

IN THE SUPREME COURT OF THE STATE OF NEVADA

RURAL TELEPHONE COMPANY,

Appellant,

vs.

PUBLIC UTILITIES COMMISSION
OF NEVADA, AN ADMINISTRATIVE
AGENCY OF THE STATE OF NEVADA,

Respondent.

Case No. 69612

District Court Case No.

15 OC 00188-1B

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RESPONDENT'S ANSWERING BRIEF
(Appeal from Order of the First Judicial District Court of the
State of Nevada in and for Carson City)

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RESPONDENT'S ANSWERING BRIEF

Respondent, the Public Utilities Commission of Nevada (“Commission”), submits its Answering Brief and requests that the Nevada Supreme Court affirm the First Judicial District Court’s Order Denying Judicial Review entered on October 31, 2013.

I. STATEMENT OF THE ISSUE

Whether the District Court had the authority to extend a legislatively-mandated filing deadline under Nevada Revised Statutes (“NRS”) 703.373 for seeking judicial review of a final order of the Public Utilities Commission of Nevada (“Commission”).

II. STATEMENT OF THE CASE

This case is an appeal of an Order Denying Motion to Dismiss for Lack of Jurisdiction, Denying Motion for Extension of Time, Striking Opening Brief, and Dismissing Petition for Judicial Review entered on December 8, 2015, in the First Judicial District Court of the State of Nevada in and for Carson City.

On August 19, 2015, Rural Telephone Company (“Rural”) timely filed its Petition for Judicial Review of the Commission’s July 22, 2015, final order. JA Vol. 1 at 0001-0063. On September 18, 2015, the Commission filed with the District Court the certified record of the underlying administrative proceeding and provided written notice to Rural that the record had been filed. JA Vol. 1 at 0090-

0099. Pursuant to NRS 703.373, Rural had 30 days—until October 19, 2015—to file a memorandum of points and authorities in support of Rural’s Petition for Judicial Review. On October 16, 2015, Rural filed a Motion for Extension of Time requesting that the District Court grant to Rural a 30-day extension of time to file its memorandum of points and authorities (“Motion”). JA Vol. 1 at 00103-0114. On October 26, 2015, the Commission filed its Opposition to Petitioner’s Motion for Extension of Time and Countermotion to Dismiss (“Opposition”). JA Vol. 1 at 0115-0145.

On November 18, 2015, Rural filed a memorandum of points and authorities in support of its Petition for Judicial Review, 30 days after the memorandum was due pursuant to NRS 703.373. JA Vol. 2 at 0222-0271. On December 8, 2015, the District Court issued an Order Denying Motion to Dismiss for Lack of Jurisdiction, Denying Motion for Extension of Time, Striking Opening Brief, and Dismissing Petition for Judicial Review. JA Vol. 2 at 0272-0279.

The District Court correctly held it did not, under the circumstances of the case, have authority to grant a 30-day extension to Rural to file a memorandum of points and authorities in support of its Petition for Judicial Review. JA Vol. 2 at 0274-0279. The District Court also correctly held that because Rural failed to cite any legal authority to support its Motion, its Motion must be denied. As the District Court stated, “the failure of a moving party to file a memorandum of points

and authorities in support of a motion shall constitute a consent to the denial of a motion.” JA Vol. 2 at 0277-0278 (Citing First Judicial District Court Rule (“FJDCR”) 15(5)).

III. STATEMENT OF THE FACTS

On September 18, 2015, the Commission provided Rural with written notice that the certified record of the underlying administrative proceeding had been filed with the District Court. JA Vol. 1 at 0090-0099. Pursuant to NRS 703.373, Rural had 30 days—until October 19, 2015—to file a memorandum of points and authorities in support of its Petition for Judicial Review. On October 15, 2015, Rural contacted the Commission and requested the Commission stipulate to a 30-day extension for Rural to file its memorandum of points and authorities in support of its Petition for Judicial Review. JA Vol. 1 at 0110. On October 16, 2015, the Commission responded to Rural’s request by stating it would not oppose a 10-day extension. JA Vol. 1 at 0110, 0201. On October 19, 2015, Rural filed its Motion requesting the District Court allow a 30-day extension to November 18, 2015, for Rural to file a memorandum of points and authorities in support of its Petition for Judicial Review. JA Vol. 1 at 0103-0114.

