

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UG-080519
TRANSPORTATION)	
COMMISSION,)	
)	
Complainant,)	
)	
v.)	
)	
NORTHWEST NATURAL GAS)	
COMPANY,)	
)	
Respondent.)	
.....)	
In the Matter of the Petition of:)	DOCKET NO. UG-080519
)	DOCKET NO. UG-080530
NORTHWEST NATURAL GAS)	(consolidated)
COMPANY)	
)	
For an accounting order authorizing)	NORTHWEST NATURAL GAS
deferred accounting treatment of certain)	COMPANY'S RESPONSE TO MOTION
costs associated with the Company's)	TO CONSOLIDATE WITH DOCKET NO.
Smart Energy Program)	UG-080546
.....)	

I. INTRODUCTION

1. On June 4, 2008, the Public Counsel Section of the Washington State Attorney General's Office ("Public Counsel") filed a motion with the Washington State Utilities and Transportation Commission ("Commission") to consolidate Northwest Natural Gas Company's ("NW Natural" or "the Company") two Smart Energy filings—the tariff filing introducing the Smart Energy Program, and the Petition for Deferred Accounting Treatment of Certain Costs

Associated with the Company's Smart Energy Program (together, the "Smart Energy Filings"¹)— with the Company's current Rate Case² ("Motion"). NW Natural opposes Public Counsel's Motion.

2. First, consolidation would not increase judicial economy or administrative efficiency. The Commission has already reviewed the Smart Energy Filings and has engaged in its initial investigation through the Public Meeting process. Therefore, it may actually duplicate effort to ask the Commission to begin its review anew through the Rate Case process. Moreover, the Smart Energy Filings raise unique legal issues that would not otherwise be at issue in the Rate Case. Thus, if the Commission grants Public Counsel's Motion, the Commission would be required to expend virtually the same amount of or more time and resources than it would have if the dockets remained separate.

3. Second, any potential gains in economy and efficiency would come at the cost of an unacceptable delay in the Commission's decision in the Smart Energy Filings. The current Rate Case schedule does not call for a Commission decision until well into 2009. Such an extended delay in the Commission's decision on the Smart Energy Filings would not only be unfair to Washington customers who want to enroll in the program, but could also jeopardize the overall viability of the program. Because consolidation would not meaningfully increase judicial economy or efficiency, would unacceptably delay decisions on the Smart Energy Filings and could damage the ultimate success of the program, NW Natural respectfully requests that the Commission not consolidate the Smart Energy Filings with the Rate Case.

¹ *Re 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 No. UG-080530 and *WUTC v. Northwest Natural Gas Company*, Docket No. UG-080519.

² *WUTC v. Northwest Natural Gas Company*, Docket No. UG-080546.

II. BACKGROUND

4. On March 21, 2008, NW Natural filed revisions to its currently effective Tariff WN U-6 to establish a Smart Energy Program.³ Three days later, on March 24, 2008, the Company filed a petition for an order authorizing deferred accounting treatment of certain start up costs associated with the Smart Energy™ Program expected to be incurred in 2008 and 2009, not to exceed \$79,000 ("Petition").⁴

5. The Commission considered the Smart Energy Filings at a Public Meeting on April 30, 2008. At that time, representatives from Commission Staff and NW Natural staff appeared and responded to questions posed by the Commission on both the substance of the Smart Energy™ Program and the merits of the Petition. Based upon the Commissioners comments at the Public Meeting, it appeared that the Commissioners were supportive of the program itself, but had remaining questions about the appropriateness of spreading the start-up costs to all customers (including non-participants). Thus, the Commission suspended the tariff filing and set both the Smart Energy Filings for hearing.⁵

III. DISCUSSION

A. Legal Standard.

6. Under Washington law, the Commission has discretion to consolidate proceedings in which the facts or principles of law are related.⁶ The Commission, however, will not exercise this discretion if consolidation would not produce a meaningful increase in administrative

³ *WUTC v. Northwest Natural Gas Company*, Docket No. UG-080519 (Mar. 21, 2008).

