

**Before the Public Utilities Commission
of the State of Oregon**

**COMMENTS OF THE NATURAL GAS VEHICLE FUEL PROVIDERS ON
NORTHWEST NATURAL GAS ADVICE NO. 13-10**

September 30, 2013

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I. INTRODUCTION

The Natural Gas Vehicle Fuel Providers (NGVFP)¹ appreciates this opportunity to comment on Northwest Natural Gas Advice Letter 13-10, which requests utility entry into the competitive natural gas vehicle (NGV) refueling infrastructure market. For the reasons explained in these comments, NGVFP requests that the Commission reject Advice No. 13-10 or, at a minimum, open a proceeding to fully investigate and evaluate NW Natural's proposal.

NW Natural proposes in Advice Letter 13-10 to provide High Pressure Gas Service (HPGS) "*through Company owned and maintained compression equipment sited on the customer's premises for the purpose of allowing such customers to operate vehicle fueling equipment.*" The Advice Letter could lead the Commission to the conclusion that this is simply utility business as usual: the provision of a monopoly gas distribution service at higher pressure levels. It is not. NW Natural is proposing to go beyond the point of traditional service demarcation and enter a competitive market to build NGV refueling stations. The HPGS tariff will discourage competitors from investing in the Oregon NGV refueling infrastructure market, undermining the development of the very market the Advice Letter claims to promote. In the long run, the impact will come to rest

¹ The NGVFP represents the interests of an ad hoc coalition of NGV refueling infrastructure providers including: Clean Energy Fuels Corp., TruStar Energy, Colorado-Wyoming Petroleum Marketers Association, Kulp Energy Solutions, Mansfield, Kwik Trip, and Blu LNG.

on Oregon consumers, who will be left with fewer and less innovative service options.

The potential to undermine market development arises from an indisputable reality: a monopoly utility has inherent competitive advantages that are not available to non-utility competitors. The utility benefits from brand equity, a well-staffed marketing department, unparalleled customer access and enviable billing and accounting systems – advantages gained on the ratepayer dollar. Perhaps most importantly, due to the relatively secure nature of the utility business, utilities enjoy a substantially lower cost of capital than non-utility competitors and have ready access to that capital. Non-utility competitors simply cannot compete with this arsenal of advantages.

If the HPGS tariff were the only way to increase NGV market penetration in Oregon, it might merit the Commission's support, but it is not. Market development will be strongly influenced by a variety of factors, not simply the availability of infrastructure. A variety of factors beyond this Commission's jurisdiction are equally or more important. Key among these factors are:

- ✓ the price spread between natural gas and other transportation fuels;
- ✓ the cost of fleet conversion; and
- ✓ other state policies, incentives and mandates.

Today, these and other conditions are aligning favorably to support market development, and fleet owners and service providers are beginning to respond. It is highly likely that, without the HPGS tariff, NW Natural's target market would soon be served by non-utility competitors bringing investment dollars to Oregon.

A fully competitive large fleet market should be permitted to develop naturally, without the presence of an 800-pound gorilla equipped with unparalleled competitive strength. If NW Natural seeks to participate in this market, it should do so through an unregulated affiliate, competing on even footing with non-utility competitors. Alternatively, NW Natural could be permitted to use its monopoly advantages to serve market segments that are likely to be uneconomic to other service providers in the near term. NGVFP requests that the Commission open an investigation to explore these questions, taking the time necessary to put the NGV market on the right path.

II. NGVFP REPRESENTS THE INTERESTS OF NGV REFUELING INFRASTRUCTURE MARKET COMPETITORS

NGVFP represents the interest of providers of natural gas fuel for transportation in North America. NGVFP companies have operations in one or more of the following: compressed natural gas (CNG) and liquefied natural gas (LNG) vehicle fueling, construction and operation of CNG and LNG fueling stations, biomethane production, and compressor technology. NGVFP customers include the refuse, transit, trucking, shuttle, taxi, airport and municipal fleet markets. Certain NGVFP members have diligently pursued opportunities in the Oregon NGV refueling infrastructure market. Additionally, representatives of certain NGVFP members have participated in industry events in Oregon encouraging the increased adoption of NGV in the state.

NGVFP has significant industry experience and through this intervention seeks to assist Oregon in establishing effective policies to spur the growth of the NGV market. The NGVFP members intend to continue serving the Oregon

market, but are concerned that they will not be able to compete against NW Natural's HPGS.

III. NORTHWEST NATURAL PROPOSES TO ENTER THE NGV REFUELING INFRASTRUCTURE MARKET, NOT SIMPLY OFFER HIGH PRESSURE GAS SERVICE

NW Natural has labeled its proposal "High Pressure Gas Service," suggesting that this service is a natural part of its traditional scope of service. The scope of services and equipment provided under the HPGS rate schedule, however, place the utility squarely in a new, competitive market: the NGV refueling infrastructure market.

A. HPGS Represents a Departure from Utility Business as Usual

Advice Letter 13-10 masquerades as a typical utility service offering. Instead, the service will be provided in a competitive market and will reach beyond the traditional point of demarcation between the utility and customer facilities. NW Natural is, for all practical purposes, seeking to construct, own and operate filling stations for natural gas vehicles.² Looking at it another way, granting the Advice Letter would be akin to allowing NW Natural to sell, own and operate household appliances, like a clothes dryer, or industrial equipment that uses natural gas. The provision of competitive goods or services is simply not an appropriate role for a monopoly utility.

