[Service Date October 14, 2008]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. NORTHWEST NATURAL GAS COMPANY, Respondent.	)	DOCKET UG-080519 *(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.	)	DOCKET UG-080530 *(consolidated)* ORDER 04 INITIAL ORDER REJECTING TARIFF AND ACCOUNTING PETITION

1 ***Synopsis:*** *This is an Administrative Law Judge's Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order would reject Northwest Natural Gas Company's proposed tariff to implement its "Smart Energy Program (Pilot)" in Washington along with the Company's accounting petition, approval of which the Company states is a required precondition to implementing the program. The Smart Energy Program would allow, but not require, residential and commercial customers to fund the Company's purchase of carbon offsets from The Climate Trust. While the tariff may be laudable in purpose, the Commission cannot lawfully approve it because the agency has neither express nor implied power to do so, particularly because the Company insists that the program's implementation depends on it being able to recover program costs from customers who do not elect to participate.*

SUMMARY

2 **PROCEEDINGS:** On March 21, 2008, Northwest Natural Gas Company (NW Natural or the Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effect Tariff WN U-6 in Docket UG-080519, to establish a "Smart Energy Program (Pilot)," designated as Sixth Revision of Sheet six, Original Sheet U.1 and Original Sheet U.2. NW Natural proposes to offer its customers the opportunity to participate voluntarily in a program that will allow them "to offset the greenhouse gas emissions associated with their gas use."

3 On March 24, 2008, NW Natural filed with the Commission in Docket UG-080530 a petition seeking an Accounting Order authorizing the deferred treatment of administrative costs associated with the Company's Smart Energy Program. Specifically, NW Natural seeks authority to defer for later collection in general rates up to $79,000 in "start-up" costs of the pilot in Washington, which NW Natural estimates will be required for 2008 and 2009 combined.

4 NW Natural states in its tariff filing that "implementation of the Smart Energy Program is contingent upon approval of the [accounting] Petition" and the Company "will withdraw this tariff filing in the event the Petition is not approved." Thus, NW Natural seeks through these dockets approval of two interrelated parts of a single proposal. Effectively acknowledging this, the Commission entered Order 01in Dockets UG-080519 and UG-080530 on May 2, 2008, consolidating the two proceedings, suspending the tariff revisions, and setting the proposed tariff revisions and accounting petition for hearing.

5 **APPEARANCES:** Lisa F. Rackner, McDowell & Rackner, Portland, Oregon, represents NW Natural. David S. Johnson, Attorney, represents the Northwest Energy Coalition (NWEC). Sarah Shifley, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General (Public Counsel). Jonathan Thompson, Assistant Attorney General,

Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).[1]

6 **DETERMINATIONS:** The Commission denies NW Natural's petition for an accounting order and rejects the Smart Energy Program (Pilot) tariff filing because it is not within the Commission's legal authority to approve it, particularly in light of the fact that the program requires involuntary payments by customers who do not choose to participate. It is not within the Commission's express or implied power to order into effect and oversee a program to enable a regulated investor-owned natural gas company to purchase voluntarily carbon offsets using revenue recovered from customers through a combination of voluntary and involuntary payments in rates.

MEMORANDUM

I. Background

7 On August 31, 2007, the Oregon Public Utility Commission (Oregon PUC) approved NW Natural's request to incorporate a new schedule into the Company's tariff to implement a pilot program that would allow customers to voluntarily offset the greenhouse gas (GHG) emissions that result from their use of natural gas. The new tariff is referred to as the "Smart Energy Program (Pilot)." The Oregon PUC also approved NW Natural's application for an accounting order allowing the Company to give deferral accounting treatment to certain "start-up" costs attributable to the program with the anticipation that these costs will later be recovered in rates charged to all customers who are eligible for the program, whether or not they elect to participate.