⁴ *Re 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 No. UG-080530 (Mar. 24, 2008).

⁵ Order 1 at 5, Docket Nos. UG-080519 and 080530 (May 2, 2008).

⁶ WAC 480-07-320.

efficiency or judicial economy and would unacceptably delay entering a final order in a proceeding.⁷

B. Consolidation Would Not Meaningfully Increase Administrative Efficiency or Judicial Economy in this Case.

7. The Smart Energy Program is a five-year pilot program that enables NW Natural customers to offset greenhouse gas emissions associated with natural gas use by purchasing carbon offsets developed by The Climate Trust. As described in detail in the Petition, the Smart Energy Program will benefit all NW Natural customers, not only participants in the program, by providing customer education on carbon issues and providing the Company with the experience and knowledge necessary to prepare for carbon regulation. NW Natural plans to conduct a review of the program in the fall of 2010.
8. In this case, any potential increase in administrative efficiency or judicial economy resulting from consolidation would be insignificant. First, in the absence of this motion to consolidate, the Commission would have no reason to evaluate the Smart Energy Program within the context of the Rate Case. NW Natural is not seeking recovery of the Smart Energy-related costs in the Rate Case, and NW Natural has not filed testimony on the Smart Energy Program in the Rate Case. Public Counsel states that NW Natural references the Smart Energy Program as part of its commitment to address climate change in Rate Case testimony.⁸ The Company, however, did not provide this testimony as an evidentiary basis for recovery of Smart Energy Program costs—the testimony instead supported NW Natural's analysis of risks facing the Company.

⁷ *Qwest Corp. v. Level 3 Comm., LLC*, Order Declining to Consolidate Dockets, Docket No. UT-063038 (Feb. 15, 2008).

⁸ Public Counsel Motion to Consolidate with Docket No. UG-080546 at 2, Docket Nos. UG-080519, UG-080530 (June 6, 2008).

9. On the other hand, the parties and the Commission have already been evaluating the Smart Energy Program in the Smart Energy Filings proceeding. It would actually be administratively inefficient to include the Smart Energy Filings in the Rate Case, where the Commission and the parties would be required to begin their review of the Smart Energy Filings anew. Moreover, there may be parties to the Smart Energy proceedings that would not otherwise be involved in NW Natural's general rate case. Forcing these parties to participate in a docket that is much more complex and broader in scope could act as a deterrent to their participation.

10. Second, there is little overlap between the legal issues raised in the Smart Energy Filings and the Rate Case. Public Counsel states that the overall prudence of the Smart Energy Program is identical to the issue of the prudence of other staffing and administrative costs that will be at issue in the Rate Case.⁹ Public Counsel is mistaken. The central legal issue posed by the Smart Energy Filings is whether the program's start-up costs are recoverable through generally applicable rates, or instead must be recovered through Smart Energy rates only. Indeed, contrary to Public Counsel's claims, the Petition does not request that the Commission evaluate the prudence of Smart Energy. The Commission would consider this issue at some time in the future, after the Company incurs those expenses and can present evidence of the prudence of the expense.¹⁰ As a result, the Smart Energy filings raise unique legal issues, such as those referenced in Commission Staff's Open Meeting Memo of April 30, 2008,¹¹ that are not applicable to other issues that parties will raise in the Rate Case.

⁹ *Id.* at 2.

¹⁰ The Commission analyzes a petition for an accounting order and the proposal for recovery of the deferred costs as related but distinct issues. *Washington Utilities and Transportation Commission v. PacifiCorp dba Pacific Power & Light Co.*, Docket UE-050684, Order No. 4 at 110 (Apr. 17, 2006). The Commission will first decide whether it should approve the deferral of costs as requested in the accounting petition. *Id.* The Commission will then address whether the deferred costs will be included for recovery in rates. *Id.* The Commission will only address the recovery of deferred costs after development of a detailed record. *Id.* at 111.

