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December 13, 2013

VIA ELECTRONIC FILING AND FIRST CLASS MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97302-1088

Re: Docket UG 266 – In the Matter of Northwest Natural Gas Company Investigation into Schedule H, Large Volume Non-Residential High Pressure Gas Service Rider.

Attention Filing Center:

Enclosed for filing in the above-captioned docket are an original and five copies of Northwest Natural Gas Company's Post Hearing Brief.

A copy of this filing has been served on all parties to this proceeding as indicated on the enclosed Certificate of Service.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo

Wendy McIndoo
Office Manager

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UG 266

In the Matter of NORTHWEST NATURAL GAS COMPANY, dba NWNATURAL, Investigation into Schedule H, Large Volume Non-Residential High Pressure Gas Service Rider.	**NORTHWEST NATURAL GAS COMPANY'S POST HEARING BRIEF**

INTRODUCTION

Pursuant to the Prehearing Conference Memorandum and Ruling of Administrative Law Judge ("ALJ") Allan Arlow, issued on October 31, 2013, Northwest Natural Gas Company ("NW Natural" or "Company") submits this Post Hearing Brief to the Public Utility Commission of Oregon ("Commission").

In June of this year, NW Natural filed its Advice No. 13-10 in which it proposed to build and maintain facilities on customer premises to provide them with compressed natural gas ("CNG") for use as a transportation fuel for their truck and bus fleets. This proposal for what the Company refers to as High Pressure Gas Service ("HPGS") was made in response to requests by NW Natural's customers who expressed their desire to convert their fleets to CNG.[1] Moreover, the Company's proposal was also intended to respond to expressed state policy calling for utility participation in offering alternative transportation fuels.[2]

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[1] NWN/200, Summers/8-9; Thompson, Tr. 12; Summers, Tr. 43.

[2] NWN/200, Summers/4-5; CEF/301 at 36.

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To be clear, there is virtually no activity in Oregon in the CNG transportation fuel market. Oregon has only three retail CNG stations in the entire state and a fraction of the number of CNG vehicles on the road in other states.[3] Moreover, as pointed out by the Oregon Department of Energy's ("ODOE") witness, Julie Peacock Williamson, there are no third-party CNG providers in the state.[4] Indeed, this dearth of competitive activity is one of the primary reasons why the Company's HPGS has the support of Commission Staff ***and*** ODOE—both of whom believe that NW Natural's participation in the market may be necessary in order to spur a competitive market in Oregon.[5] As explained by ODOE's witness: "NW Natural's HPGS will establish demand for CNG fueling stations by facilitating fleet conversions, and this demand may be necessary to attract third parties to the Oregon market."[6] Similarly, Staff concludes that NW Natural's provision of CNG "could actually kick start a competitive market in Oregon."[7]

Clean Energy Fuels Corp. ("Clean Energy")—a nation-wide private developer of CNG and liquefied natural gas ("LNG") fueling stations—is the sole party in this contested case opposing NW Natural's HPGS offering. To be clear, Clean Energy has developed ***no*** CNG stations in Oregon to date,[8] and based on the statements of individuals who testified at the Commission's October 28, 2013, Public Meeting, that company seems to have no interest in doing so at this time.[9] Nevertheless, it is Clean Energy's position that

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[3] NWN/200, Summers/5-6.

[4] ODOE/100, Peacock Williamson/1-2.

[5] Staff/100, Colville/7; ODOE/100, Peacock Williamson/2, 7.

[6] ODOE/100, Peacock Williamson/2.

[7] Staff/100, Colville/7.

[8] Summers, Tr. 37-38; ODOE/100, Peacock Williamson/2-3.

[9] NWN/200, Summers/9.

the CNG fueling market is just about to take off in Oregon, but will only do so if NW Natural is prohibited from entering the market. This position is just not credible.

- First, there has been no change in market conditions to suggest that absent NW Natural's offering, the CNG fueling market is now ready to develop. Price spreads between natural gas and diesel and gasoline have remained relatively constant since 2009[10] and Oregon's state and local incentives and mandates related to alternative fuels remain unchanged.[11]

- Second, Clean Energy itself has made clear that it will not invest in the Oregon market unless and until the legislature passes a clean fuels mandate.[12] This is an action Oregon's legislature refused to take in the last full session and no evidence suggests they will be changing their minds any time soon.[13]

Despite its apparent neglect of the Oregon market, Clean Energy urges this Commission to reject NW Natural's proposal, claiming that it will hamper, as opposed to help, market development. Clean Energy specifically argues that it is impossible for a non-regulated competitor to successfully compete in a market where a utility is present.[14]

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[10] CEF/100, Mitchell/12; Summers, Tr. 35.

[11] Summers, Tr. 35-36, NWN/200, Summers/9.

[12] Clean Energy filed a letter with the Oregon Senate Committee on Environment and Natural Resources in support of Senate Bill 488 ("SB 488"). SB 488 would have amended Section 9, chapter 754, Oregon Laws 2009, to eliminate a sunset provision related to the development of Oregon's low carbon fuel standards. Had SB 488 passed, the Environmental Quality Commission would have been directed to develop low carbon fuel standard. Clean Energy's letter is a part of the legislature record and can be found at the following website: https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/17647. This letter is also attached hereto as Attachment A. In that letter, Clean Energy informed the legislature that, "Clean Energy, along with many others, would love to invest heavily in Oregon, but we cannot do so until the sunset date is lifted." Clean Energy repeated this statement to the press: "'We would love to expand our operations, we'd love to build more stations in Oregon, but we can't make further investments until the sunset date is lifted,' said Spencer Richley, policy and clean energy associate at Clean Energy Fuels, a Seal Beach, Calif.-based company that has two natural gas fueling stations in Oregon." NWN/200, Summers/9, n. 25.

[13] NWN/200, Summers/9.

[14] CEF/100, Mitchell 18-19.

This position is belied by the fact that many non-regulated CNG providers (including Clean Energy) operate in states with utility offerings, with no apparent harm to the competitive market.[15] Clean Energy's claim is particularly unpersuasive with respect to this HPGS offering, which has been carefully developed to ensure that the price covers the cost, and that it is not subsidized by NW Natural's ratepayers.

The fact is that Clean Energy and other private developers are unwilling to enter this market in any serious fashion until regulatory and market conditions assure their success—a condition that does not exist today. Despite this fact, Clean Energy apparently believes it is in its interest to keep utilities out of the market until Clean Energy is ready to enter—presumably to ensure its access to the greatest number of potential customers. This approach is not in the public interest. On the contrary, NW Natural believes it is in the interest of its customers, as well as the citizens of this state, to allow its participation to jump start the market through offering a cost-based option for customers to gain access to compression equipment that allows them to fuel CNG vehicles. If successful, that participation will also inure to the benefit of private competitors such as Clean Energy.

For these reasons, and the reasons explained below, this Commission should approve NW Natural's Advice No. 13-10.

BACKGROUND

The Company's proposed Schedule H introduces a new HPGS for nonresidential customers receiving gas service on Schedules 3, 31, or 32.[16] Under Schedule H, the Company will design, install, and maintain Company-owned compression facilities on a

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[15] NWN/200, Summers/8; ODOE/100, Peacock Williamson/3-5.

[16] NWN Initial Filing in Advice No. 13-10 at 1 (June 27, 2013).

customer's property,[17] providing them with the ability to fuel their vehicles with CNG. The facilities will compress natural gas to high pressures—up to 3,600 pounds per square inch—ready to be stored on-site and dispensed to CNG vehicles.[18] The customers will operate the equipment, and if they choose, they may offer retail CNG to the public.[19] The Company will own and maintain the equipment during a 10-year contract, and will continue to own the equipment at the end of the contract.[20]

The Company is not proposing in this filing to operate CNG fueling stations or to determine their location. Additionally, NW Natural is not proposing that its core customers take on risks associated with the CNG market.[21] Instead, NW Natural is seeking to provide to customers that are willing to pay for it, gas service at pressures that are sufficient to make use of natural gas as a transportation fuel. Part of NW Natural's proposal is that a HPGS customer could choose use the Company-owned facilities to sell CNG to the public.

