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April 6, 2021

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attention: Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97308-1088

RE: AR 641 – Division 001 Rule Updates—NW Natural's Comments and Proposed Redlines

Northwest Natural Gas Company, dba NW Natural (NW Natural or Company), appreciates the opportunity to comment on the Division 001 Rules, specifically OARs 860-001-0070, 0080, 0170, 0500, and 0540.

NW Natural's comments first address the edits proposed by the Administrative Hearings Division of the Public Utility Commission of Oregon ("AHD") to OAR 860-001-0070 and OAR 860-001-0170. The Company then explains its edits to OAR 860-001-0080 and OAR 860-001-0540, which are attached.

860-001-0070 – Confidential Information Revisions Proposed by AHD.

NW Natural generally is supportive of the changes proposed by AHD. First, the Company agrees that there should be a single term that is used throughout the rules and protective orders for information that cannot be publicly disclosed. This term could either be "protected information" or "confidential information."

Second, the Company does not oppose the changes proposed in subsection (3), as long as it is clear that parties are not required to electronically file highly confidential information, consistent with our March 9 comments.

Third, while the Company appreciates the proposed changes to simplify filing requirements, it notes that it is not always feasible to insert the bracketed "start confidential" and "end confidential" before such information within a spreadsheet. Instead, the existing language for spreadsheets should be retained, which requires inserting the confidential designation in the header or the footer. Also, the sentence stating, "The container must be marked 'CONFIDENTIAL,'" should be struck because there are no other references to the term "container" in the revised version.

860-001-0170 – Filing Requirements in Contested Case and Declaratory Ruling Proceedings Revisions Proposed by AHD.

NW Natural is supportive of the changes that AHD has proposed to this section. The Company notes, however, that the comments included with the changes indicates that the Commission cannot accept filings greater than 10 MB, whereas the rules specify a 20 MB limit. From past practice, it appears the limit is 20 MB. While the Company would appreciate clarification on this matter, we agree that the rules need not specify this.

The proposed revisions would also strike the subsection that provides for a lag between when electronic materials are filed and when physical materials are delivered. However, until the Commission has adopted its new filing system, there will be a need to physically file materials that exceed the MB limit. Furthermore, as NW Natural stated in its March 9 comments, parties should have the ability to continue to physically file highly confidential information in certain circumstances. Both of these issues should be addressed in filing requirements on the Commission's website.

860-001-0080 – Protective Order Revisions Proposed by NW Natural

In its attached redlines, NW Natural proposes that both general and modified protective orders should address how protected and highly confidential information is stored and secured if shared electronically. For general protective orders, such precautions could include password protecting or encrypting these files, limiting the duplication or download of these files, and preventing such information from being stored on individual personal computer hard drives, although the specific mechanisms need not be specified in the rules. For modified protective orders involving highly confidential information, parties should not be required to share information electronically. If, however, a party chooses to share its highly confidential information electronically, other parties should not be able to download that information from the designated shared workspace (Huddle) without consent as suggested by CUB in its initial AR 641 comments. Adopting both of these measures would limit the risk of inadvertent disclosure of both protected and highly confidential information.

860-001-0500 – Discovery in Contested Case Proceedings

NW Natural is not recommending changes to this section.

860-001-0540 – Data Requests Revisions Proposed by NW Natural

NW Natural supports changing the 14-day response period to 10-business days. The Company agrees with PacifiCorp's initial AR 641 comments that the current timeline can be burdensome when state or federal holidays fall within the current 14 calendar day calculated response period.

NW Natural also recommends several revisions to subsection (2) to reflect current practice. This includes clarifying that parties should only serve data requests and responses through "electronic mail notification of upload to a designated shared workspace,"[1] and deleting the last two sentences of subsection (2). These sentences are no longer necessary due to parties using Huddle for discovery. In addition, NW Natural recommends a clarifying edit in subsection (5), so that it is clear it applies to responses to data requests as well as data requests themselves.

NW Natural looks forward to continue working with the Commission and other stakeholders in updating the Division 001 Rules. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Zachary Kravitz

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[1] Please note that this would not automatically preclude physically filing highly confidential information in certain circumstances. Instead the notification may lead to further explanation as to why certain information cannot be filed electronically.

