

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

CASE NO. 80911

**PUBLIC UTILITIES COMMISSION OF NEVADA’S REPLY TO**  
**SOUTHWEST GAS CORPORATION’S RESPONSE TO**  
**ORDER TO SHOW CAUSE**

The deadlines for filing pleadings in this appeal should be re-instated as they were initially ordered in the Exemption from Settlement Program – Notice to file Documents, issued by the Court on April 15, 2020 (“Notice”). Given that ratepayer dollars are at issue in this appeal, the Court should act to ensure the expeditious resolution of this case by reinstating the requirement in the Notice that SWG file its opening brief and appendix on or about August 13, 2020 (120 days after April 15, 2020).

Docket 80911 Document 2020-27125

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. Procedural Background.**

On June 16, 2020, the Court issued an Order to Show Cause (“OSC”). The OSC states that “[i]nitial review of the docketing statement and documents before this court reveals a potential jurisdictional defect.” The OSC provides 30 days for SWG to show cause why its appeal should not be dismissed for lack of jurisdiction. The OSC directs SWG to include in its response a file-stamped copy of the order it seeks to appeal. The OSC explains that “[f]ailure to demonstrate that this court has jurisdiction may result in dismissal of the appeal.” The Court suspended the filing of documents in this appeal pending further order of the Court.

### **II. No Jurisdictional Defects Exist, and this Appeal Should Proceed Expeditiously.**

There are no jurisdictional defects with SWG’s appeal. To the extent there was any potential jurisdictional defect, it has been cured, and this appeal should proceed pursuant to the deadlines set forth in the Notice issued by the Court on April 15, 2020.<sup>1</sup>

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<sup>1</sup> This filing does not address the defect caused by SWG excluding the State of Nevada, Bureau of Consumer (“BCP”), from the appeal, which was addressed separately by the Public Utilities Commission of Nevada in its Joinder in Support of the Bureau of Consumer Protection’s Motion to Dismiss Appeal filed on July 10, 2020.

**A. The Order Denying Petition for Judicial Review Is Filed with the Eighth JD, and this Court Has Jurisdiction over this Appeal.**

The Order Denying Petition for Judicial Review (“Order”) was signed by the judge on March 5, 2020. The Public Utilities Commission of Nevada (“PUCN”) filed the signed Order as an attachment to the Notice of Entry of Order Denying Petition for Judicial Review on March 6, 2020 (“Notice of Entry”). The Notice of Entry, with the Order included, was file-stamped by the Eighth JD clerk on that same day.

SWG proceeded to file its Notice of Appeal on April 2, 2020, stating that it was appealing from the “‘Order Denying Petition for Judicial Review’ notice of entry of which was electronically served on March 6, 2020 (Exhibit A).” Accordingly, SWG acted to file its appeal with this Court in a timely manner in response to the Order signed by the judge and filed by the PUCN on March 6, 2020.

When this Court issued the OSC and raised the possibility of “a potential jurisdictional defect,” the PUCN took quick action to re-file the signed Order with the Eighth JD separate from the Notice of Entry. More specifically, the OSC was issued on June 16, 2020; the PUCN re-filed the signed Order on June 23, 2020, after engaging in e-mail communications with counsel for SWG.

SWG filed an “Amended Notice of Appeal” on July 9, 2020, including the

Order as filed by the PUCN with the Eighth JD on June 23, 2020, which was identical to the Order filed with the Notice of Entry on March 6, 2020. Any potential jurisdictional defects are cured, and this appeal should proceed expeditiously.

**B. The Order Was Filed in Accordance with the Plain Language of the Relevant Rules, and the Parties to the Eighth JD Case Took Actions Consistent with the Entry of Order as of March 6, 2020.**

Rule 7.24 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada (“Eighth JD Rules”) states that “[a]ny order, judgment or decree which has been signed by the judge must be filed with the clerk of the court promptly.” Additionally, Rule 58(c) of the Nevada Rules of Civil Procedure (“NRCPP”) states that “[t]he filing with the clerk of a judgement signed by the court, or by the clerk when authorized by these rules, constitutes entry of the judgement, and no judgement is effective for any purpose until it is entered.” Finally, Nevada Rules of Appellate Procedure (“NRAP”) 4(a)(3) states that “[a] judgment or order is entered for purposes of this Rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk.”