8 On March 21, 2008, NW Natural filed with the Commission in Docket UG-080519 revisions to its tariff that would have implemented the Smart Energy Program in Washington with a stated effective date of May 1, 2008, if allowed to go into effect. The Company's Tariff Advice letter stated that NW Natural would also file a related

[1] In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455.*

petition for an accounting order seeking authority to defer a portion of the program's costs. The Advice letter states (emphasis added) that "implementation of the Smart Energy Program *is contingent upon* approval of the [accounting] Petition." NW Natural filed the promised accounting petition in Docket UG-080530 on March 24, 2008.

9 Under the proposed tariff, residential and commercial customers could voluntarily enroll in the Smart Energy Program. Residential customers could elect either a fixed rate of $6.00 per month, or a volumetric rate of $0.10486 per therm. Commercial customers could elect a fixed rate of their choice, albeit with a minimum of $10 per month. According to the Company, these rates are designed to fund the cost of carbon offsets[2] and the ongoing administrative costs associated with the program, which are expected to require approximately 30 percent of the anticipated revenue collected over the term of the pilot.[3] However, the voluntary payments by customers were intentionally designed to recover only approximately 77.6 percent of the full costs of the pilot program.[4] The remaining costs, some $1,275,200 over the term of the pilot, are proposed to be "paid by all customers of NWN."[5]

10 In its accounting petition, NW Natural requests deferral of startup costs in Washington of $79,000 for 2008 and 2009, combined.[6] This relatively small part of the total program startup costs reflects the fact that only about 10 percent of the Company's customers are in Washington. The Oregon PUC approved deferral of up to $622,000 in corresponding costs in Oregon for 2008.[7] NW Natural expects the

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[2] NW Natural has partnered with The Climate Trust to offer this program. The Climate Trust is a nonprofit organization headquartered in Oregon that purchases project-based emission reductions. The Climate Trust has agreed to develop greenhouse gas offset projects on behalf of Smart Energy participants with the first priority for these projects being to help bring biogas to the region as a new energy resource.

[3] Administrative costs as a proportion of revenue vary from a high of 73 percent in 2007 to a low of 24 percent in 2012, according to the Company's analysis. Exhibit E to Affidavit of William R. Edmonds in support of NW Natural's Motion for Summary Determination at 4:188.

[4] *Id*. at 1:17.

[5] *Id*. at 1:14. It appears, as discussed below, that ratepayers are expected to pay the bulk of these costs, nearly $1 million, while shareholders will absorb the balance.

[6] The annual amounts are $52,000 in 2008 and $27,000 in 2009.

[7] NW Natural initially requested deferral treatment in Oregon for $1.048 million of the total projected 3-year start up costs of approximately $1.2 million, having agreed at that point to absorb $130,000 of the startup costs. According to NW Natural's Motion for Summary

startup costs in Oregon to approximate $268,000 during 2009 and will file with the Oregon PUC a separate accounting petition to defer those costs, as required under Oregon law. The startup costs reflect principally the costs of promotional/educational materials describing the program and its benefits to customers, and soliciting their participation. The Company proposes to collect the deferred amounts from all customer classes, whether or not they participate in the Smart Energy Program.

11 Commission Staff presented the tariff filing and related accounting petition during the Commission's April 30, 2008, open meeting. Staff recommended that the tariff be allowed to go into effect and the accounting petition be set for hearing. The Company, however, requested that the Commission suspend the tariff filing if it set the accounting petition for hearing, and proposed that the two matters be consolidated for hearing. The Commission suspended the tariff filing, consolidated the two dockets, and set the matter for hearing.

12 The Commission convened a prehearing conference on June 13, 2008**,** before Administrative Law Judge Dennis J. Moss. The parties agreed that these interrelated dockets present threshold legal and policy issues that may be dispositive and can be resolved without an evidentiary hearing. The presiding officer set a procedural schedule requiring the parties to file their motions for summary determination and responses on July 18, 2008, and August 8, 2008, respectively.

II. Motions for Summary Determination and Responses

13 NW Natural and NWEC recommend through their respective motions for summary determination that the Commission approve the Smart Energy Tariff and associated accounting petition. Staff opposes the Company's petition for an accounting order but recommends we approve the tariff because it is voluntary and not prohibited by law. Public Counsel opposes both the program and the Company's request for deferred accounting treatment.