AR 641: NW Natural's Proposed Redlines

860-001-0080

Protective Orders

(1) Protective Orders. The Commission's protective orders govern the access and use of protected information in Commission proceedings. The purpose of a protective order is to allow parties the ability to review protected information while ensuring that it is not disclosed publicly. A general protective order sets forth the processes: 1) for a person to become qualified to access protected information, 2) to designate how such information is ~~access,~~ stored and secured ~~and handle protected information~~, and 3) to challenge the designation of protected information. For good cause shown, a modified protective order may include specialized restrictions on access to certain highly protected information.

(2) General Protective Order. A party may file a motion for a general protective order when it expects a filing or discovery will involve information that falls within the scope of ORCP 36(C)(1). The general protective order, as adopted by the Commission, is available on the Commission's website and by request from the Administrative Hearings Division.

(a) The motion for a general protective order must be made in writing unless otherwise allowed by the Commission or ALJ consistent with OAR 860-001-0420(1).

(b) An ALJ may issue a general protective order immediately upon receipt of the motion to facilitate filing of protected information and discovery. Pending the ALJ's issuance of a general protective order, the information at issue need not be released.

(c) The general protective order sets forth the processes for parties to dispute a proposed signatory to a protective order or to challenge the designation of specific information as protected.

(3) Modified Protective Order. A party may file a motion under OAR 860-001-0420 for a modified protective order that provides additional protection beyond that provided by the general protective order. A modified protective order may also combine the terms of the general protective order with special provisions for highly protected information, if a party seeks to have one consolidated protective order. A modified protective order provides that certain information is designated as highly protected information. A modified protective order may limit the persons that may access the highly protected information, ~~or~~ designate the time or place or special handling for highly protected information, or otherwise specify the manner in which highly protected information is provided to the parties and the requirements that parties must follow to access, store and secure such information. No party is required to provide highly protected information in electronic format, including, but not limited to, uploading such information to a designated shared workspace. If a party agrees to upload its highly protected information to a designated shared workspace, no party is ~~-~~permitted to download such information from that shared workspace without the consent of the party that provided the information. A modified protective order may also require signatories to make a more specific certification that they have a legitimate and non-competitive need for the designated information and not simply a general interest in the proceeding, and that they intend to be actively involved in the docket by filing written materials and participating in proceedings.

(a) The motion for a modified protective order must be made in writing unless otherwise allowed by the Commission or ALJ consistent with OAR 860-001-0420(1). The motion must include:

(A) The parties and the exact nature of the information involved;

(B) The legal basis for the claim that the information is protected under ORCP 36(C)(1) or the Public Records Law;

(C) The exact nature of the relief requested;

(D) The specific reasons the requested relief is necessary;

(E) A detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient;

(F) A certification that the requesting party conferred with the other parties regarding the request for a modified protective order indicating whether the parties support the motion; and

(G) A draft of the requested modified protective order.

(b) If the motion is being filed prior to parties being identified, the Filing Center will serve the motion to the generic industry list.

(c) The ALJ will provide expedited review of any motion for modified protective order and may issue a modified protective order within 3 business days to facilitate filing of protected information and discovery. Pending the ALJ's issuance of a modified protective order, the information at issue need not be released.

(d) As a substantive motion, any response to a motion for a modified protective order regarding the terms of the modified protective order must be filed within 15 days of filing of the motion, and the moving party may file a reply within 7 days, consistent with OAR 860-001-0420(4) and (5). A modified protective order will set forth separate processes for parties to dispute a proposed signatory to the protective order, or to challenge the designation of information as protected or highly protected.

(e) When a response is filed to the motion for modified protective order, the ALJ will conduct a de novo review of the terms of the modified protective order. The ALJ will issue a ruling explaining the ALJ's determination. If the ALJ's determination requires changes to the terms of the modified protective order previously issued, the ALJ will issue an amended modified protective order, explaining if signatory pages need to be refiled.

(f) Under OAR 860-001-0110, a party may request that the ALJ certify to the Commission the determination resulting from the de novo review. A party must make this certification request within 15 days of the date of service of the applicable ALJ's decision.

(g) If a modified protective order requires signatories to certify active participation in the proceeding,

(A) A certifying party may decertify itself as eligible to receive information under the modified protective order; or

(B) A certifying party may be decertified as eligible to receive information under the modified protective order after a motion by another party or the ALJ's own motion for failing to fully participate in the proceeding. A certifying party who is the subject of a motion to decertify may file a response within 15 days of the motion to decertify.

