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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

DR 23

In the Matter of the Petition of Northwest Natural )  
Gas Company for a Declaratory Ruling Pursuant )  
to ORS 756.450 Regarding Whether Joint Bypass ) ORDER  
to Two or More Industrial Customers Violates )  
ORS 758.400 *et seq.* )

**DISPOSITION: NO VIOLATION OF ORS 758.450(2) FOUND**

On March 19, 1999, Northwest Natural Gas Company (NNG) filed a petition for a declaratory ruling pursuant to ORS 756.450, regarding whether joint bypass by two or more industrial customers violates ORS 758.400 *et seq.* The specific rulings requested are as follows: (1) whether the operation of a condominium bypass distribution system violates ORS 758.400 *et seq.*; and (2) whether the operator of such a system is a “public utility” under ORS 757.005. NNG filed errata pages to the petition on March 24, 1999. At its April 20, 1999, Public Meeting, the Commission adopted Staff’s report recommending that the Commission grant NNG’s request for a declaratory ruling.

A prehearing conference was held in this matter on May 19, 1999, to set a procedural schedule. After the conference, the Commission received and granted petitions to intervene from Oregon Steel Rolling Mills, Inc. (Oregon Steel); Oremet-Wah Chang (Wah Chang)<sup>1</sup> and Northwest Industrial Gas Users (NWIGU); and Portland General Electric (PGE).

On July 6, 1999, NNG filed an amended petition, dropping its request that the Commission issue a ruling as to whether the operator of a condominium bypass is a “public utility” under ORS 757.005. Wah Chang and NWIGU moved to suspend the schedule pending further direction from the Commission, since NNG’s revised petition significantly changed the issues originally raised in this docket. That motion was denied on July 23, 1999.

NNG, Oregon Steel, Wah Chang and NWIGU, and PGE filed opening briefs. NNG, Wah Chang and NWIGU, and Oregon Steel filed responsive memoranda or comments. NNG and Wah Chang/NWIGU filed final briefs on November 24, 1999.

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<sup>1</sup> Another entity mentioned in this order is Oregon Metallurgical Corp., which will be denominated as Oremet.

Oregon Steel and NNG filed a stipulation on November 23, 1999, resolving ambiguities with respect to NNG's intended treatment of the Oregon Steel/Ash Grove Lime (Ash Grove) bypass. Oregon Steel therefore did not file a final brief, but requests that the Commission acknowledge the stipulation in its final order. We acknowledge the fact that Oregon Steel and NNG filed such a stipulation.

## OPINION

### Applicable Law

ORS 756.450 authorizes the Commission to issue declaratory rulings:

On petition of any interested person, the Public Utility Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission. A declaratory ruling is binding between the commission and the petitioner on the state of facts alleged, unless it is modified, vacated or set aside by a court. However, the commission may review the ruling and modify, vacate or set it aside if requested by the petitioner or other party to the proceeding. Binding rulings provided by this section are subject to review in the circuit court in the manner provided in ORS 756.580 for the review of orders.

The Oregon Territorial Allocation Law is contained in ORS 758.400 *et seq.* The purpose of the law is set out at ORS 758.405:

The elimination and future prevention of duplication of utility facilities is a matter of statewide concern; and in order to promote the efficient and economic use and development and the safety of operation of utility services while providing adequate and reasonable service to all territories and customers affected thereby, it is necessary to regulate in the manner provided in ORS 758.400 to 758.475 all persons and entities providing utility services.

Subsections (1) and (2) of ORS 758.450 govern this dispute:

- (1) Territory served by more than one person providing similar utility service may only become an allocated territory by a contract approved by the Public Utility Commission.
- (2) Except as provided in subsection (4) of this section [not relevant in this case], no other person shall offer, construct or extend utility service in or into an allocated territory.

“Utility service” is defined in ORS 758.400(3):

"Utility service" means service provided by any equipment, plant or facility for the distribution of electricity to users or the distribution of natural or manufactured gas to consumers through a connected and interrelated distribution system. "Utility service" does not include service provided through or by the use of any equipment, plant or facilities for the production or transmission of electricity or gas which pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar utility service.

Commission Order No. 40972 (1965) allocated to NNG the exclusive right to provide utility service for the distribution of natural gas to the territory described in the order.