NW Natural's proposal is intended to ensure that customers receiving HPGS pay the full costs of the service—including allocated overhead costs and program development costs.[22] Full cost recovery from HPGS customers protects non-participating customers from subsidizing the program and ensures that NW Natural does not have an unfair competitive advantage. The continued program oversight provided by the Commission

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[17] Advice No. 13-10 at 1.

[18] NWN/200, Summers/11.

[19] NWN/200, Summers/12.

[20] NWN/200, Summers/11.

[21] NWN/200, Summers/13-14.

[22] NWN/200, Summers/14-20; Summers, Tr. 64, 66-67; Thompson, Tr. 13-14 ("all direct costs of providing high pressure gas service to participants will be billed directly to those participants. There will also be measures put in place so that, to the extent shared resources are used to provide this service, there will be an allocation of those costs to these customers which is intended to get to the same result, as is the case with the direct costs. So, in other words, the shared costs will also be billed out proportionally to these customers.").

and Staff affords additional safeguards to ensure that the HPGS is not subsidized by non-participating customers.[23]

The costs associated with HPGS service can be broken down into the following phases: Customer Service, Feasibility Study, Site Design and Permit Evaluation, and HPGS Service.[24]

Customer Service Phase. During the Customer Service Phase the Company will incur costs when employees respond to customers interested in HPGS.[25] Company employees will provide interested customers with a preliminary overview of HPGS and basic information about CNG including economics, conversion factors, and equipment needs.[26] The Customer Service Phase costs will be recovered through the Administrative Services Charge, which is a component of the Scheduled Maintenance Charge in Schedule H.[27]

Feasibility Study Phase. The next phase is the Feasibility Study, which requires NW Natural to work with the customer to conduct a site visit and assessment, complete an inventory of the customer's fleet and consumption, investigate permitting and easement requirements, and create an estimate for the customer.[28] Like the costs incurred during the Customer Service Phase, these will also be recovered through the Administrative Services Charge.[29]

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[23] *See* Staff/100, Colville/8.

[24] NWN/200, Summers/15; NWN/202 (describing each of the cost components in Schedule H).

[25] NWN/200, Summers/16.

[26] NWN/200, Summers/16.

[27] NWN/200, Summers/16.

[28] NWN/200, Summers/16-17.

[29] NWN/200, Summers/17.

In the event that the Company receives customer interest in its HPGS up to and through either the Customer Service or Feasibility Phases, but no customers ultimately take service under Schedule H, general customers will not pay these costs. The Company's current revenue requirement does not include any costs associated with HPGS and the Company has agreed to track the costs associated with this service.[30] Thus, these costs will be readily identifiable and addressed by the Commission and parties in the Company's next general rate case.

Site Design and Permit Evaluation Phase. During this phase, the Company will work to design the site, draw up the site design documents, file for tax credits, solicit bids, procure long lead items, and present the design and budget documents to the customer.[31] The costs associated with this phase will be tracked and if the customer ultimately takes service under Schedule H, these costs will be built into the Monthly Facility Charge.[32] If the customer ultimately chooses not to take service, that customer will receive a bill for the costs incurred.[33]

HPGS Service Phase. This final phase begins when the customer signs the HPGS Agreement.[34] At this point, the HPGS customer will pay all equipment, labor (including construction overheard costs), and all legal, technical, and customer support costs via the Monthly Facility Charge in Schedule H.[35] The customer will pay a yearly flat fee for scheduled maintenance based on the contract established with the equipment

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[30] NWN/200, Summers/19; Thompson, Tr. 99-100. Notably, these costs are estimated to be only $1,570 per year. Summers, Tr. 73.

[31] NWN/200, Summers/17.

[32] NWN/200, Summers/17.

[33] NWN/200, Summers/17; Summers, Tr. 66.

[34] NWN/200, Summers/17.

[35] NWN/200, Summers/18.

manufacturer, via the Scheduled Maintenance Charge in Schedule H.[36] The customer will pay for the actual costs for parts and labor for any unscheduled maintenance via the Unscheduled Maintenance Charge in Schedule H.[37]

In addition to the costs discussed above, the Company will also charge HPGS customers an Administrative Service Charge, which will recover the indirect administrative, or "overhead," costs resulting from the provision of HPGS.[38] These costs include those of performing customer credit evaluation, drafting the customer contract and site license, billing, warehousing and inventory management of spare parts, monitoring, and dispatch.[39] This charge, which will also include certain overhead and other costs associated with the Customer Service and Feasibility Study phases, was calculated based on the Company's estimates of the costs that will be actually incurred.[40] The initial estimated amounts are conservative and intended to ensure that all costs are recovered from participating customers.[41] However, in order to address concerns raised by Staff, the Citizens' Utility Board of Oregon ("CUB"), and the Northwest Industrial Gas Users ("NWIGU"), the Company has agreed to track Company staff time spent on these services for the first year, meet with stakeholders to discuss the costs, and propose changes to the tariff in order to adjust the Administrative Services Charge as necessary.[42]

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[36] NWN/200, Summers/18.

[37] NWN/200, Summers/18.

[38] NWN/200, Summers/18-19, Summers, Tr. 66-68.

[39] NWN/200, Summers/18-19. These costs will be included in the Administrative Service Charge.

[40] NWN/200, Summers/19.

[41] NWN/200, Summers/19.

[42] NWN/200, Summers/19.

Also, consistent with Staff's recommendation, HPGS customers will pay for the Company's costs of developing the HPGS service proposal, including the legal costs of drafting contracts, general pricing review, and market research.[43]

CUB was particularly concerned about potential cross-subsidization.[44] In light of NW Natural's adjustments, CUB is now satisfied that the proposed Schedule H is not subsidized by non-participating customers, and CUB supports NW Natural's proposal.[45] NWIGU also testified that, with the addition of NW Natural's extra precautions to prevent cross-subsidization, NWIGU supports NW Natural's HPGS proposal.[46] Staff is also satisfied with NW Natural's proposals to guard against cross-subsidization.[47]

ARGUMENT

I. NW Natural's Proposed HPGS is Appropriately Offered as Utility Service.

The Commission has the legal authority to approve NW Natural's proposed Schedule H and allow the Company to provide HPGS as a vehicle fuel and in a competitive market. Both statutes and Commission precedent are clear that "utility service" is a broadly defined term and that the provision of natural gas as a vehicle fuel is specifically contemplated as a regulated, utility service. Moreover, the Commission may regulate a service provided by a utility even if the service is subject to market competition.

A. CNG as a Vehicle Fuel can be Offered as Utility Service.

The Commission has the power to "protect . . . customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate

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[43] NWN/200, Summers/20.

[44] CUB/100, Jenks/2; CUB Comments on Advice No. 13-10 at 1 (Sept. 30, 2013).

[45] CUB/100, Jenks/3.

[46] NWIGU/100, Finklea/1.

[47] Staff/100, Colville/12-13.

service at fair and reasonable rates."[48] While the Commission's statutes do not define the term "service," the term "public utility" is defined as a "company . . . that owns, operates, manages or controls all or part of any plant or equipment in the state for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public."[49] In this context, the term "service," is "used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served."[50]

Commission precedent reflects this broad definition of "service." In *Northwest Climate Conditioning Association v. Lobdell* the Oregon Court of Appeals upheld the Commission's conclusion that utility repair and replacement activities fall under the definition of "utility service."[51] The Commission has also concluded that telephone directory publishing and advertising constitute utility service because they are "so closely associated with the provision of telephone service that such service cannot be considered adequate without it."[52] Even utility administrative services fall within the definition of ORS 756.010(8) because these services are essential to the utility's ability to fulfill its core obligations to customers.[53]

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[48] ORS 756.040(1).

[49] ORS 757.005(1)(a).

[50] ORS 756.010(8). This definition applies to ORS Chapters 756, 757, 758, 759.

[51] *N.W. Climate Conditioning Assn. et al. v. Lobdell*, 79 Or. App. 560 (1986) (utility service provided directly to retail customers and related to the safe and efficient provision of natural gas was a utility service subject to regulation under ORS 756.010(8)).

[52] *Re Pacific N.W. Bell Tel. Co.*, Docket UT 85, Order No. 89-1807, 110 P.U.R.4th 132, 140 (Dec. 29, 1989).