The HPGS will operate differently from other monopoly utility services provided by NW Natural. NW Natural's General Rules and Regulations define Custody Transfer Point as:

² See NW Natural Advice No. 13-10.

*The primary meter located at the Delivery Point; generally the meter at the interconnection between the Company's Distribution Facilities and Customer's House Line. Title and risk of loss to the gas shall pass from the Company to Customer at this point.*³

The definition of custody transfer point suggests that there is a “customer” side of the meter and a “utility” side of the meter. As demonstrated in Figure 1 below, the equipment that NW Natural proposes to provide under HPGS includes all of the equipment installed on the customer side of the meter. NW Natural states:

*The Custody Transfer Point is the meter located at the point of interconnection between Company's distribution facilities and the Company-owned service line to its HPGS Facilities. All service under this Rider occurs beyond the Custody Transfer Point.*⁴

The request for NGV station authority thus would represent a step change in utility regulation and warrants a full and detailed examination.

B. The Market at Issue is The NGV Refueling Infrastructure Market

It is critical to begin with a definition of the relevant market. NW Natural's Advice Letter fails to adequately define and describe the market it seeks to enter. The Commission cannot determine if the HPGS is necessary to serve the NGV refueling infrastructure market without first understanding the market.

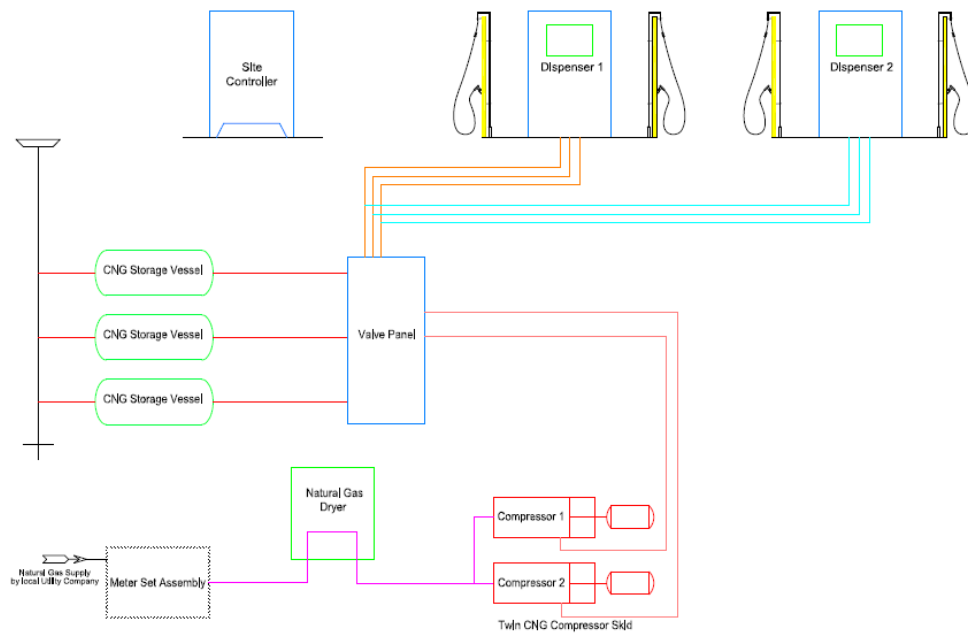
The HPGS is about more than just providing gas at higher pressures; it involves all of the infrastructure required to operate an NGV refueling station. Natural gas vehicles require the commodity provided by natural gas utilities like NW Natural to be compressed before being dispensed into a vehicle. Compression of natural gas for refueling usually incorporates a mix of equipment

³ NW Natural General Rules and Regulations, at Original Sheet 00.3

⁴ Advice No. 13-10, Supplemental Filing, at Original Sheet H-7.

including a natural gas dryer, compressors, CNG storage facilities, connecting pipes and dispensers. Figure 1 illustrates the compression process and the required equipment.

Figure 1: A NGV Refueling Station



After the equipment has been installed, the station must be operated and maintained. Third-party service providers typically provide operations and maintenance (O&M), which include scheduled and unscheduled maintenance. The service provider that provides the O&M service may or may not be the same service provider that designed and constructed the station.

C. NW Natural Would Offer a Single Bundled Product, Including All NGV Station Equipment and Services for an NGV Refueling Station

The Advice Letter requests authority to supply, design, install and own nearly the entirety of an NGV station; it also requests authority to bundle with these services the associated O&M services.⁵ NW Natural explains:

*The Company will design, plan, engineer, permit, construct, install, inspect, test, and maintain all Standard HPGS Facilities installed in accordance with this rider. NW Natural reserves the right to designate the location of all Distribution Facilities and HPGS Facilities required for such service.*⁶

NW Natural lists the equipment to be provided and owned by the utility as “Standard HPGS Facilities.”⁷ This list includes all of the equipment reflected in Figure 1. Under Proposed Rate Schedule H, NW Natural will provide “[HPGS], Scheduled Maintenance, Unscheduled Maintenance, and Back Up Service.”⁸ NW Natural will also “own” the operations and maintenance (scheduled and unscheduled) account of any Rate Schedule H customer.⁹

The Advice Letter highlights two pieces of equipment that it will not provide under the proposed Rate Schedule H: “*slow-fill dispensers and hanging hardware.*”¹⁰ (Although, notably, it will provide fast fill dispensers.) The utility proposes that it will not own this equipment, but “*may assist a Customer in the purchase, installation and maintenance of Non-Standard HPGS Facilities.*”¹¹

⁵ Advice No. 13-10, Supplemental Filing, Rate Schedule H at H-1-2.