¹¹ Open Meeting Memo, Docket No. UG-080530 (Apr. 30, 2008).

11. Public Counsel also states that the fact that NW Natural proposed a conservation program and requested decoupling in the Rate Case indicates that the Commission should consolidated the Smart Energy Filings with the Rate Case.¹² Public Counsel does not explain how the proposed conservation program or the decoupling request relates to Smart Energy. In fact, the conservation program is an energy efficiency program and does not relate to the Smart Energy Program in any meaningful way. It appears that the only connection that Public Counsel has identified between these issues is that both Smart Energy and the conservation program would provide environmental benefits. The conservation program and the decoupling request would not raise the same legal or factual issues that Staff has identified with respect to the Smart Energy Filings. Therefore, consolidation of these issues would not promote judicial economy or administrative efficiency.

12. The Smart Energy Filings and the Rate Case are at different states with respect to an evaluation of the Smart Energy Program, and the legal issues relevant to the two proceedings are only loosely related at best. As a result, consolidation will not meaningfully increase judicial economy or administrative efficiency. Consolidation may actually decrease economy and efficiency, given that the Commission has already begun evaluating the Smart Energy Program in the Smart Energy Filings proceeding.

C. Consolidation Would Unacceptably Delay Decisions on the Smart Energy Filings and Harm the Public Interest.

13. The Commission balances the potential increase in judicial economy and administrative efficiency against the delay that would result from consolidation.¹³ In this case, consolidating the Smart Energy Filings with the Rate Case would result in a delay of almost a year from when

¹² Public Counsel Motion to Consolidate with Docket No. UG-080546 at 3, Docket Nos. UG-080519, UG-080530 (June 6, 2008).

¹³ *Qwest Corp. v. Level 3 Comm., LLC*, Order Declining to Consolidate Dockets, Docket No. UT-063038 (Feb. 15, 2008).

NW Natural originally made its filing to the Commission's decision. The delay would harm NW Natural's customers in two ways, and is therefore unacceptable.

14. First, delaying the decision on the Smart Energy Filings would deprive Washington customers of the benefit of the program when Oregon customers are reaping those benefits. The Company seeks to the greatest extent possible to provide the same programs to its Oregon and Washington customers. NW Natural initiated the Smart Energy Program for its Oregon customers in August of 2007 and filed its Smart Energy Filings in March of 2008 to extend the program to its Washington customers. The time lapse between the filing dates in each state reflects the difficulty of introducing first-of-its-kind programs simultaneously in two jurisdictions and the realities of staffing and resources. The Company has received inquiries from its Washington customers about enrolling in the program. It would be unfair to the Company's Washington customers to prevent them from enjoying the benefits of the program until the Rate Case decision.

15. Second, the viability of the program may depend upon the Company's ability to enroll Washington customers. When the Company initially analyzed the Program, and considered the number of participants the Company needed to make Smart Energy self-sufficient by the end of the pilot program, an estimate was included for Washington customers. Without the opportunity to enroll any of the Company's 66,500 Washington residential and commercial customers, the Smart Energy Program may be unable to enroll enough participants to meet these targets and achieve self-sufficiency. This could ultimately result in the termination of the pilot program. As NW Natural described in its Smart Energy Filings, the Smart Energy Program will provide NW Natural's customers with significant economic and non-economic benefits. The Commission risks depriving customers of those benefits if it consolidates the Smart Energy proceedings with the Rate Case.

IV. CONCLUSION

16. The lengthy delay and potential damage to the viability of Smart Energy is not worth the trivial increase in judicial economy and administrative efficiency that could potentially result from consolidation. NW Natural urges the Commission to deny Public Counsel's motion on this basis.

Dated this 12th day of June, 2008.

Respectfully submitted,

By:



Lisa F. Rackner
MCDOWELL & RACKNER PC
520 SW 6th Avenue, Suite 830
Portland, OR 97204
Tel: (503) 595-3925
Fax: (503) 595-3928
lisa@mcd-law.com