

ORDER NO. 21-043

ENTERED Feb 12 2021

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2137

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL,

Application to Defer Costs Associated with
Metro Supportive Housing Services (MSHS)
Tax.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on February 11, 2021, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



Nolan Moser
Chief Administrative Law Judge



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 Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. CA3

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 11, 2021**

REGULAR CONSENT EFFECTIVE DATE January 1, 2021

DATE: January 26, 2021

TO: Public Utility Commission

FROM: John Fox

THROUGH: Bryan Conway, John Crider, and Matt Muldoon **SIGNED**

SUBJECT: NORTHWEST NATURAL:
(Docket No. UM 2137)
Application to Defer Costs Associated with Metro Supportive Housing
Services Tax.

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission of Oregon (Commission) approve Northwest Natural's (NWN, NW Natural, or Company) application for authorization to use deferred accounting for amounts associated with the Metro Supportive Housing Services ("MSHS") Tax for the 12-month period beginning January 1, 2021 through December 31, 2021.

DISCUSSION:

Issue

Whether the Commission should approve NW Natural's application for deferred accounting for the 12-month period beginning January 1, 2021, related to the Metro Supportive Housing Services Tax.

Applicable Rule or Law

Beginning with the date of the Application, the Commission may approve the deferral of identifiable utility expenses or revenues, the recovery or refund of which the Commission finds should be deferred in order to minimize the frequency of rate changes for the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers. ORS 757.259(2)(e) and (4). Unless subject to an

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automatic adjustment clause under ORS 757.210(1), amounts deferred are allowed in rates to the extent authorized by the Commission in a proceeding under ORS 757.210 to change rates and upon review of the utility's earnings at the time of application to amortize the deferral. ORS 757.259(4); OAR 860-027-0300(9). The Commission's final determination on the amount of deferrals allowable in the rates of the utility is subject to a finding by the Commission that the amount was prudently incurred by the utility. ORS 757.259(5).

ORS 757.269(1) states that "the Public Utility Commission shall act to balance the interests of the customers of the utility and the utility's investors by setting fair, just and reasonable rates that include amounts for income taxes" and "amounts for income taxes included in rates are fair, just and reasonable if the rates include current and deferred income taxes and other related tax items that are based on estimated revenues derived from the regulated operations of the utility."

OAR 860-022-0045 states that, in part, if any county in Oregon imposes or increases taxes or licensing, franchise, or operating permit fees, the utility required to pay such taxes or fees shall collect the amount from its customers within the county imposing such taxes or fees.

Analysis

Background

In May 2020, voters in Multnomah County, Washington County, and Clackamas County approved a measure to raise money for supportive housing services for people experiencing homelessness or at risk of experiencing homelessness in the greater Portland area. The program is administered by the Portland Area Metropolitan Service District (Metro) and funded by a 1 percent tax on taxable income of more than \$125,000 for individuals and \$200,000 for couples filing jointly, and a 1 percent tax on profits from businesses with gross receipts of more than \$5 million. The taxes are effective for tax years beginning on and after January 1, 2021.

Metro is organized under the provisions of Oregon Revised Statutes Chapter 268 and the Metro Charter. The Metro Council is the governing body of Metro. On December 17, 2020, the council adopted ordinances necessary to implement the new tax.¹ However, administrative rules are still pending and are expected to be issued in early 2021.

¹ Ordinance Nos. 20-1452, 20-1453, and 20-154.

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NW Natural's Filing

The Company's application states:

ORS 757.259 is a "statutorily authorized exception to the general prohibition against retroactive ratemaking" that allows a "means to address utility expenses or revenues outside of the utility's general rate case proceeding. Under ORS 757.259(2)(e), the Commission has discretion to authorize a deferral of "[i]dentifiable utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes . . . or to match appropriately the costs borne by and benefits received by rate payers."

And further states:

NW Natural's rates do not currently capture the impact of the MSHS Tax. Ordinarily, taxes are recovered in rates, but because the passage and financial impact of the MSHS Tax was unforeseen, the Company was unable to include it in a prior forecast or within its prior rate proceeding. As a result, NW Natural would be required to bear the costs of the MSHS Tax, unless it filed an application to defer the costs of the tax. Granting this Application will minimize the frequency of rate changes and match appropriately the costs borne by and benefits received by customers.

Proposed Accounting

NW Natural proposes to account for the costs associated with the MSHS Tax by recording the deferral in Account 186. In the absence of approval of deferred accounting, NW Natural would record the amounts in several accounts affecting the Company's income statement and balance sheet.

Estimated Deferrals in Authorization Period

NW Natural estimates a deferral of \$375 thousand for 2021.

Discussion

OAR 860-022-0040 and OAR 860-022-0045 pertain to tax recoveries of cities and counties, respectively. While Metro is a unique entity, the tax itself is based on net income rather than a franchise arrangement. In fact, the staff reports associated with the Metro ordinances indicate the Metro Council's intent to adopt an income apportionment method consistent with that used by Multnomah County and the use of

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the Multnomah County Business Income Tax (MCBIT) as a guide for implementing the MSHS tax.²

Staff has confirmed, via informal inquiry, that the Company is evaluating a range of options for recovery of the MSHS Tax from customers. NW Natural indicates that it is reasonable to recover the entire tax from Metro area customers. However, in order for the Company to recover the cost consistent with the MCBIT, their billing system must be able to identify customers who live within the Metro area. The Company is currently undergoing an effort to identify these customers prior to a filing, which will seek cost recovery.

Staff notes that NW Natural recovers the MCBIT through General Schedule A – Billing for City and County Exactions. Staff also notes that recovery of the MSHS Tax through the PGA is an entirely different mechanism, and inconsistent with OAR 860-022-0045's requirement that taxes or fees imposed by a county are to be collected from the utility's customers within the county imposing such taxes or fees. Although Metro is not a county, its jurisdiction spans areas of three counties and Staff finds it to be more akin to a county, rather than a city.

In Staff's view, based on the information known to Staff at this time, the MSHS Tax should be collected from NW Natural's customers located within Metro district, consistent with the Company's treatment of the MCBIT. Further informal inquiry with the Company suggests they too see a consistent treatment with the MCBIT.

Information Related to Future Amortization

- Earnings Review – Pursuant to ORS 757.259(5), deferred amounts will be allowed in rates to the extent authorized by the Commission following review of the utility's earnings at the time of application to amortize the deferral.
- Prudence Review – Prior to amortization, a prudence review will be conducted to ensure all costs were prudently incurred.
- Sharing – This deferral is subject to sharing as determined by the Commission in a future ratemaking proceeding.
- Rate Spread/Design – The allocation basis for the prudently incurred costs will be discussed at the time of the amortization.

² See Metro Council Meeting Agenda, Ordinance 20-1454 Staff Report, December 17, 2020: <https://oregonmetro.legistar.com/View.ashx?M=AO&ID=96448&GUID=f1dd486a-112e-4435-a791-7727520b9f7d&N=TWVldGluZyBQYWNRZXQ%3d> accessed December 30, 2020.

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- Three Percent Test (ORS 757.259(6)) – The three percent test measures the annual overall average effect on customer rates resulting from deferral amortizations. The three percent test limits (exceptions at ORS 757.259(7) and (8)) the aggregated deferral amortizations during a 12-month period to no more than three percent of the utility's gross revenues for the preceding year.

Conclusion

For the reasons stated above, Staff recommends the Commission approve NW Natural's request for authorization of a deferred account for the 12-month period beginning on January 1, 2021, with the amortization method to be determined in a future filing.

PROPOSED COMMISSION MOTION:

Approve Northwest Natural's application for authorization to use deferred accounting for amounts associated with the Metro Supportive Housing Services Tax for the 12-month period beginning on January 1, 2021.

UM 2137 NW Natural MSHS Tax.docx