

ORDER NO. 04-243

ENTERED MAY 10 2004

This is an electronic copy. Format and font may vary from the official version. Attachments may not appear.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 157

In the Matter of)	
)	
NORTHWEST NATURAL)	ORDER
)	
Revision of conditions under which a customer)	
qualifies as a responsible party on behalf of)	
another customer with a request for waiver of)	
OAR 860-021-0200(3)(a), and approval of)	
revised tariff sheets.)	

DISPOSITION: WAIVER GRANTED; TARIFF SHEETS EFFECTIVE

On March 29, 2004, Northwest Natural Gas Company (NW Natural) filed an application with the Public Utility Commission of Oregon (Commission) for approval of a waiver of the requirement in OAR 860-021-0200(3)(a) that utilizes the provisions of OAR 860-021-0200(1) for the purpose of defining a customer eligible to be a guarantor and for the tariff sheets filed in Advice 04-9 to take effect on May 1, 2004.

At its public meeting on April 27, 2004, the Commission adopted Staff's recommendation to allow the tariff sheets of Advice No. 04-9 to become effective with service on and after the stipulated date of May 1, 2004. Staff's recommendation is attached as Appendix A and is incorporated by reference.

ORDER

IT IS ORDERED that:

1. Northwest Natural Gas Company's request for a waiver of part of OAR 860-021-0200(3)(a) is granted.

ORDER NO. 04-243

2. Northwest Natural Gas Company's tariff sheets of Advice No. 04-9 are effective as of May 1, 2004.

Made, entered and effective _____.

BY THE COMMISSION:

Becky Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

ITEM NO. CA4

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 27, 2004**

REGULAR _____ CONSENT X EFFECTIVE DATE May 1, 2004

DATE: April 16, 2004

TO: Lee Sparling through Ed Busch and Bonnie Tatom

FROM: Deborah Garcia

SUBJECT: NORTHWEST NATURAL: (Docket No. UG 157/Advice No. 04-9)
Requests a partial waiver of OAR 860-021-0200(3)(a) to revise the conditions under which a customer qualifies as a responsible party on behalf of another customer, and approval of revised tariff sheets.

STAFF RECOMMENDATION:

I recommend that the Commission approve the request of Northwest Natural Gas Company dba NW Natural for a waiver of the requirement in OAR 860-021-0200(3)(a) that utilizes the provisions of OAR 860-021-0200(1) for the purpose of defining a customer eligible to be a guarantor and allow the tariff sheets filed in Advice No. 04-9 to take effect on May 1, 2004.

DISCUSSION:

NWN filed Advice 04-9 on March 29, 2004. The filing consists of two parts. The first part, filed under the provision of OAR 860-021-0005¹ and docketed as UG 157, is an application for a waiver from the part of OAR 860-021-0200(3)(a) that requires a guarantor's eligibility to be defined by the options in OAR 860-021-0200(1). The second part of the filing is a request to revise tariff Sheet RR-6A in P.U.C. Or. 24 and Sheet RR-4A in P.U.C. Or. 23² to reflect the proposed waiver.

¹ OAR 860-021-0005 says in part, "Upon application by a utility, the Commission may relieve the utility of any obligations under these rules."

² Tariff 23 consists of the rules, regulations, and rate schedules for natural gas service. Tariff 24 consists of the rules, regulations, and rate schedules for propane service. Wherever possible, NWN mirrors the rules and regulations of each. In this filing, the content of the current sheets and the proposed sheets for each tariff are identical.

Background

As the Oregon Administrative Rules (OAR) regulating the issues in this filing must be jointly considered for a complete understanding of NW Natural's (NWN or Company) requests, the following is a brief explanation of those rules, how they relate to one another, and includes any relevant change made by Order 03-550 in Docket AR 452³.

OAR 860-021-0200(1), modified in AR 452, outlines how an applicant may establish credit to receive utility service without paying a surety deposit. Section (1) options now are: (a) received 12 months of continuous utility service during the preceding 24 months that the utility can verify and the applicant or customer voluntarily terminated service; (b) meets Commission-approved minimum credit requirements based on a third party credit report;⁴ or (c) proof of ability to pay. Section (1) (b-c) are new options that tightened the previous requirement that an applicant with no credit history simply had to show positive identification to be eligible to establish service without paying a deposit.

OAR 860-021-0200(2)(a-c) outlines when a customer must pay a deposit. An applicant is not eligible to establish credit under the OAR 860-021-0200(1) options, thereby avoiding payment of a deposit, if any part of OAR 860-021-0200(2)(a-c) applies. Section (2) includes (a) not able to establish credit as defined in Section (1); (b) nonpayment of a previous utility account within the last 24 months; and (c) termination for theft of service, or tampering with utility facilities, or was otherwise found to have diverted utility service.