[53] *May v. P.G.E.*, Docket UC 196, Order No. 92-1168, 137 P.U.R.4th 448 (August 14, 1992) (customer billings constituted a service as defined by ORS 756.010(8) because customer billings were necessary for a utility to fulfill its obligations under ORS 757.225 and because regulation of utility billing systems helped protect ratepayers).

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Applying this "broad definition" principle, NW Natural's HPGS may be provided as a "utility service" subject to the Commission's jurisdiction. The fact that the provision of HPGS facilities will be located on the customer's premises does not alter the fundamental nature of the HPGS, which is to provide natural gas service to end-use customers. Indeed, HPGS is an extension of compression services already provided by the NW Natural.[54]

Further, the Commission's statutes specifically contemplate circumstances in which public utilities would provide alternative motor vehicle fuels, including natural gas, as a utility service. As discussed above, ORS 757.005(1)(a)(A) defines "public utilities." However, ORS 757.005(1)(b)(G) provides an exemption from this general definition:

> Any corporation, company, partnership, individual or association of individuals that furnishes natural gas, electricity, ethanol, methanol, methane, biodiesel or other alternative fuel to any number of customers for use in motor vehicles and does not furnish any utility service described in paragraph (a) of this subsection.[55]

The fact that ORS 757.005 identifies a potential overlap between traditional public utility services and the provision of alternative fuels suggests that the legislature contemplated scenarios in which a public utility might provide natural gas for use in motor vehicles as a utility service. This is the same conclusion that the Commission reached in Docket UM 1461, relating to electric vehicles ("EV").[56]

B. Utility Services May be Provided in Competitive Markets.

The fact that HPGS will be provided in a competitive market does not deprive the Commission of authority to regulate it as a utility service. On the contrary, there are

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[54] NWN/200, Summers/11.

[55] This exemption is not the only one. For example, others include entities providing power from solar or wind resources to any number of customers. ORS 757.005(1)(b)(C)(iii).

[56] *Re Investigation of Matters Related to Electric Vehicle Charging*, Docket UM 1461, Order No. 12-013 at 10 (Jan. 19, 2012). *See discussion infra.*

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several circumstances under which the Commission found it appropriate for a utility to provide a competitive service as a regulated offering—subject to steps intended to protect the competitive market.[57] For instance, in a 1997 proceeding for a declaratory order, the Commission concluded that PacifiCorp's provision of electricity through a direct access pilot program was a utility service subject to Commission jurisdiction.[58] PacifiCorp argued that it should not be required to file tariffs for the direct access services because it was not providing service as a monopoly utility, but rather as a competitive provider of a commodity.[59] The Commission rejected PacifiCorp's argument that the term "service" should apply "only to the provision of bundled monopoly services and not to the provision of competitive energy services" and required PacifiCorp to file tariffs under ORS 757.205 related to its participation in the direct access program.[60] In so doing, the Commission relied on the broad definition of service found in ORS 756.010(8) and *Northwest Climate Conditioning* to support its conclusion that tariffs are required "of regulated utilities even for services that are subject to direct competition."[61] Indeed, the Commission concluded that the tariffs provided the "ground rules under which the company must operate" to protect

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[57] NW Natural also currently provides services that are arguably competitive. For example, the Company will rent additional meters to industrial customers, even though those customers could likely procure the same meters on the competitive market. Thompson, Tr. 26 (describing NW Natural Schedule 15). Similarly, both Portland General Electric Company ("PGE") and PacifiCorp provide street lighting services, which are also provided in a competitive market. *See* PGE Schedule 15; PacifiCorp Schedule 51.

[58] *Re Portland General Electric Co. and PacifiCorp*, Dockets UE 101/DR 10, Order No. 97-408 (Oct. 17, 1997).

[59] *Id.* at 3.

[60] *Id.*

[61] *Id.* at 4.

the integrity of the competitive market and prevent PacifiCorp from engaging in anti-competitive pricing.[62]

More recently, the Commission's order in the EV docket addressed many of the concerns raised in this case related to the regulation of a service provided in a competitive market. In that investigative docket, the Commission focused much of its discussion and analysis on "what role, if any, investor-owned utilities should play in owning and operating charging stations and promoting EVs in other ways, and the nature of cost recovery for any activities by the utilities."[63] Although the EV docket focused largely on the regulatory implications of utility-owned public EV charging stations,[64] which is not the type of service NW Natural proposed here, the general conclusions drawn by the Commission relative to a utility's participation in an emerging market are highly relevant to the arguments presented in this case.

Significantly, the Commission specifically found that the provision of EV charging by an electric utility could be a utility service even though the service was subject to market competition. The Commission observed that, "[a]t this early stage of development for the plug-in EV industry, we deem it paramount to allow all market players, including the electric utilities, to have flexibility to respond to emerging market demands."[65] In the same paragraph, the Commission noted that utilities could structure their EV investments either as an unregulated service or as a utility investment.[66] Indeed, the Commission specifically

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[62] *Id.* at 5.

[63] Order No. 12-013 at 2.

[64] *Id.* at 5 ("comments focused on the question whether utility ownership and operation of publicly available EVSE in any form—even without regulated rate recovery—would permit the full development of a competitive marketplace for EV charging services.").

[65] *Id.* at 6.

[66] *Id.* ("**At this early stage of development for the plug-in EV industry, we deem it paramount to allow all market players, including the electric utilities, to have flexibility to respond to**

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concluded that utility investments in EV charging stations could be included in rate base if the utility is able to satisfy certain criteria set forth in the order.[67]

It should be noted however that the service considered in the EV docket is distinguishable from NW Natural's HPGS, and as a result, many of the specific criteria established to determine whether rate recovery might be appropriate for EV investments are not directly applicable here. Most notably, the criteria were designed to determine whether the Commission should allow general rate recovery of utility investments in public EV charging infrastructure, *i.e.*, EV charging stations owned and operated by utilities for provision of service to the general public.[68] As such, the EV service under to which the criteria applied raised competitive concerns not present in our case. Here, NW Natural is not proposing to own and operate public CNG fueling stations. In addition, the EV charging stations at issue in the EV docket would necessarily be subsidized by all customers.[69] Here, NW Natural's CNG fueling service is carefully designed to ensure that there is no cross-subsidization.[70]

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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. Electric utilities should be allowed to invest in EVSE and operate EV charging stations as a non-regulated, non-rate based venture. **A utility may decide how to structure its ownership and operation of EVSE and charging stations, whether below-the-line as a non-regulated utility investment, or as a utility investment**.").

[67] *Id.* at 10.

[68] *Id.* at 5, 7 (issue was "whether a utility should be able to recover in rates the costs of publicly available EVSE charging stations."). Simply examining the criteria makes clear that they are not directly applicable here. For example, the third criterion is whether "there is no likelihood that a third party EVSP or utility affiliate could provide the same services at the location or a nearby location." This factor is focused on situations where the utility is selecting the location of the charging station. That will not occur under Schedule H. *See* Thompson, Tr. 19, 21.

[69] For example, the first criterion discusses the standard that will be applicable for a utility to recover its EV charging investment from all customers, which necessarily means that the investment is being subsidized by non-participants. *See* Thompson, Tr. 22-23.

[70] NWN/200, Summers/14-20.

Finally, while not providing direct legal authority, it is significant that the provision of CNG as a utility service is also consistent with the regulatory approach taken in numerous other jurisdictions. Indeed, at least 12 other states specifically allow utilities to participate in the CNG fueling market.[71] Most notably, California—which Clean Energy touts as the model for Oregon's emerging CNG fueling market—has a long history of utility investment in CNG fueling infrastructure.[72] In addition, the National Association of Regulatory Utility Commissioners adopted a resolution in November 2012 calling for utility company programs to promote the development of the alternative fuel vehicle market.[73] These facts suggest that it is well within the authority of a state public utility commission to allow for utilities to participate in the CNG fueling market.

