ORDER NO. 14 014

ENTERED: JAN 14 2014

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

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In the Matter of NORTHWEST NATURAL GAS COMPANY, dba NW NATURAL, Investigation into Schedule H, Large Volume Non-Residential High Pressure Gas Service Rider.	ORDER

DISPOSITION: TARIFF APPROVED AS MODIFIED

I. SUMMARY

This order addresses a request by Northwest Natural Gas Company, dba NW Natural, to introduce a new optional rider to its non-residential gas service schedules to provide tariffed High Pressure Gas Service (HPGS) through company-owned and maintained compression equipment sited on customers' premises. With such equipment, customers will have sufficient gas service pressures to fuel natural gas-powered motor vehicles (NGVs).

In this order, we adopt NW Natural's proposal to provide HPGS as a regulated service through additions and revisions to the company's tariff Schedules 3, 31, and 32, and direct the company to file new tariffs consistent with this order to be effective February 1, 2014. We condition our approval of the service for a period of two years, after which time we will revisit NW Natural's HPGS to determine whether the regulated service should continue, be modified or discontinued.

II. BACKGROUND AND PROCEDURAL HISTORY

NW Natural is a public utility providing natural gas utility service within the State of Oregon within the meaning of ORS 757.005, and is subject to our jurisdiction with respect to the prices and terms of service for its Oregon retail customers.

On June 27, 2013, NW Natural filed Advice No. 13-10, seeking revisions and additions to its Tariff P.U.C. Or. 25, with an effective date of September 1, 2013. In its application, the company proposes to introduce an optional rider to offer a compressed natural gas (CNG) fueling service to its non-residential customers. This service will allow the company to provide service at pressures up to a range of 3000-3600 pounds per square inch (psi), which produces energy density high enough to fuel NGVs.

Through various filings made on August 13-15, 2013, the company filed supplemental replacement sheets and requested that the proposed tariff changes' effective date be delayed until November 1, 2013.

On August 15, 2013, the Commission Staff sent a letter to interested persons seeking comment on NW Natural's proposal by September 30, 2013. Comments were received from Senator Lee Beyer; NW Natural; Gary Baldwin; the Oregon Trucking Association; Con-Way Freight Fuelpoint CNG Innovations, LLC; Bill Stallman; Columbia Willamette Clean Cities Coalition; Northwest Industrial Gas Users (NWIGU); The Citizens' Utility Board of Oregon (CUB); Natural Gas Vehicle Fuel Providers (NGVFP); Integrys Transportation Fuels, LLC; Blue LNG; the Oregon Department of Energy (ODOE); TransEnergy Solutions; Northwest Gas Association (NWGA); and DSU Peterbuilt and GMC.

At our October 28, 2013 Regular Public Meeting, Staff presented NW Natural's request for our review. After discussion and comment, we agreed to hold a hearing on the request, and in Order No. 13-388[1], entered October 29, 2013, we suspended the tariff for a period not to exceed nine months from November 1, 2013.

A prehearing conference was held on October 31, 2013, at which appearances were noted by NW Natural, CUB, NWIGU, ODOE, Clean Energy Fuels Corp., (a member company of NGVFP) and the Commission Staff. Petitions to intervene by NWIGU; TruStar Energy LLC[2]; Transfuels LLC, dba Blu; ODOE; and Clean Energy were all granted. CUB intervened as a matter of right under ORS 774.180.

Pursuant to the schedule adopted at the prehearing conference, NW Natural filed direct testimony on November 18, 2013, and Clean Energy, ODOE, NWIGU, CUB, and Staff filed reply testimony on November 27, 2013. A hearing was held on December 6, 2013 and post-hearing briefs were filed by NW Natural, Clean Energy, CUB, NWIGU, ODOE, and Staff on December 13, 2013.

