

FIRST JUDICIAL DISTRICT COURT

CASE NUMBER: 09 OC 00016 1B

JUDGE: JAMES T. RUSSELL

DEPT. NO. I

PLAINTIFF/PETITIONER: SOUTHERN CALIFORNIA EDISON

DEFENDANT/RESPONDENT: STATE OF NEVADA

DATE: 1/21/14HEARING: BENCH TRIAL

Number	Description of Exhibit
1	SCE's Second Amended Complaint
2	Defendant's Answer to Second Amended Complaint
3	Defendant's Response to SCE's Special Interrogatories
4	Defendant's Response to SCE's Special Interrogatories – Set 2
5	Defendant's Response to SCE's Requests for Admission
6	Defendant's Response to SCE's Requests for Admission – Set 2
7	Defendant's Response to SCE's Requests for Production
8	Deft's 1st Supplemental Response/ SCE's Requests/Production
9	June 13, 2012 Order from Second Judicial District of Nevada
10	7/14/04 Findings of Fact, Conclusions of Law and Decision
11	4/26/01 Letter from D. Sandler
12	5/15/01 Letter from Department of Taxation
13	5/29/01 Letter from D. Sandler
14	7/30/01 Letter from Department of Taxation
15	6/26/01 Letter from D. Sandler
16	7/25/01 Letter from Department of Taxation
17	10/25/01 Letter from D. Sandler
18	11/30/01 Letter from Department of Taxatation
19	12/05/01 Letter from D. Sandler
20	1/14/02 Letter from Department of Taxation
21	6/26/02 Letter from D. Sandler
22	8/07/02 Letter from Department of Taxation
23	11/06/02 Letter from D. Sandler
24	12/17/02 Letter from Department of Taxation
25	12/19/02 Letter from Department of Taxation
26	12/30/02 Letter from Department of Taxation
27	1/31/03 Petition for Redetermination from P. Bancroft
28	2/25/03 Letter from D. Sandler
29	4/10/03 Letter from Department of Taxation
30	5/16/03 Letter from Department of Taxation
31	10/27/03 Letter from N. Azevedo
32	11/29/06 Nevada Tax Commission Decision
33	Exhibit 3 to Deposition of Kathleen Phillips
34	Exhibit 4 to Deposition of Kathleen Phillips
35	Exhibit 7 to Deposition of Kathleen Phillips
36	Spreadsheet of refund calculations – Claim for Relief Nos. 1 & 2

CASE TITLE: SOUTHERN CALIFORNIA EDISON VS STATE OF NEVADA

CASE NUMBER: 09 OC 00016 1B

Number	Description of Exhibit
78	"Mohave Coal Journey" diagram
79	"Black Mesa Mine" diagram
80	"Preparation Plant" diagram
81	"Black Mesa Pipeline" diagram
82	U.S. Dept of of the Interior Bureau of Reclamation 10/66
83	Contract between Colorado River Com of Nv & So Cal 10/66
84	Water User Contract Assignment 5/67
85	Mohave Project Operating Agreement. 7/70
86	Amendment #1/Mohave Project Operating Agreement 12/74
87	Amendment #2 to Mohave Project Operating Agreement 6/87
88	Amendment #3 to Mohave Project Operating Agreement 8/88
89	Amendment #4 to Mohave Project Operating Agreement 8/89
90	Contract/the Provision/Water/Mohave Generating Station 3/93
91	Termination/Water User Contract between Colorado River 3/93
92	Tax memo to Zunino from Hagen 5/03
93	Letter from Azevedo to Zunino 7/03
94	Ltr to So Cal Ed from Morrow/Taxation 10/03
95	Letter to Azevedo from Dino DiCianno 10/03
96	Letter to Azevedo from Dino DiCianno 10/03
97	Greg Zunino's letter to Norm Azevedo 10/03
98	Letter to Chinnock/Taxation from Azevedo 10/03
99	Spreadsheet-So Cal Ed Sales use Tax Claims 10/03
100	Letter to Azevedo from Chinnock 11/03
101	Letter from Greg Zunino to Norm Azevedo 11/03
102	Transcript of Public Meeting of the NV Tax Commission 12/03
103	Letter to Zunino from Azevedo 12/03
104	Transcript of Hearing 12/03
105	Nevada Tax Commission Meeting Transcript 9/08
106	Nevada Tax Commission Meeting Transcript 12/08
107	Dept/Taxation Decision Letter Denying SCE's Rqst/Refund 2/09
108	Letter to So Cal Ed from Crandall/Taxation
109	Map – Navajo Joint Use Area
110	Article re slurry pipeline and unit train systems
111	Coal Mining & Slurry Transportation System
112	Federal Depletion Allowance Guidelines
113	Legislative history for net proceeds of minerals tax
114	List of So Cal Ed claims for refund.
115	Lists of So Cal Ed refund requests & amounts
116	So Cal Edison Co's Responses/Deft's 1st Rqst/Prod/Documents
117	So Cal Edison Co's Responses/Deft's 1st Set of Interrogatories
118	So Cal Edison Co's Responses/Deft's 1st Set/ Rqsts/Admissions

CASE TITLE : SOUTHERN CALIFORNIA EDISON VS STATE OF NEVADA
CASE NUMBER: 09 OC 00016 1B

Number	Description of Exhibit
37	Spreadsheet of refund calculations – Claim for Relief Nos. 3-7
38	Compilation of supporting doc's for refund calculations
39	Compilation of checks from SCE to Nv Department of Taxation
40	1/06/1967 Mohave Project Coal Supply Agreement
41	5/26/1976 Amended Mohave Project Coal Supply Agreement
42	1/06/1967 Coal Slurry Pipeline Agreement
43	5/26/1976 Amended Coal Slurry Pipeline Agreement
44	Mohave Project Plant Site Conveyance & Co-Tenancy Agrmnt
45	Excerpt from 1998 FERC Form 423 monthly report
46	Excerpt from 1999 FERC Form 423 monthly report
47	Excerpt from 2000 FERC Form 423 monthly report
48	EIA Form 767 instructions and sample form
49	Excerpt from SCE's FERC Form 1 filing for 1998
50	Excerpt from SCE's FERC Form 1 filing for 1999
51	Excerpt from SCE's FERC Form 1 filing for 2000
52	Excerpt from SCE's Annual Report for 2000
53	Excerpt from Edison International's Form 10-K filing
54	2/1999 Nv Dept of Taxation's Exemption and Refund Report
55	1998-1999 Nv Dept Taxation Net Proceeds of Minerals Bulletin
56	1999-2000 Nv Dept Taxation Net Proceeds of Minerals Bulletin
57	2000-2001 Nv Dept Taxation Net Proceeds of Minerals Bulletin
58	"Nv Taxpayers' Bill of Rights" published/the Nv Dept Taxation
59	Nv Bureau of Mines and Geology Special Publication MI-1998
60	Nv Bureau of Mines and Geology Special Publication MI-1999
61	Nv Bureau of Mines and Geology Special Publication MI-2000
62	Nevada Mineral Industry Fact Sheet – 2011
63	Preparing for an Audit
64	Nevada Department of Taxation Newsletter, Issue No. 128
65	Nv Dept of Taxation Combined Sales and Use Tax Return Form
66	Expert Report of Dr. Ralph W. Barbaro
67	Expert Report of Sharon R. Byram, Esq.
68	Expert Report of Glenn Cunningham
69	Expert Report of Professor Richard D. Pomp
70	Expert Report of Dr. John L. Jurewitz
71	Expert Report of Dr. Richard J. McCann
72	Expert Report of Dr. James E. Faulds
73	Report of Alan R. Coyner
74	Expert Report of J. Steven Gardner
75	Expert Report of John A. Swain
76	Respondent's Answering Brief (S.P.P Co vs State 1/28/13)
77	"Mohave Fuel System" diagram

[illegible]

1 Norman J. Azevedo, NV Bar No. 3204
2 405 North Nevada Street
3 Carson City, Nevada 89703
4 (775) 883-7000

5 Charles C. Read, Admitted *pro hac vice*
6 Haley McIntosh, NV Bar No. 9442
7 JONES DAY
8 555 South Flower Street
9 Fiftieth Floor
10 Los Angeles, CA 90071-2300
11 (213) 489-3939

12 Attorneys for Plaintiff Southern California Edison Company

13 **IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA**

14 **IN AND FOR CARSON CITY**

15 SOUTHERN CALIFORNIA EDISON,

16 Plaintiff,

17 v.

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

20 Defendant.

Case No. 09-OC-00016-1B

Dept. No.: 1

21 **NOTICE OF APPEAL**

22 Plaintiff Southern California Edison Company hereby appeals to the Supreme Court of
23 Nevada from the Amended Findings of Fact, Conclusions of Law, and Decision entered by the
24 District Court on December 17, 2014, and the Order Denying Plaintiff's Motion to Amend
25 Findings of Fact and Conclusions of Law and to Amend Judgment or Direct Entry of a New
26 Judgment entered by the District Court on January 30, 2015.

27 .../

28 .../

...

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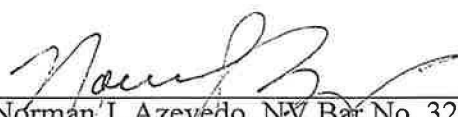
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REC'D & FILED
2015 FEB 26 PM 3:45

SUSAN HERRIWETHER
CLERK
BY Electronic Filed
Mar 03 2015 01:57 p.m.
Tracie K. Lindeman
DEPUTY
Clerk of Supreme Court

1 Dated this 26th day of February, 2015

2
3 By:


Norman J. Azevedo, NV Bar No. 3204
405 North Nevada Street
Carson City, Nevada 89703


5 Charles C. Read, *pro hac vice*
6 Haley McIntosh, NV Bar No. 9442
7 Jones Day
8 555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2300

9 Attorneys for Plaintiff

10 **CERTIFICATE OF MAILING**

11 I hereby certify that on the 26 day of February, 2015, I mailed a copy of the foregoing
12 document via U.S. Mail addressed as follows:


13 Gina Session, Esq.
14 Office of the Attorney General
15 100 N. Carson Street
Carson City, NV 89701

16 
17 Rhonda Azevedo

1 Norman J. Azevedo, NV Bar No. 3204
2 405 North Nevada Street
3 Carson City, Nevada 89703
4 (775) 883-7000

5 Charles C. Read, admitted *pro hac vice*
6 Haley McIntosh, NV Bar No. 9442
7 JONES DAY
8 555 South Flower Street
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10 Los Angeles, CA 90071-2300
11 (213) 489-3939

REC'D & FILED
2015 FEB 26 PM 3:45

SUSAN MERRIWETHER
CLERK
BY  DEPUTY

12 Attorneys for Plaintiff Southern California Edison Company

13 **IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA**
14 **IN AND FOR CARSON CITY**

15 SOUTHERN CALIFORNIA EDISON,
16
17 Plaintiff,

Case No. 09-OC-00016-1B

Dept. No.: 1

18 v.

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

22 **CASE APPEAL STATEMENT**

23 Southern California Edison Company hereby submits its Case Appeal Statement pursuant
24 to Rule 3(f) of the Nevada Rules of Appellate Procedure.

25 1. The appellant filing this Case Appeal Statement is Southern California Edison
26 Company. The attorneys of record for the appellant are: Norman J. Azevedo, Esq., 405 North
27 Nevada Street, Carson City, Nevada 89703, (775) 883-7000, and Charles C. Read, Esq. (*pro hac*
28 *vice* application to be filed in the Nevada Supreme Court) and Haley McIntosh, Esq., Jones Day,
555 South Flower Street, Fiftieth Floor, Los Angeles, CA, 90071-2300, (213) 489-3939.

2. The District Court Judge who issued the judgment from which this appeal is being
taken is the Honorable James T. Russell.

1 3. The parties to the proceedings are:

2 Plaintiff/Appellant: Southern California Edison Company

3 Defendant/Respondent: State of Nevada ex rel. Department of Taxation

4 4. The Nevada Attorney General is expected to represent Respondent in proceedings
5 before the Nevada Supreme Court: Adam Paul Laxalt, Attorney General, by Gina C. Session,
6 Chief Deputy Attorney General, 100 North Carson Street, Carson City, NV 89710-4717, (775)
7 684-1207.

8 5. The matter in District Court was commenced on January 15, 2009, with the filing
9 of a complaint.

10 6. Through its de novo trial before the District Court, Southern California Edison
11 Company sought a full refund of tax paid to the Nevada Department of Taxation from March
12 1998 through December 2000 on its use of coal at the Mohave Generating Station near Laughlin,
13 Nevada. Southern California Edison Company claimed that it was statutorily exempt from use
14 tax and that the Department's imposition of use tax violated the Commerce Clause of the United
15 States Constitution. Alternatively, Southern California Edison Company claimed that it was
16 entitled to partial refunds of use tax based on several Nevada tax statutes. In its Findings of Fact,
17 Conclusions of Law, and Decision, dated December 15, 2014, and Amended Findings of Fact,
18 Conclusions of Law, and Decision, dated December 17, 2014,¹ the District Court denied Southern
19 California Edison Company's claims and found that it was entitled to no refund. Southern
20 California Edison Company then filed a Motion to Amend Findings of Fact and Conclusions of
21 Law and to Amend Judgment or Direct Entry of a New Judgment pursuant to Rules 52(b) and
22 59(e) of the Nevada Rules of Civil Procedure. On January 30, 2015, the District Court issued an
23 order denying that motion. Southern California Edison Company appeals.

24 7. This matter previously has been before the Nevada Supreme Court on an appeal
25 related to Nevada's Open Meeting Law and on an original writ proceeding regarding the
26 appropriate standard of review: Case No. 48292 - *Chanos v. Nevada Tax Commission and*

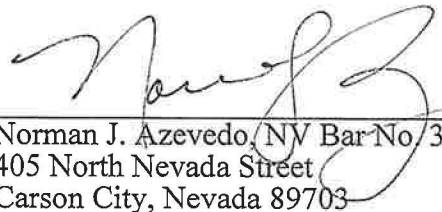
27 ¹ The Amended Findings of Fact and Conclusions of Law were issued by the Court
28 pursuant to NRCP Rule 60(a), to clarify that the Court heard the matter on a trial de novo
standard, not as a petition for judicial review.

1 *Southern California Edison; Case No. 55228 - Southern California Edison v. The First Judicial*
2 *District Court of the State of Nevada, In And For Carson City, and the Honorable James Todd*
3 *Russell.*

4 8. Southern California Edison Company remains interested in the possibility of
5 settlement.

