

IN THE SUPREME COURT OF THE STATE OF NEVADA

PUBLIC UTILITIES COMMISSION OF
NEVADA; and STATE OF NEVADA,
BUREAU OF CONSUMER PROTECTION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT of the State of Nevada, in and
For the County of Clark;
THE HONORABLE JOSEPH T. BONAVENTURE,
District Judge; and
THE HONORABLE WILLIAM D. KEPHART,
District Judge,

Respondents,

and

SOUTHWEST GAS CORPORATION,

Real Party in Interest.

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Dec 24 2019 02:55 p.m.
Case No. 80175
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No.
A-19-791302-J

**MOTION FOR STAY OF
DISTRICT COURT PROCEEDINGS**

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I. INTRODUCTION

This motion requests a stay of district court proceedings pending resolution of the Petition for Writ of Mandamus or, Alternatively, Prohibition filed by the Public Utilities Commission of Nevada (“PUCN”) on December 9, 2019, and joined in by the State of Nevada, Bureau of Consumer Protection (“BCP”) pursuant to a motion filed on December 12, 2019, and an order of this Court granting the motion on December 23, 2019. The PUCN’s petition asks this Court for extraordinary writ relief to require the district court to adhere to the legislatively-mandated, expedited procedural schedule applicable to judicial review of PUCN decisions. Specifically, the PUCN’s petition addresses the district court’s contravention of Nevada Revised Statutes (“NRS”) 703.373 in allowing supplemental briefing in Eighth Judicial District Court Case No. A-19-791302-J (the appeal of Southwest Gas Corporation (“Southwest Gas”) seeking reversal of the PUCN’s final decision in Southwest Gas’s recent general rate case).

On December 9, 2019, the PUCN filed with the district court a motion for a stay, and on December 11, 2019, the BCP filed a joinder to the PUCN’s motion. Southwest Gas filed an opposition to the motion on December 16, 2019. The motion was heard on December 17, 2019, and the district court denied the motion because it does not believe that the PUCN or BCP will be harmed by the district

court considering the supplemental briefing.¹ The district court concluded that the content of the additional briefing can be presented during hearing, regardless of whether the supplemental briefing is determined to have been impermissible,² and the judge noted that the PUCN and BCP retained the right to have the last word because they were each given an opportunity to file a sur-reply.³ The district court added that the requested stay would cause the very thing (a delay in resolving the case) that the PUCN and BCP have argued should be avoided to mitigate potential rate impact to utility customers.⁴

Notwithstanding the district court's denial of the PUCN's motion for a stay, and pursuant to the Nevada Rules of Appellate Practice, Rule 8(a), the PUCN respectfully requests that this Court stay the district court's proceedings until the PUCN's petition for a writ is resolved.

II. STANDARD OF REVIEW

In determining whether to issue a stay of district court proceedings pending disposition of a petition for a writ, this Court considers the following factors: (1)

¹ The district court asked, "[I]f the same information can be supplied or given at the hearing, then what are [the PUCN and BCP] gaining" if a stay is granted? Dec. 17, 2019, Hr'g Tr. (Ex. D) at 14:22-23.

² "I don't think that the [Supreme] Court's going to tell me, 'you... shouldn't have considered this additional information because it wasn't added until after their initial reply.'" *Id.* at 15:2-6.

³ *Id.* at 17:6-7.

⁴ *Id.* at 15:11-16.

whether the object of the requested writ will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether the petitioner is likely to prevail on the merits in the writ petition.⁵ This Court has “not indicated that any one factor carries more weight than the others, although... if one or two factors are especially strong, they may counterbalance other weak factors.”⁶

With regard to this Court’s consideration of whether the petitioner is likely to prevail on the merits of the writ petition, a stay should only be denied “if the petition for a writ appears frivolous or if the [petitioner] apparently filed the stay motion purely for dilatory purposes... [A] stay should generally be granted in other cases.”⁷

III. ARGUMENT

A. This Motion should Be Granted Because One of the Objectives of the PUCN’s Petition Will Be Defeated if the Stay Is Denied.

The PUCN has two objectives in seeking a writ from this Court. The first objective is to ensure that Southwest Gas’s impermissible reply brief in Eighth

⁵ NRAP 8(c).

⁶ *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36 38 (2004) (citing *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 659, 6 P.3d 982, 987).

⁷ *Id.* at 120 Nev. 253, 89 P.3d 40.

Judicial District Court Case No. A-19-791302-J will not improperly influence the district court and inappropriately expand the scope of the proceedings to include a discussion of new arguments related to the applicable standard of review in appeals of PUCN decisions. As explained in more detail below, Southwest Gas’s reply brief raises for the first time an argument that the PUCN should not be afforded deference on questions of fact. A stay is necessary so that neither the district court nor the parties commit further time and resources toward addressing this argument. Given the voluminous record of approximately 20,000 pages in the underlying administrative proceeding, there is value in focusing attention on the issues raised in Southwest Gas’s timely-filed and permissible opening brief.

1. Denial of the stay would not defeat the long-term objective of the PUCN’s petition, so this Court should entertain the petition even if it denies the stay.

The PUCN’s second—and more important—objective in requesting the writ is to obtain clarity, moving forward, regarding the requirements of NRS 703.373. The PUCN’s petition presents the question of whether a district court may extend the briefing schedule in appeals of PUCN decisions, an issue of statewide importance because it affects every customer of the approximately 400 PUCN-regulated utilities that provide electricity, natural gas, water, wastewater, telecommunication, and rail services throughout Nevada. The PUCN’s petition seeks clarification that NRS 703.373 is intended to mitigate the negative effect of

delays in proceedings involving judicial review of PUCN decisions. Delays in judicial review of PUCN ratemaking decisions can be harmful to utility customers because, if a reviewing court's findings result in the PUCN ultimately changing its final order to establish higher rates, the utility may receive additional revenue to offset the under-collection that occurred during the pendency of the appeal. The resulting revised rates will grow higher as more time passes between the PUCN's initial decision and the PUCN's subsequent approval of revised rates that reflect the court-ordered change. Thus, any delay compounds the rate instability caused by a reversal of a challenged PUCN decision by increasing the magnitude of a subsequent rate-change.

In the absence of guidance from this Court, the issue of whether a district court can allow supplemental briefing will likely arise in all future appeals of PUCN decisions. The possibility of obtaining another bite of the apple will inevitably motivate appellants to initiate time-consuming motion practice to request additional briefing, which will further delay resolution of the judicial review and exacerbate any harmful impact on customers' rates.

B. The PUCN and BCP Will Suffer Irreparable Injury if the Stay Is Denied.

NRS 703.373 does not permit a reply brief, so the district court's consideration of Southwest Gas's impermissible reply harms the PUCN and BCP, whose interests in this case are adverse to Southwest Gas's. The injury to the

PUCN and BCP is amplified in this case by the fact that Southwest Gas's impermissible reply introduced a new argument. Specifically, Southwest Gas's rogue reply pleading prominently features arguments related to the standard of review that were not made in its initial brief. The initial brief includes only a vague reference to the court conducting an "independent judicial review upon the facts and the law," without expressly making the argument, contained in its reply brief, that a *de novo* standard of review should apply to both questions of law and fact.⁸ Notably, the "Standard of Review" section of Southwest Gas's initial brief seemingly concedes that the PUCN is afforded deference on questions of fact and only argues that an administrative agency receives no deference on *questions of law*, even qualifying its argument with a recognition that "in some cases deference is given to an 'agency's interpretation when it is within the language of the statute.'" ⁹ To the extent that Southwest Gas's initial brief includes any argument that the PUCN should not be given deference on *questions of fact*, it is camouflaged and unclear. Allowing Southwest Gas's new and/or clarified arguments to be considered by the district court is detrimental and prejudicial to the PUCN and BCP as parties to the district court proceeding.

