

Decision 99-11-016 November 4, 1999

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

In the Matter of the Application of SOUTHWEST GAS CORPORATION for the Issuance of Limited Exemptions from the Affiliate Transaction Rules Adopted in D.97-12-088. (U-905-G)

Application 99-08-031  
(Filed August 12, 1999)

**OPINION ON SOUTHWEST GAS CORPORATION'S  
SECOND APPLICATION FOR A LIMITED EXEMPTION  
FROM THE AFFILIATE TRANSACTION RULES****Summary**

By this unopposed application, Southwest Gas Corporation (Southwest Gas) seeks a limited exemption from the Commission's Affiliate Transaction Rules, adopted in Decision (D.) 97-12-088, and modified in D.98-08-035. This decision grants the application.

**Background**

In D.99-02-086, this Commission granted Southwest Gas certain exemptions from the Commission's Affiliate Transaction Rules. Since the filing of the application which led to D.99-02-086, Southwest Gas explains that a number of operational and corporate structural modifications have occurred between it and its various affiliates. Specifically, Southwest Gas is now associated with a new affiliate, the Unitary GH&C, LLC (Unitary). Unitary is a limited liability company created by the United States Department of Energy and a number of natural gas utilities. Also, Southwest Gas represents that the business operations of several of its affiliates identified in the first application have been altered in a manner that substantively affects their jurisdictional status under the Affiliate Transaction Rules. Therefore, Southwest Gas now submits

supplemental requests for additional limited exemptions to the Affiliate Transaction Rules.

Southwest Gas is a multi-state public utility, the operations of which include intrastate transmission, distribution, and sale of natural gas in certain portions of California, Arizona, and Nevada pursuant to certificates of public convenience and necessity issued by the respective states' commissions. Within California, Southwest Gas provides natural gas distribution service to approximately 115,000 customers in portions of San Bernardino, Placer, Nevada, and El Dorado Counties.

Additionally, Southwest Gas conducts various regulated and non-utility operations through certain affiliate entities and wholly owned subsidiaries within several states. Southwest Gas has provided a list of these entities in its application which is discussed more fully below.

Southwest Gas controls or operates two interstate pipeline affiliates which it states are considered "natural gas companies" within the meaning of the Natural Gas Act, subject to the jurisdiction of the Federal Energy Regulatory Commission. These affiliates are Paiute Pipeline Company (Paiute) and Southwest Gas Transmission Company (SGTC). In D.99-02-086, the Commission granted Southwest Gas an exemption from the Affiliate Transaction Rules for its transactions with Paiute and SGTC, provided that the information Southwest Gas provided regarding its transactions with these two affiliates does not change. (See D.99-02-086, *slip op.*, at pp. 10-12.)

### **The Requested Exemptions**

The Affiliate Transaction Rules permit the utilities to apply for certain exemptions under defined circumstances. Southwest Gas applies for these exemptions pursuant to Rule II.H.

Rule II.H of the Affiliate Transaction Rules provides for a separate limited exemption for California utilities which are also multi-state utilities. Rule II.H states:

**“Limited Exemption (Application):** A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.”

In D.97-12-088, *slip op.* at 19, we explained the rationale behind this limited exemption.

“As we state elsewhere in this decision, we are regulating the California utility here, not the affiliate. However, we recognize that in the case of a California utility which is also a multi-state utility and subject to the jurisdiction of other state commissions, the corporate structure of the utility may not be such that utility activities conducted wholly outside of California are separated into a separate corporate entity. Therefore, we provide that such a multi-state utility that is covered by these rules may file an application, served on all parties to this proceeding, requesting a limited exemption from these rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof. We stress that this is an opportunity for a limited, not wholesale, exemption to these rules.”

### **Unitary**

Southwest Gas states that Unitary is involved in the technical research, testing development, manufacturing, and marketing of competitively-priced high efficient gas fired heating and cooling equipment. Southwest Gas states that Unitary is not currently involved in any type of business activity within California.

