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February 12, 1993

Paul Curl, Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504

RE: WUTC v. Washington Natural Gas Company
Docket No. UG-920840

Dear Mr. Curl:

Enclosed please find the original and 19 copies of the Motion to Dismiss Public Refueling Station Tracker (Schedule 117). This motion is filed by the Commission staff, Public Counsel, Northwest Industrial Gas Users, and Seattle Steam. Please accept the same for filing.

Please also note that hearings are scheduled to reconvene in this matter on February 22, 1993. Should the Commission wish to hear oral argument on this motion, the moving parties are prepared to do so at those hearings or a later time determined by the Commission.

Thank you for your consideration.

Very truly yours,

ROBERT D. CEDARBAUM
Assistant Attorney General

RDC:rz
Enclosure
cc/enc: All Parties of Record

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
) DOCKET NO. UG-920840
 Complainant,)
)
 v.) MOTION TO DISMISS
) PUBLIC REFUELING STATION
 WASHINGTON NATURAL GAS) TRACKER (SCHEDULE 117)
 COMPANY,)
)
 Respondent.)
_____)

The staff of the Washington Utilities and Transportation Commission, Public Counsel, Northwest Industrial Gas Users and Seattle Steam hereby move to dismiss Washington Natural Gas Company's Proposed Schedule 117, entitled "Public Refueling Station Tracker." (Attachment) The reasons for the motion are as follows:

1. The parties' motion is in the nature of a motion for partial summary judgment. The motion should, therefore, be granted if there are no genuine issues as to any material fact and the moving parties are entitled to judgment as a matter of law. CR 56(c). In applying this standard, the Commission should consider all facts in a light most favorable to the non-moving party, Washington Natural Gas. Davis v. Niagara Mach. Co., 90 Wn.2d 342, 581 P.2d 1344 (1978); Husfloen v. MTA Coast., Inc., 58 Wn. App. 686, 794 P.2d 859 (1990).

2. No genuine issues of material fact exist relative to the proposed compressed natural gas (CNG) program. The company proposes to construct a total of sixteen public CNG refueling

stations over a three-year period. The capital costs for these stations are estimated at \$4 million. In addition, the company estimates operating costs for the CNG program of \$2.8 million over that same three-year period. Revenues, however, are projected at only \$1.65 million. (Ex. 10)

3. Sales of fuel for natural gas vehicle use will be made under proposed Schedule 50.¹ However, capital costs for the sixteen CNG refueling stations (including depreciation, and a return of and on capital), as well as all other operating costs incurred in the CNG program, will not be completely recovered from Schedule 50 customers. (Tr. 319) Instead, these costs will be recovered through a 0.123¢ per therm surcharge under Schedule 117 from virtually all other customer classes, including residential, commercial and industrial sales, as well as large and limited volume transportation.² (Ex. 103; Ex. 99, p. 103; Tr. 186) While the company intends "ultimately" to recover all costs associated with the CNG program from rates collected under Schedule 50, the company admitted that the point at which the CNG program would "break even" and be "self sufficient" was unknown. (Ex. 85, p. 79; Tr. 210-211) Indeed, it may be necessary to increase the Schedule

¹ The rate for the first 2500 therms of compressed natural gas is 60¢ per therm, while the rate for uncompressed natural gas is 40¢ per therm. (Ex. 43, p. 15)

² Schedule 117 will apply the surcharge to customers being served under Schedules 11, 23, 24, 31, 36, 41, 43, 50, 51, 57, 58, 85, 86 and 87. (Ex. 43, p. 46).