⁸ 1 App. 44; *also see* 1 App. 32-33.

⁹ *Id.* at 32 (quoting *Manke Truck Lines, Inc. v. Pub. Serv. Comm'n of Nev.*, 109 Nev. 1034, 1036-37, 862 P.2d 1201, 1203 (1993); *also see id.* at 10 (quoting *Poremba v. S. Nev. Paving*, 132 Nev. 288, 291, 369 P.3d 357, 359 (2016)).

Even if the district court were inclined to permit Southwest Gas to introduce new information and argument at hearing, the PUCN and BCP are still harmed by Southwest Gas being allowed to submit the new information and argument in the form of a written pleading. Written and oral argument are not equivalent; a written pleading provides an opportunity for precision and clarity that is rarely attained through oral advocacy, and, as the district court seemingly acknowledges, a written pleading is more likely to provide the court with “sufficient information to support what [a party is] going to be arguing at the actual hearing.”¹⁰ Southwest Gas’s initial brief failed to sufficiently support its subsequent arguments regarding the standard of review, and the PUCN and BCP are injured by Southwest Gas having an opportunity to revise or rehabilitate the arguments contained in its one permitted written memorandum.

C. The Real Party in Interest Will Not Suffer Irreparable or Serious Injury if the Stay Is Granted.

Southwest Gas will not suffer irreparable or serious injury if this Court grants a stay of the district court’s proceedings. First, the delay of a stay will have no financial impact on Southwest Gas if the district court case ultimately and correctly results in the PUCN’s ratemaking decision being affirmed. Second, even if judicial review results in the PUCN being required to issue a modified order

¹⁰ Ex. D at 18:14-15, 16:19-25.

reversing its prior decision, Southwest Gas will have an opportunity to recover additional revenue to offset the under-collection that occurred during the pendency of the appeal. This possibility of the utility recovering additional funds, including the time value of money, is why delays in judicial review of PUCN decisions can have a harmful impact on utility customers; it is the primary reason why the Legislature established an expedited appeals process in NRS 703.373.¹¹ Ironically, the PUCN must request a delay-causing stay to pursue adherence to a statutory process that was clearly intended to reduce delays.

In considering any impact of a stay on Southwest Gas, it is important to note that Southwest Gas is responsible for the considerable delay in this case due to its decision to pursue supplemental briefing 46 days after being served with the PUCN's and BCP's briefs. Even if PUCN decisions were not subject to expedited judicial review pursuant to NRS 703.373 and were, instead, reviewed pursuant to the statute that governs judicial review of other agencies' decisions, Southwest Gas's reply brief would have been 16 days late, as NRS 233B.133 provides only a 30-day window for submitting replies.¹² Southwest Gas, in seeking to file an untimely and impermissible supplemental brief, initiated delays associated with not just the filing of supplemental briefs but also the related motion practice and writ

¹¹ See Pet. for Writ, 12-14; 2 App. 379-81.

¹² Unlike NRS 233B.133, NRS 703.373 does not permit reply memoranda.

proceeding. Thus, in balancing the equities of granting a stay, this Court should consider Southwest Gas's role in precipitating the circumstances that required the PUCN to seek extraordinary writ relief.

D. The PUCN and BCP Are Likely to Prevail on the Merits of the Petition.

The PUCN and BCP are likely to prevail on the merits of the petition, but there need not be a likelihood of success on the merits for this Court to grant the requested stay. Indeed, the PUCN is not required to “show a ‘probability’ of success on the merits,” and must “only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.”¹³

The substantial case presented in the PUCN's petition includes extensive points and authorities supporting the notion that NRS 703.373 does not permit a reply brief and limits a court's discretion with regard to the briefing schedule applicable to judicial review of PUCN decisions.¹⁴ The district court abused its discretion and acted arbitrarily and capriciously when it disregarded the applicable law and allowed Southwest Gas to file a reply brief.¹⁵ Moreover, there is not a

¹³ *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981) (citing *Providence Journal v. Federal Bureau of Investigation*, 595 F.2d 889 (1st Cir. 1979); *Houston Insulation Contractors Ass'n v. N.L.R.B.*, 339 F.2d 868, 870 (5th Cir. 1964)).

¹⁴ See Pet. for Writ, 7-16.

¹⁵ See *id.* at 17-20.

plain, speedy, and adequate remedy in the ordinary course of law; but even if such a remedy were available, writ relief would still be warranted because the interpretation and application of NRS 703.373, and the matter of whether PUCN decisions receive expedited judicial review, is an important issue of law that requires clarification, and public policy is served by this Court issuing the requested writ.¹⁶ Also, the circumstances reveal urgency and strong necessity, and judicial economy and sound administration militate in favor of issuing a writ.¹⁷

A stay is appropriate here because the PUCN's writ petition is not frivolous, and the request for a stay is not for dilatory purposes.¹⁸ Moreover, the requested stay achieves an equitable outcome because it avoids harm to the PUCN and BCP, while conserving government resources and not harming Southwest Gas.

IV. CONCLUSION

For the foregoing reasons, the PUCN respectfully requests that this Court stay the proceedings in Eighth Judicial District Court Case No. A-19-791302-J until such time as the PUCN's petition for a writ is resolved.

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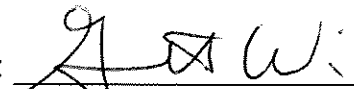
¹⁶ *See id.* at 20-29.

¹⁷ *See id.* at 27-29.

¹⁸ *See Mikohn Gaming Corp.* at 120 Nev. 253, 89 P.3d 40.

Dated this 24th day of December, 2019.

THE PUBLIC UTILITIES COMMISSION OF NEVADA

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Public Utilities Commission of Nevada and that on this date I electronically filed and served copies of the foregoing

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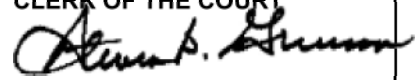
The Honorable Joseph T. Bonaventure
330 South Third Street
Las Vegas, NV 89101

The Honorable William D. Kephart
Department No. 19
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, NV 89155

Dated this December 24th, 2019.

/S/ SHAYLA HOOKER
SHAYLA HOOKER

EXHIBIT A



MSTAY

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**IN THE EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK**

SOUTHWEST GAS CORPORATION,

Petitioner,

vs.

PUBLIC UTILITIES COMMISSION OF
NEVADA, *et al.*,

Respondents.

CASE NO. A-19-791302-J

DEPT. NO. 19

**RESPONDENT'S
MOTION FOR STAY OR,
ALTERNATIVELY, CONTINUANCE**

1 Respondent Public Utilities Commission of Nevada (“PUCN”), by and through its counsel,
2 moves this Court, pursuant to Rule 8(a) of the Nevada Rules of Appellate Procedure, for a stay of the
3 order dated November 11, 2019, granting leave for Petitioner Southwest Gas Corporation to file a
4 reply. The PUCN further requests that this Court stay the procedural schedule in this case, pending a
5 decision by the Supreme Court of Nevada regarding the PUCN’s Petition for a Writ of Mandamus or
6 Prohibition. In the alternative, the PUCN requests a continuance of the scheduled hearing in this case.

7 This motion is made based upon the attached Memorandum of Points and Authorities, the
8 papers and pleadings on file herein, and any oral argument that the Court may entertain on hearing of
9 the motion.