II. Oregon State Energy Policy Supports the Provision of HPGS as a Regulated Service.

The Governor's 10-Year Energy Action Plan ("10-Year Energy Plan") calls for converting 20 percent of large fleets to alternative fuel vehicles.[74] The plan observes that the "anticipated increased use of alternative fuel vehicles is creating a new role for Oregon's utilities as they become fuel providers for the transportation sector."[75] The plan calls for utilities to "help accelerate the early deployment of alternative fuel vehicle infrastructure . . ."[76] The plan's specific action item related to alternative fuels calls for Oregon to "develop a comprehensive alternative fuel program that allows utility-ownership

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[71] NWN/200, Summers/8; ODOE/100, Peacock Williamson/5.

[72] *See* NWN/200, Summers/24-25; ODOE/100, Peacock Williamson/4-5 (Pacific Gas & Electric and Southern California Gas both have public fueling stations that compete with Clean Energy).

[73] NWN/200, Summers/8.

[74] NWN/200, Summers/4, CEF/301 at 36.

[75] CEF/301 at 36.

[76] CEF/301 at 36.

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Portland, OR 97205

of refueling infrastructure . . ."[77] The Company's proposal in this case directly implements this action item.[78]

III. Customers Support the Provision of HPGS as a Regulated Service.

It is also significant that NW Natural's customers have requested that the Company provide HPGS *as a regulated utility service*.[79] CNG offered as a transportation fuel is a new service in an undeveloped market that customers are not yet familiar with. As such, NW Natural's customers are looking for the assurance of fairness, stability, transparency, and accountability to regulators that comes from Commission oversight.[80] The Company's tariff will describe in detail how the HPGS charges will be determined, include the actual capital factors used to calculate the customer charges, and make clear that the service will be provided at cost. Moreover, customers will understand that in the event NW Natural does not deliver the service as promised, they will have the ability to seek the assistance of the Commission. For these reasons, it is important that NW Natural offer HPGS as a utility service in order to respond to customer demand and bolster the emerging CNG fueling market.[81]

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[77] CEF/301 at 36.

[78] *See* Staff/100, Colville/6. In addition, the Oregon Statewide Transportation Strategy has identified conversion of large fleets to low emissions fuels (including CNG) as an important strategy for achieving the legislature's goal of reducing greenhouse gas emissions. NWN/200, Summers/4-5.

[79] NWN/200, Summers/8-10; NWN/100, Thompson/5; Thompson, Tr. 12; Summers, Tr. 43.

[80] NWN/200, Summers/10.

[81] Summers, Tr. 36 ("other providers and customers see Northwest Natural's program as necessary to create the confidence needed to develop the CNG market in Oregon.").

IV. Schedule H Will Not Impair Competition in the Oregon CNG Market.

A. Oregon's CNG Fueling Market is in its Earliest Stages of Development.

All parties agree that the CNG market in Oregon is not yet developed.[82] ODOE testifies that "Oregon is viewed as a small commercial market for third-party providers and it has been difficult to attract participation."[83] Indeed, there are no third-party CNG providers currently competing in the Oregon CNG retail market[84] and there are only three retail CNG stations in the entire state, none of which are owned by private providers.[85] Of the 23 privately-owned CNG stations in Oregon, eight are owned by NW Natural.[86] The lack of CNG fueling in Oregon is particularly stark when compared to the 385 publicly accessible fueling stations for ethanol, biodiesel, and electric vehicles.[87]

Further, Oregon's CNG usage for transportation lags far behind many other states. Adjusted for population size, Utah has ten times as many CNG trucks and buses on the road as does Oregon.[88] California utilizes ten times as much CNG for trucks and buses,

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[82] *See e.g.* CEF/100, Mitchell/13 ("Oregon's NGV refueling infrastructure market is still in its early stages."); ODOE/100, Peacock Williamson/1-2 ("Currently, infrastructure is limited to privately-owned fueling stations with no third-party providers."); NWIGU/100, Finklea/3 ("Oregon has been a leader in electric vehicles, but lags far behind many other state in the use of natural gas vehicles."); NWN/200, Summers/5.

[83] ODOE/100, Peacock Williamson/7.

[84] ODOE/100, Peacock Williamson/1-2.

[85] NWN/200, Summers/5-6; ODOE/100, Peacock Williamson/2.

[86] NWN/200, Summers/5-6.

[87] NWN/200, Summers/6.

[88] NWN/200, Summers/6.

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and Georgia utilizes three times as much.[89] Notably, all three of these states allow utility participation in the competitive market.[90]

B. Schedule H Will Bolster Oregon's Emerging CNG Fueling Market.

All the parties to this case, with the exception of Clean Energy, agree that NW Natural's proposed HPGS offering will enhance the CNG fueling market and result in greater use of natural gas vehicles ("NGVs") in Oregon. Most notably, ODOE—the state agency tasked with implementing Oregon's state energy policy—supports NW Natural's filing. ODOE testifies that the market is not yet competitive,[91] and concludes that "NW Natural's HPGS will establish demand for CNG . . . and this demand may be necessary to attract third parties to the Oregon market."[92] As recognized by ODOE and other experts, Oregon's lack of CNG fueling infrastructure constitutes a significant barrier to the development of a robust CNG fueling market.[93] NW Natural's proposal to build fueling infrastructure in Oregon can help overcome this important market barrier by providing infrastructure that will give fleet owners the confidence to invest in converting their vehicles to CNG.[94]

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[89] NWN/200, Summers/6.

[90] ODOE/100, Peacock Williamson/5; NWN/100, Thompson/6; *see* Mitchell, Tr. 139.

[91] ODOE/100, Peacock Williamson/2 ("Given the lack of third-party service providers currently operating in Oregon and experiences in other states, the department does not believe NW Natural's HPGS will create an anti-competitive market in the state.")

[92] ODOE/100, Peacock Williamson/2.

[93] ODOE/100, Peacock Williamson/6-7; NWN/200, Summers/6; Summers, Tr. 51; Staff/100, Colville/7.

[94] ODOE/100, Peacock Williamson/2 ("NW Natural's tariff would be a step to opening up the CNG market in the state by providing [HPGS] to customers who would like to switch to CNG but do not have an option to do so absent infrastructure."); *see also* ODOE/100, Peacock Williamson/7 ("NW Natural's tariff would help develop the infrastructure needed to allow more fleets, both public and private, to use CNG."); Summers, Tr. 36, 40, 51 ("there is a cost to convert and there is a cost to the infrastructure, but without confidence in the market, people aren't willing to make those investments."), 59-60.; Staff/100, Colville/7.

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Portland, OR 97205

Similarly, Staff—the party charged with assisting the Commission to ensure that utility customers receive adequate service at just and reasonable rates—supports NW Natural's filing. Staff concludes that NW Natural's participation in this market "could actually kick start a competitive market in Oregon" by increasing conversions to NGVs.[95]

Similarly, NWIGU concludes that approval of the Company's filing will result in greater use of natural gas as a vehicle fuel,[96] as do other important stakeholders. The Columbia Willamette Clean Cities Coalition, whose mission focuses on the reduction of petroleum consumption, concludes that NW Natural's offering is a "vital step to reducing Oregon's dependence on imported conventional petroleum-based fuels and a step towards the increased benefits [provided by] the use of alternative fuels such as CNG, RNG, and LNG . . ."[97] Oregon's trucking industry is also supportive of NW Natural's offering.[98] The Oregon Trucking Association concluded that NW Natural's Schedule H will provide the "necessary natural gas fueling stations to allow the trucking industry to begin the conversion of its trucks to natural gas power."[99]

It is also important that some CNG providers with whom NW Natural may ultimately compete see the benefit of NW Natural's filing.[100] For example, TransEnergy Solutions

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[95] Staff/100, Colville/7.

[96] NWIGU/100, Finklea/3-4.

[97] Comments of Columbia Willamette Clean Cities Coalition at 3 (Sept. 27, 2013).

[98] Comments of Con-Way Freight, Inc. (Sept. 3, 2013) ("Con-way Freight strongly supports Advice No. 13-10 as a positive step toward providing fueling stations that would better allow the Oregon Trucking Industry to utilize clean burning natural gas vehicles in our fleet."); Comments of Peterbilt Diesel Service Unit (October 4, 2013) ("Allowing Northwest Natural to supply CNG in the local market will allow the expansion of vehicle sales using clean energy technology and long term will encourage the private sector to add fueling stations of their own.").