III. DISCUSSION

A. NW Natural's Proposed Tariff Service Offering

NW Natural proposes to provide company-owned and maintained high pressure gas infrastructure sited on customers' premises where the company's standard distribution system operating pressures are insufficient to meet customers' requirements for CNG fueling. The equipment will take low-pressure gas to high pressure and low volume, transfer the CNG to a storage tank until needed, and dispense the CNG into NGVs.[3] NW Natural intends to target non-residential customers with fleets of 40 or more vehicles

[1] *See also* Errata Order No. 13-415.
[2] On December 9, 2013, TruStar withdrew its petition to intervene and requested that its status be changed to that of an interested person. TruStar did not submit testimony, examine witnesses or file a post-hearing brief in this proceeding; neither was it a signatory to the protective order. We therefore grant its request.
[3] NWN/200, Summers/3.

that return to the same location at night. Potential customers with smaller fleets could be economically feasible if CNG was offered by them for sale to the public or they made arrangements with other smaller fleets to aggregate their fleets and jointly utilize a single facility.[4]

To obtain the service, customers must have an approved service election under Schedule 32 for HPGS service, enter into an HPGS service agreement with a minimum ten-year term, and satisfy certain prerequisites as required in the agreement. In addition to the provision of pressurized gas, the service includes scheduled maintenance, unscheduled maintenance and back-up service.

To provide the service, NW Natural will design, plan, engineer, permit, construct, install, inspect, test, and maintain all standard HPGS facilities, and reserves the right to choose the location for the required distribution and HPGS facilities. The tariff rider also sets out specifics relating to terms and conditions for installation of non-standard equipment and the company's obligations with respect to scheduled and unscheduled maintenance and backup service.

The rider provides a detailed explanation of its methodology for the development of costs and associated monthly charges. The monthly charges for the service are to be provided for in the agreement and enable recovery of NW Natural's costs over a primary ten-year term according to a declining balance schedule sliding from 22.9 percent in the first year to 10.7 percent in the tenth year. The scheduled maintenance charge will include maintenance and administrative expenses for the HPGS facilities; charges will initially be based on expected costs, but will be adjusted annually to more closely reflect actual costs. Furthermore, the company will bill the customer for all actual costs associated with the provision of unscheduled maintenance and back-up services. In addition to the financial obligations of customers obtaining HPGS, customers will be required to meet numerous other conditions designed to lower the company's financial exposure in the provision of HPGS.[5]

B. Positions of the Parties

In support of its tariff filing, NW Natural states that CNG, as a transportation fuel, offers many environmental, economic, national security and safety benefits compared to gasoline or diesel fuel.[6] Although the service could be provided as either a utility service or an unregulated service, NW Natural states that provision as a utility service is an appropriate response to the requests of those customers who desire the transparency and accountability of a regulated service. The service is fundamentally about providing natural gas to end-use customers through company-owned facilities.[7]

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[4] *Id.* at 11.
[5] NWN Advice No. 13-10A, Sheets H1-H8.
[6] NWN/200, Summers/3.
[7] NWN/100, Thompson/2-3.

NW Natural emphasizes that the tariff rider has been drafted in a manner specifically to protect the company's other customers in four primary ways: (1) customers receiving HPGS bear the incremental risks attendant to the service; (2) the company recovers the 30-year lifetime costs of the equipment over ten years and retains ownership; (3) early termination requires immediate full recovery of costs; and (4) customers must meet stringent credit standards.[8]

To address concerns about the impact on competition for this service, NW Natural explains it will not inappropriately use its position as a regulated utility to the disadvantage of unregulated competitors. The company will not use its own customer historical data to identify customers, but will rely on publicly-available information that all competitors can access. In addition, NW Natural will not use bill inserts or other mass media to advertise HPGS, but will rely on direct marketing paid for by shareholders, not ratepayers, and thus will have no monopoly or unfair advantage in the marketplace. Furthermore, NW Natural points out that, unlike its unregulated competitors, it does not have the option to discriminate among customers, but must provide the same service at the same price and cannot exit the market at will, depending upon conditions.[9]

