

I. INTRODUCTION

A. Procedural Background.

2. On March 21, 2008, NW Natural filed new and revised tariff sheets reflecting NW Natural's Smart Energy Program.¹ Smart Energy is a voluntary pilot program that enables residential and commercial customers to offset the greenhouse gas ("GHG") emissions associated with their natural gas use. The Smart Energy Program would be the first of its kind among gas utilities, and would further the State's articulated goals of reducing carbon emissions and slowing global warming.
3. In conjunction with the Smart Energy Tariff, NW Natural also filed a Petition for Deferred Accounting ("Petition"). The Petition requested an order authorizing deferred accounting of the 2008 and 2009 administrative start-up costs of the Smart Energy Program up to \$79,000. NW Natural's shareholders agreed to absorb the 2007 start-up costs.
4. After NW Natural filed its tariff advice and Petition, the Commission scheduled both filings for consideration at the April 30, 2008 Public Meeting. In its Open Meeting Memorandum on the tariff advice filing, Staff recommended that the Commission take no action on the filing and allow the proposed rates to become effective May 1, 2008.² However, Staff stated that while it believed that the Smart Energy Program has value, it could not support the Petition.³ Specifically, Staff: (a) expressed concern that the deferral petition was contrary to the

¹ NWN Advice No. WUTC 08-01 (Mar. 21, 2008).

² *Wash. Util. & Transp. Comm'n v. NW Natural Gas Co.*, Docket No. UG-080519, Staff's Open Meeting Memorandum at 1 (Apr. 30, 2008).

³ *Id.*

Green Tag statute applicable to electric utilities;⁴ and (b) argued that the deferral amount was too small to be approved.⁵

5. NW Energy Coalition filed a letter with the Commission in which it urged approval of both the tariff and the Petition.⁶ NW Energy Coalition cited Smart Energy as “a step in the right direction in light of a looming cap on GHGs,” and further cited the benefits of the program that inure to all customers, whether or not they participate.⁷

6. At the Public Meeting, the Commission questioned both Staff and the Company extensively regarding the Smart Energy Program and the issues raised by Staff regarding the Petition. In addition, the Commission questioned the Company about the percent of total costs of the Program that it would use for education and advertising, versus the amount to be used to support offset projects. After hearing the parties’ responses, the Commission set both the tariff and the Petition for hearing.

B. Summary of Argument.

7. The Commission should enter an order approving the Smart Energy Tariff. Smart Energy is a unique program that is in line with Washington’s commitment to reducing GHGs. The program has been supported by interested groups in both Oregon and Washington. In addition, Washington law allows a utility to offer a program such as Smart Energy. Despite the voluntary

⁴ RCW 19.29A.090(2).

⁵ *Wash. Util. & Transp. Comm’n v. NW Natural Gas Co.*, Docket No. UG-080519, Staff’s Open Meeting Memorandum at 1 (Apr. 30, 2008).

⁶ *Re NW Natural Gas Co. Petition for an Accounting Order Authorizing Deferred Accounting Treatment of Certain Costs Associated with the Smart Energy Program*, Docket No. UG-080530, *Wash. Util. and Transp. Comm’n v. NW Natural Gas Co.*, Docket No. UG-080519, NW Energy Coalition Letter (Apr. 29, 2008).

⁷ *Id.*

nature of the program, NW Natural is required to file a tariff containing the terms and conditions of the Smart Energy Program. The Company did so and requests approval of that tariff.

8. In addition, the deferral petition is consistent with Washington law and policy and should also be approved. First, deferral is appropriate because the Smart Energy Program will benefit all NW Natural customers, not only those who directly participate in the program. Recent legislative activity indicates that carbon regulation will be implemented in the near future. Given the high likelihood of carbon regulation, Smart Energy provides the following benefits to NW Natural customers: (1) the Company will have the opportunity to gain knowledge of carbon offset markets and outperform its competitors; (2) the Company will develop a relationship with The Climate Trust, one of the most experienced offset developers in the nation; (3) the Company will evaluate the costs and benefits of internal and external emission reductions; and (4) the Company's management will be educated on the carbon offset market.
9. Moreover, the Commission is not constrained by the statute that prohibits recovery of electric utility Green Tag programs from non-participants. As a matter of law, the Green Tag statute does not apply to the Smart Energy Program. Since the Washington Legislature passed the Green Tag statute, it has passed a number of laws requiring the state to take action to reduce GHGs. This evidences a more developed and robust policy towards reducing GHGs and climate than existed when the Green Tag statute was enacted. As a matter of policy the Commission should not use its discretion to apply that statute to a program such as Smart Energy that furthers significant and timely state goals.
10. Finally, the Commission has not implemented a *de minimis* standard for deferrals and should not do so in this case.

