

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION  
COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION  
COMMISSION,

Complainant,

v.

NORTHWEST NATURAL GAS  
COMPANY,

Respondent.

.....  
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  
Smart Energy Program.

DOCKET UG-080519

DOCKET UG-080530

(consolidated)

PUBLIC COUNSEL RESPONSE TO  
NW NATURAL, NW ENERGY  
COALITION, AND COMMISSION  
STAFF'S MOTIONS FOR  
SUMMARY DETERMINATION

**I. INTRODUCTION**

*I.* The Public Counsel Section of the Washington Attorney General's Office (Public Counsel) respectfully requests that the Commission deny Northwest Natural Gas Company's (NW Natural) request for an order on summary determination approving its Smart Energy Tariff and Deferred Accounting Petition. Public Counsel also asks that the Commission deny the similar request filed by intervener, NW Energy Coalition. Finally, Public Counsel concurs with Commission Staff's request to deny the Accounting Petition, but requests that the Commission reject Staff's recommendation to allow the Smart Energy Tariff to go into effect.

## II. BACKGROUND

2. On March 21, 2008, NW Natural filed revisions to its currently effective Tariff WN U-6 to establish a Smart Energy Program.<sup>1</sup> On March 24, 2008, the Company filed a Petition seeking an Accounting Order authorizing deferred treatment of certain costs associated with the Company's Smart Energy Program.<sup>2</sup> The Commission subsequently suspended the tariff revision, consolidated the matters, and set them for hearing.<sup>3</sup> At a prehearing conference on June 13, 2008, before Administrative Law Judge, Dennis Moss, the parties agreed that preliminary issues should be settled through cross-motions for summary determination.<sup>4</sup>

3. On July 18, 2008, all parties filed Motions for Summary Determination. NW Natural<sup>5</sup> and NW Energy Coalition<sup>6</sup> asked that both the Smart Energy Tariff and the Accounting Petition be approved. Commission Staff asked that the Accounting Petition be denied but recommended that the Commission allow the Tariff to go into effect.<sup>7</sup> Public Counsel now responds to the requests made in these Motions.

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<sup>1</sup> *UTC v. Northwest Natural Gas Company*, Initial filing on behalf of Northwest Natural Gas Company from Lisa Rackner, Docket No. UG-080519 (March 21, 2008).

<sup>2</sup> *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 Smart Energy Program*, Initial filing on behalf of Northwest Natural Gas Company from Kelly Miller, Docket No. UG-080530 (March 24, 2008).

<sup>3</sup> Order 01 (Complaint and Order Suspending Tariff Revisions; Consolidating Dockets/Order Setting Accounting Petition for Hearing; Consolidating Dockets).

<sup>4</sup> Order 02 (Prehearing Conference Order), ¶10.

<sup>5</sup> Northwest Natural Gas Company's Motion for Summary Determination, ¶1 (hereinafter NW Natural Motion).

<sup>6</sup> NW Energy Coalition Motion for Summary Determination, p. 12 (hereinafter NWEC Motion).

<sup>7</sup> Commission Staff's Motion for Summary Determination (hereinafter Staff Motion).

### III. ARGUMENT

#### A. Neither NW Natural nor the NW Energy Coalition Have Established that the Smart Energy Program Tariff Rates Will Be Fair, Just, and Reasonable.

##### 1. The costs of Smart Energy outweigh any benefit of the program.

4. Smart Energy's economic viability is premised on participant rates that are below cost, and which must be subsidized by non-participating ratepayers. In its Motion, the Company readily admits that, when all costs are included in the amount charged, most customers would likely choose not to participate in the program, thereby jeopardizing its overall viability. Specifically, the Company states:

NW Natural did not include administrative start-up costs in the price of the program. 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. 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.<sup>8</sup>

When it informed the Commission that it would withdraw the Smart Energy Tariff filing if the Accounting Petition were not approved, the Company further acknowledged that the Program is not, itself, cost-effective.<sup>9</sup> NW Natural's reluctance to introduce Smart Energy at its true cost shows that, all in all, the proposal is not fair, just, and reasonable.