10 Dated the 9th day of December, 2019.

11 By: /s/
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MEMORANDUM OF POINTS AND AUTHORITIES

I. NATURE OF MOTION

Pursuant to the provisions of NRAP 8(a), the Public Utilities Commission of Nevada (“PUCN”) seeks a stay of the order dated November 11, 2019, granting leave for Petitioner Southwest Gas Corporation (“Southwest Gas”) to file a reply. The PUCN further requests that this Court stay the procedural schedule in this case, pending a decision by the Supreme Court of Nevada regarding the PUCN’s Petition for a Writ of Mandamus or Prohibition, which seeks an order requiring the District Court to vacate the November 11, 2019, Order. Alternatively, the PUCN requests a continuance of the scheduled hearing in this case.

II. STATEMENT OF FACTS

On December 6, 2019, the Public Utilities Commission of Nevada filed with the Supreme Court of Nevada its Petition for a Writ of Mandamus or, Alternatively, Prohibition, seeking issuance of an order vacating the District Court’s decision to allow Southwest Gas to file a reply brief. Nevada Revised Statutes (“NRS”) 703.373, the statute governing judicial review of PUCN decisions, does not contemplate the filing of such supplemental briefing, and the PUCN is pursuing extraordinary writ relief to obtain a ruling from the State’s high court on the permissibility of supplemental briefing in this case and in future appeals of PUCN decisions.

As the PUCN argued in its opposition to Southwest Gas’s motion for leave to file a reply, NRS 703.373 appears to limit the District Court’s discretion with regard to setting a briefing schedule for appeals of PUCN decisions. Due to the potentially-harmful impact of delay on utility ratepayers, the Legislature clearly intended for NRS 703.373 to effectuate an expedited process of judicial review for PUCN decisions. This Court’s decision to allow additional briefing extended the process of judicial review and caused delay, seemingly contradicting the legislative mandate of NRS 703.373(7) for courts to proceed quickly after petitioners and respondents each file a single memorandum of points and authorities.

The question of whether a district court may allow additional briefing in appeals of PUCN decisions is an issue of law that requires clarification, and public policy is served by consideration of

1 the PUCN's petition for a writ. Moreover, this is a statewide issue because it affects every customer of
2 the approximately 400 PUCN-regulated utilities that provide electricity, natural gas, water, wastewater,
3 telecommunication, and rail services throughout Nevada. The negative effect of prolonged briefing
4 applies to judicial review of any PUCN decision setting utility rates. If a reviewing court finds that
5 rates adopted by the PUCN are too low, the utility is entitled to additional revenue to offset the under-
6 collection that occurred during the pendency of the appeal. The resulting revised rates will ultimately
7 be higher as more time passes between the PUCN's initial decision and the PUCN's subsequent
8 approval of revised rates that reflect the court-ordered change. Thus, any delay compounds the rate
9 instability caused by a reversal of a challenged PUCN decision by increasing the magnitude of a
10 subsequent rate-change.

11 In the absence of guidance from the Supreme Court, this very same issue will likely arise in all
12 future appeals of PUCN decisions. Thus, judicial economy and sound administration militate in favor
13 of the Supreme Court's issuance of an order addressing the issue. Judicial economy and sound
14 administration also militate in favor of staying the proceedings in the instant case so that neither this
15 Court nor any party is compelled to invest resources and time addressing issues raised by Southwest
16 Gas in a reply brief that may ultimately be deemed impermissible by the Supreme Court.

17 Finally, given the recent request of Southwest Gas for a continuance of the hearing in this case,
18 granting the PUCN's requested stay will achieve judicial economy by obviating the need for further
19 discussion regarding whether and when to reschedule the substantive hearing on Southwest Gas's
20 petition for judicial review. In reliance on Southwest Gas's letter filed with this Court on November
21 26, 2019, and based on subsequent conversations and tentative agreements with Southwest Gas
22 regarding potential rescheduled hearing dates, the PUCN and Nevada's Bureau of Consumer
23 Protection each adjusted internal schedules and priorities. Moving forward with a hearing on
24 Southwest Gas's Petition for Judicial Review on December 17, 2019, would therefore have a
25 prejudicial effect on the Respondents in the instant case. Accordingly, if the Court is not inclined to
26 grant the requested stay, the PUCN asks for a continuance of the scheduled hearing.

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III. CONCLUSION


For the foregoing reasons, the PUCN respectfully requests that this Court grant its motion for a stay or, alternatively, a continuance to allow the Supreme Court of Nevada to rule on the pending petition for writ relief and to ensure equitable and efficient administration of this case.

AFFIRMATION AND SIGNATURE
Pursuant to NRS 239B.030/603.040A

The undersigned does hereby affirm that upon the filing of additional documents in the above matter, an Affirmation will be provided **ONLY** if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040), which means a natural person's first name or first initial and last name in combination with any one or more of the following data elements:

1. Social Security number.
2. Driver's license number or identification card number.
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account. The term does not include publicly available information that is lawfully made available to the general public.

Dated the 9th day of December, 2019.

by: 
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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 9th day of December, 2019, I served a true and correct copy of the foregoing **RESPONDENT'S MOTION FOR STAY** using the Court's CM/ECF electronic service system to the following:

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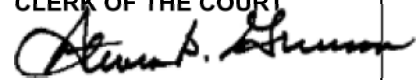
The Honorable Joseph T. Bonaventure
330 South Third Street
Las Vegas, Nevada 89101

The Honorable William D. Kephart
Department No. 19
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

DATED this 9th day of December, 2019.


SHAYLA HOOKER

EXHIBIT B



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16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 SOUTHWEST GAS CORPORATION,

19 Petitioner,

20 vs.

21 PUBLIC UTILITIES COMMISSION OF
22 NEVADA, *et al.*,

23 Respondents.

Case No.: A-19-791302-J

Dept No.: 19

24 **STATE OF NEVADA, BUREAU OF CONSUMER PROTECTION'S JOINDER TO**
25 **THE PUBLIC UTILITY COMMISSION OF NEVADA'S MOTION TO STAY OR,**
26 **ALTERNATIVELY, CONTINUANCE**

27 The Bureau of Consumer Protection ("BCP"), by and through counsel, Ernest D.
28 Figueroa, Consumer Advocate for the State of Nevada, and Whitney F. Digesti, Deputy
Attorney General, hereby joins Respondent Public Utilities Commission of Nevada's
("PUCN") Motion for Stay or, Alternatively, Continuance.

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1 Pursuant to Eighth Judicial District Court Rule ("EJDCR") 2.2(d), BCP seeks
2 joinder to the Motion for Stay or, Alternatively, Continuance, filed with this Court on
3 December 9, 2019. For all the reasons set forth in the Motion for Stay or, Alternatively,
4 Continuance, Respondent BCP believes that a stay pending the petition for writ relief will
5 ensure equitable and efficient administration in this case.