Determination, its shareholders absorbed $343,000 in startup costs for 2007. NW Natural Motion ¶ 16.

14 The parties filed responses to each other's motions as allowed under the procedural schedule.

15 The parties present wide-ranging arguments in support of their sharply divided positions. The focus of this decision, however, is on the threshold question: Does the Commission have the legal authority to approve the Smart Energy Program (Pilot), as proposed, including its requirement that program costs be recovered from customers who do not elect to participate in the program?

16 Drawing on the arguments presented, this Order determines that the Commission does not have such authority, for the reasons discussed below.[8]

III. Discussion and Determination

17 It undoubtedly is true, as NWEC contends, that "[e]ffective efforts to respond to climate change require keen vision and active leadership."[9] However, the Commission's power in this regard, as in any other, is defined by and limited to the authority and responsibility delegated to it by law. When, as here, the Commission is asked to place its legal imprimatur upon a program by authorizing it as a tariff service of an investor-owned utility, it may do so only if the Legislature has empowered it to do so.

18 Although the Smart Energy Program (Pilot) may be consistent with policy goals enunciated by the Legislature and the Governor's Office over the past several years, the Legislature has not authorized or required natural gas companies subject to the Commission's regulatory authority to implement a program such as the one proposed. Indeed, the Legislature has not given the Commission express authority to approve any such program or exercise regulatory oversight with respect to carbon emissions attributable to natural gas customers of investor-owned utilities. Nor is there anything in the Commission's governing statutes that necessarily implies any such power.

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[8] The Commission has considered all of the arguments presented, but does not need to reach and, hence, does not discuss below, various points that are not essential to resolve the cross-motions for summary determination.

[9] NWEC Motion at 3.

Finally, to the extent the Commission might infer that it arguably, albeit not necessarily, has such power and should exercise it to promote state policy, there is authority that strongly suggests the program should not be approved as proposed because it requires involuntary payments from customers who elect not to participate.

19 Staff states in its Response that:

> Staff and Public Counsel's motions for summary determination argue that NW Natural's "resale" of the Climate Trust's greenhouse gas offset services is arguably not a utility "service" that belongs in the Company's tariff or on its regulated books.[10]

Public Counsel is firmly opposed to Commission approval of the Smart Energy Program tariff, as well as the accounting petition. Albeit nominally supporting Commission approval of the tariff and rejection of the Company's accounting petition, Staff points out that while gas distribution companies may be required at some time in the future "to meet emissions standards with the option of purchasing greenhouse gas credits or offsets, they are not presently required to do so."[11]

20 Staff reasons that in the absence of express statutory requirements the Company's election to contribute money to The Climate Trust as proposed under the Smart Energy Program is "akin to a charitable contribution."[12] Citing *Jewell v. WUTC*,[13] Staff argues the Commission lacks statutory authority to allow a regulated utility to recover such contributions in general rates. Staff quotes from the Supreme Court's opinion as follows:

> The commission's orders demonstrate how far it has strayed from its statutory function. Those orders state, in part, that charitable contributions are 'socially appropriate, indeed mandatory Company expenses.' Further, 'all businesses in the state of Washington are expected to, and in fact do, support social and charitable institutions through contributions.' The Commission is not the keeper of the social conscience of the citizens of this state. The arbitrary and capricious nature of its orders is simply proved by its conclusions that (1) it is

[10] Staff Response ¶¶ 5-6 (citing: Staff's Motion at 8-12; Public Counsel's Motion at 3-8).
[11] Staff Motion ¶ 15.
[12] *Id*. ¶ 16.
[13] 90 Wn.2d 775 (1978).

> socially appropriate, indeed mandatory, that the contributions be made and that (2) all businesses are expected to, and in fact do, make charitable contributions. The commission may be accurate in its statements, but that does not mean it has statutory authority to order telephone users to make involuntary contributions.[14]

Staff argues by analogy that any allocation of Smart Energy Program costs to non-participants, for recovery in general rates, is beyond the Commission's statutory authority.