⁶ Advice No. 13-10, Supplemental Filing, Rate Schedule H at H-1.

⁷ Advice No. 13-10, Supplemental Filing, Rate Schedule H at H-1.

⁸ Advice No. 13-10, Supplemental Filing, Rate Schedule H at H-1.

⁹ Advice No. 13-10, Supplemental Filing, Rate Schedule H at H-3.

¹⁰ Advice No. 13-10, Supplemental Filing, Rate Schedule H at H-2.

¹¹ Advice No. 13-10, Supplemental Filing, Rate Schedule H at H-2.

NW Natural's HPGS would be positioned as "one stop shopping" for utility customers.

D. The Scope of NW Natural's Service Places the Utility Squarely in the Competitive Natural Gas Infrastructure Market

NW Natural is seeking the authority to seize the same NGV natural gas infrastructure opportunities currently being sought by NGVFP members and other potential competitors in Oregon. Participants in the NGV refueling infrastructure market can provide their customers with a number of different services. A service provider could (i) provide design and engineering services; (ii) procure and supply station equipment, (iii) procure or provide O&M services, (iv) serve the role of a "general contractor" by providing a package of equipment and services, (v) package the sale of natural gas together with the NGV refueling infrastructure; or (vi) manufacture station equipment. These types of service offerings are typical for non-utility service providers.

In addition to its role providing the natural gas commodity, authorization of the HPGS tariff would allow NW Natural to engage in all of these activities except for the manufacturing of station equipment.¹² The utility's request thus must be seen as a request to fully enter a competitive market, departing from the typical scope of monopoly services. The market entry would be far from typical,

¹² Approval of HPGS, would allow NW Natural to provide end to end natural gas service, from the commodity to the gas dispenser. NW Natural is the utility provider of the natural gas commodity to be compressed, sorted and dispensed at the NGV refueling facilities. NW Natural proposes to limit HPGS to customers who already have "an approved Service Election under Rate Schedule 3, Rate Schedules 31, or Rate Schedule 32." In many cases, even if NGV refueling infrastructure facilities and services are provided by a third party, like Clean Energy, the commodity will be purchased from NW Natural.

however, as NW Natural brings to the market inherent competitive advantages not available to non-utility competitors.

IV. APPROVAL OF THE HPGS WILL IMPAIR DEVELOPMENT OF OREGON'S NATURAL GAS VEHICLE INFRASTRUCTURE MARKET

A. Oregon's Natural Gas Vehicle Market is Still in its Early Stages

Oregon's NGV refueling market is in its infant stages. The market in Oregon resembles the state of NGV infrastructure in California 15 years ago not California today.

- ✓ Oregon has approximately 14 compressed natural gas vehicle refueling stations, including 3 with public access. Clean Energy has two liquefied natural gas stations that are not open yet, and Blu LNG plans to build one as well.
- ✓ There are only 3 active competitors currently in the CNG market in Oregon: Clean Energy, Trustar Energy and Smokey's CLN NGV Tech.
- ✓ NW Natural has 100 NGV in its fleet, and operates 8 NGV refueling stations for its own use.

The growth of California's NGV refueling market illustrates the benefits of limiting a utility's scope of participation in the NGV infrastructure market.

- ✓ Today, California has approximately 596 natural gas vehicle refueling stations, including 158 with public access.
- ✓ According to the California DMV, California has about 30,000 NGVs on the road.
- ✓ There are currently 70 competitors in California's market and that number is quickly growing.

California's pace of market development can be attributed to several factors. California has spurred market growth through a general policy commitment to NGV specifically and Alternative Fuel Vehicles (AFV) generally, through legislation encouraging the growth of the NGV refueling market. In 1990, acting in response to air quality concerns, the California Legislature adopted California Public Utilities Code §740.3 directing that:

*The commission, in cooperation with the State Energy Conservation and Development Commission, the State Air Resources Board, air quality management districts and air pollution control districts, regulated electrical and gas corporations, and the motor vehicle industry, shall evaluate and implement policies to promote the development of equipment and infrastructure needed to facilitate the use of electric power and natural gas to fuel low-emission vehicles.*¹³

In 1995, the California Public Utilities Commission (CPUC) evaluated the merits of utility participation in the NGV refueling market. The CPUC voted to prohibit the utilities from participating in that market, going so far as to require SoCalGas to divest its NGV station assets.¹⁴ The CPUC took this action for two reasons. First, it was concerned that the program would be subsidized by non-participating ratepayers. Second, it recognized the importance of letting a competitive market develop in a way that would not allow the monopoly utility to dominate with all of its inherent advantages. Considering the growth of California's NGV refueling market illustrated above, the policy has worked for more than 15 years.