### **NNG's Amended Petition**

NNG's amended petition, filed July 6, 1999, is the relevant document for purposes of this declaratory ruling. It seeks a declaratory ruling “that the construction and operation of an interstate pipeline bypass, that is shared by privately owned industrial consumers and is within the territory allocated to [NNG] by Commission Order No. 40972, violates ORS 758.450(2). [NNG] seeks declaratory rulings on the applicability of ORS 758.450(2) to two particular statements of fact concerning condominium bypass distribution systems, as well as the generic fact pattern for a condominium bypass distribution system as set forth below.”

**Statement of Facts in Amended Petition.** Williams Gas Pipeline (Williams), formerly known as Northwest Pipeline Corporation, owns and operates an interstate natural gas pipeline and provides natural gas transportation services. Portions of the interstate pipeline and a lateral connection to the pipeline known as the “Grants Pass Lateral” lie within NNG's allocated territory. The Grants Pass Lateral runs from Washougal, Washington, to Grants Pass, Oregon, in a north-south direction through the Willamette Valley.

Williams' interstate pipeline facilities are located near the facilities of many of NNG's industrial customers. Eight of NNG's former industrial customers have established bypass connections to the Williams pipeline rather than take local distribution service from NNG. Among these are Oregon Steel, Ash Grove, and Oremet. NNG offered each of the bypassers service at discounted rates before they left the NNG distribution system. These rates were designed to compete with the bypass options of customers. NNG has approximately 20 special service contracts with customers who are bypass candidates because of their proximity to the Williams interstate pipeline.

Two of NNG’s current industrial customers, Wah Chang and Oregon Freeze Dry, have constructed or are considering construction of pipelines that will not directly connect to the Williams pipeline but connect to previously existing bypass pipelines owned and used by former NNG industrial customers, Willamette Industries (Willamette) and Oremet, respectively. Wah Chang has taken service from Willamette, and Oregon Freeze Dry and others would likely take service from Oremet.

“Condominium bypass distribution system” here means construction and operation of a lateral pipeline for the benefit of a privately owned industrial consumer of natural gas that is connected to a new or existing bypass pipeline constructed and operated in whole or in part for the benefit of a separate privately owned industrial consumer.

NNG seeks a declaratory ruling from the Commission that the operation, construction, or extension of condominium bypass distribution systems as described below violates ORS 758.450(2).

### **General Characteristics of a Condominium Bypass System<sup>2</sup>**

- a. Two or more privately owned industrial consumers of natural gas obtain natural gas from a single connection to the Williams pipeline.
- b. The natural gas flows through a single transfer meter at the point of interconnection with the Williams interstate pipeline to a designated receiving party (as defined by Williams’ tariff). The receiving party is accountable to Williams for imbalances that occur at the meter.
- c. The natural gas is transported through a bypass pipeline that may be owned by one or more of the condominium bypass participants.<sup>3</sup>
- d. Two or more lateral pipelines are connected to the bypass pipeline and transport natural gas to individual industrial consumers of natural gas. These industrial consumers are separate legal entities. The lateral pipelines may be constructed after the construction and initial operation of the bypass line and provide an extension of utility service.
- e. The consumption of natural gas by each of the condominium bypass participants is measured by meters attached to the lateral pipelines. Daily gas flows and the imbalances between the participant’s actual gas consumption and its nomination on the Williams pipeline are allocated by the receiving party to each participant.

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<sup>2</sup> These facts are, for convenience, called the “Assumed Facts” later in this order.

<sup>3</sup> There is some ambiguity in the wording of this section. We assume for purposes of this ruling that all of the jointly-used portions of the bypass line are jointly owned by the condominium bypass participants. As NNG said in its Response Memorandum, page 2: “The issue is whether a *combination* of a jointly-owned bypass pipeline, together with lateral pipelines connecting more than one industrial facility to the bypass pipeline, is a “distribution system,” and “utility service” under ORS 758.400(3) (italics in original; underlining added).

- f. The bypass pipeline and lateral pipelines are not directly connected to another natural gas distribution plant or facility. The lateral pipelines have no functional value except as connected or related to the bypass pipeline.
- g. The condominium bypass distribution system is located within NNG's allocated territory and in an area served by distribution facilities owned and operated by NNG.