CUB, ODOE, NWIGU, and Staff support NW Natural's request. CUB supports the rider because NW Natural was able to demonstrate that there was a long-term net benefit to customers generally, and that there would be no cross-subsidization from existing customer classes.[10] CUB specifically notes that NW Natural has removed proposed subsidies related to customer service and feasibility studies, and proposes to recover all project development and administrative costs through charges to the HPGS customers and will track and charge additional costs related to the service proposals.[11]

ODOE urges the Commission to approve the NW Natural proposal because it is consistent with the Oregon state policy to reduce greenhouse gas emission and there are currently no third-party providers of CNG fueling in Oregon. The lack of a CNG fueling infrastructure has deterred fleet owners from converting to CNG, and, ODOE believes, NW Natural's tariff may eliminate the investment barrier and provide for wider use of CNG in fleet vehicles.[12] Furthermore, ODOE contends that NW Natural's participation in the market is unlikely to curtail competition. Rather, as demand for CNG increases, ODOE believes more competitors will be attracted to the Oregon market. ODOE notes that, in other states, third-party providers successfully compete with utilities and self-providers in the market.[13] Finally, ODOE states that the proposal will likely provide benefits to other ratepayers because the new offering will make the same contribution to fixed costs on those additional gas purchases as other commercial gas customers.[14]

[8] NWN/200, Summers/13-14.
[9] *Id.* at 21-23.
[10] CUB/100, Jenks/1.
[11] CUB Brief at 2, *citing* NWN/100, Thompson/7 and NWN/200, Summers/14-20.
[12] ODOE/100, Peacock Williamson/2-3; ODOE Brief at 1-2.
[13] ODOE Brief at 2-3.
[14] *Id.* at 3.

NWIGU favors adoption of the NW Natural proposed tariff because the company has adequately addressed NWIGU's concerns that all costs of the program are accounted for and paid for only by HPGS customers. The company has agreed to track all staff time spent on the HPGS program for the first year, meet with stakeholders to discuss actual costs, and propose changes to the tariff in order to adjust administrative services charges as necessary to reflect actual costs.[15] NWIGU also contends that there will be significant environmental and economic gains in the transportation sector due to the lower cost compared to both gasoline and electric vehicles.[16]

Staff supports NW Natural's tariff filing, citing the recognized need for increased NGV fueling and state policies that call for the development of such markets.[17] Staff argues that the facts in this proceeding have not shown that NW Natural's participation in the CNG market would result in unfair competition in Oregon.[18] With regard to impact on competition, Staff acknowledges concerns about NW Natural's ability to attract potential customers due to its brand identify, but contends that the utility's positive brand equity is not due to its status as a public utility, but as a provider of service in Oregon for over a hundred years. Staff does not believe that NW Natural's status as a public utility should deprive it from participating in the CNG fueling market. Furthermore, Staff notes that NW Natural will not use its customer information to identify potential customers, but rely on publicly-available data to identify potential HPGS customers.[19]

In addition to the comments and testimony of CUB, ODOE, NWIGU, and Staff, comments in support of the NW Natural proposal were filed by Senator Lee Beyer, the Oregon Trucking Association, the Columbia Willamette Clean Cities Coalition, Northwest Gas Association, the Oregon Global Warming Commission, and several other groups and individuals.

Clean Energy opposes NW Natural's proposal. Clean Energy describes itself as "North America's leading provider of natural gas fuel for transportation serving primarily vehicle fleets including trucking, airport shuttles, taxis, refuse and public transit * * *. Clean Energy's customers include the Los Angeles Municipal Transit Authority and 37 major airport stations as well as other fleet customers in 43 states."[20]

Because Clean Energy offers services that are substantially identical in scope and integration as the service proposed by NW Natural, it would find NW Natural to be a direct competitor if the rider is allowed.[21] Clean Energy urges the Commission to reject or materially revise the proposed tariff filing, noting that CNG fueling is a competitive business, not a natural extension of utility service, and that provision of the service by a

