

SOUTHWEST GAS CORPORATION,
Appellant,

vs.

PUBLIC UTILITIES COMMISSION OF
NEVADA,
Respondent.

CASE NO. 80911

its appeal dismissed for failure to file its Opening Brief and Appendix on its due date. SWG has assumed the risk of filing its Motion for Extension on the date that its Opening Brief and Appendix are due, October 26, 2020, knowing that the Court could deny its Motion and dismiss this case as a result of its failure to file a brief.

Delays in appeals of PUCN cases have real consequences to Nevada ratepayers in terms of a risk of increases to rates the longer an appeal is pending without resolution. The Nevada Legislature has recognized this fact. In enacting Nevada Revised Statutes (“NRS”) 703.373(10), the Nevada Legislature mandated that all appeals of PUCN cases “have precedent over any civil action of a different nature pending in the court.”

SWG keeps taking action that extends the briefing cycle in this case, all the while knowing that its own ratepayers bear the risk associated with a drawn-out appeal process. The PUCN has highlighted these ratepayer risks over the last two years of pendency of this appeal, both before this Court and before the District Court. By acting without any expediency in this case despite PUCN calls for urgency, SWG demonstrates no concern for the potentially escalating costs that will be shouldered by its ratepayers, all the while getting certainty for its own shareholders by filing an intervening rate case wherein the PUCN issued an order

implementing rate increases for SWG's customers as of October of this year.¹

SWG should not be permitted to continue to extend the briefing cycle in this case; this appeal should be resolved expeditiously by the Court. As described in more detail below, if this Court is not inclined to deny SWG's Motion and dismiss this appeal due to SWG's failure to adhere to the Court-ordered schedule, SWG should be given less than seven days to file its Opening Brief and Appendix after this Court issues an order on SWG's Motion for Extension.

I. Procedural Background.

On June 16, 2020, the Court issued an Order to Show Cause ("OSC") in this case. The OSC provided 30 days for SWG to show cause why its appeal should not be dismissed for lack of jurisdiction and directed SWG to include in its response a file-stamped copy of the order it seeks to appeal. The Court suspended the filing of documents in this appeal pending further order of the Court.

On July 9, 2020, in response to the OSC, SWG filed an amended notice of appeal containing a file-stamped copy of the order challenged on appeal, and naming the State of Nevada Bureau of Consumer Protection ("BCP") and the

¹ Order, Docket No. 20-02023, 2020 WL 6119350 (Sept. 25, 2020), at http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2020_THRU_PRESENT/2020-2/4942.pdf ("SWG 2020 Rate Case Order").

PUCN as respondents.² On July 16, 2020, SWG responded to the OSC, noting its July 9, 2020, amended notice of appeal. The PUCN filed a Reply to SWG’s response to the OSC (“Reply”) on July 24, 2020, stating that the Court had jurisdiction and asking that the Court keep the original schedule for SWG to file its Opening Brief and Appendix, emphasizing the potential rate impacts to SWG’s customers that result from delays in appeals of PUCN decisions involving rates. On July 27, 2020, the Court issued an Order Denying Motion to Dismiss and Reinstating Briefing (“Order on Briefing”), finding that that Motion to Dismiss filed by the BCP was moot and that SWG must file and serve its Opening Brief and Appendix 60 days from the date of the Order on Briefing. Based on the Order on Briefing, SWG’s Opening Brief and Appendix were due on September 25, 2020.

On September 25, 2020, SWG filed a Motion for Extension to File Opening Brief and Appendix. The Court granted that extension on September 28, 2020, giving SWG until October 26, 2020, to file its Opening Brief and Appendix. The Court stated that no further extensions of time shall be permitted, except upon a motion clearly demonstrating good cause. SWG, without providing any courtesy communication to the PUCN, filed another Motion for Extension on October 26,

² Separate from the OSC, the BCP filed a Motion to Dismiss on July 6, 2020, on the basis that SWG deliberately failed to name the BCP as a respondent in this appeal. The PUCN joined the Motion to Dismiss on July 10, 2020.

