

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

NORTHWEST NATURAL GAS
COMPANY,

Respondent.

DOCKET NO. UG-080519

DOCKET NO. UG-080530
(consolidated)

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.

COMMISSION STAFF'S
RESPONSE TO MOTIONS FOR
SUMMARY DETERMINATION OF
NORTHWEST NATURAL GAS
COMPANY AND NW ENERGY
COALITION

I. INTRODUCTION

1 Commission Staff hereby responds in opposition to Northwest Natural Gas Company
(NW Natural or the Company) and the NW Energy Coalition's (Coalition) Motions for
Summary Determination.

2 Both parties argue that RCW 19.29A.090 does not apply to gas companies and
therefore, the Commission has discretion to allow recovery of costs associated with the
"voluntary" Smart Energy program from non-participants, even though RCW 19.29A.090

prohibits electric companies from doing so with respect to similar “green tag” programs.¹

Both parties argue the Smart Energy program will produce benefits for general ratepayers, and not just program participants, and therefore, it is reasonable to establish a deferral as a mechanism for recovering part of the program start-up costs from general ratepayers.²

3 The flaw in the Company and the Coalition’s argument is that the Smart Energy program barely qualifies as a “utility service” and can only be justified as a tariffed service, in Staff’s view, based on its resemblance to the legislatively authorized electric green tag programs.³ It is wrong, therefore, to suggest that the Commission is free to put fewer restrictions on the Smart Energy program than the legislature has required the Commission to place on the green tag programs that it expressly authorized.

4 The Commission should deny NW Natural and NW Energy Coalition’s motions. The Commission should grant Staff’s motion and deny the Company its requested deferral of start-up costs associated with the Smart Energy program.

II. ARGUMENT

A. **The reason Staff recommends allowing Smart Energy as a tariffed service is because the program is voluntary and because it is similar to the green tag programs authorized by RCW 19.29A.090.**

5 Smart Energy would allow NW Natural customers to offset their “carbon footprint” by donating money that the Company would pass on to the Climate Trust organization to fund projects that reduce greenhouse gas emissions from sources other than the combustion

¹ “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.” RCW 19.29A.090(5).

² Company’s Motion at pp. 16, 17; Coalition’s Motion at p. 6.

³ Staff does not repeat these arguments here, but would refer the Commission to its Motion for Summary Determination at pp. 12-14.

of natural gas.⁴ For the reasons argued in Staff and Public Counsel's motions for summary determination, NW Natural's "resale" of the Climate Trust's greenhouse gas offset services is arguably not even a utility "service" that belongs in the Company's tariff or on its regulated books.⁵

6 The only model for such a program in Washington law or policy is RCW 19.29A.090, authorizing electric green tag programs,⁶ but that statute precludes recovery of green tag program expenses from non-participants.⁷

B. The parties' arguments regarding the benefits that will flow to general ratepayers as a result of the Smart Energy program are speculative at best.

7 In response to Staff and Public Counsel's arguments against recovery of program costs from non-participating general ratepayers, the Company asserts that all NW Natural customers will benefit from Smart Energy, whether or not they choose to voluntarily offset their carbon footprint. The Company's argument boils down to the following:

[T]he Smart Energy Program will provide NW Natural the opportunity to gain a competitive advantage in the carbon offset market, which will be to the benefit of all customers when carbon legislation is enforced. The Company will spend less money on carbon regulation compliance in the future if it can use the Smart Energy Program

⁴ Petition at ¶¶ 3-5.

⁵ Staff's Motion at pp. 8-12; Public Counsel's Motion at pp. 3-8.

⁶ The statute [RCW 19.29A.090] gives utilities two options to provide qualified alternative energy resources: green power itself or green tags/credits. An idea first promoted by power marketers in the mid-1990s, the green tags are a type of currency used in the electricity industry to represent the environmental and social benefits of clean electricity production. They are also sometimes called "tradable renewable energy certificates" or "renewable energy credits." A green tag with the environmental attributes of a renewable resource is separated from the electricity produced and is sold as a distinct product. One product is unlabeled electricity; the other product (the green tag) represents the environmental attributes equivalent to the amount of renewable electricity produced.