On October 26, 2015, the Commission filed its Opposition to Rural’s Motion. JA Vol. 1 at 0115-0145. In its Opposition, the Commission opposed the 30-day extension and argued the following: 1) NRS 703.373(6)’s 30-day deadline

for the filing of an opening brief is mandatory and jurisdictional. NRS 703.373(6) states that a petitioner *must* file its opening brief within 30 days. NRS 233B.133(6) provides that for good cause a court may extend the briefing deadlines, but NRS 703.373 contains no such provisions; 2) the District Court did not have the authority to grant Rural's 30-day extension request because the filing of a memorandum of points authorities is mandatory; 3) Rural's Motion was moot because the Motion did not toll the statutory timeline; and 4) because Rural failed to cite any applicable authority to support its Motion, the Motion should be denied. JA Vol. 1 at 0115-0145.

On November 3, 2015, Rural filed its Reply to Opposition to Motion for Extension of Time and Opposition to Countermotion to Dismiss ("Reply to Opposition"). JA Vol. 1 at 0146-0204. In its Reply to Opposition, Rural argued that the deadlines in NRS 703.373 were designed to produce review of Commission decisions by a court within 4-6 months of the filing of a Petition for Judicial Review. JA Vol. 1 at 0146-0204.

On November 13, 2015, the Commission filed its Reply to Rural's Opposition to Respondent's Countermotion to Dismiss and a Request for Submission ("Reply"). JA Vol. 1 at 0208-0219. In its Reply, the Commission reiterated that Rural's Motion should be denied because Rural failed to file its memorandum of points and authorities in support of its Petition for Judicial

Review within the time period allotted by NRS 703.373(6) and the timeline in the statute is mandatory. JA Vol. 1 at 0208-0210. The Commission also reiterated that Rural failed to cite any case law where a court disregarded a statutory timeline. JA Vol. 1 at 0212. Finally, the Commission argued that while Rural tried to fault the Commission for Rural's tardiness in filing, Rural alone was responsible for its predicament. JA Vol. 2 at 0212-0214.

On November 18, 2015, Rural filed its memorandum of points and authorities in Support of its Petition for Judicial Review, 30 days after it was due pursuant to NRS 703.373. JA Vol. 2 at 0222-0271. On December 8, 2015, the District Court issued an Order Denying Motion to Dismiss for Lack of Jurisdiction, Denying Motion for Extension of Time, Striking Opening Brief, and Dismissing Petition for Judicial Review. JA Vol. 2 at 0272-0279. The District Court held that "NRS 703.373 does not expressly give the court authority to extend the opening brief deadline... The court concludes that it does not have the authority to grant Rural a 30 day extension over the Commission's objection." JA Vol. 2 at 0275-0277. The District Court also held that "[b]ecause Rural failed to cite to any legal authority to support its motion for an extension its motion must be denied for that reason as well." JA Vol. 2 at 0277.

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IV. SUMMARY OF THE ARGUMENT

The District Court correctly dismissed Rural's Petition for Judicial Review. This case is about the narrow issue of whether the District Court had the authority to extend the statutorily-mandated deadline for filing an opening brief. NRS 703.373(6) states that "[a] petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 30 days after the Commission gives written notice to the parties that the record of the proceeding under review has been filed with the court." Rural had 30 days to file its memorandum with the Commission but failed to do so. In fact, Rural waited an additional 30 days before finally filing the memorandum.