2020, the new date on which the Court stated its Opening Brief and Appendix were due unless good cause for further delay was clearly demonstrated.

While this appeal was pending, SWG voluntarily filed another rate case at the PUCN on February 27, 2020. PUCN Docket No. 20-02023. An order in that case was issued on September 25, 2020, referred to hereinafter as the “SWG 2020 Rate Case Order.” No party in that proceeding filed a petition for reconsideration in the time permitting pursuant to regulation, and as such, the SWG 2020 Rate Case Order is final. Rates in that case went into effect as of October 7, 2020.³

II. Argument

A. SWG’s Request for an Extension Should Be Denied because an Extended Appeal Process Poses Risks to SWG’s Ratepayers for Significant Rate Increases.

The PUCN, on multiple occasions, has raised its concerns with delay regarding this appeal process. By requesting numerous extensions that cite to family or existing workload issues that are ongoing and within counsel’s control given proper planning, SWG refuses to demonstrate any concern as to the potential effect this case might have on its own customers.

The current appeal before this Court concerns SWG’s 2018 rate case,

³ Letter from the PUCN to Southwest Gas Corporation, Docket No. 20-02023 (Oct. 14, 2020), at http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2020_THRU_PRESENT/2020-2/5342.pdf.

wherein SWG requested a rate increase for its Northern and Southern Nevada customers. The PUCN's order setting rates in that case was issued in December 2018, with rates effective as of January 4, 2019.⁴ As such, if the Court overturns part or all of the PUCN's decision in this appeal, the resulting revised rate increase requires the PUCN to reach back to January 4, 2019, to permit the utility to recover revenue that it would have collected since that time. And, given the potential that the utility may be eligible to earn carry⁵ on the dollars not collected since January 2019, the pot of money at issue continues to grow as more time passes between the PUCN's final decision on the 2018 rate case and any subsequent PUCN order on revised rates that reflects a court-ordered change. The risk for increases in costs for utility ratepayers pending resolution of an appeal regarding a utility rate case is why the Nevada Legislature prioritized appeals of PUCN cases and established expedited timelines and briefing schedules for judicial review of PUCN decisions.⁶

The potential for a negative effect on ratepayers is exacerbated in this proceeding. As noted above, while this appeal was pending, new rate increases went into effect for SWG's customers. As a result of the 2018 rate case and the

⁴ After petitions for reconsideration were filed, a Modified Final Order was issued in February 2019. However, SWG's revised tariffs setting rates went into effect on January 4, 2019.

⁵ Carry is considered to be equivalent to interest, such as on a loan, and may be equal to the utility's cost of capital.

⁶ See NRS 703.373.

more recent 2020 rate case, SWG's Southern Nevada customers have experienced two rate increases in less than two years, while SWG's Northern Nevada customers have experienced one rate increase. Now, both Northern Nevada and Southern Nevada customers could be subjected to additional rate increases as a result of this appeal. Independent of any rate increase resulting from this Court's decision on the merits of the appeal, the prolonged appeal process puts SWG's ratepayers at risk for further rate instability from carry on uncollected revenue should this Court rule in SWG's favor.

This is particularly concerning to the PUCN given the economic strain that currently exists in Nevada due to the COVID-19 pandemic. Many utility customers are already behind on their payments; another rate increase would subject these ratepayers to a greater risk of utility shut-offs or late fees in the future.

B. SWG Has Already Been Granted What Amounts to Two Extensions Regarding this Appeal, and Its Motion Does Not Clearly Demonstrate Good Cause for Another Extension.

SWG has already been granted what amounts to two extensions in this appeal. After the issuance of the OSC, SWG was given 60 days to file its Opening Brief and Appendix after the Order on Briefing was issued. Order on Briefing at 2. SWG's Opening Brief and Appendix were originally due on or about August 13, 2020, but the Order on Briefing gave SWG until September 25, 2020. Before that

Order on Briefing was issued, the PUCN urged in its Reply to SWG's Response to the OSC that the Court keep the original schedule for SWG to file its Opening Brief and Appendix, emphasizing the potential rate impacts to SWG's customers that result from delays in appeals of PUCN decisions involving rates. While the PUCN understands it was in the Court's discretion to grant this additional time after the OSC was resolved, SWG was nonetheless reminded of the urgency to complete this case to mitigate the negative impacts of a prolonged appeal on its customers.