11. Approval of the Smart Energy Tariff and the Petition are consistent with Washington law and would provide benefits to NW Natural customers generally. NW Natural therefore requests that the Commission grant this Motion for Summary Determination.

II. STATEMENT OF FACTS

A. Smart Energy Program.

1. Climate Change Legislation.

12. Smart Energy was developed in response to state and federal policies to limit GHG emissions and slow global warming. In Washington, the Legislature has already found that climate change is disrupting Washington's economy, environment, and communities,⁸ and has enacted laws requiring the state to reduce overall emissions of GHGs.⁹ At the federal level, while the timing of specific legislation is uncertain, most observers have recognized the national movement towards greenhouse gas regulations,¹⁰ and significantly, have concluded that cap and trade is the most likely form of federal legislation.¹¹

2. Overview of Smart Energy Program.

13. Smart Energy is a pilot program that allows NW Natural customers to offset the GHGs resulting from their natural gas use.¹² NW Natural has partnered with The Climate Trust to offer the program.¹³ The Climate Trust is a nonprofit organization that has been promoting climate change solutions by developing high-quality GHG offsets since 1997.¹⁴ The Climate Trust is

⁸ RCW 80.80.005(1).

⁹ RCW 70.235.020.

¹⁰ Edmonds Affidavit ¶ 15.

¹¹ *Id.* ¶ 16–17.

¹² NWN Advice No. WUTC 08-01 (Mar. 21, 2008).

¹³ *Id.*; Edmonds Affidavit ¶ 4.

¹⁴ *Id.* ¶ 5.

one of the country's most experienced offset developers and has been recognized by a third-party reviewer as one of the two top offset developers in the nation.¹⁵ NW Natural has engaged The Climate Trust to develop GHG offset projects on behalf of Smart Energy participants, with an emphasis on bringing biogas to the region.¹⁶

14. Both residential and commercial customers are eligible to enroll in the Smart Energy Program.¹⁷ Residential participants may elect either a fixed rate of \$6.00 per bill or a volumetric rate of \$0.10486 per therm.¹⁸ Commercial customers may elect any fixed rate of \$10 or more per month.¹⁹ NW Natural will use these funds to purchase carbon offsets and to administer the program.²⁰ The Company expects the administrative costs to comprise about 30 percent of the program rates during the pilot program.²¹

15. NW Natural based the amount of the residential flat rate in part on market research indicating that this price is near the top of a range of prices customers would pay for a product like Smart Energy.²² Respondents in two focus groups conducted in February of 2007 generally stated that they would pay \$3 to \$7 for the Smart Energy Program.²³ NW Natural chose the \$6 rate to reflect the cost of offsetting emissions from the average residential customer that uses

¹⁵ *Id.*

¹⁶ NWN Advice No. WUTC 08-01 (Mar. 21, 2008); Edmonds Affidavit ¶ 4.

¹⁷ NWN Advice No. WUTC 08-01 (Mar. 21, 2008).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*; Edmonds Affidavit. ¶ 9.

²¹ *Id.*; NWN Advice No. WUTC 08-01 (Mar. 21, 2008). NW Natural plans to conduct a detailed review of the Oregon and Washington programs in the fall of 2010—three years after implementation of the program in Oregon. NWN Advice No. WUTC 08-01 (Mar. 21, 2008).

²² Edmonds Affidavit ¶ 12.

²³ Heiting Affidavit ¶ 5.

natural gas for space heating and hot water, based on the price of carbon offsets as of June 29, 2007.²⁴

16. NW Natural's shareholders absorbed \$343,000 in start-up costs in 2007.²⁵ The Company spent these funds to develop the Smart Energy product and to produce communications materials that the Company used in Oregon and plans to use in Washington.²⁶ For example, the Company has developed a Smart Energy brochure and bill insert, developed a website, and purchased print, radio, outdoor, and online advertising to promote the program.²⁷ The Company has already borne the cost of developing these materials, so there is no need for Washington customers to reimburse Oregon customers for product development it has already completed.²⁸

17. To offer the product in Washington, the Company will conduct specific outreach and education efforts.²⁹ The Company plans to engage in a comprehensive communications program to educate its customers on the connection between natural gas, GHG emissions, and climate change; how offsets help mitigate a customer's use of natural gas; and how clean energy programs help to reduce GHGs and climate change.³⁰ The education and advertising program will include print and transit advertising in NW Natural's Washington service territory, a bill insert, and the Smart Energy website.³¹

²⁴ Edmonds Affidavit ¶ 12; NWN Advice No. WUTC 08-01 (Mar. 21, 2008).