The District Court found that it had no authority to extend the opening brief deadline. The District Court stated that "since this Court does not have inherent jurisdiction over Commission administrative decisions, the court must enforce the statutory procedures implemented by the legislature... Included in [NRS 703.373] are mandatory fast-track deadlines for filing briefs. NRS 703.373 does not expressly give the court authority to extend the opening brief deadline." JA Vol. 2 at 02075-0276.

In support of its dismissal, the District Court cited the legislative history of NRS 703.373. JA Vol. 2 at 02075-0276. The legislative history of NRS 703.373(6) leaves no doubt that the purpose of NRS 703.373(6) is to fast-track the

judicial review process of Commission decisions. NRS 703.373 was amended by Assembly Bill 17 (2011) (“AB 17”) to explicitly require a fast-tracked review process for Commission decisions.

Finally, Rural failed to cite any supporting legal authority to support its Motion. The District Court correctly concluded that this failure to cite any legal authority must also lead to a denial of Rural’s Motion.

V. ARGUMENT

A. Standard of Review.

The interpretation of a statute is a question of law, which requires de novo review. See Irving v. Irving, 122 Nev. 494, 496 (2006) (citing White v. Warden, 96 Nev. 634, 636, 614 P.2d 536, 537 (1980); Clark Cty. Educ. Ass’n v. Clark Cty. Sch. Dist., 122 Nev. 337, 131 P.3d 5, 10 (2006)). When reviewing the interpretation of a statute, this Court has traditionally followed the plain meaning of the statute, absent an ambiguity. See Irving, 122 Nev. at 496, 134 P.3d at 720. However, where a “statute’s language is susceptible to two or more reasonable interpretations,” this Court looks to “the Legislature’s intent in interpreting the statute,” which “may be deduced by reason and public policy.” Id.

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B. The District Court Correctly Held that It Did Not Have the Authority to Extend an Opening Brief Deadline because the Timeline Established by NRS 703.373(6) Is Mandatory.

1. Strict compliance with statutory timelines applies broadly and is not limited to cases that involve initiation of an administrative appeal.

NRS 703.373(6) states, “A petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 30 days after the Commission gives written notice to the parties that the record of the proceeding under review has been filed with the court.” Rural argues that strict compliance with statutory timelines is limited to the *initiation* of an administrative appeal—filing a petition for judicial review. Rural Br. at 13-15. Rural is wrong on this point. The Nevada Supreme Court’s principle of deeming a time limit mandatory where the statute is silent as to whether the time limit can be excused has been applied outside the narrow confines that Rural identifies. For instance, in Leven v. Frey, the Nevada Supreme Court ruled that the judgment renewal statute’s three-day timeline must be strictly followed because “[t]he Legislature did not provide for any deviations from this requirement, and we perceive no reason to extend this period in contravention of the Legislature’s clear and express language.” 123 Nev. 399, 408, 409, 168 P.3d 712, 718, 719 (2007). Thus, Leven strictly enforced the timeline applicable to the judgment renewal statute after finding no legal ground to

deviate from the mandatory time limit.¹ NRS 703.373(6) does not contain any provision that would allow for a deviation from the 30-day requirement. The District Court agreed when it held that “this court does not have inherent jurisdiction over Commission administrative decisions” and that “the court must enforce the statutory procedures implemented by the legislature.” JA Vol. 2 at 2075.

2. Under NRS 703.373, the 30-day timeline for filing a memorandum of points and authorities is no less mandatory than the 30-day timeline for filing a petition for judicial review.