6 **AFFIRMATION**
7 **(Pursuant to NRS 239B.030)**

8 The undersigned does hereby affirm that this document does not contain the social
9 security number of any person.

10 DATED this 11th day of December 2019.

11
12 AARON D. FORD
13 Attorney General

14 ERNEST D. FIGUEROA
15 Consumer Advocate

16 /s/ Whitney F. Digesti

17 WHITNEY F. DIGESTI, (Bar No. 13012)
18 Deputy Attorney General
19 Bureau of Consumer Protection
20 100 N. Carson Street
21 Carson City, NV 89701
22 Tel. (775) 684-1169

23 *Attorneys for the State of Nevada*
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on this 11th day of December, I served a true and correct copy of the
4 foregoing **STATE OF NEVADA, BUREAU OF CONSUMER PROTECTION'S**
5 **JOINDER TO THE PUBLIC UTILITY COMMISSION OF NEVADA'S MOTION TO**
6 **STAY OR, ALTERNATIVELY, CONTINUANCE**, by electronic service to:

7 Daniel F. Polsenberg, Esq.
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9 Joel D. Henriod, Esq.
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12 jhenderson@lrrc.com
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16 3993 Howard Hughes Parkway, Suite 600
17 Las Vegas, Nevada 89169
18 Attorneys for Southwest Gas Corporation

19 And by depositing a copy in state mail to:

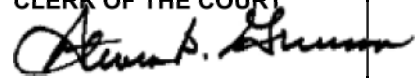
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26 The Honorable Joseph T. Bonaventure
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The Honorable William D. Kephart Dept No. 19
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Vivian Barrera
An employee of the State of Nevada
Office of the Attorney General

EXHIBIT C



OPPM

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DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHWEST GAS CORPORATION,

Petitioner,

vs.

PUBLIC UTILITIES COMMISSION
OF NEVADA,

Respondent.

Case No.: A-19-791302-J

Dep't No.: 19

**SOUTHWEST GAS CORPORATION'S
OPPOSITION TO MOTION FOR STAY**

The Public Utilities Commission's request to stay this litigation pending its extraordinary petition to the Nevada Supreme Court is many things, but it is not a request for "equitable and efficient administration of this case." (Mot. 6; Joinder 2.) It's a request that would create the very delay that the Commission purports to decry. As the Commission has already obtained its requested alternative relief—a continuance through January 9, 2020—this Court should deny the request for a stay.

I.

A STAY PENDING THE WRIT PETITION IS UNWARRANTED

It is perhaps fitting that the Commission proceeds directly from a "Statement of Facts" (Mot. 1) to its "Conclusion" (Mot. 3). Absent from the brief is any

1 “Argument” that discusses NRAP 8(c), the applicable rule governing a request
2 for a stay pending a writ petition. That rule requires the party seeking a stay
3 to discuss the following factors:

4 (1) whether the object of the appeal or writ petition will be
5 defeated if the stay or injunction is denied;

6 (2) whether appellant/petitioner will suffer irreparable or
7 serious injury if the stay or injunction is denied;

8 (3) whether respondent/real party in interest will suffer
9 irreparable or serious injury if the stay or injunction is
10 granted; and

11 (4) whether appellant/petitioner is likely to prevail on the
12 merits in the appeal or writ petition.

13 NRAP 8(c). These factors all militate against a stay here, but in particular the
14 petition lacks even the “substantial case on the merits” required by NRAP
15 8(c)(4). *See Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659,
16 6 P.3d 982, 987 (2000) (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.
17 1981)).

18 **A. The Petition Is Likely to Be Denied**

19 **1. *The Right (or Disentitlement) to File a Reply
20 Is Not a Significant Issue Requiring the
21 Supreme Court’s Extraordinary Intervention***

22 Even if properly presented, the Supreme Court would be unlikely to have
23 much interest in the writ petition. The Supreme Court has long held that
24 courts have the inherent power to regulate such matters of procedure. *See Al-*
25 *bios v. Horizon Communities, Inc.*, 122 Nev. 409, 420 n.12, 132 P.3d 1022, 1029
26 n.12 (2006). The arcane question in this petition—whether a petition for judi-
27 cial review under NRS chapter 703 categorically forbids the filing of a reply
28 brief—is a poor vehicle for the Supreme Court to overturn that jurisprudence.

Moreover, “very few writ petitions warrant extraordinary relief.” *Smith v.*
Eighth Judicial Dist. Court, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997). The
filing of a reply brief is not extraordinary—it’s as mundane as it gets.

2. *The Petition Is Meritless*

For what it's worth, the petition fails on its own merits. First, this is not the situation in *Rural Telephone Co. v. Public Utilities Commission*, 133 Nev. 387, 398 P.3d 909 (2017), where the Legislature had set a specific deadline that the utility wanted to disregard. Here, in contrast, the Legislature has not attempted to prohibit or otherwise regulate the filing of a reply brief. Indeed, the Legislature caps the court's discretion in just one way—it cannot set the hearing any *sooner* than 20 days after the filing of the Commission's response brief. NRS 703.373(7). The absence of any statutory language about replies means that the court has discretion to allow a reply if a petitioner wants to file one. *See Double Diamond v. Second Judicial Dist. Court*, 131 Nev. 557, 563, 354 P.3d 641, 645 (2015) (declining to “read additional language into the statute”); *McKay v. Bd. of Cnty. Comm'rs*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987) (“[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.”); *cf. Sheriff, Pershing County v. Andrews*, 128 Nev. 544, 548, 286 P.3d 262, 264 (2012) (where legislature prohibited certain conduct, but not other conduct, omission was deliberate); *In re Boyce*, 27 Nev. 299, 75 P. 1, 4 (1904) (where Nevada Constitution was silent, legislature had discretion to exercise power).

The Commission's petition, though, would unnecessarily force a constitutional conflict. *See Mangarella v. State*, 117 Nev. 130, 134-35, 17 P.3d 989, 992 (2001) (“Whenever possible, we must interpret statutes so as to avoid conflicts with the federal or state constitutions.”). Under the separation of powers, the Legislature's sphere is only to enact substantive law; it “may not unduly impinge upon the ability of the judiciary to manage litigation,” *Borger v. Eighth Judicial Dist. Court*, 120 Nev. 1021, 1028–30, 102 P.3d 600, 605–06 (2004), such as by promulgating rules of courtroom procedure, *State v. Connery*, 99 Nev. 342, 346, 661 P.2d 1298, 1300 (1983).

1 In *Borger*, the Supreme Court clarified that the Legislature could not
2 limit a district court's discretion to allow a medical-malpractice litigant to
3 amend the complaint. 120 Nev. 1021, 1028–30, 102 P.3d 600, 605–06 (2004).

4 Here, we are talking about something even farther removed from the Leg-
5 islature's power to enact substantive law: the ability of a court to order supple-
6 mental briefing on difficult legal questions. To say that the Legislature prohib-
7 ited a district court from soliciting needed analysis for a decision—or allows the
8 court to solicit that analysis only during an oral hearing, without the benefit of
9 written authorities—would not just be nonsensical; it would be unconstitu-
10 tional.

11 **3. The Petition Is Barred by Laches and Estoppel**

12 Even if the petition had merit, the time for filing it passed long ago.

13 The doctrine of laches requires parties who seek the Supreme Court's ex-
14 traordinary relief in a writ petition to do so expeditiously. *See Widdis v. Second*
15 *Judicial Dist. Court*, 114 Nev. 1224, 1227–28, 968 P.2d 1165, 1167 (1998). Inex-
16 cusable delay, knowing acquiescence in existing conditions, and prejudice to the
17 real party in interest are all grounds for denying the petition. *State v. Eighth*
18 *Judicial Dist. Court (Anzalone)*, 118 Nev. 140, 148, 42 P.3d 233, 238 (2002).
19 Without an adequate excuse, even a short delay risks dismissal for laches.
20 *Bldg. & Constr. Trades Council of N. Nev. v. State ex rel. Pub. Works Bd.*, 108
21 Nev. 605, 836 P.2d 633 (1992).

