BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. NORTHWEST NATURAL GAS COMPANY, Respondent.	DOCKET UG-080519
In the Matter of the Petition of: NORTHWEST NATURAL GAS COMPANY For an accounting order authorizing deferred accounting treatment of certain costs associated with the Company's Smart Energy Program	DOCKET NO. UG-080530 (consolidated) NORTHWEST NATURAL GAS COMPANY'S RESPONSE TO MOTIONS FOR SUMMARY DETERMINATION

I. INTRODUCTION

1. Pursuant to WAC 480-07-380(2)(c) and the June 13, 2007, Prehearing Conference Order, Northwest Natural Gas Company ("NW Natural" or "the Company") submits this Response to Motions for Summary Determination filed by Commission Staff ("Staff") and the Public Counsel Section of the Washington State Attorney General's Office ("Public Counsel") filed on July 18, 2008. In its motion, Staff moved for summary determination denying the Company's Petition for Deferred Accounting ("Petition"), but recommended that the Smart Energy tariff be allowed to go into effect. Public Counsel moved for summary determination denying the tariff and dismissing the Petition. NW Energy Coalition also filed a motion for summary determination requesting approval of both the tariff and the Petition.

2. Under WAC 480-07-380(2), if there is no genuine issue as to any material fact, the moving party is entitled to judgment as a matter of law. In NW Natural's Motion for Summary Determination (NW Natural's "Opening Brief") the Company presented substantial evidence in support of its Smart Energy tariff and Petition. No party presented facts showing there is a genuine issue of fact relating to issues that are dispositive to this case. As a result, NW Natural respectfully requests that the Washington State Utilities and Transportation Commission ("Commission") deny the motions of Staff and Public Counsel, and grant the motions of the Company and NW Energy Coalition.

II. DISCUSSION

A. There Is No Genuine Issue as to Any Material Fact Relating to Approval of the Smart Energy Tariff.

3. The Commission should approve the Smart Energy tariff because it offers an innovative program that benefits all customers at just and reasonable rates. Public Counsel urges that the Commission to reject the Smart Energy tariff outright, arguing that the level of administrative expenses are, *per se*, unreasonable, and that they are not adequately disclosed in the program materials provided to customers. However, as discussed below, Public Counsel provides no specific factual evidence to support these arguments. Public Counsel's motion is replete with unsupported citations to websites and factual statements that are not supported by sworn testimony or other evidence. Public Counsel's arguments should therefore be rejected.

1. Public Counsel's Arguments Regarding Administrative Expenses Are Without Support in the Record.

a. Smart Energy Administrative Expenses Are Reasonable.

4. Public Counsel argues that the Commission should reject the Smart Energy tariff because "the substantial administrative expenses undermine its cost effectiveness and lead to

unreasonable rates." However, Public Counsel provides no basis on which the Commission can fairly come to such a conclusion.

5. It is true that NW Natural estimates that the administrative expenses associated with the program will constitute approximately 30 percent of pilot program rates while approximately 70 percent of the costs will be paid to The Climate Trust for the purchase of carbon offsets.[1] There is no evidence in the record, however, to suggest that such administrative costs are either out of proportion to the overall program costs, or that they do not benefit customers. On the contrary, Staff Analyst Deborah Reynolds stated at the Public Meeting on the Smart Energy Program that these administrative costs are "fairly similar" to those associated with Puget Sound Energy's green energy program.[2] Moreover, this view is consistent with the affidavit testimony of Kimberly Heiting who explains that all valuable programs offered by the Company involve a certain level of administrative expense, and the 30 percent administrative expense associated with Smart Energy is actually conservative.[3] The bottom line is that without these administrative expenses, the Company could not effectively communicate with its customers about and offer this exciting and innovative program.[4]

b. NW Natural Clearly and Adequately Discloses the Level of Administrative Expenses Associated with the Smart Energy Program.

