

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Washington Utilities and Transportation)	
Commission,)	
Complainant,)	
)	
v.)	Docket Nos. UG-080519 and
)	UG-080530 (<i>consolidated</i>)
Northwest Natural Gas Company,)	
Respondent.)	

NW Energy Coalition

Motion for Summary Determination

July 18, 2008

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I. Introduction

Northwest Natural Gas Company (“NWN” or the “Company”) filed in March 2008 to add a Smart Energy pilot program (the “Washington Program”) to its Washington State service offerings (Docket No. UG-080519). NWN then filed an accounting petition seeking deferral of certain start-up costs related to the Washington Program (Docket No. UG-080530). The two proceedings were consolidated, and the NW Energy Coalition (the “Coalition”) intervened in the proceedings. At the Prehearing Conference held on June 13, 2008, the parties agreed to resolve the policy and legal issues in the proceedings via cross-motions for summary determination and responses thereto.

The Coalition files this Motion for Summary Determination under WAC 480-07-380(2).¹ We fully support the Washington Program and NWN’s accounting proposal, and believe the Commission should approve the Program and proposal, because:

- *The Program will serve a valuable purpose.* The Washington Program will enable NWN’s customers in this state to reduce the carbon footprint associated with their use of natural gas. The utility’s efforts are both responsive to the threat of global warming and consistent with recent laws and policies in the state and in the region.²
- *The Program will mirror a program that is already in place in Oregon.* The Washington Program will offer the same opportunities to NWN’s Washington customers as a program that is already in place and available to the utility’s Oregon customers (the “Oregon

¹ WAC 480-07-380(2)(a) states in part that a party may move for summary determination of one or more issues if the pleadings and evidence in the proceeding show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law.

² See discussion in Section II.

Program”). The two Programs mirror and complement one another for the benefit of both states.³

- Deferral of Program start-up costs is reasonable and appropriate. NWN proposes to defer certain start-up costs for the Washington Program that are not included in the Smart Energy tariffs or already borne by the utility’s shareholders. This represents the same cost treatment that NWN proposed and the Oregon Public Utility Commission (“OPUC”) approved for the Oregon Program. For this reason and others, we believe that NWN has proposed a reasonable and appropriate cost treatment in these proceedings.⁴
- The Commission should reject Staff’s position on start-up costs. Staff states that NWN should not defer the Washington Program’s start-up costs but, instead, should include those costs in the Company’s administrative costs. The Commission should reject this position for several reasons. NWN’s proposed cost treatment should be approved.⁵

II. The Program that Northwest Natural Proposes Will Serve a Valuable Purpose.

Through the Washington Program, NWN will offer customers in this state the opportunity to offset all or a portion of the greenhouse gas (“GHG”) emissions associated with their natural gas use – *i.e.*, their “carbon footprint” – by supporting innovative environmental projects developed by The Climate Trust, an Oregon-based nonprofit organization. Customers who avail themselves of this opportunity will pay a certain amount – either a fixed or volumetric charge -- and receive “carbon offsets” in return, which will effectively “offset” all or a portion of the carbon footprint associated with their natural gas use. In this manner, customers will be able to respond in an individual and meaningful way to the threat of global warming.

³ See discussion in Section III.

⁴ See discussion in Section IV.

⁵ See discussion in Section V.

There is no question but that such an innovative program will serve a valuable purpose. Climate change has become the issue of our time. Effective efforts to respond to climate change require keen vision and active leadership – not only by elected officials and regulators, but also by utilities and other energy companies. By proposing the Washington Program, and by gaining approval for a very similar effort in Oregon, NWN has stepped up as the *first* gas distribution utility in the Pacific Northwest to offer its customers an opportunity to offset the GHG emissions associated with their natural gas use. We wholeheartedly agree with Staff that the Washington Program offers value.⁶

Further, the Washington Program follows in the wake of, and is entirely consistent with, recent state and regional laws and policies that seek offsets and/or reductions in GHG emissions. In 2004, the Washington Legislature passed Chapter 80.70 RCW, requiring developers of new fossil-fueled electric generation facilities to reduce or offset 20% of total carbon dioxide emissions.⁷ Just last year, Governor Gregoire issued an Executive Order (No. 07-02) that set specific emission reduction goals for Washington State as well as timelines for those reductions.⁸ Later in 2007, the Washington Legislature codified the Governor’s Executive Order and set various GHG emission reduction goals over the next several decades.⁹

Also last year, Washington State joined four other states (including Oregon) and one Canadian province in establishing the Western Climate Initiative (“WCI”), which has since grown to include seven states and three provinces. The WCI members established an aggregate

⁶ See Memorandum for April 30, 2008 Open Meeting, Docket No. UG-080519 (April 28, 2008), at p. 1 (Staff states that the Smart Energy Program “has value”).

