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December 13, 2013

Attention: Filing Center
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Re: *In the Matter of NORTHWEST NATURAL GAS COMPANY, dba NW NATURAL
Investigation into Schedule H, Large Volume Non-Residential High Pressure Gas Service
Rider
OPUC Docket UG 266*

Enclosed for filing today are an original and five copies of STAFF POST-HEARING
BRIEF in the above-captioned docket.

Sincerely,

Stephanie S. Andrus
Senior Assistant Attorney General
Business Activities Section

Enclosures
SSA:jrs/#4846092
(Electronic copy only)
c: UG 266 Service list

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UG 266

In the Matter of
NORTHWEST NATURAL GAS COMPANY,
dba NW NATURAL
Investigation into Schedule H, Large Volume
Non-Residential High Pressure Gas Service
Rider

STAFF POST-HEARING BRIEF

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I. Introduction.

Northwest Natural Gas Company (“NWN”) asks for authority to provide High Pressure Gas Service (HPGS) through the addition of Schedule H, Large Volume Non-Residential High Pressure Gas Service Rider (hereinafter referred to as “Schedule H”). HPGS provides participating customers with the ability to fuel their vehicles with compressed natural gas (“CNG”).¹ CNG is natural gas compressed to less than one percent of its volume.² CNG can be carried by vehicles in sufficient quantities to allow them to travel significant distances before refueling. NWN’s tariff filing raises two primary questions. First, whether the Commission should authorize NWN to provide HPGS as a regulated service. Second, whether the rates NWN proposes for the service are just and reasonable.

Clean Energy Fuels Corp. (Clean Energy) opposes Schedule H, asserting that NWN should be allowed to participate in the CNG fueling market only through an unregulated affiliate or by serving a limited and specific group of customers.³ Clean Energy asserts that allowing NWN to participate in the market as a regulated utility will “stunt the growth of the market”

¹ NWN/100, Thompson/1-2.

² NWN/200, Summers/3.

³ Other providers of similar services provided comments to the Commission opposing NWN’s entrance into the HPGS market.

1 because it will cause competitors to “direct their capital investment dollars in other states with
2 conditions more conducive to competition.”⁴ Staff, the Northwest Industrial Gas Users
3 (NWIGU), and the Citizens’ Utility Board of Oregon (CUB) support NWN’s provision of HPGS
4 if the costs are borne by HPGS customers. The Oregon Department of Energy (ODOE) and
5 several entities filing comments with the Commission also support NWN’s entrance into the
6 HPGS market.

7 Staff recommends that the Commission approve NWN’s proposed Schedule H. As
8 discussed below, the Governor and Oregon Legislature have signaled their support of regulated
9 utility’s participation in alternative fuels markets and no persuasive evidence establishes that
10 NWN should be excluded from the CNG fueling market. Staff also concludes that the rates
11 proposed in Schedule H are just and reasonable. Schedule H is designed to recover all the costs
12 of HPGS from HPGS customers. Further, HPGS will benefit non-HPGS customers because
13 HPGS customers will share fixed costs of the system.

14 **A. HPGS**

15 Under the Schedule H, the Company will design, install and maintain Company-owned
16 compression facilities on a participating customer’s property. The facilities will take low-
17 pressure gas from the natural gas pipeline, compress the gas to high pressure and low volume,
18 store the gas and dispense it into CNG vehicles.⁵

19 The terms of service and pricing for HPGS will vary for each installation and will be laid
20 out in the customer’s HPGS Service Agreement. NWN will bill the customer a monthly facility
21 charge designed to recover all equipment, permitting and siting costs. NWN will derive the
22 monthly facility charge by multiplying the actual project costs by an annual cost recovery factor,
23 divided by 12. The cost recovery factor is designed to recover in each year the depreciation on
24 the HPGS equipment plus NWN’s financing costs, at its authorized return, for the investment

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26 ⁴ CEF/100, Mitchell/2, 3.

