

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application for the Sale
and Transfer of Assets from

LEHMAN ENTERPRISES, INC.

To

CASCADIA WATER, LLC

DOCKET NO. UW-_____

APPLICATION FOR SALE AND
TRANSFER OF ASSETS

I. INTRODUCTION

I In accordance with RCW 80.12.020 and RCW 80.12.040 and WAC 480-110-555, WAC 480-143-120, and WAC 480-143-130, Northwest Natural Gas Company (“NW Natural” or “Company”) files this application requesting approval from the Washington Utilities and Transportation Commission (“Commission”) of the sale and transfer of assets from Lehman Enterprises, Inc. (“Lehman”) to Cascadia Water, LLC (“Cascadia”) (“Application”). Cascadia is a wholly-owned subsidiary of Northwest Natural Water, LLC (“NWN Water LLC”), which in turn is a wholly-owned subsidiary of NW Natural. Concurrent with the filing of this Application, NW Natural is also filing for regulatory approval for the sale and transfer of assets from Sea View Water, LLC to Cascadia, and NW Natural respectfully requests that these two applications be consolidated for purposes of processing the applications

2 In Docket UG-170094, NW Natural sought—and the Commission approved—authorization to reorganize into a holding company structure.¹ Once the holding company (“HoldCo”) is formed, Cascadia’s parent, NWN Water LLC² will be transferred to HoldCo, and thereafter HoldCo will be the 100 percent owner of both NW Natural and NWN Water LLC. NW Natural recently obtained shareholder approval to form HoldCo, and plans to do so before the end of this year. In the event that the Commission approves this Application before the formation of HoldCo, NW Natural requests that the Commission order in this proceeding also approve the subsequent transfer of ownership of Cascadia/NWN Water LLC (and Lehman) from NW Natural to HoldCo. If HoldCo is formed prior to the issuance of a Commission order in this proceeding, NW Natural requests that the Commission approve the transfer of ownership of Lehman to Cascadia/NWN Water LLC with HoldCo as the ultimate parent company.

3 In this Application, NW Natural presents both sides of the Lehman transaction for review by the Commission. First, NW Natural provides an analysis of the purchase by Cascadia/NWN Water LLC/NW Natural under RCW Chapter 80.12.040 and WAC 480-143-130 for a utility acquisition of another utility’s assets to ensure that the purchasing utility’s customers will not be harmed. Second, NW Natural presents an analysis of the sale of utility assets by Lehman under RCW 80.12.020, WAC 480-110-555, and WAC 480-143-120 to ensure that the selling utility’s customers will not be harmed. As described in detail in this Application, NW Natural’s customers will not be harmed from the

¹ See *In the Matter of Northwest Natural Gas Company’s Application for Approval of Corporate Reorganization to Create a Holding Company*, Docket UG-170094, Order 01 (Dec. 28, 2017).

² NWN Water LLC is a non-operating entity formed solely to serve as a corporate platform to hold the stock of any water utility it may acquire.

acquisition, and Lehman’s customers will not be harmed and will benefit from new ownership, and thus Cascadia’s acquisition of Lehman is consistent with the public interest.

II. DISCUSSION

A. Description of the Lehman Transaction.


4 Lehman is a regulated water utility subject to the Commission’s jurisdiction, which provides water service to approximately 904 customers on 10 water systems located on Whidbey Island in Island County. Lehman is currently owned by Jim and Terry Lehman.


5 Cascadia is a wholly-owned subsidiary of NWN Water LLC, which in turn is a wholly-owned subsidiary of NW Natural. NW Natural is a utility that is subject to the Commission’s jurisdiction under RCW 80.04.010. NW Natural’s principal business office is located at 220 NW Second Avenue, Portland, Oregon 97209. Communications regarding this Application should be addressed to the following:

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6 The Lehman transaction is structured as an asset sale for which NWN Water LLC will pay [Confidential] 


[Confidential] in exchange for substantially all the assets of Lehman (“Lehman

Transaction”). The Asset Purchase Agreement between NW Natural Water Company, LLC and Lehman Enterprises, Inc. (“Lehman Asset Purchase Agreement” or “Lehman APA”) was executed on May 11, 2018 and is attached to this Application as Confidential Exhibit 1.

7 After the Lehman Transaction is complete, Lehman will cease operating as a water utility, and Cascadia will provide water service to Lehman’s customers. Lehman’s customers’ water service will not be interrupted by the transition to Cascadia. Cascadia is proposing a new tariff which is included in this Application as Exhibit 2 (“Cascadia Tariff”). The Cascadia Tariff adopts Lehman’s tariff in its entirety, and proposes to adopt Lehman’s rates for customers on the legacy Lehman system as part of its tariff. Additionally, the Cascadia Tariff proposes to adopt Sea View’s tariff in its entirety for the customers on the legacy Sea View system so that those customers do not experience any change in service resulting from the acquisitions. .

