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August 8, 2014

VIA ELECTRONIC FILING & U.S. MAIL

Oregon Public Utility Commission
3930 Fairview Industrial Drive SE
PO Box 1088
Salem, OR 97308

Re: In the Matter of Northwest Natural Gas Company dba NW Natural
Mechanism for Recovery of Environmental Remediation Costs
Docket No. UM 1635

Dear PUC,

Enclosed please find the original and five (5) copies of the NORTHWEST INDUSTRIAL GAS USERS' PHASE II POST-HEARING BRIEF in the above-referenced docket.

Thank you for your assistance with this filing. Should you have any questions, please feel free to contact me.

Very truly yours,



Tommy A. Brooks

TAB:sk
Enclosures

cc: UM 1635 Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1635**

4 In the Matter of

5 NORTHWEST NATURAL GAS
6 COMPANY, dba NW NATURAL

7 Mechanism for Recovery of
8 Environmental Remediation Costs.

NORTHWEST INDUSTRIAL GAS
USERS' PHASE II POST-HEARING
BRIEF

9 **Introduction**

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11 Pursuant to Administrative Law Judge Shani Pine's Ruling dated February 6,
12 2014, Northwest Industrial Gas Users ("NWIGU") files this Post-Hearing Brief in Phase
13 II of this docket. Because the Commission canceled the hearing in this matter and no
14 new evidence has been presented, this Phase II Post-Hearing Brief will only briefly
15 summarize NWIGU's arguments and NWIGU continues to rely on the Points and
16 Authorities presented in its Phase II Prehearing Brief, which are incorporated here by this
17 reference.

18 As explained in more detail in NWIGU's Phase II Prehearing Brief, NWIGU
19 urges the Commission to reject Northwest Natural's ("NW Natural" or "Company")
20 proposed earnings test for sharing environmental remediation costs, as well as its
21 proposal to recover all prior-incurred environmental remediation costs through insurance
22 settlement proceeds, and to adopt instead one of the proposals presented by NWIGU,
23 Staff, or the Citizens' Utility Board of Oregon ("CUB"). NWIGU also urges the
24 Commission to adopt a rate spread that allocates environmental remediation costs on an
25 equal percentage of margin basis as the parties previously agreed in Phase I of this
26 docket.

1 **Summary of Arguments**

2 **A. Earnings Test and Insurance Proceeds**

3 The significance of having an earnings test with a deadband is that it will likely
4 act as a *de facto* sharing mechanism in some years, thereby preventing customers from
5 having to bear the entire burden of the Company's environmental remediation costs. The
6 Company's proposal presents the Commission with an option that creates the least-likely
7 chance that the Company's investors will take on any of the Company's environmental
8 remediation liability and should be rejected.

9 The Company has argued that the Commission should adopt an earnings test that
10 sets the cut-off at 100 basis points above authorized return on equity ("ROE").¹ By
11 choosing 100 basis points above ROE as the cut-off, the Company's proposal makes it
12 more likely that customers will indeed shoulder the entire burden. The Company earned
13 greater than its authorized ROE in only four of the past ten years.² Of those four years,
14 only once did the Company earn more than 100 basis points over its authorized ROE.³

15 A more reasonable approach would be for the Commission to adopt one of the
16 proposals by NWIGU, Staff or CUB, each of which proposed sharing mechanisms that
17 make it more likely shareholders will have to bear some of the burden of environmental
18 remediation costs, but still allowing the Company an opportunity to earn its authorized
19 ROE. As stated in NWIGU's Phase II Pre-Hearing Brief, the proposals by Staff and
20 intervenors all have three things in common: (1) they continue to allow the Company an
21 opportunity to earn its authorized ROE; (2) they do not destroy the Company's incentive
22 to earn beyond its authorized ROE (indeed, NWIGU's proposal bolsters that incentive);
23 and (3) they make it more likely that customers will not bear the entire burden of paying
24 for environmental remediation costs. NW Natural's proposal, in contrast, lacks that third
25

26 ¹ NWN/800, Miller 17 at line 5.

² NWN/900, Miller/24 at line 1.

³ See Staff/200, Johnson-Bahr/13 at line 1, Table 1.

1 component and, therefore, fails to strike the proper balance between shareholders and
2 customers that the Commission indicated it was seeking when it rejected the parties'
3 earlier stipulation.