117 surcharge, especially in the second year of the CNG program. (Tr. 440-441) It may also be necessary to maintain Schedule 117 as a mechanism to recover CNG program capital and operating costs for at least five years and as long as ten years, if not "indefinitely." (Ex. 91, p. 56; Tr. 455-456; Ex. 86, p. 78)

4. Furthermore, while the company claims that revenues collected from sales under Schedule 50 will be used to offset costs recovered under the Schedule 117 tracker (Ex. 103), the company's own projections reflect operating losses of \$1.16 million in the initial three years of the CNG program which will be recovered, dollar for dollar, through the Schedule 117 surcharge imposed upon all other ratepayers. (Ex. 10; Tr. 198-200; Tr. 454) Moreover, the company's revenue projections themselves have not been substantiated through a formal market survey of the numbers, types, locations and activity of targeted fleets in the company's service territory, or the needs and attitudes of targeted fleet operators. (Tr. 214; Ex. 91, p. 58; 277) The extent to which Schedule 50 revenues will offset costs recovered under Schedule 117 is, therefore, uncertain and unmeasured.

5. When these facts are taken in a light most favorable to the company, it is nevertheless clear that the proposed CNG program requires all ratepayer classes to directly subsidize sales of natural gas for vehicle use.³ Indeed, as Mr. Thorpe admitted, the

³ This subsidy would also not economically benefit the vast majority of the company's ratepayers since ratepayers typically are not free to choose whether to use CNG for vehicle use. Indeed, Mr.

company will not ask its shareholders to fund the CNG investment because such investment is "speculative at best." (Tr. 177, 194, 258, 358) Therefore, to eliminate that risk the company is seeking the monetary backing of all of its customers, whether or not they purchase natural gas for vehicle use under Schedule 50. (Tr. 184, 192, 258, 295) The company's proposal to offset costs recovered under Schedule 117 with revenues from Schedule 50 only serves to highlight the company's dependence on all customer classes to initiate and sustain the CNG program. Even ratepayers who do not own or operate motor vehicles will be required to subsidize the use of CNG as a motor vehicle fuel through the tracker.

6. Schedule 117, therefore, directly violates RCW 81.28.280 which prohibits ratepayer subsidies of CNG refueling stations as follows:

The legislature finds that compressed natural gas offers significant potential to reduce vehicle emissions and to significantly

Thorpe agreed that individual ratepayers should not use CNG because of the expense of conversion (\$2,500-\$3,000) and because annual mileage is too low to make CNG price competitive with gasoline. (Tr. 204, 208) The company also agreed that not all fleets would find natural gas to be suitable either because the fleet is too small or because annual miles driven are too few to make the fuel price competitive with gasoline. (Ex. 91, p. 1; Tr. 204) Industrial customers, therefore, may also see no benefit from participating in the CNG program.

Clearly, the capacity to make use of CNG is constrained by factors over which non-using ratepayers have no ability to influence. Through the use of its tracker, however, the company would force all ratepayers for whom CNG is not a viable alternative to carry the financial burden of subsidizing ratepayers who can afford to participate in the CNG program.

decrease dependence on petroleum-based fuels. The legislature also finds that well-developed and convenient refueling systems are imperative if compressed natural gas is to be widely used by the public. The legislature declares that the development of compressed natural gas refueling stations are in the public interest. Nothing in this section and RCW 80.28.290 is intended to alter the regulatory practices of the commission or allow the subsidization of one ratepayer class by another.

(Emphasis added.)⁴

Legislative history supports the conclusion that the prohibition against ratepayer subsidies of CNG refueling stations is mandatory. During the House debate on Section 216 of the Air Pollution Reduction Act, now codified as RCW 80.28.280, legislators discussed the intent of language specifically added to clarify the role of the Commission in advancing the development of CNG refueling stations. That colloquy clarifies the legislature's intent that the users of CNG for vehicle use must pay the costs incurred to develop and furnish that service to them:

Senator Sutherland [sic]: "I note changes in [RCW 80.28.280 and RCW 80.28.290], language which refers to the role of the Utilities and Transportation Commission in

⁴ Schedule 117 also indirectly violates RCW 80.28.280 since it requires the company's ratepayers to fund a CNG program which, according to the company, will benefit non-ratepayers through cleaner air in the Puget Sound region. (Tr. 297-298) Moreover, the record indicates that there are 2.4 million passenger vehicles and light trucks in the Puget Sound area. (Ex. 91, p. 22) The company's CNG program, however, is projected to provide fuel to only 1,400 vehicles after three years. (Ex. 10) The company's claim that its CNG program will result in cleaner air is, therefore, grossly exaggerated.

furthering the development of compressed natural gas refueling stations. Could you please tell me the intent of these changes?'