In spite of the concerns expressed by the PUCN, SWG filed for an extension on September 25, 2020, citing as support for the extension its current litigation demands, as well as assistance that was provided to the spouse of one of the attorneys assigned to the case.⁷ While there was not time for the PUCN to object to SWG's request before the Court granted the extension less than one business day after its filing, the PUCN did not find SWG's reasons for extending the briefing cycle in this case compelling when compared to the risks to SWG's own

⁷ Notably, SWG uses the same excuse in the Motion for Extension just filed on October 26, 2020, stating again as reason for its delay that counsel had to assist his wife with completion of a doctoral project, which counsel now states is in its final days. If the issues with this doctoral project existed prior to September 25, 2020, when SWG filed its last motion for extension, presumably counsel could have taken the appropriate actions to ensure he could do his work while his wife completed her doctoral project. It is an absurd notion that the doctoral project of the wife of one of SWG's attorneys should take precedence over escalating rates for thousands of Nevada ratepayers.

customers. Given that the Nevada Legislature determined that PUCN cases take precedence over all other civil cases, the PUCN believes that extension requests that cite to existing workload or personal matters that should be within the control of counsel do not constitute reason enough for extension of deadlines for PUCN cases involving rates.

C. SWG Has Been on Notice that Its Ratepayers Are at Risk of Higher Rates the Longer this Appeal is Pending.

Before SWG filed its Notice of Appeal with this Court on April 2, 2020, the PUCN filed a Petition for Writ of Mandamus or, Alternatively, Prohibition, on December 9, 2019 (“Petition for Writ”). Supreme Court Docket No. 80175. In the PUCN’s Petition for Writ, it presented the question of whether a district court may extend the briefing schedule in appeals of PUCN decisions. In the underlying case at the Eighth Judicial District, District Court Case No. A-19-791302-J, SWG had filed a motion to reply to the respondents’ briefs. NRS 703.373 does not provide for reply briefs and requires expedited resolution of appeals regarding PUCN cases. When the Eighth Judicial District permitted SWG’s reply despite strong opposition to SWG’s motion by the PUCN,⁸ the PUCN filed the Petition for Writ, arguing the matter is an issue of statewide importance because it affects every customer of the approximately 400 PUCN-regulated utilities that provide

⁸ Court Minutes, Eighth Judicial District, District Court Case No. A-19-791302-J (Oct. 15, 2020).

electricity, natural gas, water, wastewater, telecommunication, and rail services throughout Nevada. The PUCN's Petition for Writ sought clarification that NRS 703.373 is intended to mitigate the negative effect of delays in proceedings involving judicial review of PUCN decisions.

Delays in judicial review of PUCN ratemaking decisions can be harmful to utility customers because, if a reviewing court's findings result in the PUCN ultimately changing its final order to establish higher rates, the utility may receive additional revenue like carry 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 the 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.⁹ With this concern in mind, the Legislature established the accelerated appeal process outlined in NRS

⁹ Stability and predictability are key attributes of a sound utility rate structure because they allow customers to plan, reduce transactional and administrative costs, and "secure a rational control of demand." James C. Bonbright et al., *Principles of Public Utility Rates* 388 (2d ed. 1988).

703.373.¹⁰ The potential harm to utility customers is important enough, and has such far-reaching, statewide significance, that the Legislature prioritized appeals of PUCN decisions over all other civil actions.¹¹

While this Court ultimately denied the PUCN's Petition for Writ, the issue of potential harm from increased rates and rate instability for SWG's customers continues to exist and only grows more critical as this appeal is drawn out by SWG. SWG's own actions, including not just its efforts to delay resolution of this appeal but also its decision to file two rate cases requesting rate increases in less than two years, have created circumstances that will potentially result in rate shock to its customers. This Court may and should consider the context of SWG's requested extension, and the rate impacts on SWG's ratepayers, in determining whether SWG has demonstrated good cause for its extension request.