⁵ NWN/200, Summers/3.

1 made on behalf of the customer. In addition, the HPGS customer's monthly bill will include a
2 charge for scheduled maintenance and administrative costs, and when applicable, charges for any
3 other service such as unscheduled maintenance or back-up gas service that NWN may provide.
4 Customers will operate the facilities, and if they choose, may use the equipment to offer retail
5 CNG to the public. NWN will own and maintain the facilities during a 10-year contract, and will
6 continue to own the equipment at the end of the contract.⁶

7 **B. The record in this case does not show that NWN's participation in the CNG market**
8 **would result in unfair competition.**

9 The evidence in this case establishes that there is a need for CNG fueling market
10 development in Oregon. The Governor of Oregon has announced a policy calling for
11 development of the alternative fuels market.⁷ The legislature adopted legislation during the 2013
12 Legislative Session requiring the Commission to establish a voluntary emission reduction
13 program for natural gas for the purpose of incentivizing investment in projects that reduce
14 greenhouse gas emissions and benefit the utilities' customers.⁸ Multiple stakeholders
15 commented to the Commission that they want the ability to fuel CNG vehicles.⁹ NWN reports
16 that the primary motivation to offer HPGS as a utility service is to respond to requests for the
17 service from customers. NWN testified that over the past several years, NWN has received an
18 increasing number of calls from customers interested in converting their fleets to CNG and
19 unable to find businesses willing to provide them with local CNG service.¹⁰

20 The evidence also establishes that it is in the public interest to allow NWN to participate
21 in the CNG fueling market. Notably, the Governor's 10-year Energy Action plan calls for utility
22 participation in the development of alternative fuel program in Oregon. Goal 3 of the plan states:
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24 ⁶ NWN/200, Summers/11.

25 ⁷ Staff/100, Colville/5.

26 ⁸ Oregon Legislative Assembly, "Senate Bill 844" (2013).

⁹ Staff/100, Colville/5.

¹⁰ NWN/200, Summers/8-9.

1 Oregon should develop a comprehensive alternative fuel program that allows utility-
2 ownership of refueling infrastructure and provides incentives, where appropriate, for
3 vehicle conversions.¹¹

4 Senator Lee Beyer submitted comments to this Commission noting that NWN's proposal to
5 provide HPGS in Oregon is the sort of program contemplated by the 2013 legislation adopted to
6 incentivize natural gas public utilities to invest in emission reduction programs.¹² And all
7 entities that submitted comments or testimony to the Commission, other than NWN's direct
8 competitors, support NWN's entrance into the market. Significantly, no potential customer of
9 NWN has come forward with concerns that NWN's participation in the HPGS will harm
10 customers by dampening competition.

11 Although the circumstances underlying electric vehicle charging and CNG services are
12 not completely analogous, the Commission's conclusions regarding utility participation in
13 Oregon's Electric Vehicle (EV) charging market also support allowing NWN into the CNG
14 fueling market. In its investigation of matters related to EV charging, the Commission
15 concluded that it would not prohibit utility participation in the nascent EV charging market:

16 At this early stage of development for the plug-in EV industry, we deem it paramount to
17 allow all market players, including the electric utilities, to have flexibility to respond to
18 emerging market demands. We do not find that allowing utilities to potentially
participate in the EVSE market will necessarily impede the vibrancy of the whole
market.¹³

19 Staff finds no compelling reason to not apply the Commission's reasoning regarding broad
20 market participation to the provision of HPGS by NWN. As discussed in testimony, the
21 Commission can require NWN to discontinue HPGS if the Commission concludes NWN's
22 participation in the CNG fueling market is harming ratepayers. And, as discussed in Staff
23 testimony, NWN's participation in the market leaves room for competitors that have more

24 ¹¹ Kitzhaber, *10-Year Energy Action Plan* at 36.