⁷ RCW 80.70.020(4).

⁸ *Washington Climate Change Challenge*, Executive Order No. 07-02 (February 7, 2007), at pp. 2-3.

⁹ Chapter 80.80 RCW. Governor Gregoire has since signed into law E2SHB 2815, which took effect on June 12, 2008. The 2008 law provides that emissions reduction standards are mandatory for Washington, *e.g.*, “*The state shall limit emissions of greenhouse gases to achieve the following emissions reductions for Washington state: (i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990 levels...*” See E2SHB 2815 at Sections 3(1)(a) and 13 (emphasis added); *see also* note 11 in this Motion.

goal of reducing GHG emissions by 15% below 2005 levels by 2020 and continuing emissions reductions thereafter. According to the WCI, actions to achieve the regional emission reduction goals should be comprehensive and economy-wide, and should include actions in energy supply, residential, commercial, and industrial sectors among others.¹⁰ And following on the WCI's initial work, in April 2008 the Washington Legislature established both a basic framework for implementing GHG emission reductions across the state as well as preparations for developing and administering a cap-and-trade system to support these reductions (E2SHB 2815).¹¹

In sum, this policy and legal backdrop for the Washington Program states a critical need to reduce or offset GHG emissions; sets emission reduction targets for the state and for the region; and encourages companies and individuals in all sectors of the economy to do their part in combating global warming. NWN should be commended for taking a first step with the Program and for giving its Washington customers the opportunity to participate in these very important efforts in an individual and meaningful way.

III. The Program Will Mirror a Program that is Already in Place in Oregon.

NWN has not proposed the Washington Program in a regulatory vacuum. Rather, the Program mirrors a program that is already in place in Oregon – the Oregon Program -- following approval by the OPUC in August 2007.¹² Staff acknowledges that the two Programs mirror one another.¹³

¹⁰ *Western Climate Initiative Statement of Regional Goal* (August 22, 2007), at pp. 1-2. (http://westernclimateinitiative.org/Media_Room.cfm).

¹¹ E2SHB 2815 was signed into law by Governor Gregoire and took effect on June 12, 2008. The new law creates a “framework for reducing greenhouse gases emissions in the Washington economy.” *See also* note 9 in this Motion.

¹² *See In the Matter of Northwest Natural Gas Company*, Oregon Public Utility Commission, Docket No. UM 1327, Order No. 07-383 (August 31, 2007) (“OPUC Order”).

¹³ Memorandum for April 30, 2008 Open Meeting, Docket No. UG-080530 (April 28, 2008), at p. 2 (Staff states that the Washington Program and NWN's accounting petition “mirror filings already in place in Oregon”).

The core details of the approved Oregon Program are the same as the details of the Washington Program. NWN offers its Oregon customers the opportunity to pay the same charge and to receive the same carbon offsets through The Climate Trust organization. These carbon offsets are, again, used to offset all or a portion of the carbon footprint associated with customers' natural gas use.

OPUC Staff reviewed the Oregon Program in a 2007 proceeding. In its Report in Docket No. UM 1327, OPUC Staff called the Smart Energy offering an “attractive product” and described the arrangement with The Climate Trust as “innovative and unique to local gas distribution companies in the Northwest.” OPUC Staff noted that the Smart Energy program would not only improve air quality and lower GHG emissions, but also enhance education about those emissions and ways to reduce them. OPUC Staff stated: “The Company persuasively argued that this pilot program provides knowledge and experience with carbon regulation...”¹⁴ The OPUC approved the Oregon Program in the OPUC Order.