21 NW Natural misses the mark when disputing the applicability of the rationale behind *Jewell.* Staff's argument does not depend, as the Company contends in its Response, on the "classification of Smart Energy rates as charitable contributions."[15] Staff's argument depends on the reasoning behind *Jewell* that customers cannot be required to make involuntary payments to provide benefits that are outside the scope of the Commission's regulatory authority, as defined by its enabling statutes. In other words, even accepting the reduction of carbon emissions as a "socially appropriate" activity, the Commission cannot assume the mantle of the "social conscience of the citizens," by extracting involuntary payments from NW Natural customers, unless authorized or required by statute to do so. As Staff's arguments suggest, it simply is not within the Commission's express or necessarily implied powers to authorize and oversee the functioning of a program such as Smart Energy, particularly when, as here, its implementation is conditioned on cost recovery in general rates.

22 Staff's and Public Counsel's respective discussions of *Okeson v. City of Seattle* support this analysis and conclusion.[16] In *Okeson*, the Court held that municipal utilities such as Seattle City Light had neither express nor implied power to pay other entities to reduce their greenhouse gas emissions and that the utility's offset program served a general governmental purpose and not a proprietary, utility purpose.[17] Thus, Seattle City Light could not require its customers to pay for the program in rates.

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[14] *Id.* at 777, 778.
[15] NW Natural Response ¶ 23.
[16] 159 Wash.2d 436 (2007).
[17] To meet a self-imposed policy of meeting electric energy needs with no net increase in greenhouse gas emissions, Seattle City Light (coincidentally based on proposals solicited and evaluated by Climate Trust) entered into a series of agreements to pay other entities (such as King County Metro, Washington State Ferries, and a DuPont plant in Kentucky) to use cleaner fuels and, in return, to receive credit for the resulting greenhouse gas reductions.

23 NW Natural argues that the Court's holding in *Okeson* is inapplicable here because the decision turned on RCW 35.92.050, a statute that defines the powers of municipalities, not investor-owned utilities. According to the Company: "The test the court applied in *Okeson* to determine whether the purchase of carbon offsets was within the powers of a city utility is inapposite to the Commission's consideration of the Smart Energy Program."[18] NW Natural also points out that the Legislature provided the power the *Okeson* court found lacking, enacting in the 2007 session a law declaring that greenhouse gas offset contracts and other mitigation efforts are "a recognized utility purpose that confers a direct benefit on the utility's ratepayers."[19] NW Natural argues that though the Legislature's declaration was codified as an amendment to RCW 35.92.050, it applies not only to municipalities but "to non-municipal utilities such as NW Natural."[20]

24 It may be reasonable to infer that this legislative pronouncement applies as a matter of *policy* to all utilities. It unquestionably, however, does not apply as a matter of *law* to any utilities other than those governed by RCW 35.92 —Municipal Utilities. Thus, neither *Okeson* nor the legislation it inspired applies directly to the Commission's consideration of the Smart Energy tariff. While the legislation reflects a policy that is generally supportive of such programs, it is unavoidably true that the amendment of RCW 35.92 did not confer any power on the Commission concerning greenhouse gas offset programs for investor-owned utilities governed under RCW Title 80. This leaves us with the reasoning of the *Okeson* court, which is persuasive by analogy. We, like the municipal utility in *Okeson*, are limited in our powers to those expressly conferred upon us by the Legislature or necessarily implied by our governing statutes.

25 Staff points out that in the same session the Legislature amended the law governing municipal utilities it authorized electric utilities to purchase, under limited circumstances, "verifiable greenhouse gases emissions reductions" from other electric generating facilities within the Western interconnection as a means of meeting new greenhouse gases emissions performance standards for electric generating resources.[21] While this legislation expanded the Commission's regulatory power over electric

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[18] NW Natural Motion ¶30.
[19] NW Natural Response ¶ 16 (citing 2007 Wash. Laws ch 349 § 1).
[20] *Id.*
[21] Staff Motion ¶ 18 (citing RCW 80.80.040 (13)).