D. SWG's Motion for Extension Does Not Clearly Demonstrate Good Cause.

SWG has filed for another extension, again citing family and existing workload issues that are predictable or ongoing. These issues, with appropriate

¹⁰ In addition to concerns related to rate stability, delayed implementation of final rates also creates equity concerns by allowing the utility to recover costs from different ratepayers than those who were customers when the costs were incurred. *See Minutes of the Meeting of the Assembly Comm. on Government Affairs, Seventy-Sixth Session, Feb. 9, 2011, pp. 45-47.*

¹¹ NRS 703.373(10).

planning and due diligence on the part of counsel, should not be the cause of a delay of this case. SWG notes three existing cases (although it only cites two cases) and planning for oral arguments that interfered with its October 26, 2020, deadline. The original notice of appeal in this case was filed on April 2, 2020. SWG has known since April 2, 2020, and really before that time, that it would have a brief due. This is an obligation SWG signed up for when it filed its notice of appeal. And SWG, unlike the respondents, is not waiting for someone else to file before it can get its work done. SWG could have started writing its Opening Brief on or before April 2, 2020. In total, SWG has had over six months to prepare and file its Opening Brief and Appendix. Frankly, SWG's discussion of the work associated with three recent cases is just not that compelling when we consider the overall amount of time it has had to prepare for the eventuality that it would have to file an Opening Brief and Appendix in this case.

In addition to the workload, SWG raised for the second time an excuse regarding a doctoral project for an attorney's wife; this excuse was already used once in the September 25, 2020, motion as a reason for delay. If this was an issue for counsel prior to September 25, 2020, the strain on counsel's time seemingly could have or should have been addressed if counsel truly "have made every effort to expeditiously complete work on the draft" as they state. Appellant counsel presumably also had many months to prepare for the birth of a grandchild. While

the PUCN would like to be sensitive to important family milestones or other family issues that occur from time-to-time, these are common issues that nearly all families face and diligently plan for so that work deadlines can still be met.

In fact, for SWG's most recently decided rate case, the PUCN was statutorily required to act within a 210-day timeframe. So, no matter what family issues arose, including child care or health issues, in addition to employee illnesses, and several other major cases pending at the PUCN, the PUCN still got its work done and SWG had new rates by October 7, 2020. This was in spite of the introduction of over 100 exhibits being entered into the record, and approximately 30 witnesses being sworn in at a multi-day contested hearing. The PUCN's order in that case is 213 pages long.

More importantly, SWG's excuses are preposterous in the face of the potential impacts of the delay in this case. As stated in great detail above in this opposition, the PUCN has made it abundantly clear to SWG for the last two years that delay does not serve the public interest, as ongoing delays continue to place unnecessary risks for larger rate increases on ratepayers. In other words, SWG cannot claim unfair surprise that the PUCN is now objecting to its ongoing delays; this opposition should be entirely predictable. As noted already, SWG's efforts to further delay this appeal run counter to State policy, as the Nevada Legislature has prioritized PUCN appeals over all other civil cases and explicitly expedited the

statutory timelines for judicial review of PUCN decisions compared to the timelines applicable to review of decisions of all other administrative agencies.¹²

The State policy of promptly resolving appeals of PUCN decisions exists to protect utility customers in Nevada from paying increased costs associated with delayed implementation of final rates. The importance of this policy is illuminated under existing circumstances, when many Nevada families are facing financial hardships and struggling to pay utility bills, especially bills that have increased as a result of more time spent at home. A utility bill that increases by just \$5.00 per month, for example, could have a significant negative impact on a Nevada family. When taken in the appropriate context, SWG's excuses for delay are not really comparable on any scale to the impact of a rate increase for thousands of Nevada ratepayers.