By proposing the Washington Program, therefore, NWN has built upon the acclaim it received for the Oregon Program. NWN now wants to give customers in both states the opportunity to reduce their carbon footprint, through carbon offset programs that mirror and complement one another. What NWN is proposing is a multi-state effort that is designed and intended to respond in a targeted manner to the threat of global warming. NWN should be commended for this initial effort.

IV. Deferral of Program Start-Up Costs is Reasonable and Appropriate.

NWN has proposed to defer certain start-up costs for the Washington Program. Specifically, the Company seeks an accounting order allowing it to defer Smart Energy start-up

¹⁴ Staff Report, Oregon Public Utility Commission, Advice No. 07-4 and Docket No. UM 1327 (August 28, 2007) (“OPUC Staff Report”), at pp. 2-4.

costs for its Washington operations up to an amount that represents 10 percent of the costs it calculated for Oregon. The Washington costs are estimated to total \$79,000 during 2008 and 2009.¹⁵

We believe that this cost treatment is reasonable and appropriate. The Company has shown that there will be demonstrable, utility-related benefits associated with the Washington Program. Similar to the benefits that the Oregon Program offers, these benefits include enhanced education, knowledge, and experience concerning GHG emissions, carbon footprints, and mitigation measures.¹⁶ These benefits are tied to the emissions from natural gas use, which creates a nexus between the purpose of the Washington Program and the service that NWN provides as a natural gas utility.

In this regard, the Washington Program will benefit *all* of NWN's customers, not just the customers who sign up to participate. *All* customers will receive the benefits resulting from the reduction in GHG emissions. *All* customers will benefit from NWN's added expertise in encouraging the production, integration, and utilization of biogas, as well as the utility's experience with carbon offsets as a potential mitigation measure. And *all* customers will benefit as recipients of NWN's comprehensive educational campaign.¹⁷

In addition, the Washington Program will offer all customers the opportunity to participate in the Program. This opportunity benefits all customers, much as conservation programs do. All customers pay for available conservation programs even though they may not

¹⁵ See Petition of Northwest Natural Gas Company, Docket No. UG-080530 (March 21, 2008), at p. 3.

¹⁶ The Coalition understands that NWN will be filing its own Motion for Summary Determination that contains evidentiary support for the Washington Program's benefits.

¹⁷ Because the Company's Washington customers are located just across the Columbia River from Portland, any advertising that the Company conducts will likely occur in the same media market. NWN should therefore be able to coordinate its educational campaign for the Washington Program with the efforts that it is already undertaking for the Oregon Program. Conversely, denial of the Washington Program could lead to confusion among Washington customers who view the media associated with the Oregon Program.

choose to participate in those programs. The rationale for this approach is twofold: conservation in itself benefits all customers (by potentially avoiding future infrastructure costs and reducing environmental impact), and the existence of these programs provides an opportunity for all customers to participate. This opportunity is not free, and because it benefits all customers, some of the costs that create that opportunity – *i.e.*, the start-up costs -- should be paid by all customers.

Further, global warming became a specific gas utility concern in Washington State when, in January 2006, the Commission adopted new rules related to integrated resourced planning for investor-owned gas utilities.¹⁸ These rules state that gas utilities must develop plans that describe the “mix of natural gas supply and conservation designated to meet current and future needs at the lowest reasonable cost to the utility and its ratepayers.” In achieving “lowest reasonable cost,” utility analyses are required to consider, among other factors, “the cost of risks associated with *environmental effects including emissions of carbon dioxide.*”¹⁹ (Emphasis added) Addressing environmental cost and risk – including cost and risk associated with GHG emissions – is thus essential to a gas utility’s planning processes in this state and the obligation to serve load.

This mandate means that, as a practical matter, gas utilities must gain experience with, and develop expertise in reducing GHG emissions, including experience and expertise with the use of biogas and offset markets. These are utility-wide efforts, and the costs of these efforts should not be allocated to, and borne by, just a small segment of customers. As noted above,

¹⁸ *In the Matter of Amending WAC 480-90-238 and WAC 480-100-238 Relating to Least Cost Planning for Gas and Electric Utilities*, Docket Nos. UE-030311 and UG-030312, General Order No. R-526 (January 3, 2006); *see also* WAC 480-90-238.