6. Public Counsel also claims the Smart Energy tariff should be rejected because NW Natural customers will not be adequately informed about the level of administrative expenses associated with the Smart Energy Program. Again, Public Counsel provides no substantial

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[1] Edmonds Affidavit ¶ 9 (July 18, 2008).

[2] An audiofile of the transcript of this meeting can be downloaded from the following website: http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/e99b53542564ab1f8825744a006b87d0!OpenDocument

[3] Supplemental Heiting Affidavit ¶ 4 (Aug. 8, 2008).

evidence in support of its position, instead relying generalizations and guesswork to make its point. For instance, Public Counsel points to the fact that NW Natural has chosen to disclose the information about administrative costs on its website in an FAQ (Frequently Asked Questions) page and postulates: "This *could* mean that customers will end up paying Smart Energy fees believing that they will be applied to carbon reduction programs when in fact they are being used for administrative, overhead, and marketing costs."[5] This type of vague guesswork should not be relied upon to support Public Counsel's position.

7. In fact, NW Natural explicitly stated in its tariff filing that it expects administrative costs to constitute 30 percent of the Smart Energy Program.[6] Moreover, the sign-up sheets for the program sent to customers as bill inserts also clearly identify the level of administrative expense.[7] And, as Public Counsel conceded, NW Natural has posted the expected level of the administrative costs on the Smart Energy webpage FAQs.[8] Contrary to Public Counsel's speculation as to the sufficiency of this notice, NW Natural's Director of Communications placed the information on the FAQ page precisely because, in her expert opinion, this is where she determined that most people seeking additional information about the Smart Energy Program would turn.[9]

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[4] *Id.* ¶ 5.

[5] *Wash. Util. & Transp. Comm'n v. NW Natural Gas Co.*, Docket UG-080519, Public Counsel Motion for Summary Determination at 5 (July 18, 2008) (emphasis added) [hereinafter "Public Counsel Motion for Summary Determination"].

[6] NWN Advice No. WUTC 08-1 at 2 (Mar. 21, 2008).

[7] Supplemental Heiting Affidavit ¶ 6 (Aug. 8, 2008).

[8] *Id.* ¶ 7.

[9] *Id.* In support of its claim regarding disclosure of the administrative costs, Public Counsel notes that members of a biogas focus group were concerned about "contributing to corporate coffers." Public Counsel Motion for Summary Determination at 5. It is unclear whether Public Counsel makes this statement to insinuate that Smart Energy administrative expenses will be used to benefit the Company's shareholders. If that is the case, however,

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8. Finally, even if the Public Counsel's argument regarding disclosure of the administrative expenses had any merit, the issue is irrelevant to whether the overall rates associated with the program are just and reasonable. There is no basis in Washington law for finding the Smart Energy rates to be unreasonable because the Company chose to inform customers of the level of administrative expenses in its tariff filing, on its website, and in a bill insert. Public Counsel's argument should be rejected.

c. The Fact that Customers Can Donate Directly to The Climate Trust is Irrelevant.

9. Public Counsel argues that the fact that NW Natural customers could make a donation directly to The Climate Trust to offset their individual emissions shows that the rates for Smart Energy are not just and reasonable. There is no basis for this argument.

10. Public Counsel provides no authority to suggest that the availability of comparable programs or even less expensive programs is in any way related to the Commission's determination. In fact, as discussed in the Company's Opening Brief, the question for this Commission is whether the Smart Energy Program will provide benefits to NW Natural's Washington customers,[10] not whether the Smart Energy program is the *sole source* of such benefits.