6
7 Dated this 26th day of February, 2015

8
9 By:


Norman J. Azevedo, NV Bar No. 3204
405 North Nevada Street
Carson City, Nevada 89703

11 Charles C. Read, *pro hac vice*
12 Haley McIntosh, NV Bar No. 9442
13 Jones Day
14 555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2300

15 Attorneys for Plaintiff

16 **CERTIFICATE OF MAILING**

17 I hereby certify that on the 26 day of February, 2015, I mailed a copy of the foregoing
18 document via U.S. Mail addressed as follows:

19 Gina Session, Esq.
20 Office of the Attorney General
21 100 N. Carson Street
Carson City, NV 89701

22 
23 Rhonda Azevedo

Judge: RUSSELL, JUDGE JAMES
TODD

Case No. 09 OC 00016 1B

Ticket No.
CTN:

SOUTHERN CALIFORNIA EDISON

By:

STATE OF NEVADA

DRSPND

-vs-

By: CORTEZ-MASTO, CATHERINE
100 NORTH CARSON STREET
CARSON CITY, NV 89701Dob: Sex:
Lic: Sid:Plate#: Make:
Year: Accident:
Type: Venue:
Location:SOUTHERN CALIFORNIA EDISON PLNTPET
DEPARTMENT OF TAXATION DFNDTBond: Set:
Type: Posted:

Charges:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	02/26/15	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
2	02/26/15	NOTICE OF APPEAL Receipt: 38422 Date: 02/26/2015	1BCCOOPER	24.00	0.00
3	02/03/15	NOTICE OF ENTRY OF ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT OR DIRECT ENTRY OF NEW JUDGMENT	1BVANESSA	0.00	0.00
4	02/03/15	NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR ATTORNEY'S' FEES AND COSTS; ORDER DENYING REQUEST FOR ORAL ARGUMENT; ORDER DENYING NOTICE TO SET	1BVANESSA	0.00	0.00
5	02/02/15	SUMMARY JUDGMENT	1BJHIGGINS	0.00	0.00
6	01/30/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
7	01/30/15	ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR ATTORNEYS' FEES AND COSTS/ORDER DENYING REQUEST FOR ORAL ARGUMENT/ORDER DENYING NOTICE TO SET	1BJHIGGINS	0.00	0.00
8	01/30/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
9	01/30/15	ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT OR DIRECT ENTRY OF A NEW JUDGMENT	1BJHIGGINS	0.00	0.00
10	01/27/15	NOTICE TO SET	1BCGRIBBLE	0.00	0.00
11	01/27/15	REQUEST FOR ORAL ARGUMENT	1BCGRIBBLE	0.00	0.00
12	01/27/15	NEVADA DEPARTMENT OF TAXATION'S REPLY TO SOUTHERN CALIFORNIA EDISON'S OPPOSITION TO MOTION FOR ATTORNEYS' FEES AND COSTS AND OPPOSITION TO MOTION TO RETAX COSTS	1BCGRIBBLE	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
13	01/15/15	REQUEST TO SUBMIT	1BVANESSA	0.00	0.00
14	01/12/15	SOUTHERN CALIFORNIA EDISON COMPANY'S OPPOSITION TO MOTION FOR ATTORNEYS' FEES AND COSTS AND MOTION TO RETAX COSTS	1BCGRIBBLE	0.00	0.00
15	01/09/15	DEFENDANT'S OPPOSITION TO SOUTHERN CALIFORNIA EDISON COMPANY'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT OR DIRECT ENTRY OF A NEW JUDGMENT	1BCGRIBBLE	0.00	0.00
16	12/29/14	DECLARATION OF NORMAN AZEVEDO IN SUPPORT OF SOUTHERN CALIFORNIA EDISON COMPANY'S EX-PARTE MOTION FOR AN EXTENSION OF TIME TO RESPOND TO DEPARTMENT OF TAXATION'S MOTION FOR ATTORNEYS' FEES AND COSTS	1BCGRIBBLE	0.00	0.00
17	12/29/14	SOUTHERN CALIFORNIA EDISON COMPANY'S EX-PARTE MOTION FOR AN EXTENSION OF TIME TO RESPOND TO DEPARTMENT OF TAXATION'S MOTION FOR ATTORNEYS' FEES AND COSTS	1BCGRIBBLE	0.00	0.00
18	12/24/14	MEMORANDUM OF COSTS	1BJULIEH	0.00	0.00
19	12/24/14	MOTION FOR ATTORNEY'S FEES AND COSTS	1BJULIEH	0.00	0.00
20	12/24/14	SOUTHERN CALIFORNIA EDISON COMPANY'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT OR DIRECT ENTRY OF A NEW JUDGMENT	1BJULIEH	0.00	0.00
21	12/17/14	NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION	1BJHIGGINS	0.00	0.00
22	12/17/14	AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION	1BJHIGGINS	0.00	0.00
23	12/15/14	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
24	12/15/14	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION	1BJULIEH	0.00	0.00
25	12/04/14	DEFENDANT'S REQUEST FOR JUDICIAL NOTICE	1BJULIEH	0.00	0.00
26	08/12/14	NOTICE OF ENTRY OF ORDER	1BCGRIBBLE	0.00	0.00
27	08/06/14	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BVANESSA	0.00	0.00
28	08/06/14	ORDER WITHDRAWING CAMPELL & RYAN AS COUNSEL OF RECORD	1BVANESSA	0.00	0.00
29	08/05/14	REQUEST TO SUBMIT	1BVANESSA	0.00	0.00
30	07/21/14	MOTION TO WITHDRAW CAMPBELL & RYAN AS COUNSEL OF RECORD	1BCGRIBBLE	0.00	0.00
31	06/03/14	CERTIFICATE OF SERVICE	1BVANESSA	0.00	0.00
32	05/13/14	CERTIFICATE OF SERVICE	1BJULIEH	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
33	04/30/14	ORDER STAYING DETERMINATION PENDING DECISION BY NEVADA SUPREME COURT	1BJHIGGINS	0.00	0.00
34	03/28/14	SOUTHERN CALIFORNIA EDISON COMPANY'S RESPONSE TO DEFENDANT'S REQUEST FOR JUDICIAL NOTICE	1BJHIGGINS	0.00	0.00
35	03/25/14	DEFENDANT'S REQUEST FOR JUDICIAL NOTICE	1BVANESSA	0.00	0.00
36	03/21/14	DEFENDANT'S REPLY TO SOUTHERN CALIFORNIA EDISON COMPANY'S POST-TRIAL OPENING BRIEF	1BCGRIBBLE	0.00	0.00
37	03/21/14	SOUTHERN CALIFORNIA EDISON COMPANY'S POST-TRIAL RESPONSE BRIEF	1BCGRIBBLE	0.00	0.00
38	02/28/14	DEFENDANT'S CLOSING BRIEF	1BCGRIBBLE		0.00
39	02/28/14	SOUTHERN CALIFORNIA EDISON COMPANY'S ATTACHMENTS IN SUPPORT OF POST - TRIAL OPENING BRIEF	1BCGRIBBLE		0.00
40	02/28/14	SOUTHERN CALIFORNIA EDISON COMPANY'S POST TRIAL OPENING BRIEF	1BCGRIBBLE		0.00
41	02/20/14	TRANSCRIPT OF PROCEEDINGS TRIAL DAY 8 FRIDAY, JANUARY 31, 2014 FILED FEBRUARY 20, 2014	1BCGRIBBLE	0.00	0.00
42	02/20/14	TRANSCRIPT OF PROCEEDINGS TRIAL DAY 7 THURSDAY, JANUARY 30, 2014 FILED FEBRUARY 20, 2014	1BCGRIBBLE	0.00	0.00
43	02/20/14	TRANSCRIPT OF PROCEEDINGS TRIAL DAY 6 WEDNESDAY, JANUARY 29, 2014 FILED FEBRUARY 20, 2014	1BCGRIBBLE	0.00	0.00
44	02/20/14	TRANSCRIPT OF PROCEEDINGS TRIAL DAY 5 TUESDAY, JANUARY 28, 2014 FILED FEBRUARY 20, 2014	1BCGRIBBLE	0.00	0.00
45	02/18/14	TRANSCRIPT OF PROCEEDINGS TRIAL DAY 4 FRIDAY, JANUARY 24, 2014	1BCGRIBBLE	0.00	0.00
46	02/18/14	TRANSCRIPT OF PROCEEDINGS TRIAL DAY 3 THURSDAY, JANUARY 23, 2014	1BCGRIBBLE	0.00	0.00
47	02/18/14	TRANSCRIPT OF PROCEEDINGS - TRIAL DAY 2 WEDNESDAY, JANUARY 22, 2014	1BCGRIBBLE	0.00	0.00
48	02/18/14	TRANSCRIPT OF PROCEEDINGS TRIAL- DAY 1 TUESDAY, JANUARY 21, 2014	1BCGRIBBLE	0.00	0.00
49	02/16/14	SOUTHERN CALIFORNIA EDISON COMPANY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	1BCGRIBBLE	0.00	0.00
50	02/16/14	DEFENDANT'S TRIAL STATEMENT	1BCGRIBBLE	0.00	0.00
51	01/16/14	TRIAL STATEMENT OF SOUTHERN CALIFORNIA EDISON COMPANY	1BJULIEH	0.00	0.00
52	01/15/14	DEFENDANTS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	1BCCOOPER	0.00	0.00
53	01/02/14	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
54	01/02/14	ORDER AFTER PRETRIAL CONFERENCE	1BCCOOPER	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
55	01/02/14	ORDER AFTER PRETRIAL CONFERENCE	1BCCOOPER	0.00	0.00
56	12/06/13	TRIAL DATE MEMO	1BJHIGGINS	0.00	0.00
57	12/03/13	NOTICE OF ENTRY OF ORDER	1BVANESSA	0.00	0.00
58	11/20/13	ORDER ADMITTING TO PRACTICE (JAMES WARD)	1BJULIEH	0.00	0.00
59	11/18/13	REQUEST FOR SUBMISSION	1BCCOOPER	0.00	0.00
60	11/15/13	DEFENDANT'S FOURTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURES	1BVANESSA	0.00	0.00
61	11/14/13	DEFENDANT'S SUPPLEMENT TO SECOND REBUTTAL EXPERT DISCLOSURE	1BJHIGGINS	0.00	0.00
62	11/07/13	DEFENDANT'S SECOND REBUTTAL EXPERT DISCLOSURE	1BJHIGGINS	0.00	0.00
63	10/31/13	MOTION TO ASSOCIATE COUNSEL	1BCCOOPER	0.00	0.00
64	10/07/13	AMENDED PRETRIAL ORDER	1BCCOOPER	0.00	0.00
65	09/13/13	NOTICE OF ENTRY OF ORDER	1BCGRIBBLE	0.00	0.00
66	09/10/13	ORDER TO VACATE TRIAL	1BVANESSA	0.00	0.00
67	07/01/13	NOTICE OF ENTRY OF ORDER	1BJHIGGINS	0.00	0.00
68	07/01/13	NOTICE OF ENTRY OF AMENDED ORDER	1BJHIGGINS	0.00	0.00
69	06/24/13	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
70	06/21/13	AMENDED ORDER DENYING MOTION IN LIMINE REGARDING COMPETITOR FUELS	1BCCOOPER	0.00	0.00
71	06/19/13	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
72	06/19/13	ORDER GRANTING EXTENSION OF TIME TO PRODUCE REBUTTAL EXPERT REPORTS	1BJULIEH	0.00	0.00
73	06/19/13	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
74	06/19/13	ORDER DENYING MOTION IN LIMINE REGARDING VOIDED DECISION (2)	1BJULIEH	0.00	0.00
75	06/13/13	TRIAL DATE MEMO	1BJULIEH	0.00	0.00
76	06/13/13	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
77	06/13/13	ORDER VACATING PRE-TRIAL CONFERENCE AND TRIAL DATE AND STAY OF PROCEEDINGS	1BJULIEH	0.00	0.00
78	06/10/13	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
79	06/10/13	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
80	06/10/13	JOINT MOTION FOR ORDER VACATING PRE-TRIAL CONFERENCE AND TRIAL DATE AND STAY OF PROCEEDINGS	1BVANESSA	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
81	06/07/13	DEFENDANT NEVADA DEPARTMENT OF TAXATION'S REPLY TO OPPOSITION TO MOTION IN LIMINE TO EXCLUDE EVIDENCE OF COMPETITOR FUELS	1BVANESSA	0.00	0.00
82	06/07/13	DEFENDANT NEVADA DEPARTMENT OF TAXATION'S REPLY TO OPPOSITION TO MOTION IN LIMINE TO EXCLUDE EVIDENCE OF VOIDED DECISION	1BVANESSA	0.00	0.00
83	06/03/13	FILE RETURNED AFTER SUBMISSION - NO ACTION TAKEN	1BJHIGGINS	0.00	0.00
84	05/29/13	OPPOSITION TO DEPARTMENT OF TAXATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF VOIDED DECISION	1BJHIGGINS	0.00	0.00
85	05/29/13	OPPOSITION TO DEPARTMENT OF TAXATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF "COMPETITOR FUELS"	1BJHIGGINS	0.00	0.00
86	05/24/13	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
87	05/24/13	DEFENDANT NEVADA DEPARTMENT OF TAXATION'S REPLY TO SOUTHERN CALIFORNIA EDISON COMPANY'S OPPOSITION TO MOTION FOR EXTENSION OF TIME TO PRODUCE REBUTTAL EXPERT REPORTS	1BVANESSA	0.00	0.00
88	05/24/13	AFFIDAVIT OF SERVICE	1BVANESSA	0.00	0.00
89	05/23/13	DEFENDANT'S FIRST SUPPLEMENT TO REBUTTAL EXPERT DISCLOSURES	1BVANESSA	0.00	0.00
90	05/22/13	SOUTHERN CALIFORNIA EDISON COMPANY'S NOTICE OF DEPOSITION OF JODI CREWS	1BCGRIBBLE	0.00	0.00
91	05/22/13	SUBPOENA	1BCGRIBBLE	0.00	0.00
92	05/21/13	SOUTHERN CALIFORNIA EDISON COMPANY'S NOTICE OF DEPOSITION OF KATY PHILLIPS	1BCGRIBBLE	0.00	0.00
93	05/16/13	DEFENDANT NEVADA DEPARTMENT OF TAXATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF "COMPETITOR FUELS"	1BCGRIBBLE	0.00	0.00
94	05/16/13	DEFENDANT NEVADA DEPARTMENT OF TAXATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF VOIDED DECISION	1BCGRIBBLE	0.00	0.00
95	05/16/13	SOUTHERN CALIFORNIA EDISON COMPANY'S OPPOSITION TO LMOTION FOR EXTENSION OF TIME TO PRODUCE REBUTTAL EXPERT REPORTS	1BCGRIBBLE	0.00	0.00
96	05/14/13	TRIAL DATE MEMO	1BJULIEH	0.00	0.00
97	05/03/13	DEFENDANT NEVADA DEPARTMENT OF TAXATION'S MOTION FOR EXTENSION OF TIME TO PRODUCE REBUTTAL EXPERT REPORTS	1BJHIGGINS	0.00	0.00
98	04/24/13	DEFENDANT'S REBUTTAL EXPERT DISCLOSURES	1BCFRANZ	0.00	0.00
99	01/28/13	PRETRIAL ORDER	1BCCOOPER	0.00	0.00
100	12/19/12	TRIAL DATE MEMO	1BJHIGGINS	0.00	0.00
101	12/17/12	NOTICE TO SET	1BJHIGGINS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
102	10/29/12	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
103	10/29/12	ORDER TO VACATE TRIAL DATE	1BCCOOPER	0.00	0.00
104	10/17/12	STIPULATION AND NOTICE TO VACATE TRIAL DATE AND TO SET FOR HEARING	1BJHIGGINS	0.00	0.00
105	10/11/12	NOTICE OF ENTRY OF ORDER	1BVANESSAG	0.00	0.00
106	10/04/12	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BVANESSAG	0.00	0.00
107	10/04/12	ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS	1BVANESSAG	0.00	0.00
108	07/27/12	NOTICE OF ENTRY OF ORDER	1BCFRANZ	0.00	0.00
109	07/25/12	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
110	07/25/12	ORDER GRANTING DEFENDANT'S MOTION TO STAY DISCOVERY PENDING RULING ON DISPOSITIVE MOTION	1BJHIGGINS	0.00	0.00
111	07/23/12	REPLY TO OPPOSITION TO MOTION TO STAY DISCOVERY PENDING RULING ON DISPOSITIVE MOTION	1BVANESSAG	0.00	0.00
112	07/23/12	REQUEST FOR SUBMISSION	1BVANESSAG	0.00	0.00
113	07/20/12	NOTICE OF ENTRY OF ORDER	1BVANESSAG	0.00	0.00
114	07/18/12	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
115	07/18/12	ORDER ON DEFENDANT'S REQUEST FOR JUDICIAL NOTICE	1BCCOOPER	0.00	0.00
116	07/18/12	SOUTHERN CALIFORNIA EDISON COMPANY'S OPPOSITION TO MOTION TO STAY DISCOVERY	1BCCOOPER	0.00	0.00
117	07/13/12	REQUEST FOR SUBMISSION	1BCGRIBBLE	0.00	0.00
118	07/11/12	MOTION TO STAY DISCOVERY PENDING RULING ON DISPOSITIVE MOTION	1BCCOOPER	0.00	0.00
119	07/11/12	REPLY TO OPPOSITION TO SOUTHERN CALIFORNIA EDISON COMPANY'S QUALIFIED OPPOSITION TO THE DEPARTMENT OF TAXATION'S MOTION AND REQUEST FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
120	07/05/12	SOUTHERN CALIFORNIA EDISON COMPANY'S QUALIFIED OPPOSITION TO THE DEPARTMENT OF TAXATION'S MOTION AND REQUEST FOR JUDICIAL NOTICE	1BCCOOPER	0.00	0.00
121	06/28/12	CASE CONFERENCE STATEMENT	1BJULIEH	0.00	0.00
122	06/28/12	INITIAL DISCLOSURE OF SOUTHERN CALIFORNIA EDISON COMPANY	1BJULIEH	0.00	0.00
123	06/22/12	ORDER DENYING MOTION TO STRIKE	1BJULIEH		0.00
124	06/22/12	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH		0.00
125	06/22/12	DEFENDANT'S REQUEST FOR JUDICIAL NOTICE	1BCGRIBBLE		0.00
126	06/21/12	REQUEST FOR ORAL ARGUMENT	1BCGRIBBLE		0.00