25 ¹² Transcript of 12.6.2013 Hearing ("Tr") 119 (Staff witness Colville testifying regarding Senator Beyer's comment
letter filed in this docket indicating that the 2013 legislature intentionally passed Senate Bill 844 for issues and
services like NWN's proposed HPGS.); Senator Lee Beyer's October 13, 2013 Comments re: NWN Advice No. 13-
26 10.

¹³ Order No. 12-013 at 6.

1 flexibility regarding service offerings and that can amortize investment costs in a period that is
2 longer than the ten-year period required under Schedule H.¹⁴

3 No persuasive evidence shows NWN should not be allowed to serve the demand in
4 Oregon for HPGS. Although Clean Energy argues that NWN's participation will dampen
5 competition and impede the development of the CNG fueling market, Clean Energy's arguments
6 are not well founded.

7 Clean Energy's argument that NWN's participation in the market will dampen
8 investment in the Oregon market is predicated in part on Clean Energy's assertion that the NGV
9 market in Oregon "has not, until quite recently, been primed for development."¹⁵ The record
10 does not support Clean Energy's suggestion that a "recent" change in market conditions should
11 facilitate market growth or its suggestion that competitors will come to Oregon only if NWN is
12 kept out of the market.¹⁶

13 First, contrary to Clean Energy's assertion, there has been no significant change in
14 market conditions that has "primed" the market for development. The market conditions that
15 exist today have been existence for years.¹⁷ Numerous comments submitted to the Commission
16 in favor of NWN's provision of HPGS show the demand for CNG fueling service has largely
17 gone unmet. Accordingly, market conditions like those that exist today have not tempted new
18 market entrants. And, as of yet, NWN's absence from the market has not fostered competition.

19 Furthermore, Clean Energy's suggestion that recent changes in Oregon will facilitate its
20 own entrance into the Oregon CNG fueling market is refuted by Clean Energy's testimony to the
21 Oregon legislature earlier this year. On March 25, 2013, Clean Energy submitted testimony to
22 the Oregon Senate Committee on Environment and Natural Resources stating that it would not
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25 ¹⁴ Staff/100, Colville/6.

¹⁵ CEF/100, Mitchell/4.

26 ¹⁶ CEF/100, Mitchell/13 ("NGV adoption will occur with the alignment of key economic factors. Until recently,
economic conditions, including the fuel price spreads that drive adoption, have not been sufficiently favorable.").

¹⁷ Tr 34-35.

1 invest heavily in the Oregon market until the legislature removed the 2015 sunset date on the
2 state's low carbon fuel standard.¹⁸

3 Finally, Clean Energy's assertions that NWN's inherent advantages as a public utility
4 will allow NWN to compete unfairly are not well supported. Clean Energy asserts that NWN
5 has the following advantages as a regulated utility that will allow it to compete unfairly in the
6 HPGS market: 9.5% authorized return on equity, brand equity, access to an established customer
7 base and access to customer information.¹⁹ Staff disagrees that these factors warrant NWN's
8 exclusion from the CNG fueling market.

9 The fact that NWN has an authorized rate of return is an inherent part of being a
10 regulated utility. Notwithstanding any inherent advantages a public utility may have in a
11 competitive market, Oregon's 10-year Action Plan calls for utility participation in the alternative
12 fuels market. There is nothing significant about NWN that should compel the Commission to
13 conclude NWN's provision of HPGS is inappropriate notwithstanding Oregon's general goal of
14 having utility participation in the alternative fuel market.

15 Further, as noted by NWN witness Summers at the hearing, some competitors may have a
16 lower cost of capital than NW Natural.²⁰ And, any advantage NWN may have because of its
17 return on equity can be offset by advantages of non-regulated companies.²¹

18 Second, as noted by NWN witness Summers, NWN's positive brand equity is not due to
19 its status as a public utility.²² Arguably, NWN's brand awareness is linked to its opportunity to
20 provide utility service in Oregon for over 100 years. However, Staff does not recommend that
21 the Commission deny NWN's access to the CNG fueling market because NWN has had a long-
22 time presence in Oregon.