Specific policy directives including the adoption of fleet vehicle rules by the South Coast Air Quality Management District (SCAQMD) also helped to spur the

¹³ Cal. P.U.C. §740.3.

¹⁴ D.95-11-035

California NGV market. The SCAQMD's fleet rules generally mandate the conversion of heavy-duty diesel vehicles to alternative fuels, such as CNG and LNG. The rules were designed to “*gradually shift public agencies and certain private entities to lower emissions and alternative fuel vehicles whenever a fleet operator with 15 or more vehicles replaces or purchases new vehicles.*”¹⁵ The adoption of these rules established a new customer base for AFVs generally and NGVs specifically, and encouraged new NGV refueling infrastructure providers to enter the SCAQMD service territory.

Oregon’s NGV refueling infrastructure market has lagged behind California, in part, because Oregon until very recently had not adopted a general policy encouraging AFV. The Advice Letter points to Governor Kitzhaber’s 10-year Energy Plan, adopted in December 2012, calling for “*a 20 percent conversion of large fleets to alternative fuel vehicles over the next ten years.*”¹⁶ The Governor’s commitment to increasing adoption of AFV is encouraging, but the Commission must take actions that are consistent with encouraging a competitive market place in order to see infrastructure growth.

Growth of Oregon’s NGV refueling market has also been discouraged by more specific regulatory uncertainties. First, the state’s consideration of a Green Waste Program and a Fleet Replacement Program several years ago caused companies to defer investments in new vehicle fleets to make sure their purchases would meet the ultimate program requirements. Second, the state

¹⁵ See <https://www.aqmd.gov/tao/FleetRules/>.

¹⁶ See http://www.oregon.gov/energy/Ten_Year/Ten_Year_Energy_Action_Plan_Final.pdf

has been unable to reauthorize the Clean Fuels Program, which will affect the economics of NGV infrastructure, and competitors have been cautious about entry.

As discussed in Section IV.B. below, factors beyond statewide policy impact the growth of NGV refueling infrastructure. A policy that discourages a competitive NGV refueling market, however, is more likely to singlehandedly discourage the development of the competitive market as discussed in Section IV.C.. Advice No. 13-10 represents an opportunity for the Commission to make a strong policy statement supporting NGV market growth in furtherance of Governor Kitzhaber's plan.

B. Approval of Advice 13-10 Will Not Spur Growth of the NGV Infrastructure Market

NW Natural suggests that the availability of HPGS will have significant potential to influence the growth of the NGV market.¹⁷ The proposal fails to acknowledge, however, that the HPGS, alone, will not be the driving factor encouraging market growth. The most significant factor impacting the growth of NGV markets is the price spread between conventional gas and natural gas prices – a spread that has seen considerable change in the last few years.

Other key factors include:

- ✓ Availability of attractive and affordable natural gas vehicle options;
- ✓ The prices of NGVs from original equipment manufacturers as compared to conventional vehicles;

¹⁷ Advice No. 13-10 at 3. HPGS states, "*the company hopes it will contribute to the development of a market in Oregon for gas as a transportation fuel.*"

- ✓ The economic climate, which determines the availability of investment capital for fleet owners to acquire new vehicles;
- ✓ The age of existing fleet vehicles or the need for additional vehicles, factors that also affect the economics of making a fleet investment;
- ✓ Cost and development of other AFV including electric vehicles; and
- ✓ Government policies and incentives.

Without alignment of these factors, no changes in the NGV infrastructure market – whether by competitors or the utility – will spur market growth. For example, if a potential NGV customer cannot afford to replace its fleet of vehicles, the availability of infrastructure will not alter the economics of that customer’s decision.

These factors have not previously aligned in a manner that supported increased adoption of NGV refueling infrastructure, but the timing may now be ripe for NGVs. The price spread between CNG and gasoline historically has not supported the use of NGVs; current conditions, however, make NGV investments economic. Five years ago the spread between the two fuel choices was 13 to 1 (\$106/barrel for crude oil; \$7.27/mmBtu for natural gas); today the spread is 28 to 1 (\$106/barrel for crude oil; \$3.81/mmBtu for natural gas).¹⁸ There are an increasing number of NGV options, and the economic environment nationwide is slowly improving. The confluence of these factors has been encouraging companies to enter the NGV refueling infrastructure market nationwide. Currently, there are over 80 companies nationwide participating in this market, and as long as Oregon maintains a favorable competitive market the barriers of

¹⁸ See U.S. Energy Information Association website: (<http://www.eia.gov/petroleum/marketing/monthly/pdf/pmmtab1.pdf>) and (http://www.eia.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngyir2008/ngyir2008.html).

entry are such that any of these companies could enter the Oregon market at any time. If the Commission chooses to approve Advice 13-10, for the reasons outlined in Section IV.C. below, new competitors are likely to dedicate their capital and human resources to other markets.