No.	Filed	Action	Operator	Fine/Cost	Due
127	06/21/12	DEFENDANTS' EARLY CASE CONFERENCE DISCLOSURES	1BCGRIBBLE		0.00
128	06/19/12	REQUEST FOR SUBMISSION	1BCGRIBBLE	0.00	0.00
129	06/18/12	DEFENDANT'S REPLY TO OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS	1BCGRIBBLE	0.00	0.00
130	06/07/12	SOUTHERN CALIFORNIA EDISON COMPANY'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS (AND REQUEST FOR ORAL ARGUMENT)	1BJHIGGINS	0.00	0.00
131	05/24/12	DEFENDANT'S SUPPLEMENT TO MOTION FOR JUDGMENT ON THE PLEADINGS	1BCGRIBBLE	0.00	0.00
132	05/24/12	CERTIFICATE OF SERVICE	1BCGRIBBLE	0.00	0.00
133	05/22/12	PROOF OF SERVICE	1BJHIGGINS	0.00	0.00
134	05/21/12	DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS	1BCGRIBBLE	0.00	0.00
135	05/18/12	DEFENDANT'S ANSWER TO SECOND AMENDED COMPLAINT	1BCGRIBBLE	0.00	0.00
136	05/15/12	NOTICE OF ENTRY OF ORDER	1BCGRIBBLE	0.00	0.00
137	05/10/12	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCGRIBBLE	0.00	0.00
138	05/10/12	ORDER DENYING MOTION TO STRIKE	1BCGRIBBLE	0.00	0.00
139	05/04/12	REQUEST FOR SUBMISSION	1BCGRIBBLE	0.00	0.00
140	05/04/12	REPLY TO OPPOSITION TO MOTION TO STRIKE	1BCGRIBBLE	0.00	0.00
141	04/25/12	OPPOSITION TO MOTION TO STRIKE	1BCGRIBBLE	0.00	0.00
142	04/12/12	MOTION TO STRIKE	1BVANESSAG	0.00	0.00
143	04/10/12	SECOND AMENDED COMPLAINT	1BCGRIBBLE	0.00	0.00
144	04/10/12	ISSUING ADD'L SUMMONS	1BVANESSAG	0.00	0.00
145	02/22/12	PRETRIAL ORDER	1BCCOOPER	0.00	0.00
146	02/22/12	TRIAL DATE MEMO	1BJHIGGINS	0.00	0.00
147	01/27/12	ORDER TO SET FOR HEARING	1BJHIGGINS	0.00	0.00
148	10/18/11	NOTICE IN LIEU OF REMITTITUR	1BCCOOPER	0.00	0.00
149	09/21/11	ORDER DENYING REHEARING	1BCCOOPER	0.00	0.00
150	08/18/11	ORDER TO VACATE TRIAL	1BKDUNCKHO	0.00	0.00
151	07/15/11	NOTICE OF ENTRY OF ORDER	1BJHIGGINS	0.00	0.00
152	07/13/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
153	07/13/11	ORDER GRANTING MOTION FOR STAY OF PROCEEDING	1BJULIEH	0.00	0.00
154	07/11/11	REQUEST FOR SUBMISSION	1BJHIGGINS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
155	07/11/11	REPLY TO OPPOSITION TO MOTION FOR STAY OF PROCEEDINGS	1BJHIGGINS	0.00	0.00
156	06/28/11	OPPOSITION TO THE DEPARTMENT'S MOTION FOR STAY PROCEEDINGS	1BMKALE	0.00	0.00
157	06/15/11	TRIAL DATE MEMO	1BMKALE	0.00	0.00
158	06/14/11	MOTION FOR STAY OF PROCEEDINGS	1BMKALE	0.00	0.00
159	06/02/11	NOTICE OF CHANGE OF ADDRESS	1BJULIEH	0.00	0.00
160	06/01/11	ORDER VACATING ORDER DATED NOVEMBER 19, 2009, AND ALLOWING MATTER TO PROCEED AS AN INDEPENDENT ACTION	1BJHIGGINS	0.00	0.00
161	05/31/11	PROOF OF SERVICE	1BJULIEH	0.00	0.00
162	05/27/11	SUPREME COURT OPINION	1BMKALE	0.00	0.00
163	05/27/11	WRIT OF MANDAMUS - CIVIL (EXISTING CASE)	1BMKALE	0.00	0.00
164	08/12/10	EDISON'S REQUEST FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF EDISON'S PETITION FOR WRIT OF MANDAMUS	1BMKALE	0.00	0.00
165	08/12/10	NOTICE OF CHANGE OF ATTORNEY INFORMATION	1BMKALE	0.00	0.00
166	08/12/10	NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF EDISON'S PETITION FOR WRIT OF MANDAMUS	1BMKALE	0.00	0.00
167	08/11/10	NOTICE OF CHANGE OF ATTORNEY INFORMATION	1BJHIGGINS	0.00	0.00
168	03/01/10	ORDER	1BCFRANZ	0.00	0.00
169	12/28/09	OPPOSITION TO PETITIONER'S MOTION TO STRIKE RESPONDENT'S STATEMENT OF INTENT TO PARTICIPATE	1BMKALE	0.00	0.00
170	12/24/09	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
171	12/24/09	ORDER GRANTING PLAINTIFF'S MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF A WRIT OF PETITION	1BCCOOPER	0.00	0.00
172	12/21/09	REQUEST TO SUBMIT	1BCCOOPER	0.00	0.00
173	12/21/09	NON OPPOSITION TO PLAINTIFF'S REQUEST TO STAY PROCEEDINGS PENDING WRIT OF MANDAMUS	1BCCOOPER	0.00	0.00
174	12/17/09	PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S STATEMENT OF INTENT TO PARTICIPATE	1BCCOOPER	0.00	0.00
175	11/30/09	PLAINTIFF'S REQUEST TO STAY PROCEEDINGS PENDING RESOLUTION OF A PETITION TO THE NEVADA SUPREME COURT FOR A WRIT OF MANDAMUS	1BJHIGGINS	0.00	0.00
176	11/24/09	STATEMENT OF INTENT TO PARTICIPATE	1BCCOOPER	0.00	0.00
177	11/24/09	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
178	11/24/09	CERTIFICATE OF SERVICE	1BCCOOPER	0.00	0.00


No.	Filed	Action	Operator	Fine/Cost	Due
179	11/19/09	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
180	11/19/09	ORDER TO PROCEED AS PETITION FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
181	10/12/09	TRANSCRIPT OF PROCEEDINGS - HEARING 10/8/09	1BJULIEH	0.00	0.00
182	09/15/09	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
183	09/15/09	ORDER FOR HEARING	1BCCOOPER	0.00	0.00
184	09/11/09	REQUEST FOR SUBMISSION	1BMKALE	0.00	0.00
185	09/11/09	OPPOSITION TO DEPARTMENT'S REQUEST TO TREAT EDISON'S TAX REFUND ACTION AS A PETITION FOR JUDICIAL REVIEW OF THE TAX COMMISSION'S DECISION (ORAL ARGUMENT REQUESTED)	1BMKALE	0.00	0.00
186	09/11/09	PLAINTIFF'S REQUEST FOR ORAL ARGUMENT	1BMKALE	0.00	0.00
187	09/11/09	NOTICE OF CHANGE OF ADDRESS	1BMKALE	0.00	0.00
188	09/11/09	OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER THAT PLAINTIFF' S REFUND ACTION UNDER NRS 372.680 IS A TRIAL DE NOVO	1BMKALE	0.00	0.00
189	08/28/09	MOTION FOR AN ORDER THAT PLAINTIFF'S REFUND ACTION UNDER NRS 372.680 IS A TRIAL DE NOVO	1BCCOOPER	0.00	0.00
190	08/28/09	RESPONDENT'S BRIEF REGARDING NATURE OF THE PROCEEDINGS BEFORE THIS COURT	1BCCOOPER	0.00	0.00
191	07/06/09	STIPULATION REGARDING BRIEFING SCHEDULE	1BCCOOPER	0.00	0.00
192	06/30/09	ORDER DENYING DEFENDANT'S MOTION TO DISMISS	1BJHIGGINS	0.00	0.00
193	06/18/09	TRANSCRIPT OF PROCEEDINGS	1BJULIEH	0.00	0.00
194	06/15/09	SUBMISSION OF ADDITIONAL AUTHORITIES	1BCCOOPER	0.00	0.00
195	06/09/09	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
196	06/09/09	ORDER ADMITTING TO PRACTICE	1BJULIEH	0.00	0.00
197	06/05/09	REQUEST TO SUBMIT	1BMKALE	0.00	0.00
198	05/28/09	TRIAL DATE MEMO	1BMKALE	0.00	0.00
199	05/27/09	REQUEST TO SUBMIT (2)	1BCCOOPER	0.00	0.00
200	05/22/09	PLAINTIFF'S REQUEST FOR ORAL ARGUMENT	1BMKALE	0.00	0.00
201	05/22/09	MOTION TO ASSOCIATE COUNSEL	1BMKALE	0.00	0.00
202	05/22/09	AMENDED COMPLAINT	1BMKALE	0.00	0.00
203	05/19/09	REQUEST TO SUBMIT	1BCCOOPER	0.00	0.00
204	05/15/09	REPLY TO OPPOSITION TO MOTION TO DISMISS	1BJHIGGINS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
205	05/08/09	OPPOSITION TO MOTION TO DISMISS	1BCFRANZ	0.00	0.00
206	05/08/09	MOTION TO ASSOCIATE COUNSEL (2)	1BCFRANZ	0.00	0.00
207	04/20/09	MOTION TO DISMISS	1BJHIGGINS	0.00	0.00
208	04/13/09	AFFIDAVIT OF SERVICE (4)	1BCFRANZ	0.00	0.00
209	04/13/09	SUMMONS	1BCFRANZ	0.00	0.00
210	04/02/09	ISSUING SUMMONS AND ADD'L SUMMONS (1)	1BMKALE	0.00	0.00
211	03/27/09	AMENDED COMPLAINT	1BJULIEH	0.00	0.00
212	03/11/09	NOTICE OF CHANGE OF ADDRESS	1BJHIGGINS	0.00	0.00
213	03/11/09	ADD'L SUMMONS (1)	1BJHIGGINS	0.00	0.00
214	03/10/09	SUMMONS & ADD'L SUMMONS (3)	1BJULIEH	0.00	0.00
215	01/15/09	ISSUING SUMMONS AND ADD'L SUMMONS (4)	1BMKALE	0.00	0.00
216	01/15/09	COMPLAINT FILED (\$146.00 FEE) Receipt: 5828 Date: 01/15/2009	1BMKALE	146.00	0.00
Total:				170.00	0.00
Totals By: COST				170.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

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2014 DEC 17 AM 9:48

ALAN GLOVER

BY  CLERK
DEPUTY

Case No.: 09 OC 00016 1B

Dept. No.: 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL.
DEPARTMENT OF TAXATION,

Defendant.

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

This matter is before this Court based on a Second Amended Complaint filed by Plaintiff, Southern California Edison, as to a decision rendered by Defendant, The State of Nevada, ex rel, Department of Taxation. An eight day bench trial was held January 21-29, 2014. An Order Staying Determination Pending Decision by Nevada Supreme Court was entered on April 30, 2014, pending a decision in *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93, which was rendered on December 4, 2014. Based on this decision, the following Findings of Fact and Conclusions of Law are entered in this case. An Amended Findings of Fact, Conclusions of Law, and Decision is issued by this Court pursuant to NRCP Rule 60(a), to clarify that this Court heard this matter on the Second Amended Complaint filed as an independent action, and on a Trial De Novo standard, not as a Petition for Judicial Review, based on the decision by the Nevada Supreme Court in *Southern California Edison v. First Judicial District Court*, 127 Nev. Adv. Op. 22 (2011).