²⁵ Edmonds Affidavit ¶ 10.

²⁶ Heiting Affidavit ¶ 4.

²⁷ Heiting Affidavit ¶ 3-4.

²⁸ Heiting Affidavit ¶ 4.

²⁹ Heiting Affidavit ¶ 3-4.

³⁰ *Id.*

³¹ *Id.*

18. NW Natural did not include administrative start-up costs in the price of the program.³² The Company's market research suggested that customers would be much less likely to participate in the program if the cost were much higher than \$6 per month for residential customers.³³ Raising the price of the program beyond the \$6 flat rate would likely result in substantially fewer participants and could jeopardize the viability of the program.³⁴
19. The Smart Energy Program is identical to the Smart Energy Program that was approved for Oregon customers by the Public Utility Commission of Oregon ("Oregon Commission") on August 31, 2007.³⁵ The Oregon Commission approved deferred accounting of the 2008 startup costs in an amount not to exceed \$622,000.³⁶
20. The Oregon Commission based its approval on the Oregon Commission Staff's finding that Smart Energy provides the Company with knowledge and experience with carbon regulation that will reduce carbon regulation compliance costs in the future.³⁷ Oregon Commission Staff noted that the program will allow the Company to search now for low cost offset opportunities that may no longer be available when the market becomes more competitive.³⁸ Although NW Natural did not request ratemaking treatment of the startup costs in its application to the Oregon Commission, it stated and the Oregon Commission understood that the Company filed the Smart

³² Edmonds Affidavit ¶ 12.

³³ Heiting Affidavit ¶ 5.

³⁴ Edmonds Affidavit ¶ 12.

³⁵ *Id.* ¶ 12 and Edmonds Exhibit F at 1.

³⁶ *Id.* ¶ 13 and Edmonds Exhibit F at 1.

³⁷ *Id.* ¶ 13 and Edmonds Exhibit F at 1.

³⁸ Edmonds Exhibit F, Appendix A at 4.

Energy tariff with the expectation that the deferred startup costs would be amortized to all customer classes, not only program participants.³⁹

B. Petition for Deferred Accounting

21. With the Smart Energy tariff advice filing introducing the Smart Energy Program, NW Natural filed a separate Petition for an Accounting Order requesting that the Commission authorize deferred accounting treatment of certain Smart Energy Program costs.⁴⁰ NW Natural informed the Commission that the implementation of the Smart Energy Program is contingent upon approval of the Petition, and that NW Natural would withdraw the tariff advice filing if the Petition were not approved.⁴¹

22. In the Petition, the Company requested that the Commission authorize the deferred accounting treatment of Washington start-up costs of the Smart Energy Program in 2008 and 2009, up to a total of \$79,000.⁴² This amount reflects \$52,000 in 2008 start-up costs and \$27,000 in 2009 start-up costs.⁴³ Washington customers comprise approximately 10 percent of NW Natural's customers, and costs associated with start-up outreach efforts and education directed to Washington customers are expected to be approximately 10 percent of the total costs.⁴⁴ In 2008, the Company expects to incur approximately \$622,000 in program costs—\$100,000 for initial work performed by The Climate Trust and \$522,000 for ongoing customer outreach and

³⁹ Edmonds Exhibit F, Appendix A at 1.

⁴⁰ NWN Advice No. WUTC 08-01 (Mar. 21, 2008); *Re NW Natural Gas Co. Petition for an Accounting Order Authorizing Deferred Accounting Treatment of Certain Costs Associated with the Company's Smart Energy Program*, Docket UG-080530 (Mar. 21, 2008) [hereinafter "Petition"].

⁴¹ NWN Advice No. WUTC 08-01 (Mar. 21, 2008).

⁴² Petition at 1.

⁴³ Edmonds Affidavit ¶ 9.

