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Docket No.: UG-920840

Company: Washington Natural Gas

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March 2, 1993

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Mr. Paul Curl, Secretary
Washington Utilities and Transportation Commission
Chandler Plaza Building
1300 S. Evergreen Park Drive, S.W.
Olympia, WA 98504-7250

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

Dear Mr. Curl:

Enclosed please find the original and 19 copies each of the Northwest Industrial Gas Users' Brief in Support of Motion to Dismiss Public Refueling Station Tracker for filing with the Commission in the above referenced docket. One additional copy is enclosed to be filed-stamped and returned for our records.

Thank you for your attention to this matter. If you have any questions with regard to this filing, please call me.

Very truly yours,



Edward A. Finklea
Counsel for the Northwest Industrial
Gas Users

PEP/kkl

Encs.

cc: All Parties w/enc.
M.A. Hutton w/enc.

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WASHINGTON NATURAL GAS COMPANY,

Respondent.

)
)
) Docket No.
) UG-920840
)
) NORTHWEST INDUSTRIAL GAS
) USERS' BRIEF IN SUPPORT OF
) MOTION TO DISMISS PUBLIC
) REFUELING STATION TRACKER
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NORTHWEST INDUSTRIAL GAS USERS' BRIEF IN SUPPORT OF
MOTION TO DISMISS PUBLIC REFUELING STATION TRACKER

On February 12, 1993, the Northwest Industrial Gas Users (NWIGU),¹ the Washington Utilities and Transportation Commission Staff, Public Counsel, and Seattle Steam filed a Motion to Dismiss Public Refueling Station Tracker (Proposed Schedule 117), which was also supported by Intervenor PERCC (Partnership for Equitable Rates for Commercial Customers). NWIGU submits this Brief in support of the Motion to Dismiss and adopts the Motion to Dismiss as part of this Brief. The Commission should grant the joint Motion to

¹ The NWIGU is a nonprofit association comprised of 41 industrial end users of natural gas with major facilities in the states of Oregon, Washington, and Idaho. NWIGU members include diverse industrial interests, including food processing, pulp and paper, wood products, aluminum, steel, chemicals, electronics, and aerospace. The association provides an information service to its members and participates in various regulatory matters that affect member interests. Numerous NWIGU member companies purchase natural gas services from Washington Natural Gas under various rate schedules, including sales and transportation service.

Dismiss because the Public Refueling Station Tracker proposed by Washington Natural Gas (WNG) is illegal under Washington law.

No genuine issue of material fact exists regarding WNG's proposed Public Refueling Station Tracker program for compressed natural gas (CNG). WNG proposes to construct 16 public refueling stations for CNG over the next three years. WNG proposes to finance these stations' construction and the CNG program operating costs by an equal cents per therm surcharge on all WNG sales and transportation customers,² to be offset by whatever revenue is generated by actual CNG sales customers under proposed Rate Schedule 50. (Tr. Vol. III, at 439).

The evidence in the record before the Commission establishes that the break-even point for the proposed CNG program is unknown. (Tr. Vol. III, at 320). The company admitted that it would likely increase the Schedule 117 surcharge from the first year surcharge of 0.123 cents per therm, (Tr. Vol. III, at 441) and that its proposed subsidy from the non-CNG customer ratepayers would be necessary for at least five years and possibly ten, if not indefinitely (Tr. Vol. III, at 444, 454-56).

WNG's proposed Schedule 117 surcharge is illegal under Washington statutes as a matter of law. Ratepayer subsidies of CNG refueling stations by non-CNG users are prohibited under RCW 80.28.280. While declaring that CNG refueling stations are in the

² Schedule 117 applies to firm gas sales schedules 11, 23, 24, 31, 36, 41, 43, 50, and 51. Schedule 117 is also added to interruptible sales schedules 85, 86 and 87 and to transportation schedules 57 and 58. (Ex. 43, Sheet No. 46).

public interest, RCW 80.28.280 provides that: "Nothing in this section [80.28.280] 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).

The legislative history as detailed in the joint Motion to Dismiss further confirms that the legislature determined that cross-subsidies of CNG refueling stations by other utility ratepayers are prohibited. The statute is clear and unambiguous. WNG may argue that the Commission should interpret RCW 80.28.290 to allow its proposed tracker as an appropriate rate incentive. WNG is attempting to equate offering CNG customers rate incentives with assessing current customers a surcharge. The legislature rejected such a result. The Commission cannot ignore the prohibition against cross subsidies contained in RCW 80.28.280 under any pretense of construing a surcharge to be a rate incentive which is allowed under 80.28.290.

Under Washington law, "[a]n administrative agency cannot amend its statutory framework under the guise of interpretation." Cole v. WUTC, 79 Wash. 2d 302, 307, 485 P.2d 71, 74 (1971). Neither does an agency have the power to promulgate rules that amend or change legislative enactments. Green River Community College v. Higher Education Personnel Board, 95 Wash. 2d 108, 112, 622 P.2d 826, 829 (1980). In all its proceedings, a regulatory body must act strictly within its statutory authority, within constitutional limitations and in a lawful manner. State ex rel.

Pacific Telephone & Telegraph Co. v. Dep't of Public Service, 19 Wash. 2d 200, 215, 142 P.2d 498, 507 (1943).

RCW 80.28.290 requires the Commission to identify barriers to the development of CNG refueling stations and to "consider providing rate incentives to encourage natural gas companies to invest in the infrastructure required by such refueling stations." The statutory approval of rate incentives, however, is expressly limited by the bounds of 80.28.280. The legislature determined that under RCW 80.28.280, rate incentives cannot result in an unlawful subsidy from non-CNG ratepayers.

The Commission could consider a CNG sales tariff (analogous to Schedule 50) that recovers the costs of a more gradual building of CNG refueling stations from actual CNG ratepayers. WNG could provide the CNG customers with below-cost service while the program is getting started, as long as the discounts do not require current non-CNG customers to subsidize those customers. That is the balance the legislature struck.

Schedule 117 is, however, unlawful. The Motion to Dismiss should be granted.

DATED the 2nd day of March, 1993.

Respectfully submitted,

Edward A. Finklea

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by placing a true copy of the document properly addressed to each party in the United States mail first class postage prepaid.

Dated at Portland, Oregon, this 2nd day of March, 1993.


Edward A. Finklea