5. In its Motion, NW Natural claims that the program costs are warranted given the benefits to be gained.<sup>10</sup> Specifically, NW Natural claims that it will gain experience with carbon offsets and various carbon-reduction options. However, the Company is free to investigate carbon offset markets and reduction options without

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<sup>8</sup> NW Natural Motion, ¶18.

<sup>9</sup> *Id.*, ¶21.

<sup>10</sup> *Id.*, ¶¶37-41.

making customers pay the substantial, unnecessary costs of Smart Energy advertising and administration.<sup>11</sup> Additionally, NW Natural also claims that Washington customers will benefit from having the option of purchasing offsets. However, as Staff and Public Counsel discuss in their Motions for Summary Determination, NW Natural's customers already have the ability to access information about carbon emissions reductions and to purchase carbon offsets, *without* paying thirty cents of each dollar for NW Natural's administrative and advertising costs.<sup>12</sup>

**2. Political support for greenhouse gas and carbon emissions reductions do not warrant implementation of a cost-ineffective program.**

6. In their Motions for Summary Determination, both NW Natural<sup>13</sup> and NW Energy Coalition<sup>14</sup> point to recent legislative activity as support for Smart Energy and the accounting petition. Both parties speculate that, in the future, regulations might be passed requiring the Company to reduce carbon emissions and/or investigate purchase of carbon offsets. However, neither current legislative support for carbon emissions reductions in other arenas nor speculation about possible future regulations warrants implementation of this patently cost-ineffective program.<sup>15</sup>

7. Indeed, Public Counsel is not aware of any legal requirements regarding carbon emissions or offsets applicable to the Smart Energy program. First, there are no laws

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<sup>11</sup> See Public Counsel Motion for Summary Determination, n. 28.

<sup>12</sup> *Id.*, p.4; Staff Motion, n. 6.

<sup>13</sup> NW Natural Motion, ¶¶26-27.

<sup>14</sup> NW Energy Coalition Motion, pp. 3-4.

<sup>15</sup> The Commission's discussion in *Washington Natural Gas*, discussed in more depth below, is instructive on this point. There, the Commission acknowledged recent legislative encouragement for compressed natural gas programs, but stated that, until legislation required utilities to invest in such programs, it would not consider allowing program costs to be recovered from all ratepayers. See discussion below at III.B.2.

requiring purchase of offsets by *any entity*, or requiring that any entity make offsets available to their customers. What laws do exist regarding carbon emissions reductions apply only to state government, and not to private companies.<sup>16</sup> Moreover, the recent Governor's executive order<sup>17</sup> deals with carbon emissions reductions, *not* emissions offsets, and, as is clear from the Company's filing, NW Natural makes no effort to actually reduce its own carbon emissions through Smart Energy. Finally, the Company notes that the federal government might pass laws in the near future.<sup>18</sup> However, federal legislative proposals have taken many forms and are focused at the gas processing level, not at on local distribution companies, and might thus be inapplicable to NW Natural.<sup>19</sup>

**3. Oregon's approval of Smart Energy is not binding on this Commission and does *not* warrant less than full consideration of the Company's filings.**

8. Both the NW Energy Coalition<sup>20</sup> and NW Natural<sup>21</sup> place undue emphasis on the Oregon Public Utility Commission's (OPUC) recent decision approving Smart Energy in that state. Decisions from other states are not binding on this Commission and do not limit the scope of its review. This Commission must independently determine whether NW Natural's Tariff Filing and Accounting Petition are in the public interest. Moreover, with all

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<sup>16</sup> NW Natural Motion, ¶26.

<sup>17</sup> RCW 70.235 sets reduction requirements for state government. Executive Order 07-02 establishes work groups to look at future opportunities and does not create any current requirements.

<sup>18</sup> NW Natural Motion, ¶12.