NRS 703.373 uses nearly identical language to set forth the 30-day subsection (3) timeline to initiate a petition for judicial review and the 30-day subsection (6) timeline to file a memorandum of points and authorities. Both subsections contain mandatory and non-discretionary “*must file*” language. Rural acknowledges that its failure to file a petition for judicial review in accordance with subsection (3) would have been fatal to this action (Rural Br. at 13-15); however, when looking at essentially identical language of subsection (6), Rural arrives at the opposite conclusion and demands that it receive double the time

¹ Other examples of dismissals for failure to meet statutory timelines include mechanics’ liens cases (see e.g., Cox Const. Co., LLC v. CH2 Investments, LLC, 296 P.3d 1202, 1204 (Nev. 2013) (a lien was found to be untimely and action dismissed because the plaintiff filed the lien after the 90-day period provided for in NRS 108.226 had lapsed)) and dismissals for failure to meet Nevada’s statute of limitations provisions contained within NRS Chapter 11.

provided for in subsection (6) to file its memorandum. Rural's position is inconsistent. Rural simply tries to bend the statutory language to suit whatever particular set of circumstances in which it finds itself—if Rural is compliant with a timeline, it acknowledges that the timeline is mandatory, but if Rural fails to meet a timeline set in the same statute using the same language, Rural argues that the timeline is flexible.

Finally, Rural ignores the clear statutory language that distinguishes a mandatory subsection of NRS 703.373 with a discretionary subsection. NRS 703.373(5) reads:

Within 30 days after the service of the petition for judicial review *or such time as is allowed by the court*, the Commission shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review...

(Emphasis added). The “or such time as is allowed by the court” portion of NRS 703.373(5) explicitly authorizes the Court to modify the timeline to transmit the certified administrative record. In sharp contrast to NRS 703.373(5), subsection (6) gives no authority to the Court to modify the submission timeline for Rural's memorandum of points and authorities. Rural asks this Court to read into NRS 703.373 the language that the Legislature left out.

3. Disregarding the 30-day timeline would render NRS 703.373(6) meaningless.

With no applicable provision authorizing a deviation from the NRS

703.373(6) timeline, Rural asks this Court to simply disregard the statute’s 30-day provision. In Stockmeier v. Psychological Review Panel, the Nevada Supreme Court stated that statutes should be interpreted “to give meaning to each of their parts, such that, when read in context, none of the statutory language is rendered mere surplusage.” 122 Nev. 534, 540, 135 P.3d 807, 810 (2006). Rural’s request necessarily renders NRS 703.373(6) meaningless because the statute’s only purpose is to establish a 30-day timeline for filing a memorandum of points and authorities.

C. NRS 703.373 is Clear and Unambiguous, but if the Court Considers the Legislative History of NRS 703.373, It is Clear the Legislature Intended the 30-day Timeline to Be Inflexible.

The statutory language of NRS 703.373(6) is clear and unambiguous: “A petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 30 days after the Commission gives written notice to the parties that the record of the proceeding under review has been filed with the court.” It is well-settled in Nevada that, where a statute is clear on its face, a court may not go beyond the language of the statute in determining the Legislature’s intent. Thompson v. District Court, 100 Nev. 352, 354, 683 P.2d 17, 19 (1984). Here, the mandatory filing timeline language is clear. Accordingly, compliance with the NRS 703.373(6) 30-day filing timeline is mandatory. However, even if

the Court finds that NRS 703.373(6) is unclear and ambiguous, the legislative history shows that the Legislature intended for the 30-day timeline to be inflexible.

The legislative history of NRS 703.373 makes clear that NRS 703.373 was modeled after NRS 233B with one important exception: while NRS 233B.133(6) clearly allows the court to extend the time for filing memoranda upon a showing of good cause, a similar provision is noticeably absent from NRS 703.373. “It is ordinarily presumed that the legislature, by deleting an express portion of a law, intended a substantial change in the law.” McKay v. Board of Sup’rs of Carson City, 102 Nev. 644, 650, 730 P.2d 438, 442 (1986). Here, the Legislature purposefully chose not to include an extension of time provision within NRS 703.373 to streamline judicial review of the Commission’s decisions. As the District Court stated, “Here, the legislature enacted NRS 703.373 giving the court jurisdiction to judicially review Commission administrative decisions. Included in that statute are mandatory fast-track deadlines for filing briefs. NRS 703.373 does not expressly give the court authority to extend the opening brief deadline.” JA Vol. 2 at 2075.