FINDINGS OF FACT

1
2 1. Defendant State of Nevada *ex rel.* Department of Taxation (the "Department") is
3 an agency of the executive branch of the State of Nevada that is charged with the administration
4 and enforcement of the tax laws set forth in Title 32 of the Nevada Revised Statutes, including
5 chapters 372 and 374 of the Nevada Revised Statutes governing sales and use taxes and local
6 school support taxes, respectively.
7

8 2. The Plaintiff, Southern California Edison ("SCE") is a regulated public utility that
9 operated the Mohave Generating Station ("Mohave"), a coal fired power plant in Clark County,
10 Nevada, from 1970 to 2005. SCE owned a majority interest in Mohave.
11

12 3. As a result of an agreement with the Department of the Interior, SCE purchased
13 coal in Arizona exclusively from Peabody Western Coal Company ("Peabody") pursuant to
14 Mohave Coal Supply Agreement, dated January 6, 1967, and the Amended Mohave Project
15 Supply Agreement, dated May 26, 1976, wherein Peabody is the seller and Mohave co-owners
16 are the buyers. In exchange for the agreement to purchase coal mined on Indian Reservations in
17 Arizona, SCE was able to purchase the water necessary to operate Mohave from the Colorado
18 River Commission.
19

20 4. Peabody obtained the coal from the Black Mesa Mine located on Navajo and
21 Hopi Indian reservations in Arizona. Peabody operated the Black Mesa Mine through lease
22 agreements with the Navajo and Hopi Tribes.
23

24 5. SCE determined that the most inexpensive means to transport the coal from
25 Arizona to Nevada was by means of a pipeline.

26 6. As part of the Coal Supply Agreement, Peabody entered into a Coal Slurry
27 Pipeline Agreement with Black Mesa Pipeline ("BMP") to process the coal into a coal slurry that
28 met SCE's specifications and could be transported to Mohave through the pipeline.

1 7. The tangible personal property purchased by SCE was the coal slurry product.

2 8. BMP operated the Coal Slurry Preparation Plant and the pipeline that transported
3 the coal slurry to Mohave. Before delivery of the coal to BMP, Peabody processed the run-of-
4 mine coal by separating rock in a rotary breaker lowering the ash content and reducing the coal
5 to a 2" x 0" size. At the Coal Slurry Preparation Plant, the coal was further crushed by various
6 means to a certain size and blended with water to create coal slurry that could then be transported
7 through the pipeline.
8

9 9. The processing by Peabody and BMP created a coal slurry that met SCE's
10 transportation requirements.

11 10. The price SCE paid Peabody for the coal slurry is set forth in the Amended
12 Mohave Project Coal Supply Agreement, Sec. 6. The price for the coal slurry is paid for the coal
13 delivered to the Mohave Project and is based on the mine price, the price for transportation, and
14 all sale, use, production and severance taxes paid by the seller, mainly Peabody. Thus, Peabody
15 is the entity that paid all taxes, not SCE.
16

17 11. The coal slurry was transported more than 270 miles through a pipeline to the
18 Mohave Generating Station.
19

20 12. Peabody retained title to the coal when it was transferred to BMP for processing
21 and transportation. After processing and transportation by BMP, the sales transaction between
22 Peabody and SCE took place in Nevada when title to the coal slurry passed to SCE upon delivery
23 at Mohave.
24

25 13. Risk of loss for the coal slurry and water passed from Peabody to SCE at the same
26 time title was passed at the receiving facilities of the Mohave Generating Station in Nevada.

27 14. Because Peabody did not have any physical presence in Nevada, SCE paid Use
28 Tax to Nevada for the coal slurry beginning in 1970.

1 15. SCE de-watered the coal and burned it to generate electricity. SCE further
2 pulverized the coal into a powder that could be blown into the burners, it did not have the means
3 at Mohave to take run-of-mine coal and process it for burning as fuel. SCE also used the water
4 from the coal slurry for cooling at the plant.

5 16. SCE could not purchase coal in Nevada because there are no commercially viable
6 deposits of coal in Nevada and there were no coal mines operating in Nevada during the 1998 to
7 2000 period of time at issue in this case. There is no record that any coal mine in Nevada has
8 been subject to the Net Proceeds of Minerals tax or that any coal miner or supplier has ever made
9 a sale of coal in Nevada that was not subject to either sales or use tax.

10 17. Peabody did not compete with any Nevada companies that mined coal in Nevada.

11 18. Peabody did not compete with any oil, natural gas, or geothermal producers in
12 Nevada.

13 19. There is no evidence that any coal transaction in Nevada was exempt from sales
14 or use tax pursuant to NRS 372.270.

15 20. Beginning in April 2001, SCE filed claims for a partial refund filed with the
16 Department of Taxation for the period between March 1998 and December 2000. This claim was
17 limited to a request for credit toward Arizona sales tax paid by SCE to Peabody.

18 21. On January 31, 2003, after the Department denied SCE's claims for refund for the
19 time period between March 1998 and December 1999, SCE submitted a Petition for
20 Redetermination limited to those periods arguing for the first time that its consumption of coal at
21 the Mohave Plant was exempt based on the dormant Commerce Clause and that the taxable
22 measure should not have included SMCRA and Black Lung payments, but SCE did not provide
23 amended returns.

1 22. Thereafter, on October 27, 2003, SCE submitted a letter with revised returns
2 referring to new claims but failed to articulate the grounds for its revised claims.

3 23. In November of 2003, SCE submitted a brief to the Nevada Tax Commission
4 alleging, in the alternative, that either: (1) SCE's consumption of coal at the Mohave Plant was
5 entirely exempt from Nevada's use tax; or (2) SCE is entitled to a refund based on its inadvertent
6 inclusion of royalties and transportation charges in the measure of its use tax obligation. The
7 brief also alleged that SCE is entitled to a refund based upon taxes and fees remitted to Arizona,
8 the United States, and the Navajo Nation.
9

10 24. After a previous decision on SCE's refund request was voided by the Nevada
11 Supreme Court, the Nevada Tax Commission held open hearings on the claims for refund on
12 September 9, 2008, and December 1, 2008.
13

14 25. At the December 1, 2008, hearing the Commission voted to deny SCE's refund
15 claims.
16

17 26. On March 2, 2009, the Commission served its final written decision, dated
18 February 27, 2009, denying SCE's claims for refund (Ex. E to Plaintiff's Second Amended
19 Complaint).
20

21 27. SCE did not pay any sales tax to the State of Arizona on its purchase of the coal
22 slurry. Any tax was paid by Peabody to the state of Arizona.
23

24 28. SCE did not pay any taxes to the United States or the Navajo Nation or Hopi
25 Tribe on its purchase of coal slurry. Any tax was paid by Peabody to the state of Arizona.
26

27 29. SCE did not pay taxes to the State of Nevada imposed pursuant to Chapter 362 of
28 the Nevada Revised Statutes ("NRS").

30. SCE has not been taxed differently than any other similarly situated taxpayer on the use of coal in the state of Nevada nor any other tax payer who has had a product delivered to Nevada for use in this State.

31. SCE did not suffer any discrimination in fact in comparison to any other purchaser of coal in Nevada.

32. SCE has not suffered any injury as a result of the exemption in NRS 372.270 that would entitle it to retroactive relief.

CONCLUSIONS OF LAW

1. Nevada imposes a sales tax upon retailers for the privilege of selling tangible personal property at retail in Nevada. NRS 372.105. In addition to the sales tax, Nevada imposes a use tax upon consumers for the storage, use or other consumption of tangible personal property in Nevada. NRS 372.185 and NRS 374.190.

2. The use tax is imposed with respect to tangible personal property “. . . purchased from any [out-of-state] retailer on or after July 1, 1955, for storage, use or other consumption in [Nevada].” NRS 372.185(1).

3. The tax applies to tangible personal property which was acquired out-of-state but which would have been subject to sales tax if the sale had occurred in Nevada. NRS 372.185(2).

4. The use tax is complementary to the sales tax and generally applies when tangible personal property avoids the imposition of sales tax at a point of purchase outside of Nevada. *Nevada Tax Comm'n v. Nevada Cement Co.*, 116 Nev. 877, 8 P.3d 147 (2000). See also *Sparks Nugget, Inc. v. State of Nevada ex rel. Dep't of Taxation*, 124 Adv. Op. No. 15 (March 27, 2008) (“any non-exempt retail sales of personal property that have escaped sales tax are nonetheless taxed when the property is utilized in the state”).

1 5. SCE paid use tax pursuant to NRS 372.185 beginning in 1970 on the coal slurry.

2 6. NRS 372.185 provides:

3 1. An excise tax is hereby imposed on the storage, use or other consumption
4 in this State of tangible personal property purchased from any retailer on
5 or after July 1, 1955, for storage, use or other consumption in this State at
6 the rate of 2 percent of the sales price of the property.

7 2. The tax is imposed with respect to all property which was acquired out of
8 state in a transaction that would have been a taxable sale if it had occurred
9 within this State.

10 7. Because there is no coal mined in Nevada, any sale of coal in Nevada would
11 necessarily be subject to either sales or use tax. The transfer of title to the coal slurry took place
12 in Nevada and pursuant to the Mohave Project Coal Supply Agreements, Nevada law governs.

13 8. The fundamental objective of the dormant Commerce Clause is “preserving a
14 national market for competition undisturbed by preferential advantages conferred by a State upon
15 its residents or resident competitors.” *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997).

16 9. When challenging a state tax based on the dormant Commerce Clause, the
17 taxpayer has the burden to demonstrate that the state tax in question does, in fact, violate the
18 Commerce Clause of the United States Constitution. *Container Corp. of America v. Franchise*
19 *Tax Bd.*, 463 U.S. 159, 164 (1983).

20 10. In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), the United States
21 Supreme Court set out a test to determine whether a state tax provision violates the Commerce
22 Clause. A state tax provision will survive a Commerce Clause challenge so long as the tax: (1) is
23 applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3)
24 does not discriminate against interstate commerce; and (4) is fairly related to the services
25 26
27 28

1 provided by the state. See *Quill v. N. Dakota*, 504 U.S. 298 (1992) (quoting *Complete Auto*
2 *Transit v. Brady*).

3 11. The use tax paid by Taxpayers pursuant to NRS 372.185(1) does not violate the
4 dormant Commerce Clause under the Constitution of the United States. *Great Am. Airways v.*
5 *Nevada State Tax Comm'n*, 101 Nev. 422, 425 (1985).

6 12. The United States Supreme Court has identified the fundamental objective of the
7 dormant Commerce Clause as “preserving a national market for competition undisturbed by
8 preferential advantages conferred by a State upon its residents or resident competitors.” *Gen.*
9 *Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997). In this case, SCE has not been treated any
10 differently than any of its market competitors. Since there is no unequal treatment and
11 consequently no impediment to free trade, SCE’s claim is not within the zone of interests to be
12 protected by the Commerce Clause.

13 13. There are no facts in the record to support a finding that SCE, by paying use tax
14 on its purchase of the coal slurry, is being discriminated against in comparison to a similarly
15 situated taxpayer. To hold otherwise would be to give an unpalatable windfall to SCE.

16 14. SCE has not been subject to an illegal or improper tax that would entitle them to a
17 refund of use tax.

18 15. There is no evidence in the record that SCE’s market competitors have claimed an
19 exemption from the payment of Sales and Use tax pursuant to NRS 372.270 on the purchase of
20 coal.

21 16. Further, the Nevada Supreme Court in the *Sierra Pacific Power Company, et al*
22 case held that NRS 372.270 was not severable and that it was to be stricken down in its entirety.
23 *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev.
24 Adv. Op. 93 (Dec. 04, 2014). Therefore, it cannot be used to create an agreement that there was a
25
26
27
28

1 benefit to any Nevada mining operation that would reflect a different treatment to an in state
2 operation.

3 17. Dormant Commerce Clause case law makes clear that violations must be based on
4 actual injury and it is the burden of the taxpayer to prove the injury. In *Gregg Dyeing Co. v.*
5 *Query*, 286 U.S. 472, 481 (1932), the United States Supreme Court wrote: “Discrimination, like
6 interstate commerce itself, is a practical conception. We must deal in this matter, as in others,
7 with substantial distinctions and real injuries.” The practical effect here is that there was no
8 discrimination.
9

10 18. Further, the United States Supreme Court in *McKesson Corp. v. Div. of Alcoholic*
11 *Beverages and Tobacco, Dep’t of Bus. Regulation of Florida*, 496 U.S. 18 (1990) analyzed the
12 available remedies when a tax scheme is found to violate the dormant Commerce Clause.
13 *McKesson* dealt with a Florida liquor tax that was found to discriminate against interstate
14 commerce. The case addresses the means to address the injury suffered by a taxpayer in
15 competition with a taxpayer that received beneficial treatment.
16

17 The Court concluded that the State had options available for addressing the injury. The State
18 could refund the “difference between the tax [petitioner] paid and the tax [petitioner] would have
19 been assessed were it extended the same rate reductions that **its competitors actually received.**”
20 *Id.* at 40 (emphasis added).
21

22 Given the fact that SCE has not provided any facts to suggest that an actual competitor with
23 SCE received tax rate reductions or exemptions that caused injury to SCE, there should be no
24 applicable remedy.
25

26 19. The United States Supreme Court wrote:

27 Thus, in the absence of actual or prospective competition between the supposedly favored
28 and disfavored entities in a single market there can be no local preference, whether by express

1 discrimination against interstate commerce or undue burden upon it, to which the dormant
2 Commerce Clause may apply. The dormant Commerce Clause protects markets and participants
3 in markets, not taxpayers as such.

4 *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 300 (1997).

5 20. The Legislature enacted NRS 372.270 which provides “the gross receipts from the
6 sale of and the storage, use or other consumption in this State of, the proceeds of mines which
7 are subject to taxes levied pursuant to chapter 362 of NRS” are exempt from sales and use tax.
8 NRS Chapter 362 levies a tax on the net proceeds of minerals extracted in Nevada. *See* NRS
9 362.120 *et seq.* In other words, minerals which are subject to the net proceeds of minerals of tax
10 under NRS Chapter 362 are exempted from the sales and use tax assessed in NRS Chapter 372.
11

12 21. The exemption in NRS 372.270 is only a partial exemption that applies only to
13 the extent of actual payment of the Nevada net proceeds tax. A.G.O. 76 (June 27, 1955). The
14 Attorney General concluded “that the sales tax is placed upon that portion of the gross receipts
15 constituting the value of the product which is not taxed under the Net Proceeds of Mines Tax.”
16
17 *Id.*

18 22. The Nevada Supreme Court has ruled that sales and use tax exemptions are to be
19 narrowly construed in favor of taxability. *Shetakis Distributing Co. v. Dep’t of Taxation*, 108
20 Nev. 901, 907, 839 P.2d 1315, 1319 (1992). The language of the Nevada Constitution Article X
21 Section 5(1) and NRS 362.110¹ clearly limits the net proceeds tax, and the corresponding
22 exemption from sales and use taxes, to minerals extracted in Nevada.
23
24

25
26
27 ¹ NRS 362.110 requires that the net proceeds form be filed by “every person extracting minerals in this State . . .
28

1 23. The coal in question was mined or extracted outside of Nevada and is, therefore,
2 not subject to the net proceeds of minerals tax in Nevada and is not exempted from Nevada sales
3 and use tax by NRS 372.270, which statute has been stricken by the Nevada Supreme Court.