<sup>19</sup> It is also not clear what form federal legislation may take. Any *possible* future benefit of Smart Energy is premised on the assumption that a cap and trade approach will be taken, while it may be just as likely that a carbon (or BTU) tax approach will develop. See Edmonds Affidavit, Docket Nos. UG-080519/UG-080530 (consolidated), ¶15 and Attachment J. See also, Redburn, Tom, "The Real Climate Debate: To Cap or to Tax?" *New York Times*, Nov. 2, 2007, available at [http://www.nytimes.com/2007/11/02/us/politics/04web-redburn.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/11/02/us/politics/04web-redburn.html?_r=1&oref=slogin) (last visited July 30, 2008).

<sup>20</sup> NWECA Motion, pp. 5, 8-9.

<sup>21</sup> NW Natural Motion, ¶¶19-20.

due respect to the OPUC staff, their conclusion that Smart Energy would provide the Company with “knowledge and experience with carbon regulation that would reduce future compliance costs that would be passed on to customers in the future” appears to depend on adoption of a cap and trade policy.<sup>22</sup> If, for example, a carbon tax is levied instead, there will be no reduction in carbon compliance costs. Even if a cap and trade policy is adopted, it is pure speculation whether, or by how much, future compliance costs would be reduced.

**B. Neither NW Natural nor NW Energy Coalition Have Established that Deferred Accounting is Reasonable for Smart Energy Education and Marketing Costs.**

**1. NW Natural has not shown that WAC 480-90-223 allows recovery of Smart Energy “start-up” costs.**

9. The Company’s Motion and accompanying materials provide further evidence that the “start-up” costs it wishes to defer are associated with advertising and promotion and thus not recoverable under WAC 480-90-223.<sup>23</sup> In its Motion, the Company states that it “plans to engage in a comprehensive communications program” in Washington and that “[t]he education *and advertising* program will include print and transit *advertising* in NW Natural’s Washington service territory.”<sup>24</sup> The Company further describes Washington-specific educational program as “print and transit *advertising* in NW Natural’s Washington service territory and bill inserts.”<sup>25</sup>

10. The sample advertisements that NW Natural provides to support its Motion are promotional materials, contain little substantive information, and do not accurately depict the Smart Energy program. One sample is an outdoor billboard that appears misleading in its

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<sup>22</sup> Staff Report, Oregon Public Utility Commission, Advice No. 07-4 and Docket No. UM 1327 (August 28, 2007), p.4.

<sup>23</sup> NW Natural Motion, p. 7 (citing Heiting Affidavit ¶4).

<sup>24</sup> NW Natural Motion, ¶17 (emphasis added).

<sup>25</sup> Heiting Affidavit, ¶4 (emphasis added).

depiction of the program Smart Energy because it suggests that NW Natural itself is currently generating biogas. The billboard includes a picture of a cow, the Smart Energy logo, and states only, “Fight global warming one cow pie at a time. Smart Energy. Presented by NW Natural.”<sup>26</sup> This is likely the type of “transit advertising” NW Natural proposes to have appear on the side of buses and along highways at general ratepayer expense. A sample print advertisement<sup>27</sup> includes similar graphics and describes potential biodigester programs, suggesting that such programs are already underway when, in fact, no biodigester programs presently exist<sup>28</sup> and under no circumstances will NW Natural use Smart Energy dollars to purchase biogas.<sup>29</sup>

11. The Company also provides a print-out of a webpage titled, “About Smart Energy.” Although the webpage provides more in-depth information about carbon emissions, offsets, and the Smart Energy Program, it is unlikely that any portion of the costs NW Natural seeks to defer can be attributed to the web page; the Company is not seeking reimbursement for the cost of the page’s development and, since the page is already publicly available, will not incur additional costs to make the page available in Washington.<sup>30</sup>

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<sup>26</sup> Heiting Affidavit, Exh. A.