Pursuant to Rule II.H, we exempt transactions between Southwest Gas and Unitary from the Affiliate Transaction Rules because Southwest Gas is a multi-state utility, and Unitary does not conduct any business activity or transactions within California. (See D.99-02-086, *slip op.*, at p. 10.) If the operations of Unitary, or any other circumstances change from the information provided by Southwest Gas in this application, Southwest Gas should file a Petition for Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances.

**LNG Energy Inc. (LNGE)**

Due to changed circumstances, Southwest Gas also requests an exemption for LNGE. In D.99-02-086, *slip op.* at pp. 7-9, the Commission denied Southwest Gas' request to exempt transactions between itself and LNGE from the Affiliate Transaction Rules because LNGE provided marketing services that relate to the use of gas in California, and Southwest Gas had not narrowly tailored its requested exemption to encompass activities of LNGE solely outside of California.

Southwest Gas states that LNGE's business activities have now changed materially. Specifically, while LNGE was previously primarily marketing liquefied natural gas as an alternative energy source, LNGE has subsequently disposed of substantially all of its assets and continuing contract obligations. LNGE is also no longer actively engaged in marketing liquefied natural gas. Southwest Gas states that LNGE conducts its finance, consulting, construction, and non-energy marketing activities outside of California. For these reasons, Southwest Gas is requesting the Commission grant a limited exemption governing the non-California transactions between Southwest Gas and LNGE.

Rule II.H contemplates that the Commission may grant multi-state utilities a limited exemption to the Affiliate Transaction Rules for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. We recognized that the corporate structure of multi-state utilities may not be such that utility activities conducted wholly outside of California are separated into a separate corporate entity. We grant Southwest Gas' requested exemption because LNGE is limiting its energy-related activities, and the requested exemption is narrowly tailored to apply to transactions between Southwest Gas and LNGE which do not relate to any of LNGE's California activities (i.e., non-California transactions). If the operations of LNGE, or any other circumstances change from the information provided by Southwest Gas in this application, Southwest Gas should file a Petition for Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances.

**Northern Pipeline Construction Company (NPL)**

In D.99-02-086, *slip op.* at pp. 6-7, the Commission denied Southwest Gas' requested exemption for NPL because NPL provided construction service in Southwest Gas' California service territory so that Southwest Gas itself could provide natural gas service. As such, the Commission reasoned that this affiliate fell within the definition of Rule II.B of the Affiliate Transaction Rules (engaging in the provision of services that relate to the use of gas), and that transactions between Southwest Gas and NPL were not exempted from the Affiliate Transaction Rules.

Southwest Gas states that since the Commission issued D.99-02-086, NPL has permanently altered the scope of its natural gas pipeline construction activities. While NPL remains engaged in providing general contractor services for natural gas pipelines, it is no longer involved in any business activities within

California. Those activities have been transferred to a separate affiliate called Southwest Administrators (SA).

Pursuant to Rule II.H, we exempt transactions between Southwest Gas and NPL from the Affiliate Transaction Rules because Southwest Gas is a multi-state utility, and NPL does not conduct any business activity or transactions within California. (See D.99-02-086, *slip op.*, at p. 10.) If the operations of NPL, or any other circumstances change from the information provided by Southwest Gas in this application, Southwest Gas should file a Petition for Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances.

**SA**

In D.99-02-086, the Commission previously determined that SA was an affiliate not covered by the Affiliate Transaction Rules because it was not engaged in the provision of a product that uses gas or the provision of services that relate to the use of gas. However, Southwest Gas states that SA has now taken over the California based gas pipeline general construction activities previously provided by NPL. Southwest Gas now requests a limited exemption to the Rules pursuant to Rule II.H for non-California transactions between Southwest Gas and SA.

Similar to our conclusion above with respect to LNGE, we grant Southwest Gas' requested exemption because SA has limited energy-related activities in California, and the requested exemption is narrowly tailored to apply to transactions between Southwest Gas and SA which do not relate to any of SA's California activities (i.e., non-California transactions). If the operations of SA, or any other circumstances change from the information provided by Southwest Gas in this application, Southwest Gas should file a Petition for

Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances.