11. Moreover, Public Counsel presents no evidence that the offset programs offered directly to the public by The Climate Trust are comparable to Smart Energy. In fact, Smart Energy was designed specifically to reflect the priorities of NW Natural's Oregon and Washington

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this is flat out wrong. Smart Energy Program funds will be used only to purchase offsets and administer the program. Edmonds Affidavit ¶ 9 (July 18, 2008). The Company's shareholders will not receive any of the Smart Energy Program rates paid by participants. *Id.* Public Counsel's suggestion to the contrary is baseless.

customers.[11] So, for instance, in its contract with The Climate Trust, NW Natural has negotiated an acquisition process that will give priority to biogas projects in the region whenever possible.[12] If such a project is not available, the contract specifies other acquisition options in order of preference (*i.e.* offsets from biodigester or clean energy projects in the region will be pursued before offsets from other projects in The Climate Trust's portfolio).[13] Public Counsel has provided no evidence that comparable programs are available from any other party other than NW Natural, let alone The Climate Trust.[14]

12. Finally, Public Counsel's argument assumes that the carbon offsets themselves are the only benefits of the Smart Energy Program. As discussed in detail in the Company's Opening Brief, all of NW Natural's customers will benefit from the Smart Energy regardless of whether or not they purchase offsets. Customers will benefit from the extensive educational campaign that is a part of the program.[15] Moreover, Smart Energy will provide the Company with valuable knowledge regarding the carbon offset market; this knowledge and experience will lower the Company's costs to comply with anticipated carbon regulation.[16] Public Counsel's argument

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[10] *Wash. Util. & Transp. Comm'n v. NW Natural Gas Co.*, Docket UG-080519, NW Natural Gas Company's Motion for Summary Determination at 4 (July 18, 2008) (emphasis added) [hereinafter "NW Natural Opening Brief"].

[11] Supplemental Heiting Affidavit ¶ 8 (Aug. 8, 2008).

[12] Exhibit B to Edmonds Affidavit at Exhibit B (July 18, 2008).

[13] *Id.*

[14] In an apparent effort to insinuate that Smart Energy funds will be used to purchase offsets that are unrelated to the interests of NW Natural's customers, Public Counsel states that one of the longest-term projects that The Climate Trust buys offsets from is a reforestation project in Ecuador. Public Counsel Motion at 7 n.27. Public Counsel, however, presents no evidence that Smart Energy funds will be used to support this project. Public Counsel also ignores the project priority established in the contract between The Climate Trust and NW Natural that ensures that biogas projects in the northwest will receive preference over other projects.

[15] NW Natural's Opening Brief at 17.

[16] *Id.* at 8. Public Counsel argues that NW Natural's participation in the Smart Energy Program will not add appreciably to the Company's knowledge of offset projects and markets because the Company already has

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ignores all of these benefits that NW Natural's Washington customers will lose out on if the Company is not allowed to offer Smart Energy.

2. Public Counsel's Argument That the Smart Energy Program Should Not Be Implemented Because It Is Unrelated to NW Natural's Provision of Gas Service is Without Merit.

a. Okeson's Holding Is Limited to Municipal Corporations.

13. Public Counsel also relies on that the Washington Supreme Court's decision in Okeson v. Seattle17 to argue that Commission should not approve the Smart Energy tariff. The holding in Okeson, however, is irrelevant to the Smart Energy Program.

14. In *Okeson*, the court evaluated a program adopted by the municipal utility, Seattle City Light, to purchase carbon offsets designed to mitigate its own contribution to greenhouse gasses.[18] In so doing, the court explicitly relied on its "longstanding rule" limiting the bounds of authority of a municipal utility.[19] Specifically, the court quoted: "A *municipal corporation* is limited in its powers to those granted in express words, or to those necessarily or fairly implied in or incident to the powers expressly granted."[20] Accordingly, the court looked to the enabling statute from which, Washington cities derive their authority—RCW 35.92.050—to determine

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access to that information by virtue of Mr. Edmond's position on Board of Directors of The Climate Trust. Public Counsel's Motion for Summary Determination at 7 n.28. Public Counsel misunderstands Mr. Edmond's role as a Board Member. In that capacity Mr. Edmonds may gain high level information regarding carbon offset projects and markets. Supplemental Edmonds Affidavit ¶ 5 (Aug. 8, 2008). However, in his work with Smart Energy, he is directly involved in the process of identifying and reviewing potential carbon offset projects, and negotiating carbon offset agreements—both of which activities are critical to the ability to participate effectively in carbon offset markets. Supplemental Edmonds Affidavit ¶ 5 (Aug. 8, 2008).