<sup>27</sup> *Id.*

<sup>28</sup> See “Smart Energy Questions and Answers,” available at [https://www.nwnatural.com/services/smartenergy/smartenergy\\_about.asp?id=1100](https://www.nwnatural.com/services/smartenergy/smartenergy_about.asp?id=1100) (last visited July 16, 2008).

<sup>29</sup> See Declaration of Jonathan Thompson in support of Staff Motion, Exh. B (Response to Staff DR No. 4).

<sup>30</sup> See Heiting Affidavit, ¶4.

**2. The Commission's holding in *WUTC v. Wash. Natural Gas Co.* supports rejection of deferred accounting.**

12. NW Natural improperly applies the Commission's holding in *Washington Natural Gas*.<sup>31</sup> In *Washington Natural Gas*, the Company proposed, and the Commission allowed, rate recovery of some costs of a water heater leasing program from all customers.<sup>32</sup> The Company also requested, and was *not* allowed, recovery of initial costs of a compressed natural gas (CNG) refueling station program.<sup>33</sup> Contrary to NW Natural's application of this case<sup>34</sup>, the Commission's holding on the CNG program is more relevant here than the ruling regarding the water heater program. Moreover, when read in sum, the final order in *Washington Natural Gas* strongly cautions against allowing recovery of marketing and advertising costs.<sup>35</sup>

**a. The Commission's allowance of the water heater leasing program in *Washington Natural Gas* is not properly read to allow NW Natural to recover Smart Energy costs from all ratepayers.**

13. Contrary to NW Natural's reading, the Commission's decision regarding the water heater leasing program in *Washington Natural Gas* does not stand for the proposition that costs for voluntary programs can be spread to all customers. In fact, the Commission called the program "flawed" for the very reason that it contained a subsidy, and allowed the program to remain in place only if the company took numerous steps to minimize, and

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<sup>31</sup> NW Natural Motion, ¶34 and n. 81.

<sup>32</sup> Fourth Supplemental Order Rejecting Tariff Filing; Authorizing Refiling, *WUTC v. Washington Natural Gas Co.*, Docket No. UG-920840, pp. 16-17 (hereinafter *WNG Final Order*).

<sup>33</sup> Third Supplemental Order Granting Motion to Dismiss Public Refueling Station Schedule (Schedule 117), *WUTC v. Washington Natural Gas Co.*, Docket No. UG-920840 (hereinafter *WNG Third Order*).

<sup>34</sup> NW Natural Motion, n. 81

<sup>35</sup> *WNG Final Order*, pp. 12-13.



eventually eliminate, the subsidy.<sup>36</sup> Moreover, the Commission did not expressly accept any of the Company's assertions of specific benefits that non-participating customers allegedly received from the leasing program.

14. In *Washington Natural Gas*, the Company requested to retain its water heater leasing program even though the program rates were below cost, meaning that non-participating customers subsidized a portion of the costs.<sup>37</sup> The Commission allowed the Company to continue leasing *existing* water heaters at below-cost rates only so long as the Company *minimized* the amount of program subsidy by taking numerous steps, including: raising the rate by nearly one-third immediately, raising rates additionally in the future to reduce the level of program subsidy, eliminating any credit for installation costs, offering the option of purchasing heaters at depreciated book value to decrease the amount being leased, filing revised tariffs containing cost-recovering rates for new heaters, and de-emphasizing the program in customer communications.<sup>38</sup>

**b. The Commission's rejection of the Company's request to recover initial CNG program costs from all ratepayers is most apposite here and supports rejection of NW Natural's Accounting Petition.**

15. In *Washington Natural Gas*, the Company also requested to recover a portion of initial maintenance and operations costs of a proposed CNG refueling station program through a surcharge collected from all customers.<sup>39</sup> The Commission rejected allowing

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<sup>36</sup> *Id.*, pp. 16-17.