AB 17 created NRS 703.373. The hearings on AB 17 make it clear that the Legislature intended for NRS 703.373 to include mandatory, fast-track deadlines. The Commission’s Assistant General Counsel and Utilities Hearing Officer testified at a February 9, 2011, legislative hearing on AB 17 regarding the need for

NRS 703.373. He testified:

The reason for the fast-track review of commission decisions is based on two premises: money and infrastructure. All Commission decisions basically touch on one of these two issues. With regards to money, there is the issue of rate stability. The Commission has, in its process, general rate cases - that is a top down review of all utilities operations, revenues, and recovery rates which are on a two to three-year cycle. If the judicial review process of a decision takes one, two, or three years you have the potential of a spike in rates. If that happened, a Commission decision would go into effect at the same time that a Supreme Court decision would go into effect. That would have the effect of spiking the rates. The other issue is carrying charges. Once Commission decisions are issued they are deemed effective. Unless there is an injunction they go into effect immediately. Those binding rates are then recovered by ratepayers. If there is subsequently a refund or additional monies to be recovered from or to the ratepayers there are carrying charges - basically interest on these monies that either the Commission or the ratepayers are going to have to pay. The shorter the time frame for judicial review that we have, the less carrying charges there are.

Lastly, with regards to money there is what is called 'intergenerational equities.' When a rate goes into effect there is a certain pool of ratepayers. If judicial review takes one to three years that pool of ratepayers changes over that time and there is not an equal comparison. If a refund needs to be issued, there are some people that are going to get that refund without having paid previously and others who are no longer in the area that should have gotten that refund.

With regards to utility infrastructure we have resource planning proceedings. This deals with utilities throughout the state that are regulated by us. A person does this through a construction permit or a resource planning process where they get approval to build something. They need to have certainty in a short amount of time as to whether or not they can go forward with their building. When the state was booming, it was very difficult for the Commission to even keep up with the growth. They need to have finality to know whether or not they can build that infrastructure in order to provide reliable and adequate service.

...

What NRS 233B.039 does... It allows for *extended briefing*... *Those were never things that were contemplated for judicial review of the Commission.* It was a question of whether to follow NRS 703.373 or NRS 233B.039 judicial review provisions.

Minutes of the Meeting of the Assemb. Comm. on Government Affairs, Seventy-Sixth Session, Feb. 9, 2011, pp. 45-47. (Emphasis added.) The Legislature, at the Commission's request, used NRS 233B.133 as a template in formulating NRS 703.373. The Commission did not request and the Legislature did not include in NRS 703.373 a provision similar to NRS 233B.133(6), which authorizes a court, for good cause, to extend the time allowed. As the District Court stated, "In light of the fact that one of primary purposes of AB 17 was to fast-track Commission judicial reviews, the Commission's and the legislature's failure to confer on courts the authority to expressly grant extensions of briefing deadlines appears to be intentional." JA Vol. 2 at 2075. The District Court correctly held that it did not have authority to grant Rural a 30-day extension over the Commission's objection.

As further support of this clear mandate of the Legislature, NRS 233B.133 directly conflicts with NRS 703.373 and cannot be harmonized. Whereas NRS 233B.133(1) allows a petitioner 40 days to file a memorandum of points and authorities subsequent to the agency's notice of filing of the administrative record with the court, NRS 703.373 allows only 30 days. Whereas NRS 233B.133(3) allows a petitioner to file a reply to the agency's response, NRS 703.373 contains no provision that allows a reply from the petitioner. Whereas NRS 233B.133(4)

allows the parties an option to request a hearing within seven days of the briefings closure, NRS 703.373(7) provides that the parties *must* be ready for a hearing upon 20 days' notice following the submission of the Commission's brief. And, whereas NRS 233B.133(6) allows the Court to extend the timeline for filing memoranda upon a showing of good cause, no such provision exists in NRS 703.373. Thus, the timelines and flexibility set forth in NRS 233B.133 do not apply to judicial review of Commission decisions. Instead, Rural is bound by the timelines set forth in NRS 703.373. Petitioner cites no authority that would allow a contrary determination.