C. Approval of Advice 13-10 Will Harm the Growth of a Competitive NGV Infrastructure Market

NW Natural's entry into this competitive market, with all of its inherent monopoly utility advantages, will impair the natural development of this growing industry by driving out investment by non-utilities. If one market participant has a clear advantage in a competitive market, new entrants are discouraged from making the investment of time and money necessary to compete effectively. If competitors choose not to enter a market, or leave a market, the prevailing market participant, in this case the utility, will be left with market power. This leaves customers without choices and vulnerable to higher prices.

The advantages NW Natural has as a monopoly utility in a competitive market are obvious.

- ✓ NW Natural has highly beneficial access to a sizable potential CNG customer base, and this access is not equally available to other competitors. Access to the potential customer base gives NW Natural an advantage in targeting potential customers of the HPGS and provides an established communications and marketing platform. As the supplier of the natural gas commodity or transportation, NW Natural has knowledge of all of the current CNG customers.
- ✓ The utility has detailed information about potential customers that most definitely is not available to other competitors. This includes historical sales data and existing distribution facility design.

- ✓ NGVFP members and other companies supplying NGV refueling infrastructure must contact NW Natural to obtain information on the pressure in the natural gas pipeline before providing a quote to a potential customer. If the utility becomes a competitor, it will have immediate and direct knowledge of other competitors' marketing leads that it can leverage to its own advantage by circumventing private fuel providers and poaching their customers.
- ✓ The utility can employ its existing ratepayer-funded administrative infrastructure for marketing, billing and services; competitors have no ratepayer funding to lean on and must fund these activities with their shareholders' dollars.
- ✓ The utility can gain access to the capital needed to fund the program at a cost that is as much as 50% lower than the cost of private capital, with an authorized rate of return of 7.8%. All other things being equal, this advantage alone puts competitors in a losing situation. In addition, the cash flow and existing financing agreements of a large public corporation like NW Natural allow it to easily access the capital needed for infrastructure development. For its competitors, obtaining the needed capital would likely require a significant new financial commitment.
- ✓ NW Natural can benefit from the brand equity that it has established in its position as a monopoly provider of natural gas. NW Natural's monopoly position has allowed it to build its relationships and reputation with its current customers.

By authorizing the HPGS, the Commission would be allowing a utility to use its monopoly advantages in its regulated business to create an environment toxic to private investment in the NGV refueling market. Private companies considering entering the competitive Oregon market will likely determine that they cannot effectively compete with NW Natural with its many advantages and will opt not to enter the market. In the long run, limiting the flow of capital into Oregon's NGV refueling market will necessarily restrict growth and options for consumers.

D. Oregon’s EV Policy Provides Insufficient Policy Direction and Support to Serve as a Basis for NGV Policy.

The Commission should not rely on the recent policy adopted in Order No. 12-013 in the context of electric vehicles (EVs) to set policy in the NGV market. To begin with, the Order suggests that the issue of utility impact on a competitive market was not actively litigated in that case, and a record as to the effects of utility participation was not developed. In addition, the differences in the EV and NGV markets suggest that EV policies are a mismatch for the realities of NGV markets.

In its “*Investigation of matters related to Electric Vehicle Charging*,” the Commission opened a docket:

[T]o address general matters related to the emergence and development of the EV charging market and industry, including the role of electric utilities with regard to owning and operating EV service equipment (EVSE) and acting as EV service providers (EVSP).¹⁹

Specifically, the Commission considered whether, “*utility ownership and operation of publicly available EVSE...would permit the full development of a competitive marketplace for EV charging services.*”²⁰ EVSP ECOTality and the Citizens’ Utility Board of Oregon (CUB) argued that only utility affiliates should be permitted to own and operate EVSE facilities.²¹ Pacific Power, PGE and Idaho Power urged the Commission to instead allow the utilities flexibility in participating in the market.²²

¹⁹ Order No. 12-013 at 1.

²⁰ Order No. 12-013 at 5.

²¹ Order No. 12-013 at 6.

²² Order No. 12-013 at 6.

The Commission ultimately decided that “[E]lectric utilities should be allowed to invest in EVSE and operate EV charging stations as a non-regulated, non-rate based venture.”²³ The Order provides no discussion or evidence in support of its conclusion that utility participation in the EVSE market will not “necessarily impede the vibrancy of the whole market.”²⁴ ECOtality presented concerns regarding utility marketing advantages and CUB stressed the importance of financial separation, but the Commission Order fails to address these concerns. Without any evidence or reasoning for its EV decision, Order 12-013 is an infirm policy foundation on which the Commission can rely when addressing NGV.

Differences between the EV and NGV markets also leave the Commission’s EV Order inappropriate direction for addressing NGV markets. As the EV and NGV markets have developed, each of the AFVs has found a unique market niche. Since fleet vehicles tend to return to one base location throughout the day or every night, investment in NGVs and a refueling station is cost effective for fleets.²⁵ An NGV refueling station is expensive to install and operate, and fleet operators are able to spread the cost over a certain number of vehicles. Accordingly, as NW Natural’s website points out, the 400 NGVs in Oregon are “mostly commercial fleets.”²⁶ NGVs have proven less successful for private, personal use as vehicle options and home refueling solutions are limited and

²³ Order No. 12-013 at 6.

²⁴ Order No. 12-013 at 6.

