

Decision 99-01-015 January 20, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of The
Washington Water Power Company for an
Exemption from Affiliate Transaction Rules.

Application 97-12-046
(Filed December 31, 1997)

**OPINION GRANTING THE WASHINGTON WATER POWER
COMPANY'S APPLICATION FOR EXEMPTION FROM
THE AFFILIATE TRANSACTION RULES**

I. Summary

This decision grants the unopposed application of Washington Water Power Company (WWP) for an exemption from the Commission's Affiliate Transaction Rules adopted by the Commission in Decision (D.) 97-12-088, as modified in D.98-08-035.

II. Background

On December 31, 1997, WWP filed this application which is unopposed. WWP is headquartered in Spokane, Washington, and provides electricity and natural gas distribution services in eastern Washington, northern Idaho, Oregon and California. In 1991, WWP purchased natural gas distribution facilities in South Lake Tahoe, California. This service territory is confined to the South Lake Tahoe area. At the end of 1996, WWP provided natural gas service, at retail, to approximately 15,000 customers within this confined area. WWP provides this natural gas service through an operating division called WP Natural Gas. Neither WWP nor its operating division, WP Natural Gas, maintains any other service territory within California. Therefore, the regulatory nexus with respect to WWP and this Commission relates to WWP's customer base in South Lake Tahoe.

WWP states that it also owns certain nonregulated enterprises which serve as market power marketers or energy services providers in various markets throughout the country. Among these entities are Avista Energy, Inc., a wholly owned subsidiary which has formed an energy alliance with Mock Resources (Avista/Mock LLC) for the purpose of doing business in California, as well as Avista Advantage, Inc., a provider of billing and meter reading services throughout the country.

III. The Exemption

WWP states that its only jurisdictional nexus to California is with reference to serving a limited number of natural gas customers at retail (about 15,000) in the geographically limited service territory in South Lake Tahoe. WWP explains that this territory is small, geographically confined, and relates only to the provision of retail gas services. WWP seeks an exemption from the application of the Affiliate Transaction Rules to its affiliates covered by the Rules, provided that it voluntarily agrees that any affiliate covered by the Rules will not participate directly or indirectly in the utility's California service territory. WWP states that it would "not object" to filing periodic reports of an independent auditor verifying that the affiliates covered by the Affiliate Transaction Rules have not directly or indirectly participated in the utility's California service territory.

This voluntary agreement, in essence, adopts a proposal similar to that proposed by the Office of Ratepayer Advocates and The Utility Reform Network prior to the issuance of D.97-12-088, and which the Commission did not adopt. In lieu of a ban of affiliate operations within the utility's service territory, D.97-12-088 adopted various affiliate rules to address the Commission's concerns about, *inter alia*, competition and cross-subsidization.

Given the unique facts of this case, and the fact that no party opposes this proposal, we grant WWP's application, provided WWP complies with its

voluntary agreement that any of its affiliates covered by the Rules will not participate directly or indirectly in the utility's California service territory. WWP has voluntarily adopted a limitation on the scope of its affiliate activities in its service territory that goes beyond our adopted rules.

Because of WWP's agreement discussed above, and because WWP is a multi-state utility and is subject to the jurisdiction of other state regulatory commissions, pursuant to Rule II H, we also approve its exemption from the Rules for transactions between the utility in its capacity serving its jurisdictional areas outside California, and its affiliates. We also accept WWP's proposal that it file periodic reports from an independent auditor verifying that its affiliates covered by the Affiliate Transaction Rules have neither directly nor indirectly participated within WWP's California service territory. These reports should be filed at the same time and in the same manner as the utility audit reports required pursuant to Rule VI C.

WWP also seeks a stay of the application of the Affiliate Transaction Rules pending Commission action on its application. Since this decision grants WWP's application, its request for stay is now moot.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. WWP's jurisdictional nexus to California is with reference to serving a limited number of natural gas customers at retail (about 15,000) in the geographically limited service territory in South Lake Tahoe, California. This territory is small, geographically confined, and relates only to the provision of retail gas services.

2. WWP seeks an exemption from the application of the Affiliate Transaction Rules to its affiliates covered by the Rules, provided that it voluntarily agrees that any affiliate covered by the Rules will not participate directly or indirectly in the utility's California service territory. WWP does not object to filing periodic reports of an independent auditor verifying that the affiliates covered by the Affiliate Transaction Rules have not directly or indirectly participated in the utilities' California service territory.

3. This application is unopposed.

4. WWP's request for a stay is moot.

Conclusions of Law

1. WWP's application for exemption to the Affiliate Transaction Rules which the Commission adopted in D.97-12-088, as modified in D.97-08-035, should be granted, provided WWP complies with its voluntary agreement that any of its affiliates covered by the Rules will not participate directly or indirectly in the utility's California service territory.

2. Because of WWP's agreement set forth in Conclusion of Law 1 above, and because WWP is a multi-state utility and is subject to the jurisdiction of other state regulatory commissions, pursuant to Rule II H, we should approve its exemption from the Rules for transactions between the utility in its capacity serving its jurisdictional areas outside California, and its affiliates.

3. WWP should file periodic reports from an independent auditor verifying that its affiliates covered by the Affiliate Transaction Rules have neither directly nor indirectly participated within WWP's California service territory. These reports should be filed at the same time and in the same manner as the utility audit reports required pursuant to Rule VI C of the Affiliate Transaction Rules.

4. WWP's request for a stay should be dismissed as moot.

O R D E R

IT IS ORDERED that:

1. The Washington Water Power Company (WWP) application for exemption to the Affiliate Transaction Rules (Rules) which the Commission adopted in Decision (D.) 97-12-088, as modified in D.97-08-035, is granted, provided WWP complies with its voluntary agreement that any of its affiliates covered by the Rules will not participate directly or indirectly in the utility's California service territory.

2. WWP's request, pursuant to Rule II H of the Affiliate Transaction Rules, that it be exempt from the Rules for transactions between the utility in its capacity serving its jurisdictional areas outside California, and its affiliates, is approved.

3. WWP shall file periodic reports from an independent auditor verifying that its affiliates covered by the Affiliate Transaction Rules have neither directly nor indirectly participated within WWP's California service territory. These reports shall be filed at the same time and in the same manner as the utility audit reports required pursuant to Rule VI C of the Affiliate Transaction Rules.

4. This proceeding is closed.

This order is effective today.

Dated January 20, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners