



## I. INTRODUCTION

2. NW Natural's Smart Energy Program is a pilot program through which customers can choose to purchase carbon offsets to mitigate greenhouse gas ("GHG") emissions associated with their natural gas use. The Smart Energy Program is the first of its kind among stand-alone gas utilities and, if adopted in Washington, would further the State's articulated goals of reducing carbon emissions and slowing global warming.
3. Smart Energy has already been approved by the Oregon Public Utility Commission ("OPUC") and is currently being offered to the Company's Oregon customers.<sup>2</sup> NW Natural seeks to offer Smart Energy to its Washington customers as well. To this end, the Company has filed tariff revisions in Docket UG-080519 to establish a "Smart Energy Program (Pilot)" ("Smart Energy Tariff").<sup>3</sup> In addition, although the lion's share of the costs of Smart Energy costs will be recovered through fees paid by program participants, NW Natural has filed a petition for an accounting order authorizing deferred treatment of up to \$79,000 in "start-up" costs ("Accounting Petition").<sup>4</sup> The OPUC approved a similar petition when it approved Smart Energy.<sup>5</sup> To ensure that Oregon and Washington customers are treated equivalently, NW Natural has represented that approval of the Accounting Petition—which would allow the

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<sup>2</sup> *Re NW Natural Gas Co. Application for Deferred Accounting for Certain Smart Energy Program Startup Costs*, Docket UM 1327, Order No. 07-383 (Aug. 31, 2007) [hereinafter "Oregon Order"].

<sup>3</sup> NWN Advice No. WUTC 08-01 (Mar. 21, 2008).

<sup>4</sup> *Re NW Natural Gas Co. Petition for an Accounting Order Authorizing Deferred Accounting Treatment of Certain Costs Associated with the Company's Smart Energy Program*, Docket UG-080530, Petition for Deferred Accounting Order (Mar. 21, 2008) [hereinafter "Petition"]. NW Natural's shareholders absorbed \$343,000 in start-up costs in 2007. *Wash. Util. & Transp. Comm'n v. NW Natural Gas Co.*, Docket UG-080519, NW Natural Gas Co.'s Motion for Summary Determination ¶ 16 (July 18, 2008) [hereinafter "Motion"].

<sup>5</sup> Oregon Order at 2.

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<sup>5</sup> Oregon Order at 2.

share in the costs of the program. For these reasons, it is within the Commission's jurisdiction to adopt the Smart Energy Petition *and* the Accounting Petition.

7. Third, because the Initial Order found that the Commission lacks the legal authority to approve the Smart Energy Tariff and Accounting Petition, it never reached the compelling reasons why—as a matter of policy—the Commission *should* approve the Smart Energy filings. On these issues, the evidence is clear that Smart Energy is consistent with significant and timely state policies.

8. For these reasons, the Commission should decline to adopt the Initial Order and instead should grant NW Natural's Motion for Summary Determination, and approve the Smart Energy Tariff and Accounting Petition.

## **II. NW NATURAL'S CONTENTIONS CONCERNING THE INITIAL ORDER'S CONCLUSIONS OF LAW.**

9. As required by WAC 480-07-825(3), NW Natural asserts the following:

10. **Contention 1:** The ALJ erred in concluding that “[I]t 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.”<sup>10</sup>

11. **Basis for Contention.** The Initial Order's conclusion is contrary to RCW 80.01.040 and relevant case law, as described in detail below and in NW Natural's Motion for Summary Determination, and should therefore be rejected.

12. **Recommended Conclusion of Law.** “The Commission has the authority to approve the Smart Energy Program tariff and the related petition for accounting that contemplates the recovery of program costs in general rates. The Smart Energy Program is consistent with Washington policy and should be approved.”

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<sup>10</sup> Initial Order ¶ 31.

13. **Requested Remedy.** NW Natural requests that the Commission grant its and NW Energy Coalition's Motions for Summary Determination.