⁴⁴ *Id.*

education expenses.⁴⁵ NW Natural also expects the 2009 start-up costs to be approximately \$268,000.⁴⁶ After the start-up period, all on-going costs of the program will be borne solely by Smart Energy participants.⁴⁷

23. Support for the program from non-participants will be modest. The Company estimates that the effect on an average residential customer bill will be approximately 6 cents per month for one year—about a .1 percent change over current rates.⁴⁸

III. STANDARD OF REVIEW

24. Under WAC 480-07-380(2)(a), a party may move for summary determination if the pleadings and evidentiary support “show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” In ruling on a motion for summary determination, the Commission will consider the standards applicable to motions filed under the Washington Superior Court Civil Rule 56.⁴⁹ A “material fact” is one upon which the outcome of a case depends.⁵⁰ The moving party bears the burden of showing that there are no disputed material facts and reasonable inferences are drawn against the moving party.⁵¹

25. If the moving party makes such a showing, the non-moving party must set forth sufficient facts to rebut the moving party’s contentions regarding the absence of a material issue of fact.⁵² The non-moving party must present specific facts showing there is a genuine issue of fact to

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* ¶ 11.

⁴⁹ WAC 480-07-380(2)(a). Civil Rule 56(c) states that summary judgment will be rendered if the pleading and evidence show there is “no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

⁵⁰ *Samis v. City of Soap Lake*, 23 P.3d 477, 481 (Wash. 2001).

⁵¹ *Folsom v. Burger King*, 958 P.2d 301, 304 (Wash. 1998).

⁵² *Seven Gables Corp v. MGM/UA Entertainment Co.*, 721 P.2d 1, 7 (Wash. 1986).

overcome a motion for summary determination—not merely allegations, denials, or conclusory statements.⁵³

IV. ARGUMENT

A. The Commission Should Approve the Company's Smart Energy Tariff.

1. Smart Energy Furthers Important and Timely State Policies.

26. NW Natural urges the Commission to approve the Smart Energy Tariff. The Smart Energy Program is an innovative program that takes a proactive approach to the Washington Legislature's articulated policy of reducing GHGs. This year, the Washington Legislature passed RCW 70.235.020, which requires the state to reduce overall emissions of GHGs to certain levels by 2020, 2035, and 2050. The law requires the Director of the Department of Ecology to develop a design for a regional market-based system to limit and reduce GHGs.⁵⁴ The Governor also recently declared Washington's commitment to reducing GHGs in the state.⁵⁵ Through its efforts to reduce its customers' carbon footprints through the purchase of high-quality carbon offsets, the Smart Energy Program will directly further these significant and timely Washington policy goals.

27. Moreover, Smart Energy has been supported by key stakeholders in both Oregon and Washington. In Washington, Staff recommended that the Commission approve the tariff, noting its value.⁵⁶ NW Energy Coalition also supports the program, noting that it offers "a realistic and honest alternative" until bio-gas is available to customers and that the program benefits all

⁵³ Civil Rule 56(e); *Grimwood v. Univ. of Puget Sound*, 753 P.2d 517, 519 (Wash. 1988).

⁵⁴ RCW 70.235.030.

⁵⁵ Executive Order 07-02 (Feb. 7, 2007).

⁵⁶ *Wash. Util. & Transp. Comm'n v. NW Natural Gas Co.*, Docket No. UG-080519, Staff's Open Meeting Memorandum at 1 (Apr. 30, 2008).

customers, whether or not they participate in the program.⁵⁷ In addition, the Oregon Commission has approved the program while Oregon Staff found that the Smart Energy Program was an attractive product that “is innovative and unique to local gas distribution companies in the Northwest.”⁵⁸

2. Issues Raised at the Pre-Hearing Conference.

28. At the pre-hearing conference, Administrative Law Judge (“ALJ”) Dennis J. Moss raised two additional issues related to approval of the Smart Energy tariff: First, whether the Washington Supreme Court’s decision in *Okeson v. Seattle*⁵⁹ suggested any limitation on the Commission’s authority to approve the Smart Energy advice filing. Second, whether NW Natural must file a tariff for strictly voluntary programs such as Smart Energy.

a. Washington Law Does Not Prohibit NW Natural from Offering the Smart Energy Program.