Even setting aside the strong public interest reasons for expeditiously resolving this appeal, SWG's reasons for delay do not meet the standard set forth by this Court in its September 28, 2020, order. The Court stated that SWG had to clearly demonstrate good cause for an extension. This Court has found that "[g]ood cause generally is established when it is shown that circumstances causing

¹² See *Rural Telephone Co. v. Pub. Utils. Comm'n of Nev.*, 133 Nev. 387, 389-90, 398 P.3d 909, 911-12 (2017) (finding the effect of NRS 703.373 clear as to the scope of judicial discretion and "the Legislature's intent to provide an expedited timeline for judicial review.").

the failure to act are beyond the individual's control.” *Mosely v. Eighth Judicial Dist. Court ex rel. County of Clark*, 124 Nev. 654, 668, n.66, 188 P.3d 1136, 1146 (2008) (citing *State v. Williams*, 120 Nev. 473, 477, 93 P.3d 1258, 1260 (2004)).

As previously discussed, with appropriate planning and due diligence, none of the reasons cited for delay were beyond counsel's control. References to SWG's recent case load and family issues do not demonstrate circumstances outside of its control when counsel have had over six months to prepare an Opening Brief and Appendix. Incidentally, with regard to items within SWG's control, SWG has yet to contact respondents about a potential joint appendix, even though the Nevada Rules of Appellate Procedure (“NRAP”) impose an obligation on SWG to do so. This fact alone demonstrates that SWG has not been expeditiously working to complete its draft, as it argues it has.

In certain contexts, this Court also has found that “good cause” means a “substantial reason” or a reason that affords a legal excuse. *Hathaway v. State*, 19 Nev. 248, 252, 71 P.3d 503, 506 (2003) (citing *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). “In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” *Id.* (citing *Pellegrini v. State*, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); *Lozada v. State*, 110, Nev. 349, 353, 871 P.2d 944, 946 (1994); *Passanisi v. Director, Dep't Prisons*, 105 Nev. 63,

66, 769, P.2d 72, 74 (1989)). An impediment external to the defense might be a showing that a factual or legal basis for a claim was not reasonably available to counsel, or that a showing of ineffective assistance of counsel is appropriately raised in an untimely fashion. *Id.* (internal citations omitted). “[A] claim or allegation that was reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse delay.” *Id.*, 19 Nev. at 253, 71 P.3d at 506.

SWG’s Motion for Extension, and the workload and family issues cited therein, does not demonstrate a substantial reason or legal excuse for delay. Nor do these excuses come close to something akin to an impediment external to the defense. In total, there has been no demonstration, and certainly not a clear demonstration, that the excuses noted in the Motion for Extension create good cause to further delay this appeal. In the six months that this appeal has been pending with this Court, counsel could have predicted or overcome with proper planning and due diligence all of the issues raised in the Motion for Extension. Counsel for SWG took on this case, presumably aware of the demands of existing caseload, the demands of this case itself, and the State of Nevada’s interests in expeditious resolution of this case. Moreover, the service list in this proceeding indicates that no fewer than three attorneys are acting as counsel for SWG. Although it is difficult to tell, it appears that the excuses contained in SWG’s

Motion apply to only two of the three attorneys who are signatories to SWG's filings.

This Court should deny SWG's Motion for a lack of demonstration of good cause and dismiss this appeal on its own motion. NRAP Rule 31(d)(1) states that "[i]f an appellant fails to file an opening brief or appendix within the time provided by this Rule, or within the time extended, a respondent may move for dismissal of the appeal or the court may dismiss the appeal on its own motion." SWG knows or should know the risks its customers face with a prolonged appeal and that the public interest supports an expeditious resolution of this case. SWG has assumed the risk of filing its Motion for Extension on the date that its Opening Brief and Appendix are due, knowing that the Court stated that further extensions would not be permitted without a clear demonstration of good cause. Given the nature of the reasons for the extension, SWG should have known that the Court could deny its Motion and dismiss this case as a result of its failure to file a brief.