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24 ¹⁸ Tr 35-36.

¹⁹ CEF/100, Mitchell/19.

25 ²⁰ Tr 40.

26 ²¹ Tr 40-41 (NWN witness testifying "Non-regulated companies have flexibility in pricing and structuring their services; they can discriminate among customers; they can offer different deals to customers; they can refuse to offer service to a customer.").

²² Tr 84.

1 Third, NWN sufficiently refuted Clean Energy's assertion that NWN will use information
2 it has already obtained from serving natural gas customers to an unfair advantage. NWN
3 testified that it did not and will not use its customer information to identify potential HPGS
4 customers.²³ Instead NW uses publicly-available data to identify potential customers of HPGS,
5 not its own customer information.²⁴

6 Rather than having a dampening effect on competition, Staff anticipates that NWN's
7 provision of HPGS market may facilitate competition in the CNG fueling market. The interplay
8 between the installation of HPGS equipment and NGVs argues that increasing the number of
9 NGV fueling stations in Oregon will facilitate acquisition of NGVs in the state. This is because
10 entities interested in converting their fleets to CNG may be hesitant to do so if there are few
11 fueling stations. As the number of NGVs in the state increases, the opportunity for competitive
12 services could rise.²⁵ The Oregon Department of Energy's witness Julie Peacock Williamson
13 shares Staff's view:

14 I believe that NW Natural's HPGS will establish demand for CNG fueling stations by
15 facilitating fleet conversions, and this demand may be necessary to attract third parties to
the Oregon market.²⁶

16 Staff anticipates that Clean Energy will rely on Staff's analysis regarding rate-making
17 treatment for EVSE in the Commission's 2012 EV investigation to assert that the Commission
18 should not allow NWN to enter the HPGS market. If Clean Energy does so, the reliance is
19 misplaced. The 2012 EV investigation docket was a general investigation into issues related to
20 EV charging infrastructure and rates.²⁷ This docket concerns NWN's specific proposal for
21 provision of HPGS and rate recovery for the service from customers taking the service. In the
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23 ²³ NWN/200, Summers/21-22.

24 ²⁴ NWN/200, Summers/22.

25 ²⁵ Staff/100, Colville/7. *See also* NWN/200, Summers/6 ("The primary barriers to development of CNG for
26 transportation are the lack of fueling infrastructure and the cost of fleet conversion. Indeed, there is a 'chicken and
egg' aspect to the problem. Before vehicle fleet owners are willing to make the significant investment to transition
their fleets to CNG, they must be sure there is sufficient fueling infrastructure available. However, CNG developers
are reluctant to enter a market until a critical number of vehicles are converted to CNG.").

26 ²⁶ ODOE/100, Peacock Williamson/2.

²⁷ Order No. 12-013, *In the Matter of Public Utility Commission of Oregon Investigation of Matters related to
Electric Vehicle Charging ("EV Investigation")*.

1 EV investigation docket, the Commission noted that it did not know how it would rule if
2 presented with a specific proposal to allow a utility to roll costs of EVSE into all ratepayers'
3 rates but identified criteria it would apply if a utility presented such a proposal. In contrast,
4 NWN has not asked to recover costs of HPGS from all ratepayers, but has designed Schedule H
5 to recover all costs associated with the service from HPGS customers. Accordingly, not all the
6 criteria identified by the Staff and the Commission in the EV investigation for judging the
7 appropriateness of rate recovery for EVSE from all ratepayers are applicable in this docket.