22 Here, the Commission's knowing acquiescence in the Court's alternative
23 relief of a surreply—the very relief that the Commission requested—acts as a
24 waiver that bars the petition. The Commission knew on October 15 that the
25 Court was taking this course, but it waited nearly two months to file the peti-
26 tion. *See Bldg. & Constr. Trades Council*, 108 Nev. at 611, 836 P.2d at 637 (one
27 month was too long). In that time, the Commission and the Bureau of Con-
28 sumer Protect not only filed their surreplies, but—as evidenced by the Court's

1 request for hard copies of the parties' briefs—the Court was actively reviewing
2 those pleadings in preparation for the December 17 hearing. This delay, moreo-
3 ver, irretrievably prejudices both Southwest Gas and this Court: there is no way
4 now for the Court to erase the reply and surreplies from its mind, and it is un-
5 fair for the Commission to ask it to.

6 **B. Denying a Stay Will Not Prejudice the Commission**
7 **or Destroy the Object of the Petition—Any More**
8 **than the Commission's Own Delay Has Done So**

9 Denying a stay would not harm the Commission or BCP because they
10 have already filed their surreplies. NRAP 8(c)(2) (court should consider
11 “whether appellant/petitioner will suffer irreparable or serious injury if the stay
12 or injunction is denied”). Those surreplies cured any prejudice that the Com-
13 mission or BCP might have suffered from the Court granting relief to file a re-
14 ply. In fact, the surreplies gave the Commission and BCP an advantage by giv-
15 ing them the last word.

16 And the “object of the appeal or writ petition” will not “be defeated if the
17 stay or injunction is denied.” NRAP 8(c)(4). The petition supposedly seeks to
18 vindicate the expedited procedure that NRS chapter 703 demands, but a stay
19 would undermine—not advance—that object. Regardless, any problems with
20 the reviewability of the petition are those that the Commission created by wait-
21 ing until a week before the December 17 hearing to seek a stay.

22 **C. The Stay Will Cause the Very Delay that the**
23 **Commission Bemoans, to Southwest Gas's Prejudice**

24 The Commission is right about one thing—these are supposed to be expe-
25 dited proceedings. So, by definition, a stay would cause harm to Southwest
26 Gas. See NRAP 8(c)(3) (court must consider “whether respondent/real party in
27 interest will suffer irreparable or serious injury if the stay or injunction is
28 granted”). The Commission disingenuously purports to be concerned with “the

1 potentially-harmful impact of delay on utility ratepayers,” and the “negative ef-
2 fect of prolonged briefing,” but its request for a stay would only delay things fur-
3 ther. This Court’s consideration of the underlying petition for review is the only
4 thing that will actually move this case forward. The request for a stay is poorly
5 camouflaged gamesmanship. The Court should see through this machination.
6 *Cf. Archon Corp. v. Eighth Judicial Dist. Court*, 133 Nev. 816, 407 P.3d 702
7 (2017) (writ petition relief following denial of motion to dismiss “presents many
8 of the inefficiencies that adherence to the final judgment rule seeks to pre-
9 vent—an increased caseload, piecemeal litigation, needless delay, and confusing
10 litigation over this court’s jurisdiction”).

11 II.

12 THE ALTERNATIVE RELIEF IS SUFFICIENT

13 Just as this Court appropriate exercised its discretion to adopt the com-
14 promise position on reply brief—let both sides file one—this Court should also
15 let the agreed-to continuance for the hearing on the petition stand in for the
16 more drastic remedy of a stay. This is particularly appropriate given the
17 rushed process, in which the Commission rejected Southwest Gas’s offer to hear
18 the petition a week early, did not seek an interim stay (pending full briefing),
19 and filed this motion for a stay pending the writ petition on shortened time.

20 The Supreme Court is likely to act on the petition one way or another be-
21 fore the January 9 hearing. If the Supreme Court denies the petition, the stay
22 will have only gummed up this Court’s calendar and required the Court and the
23 parties to again resume preparations for the hearing. If the Supreme Court or-
24 ders an answer on the petition before January 9, this Court can reevaluate the
25 propriety of a stay at that point. That would be far preferable to issuing a blan-
26 ket stay on the shortened schedule that the Commission has forced.

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Dated this 16th day of December, 2019.

By: /s/ Abraham G. Smith

Attorneys for Petitioner

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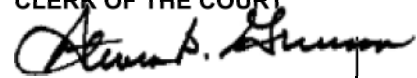
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EXHIBIT D



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SOUTHWEST GAS CORPORATION,)	CASE NO. A-19-791302-J
)	
Petitioner,)	DEPT. NO. XIX
)	
vs.)	
)	
PUBLIC UTILITIES COMMISSION)	
OF NEVADA,)	
)	
Respondent.)	
)	

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
TUESDAY, DECEMBER 17, 2019

**RECORDER'S TRANSCRIPT OF HEARING:
RESPONDENT'S EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME
REGARDING ITS MOTION FOR STAY, OR ALTERNATIVELY CONTINUANCE**

APPEARANCES:

FOR THE PETITIONER:	DANIEL F. POLSENBERG, ESQ. ABRAHAM G. SMITH, ESQ.
FOR THE RESPONDENT:	DEBREA M. TERWILLIGER, ESQ.
FOR THE INTERVENOR:	PAUL E. STUHFF, ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 17, 2019

2 [Case called at 9:06 A.M.]

3 THE COURT: Southwest Gas Corporation versus Public
4 Utilities Commission of Nevada in A-791302.

5 THE COURT RECORDER: Put your names on the record,
6 please.

7 MR. POLSENBERG: Good morning, Your Honor. Dan
8 Polsenberg for Southwest Gas.

9 MR. SMITH: Abe Smith for Southwest Gas.

10 MS. TERWILLIGER: Good morning, Your Honor. Debrea
11 Terwilliger for Public Utilities Commission of Nevada.

12 MR. STUHFF: Good morning, Your Honor. Paul Stuhff
13 here for the State of Nevada, Bureau of Consumer Protection.

14 THE COURT: All right. This is -- all right, I may
15 need to make a quick record with this.

16 Okay. This is a matter that preceded before the
17 Public Utilities Commission of Nevada. After a decision was
18 rendered in that matter the Southwest Gas took a Petition,
19 filed a Petition for Judicial Review challenging the
20 Commission's Findings.

21 And in a period of time after they had filed their
22 Petition, they then asked leave to file a Reply to the
23 Opposition by the Commission and Judge Bonaventure, in my
24 absence, had granted that. And during that hearing, the
25 Public Utilities Commission had asked for a surrebuttal time,

1 and so dates were set.

2 This was originally set for Judicial Review for
3 today. And because of those requests of -- for the -- a Reply
4 and then a rebuttal to the Reply, it was set -- it's been set
5 for January 9th.

6 MR. POLSENBERG: Your Honor, if I may interrupt you.

7 THE COURT: Okay.

8 MR. POLSENBERG: The date of today, December 17th,
9 was based on the Replies and the Surreplies.

10 THE COURT: Okay.

11 MR. POLSENBERG: So, it wasn't --

12 THE COURT: Oh, I'm sorry. Then there --

13 MR. POLSENBERG: -- moved because of the --

14 THE COURT: -- was a time that came because of the
15 date for today that there was a request to continue it the
16 9th.

17 MR. POLSENBERG: I had originally requested to move
18 it because I had something else --

19 THE COURT: Right.

20 MR. POLSENBERG: -- and then realized that this was
21 more important than my something else --

22 THE COURT: Okay.

23 MR. POLSENBERG: -- and so tried to move it back to
24 here. By then our friends from the Government had rearranged
25 their schedules and actually told me they couldn't make it

1 here today, although, they are here today.