If the Court is inclined to grant SWG's Motion, at least in part, SWG should not be given another 30 days to file its Opening Brief and Appendix, which it should have been prepared to file on October 26, 2020. SWG should be required to file a brief in less than seven days from the date of the Court order regarding its October 26, 2020, Motion. If SWG is permitted another 30-day extension to file its Opening Brief and Appendix, the PUCN and the BCP will be drafting their

responsive briefs during the Thanksgiving and Christmas holidays, causing significant staffing constraints on the PUCN. While the PUCN understands the standard that is applicable in this case is whether SWG has demonstrated good cause, the effect on other parties to this case by these ongoing and unpredictable requests for extensions of time (and without any courtesy communication to opposing counsel) should weigh in favor of only a brief extension of time if the Court is inclined to grant SWG's Motion.

E. Given that SWG Has Had an Intervening Rate Case Approved, Any Further Delays by SWG in this Case May Support Dismissal.

As noted above, SWG voluntarily filed another rate case at the PUCN on February 27, 2020. A final order has been issued in that case as of September 25, 2020, and no parties have sought reconsideration in the time allotted by regulation.

Importantly, all of the issues concerning specific items of cost recovery raised in this appeal have been re-addressed in the new rate case order.

Specifically, SWG's return on equity was set in the most recent rate case at the exact same amount as in the 2018 rate case (9.25 percent); SWG did not seek reconsideration of the 9.25-percent return on equity amount approved in its most recent rate case, although it is appealing the 9.25-percent return on equity amount

from the 2018 rate case order.¹³ Also, the amount of cost recovery for pension expenses SWG can receive through customer rates was re-decided in the 2020 Rate Case Order.¹⁴ Finally, SWG received approval to recover the remaining costs associated with the challenged work orders at issue in this appeal, as no party recommended a disallowance of the costs that SWG included in its 2020 rate case associated with the work orders.¹⁵

With these issues resolved in a new rate case, any order from this Court cannot affect rates after October 7 2020, the date upon which new PUCN-approved rates became effective for SWG's customers.¹⁶ SWG's new rate case order, the SWG 2020 Rate Case Order, is based on new facts and evidence. Over 120 exhibits were entered into the record, and approximately 30 witnesses were sworn

¹³ Order, Docket No. 20-02023, 2020 WL 6119350, at *23-*28, paragraphs 83-99. The return on equity as set in the 2018 rate case was raised as issue on appeal number 5 in SWG's Docketing Statement for this case.

¹⁴ Order, Docket No. 20-02023, 2020 WL 6119350, at *66-*67, paragraphs 269-72. Pension expense was raised at issue on appeal number 6 in SWG's Docketing Statement for this case.

¹⁵ Order, Docket No. 20-02023, 2020 WL 6119350, at *135, Ordering paragraph 1. The challenged work orders were raise as issue on appeal number 4 in SWG's Docketing Statement for this case.

¹⁶ Courts cannot set rates, as such actions would result in a court substituting its judgement for that of the PUCN. *State v. Zephyr Cove Water Co.*, 94 Nev. 634, 637, 640, 584 P.2d 698, 700, 702 (1978). If the Court overturns portions of the PUCN's 2018 order, the Court would have to remand the matter to the PUCN for a determination on rate-setting.

in at a multi-day contested hearing to create the record that the PUCN relied upon in issuing its SWG 2020 Rate Case Order. The decisions that the Court makes regarding the issues on appeal cannot affect any decisions made by the PUCN pursuant to this new rate case order, which is based on an entirely changed or new set of facts and evidence.

SWG voluntarily filed a new rate case; SWG was not acting pursuant to a specific statute or regulation when it filed its most recent rate case in February of this year. SWG's decision was entirely of its own doing, just as the ongoing delays in this case are. SWG's own actions have limited the effect any order from this Court may have going forward.¹⁷ Moreover, "the occurrence of subsequent events" – the SWG 2020 Rate Case Order – may have rendered moot the live controversies cited by SWG in its Docket Statement for this appeal.¹⁸ Certainly, given the change of circumstances with the new rate case, granting the relief SWG requests in this case may be inequitable and barred by laches.¹⁹ SWG's customers are not going to understand that they are responsible for costs dating back to the

¹⁷ While the Court cannot affect rates after October 7, 2020, this fact does not mitigate the ongoing risk for SWG's customers related to the carry costs associated with any decision by this Court to overturn the PUCN's 2018 decision.