[15] NWIGU Brief at 1-2, *citing* NWN/200, Summers/19, ll. 22-24.
[16] *Id.* at 2-3, *citing* NWIGU/100; Finklea/2-3.
[17] "Oregon should develop a comprehensive alternative fuel program that allows utility-ownership of refueling infrastructure and provides incentives, where appropriate, for vehicle conversions." Governor Kitzhaber's, *10-Year Energy Action Plan* at 36 (CEF/301); Staff Brief at 4.
[18] Staff/100, Colville/5; Staff Brief at 3.
[19] Staff Brief at 6-7, *citing* NWN/200, Summers 21-22.
[20] CEF/100, Mitchell/4-5.
[21] *Id.* at 17.

regulated monopoly will undermine the development of the NVG refueling infrastructure market in Oregon.[22]

Clean Energy contends that, if NW Natural were allowed to offer its HPGS as a regulated service, the utility would have inherent monopoly advantages and indirect cross-subsidies, creating an uneven playing field. In particular, Clean Energy is concerned about the utility's materially lower cost of capital and the advantages of its "brand equity" in Oregon.[23] Other indirect cross-subsidies claimed by Clean Energy are access to customers' information database of usage and distribution design, and unique access to pressure and site information from potential customers of competitors.[24] According to Clean Energy, these advantages will ultimately give NW Natural the ability to undercut its competitors' prices and impede the development of the market, leaving customers with fewer choices and less innovation.[25]

Contrary to claims of NW Natural, Clean Energy argues that the varying rates charged each customer based on particular circumstances does not make the proposed service transparent, uniform, or understandable. If we approve the proposed rider, Clean Energy urges that we either require NW Natural to offer service through a separate unregulated entity or limit NW Natural's participation to underserved or uneconomic markets where competition would be unlikely.[26]

Comments supporting Clean Energy's positions and opposing the NW Natural proposal were submitted by Blu LNG, Integrys Transportation Fuels LLC, and the Natural Gas Vehicle Fuel Providers, who, like Clean Energy, are potential competitors for customers of NW Natural's CNG fueling service.

C. Commission Resolution

We approve NW Natural's request. Although natural gas vehicle fueling is potentially a competitive business, CNG fueling is properly considered a utility service and may appropriately be offered under regulated tariffs. Moreover, NW Natural has structured its HPGS tariff rider in a manner that meets our requirements for a utility proposing to provide a regulated service in a potential competitive marketplace.

1. Utility Service

Our enabling statues and case precedent support the conclusion that CNG fueling falls within the definition of utility service. ORS 756.010(8) provides that 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." The offering of CNG fueling

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[22] *Id.* at 2-3.

[23] Clean Energy cites NW Natural's 9.5 percent cost of capital compared to an industry average of 15 percent and describes "brand equity" as a significant but non-quantifiable public awareness and public trust conferred upon it by the longevity of its franchise. *Id.* at 19-21.

[24] *Id.* at 19.

[25] *Id.* at 22.

[26] *Id.* at 26.

through company-owned and maintained compression equipment falls well within this broad definition.

The Court of Appeals decision in *NW Climate Conditioning Assn et al v. Lobdell*, 79 Or App 560 (1986), confirms this interpretation. There, the court affirmed the Commissioner's determination that a utility's appliance inspection and repair activities constituted regulated services, despite the competitive nature of those services. The court explained:

> The Commissioner's administrative responsibility extends to all services provided by public utilities that are subject to ORS chapter 756. ORS 756.010(11) provides that the term "service" "is used in its broadest and most inclusive sense." That unequivocal definition leaves little room for agency discretion. "Service" in its "broadest and most inclusive sense" indubitably encompasses the repair and replacement activities performed by [the utility]. [27]

Furthermore, as NW Natural points out, the statutory definition of "public utility" reveals that the legislature contemplated that alternative fuels for use in motor vehicles would be provided both as a regulated and non-regulated service. In ORS 757.005(1)(a) (A), the legislature defines a "public utility" as any company that owns or controls "any plant or equipment in this state" for the delivery of power to the public. The legislature further clarifies in ORS 757.005(1)(b)(G), however, that any company that provides "alternative fuel * * * for use in motor vehicles and does not furnish any utility services described in paragraph (a)" is not a public utility. The recognition of a potential overlap between traditional public utility services and the provision of alternative fuels further supports our authority to allow NW Natural to provide CNG fueling as a regulated service.