D. Rural Cites No Case Law where a Court Disregarded a Statutory Timeline.

Rural states, "This Court has cautioned that dismissal for procedural errors 'should be used only in extreme situations' and should be weighed against other factors including 'the policy favoring adjudication on the merits.'" Rural Br. at 22. However, three of the cases Rural cites do not support Rural's statement. None of the three cases dealt with a procedural deadline. None of the three cases even use the phrase "procedural errors." The word "procedure" does not even appear in two of the three cases. The primary case Rural cites in support of its argument, Nevada Power Co. v. Fluor Illinois, 108 Nev. 638, 837 P.2d 1354 (1992), actually overturned a lower court's dismissal for failure to obey a discovery order precluding a demolition of a key piece of evidence in the case—hardly a

procedural error. 108 Nev. at 645. Another case cited by Rural, Miles v. State, 120 Nev. 383, 91 P.3d 588 (2004), dealt with the issue of authenticity of a signature on the original verified habeas corpus petition. Finally, Forman v. Eagle Thrifty Drugs & Markets, Inc., 89 Nev. 533, 516 P.2d 1234 (1973), in relevant part, addressed the issue of implications of a wrong judgment referenced in the appeal notice.

Rural also cites to Fitzpatrick v. Department of Commerce, 107 Nev. 486 (1991) and states that “this Court held when a petition for judicial review was timely filed, it was error for the district court to dismiss the petition on the grounds that the petitioner failed to file a timely memorandum of points and authorities.” Rural Br. at 23. However, as Rural acknowledges, Fitzpatrick contemplates NRS 233B.133, not NRS 703.373, the statute at issue here. Rural argues that “if a petition for judicial review is timely filed, the district court has the authority to accept a tardy memorandum of points and authorities because NRS 233B.133 allows a court to extend the time allowed for filing memoranda.” Rural Br. at 24. The Commission agrees with Rural on this point—NRS 233B.133 allows a court to extend the time allowed for filing memoranda. But NRS 233B.133 does not apply here because NRS 703.373 is clearly controlling. NRS 233B.039(5)(d) explicitly provides that “[t]he provisions of [NRS 233B] do not apply to [t]he judicial review of decisions of the Public Utilities Commission of Nevada.” Unlike NRS

233B.133, NRS 703.373 does not allow a court to extend the time for filing memoranda.

E. NRS 703.373 Does Not Create a Separation of Powers Doctrine Problem in Prohibiting a District Court from Extending NRS 703.373's Mandatory Deadlines.

Rural argues that when a statute interferes with the Judiciary's inherent authority to manage its own cases, the statute is unconstitutional because it is a violation of the separation of powers doctrine. Rural Br. at 27, citing Borger v. District Court, 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004). Rural cites Borger as a primary example of a court's authority to manage a case and allow an extension of time if a court so chooses. Rural Br. at 27-30, citing Borger v. District Court, 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004). In Borger, this Court was asked to determine whether dismissal of a complaint was required when there was a question about the merit of an affidavit filed with the complaint. 120 Nev. at 1027, 102 P.3d at 605. Pursuant to the applicable statute, dismissal was required when a plaintiff failed to file an affidavit with his or her complaint. Borger, 120 Nev. at 1029, 102 P.3d at 606. This Court noted that although the statute required dismissal when an affidavit was omitted, the statute was silent as to whether a court may grant leave to amend a complaint where there is a question as to the merit of an affidavit submitted therewith. Id. In Borger, this Court held that where the sufficiency of an affidavit is in question, the decision to allow an amendment of

the complaint rests with the court. Id. This Court did not find that mandatory statutory provisions could be disregarded.