NNG also seeks a ruling that the particular Willamette Industries/Oremet-Wah Chang and Oremet/Oregon Freeze Dry condominium bypass distribution systems, described below, violate ORS 758.450(2).

**Willamette Industries Condominium Bypass Distribution System.** Willamette operates two facilities in Millersburg, Oregon: the Willamette Kraft Paper Mill and the Duraflake plant. Before 1993, these facilities were served by NNG. The Duraflake plant took service under Rate Schedules 5 and 91 and the Kraft Paper Mill took service under Rate Schedules 4 and 91.

In 1993, Willamette finished constructing a 5.5-mile 10-inch pipeline connecting its facilities to the Williams Grants Pass Lateral at the Williams Santiam meter station. Willamette intended this line to serve both the firm natural gas requirements of its facilities and a proposed electric turbine. The projected increase in gas usage and Willamette's desire to have total control and firm pipeline capacity for its requirements outweighed the economies that NNG was able to offer Willamette.

Wah Chang is an industrial customer of NNG and took interruptible transportation service under Rate Schedule 91. The Wah Chang facilities at issue are located in Millersburg, Oregon, on property that is contiguous to property owned by Willamette. Wah Chang purchased or transported approximately 3,127,000 therms per year of throughput for its facility. On October 6, 1998, NNG received a letter from Wah Chang requesting termination of service under Rate Schedule 91 for the facility and stating its intention to bypass NNG's system via direct connection to Williams.

In June 1999, Wah Chang informed NNG that it had completed its connection to the Willamette pipeline. The connection occurs through a short lateral pipeline that connects the Wah Chang plant to the Willamette pipeline, which is located approximately 1,800 feet away. Wah Chang asserts it owns an "undivided interest in the Santiam Pipeline facilities."<sup>4</sup> Wah Chang now receives natural gas through this condominium bypass distribution system, although it continues to receive a small amount of firm service from NNG under Rate Schedule 4. As a result of the connection of the Wah Chang lateral pipeline to the Willamette bypass pipeline, the Willamette condominium bypass distribution system has the characteristics set out above.

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<sup>4</sup> We assume the "Santiam Pipeline facilities" are the Willamette bypass pipeline.

NNG odorizes the natural gas delivered through the Willamette bypass pipeline. NNG has no contractual relationship with Wah Chang to odorize Wah Chang's purchased natural gas.

**The Oremet Condominium Bypass Distribution System** Oremet appears to be about to construct a second condominium bypass distribution system. Oremet and Wah Chang are part of the same corporate family, Allegheny Teledyne Company. Until recently, Oremet purchased or transported about 5,400,000 therms per year of natural gas. Oremet was the second largest customer taking firm service from NNG in its Oregon operations. After attempting to negotiate a special contract for a competitive rate with NNG, and to gain Commission approval of the contract, Oremet decided to pursue direct connection to the Williams Grants Pass Lateral. On April 17, 1998, Oremet instructed NNG to seek termination of the contract approval proceedings.

Oremet constructed a six-inch pipeline connecting its titanium mill in Albany, Oregon, to the Williams Grants Pass Lateral. On January 30, 1998, Oremet and Williams (then Northwest Pipeline Corporation) entered into a facility agreement under which new tap and meter facilities were constructed on the Grants Pass Lateral. On November 12, 1998, Oremet began receiving natural gas through its bypass pipeline.

During the special contract negotiations, Oremet indicated that it would contact the other industrial customers in the vicinity to participate in a condominium bypass. If Willamette is allowed to open up its facilities to other industrial customers, it is likely that Oremet would do the same for the five current NNG customers located near the new bypass line (Smokecraft, Oregon Freeze Dry, National Frozen Foods, Panalam, and American Cemwood). Together these five customers account for over 2.7 million therms per year of throughput on the NNG distribution system. Oregon Freeze Dry has informed NNG that it is considering terminating its service agreement with NNG to pursue bypass to Oremet's line. If the Oregon Freeze Dry connection is made, the resulting Oremet condominium bypass distribution facilities would have the general characteristics of a condominium bypass distribution system set out above.