Green Power Programs in Washington: A Report to the Legislature, Department of Community Trade and Economic Development (Dec. 2003), available at www.cted.wa.gov/uploads/Green%20Power%2011-24-03.doc

⁷ "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." RCW 19.29A.090(5).

to gain experience and knowledge before its competitors—a direct benefit to customers.⁸

This is unsupported speculation.⁹ Carbon regulations have not yet been adopted.¹⁰ Even if it is likely that carbon regulation will soon be imposed, there is considerable uncertainty on the details of the regulations.¹¹ For example, the voluntary “carbon offset” market to which the company refers may bear no resemblance to the mandated permit market that would exist under a cap-and-trade regime. The company provides no support for the notion that dairy farmers (the most likely third parties to receive payments to contain their GHG emissions) would even be participants in a government-mandated cap-and-trade market.

8 This is not to say that there is no value in the Company exploring low cost ways to adapt to the coming environmental regulatory landscape, but as an argument for general ratepayer subsidy of the Smart Energy program, it is wholly unconvincing. The Company’s reference to Commission’s treatment of Washington Natural Gas water heater leasing program¹² actually goes counter to the argument that cross-subsidy among classes of ratepayer is permissible based on arguments of indirect benefit. There, the Commission accepted a compromise offered by the gas company (increase the rental rate from \$3.05 to \$4.00 and increase rates in future years) to address the Commission’s concern about the water heater leasing program’s “failure to earn an adequate return” and directed the

⁸ Company’s Motion at fn. 81.

⁹ The Company and the Coalition’s motions are, in essence, anticipatory responses to Staff and Public Counsel’s motions for summary determination, which were filed at the same time. Because Staff and Public Counsel have submitted adequate support for summary determination, the burden shifts to the Company to set forth specific facts that rebut the contentions and that reveal a material issue of fact. *Rizzuti v. Basin Travel Service of Othello, Inc.*, 125 Wash. App. 602, 615 (2005). The Company may not rely on speculation, argumentative assertions, or unsupported affidavits. *Id.*

¹⁰ Edmonds Affidavit at ¶¶ 15-17.

¹¹ Edmonds Affidavit, Exh. K (Recommendation of the American Gas Association on the Lieberman/Warner Climate Change Bill, March 25, 2008), Exh. I (Public Utilities Fortnightly article “The Politics of Carbon”).

¹² Company’s Motion at ¶ 34, citing Wash. Util. & Transp. Comm’n v. Wash. Natural Gas Co., Docket UG-920840, 4th Supp. Order, pp. 16-17 of the original (Sept. 27, 1993).

company “to file a revised tariff that includes a *cost-recovering* rate for the new, efficient water heaters it proposes to lease.”¹³ The Commission’s treatment of the Washington Natural Gas Company’s proposal to subsidize the construction of compressed natural gas vehicle filling stations from general rates is also contrary to the Company’s position here and is remarkably similar to the instant case.¹⁴

9 The Coalition adds its own argument regarding “utility-related” benefits that would flow to general ratepayers. The Coalition observes that, under the Commission’s integrated resource planning rules, 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.”¹⁵ The Coalition further points out that 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.”¹⁶ The Coalition then states: “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.”¹⁷

¹³ Emphasis added. Docket UG-920840, 4th Supp. Order at p. 17.