2 THE COURT: Okay. Well, needless to say, there was
3 then a request for a stay filed in light of the fact that the
4 Public Utilities Commission had filed an appeal of Judge
5 Bonaventure's decision that I signed, to give the Southwest
6 Gas an opportunity to file a Reply and then a Surrebuttal.

7 And so today, in light of the fact that I see that
8 the Petition for Judicial Review is on for the 9th, I'm not
9 prepared to address your Judicial Review today.

10 MR. POLSENBERG: I understand that and I --

11 THE COURT: Okay.

12 MR. POLSENBERG: -- don't think either of us are
13 either.

14 THE COURT: All right. So what I'm just addressing
15 today -- and in the meantime, there's been a Joinder also
16 filed on behalf of the State of Nevada, so what -- as an
17 Intervenor.

18 So what I'm just going to do is address the stay at
19 this point. So it's your motion.

20 MS. TERWILLIGER: Thank you, Your Honor.

21 Debrea Terwilliger for the Public Utilities
22 Commission. As you stated, we're here asking for a stay of
23 the -- of the procedural -- the procedural order in this case
24 given that the Commission, the PUC has filed a Petition for
25 Writ with the Supreme Court on December 9th.

1 Contemporaneously, we filed the Motion for Stay here
2 at the Court. You know, this is -- we're asking for this in
3 the interest of judicial economy. We seek clarity from the
4 Nevada Supreme Court as to the appeal process for the
5 Commission. And the Commission's opinion, NRS 703.373, does
6 not permit Replies. And to the extent this Court would have
7 the hearing on this matter, whether that be January 9th or
8 some other time, before the Supreme Court gives us that
9 clarity as to that statute --

10 THE COURT: Can I ask you a question though?

11 MS. TERWILLIGER: Sure.

12 THE COURT: If we're in a hearing --

13 MS. TERWILLIGER: Yeah.

14 THE COURT: -- and we're actually to the hearing
15 proceeding, would they not then still be allowed to present
16 the same information that would be given in a written Reply?

17 MS. TERWILLIGER: Arguably, yes. But nonetheless, I
18 think, you know, the --

19 THE COURT: Okay.

20 MS. TERWILLIGER: -- the -- look, this is an issue
21 of matter -- a matter of public importance for the State. The
22 Nevada Legislature has been clear, in our opinion, that NRS
23 703.373 requires for an expedited proceeding for Commission
24 proceedings, and that's in the ratepayer's interest.

25 The longer we go between Commission cases, and the

1 judicial process, the longer that pot of money that's at
2 issue, particularly in rate cases, which we're here on, that
3 pot of money grows. But normally, under normal circumstances,
4 this Commission would be saying, we should have moved to
5 hearing as quickly as possible.

6 And we did argue that. We argued that the Reply
7 shouldn't be allowed because we should be moving towards
8 hearing. But the Commission, as the public body, has decided
9 that the -- it is more important -- the -- getting clarity
10 from the Supreme Court, for not just Southwest Gas's
11 ratepayers, but for all ratepayers, all of us are a ratepayer
12 of some public utility in the State, whether that's NV Energy,
13 Southwest Gas, a telecom provider; it's more important to get
14 clarity and to temporarily ask this Court to stay this
15 proceeding, such that -- such that we can see if the Supreme
16 Court is going to give us the clarity we asked for and so that
17 this Court, in the interest of judicial economy, does not have
18 to -- to hear Replies, and Surreplies, that the Supreme Court
19 might now allow.

20 And if I may, I just want to, you know, Southwest
21 Gas --

22 THE COURT: Okay.

23 MS. TERWILLIGER: -- argues we didn't -- we didn't
24 address Nevada Rule of Appellate Procedure 8(c). That's the
25 standard that would be applied if the Nevada Supreme Court, if

1 we asked for a stay here, this Court might find instructive.
2 You know, that standard is whether the object, the appeal, or
3 Writ Petition will be defeated if the stay or injunction is
4 denied.

5 The object or appeal is, again, I'm repeating
6 myself, but it's to get clarity from the Nevada Supreme Court.
7 We need to know what the judicial appeal process is for PUC
8 cases, you know, the Commission, you know, respectfully, Your
9 Honor, that the order from the -- the Court's order granting
10 the Reply has thrown that in a bit of a disarray.

11 We have other appeals pending. We have one coming
12 up for oral argument in the Second JD. NV Energy did not
13 request a Reply, did not seek a Reply. It's very -- we do not
14 have Replies in PUC cases.

15 THE COURT: But isn't there not a lot of -- a degree
16 of discretion that's afforded the District Court in this area
17 for purposes of having clarity, before you actually go to the
18 actual -- the actual hearing?

19 MS. TERWILLIGER: I understand your interest, but
20 the Nevada Supreme Court has spoken. The Rural Telephone
21 case, you know, Southwest Gas argues that the Rural Telephone
22 case is not the same as this case. They're right. But that
23 doesn't mean that the Rural Telephone case didn't address this
24 very issue.

25 The Nevada Supreme Court said in the Rural Telephone

1 case, There are mandatory discretionary provisions in NRS
2 703.373. One of the mandatory provisions is NRS 703.373(7)
3 which says, we -- after the respondents -- that's me and the
4 BCP, the AG's office, file our Reply Memorandum, the matter is
5 at issue and the parties have to be ready to go to hearing in
6 20 days. The Court said that was mandatory language and it
7 leaves no room for a court discretion.

8 So being -- the matter being at issue after we file
9 our Reply Memorandum does not leave room for -- for a Reply.
10 The matter began at issue, and be ready for hearing in 20 days
11 does not leave room for appeal.

12 So I -- under normal circumstances, I understand
13 this Court would like the discretion to take more pleadings to
14 understand issues. But in this case, the Nevada legislature
15 and the Nevada Supreme Court have spoken; we want Nevada PUC
16 appeal cases to move quickly.

17 They -- this is why NRS 703.373 is different than
18 NRS 233B. Other state agencies -- other state agencies have
19 their appeals governed by NRS 233B, which does allow Replies,
20 and it allows some room in the procedural schedule.

21 This statute doesn't allow that room. And it's
22 because we're all ratepayers here. That pot of money
23 continues to grow between the, you know, the Commission
24 decision and the resolution of the appeal process, which is
25 like why I said, under normal circumstances we'd be saying,

1 let's move forward with this case.

2 But in this case, the Commission, as a public body
3 has said, we want clarity from the Supreme Court, and we, Your
4 Honor, don't want you to waste your time hearing arguments
5 that the Replies and Surreplies that the Nevada Supreme Court
6 say -- may say later, you know -- you know, we don't -- we
7 don't think those were lawfully made, those Replies and
8 Surreplies. Those questions can get asked at hearing.

9 Southwest Gas should have known. They should have, you
10 know, reviewed NRS 703.373, realized they only got one bite of
11 apple. The arguments they covered in their Reply could have
12 easily -- they were standard of review arguments.
13 They could have easily been covered in their opening
14 memorandum. They -- the fact that they didn't do was -- that
15 -- that's their -- that's their issue.

16 So, you know, and I just want to make clarification,
17 because you kind of stated on the record, that we asked for a
18 Surreply. That was only our backup position.

19 Our -- our primary position that the Commission
20 took, when we opposed their Motion for a Reply was that we
21 don't think it's allowed under NRS 703.373. We only asked for
22 that as a backup because the statute also contemplates the
23 respondents, that being the PUC in this case, and the BCP get
24 the last word. So that's the only reason that was asked for.
25 That was not our primary request.