¹⁹ WAC 480-90-238(2)(a)-(b).

because many of the Smart Energy program benefits will accrue to all customers, it is reasonable and appropriate to allocate a limited portion of the program costs to all customers.

Many of these cost issues were considered in the OPUC proceeding that approved the Company's Oregon Program. In fact, the cost treatment that NWN proposes for the Washington Program is the same as the treatment that it proposed and received for the Oregon Program costs. In Docket No. UM 1327 before the OPUC, the Company documented and categorized certain start-up costs that it had incurred or expected to incur in 2007, 2008, and 2009. These costs included such items as bill inserts, advertising, Website development, and necessary promotional items. NWN agreed that its shareholders would absorb all of the start-up costs for 2007 (estimated at \$288,000). As to start-up costs for 2008 (estimated at \$622,000), NWN sought the same deferred accounting treatment that it seeks in these proceedings for Washington Program start-up costs.²⁰

OPUC Staff analyzed the Company's cost proposal and concluded that there was a "sufficient showing of utility related benefit and appropriate sharing of costs necessary to recommend that the Commission approve the Smart Energy Program tariff filing and associated deferral application." The OPUC cited its Staff's analysis when it approved the Company's request for deferred accounting.²¹

We believe that the OPUC reached the right decision when it approved the Company's request for cost deferral in Oregon. That action provides an appropriate template for the Commission in these proceedings. For all of the above reasons, we ask the Commission to approve deferral of the start-up costs that are associated with the Washington Program.

²⁰ OPUC Staff Report, at p. 3.

²¹ *Id.* at p. 4; OPUC Order, at p. 2.

V. The Commission Should Reject Staff's Position on Start-Up Costs.

Despite the OPUC's decision regarding the Oregon Program, and despite the existence of utility-wide benefits and the nexus between those benefits and the Washington Program's costs, Staff takes the position in these proceedings that the start-up costs should not be deferred but, instead, should be included as part of NWN's administrative costs. As part of its argument,²² Staff refers to a portion of RCW 19.29A.090 (the "Green Tariff law") and states: "Although the statute is specific to electric energy programs, Staff believes it is reasonable, in the absence of other guidance, to apply that recovery methodology to the Smart Energy Program."²³ The Commission should reject this position for several reasons.

First, Staff operates under a false premise. "Other guidance" is indeed available: specifically, the OPUC's recent approval of deferred costs for the Oregon Program. But nowhere does Staff address the parallels between the respective Programs or the positions that the OPUC and OPUC Staff took last year in Docket No. UM 1327. It is surprising that Staff does not cite this precedent as relevant to the Commission's consideration of the Washington Program.

Second, "other guidance" is offered in the form of recent laws and policies that identify and respond to the threat of global warming – including Executive Order No. 07-02, recent state legislation, and WCI's policy statements, all discussed above. Given these pronouncements, it is

²² Staff also states that the proposed start-up costs are too small to be deferred. See Memorandum for April 30, 2008 Open Meeting, Docket No. UG-080530 (April 28, 2008), at p. 2. The Coalition understands that NWN will respond to this position in its Motion for Summary Determination.

²³ Memorandum for April 30, 2008 Open Meeting, Docket No. UG-080519 (April 28, 2008), at p. 2. Staff cites Section (5) of the Green Tariff law for this position. The law states in part: "*All costs and benefits* associated with any option offered by an *electric utility under this section* must be allocated to the customers who voluntarily choose that option and may not be shifted to any customers who have not chosen such option." (Emphasis added)

difficult to understand why Staff relies solely on a law that is not only inapplicable on its face, but sets up an artificial and significant barrier to mitigation measures for GHG emissions.²⁴

Third, Staff concedes that the Green Tariff law does not apply to natural gas utilities or to the programs that these utilities offer to natural gas customers. There is nothing in the statute or the applicable legislative history, or in subsequent law, to suggest that the Legislature ever intended to extend the Green Tariff language to programs that gas utilities introduce for entirely different reasons (*see* discussion following). In fact, Section (5) of the statute makes clear that the cost allocation provision therein applies *only to electric utilities* and to programs that these utilities offer *under the Green Tariff law*. RCW 19.29A.090(5) does not offer guidance for these proceedings -- particularly when ample guidance is already offered by the OPUC's approval of deferred accounting for the Oregon Program, and by the legal and policy pronouncements that are discussed above.