²⁵<https://www.nwnatural.com/AboutNWNatural/EnvironmentalStewardship/AdvancedTechnologies>

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<https://www.nwnatural.com/AboutNWNatural/EnvironmentalStewardship/AdvancedTechnologies>

expensive. Without a critical mass of personal NGVs in the state, it is unlikely that any company, NW Natural included, will invest in an NGV refueling station offering exclusively public access.

EV technology has not proven effective for fleets since they tend to be larger vehicles that drive longer distances. EV technology has, however, proven well-suited for personal vehicles that tend to drive shorter distances. Accordingly, there are more electric passenger vehicles on the market at a somewhat lower price point than NGVs. Home “refueling” is feasible for EVs since in many cases all that is required is an outlet.

The differences in the technologies and market development of the two types of AFVs suggest that the same policies will not be effective in each market. What the Commission may have deemed necessary to encourage development of the EV market may not be the policy that will best spur the growth of the NGV refueling infrastructure market.

V. HPGS IS NOT UNIQUE AND NW NATURAL FAILS TO DEMONSTRATE THAT HPGS IS NECESSARY TO SERVE THE NGV INFRASTRUCTURE MARKET

A. Other Market Participants Can Provide the Same Service to Oregon Customers

NW Natural misleads the Commission in its characterization of the market. The Advice Letter states: “*Service under Schedule H provides a non-residential customer with a turn-key solution not otherwise available for providing the gas pressure required for vehicle refueling, without a significant upfront capital*”

*investment into compression facilities.”*²⁷ This statement is false. Some NGVFP members offer NGV refueling infrastructure options including turn-key CNG refueling services at no upfront cost to the customer, recovering capital expenses over time through a slight raise in the price at the pump.

In fact, NGVFP members and other competitors can offer Oregon customers more flexibility than NW Natural’s HPGS proposal. A current customer of an identified NW Natural rate schedule electing to take service under the HPGS will have NW Natural provide all of the planning, design, and construction of the refueling station as well as all maintenance of the station.²⁸ This is, of course, in addition to NW Natural providing the natural gas commodity. A customer of a NGVFP member on the other hand may have their NGV refueling infrastructure provider:

- ✓ Build, maintain and own the station leasing it to the customer;
- ✓ Build and maintain a facility owned by the customer;
- ✓ Build a facility for the customer with a third party providing maintenance;
- ✓ Design a facility for the customer that a third party builds and maintains; or
- ✓ Provide operations and maintenance service on a customer facility designed and built by a third party.

There are over 80 companies nationwide providing some level of NGV refueling market infrastructure services. Contrary to NW Natural’s characterization in its Advice Letter, NGVFP members and other competitors

²⁷ HPGS Application at 2.
²⁸ HPGS Schedule H at H-1.

stand ready to serve new market opportunities in Oregon. For example, NGVFP member Clean Energy has made a proposal to a number of the customers identified in NW Natural's Advice Letter. One of these customers was unable to commit for economic reasons and discussions with the other are ongoing. Clean Energy remains ready and willing to build a station for Oregon customers, but the ease of working with the incumbent utility under the HPGS may deter these customers from further work with Clean Energy and its competitors. It is simply easier for an existing NW Natural customer to default to utility service.

B. NW Natural Fails to Support Its Application with Adequate Evidence

NW Natural provides no support for the assertions of market growth in its Application, and the letters provided by the utility do not demonstrate sufficient understanding of the market or NW Natural's Application.

The Advice Letter states, "*NW Natural estimates that it may have 27 customers taking HPGS within its Oregon service territory over the next five years.*"²⁹ NW Natural does not provide the information on which it bases its estimation or any discussion of how it arrived at its final conclusion. NW Natural did attach letters from five potential customers. At most, based on the information presented, the Commission could determine that NW Natural will have five customers taking HPGS.

The letters of support for HPGS provided in Attachment A to the Advice Letter demonstrate how NW Natural's monopoly utility position and resulting

²⁹ Advice No. 13-10 at 3.

brand equity provides it with a competitive advantage. Potential customers support Advice No. 13-10 writing:

- ✓ *We have had positive experience with NW Natural over the years, and have great trust in the utility's ability to deliver this program effectively and efficiently in a way that will benefit the ratepayer.*³⁰
- ✓ *WLPCO recognizes that NWN is a leader and expert in CNG infrastructure.*³¹
- ✓ *Metro has a positive relationship with NW Natural and trusts its ability to deliver this program effectively and efficiently in a way that will benefit the natural gas ratepayer.*³²

None of the letters provided include any discussion of the products or services available from other NGV refueling infrastructure competitors. Accordingly, there is no discussion on why the NW Natural offering is better suited for the needs of the customer. Without this information, the only conclusion is that NW Natural's utility advantages are the reason for the customer's choice, demonstrating the impossibility of new market participants competing on even ground.

VI. THE TERMS OF THE HPGS SCHEDULE AND CONTRACTS ARE ANTICOMPETITIVE AND MERIT FURTHER SCRUTINY

In its Application seeking authorization for the HPGS, NW Natural includes the Rate Schedules and contracts that will dictate the terms of the service. Many of the proposed terms are not in the best interest of the customer or competition, potentially restricting information sharing and creating uncertainty.

³⁰ Advice No. 13-10, Attachment A, Letter from Tri- Met Dated March 21, 2013.