1 So, you know, I just want to -- you know, Southwest
2 Gas also makes some laches argument, that we waited too long
3 to file the Petition for Writ, that we acquiesced in filing
4 our Surreply.

5 Well, the Surreply was due less than two weeks after
6 Judge Bonaventure ordered -- he -- that hearing was on October
7 15th, we had a due date of November 1st. It was a very quick
8 turnaround. I don't know that the Commission should be
9 punishing [sic] for following a court order that was -- had a
10 really quick turnaround for the surreplies.

11 We moved towards this Petition and filing this
12 Petition as quickly as possible. I think, you know, other --
13 other cases that -- Southwest Gas cited some cases that seem
14 to imply that -- that two months was too long.

15 Well, first of all, it wasn't two months. The -- we
16 had -- Judge Bonaventure set the December 17th -- or set the
17 -- Judges Bonaventure said on October 15th that we filed the
18 Replies and Surreplies and moved to hearing on December 17th.
19 That Notice of Entry of Order was November 15th.

20 We filed on December 9th. If you're going from
21 October 15th, that was less than two months. If you're going
22 from November 15th, that was less than a month. There are
23 other courts who have said that four months does not raise a
24 laches argument, State versus Eighth JD, Anzalone, and I hope
25 I'm pronouncing that right, 118 Nev. 140, at pages 147, 48;

1 Moseley versus Eighth JD, 124 Nev. 654, at 659, a four month
2 delay do not support laches.

3 THE COURT: Okay.

4 MS. TERWILLIGER: We don't think -- we went as
5 quickly as we could at the Commission, who normally doesn't do
6 these types of Writs. So I -- you know, I just want to -- I
7 want to kind of wrap up with one thing. That Southwest Gas
8 now seems to be causing -- saying we caused a delay.

9 I'm sorry, I just can't -- I can't buy that
10 argument. We filed our certified record in accordance with
11 the statute 30 days after their -- their Petition for Judicial
12 Review was served on us on March 22nd. We filed on April
13 22nd. They filed their Memorandum 30 days later. We filed
14 our Reply Memorandum 30 days later. We were ready to go
15 hearing after all that happened.

16 Southwest Gas filed a Reply -- or a Motion for Reply
17 and a Reply attached to that Motion, 46 days after we filed
18 our memorandum.

19 Now, if they were operating under NRS 233B, that
20 would have been 16 days later than NRS 233B allowed. They
21 filed that motion 46 days after we filed our Memorandum.

22 We are here -- the notion that Southwest Gas is
23 harmed in this case is bogus, because we are here now because
24 of their actions, their decision to file a Reply when the
25 statute doesn't allow it, 46 days after we filed our

1 Memorandum.

2 So the notion that we caused a delay or that
3 Southwest Gas is harmed is just -- I'm sorry, I can't -- I
4 can't buy it. And I want to make this point.

5 Mr. Polsenberg, after he said that he couldn't make
6 the December 17th hearing, we worked with him to try to come
7 up with another date. And he's now saying we caused delay
8 because we couldn't come a week earlier.

9 I'm sorry, I -- I and Whitney Digesti, who's the
10 counsel who will be arguing the substantive hearing, had been
11 working on the December 17th hearing.

12 Mr. Polsenberg's conflict doesn't mean I have to
13 give a week of my prep time up when I have other competing
14 interests. Believe it or not, being in court is not my day
15 job. My day job is advising Commissioners, writing Commission
16 orders. I don't have to give up a week of my prep time in
17 order to fit Mr. Polsenberg's schedule. I'm sorry.

18 And then the last thing -- I'm jumping around here a
19 bit -- but Southwest Gas also says it will be harmed. I just
20 want to make one point for you, from the Commission procedural
21 perspective.

22 If this Court reverses the Commission, Southwest
23 Gas, when they -- when Southwest Gas comes back to the
24 Commission to implement that that -- whatever this Court does,
25 and let's say it's reverse some component of the Commission's

1 case, Southwest Gas can request that the new rates that get
2 put into effect take into account the time value of money they
3 lost between the Commission order and the judicial
4 proceedings, wherever we are in the judicial proceedings,
5 essentially, interest. We call it carry in the PUC world.

6 They can ask for that time value of money, that
7 money their shareholders lost by not collecting the rate that
8 this Court decides they should have collected.

9 The notion that Southwest Gas's shareholders are
10 going to be harmed by a stay is just wrong. They can come to
11 the Commission after this Court order -- this Court rules and
12 get -- and ask for that interest, that time value of money
13 back.

14 THE COURT: Okay.

15 MS. TERWILLIGER: So I'm --

16 THE COURT: All right.

17 MS. TERWILLIGER: -- here to answer any questions.

18 THE COURT: Okay.

19 MS. TERWILLIGER: Thank you for giving me the time
20 to speak.

21 THE COURT: Did you have anything to add?

22 MR. STUHFF: Thank you, Your Honor.

23 Paul Stuhff here for the Nevada Attorney General's
24 Office, the Bureau of Consumer Protection.

25 We would just join with the Commission's motion in

1 this matter. We represent the interests of ratepayers in this
2 case. This -- this case has suffered from delays. Those
3 delays have been brought about by Southwest Gas as Ms.
4 Terwilliger has stated.

5 Basically, the Southwest Gas has asked for more
6 briefing on this than is called for by NRS 703.373. Normally,
7 in a typical case, we would say, you know, that's within the
8 discretion of the Court. The Court can call for more
9 briefing. That's absolutely true. We think that in the
10 typical case that's -- that's fine.

11 But in this case, with the amount of briefing that's
12 gone on, the Commission has sought extraordinary relief
13 because they believe that they don't have a plain, speedy, or
14 adequate remedy, so they've gone to the Nevada Supreme Court.

15 To avoid wasting your time, Your Honor, frankly, we
16 believe that this case should be stayed pending the decision
17 of the Nevada Supreme Court and then you will receive a
18 decision from the Nevada Supreme Court as to whether to
19 consider the Reply or Surreply or not.

20 And that decision --

21 THE COURT: That was the question I was asking
22 though, is if the same information can be supplied or given at
23 the hearing, then what are you gaining? Let's say I deny the
24 granting of a stay, and we have the hearing on the 9th; the
25 only issue then would be, you'd think that there would be an

1 appealable issue as to the same idea, and that I wasn't to
2 consider that information? I don't buy that. I don't think
3 that the Court's going to tell me, you know what, you should
4 have -- you shouldn't have considered this additional
5 information because it wasn't added until after their initial
6 reply. I don't buy that. That's what I'm saying.

7 So what the concern I have -- I understand your idea
8 with regards to procedural, that you want some clarify from
9 the Supreme Court. You know, that -- I think conceptually, we
10 always say that. We want clarity from the Supreme Court.

11 But in this particular case, when we're talking
12 about, one, you're putting the same argument about timing and
13 wanting to move things on, it makes no sense to me that now
14 you ask to -- to stay this on that particular issue, in light
15 of the fact that I could accept that or -- or deal with that
16 information at the hearing itself.

17 That's why I'm having concerns with it. If you're
18 saying that I cannot, the position you're taking is that I
19 cannot consider that additional information that they put in
20 their -- in their brief that, if short -- and say that they
21 had a brief at all and they gave it to me at the hearing, if
22 you're saying that, I need some authority on that. Do you
23 understand what I'm saying?