4 The Company's proposal to apply insurance proceeds to fully recover previously-
5 deferred costs is also unreasonable. The most significant change in facts since this
6 docket began is the amount of insurance proceeds the Company now has in hand. When
7 the docket began, the Company had collected approximately \$50 million in insurance
8 proceeds. Since that time, the Company settled with all but one insolvent insurer and will
9 now receive a total of more than \$150 million in insurance proceeds.⁴

10 There is no dispute that the insurance proceeds are a customer asset. The question
11 remains, however, how the Commission should apply the insurance proceeds in light of
12 the fact that the Company will recover environmental remediation costs from several
13 generations of customers. Although the Company has been incurring environmental
14 remediation costs for more than a decade, it now proposes to apply the insurance
15 proceeds it has received so that it fully recovers the costs it has already incurred.⁵ The
16 Commission should reject the Company's proposal because it does not reasonably
17 distribute the benefits of the insurance proceeds.

18 First, through this proposal, the Company is ignoring the previous order from the
19 Commission, which concluded that the \$7 million of past costs the Company was willing
20 to write off through the stipulation was "too low." The Company's proposal fails to
21 respond to that part of the Commission's order and, by seeking to apply the insurance
22 proceeds to fully recover past-deferred amounts, the Company would reduce the amount
23 it has to write off to zero.

24 Second, NW Natural's approach continues to place the entire burden of the
25 environmental remediation costs on current and future customers. Not only would

26 ⁴ NWN/800, Miller 7 at line 2; *See* Staff/200, Johnson-Bahr/1.

⁵ NWN/800, Miller/23 at line 3.

1 shareholders not be required to absorb any of the Company's historic remediation costs,
2 applying insurance proceeds to fully recover past costs leaves fewer dollars to apply to
3 future costs and, therefore, increases the burden on current and future customers.
4 Because the settlement payments are designed in part to cover the insurance company's
5 liability to NW Natural for the costs the Company is likely to incur for environmental
6 remediation in the future, the appropriate portion of those funds must benefit future
7 customers who will bear those costs.

8 Because the Company's insurance proceeds are a customer asset that should be
9 used to offset costs that would otherwise be borne by past, present and future customers,
10 those proceeds should be allocated in an equitable manner between those generations.
11 NW Naturals' proposal fails to do that and, therefore, is not reasonable. The Commission
12 should instead implement one of the proposal presented by Staff and intervenors, each of
13 which strike a better balance between generations of NW Natural's customers.

14 **B. Rate Spread**

15 As part of the stipulation in Phase I of this docket, the parties agreed on a rate
16 spread that allocated costs on an equal percent of margin. Although the Commission
17 rejected the stipulation, it later indicated that it had no problem with the rate spread
18 component of the stipulation and invited the parties to settle again on that issue.⁶

19 NWIGU raised the rate spread issue again in its response testimony.⁷ Staff
20 similarly recommended that the Commission allocate rates in this docket on an equal
21 percent of margin basis.⁸ No other party objected to NWIGU's or Staff's
22 recommendation in testimony or in a prehearing brief. If other parties object to
23 NWIGU's and Staff's proposal in a post-hearing brief, NWIGU urges the Commission to
24 recognize that the only testimony in this proceeding relating to rate spread is the
25

26 ⁶ UM 1635, Memorandum (Dec. 5, 2013).

⁷ NWIGU/200, Gorman/3 at line 5.

⁸ Staff/200, Johnson-Bahr/4 at line 9.

1 testimony in support of Staff's and NWIGU's proposals, each of which supports the
2 earlier stipulation. The Commission should therefore adopt the rate spread proposal
3 originally presented in the parties' stipulation.

4 **Conclusion**

5 Based on the foregoing, the Commission should reject NW Natural's proposal for
6 an earning test and its proposed application of insurance proceeds to fully recover prior
7 deferred amounts. Instead, the Commission should establish an earnings test and
8 application of insurance proceeds consistent with the proposals presented by NWIGU,
9 Staff or CUB. Further, the Commission should adopt the rate spread proposal originally
10 presented in the parties' stipulation.

11 Dated this 8th day of August 2014.

12 Respectfully submitted,

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25 Of Attorneys for the
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CERTIFICATE OF SERVICE

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I CERTIFY that I have on this day served the foregoing document upon all parties of record in this proceeding via electronic mail and/or by mailing a copy properly addressed with first class postage prepaid.

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Dated in Portland, Oregon, this 8th day of August 2014.



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