### **Contentions of Law**

NNG argues that the operation, construction, or extension of a condominium bypass distribution system is inconsistent with the purposes of the Oregon Territorial Allocation Law, set out at ORS 758.405 above. According to NNG, the operation, construction, or extension of a condominium bypass distribution system in place of local distribution company (LDC) facilities encourages rather than prevents the duplication of gas distribution facilities. It does not promote the efficient and economic use of the LDC facilities in place, raises safety issues about inspection and maintenance of the condominium bypass distribution system, and ultimately harms core customers if loss of industrial load results in higher rates to cover the local distribution company's fixed costs of service.

NNG takes the position that the operation, construction, or extension of a condominium bypass distribution system in general, and the Willamette and proposed Oremet systems in particular, violate ORS 758.450(2). Under this statute, no one other than NNG can offer, construct, or extend utility service in or into the territory exclusively allocated to NNG. According to NNG, the systems it describes violate ORS 758.450(2) for the following reasons:

NNG argues that the provision of natural gas through a condominium bypass distribution system is “utility service” for purposes of ORS 758.450(2). The interstate pipeline tap and meter, the bypass pipelines, and the lateral connection pipelines constitute a “distribution system” since the facilities operate to distribute natural gas to more than one consumer. The parts of the facilities are connected to each other and not to any other distribution system and are thus a “connected . . . system” under ORS 758.450(2). The system is also “interrelated” under the same statute because the lateral pipelines have no functional value except as connected or related to the bypass pipeline and the individual plant meters are used to apportion consumption within the system.

According to NNG, the operation of a condominium bypass distribution system by a receiving party for the benefit of another entity, including operation of their systems by Willamette and Oremet, is an “offer” of “utility service” under ORS 758.450(2). These operational activities include allocation of the costs of natural gas based on the consumption of the individual participants, provision of odorization, inspection and maintenance, and other activities. Hence, NNG concludes that any person who constructs or completes construction of a condominium bypass distribution system in whole or in part of a size or capacity greater than needed for a single consumer of natural gas has constructed utility service within the meaning of ORS 758.450(2). Any person who connects facilities for the provision of natural gas onto a bypass pipeline serving another person has extended utility service within the meaning of the same statutory provision.

The territory involved in the Willamette and Oremet condominium bypass distribution systems is within NNG’s exclusively allocated service territory, and none of the exemptions under ORS 758.450(4) apply to these facts.

NNG argues that to the extent the provisions of ORS 758.450(2) are ambiguous in their application to a condominium bypass distribution facility in general or the Willamette and Oremet facilities in particular, the Commission should construe the statute in light of its purpose as stated in ORS 758.405 and “other public policies recognized by the Commission.” Those considerations include the policy to avoid duplication of utility facilities, the policy to ensure that all pipelines are maintained and operated safely, and the impact that the loss of load of groups of industrial customers will have on the rates of the core customers who must cover the fixed costs of utility service. A decision to allow condominium bypass distribution systems would open the flood gates

to other groups of customers, including commercial customers, subdivisions, or other aggregations, who would seek the same type of bypass services.

Oregon Steel and Ash Grove form a condominium bypass distribution system within NNG's allocated territory. NNG distinguishes this system from those it here challenges. Oregon Steel and Ash Grove jointly constructed a two-mile bypass to Williams and placed that facility in service in April 1991. Litigation before the Commission and in state and federal courts ensued. In 1992, the parties entered into a stipulation and settlement agreement regarding the various lawsuits and proceedings. The settlement was approved by the Commission in Order No. 92-762. According to NNG, the approval of this agreement certifies the allocation of utility territory among these parties under ORS 758.415. The provision of utility services by Oregon Steel or Ash Grove is not "in or into an allocated territory" of NNG under ORS 758.450(2).

If the Commission declares that condominium bypass distribution facilities violate ORS 758.450(2), any person responsible for the operation, construction, or extension of such a system is subject to injunctive remedies under ORS 758.465 and enforcement actions by the Commission under ORS 756.160 and 756.180. In addition, if a receiving party operating a condominium bypass distribution facility is a public utility under ORS 757.005(1)(a)(A), that party is liable for treble damages under ORS 756.185.

