

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

NORTHWEST NATURAL GAS
COMPANY,

Petitioner,

Seeking an Order Approving Natural
Gas Potential Conservation Assessment

DOCKET UG-210773

ORDER 01

APPROVING NATURAL GAS
CONSERVATION POTENTIAL
ASSESSMENT SUBJECT TO
CONDITIONS

BACKGROUND

- 1 The Clean Buildings Act (Act)¹ sets forth new requirements for natural gas conservation potential assessments. Pursuant to RCW 80.28.380, a utility must identify and acquire all conservation measures that are “available and cost effective.” The utility must establish an acquisition target every two years, with the first target taking effect in 2022. The Washington Utilities and Transportation Commission (Commission) must approve the acquisition target by order. These targets must be based on a conservation potential assessment prepared by an independent third party and approved by the Commission and. The analysis used to identify all cost-effective conservation must include the cost of greenhouse gas emissions.
- 2 On July 29, 2021, Northwest Natural Gas Company (NW Natural or Company) filed a 2021 Conservation Potential Assessment (Conservation Potential Assessment or CPA) prepared by Applied Energy Group. In the CPA, the Applied Energy Group provides an analysis of the available and cost-effective conservation potential for NW Natural over a planning horizon from 2022 to 2050. Using both the Total Resource Cost (TRC) test and the Utility Cost Test (UCT), the Applied Energy Group identified 80,831,000 therms of natural gas energy efficiency achievable potential in 2022, with additional savings in subsequent years.
- 3 On September 14, 2021, the Commission issued a Notice of Opportunity to File Written Comments by September 27, 2021. The Commission asked for feedback approving

¹ See generally Laws of 2019, ch. 285.

Conservation Potential Assessments under RCW 80.28.380. The Commission asked for feedback on the following issues:

1. Does the requirement to incorporate the social cost of greenhouse gases under RCW 80.28.380 require the utility to use a Total Resource Cost (TRC) test in identifying cost-effective conservation measures?
2. What considerations should be included in an analysis of the availability of conservation required under RCW 80.28.380?
3. Must utilities include conservation measures from gas transportation customers in their identification of all conservation measures under RCW 80.28.380?

4 On September 27, 2021, the Commission received written comments from NW Natural, Alliance of Western Energy Consumers (AWEC), the Public Counsel Unit of the Attorney General's Office (Public Counsel), and Commission staff (Staff).

5 In its comments, NW Natural submitted that RCW 80.28.380 does not require a specific cost-effectiveness test for reflecting the cost of greenhouse gas emissions. The Company notes that it reflected the social cost of greenhouse gas emissions in avoided costs in its analysis. NW Natural does not interpret the statute as requiring gas companies to include conservation measures from transportation customers. NW Natural questions whether there are any cost-effective savings available for these customers.

6 Much like NW Natural, AWEC submits that RCW 80.28.380 does not require a specific cost-effectiveness test for reflecting the cost of greenhouse gas emissions. AWEC argues that the statute is silent with respect to transportation customers and that requiring utilities to include these customers in their CPAs would depart from past practice.

7 Public Counsel notes that the UCT includes only the costs and benefits that accrue to the utility or program administrator.² Noting the relatively broad language of RCW 80.28.395, Public Counsel submits that the Act's provisions rule out the UCT as a method of identifying cost-effective conservation based on the social cost of greenhouse

² See generally *In re the Comm'n Investigation into Nat. Gas Conservation Programs*, Docket UG-121207, Policy Statement ¶¶ 7-17 (October 9, 2013) (Natural Gas Conservation Policy Statement) (defining various tests used to measure the cost of greenhouse gas emissions).

gas.³ Public Counsel discusses whether transportation customers should be included in CPAs but does not specifically take a position on the issue.

8 Staff asserts that the social cost of greenhouse gases is not a cost to the utility and that RCW 80.28.380 essentially requires the utility to use either the TRC test or the Societal Cost Test (SCT), which reflect costs beyond the utility's system.

9 With respect to transportation customers, Staff submits that the statute's language is both expansive and mandatory. Gas transportation customers are purchasing a service regulated by the Commission. Staff explains, though, that the utility would still need to evaluate whether there were conservation measures that were both available and cost-effective for these customers.

10 In its memorandum for this docket, Staff notes that NW Natural's Conservation Potential Assessment followed Northwest Power and Conservation Council (NWPCC) methodology and past standard practice to identify conservation potential. Staff notes that a typical CPA does not include large industrial-scale users of natural gas like the gas transportation customers. Staff recommends, therefore, that the Company investigate conservation measures for transportation customers on a case-by-case basis, over the next biennium.