[99] Comments of Oregon Trucking Association (Sept. 4, 2013).

[100] *See* NWN/200, Summers/24; Comments of Fuelpoint CNG Innovations, LLC (Sept. 16, 2013); NWN/201, Summers/34 (Mark Fitz of StarOil testified that "The schedule would not chill the market. It'd actually be the opposite . . ."); NWN/201, Summers/43 (John Anderson of Eugene Truck Haven

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Portland, OR 97205

testified to the Commission that NW Natural's tariff "will provide a strong net benefit to the state in general . . . and spur the adoption of CNG in the transportation market."[101] Presumably, TransEnergy understands that the development of the CNG market is in the interest of the entire industry.

It should also be noted that NW Natural is by no means intending to dominate the CNG fueling market. On the contrary, NW Natural is targeting a small segment of the market that is looking for a low risk investment that includes the regulatory oversight provided by the Commission.[102] In fact, the Company's expectation is that over a five year period it will sign up only one percent of Oregon's total fleet market and only 10 percent of Oregon's large fleet market.[103] As explained by NW Natural's witness at hearing, HPGS is a standard service that the Company expects will appeal to a limited market share.[104]

NW Natural's HPGS is also expected to contribute to the retail CNG market. Although NW Natural is not proposing to construct public CNG fueling stations itself, NW Natural's HPGS customers will have the option of providing public fueling.[105] And, as pointed out by NW Natural, many will be economically incented to do so in order to generate revenue that can be used to offset the fixed costs of receiving the HPGS from NW Natural.[106] Indeed, based on comments filed in this case and feedback from potential

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supports the filing); NWN/201, Summers/54 (Greg Stone of TechStar Energy testified that, "I am, obviously, in full support of what Northwest Natural is doing. Even as a developer, I don't feel like it's a competitive disadvantage. I think it's an advantage to everyone.").

[101] Comments of TransEnergy Solutions (Sept. 30, 2013).

[102] Summers, Tr. 41, 45-46, 87; *see also* Mitchell, Tr. 128-129 (describing why Clean Energy's pricing options are more attractive to customers).

[103] Summers, Tr. 45-46 (large fleets defined as fleets with 40 or more vehicles).

[104] Summers, Tr. 41, 45-46.

[105] Summers, Tr. 39, 47; NWN/200, Summers/12

[106] Summers, Tr. 39; NWN/200, Summers/11.

customers, it appears likely at least some HPGS customers will provide public fueling.[107] The provision of public fueling—whether from a fleet customer offering public access or a customer intent on opening a public fueling station—will result in further market development and build consumer confidence in NGVs.[108]

Clean Energy argues that NW Natural's customers will be discouraged from providing public fueling due to concerns over damage to the facilities, lack of sufficient compression capabilities, and the lack of fast fill dispensers at fleet fueling stations.[109] However, all of NW Natural's proposed facilities utilize fast fill dispensers that facilitate public fueling.[110] And as noted above, NW Natural's potential fleet customers have expressed a clear intent to offer public fueling.[111] Further, some non-fleet customers have expressed their intent to open and operate public, retail CNG fueling stations using NW Natural's HPGS offering.[112] In fact, at hearing Clean Energy indicated that approximately 20 percent of its own customers offer public fueling.[113] If that is the case, there is no reason to believe that NW Natural's customers will not do the same.

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[107] Summers, Tr. 39, 47, 92-94.

[108] ODOE/100, Peacock Williamson/7 ("Any CNG stations that offer public fueling will facilitate conversions of additional fleets and help attract to Oregon third-party developers of CNG stations.").

[109] CEF/100, Mitchell/23.

[110] Summers, Tr. 39.

[111] Summers, Tr. 39 ("Indeed, some of our customers have expressed interest to provide public access to boost volumes through their fleet stations to reduce the monthly fixed cost.").

[112] Summers, Tr. 39 ("Some of our customers have expressed interest to actually just operate a retail station and aggregate fleet volumes.").

[113] Mitchell, Tr. 128.

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C. Clean Energy's Market Claims are at Odds with the Evidence.

Clean Energy testifies that NW Natural's participation in the market is unnecessary because Oregon's market is now "primed for development."[114] According to Clean Energy, "[f]or the first time, factors have aligned in a manner that encourages increased NGV adoption" in Oregon.[115] However, the evidence suggests that there have been no significant changes to the conditions that have existed over the past three years while the market has languished.

First, nothing in Clean Energy's own behavior suggests that the market is ready to take off. Clean Energy has constructed no CNG stations in Oregon to date.[116] It has constructed two LNG stations—but Clean Energy states that these will not be opened until "sufficient numbers of natural gas vehicles are deployed in the geographies and on the routes served by such stations."[117] Although Clean Energy "hope[s] to open up these stations in the next few months,"[118] it has provided no basis to suggest that sufficient NGVs will be deployed in the next few months to provide it with the incentive to do so.[119]

The fact is that Clean Energy's activity in Oregon—or lack of activity—is entirely consistent with its advocacy before the state legislature and the press, in which it has made clear that it will not invest in Oregon until the Oregon adopts a low carbon fuel standard. Specifically, in a letter to the legislature last session, Clean Energy stated:

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[114] CEF/100, Mitchell/4.

[115] CEF/100, Mitchell/25.

[116] Summers, Tr. 37-38; ODOE/100, Peacock Williamson/2-3.

[117] CEF/100, Mitchell/6.

[118] CEF/100, Mitchell/5.

[119] Clean Energy also claims that it "expects to commence construction of a station in the near future." CEF/100, Mitchell/6. The testimony does not indicate if this is a CNG or LNG station. However, consistent with Clean Energy's use of the term "station" to denote an LNG station, it is reasonable to assume Clean Energy is referring to the construction of an LNG station.

"Clean Energy, along with many others, would love to invest heavily in Oregon, ***but we cannot do so until" Oregon adopts a low carbon fuel standard.***[120] Clean Energy repeated this claim to the press, stating unequivocally that Clean Energy ***"can't make further investments" in Oregon until the legislature allows a low carbon fuel standard***.[121]

As Clean Energy is well aware, the legislature declined to adopt low carbon fuel standards last session and there is no evidence to suggest that they are inclined to do so any time soon.[122]

At hearing, Clean Energy's witness, Warren Mitchell, sought to downplay its statements to the legislature by testifying that his company has seven employees that are partially assigned to Oregon.[123] However, Mr. Mitchell provided no evidence to suggest that these employees are actually active in the state. Moreover, Mr. Mitchell did not even attempt to rebut the evidence presented at the October 28, 2013, Public Meeting, and referred to in NW Natural's testimony, that Clean Energy has been wholly unresponsive to requests from potential Oregon customers.[124]

Second, no evidence suggests that market conditions generally have changed such that *other competitors* will be any more likely to enter the Oregon CNG market than have over the past several years. Clean Energy claims that the "price spread between CNG

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[120] Summers, Tr. 35-36; Attachment A at 2.

[121] NWN/200, Summers/9, n. 25.

[122] NWN/200, Summers/9.

[123] Mitchell, Tr. 134.

[124] NWN/200, Summers/9 (John Anderson of Eugene Truck Haven testified that, "Two years ago I called Clean Energy. I'm still waiting for them to call me back."); NWN/201, Summers/47 (Matt Tracy of Columbia Willamette Clean Cities Coalition testified that four years ago third-party developers "promised to the customers at that time that they would be deploying assets and deploying infrastructure in the region at a rapid rate.").

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and gasoline is the most significant factor encouraging adoption of NGVs,"[125] and that this price spread has "significantly widened over the last few years."[126] In fact, according to Clean Energy's own evidence, this price spread has been at roughly the same level for three years, and generally wide for over six years.[127] Yet, during this time Clean Energy has not built a single CNG station in Oregon[128] and neither have any other third party providers.[129]

Clean Energy also suggests that Oregon has seen recent "[c]hanges in regulation, including government mandates and incentives in support of NGVs [that] should encourage increased adoption of NGVs."[130] However, Clean Energy fails to identify a single change to Oregon's mandates or incentives that will result in increased NGV adoption in Oregon. On the contrary, while Oregon has offered significant NGV incentives since the 1990s,[131] to date these incentives have been insufficient to stimulate the CNG market. On the other hand, as discussed above, Oregon does not seem to be prepared to adopt low carbon fuel standards or alternative fleet fuel requirements like those that Clean

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[125] CEF/100, Mitchell/10.