24 Because if that's your -- if that's the Petition
25 you're taking -- I mean the position you're taking before the

1 Supreme Court, there is no authority to support that. And so
2 that's why I'm having some concerns with this at this point.

3 MS. TERWILLIGER: Thank you, Your Honor. Debrea
4 Terwilliger.

5 Just to -- if I understand your question, that --
6 what you're saying is that the issues that were addressed in
7 the Reply and Surreply that you could --

8 THE COURT: Um-h'm

9 MS. TERWILLIGER: -- you can address them at
10 hearing.

11 THE COURT: Right.

12 MS. TERWILLIGER: You could hear them at hearing.
13 Of course. Absolutely.

14 THE COURT: Right.

15 MS. TERWILLIGER: That -- that is, you know, that is
16 your --

17 THE COURT: And so --

18 MS. TERWILLIGER: -- that -- sure.

19 THE COURT: -- with that being said, would it not be
20 more prudent if the parties be given the opportunity to
21 provide me with that additional -- with those additional
22 arguments with some authority that I may be able to prepare
23 for prior to the date of the actual hearing, if that's
24 something that there's going to be made -- the arguments are
25 going to be made before me.

1 I mean, it's one thing to come in here and hear
2 their arguments, let's say one, two. And then at the hearing
3 you throw in three and four, but then there's no authority
4 behind it, and you don't have an opportunity to address that
5 authority, which you -- however you're giving it at this
6 point, you will be, because you do have the right to respond
7 last. That's why I'm having -- I'm --

8 MS. TERWILLIGER: Yeah, you're addressing a
9 practical matter that I understand your issue.

10 THE COURT: Okay.

11 MS. TERWILLIGER: We're -- we're addressing what we
12 want is clarity in the law going --

13 THE COURT: All right.

14 MS. TERWILLIGER: -- forward. I --

15 THE COURT: I know, but can't that be something that
16 can be dealt with at a later time, because I'm still going to
17 get the information. You're agreeing I'd still get the
18 information anyhow.

19 MS. TERWILLIGER: Yes. Yes.

20 THE COURT: So if we have the hearing on the 9th, I
21 make the decision I'm going to make one way or the other.

22 MS. TERWILLIGER: Um-h'm

23 THE COURT: If for some reason you think that you
24 need to address it further or they need to address it further
25 then you can address the issue that you've raised now that you

1 want to -- that you're challenging on a Writ. That's what --

2 MS. TERWILLIGER: They --

3 THE COURT: -- that's what I'm getting at.

4 MS. TERWILLIGER: Yeah, the issue is, is that the
5 Writ, the Petition for Writ asks for the Court to vacate that
6 order.

7 THE COURT: Right.

8 MS. TERWILLIGER: That the Reply and Surreply, they
9 shouldn't have gotten another bite of the apple. They should
10 have known --

11 THE COURT: But are they though? That's what I'm
12 saying. Is it really another bite of the apple in light of
13 the fact that they're presenting or giving the Court
14 sufficient information to support what they're going to be
15 arguing at the actual hearing?

16 MS. TERWILLIGER: It is another bite at the apple.
17 I mean, it's -- it's more information that the Court can use
18 to deal with --

19 THE COURT: Okay.

20 MS. TERWILLIGER: -- that could have come in at the
21 hearing. But it still is another bite at the apple that has
22 delayed these proceedings.

23 THE COURT: Okay. All right.

24 I don't need to hear anything from you all, because
25 the position I'm taking is that -- exactly -- is that I'm of

1 the opinion that the parties brief certain issues in their
2 initial brief, and you file a response to it, and then they
3 have other issues that they want to address, they certainly
4 would have that right to do that at a hearing.

5 So I think for purposes of giving -- being more
6 informed to the Court, I would -- I would believe that Judge
7 Bonaventure granted that for that reason.

8 So I'm going to deny the Motion for Stay. We're
9 going to have the hearing on the 9th. I mean, if you get some
10 kind of -- something from them, because you'll have to apply
11 to the Supreme Court, then fine. You know, but at this point
12 in time, I understand the concerns with both parties of
13 timing. And that's basically the argument you're making with
14 regards to the statute. And I understand it. I do.

15 But -- and would I have granted the motion? I don't
16 know. But I'm going to have the hearing on the 9th and we're
17 going to resolve this on the merits.

18 MR. POLSENBERG: Thank you, Your Honor.

19 MR. SMITH: Thank you, Your Honor.

20 MS. TERWILLIGER: Thank you, Your Honor.

21 THE COURT: All right.

22 MR. STUHFF: Thank you.

23 THE COURT: So --

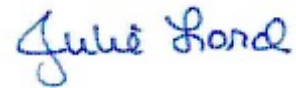
24 MR. POLSENBERG: Your Honor, Abe Smith went to a lot
25 of effort to prepare an argument, so anybody who wants to hear

1 it, he's going to give it out in the hallway.
2 THE COURT: I'm going to ask that you prepare an
3 order though.
4 MR. POLSENBERG: Yeah, certainly.
5 MR. SMITH: Thank you.
6 THE COURT: Okay.
7 MR. POLSENBERG: And we'll run it by them.
8 THE COURT: Okay. Thank you.
9 MR. POLSENBERG: Thank you, Your Honor.
10 THE COURT: Okay. We'll see you back on the 9th;
11 okay?
12 MR. POLSENBERG: Great. Thank you, Your Honor.
13 MS. TERWILLIGER: Thank you.
14 MR. STUHFF: Thank you.
15 THE COURT: Okay. You all have a good Christmas and
16 holidays.
17 MR. STUHFF: You, too.

18 [Hearing concluded at 9:28 A.M.]

19 * * * * *

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



JULIE LORD, INDEPENDENT TRANSCRIBER
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EXHIBIT E

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

December 17, 2019

A-19-791302-J	Southwest Gas Corporation, Petitioner(s) vs. Public Utilities Commission of Nevada, Respondent(s)
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December 17, 2019 9:00 AM All Pending Motions

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: April Watkins

RECORDER: Christine Erickson

PARTIES

PRESENT:	Polsenberg, Daniel F.	Attorney for Petitioner
	Smith, Abraham G.	Attorney for Petitioner
	Stuhff, Paul E.	Attorney for Intervenor
	Terwilliger, Debrea M.	Attorney for Respondent

JOURNAL ENTRIES

- RESPONDENT'S EX PARTE APPLICATION FOR AN ORDER ON ORDER SHORTENING TIME REGARDING ITS MOTION FOR STAY, OR, ALTERNATIVELY CONTINUANCE...STATE OF NEVADA, BUREAU OF CONSUMER PROTECTION'S JOINDER TO THE PUBLIC UTILITY COMMISSION OF NEVADA'S MOTION TO STAY OR, ALTERNATIVELY, CONTINUANCE

Court noted procedural history and advised only the motion to stay will be addressed today. Ms. Terwilliger argued in support of stay until clarity is received by the Nevada Supreme Court as to the appeal process. Further, Ms. Terwilliger argued Respondent did not cause delay, Petitioner not harmed here due to their actions and the shareholders will not be harmed as well. Mr. Stuhff joined with Commission's motion for stay and argued case has suffered by the delays brought on by Petitioner due to the Petitioner asking for more briefing then called for. Further, with amount of briefing, Commission has sought extraordinary relief, gone to the Nevada Supreme Court and case should be stayed pending decision by the Nevada Supreme Court. Colloquy. Additional argument by Ms. Terwilliger. COURT ORDERED, motion and joinder DENIED. Hearing set for January 9, 2020, STANDS.

