100.3 million in insurance proceeds after taxes, and asked the Commission to substitute that amount for the $100.3 million specified in the order. [20] NW Natural stated that despite the reduced amount of cash it would put into the account, customers would still receive the benefit of the full pre-tax $100.3 million.[21]

Staff, CUB, and NWIGU opposed NW Natural's request, asserting that NW Natural's application did not satisfy the Commission's criteria for reconsideration of an order under OAR 860-001-0720(3). On May 1, 2015, the ALJ issued a ruling,

> instruct[ing] the parties to meet and confer regarding the issues raised in the application and in the responses to the application. If parties are able to reach an agreement addressing the issues raised, they may file an update and any supporting documentation on or before May 20, 2015.[22]

NW NATURAL'S ADVICE NO. 15-03:

NW Natural's compliance filing includes two new tariffs (Schedules 181 and 182) to recover revenue for costs incurred on and after January 1, 2013. Schedule 181 is a special adjustment tariff to recover $10 million in revenue to apply to remediation costs

---

[15] Order No. 15-049 at 11.
[16] Order No. 15-049 at 11.
[17] Order No. 15-049 at 6.
[18] Order No. 15-049 at 6.
[19] Application for Reconsideration and/or Clarification (March 31, 2015).
[20] Application for Reconsideration and/or Clarification at 2-3.
[21] Application for Reconsideration and/or Clarification at 5.
[22] UM 1635 May 1, 2015 Ruling.

incurred in 2013 and 2014, and $2.1 million to apply to the remediation costs incurred during the first five months of 2015.[23]

Schedule 181 has two parts. Part 1 creates a one-time surcharge to the same customers that are scheduled to receive a $10 million Interstate Storage and Optimization Credit on bills issued in June 2015.[24] Part 2 of Schedule 181 recovers from customer classes not eligible for the $10 million credit their allocated share of $10 million for 2013-2014 remediation costs and collects from all customers $2.9 million in revenue for costs incurred during the first five months of 2015. Part 2 of Schedule 181 would collect these amounts over a one-year period starting November 1, 2015.[25]

Schedule 182 is a tariff rider to collect $5 million of remediation expenses in base rates going forward, and has an effective date of June 1, 2015.[26]

NW Natural used the Commission-ordered state allocation percentage of 98.6 percent to allocate all deferred costs associated with the remediation sites associated with service to both Oregon and Washington, but allocated to Oregon 100 percent of the deferred costs related to sites that were not associated with service to Washington.[27] NW Natural allocated 98.6 percent of the proceeds to Oregon.[28]

Points of disagreement

CUB, NWIGU, and Staff believe that certain elements of NW Natural's advice filing are inconsistent with Order No. 15-049.[29] Staff recommends that the Commission schedule further proceedings to allow parties to comment on the issues below and to give the Commission an opportunity to determine the appropriate rate mechanisms to implement Order No. 15-049, and direct parties accordingly.

Staff does not believe that it is necessary to take additional evidence to resolve the issues listed below. Staff, CUB, NWIGU, and NW Natural have agreed to work together on a set of stipulated facts and believe that a consensus can be reached. Accordingly,

---

[23] NWN Advice No. 15-03 at 2-3.
[24] NWN Advice No. 15-03 at 2-3.
[25] NWN Advice No. 15-03 at 3.
[26] NWN Advice No. 15-03 at 3-4.
[27] NWN Advice No. 15-03 at 4.
[28] NWN Advice No. 15-03 at 4-5 (On page 4 ofNWN Advice No. 15-03, NW Natural reports the rate ordered by the Commission is 98.68 percent. On page 5, NW Natural states that it used the Commission-ordered rate of 9 8.6 percent to allocate costs to Oregon.).
[29] Staff, CUB, NWIGU, and NW Natural have conferred regarding NW Natural's Advice No. 15-03.