Fourth, RCW 19.29A.090(5) is distinguishable due to the circumstances that caused the Legislature to pass the Green Tariff law. The energy landscape has changed significantly since the Legislature passed the law in 2001. At that time the Pacific Northwest region was embroiled in an energy crisis brought on by a temporary but severe supply crunch; volatility in the Western power markets; a late spring run-off; and other contributing factors. These events caused state legislators to focus on developing new renewable energy supplies, as well as the costs of providing those supplies. The legislators did not, however, focus on global warming concerns –

²⁴ *See, e.g.*, Department of Community, Trade and Economic Development, and Washington Utilities and Transportation Commission, *Green Power Programs in Washington: A Report to the Legislature* (December 2002), at pp. 8-9 (citing stakeholder concerns that Section (5) of the Green Tariff law is “restrictive” and presents a “challenge” to marketing alternative renewable resources). From a policy perspective, it makes very little sense to now saddle the Washington Program with the same impediments – particularly at a time when NWN is attempting to develop and implement that Program.

which, again, represent the impetus for the Washington Program that NWN has proposed in these proceedings.

Legislative history confirms the limited focus of the Green Tariff law on electric power supply and cost. Specifically referring to the offering of a “green” option to utility customers, the final House Bill Report for EHB 2247 states:

“The Northwest region has seen a growth in demand for electricity while at the same time has not seen much in the way of new generation. The Northwest Power Planning Council’s prediction of an *increasing possibility of power supply problems during the next few years and the region’s recent experience with unprecedented high prices in the western power markets has focused attention again on development of alternative energy sources and on conservation and energy efficiency*. The current market prices of electricity are making investments in renewable resources more economically viable than in the past when renewable resources were significantly more expensive than fossil fuels.” (Emphasis added)²⁵

Fifth, and even if Section (5) of the Green Tariff law were to apply to the Washington Program, it is necessary to consider *all* of the section’s language. Staff cites the cost allocation language in RCW 19.29A.090(5), but overlooks the fact that the statute also refers to an allocation of *benefits*. In other words, Staff focuses exclusively on allocating start-up costs, but does not propose any mechanism to ensure that customers receive quantifiable benefits due to their participation in the Washington Program.

To us, it seems one-sided -- and potentially punitive to participating customers – for Staff to ignore the equal weight that the Green Tariff law gives to both costs *and* benefits. Thus, if the

²⁵ *Final Bill Report EHB 2247* (2001), at p. 2.
(<http://apps.leg.wa.gov/documents/billdocs/2001-02/Pdf/Bill%20Reports/House/2247.FBR.pdf>).

Commission determines that RCW 19.29A.090(5) does apply to the Washington Program, then we believe that the Commission should concurrently begin a process that defines and quantifies the benefits of the Program and assigns those benefits solely to the customers who participate in the Program.²⁶

VI. Conclusion

Mitigation of environmental burdens, reduction of potential risks, and the creation of potential long-term benefits to ratepayers all relate directly to the core task of operating a gas utility such as the Company. The Washington Program offers a valuable opportunity for NWN and its customers in this state to become educated about carbon offsets and to take real and concrete steps to offset their contribution to global warming. Deferral of start-up costs is both reasonable and appropriate in order to make the Washington Program work.²⁷

For the reasons discussed in this Motion, the Coalition requests that the Commission approve the Washington Program and the accounting treatment that the Company has proposed.

DATED: July 18, 2008.

NW ENERGY COALITION

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²⁶ Such a process would, in all likelihood, require evidentiary submissions by NWN and the other parties, which in turn would expand the scope of these proceedings to a level that cannot be resolved via summary determination under WAC 480-07-380(2). But these are unavoidable consequences if the Commission accepts Staff's position that RCW 19.29A.090(5) should apply to these proceedings.

²⁷ In a letter that accompanied the Smart Energy filing, NWN stated that it would withdraw the filing if its request for deferred accounting is not approved. Withdrawal of the filing would represent a loss for Washington and a missed opportunity as the state moves into an increasingly carbon-constrained world.