OAR 860-021-0200(3)(a) provides one more option for an applicant who cannot meet the requirements of OAR 860-021-0200(1) to establish credit and does not have the means to pay a deposit. Under this rule, an applicant may present the utility with a signed surety agreement from a responsible party (guarantor) in lieu of paying a deposit. The surety agreement is for an amount equal to the deposit the applicant is obliged to pay and continues in effect until the applicant establishes good credit. This allows an individual, such as a recently relocated domestic abuse victim, to secure essential utility service. The rule defines a guarantor as a current customer that meets any one of the requirements in OAR 860-021-0200(1). Before being modified in AR 452, the definition of a guarantor was a "...utility customer who has received service continuously for the preceding 12 months from the same utility without late payment..."

OAR 860-021-0215(2) contains the criteria a customer must meet to establish credit and have a deposit refunded. Twelve months after a deposit is made, a customer will

³ AR 452 was opened during the Commission's last triennial rule review for the purpose of investigating proposed changes to Division 021 of the Commission's rules.

⁴ At this time, no energy utility has a Commission-approved program in place to offer this option.

establish or reestablish credit when all of the following are true: (a) the account is current; (b) not more than two five-day disconnection notices were issued to the customer during the previous 12 months; and (c) the customer was not disconnected for nonpayment during the previous 12 months.

NW Natural's Filing

Currently, the rules allow any customer to qualify as a guarantor for another customer or applicant simply on the basis that they initially established credit with the Company by paying a deposit or by providing proof of ability to pay. This means that a customer who is otherwise unknown to the Company can sign up for service by establishing credit by either of these methods and instantly become eligible to be a guarantor for one or more applicants or customers whose payment history is also unknown to the Company.

NWN asserts in its filing that the above scenario is not appropriate and was not expected or intended by the parties to AR 452. It is the Company's position that a customer should not be eligible to qualify as a guarantor under a surety agreement without first having established 12 months of continuous service in good standing with the Company. This position is based on the following:

1. The first option for establishing credit under the currently effective OAR 860-021-0200(1)(a) is a demonstration of 12 months of continuous utility service with the same type of utility.

The two additional options (1)(b) and (1)(c) that are new to the rule, were added in AR 452 because participating utilities were seeking to improve the rules with respect to the establishment of credit for applicants that had no verifiable previous history with any Oregon regulated utility. Before the AR 452 changes, the rules allowed an applicant to establish credit simply by providing proof of identification. It is the Company's understanding that the resulting changes were never intended to diminish the use of 12 months of continuous service as a fundamental measure of credit establishment.

2. OAR 860-021-0215(2), which was not revised in AR 452, states that credit is considered to be established or reestablished if the customer has met specified conditions within one year after a deposit is made. As such, a customer that paid a deposit does not actually establish credit with the utility until a full 12 months of service in good standing has passed.

3. OAR 860-021-0200(3)(b), also in effect before the AR 452 rulemaking, stated that a responsible party for the purpose of entering into a surety agreement is a customer that had received 12 months of continuous service with that utility, without late payment.

NWN contends that, to the best of its knowledge, the appropriateness of the previous rule language was not questioned in the AR 452 proceeding.

On the proposed tariff sheets in this filing NWN has defined eligibility to be a guarantor as follows: A responsible party must be an existing customer of the Company who has received at least 12 months of continuous gas service and who has not been disconnected for nonpayment, for theft or diversion of service, or for tampering with utility facilities. This definition combines elements of OAR 860-021-0200(1)(a) and OAR 860-021-0200(2) and mirrors the intent of the guarantor eligibility requirements before the modification in AR 452.

It is my understanding that a request that the Commission open a rulemaking related to the issues raised in this filing may be made at a subsequent public meeting. The rulemaking would also address other related issues that were raised by NWN in its AR 479 comments. If the rulemaking proceeds, it is likely that the waiver requested in this filing will no longer be necessary and could be withdrawn at that time.

I agree that the language of OAR 860-021-0200(3)(a) does not appear to reflect the intent of the parties to AR 452 and allows unintended consequences that increase the risk to other customers. If the utility must take a surety agreement for one or more applicants from an individual with no credit history with the company, a likely outcome is an increase in the number of NWN's customer accounts that it is not able to collect. This outcome would unfavorably affect the rates of other customers, and could adversely impact the Company. Generally, Staff does not recommend and the Commission does not favor exempting an entity from compliance with any administrative rule. However, the Commission has on occasion, found it to be in the public interest to grant such a request.⁵ I am persuaded that NWN's request for a waiver is in the public interest and recommend the Commission approve it and allow the revised tariffs to take effect.

PROPOSED COMMISSION MOTION:

NWN's request for a waiver of part of OAR 860-021-0200(3)(a) be granted and the proposed tariffs be allowed to take effect with service on or after May 1, 2004.

⁵ Order No. 02-135, Page 3, Footnote 1. See e.g., South Hills Water System, Inc., April 21, 1998 Public Meeting (OAR 860-036-0235 & 0120(3)), and Agate & Apache Water, August 10, 1999 (OAR 860-036-0015, 0235(2)).