[126] CEF/100, Mitchell/11.

[127] CEF/100, Mitchell/12; Summers, Tr. 35 (price spreads "have remained steady for several years since 2011"), 44. Also, comparing the price spread information on page 12 of Mr. Mitchell's testimony to the throughput growth in SoCalGas's service territory on page 16 of Mr. Mitchell's testimony, shows that California's market growth seems entirely independent of the CNG-gasoline price spread.

[128] Summers, Tr. 37-38; ODOE/100, Peacock Williamson/2-3.

[129] ODOE/100, Peacock Williamson/2.

[130] CEF/100, Mitchell/4.

[131] Summers, Tr. 35 (Oregon has had 35 percent Business Energy Tax Credit ("BETC") since 1994)

Energy testifies were important in encouraging the development of California's NGV market.[132]

Clean Energy does cite the recent issuance of the 10-Year Energy Plan, which called for the adoption of a low carbon fuel standard, going so far as to suggest that it has provided the regulatory certainty Clean Energy believes is necessary to encourage investment in Oregon's market.[133] This claim stretches credulity, particularly given the fact that the legislature rejected the call for a low carbon fuel standard—which is precisely the action that Clean Energy states is a necessary predicate for its investment in Oregon.[134]

D. California's History does Not Support the Contention that Unsubsidized Utility Participation Must be Restricted in Order to Promote the CNG Market.

Clean Energy contends that the CNG experience in California demonstrates that the best way to promote growth in the NGV market is "to restrict utility participation in the market."[135] However, Clean Energy's argument is at odds with the evidence in this case, including Clean Energy's own description of the history of CNG fueling in California. In fact, utilities were instrumental in jump starting the CNG fueling market in California and continue to provide CNG fueling services in the competitive market.

In 1991, when the California NGV market was just emerging, the California Public Utilities Commission ("CPUC") analyzed the potential anti-competitive issues related to the provision of CNG as a regulated service and concluded that "utilities play a critical role in the development of this market,"[136] and that utilities must "jump start the retail market by

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[132] *See* CEF/100, Mitchell/15.

[133] CEF/100, Mitchell/13.

[134] Summers, Tr. 35-36; Attachment A at 2.

[135] CEF/100, Mitchell/16.

[136] *Re Pacific Gas & Electric Co.*, 124 P.U.R.4th 107, 127 (Cal.P.U.C. 1991).

providing fueling stations and offering conversion incentives."[137] Accordingly, the CPUC authorized an initial utility program intended encourage the development of the nascent CNG fueling market. Importantly, this initial program was heavily subsidized by ratepayers.[138]

Clean Energy correctly points out that in 1995 the CPUC voted to restrict the utilities from owning NGV fueling stations and ordered Southern California Gas Company ("SoCalGas") to divest itself of all stations owned on customer sites.[139] However, the CPUC allowed the utilities to continue to own and operate public fueling stations that were also used to fuel the utilities' fleets.[140] Moreover, the CPUC did not require divestment out of any competitive concerns, but rather over concerns about the ratepayer subsidies.[141] Indeed, the CPUC made clear that utilities "should be allowed to use shareholder funds" to continue to build fueling stations.[142] Today utilities in California continue to compete against third-party providers, like Clean Energy, in the CNG fueling market.[143] Indeed,

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[137] *Re Utility Involvement in the Market for Low-Emission Vehicles,* 1991 WL 496693, 8 (Cal.P.U.C. 1991).

[138] *See e.g. Re Pacific Gas & Electric Co.*, 124 P.U.R. 4th at 109, 50 (PG&E's programs alone cost ratepayers over $5 million in 1991, and over $7 million in 1992.); *Re Utility Involvement in Market for Low-emission Vehicles*, 145 P.U.R.4th 243 (Cal.P.U.C. 1993) (The CPUC calculated that California ratepayers, as customers of PG&E, SoCalGas, and SDG&E, spent over $40 million in 1992 on NGV programs).

[139] CEF/100, Mitchell/14.

[140] *Re Order Instituting Investigation of Utility Involvement in the Low-emission Vehicle Market*, 165 P.U.R.4th 503, 62 C.P.U.C.2d 395, 459 (1995).

[141] *Id.* at 444 ("Several parties raise concerns about unfair competition stemming from the utilities' proposed programs [to build ratepayer funded refueling stations]. Since we are not approving the programs, we need not fully address those issues here."). Even Clean Energy admits this fact. CEF/100, Mitchell/23. The order then goes on to say that to avoid unfair competition the customer charges in future programs must be fully compensatory.

[142] *Id.*

[143] ODOE/100, Peacock Williamson/4; NWN/100, Thompson/6 (discussing the CPUC's approval of comparable SoCalGas CNG offering). At hearing Clean Energy's attorney questioned NW

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ODOE concluded that it "appears that utility ownership of stations has not prevented third-party service providers from expanding services in California."[144]

Clean Energy's testimony also makes clear that other factors, including California's incentives and mandates, were significant contributors to the development of the California market.[145] As Clean Energy notes, California "offers significant monetary incentives" for NGVs.[146] Clean Energy also points out that, "[p]erhaps most importantly," in 2000 California regulators imposed strict air quality regulations requiring fleets to use alternative fuels.[147] Clean Energy presents no evidence that suggests that the prohibition of utility involvement in the CNG fueling market is necessary for market development.

E. NW Natural Does Not Possess an Unfair Competitive Advantage as a Result of its Utility Status.

The main advantage that a regulated utility might gain in a competitive market is the ability to use other customers to subsidize the competitive service. Here, NW Natural's

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Natural's witness Mark Thompson in such a way as to imply that the CPUC's approval of the SoCalGas CNG offering was unsettled. *See* Thompson, Tr. 27-28. In fact, Clean Energy filed motions for rehearing and for a stay of the CPUC's decision—both of which were denied by the CPUC on October 17, 2013. *Re Application of Southern California Gas Co. to Establish a Compression Services Tariff*, Application 11-11-011, Decision 13-10-042 (Oct. 17, 2013). Clean Energy has a pending motion to modify the CPUC's decision, which was filed on July 11, 2013. Based the CPUC's denial of Clean Energy's previous motions, it appears unlikely that the matters is as unsettled as Clean Energy implies. Clean Energy also referenced a rulemaking that has been initiated by the CPUC related to NGVs. That rulemaking was initiated on November 22, 2013. *Order Instituting Rulemaking to Consider Alternative-Fueled Vehicle Programs, Tariffs, and Policies*, Rulemaking 13-11-007 (Nov. 22, 2013). It seems unlikely that the rulemaking is intended to reverse the result of the SoCalGas order, based on the fact that the CPUC affirmed its SoCalGas order a month before initiating the rulemaking,

[144] ODOE/100, Peacock Williamson/4.

[145] CEF/100, Mitchell/4 ("Unlike California, Oregon has not historically had government mandates to drive the market development. Changes in regulation, including government mandates and incentives in support of NGVs, should encourage increased adoption of NGVs."); 14 ("For over 20 years, California has made a policy commitment to AFV generally and NGV specifically.").

[146] CEF/100, Mitchell/15.

[147] CEF/100, Mitchell/15; SCAQMD Rules 1191, 1192, 1193, 1194, and 1186.1.

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Portland, OR 97205

service is designed to prevent cross-subsidization by non-participating customers thus protecting ratepayers and maintaining a level playing field for non-utility competitors.[148]

Nevertheless, Clean Energy claims that NW Natural will be able to rely on "indirect cross subsidies as a result of its utility status,"[149] providing the Company with an unfair advantage. Clean Energy identifies three "indirect subsidies" that it claims will undermine the market:

- NW Natural's lower return on equity ("ROE");
- NW Natural's brand equity; and
- NW Natural's access to customer information.

Clean Energy's claims of indirect subsidies are not compelling and to the extent they provide any advantage to NW Natural, that advantage is far outweighed by NW Natural's inherent market disadvantages that result from its status as a monopoly utility.