### III. ARGUMENT<sup>11</sup>

**A. The Commission Has the Authority to Approve the Smart Energy Tariff and Accounting Petition, Because the Smart Energy Program Provides Significant Benefits to All NW Natural Customers.**

14. In its Motion for Summary Determination, NW Natural argued that the Commission has the authority to spread the cost of the Smart Energy Program to all customers—and by necessary implication, the authority to approve the program itself—because the program provides benefits that will flow to all customer classes, even those not participating directly. In particular, NW Natural provided testimony demonstrating that:

- Smart Energy will provide the Company with the opportunity to gain knowledge and experience to take better advantage of offset markets and therefore outperform competitors, thereby reducing future costs for customers;<sup>12</sup>
- Smart Energy will allow NW Natural to develop a relationship with The Climate Trust—one of the most experienced offset developers in the nation. This relationship will in turn provide the Company with opportunities to invest in quality offset projects to which it would not otherwise have access;<sup>13</sup>

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<sup>11</sup> NW Natural will not repeat every argument made in its Motion for Summary Determination and Response to Motions for Summary Determination, but rather hereby refers to and incorporates those documents.

<sup>12</sup> Motion ¶ 37; n.81.

<sup>13</sup> *Id.* ¶ 38.

- Smart Energy will allow the Company to evaluate the merits of internal and external emission reductions, placing it in a better position to select the most economical ways to comply with carbon regulation.<sup>14</sup>

All of these factors will serve to reduce the Company's costs of complying with the carbon regulation that is most certainly on the horizon.<sup>15</sup> These reduced costs will in turn serve to reduce customer rates, ensuring NW Natural's customers with more efficient and economical service.

15. Despite this evidence, the Initial Order suggests that the Commission has no authority over a carbon offset program such as Smart Energy—regardless of whether non-participating customers are asked to bear the costs. Indeed, at the outset of the discussion, the Initial Order states:

[T]he 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 such power.<sup>16</sup>

16. The Initial Order provides no further analysis of this threshold question, and instead focuses on whether non-participating customers can be required to pay for the program. The Initial Order is correct in observing that it need not issue a ruling on this question, given that the Company has linked its willingness to offer Smart Energy to the Commission's approval of the Accounting Petition. However, in giving short shrift to the question as to whether Smart Energy

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<sup>14</sup> *Id.* ¶ 39.

<sup>15</sup> *Id.* ¶ 41, n.81.

<sup>16</sup> Initial Order ¶ 18.

is the *type* of program the Commission has jurisdiction to approve, the Initial Order fails to identify and perform the analysis that would make clear that the Commission does in fact have the authority to approve the Smart Energy Tariff—either separately or together with the Accounting Petition.

**1. The Commission Has Broad Authority to Approve a Service That Provides Utility-Related Benefits to Customers.**

17. Pursuant to RCW 80.01.040(3), the Commission has the power to “regulate in the public interest . . . the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service . . . to the public for compensation.” The Supreme Court of Washington has held that this statute “grants the WUTC broad authority to regulate the practices of public utilities.”<sup>17</sup> With respect to the Commission’s authority to regulate “in the public interest,” the public interest is a “broad concept encompassing the welfare of present and future customers, stakeholders and the public.”<sup>18</sup> In addition, RCW 80.04.010 states that the term “service” should be used in its “broadest and most inclusive sense.” As discussed below, under this mandate it is appropriate for the Commission to approve a utility service that provides utility-related benefits to utility customers.

18. Of course the Commission’s authority is not unbounded, and the limit of that authority is best articulated in *Jewell v. WUTC*.<sup>19</sup> There, the Washington Supreme Court, sitting en banc, reviewed a Commission order allowing the investor-owned General Telephone Company to recover in rates corporate charitable contributions.<sup>20</sup> Not surprisingly, the Supreme Court found

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<sup>17</sup> *Tanner Elec. Coop. v. Puget Sound Power & Light Co.*, 128 Wash.2d 656, 666 (1996) (en banc).

<sup>18</sup> *Wash. Independent Tel. Ass’n v. WUTC*, 149 Wash.2d 17, 28 n.3 (2003).

<sup>19</sup> 90 Wash.2d 775 (1978).

<sup>20</sup> *Id.*

that it did not.<sup>21</sup> However, in coming to this conclusion, the Court did not simply look to whether Washington statutes explicitly confer on the Commission the authority to include charitable contributions in rates, as it appears the ALJ did when analyzing the Commission's authority over the Smart Energy Program. Instead, the Court looked to the Legislature's charge to the Commission to deliver "prompt, expeditious and efficient service,"<sup>22</sup> and then evaluated whether the proposed service furthered that mission.

19. After reviewing the evidence adduced in the case, the Supreme Court concluded: "There is a total lack of any proof or finding that the telephone users are receiving any more 'prompt, expeditious and efficient' telephone service because the telephone companies choose to contribute to, among other charities, hospitals or private colleges."<sup>23</sup> Indeed, as observed by the court, the "essence" of the utility's case was that the "telephone company must be a good corporate neighbor" and that it was "entitled to rate charges for contributions which result in improving the image of the corporation," and the Commission's decision was "premised on the idea that utility contributions are expected and desirable."<sup>24</sup> Based on this record, the Court reversed the decision of the trial court that had upheld the Commission order.<sup>25</sup>

20. The Initial Order misconstrues the holding in *Jewell*, concluding that it would be "no more appropriate for the Commission to assume jurisdiction over the [Smart Energy Program] . . . than it would be for the Commission to take similar action with respect to a proposal that

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<sup>21</sup> *Id.* at 777.

<sup>22</sup> *Id.* The Commission must ensure that charges made by any gas company for any service are just, fair, and reasonable. RCW 80.28.010(1). The Commission also must ensure that every gas company furnish safe, adequate, and efficient service. RCW 80.28.010(2).

<sup>23</sup> *Jewell*, 90 Wash.2d at 777.

<sup>24</sup> *Id.* at 777-78.

<sup>25</sup> *Id.* at 780.



would allow customers to donate to [a] . . . charity, using the utility as a conduit.”<sup>26</sup> The analogy is inapt. Unlike the telephone company in *Jewell*, NW Natural has not argued that the Commission has the authority to approve the Smart Energy Program because it is “expected or desirable.” On the contrary, consistent with the Supreme Court’s guidance, the Company provided the Commission with substantial evidence demonstrating that NW Natural’s administration of the Smart Energy Program will enhance its ability to carry out its statutory mission and will in fact result in more efficient and effective service.

21. The Initial Order also attempts to draw upon statutes that authorize other utility programs to argue that Smart Energy cannot be approved by the Commission in absence of explicit authorization from the Legislature. The Initial Order cites to a number of statutes that authorize “mechanisms that address social and environmental objectives through utility rates and service offerings,” such as approving discount rates for low income customers, authorizing utilities to file conservation service tariffs, and authorizing utilities to request donations from customers to support urban forestry.<sup>27</sup> The Initial Order argues that because the Legislature explicitly approved these specific programs, the reverse implication is that any program that addresses social or environmental concerns that was not specifically approved by the Legislature is outside

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<sup>26</sup> Initial Order ¶ 27.

<sup>27</sup> *Id.* ¶ 25.

the Commission's authority.<sup>28</sup> This position makes little sense, and specifically ignores the appropriate test of the Commission's jurisdiction as articulated in *Jewell*.<sup>29</sup>

**2. The Legislative Response to Okeson Supports, Rather than Undermines, NW Natural's Argument that the Commission Has Jurisdiction over the Smart Energy Program.**

22. The Initial Order also mistakenly relies on the *Okeson*<sup>30</sup> case to conclude that the Commission lacks authority to approve the Smart Energy Program. In that case, the Court found that Seattle City Light lacked the authority to use ratepayer money to purchase carbon offset contracts because that activity did not bear a "sufficiently close nexus" to a municipal utility's statutory purpose of supplying electricity. This was perhaps a reasonable conclusion given that the authority of a municipal utility is to be narrowly interpreted.<sup>31</sup> However, as pointed out in NW Natural's Response to Motions for Summary Determination, the Legislature responded to the Court by clarifying that the purchase of carbon offsets and other GHG mitigation efforts are "a recognized utility purpose that confers a direct benefit on the utility's ratepayers."<sup>32</sup> In so doing, the Legislature made clear its view that *Okeson* was wrongly decided and that carbon offset programs are in fact a legitimate utility service.

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<sup>28</sup> *Id.*

<sup>29</sup> The Initial Order also misinterprets the implications of RCW 80.80.040(13). Initial Order ¶ 25. That statute allows owners of projects that are subject to carbon sequestration requirements to fulfill those requirements by purchasing GHG emission reductions from other electric generating facilities within the Western interconnection. RCW 80.80.040(13). This statute provides authority for utilities to fulfill carbon sequestration requirements with GHG offsets. The statute does not confer upon the Commission new regulatory authority that has any bearing on programs such as Smart Energy and is therefore irrelevant to this case.