utilities subject to jurisdiction under RCW Title 80, it did not do so with respect to natural gas utilities. As Staff argues, when the Legislature specifically acts in connection with greenhouse gas offsets with express reference to a particular class of utilities subject to the Commission's jurisdiction (*e.g.*, investor-owned electric companies), "an inference arises in law" that it intentionally did not act in this connection with regard to any others (*i.e.*, investor-owned natural gas companies).[22] Considering this well-established principle, Staff argues:

> There remains a significant question as to whether an investor-owned utility may recover in general rates the cost associated with the purchase of greenhouse gas offsets that are not incurred as a result of a regulatory requirement."[23]

26 Finally, Staff points out that while the Legislature has expressly authorized various mechanisms that address social and environmental objectives through utility rates and service offerings, it has not authorized any mechanisms to address greenhouse gas emissions through the rates and services of natural gas companies.[24] Staff refers to the Commission's authority under RCW 80.28.068, "upon request of an electric or natural gas company," to approve rates at a discount for low-income customers and to include resulting lost revenues in rates recovered from other customers; RCW 80.28.303 authorizing gas, electric, and water companies to file conservation service tariffs with the Commission and to include in ratebase all bondable conservation investment and; RCW 80.28.300 authorizing gas and electric companies to request donations from their customers to support urban forestry, which the companies may use to support and complete projects consistent with model evergreen community management plans and ordinances. It is a well-established principle of statutory construction that "where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*-specific inclusions exclude implication."[25]

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[22] *Id.*; s*ee, infra,* ¶ 26 fn. 25 and cited text.
[23] *Id.* ¶ 18.
[24] Staff Motion ¶ 20.
[25] *Washington Nat. Gas Co. v. Public Utility Dist. No. 1,* 77 Wash.2d 94, 459 P.2d 633, 636 (1969); *Silver Firs Town Homes, Inc. v. Silver Lake Water District*, 103 Wash. App. 411, 421 (2000).

27 Staff's arguments are persuasive. Applying the principles discussed above, it is clear that the costs of the Smart Energy Program cannot be recovered from customers who do not voluntarily participate. Arguably, even if the costs of the Smart Energy Program were to be recovered solely from those who elect to participate, it still would be no more appropriate for the Commission to assume jurisdiction over the program and give it the status of a tariff than it would be for the Commission to take similar action with respect to a proposal that would allow customers to donate to United Way, or some other charity, using the utility as a conduit. As discussed in the preceding paragraph, where the Legislature wishes to extend the Commission's authority to encompass a utility program that solicits donations for environmental programs, promotes conservation, or provides assistance to low-income customers, it will do so. If the Legislature does not expressly or by necessary implication confer such authority, the Commission simply does not have it.

28 Finally, assuming for the sake of discussion that the Commission has implied power to authorize a tariff providing for customer purchases of carbon offsets because, as NW Natural argues, there is no express statutory language prohibiting such a thing:[26]

> The only model for such a program in Washington law or policy is RCW 19.29A.090, authorizing electric green tag programs,[27] but that

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[26] NW Natural Motion ¶ 30. Though accepted here for purposes of discussion, it is important to note again the point that the Commission's powers are defined and limited by the mandates the Legislature gives it. The scope of the Commission's authority is not determined by consideration of what the Legislature does not forbid it from doing.

[27] NW Natural's argument that the propriety of spreading the costs of a voluntary utility program "is best illustrated" by a 1993 order allowing Washington Natural Gas Company (WNG) to continue a water heater leasing program is incorrect in its premise and its conclusion. The Commission did not accept in that case the argument that cross-subsidy among classes of ratepayers is permissible based on arguments of indirect benefits to all customers. The Commission found the tariff flawed because it did not "recover an adequate return" and directed WNG "to file a revised tariff that includes a *cost-recovering* rate for the new, efficient water heaters it proposes to lease," and required rate increases for existing leases to initiate movement of rates toward full cost recovery. *Wash. Util. & Transp. Comm'n v. Wash. Natural Gas Co.*, Docket UG-920840, 4th Suppl. Order (Sept. 27, 1993). The Commission's earlier rejection of WNG's proposal in the same docket to have customers subsidize the construction of compressed natural gas vehicle filling stations from general rates is also contrary to the Company's position here and is similar to this case in material part. WNG sought a surcharge on general ratepayers to "jumpstart" the funding of compressed natural gas (CNG) fueling stations to encourage rapid development of fleets of natural gas-fueled vehicles. WNG's petition relied on