Staff recommends that the Commission initiate proceedings to allow parties to submit additional comments or briefs[30] regarding the proper interpretation of Order No. 15-049 with respect to the following points of disagreement:[31]

1. *The date on which the $33,400 prudence disallowance is removed from the deferral balance.*

To implement the Commission's disallowance of $33,400 of environmental remediation expense, NW Natural removed this amount from the deferral balance effective November 30, 2013. Staff, CUB, and NWIGU believe the disallowance should be effective as of the date the expenses were incurred, which could have been in early 2006.[32] Otherwise, NW Natural will be allowed to accrue interest on amounts deemed imprudent. It is Staff's understanding that there is no disagreement among the parties, including NW Natural, on this issue; however the compliance filing did not remove the interest accrued on the prudence disallowance and NW Natural has not yet filed to change its approach.

2. *The date on which NW Natural's $15 million share of the December 31, 2012 deferral balance is removed from the balance.*

Essentially, Staff and intervenors disagree with NW Natural as to whether NW Natural should be allowed to earn interest on its $15 million share of the December 31, 2012, deferral balance through February 20, 2015, the date of Order No. 15-049. NW Natural has assumed the Commission intended this adjustment to the deferral balance to be effective as of the date of Order No. 15-049. Accordingly, NW Natural's current deferral balance includes accrued interest on the entire deferral amount through February 20, 2015, including the $15 million.

Staff believes that to give effect to the Commission's decision to require NW Natural to absorb $15 million of the $94.3 million balance of deferred remediation costs and interest that existed on December 31, 2012, it is necessary to remove $15 million from

---

[30] See Order No. 03-085, *supra* at 2 (Commission allowing parties to submit comments but no new evidence on whether telecommunications utilities' filings are consistent with Commission's final order.).

[28] Staff does not seek a Commission determination at the May 19, 2015 public meeting on any of the issues identified, or any of the positions summarized, in this memorandum. Contrarily, Staff asks the Commission wait to address these issues until after parties have had opportunity to submit comments or briefs.

[32] The prudence determination was based on NW Natural's inability to account for these specific expenses, which makes determining the precise date they were incurred difficult.

the deferral balance as of December 31, 2012. If NW Natural's $15 million share is not removed on this date, but is removed from the deferral balance as of the date of Order No. 15-049, NW Natural will be allowed to keep the $2.9 million in interest that accrued on the $15 million from December 31, 2012 until February 20, 2015.

CUB does not believe that this is the proper way to conduct an earnings test, which CUB will discuss more fully in its own letter to the Commission.

3. *State allocation for costs incurred on and after January 1, 2013.*

NW Natural did not use the same state allocation for all costs addressed in Order No. 15-049. NW Natural states that "[b]ecause the Commission adopted 'historic operations' as the basis for cost allocation, NW Natural interprets the Order to allocate to Oregon customers 96.68 percent of the environmental costs associated with remediation sites that historically serviced both Oregon and Washington customers and 100 percent of the environmental costs associated with sites that only served Oregon customers."[33]

Staff, CUB, and NWIGU believe that the plain reading of the order is clear. The Commission adopted the prior stipulated amount of 96.68 percent as the state allocation of environmental remediation costs.

4. *Allocation of insurance proceeds.*

Issue #4 is directly related to issue #3. NW Natural allocated 98.68 percent of the insurance proceeds to Oregon and the remainder to Washington. If the Commission directs NW Natural to allocate 96.68 percent of all environmental remediation costs to Oregon then issue #4 is moot because the same allocation will apply to both the costs and insurance proceeds. On the other hand, if the Commission agrees with NW Natural's interpretation that 100 percent of the costs to remediate certain sites should be allocated to Oregon customers, then Staff recommends that the Commission require that NW Natural allocate a portion of the insurance proceeds using this allocation to ensure symmetrical treatment of costs and insurance proceeds. Staff understands that NW Natural would be agreeable to this modification to synch up the allocation of insurance proceeds and expenses, but NW Natural has not yet made a filing to modify this approach.

CUB and NWIGU believe that the Commission order requires 96.68 percent to be used for both costs and insurance.

---

[33] NWN Advice No. 15-03 at 4.

5. *NW Natural's Schedule 181 Part 1 offsetting $10 million credit scheduled for June 1, 2015.*

NW Natural, Staff, and NWIGU assume that the Commission intended its rate-recovery mechanism for "future" remediation costs to be applied to costs incurred after January 1, 2013. This means that NW Natural must recover $10 million for calendar years 2013 and 2014 ($5 million for each year) and apply $10 million of insurance proceeds ($5 million for each year), plus accumulated interest to costs incurred in those years.