8 In the EV investigation, the Commission explained how it would evaluate the prudence of
9 EVSE investment for purposes of rate recovery from all ratepayers, noting that to establish
10 prudence a utility must show the investment provides net benefits:

11 We expect that a utility that requests rate recovery for EVSE investment to make a
12 compelling case that the utility's ownership and operation of the EVSE is beneficial to
13 ratepayers—not just the public generally. Utilities suggest that prudence be the primary
14 measure used to determine whether EVSE investment should be recoverable in rates. We
15 respond that prudence requires a showing of net benefits to customers. We find, therefore,
16 that Staff's first criterion is fundamental to the analysis. We note, however, that a showing
that utility EVSE investment has net benefits to customers may be dependent on a showing
that utility other criteria, such as the necessity of installing and operating charging
infrastructure at the particular location to facilitate plug-in EV adoption in the greater area,
and the lack of third party EVSP or utility affiliate to provide the same services at the same
location or a nearby location.²⁸

17 Assuming *arguendo* that NWN must show a net benefit to all ratepayers to establish the
18 prudence of its investment in HPGS, such a showing would be based on different factors than
19 those needed to show the prudence of investment in an EV charging station.

20 To establish that its revenue from HPGS will be sufficient to cover the cost of the
21 investment, NWN has presented evidence showing that it reasonably forecasted the costs and
22 designed rates to recover those costs. NWN has also demonstrated that it included sufficient
23 safeguards (e.g., credit requirements) to ensure that HPGS customers will pay the cost of the
24 HPGS service. In contrast, to show that investment in a public EV charging station is prudent, a
25 utility may have to show that it installed the charging station in a place where it is likely to earn

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²⁸ Order No. 12-013 at 10, *EV Investigation*.
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1 revenue to offset the costs.²⁹ Also, the utility would have to show the service is reasonably
2 necessary and that the utility can provide it cost effectively.

3 **B. The rates proposed in the Schedule H rider are just and reasonable**

4 Staff is persuaded NWN has designed Schedule H to recover all costs of HPGS,
5 including indirect costs, HPGS customers. Staff also concludes that HPGS will benefit non-
6 HPGS customers. This is because customers taking service under Schedule H will increase the
7 volume of natural gas sold by NWN.³⁰ As a result, NWN's fixed costs will be spread to these
8 additional volumes, reducing existing customers' unit costs, thereby creating a net benefit to
9 existing customers.³¹

10 CUB asserts that NWN must establish that HPGS results in a net benefit to all ratepayers
11 before the Commission approves the HPGS Rider.³² NWN asserts that it need only show that
12 non-HPGS customers are not harmed.³³ NWIGU asserts that the net benefit standard is applied
13 to mergers and acquisitions and not tariff. NWIG asserts that if the net benefit standard is
14 applied here, the Commission would require those taking HPGS to pay more than the cost of
15 service to subsidize existing customers.³⁴

16 Although CUB and NWN disagree on whether the net benefit standard applies, CUB and
17 NWN, as well as Staff, are in agreement that HPGS provides a net benefit to ratepayers.³⁵
18 Because the evidence establishes HPGS provides a net benefit, whether a no harm or net benefit
19 standard applies is not particularly material to the outcome of this docket.

20 Staff has not found express support for the proposition the Commission applies a "net
21 benefit" standard to determine whether to approve a tariff for voluntary services that when the
22

23 ²⁹ Order No. 12-013 at 10 (Explaining that showing that utility EVSE investment has net benefits may be dependent
24 on showing Staff's other criteria, such as the necessity of installing and operating infrastructure at the particular
location to facilitate plug-in EV adoption in the greater area, and the lack of third party EVSP or utility affiliate to
provide the same services at the location or a nearby location.)

25 ³⁰ Staff/100, Colville/14.

26 ³¹ Staff/100, Colville/14.

³² CUB/100, Jenks/4.

³³ NWN/100, Thompson/ 7-8.

³⁴ NWIGU/100, Finklea/4-5.

³⁵ Staff/100, Colville/14, NWN/100, Thompson/7-8.