[17] 159 Wash.2d 436 (2007).

[18] *Id.* at 441.

[19] *Id.* at 445.

[20] *Id.* (quoting *Farwell v. Seattle*, 43 Wash. 141 (1906) (emphasis added)).

that the offering of offset programs was neither explicitly nor implicitly contemplated by the Legislature.[21]

15. *Okeson* is inapplicable for several reasons. First and foremost, the holding in *Okeson* is applicable only to municipal and not investor owned utilities such as NW Natural. As discussed above, the activities of municipal utilities are strictly limited to those stemming from the enabling statute applicable to city governments. Investor owned utilities operate under no such restrictions. Thus, the court's finding that there was not a sufficient "nexus" between the offset program and Seattle City Light's statutory authority cannot be applied to NW Natural's Smart Energy program.

16. Second, in the 2007 session, six months after the Washington Court of Appeals handed down its decision, the Legislature acted to reverse the result of *Okeson*.[22] Specifically, the Legislature passed a law declaring that GHG offset contracts and other GHG mitigation efforts are "a recognized utility purpose that confers a direct benefit on the utility's ratepayers."[23] In so doing, the Legislature stated its clear view that *Okeson* was wrongly decided, and that carbon offset programs are appropriately offered by utilities. It is true that the Legislature's declaration was codified in an amendment to RCW 35.92.050. However, there is no policy that would limit the Legislature's view of GHG mitigation efforts as benefiting ratepayers to municipal utilities only. Consequently, the Legislature's finding that GHG mitigation efforts directly benefit utility customers is applicable to non-municipal utilities such as NW Natural. Public Counsel's argument to the contrary should be rejected.

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[21] *Id.* at 445–46.

[22] 2007 Wash. Laws ch. 349 § 1.

[23] *Id.*

17. Second, in addition to GHG mitigation, the Smart Energy Program provides broad customer benefits to all NW Natural customers not associated with the Seattle City Light Program and is distinguishable on that basis. In *Okeson* the express benefit intended by the Seattle City Light program was to "prevent City Light's production from causing a net increase in global greenhouse gas emissions . . .."[24] In the court's opinion, this benefit was insufficient to form the requisite nexus.[25] On the other hand, as described in the Company's Opening Brief, Smart Energy provides broad benefits to customers.[26] Therefore, even if the nexus test articulated in *Okeson* were applicable to NW Natural's activities, Smart Energy should be approved.

18. Finally, the comparison between Smart Energy and the Seattle City Light program is inapt because the costs of the programs are not borne in the same fashion. The entire cost of the Seattle City Light program was spread over the customer base.[27] Smart Energy costs, however, are almost entirely borne by the participants in the program. Only those start up costs identified in the Company's Petition are to be spread over the NW Natural customer base.

b. The Smart Energy Program Is Not a Conservation Program.

19. Public Counsel also argues that because Smart Energy is not an effective conservation program, the Company should not offer it to its customers.[28] This argument is without basis.

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[24] *Okeson*, 159 Wash.2d at 449. The court also refers to two "benefits" cited by the dissent—the benefit of customers "specially knowing the electricity they consume is not contributing to anthrogenic climate change," and allowing "City Light to operate more efficiently." The court however found that the record did not support these assertions. *Id.* at 449–450.

[25] *Okeson*, 159 Wash.2d at 450.

[26] NW Natural's Opening Brief at 4.

[27] *See Okeson*, 159 Wash.2d at 442.

[28] Public Counsel's argument that offset programs do little to encourage permanent carbon reduction is irrelevant and without support. NW Natural is implementing the Smart Energy Program in response to the likely implementation of mandatory GHG reduction regulations. Whether those regulations will achieve the goal of

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Quite simply, NW Natural has never argued that Smart Energy is a conservation program. While conservation may be a positive side-effect of Smart Energy, because customers will be educated on how their natural gas use affects climate change and may be more likely to use less natural gas, the Company is not implementing the program for the purpose of conservation. The Smart Energy Program provides other benefits to NW Natural's customers that are unrelated to conservation.

c. NW Natural Is Taking Steps to Offset Its Own Carbon Emissions.

20. Public Counsel also argues that the Commission should reject the Smart Energy tariff because NW Natural could more effectively use the money to mitigate its own carbon emissions.[29] It is not clear how this argument relates to whether the rates in the Smart Energy tariff are just and reasonable. At any rate, Public Counsel is incorrect in suggesting that the Company has *not* already taken steps to reduce its carbon emissions. In fact, in 2007, NW Natural's shareholders purchased the very first block of Smart Energy offsets, contributing $77,000 of shareholder dollars in order to offset the natural gas the Company uses to heat its offices, shops, and service centers for the anticipated five-year period of the pilot program.[30] In addition, NW Natural's shareholders absorbed $266,000 in 2007 start-up costs for the Smart Energy Program.[31] This results in a total shareholder cash contribution to the program of $343,000. The Company is also tracking its carbon footprint so that it will be able to provide an

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carbon reduction is a matter for the lawmakers who enact those laws. Even if the argument were relevant, Public Counsel presents no support for its argument. Citations to articles that are not supported by sworn testimony do not constitute the specific facts required to prevail on a motion for summary determination.

[29] Public Counsel Motion for Summary Determination at 6.

[30] Edmonds Supplemental Affidavit ¶ 3 (Aug. 8, 2008).

[31] Edmonds Affidavit ¶ 10 (July 18, 2008).

accounting of its GHG emissions, as the Company expects it will be required to in 2010.[32] In addition, the Company engages in various sustainability projects, such as reinjecting natural gas during pipeline maintenance that would otherwise have been vented from the pipeline.[33] There is no basis for Public Counsel's criticism of the Company for not taking steps to reduce and offset its own carbon emissions.

21. In conclusion, Public Counsel has not presented any evidence that the rates in the Smart Energy tariff are not just and reasonable or that NW Natural is precluded from offering such a program under Washington law. NW Natural respectfully requests that the Commission approve the Smart Energy tariff.

B. There Is No Genuine Issue as to Any Material Fact Relating to Approval of the Petition for Deferred Accounting.

22. In its Motion for Summary Determination, Commission Staff states that although the Commission does not decide recovery of rates when it approves an accounting order, the Commission may deny a petition for deferral if the company has not established a well-supported basis for deferral.[34] NW Natural has established that the Smart Energy start-up costs incurred by the Company are eligible for recovery in rates in the future. Because there is no material issue of fact regarding recovery of the Smart Energy costs, the Commission should approve the Company's Petition requesting deferral of these amounts.

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[32] Edmonds Supplemental Affidavit ¶ 4 (Aug. 8, 2008).

[33] *Id.* ¶ 6.

[34] *Wash. Util. & Transp. Comm'n v. NW Natural Gas Co.*, Docket UG-080519, Commission Staff's Motion for Summary Determination at 7 (July 18, 2008) (emphasis added) [hereinafter "Staff's Motion for Summary Determination"].

1. Smart Energy Program Rates Are Not Charitable Contributions.

23. Staff's first argument that the Commission lacks authority to allow the Company to recover expenses associated with the Smart Energy Program is that such expenses are akin to a charitable contribution. Staff's classification of Smart Energy rates as charitable contributions ignores the fact that the program provides benefits to all customers. The goal of the program is to prepare the Company for a carbon-regulated future for the benefit of its customers, not to provide a benefit to the public at large or non-customers, as is the case with charitable contributions.

24. The Washington Legislature has made it clear that it does not view a utility purchasing carbon offsets as making a charitable contribution. As described above, the Legislature declared that GHG offset contracts and other GHG mitigation efforts are "a recognized utility purpose that confers a direct benefit on the utility's ratepayers."[35] While the Legislature made this declaration in enacting a statute that relates only to municipal utilities, the Legislature's finding regarding offsets providing a benefit to utility customers was not limited by its terms to municipal utilities. Staff's interpretation of Smart Energy costs as charitable contributions is in direct conflict with the Legislature's policy on GHG mitigation efforts as a benefit to utility customers.