In Resolution ALJ 176-3022, dated September 2, 1999, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, a public hearing is not necessary, nor is it necessary to alter the preliminary determination in Resolution ALJ 176-3022.

### **Waiver on Comment Period**

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

### **Findings of Fact**

1. The Affiliate Transaction Rules permit the utilities to apply for certain exemptions under defined circumstances.
2. Southwest Gas is a multi-state utility subject to the jurisdiction of other state regulatory commissions as well as to this Commission's jurisdiction.
3. Unitary does not conduct any business activity or transactions within California.
4. LNGE's business activities have changed since the issuance of D.99-02-086. LNGE is limiting its energy-related activities in California, and Southwest Gas' requested exemption regarding LNGE is narrowly tailored to apply to non-California transactions between Southwest Gas and LNGE.
5. Since the issuance of D.99-02-086, NPL has altered the scope of its natural gas pipeline activities. While NPL remains engaged in providing general contractor services for natural gas pipelines, it is no longer involved in any business activities within California.

6. NPL's business activities within California have been transferred to a separate affiliate, SA.

7. SA has limited energy-related activities within California and Southwest Gas' requested exemption regarding SA is narrowly tailored to apply to non-California transactions between Southwest Gas and SA.

8. This proceeding is designated as a ratesetting proceeding; no protests have been received. No hearing is necessary.

9. This is an uncontested matter in which the decision grants the relief requested.

### **Conclusions of Law**

1. Pursuant to Rule II.H of the Affiliate Transaction Rules, Southwest Gas should be exempt from the operation of the Affiliate Transaction Rules between itself and the following affiliates: Unitary and NPL. If the operations of Unitary or NPL, or any other circumstances change from the information provided by Southwest Gas in this application, Southwest Gas should file a Petition for Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances.

2. Pursuant to Rule II.H of the Affiliate Transaction Rules, Southwest Gas should be exempt from the operation of the Affiliate Transaction Rules between itself and the following affiliates solely for non-California transactions (i.e., transactions between Southwest Gas and its affiliates that do not relate to any of the affiliate's California activities): LNGE and SA. If the operations of LNGE or SA, or any other circumstances change from the information provided by Southwest Gas in this application, Southwest Gas should file a Petition for Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances.



3. A copy of this decision should be served on the service list of Rulemaking 97-04-011/Investigation 97-04-012.
4. This proceeding should be closed.

## O R D E R

### IT IS ORDERED that:

1. The Southwest Gas Corporation's (Southwest Gas) unopposed application for the issuance of a limited exemption from the Affiliate Transaction Rules as set forth in Decision (D.) 97-12-088, as modified by D.98-08-035, is granted.
2. Pursuant to Rule II.H of the Affiliate Transaction Rules, Southwest Gas is exempt from the operation of the Affiliate Transaction Rules between itself and the following affiliates: Unitary GH&C, LLC (Unitary) and Northern Pipeline Construction Company (NPL). If the operations of Unitary or NPL, or any other circumstances change from the information provided by Southwest Gas in this application, Southwest Gas shall file a Petition for Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances.
3. Pursuant to Rule II.H of the Affiliate Transaction Rules, Southwest Gas is exempt from the operation of the Affiliate Transaction Rules between itself and the following affiliates solely for non-California transactions (i.e., transactions between Southwest Gas and its affiliates that do not relate to any of the affiliate's California activities): LNG Energy Inc. (LNGE) and Southwest Administrators (SA). If the operations of LNGE or SA, or any other circumstances change from the information provided by Southwest Gas in this application, Southwest Gas shall file a Petition for Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances.

4. A copy of this decision shall be served on the service list of Rulemaking 97-04-011/Investigation 97-04-012.

5. This proceeding is closed.

This order is effective today.

Dated November 4, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners