

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

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In the Matter of	)	
	)	
NORTHWEST NATURAL	)	ORDER
	)	
(Advice No. 06-2) Adds new Schedule 60	)	
Special Contracts related to Rate	)	
Schedule 32, as part of a Settlement	)	
Agreement with large-volume customers.	)	

**DISPOSITION: TARIFF SHEETS ALLOWED; WAIVER GRANTED**

On February 1, 2006, Northwest Natural Gas Company (NW Natural) filed tariff sheets in Advice No. 06-2 to be effective February 8, 2006. The terms of the proposed tariff sheets are set forth in the Staff Report dated February 1, 2006, attached as the Appendix to this order.

The filing represents part of a settlement of a dispute involving NW Natural regarding the terms of the service that applied to industrial customers who had recently elected to change from Transportation only to Sales service.<sup>1</sup> After extensive negotiations, NW Natural was able to reach settlement with 14 of the 15 affected customers. Part of the monetary compensation in the settlements, which are referred to in the settlements as “credits,” is calculated by multiplying fractional dollar amounts by different natural gas volumes. In its Advice letter accompanying this filing, NW Natural explains the need for Commission approval of this filing:

Because this kind of mechanism is ordinarily used to determine and collect revenues for service performed by the Company and is within the jurisdiction of the Commission, the Company is seeking permission from the Commission to use this mechanism to calculate the monetary compensation to settle the claims and disputes. There are, of course, different ways that monetary compensation could have been determined. This mechanism or vehicle for calculating monetary compensation appeared to be appropriate in this case because the Company was dealing with two complaints and multiple potential complaints. Customers, potentially, at

<sup>1</sup> See Staff’s Report for the Commission’s December 6, 2005, Public Meeting for background information on this dispute.

least, could have alleged claims for damages based upon alleged higher gas costs, which, in turn, would have been derived from natural gas volumes. In other words, the settlements used what are referred to as “credits” because it provided a convenient method for determining the consideration and for settling the cases. There would have been other ways to “monetize” the settlement amounts, but this method seemed appropriate in this case. The Sales and the Transportation Settlement Agreements are bargained for “entire” single settlement agreements. The settlement agreements encompass settlements of claims that arise outside of the Commission’s jurisdiction.

NW Natural also explained that financial results of the filing will not affect other customers:

The Company has not and will not seek any added costs associated with these settlement agreements in rates from any other customers. The added costs will not be included in any purchased gas adjustments or any other account used in the calculation of rates, and will not be included as an operating expense in any test year in any future rate case.

At its February 7, 2006, Public Meeting, the Public Utility Commission of Oregon allowed the tariff sheets to go into effect. Although the Commission is approving the filing, it makes no specific findings regarding any aspect of the underlying dispute. Neither Rate Schedule 32 nor Schedule T are affected or changed by the Commission’s approval of these settlement agreements, and no party should rely on this decision with regard to any issues that may be raised in litigation between NW Natural and any other customer. In approving this filing, the Commission is not reaching any conclusions regarding whether NW Natural has violated any statutes, rules, or tariffs regarding the underlying dispute in this matter.

Thirty days after NW Natural has concluded providing service under the agreements, the company will submit to the Commission all information about, and an accounting for, its performance of the agreements. As information about each customer's specific volumes may be considered to be trade secret and confidential by those customers, the customer specific volume information may be submitted to the Commission designated as "trade secrets" or other confidential information that are exempt from disclosure under ORS 192.501.

Pursuant to a waiver of OAR 860-022-0032, the Commission finds that the tariff sheets shall be effective for billings sent on and after February 8, 2006.

IT IS ORDERED that Advice No. 06-2, filed by Northwest Natural Gas Company, is allowed effective on and after February 8, 2006.

Made, entered, and effective FEB 09 2006



BY THE COMMISSION:

Becky L. Beier  
**Becky Beier**  
Commission Secretary

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 by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

## ITEM NO. 1

**PUBLIC UTILITY COMMISSION OF OREGON**  
**STAFF REPORT**  
**PUBLIC MEETING DATE: February 7, 2006**

REGULAR   X   CONSENT        EFFECTIVE DATE   February 8, 2006  

DATE: February 1, 2006

TO: Public Utility Commission

FROM: Deborah Garcia *DG*

THROUGH: *Li* Lee Sparling, *EB* Ed Busch, and *DA* Judy Johnson

SUBJECT: NORTHWEST NATURAL: (Advice No. 06-2) Adds new Schedule 60 Special Contracts related to Rate Schedule 32, as part of a Settlement Agreement with large-volume customers.

**STAFF RECOMMENDATION:**

I recommend the Commission approve Northwest Natural's request for a waiver of Oregon Administrative Rule 860-022-0035 and Application for Less than Statutory Notice, to allow Advice No. 06-2 and the associated tariff sheets to go into effect for customer billings mailed on or after February 8, 2006.

**DISCUSSION:**

As the Commission is aware,<sup>1</sup> there is a disagreement over the terms of the service that applied to Northwest Natural (NWN or Company) large-volume customers who recently elected to change from Transportation to Sales service.

