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BEFORE THE PUBLIC UTILITY COMMISSION**

OF OREGON

UA 93

In the Matter of)	
)	
NORTHWEST NATURAL GAS)	
COMPANY)	ORDER
)	
Request for Approval of Agreement to)	
Allocate Customers and Territory.)	

DISPOSITION: TERRITORY APPLICATION GRANTED

On December 31, 2001, Northwest Natural Gas Company (NW Natural) filed an application under ORS 758.400 to 758.475, asking the Public Utility Commission of Oregon (Commission) to approve a Transportation Service Agreement (TSA) between NW Natural and Coos County and to acknowledge two exceptions to NW Natural's exclusive service territory in Coos County. On October 4, 2002, we denied NW Natural's application because we did not have the requisite statutory authority to grant the application. *See*, Order No. 02-678.

Subsequent to our denial of NW Natural's application, Senate Bill 321 was introduced to the 72nd Oregon Legislative Assembly. The bill added provisions to ORS 758.410, which gave the Commission authority to approve a contract such as the TSA between NW Natural and Coos County. The bill was passed by the Senate and House and signed by the governor. SB 321 took effect on March 28, 2003.¹

On April 16, 2003, NW Natural filed another application with the Commission, seeking an expedited order to 1) incorporate the UA 93 record into a new application proceeding, 2) approve the TSA between Coos County and NW Natural, and 3) approve an assignment of rights acquired by allocation pursuant to ORS 758.460(1). In response to NW Natural's application, Administrative Law Judge (ALJ) Kathryn Logan reopened this docket on April 21, 2003.

On April 21, 2003, the ALJ informed the parties that they had until May 2, 2003 to file briefs responding to NW Natural's April 16, 2003 filing. Staff, the Northwest Industrial Gas Users (NWIGU), Coos County and Pat Simpson submitted briefs.

¹ A new subsection 3 was added to ORS 758.410, the text of which may be found *infra* at 4.

On May 14, 2003, NW Natural filed an amendment to its application. Specifically, NW Natural and Coos County amended the TSA to incorporate the terms called for in the Second Stipulation Relating to the Coos County Distribution System, which was approved by the Commission in Docket UG 152 on April 22, 2003. *See*, Order No. 03-236.

Background

In Order No. 00-274 (Docket UA 76), the Commission approved NW Natural's application to exclusively serve unserved territory in Coos County. We stated:

"This application is made as part of an economic development project undertaken by Coos County with support from the State of Oregon. The plan is for a natural gas pipeline to be built from the Williams Pipeline Corporation's lateral to serve Coos Bay, Myrtle Point and Coquille. Coos County voters passed a \$27 million bond measure in 1999 to finance the County's portion of this project." Order No. 00-274 at 2.

Once the initial territory application was approved, Coos County and NW Natural negotiated the TSA which addressed multiple subjects. NW Natural now seeks Commission approval of the TSA.

Positions of the Parties

NW Natural

NW Natural contends that the Commission need only determine that the TSA's territory allocation provisions promote the purposes outlined in ORS 758.405 in order to approve the TSA. As outlined by NW Natural, the statutory purposes are:

1. To eliminate or avoid unnecessary duplication facilities;
2. To promote the efficient and economic use and development and the safety of operation of utility services; and

3. To provide adequate and reasonable service to all territories and customers affected thereby.

NW Natural argues that all three provisions are met by the TSA.

NW Natural further requests that the Commission retain jurisdiction over the TSA. In particular, NW Natural asks that Sections 2.2 and 6.2, along with Article 8, be the focus of the Commission's approval and active supervision.

Coos County and Staff support NW Natural's request.

NWIGU

NWIGU's prior objections to the legality of the territorial allocation within Coos County under the terms of the TSA were resolved by the enactment of SB 321. NWIGU now asks the Commission to distinguish the situation in this docket from other territory allocation dockets, and to expressly note the nonprecedential nature of this docket.

Pat Simpson

Ms. Simpson urges the Commission to deny NW Natural's request because the scope of the TSA is outside the Commission's authority. In particular, Ms. Simpson does not agree that SB 321 gives the Commission the authority to allow NW Natural and Coos County to jointly negotiate with customers to offer incentives and special contracts for natural gas service. She further argues that SB 321 does not confer authority on the Commission to approve conditions related to Coos County's compelled purchase of NW Natural's distribution facilities. Finally, she contends that NW Natural did not meet its burden of establishing that the purposes of ORS 758.405 are met by the TSA.

Contents of TSA

The TSA addresses multiple subjects, including details for constructing the pipeline and distribution system; marketing; fees and payment; receipt, transport and delivery of natural gas; and management, operation and repair of the pipeline and distribution system.