<sup>30</sup> *Okeson v. Seattle*, 159 Wash.2d 436 (2007).

<sup>31</sup> See *Farwell v. Seattle*, 43 Wash 141, 144-145 (1906) ("It is a general principle that a municipal corporation cannot usually exercise its powers beyond its own limits, and if in any case it has authority to do so, it must be derived from some statute which expressly or impliedly permits it. The doctrine of ultra vires is applied with greater strictness to municipal bodies than to private corporations.").

<sup>32</sup> 2007 Wash. Laws Ch. 349 § 1.

23. The ALJ has misinterpreted NW Natural's arguments regarding the Legislative response to *Okeson*, stating: "NW Natural points out that the Legislature provided the power that the *Okeson* court found lacking." However, the language of the statute suggests not that the Legislature was conferring new powers upon municipal utilities. Rather, it appears that the Legislature was clarifying that purchasing carbon offsets is a legitimate activity of municipal utilities and that, therefore, Seattle City Light always had the authority to do so. This distinction is important; if the Legislature believes that the authority to purchase carbon offsets is inherent in the authority of a municipal utility, whose mission is to "operate . . . facilities for the purpose of furnishing the city or town . . . with gas [or] electricity,"<sup>33</sup> there is no reason to believe that the same is not true of an investor owned utility, whose mission is provide "safe, adequate and efficient" utility service.<sup>34</sup> Thus, the *Okeson* case and the Legislative response serve to support rather than undermine NW Natural's arguments.

**B. The Commission Has the Authority to Spread Costs Associated with the Smart Energy Program to All Customers.**

24. Under Washington law, the Commission not only has authority to approve the Smart Energy Tariff, but also has authority to spread the costs of Smart Energy to all customers—so long as some of the benefits of the program flow to all customer classes. As discussed in NW Natural's Motion, this principle is best illustrated in a 1993 order in which the Commission allowed Washington Natural Gas Company to recover the costs of a water heater leasing program.<sup>35</sup> As in the case of Smart Energy, the monthly lease rate was too low to allow the

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<sup>33</sup> RCW 35.92.050.

<sup>34</sup> RCW 80.28.010.

<sup>35</sup> Motion ¶ 34.

utility fully to recover program costs.<sup>36</sup> As a result, the company proposed that all customers subsidize the cost of the program.<sup>37</sup> In support of its position, the utility argued that while customers who participated in the program received direct benefits of the program, the program provided some benefits to all customers in the form of the company's increased year-round load factor.<sup>38</sup> The Commission found that the program could provide an overall customer benefit if certain changes were made to the program and allowed the utility to continue to operate the program at a rate lower than cost.<sup>39</sup>

25. The "water heater" case is precisely on point. It concerns a program outside the company's core utility service, and asks whether the costs of the program can be spread to customers who do not directly participate in the program. The Commission provides a very clear and concise answer that is consistent with the holding in *Jewell*: The Commission has authority to approve and spread the costs of a "non-core" service to customers that do not directly participate in the service if the service provides at least some benefits to all utility customers.

26. The Initial Order misunderstands the Commission's holding in the water heater case. In footnote 28, the Initial Order incorrectly states that the "Commission did not accept . . . the argument that cross-subsidy among classes of rate payers is permissible" where there are indirect benefits to all customers. This statement is incorrect. The Commission, did *not* require the company to eliminate the subsidy.<sup>40</sup> On the contrary, the Commission ordered the company to file a "cost-recovering rate for the *new*, efficient water heaters it proposes to lease, along with a

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<sup>36</sup> *Wash. Util. & Transp. Comm'n v. Wash. Natural Gas Co.*, Docket UG-920840, 4<sup>th</sup> Suppl. Order (Sept. 27, 1993).

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

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

new \$4.00 per month rate for the *existing* heaters.”<sup>41</sup> Therefore, the Commission explicitly allowed all customers to subsidize the cost of leasing the existing water heaters, while requiring full cost recovery from program participants only for new water heaters.