4 24. Because of the requirement to narrowly construe tax exemptions, SCE is required
5 to clearly show that the sales and use tax exemption of NRS 372.270 was intended to apply to
6 coal mined outside Nevada. This is not the case.

7
8 25. The Constitutional provision is not ambiguous to a reasonably informed person
9 but clearly applies only to minerals extracted in Nevada.

10 26. The Nevada Supreme Court in the *Sierra Pacific Power Company et al* case held
11 that there was no refund available to the utility company in that case because there had been no
12 actual injury. *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of*
13 *Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). Here, as in that case, SCE did not pay any
14 higher tax than did its competitors. No competitor gained a competitive advantage under the tax
15 scheme.
16

17 Although the exemption to the use tax set forth in NRS 372.270 is unconstitutional and in
18 violation of the Dormant Commerce Clause, the use tax itself is not unconstitutional. Thus, the
19 tax itself complained of was lawfully assessed. NRS 372.270 has no applicability because there
20 was no competitor that obtained an advantage thereunder; and, as such, there was no actual
21 discrimination against interstate commerce. *See Sierra Pacific Power Company, et al. v. The*
22 *State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). In fact, to not
23 charge a use tax would have given a benefit to SCE which other taxpayers did not enjoy. SCE is
24 on an even playing field with all such companies in the state of Nevada in regard to this issue.
25

26 27. SCE is not entitled to a credit for the Arizona Transaction Privilege Tax that
27 Peabody paid to the State of Arizona.
28

1 NAC 372.055 provides,

2 In determining the amount of use tax that is due from a taxpayer, the Department will
3 allow a credit toward the amount due to this State in an amount equal to sales tax legitimately
4 paid for the same purchase of tangible personal property to a state or local government outside of
5 Nevada, upon proof of payment deemed satisfactory to the Department. Here there was no “same
6 purchase.” SCE paid no direct tax to the state of Arizona.
7

8 In the contract between the parties SCE agreed to reimburse Peabody as part of the sale
9 price the taxes that Peabody paid to Arizona. This reimbursement was a part of the purchase
10 price SCE paid to Peabody for the coal slurry. The State of Nevada was entitled to collect use tax
11 measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08
12 (3d ed. 2013).
13

14 Even assuming that SCE was entitled to a credit for sales tax Peabody paid, this credit
15 does not apply to the Arizona Transaction Privilege Tax because in this context it is not a sales
16 tax, it is levied on a seller’s, Peabody’s, gross receipts rather than each individual sale and is for
17 the privilege of doing business in the State of Arizona. *Arizona Dep’t. of Revenue v. Robinson’s*
18 *Hardware*, 721 P.2d 137, 141 (Ariz. Ct. App. 1986).
19

20 28. SCE may not exclude taxes Peabody paid to the federal government from the
21 measure of use tax. In the contract between the parties SCE agreed to reimburse Peabody for
22 taxes and fees that Peabody paid to the federal government. This reimbursement was a part of the
23 purchase price SCE paid to Peabody for the coal slurry. Peabody was the actual taxpayer, not
24 SCE. SCE paid no direct tax to the federal government. The State of Nevada was entitled to
25 collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE
26 TAXATION, ¶ 17.08 (3d ed. 2013).
27
28

1 29. SCE claims that the federal taxes should not have been included in the sales price
2 subject to Nevada use tax under NRS 372.025. Prior to its amendment NRS 372.025 provided,

3 1. “Gross receipts” means the total amount of the sale or lease or rental price, as
4 the case may be, of the retail sales of retailers, valued in money, whether received in money or
5 otherwise, without any deduction on account of any of the following:

6 (a) The cost of the property sold. However, in accordance with such rules
7 and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer
8 has purchased property for some other purpose than resale, has reimbursed his vendor for tax
9 which the vendor is required to pay to the State or has paid the use tax with respect to the
10 property, and has resold the property before making any use of the property other than retention,
11 demonstration or display while holding it for sale in the regular course of business. If such a
12 deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect
13 to the sale of the property.
14

15 (b) The cost of the materials used, labor or service cost, interest paid,
16 losses or any other expense.
17

18 (c) The cost of transportation of the property before its sale to the
19 purchaser.
20

21 2. The total amount of the sale or lease or rental price includes all of the
22 following:

23 (a) Any services that are a part of the sale.
24

25 (b) All receipts, cash, credits and property of any kind.
26

27 (c) Any amount for which credit is allowed by the seller to the purchaser.
28

 3. “Gross receipts” does not include any of the following:

 (a) Cash discounts allowed and taken on sales.

1 (b) The sale price of property returned by customers when the full sale
2 price is refunded either in cash or credit, but this exclusion does not apply in any instance when
3 the customer, in order to obtain the refund, is required to purchase other property at a price
4 greater than the amount charged for the property that is returned.

5 (c) The price received for labor or services used in installing or applying
6 the property sold.

7 (d) The amount of any tax, not including any manufacturers' or
8 importers' excise tax, imposed by the United States upon or with respect to retail sales, whether
9 imposed upon the retailer or the consumer.

10 4. For purposes of the sales tax, if the retailers establish to the satisfaction of
11 the Tax Commission that the sales tax has been added to the total amount of the sale price and
12 has not been absorbed by them, the total amount of the sale price shall be deemed to be the
13 amount received exclusive of the tax imposed.

14 In the contract between the parties, SCE agreed to reimburse Peabody for taxes that
15 Peabody paid to the federal government. This reimbursement was a part of the price SCE paid to
16 Peabody for the coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of
17 Nevada was entitled to collect sue tax measured by the entire price of the coal slurry.

18 HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

19 Further, the federal taxes paid by Peabody do not fall within the exclusion in NRS
20 372.025(3)(d) because the taxes did not concern retail sales. The fee imposed by the Surface
21 Mining Control & Reclamation Act of 1977 is an assessment or excise tax on all coal produced
22 for sale by surface or underground mining. *United States v. Tri-No Enterprises, Inc.*, 819 F.2d
23 154, 158 (7th Cir. 1987). The tax imposed by the Black Lung Benefits Revenue Act of 1977 is
24 also an excise tax. *See e.g. Warrior Coal Mining Co. v. U.S.*, 72 F.Supp. 2d 747 (W.D. Ky. 1999)

1 and *Costain Coal Inc. v. U.S.*, 126 F.3d 1437 (C.A. Fed. 1997). Since the federal taxes Peabody
2 paid pursuant to the Surface Mining Control & Reclamation Act of 1977 and the Black Lung
3 Benefits Revenue Act of 1977 are excise taxes and not retail sales taxes, the exclusion does not
4 apply.

5 30. SCE is not entitled to exclude from the measure of use tax taxes Peabody and/or
6 Black Mesa paid to the Navajo Nation and Hopi tribe. In the contract between the parties SCE
7 agreed to reimburse Peabody for taxes that Peabody and/or Black Mesa paid to the Navajo nation
8 and/or the Hopi Tribe. This reimbursement was a part of the price SCE paid to Peabody for the
9 coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of Nevada was entitled
10 to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE
11 TAXATION, ¶ 17.08 (3d ed. 2013)
12
13

14 As set forth above, NRS 372.065(3)(d) excludes, “the amount of any tax, not including
15 any manufacturers’ or importers’ excise tax, imposed by the United States upon or with respect
16 to retail sales, whether imposed upon the retailer or the consumer” from the definition of sales
17 price. The Navajo Nation Business Activity Tax and Possessor Interest Tax do not fall within
18 this exclusion because these are not taxes imposed with respect to retail sales. The Business
19 Activity Tax imposed by the Navajo Nation is a tax on the privilege of doing business on the
20 Navajo Nation lands. *Pittsburg & Midway Coal Mining Co., v. Watchman*, 52 F.3d 1531, 1535
21 (10th Cir. 1995). The Possessory Interest Tax levied by the Navajo Nation is based on the value
22 of property leased on tribal lands. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457, 468 (9th Cir.
23 1996). These are not retail sales taxes and there is no basis for not including them in the sales
24 price of the property used to compute the measure of the use tax.
25
26

27 31. SCE is not entitled to exclude from the measure of use tax taxes paid to the state
28 of Arizona. SCE argues that it should not have paid use tax on amounts paid to Peabody for the

1 Arizona Ad Valorem Tax and the Arizona Transaction Privilege Tax, “because such amounts are
2 not includable in the sales price subject to Nevada use tax under NRS 372.065.” This argument
3 fails because these taxes are not taxes on retail sales.

4 In other words, sales price does not include a tax imposed on a retail sale. The exclusion
5 does not apply to Peabody’s sales of coal to SCE because the taxes Peabody paid were not taxes
6 on retail sales. The Arizona Transaction Privilege is not a tax on a retail sale. *See Arizona Dept.*
7 *of Revenue v. Robinson’s Hardware*, 721 P.2d 137 (Ariz. App. 1986); *In re Inselman*, 334 B.R.
8 267 (D.Ariz., 2005); and, *City of Phoenix v. West Publishing Co.*, 712 P.2d 944, 946-47 (Ariz.
9 Ct. App. 1986). The Arizona Ad Valorem Tax is also not a sales tax; rather, it is a property tax
10 paid to the State of Arizona based upon the assessed valuation of the property. *Bahr v. State of*
11 *Arizona*, 985 P.2d 564, 565 (Ariz. Ct. App. 1999).
12
13

14 As such SCE may not exclude from the measure of use tax, taxes that Peabody paid to the
15 state of Arizona.

16 32. SCE is not entitled to exclude transportation costs from the measure of use tax.

17 Prior to its amendment in 2002 NAC 372.101 provided,
18

- 19 1. Except as otherwise provided in subsection 3, any charge for freight,
20 transportation or delivery included in the sale of tangible personal property is
21 subject to sales and use taxes.
- 22 2. Any charge for freight, transportation or delivery that appears on the invoice of
23 the seller is part of the selling price even if stated separately and is not deductible
24 from the price of the property as shown on the invoice.
- 25 3. A charge for freight, transportation or delivery is not taxable if:
26 a. It is invoiced to the purchaser by the freight carrier; and
27 b. Title to the property passes before shipment.
28

1 A charge for freight, transportation or delivery that is not connected with the sale of
2 tangible personal property is a charge for a service and is not subject to sales and use taxes.

3 Transportation costs were included in the calculation of use tax at the time SCE incurred
4 the tax liability. Therefore, SCE is not entitled to exclude from the sales price the amounts it paid
5 for transportation costs.

6
7 33. Based on the evidence before the court, SCE is not entitled to any refund on its
8 payment use tax on its consumption of a coal slurry product at the Mohave Generating Station in
9 Nevada.

10 34. Based on this decision, this Court does not have to reach a decision on whether
11 the coal lost its identity when it became coal slurry with the application of the transformation
12 process.
13


14 DECISION

15 Based on the foregoing and good cause appearing,

16 IT IS HEREBY ORDERED that the relief prayed for by the Plaintiff in its Second
17 Amended Complaint is DENIED and judgment is awarded to the Defendant.
18

19 **IT IS SO ORDERED.**

20 Dated this 17th day of December, 2014.

21
22
23 
24 JAMES T. RUSSELL
25 DISTRICT JUDGE
26
27
28

CERTIFICATE OF MAILING

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 7th day of December, 2014, I served the foregoing to counsel of record, as follows:

☒ By depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid, addressed as follows:


Norman Azevedo, Esq.
405 North Nevada Street
Carson City, Nevada 89703

Charles C. Read, Esq.
Jones Day
555 S. Flower Street,
Fiftieth Floor
Los Angeles, CA 90071-2300

Gina C. Session, Esq.
Andrea Nichols, Esq.
Chief Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701

☒ By emailing a copy thereof addressed as follows:

Gina Session: gsession@ag.nv.gov
Andrea Nichols: anichols@ag.nv.gov
Norman Azevedo: norm@nevadataxlawyers.com
Charles C. Read: ccread@jonesday.com


Samantha Peiffer, Esq.
Law Clerk, Dept. 1

Case No: 09 OC 00016 1B

Dept. No: I

REC'D & FILED

2015 JAN 30 AM 10:00

SUSAN HERRIWETHER
CLERK

BY DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE CARSON CITY**

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

STATE OF NEVADA, EX REL.
DEPARTMENT OF TAXATION,

Defendant.

**ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMEND FINDINGS
OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT OR DIRECT
ENTRY OF A NEW JUDGMENT**

This matter is before this Court on Southern California Edison's Motion to Amend Findings of Fact and Conclusions of Law and to Amend Judgment or Direct Entry of a New Judgment, filed herein on December 24, 2014, and Defendant's Opposition thereto filed January 9, 2015. Southern California Edison did not file a Reply but did file a Request to Submit on January 15, 2015.

In its Motion, Southern California Edison argues that this Court incorrectly applied the Nevada Supreme Court's decision in *Sierra Pac. Power v. State Dep't of Tax*, 130 Nev. Adv. Op. 93, 338 P.3d 1244 (2014) to the facts of this case. The Motion further requests that this Court amend its Decision to include certain evidence and argument introduced by Plaintiff, Southern California Edison, at trial. Lastly, Southern California Edison asks that the Decision be amended so that it does not refer to "coal slurry" as a "coal slurry product." Southern California Edison does not indicate what term should be utilized instead.

This Court has reviewed the Amended Findings of Fact, Conclusions of Law and Decision entered December 17, 2014, and finds that it correctly applied the Nevada Supreme

1 Court's decision in *Sierra Pac. Power* and further that the findings are sufficient to indicate the
2 factual basis for the Court's ultimate decision to deny Southern California Edison the relief
3 prayed for in its Second Amended Complaint and to award judgment in favor of Defendant,
4 Nevada Department of Taxation.

5 Therefore, good cause appearing, IT IS HEREBY ORDERED that Southern California
6 Edison's Motion to Amend Findings of Fact and Conclusions of Law and to Amend Judgment
7 or Direct Entry of a new Judgment is DENIED.

8 **IT IS SO ORDERED** this 30th day of January, 2015.