29. *Okeson* does not limit the Commission’s authority to approve the Smart Energy tariff. In *Okeson*, the court evaluated a Seattle City Light program in which the municipal utility purchased carbon offsets in an effort to mitigate GHGs.⁶⁰ Finding that the offset contracts did not bear a “sufficiently close nexus” to Seattle City Light’s statutory purpose of supplying

⁵⁷ *Re NW Natural Gas Co. Petition for an Accounting Order Authorizing Deferred Accounting Treatment of Certain Costs Associated with the Smart Energy Program*, Docket No. UG-080530, *Wash. Util. and Transp. Comm’n v. NW Natural Gas Co.*, Docket No. UG-080519, NW Energy Coalition Letter (Apr. 29, 2008).

⁵⁸ *Re NW Natural Gas Co. dba NW Natural Application for Deferred Accounting for Certain Smart Energy Program Startup Costs*, Docket UM 1327, Order No. 07-383 Appendix at 3 (Aug. 31, 2007).

⁵⁹ 159 Wash.2d 436 (2007). Note that the Washington Legislature reversed the Supreme Court’s holding in *Okeson* in RCW 35.92.430. That statute allows a municipal utility to mitigate GHGs by purchasing offsets, among other activities. RCW 35.92.430(2).

⁶⁰ *Id.* at 445–47.

electricity,⁶¹ the court found that Seattle City Light lacked the authority to use ratepayer money to purchase offset contracts.⁶²

30. The court's holding in *Okeson* is inapplicable to NW Natural. The holding applies only to utilities enabled by RCW 35.92.050, which authorizes cities and towns to operate facilities to furnish their inhabitants with electricity or power-related facilities. NW Natural is not a municipal utility and is not authorized pursuant to RCW 35.92.050—it is a gas company regulated under Title 80 of the Revised Code of Washington. The test the court applied in *Okeson* to determine whether the purchase of carbon offsets was within the powers of a city utility is inapposite to the Commission's consideration of the Smart Energy Program. In addition, no statute prohibits a gas company from offering a voluntary program for the purchase of carbon offsets. Therefore, nothing in Washington statutes, regulations, or case law prohibits NW Natural from offering the Smart Energy Program.

b. NW Natural Must File a Tariff for the Smart Energy Program, Even Though Participation is Voluntary.

31. Despite the voluntary nature of the Smart Energy Program, NW Natural must file a tariff for the program. First, neither applicable statutes nor regulations appear to exempt voluntary programs from the requirement that a utility show all rates and charges in its tariff. RCW 0.28.050 requires every gas company to file with the Commission a tariff showing “all rates and charges made, established or enforced, or to be charged or enforced.” In addition, no gas company may “charge, demand, collect or receive a greater or less or different compensation for any service rendered . . . than the rates and charges applicable to such service as specified in

⁶¹ *Id.* at 450–51. See RCW 35.92.050.

⁶² *Id.* at 453.

its schedule filed and in effect at that time.”⁶³ No authority appears to exempt voluntary programs from these requirements.

32. In addition, the Commission has approved tariffs for voluntary utility programs. For example, Puget Sound Energy’s Natural Gas Schedule No. 71 outlines the terms and conditions for residential water heater rental service, a voluntary program authorized by the Commission.⁶⁴ There appears to be no basis for excluding the terms and conditions of the Smart Energy Program from NW Natural’s tariff.

B. The Commission Should Approve NW Natural’s Petition for Deferred Accounting.

33. The start-up costs associated with Smart Energy are temporary, one-time costs for a program with general customer benefits that, in the absence of a deferred accounting order, would not be recovered by the Company. For this reason the Commission should grant the Company’s Petition for Deferred Accounting.

1. The Commission Has the Authority to Spread Costs of Program to All Customers.

34. Under Washington law, the Commission can spread costs of a program to all customer classes, even to those not directly participating, as long as some benefits will flow to all customer classes. The principle is best illustrated in a 1993 order in which the Commission allowed Washington Natural Gas Company to recover the costs of a water heater leasing program.⁶⁵ As in the case of Smart Energy, the monthly leasing rate for the water heaters was too low to fully cover program costs.⁶⁶ As a result, the company proposed that all customers subsidize the cost

⁶³ RCW 80.28.080.

⁶⁴ *Washington Utilities & Transportation Commission v. Puget Sound Energy*, Docket No. UG-060267, Order 8 (Jan. 5, 2007).

⁶⁵ *Wash. Util. & Transp. Comm’n v. Wash. Natural Gas Co.*, Docket UG-920840, 4th Suppl. Order (Sept. 27, 1993).