NW Natural's Cost of Capital Does Not Provide an Unfair Competitive Advantage.

Clean Energy claims that NW Natural's ROE is lower than non-utility competitors and that this will allow the Company to provide HPGS at a price that will undercut the market.[150] It is true that utilities generally have a lower ROE as compared to many non-regulated companies.[151] However, due to their capital structure and a greater reliance on low-cost debt, a non-regulated company may enjoy a lower overall cost of capital.[152] In addition, non-regulated companies can price their services at a loss for limited periods of

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[148] NWN/200, Summers/15.

[149] CEF/100, Mitchell/18-19.

[150] CEF/100, Mitchell/19.

[151] Summers, Tr. 40.

[152] Summers, Tr. 40.

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time in order to grow their market share.[153] Therefore, even if the utility has a lower ROE than other competitors, that fact does not necessarily translate into an ability to undercut the market.

NW Natural's Brand Equity Does Not Provide an Unfair Competitive Advantage.

Clean Energy claims that NW Natural's utility status provides it with the ability to build brand equity that results in an uneven playing field.[154] However, while general awareness of NW Natural's brand may be partially due to its status as a utility, the Company's *positive brand equity* is due entirely to its consistent provision of quality service to customers—something that is not true of all utilities.[155] Indeed, many utilities do not have brand equity, making clear that this factor is a result of how a company manages itself and not the result of a company's status as a regulated utility.[156]

Moreover, customers who might be interested in NW Natural's HPGS are generally sophisticated customers who are interested in converting large fleets of vehicles to CNG for economic reasons.[157] It is unlikely that these customers would automatically default to a utility service before fully investigating their options. In other words, NW Natural expects that potential customers will fully evaluate their offerings on their merits.

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[153] Summers, Tr. 40, 96.

[154] CEF/100, Mitchell/21.

[155] NWN/200, Summers/21; Summers, Tr. 83-84.

[156] Summers, Tr. 83-84. Clean Energy also claims that NW Natural has an unfair advantage because it has been operating in Oregon since 1859. CEF/100, Mitchell/21. However, NW Natural's competitive advantages derived from its length of service and the fact it is an Oregon company are not the result of its status as a utility. There are many non-utility companies operating in Oregon that may have a market advantage over an out-of-state competitor like Clean Energy. And there are many non-utility companies that have been operating longer than Clean Energy.

[157] Staff/100, Colville/7.

NW Natural's HPGS Service Does not Rely on Customer Usage Data.

Clean Energy claims that NW Natural's access to customer information provides the Company with another "indirect cross subsidy" because competitors do not have comparable data access.[158] However, NW Natural gains no advantage from access to customers' historical usage data.[159] NW Natural did not review customers' historical data to identify fleets that could be converted to CNG.[160] Rather, it used publicly available information listing fleets in Oregon via software called "FleetSeek."[161] This information is equally available to any competitor wishing to target fleets for conversion to CNG.[162]

Clean Energy also suggests that NW Natural will be able to undercut competitors' prices because NW Natural will have notice when a customer is negotiating for CNG service from a competitor.[163] While it may be true that NW Natural will know if a customer is negotiating with a CNG provider, it is not true that NW Natural will have the flexibility to reduce its prices in order to lure that customer away from the competition. Because Schedule H is a regulated tariff, NW Natural will be unable to offer more attractive terms to a single customer simply because it learns that customer is negotiating with a competitor.[164] NW Natural's status as a regulated utility does not lead to any "indirect cross subsidies" due to ability to undercut competitors' prices. In fact, the ability to offer

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[158] CEF/100, Mitchell/19.

[159] NWN/200, Summers/22.

[160] NWN/200, Summers/22.

[161] NWN/200, Summers/22.

[162] NWN/200, Summers/22.

[163] CEF/100, Mitchell/19.

[164] *See* NWIGU Comments on Advice No. 13-10 at 2 (Sept. 27, 2013).

customized terms in order to attract a particular customer is a competitive advantage that Clean Energy would have over NW Natural.[165]

Private Companies Have Competitive Advantages over NW Natural.

As explained above, the most important competitive advantage that a monopoly utility might enjoy in entering a competitive market is the ability to spread the costs of service to other ratepayers.[166] NW Natural has taken great pains to ensure that the costs of HPGS will be paid by HPGS customers, and not by other customers.[167] Without this cost advantage, an unsubsidized utility service is left with many disadvantages compared to a private provider.[168]

First, unregulated companies can levelize costs and spread them over a longer time period, thus reducing the annual price of service for the customer.[169] NW Natural's standard HPGS offering utilizes a 10-year amortization period in order to reduce risk to the Company, consistent with its role as a regulated utility.[170] A competitor could undercut the cost of Schedule H, for example, by spreading costs over 20 years, rather than the 10-year period allowed in Schedule H.[171]

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[165] *See e.g.* CEF/100, Mitchell/5-6 (describing how Clean Energy offers customers the "flexibility to build a service package that best suits their needs.").

[166] *See* NWIGU Comments on Advice No. 13-10 at 2 ("The regulatory process should ensure that Clean Energy and others are not competing against a subsidized service. Subsidies from other ratepayers would lead to unfair competition…").

[167] NWN/200, Summers/15.

[168] NWN/200, Summers/22-23.

[169] NWN/200, Summers/22.

[170] Summers, Tr. 88-89.

[171] NWN/200, Summers/22; Staff/100, Colville/6.

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Portland, OR 97205

Second, private providers can discriminate between customers, offer different terms and prices, or offer service only to the most lucrative customers.[172] NW Natural, on the other hand, must make the same tariff available to all customers.[173] This means NW Natural must provide the same service at the same price to any interested customer, while competitors can cherry-pick the most profitable among them.[174]

Third, because NW Natural must maintain a public tariff, the Company's HPGS service will have a level of transparency that is lacking with respect to competitors.[175] Although the tariff will not include the precise prices for each customer, the tariff will describe the basic cost of the equipment, how the prices will be determined, and include the specific capital factors that will be used. Based on these it will be a relatively easy task for any non-regulated player to design its prices to undercut NW Natural for the most attractive accounts.

Finally, unregulated companies can change offerings at any time without going through a regulatory process to gain approval.[176] This freedom allows unregulated competitors flexibility in responding to changes in the market, while it could take NW Natural months or years of regulatory work to catch up.[177] As Clean Energy states, the company offers, "a full suite of NGV refueling infrastructure packages and the flexibility to

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[172] NWN/200, Summers/22.

[173] NWN/200, Summers/23; Summers, Tr. 47-48, 52, 87-88.

[174] NWN/200, Summers/23.

[175] NWN/200, Summers/23; NWIGU/100, Finklea/4 (companies like Clean Energy "may actually have a competitive edge because NW Natural's cost of service and rates will be publicly available and other in the market will presumably have access to that information, whereas NW Natural will not have reciprocal access to that information from other service providers.").

[176] NWN/200, Summers/23.

[177] NWN/200, Summers/23; Summers, Tr. 40-41.

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Portland, OR 97205

build a service package that best suits their needs."[178] On the other hand, NW Natural fully expects that its standardized, low risk offer will appeal only to certain customers, while Clean Energy's full menu of customer options will appeal to others.[179]

V. Clean Energy's Recommendation that NW Natural Serve Only Uneconomic Markets is Untenable.

Clean Energy recommends that the Commission allow NW Natural to provide CNG only to uneconomic markets, such as NGV home fueling, school bus fleets, and low-volume municipal fleets.[180] Clean Energy claims that these market sectors are uneconomic for unregulated providers but might be profitable for NW Natural because of the Company's lower cost of capital.[181] Clean Energy fails to present any facts in support of this claim. The Company, however, has analyzed these very market sectors and determined that subsidies would be required for the Company to provide cost-of-service HPGS.[182] Therefore, Clean Energy's recommendation should be rejected.

VI. Schedule H Provides Customer Benefit.

NW Natural's provision of HPGS will provide a customer benefit because the costs of the service will be recovered directly from participating customers, thus preventing cross-subsidization. In addition, the provision of HPGS will result in the sale of additional volumes, which will contribute to the fixed costs of the utility system, thereby reducing existing customers' contribution—creating a net benefit.[183]

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[178] CEF/100, Mitchell/5.