³¹ Advice No. 13-10, Attachment A, Letter from West Linn Paper Company dated April 23, 2013.

³² Advice No. 13-10, Attachment A, Letter from Metro dated April 8, 2013.

A. The Feasibility Agreement Requires Exclusivity

NW Natural proposes a three step contract process. First, the customer signs a Feasibility Agreement under which NW Natural evaluates the Customer's needs in order to provide a cost estimate.³³ Next, the Customer and NW Natural enter into a Site Design and Permit Evaluation Agreement, under which NW Natural designs the NGV refueling station and confirms what permits are required.³⁴ Finally, the customer and NW Natural enter into an HPGS Agreement for the permitting, construction and maintenance of the NGV refueling station.³⁵ This laborious three step process delays a final cost estimate and design plans until later stages of the process and may discourage customers from stepping out of the process to solicit other bids once the process starts.

The Feasibility Agreement, the first phase of the NW Natural process, requires customer exclusivity. To proceed with its site evaluation, the customer must "*agree not to enter into any contracts for service similar to those being provided by NW Natural under this Agreement for a period of 180 days after the Effective Date of this Agreement.*"³⁶ A customer thus cannot proceed on parallel tracks with two potential competitors. A customer's first point of contact, given the familiarity and history with the utility, will likely be the utility; competitors will be locked out of development opportunities for the 180 day exclusivity period.

³³ Advice No. 13-10, Attachment B.

³⁴ Advice No. 13-10, Attachment C

³⁵ Advice No. 13-10, Attachment D.

³⁶ Feasibility Agreement at 4.

B. The Feasibility Agreement Restricts Information Sharing

The current language of the Feasibility Agreement suggests, at a minimum, uncertainty in information sharing between a customer and a non-utility service provider once the customer has contacted NW Natural. The Agreement states:

*Any analyses, reports, or other information provided by NW Natural to Customer under this Agreement are for the limited purpose of assisting Customer in Customer's own evaluation of receiving service under the HPGS. Customer shall not use the analyses, reports, or other information provided by NW Natural for any other purpose.*³⁷

The meaning of “other information” is not clear under the terms of the contract. Depending on the definition of this term, a customer that signs a Feasibility Agreement may be restricted in the information it can provide to another potential service provider.

C. The Financial Terms Create Uncertainty Over Termination Consequences

HPGS customers will pay the full cost of the NGV refueling infrastructure equipment, but despite paying for the equipment will not own the equipment at the end of the contract. The Advice Letter proposes that NW Natural will own all HPGS Facilities,³⁸ and that HPGS customers will pay a “*monthly facility charge designed to recover all equipment, permitting and siting costs.*”³⁹ At the end of the contract term, NW Natural will remove all HPGS Facilities; in the event of termination of the contract the customer must pay out the remainder of amounts

³⁷ Attachment B at 1.

³⁸ Advice No. 13-10 at 1.

³⁹ Advice No. 13-10 at 2.

due under the contract and NW Natural will remove the HPGS Facilities.⁴⁰ Even though the customer has paid the full cost of the equipment, NW Natural owns the equipment and the customer is left with nothing. In the event of early termination, NW Natural states that it will redeploy the equipment for the benefit of another customer, but does not indicate the disposition of equipment removed after a full contract term. NW Natural also does not clarify how redeployed equipment will be priced and if equipment is paid for twice whether the ratepayers or shareholders will benefit.

D. Controls on Ratepayer Cross-Subsidies are Not Apparent

It is not clear from the face of Advice No. 13-10 that NW Natural has ensured that the competitive HPGS will not be cross-subsidized by utility ratepayers. The Advice Letter states that “*customers served under Schedule H will pay all incremental costs associated with the provision of HPGS.*”⁴¹ In addition, NW Natural provides “*an analysis to determine whether the [HPGS] might impose costs on customer[s] taking service under other rate schedules*” to demonstrate that the HPGS can be self-supporting.⁴² This analysis only goes so far, however, falling short of offering a clear picture of accounting practices and the ultimate ratepayer risk.

⁴⁰ Advice No. 13-10, Attachment D at 8.

⁴¹ Advice No. 13-10 at 3.

⁴² See Advice No. 13-10 at Attachment E.

E. Northwest Natural's Recent Actions Suggest That the NGVFP Concerns are Warranted

Even though HPGS is yet to be authorized, NW Natural staff has already demonstrated a willingness to leverage the utility's position to harm competitors. On September 10, NGVFP member Clean Energy reported an incident between Chris Galati, NW Natural's Director of Conservation and Technology Business Development, and two Clean Energy representatives at the Oregon Trucking Association Convention. The behavior reported by Clean Energy suggests that NW Natural cannot be trusted to both participate in a competitive NGV refueling infrastructure market and provide the natural gas commodity in its utility role.

VII. OREGON SHOULD TAKE THIS AS AN OPPORTUNITY TO DEVELOP A RECORD AND ESTABLISH NGV POLICY

There is no doubt that Advice 13-10 presents a complicated question, and the answer will have long-term effects on the development of the natural gas vehicle market in Oregon. Complicated questions merit close examination and public review. NGVFP requests that the Commission undertake a thorough, public review of this issue before reaching its decision. We request that the Commission reject this advice letter at this time, and open an investigatory docket to develop a record as to the needs of the public for this service, what resources are currently available, and how best to develop a competitive market to meet those needs.