⁶⁶ *Id.*

of the program.⁶⁷ In support of its position, the utility argued that while customers who participated in the program received direct benefits of the program, the program provided *some* benefits to *all* customers in the form of the company's increased year-round load factor.⁶⁸ The Commission found that the program could provide an overall customer benefit if certain changes were made to the program and allowed the utility to continue to operate the program at a rate lower than cost.⁶⁹

35. Similarly, while the Smart Energy Program provides direct benefits to its participants in the form of high-quality carbon offsets, it also provides benefits to all NW Natural customers, whether they participate in the program or not. As a result of its involvement with The Climate Trust and administration of the Smart Energy Program, NW Natural will gain knowledge of carbon offset markets and strategies, which will serve to reduce the Company's cost of compliance with carbon regulation in the future.

36. As described above, all indications suggest that carbon regulation is likely to affect the Company's operations in the near future. In particular, NW Natural points to the Washington State legislation discussed above. In addition, Washington is a participant in the Western Climate Initiative which is currently developing a cap and trade regime to be introduced to the state legislatures of the signatory states.⁷⁰ The Company will require significant expertise and knowledge to comply with these regulations at the least cost for its customers. As a result, the Smart Energy Program will benefit NW Natural customers in four respects.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See 2008 Laws Ch. 14 § 4(1)(a).

37. *First*, Smart Energy will provide the Company the opportunity to gain knowledge and experience to take better advantage of offset markets and outperform its competitors. The carbon offset market has grown in complexity over the past several years.⁷¹ Quality offset projects involve complicated contracts that require knowledge and experience to negotiate successfully.⁷² Smart Energy will give NW Natural the opportunity to gain this knowledge and experience before the Company must compete with other companies to comply with carbon regulations.
38. *Second*, Smart Energy allows NW Natural to develop a relationship with The Climate Trust, one of the most experienced offset developers in the nation.⁷³ This relationship will allow the Company to better identify high quality offset projects and obtain the benefits of such projects for the Company's customers.⁷⁴ NW Natural will also gain knowledge of how to identify high-quality offset projects and to avoid less reliable projects.⁷⁵
39. *Third*, the Company's experience with Smart Energy will allow it to evaluate the merits of internal and external emission reductions. As part of the Smart Energy Program, NW Natural will track current and forecasted prices for GHG offsets.⁷⁶ The Company will compile price information for high quality offsets through this process, allowing the Company to compare the costs of internal and external compliance options.⁷⁷ The Company will then be in a better position to choose the most economical ways to comply with carbon regulation.

⁷¹ Edmonds Affidavit ¶ 6.

⁷² *Id.*

⁷³ Edmonds Affidavit ¶ 4–6.

⁷⁴ Edmonds Affidavit ¶ 6.

⁷⁵ *Id.*

⁷⁶ *Id.* ¶ 7.

⁷⁷ *Id.*

40. *Fourth*, NW Natural's implementation of the Smart Energy Program will educate Company management on the offset market.⁷⁸ Management will then be better able to guide the Company's climate strategy and compliance with relevant carbon regulations. As a result, NW Natural will be in a better competitive position than natural gas utilities that do not have such management experience.

41. Not only will the Smart Energy Program provide the Company with the experience and knowledge that will give it a competitive edge in the marketplace, but it will also educate NW Natural's customers on issues related to carbon offsets.⁷⁹ All NW Natural's customers will receive the benefits of the educational materials.⁸⁰ Therefore, NW Natural's customers, not only program participants, will be the direct beneficiaries of the Company gaining a competitive advantage in the offset market, gaining knowledge and experience in the offset market, and educating customers about GHG emissions and climate change.⁸¹

⁷⁸ *Id.* ¶ 8.

⁷⁹ Heiting Affidavit ¶ 3.

⁸⁰ Heiting Affidavit ¶ 3–5.

⁸¹ The Smart Energy Program is distinguishable from a program for which the Commission found a utility could not recover across all customer classes. *Wash. Util. & Transp. Comm'n v. Wash. Natural Gas Co.*, Docket UG-920840, 3d Suppl. Order (Mar. 12, 1993). In Washington Natural Gas, the Commission held that the utility could not receive ratepayer funding for the development and operation of a compressed natural gas ("CNG") facility. *Id.* The Commission found that ratepayers would be paying the costs of a program they would not use and "from which they would gain limited and speculative benefits only as members of the general public." *Id.* The utility had cited the environmental benefits of CNG and the fact that the CNG facilities would be a source of year-round sales as justification for cost recovery across all customers. *Id.* The Commission stated that those benefits were not enough to justify cost recovery from customers who did not use the CNG facility. *Id.*

In the case of the Smart Energy Program, however, NW Natural's non-participating customers will receive specific benefits that are not available to the public. As described above, the Smart Energy Program will provide NW Natural the opportunity to gain a competitive advantage in the carbon offset market, which will be to the benefit of all customers when carbon legislation is enforced. The Company will spend less money on carbon regulation compliance in the future if it can use the Smart Energy Program to gain experience and knowledge before its competitors—a direct benefit to customers.

