

Agenda Date: November 7, 2005
Item Number: 1A

Docket: UG-051683 and UG-051687

Company Name: NW Natural Gas Company

Staff: Joelle Steward, Regulatory Analyst
James M. Russell, Energy Accounting Manager

Recommendation:

1. Approve the request of NW Natural Gas Company in Docket UG-051687 for Less than Statutory Notice to allow the proposed tariff revisions to Schedule T, Service Election, to become effective on November 8, 2005.
2. Authorize the secretary to issue orders approving, with less than required notice, special contracts filed by November 10, 2005 between NW Natural and any of its Schedule 42 customers, if those contracts have the same provisions as the proposed agreement submitted in Docket UG-051683.

Background:

On October 26, 2005, the Commission granted a request by NW Natural Gas Company (NW Natural) for Less than Statutory Notice to allow a tariff revision to Schedule T, Service Election, to go into effect October 27, 2005. The tariff revision allowed customers who had elected to transfer from transportation service to sales service between August 1, 2005 and October 27, 2005, to return to transportation service on either November 1, November 15 or December 1, 2005. Without this exception, these customers would be required to meet the one-year term for sales service, as specified in the rate schedules, before returning to transportation service. The tariff revision specified that in order to return to transportation service by November 1st, a customer was required to submit a Withdrawal of Election form to the Company by 5:00 pm, October 27, 2005. In order to return to transportation service on November 15 or December 1, 2005, a customer is required to submit a Withdrawal of Election form to the Company by 5:00 pm, November 8, 2005.

Four customers in Washington had elected to transfer to sales service prior to October 27, 2005. One of these customers opted to return to transportation service on November 1st. Three customers in Washington must decide by 5:00

pm, November 8, 2005, if they will return to transportation service or remain on sales service.

On November 4, 2005, the Company filed an Agreement between Northwest Natural Gas Company and [Customer] Regarding Gas Supply Costs for Sales Service During Interim Period.¹ The Agreement sets forth the commodity billing rates through an interim period of October 1, 2005 through March 31, 2006, for the customers who transferred to sales service between August 1 and October 27, 2005. The Company negotiated the Agreement with certain customers and their membership organization, Northwest Industrial Gas Users, but no customer has yet accepted the negotiated Agreement. The Company requested that the Commission approve the Agreement with Less than Required Notice and that the Commission take this action in time for the customers to decide whether to opt into the Agreement before the 5 p.m. November 8 deadline established in the tariff.

On November 7, 2005, the Company filed a tariff revision in Docket UG-051687 to extend the election deadline in Schedule 42 from November 8, 2005 to November 10, 2005. The Company asked that the Commission approve this filing with less than required notice, to be effective November 8, 2005. The effect of this filing is to extend until November 10 the deadline for customers to choose between transportation service and sales service.

Discussion:

The Company and the customers who elected to transfer to sales service during the August through October period are in a dispute over the provision in Schedule T that states “the Customer will pay the Company for any incremental gas supply costs incurred by the Company to accommodate such Customer’s change in service.” The dispute concerns 1) if the customers, in these specific circumstances, are required to pay the incremental gas supply costs and 2) how exactly are incremental gas supply costs determined.

¹ Staff believes that the filing is, at this point, a proposed agreement rather than an actual contract, because the document has not been executed and does not identify any specific customer. Once executed, it would be a special contract, as defined in WAC 480-80-143.

To resolve the incremental cost dispute, the Agreement states that the Company will file with the Commission a Motion for a Declaratory Order to determine the meaning of "incremental gas supply costs". The Company will seek a final order by March 31, 2006. Furthermore, the Company will create a balancing account to track the difference between the interim billing rate and the actual gas costs incurred to serve each customer, and true-up customer bills from the interim period in accordance with a Commission decision in the incremental cost determination proceeding. The Agreement also provides that the Company will file proposed revisions to Schedule T by November 30, 2005, that will permit customers to withdraw their sales service elections after March 31, 2006.

The interim commodity billing rates specified in Section 3 of the proposed Agreement; NW Natural will charge the returning sales customers \$9.00/Dth for November 2005, and \$10.00/Dth for the period December 2005 through March 2006. There are caps in the agreement specifying that the final "true-up" rate will not exceed \$11.80/Dth in October, \$9.95/Dth in November, and \$11.02/Dth for the period December 2005 through March 2006. Staff understands that these caps were based on the costs of contracts the Company recently entered into in order to supply these customers and that none of these contract cost, or other supplies purchased to serve these customers, will adversely effect core sales customers.

We understand that this was a negotiated agreement and it did receive customer support in Oregon this morning. We understand that the Oregon Commission approved the interim billing plan but extended the election date from November 8, 2005 to November 10, 2005 to allow customers additional time to select. We understand that the Company will file a revised schedule T-2 in Washington to mirror the Oregon extension.

Staff believes that it would be inappropriate to approve the special contract proposed by Company if the result would be that other customer classes were required to bear the risk that the incremental cost of gas would exceed the caps negotiated in the contract. However, the Company has committed not to seek recovery of any costs above the capped rate in the rates of other customers. Staff

recommends that this commitment be reflected as a condition of the Commission's approval of the contracts.

As noted above, the document filed by the Company in Docket UG-051683 is a proposed agreement rather than a special contract, since no customer has accepted it. Staff recommends that the Commission authorize the executive secretary to approve any contract that are filed by November 10, if those contracts have the same provisions as the proposed agreement

Conclusion:

Staff recommends that the Commission (1) approve with less than statutory notice the tariff revision in Docket UG-051687 to extend the deadline for customers to elect sales or transportation service and (2) authorize the executive secretary to approve contracts filed by November 10 that have the same provisions as the proposed agreement filed in Docket UG-051683.