1 charges for the voluntary service are recovered only from the customers taking the service. It is
2 clear that the Commission balances the interests of customers taking the voluntary service and
3 other utility ratepayers when examining such a tariff, but it is less clear that the Commission will
4 require that the voluntary service provide net benefits to customers who do not take the service
5 or pay for it.³⁶ In 1987, the Commission investigated whether it could and should preclude
6 certain discretionary gas customers from receiving gas-rate discounts.³⁷ The Commission
7 explained its analysis as follows:

8 The goal in Oregon is to protect utility customers, and the public in general, from abuses
9 likely to arise from a monopolist's control over prices and terms of service. See ORS
10 756.040.

11 While the markets served by energy utilities are much more competitive now than they
12 have been in the past, and the simple fact remains that some customers do not have viable
13 alternatives to their gas or electric service. As a monopolist, a gas or electric utility need
14 not be overly concerned about lost revenue from discounts to discretionary customers
15 because fixed costs can be recovered from its "core" customers. The Commission has an
16 obligation to protect core customers from excessive discounts for discretionary
17 customers.

18 Each utility's core customers benefit from discounts for discretionary customers to the
19 extent the discounts result in sales that otherwise would not occur. However, discounts
20 offered by a gas utility that attract discretionary customers from an electric utility can
21 result in rate increases for core customers of the electric utility. As the guardian of core
22 customers of both utilities, the Commission has an obligation to balance the interests of
23 gas utility customers against the interests of electric utility customers and adopt policies
24 that avoid unfair treatment of either group.³⁸

25 Notwithstanding any ambiguity about whether the Commission applies either a net benefit or no
26 harm standard when reviewing a tariff for a voluntary service, it is clear that the tariff must be
27 just and reasonable and non-discriminatory. To be non-discriminatory, the rate must cover all
28 the costs for the service, and contribute to the fixed costs of the system. This is because if HPGS
29 does not contribute to the fixed costs of the system, HPGS customers will obtain the benefit of
30 the system at the expense of other ratepayers.

31 As explained above, the HPGS will cover the costs of the service and contribute to the

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33 ³⁶ Cf. Order No. 12-013 at , *EV Investigation* (holding utility must establish a net benefit for all ratepayers before
34 rolling costs of EVSE into all ratepayers rates.

35 ³⁷ Order No. 87-803, *In re Transportation Rates Charged by Gas Utilities, et al., (Cogeneration Phase)*.

36 ³⁸ Order No. 87-803, *In re Transportation Rates Charged by Gas Utilities (Cogeneration Phase)*.

1 fixed costs of NWN's system.³⁹ Thus, the rate is non-discriminatory. Based on its review of the
2 information provided in this docket, Staff also concludes the HPGS rates are just and reasonable.

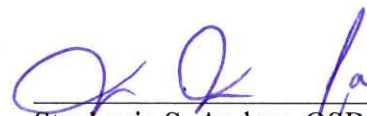
3 **II. Conclusion**

4 Staff recommends that the Commission approve NWN's proposed Schedule H.

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6 DATED this 13th day of December, 2013.

8 Respectfully submitted,

9 ELLEN F. ROSENBLUM
10 Attorney General

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12 _____
13 Stephanie S. Andrus, OSB #92512
14 Senior Assistant Attorney General
15 Of Attorneys for Staff of the Public Utility
16 Commission of Oregon

25 _____
26 ³⁹ See also CUB/100, Jenks/3 ("By agreeing to track [costs of HPGS], and to adjust the Administrative Service charge if it is not recovering these costs, other customers are protected from subsidizing the service. Without a subsidy, the increased sales will contribute to the fixed costs of the system and provide a net benefit to other customers.")

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2013, I served the foregoing STAFF POST-HEARING BRIEF upon the persons named on the service list below who have waived such service by mail, by serving a full, true and correct copy thereof at their e-mail address as follows:

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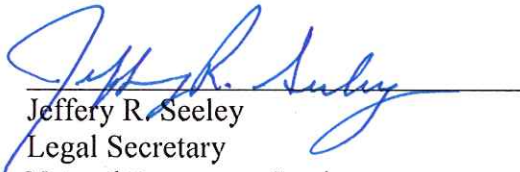
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