

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation into the Natural Gas Procurement  
Practices of the Southwest Gas Company.

Investigation 01-06-047  
(Filed June 28, 2001)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGE**

This ruling determines the category, scope, need for hearing, and schedule of this proceeding in accordance with Article 2.5 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure.<sup>1</sup> This ruling follows a prehearing conference (PHC) held on August 31, 2001 in Victorville, California.

This ruling determines that this is a ratesetting<sup>2</sup> proceeding, for which hearings are necessary. Consistent with Investigation 01-06-047, subsequent rulings, and statements at the PHC, we define the scope of issues for this

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<sup>1</sup> This ruling's determination of category may be appealed to the Commission in accordance with the procedures in Rule 6.4. All other determinations made by this ruling are final.

<sup>2</sup> Rule 5(c) defines a "ratesetting" proceeding as one in which the Commission investigates rates for a specifically named utility, or establishes a mechanism that in turn sets the rates for a specifically named utility. "Ratesetting" proceedings include complaints that challenge the reasonableness of rates and charges, past, present, or future. In addition, under Rule 6.1(c), proceedings that do not clearly fit into other categories can be conducted under the rules applicable to the "ratesetting" category unless and until the Commission determines other rules.

proceeding. The schedule set below anticipates a final Commission decision by April 2002. Finally, we note that this schedule is consistent with Section 1 of Senate Bill (SB) 960 (Ch.96-0856), which urges the Commission to establish reasonable periods for the completion of proceedings, and that deadlines not exceed 18 months.

### **Background**

On July 3, 2001, the Commission initiated Investigation (I.) 01-06-047 to examine the reasonableness of the natural gas procurement practices of Southwest Gas Company (SW Gas). As required by Rule 6(c)(2), the Commission preliminarily determined in I.01-06-047 that: (1) the category for this proceeding is “ratesetting”; (2) there is a need for a formal hearing; (3) that the scope of this proceeding includes all the issues pertaining to the reasonableness of SW Gas’s procurement actions and its responses to rising natural gas rates from June 1, 1999 through May 31, 2001 and on measures taken to minimize gas procurement costs beyond May 31, 2001, as raised in I.01-06-047.

Among other things, I.01-06-047 noted that the Commission has neither established an incentive mechanism for SW Gas, nor has it conducted a detailed reasonableness review. The order asked that SW Gas prepare a detailed report for this Commission concerning its gas purchasing activities over the last year.

On July 18, 2001, SW Gas filed the requested report. No party filed any document in answer to this report.

On August 22, an Administrative Law Judge’s (ALJ) Ruling posed several addition questions for consideration at a prehearing conference (PHC) to enable the Commission to refine the scope of the proceeding.

On August 31, Commissioner Wood and ALJ Sullivan presided over a PHC in Victorville, California to address the scope of issues in the proceeding

and a schedule for resolving them. SW Gas and the Office of Ratepayer Advocates (ORA) furnished written responses to the August 22 ruling that were appended to the transcript of the PHC.

### **Category**

Rule 6(c)(1) states as follows:

“A Commission order to show cause or order instituting investigation, issued after January 1, 1998, shall determine the category and need for hearing, and shall attach a preliminary scoping memo. The order, only as to the category, is appealable under the procedures in Rule 6.4. Any person filing a response to an order to show cause or order instituting investigation shall state in the response any objections to the order regarding the need for hearing, issues to be considered, or schedule, as set forth in the order. At or after the prehearing conference if one is held, the assigned Commissioner shall rule on the scoping memo. The ruling shall also designate the principal hearing officer or the presiding officer, as appropriate.”

No party in written or oral statements objected to the preliminary determination that this should be a ratesetting proceeding. No party objected to the preliminary determination that hearings are necessary.

Pursuant to Rule 6(c)(1), we affirm the Commission’s preliminary determination in I.01-06-047 that this is a ratesetting proceeding. The *ex parte* rules as set forth in Rule 7 of the Commission’s Rules of Practice and Procedure apply to this proceeding.

### **Scope of Proceeding**

I.01-06-047 set a broad scope for the inquiry into the reasonableness of SW Gas’s purchases of natural gas during the last heating season. The order stated:

“Since SW Gas does not have an established reasonableness review schedule, or a gas cost incentive mechanism, we are issuing this Order Instituting Investigation (OII) into SW Gas’ [sic] procurement

costs and purchasing practices from June 1, 1999 through May 31, 2001. We will also be examining the steps SW Gas has taken to minimize gas costs for the future. Although SW Gas' [sic] costs seem to have risen most precipitously in its Southern Division, we will also be examining gas costs for the Northern Division.” (I.01-06-047, p.4).