[179] Summers, Tr. 41, 45-46, 87.

[180] CEF/100, Mitchell/27.

[181] CEF/100, Mitchell/26-27.

[182] Summers, Tr. 41.

[183] NWN/100, Thompson/8; CUB/100, Jenks/4-5; Staff/100, Colville/14.

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Although there is no dispute that the Company's proposed HPGS will result in a net benefit to customers, the Company maintains that "no harm" is the correct standard to be applied when the Commission is reviewing whether a new utility offering is in the public interest.[184] This distinction may be important in the event the Company proposes a new service that will not necessarily result in greater volumes sold. In such a case, it should be sufficient if the Company can demonstrate that the rate covers the Company's costs. For example, currently the Company maintains a tariffed offering under which it will rent at cost additional gas meters to industrial customers for the customer's internal gas usage monitoring.[185] The provision of this service does not result in additional sales volumes. Nonetheless because it is priced at cost, the provision of this service does not harm customers. A determination by the Commission in this case that the net benefit standard applies could preclude such potential service offerings down the road.

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[184] NWN/100, Thompson/7. The Commission has consistently applied a "no harm" standard when statute or rule in question requires a finding that a particular action is in the public interest. *See e.g. Re Portland General Electric Company*, Docket UP 224, Order No. 05-966 (Aug. 29, 2005) (ORS 757.480 imposes a no harm standard); *Re CenturyLink, Inc. Application for Approval of Merger*, Docket UM 1484, Order No. 11-095 at 6 (Mar. 24, 2011) (no harm standard applies to transactions under ORS 759.375 and 759.380); *Re PacifiCorp Application Requesting the Purchase of the Goshen Series Capacitor Bank*, Docket UP 253, Order No. 10-011 (Jan. 11, 2010) (applies no harm standard to transaction under ORS 757.485); *Re PacifiCorp*, Docket UF 4000, Order No. 88-767, 95 P.U.R.4th 96 (July 15, 1988) (the same no harm standard that applies to ORS 757.480 applies to ORS 757.495). The Commission's application of a no harm standard to protect the public interest is based on its analysis of ORS 756.040. As described in Order No. 88-767: "The public interest standard is consistent with the Commission's general duty under ORS 756.040 to use its jurisdiction and powers to protect utility customers and the public generally from 'unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.' A finding that a proposed transaction is consistent with the public interest necessarily encompasses a determination that the public will be protected from unjust and unreasonable exactions and will receive adequate service at fair and reasonable rates. Contrary to BPA's contention, ORS 756.040 does not require that every transaction authorized by the Commission must improve the position of utility customers and the public." While the Commission did apply a net benefits standard to EV charging, the factual differences between that case and here render the application of the net benefits standard here inappropriate. In the EV case, the Commission examined rate recovery of public EV charging stations that would necessarily be subsidized by non-EV charging customers. That is not the case here.

[185] Thompson, Tr. 26 (describing NW Natural Schedule 15).

CONCLUSION

The Commission should approve NW Natural's proposed Schedule H. Doing so will provide much needed support to Oregon's CNG fueling market, which will ultimately benefit the competitive market, NW Natural's customers, and the state of Oregon.

Respectfully submitted this 13th day of December, 2013.

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Docket UG 266

Attachment A

to

Northwest Natural Gas Company's

Post Hearing Brief

Letter from Spencer Richley of Clean Energy to

Members of the Senate Committee on Environment and Natural Resources

December 13, 2013

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Spencer A. Richley
Policy and Regulatory Associate

Clean Energy

March 25, 2013

Oregon State Capitol
Senate Committee on Environment and Natural Resources
900 Court St NE
Salem, OR 97301

RE: Written Testimony for SB 488 – Strong Support

Dear Chair Dingfelder and Members of the Senate Committee on Environment and Natural Resources,

Although I had the opportunity to give a two-minute verbal testimony on March 18, I wanted to elaborate on my testimony, provide you with information you requested, and clarify aspects of the program for you. On behalf of Clean Energy, I write in strong support of SB 488, a bill that would lift the sunset date of the Oregon Clean Fuels Program to allow the regulatory process to begin.

Clarification about the Program

After listening to testimonies, there seems to be confusion about the nature of the Oregon Clean Fuels Program. This is not a biofuels program or an ethanol program, but rather it is intended for all alternative fuels. It is a technology-neutral program, and its purpose is to lower the overall greenhouse gas emissions that come from the refueling industry by providing Oregon with a variety of alternative fuels like natural gas, electricity, hydrogen, propane, renewable diesel, ethanol, and more.

Passage of SB 488 Means Heavy Investment in Oregon

As I mentioned in my verbal testimony, Clean Energy is North America's leading provider of natural gas as vehicle fuel. We have two stations in Oregon – one in Central Point and one in Stanfield. These are currently the only two publicly available natural gas stations in Oregon. There are only two other natural gas refueling stations in Oregon, but they are both private. In comparison, California has about 450 natural gas stations. Similarly, according to the California DMV, there are 37,000 natural gas vehicles in California, but in Oregon there are only 115 natural gas vehicles (92 buses, 14 trucks, and 9 passenger cars) according to the Oregon DMV. This vast difference in the number of stations and vehicles is due to the fact that California has a Low Carbon Fuel Standard (LCFS). Clean Energy alone has grown from about 270 employees in 2010 to almost 1200 employees today. Natural gas is not the only alternative fuel that is heavily investing in California. Virtually every type of alternative fuel is heavily investing in California because it has become so attractive as a result of the LCFS.

The amount of investment in numerous alternative vehicle and fuel companies in California is a preview of what could be achieved in Oregon if SB 488 passes. Clean Energy, along with many others, would love to invest heavily in Oregon, but we cannot do so until the sunset date is lifted.

Will Gas Prices Rise?

By looking at the effect of the Low Carbon Fuel Standard on California's gas prices, we can extrapolate this to the future of Oregon's gas prices. According to the California Air Resources Board (CARB), gasoline prices have not risen at all and diesel prices have actually *decreased* by $0.04 per gallon. Furthermore, the Oregon Clean Fuels program is arguably better than the LCFS because it includes a consumer protection clause that states that if the price of gasoline or diesel rises by 5%, the program may be suspended. This ensures that consumers receive the benefits of the program without subjecting them to the possible risks.

Additionally, it is very plausible that gas prices will decrease as a result of phase 2 of the Oregon Clean Fuels Program because the vehicle fueling market will become saturated with multiple options. For example, natural gas can save consumers up to $1.50 over the gallon equivalent of gasoline and diesel. Other fuels like electricity, propane, and more also provide savings to petroleum fuels. This offers businesses and consumers a fuel that is economical, clean, and domestic, thereby reducing Oregon's dependence on the volatile prices of foreign oil.

Why Not Wait until California's Court Case Has Been Resolved?

It is important to keep in mind the timelines of the program when deciding whether to pass this bill. If SB 488 passes, it simply gives the Department of Environmental Quality (DEQ) approval to implement the regulatory portion, or "phase 2," of the program. Before this can occur however, the DEQ needs to consider the data and studies collected from "phase 1" of the program. It is important to note that although the passage of SB 488 would grant the DEQ approval to implement phase 2, if the data and studies or California's court case suggest that the program would have adverse effects on Oregon, they will not proceed with regulation. Therefore, lifting the sunset date does not force the Oregon Clean Fuels Program to be implemented, but rather it gives DEQ the option to implement it if their data suggests that the program would provide substantial benefits to Oregon.

Clean Energy

Conclusion

With the full implementation of the CFP, Oregon will experience rapid development in the alternative fuel sector, which will create Oregonian jobs, improve local business competitiveness through fuel savings, cleaner air, and increased energy security. Failure to pass SB 488 will allow the petroleum industry with their out-of-state refineries to continue to monopolize a market that could have otherwise enjoyed more meaningful competition to the benefit of Oregon consumers.

For all of the reasons and more, we urge you to support the growth of clean fuels, new capital investments to produce such fuels inside of Oregon, and choice for consumers and businesses when it comes to transportation fuels.

Sincerely,

Spencer Richley
Policy and Regulatory Associate

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UG 266 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: December 13, 2013

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