SERVICE DATE
MAR 12 1993

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Washington Utilities and Transportation Commission, Complainant, v. Washington Natural Gas Company, Respondent	DOCKET NO. UG-920840 THIRD SUPPLEMENTAL ORDER GRANTING MOTION TO DISMISS PUBLIC REFUELING STATION SCHEDULE (SCHEDULE 117)

This is a general rate filing by Washington Natural Gas Company (WNG). The filing includes a proposed Schedule 117, to fund construction of compressed natural gas (CNG) vehicle refueling facilities. The schedule would impose a 0.123¢ per therm surcharge on all gas sold under virtually all of the company's rate schedules.

The company presented evidence supporting the schedule during hearings in January and February. After conclusion of the company's direct case, the Commission Staff, Public Counsel, and intervenors moved to dismiss Schedule 117 from the issues in the proceeding. They argue that it employs a legally forbidden mechanism. Resolving all factual issues in the company's favor for purposes of the motion, they argue, the company's schedule should be rejected. The parties argued the motion orally and on brief.

For the legal and policy reasons set out in this order, the Commission grants the motion and dismisses the schedule. The Commission recognizes that meritorous public purposes underlie the proposal. Dismissal is without prejudice to the company's presentation, in this or another proceeding, of a proposal working to the same goal that is not contrary to law and policy.

The company proposal. The company argues that recent state and federal laws mandate serious consideration for compressed natural gas as a vehicle fuel, because of environmental benefits and its availability from domestic suppliers. The company contends that the system needs a "jump start", i.e., the funding of an infrastructure including a number of refueling stations, to encourage rapid development of fleets of natural gas-fueled vehicles.

The company proposes to construct, over the next four years, 16 refueling stations to serve compressed natural gas vehicles. These stations are to be located in the Puget Sound

area, along the I-5, I-405, and I-90 corridors. Some of the costs of construction would be recovered through sales of CNG under the company's tariff, Schedule 50. However, the company estimates that revenues would not meet expenses and investment for several years, and it is not able to project when CNG revenues would reach a break even point.

In the meantime, the company proposes Schedule 117. Under that schedule, the investment in facilities and the costs of maintenance and operation would be recovered, dollar-for-dollar, from other ratepayers through a surcharge called a "tracker" because it tracks, and passes along to customers, each dollar of expenditures made by the company that is not recovered from CNG purchasers.

The company wants a guarantee of ratepayer funding because it believes that the project is too risky for its stockholders to bear alone, too risky for an independent supplier to undertake alone, and too risky even for a joint venture with another entity. The company argues that it may fund the construction and operation of the CNG stations by a surcharge on all ratepayers because environmental and certain potential economic benefits[1] of CNG flow to all ratepayers, not just those who use CNG.

Motion: On February 12, 1993, the Commission Staff, Public Counsel, and intervenors filed a joint motion to dismiss Schedule 117. They contend that the tracker would provide a direct subsidy of CNG users by other rate classes in a manner prohibited by law.[2] The moving parties argue that the statute controls, that Schedule 117 is clearly in violation, and that the schedule must therefore be dismissed.

Discussion: The Commission grants the motion to dismiss the public refueling station tracker, Schedule 117. Upon review of the briefs and the authority cited by the parties, the Commission is convinced that the proposed tracker is a direct, dollar-for-dollar subsidy of the CNG program by other rate classes and must be disallowed. Both the statute itself (RCW

---

[1] The company contends that it could increase and improve its load factor with the sale of CNG, thereby reducing its purchase cost of gas, and that all ratepayers would benefit.

[2] RCW 80.28.280 discusses potential environmental benefits associated with CNG and declares that the development of CNG refueling stations is in the public interest. The section also says, "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)

80.28.280) and its legislative history are clear that while CNG vehicles and refueling stations should be encouraged, the statute does not allow a direct subsidy of those stations by other customer classes.

The Commission has considered all of the evidence in the light most favorable to the company.[3] There is no escaping the conclusion that most ratepayers would be paying the direct costs of a program they would never use and from which they would gain limited and speculative benefits only as members of the general public -- thus, they would in fact be subsidizing that program.

The proposal also runs counter to long-held, sound regulatory policies. Usually, a utility's investment in utility operations is provided by investors, who take some risk that the construction will be competently completed and that it is for a prudent purpose. In exchange for that risk, they are entitled to the opportunity to begin earning a return on their investment when it becomes used and useful in providing utility service. Reasonable expenses incurred to operate a prudent investment are a part of the company's cost of doing business, and it is also entitled to the opportunity to recover that cost from ratepayers.

The company's proposal is a radical departure from this pattern. First, the proposal offers a dollar-for-dollar return of company expenses and is a guarantee that the company will recover every penny it spends. The Commission has used tracker-type mechanisms only rarely. Generally, in those instances the expenditures have had one or more of the following characteristics: they have been easily measurable; they have been beyond the company's ability to control; and they are substantial expenses, essential to carry out company operations. In addition, the Commission has tended to find a substantial ratepayer benefit when it has authorized a tracker-type mechanism.

---

[3]The company challenges movants' contention that there are no disputed issues of fact. It lists numerous issues that it contends are unresolved factual issues. The Commission rejects the company's argument: for purposes of this motion, the Commission takes as a verity the facts that the company has presented in the direct case it has concluded. To the extent that the company's purported issues anticipate contrary facts, the company's presentation is assumed factual and true and the Commission does not assume anything contrary. To the extent that the company's statement of factual issues arises from an incomplete record, the company had the opportunity to make a complete record. It cannot use its own failure to present a full picture as a weapon to fend off a challenge.

Here, the expenses may not be clearly and easily measurable, and may be intertwined with other expenditures. They are within the company's ability to control, as decisions on whether and how to build are discretionary. The expenditures are not substantial in relation to the company's overall operations. And the record does not demonstrate that a substantial benefit will accrue to ratepayers from authorizing the proposed tracker. We accept the company's assertion that some benefit will accrue to ratepayers from a stabilized source of year-round sales. The company could not quantify the expected sales volume nor the resulting benefit for company ratepayers, and the benefit may thus be minuscule. There is no clear indication under traditional tests that a tracker-type mechanism passing costs through to ratepayers and removing all risk from shareholders or lenders is appropriate for this service.

Second, the proposal offers a direct subsidy to one class of ratepayers, purportedly to benefit society as a whole, at the expense of other classes. The company cites, and we recognize, public policies that proclaim various public benefits from natural gas vehicles, including reduced carbon emissions and reduced dependence on imported oil. The company proposes a transfer of funds from ratepayers to benefit a small group of users, although to support a public purpose. It may be more appropriate to spread the burden of supporting that public purpose among all the body politic, who all receive the social benefit, than to impose it on those who happen to be company ratepayers, who are a small group of that larger body politic. That is a task for the legislature, not for the Commission.

For these reasons, we grant the motion to dismiss. The company has had its opportunity to present its evidence, and we accept the evidence as true. The company's case fails to demonstrate that the tracker proposal implements sound ratemaking policy, or that the statute proclaiming the public benefits of CNG use requires or allows us to impose on other natural gas users the proposed direct subsidy payment.

Granting the motion at this juncture also offers advantages for the Commission and for all parties. Other parties are spared the need to present evidence and stand cross examination on an issue on which the company's direct case does not sustain its burden. The company need not offer rebuttal nor further argue the issue. The Commission is spared the time and effort to hear and consider further evidence in support of a legally deficient proposal.

The legislature is in session, and if it wants to do so, it may change the policy expressed in RCW 80.28.280 and authorize us to impose direct subsidy payments on other customer classes for the purpose of establishing CNG refueling stations. And the company could also come back in this proceeding with a

proposal that accomplishes some of what it seeks without offending the statutory and policy principles that mortally wound its current proposal.[4]

The company is to be commended for its desire to "jump start" the market and begin realizing potential public and private benefits associated with CNG vehicles. Compressed natural gas as a vehicle fuel may ultimately prove to be a viable and successful program for the company. Indeed, the company points out enough potential benefits of this fuel that it may well be able to make its own market for CNG and CNG refueling stations, without the tracker-type funding proposed in this case. Intervenors' presentations include an extensive list of potential alternative funding and promotional opportunities for the company, as well.

This ruling does not affect the company's proposed Schedule 50, which would provide for the sale of natural gas for vehicle use.

ORDER

THE COMMISSION ORDERS That the joint motion to dismiss the public refueling station tracker, Schedule 117, is granted.

DATED at Olympia, Washington, and effective this 12th day of March 1993.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHARON L. NELSON, Chairman

RICHARD D. CASAD, Commissioner

A. J. PARDINI, Commissioner

---

[4]Should the company choose to do this, it is encouraged to work with other parties with a view toward supplementing its existing presentation rather than wait until its rebuttal case to present an entirely new, extensive proposal. The Commission will carefully consider any such proposal but cannot commit to receiving or approving anything that may be submitted.