NNG summarizes its position by stating that this case concerns more than simply a bypass system. It concerns a bypass distribution system, and one that is condominium in nature. By condominium, NNG means that part of the system is owned in common and other parts are owned by a single owner. Specifically, parts of a system for distributing natural gas to consumers are owned by Williams (the interstate pipeline tap and meter), by tenants in common or joint venturers (bypass pipeline), and by individual industries (lateral pipelines and meters). What makes the system subject to state regulation and violative of ORS 758.450(2), according to NNG, is the extension of the bypass pipeline to more than one consumer by the addition of individually owned service pipelines. Once a supply facility serves more than one consumer, and includes separately owned lateral pipelines and meters, NNG argues that it becomes a distribution system.

NNG also argues that the need for operational and accountability policies and central management, features that NWIGU admits are needed for the Willamette Industries bypass, make a condominium system qualitatively different from a single-user supply system.

NNG seeks as relief a declaratory ruling that the construction, operation, or extension of a condominium bypass distribution system as described above violates ORS 758.450(2); a declaratory ruling that the construction, operation, or extension of the Willamette Industries condominium bypass distribution system as described above violates ORS 758.450(2); a declaratory ruling that the construction, operation, or extension of the Oremet condominium bypass distribution system described above would

violate ORS 758.450(2); and initiation of enforcement actions by the Commission seeking injunctions against any violations of ORS 758.450(2) found in this proceeding.

### **Responses by Wah Chang and NWIGU**

Wah Chang and NWIGU argue that the arrangement described by NNG does not constitute “utility service.” It is merely an attempt by the participants to obtain cost-effective natural gas service. That is the same motive that is behind single industrial consumer bypasses. These facilities do not constitute a connected and interrelated distribution system. They do not serve a distribution function, as the participants do not distribute gas to third parties. The participants serve only themselves by what amounts to one pipeline, not a network. Tie-in facilities alone, such as valves and meters, are not local distribution facilities.

These intervenors also argue that the arrangement does not constitute an offer of utility services. The participants are joint owners and have the responsibility to plan, operate and maintain the lines. Moreover, the participants have nothing to do with the utility industry, except as customers, and do not resemble utilities. The details of the arrangement are determined by the participants and can be changed by them. The participants may designate that one of them is to act as operator, but they can change that arrangement.

The provision in the statute regarding duplication of facilities is aimed at utilities, not at customers, and was designed to prevent two or more utilities from providing duplicative service in the same geographic territory. In Order No. 92-557 (UA 37), the Commission discussed the history of the allocation statutes. It noted that prior to the 1961 enactment of those statutes, PGE and PP&L

served overlapping and scattered territories in Portland. Where two or more electric utilities serve the same area, each must build substations, install transformers, and string lines to customers. The result is an inefficient and unsightly duplication of facilities. In some areas of Portland, for instance, utility poles bore eight or nine power lines, several from each company. The density of those lines also created a safety hazard for utility employees who had to repair them. (At 2.)

The Commission noted in that order that the statutes provide a mechanism for utilities to agree to provide service to certain areas or to ask the Commission to make that determination. They are designed to protect regulated utilities from competition from unregulated companies who would sell competitive distribution service. End users are not the target of these provisions. Moreover, NWIGU argues, the purpose of the duplication provision is to prevent “ratepayer paid duplication”—that is, situations in which the public pays for duplicative facilities. Under the arrangements involved in this ruling, the utilities would not pay for the facilities involved.

These intervenors also argue that these arrangements do not present a safety issue, as the connection is subject to existing safety requirements. They also assert that these arrangements do not violate the express aim of the statute of preventing interference with the economic use of the existing distribution facilities.

Oremet/Wah Chang and NWIGU also argue that NNG has in the past at least tacitly acknowledged the legality of similar arrangements by seeking approval of special contracts to prevent bypass.

The intervenors assert that arrangements such as those set out by NNG are common in other states. They argue that federal law should be considered. They cite cases in which the federal courts have upheld these arrangements or have determined that FERC has jurisdiction over them.