Notwithstanding the fact that Borger does not, as Rural suggests, find that a court has authority to disregard mandatory statutory requirements, Borger is no longer controlling. In Washoe Medical Center v. Second Judicial District Court, this Court held that “a complaint that does not comply with NRS 41A.071 is void ab initio, it does not legally exist and thus it cannot be amended.” 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006). In Washoe Medical Center, this Court explained that “in requiring dismissal of an action filed without a supporting affidavit, NRS 41A.071 trumps [Nevada Rule of Civil Procedure (“NRCP”)] 15(a), which allows liberal amendment of pleadings, given the substantive policy expressed in NRS 41A.071 against a plaintiff bringing a malpractice action without a medical expert first reviewing and validating the claims.” 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006); See also Baxter v. Dignity Health, 131 Nev., Adv. Op. 76, 930 (2015) (discussing Washoe Medical Center).

In Alemi v. Eighth Judicial District, this Court cited Washoe Medical Center in finding that the complaint and affidavit in the case failed to meet the requirements of NRS 41A.071 and that the complaint and affidavit were therefore void in ab initio. 2016 WL 115651, Docket No. 66917 (Jan. 7, 2016) (unpublished disposition). In Alemi, this Court stated that the District Court was required to

dismiss the case without leave to amend due to the failure of the complaint and affidavit. Id. The holding in Alemi was the opposite of the holding in Borger; in fact, in Alemi, this Court referenced Borger and succinctly stated, “We note that although dictum of Borger v. Eighth Judicial District anticipates allowing amendments, our more recent decision in Washoe Medical Center, 122 Nev. at 1304, 148 P.3d at 794, is controlling.” Id.

In Washoe Medical Center, this Court found that the requirements of NRS 41A.071 trumped NRCP 15(a), which allows liberal amendments. Similarly, in this case, NRS 703.373 dictates mandatory timelines for filings that trump any court rules. As this Court recognized in Washoe Medical Center, a party cannot fail to comply with clear statutory mandates and have its case survive. There is no separation of powers issue when a court follows the clear mandate of a controlling statute. In this case, NRS 703.373 sets forth an expedited process for judicial review of a final decision of the Commission. NRS 703.373(6) states that a memorandum of points and authorities in support of a petition for judicial review must be filed within 30 days of written notice that the certified record of proceeding has been filed with the district court. It is clear through the passage AB 17, which created NRS 703.373(6) that the Legislature intended for petitions for judicial review of Commission decisions to follow a fast track through the appeals process. The Legislature did not intend for extensions to be granted, or it would

have allowed for extensions. There is no separation of powers issue with the District Court correctly applying the controlling statute, NRS 703.373, and finding that Rural's Petition had to be dismissed because the supporting memorandum of points and authorities was filed late.

F. Rural Failed to Cite to Any Legal Authority in Support of Its Motion for an Extension of Time.

The District Court correctly dismissed Rural's Petition for Judicial Review because the District Court did not have the authority to extend the statutorily-mandated deadline for filing a memorandum of points and authorities as prescribed by NRS 703.373. JA Vol. 2 at 2076-77. The District Court also correctly denied Rural's Motion because it did not reference any legal authority in support of its request for an extension of time. This failure constituted consent to the denial of Rural's Motion. Id. at 78 (citing FJDCR 15(5)). With the denial of Rural's Motion, the Petition for Judicial Review was similarly unsupported by points and authorities and was therefore correctly dismissed.

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VI. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Nevada Supreme Court uphold the judgment of the District Court.

DATED this 3rd day of August, 2016.

Respectfully Submitted,

THE PUBLIC UTILITIES COMMISSION OF NEVADA

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of the Nevada Rules of Appellate Procedure (“NRAP”) 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14-point Times New Roman font.

I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, contains approximately 4,945 words, and does not exceed 30 pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable NRAP, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the NRAP.

DATED this 3rd day of August, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Public Utilities Commission of Nevada, and that on this date I have served copies of the foregoing **RESPONDENT’S ANSWERING BRIEF** in Case No. 69612 by emailing via the Court’s eFlex filing system to the following registered users in this matter:

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