2. Policy Considerations for Utility-Provided Competitive Services

In addition, NW Natural has met our policy criteria to allow the company to provide CNG fueling as a regulated service in a competitive market. NW Natural has demonstrated that other customers will benefit, with little to no risk, from the service offering, that no competitive market for natural gas vehicle fueling currently exists, and that the competitive market may not develop absent utility participation.

a. Net Benefit to Ratepayers

NW Natural's proposed HPGS could be offered as either a utility service or an unregulated service. Because NW Natural proposes to offer the service under its regulated tariffs and utilize the financial assets, plant, and human resources with which it provides other tariff-based services, we agree with CUB that other customers must not only be protected from the service offering, but must also receive a net benefit from the company's entry into the market.

[27] *NW Climate Conditioning Assn et al v. Lobdell*, 79 Or App 560, 565 (1986). ORS 756.010(11) was subsequently renumbered as ORS 756.010(8).

In this case, NW Natural has structured its tariff rider to protect existing customers against financial impacts arising from this venture. As demonstrated by testimony of CUB and NWIGU[28]—parties representing the interests of residential and industrial customers who will not be customers for this new service offering—as well as our own Staff, NW Natural has put into place a business plan that provides for early recovery of expenses along with sufficient safeguards and accounting measures to provide reasonable assurances that the cost burden and risk of this new service will be recovered essentially from those customers who enter into agreements to obtain services and facilities under the tariff rider.

Furthermore, as explained by the parties, the additional sales made through the HPGS offering will provide net benefits generally to other customers. The sales of natural gas to the new HPGS customers will make the same contribution to fixed costs as gas purchases by other commercial gas customers. By spreading these costs over a larger volume of sales, the amount of fixed costs that are recovered per unit of sales is reduced. Consequently, the new contribution to fixed costs will incrementally lower the portion of fixed costs currently being borne by the existing customer base. For these reasons, we find that NW Natural's provision of CNG fueling as a regulated service will provide a net benefit to other customers.

b. Absence of a Pre-Existing Competitive Market

Where a robust competitive marketplace for a particular service already exists, there is no policy rationale to support entry by a public utility into the market with a regulated, tariffed service. If the economics support market entry, then the utility should offer a comparable unregulated service, supported by neither ratepayers nor the revenue requirement "above the line" expenses and associated assets.

The record in this case clearly shows that there is no competitive market, robust or otherwise, in Oregon for CNG fueling services. At present, despite requests for CNG fueling from fleet owners, there are no third-party providers of HPGS in Oregon.[29] All the existing 28 CNG fueling stations are privately owned and operated by individual fleet owners solely for their own use, leaving most businesses and public bodies that operate fleets without access to CNG fueling.[30]

Numerous fleet owners have sought, without success, to have third-party vendors from outside of Oregon come into the state to establish CNG fueling facilities. John Anderson, owner of Eugene Truck Haven, stated that he called Clean Energy two years ago seeking a CNG facility. Last year, he called a manufacturer, IMW, and has yet to hear from either company.[31] Similarly, Mark Fritz of Star Oil, a motor vehicle fuels distributor, stated "the biggest chill in the marketplace was the promise of stations that have not been built by out-of-state players * * * there are hundreds of heating contractors out now that

[28] *See, e.g.* CUB/100, Jenks/3, ll. 6-9; NWIGU/100, Finklea/2, ll.6-11.
[29] NWN/200, Summers/8-9; NWN/201, Summers/43-45.
[30] *See* ODOE/100, Peacock Williamson/6.
[31] NWN/201, Summers/44-45.

are looking at this as a potential install line of their mechanical and commercial lines."[32] Neither statement was refuted in the record.