### **Position of Oregon Steel**

The arguments of Oregon Steel regarding the meaning and intent of the relevant statutes are similar to those of Wah Chang and NWIGU. Oregon Steel contends that the statute does not prohibit customer-owned bypasses. It is not a bar to all duplication. And, joint owners do not provide utility service to one another. They are not employed by each other to operate the bypass. They are not dealers or manufacturers providing services such as installation, maintenance, or repairs. There is no provision of service or product to the public. The end users do not operate for the benefit of another. All are joint owners and share in the benefits and costs. The customers remaining with the utility will not suffer as a result of the bypass. Industrial end users are discretionary customers. The Commission gave utilities price flexibility in Order No. 87-402 to keep these customers. They have a right to bypass the local distribution company when its service is not economically efficient.

Oregon Steel also argues that an existing pipeline agreement between Oregon Steel and Ash Grove should be grandfathered if the Commission adopts NNG's position. Oregon Steel also maintains that the Commission must consider federal law in this case and that NNG's position conflicts with federal law. It asserts that the matter is preempted by the Natural Gas Act (NGA), which, in Oregon Steel's view, prohibits states from interfering with the construction or operation of a bypass facility.

## **DISPOSITION**

### **Scope of Decision**

NNG has requested that we issue the following declaratory rulings: that a pipeline system as described in its Assumed Facts (p. 4 of this order) violates ORS 758.452(2); that the existing pipeline arrangement involving Willamette Industries/Wah Chang violates ORS 758.450(2); and that the proposed Oremet/Oregon Freeze Dry pipeline arrangement would violate ORS 758.450(2). It also asks that the

Commission initiate enforcement action seeking injunctions against any violations of ORS 758.450(2) found in this proceeding.<sup>5</sup>

The Commission will limit its ruling to the scenario set out in the Assumed Facts. Declaratory rulings have the function of allowing an agency to determine how laws under the agency's authority apply to a given set of facts. The "facts" considered by the agency are those supplied by the petitioner. A declaratory ruling proceeding does not allow for fact finding regarding disputed facts. We also note that the declaratory ruling statute quoted above in this order specifically states that a ruling is "binding between the commission and the *petitioner* on the stated facts alleged..." (emphasis added). That wording, we believe, strongly suggests that the declaratory ruling procedure is intended to be a means by which an entity can get some assurance about the legality of its own behavior from an agency. Whether it is intended to be a means for an entity to have the actions of third parties adjudicated is, at the least, uncertain.

The request for a declaratory ruling in this case was filed by NNG, which is thus the petitioner. The intervenors are not petitioners. The impact of a declaratory ruling on them is open to question. We also note that the facts relating to the actual pipelines are not agreed upon by the participants in this case. These factual disputes involving the existing or proposed bypass arrangements by Oremet/Wah Chang, Oregon Steel, Oregon Freeze Dry, and others, and the nature of the declaratory ruling statute itself lead us to the conclusion that this declaratory ruling will be applicable only to the Assumed Facts set out by NNG in its petition. Because we do not make rulings relating to the particular "real life" factual contexts, the enforcement action requested by NNG would be inappropriate.

The intervenors argue at length that federal law controls this case and that it requires a decision in their favor. In a July 24, 1999, Ruling, the Administrative Law Judge denied a motion by the intervenors to broaden the issues in this case to include federal law and other issues suggested by the intervenors. The ruling was based on the Administrative Law Judge's conclusion that such issues are outside the scope of NNG's petition. We agree with that conclusion and thus do not consider the impact of federal law on the Assumed Facts.

## **Decision**

The parties agree that bypass of a utility's service by a sole industrial customer through construction and operation of a pipeline is not a violation of ORS 758.405(2). Indeed, the Commission has recognized the legality of bypass in Order No. 87-402 (UG 23/UE 50) and through many other proceedings in which a utility has

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<sup>5</sup> We note that NNG withdrew its request that we determine whether the operators of the type of bypass arrangements set out in its Assumed Facts are "public utilities" under ORS 757.005. We therefore will not consider the applicability of that statute to the Assumed Facts.

sought to enter into a special contract with an industrial customer as a way of heading off such bypass. The only distinction between this case and those is that the bypass here is effected by two (or potentially more) customers working in concert through the sort of arrangement described by NNG in its Assumed Facts. The question before us is whether the number of customers and the details of the arrangements between them change the legal status of the bypass.