2. The Commission Should Not Apply the Electric Utility Green Tag Statute to Gas Utility Programs.

42. In Commission Staff's April 30, 2008 memorandum, Staff states that it is concerned with the policy implication of applying costs of the Smart Energy Program across all customers.⁸² Staff notes that the Smart Energy Program resembles the electric alternative energy resources programs required by RCW 19.29A.090.⁸³ Under that statute, each electric utility must allow customers a voluntary option to purchase alternative energy resources in the form of resources the utility owns or contracts for or green tags.⁸⁴ The electric utility must allocate the costs of alternative energy program to participants and may not spread costs to customers who do not participate.⁸⁵

43. The Commission is not legally bound to apply the statute to NW Natural's Smart Energy Program. On its face, RCW 19.29A.090 applies only to electric utilities, and then only to the statutorily mandated Green Tag programs. Accordingly, the Commission is entirely free to make a policy decision as to whether it wishes to impose the statute's constraints on Smart Energy. It should not.

44. While the Legislature surely had its policy reasons for enacting RCW 19.29A.090, those policy reasons are outweighed by the more timely and compelling policies articulated by the Legislature in its efforts to limit GHG. The Legislature passed RCW 19.29A.090 in 2001 and amended the statute in 2002. Since that time, the Legislature enacted laws requiring the state to

⁸² *Re NW Natural Gas Co. Petition for an Accounting Order Authorizing Deferred Accounting Treatment of Certain Costs Associated with the Smart Energy Program*, Docket No. UG-080530, Staff's Open Meeting Memorandum at 2 (Apr. 30, 2008).

⁸³ *Id.*

⁸⁴ RCW 19.29A.090(2).

⁸⁵ RCW 19.29A.090(5).

reduce overall emissions of GHGs⁸⁶ and found that climate change is disrupting Washington's economy, environment, and communities.⁸⁷ In addition, the Legislature adopted the Renewable Portfolio Standard, also evidencing a clear commitment to reducing carbon emissions in the state.⁸⁸ The Legislature's actions since 2002 indicate that climate change is a much more important issue to legislators than it was in 2002. As a result, the Legislature's support for programs such as Smart Energy would likely be even stronger than it was for renewable electricity programs in 2002. The Commission should not act voluntarily to hobble programs that seek to further GHG reductions and that are directly in line with the Legislature's policy of reducing GHGs in the state.

45. Moreover, there is another, more specific reason to distinguish between the Smart Energy Program and Green Tag programs. When a gas utility offers a program such as Smart Energy, it assumes a risk that an electric utility does not. Alternative energy options tend to enhance the image of electric utilities by offering customers what they perceive to be a more environmentally friendly version of the utility's product. In contrast, implementing the Smart Energy Program requires NW Natural to educate its customers that the use of natural gas emits carbon dioxide that contributes to climate change. Thus, NW Natural is taking a risk in offering Smart Energy that its customers will view natural gas as undesirable from an environmental perspective. Electric utilities do not take such a risk in offering alternative energy programs. This alone is a reason to provide more support for the Smart Energy Program.

46. Finally, the Smart Energy Program is distinguishable from alternative energy programs in that it provides customers with additional educational benefits that alternative electricity

⁸⁶ 2008 Laws Ch. 14 § 3.

⁸⁷ RCW 80.80.005(1).

⁸⁸ RCW 19.285.010 *et seq.*

programs do not provide. While the benefits of alternative energy are generally understood by the public, the benefits of carbon offsets are more complex and less easily understood. NW Natural will be providing customers with education and information on issues that are not already common knowledge, providing them a benefit beyond that which an electric utility provides when educating customers on alternative energy.