We therefore find that NW Natural's proposed HPGS will help fill a gap that is not currently being satisfied in the competitive marketplace.

c. Development of Market Absent Utility Participation.

In determining whether regulated services should be offered in a potentially competitive marketplace, we must also consider the development of the market absent utility investment. There is no rationale to simply allow a utility to be first in a market that would develop and become robust regardless. Rather, we look for evidence that utility participation in the market will be a likely catalyst to the establishment and growth of a competitive market.

In this case, the record shows that the market for the provision of CNG fueling may not develop absent NW Natural's offering. Clean Energy, a nationwide leader of providing natural gas for vehicles, testified before the Oregon Legislative Assembly that it could not enter the Oregon marketplace because a continuing mandate on fuel suppliers to reduce carbon emissions was due to sunset in 2015. Specifically, in March 25, 2013 testimony offered in support of SB 488 that would remove the sunset provision, Clean Energy directly stated that, in the absence of passage of the bill "Clean Energy, along with many others, would love to invest heavily in Oregon but we cannot do so."[33] Despite Clean Energy's support, SB 488 failed to pass.

We are not persuaded by Clean Energy's assertion that NW Natural's participation in the market will act as a disincentive to competitive market entry. In fact, we find evidence tending to prove the contrary to be persuasive. We agree with ODOE that, given the lack of a competitive market and the experiences in other states, NW Natural's HPGS proposal may well establish demand for CNG fueling stations by facilitating fleet conversions for those entities lacking their own facilities.[34]

We find that a preponderance of the evidence shows that the CNG fueling market in Oregon may not develop in the absence of utility company participation and that participation in the market by NW Natural may well stimulate market development for CNG fueling station by facilitating fleet conversions. This demand may be necessary to attract third parties to Oregon.[35]

3. Procedures to Mitigate Anti-Competitive Impact

In reaching these decisions, we acknowledge the concerns raised by Clean Energy and other that utilities may have certain advantages as marketplace participants. Due to these

[32] NWN/201, Summers/35.
[33] NWN Post Hearing Brief, Attachment A at 2.
[34] ODOE/100, Peacock Williamson/2.
[35] *Id.*

potential advantages, we conclude that reviews are necessary to assure the viability and integrity of competitive markets.

Accordingly, we condition our approval of NW Natural's HPGS to a period of two years from the effective date of the tariffs.[36] Following that period, we will revisit the offering to determine whether the regulated service should continue, or whether it should be modified or discontinued on a going-forward basis. To assist that effort, we instruct our Staff to undertake an investigation of the CNG fueling market and NW Natural's participation in it, and to make such recommendations to the Commission as will further the growth of a robust competitive market. We specifically direct Staff to examine whether circumstances on which we based our decision have changed, and to report on the market development in parts of Oregon not served by NW Natural.

4. Other Benefits

Many parties support NW Natural's entry into the CNG fueling market to help fulfill enumerated state policies and goals, including the Governor's 10-year Energy Action plan for a twenty percent conversion of large fleets to alternative fuels such as CNG. Although NW Natural's offering may be consistent with and help promote those goals, we base our decision solely on the legal and economic criteria discussed above.

IV. CONCLUSION

We have reviewed the testimony presented by the parties and the public comments filed with the Commission by numerous customers and others with an interest in this proceeding. We conclude that our decisions in this docket will result in rates that are fair, just, and reasonable and that adoption of the proposed tariff rider will further the public interest.

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[36] Regardless of whether the Commission makes any prospective changes to NW Natural's HPGS offering, all contracts entered into prior to that time will remain in full force and effect for the duration of each contract.

V. ORDER

IT IS ORDERED that:

1. Advice No. 13-10, is permanently suspended.

2. Northwest Natural Gas Company, dba NW Natural must file new tariffs consistent with this order to be effective February 1, 2014.

Made, entered, and effective JAN 14 2014.

Susan K. Ackerman
Chair

John Savage
Commissioner

Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.