

[Service Date October 12, 2011]

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

WASHINGTON UTILITIES AND)	DOCKET UG-111233
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 02
)	
v.)	
)	ORDER GRANTING, IN PART,
NORTHWEST NATURAL GAS)	JOINT MOTION TO WITHDRAW
COMPANY,)	TARIFF FILING
)	
Respondent.)	
)	
.....)	

MEMORANDUM

- 1 On July 7, 2011, Northwest Natural Gas Company (NW Natural or Company) filed with the Washington Utilities and Transportation Commission (Commission) a revision to its Tariff WN U-6. NW Natural filed a revised Schedule P “Determination of Company’s Purchased Gas Cost Adjustments and Weighted Costs of Gas,” with a stated effective date of August 6, 2011. The filed revisions to Schedule P, if allowed to become effective, would change the definition of gas commodity costs to include the costs of developing gas reserves NW Natural acquired through a joint venture with Encana Oil and Gas (USA) Inc. (Encana). NW Natural requests that the Commission make an express finding that the Company’s decision to enter into the transaction with Encana was prudent, allow the Company to recover in rates the associated costs, and approve the proposed revisions to Schedule P. The Commission suspended operation of the as-filed tariff on July 28, 2011.

- 2 The Commission set and gave notice on August 2, 2011, of a prehearing conference to be convened at the Commission’s offices in Olympia, Washington on August 22, 2011. NW Natural, however, informally contacted the presiding Administrative Law Judge shortly prior to August 22, 2011, informing him that Staff and the Company

had entered into discussions that were likely to lead to NW Natural seeking leave to withdraw its tariff filing. NW Natural requested informally that the scheduled prehearing conference be cancelled pending developments. On August 22, 2011, the Company formalized its request by filing an appropriate letter with the Commission. Later on August 22, 2011, the Commission issued its Notice Cancelling Prehearing Conference.

- 3 On September 23, 2011, the Commission accepted for filing the Joint Motion of NW Natural and Commission Staff to Allow Withdrawal of Tariff Filing. This is not, however, a straightforward request for leave to withdraw. The Joint Motion states that: “The Company wishes to withdraw the Tariff Filing with the understanding that, under circumstances specified below, the Commission will not require the Company at any time in the future to include the costs or benefits of the Transaction in Washington rates.”¹ The “circumstances” to which the Joint Motion refers apparently are that Staff is opposed to the relief NW Natural requests and the Company believes the matter must be resolved before October 1, 2011.²
- 4 The timing of NW Natural’s filing in Washington was a matter entirely in the Company’s control.³ NW Natural had no reason to believe the Commission would

¹ Joint Motion at 1.

² The Joint Motion states that the date of October 1, 2011, is “essential.”

The Company requested that the Commission issue an order by October 1, 2011, so that both the Oregon and Washington 2011 PGAs could include the costs and benefits of the Transaction. This timing was essential to the Company given the structure of the Transaction, the costs of which are more heavily weighted in the first few years while the more significant benefits are realized thereafter. Indeed, the Transaction’s all-in cost of gas is currently above market, but is expected to compare favorably over the coming years. For this reason, to produce an equitable result for Oregon and Washington customers, the Company proposed that Washington customers begin paying for the Transaction at the same time as Oregon customers.² Thus, according to the Company, if the costs and benefits of the Transaction are not included in the Company’s 2011 Washington PGA, then it is highly unlikely they could ever be included in Washington rates without placing an unfair burden on the Company’s Oregon customers, unless circumstances so warrant.

³ NW Natural gained approval on April 28, 2011, before the Oregon Public Utility Commission (OPUC) for the same authority it seeks here. The “Transaction” became effective by its terms

not, in the normal course of business, suspend the tariff filing. Moreover, it is fair to observe that what NW Natural proposes via its tariff filing is novel in its nature and scope. Thus, the Company should have expected suspension so that this Commission, like its Oregon counterpart, would have a reasonable opportunity to inquire into the questions raised by the filing. NW Natural, having delayed filing for Commission approval until July 7, 2011, had no reason to believe such an inquiry could be completed in time to allow the tariff, if contested by Staff or others, to become effective by October 1, 2011.