9
10 
11 JAMES T. RUSSELL
12 DISTRICT COURT JUDGE

13 Submitted by:
14 ADAM PAUL LAXALT
15 Attorney General
16 GINA C. SESSION
17 Chief Deputy Attorney General
18 Nevada Bar No. 5493
19 100 North Carson Street
20 Carson City, Nevada 89701-4717
21 Phone: (775) 684-1207
22 Fax: (775) 684-1156
23 Attorneys for Defendant
24 Nevada Department of Taxation
25
26
27
28
29

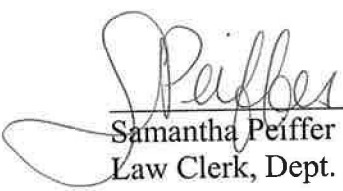
CERTIFICATE OF MAILING

I hereby certify that on the 30th day of January, 2015, I served a copy of the foregoing
by placing the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman J. Azevedo, Esq.
405 N. Nevada Street
Carson City, NV 89703

Charles C. Read, Esq.
Jones Day
555 South Flower Street
50th Floor
Los Angeles, CA 90071-2300

Gina C. Session, Esq.
Andrea Nichols, Esq.
100 N. Carson Street
Carson City, NV 89701-4717


Samantha Peiffer
Law Clerk, Dept. 1

ORIGINAL

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ALAN GLOVER
CLERK
BY

CATHERINE CORTEZ MASTO
Nevada Attorney General
GINA C. SESSION
Nevada Bar No. 5493
100 N. Carson Street
Carson City, Nevada 89710-4717
775 684-1207
Attorneys for Defendant
Nevada Dept. of Taxation

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

STATE OF NEVADA ex rel. DEPARTMENT
OF TAXATION,

Defendant.)

Case No. 09 OC 00016 1B
Department No. 1


**NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW and
DECISION**

PLEASE TAKE NOTICE that the **AMENDED FINDINGS OF FACT, CONCLUSIONS
OF LAW, and DECISION**, was signed by Judge Russell on December 17, 2014, and was filed
with this Court on December 17, 2014. A true and correct copy of the **AMENDED FINDINGS
OF FACT, CONCLUSIONS OF LAW, and DECISION**, is attached hereto as Exhibit 1.

Dated: December 17, 2014.

CATHERINE CORTEZ MASTO
Attorney General

By:


GINA C. SESSION
Chief Deputy Attorney General
Nevada State Bar No. 5493
100 N. Carson Street
Carson City, Nevada 89701-4717
Attorneys for Defendant

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717


CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on December 17, 2014, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW and DECISION** by mailing a copy thereof in the United States Mail, postage paid, fully addressed as follows:

Norman J. Azevedo, Esq.
405 North Nevada Street
Carson City, NV 89703

Charles C. Reed, Esq.
Joe Ward, Esq.
Jones Day
555 S. Flower Street, 50th Floor
Los Angeles, CA 90071

Dated: December 17, 2014.


An Employee of the State of Nevada
Office of the Attorney General

1 **INDEX OF EXHIBIT TO NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT,**
2 **CONCLUSIONS OF LAW and DECISION**

3

Exhibit No.	Description of Exhibit	Page(s)
1	Amended Findings of Fact, Conclusions of Law, and Decision	18

4

EXHIBIT 1

EXHIBIT 1

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ALAN GLOVER

BY  CLERK
DEPUTY

Case No.: 09 OC 00016 1B

Dept. No.: 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL.
DEPARTMENT OF TAXATION,

Defendant.

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

This matter is before this Court based on a Second Amended Complaint filed by Plaintiff, Southern California Edison, as to a decision rendered by Defendant, The State of Nevada, ex rel, Department of Taxation. An eight day bench trial was held January 21-29, 2014. An Order Staying Determination Pending Decision by Nevada Supreme Court was entered on April 30, 2014, pending a decision in *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93, which was rendered on December 4, 2014. Based on this decision, the following Findings of Fact and Conclusions of Law are entered in this case. An Amended Findings of Fact, Conclusions of Law, and Decision is issued by this Court pursuant to NRCPP Rule 60(a), to clarify that this Court heard this matter on the Second Amended Complaint filed as an independent action, and on a Trial De Novo standard, not as a Petition for Judicial Review, based on the decision by the Nevada Supreme Court in *Southern California Edison v. First Judicial District Court*, 127 Nev. Adv. Op. 22 (2011).

FINDINGS OF FACT

1
2 1. Defendant State of Nevada *ex rel.* Department of Taxation (the "Department") is
3 an agency of the executive branch of the State of Nevada that is charged with the administration
4 and enforcement of the tax laws set forth in Title 32 of the Nevada Revised Statutes, including
5 chapters 372 and 374 of the Nevada Revised Statutes governing sales and use taxes and local
6 school support taxes, respectively.
7

8 2. The Plaintiff, Southern California Edison ("SCE") is a regulated public utility that
9 operated the Mohave Generating Station ("Mohave"), a coal fired power plant in Clark County,
10 Nevada, from 1970 to 2005. SCE owned a majority interest in Mohave.
11

12 3. As a result of an agreement with the Department of the Interior, SCE purchased
13 coal in Arizona exclusively from Peabody Western Coal Company ("Peabody") pursuant to
14 Mohave Coal Supply Agreement, dated January 6, 1967, and the Amended Mohave Project
15 Supply Agreement, dated May 26, 1976, wherein Peabody is the seller and Mohave co-owners
16 are the buyers. In exchange for the agreement to purchase coal mined on Indian Reservations in
17 Arizona, SCE was able to purchase the water necessary to operate Mohave from the Colorado
18 River Commission.
19

20 4. Peabody obtained the coal from the Black Mesa Mine located on Navajo and
21 Hopi Indian reservations in Arizona. Peabody operated the Black Mesa Mine through lease
22 agreements with the Navajo and Hopi Tribes.
23

24 5. SCE determined that the most inexpensive means to transport the coal from
25 Arizona to Nevada was by means of a pipeline.
26

27 6. As part of the Coal Supply Agreement, Peabody entered into a Coal Slurry
28 Pipeline Agreement with Black Mesa Pipeline ("BMP") to process the coal into a coal slurry that
met SCE's specifications and could be transported to Mohave through the pipeline.

1 7. The tangible personal property purchased by SCE was the coal slurry product.

2 8. BMP operated the Coal Slurry Preparation Plant and the pipeline that transported
3 the coal slurry to Mohave. Before delivery of the coal to BMP, Peabody processed the run-of-
4 mine coal by separating rock in a rotary breaker lowering the ash content and reducing the coal
5 to a 2" x 0" size. At the Coal Slurry Preparation Plant, the coal was further crushed by various
6 means to a certain size and blended with water to create coal slurry that could then be transported
7 through the pipeline.
8

9 9. The processing by Peabody and BMP created a coal slurry that met SCE's
10 transportation requirements.

11 10. The price SCE paid Peabody for the coal slurry is set forth in the Amended
12 Mohave Project Coal Supply Agreement, Sec. 6. The price for the coal slurry is paid for the coal
13 delivered to the Mohave Project and is based on the mine price, the price for transportation, and
14 all sale, use, production and severance taxes paid by the seller, mainly Peabody. Thus, Peabody
15 is the entity that paid all taxes, not SCE.
16

17 11. The coal slurry was transported more than 270 miles through a pipeline to the
18 Mohave Generating Station.
19

20 12. Peabody retained title to the coal when it was transferred to BMP for processing
21 and transportation. After processing and transportation by BMP, the sales transaction between
22 Peabody and SCE took place in Nevada when title to the coal slurry passed to SCE upon delivery
23 at Mohave.
24

25 13. Risk of loss for the coal slurry and water passed from Peabody to SCE at the same
26 time title was passed at the receiving facilities of the Mohave Generating Station in Nevada.

27 14. Because Peabody did not have any physical presence in Nevada, SCE paid Use
28 Tax to Nevada for the coal slurry beginning in 1970.

1 15. SCE de-watered the coal and burned it to generate electricity. SCE further
2 pulverized the coal into a powder that could be blown into the burners, it did not have the means
3 at Mohave to take run-of-mine coal and process it for burning as fuel. SCE also used the water
4 from the coal slurry for cooling at the plant.

5 16. SCE could not purchase coal in Nevada because there are no commercially viable
6 deposits of coal in Nevada and there were no coal mines operating in Nevada during the 1998 to
7 2000 period of time at issue in this case. There is no record that any coal mine in Nevada has
8 been subject to the Net Proceeds of Minerals tax or that any coal miner or supplier has ever made
9 a sale of coal in Nevada that was not subject to either sales or use tax.
10

11 17. Peabody did not compete with any Nevada companies that mined coal in Nevada.

12 18. Peabody did not compete with any oil, natural gas, or geothermal producers in
13 Nevada.
14

15 19. There is no evidence that any coal transaction in Nevada was exempt from sales
16 or use tax pursuant to NRS 372.270.

17 20. Beginning in April 2001, SCE filed claims for a partial refund filed with the
18 Department of Taxation for the period between March 1998 and December 2000. This claim was
19 limited to a request for credit toward Arizona sales tax paid by SCE to Peabody.
20

21 21. On January 31, 2003, after the Department denied SCE's claims for refund for the
22 time period between March 1998 and December 1999, SCE submitted a Petition for
23 Redetermination limited to those periods arguing for the first time that its consumption of coal at
24 the Mohave Plant was exempt based on the dormant Commerce Clause and that the taxable
25 measure should not have included SMCRA and Black Lung payments, but SCE did not provide
26 amended returns.
27
28

1 22. Thereafter, on October 27, 2003, SCE submitted a letter with revised returns
2 referring to new claims but failed to articulate the grounds for its revised claims.

3 23. In November of 2003, SCE submitted a brief to the Nevada Tax Commission
4 alleging, in the alternative, that either: (1) SCE's consumption of coal at the Mohave Plant was
5 entirely exempt from Nevada's use tax; or (2) SCE is entitled to a refund based on its inadvertent
6 inclusion of royalties and transportation charges in the measure of its use tax obligation. The
7 brief also alleged that SCE is entitled to a refund based upon taxes and fees remitted to Arizona,
8 the United States, and the Navajo Nation.
9

10 24. After a previous decision on SCE's refund request was voided by the Nevada
11 Supreme Court, the Nevada Tax Commission held open hearings on the claims for refund on
12 September 9, 2008, and December 1, 2008.
13

14 25. At the December 1, 2008, hearing the Commission voted to deny SCE's refund
15 claims.
16

17 26. On March 2, 2009, the Commission served its final written decision, dated
18 February 27, 2009, denying SCE's claims for refund (Ex. E to Plaintiff's Second Amended
19 Complaint).
20

21 27. SCE did not pay any sales tax to the State of Arizona on its purchase of the coal
22 slurry. Any tax was paid by Peabody to the state of Arizona.
23

24 28. SCE did not pay any taxes to the United States or the Navajo Nation or Hopi
25 Tribe on its purchase of coal slurry. Any tax was paid by Peabody to the state of Arizona.
26

27 29. SCE did not pay taxes to the State of Nevada imposed pursuant to Chapter 362 of
28 the Nevada Revised Statutes ("NRS").

1 5. SCE paid use tax pursuant to NRS 372.185 beginning in 1970 on the coal slurry.

2 6. NRS 372.185 provides:

3 1. An excise tax is hereby imposed on the storage, use or other consumption
4 in this State of tangible personal property purchased from any retailer on
5 or after July 1, 1955, for storage, use or other consumption in this State at
6 the rate of 2 percent of the sales price of the property.

7 2. The tax is imposed with respect to all property which was acquired out of
8 state in a transaction that would have been a taxable sale if it had occurred
9 within this State.

10 7. Because there is no coal mined in Nevada, any sale of coal in Nevada would
11 necessarily be subject to either sales or use tax. The transfer of title to the coal slurry took place
12 in Nevada and pursuant to the Mohave Project Coal Supply Agreements, Nevada law governs.

13 8. The fundamental objective of the dormant Commerce Clause is "preserving a
14 national market for competition undisturbed by preferential advantages conferred by a State upon
15 its residents or resident competitors." *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997).

16 9. When challenging a state tax based on the dormant Commerce Clause, the
17 taxpayer has the burden to demonstrate that the state tax in question does, in fact, violate the
18 Commerce Clause of the United States Constitution. *Container Corp. of America v. Franchise*
19 *Tax Bd.*, 463 U.S. 159, 164 (1983).

20 10. In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), the United States
21 Supreme Court set out a test to determine whether a state tax provision violates the Commerce
22 Clause. A state tax provision will survive a Commerce Clause challenge so long as the tax: (1) is
23 applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3)
24 does not discriminate against interstate commerce; and (4) is fairly related to the services
25 provided.

1 provided by the state. See *Quill v. N. Dakota*, 504 U.S. 298 (1992) (quoting *Complete Auto*
2 *Transit v. Brady*).

3 11. The use tax paid by Taxpayers pursuant to NRS 372.185(1) does not violate the
4 dormant Commerce Clause under the Constitution of the United States. *Great Am. Airways v.*
5 *Nevada State Tax Comm'n*, 101 Nev. 422, 425 (1985).

6 12. The United States Supreme Court has identified the fundamental objective of the
7 dormant Commerce Clause as “preserving a national market for competition undisturbed by
8 preferential advantages conferred by a State upon its residents or resident competitors.” *Gen.*
9 *Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997). In this case, SCE has not been treated any
10 differently than any of its market competitors. Since there is no unequal treatment and
11 consequently no impediment to free trade, SCE’s claim is not within the zone of interests to be
12 protected by the Commerce Clause.
13

14 13. There are no facts in the record to support a finding that SCE, by paying use tax
15 on its purchase of the coal slurry, is being discriminated against in comparison to a similarly
16 situated taxpayer. To hold otherwise would be to give an unpalatable windfall to SCE.
17

18 14. SCE has not been subject to an illegal or improper tax that would entitle them to a
19 refund of use tax.
20

21 15. There is no evidence in the record that SCE’s market competitors have claimed an
22 exemption from the payment of Sales and Use tax pursuant to NRS 372.270 on the purchase of
23 coal.
24

25 16. Further, the Nevada Supreme Court in the *Sierra Pacific Power Company, et al*
26 case held that NRS 372.270 was not severable and that it was to be stricken down in its entirety.
27 *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev.
28 Adv. Op. 93 (Dec. 04, 2014). Therefore, it cannot be used to create an agreement that there was a

benefit to any Nevada mining operation that would reflect a different treatment to an in state operation.

17. Dormant Commerce Clause case law makes clear that violations must be based on actual injury and it is the burden of the taxpayer to prove the injury. In *Gregg Dyeing Co. v. Query*, 286 U.S. 472, 481 (1932), the United States Supreme Court wrote: "Discrimination, like interstate commerce itself, is a practical conception. We must deal in this matter, as in others, with substantial distinctions and real injuries." The practical effect here is that there was no discrimination.

18. Further, the United States Supreme Court in *McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco, Dep't of Bus. Regulation of Florida*, 496 U.S. 18 (1990) analyzed the available remedies when a tax scheme is found to violate the dormant Commerce Clause. *McKesson* dealt with a Florida liquor tax that was found to discriminate against interstate commerce. The case addresses the means to address the injury suffered by a taxpayer in competition with a taxpayer that received beneficial treatment.