Senator Anderson: "Certainly. The change to which you refer is to clarify the legislative intent that these sections are not meant to force the UTC to change any regulatory practices or to allow the subsidization of the CNG refueling stations by any other class of ratepayers. We expect the UTC to develop rules and approve tariffs which will ensure that users of compressed natural gas for vehicle fuel pay the costs associated with developing and providing service to them. Examples of such rules and tariffs are those which ensure that ratepayers in communities which require electrical undergrounding are not subsidized by ratepayers in communities which do not and which ensure that residential ratepayers do not subsidize the cost of service to industrial customers or vice versa."

Senator Sutherland: "Thank you. It's clear to me that nothing in these sections allows the subsidization of one ratepayer class by another."

Journal of the Senate, April 19, 1991 at 2333 (Emphasis added).

7. The parties Motion to Dismiss should, therefore, be granted as a matter of law. It is important to note, however, that the Motion is directed only against the Schedule 117 tracker. If the Motion is granted, the company remains free to propose a schedule for the sale of natural gas limited to vehicle use. Under those circumstances, the parties reserve the right to present testimony concerning the level and basis for such rates in order to insure that they are consistent with the public policy goals stated in RCW 80.28.280 of fostering the development of CNG refueling stations, but doing so without subsidies between ratepayer classes.

For the reasons set forth above, the company's proposed Schedule 117, entitled "Public Refueling Station Tracker," should be dismissed.

DATED this 12th day of February, 1993.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

By 

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C E R T I F I C A T E

I hereby certify that I have this day served a true copy of the foregoing document upon the parties of record listed below by mailing a copy thereof properly addressed to each such party by first class mail, postage prepaid.

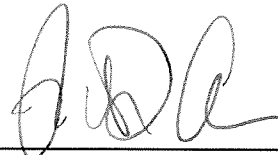
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ROBERT D. CEDARBAUM

February 12, 1993.

WASHINGTON NATURAL GAS COMPANY

DOCKET NO.	
EXHIBIT NO.	
SCHEDULE NO.	RAC-2
SHEET NO.	46 OF 49

WN U-2 Original Sheet No. 1117

PROPOSED

WASHINGTON NATURAL GAS COMPANY

SUPPLEMENTAL SCHEDULE NO. 117
Public Refueling Stations Tracker

(N)

APPLICABLE:

Throughout territory served.

PURPOSE:

To provide for special surcharge adjustment associated with funding of compressed natural gas public refueling stations program.

RATE:

- (a) The rates of firm gas Schedule Nos. 11, 23, 24, 31, 36, 41, 43, 50, and 51 are to be increased by 0.123¢ per therm in all blocks of these rate schedules. (I)
- (b) The rates of interruptible Schedule Nos. 85, 86, and 87 are to be increased by 0.123¢ per therm in all blocks of these rate schedules. (I)
- (c) The rates of transportation Schedule Nos. 57 and 58 are to be increased by 0.123¢ per therm in all blocks of these rate schedules. (I)
- (d) The charge for gas lighting service under Rate Schedule No. 16 is to be increased by \$0.00 per month per mantle.

SPECIAL TERMS AND CONDITIONS:

The rates named herein are subject to increases as set forth in Rate Schedule No. 1. (N)

ADVICE NO. 373-F488

Issued July 27, 1992

With all consumption on
and after August 27, 1992

Effective

Issued By Washington Natural Gas Company, Seattle, Washington

By Ritchie Campbell

Title Director, Rates & Special Studies