> statute precludes recovery of green tag program expenses from non-participants.[28]

29 RCW 19.29A.090 provides: "[a]ll 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*." Staff argues that if this statutory provision is to be relied upon as the basis for inferring that the Commission has the authority to approve the Smart Energy Program because to do so would be consistent with state policy, "then the limitations imposed by the Legislature must be taken into account as well."[29]

30 Staff's point is well taken. Even putting to one side the fundamental question of our legal authority to approve the Smart Energy Program at all, it is unavoidably true that to the extent we accept that there is a legislatively articulated policy supporting a program such as Smart Energy, principles of consistency require that we also recognize a legislatively articulated policy that volunteer programs related to environmental initiatives in utility tariffs are to be paid for by those who elect to participate, not by ratepayers generally. Even if the Company and NWEC are correct that the Smart Energy Program benefits non-participating general ratepayers, their arguments that this justifies recovering program costs in general rates are still unavailing because the same or stronger arguments could be made with regard to the green tag programs offered by electric companies. As Staff points out, unlike gas utilities, electric utilities are subject to existing renewable portfolio standards and are at least as likely to be included in any future carbon regulation. Yet, the Legislature

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then-recent state and federal laws mandating consideration of CNG as a vehicle fuel because of environmental benefits and availability from domestic suppliers, and to potential improved load factors that arguably would reduce WNG's purchase cost of gas and benefit all ratepayers. 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, not for the Commission." *Wash. Util. & Transp. Comm'n v. Wash. Natural Gas Co.*, Docket UG-920840, 3rd Supp. Order (March 12, 1993).

[28] Staff Response ¶ 6.

[29] *Id.*

has not seen fit to amend RCW 19.29A.090's prohibition against recovering program costs from non-participants.[30]

31 There being no material facts in dispute, the Commission concludes in light of the foregoing discussion that it is beyond the Commission's authority to approve the Smart Energy Program tariff and the related petition for accounting that contemplates the recovery of program costs in general rates. NW Natural represents that recovery of Smart Energy Program costs from customers who elect not to participate is a precondition to the program's implementation in Washington. Considering this, even accepting the unlikely proposition that the Commission has implied authority to approve the program as a tariff service, it is appropriate to deny both the Company's petition and the tariff filing that requires the petition's approval, according to the Company. The Commission concludes that NW Natural's and NWEC's Motions for Summary Determination should be denied. Staff's and Public Counsel's respective Motions for Summary Determination should be granted to the extent consistent with, and for the reasons discussed in, this Order.

ORDER

THE COMMISSION ORDERS That:

32 (1) Northwest Natural Gas Company's Motion for Summary Determination is denied.

33 (2) Northwest Energy Coalition's Motion for Summary Determination is denied.

34 (3) Staff's and Public Counsel's respective motions for summary determination are granted to the extent consistent with the discussion in this Order.

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[30] Public Counsel's Motion at 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 marketing and administrative costs of promoting voluntary programs to purchase qualified alternative energy resources.

35 (4) Northwest Natural Gas Company's petition for an accounting order authorizing deferred treatment of certain Smart Energy Program costs for later recovery from all customers in general rates, filed on March 24, 2008 in Docket UG-080530, is denied.

36 (5) The Tariff Schedule designated as Sixth Revision of Sheet six, Original Sheet U.1 and Original Sheet U.2, (Smart Energy Program Pilot) filed by Northwest Natural Gas Company in Docket UG-080519 on March 21, 2008, is rejected.

Dated at Olympia, Washington, and effective October 14, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action of no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
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Olympia, WA 98504-7250