The Court concluded that the State had options available for addressing the injury. The State could refund the "difference between the tax [petitioner] paid and the tax [petitioner] would have been assessed were it extended the same rate reductions that **its competitors actually received.**" *Id.* at 40 (emphasis added).

Given the fact that SCE has not provided any facts to suggest that an actual competitor with SCE received tax rate reductions or exemptions that caused injury to SCE, there should be no applicable remedy.

19. The United States Supreme Court wrote:

Thus, in the absence of actual or prospective competition between the supposedly favored and disfavored entities in a single market there can be no local preference, whether by express

1 discrimination against interstate commerce or undue burden upon it, to which the dormant
2 Commerce Clause may apply. The dormant Commerce Clause protects markets and participants
3 in markets, not taxpayers as such.

4 *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 300 (1997).

5 20. The Legislature enacted NRS 372.270 which provides “the gross receipts from the
6 sale of and the storage, use or other consumption in this State of, the proceeds of mines which
7 are subject to taxes levied pursuant to chapter 362 of NRS” are exempt from sales and use tax.
8 NRS Chapter 362 levies a tax on the net proceeds of minerals extracted in Nevada. *See* NRS
9 362.120 *et seq.* In other words, minerals which are subject to the net proceeds of minerals of tax
10 under NRS Chapter 362 are exempted from the sales and use tax assessed in NRS Chapter 372.
11

12 21. The exemption in NRS 372.270 is only a partial exemption that applies only to
13 the extent of actual payment of the Nevada net proceeds tax. A.G.O. 76 (June 27, 1955). The
14 Attorney General concluded “that the sales tax is placed upon that portion of the gross receipts
15 constituting the value of the product which is not taxed under the Net Proceeds of Mines Tax.”
16 *Id.*
17

18 22. The Nevada Supreme Court has ruled that sales and use tax exemptions are to be
19 narrowly construed in favor of taxability. *Shetakis Distributing Co. v. Dep’t of Taxation*, 108
20 Nev. 901, 907, 839 P.2d 1315, 1319 (1992). The language of the Nevada Constitution Article X
21 Section 5(1) and NRS 362.110¹ clearly limits the net proceeds tax, and the corresponding
22 exemption from sales and use taxes, to minerals extracted in Nevada.
23
24

25
26
27 ¹ NRS 362.110 requires that the net proceeds form be filed by “every person extracting minerals in this State . . .
28

1 23. The coal in question was mined or extracted outside of Nevada and is, therefore,
2 not subject to the net proceeds of minerals tax in Nevada and is not exempted from Nevada sales
3 and use tax by NRS 372.270, which statute has been stricken by the Nevada Supreme Court.

4 24. Because of the requirement to narrowly construe tax exemptions, SCE is required
5 to clearly show that the sales and use tax exemption of NRS 372.270 was intended to apply to
6 coal mined outside Nevada. This is not the case.

7 25. The Constitutional provision is not ambiguous to a reasonably informed person
8 but clearly applies only to minerals extracted in Nevada.

9 26. The Nevada Supreme Court in the *Sierra Pacific Power Company et al* case held
10 that there was no refund available to the utility company in that case because there had been no
11 actual injury. *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of*
12 *Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). Here, as in that case, SCE did not pay any
13 higher tax than did its competitors. No competitor gained a competitive advantage under the tax
14 scheme.

15 Although the exemption to the use tax set forth in NRS 372.270 is unconstitutional and in
16 violation of the Dormant Commerce Clause, the use tax itself is not unconstitutional. Thus, the
17 tax itself complained of was lawfully assessed. NRS 372.270 has no applicability because there
18 was no competitor that obtained an advantage thereunder; and, as such, there was no actual
19 discrimination against interstate commerce. *See Sierra Pacific Power Company, et al. v. The*
20 *State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). In fact, to not
21 charge a use tax would have given a benefit to SCE which other taxpayers did not enjoy. SCE is
22 on an even playing field with all such companies in the state of Nevada in regard to this issue.

23 27. SCE is not entitled to a credit for the Arizona Transaction Privilege Tax that
24 Peabody paid to the State of Arizona.

1 NAC 372.055 provides,

2 In determining the amount of use tax that is due from a taxpayer, the Department will
3 allow a credit toward the amount due to this State in an amount equal to sales tax legitimately
4 paid for the same purchase of tangible personal property to a state or local government outside of
5 Nevada, upon proof of payment deemed satisfactory to the Department. Here there was no "same
6 purchase." SCE paid no direct tax to the state of Arizona.
7

8 In the contract between the parties SCE agreed to reimburse Peabody as part of the sale
9 price the taxes that Peabody paid to Arizona. This reimbursement was a part of the purchase
10 price SCE paid to Peabody for the coal slurry. The State of Nevada was entitled to collect use tax
11 measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08
12 (3d ed. 2013).
13

14 Even assuming that SCE was entitled to a credit for sales tax Peabody paid, this credit
15 does not apply to the Arizona Transaction Privilege Tax because in this context it is not a sales
16 tax, it is levied on a seller's, Peabody's, gross receipts rather than each individual sale and is for
17 the privilege of doing business in the State of Arizona. *Arizona Dep't. of Revenue v. Robinson's*
18 *Hardware*, 721 P.2d 137, 141 (Ariz. Ct. App. 1986).
19

20 28. SCE may not exclude taxes Peabody paid to the federal government from the
21 measure of use tax. In the contract between the parties SCE agreed to reimburse Peabody for
22 taxes and fees that Peabody paid to the federal government. This reimbursement was a part of the
23 purchase price SCE paid to Peabody for the coal slurry. Peabody was the actual taxpayer, not
24 SCE. SCE paid no direct tax to the federal government. The State of Nevada was entitled to
25 collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE
26 TAXATION, ¶ 17.08 (3d ed. 2013).
27
28

1 29. SCE claims that the federal taxes should not have been included in the sales price
2 subject to Nevada use tax under NRS 372.025. Prior to its amendment NRS 372.025 provided,

3 1. "Gross receipts" means the total amount of the sale or lease or rental price, as
4 the case may be, of the retail sales of retailers, valued in money, whether received in money or
5 otherwise, without any deduction on account of any of the following:

6 (a) The cost of the property sold. However, in accordance with such rules
7 and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer
8 has purchased property for some other purpose than resale, has reimbursed his vendor for tax
9 which the vendor is required to pay to the State or has paid the use tax with respect to the
10 property, and has resold the property before making any use of the property other than retention,
11 demonstration or display while holding it for sale in the regular course of business. If such a
12 deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect
13 to the sale of the property.

14 (b) The cost of the materials used, labor or service cost, interest paid,
15 losses or any other expense.

16 (c) The cost of transportation of the property before its sale to the
17 purchaser.

18 2. The total amount of the sale or lease or rental price includes all of the
19 following:

20 (a) Any services that are a part of the sale.

21 (b) All receipts, cash, credits and property of any kind.

22 (c) Any amount for which credit is allowed by the seller to the purchaser.

23 3. "Gross receipts" does not include any of the following:

24 (a) Cash discounts allowed and taken on sales.

1 (b) The sale price of property returned by customers when the full sale
2 price is refunded either in cash or credit, but this exclusion does not apply in any instance when
3 the customer, in order to obtain the refund, is required to purchase other property at a price
4 greater than the amount charged for the property that is returned.

5 (c) The price received for labor or services used in installing or applying
6 the property sold.

7 (d) The amount of any tax, not including any manufacturers' or
8 importers' excise tax, imposed by the United States upon or with respect to retail sales, whether
9 imposed upon the retailer or the consumer.

10 4. For purposes of the sales tax, if the retailers establish to the satisfaction of
11 the Tax Commission that the sales tax has been added to the total amount of the sale price and
12 has not been absorbed by them, the total amount of the sale price shall be deemed to be the
13 amount received exclusive of the tax imposed.

14 In the contract between the parties, SCE agreed to reimburse Peabody for taxes that
15 Peabody paid to the federal government. This reimbursement was a part of the price SCE paid to
16 Peabody for the coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of
17 Nevada was entitled to collect sue tax measured by the entire price of the coal slurry.
18 HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

19 Further, the federal taxes paid by Peabody do not fall within the exclusion in NRS
20 372.025(3)(d) because the taxes did not concern retail sales. The fee imposed by the Surface
21 Mining Control & Reclamation Act of 1977 is an assessment or excise tax on all coal produced
22 for sale by surface or underground mining. *United States v. Tri-No Enterprises, Inc.*, 819 F.2d
23 154, 158 (7th Cir. 1987). The tax imposed by the Black Lung Benefits Revenue Act of 1977 is
24 also an excise tax. *See e.g. Warrior Coal Mining Co. v. U.S.*, 72 F.Supp. 2d 747 (W.D. Ky. 1999)

1 and *Costain Coal Inc. v. U.S.*, 126 F.3d 1437 (C.A. Fed. 1997). Since the federal taxes Peabody
2 paid pursuant to the Surface Mining Control & Reclamation Act of 1977 and the Black Lung
3 Benefits Revenue Act of 1977 are excise taxes and not retail sales taxes, the exclusion does not
4 apply.

5 30. SCE is not entitled to exclude from the measure of use tax taxes Peabody and/or
6 Black Mesa paid to the Navajo Nation and Hopi tribe. In the contract between the parties SCE
7 agreed to reimburse Peabody for taxes that Peabody and/or Black Mesa paid to the Navajo nation
8 and/or the Hopi Tribe. This reimbursement was a part of the price SCE paid to Peabody for the
9 coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of Nevada was entitled
10 to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE
11 TAXATION, ¶ 17.08 (3d ed. 2013)

12
13
14 As set forth above, NRS 372.065(3)(d) excludes, “the amount of any tax, not including
15 any manufacturers’ or importers’ excise tax, imposed by the United States upon or with respect
16 to retail sales, whether imposed upon the retailer or the consumer” from the definition of sales
17 price. The Navajo Nation Business Activity Tax and Possessor Interest Tax do not fall within
18 this exclusion because these are not taxes imposed with respect to retail sales. The Business
19 Activity Tax imposed by the Navajo Nation is a tax on the privilege of doing business on the
20 Navajo Nation lands. *Pittsburg & Midway Coal Mining Co., v. Watchman*, 52 F.3d 1531, 1535
21 (10th Cir. 1995). The Possessory Interest Tax levied by the Navajo Nation is based on the value
22 of property leased on tribal lands. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457, 468 (9th Cir.
23 1996). These are not retail sales taxes and there is no basis for not including them in the sales
24 price of the property used to compute the measure of the use tax.

25
26
27 31. SCE is not entitled to exclude from the measure of use tax taxes paid to the state
28 of Arizona. SCE argues that it should not have paid use tax on amounts paid to Peabody for the

1 Arizona Ad Valorem Tax and the Arizona Transaction Privilege Tax, "because such amounts are
2 not includable in the sales price subject to Nevada use tax under NRS 372.065." This argument
3 fails because these taxes are not taxes on retail sales.

4 In other words, sales price does not include a tax imposed on a retail sale. The exclusion
5 does not apply to Peabody's sales of coal to SCE because the taxes Peabody paid were not taxes
6 on retail sales. The Arizona Transaction Privilege is not a tax on a retail sale. *See Arizona Dept.*
7 *of Revenue v. Robinson's Hardware*, 721 P.2d 137 (Ariz. App. 1986); *In re Inselman*, 334 B.R.
8 267 (D.Ariz., 2005); and, *City of Phoenix v. West Publishing Co.*, 712 P.2d 944, 946-47 (Ariz.
9 Ct. App. 1986). The Arizona Ad Valorem Tax is also not a sales tax; rather, it is a property tax
10 paid to the State of Arizona based upon the assessed valuation of the property. *Bahr v. State of*
11 *Arizona*, 985 P.2d 564, 565 (Ariz. Ct. App. 1999).

12
13
14 As such SCE may not exclude from the measure of use tax, taxes that Peabody paid to the
15 state of Arizona.

16 32. SCE is not entitled to exclude transportation costs from the measure of use tax.

17 Prior to its amendment in 2002 NAC 372.101 provided,

- 18
19 1. Except as otherwise provided in subsection 3, any charge for freight,
20 transportation or delivery included in the sale of tangible personal property is
21 subject to sales and use taxes.
- 22 2. Any charge for freight, transportation or delivery that appears on the invoice of
23 the seller is part of the selling price even if stated separately and is not deductible
24 from the price of the property as shown on the invoice.
- 25 3. A charge for freight, transportation or delivery is not taxable if:
26
27 a. It is invoiced to the purchaser by the freight carrier; and
28 b. Title to the property passes before shipment.

1 A charge for freight, transportation or delivery that is not connected with the sale of
2 tangible personal property is a charge for a service and is not subject to sales and use taxes.

3 Transportation costs were included in the calculation of use tax at the time SCE incurred
4 the tax liability. Therefore, SCE is not entitled to exclude from the sales price the amounts it paid
5 for transportation costs.
6

7 33. Based on the evidence before the court, SCE is not entitled to any refund on its
8 payment use tax on its consumption of a coal slurry product at the Mohave Generating Station in
9 Nevada.

10 34. Based on this decision, this Court does not have to reach a decision on whether
11 the coal lost its identity when it became coal slurry with the application of the transformation
12 process.
13

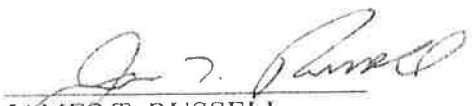
14 DECISION

15 Based on the foregoing and good cause appearing,

16 IT IS HEREBY ORDERED that the relief prayed for by the Plaintiff in its Second
17 Amended Complaint is DENIED and judgment is awarded to the Defendant.
18

19 **IT IS SO ORDERED.**

20 Dated this 17th day of December, 2014.

21
22 
23 JAMES T. RUSSELL
24 DISTRICT JUDGE
25
26
27
28

CERTIFICATE OF MAILING

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 17th day of December, 2014, I served the foregoing to counsel of record, as follows:

☒ By depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid, addressed as follows:

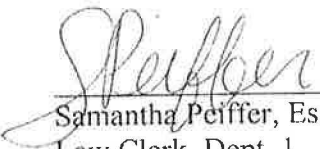
Norman Azevedo, Esq.
405 North Nevada Street
Carson City, Nevada 89703

Charles C. Read, Esq.
Jones Day
555 S. Flower Street,
Fiftieth Floor
Los Angeles, CA 90071-2300

Gina C. Session, Esq.
Andrea Nichols, Esq.
Chief Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701

☒ By emailing a copy thereof addressed as follows:

Gina Session: gsession@ag.nv.gov
Andrea Nichols: anichols@ag.nv.gov
Norman Azevedo: norm@nevadataxlawyers.com
Charles C. Read: ccread@jonesday.com


Samantha Peiffer, Esq.
Law Clerk, Dept. 1

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SUSAN MERRIWETHER
CLERK

BY  DEPUTY

1 ADAM PAUL LAXALT
Nevada Attorney General
2 Nevada Bar No. 12426
GINA C. SESSION
3 Chief Deputy Attorney General
Nevada Bar No. 5493
4 ANDREA NICHOLS
Senior Deputy Attorney General
5 Nevada Bar No. 6436
100 N. Carson Street
6 Carson City, Nevada 89710-4717
Phone: 775-684-1207
7 Fax: 775-684-1156
Attorneys for Defendant
8 Nevada Dept. of Taxation

9
10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR CARSON CITY**

12 SOUTHERN CALIFORNIA EDISON,) Case No. 09 OC 00016 1B
13)
14 Plaintiff,) Department No. 1
15 vs.)
16 STATE OF NEVADA ex rel. DEPARTMENT)
OF TAXATION,)
17 Defendant.)

