

1 Norman J. Azevedo (SBN 3204)
405 N. Nevada Street
2 Carson City, NV 89703
Telephone: (775) 883-7000
3 Facsimile: (775) 883-7001

4 Charles C. Read (Admitted Pro Hac Vice)
JONES DAY
5 555 South Flower Street
Fiftieth Floor
6 Los Angeles, CA 90071-2300
Telephone: (213) 489-3939
7 Facsimile: (213) 243-2539

8 Attorneys for Petitioner
Southern California Edison
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10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
11

12 SOUTHERN CALIFORNIA EDISON,

13 Petitioner,

14 v.

15 THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA in and for
16 Carson City, and THE HONORABLE
JAMES T. RUSSELL,
17

18 Respondents,

19 THE STATE OF NEVADA *ex rel.*
DEPARTMENT OF TAXATION,


20 Real Party in Interest.
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23

Case No. 09-0C-00016-1B

Docket No. 55228

FILED

OCT 19 2010

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

24 **MOTION TO CONSOLIDATE PETITIONS FOR WRIT OF MANDAMUS**
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1 Southern California Edison ("SCE") hereby moves this Court pursuant to NRAP 27 for an
2 Order consolidating its petition for writ of mandamus with the petition before this Court in Case
3 No. 56740 styled *State of Nevada Department of Taxation (petitioner) v. Second Judicial District*
4 *Court of the State of Nevada in and for the Country of Washoe and the Honorable Janet J. Berry*
5 *(respondents) and Sierra Pacific Power Company and Nevada Power Company (real parties in*
6 *interest)*. Sierra Pacific Power Company and Nevada Power Company, jointly doing business as
7 NV Energy (and herein referred to collectively as NV Energy), are concurrently moving to
8 consolidate the petitions for writ of mandamus through a parallel motion filed in Case No. 56740.
9 The motions are based on the documents on file in each of these cases.

10 These petitions for writ of mandamus should be consolidated for purposes of oral
11 argument and a decision because they present a significant, common issue, *i.e.*, the standard of
12 review to be applied in taxpayer lawsuits of this nature. Each of these cases was commenced in
13 respective district courts by the filing of a complaint by a taxpayer pursuant to NRS 372.680 to
14 recover a refund of sales or use taxes. Each of these complaints constitutes an original action for
15 restitution of the taxes alleged to have been overpaid to the State. In each of these actions, the
16 State has asserted that the cases should proceed in district court as petitions for judicial review.
17 The Department of Taxation has acknowledged that these two cases are closely related and
18 involve a common issue of law. *State of Nevada, ex rel. Department of Taxation v. Second*
19 *Judicial District Court of the State of Nevada in and for the Country of Washoe and the*
20 *Honorable Janet J. Berry*, Original Petition for Writ of Mandamus at 3, 8-9 (Sept. 1, 2010).

21 In the case of *Southern California Edison* (Case No. 55228), the district court ruled the
22 case should proceed under a judicial review standard. In the case of *NV Energy* (Case No.
23 56740), the district court ruled the case should proceed as a trial *de novo* for restitution of
24 overpaid taxes. Accordingly, in each of these cases, the primary issue before this Court is
25 whether the provisions of NRS 372.680 provide for a taxpayer, after exhausting administrative
26 remedies, to bring an original action in restitution for the recovery of sales or use taxes alleged to
27 have been overpaid to the State.
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1 This Court has currently set oral argument in the above-captioned matter for November 2,
2 2010. In *NV Energy*, the case is fully briefed and ready for oral argument at the convenience of
3 the Court. Movants suggest the date for oral argument in Case No. 55228 be vacated, and a new
4 hearing date for the consolidated petitions be set once the Court has reviewed the briefs and the
5 record in Case No. 56740.

6 Based on the foregoing, it is respectfully requested that this Court issue an order
7 consolidating the petitions for writ of mandamus in Case No. 56740 and Case No. 55228 for
8 purposes of oral argument and a decision on the merits.

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10 Dated: October ^{19th} 19, 2010

Respectfully submitted,

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12 By: 

13 Norman J. Azevedo (SBN 3204)
14 405 N. Nevada Street
15 Carson City, NV 89703
16 Telephone: (775) 883-7000
17 Facsimile: (775) 883-7001

18 Attorney for Petitioner
19 SOUTHERN CALIFORNIA EDISON
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LAI-3110870v1

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of October, 2010, I placed a copy of the foregoing
in the United States Mail, postage pre-paid, addressed to:

The Honorable James T. Russell
First Judicial District Court
885 E. Musser Street
Carson City, NV 89701
Respondent

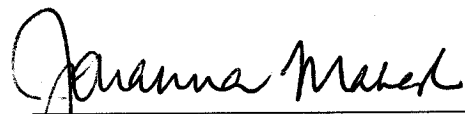
Gina Session, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701
Attorney for Real Party in Interest

Paul D. Johnson, Esq.
Deputy District Attorney
Office of the Clark County District Attorney
500 South Grand Central Parkway
Las Vegas, NV 89155
Attorney for Amicus Curiae

Jeffrey A. Silvestri, Esq.
McDonald Carano Wilson LLP
2300 W. Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Attorney for Amici Curiae

William L. Keane, Esq.
Senior Principal Deputy Legislative Counsel
Legislative Counsel Bureau, Legal Division
401 S. Carson Street
Carson City, NV 89701
Attorney for the Legislature of the State of Nevada

Brenda J. Erdoes, Esq.
Legislative Counsel
Legislative Counsel Bureau, Legal Division
401 S. Carson Street
Carson City, NV 89701
Attorney for the Legislature of the State of Nevada


Johanna Maher