The PUCN understood that it had satisfied the requirements of Eighth JD Rule 7.24, NRCPP 58(c), and NRAP(4)(a)(3). The PUCN filed the signed Order as an attachment to the Notice of Entry on March 6, 2020, and the Notice of Entry, with the Order included, was file-stamped by the Eighth JD on that same day.

None of the rules cited above clearly indicate a requirement to separately file the Order in addition to filing the Order with the Notice of Entry. However, in an effort to expeditiously remedy any potential defect, the PUCN promptly filed a copy of the signed Order separate from the Notice of Entry upon receiving service of the OSC.

All of the parties to the Eighth JD case proceeded with this appeal as if an entry of judgement had been made in accordance with the relevant rules. No party to the Eighth JD case alerted the PUCN to any deficiency as to the entry of the Order at the time of its filing. Moreover, SWG filed a Notice of Appeal on April 2, 2020, specifically appealing from the Order filed and attached to the Notice of Entry. SWG's actions indicate that the Order filed by the PUCN on March 6, 2020, was the order upon which SWG's statutory deadlines for filing an appeal were based, and it filed its Notice of Appeal accordingly.

**C. This Appeal Should Proceed Expeditiously to Prevent Harm to Ratepayers.**

Even if this Court finds that SWG's appeal could not be valid until the Order was filed with the Eighth JD clerk separate from the Notice of Entry, the Court should reinstate the schedule set forth in the Notice issued on April 15, 2020. In accordance with that Notice, SWG should file its opening brief and appendix on or about August 13, 2020 (120 days after April 15, 2020). If any jurisdictional defect

existed prior to the issuance of the OSC, it has been cured.

SWG should not be rewarded with more time to file its opening brief and appendix, particularly given that SWG's actions have not proven to be efficient. After the PUCN filed the Order with the Eighth JD clerk on June 23, 2020, SWG waited over three weeks to file a one-page response with this Court. SWG states in its response that its originally-filed Notice of Appeal was void because it preceded the filing of an underlying order.<sup>2</sup> Noting that the PUCN filed the underlying Order, SWG filed an Amended Notice of Appeal on July 9, 2020.<sup>3</sup> However, this Court did not mandate that SWG amend its Notice of Appeal. The OSC merely requests a response from SWG and specifically states that "appellant should provide a file-stamped copy of the order it seeks to appeal."

SWG seems to be arguing that given the potential defect identified by the Court in the OSC and the efforts by the PUCN to fix the defect promptly, SWG gets to start over with its Amended Notice of Appeal.<sup>4</sup> Even if this Court

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<sup>2</sup> The PUCN notes that the underlying Order, which was signed by the judge, was filed, albeit attached to the Notice of Entry. However, even SWG acted as if the filing of the underlying Order on March 6, 2020, served to act as an entry of order, thereby triggering the filing of this appeal.

<sup>3</sup> Note that even though SWG amended its Notice of Appeal on July 9, 2020, it still waited a week to file a one-page response to the OSC.

<sup>4</sup> As part of starting over, SWG apparently believes it can remedy its attempt to inappropriately exclude the BCP from this case.

determines that amending the Notice of Appeal is the appropriate procedural step, any delay in this proceeding should be avoided.

Ratepayer dollars are at issue in this appeal, and there is a negative effect of prolonging any briefing cycle that applies to judicial review of PUCN decisions setting utility rates. If a reviewing court finds that rates adopted by the PUCN are too low, the utility is entitled to additional revenue to offset the under-collection that occurred during the pendency of the appeal. The resulting revised rates will ultimately be higher as more time passes between the PUCN's initial decision and the PUCN's subsequent approval of revised rates that reflect a court-ordered change. Thus, any delay compounds the rate instability caused by a reversal of a challenged PUCN decision by increasing the magnitude of a subsequent rate-change. As such, this appeal should proceed expeditiously with SWG being required to file its opening brief and appendix on or about August 13, 2020, as originally ordered by this Court.

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### III. Conclusion

SWG's appeal should not be dismissed for lack of jurisdiction. The deadlines for filing pleadings in this appeal should be re-instated as they were initially ordered in the Exemption from Settlement Program – Notice to file Documents issued by the Court on April 15, 2020, which would require SWG to file its opening brief and appendix on or about August 13, 2020.

Dated this 24<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 **Public Utilities Commission of Nevada's Reply to Southwest Gas Corporation's Response to Order to Show Cause** 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 24, 2020.

/S/ SHAYLA HOOKER  
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