27. Thus, given the Company’s evidence of Smart Energy’s benefits, this Commission has clear authority to adopt the Smart Energy tariff and approve the Petition. Indeed, it was the evidence of broad benefits of the program that served as the basis for the OPUC’s approval of the Oregon Smart Energy Program tariff and the accompanying accounting petition. In its Staff Report, OPUC Staff specifically found:

The Company persuasively argued that this pilot program provides knowledge and experience with carbon regulation that would reduce future compliance costs and allows the Company to search now for low cost mitigation opportunities that may no longer be available in a more fully developed compliance market. ***Staff agrees that these actions are likely to lower the Company’s compliance costs that would be passed on to customers in the future.***<sup>42</sup>

28. Based on this finding, the Commission found that there was a “sufficient showing of utility related benefit to approve the filings.”<sup>43</sup> Washington customers will similarly benefit from the Smart Energy Program through reduced compliance costs and more efficient service.

29. Finally, the Initial Order relies on the electric utility Green Tag program, RCW 19.29A.090, to find that if the costs of those programs cannot be borne by all utility customers, it follows that the Smart Energy Program costs should not be borne by all customers either.<sup>44</sup> The Initial Order, however, fails to address the differences between the Smart Energy

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<sup>41</sup> *Id.* (emphasis added).

<sup>42</sup> *Re NW Natural Gas Company Application for Deferred Accounting for Certain Smart Energy Program Startup Costs*, Docket UM 1327, Order No. 07-383, Appendix A, p. 4 (emphasis added).

<sup>43</sup> *Id.* at 1.

<sup>44</sup> Initial Order ¶ 30.

Program and the Green Tag programs and the differences in policy since the Legislature passed RCW 19.29A.090.

30. First, as NW Natural discussed in detail in its Motion,<sup>45</sup> the policy prohibiting cost recovery among all customers in RCW 19.29A.090 is outweighed by the more timely and compelling policies the Legislature has articulated in its efforts to limit GHGs. The Legislature adopted the RCW 19.29A.090 in 2001 and amended the statute in 2002. Since that time, the Legislature has enacted laws requiring the state to reduce overall emissions of GHGs,<sup>46</sup> and adopted the Renewable Portfolio Standard.<sup>47</sup> Perhaps most relevant, and as discussed above, following the court decision in *Okeson*, the Legislature declared that a municipal utility's carbon offset purchase program serves a "recognized utility purpose that confers a direct benefit on the utility's ratepayers,"<sup>48</sup> with the clear implication that municipal utility ratepayers can be assessed the costs of such programs. While the Initial Order correctly notes that this statute applies specifically to carbon offset programs offered by municipal utilities and is therefore not binding on the Commission, as a matter of policy, the statute applies with equal force to the Smart Energy Program.

31. Second, there are sound bases for distinguishing a Green Tag program offered by an electric utility with that of a carbon offset program offered by a local distribution company such as NW Natural. When a gas utility offers a program such as Smart Energy, it assumes a risk that an electric utility does not. Alternative energy options tend to enhance the image of electric utilities by offering customers what they perceive to be a more environmentally friendly version

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<sup>45</sup> Motion ¶¶ 42–46.

<sup>46</sup> 2008 Laws Ch. 14 § 3.

<sup>47</sup> RCW 19.285.010 *et seq.*

<sup>48</sup> 2007 Wash Laws Ch. 349 § 1.

of the utility's product. In contrast, implementing the Smart Energy Program requires NW Natural to educate its customers about the environmentally harmful effects of their natural gas use. Thus, NW Natural is taking a risk in offering Smart Energy that its customers will view natural gas as undesirable.

32. Moreover, the Smart Energy Program is distinguishable from Green Tag programs in that it provides customers with additional educational benefits. While the benefits of alternative energy are generally well understood by the public, the benefits of carbon offsets are more complex and less easily understood. Accordingly, the Smart Energy Program will educate customers on issues that are not already common knowledge, providing them with a greater educational benefit than that provided by Green Tag programs.

33. For these reasons, Smart Energy is clearly distinguishable from the Green Tag programs that are the subject of RCW 19.29A.090. It is therefore inappropriate for the Commission to apply the Green Tag policy to NW Natural's Smart Energy Program.

**C. The Commission Should Approve the Smart Energy Tariff and Deferral Petition.**

34. In its Motion for Summary Determination, NW Natural presented evidence and argument demonstrating that the Smart Energy Program is consistent with the public policy as articulated by the Legislature and the Governor. Because the ALJ found that the Commission lacked the authority to approve the Smart Energy Tariff and the Accounting Petition, the Initial Order did not reach the question as to whether, as a matter of policy, the Commission *should* approve the tariff and Deferral Petition. NW Natural urges the Commission to find in the affirmative.