<sup>37</sup> *Id.*

<sup>38</sup> Unlike NW Natural suggests in its motions, the Commission did not expressly accept any of the Company's arguments regarding the benefits *all* customers gained from the program. *Id.*

<sup>39</sup> *WNG Third Order*, p. 1.

recovery of these costs and it is *this* portion of the case—rejection of rate recovery for program costs from non-participating customers—that is most applicable here.

16. As NW Natural is doing in this case, Washington Natural Gas argued that it should be allowed to recover a portion of program costs from all ratepayers because “environmental and certain potential economic benefits [of the program] would flow to all ratepayers.”<sup>40</sup> In reaching its decision, the Commission reviewed then-recently-passed legislation encouraging development of such programs and recognized that the program may offer such benefits as reduced carbon emissions, but concluded that “there is no escaping that most ratepayers would be paying the direct costs of a program they would never use and from which they would gain limited and speculative benefits only as members of the general public.”<sup>41</sup> In *Washington Natural Gas*, the Commission reiterated that statutes “proclaiming the public benefits” of CNG programs did not require or allow it to impose costs of such a program on customers not participating in the program.<sup>42</sup>

17. NW Natural distinguishes this portion of *Washington Natural Gas* on the grounds that all customers will gain a greater benefit from Smart Energy than customers would have from a CNG program.<sup>43</sup> However, the *asserted* benefits of these programs are actually very similar, and neither warrant recovery of costs from non-participating customers. In both cases, the companies argue that non-participating customers would benefit from reduced carbon emissions. Both companies also argue that all customers would see economic benefits—improved load factors in the case of CNG, and getting a head-start in the offset

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<sup>40</sup> *Id.*, p. 2.

<sup>41</sup> *Id.*, p. 3.

<sup>42</sup> *Id.*, p. 4.

<sup>43</sup> NW Natural Motion, n. 81.

market in the case of Smart Energy. Similarly, in both cases, although no legislation mandates development of these programs, the companies anticipate the possibility of future requirements and cite legislative trends as support for allowing recovery from all customers.

**3. NW Natural's arguments against applying RCW 19.29A.090 are unfounded.**

18. The Washington legislature's interest in protecting all ratepayers from bearing the costs of *voluntary* electric programs is not rendered irrelevant by current attention to reducing greenhouse gas emissions. Lawmakers have continued to reject amendments to change how costs are collected; this tends to show that their intention to protect general ratepayers from being forced to pay costs associated with voluntary programs remains solid and is unlikely to change. Moreover, NW Natural's insistence that Washington lawmakers' "support for programs such as Smart Energy would likely be even stronger than it was for renewable electricity programs in 2002"<sup>44</sup> is only speculation and makes little sense given that the Legislature has *not* passed any carbon offset program requirements for natural gas companies.

19. NW Natural's focus on the "educational value" of the program to all customers is also unpersuasive. Education about the carbon offset market bears little relation to safe, reliable natural gas service and is unlike the type of education that is properly included in rates, such as education on safety and conservation. Moreover, NW Natural's customers have numerous resources from which to gain information—a single internet search turns up numerous consumer resources and articles on carbon emissions and carbon offset programs,

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<sup>44</sup> NW Natural Motion, ¶44.


most of which provide far more information than the materials NW has proposed.<sup>45</sup> Finally, as discussed previously, the “educational” materials that NW Natural proposes to pay for with Smart Energy dollars consist primarily of promotional language and provide very little objective information about carbon emissions and the offset market.

#### IV. CONCLUSION

20. Utility efforts to address climate change and carbon emissions may be unobjectionable if cost-effective, appropriately designed and supported, and sufficiently related to the utility’s provision of service to its customers. The Smart Energy program does not meet that standard. For the reasons stated above, Public Counsel respectfully requests that the Commission grant Public Counsel’s Motion for Summary Determination, reject the Motions for Summary Determination filed by NW Natural and NW Energy Coalition, and reject Staff’s recommendation that the Smart Energy tariff be allowed to go into effect.

21. DATED this 8<sup>th</sup> day of August, 2008.

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<sup>45</sup> See previous discussion at III.B.1.