25. Staff also argues that the *Okeson* decision means there is a question as to whether an investor-owned utility may recover the cost associated with GHGs in rates that are not incurred as a result of a regulatory requirement. As discussed above, the question in *Okeson* was whether a municipal utility, which only has the powers granted by statute, had the authority to engage in purchasing GHG offsets. This question is inapplicable to an investor owned utility that is not subject to the limitation on statutory authority analyzed in *Okeson*. To the extent the holding in

[35] 2007 Wash. Laws ch. 349 § 1.

Okeson can be read to raise a question as to whether an investor owned utility can recover costs associated with GHG mitigation efforts, the Legislature has responded that they can.

2. Application of the Electric Utility Green Tag Statute to the Smart Energy Program is Contrary to State Policy.

26. Staff argues that the limitation on cost recovery from non-participants in the electric utility Green Tag statute[36] should be applied to the Smart Energy Program. Staff notes that once gas distribution companies are actually subject to GHG regulation, this limitation may not apply. Staff's reliance on the Green Tag statute to limit the Company's ability to recover costs of the Smart Energy Program is contrary to recent policy developments in Washington. It also provides a disincentive for utilities to keep costs down in the long run by anticipating and preparing for regulations that it reasonably believes will be implemented in the near future.

27. As the Company discussed in its Opening Brief, the Washington Legislature has enacted legislation requiring reduction of GHGs and joining the Western Climate Initiative, which is creating a carbon offset program. Significantly, in 2007 the Legislature explicitly recognized that utility customers benefit from a utility purchasing carbon offsets.[37] These developments indicate that the Commission would undermine the state's current policy on carbon offsets if applied the cost recovery prohibition in the Green Tag statute to the Smart Energy Program.

28. In addition, Staff's proposed policy would provide a disincentive for utilities to take steps to reduce future costs by preparing for regulations before they are implemented. Utilities will not be proactive about regulatory compliance if they are penalized for doing so. In its motion, Staff states that "at least until investor-owned gas distribution companies are subject to regulations that require or authorize them to purchase greenhouse gas credits as a means of

[36] RCW 19.29A.090.

[37] 2007 Wash. Laws ch. 349 § 1.

meeting emissions standards" the utility may not recover program costs from non-participants.[38] This limited interpretation reduces a utility's incentive to prepare for regulation that it reasonably believes will be implemented in the near future. This policy is likely to increase customer costs in the long run and unnecessarily places the utility at a competitive disadvantage. In addition, this policy assumes there is no benefit to customers in preparing for compliance before regulations are effective, no matter how likely the regulation is and how much it would benefit customers for the utility to get a head start on compliance.

29. Public Counsel also states that the Commission should use the Green Tag statute to preclude NW Natural's recovery of costs for the Smart Energy Program. Public Counsel argues that the fact that proposed legislative amendments that would have allowed electric utilities to recover marketing and administrative costs of Green Tag programs failed indicates that NW Natural should not be able to recover Smart Energy costs. Public Counsel describes two attempted amendments of the Green Tag statute—one in 2002 and one in 2008. With respect to the 2002 proposed amendment, Public Counsel does not take into account the movement in the Legislature towards GHG regulation that has occurred since 2002. It would be unreasonable to rely on one senator's view of a proposed amendment to disallow cost recovery for the Smart Energy Program when the Legislature's policy towards GHG reductions and offsets has transformed dramatically since that time.

30. With respect to the 2008 amendment, Public Counsel cites no legislative history indicating that the amendment failed for policy reasons related to this case. As a result, any argument based on this proposed amendment is baseless.

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[38] Commission Staff's Motion at 14.