¹⁸ See, e.g., *University and Community College System of Nevada v. Nevadans for Sound Government*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004).

¹⁹ *Public Serv. Comm'n v. Sierra Pacific Power Co.*, 103 Nev. 187, 194, 734 P.2d 1245, 1251 (1987) (citing *Miller v. Walser*, 42 Nev. 497, 517, 181 P. 437, 443 (1919)).

2018 rate case when SWG had higher rates approved in 2020. In *Cooney v. Pedroli*, 49 Nev. 55, 62-63, 253 P. 637, 640 (1925), this Court found that relief can be denied if “the passage of time has brought in its train anything that works to the disadvantage of a party and makes it doubtful if equity can be done.” Certainly, customers will be disadvantaged by a potential third rate increase in a two-year period that is a direct result of SWG’s action (at the PUCN) and inaction (at this Court).

Additionally, the ongoing passage of time and intervening rate case complicates the evidence that the PUCN must consider if this matter is remanded back to the PUCN for rate-setting purposes. The PUCN, if overturned here, will be forced to overlook any new evidence presented by SWG in its 2020 rate case, focusing only on the evidence available in 2018 to reach any new determination regarding the 2018 rates. It is possible for the PUCN to prevent the introduction of new evidence and to rely exclusively on information that would have been available in 2018; however, an absurd scenario would be created in which the PUCN and parties to the 2018 rate case must evaluate the reasonableness of economic forecasts for a period of time that has already passed, all the while knowing whether such forecasts were accurate or inaccurate, but not allowing such knowledge to influence positions or decisions as to the likelihood of accuracy of the forecasts. The further away the 2018 evidence is, the more difficult it becomes

to step into that alternative universe and disregard new economic realities such as those created by the COVID-19 pandemic.

This Court should consider whether SWG's case should be dismissed, particularly as SWG's intervening rate case and repeated requests for delays continue to complicate the issues under review at this Court.

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III. Conclusion

SWG's October 26, 2020, Motion for Extension should be denied, and its appeal should be dismissed for failure to file its brief on the Court-ordered due date. If the Court is inclined to grant an extension, SWG should be required to file its Opening Brief and Appendix in less than seven days from the date of an order addressing its Motion. This Court should consider whether SWG's voluntary actions of filing an intervening rate case and repeatedly delaying resolution of this case have rendered the issues on appeal moot or inappropriate for further judicial review due to the inequitable effect of continuing such review.

Dated this 27th day of October, 2020.

THE PUBLIC UTILITIES COMMISSION OF NEVADA

By: /s/ DEBREA M. TERWILLIGER, ESQ.
GARRETT WEIR, ESQ.
Nevada Bar No. 12300
DEBREA TERWILLIGER
Nevada Bar No. 10452
1150 East William Street
Carson City, NV 89701
Tel: 775-684-6132
Fax: 775-684-6186
dterwilliger@puc.nv.gov

Attorneys for Respondent

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 Opposition to Southwest Gas Corporation's Motion for Extension** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF filing system to the following:

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Justin J. Henderson, Esq.
Abraham G. Smith, Esq.
dpolsenberg@lrrc.com
jhenriod@lrrc.com
jhenderson@lrrc.com
asmith@lrrc.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, NV 89169
Attorneys for Southwest Gas Corporation

Aaron D. Ford, Esq.
Ernest D. Figueroa, Esq.
Whitney F. Digesti, Esq.
bcpserve@ag.nv.gov
efigueroa@ag.nv.gov
wdigesti@ag.nv.gov
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701
*Attorneys for the State of Nevada,
Bureau of Consumer Protection*

Dated this October 27, 2020.

/S/ SHAYLA HOOKER
SHAYLA HOOKER