5 Now faced with the entirely predictable results of its decisions, the Company states that it is “willing to withdraw its filing . . . [i]n light of Staff’s expected opposition to the Transaction and the tight timelines required for approval of the Transaction by the Commission.”⁴ However, the Joint Motion also states that NW Natural “requires a clear statement that the Commission will not at some later date seek to include in Washington rates, directly or indirectly, either the costs or the benefits of the Transaction, so long as all of the costs and benefits continue to be reflected in rates approved by the OPUC.”⁵

6 NW Natural thus seeks an order by which the Commission would bind itself immediately and for the future with respect to the treatment of gas costs that may affect what Washington customers pay in rates for up to 30 years or more, if the subject transaction works out as planned. The Joint Motion offers no explanation of what the assurance it seeks might portend for Washington customers in terms of present or future costs of gas that will be passed through in rates via the regular purchased gas adjustment process before the Commission, or otherwise. Indeed, the

governing necessary regulatory approval on May 1, 2011. The Company presumably filed its request with the OPUC well in advance of April 28, 2011. NW Natural could easily have filed for parallel authority in Washington at the same time. Yet, the Company waited until July 7, 2011, to initiate any process in Washington. As related above, NW Natural then requested postponement of the first scheduled prehearing conference and took a full month, until September 23, 2011, to file the instant motion jointly with Staff.

⁴ Joint Motion at 4. We emphasize that the “tight timelines” to which the Joint Motion refers followed predictably from NW Natural’s decision to postpone seeking approval from the Washington Commission relative to its undertaking to gain approval in Oregon.

⁵ *Id.*

Joint Motion offers nothing of substance at all concerning the implications of what it asks the Commission to do.

- 7 The Joint Motion, presented as it is with a demand for Commission action that is wholly unsupported by any evidence concerning, or critical examination of, the implications of the requested action is simply untenable. It is more in the nature of a wholly unsupported settlement proposal than a good faith expression of the Company's willingness to withdraw its tariff filing in favor of having the Commission's treatment of the Encana contract considered in some other proceeding, such as a PGA filing, or via some other procedural means.
- 8 We do not foreclose the opportunity for NW Natural and Staff to present a proposed settlement in this proceeding. However, any such agreement must address at a minimum the questions raised by the Company's filing and present a well-developed body of evidence supporting the proposed settlement's answers to them. Depending on the terms of a settlement, these questions might include, among others:
- Was the Company's entry into the Encana transaction a prudent decision?
 - If so, what should be the accounting and rate treatment afforded the costs of this gas supply?
 - What will be the rate impact of this contract on Washington customers?
- 9 On the other hand, it is conceivable that the Company and Staff might agree, as implied by the Joint Motion, that the costs of this contract can be accounted for separately from other gas costs and simply not allowed to impact rates to customers in Washington. This, too, would require the parties to present evidence demonstrating the prudence of such an approach and that it portends no prejudice to Washington customers.
- 10 If the parties do not wish to pursue the settlement option, there are two alternatives. We will here grant NW Natural leave to withdraw its tariff filing, but without any commitment from the Commission concerning the current or future treatment of costs associated with the Encana contract. The Company can then pursue whatever avenue it believes appropriate to bring this matter before the Commission in a subsequent filing or prepare for Commission inquiry in its next PGA proceeding, or in such other proceeding as might be initiated to consider the Encana contract.

- 11 Alternatively, the Commission remains prepared to adjudicate this matter in this docket and resolve whatever disputes separate the Company and the Staff on the issues presented.

ORDER

- 12 The Commission orders that the Joint Motion is granted to the extent of giving NW Natural leave to withdraw its tariff filing, which will result in this docket being closed. NW Natural must inform the Commission whether it wishes to withdraw by filing in this docket a letter directed to the Commission's Executive Director and Secretary within five business days after the date of this Order. If NW Natural elects to withdraw, the Commission will issue a notice closing this docket. If NW Natural elects not to withdraw, the Commission will schedule a prehearing conference to consider what process will be required and establish a schedule for that process.

Dated at Olympia, Washington, and effective October 12, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE: This is an Interlocutory Order as defined in WAC 480-07-810 and review may be sought only to the extent such review might be appropriate under the standards stated in WAC 480-07-810(2) and consistent with the process set forth in WAC 480-07-810(3).