18 **NOTICE OF ENTRY OF ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION**
19 **TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND**
20 **JUDGMENT OR DIRECT ENTRY OF NEW JUDGMENT**

21 PLEASE TAKE NOTICE that the **ORDER DENYING SOUTHERN CALIFORNIA**
22 **EDISON'S MOTION TO AMENDED FINDINGS OF FACT and CONCLUSIONS OF LAW**
23 **and TO AMEND JUDGMENT or DIRECT ENTRY OF A NEW JUDGMENT**, was signed by
24 Judge Russell on January 30, 2015, and was filed with this Court on January 30, 2015. A true
25 and correct copy of the **ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION**
26 **TO AMENDED FINDINGS OF FACT and CONCLUSIONS OF LAW and TO AMEND**

27 ///

28 ///

JUDGMENT or DIRECT ENTRY OF A NEW JUDGMENT, is attached hereto as Exhibit 1.

Dated: February 3, 2015.

ADAM PAUL LAXALT
Attorney General

By: 

GINA C. SESSION
Chief Deputy Attorney General
Nevada State Bar No. 5493
100 N. Carson Street
Carson City, Nevada 89701-4717
Attorneys for Defendants

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717


CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on February 3, 2015, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER OF ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSION OF LAW AND TO AMEND JUDGMENT OR DIRECT ENTRY OF A NEW JUDGMENT** by mailing a copy thereof in the United States Mail, postage paid, fully addressed as follows:

Norman J. Azevedo, Esq.
405 North Nevada Street
Carson City, NV 89703

Charles C. Reed, Esq.
Joe Ward, Esq.
Jones Day
555 S. Flower Street, 50th Floor
Los Angeles, CA 90071

Dated: February 3, 2015.


An Employee of the State of Nevada
Office of the Attorney General

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INDEX OF EXHIBIT

Exhibit No.	Description	Page(s)
1	Order Denying Plaintiff's Motion to Amend Findings of Fact and Conclusions of Law and to Amend Judgment or Direct Entry of a New Judgment	3

EXHIBIT 1

EXHIBIT 1

1 Case No: 09 OC 00016 1B

2 Dept. No: 1

REC'D & FILED

2015 JAN 30 AM 10:00

SUSAN MERRIWETHER
CLERK

BY [Signature] DEPUTY

3
4
5 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE CARSON CITY**
7

8 SOUTHERN CALIFORNIA EDISON,)

9 Plaintiff,)

10 vs.)

11 STATE OF NEVADA, EX REL.
12 DEPARTMENT OF TAXATION,)

13 Defendant.)

14 **ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMEND FINDINGS**
15 **OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT OR DIRECT**
16 **ENTRY OF A NEW JUDGMENT**

17 This matter is before this Court on Southern California Edison's Motion to Amend
18 Findings of Fact and Conclusions of Law and to Amend Judgment or Direct Entry of a New
19 Judgment, filed herein on December 24, 2014, and Defendant's Opposition thereto filed
20 January 9, 2015. Southern California Edison did not file a Reply but did file a Request to
21 Submit on January 15, 2015.

22 In its Motion, Southern California Edison argues that this Court incorrectly applied the
23 Nevada Supreme Court's decision in *Sierra Pac. Power v. State Dep't of Tax*, 130 Nev. Adv.
24 Op. 93, 338 P.3d 1244 (2014) to the facts of this case. The Motion further requests that this
25 Court amend its Decision to include certain evidence and argument introduced by Plaintiff,
26 Southern California Edison, at trial. Lastly, Southern California Edison asks that the Decision
27 be amended so that it does not refer to "coal slurry" as a "coal slurry product." Southern
28 California Edison does not indicate what term should be utilized instead.

29 This Court has reviewed the Amended Findings of Fact, Conclusions of Law and
Decision entered December 17, 2014, and finds that it correctly applied the Nevada Supreme

1 Court's decision in *Sierra Pac. Power* and further that the findings are sufficient to indicate the
2 factual basis for the Court's ultimate decision to deny Southern California Edison the relief
3 prayed for in its Second Amended Complaint and to award judgment in favor of Defendant,
4 Nevada Department of Taxation.

5 Therefore, good cause appearing, IT IS HEREBY ORDERED that Southern California
6 Edison's Motion to Amend Findings of Fact and Conclusions of Law and to Amend Judgment
7 or Direct Entry of a new Judgment is DENIED.

8 IT IS SO ORDERED this 30th day of June, 2015.

9
10 
11 JAMES T. RUSSELL
12 DISTRICT COURT JUDGE

13 Submitted by:
14 ADAM PAUL LAXALT
15 Attorney General
16 GINA C. SESSION
17 Chief Deputy Attorney General
18 Nevada Bar No. 5493
19 100 North Carson Street
20 Carson City, Nevada 89701-4717
21 Phone: (775) 684-1207
22 Fax: (775) 684-1156
23 Attorneys for Defendant
24 Nevada Department of Taxation
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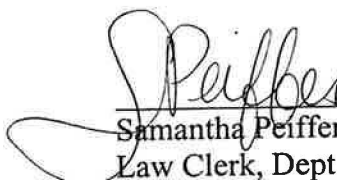
CERTIFICATE OF MAILING

I hereby certify that on the 30th day of January, 2015, I served a copy of the foregoing
by placing the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman J. Azevedo, Esq.
405 N. Nevada Street
Carson City, NV 89703

Charles C. Read, Esq.
Jones Day
555 South Flower Street
50th Floor
Los Angeles, CA 90071-2300

Gina C. Session, Esq.
Andrea Nichols, Esq.
100 N. Carson Street
Carson City, NV 89701-4717


Samantha Peiffer
Law Clerk, Dept. 1

DISTRICT COURT MINUTES

CASE NO. 09OC00016 TITLE: SOUTHERN CALIFORNIA EDISON VS STATE OF NEVADA;
DEPARTMENT OF TAXATION

6/16/09 - DEPT. I - JUDGE RUSSELL - J. Harkleroad, Clerk - J. Forbes, Reporter

MOTION TO DISMISS (ORAL ARGUMENT REQUESTED)

Present: Charles Churchill Read and Norman J. Azevedo, counsel for Pltf.; Gina C. Session, counsel for Deft.

Counsel argued motion.

COURT ORDERED: Read to prepare Order. Motion to Dismiss is denied.

10/8/09 - DEPT. I - JUDGE RUSSELL - J. Harkleroad, Clerk - J. Forbes, Reporter

PETITION FOR JUDICIAL REVIEW

Present: Charles Churchill Read and Norman J. Azevedo, counsel for Pltf.; Gina C. Session, counsel for Deft.

Statements were made by Court. Counsel argued petition.

Court stated its findings for the record.

COURT ORDERED: Session to prepare decision.

Further statements were made by Court.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00016 1B

TITLE: SOUTHERN CALIFORNIA EDISON VS
STATE OF NEVADA

12/19/13 – DEPT. I – HONORABLE JAMES T. RUSSELL
J. Harkleroad, Clerk – Not Reported

PRETRIAL CONFERENCE

Present: Charles Read and Norman Azevedo, counsel for Pltf.; Gina Sessions and Andrea Nichols, Deputies Attorney General

Statements were made by Court, Read and Sessions as to the status of the case.

Arguments were made by Read, Sessions and Nichols regarding pending discovery issues.

COURT ORDERED: Matter taken under submission.

Further statements were made by Court and Read regarding procedural matters during trial.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00016 1B

TITLE: SOUTHERN CALIFORNIA EDISON VS
STATE OF NEVADA

01/21/14 – DEPT. I – HONORABLE JAMES T. RUSSELL
C. Franz, Clerk – P. Hoogs, Reporter

BENCH TRIAL

Present: Counsel for Plaintiff, Charles Reed, Joseph Ward and Norm Azevedo; Paulina Oliver, Representative for Nevada Department of Taxation; Gina Sessions and Andrea Nichols, Deputy Attorney General's.

Evidence marked and admitted in accordance with Exhibit Sheet.

Court and Counsel discussed housekeeping matters.

Court made statements in regards to motion in limine.

The following witnesses were sworn and testified:

1. Anthony Smith
2. Paul Phelan

Statements were made by Court, Reed and Session.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00016 1B

TITLE: SOUTHERN CALIFORNIA EDISON VS
STATE OF NEVADA

01/22/14 – DEPT. I – HONORABLE JAMES T. RUSSELL
C. Franz, Clerk – D. Bratcher Gustin, Reporter

BENCH TRIAL CONTINUED

Present: Counsel for Plaintiff, Charles Reed, Joseph Ward and Norm Azevedo; Paulina Oliver, Representative for Nevada Department of Taxation; Gina Sessions and Andrea Nichols, Deputy Attorney General's.

Evidence marked and admitted in accordance with Exhibit Sheet.

Paul Phelan previously sworn resumed the stand.

3. Glenn Cunningham

P. Hoggs, Reporter now present.

Discussion by Court, Reed and Sessions regarding sample of coal slurry show to the Court.

4. Ralph Barbaro

5. Sharon Byram

Statements were made by Court, Reed and Session.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00016 1B

TITLE: SOUTHERN CALIFORNIA EDISON VS
STATE OF NEVADA

01/23/14 – DEPT. I – HONORABLE JAMES T. RUSSELL
C. Franz, Clerk – P. Hoogs, Reporter

BENCH TRIAL CONTINUED

Present: Counsel for Plaintiff, Charles Reed, Joseph Ward and Norm Azevedo; Paulina Oliver, Representative for Nevada Department of Taxation; Gina Sessions and Andrea Nichols, Deputy Attorney General's.

Court, Reed and Session discussed scheduling of witnesses.
Sharon Byram previously sworn resumed the stand.

- 6. Paulina Oliver, called out of order
- 7. Richard Pomp

Statements were made by Court, Reed and Session.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00016 1B

TITLE: SOUTHERN CALIFORNIA EDISON VS
STATE OF NEVADA

01/24/14 – DEPT. I – HONORABLE JAMES T. RUSSELL
C. Franz, Clerk – D. Bratcher Gustin, Reporter

BENCH TRIAL CONTINUED

Present: Counsel for Plaintiff, Charles Reed, Joseph Ward and Norm Azevedo; Paulina Oliver, Representative for Nevada Department of Taxation; Gina Sessions and Andrea Nichols, Deputy Attorney General's.

Statements were made by Court, Reed and Session.
Evidence was marked and admitted in accordance with Exhibit Sheet.

8. John Jurewitz

Richard D. Pomp previously sworn resumed the stand.
Statements were made by Court, Reed and sessions regarding filing supplemental briefs.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00016 1B

TITLE: SOUTHERN CALIFORNIA EDISON VS
STATE OF NEVADA

01/28/14 – DEPT. I – HONORABLE JAMES T. RUSSELL
C. Franz, Clerk – D. Bratcher Gustin, Reporter

BENCH TRIAL CONTINUED

Present: Counsel for Plaintiff, Charles Reed, Joseph Ward and Norm Azevedo; Paulina Oliver, Representative for Nevada Department of Taxation; Gina Sessions and Andrea Nichols, Deputy Attorney General's.

Statements were made by Court, Reed and Session.

Plaintiff is prepared to rest with the exception of additional samples of coal and witness.

COURT ORDERED: It will allow the plaintiff to rest subject to the condition that a foundation will be laid in regards to the additional sample.

9. James Steven Gardner

Evidence was marked and admitted in accordance with Exhibit Sheet.

10. James Faulds

11. Alan Richard Coyner

12. Terri Rubald, called out of order.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00016 1B

TITLE: SOUTHERN CALIFORNIA EDISON VS
STATE OF NEVADA

01/29/14 – DEPT. I – HONORABLE JAMES T. RUSSELL
C. Franz, Clerk – P. Hoogs, Reporter

BENCH TRIAL CONTINUED

Present: Counsel for Plaintiff, Charles Reed, Joseph Ward and Norm Azevedo; Paulina Oliver, Representative for Nevada Department of Taxation; Gina Sessions and Andrea Nichols, Deputy Attorney General's.

Evidence was marked and admitted in accordance with Exhibit Sheet
Statements were made by Court, Reed and Session.

13. James Richard McCann

Paulina Oliver previously sworn resumed the stand.

Terri Rubald previously sworn resumed the stand.

Statements were made by Court.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00016 1B

TITLE: SOUTHERN CALIFORNIA EDISON VS
STATE OF NEVADA

01/30/14 – DEPT. I – HONORABLE JAMES T. RUSSELL
C. Franz, Clerk – P. Hoogs, Reporter

BENCH TRIAL CONTINUED

Present: Counsel for Plaintiff, Charles Reed, Joseph Ward and Norm Azevedo; Paulina Oliver, Representative for Nevada Department of Taxation; Gina Sessions and Andrea Nichols, Deputy Attorney General's.

Statements were made by Court and Session.

Terri Rubald previously sworn resumed the stand.

14. John Alan Swain

Statements were made by Court, Session and Reed.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00016 1B

TITLE: SOUTHERN CALIFORNIA EDISON VS
STATE OF NEVADA

01/31/14 – DEPT. I – HONORABLE JAMES T. RUSSELL
C. Franz, Clerk – P. Hoogs, Reporter

BENCH TRIAL CONTINUED

Present: Counsel for Plaintiff, Charles Reed, Joseph Ward and Norm Azevedo; Paulina Oliver, Representative for Nevada Department of Taxation; Gina Sessions and Andrea Nichols, Deputy Attorney General's.

Statements were made by Court, Session and Reed.

Steven Gardner now present via telephone to hear testimony of Glenn Cunningham.

Glenn Cunningham previously sworn resumed the stand.

Steven Gardner previously sworn testified via telephone.

Plaintiff and Defendant rests.

Statements were made by Court, Session and Reed.

COURT ORDERED: It takes the matter under submission. Counsel to file simultaneous briefs, due February 28, 2014 at 5:00 P.M. and any reply briefs, due by March 21, 2014 at 5:00 P.M.

Further Statements were made by Court, Reed

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.