3. The Commission Should Not Adopt a *De Minimis* Standard for Deferred Accounting Petitions.

47. In its Public Meeting Memo, Staff suggests that the Company's Petition is inappropriate because the deferral would have an only .05 percent effect on the Company's rate of return.⁸⁹ In effect, Staff seems to be suggesting that a deferral petition cannot be approved unless the utility can show that the amounts deferred would have a substantial impact on the Company's bottom line. Staff's concern is misplaced. Not only has the Commission never held that a material impact on a Company's earnings is a prerequisite for approval of a deferral, but such a policy would prevent utilities from recovering reasonably-incurred but non-recurring expenses.

48. Staff's April 30, 2008 memorandum states that "deferred amounts must be of a magnitude such that recording the cost pursuant to the FERC uniform system of accounts has a material impact on Company earnings."⁹⁰ Although Staff cites no support for this proposition in its memorandum, in informal discussions Staff offered that it was relying on the Commission's Order No. 1 in Docket UE-031658 to support its statement. That order, which authorized an electric utility to record and defer costs connected with its environmental remediation program, stated that only major projects involving a system-wide expenditure of more than \$3 million

⁸⁹ *Re NW Natural Gas Co. Petition for an Accounting Order Authorizing Deferred Accounting Treatment of Certain Costs Associated with the Smart Energy Program*, Docket No. UG-080530, Staff's Open Meeting Memorandum (Apr. 30, 2008).

⁹⁰ *Id.* at 2.

would require an authorizing order from the Commission to be eligible for deferral.⁹¹ Non-major environmental remediation project costs would be expensed and considered for recovery in a general rate proceeding.⁹²

49. This order does not stand for Staff's proposition that the Commission adopted a minimum threshold for deferred treatment of expenses. It delineated treatment for a specific type of major projects versus minor projects for one utility for one type of expenditure. There is nothing in the order to suggest that the Commission has established a threshold dollar figure or materiality requirement for deferred accounting.

50. Second, applying such a policy would deny the Company the opportunity to recover prudently-incurred costs. In this case, NW Natural is not proposing that the start-up expenses be included in permanent rates.⁹³ Therefore, deferral represents the only opportunity for the Company to recover them. And while the impact of any particular deferral may be small on its own, the impact of several such deferrals may be material in the aggregate.

51. Finally, applying a *de minimis* policy to a multi-jurisdictional utility such as NW Natural would result in severe inequities between customer groups. Only approximately ten percent of NW Natural's service territory is in Washington. Accordingly, for any particular deferral petition the Company might bring, it is likely that the Washington jurisdictionally-allocated amount would appear to be *de minimis*. If the Commission disallowed all such petitions, the result would be that NW Natural's Oregon customers would routinely pay for prudently-incurred

⁹¹ *Re PacifiCorp dba Pac. Power & Light Co. Petition for an Accounting Order Regarding Treatment of Environmental Remediation Costs*, Docket UE 031658, Order No. 1 at 5 (Apr. 27, 2005).

⁹² *Id.*

⁹³ *See Wash. Util. and Transp. Comm'n v. NW Natural Gas Co.*, Docket UG-080519, Commission Staff's Response to Public Counsel's Motion to Consolidate with Docket No. UG-080546 (June 11, 2008).

expenses for amounts subject to deferral while the Washington customers would not. This situation would violate all reasonable concepts of equity between customer groups.

52. Additionally, such a policy would be contrary to the Commission's policy of allowing a utility to recover prudently incurred expenses. Without a deferred accounting mechanism, a utility would be unable to recover non-recurring expenses that would not be at issue in a general rate proceeding.

53. A new *de minimis* standard for deferred accounting should not be implemented without an opportunity for stakeholders to evaluate and comment on the relevant issues. This docket is inappropriate for such a consideration. If, however, the Commission did decide to implement a *de minimis* standard for deferred accounting, in the case of NW Natural the Commission should consider the expense on a total Company basis, not only on a Washington basis. Otherwise the Company's expenses will always be understated as compared with other companies that operate only or primarily in Washington.

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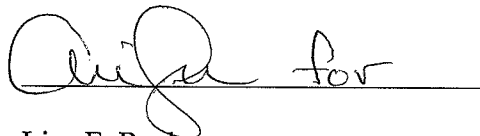
V. CONCLUSION

54. For the reasons described above, NW Natural respectfully requests that the Commission issue an order approving the Company's Petition for Deferred Accounting and its Smart Energy Tariff.

Dated this 18th day of July, 2008.

Respectfully submitted,

By:

A handwritten signature in cursive script, appearing to read "Lisa F. Rackner", written over a horizontal line.

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