Article 8 of the TSA, entitled *Negotiation with Industrial Customers*, outlines a procedure for providing gas to potential industrial customers. First, NW Natural would negotiate with prospective industrial customers. If after such negotiations an eligible prospective customer determined not to locate in Coos County, then both Coos County and NW Natural will negotiate with the customer. If the three parties cannot

agree on a special contract for gas distribution, and after NW Natural and Coos County determine whether other economic incentives are available, then Coos County may offer the eligible prospective customer a direct connection to the county's pipeline. The TSA does not outline the transfer or allocation of any of NW Natural's exclusive service territory to Coos County, except for the possible allocation of an eligible industrial customer pursuant to this process.

Further, in Article 9, the TSA requires Commission approval of the entire document without qualification, limitation or condition (except as may be approved by NW Natural in writing), and that the Commission must agree to retain jurisdiction over the TSA to supervise and enforce its terms and conditions.

Applicable Law

ORS 768.405 Purpose of ORS 758.400 to 758.475. 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 matter provided in ORS 758.400 to 758.475 all persons and entities providing utility services.

ORS 758.410 Contracts for allocation of territories and customers between suppliers of utility service and for transfer of facilities.

- (1) Any person providing a utility service may contract with any other person providing a similar utility service for the purpose of allocating territories and customers between the parties and designating which territories and customers are to be served by which of said contracting parties; and the territories and customers so allocated and designated may include all or any portion of the territories and customers which are being serviced by either or both of the parties at the time the contract is entered into, or which could be economically serviced by the then existing facilities of either party, or by reasonable and economic extensions thereto.

* * * * *

(3) The commission may approve a contract entered into under this section that authorizes Coos County to construct a natural gas pipeline into allocated territory in Coos County and that contains terms for the allocation of industrial customers in Coos County between the county and the other party to the contract. The contract need not specify the territory in which industrial customers subject to the allocation are located. The commission may approve the provisions of a contract under this subsection that govern allocation of industrial customers only if the commission determines that the provisions promote the purposes specified in ORS 758.405. The commission shall actively supervise the implementation of any contract entered into pursuant to this subsection to ensure that the contract continues to promote the purposes specified in ORS 758.405. A contract entered into under this subsection is not subject to ORS 758.420(2).

ORS 758.415 Contract enforceable if approved by commission; conditions for approval. Notwithstanding any other provisions of law, a contract entered into pursuant to ORS 758.410, when approved by the Public Utility Commission as provided in ORS 758.420 to 758.475, shall be valid and enforceable; provided, that the commission shall approve such a contract only if the commission finds, after a hearing as provided in ORS 758.420 to 758.475, that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby.

ORS 758.460 Assignment or transfer of rights acquired by allocation; approval of commission. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the Public Utility Commission after a finding that such assignment or transfer is not contrary to the public interest. However, no hearing is required if all affected customers agree to the proposed assignment or transfer.

* * * *

Discussion

Under the purview of the territory allocation statutes, NW Natural has asked the Commission to approve a TSA between NW Natural and Coos County, and to approve an assignment of rights. We first address the approval of the TSA.

Under SB 321, the Commission may approve the TSA if it promotes the purposes found in ORS 758.405. Under ORS 785.405, the purpose of the territory allocation statutes (ORS 758.400 to 758.475) is to prevent and eliminate duplication of utility facilities, promote economic use and development, and maintain safe operation of service while providing adequate and reasonable service. NW Natural has met its burden of establishing that the TSA promotes these purposes.²

NW Natural also asks that we retain jurisdiction over the TSA and actively supervise its territorial allocation provisions. We will retain jurisdiction to the extent allowed by the territory allocation statutes and SB 321.

Finally, NW Natural asks that we approve an assignment of NW Natural's rights to exclusive service territory in Coos County to the extent necessitated by the TSA. To approve such an assignment pursuant to ORS 758.460(1), we must find that the assignment is not contrary to the public interest. As we have previously determined that provisions of the TSA meet the purposes of the territory allocation statutes, it logically flows that such provisions are not contrary to the public interest. We approve the transfer and assignment of NW Natural's rights to exclusive service territory pursuant to the provisions of the TSA.

² NWIGU wants the Commission to distinguish the situation in this docket from other territory allocation dockets, and to expressly note the nonprecedential nature of this docket. We do so. Without the passage of SB 321, which specifically references the Coos County pipeline, this allocation could not have been approved.

ORDER

IT IS ORDERED that:

1. The territory allocation application is granted.
2. The terms and conditions of the Transportation Service Agreement between Coos County and Northwest Natural Gas are approved to the extent allowed by statute.
3. The Commission retains jurisdiction to the extent allowed by statute.
4. The transfer of Northwest Natural Gas's rights to exclusive service territory in Coos County pursuant to the provisions of the Transportation Service Agreement is approved.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
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.