As discussed above, NW Natural proposes to apply a previously-ordered $10 million customer credit to costs incurred in those years, as well as the appropriate amount of insurance proceeds, and amortize the remainder of the costs eligible for recovery over a 12-month period through the SRRM Tariff starting November 1, 2015.

CUB disagrees that it is appropriate to require 2015-2016 customers to bear the entire burden for costs incurred in 2013 and 2014. CUB believes that there is no authorization in Order No. 15-049 to charge current customers a 12.5 million surcharge for the years 2013, 2014 and the first half of 2015 as proposed by NW Natural under Schedule 181. CUB believes it is appropriate for NW Natural to amortize the costs incurred after January 1, 2013, and prior to rates implementing Order No. 15-049 over a longer period of time.

6. *Adjustments to Schedule 182 to take into account updated sales estimates.*

The Commission directed NW Natural to file a compliance tariff to collect $5 million in base rates for future remediation costs "using sales estimates" from NW Natural's last rate case.[34] The Commission order also directs NW Natural to develop rates to annually collect from customers $5 million.

If NW Natural uses the sales estimates from the last rate case, the Company will likely collect more than $5 million from customers each year because current sales levels are greater than those used in the last rate case. In the alternative, the intent of the order could be to establish a tariff with a target of $5 million while anticipating that actual collections will be different. If this interpretation is correct, then the matter of using the last rate case sales statistics is not as significant a concern. It should be noted that allowing the actual collection in rates to vary each year could change the economics of

[34] Order No. 15-049 at 11.

the Commission's order with respect to the applicable environmental remediation costs that will be subject to the earnings tests.

Staff and NWIGU believe the Commission's order reflects that it intended for NW Natural to collect $5 million annually from customers, and that accordingly, NW Natural should use a more up-to-date sales forecast to calculate rates. Other regulatory mechanisms may also be needed to ensure that $5 million is annually collected from customers.

7. *Placement of insurance proceeds allocated to future costs.*

The Commission directed the Company to place the remaining balance of insurance proceeds in to a secure account. NW Natural filed a request for reconsideration because the amount of available insurance proceeds is significantly less than that directed by the Commission because the Company claims it paid taxes on the insurance proceeds since it is part of the Company's income. NW Natural asked the Commission to reduce the amount of insurance proceeds that it must place in a secure account to offset future environmental remediation costs.[35] The ALJ has instructed the parties to confer to determine whether they can reach agreement on treatment of the insurance proceeds, and to report back to the Commission by May 20, 2015.

The parties are conferring regarding treatment of future insurance proceeds. Although this question is not necessarily a "compliance" issue, Staff recommends that the Commission allow parties to address this issue (through settlement or otherwise) in proceedings initiated to address the compliance issues listed above. If we are able to reach settlement on this issue, the parties would promptly file the proposed settlement regardless of the status of other issues. If the Commission decides to change the order's disposition of the insurance proceeds, the Commission has authority to do so under ORS 756.568.

Staff, the Company, CUB, and NWIGU met May 12, 2015, and agreed to meet again following the public meeting scheduled for May 19, 2015.

CONCLUSION:

Staff, CUB, and NWIGU believe that NW Natural's Advice No. 15-03 is inconsistent with the Commission's determinations in Order No. 15-049. Accordingly, Staff recommends the Commission deny NW Natural's request to approve Advice No. 15-03 and order

[35] Application for Reconsideration and/or Clarification at 2.

additional proceedings to resolve issues related to compliance with Order No. 15-049. Staff recommends that the Commission address issues related to the use of insurance proceeds for future remediation costs in the new proceedings. To the extent that Order No. 15-049 must be modified to account for different treatment of the insurance proceeds, or to provide more direction on NW Natural's recovery of remediation costs incurred between January 1, 2013 and the time rates implementing Order No. 15-049 are effective, the Commission may modify Order No. 15-049 under its authority in ORS 756.568.

PROPOSED COMMISSION MOTION:

Staff recommends that the Commission deny NW Natural's request to approve Advice No. 15-03 and order additional proceedings to resolve issues related to compliance with Order No. 15-049.