11 Staff does not dispute the Company's CPA and recommends that the Commission approve it subject to conditions. Specifically, Staff recommends that the Company's present CPA, filed on July 29, 2021, be approved subject to the condition that the Commission place the following requirements on the Company's CPA in two years' time:

1. **Increase Transparency of Subsequent CPA Filings.** The Company will file the full CPA model (confidentially where necessary) with the Commission when seeking approval of the CPA. The Company will coordinate one or more structured, technical discussions as the CPA is developed to discuss the CPA model with Commission Staff, other interested stakeholders, and the independent third party performing the

³ RCW 80.28.395 provides in part: "For the purposes of RCW 80.28.380, the cost of greenhouse gas emissions resulting from the use of natural gas, including the effect of emissions occurring in the gathering, transmission, and distribution of natural gas to the end user is equal to the cost per metric ton of carbon dioxide emissions, using the two and one-half percent discount rate, listed in table 2, Technical Support Document: Technical update of the social cost of carbon for regulatory impact analysis under Executive Order 12866, published by the interagency working group on social cost of greenhouse gases of the United States government, August 2016."

CPA. The Company will work with Staff to establish a timeline and additional supporting documentation required for Staff review.

2. **Assessment of Transportation Customer Conservation Potential.** The Company must evaluate the available and cost-effective savings potential for the benefit of all transportation customers using the following provisions.
 - a) Develop an outreach plan to offer voluntary energy audits that may be conducted by the utility or third-party contractors as a customer service.
 - b) Consult with the energy efficiency advisory group in developing a plan and reporting mechanism.
3. **Deferral of Costs.** Costs for implementing and administering an Assessment of Transportation Customer Conservation Potential as described above are recoverable from the customer classes benefitting from these services, including through transportation rates, as determined by the Commission. The Company may request deferral of these costs.

12 On October 14, 2021, the Commission heard comments from stakeholders including NW Natural, Staff, Public Counsel, and AWEC at its regularly scheduled open meeting. The stakeholders provided additional support for their written comments in this proceeding.

DISCUSSION

13 We approve the Company's Conservation Potential Assessment, taking effect for the 2021 to 2023 biennium. We accept Staff's first recommended condition, which requires the Company to provide the full model and workpapers supporting its next Conservation Potential Assessment filed in two years' time. However, we decline to decide at this time whether the Clean Buildings Act requires the utilities to evaluate conservation potential for gas transportation customers.

14 For some time, the Commission has required utilities to develop Integrated Resource Plans, which describe the mix of natural gas supply and conservation to meet customer demand at the lowest reasonable cost.⁴ Utilities have also been permitted to recover the

⁴ E.g., WAC 480-90-238(2).

costs of these conservation programs in rates.⁵ NW Natural operates its energy efficiency programs under a settlement stipulation approved by the Commission in Docket UG-080546 in Order 04.

15 The Clean Buildings Act expands the Commission’s role in evaluating natural gas conservation programs. Pursuant to RCW 80.28.380, a utility must identify and acquire all conservation measures that are “available and cost effective.” The utility must establish an acquisition target every two years, reflecting all “available and cost effective” conservation, with the first target taking effect in 2022. The Commission must now approve the acquisition target by order.⁶

16 We agree that NW Natural’s CPA for the 2022 - 2023 biennium, subject to the first condition recommended by Staff, meets the requirements of the statute and should be approved. The CPA was prepared by an independent third party and reasonably reflects all available and cost-effective conservation measures typically considered.

17 Nevertheless, the first round of CPAs under the Clean Buildings Act raises significant policy issues that require further evaluation. We address each of these issues in turn.

Cost-effectiveness analysis and methodology

18 The passage of RCW 80.28.380 raises questions as to how utilities should perform cost-effectiveness analyses for their conservation programs. This issue deserves further consideration over the next biennium.

19 NW Natural’s CPA followed NWPCC methodology and past standard practice to identify conservation potential. With regards to the specific cost-effectiveness tests, NW Natural notes that it uses both the TRC and UCT. The Company includes the social cost of greenhouse gas as an avoided cost. We find this approach adequate and approve the CPA but recognize that this is a complicated issue that deserves further consideration in the coming years.

20 For example, both Staff and Public Counsel have raised concerns as to whether the UCT is able to properly account for the social cost of greenhouse gas emissions.⁷ These are valid concerns. We therefore adopt Staff’s proposed conditions. Staff’s proposed

⁵ See RCW 80.28.303.

⁶ See *id.*

⁷ See WAC 194-40-100 (setting forth the social cost of greenhouse gas emissions to be included by utilities in resource planning, evaluation, and selection).

condition 1, noted in paragraph 11 of this Order, provides greater transparency into the next CPA filed by the Company and the workpapers supporting that filing. This requirement will allow the Commission to further consider this issue when NW Natural files its next CPA for the 2024 - 2025 biennium.