The Commission concludes that the arrangements described in NNG's Assumed Facts do not violate ORS 758.405.<sup>6</sup> The key portion of that statute for purposes of this ruling is subsection (2): "No other person shall offer, construct or extend utility service in or into an allocated territory." "Utility service" is defined in ORS 758.400(3) as "service provided by any equipment, plant or facility for the distribution of electricity to users or the distribution of natural or manufactured gas to consumers through a connected and interrelated distribution system."

Wah-Chang/NWIGU, and Oregon Steel Mills argue that what is described in the Assumed Facts does not constitute utility service. They believe that the territorial allocation scheme set out in ORS 758.450 and the other portions of ORS Chapter 758 is designed to allow utility companies to resolve allocation disputes and to provide that once allocations have occurred, they can be enforced. We agree and conclude that these statutes are not aimed at the provision by customers of utility products to themselves as set out in the Assumed Facts.<sup>7</sup>

Under the Assumed Facts, the participants in a so-called condominium bypass system are co-owners of part of the facilities involved and may be sole owners of other parts. The co-owners are not employed by each other, but are operating to provide service to themselves through a mutually beneficial arrangement. They do not sell utility product or service to each other. They are not offering service of any sort to the general public. The facilities they have created do not benefit or serve anybody but themselves. The fact that they may appoint one of the co-owners as the receiving party or that one of the co-owners may perform management duties does not change the fact that the arrangement is one involving co-owners and not a utility and its customers. Each of the co-owners is, in fact, a sole customer who happens to have arranged for service to itself through an arrangement with another coequal customer. We conclude that provision by two customers of service to themselves by the arrangements described in the Assumed Facts does not violate the statutes involved.

We also conclude that this sort of arrangement is not inconsistent with the purposes of ORS 758.405: the "elimination and future prevention of duplication of utility facilities," and the promotion of "the efficient and economic use and development and the

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<sup>6</sup> We note that NNG asserts as a "fact" in its Assumed Facts that the lateral pipelines provide an "extension of utility service." Since the determination of whether the service constitutes "utility service" is at the heart of the dispute, and thus of this order, we ignore NNG's assertion.

<sup>7</sup> As noted above, NNG does not request that we rule on whether the participants in a condominium bypass are "public utilities" under ORS 757.005. We therefore assume they are not for purposes of this ruling.

safety of operation of utility services while providing adequate and reasonable service to all territories and customers."

We agree with the intervenors in this case that these arrangements described in the Assumed Facts do not duplicate "utility facilities" because the pipeline arrangements created by customers are not utility facilities. The statute is aimed at preventing wasteful duplication of facilities used by utilities, not at preventing duplication of facilities that customers may use to provide service to themselves. As we noted in Order No. 98-546 (UA 58/UA 60), these statutes "reflect a desire to avoid contests between utilities." (At 6.) Even if we were to consider the customer's facilities to be utility facilities, there is insufficient basis in the record for us to conclude that the arrangements described in the Assumed Facts would involve greater duplication of facilities than would sole-bypass by individual customers. We also find persuasive the argument made by intervenors that the purpose of the antiduplication provision is to protect the customers of utilities from having to pay for duplicate facilities which do not benefit them. No such risk of direct customer/ratepayer loss exists in the scenario set out by NNG, although there might be some loss of contribution to fixed costs.

We also conclude that the arrangement described in the Assumed Facts would not interfere with the efficient and economic use of utility services. NNG's facilities are still useful despite these bypass arrangements and may even be used again to serve the bypassing customers in the future.

We also do not agree with NNG that the safety of the operation of utility services will be compromised by the arrangement described. The bypass arrangements are subject to safety provisions, as the intervenors argue. In any event, the customers involved have an overriding incentive as well as a legal duty to make sure that the facilities do not create a safety hazard. We do not think that the safety issue is of significance in this case.

## **CONCLUSIONS**

The Commission concludes for the reasons set out above that the facts set out in the petition filed by NNG do not constitute a violation of ORS 758.450(2).

**ORDER**

IT IS ORDERED that the facts described in the Amended Petition filed by Northwest Natural Gas for a declaratory ruling do not constitute a violation of ORS 758.450(2).

Made, entered, and effective \_\_\_\_\_.

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**Ron Eachus**  
Chairman

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**Roger Hamilton**  
Commissioner

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**Joan H. Smith**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

DR23fo