(4) A party alleging that the terms of a protective order have been violated may file a complaint under ORS 756.500, or the Commission may, on the Commission's own initiative, file such complaint. Any person that fails to comply with the terms of a protective order may be subject to sanctions. Depending upon the severity of the violation, the Commission may impose any sanction it deems appropriate, up to and including:

(a) Issuing a public reprimand;

(b) Expelling the person or associated party from the proceeding in which the protective order was violated;

(c) Prohibiting the person or associated party from appearing in future proceedings;

(d) Imposing penalties under ORS 756.990(2)(c); or

(e) Reporting any attorney that violated the protective order to the bar association in all states where the attorney is admitted to practice law.860-001-0500

860-001-0500

Discovery in Contested Case Proceedings

(1) Discovery must be commensurate with the needs of the case, the resources available to the parties, and the importance of the issues to which the discovery relates.

(2) Discovery that is unreasonably cumulative, duplicative, burdensome, or overly broad is not allowed. Instructions and definitions included in discovery requests must be consistent with these rules and ORS Chapters 756, 757, and 759.

(3) Privileged material is not discoverable except as provided under the Oregon Rules of Evidence.

(4) A party will not be required to develop information or prepare a study for another party, unless the capability to prepare the study is possessed uniquely by the party from whom discovery is sought, the discovery request is not unduly burdensome, and the information sought has a high degree of relevance to the issues in the proceedings.

(5) Parties must make every effort to engage in cooperative informal discovery and to resolve disputes themselves. If a party receives a data request that is likely to lead to a discovery dispute, then that party must inform the requesting party of the dispute as soon as practicable and attempt to resolve it informally.

(6) If parties are unable to resolve a dispute informally, then any of the parties involved in the dispute may request that the ALJ conduct a conference to facilitate the resolution of discovery disputes. A

requesting party must identify the specific discovery sought and describe the efforts of the parties to resolve the dispute informally.

(7) A party may file a motion to compel discovery. The motion must contain a certification that the parties have conferred and been unable to resolve the dispute. A party filing a motion to compel will be allowed the opportunity to file a reply to the response to the motion.

(8) A party's assertion that information responsive to a discovery request is confidential may not be used to delay the discovery process; provided, however, a party pursing protection will not be required to produce information that it claims is inadequately protected until such time as its claim for the need for a general protective order or a modified protective order is resolved. If an answering party believes that a response to a discovery request involves confidential information that is inadequately protected by the safeguards existing in the docket, the answering party must notify the requesting party of this belief as soon as practicable and, if appropriate, promptly move for an appropriate protective order.

(9) A party may by motion, or the ALJ may on the ALJ's own motion, propose that sanctions be imposed if a party fails or refuses to comply with an oral or written ruling resolving a discovery dispute. The ALJ may impose sanctions including: default; dismissal; or striking of testimony, evidence, or cross-examination.

860-001-0540

1) A party may submit data requests to any other party, subject to the discovery rules in the ORCP. Data requests are written interrogatories or requests for production of documents. Data requests must be answered within 10 business~~4~~ days from the date of service. Each data request must be answered fully and separately in writing or by production of documents, or objected to in writing.

(2) A party submitting a data request must serve the request on all parties to the proceedings. For nonconfidential requests, service may be made ~~by electronic mail or~~ by electronic mail notification of upload to a designated shared workspace for data requests and responses. If the request contains confidential information, then the submitting party must serve a complete copy on all parties eligible to receive confidential information under the terms of a protective order and a redacted copy to all other parties. The complete confidential copy must be served using means identified in the protective order. ~~Nonconfidential data requests and responses submitted to the Staff of the Commission must be sent to PUC.Datarequests@state.or.us. If a designated shared workspace is being used for data requests and responses, the notification of uploaded data requests and responses must be sent to PUC.Datarequests@state.or.us.~~

(3) The party answering the data request must provide a response or an electronic mail notification of upload to a designated shared workspace to the submitting party and all other parties that filed a written request for a copy of the response. A party must agree to be bound by the applicable protective order to be eligible to receive a response containing confidential information.

4) A party may offer into evidence data requests and the answers to the data requests. Any objection to substance or form of a data request or answer must be attached to the submitted data request or answer with specific reference and grounds. Every remedy available to a party using deposition procedures is available to a party using data requests.

(5) Except when requested by the Commission or ALJ, or when seeking resolution of a discovery dispute under these rules, data requests and responses to data requests are not filed with the Filing Center or provided to the ALJ.