

*In the Supreme Court of Nevada*

SOUTHWEST GAS CORPORATION,  
Appellant,

*vs.*

PUBLIC UTILITIES COMMISSION  
OF NEVADA; and STATE OF  
NEVADA BUREAU OF CONSUMER  
PROTECTION,

Respondents.

Electronically Filed  
Nov 03 2020 08:24 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**NONOPPOSITION TO MOTION TO EXCEED PAGE LIMIT**

*and*

**REPLY BRIEF ON MOTION FOR EXTENSION  
TO FILE OPENING BRIEF AND APPENDIX**

As a matter of professional courtesy, appellant Southwest Gas Corporation does not oppose the Public Utilities Commission's request to file an opposition that more than doubles the page limit under NRAP 27(d)(2).<sup>1</sup>

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<sup>1</sup> Although Southwest Gas's time for a reply on the motion for extension does not begin to run until this Court rules on the Commission's motion to exceed the page limit, in the spirit of seeking an expedited ruling on Southwest Gas's simple extension, Southwest Gas is filing its reply today within the 5-page limit.

If this Court is inclined to seriously entertain the Commission's request to dismiss the appeal altogether, Southwest Gas alternately requests an opportunity to more fully brief the issue with a similarly expanded page limit.

The Commission's 23-page opposition supplies no basis, however, for its draconian request to dismiss Southwest Gas's appeal.

**A. The Appeal is Important But Not Statutorily Expedited**

The Commission imposes a nonexistent obligation on *this* Court to place “all appeals of PUCN” ahead of “any civil action of a different nature.” (Opp. 2; *see also* Opp. 11 (stating that “the Legislature prioritized appeals of PUCN decisions over all other civil actions”).) The quoted statute, NRS 703.373(10), actually refers to petitions for judicial review in the *district court*. In contrast, an appeal to this Court is simply “pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution as in other civil cases.” NRS 703.376.

That is not to say that this case is unimportant. Far from it, the issues are extraordinarily significant, especially the question of whether a regulated utility is entitled to a presumption of prudence in its incurred costs, as indicated in *Public Service Commission v. Ely Light & Power Co.*, 80 Nev. 312, 393 P.2d 305 (1964). The Commission's election to stop applying such a presumption has far-reaching consequences that require thorough briefing from counsel and careful deliberation by this Court.

This Legislature recognized that this Court entertains other cases, such as the termination of parental rights, child-custody disputes, and guardianship matters, that may require this Court’s expedited attention before cases involving the Commission.<sup>2</sup>

**B. Southwest Gas Has Not Caused Unreasonable Delay**

The Commission is in no position to complain about “action that extends the briefing cycle in this case.” (Opp. 2.) It was the Commission that, pending the decision on judicial review, filed a meritless writ petition and motion for stay of the district-court proceedings, which were summarily denied. (Docket No. 80175.) The Commission even tut-tuts Southwest by pointing to this unsuccessful gambit (Opp. 9–11), ignoring how that effort threatened to derail the judicial review process. It was also the Commission that failed to file the order denying judicial review with the district court clerk, which kept this Court from immediately acquiring jurisdiction. (*See* Doc. No. 20-27239, Order Denying Motion to Dismiss and Reinstating Briefing, filed July 27, 2020.)

Southwest Gas has followed the rules of appellate procedure here.

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<sup>2</sup> The Legislature also understands that, in contrast to this Court’s review of all kinds of cases, some district courts have special divisions to hear specific categories of cases. *Cf., e.g.*, NRS 3.223 (family courts).

Contrary to the Commission’s argument, this Court’s order reinstating the briefing schedule following the resolution of the jurisdictional defect did not “amount[] to two extensions.” (*Contra* Opp. 7.) Southwest Gas should not be penalized for the jurisdictional defect.

**C. A 30-Day Extension is Reasonable, Especially  
in Light of the Importance of the Issues**

The Commission is also inconsistent about the supposed detriment that a 30-day extension causes. Largely without citation to the record or other evidence, the Commission speculates that a reversal here will cause “rate instability,” exacerbating the larger “economic strain” caused by Covid-19, as though this Court is incapable of crafting an equitable decision such that one that recognizes error by the Commission is inherently unfair. (Opp. 6–7.) At the same time however, the Commission strays from the district-court record to aver that “all of the issues concerning specific items of cost recovery raised in this appeal have been re-addressed” in a second rate case that was not appealed, such that “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.” (Opp. 18–19.) The Commission cannot have it both ways.

In any event, missing from the Commission’s analysis is the biggest

issue, by far: the presumption of prudence. This pure legal issue must be addressed in *this* appeal, where it is squarely raised, regardless of the “specific items of cost recovery” about which the Commission complains.

**D. There is Good Cause for an Extension**

The Commission brushes off the genuine family issues detailed in the motion (Mr. Polsenberg’s grandchild arrived early), and ignores altogether the oral arguments that this Court set in three of counsel’s cases. (Docket Nos. 75424 (set for Nov. 2, 2020 argument but since settled), 79024 (argued Sept. 8, 2020), 76422 (argued Sept. 17, 2020), and 81024 (argued today).) These arguments put an extraordinary burden on counsel and their staff, especially in light of the departure of the attorney who had primarily handled the briefing on this case in the district court.

Dated this 3rd day of November, 2020.

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**CERTIFICATE OF SERVICE**

I certify that on November 3, 2020, I submitted the foregoing  
“Nonopposition to Motion to Exceed Page Limit and Reply Brief on Motion  
for Extension to File Opening Brief and Appendix” for filing *via* the  
Court’s eFlex electronic filing system. Electronic notification will be sent  
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