ATTACHMENT
Relevant Statutes and Rules

RCW 80.28.050

Tariff schedules to be filed with commission -- Public schedules.

Every gas company, electrical company and water company shall file with the commission and shall print and keep open to public inspection schedules in such form as the commission may prescribe, showing all rates and charges made, established or enforced, or to be charged or enforced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities granted or allowed by such gas company, electrical company or water company.

[1961 c 14 § [80.28.050](#). Prior: 1911 c 117 § 27; RRS § 10363.]

NOTES:

Duty of company to fix rate for wholesale power on request of public utility district:
RCW 54.04.100.

RCW 80.28.060

Tariff changes -- Statutory notice -- Exception.

Unless the commission otherwise orders, no change shall be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by a gas company, electrical company or water company in compliance with the requirements of RCW [80.28.050](#) except after thirty days' notice to the commission and publication for thirty days, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. The commission, for good cause shown, may allow changes without requiring

the thirty days' notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it shall take effect. All such changes shall be immediately indicated upon its schedules by the company affected. When any change is made in any rate or charge, form of contract or agreement, or any rule or regulation relating to any rate or charge or service, or in any general privilege or facility, the effect of which is to increase any rate or charge, then in existence, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, such character to be in form as designated by the commission.

[1989 c 152 § 1; 1961 c 14 § [80.28.060](#). Prior: 1911 c 117 § 28; RRS § 10364.]

RCW 80.28.080

Published rates to be charged -- Exceptions.

No gas company, electrical company or water company shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor shall any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes: PROVIDED, That the term "employees" as used in this paragraph shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such company; and the term "families," as used in this paragraph, shall include the families of those persons named in this proviso, the families of persons killed or dying in the service, also the families of persons killed, and the surviving spouse prior to remarriage, and the minor children during minority of persons who died while in the service of any of the companies named in this paragraph: PROVIDED FURTHER, That water companies may furnish free or at reduced rates water for the use of the state, or for any project in which the state is interested: AND PROVIDED FURTHER, That gas companies, electrical companies, and water companies may charge the defendant for treble damages awarded in lawsuits successfully litigated under RCW [80.28.240](#).

No gas company, electrical company or water company shall extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

[1985 c 427 § 2; 1973 1st ex.s. c 154 § 116; 1961 c 14 § [80.28.080](#). Prior: 1911 c 117 § 29; RRS § 10365.]

NOTES:

Severability -- 1973 1st ex.s. c 154: See note following RCW 2.12.030.

WAC 480-80-141 Service contract. (1) A utility may use service contracts when its tariff requires certain assurances from the customer for a specific service level such as a commitment to a minimum period of service.

(2) If the utility chooses to use service contracts, the utility must provide the commission with samples of the service contracts.

(a) Gas, electric, and water companies must provide the commission with samples of all service contracts currently in use.

(b) Telecommunications companies not classified as competitive must provide the commission with samples of current service contracts within five days after a request by the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-141, filed 5/14/02, effective 6/17/02.]

WAC 480-80-143 Special contracts for gas, electric, and water companies. (1)

Contracts to be filed. Gas, electric, and water companies must file with the commission all contracts for the retail sale of regulated utility services to end-use customers that:

(a) State charges or conditions that do not conform to the company's existing tariff; or
(b) Provide for utility services not specifically addressed in the gas, electric, or water company's existing tariffs.

(2) Any significant modification of a previously executed contract will be treated as a new contract for purposes of this section.

(3) Essential terms and conditions of all contracts filed pursuant to this section are considered a part of the gas, electric, or water company's filed tariffs and are subject to enforcement, supervision, regulation, control, and public inspection as such.

(4) Filing and effective dates. The contract will become effective on the effective date stated in the contract or thirty days after the filing date, whichever occurs later, unless

suspended or rejected by the commission. The commission may approve an earlier effective date if requested by the company, in which event the contract shall not become effective on a date that precedes commission approval. A request for an earlier effective date must include a complete explanation of why an earlier effective date is appropriate.

(5) Each application filed for commission approval of a contract must:

(a) Include a complete copy of the proposed contract;

(b) Show that the contract meets the requirements of RCW 80.28.090 (Prohibiting unreasonable preference) and RCW 80.28.100 (Prohibiting rate discrimination);

(c) Demonstrate, at a minimum, that the contract charges recover all costs resulting from providing the service during its term, and, in addition, provide a contribution to the gas, electric, or water company's fixed costs;

(d) Summarize the basis of the charge(s) proposed in the contract and explain the derivation of the proposed charge(s) including all cost computations involved; and

(e) Indicate the basis for using a contract rather than a filed tariff for the specific service involved. If the basis for using a contract is the availability of an alternative service provider, identify that provider.

(6) All contracts must be for a stated time period, except for contracts for water line extensions. The commission may approve terms and conditions that prescribe the charge(s) to be applied during the time period, if such charge(s) are found to be appropriate. Unless otherwise provided by the commission, such approval will not be determinative with respect to the expenses and revenues of the utility for subsequent ratemaking considerations.

(7) Filings under this section may be submitted with portions designated "confidential" pursuant to WAC 480-07-160. However, any filing that designates the essential terms and conditions of the contract as "confidential" shall be rejected by the commission as not in compliance with the public inspection requirement of RCW 80.28.050. Essential terms and conditions are:

(a) Identity of the customer;

(b) Nature and characteristics of the service provided, including interruptible, firm, or peak delivery;

(c) Duration of the contract, including any options to renew;

(d) Charge(s) for service, including minimum charge provisions;

(e) Geographic location where service will be provided; and

(f) Additional obligations specified in the contract, if any.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-80-143, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-143, filed 5/14/02, effective 6/17/02.]