The Company has successfully concluded settlements with 18 customers, 14 of which are Oregon customers. The settlement agreement is the result of an intense month-long negotiation between NWN and 18 large-volume customers. During that process multiple counter proposals were made and considered. Northwest Industrial Gas Users (NWIUGU) and customer representatives agree that the elements of the final agreement, taken together as a whole, constitute a reasonable resolution of the issues. The methods chosen allow for the reflection of the unique circumstances of each customer.

<sup>1</sup> At its public meeting on December 6, 2005, the Commission opened UM 1236 to investigate whether NWN provided adequate customer information to large-volume customers who elected to switch from Transportation service to Sales service.

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The ability to reflect an individual customer's historical and prospective volumes for different elements of the settlement agreement were important in balancing the circumstances related to each customer's C.<sup>2</sup> claims.

There are two forms of settlement: the Sales Settlement Agreement and the Transportation Settlement Agreement. These are not typical settlements. Part of the monetary compensation in the settlements, which are referred to in the settlements as "credits," is calculated by multiplying fractional dollar amounts by different natural gas volumes. In the case of the Transportation Settlement Agreement, part of the monetary compensation is calculated by multiplying a percentage by the Permanent Margin.

In its Advice letter accompanying this filing, NWN said:

Because this kind of mechanism<sup>3</sup> is ordinarily used to determine and collect revenues for service performed by the Company and is within the jurisdiction of the Commission, the Company is seeking permission from the Commission to use this mechanism to calculate the monetary compensation to settle the claims and disputes. There are, of course, different ways that monetary compensation could have been determined. This mechanism or vehicle for calculating monetary compensation appeared to be appropriate in this case because the Company was dealing with two complaints and multiple potential complaints. Customers, potentially, at least, could have alleged claims for damages based upon alleged higher gas costs, which, in turn, would have been derived from natural gas volumes. In other words, the settlements used what are referred to as "credits" because it provided a convenient method for determining the consideration and for settling the cases.

There would have been other ways to "monetize" the settlement amounts, but this method seemed appropriate in this case. The Sales and the Transportation Settlement Agreements are bargained for "entire" single settlement agreements. The settlement agreements encompass settlements of claims that arise outside of the Commission's jurisdiction. Although the agreements each contain different mechanisms for determining the amount of consideration, every promise and condition is consideration for and is mutually dependent upon the other. No part of an agreement is severable or independent of the rest of the agreement. These agreements are not intended to be precedential. They are

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<sup>2</sup> "Claim" as defined in the Definitions section of the settlement agreements.

<sup>3</sup> To clarify, Staff understands that the word mechanism refers to the method of calculation in Schedule 32 that is used to calculate customer rates.

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settlements between a public utility and each of 14 sophisticated large customers who are able to effectively determine their interests.

The Company is paying for these settlements. Other customers will not be adversely affected by the settlement agreements. The Company has not and will not seek any added costs associated with these settlement agreements in rates from any other customers. The added costs will not be included in any purchased gas adjustments or any other account used in the calculation of rates, and will not be included as an operating expense in any test year in any future rate case.

PUC Staff will be able to audit the Company to ensure that other customers are not adversely affected by the settlements. Thirty days after the Company has concluded providing service under the agreements, the Company will submit to PUC Staff all information about and an accounting for its performance of the agreements. As noted above, information about each customer's specific volumes is considered to be trade secret and confidential by those customers, and that customer specific volume information will be submitted to PUC Staff as "trade secrets" or other records that are exempt from disclosure under ORS 192.501.

The following customers entered into the Sales Settlement Agreement:

Bruce Packing Co., Inc.  
Bullseye Glass Company  
Consolidated Metco, Inc.  
Esco Corporation  
McCall Oil and Chemical Corporation  
Norpac Foods, Inc.  
State of Oregon, acting by and through the State Board of Higher Education, on behalf of Portland State University  
Supreme Perlite Co.

The following customers entered into the Transportation Settlement Agreement:

Blue Heron Paper Company  
Emerald Forest Products (Eugene)  
Hexion Specialty Chemicals  
Johnson Controls, Inc.  
Kraft Foods North America  
Rainier Wood Products, Inc

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In effect, NW Natural is asking to establish a separate class of customers with a settlement credit applied to the bills of the customers in the class. ORS 757.230 lists the factors that may be considered in establishing customer classes:

"the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration."

Commission counsel Paul Graham advises that the settlement of likely litigation related to the provision of utility service qualifies as a reasonable consideration for distinguishing these customers as a separate class. On that basis, and recognizing that other customers will not be harmed, Staff recommends that the proposed tariff sheets be allowed into effect. Counsel advises that Commission action to allow the tariff sheets into effect does not represent an endorsement of the terms of the settlement.

**PROPOSED COMMISSION MOTION:**

NWN's request to waive Oregon Administrative Rule 860-022-0035, the Application for Less than Statutory Notice, and Advice No. 06-2 be approved, and the associated tariff sheets be allowed to go into effect for customer billings mailed on or after February 8, 2006.