35. The Smart Energy Program is an innovative program that takes a proactive approach to Washington's articulated policy of reducing GHGs. This year, the Washington Legislature passed RCW 70.235.020, which requires the state to reduce overall emissions of GHGs to certain

levels by 2020, 2035, and 2050. The law requires the Director of the Department of Ecology to develop a design for a regional market-based system to limit and reduce GHGs.<sup>49</sup> The Governor also recently declared Washington's commitment to reducing GHGs in the state.<sup>50</sup> Through its efforts to reduce its customers' carbon footprints through the purchase of high-quality carbon offsets, the Smart Energy Program will directly further these significant and timely Washington policy goals.

36. Moreover, Smart Energy has been supported by key stakeholders in both Oregon and Washington. In Washington, Staff recommended that the Commission approve the tariff, noting its value.<sup>51</sup> NW Energy Coalition also supports the program, noting that it offers "a realistic and honest alternative" until biogas is available to customers and that the program benefits all customers, whether or not they participate in the program.<sup>52</sup> In addition, the OPUC has approved the program and OPUC Staff found that the Smart Energy Program was an attractive product that "is innovative and unique to local gas distribution companies in the Northwest."<sup>53</sup>

37. In addition to the specific economic benefits discussed above, Smart Energy will provide other, less tangible but nevertheless significant benefits to NW Natural's Washington customers. In particular, the Company plans to engage in a comprehensive communications program to educate its customers on the connection between natural gas, GHG emissions, and climate

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<sup>49</sup> RCW 70.235.030.

<sup>50</sup> Executive Order 07-02 (Feb. 7, 2007).

<sup>51</sup> *Wash. Util. & Transp. Comm'n v. NW Natural Gas Co.*, Docket No. UG-080519, Staff's Open Meeting Memorandum at 1 (Apr. 30, 2008).

<sup>52</sup> *Re NW Natural Gas Co. Petition for an Accounting Order Authorizing Deferred Accounting Treatment of Certain Costs Associated with the Smart Energy Program*, Docket No. UG-080530, *Wash. Util. and Transp. Comm'n v. NW Natural Gas Co.*, Docket No. UG-080519, NW Energy Coalition Letter (Apr. 29, 2008).

<sup>53</sup> *Re NW Natural Gas Co. dba NW Natural Application for Deferred Accounting for Certain Smart Energy Program Startup Costs*, Docket UM 1327, Order No. 07-383 Appendix at 3 (Aug. 31, 2007).



change; how offsets help mitigate a customer's use of natural gas; and how clean energy programs help to reduce GHGs and climate change.<sup>54</sup>

38. Finally, support for the program from non-participants will be modest. The Petition seeks authorization to defer start up costs for Smart Energy in Washington for 2008 and 2009 up to a total of \$79,000.<sup>55</sup> The Company estimates that the effect on an average residential customer bill will be approximately 6 cents per month for one year—about a .1 percent change over current rates.<sup>56</sup>

39. For all of these reasons, Smart Energy is good public policy. Therefore, the Commission should exercise its authority to approve the Smart Energy tariff and Deferral Petition.

#### **IV. CONCLUSION**

40. Smart Energy represents a forward-thinking approach to this state's most compelling public policy concern—that of global climate change. The program will not only further the Legislative mandate to reduce GHG emissions, it will also provide NW Natural with the knowledge and experience with carbon offset markets that will allow it to provide more efficient cost-effective service in a carbon-constrained world.

41. The Initial Order's unduly narrow view of the Commission's authority to approve Smart Energy stems from its failure to recognize the broad utility-related benefits that will flow to all

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<sup>54</sup> Motion ¶ 17.

<sup>55</sup> Petition ¶ 1.

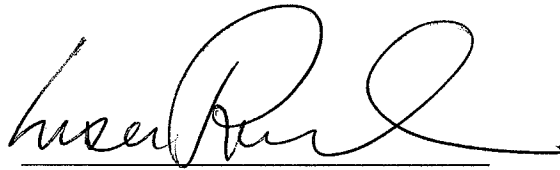
<sup>56</sup> Motion ¶ 3.

Smart Energy's customers. The Commission should therefore reject the Initial Order and approve NW Natural's Smart Energy Tariff and Accounting Petition.

Dated this 3rd day of November, 2008.

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