B. Applicable Legal Standard.

8 In accordance with RCW Chapter 80.12.040 and WAC 480-143-130, Cascadia, as an indirect subsidiary of NW Natural, must obtain Commission approval prior to completing the purchase of Lehman, and in accordance with RCW 80.12.020, WAC 480-110-555, and WAC 480-143-120, Lehman must obtain Commission approval prior to selling, leasing, assigning, or otherwise disposing of any of its property that is necessary or useful in the performance of its duties to the public. The Commission applies a public interest “no harm” standard in its review of property transfer applications.³ The

³ WAC 480-143-170.

Commission also considers “the new company’s financial and managerial fitness to run the operations.”⁴

C. Cascadia’s Acquisition of Lehman Satisfies the No Harm Standard and Is Consistent with the Public Interest (RCW 80.12.040 and WAC 480-143-130).

9 As described above, Cascadia is a wholly-owned subsidiary of NWN Water LLC, which in turn is a wholly-owned subsidiary of NW Natural. Accordingly, NW Natural provides the following analysis demonstrating that NW Natural’s customers will not be harmed by the Lehman Transaction, and that the Lehman acquisition will have no impact on the Company’s ability to provide natural gas service. Additionally, NW Natural’s customers will benefit from the consolidated Company’s growth that it is seeking to achieve through its water utility acquisition strategy.

10 *First*, the Lehman acquisition will not in any way affect the financial, technical, or managerial abilities of NW Natural to continue to provide high-quality, reliable service to its LDC customers. After the Lehman acquisition is complete, the Company will continue to provide the same safe and reliable natural gas service to its customers that it has provided for over one hundred years. Importantly, Lehman’s current management team (Culley Lehman and Amy Lehman) will become employees of Cascadia, and thus will continue to provide day-to-day oversight and local support for operations of the water system, and therefore the operation of Lehman will not affect NW Natural’s day-to-day operations.

⁴ *In the Matter of the Application of Fragaria Landing Water Co., Lowper Inc., dba Lowper Water Co., Marbello Water Co., Inc., and SJM Water Service Inc., Applicant, For the Sale and Transfer of Stock to Iliad Water Servs. Inc., Docket UW-150688, Order 01 at ¶15 (July 30, 2015) (citing In Re Application of PacifiCorp & Scottish Power, LLC, Docket UE-981627, Third Suppl. Order on Prehearing Conference at 2-3 (Apr. 2, 1999)).*

11 **Second**, no costs associated with Lehman will be included in NW Natural’s gas utility rates. Upon closing of the Lehman Transaction, NW Natural will observe all corporate separations and affiliated interest requirements as provided by the Commission’s statutes and rules.⁵ Following the corporate reorganization described above, NW Natural will be bound by the conditions described in its Amended Application in UG-170094 relating to the corporate and financial separation between NW Natural and its affiliates.

12 **Third**, the Lehman acquisition represents an important step in the Company’s plan to enter the water utility business, and is therefore consistent with the Company’s strategy for growth as described in its request for corporate reorganization. In particular, the Company believes that business growth—through acquisition of water utilities—will provide enhanced financial strength, access to capital markets and overall shareholder value to the consolidated entity that will support its continued efforts to provide safe and reliable customer service to the Company’s LDC customers. Importantly, NW Natural’s executives and board of directors have the regulatory, financial, operational, and engineering knowledge and expertise to effectively oversee Lehman’s operations. Both water and gas LDC businesses rely on maintenance of and investment in critical pipe infrastructure to drive organic growth. NW Natural understands how to plan for and build an efficient pipeline system and how to maintain that system to ensure safe and reliable service. In addition, both the water distribution and gas distribution businesses are largely regulated by public utility commissions—a regulatory environment with which NW Natural is familiar. For these reasons, NW Natural believes that its ownership of Lehman

⁵ RCW Chapter 80.16; WAC 480-110-545; WAC 480-110-575.

will result in a stronger, and more financially sound water company—and a stronger consolidated corporate structure.

13 **Finally**, in the event that NW Natural can achieve synergies through its water utility acquisition strategy, all of our customers should, over time, benefit from cost savings. Savings achieved will be passed through to NW Natural’s gas customers; Condition 36, in NW Natural’s Amended Application in UG-170094 specifically provides that any savings achieved by NW Natural as a result of HoldCo’s future mergers and acquisitions, to the extent they are greater than \$50,000 will be deferred and credited to Washington customers until NW Natural’s second rate case following the Commission’s order in docket UG-170094.⁶ Thus, NW Natural’s gas utility customers may benefit from this acquisition through reductions in costs that occur even before the Company’s next rate case is filed. After the Company’s second general rate case, the savings flowing from the Company’s water utility acquisitions will benefit customers through subsequent ratemaking proceedings.

D. The Sale of Lehman Satisfies the No Harm Standard and Is Consistent with the Public Interest (RCW 80.12.020, WAC 480-110-555, WAC 480-143-120).