Currently the Advice Letter and its attachments provide an inadequate record upon which the Commission can make a decision on Advice No. 13-10. The information available to the Commission has all been provided by NW

Natural acting in its own best interest to exclude other market competitors.

Before making any decision on Advice No. 13-10 the Commission should open a proceeding to better explore the NGV Refueling infrastructure market and investigate NW Natural's specific proposals. A proceeding on the issue should seek input from other market participants and explore the concerns regarding NW Natural's proposal highlighted in Section VI above.

In addition to providing an opportunity to better address the NW Natural proposal, opening a proceeding will allow the Commission to study the state of the market and develop a policy position that will best encourage growth. Oregon is less than a year into the Governor's 10-year plan, and a proceeding exploring Advice No. 13-10 allows the Commission to audit the market and make reasoned policy decisions that support the Governor's plans.

VIII. TO BEST ENCOURAGE NGV REFUELING INFRASTRUCTURE GROWTH THE HPGS SHOULD BE REJECTED OR AT A MINIMUM LIMITED TO CERTAIN UNECONOMIC MARKETS

A decision approving Advice Letter 13-10 would push competitors even further from the Oregon market and expose ratepayers to unnecessary risk of cross subsidies. NGVFP recommends that the Commission reject Advice No. 13-10, leaving the Oregon NGV refueling infrastructure market fully competitive. Rejection of Advice No. 13-10 sets a policy precedent that will encourage growth of the Oregon NGV market similar to what has been seen in California.

A decision rejecting the Advice Letter would conform to a recent resolution of the National Association of State Utility Consumer Advocates (NASUCA). The resolution states in part:

BE IT FURTHER RESOLVED that gas distribution utilities should not be allowed to provide any services or investments for natural gas fueling infrastructure, beyond the distribution of natural gas, unless that function is performed through an unregulated affiliate governed by appropriate affiliate transaction rules. Such services and investments should include:

- The provision of compression equipment for refueling stations on customer property or downstream of the customer meter....*

NGVFP fully supports entry by an unregulated affiliate of NW Natural into the market, as NASUCA contemplated. Participation of a NW Natural affiliate allows NW Natural to leverage its significant experience as a natural gas infrastructure provider, while preventing it from leveraging its utility advantages.

While NGVFP maintains that the Commission should reject Advice No. 13-10, the anticompetitive effects of HPGS can be mitigated by allowing NW Natural to use its utility advantages narrowly in a manner that will not harm the growth of competition. As an initial matter, the Commission should encourage NW Natural to maximize the Company's use of NGVs and to develop NGV stations as necessary to support those vehicles on their own property. In addition, while the large fleet NGV refueling infrastructure market will be adequately served by competitive market participants, there may be certain markets that remain underserved because they are uneconomic. NW Natural is in the position to leverage its financing advantages to serve these otherwise uneconomic markets, leading to incremental market development. As a starting point for exploring underserved markets, NGVFP submits to the Commission that potential underserved markets may include the home NGV refueling business, Unified School District bus fleets, and non-proprietary, low volume municipal fleets (excluding, for example, port, airport, transit and refuse properties). NGVFP

encourages the Commission to further investigate which markets are uneconomic and will provide the Commission whatever support it may need.

If the utility is not satisfied with serving markets that can benefit most from utility advantages, such as its low cost of capital, the Commission must ask why. It should not grant the utility market entry as a profit-making venture for shareholders; if this is a profit-making venture, it should be undertaken by an affiliate. It is an appropriate use of utility market power, however, to serve underserved markets, advancing the public interest in a way that economically driven competitors cannot.

IX. CONCLUSION

For all of the foregoing reasons, NGVFP encourages the Commission to reject Advice No. 13-10 or at a minimum open a proceeding on Advice No. 13-10.

Respectfully submitted,



A handwritten signature in blue ink that reads 'Matthew R. Girardot'.

Matthew R. Girardot
Senior Counsel, Mansfield



A handwritten signature in blue ink that reads 'Scott Edelbach'.

Scott Edelbach
General Manager, TruStar Energy



A handwritten signature in black ink, appearing to read "Joel Hirschboeck".

Joel Hirschboeck
Superintendent of Alternative
Fuels & Commercial Accounts,
Kwik Trip



Colorado-Wyoming Petroleum Marketers Association
Convenience Store Association

A handwritten signature in blue ink, appearing to read "Grier Bailey".

Grier Bailey
Manager, Government Affairs,
Colorado-Wyoming Petroleum
Marketers Association



A handwritten signature in black ink, appearing to read "Zachary Wester".

Zachary Wester
Policy and Regulatory Associate,
Blu LNG



A handwritten signature in blue ink, appearing to read "Bob Kulp".

Bob Kulp
Founder and Owner, Kulp Energy
Solutions



A handwritten signature in black ink, appearing to read 'Todd Campbell', with a long horizontal stroke extending to the right.

Todd Campbell

Vice President, Public Policy and Regulatory Affairs,

Clean Energy

September 30, 2013