In addition to our investigation into the market-based cost containment measures that form the central focus of any reasonableness inquiry, the ALJ Ruling of August 22, 2001 makes clear that we will also examine the steps taken by SW Gas to participate in ongoing regulatory proceedings affecting gas prices. In particular, we will examine how SW Gas has participated in regulatory proceedings that may make available lower cost gas for its customers or which may lead to rebates from wholesale gas suppliers and transporters to gas distribution companies.

Finally, based on the statements of San Bernardino County made at the PHC, we plan to investigate the actions SW Gas took to assist its customers as the cost of gas skyrocketed. In particular, we will examine the efforts made by SW Gas to inform and enroll customers in the CARE program to assist low-income customers in meeting their heating needs. In addition, we will determine whether SW Gas took actions to assist customers in meeting the rapidly rising cost of gas and examine whether the rising prices led to an increasing number of shut-offs of customers for non-payment.

### **Schedule**

During the PHC, SW Gas and ORA expressed a preference for consolidation of the reasonableness review with an upcoming General Rate Case review of gas operations. SW Gas, however, stated its ability to act expeditiously should the Commission decline to consolidate this proceeding. The County of

San Bernardino asked for a timely resolution of this proceeding without consolidation into the General Rate Case.

We will proceed with this investigation to ensure that SW Gas is moving rapidly to prevent a repetition of last winter’s experience in the territories served by SW Gas. Although the schedule for this proceeding will not produce a decision until early in 2002, we believe that our investigation of these matters through the fall will provide an impetus for SW Gas to adopt measures and programs that will better serve its customers.

Furthermore, we note the high level of interest in this proceeding by residents in Apple Valley and Big Bear Lake. To accommodate this interest, we plan to hold public participation hearings (PPH) in Apple Valley on January 9, 2002 and in Bear Valley on January 8, 2002.

<b>Event</b>	<b>Date</b>
Investigation 01-06-047 Filed	June 28, 2001
SW Gas Files Report Ordered in I.01-06-047	July 18, 2001
ALJ Ruling Posing Scoping Issues for PHC	August 22, 2001
PHC and PPH Held in Victorville	August 31, 2001
Scoping Memo Issued	September 13, 2001
Notices of Intent to Claim Compensation Due	September 30, 2001
SW Testimony Served	October 15, 2001
Responsive Testimony	November 15, 2001
Rebuttal Testimony Served	November 30, 2001
Evidentiary Hearings Begin	December 11, 2001
Closing Argument before Assigned Commissioner	December 14, 2001
Public Participation Hearing, Big Bear Lake	January 8, 2002
Public Participation Hearing Apple Valley	January 9, 2002
Concurrent Opening Briefs Filed (including any request for oral argument before the Commission)	January 15, 2002
Concurrent Reply Briefs Filed and Projected Submission Date	January 31, 2002

Proposed Decision Issues	March 15, 2002
Final Commission Decision	April 15, 2002

Resolution of the issues within the scope of this proceeding will not exceed 18 months from the date of the filing of the application (June 28, 2001), pursuant to SB 960, Section 1 (Ch.96-0856).

### **Principal Hearing Officer and Final Oral Argument**

Pursuant to Pub. Util. Code § 1701.3, ALJ Sullivan is designated as the principal hearing officer in this application.

As stated in the schedule above, and pursuant to Rule 8(d), parties requesting final oral argument before the Commission should include that request in their concurrent brief, filed after hearing.

### **Service List and Electronic Distribution of Pleadings**

The current service list attached to this ruling replaces the prior service list for this proceeding. A current service list for this proceeding is also available on the Commission's web page, [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Choose "Proceedings" and then "Service Lists." The service list for this proceeding can be located in the "Index of Service Lists" by scrolling to the application number.

Consistent with the service procedures discussed at the PHC, (per Rule 2.3), all parties are encouraged to distribute all pleadings and testimony in electronic form to those parties that provided an electronic mail address to the Commission. In addition, testimony must be served in a paper format to avoid differences in pagination that can complicate the cross-examination of witnesses. The electronic addresses of all parties to the proceeding can be found in the comma-delimited service list file. Choose the application number and click on "Download Comma-delimited File."

### **Intervenor Compensation**

The prehearing conference in this matter was held on August 31, 2001. Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation shall file and serve a notice of intent to claim compensation not later than September 30, 2001.

**IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. This ruling confirms the Commission's preliminary finding in Investigation 01-06-047 that the category for this proceeding is ratesetting and that hearings are necessary. This ruling, only as to category, is appealable under the procedures in Rule 6.4.
4. Administrative Law Judge (ALJ) Sullivan is the principal hearing officer in this investigation.
5. The official service list as of this date is attached to this ruling as Appendix A. All submission shall be served on those on the current service list as well as on the Assigned Commissioner and assigned ALJ. Submission to the assigned ALJ and to the service list shall be provided by either electronic mail or hard copy.
6. Appendix B contains directions concerning the preparation and identification of exhibits. Parties shall follow these directions.
7. The *ex parte* rules as set forth in Rule 7 of the Commission's Rules of Practice and Procedure apply to this application. They are attached as Appendix C to this ruling for the convenience of parties.

8. Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation shall file and serve a notice of intent to claim compensation not later than September 30, 2001.

Dated September 13, 2001, at San Francisco, California.

          /s/ CARL WOOD            
Carl Wood  
Assigned Commissioner

          /s/ TIMOTHY J. SULLIVAN            
Timothy J. Sullivan  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated September 13, 2001, at San Francisco, California.

/s/ MAUREEN S. LITTLE  
Maureen S. Little

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.



I.01-06-047 CXW/TJS/t93

Appendix A – Service List

## Appendix B

### EXHIBITS

#### *Service of Exhibits*

All prepared written testimony shall be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Do NOT file prepared written testimony with the Commission's Docket Office. (Such testimony becomes part of the record only after it is admitted into evidence.)

#### *Identification of Exhibits in the Hearing Room*

Each party sponsoring an exhibit shall, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet shall be blank for the ALJ's exhibit stamp.** Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

#### *Cross-examination With Exhibits*

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

#### *Corrections to Exhibits*

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

**End of Appendix B**

### Appendix C

#### Rule 7, parts c, e, f, g

(c) In any ratesetting proceeding, ex parte communications are permitted only if consistent with the following restrictions, and are subject to the reporting requirements set forth in Rule 7.1:

(1) Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) If an ex parte communication meeting or call is granted by a decisionmaker to any party individually, all other parties shall be sent a notice at the time that the request is granted (which shall be no less than three days before the meeting or call), and shall be offered individual meetings of a substantially equal period of time with that decisionmaker. The party requesting the initial individual meeting shall notify the other parties that its request has been granted, at least three days prior to the date when the meeting is to occur. At the meeting, that party shall produce a certificate of service of this notification on all other parties. If the communication is by telephone, that party shall provide the decisionmaker with the certificate of service before the start of the call. The certificate may be provided by facsimile transmission.

(3) Written ex parte communications are permitted at any time provided that the party making the communication serves copies of the communication on all other parties on the same day the communication is sent to a decisionmaker.

#### (4) Prohibitions on Ex Parte Communications:

(i) Prohibition of Ex Parte Communications When a Ratesetting Deliberative Meeting is Not Scheduled or When a Ratesetting Decision is Held.

In any ratesetting proceeding, the Commission may establish a period during which no oral or written communications on a substantive issue in the proceeding shall be permitted between an interested person and a Commissioner, a

Commissioner's personal advisor, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge. Such period shall begin not more than 14 days before the Commission meeting date on which the decision in the proceeding is scheduled for Commission action. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the Commission meeting date to which the decision is held.

(ii) Prohibition of Ex Parte Communications When a Ratesetting Deliberative Meeting is Scheduled:

In all ratesetting proceedings in which a hearing has been held, a proposed decision has been filed and served, and a Ratesetting Deliberative Meeting has been scheduled, there shall be a prohibition on communications as provided in this subsection.

The first day of the prohibition on communications will be the day of the Ratesetting Deliberative Meeting at which the proposed decision is scheduled to be discussed and will continue through the conclusion of the Business Meeting at which a vote on the proposed decision is scheduled. If a proposed decision is held at the Business Meeting, when the hold is announced, the Commission will also announce whether and when there will be a further prohibition on communications, consistent with the provisions of subparagraph (i).

(e) The requirements of subsections (b) and (c) of this rule, and any reporting requirements under Rule 7.1, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed after the pleading initiating the proceeding, (2) all such responsive pleadings are withdrawn, or (3) there has been a final determination that a hearing is not needed in the proceeding. However, if there has been a request for hearing, the requirements continue to apply unless and until the request has been denied.

(f) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 7.1(a).

(g) When the Commission determines that there has been a violation of this rule or of Rule 7.1, the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.1(a), 1701.2(b), 1701.3(c) and 1701.4(b), Public Utilities Code.

### **7.1. (Rule 7.1) Reporting Ex Parte Communications.**

(a) Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. An original and seven copies of a "Notice of Ex Parte Communication" (Notice) shall be filed with the Commission's San Francisco Docket Office within three working days of the communication. The Notice shall include the following information:

- (1) The date, time, and location of the communication, and whether it was oral, written, or a combination;
- (2) The identities of each decisionmaker involved, the person initiating the communication, and any persons present during such communication;
- (3) A description of the interested person's, but not the decisionmaker's, communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

(b) These reporting requirements apply to ex parte communications in ratesetting proceedings and to ex parte communications concerning categorization. In a ratesetting proceeding, communications with a Commissioner's personal advisor also shall be reported under the procedures specified in subsection (a) of this rule.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4)(C)(i)-(iii), Public Utilities Code.

**End of Appendix C**