21 There are also concerns that using the UCT to perform certain cost-effectiveness calculations may affect decision-making around conservation programs. As we observed in our Natural Gas Conservation Policy Statement, NW Natural’s advisory group plays an important role in evaluating these programs and addressing the potential shortcomings of the UCT methodology. We encourage NW Natural’s advisory group to continue to scrutinize and vet conservation programs.⁸

Transportation Customers

22 The Commission has also sought feedback as to whether RCW 80.28.380 requires utilities to include conservation measures from gas transportation customers in their identification of conservation measures.

23 The Washington State Supreme Court has held, “Our starting point must always be the statute’s plain language and ordinary meaning.”⁹ We follow the same principle here, but we recognize the ambiguity in the statute at issue.

24 The Clean Buildings Act does not directly address gas transportation customers and whether they should be included or excluded from utility conservation potential assessments. The statutory provision in question, RCW 80.28.380, provides in relevant part that “[e]ach gas company must identify and acquire *all* conservation measures that are available and cost-effective.” (Emphasis added). Staff argues that the term “all” indicates a legislative intent that utilities identify and acquire conservation potential from gas transportation customers.

25 We must, however, still give effect to the remaining terms of RCW 80.28.380, and we do not have sufficient information at this point to determine whether there are “available” and “cost-effective” conservation measures for gas transportation customers. Because the

⁸ Natural Gas Conservation Policy Statement ¶ 38 (“To guard against the implementation of unreasonable programs, and to address concerns with the UCT, we continue to rely on the natural gas utilities’ conservation advisory groups to scrutinize program designs.”).

⁹ *State v. J.P.*, 149 Wn.2d 444, 450 (Wash. 2003).

statute requires an inquiry into these very issues, this is not a purely legal question. Rather, it requires applying the law to the facts at hand.

26 Nor do other provisions of the Clean Buildings Act provide clarity. “Where we are called upon to interpret an ambiguous statute or conflicting provisions, we may arrive at the legislature’s intent by applying recognized principles of statutory construction.”¹⁰ We have no evidence that the legislature intended to either include or exclude transportation customers when passing the Clean Buildings Act, but we nevertheless observe that it broadly encouraged conservation measures. The legislature declared “that efficiency is the region’s largest, cheapest, lowest risk energy resource” and that the region could potentially meet its needs for electricity load growth with “an aggressive new energy efficiency policy.”¹¹ Again, the legislative intent appears to broadly encourage conservation without addressing the issue of gas transportation customers specifically.

27 Ultimately, we find that the statute is ambiguous and that more information is needed. We find it appropriate to approve the Conservation Potential Assessment at hand, subject to Staff’s proposed condition 1, which provides greater transparency into the Company’s next Conservation Potential Assessment. The Commission may revisit the issue of gas transportation customers in a future proceeding.

FINDINGS AND CONCLUSIONS

- 28 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including gas companies.
- 29 (2) NW Natural is a gas company and a public service company subject to Commission jurisdiction.
- 30 (3) NW Natural is subject to RCW 80.28.380, which requires the Company to determine a conservation acquisition target every two years, effective 2022.
- 31 (4) NW Natural’s Conservation Potential Assessment was prepared by an independent third party and followed NWPCC methodology.

¹⁰ *J.P.*, 149 Wn.2d at 450.

¹¹ Laws of 2019, ch. 285 § 1.

- 32 (5) NW Natural identifies 80,831,000 therms of natural gas energy efficiency achievable potential in 2022, with additional savings in subsequent years.
- 33 (6) The Commission received written comments from the Company, Public Counsel, Staff, and AWEC. The stakeholders disagreed as to whether RCW 80.28.380 requires a specific method of cost-effectiveness analysis and whether transportation customers are included under the statute.
- 34 (7) NW Natural should provide the full Conservation Potential Assessment model and supporting workpapers in advance of its next Conservation Potential Assessment filing in 2023.
- 35 (8) The Commission requires more information to determine whether RCW 80.28.380 should be interpreted to include natural gas transportation customers.
- 36 (9) This matter came before the Commission at its regularly scheduled meeting on October 14, 2021. The Commission heard additional feedback from stakeholders in support of their written comments.
- 37 (10) After reviewing NW Natural's Conservation Potential Assessment filed on July 29, 2021, and giving due consideration to all relevant matters, the Commission finds that NW Natural's Conservation Potential Assessment should be approved subject to the Staff's proposed condition 1, set forth in paragraph 11 of this Order.

ORDER

THE COMMISSION ORDERS:

- 38 (1) Northwest Natural Gas Company's Conservation Potential Assessment filed on July 29, 2021, meets the requirements of RCW 80.28.380, and should be approved subject to Staff's proposed condition 1, set forth in paragraph 11 of this Order.
- 39 (2) The Commission retains jurisdiction over the subject matter and Northwest Natural Gas Company to effectuate the provisions of this Order.

Dated at Lacey, Washington, and effective October 14, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner