

SOUTHWEST GAS CORPORATION,  
Appellant,  
  
vs.  
  
PUBLIC UTILITIES COMMISSION OF  
NEVADA,  
Respondent.

CASE NO. 80911

**PUBLIC UTILITIES COMMISSION OF NEVADA’S JOINDER IN  
SUPPORT OF THE BUREAU OF CONSUMER PROTECTION’S  
MOTION TO DISMISS APPEAL**

Comes now, the Public Utilities Commission of Nevada (“PUCN”) and files a Joinder in Support of the Motion to Dismiss Appeal (“Motion to Dismiss”) filed by the State of Nevada, Bureau of Consumer Protection (“BCP”).

The PUCN joins BCP's Motion to Dismiss, as the BCP is a necessary, proper, and important party in this appeal, Case No. 80911. The BCP was clearly a respondent in the underlying case before the Eighth Judicial District Court in Clark County, Nevada ("Eighth JD"), Case No. A-19-791302-J. By statutory directive, the BCP also is an integral party in PUCN proceedings wherein Nevada monopoly utilities request changes in rates charged to Nevada ratepayers. The BCP role of representing the interests of Nevada ratepayers, particularly residential ratepayers, is paramount for ensuring the appropriate balance between utility shareholders and ratepayers, resulting in the implementation of just and reasonable utility rates.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. Procedural and Factual Background**

As BCP states in its Motion to Dismiss, it represented Nevada ratepayers during the PUCN proceeding (Docket No. 18-05031) regarding Southwest Gas Corporation's ("SWG") application to increase its customers' rates. The PUCN held a contested hearing regarding SWG's application; the BCP conducted discovery during the PUCN proceeding, submitted pre-filed testimony, presented witnesses at hearing, cross-examined other party witnesses, filed legal briefs, and participated in all other aspects of the proceeding before the PUCN.

When SWG appealed the PUCN's final orders to the Eighth JD, the BCP filed to participate in the case. Nevada Revised Statutes ("NRS") 703.373(4) states: "Any party of record desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the Commission and every party within 15 days after service of the petition for judicial review." BCP filed its "Statement of Intent to Participate" on March 27, 2019, after which it participated fully in the Eighth JD case.

NRS 703.373 sets forth various deadlines for filings in district court when a petition for judicial review is filed regarding a PUCN order. As to the filing of memoranda by respondents, the statute states that "the Commission *and any other respondents* shall serve and file a reply memorandum of points and authorities

within 30 days after service of the memorandum of points and authorities [by the petitioner] ...” NRS 703.373(7) (emphasis added). BCP, as a respondent, filed a reply memorandum on the same date as the PUCN. Additionally, the BCP responded to the various motions made in the case and participated in oral argument held on January 9, 2020.

The Order Denying Petition for Judicial Review signed by the judge in the Eighth JD leaves no doubt that there were multiple respondents in the Eighth JD case. The caption in this order lists “Respondents,” noting “*et al.*” after “Public Utilities Commission of Nevada” to include the BCP.

## **II. Argument**

### **A. The BCP Was a Respondent in the Eighth JD Case, and SWG’s Exclusion of BCP from this Supreme Court Case Violates the Nevada Rules of Appellate Procedure.**

As the facts above indicate, the BCP was clearly a respondent in the Eighth JD case. The BCP filed a notice of intent to participate in that case, participated in motion practice, filed a reply memorandum on the same date as the PUCN as directed by statute, and made oral arguments before the court. The Eighth JD Order Denying Petition for Judicial Review recognizes that there were multiple respondents in the case.

The PUCN joins the BCP in its argument that the Supreme Court should dismiss SWG’s defective appeal for failure to comply with Nevada Rules of

Appellate Procedure (“NRAP”) 3(f). The BCP participated as a respondent at the Eighth JD, and SWG’s Case Appeal Statement filed initially with the Eighth JD clearly excluded the BCP as a named respondent in the Case Appeal Statement.

SWG also failed to list the BCP as a respondent in filings specific to this Court. SWG filed a Docketing Statement Civil Appeals (“Docketing Statement”) with this Court on May 19, 2020. SWG is required to file the Docketing Statement on the form provided by the Court in accordance with NRAP 14(b). Question 3 in the Docketing Statement form specifically requests the names of attorneys representing respondent(s). SWG did not list the BCP or its attorneys.

In response to Docketing Statement Question 22(b), which asks “[i]f all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served or other,” SWG answered that the BCP “participated in the district court proceedings pursuant to NRS 703.373(4) and is not aggrieved by the district court’s final order of affirmance.” While it may be the case that BCP was not aggrieved by the Order Denying Petition for Judicial Review given that the order upheld the PUCN’s finding that SWG was not entitled to recover unjustified costs from its captive utility customers, SWG is well aware that the BCP and the ratepayers it represents will be aggrieved if the PUCN’s decision is reversed by the Supreme Court. SWG’s removal of the BCP as a respondent appears to have been an intentional

attempt to exclude the entity statutorily charged with protecting Nevada’s residential utility customers from unjust and unreasonable rate increases such as those at issue in this appeal.

NRAP 14(a)(3) explains that the purpose of the Docketing Statement is “to assist the Supreme Court in identifying jurisdictional defects, identifying issues on appeal, ... scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment ..., and compiling statistical information.” NRAP 14(f) also permits respondents to file a response to the Docketing Statement. By not listing the BCP as a respondent, SWG has effectively precluded the BCP from filing a response to the Docketing Statement. Worse yet, the BCP was precluded from assisting the Supreme Court with the stated purpose of the Docketing Statement pursuant to NRAP 14(a)(3).<sup>1</sup>

For the reasons stated above and in the BCP’s Motion to Dismiss, this Court should find that SWG has violated NRAP 3(f) and NRAP 14. Failure to include an

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<sup>1</sup> The PUCN filed a response to SWG’s Docketing Statement on May 26, 2020. At that time, the PUCN did not raise as an issue SWG’s exclusion of the BCP from the Docketing Statement because it is not for the PUCN to decide whether a party will participate in an appeal of a PUCN decision. In fact, given that the BCP is an independent party that regularly participates before the PUCN in contested cases, the PUCN did not believe it would be appropriate to raise these issues until it was clear that the BCP wished to participate in this appeal. Now that the BCP has clearly stated its intent to participate as a respondent, it is appropriate that the PUCN also raise its concerns with SWG’s failure to comply with NRAP regarding BCP’s exclusion from the Case Appeal Statement and the Docketing Statement.

integral party in an appeal before the Supreme Court, particularly when that appeal involves questions of law that are crucial to the BCP's role as a representative of Nevada ratepayers, should not be taken lightly by this Court. The PUCN joins the BCP in asking that this Court dismiss SWG's appeal.

**B. The BCP Is Charged with Representing the Interests of Nevada Ratepayers in Matters Involving Monopoly Utilities**

The BCP serves an integral role in all matters before the PUCN, and more generally, regarding regulated monopoly public utilities in this State. The BCP is headed by a Consumer's Advocate. The Consumer's Advocate is required to intervene and represent the public interest in all proceedings conducted pursuant to NRS 704.061 through 704.110.<sup>2</sup> NRS 704.228.360(1)(a)(2). The rate increase requested by SWG, which is the subject of this appeal, was filed pursuant to NRS 704.110. As cited by BCP in its Motion to Dismiss, NRS 228.360(b)(3) permits the Consumer's Advocate to fully engage (petition for, request, appear, or intervene) in any PUCN or court proceeding involving utility rates to ensure the public interest is being met as to the rates charged by public utilities.

The Legislature could not have been more clear in that the Consumer's

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<sup>2</sup> The public interest that the Consumer Advocate is required to represent is defined as: "[T]he interests or rights of the State of Nevada and of the residents of this State, or a broad class of those residents ..." NRS 228.308.

Advocate and the BCP are integral in ensuring the public interest is met with regard to the rates charged to Nevada utility ratepayers. SWG appeals a decision of the PUCN regarding its request to increase rates charged to Nevada ratepayers. SWG's assertion in the Docketing Statement that the BCP should be left out of the appeal before this Court because the BCP was not harmed by the Eighth JD order completely ignores the important role that BCP has in Nevada via a statutory mandate to represent and protect the interest of ratepayers. SWG's appeal is an attempt to transform the law in this State as to whether or not a presumption of prudence exists for monopoly utilities in general rate cases. The ruling that SWG seeks will shift the burden of demonstrating just and reasonable rates away from the monopoly utility and to parties like the BCP who represent Nevada ratepayers. This Court should not stand for SWG's brazen attempt to exclude the BCP, which is charged with protecting Nevada ratepayers, from this important examination of Nevada law.

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For the foregoing reasons, the PUCN joins the Motion to Dismiss filed by BCP.

Dated this 10<sup>th</sup> day of July, 2020.

THE PUBLIC UTILITIES COMMISSION OF NEVADA

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## CERTIFICATE OF SERVICE

I certify that I am an employee of the Public Utilities Commission of Nevada and that on this date I electronically filed and served copies of the foregoing **Joinder in Support of the Bureau of Consumer Protection's to the Motion to Dismiss Appeal** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF filing system to the following:

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Dated this July 10, 2020.

/S/ SHAYLA HOOKER  
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