14 Lehman’s customers will not be harmed by the Lehman Transaction, and will in fact benefit from new ownership.

15 **First**, Lehman’s customers will experience no disruption in service and will not be harmed by the Lehman Transaction. Although Lehman will cease to exist after the Lehman Transaction is complete, Lehman’s current management will become employees of

⁶ *In the Matter of Northwest Natural Gas Company’s Application for Approval of Corporate Reorganization to Create a Holding Company*, Docket UG-170094, Supplement to Application at 10 (Dec. 21, 2017).

Cascadia and will continue to provide operations and management support for the water system and customer service support for the benefit of customers. After the close of the Lehman Transaction, customers will interface with Cascadia for billing. To help ensure a smooth transition, Lehman and Cascadia will send bill inserts describing the transaction and the process for transition, provide new email and phone number contact information as well as the URL for Cascadia's website, and describe any changes for Lehman's customers related to Cascadia's customer billing and payment practices. As a result of these efforts, Lehman's customers will experience no disruption in service and the Lehman Transaction will be seamless for Lehman's customers.

16 **Second**, Lehman customers will benefit from the utility industry experience of its affiliate, NW Natural. In particular, Lehman's customers will benefit from NW Natural's experience and expertise in planning for, building, and maintaining safe and reliable pipeline infrastructure. Lehman is currently in need of capital investment, and the current owners do not have the financial capacity to invest in the system. Cascadia, through its parent companies, HoldCo and NWN Water LLC, will be able to provide this investment over time, therefore benefiting Lehman's customers.

17 **Third**, given the shared executive support among NW Natural and NWN Water LLC, Lehman's customers will benefit from NW Natural's depth of experience with regulatory compliance.

18 **Fourth**, Lehman's customers will experience no immediate change in their water utility rates, and will receive service under Cascadia's tariff, which will maintain the rates

and charges from Lehman's tariff with no proposed modifications.⁷ Additionally, the Lehman Transaction does not include an acquisition adjustment, and HoldCo and NWN Water LLC commit that neither entity will propose to include any research and due diligence, negotiation, or other acquisition costs associated with the acquisition of Lehman in customer rates in any future rate case filing. Going forward with its growth strategy, HoldCo and NWN Water LLC will evaluate whether to seek an acquisition adjustment with other utility acquisitions on a case-by-case basis.

E. Financial and Managerial Fitness of Cascadia/NWN Water LLC

19 Financial Fitness of NWN Water LLC. Under the Lehman Transaction, Cascadia will acquire the Lehman system. Cascadia's parent company, NWN Water LLC, is currently a wholly-owned subsidiary of NW Natural, which will be transferred to HoldCo immediately upon its formation. NW Natural or HoldCo will provide funds for NWN Water LLC to complete the Lehman Transaction, and thus NWN Water LLC is financially able to acquire Lehman. (See also Exhibit 3).

20 Financial Statements. NW Natural's financial statements are included with this Application as Exhibit 3. Upon its formation, HoldCo will provide its financial statements to the Commission.

21 Experience in Utility Management. Lehman will continue to operate under its current management, who will become employees of Cascadia. Lehman's management team will benefit from the utility expertise of its affiliate, NW Natural, which has substantial experience overseeing the operations of a regulated Washington distribution

⁷ At some point in the future, Cascadia intends to migrate to a unified rate for the customers of the legacy Sea View and Lehman systems, which will be proposed in a future rate case filing.

company—and will bring this expertise to the Lehman water systems. Importantly, NW Natural’s executives and board of directors have the regulatory, financial, operational, and engineering knowledge and expertise to effectively oversee Lehman’s operations. Both water and gas LDC businesses rely on maintenance of critical pipe infrastructure to drive organic growth. NW Natural’s executives understand how to plan for and build an efficient pipeline system and how to maintain that system to ensure safe and reliable service. In addition, both the water distribution and gas distribution businesses are largely regulated by utility commissions—a regulatory environment with which NW Natural is familiar.

F. Notice to Customers

22 In accordance with WAC 480-143-210(1), notice of the transfer of ownership must be provided to customers 30 days prior to the Commission’s open meeting date for which an application is scheduled for action. The Company will coordinate with Commission Staff to determine the date on which the Application will be scheduled for Commission action, and will plan to provide notice to Lehman’s customers at least 30 days in advance of that date. The Draft Lehman Customer Notice is included with this Application as Exhibit 5.

G. Exhibits

23 The following exhibits are included with this Application:

- Exhibit 1 – Lehman Asset Purchase Agreement (Confidential)
- Exhibit 2 – Cascadia Tariff
- Exhibit 3 – NW Natural Financial Statements
- Exhibit 4 – Lehman 2017 Annual Report (includes Financial Statements)
- Exhibit 5 – Draft Lehman Customer Notice

III. CONCLUSION

24 NW Natural respectfully requests that the Commission approve its Application in accordance with RCW 80.12.020 and RCW 80.12.040, and WAC 480-110-555, WAC 480-143-120, and WAC 480-143-130. The Lehman Transaction will not harm NW Natural's customers or Lehman's customers, and will benefit Lehman's customers, and accordingly, the Lehman Transaction is consistent with the public interest.

Respectfully submitted this 17th day of July, 2018.

MCDOWELL RACKNER GIBSON PC



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