¹⁴ Company’s Motion at ¶ 41, fn. 81, citing Wash. Util. & Transp. Comm’n v. Wash. Natural Gas Co., Docket UG-920840, 3rd Supp. Order (March 12, 1993). In that case, the company sought a surcharge on general ratepayers to “jumpstart” the funding of compressed natural gas fueling stations to encourage rapid development of fleets of natural gas-fueled vehicles. Docket UG-920840, 3rd Supp. Order at p. 1. The company referred to recent state and federal laws mandating serious consideration of compressed natural gas as a vehicle fuel because of environmental benefits and availability from domestic suppliers, and to potential improved load factors that would reduce its purchase cost of gas and benefit all ratepayers. *Id.* at pp. 1, 2, fn. 1. The statute encouraging development of such technology stated that it was not intended to “alter the regulatory practices of the commission or allow the subsidization of one ratepayer class by another.” *Id.* at p. 2, fn. 2. The Commission dismissed the petition, stating “The company proposes a transfer of funds from ratepayers to benefit a small group of users, although to support a public purpose. It may be more appropriate to spread the burden of supporting that public purpose among all the body politic, who all receive the social benefit, than to impose it on those who happen to be company ratepayers, who are a small group of that larger body politic. That task is for the legislature, nor for the Commission.” *Id.* at p. 4.

¹⁵ Coalition’s Motion at p. 7.

¹⁶ *Id.*, citing WAC 480-90-238(2)(a)-(b).

¹⁷ *Id.*

Staff agrees that the rules require gas utilities to consider *gas supply* and *conservation measures* that result in the lowest reasonable cost, including environmental cost. However, paying others to reduce their carbon dioxide emissions is neither a gas supply alternative, nor a conservation measure.¹⁸ Staff understands that the Company is participating in the development of standards for the possible inclusion of biogas in the gas supply; however, no Smart Energy funds will be used to purchase biogas.¹⁹ Thus, the Coalition stretches the Commission's integrated resource planning process beyond its terms in its effort to find a direct, utility benefit to general ratepayers.

C. There is an equally plausible argument that the electric company green tag programs authorized by RCW 19.29A.090 provide direct benefits to general ratepayers, yet the legislature has nonetheless retained the restriction against subsidy from general ratepayers for such programs.

10 Even if the Company and the Coalition are correct about the benefits the Smart Energy program would afford non-participating general ratepayers, these arguments are still unavailing because the same or stronger arguments could be made with regard to the green tag programs offered by electric companies. Unlike gas utilities, electric utilities are subject to existing renewable portfolio standards²⁰ and are at least as likely to be included in any carbon regulation.²¹ Despite those arguments, the legislature has not seen fit to amend RCW 19.29A.090's prohibition against recovering program costs from non-participants.²²

¹⁸ WAC 480-90-238(2)(c) defines "conservation" as "any reduction in natural gas consumption that results from increases in the efficiency of energy use or distribution." Although Smart Energy participants might take it upon themselves to reduce their natural gas use, the purpose of the Smart Energy program is to allow the customer to consume natural gas while paying something extra to offset the associated carbon emissions.

¹⁹ Thompson Decl. Exh. B (Response to Staff DR 4).

²⁰ RCW 19.285 (This act codifies the November 2006 passage of voter initiative 937 (I-937). I-937 requires large utilities to obtain 15% of their electricity from new renewable resources such as solar and wind (and Tidal, Ocean and Wave energy) by 2020, and to undertake cost-effective energy conservation); WAC 480-109.

²¹ See Edmonds Affidavit, Exh. I (Public Utilities Fortnightly article "The Politics of Carbon").

²² Public Counsel's Motion at p. 10 points out that as recently as the 2008 legislative session, the legislature considered, but did not enact, an amendment to RCW 19.29A.090 that would have allowed utilities to recover

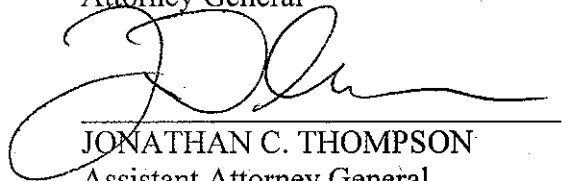
III. CONCLUSION

11 For the foregoing reasons, the Commission should deny NW Natural and NW Energy Coalition's motions and grant Staff's cross motion, denying authorization to defer start-up costs associated with the Company's Smart Energy program.

DATED this 8th day of August, 2008.

Respectfully submitted,

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marketing and administrative costs of promoting voluntary programs to purchase qualified alternative energy resources.