31. The clear trend in the Washington Legislature is towards implementation of a carbon offset program. As discussed in NW Natural's Opening Brief, the Legislature passed limits on GHG emissions in 2008 and observers believe those caps will be enforced through a carbon offset program. Even more significantly, the Legislature explicitly found that a utility's purchase of carbon offsets benefits its customers.[39] This finding is a strong, possibly even certain, indication that the Legislature would find that recovery in rates for a small portion of administrative costs of a program such as Smart Energy should be allowed in order to encourage such programs. The Commission should not restrict utilities' ability to prepare for this eventuality by choosing to apply the Green Tag statute's requirements to gas companies when no statute requires it to do so.

3. NW Natural's Advertising of the Smart Energy Program Necessarily Consists Primarily of Education and is Therefore Recoverable Under WAC 480-90-223.

32. Public Counsel argues that the Commission WAC 480-90-223, which prohibits recovery for promotional advertising, as a basis for denying the Company's Petition. WAC 480-90-223 states:

33. "The Commission will not allow expenses for promotional or political advertising for rate-making purposes. The term promotional advertising means advertising to encourage any person or business to select or use *the service or additional services* of a gas utility, to select or install any appliance or equipment designed to use the gas utility's service, or to influence consumers' opinions of a gas utility."[40]

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[39] 2007 Wash. Laws ch. 349 § 1.

[40] WAC 480-90-223 (emphasis added).

34. The rule is inapplicable for two reasons. First, Smart Energy is not a "service" within the meaning of the rule. On its face, WAC 480-90-223 appears to be quite clearly intended to exclude from customer rates costs associated with the utility's attempt to *sell* additional *services* to customers—services from which the utility will profit. Accordingly, the Commission has relied on used the rule to disallow costs related to advertising designed to encourage customers to switch to gas from electricity and to use appliances that use gas.[41] In this light, Smart Energy cannot fairly be interpreted as a "service" within the meaning of the rule. Therefore, the rule is inapplicable.

35. Second, the educational and other communications regarding the program cannot be fairly characterized as "promotional advertising." As discussed in Ms. Heiting's affidavit filed with NW Natural's Opening Brief, the issues underlying the Smart Energy Program are more complex than those on which the Company has educated its customers in the past, requiring an extensive education campaign.[42] Accordingly, the Company has used print and other media extensively in connection with Smart Energy in order to educate its customers regarding GHG, their carbon footprint, carbon offsets and the types of projects that generate the offsets.[43] And, while this communications campaign is designed to encourage participation in Smart Energy, it in no way promotes the Company or its services. Quite to the contrary, the Company is well aware that educating customers about the GHG emissions associated with their natural gas use

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[41] *Wash. Util. & Transp. Comm'n v. Wash. Natural Gas Co.*, Docket No. UG-920840, 4th Suppl. Order (Sept. 27, 1993). This order interpreted WAC 480-90-043, the predecessor to the current rule WAC 480-90-223. The rules are substantively identical with respect to their prohibition on recovery for promotional advertising that encourages a customer to select a service or additional services of the utility. *Compare id.* n.6 and WAC 480-90-223.

[42] Heiting Affidavit ¶ 3 (July 18, 2008).

[43] *Id.*

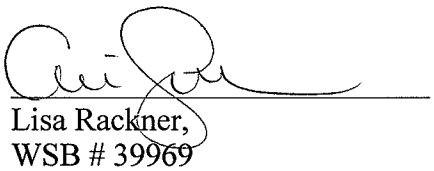
could encourage customers to switch fuel sources in the belief that natural gas is not as "clean."[44] In this light, the educational and awareness campaign cannot fairly be characterized as "promotional advertising."

III. CONCLUSION

36. For all of the above reasons, and the reasons discussed in NW Natural's Opening Brief, NW Natural requests that the Commission issue an order granting its Motion for Summary Determination and approving the Company's Petition for Deferred Accounting and its Smart Energy tariff.

DATED: August 8, 2008

Respectfully submitted,



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[44] Heiting Supplemental Affidavit ¶ 9 (Aug. 8, 2008).