

Case No. 80175

In the Supreme Court of Nevada

PUBLIC UTILITIES COMMISSION OF NE-
VADA; 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 JO-
SEPH T. BONAVENTURE, District Judge;
and THE HONORABLE WILLIAM D.
KEPHART, District Judge,

Respondents,

and

SOUTHWEST GAS CORPORATION,

Real Party in Interest.

Electronically Filed
Dec 31 2019 03:46 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**OPPOSITION TO MOTION FOR STAY OF
DISTRICT COURT PROCEEDINGS**

OPPOSITION TO STAY OF DISTRICT COURT PROCEEDINGS

This motion should be denied for the same reason the writ petition should be denied: it's a waste of time.

Under the guise of judicial economy, the writ petition squanders judicial resources. The Public Utilities Commission and the Bureau of Consumer Protection claim that in a petition for judicial review under NRS 703.373, a district court cannot consider any written reply or sur-reply—supposedly because it would delay these expedited proceedings. Yet NRS 703.373 contains no such prohibition, and petitioners concede that during the hearing the parties would “still be allowed to present the same information that would be given in a written Reply.” (Tr. at 5.) As the district court stated:

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. I don't buy that.

(Tr. at 15; *see also* Tr. at 16 (Commission's concession that the court could “absolutely” “hear them at hearing”). The district court has discretion to receive written authorities and could not constitutionally be deprived of it.

The motion for stay is a waste of time, too. The trial court noted:

[I]t makes no sense to me that now you ask . . . to stay this on that particular issue, in light of the fact that I could . . . deal with that information at the hearing itself.

In this motion, petitioners admit that the primary object of the petition—to obtain clarity for the future—will not be eliminated by the denial of a stay. And the petitioners' own election to file written surreplies eliminated any prejudice—so obviously, that the district court rejected their request for a stay without even hearing argument from real party in interest Southwest Gas.

A. The Motion and Petition Are Dilatory

Feigning indignation at the delay caused by a written reply, the Commission and BCP seek to cause ever more delay through this writ petition and motion for stay.

**1. *The Petition Itself Is Barred
by Laches and Estoppel***

Inexcusable delay, knowing acquiescence in existing conditions, and prejudice all justify denying a writ petition for laches. *State v. Eighth Judicial Dist. Court (Anzalone)*, 118 Nev. 140, 148, 42 P.3d 233, 238 (2002). The delay need not be long to invite laches. *Bldg. & Constr. Trades Council of N. Nev. v. State ex rel. Pub. Works Bd.*, 108 Nev. 605,

836 P.2d 633 (1992).

Here, the time for filing a writ petition passed long ago. The Commission and the BCP knew on October 15 that the district court was allowing Southwest Gas to file a reply, yet instead of seeking this Court's immediate relief—or even an interim stay so as to prepare such a petition—the Commission and BCP acquiesced in the district court's alternative relief and elected to file surreplies, even providing courtesy copies for the district court's review. Not until December 9, just eight days before the district court was set to hear the petition for judicial review, did the Commission file this belated petition and a motion for stay in the district court.

**2. *Petitioners Seek Yet More Delay in
this Request for a Stay of All Proceedings***

With the hearing on judicial review now reset for January 9, petitioners seek further delay from this Court—a stay of all proceedings pending this Court's consideration of the petition. Bringing all the trains to a dead halt is no way to express concern about expedited judicial review. It is a transparent effort to cause further expense and delay—the kind of dilatory purposes that justify denying a stay. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (2004).

B. The Petition Is Likely to Be Denied

Although the Commission miscites *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (2004),¹ it does not really matter because the petition is not merely dilatory; it is frivolous. NRAP 8(c)(4).

1. *The Right (or Disentitlement) to File a Reply Is Not a Significant Issue Requiring This Court's Extraordinary Intervention*

Even if laches were not a bar, the petition presents no pressing—or even interesting—issues. This Court has long held that courts have the inherent power to regulate such matters of procedure and that it violates the separation of powers for the Legislature to attempt to do so. *See Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 420 n.12, 132 P.3d 1022, 1029 n.12 (2006). The arcane question in this petition—whether a petition for judicial review under NRS chapter 703 categorically forbids the filing of a reply brief—is a poor vehicle for this Court to exercise advisory mandamus to overturn that jurisprudence. *See also Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1344, 950 P.2d

¹ Omitting *Mikohn Gaming's* reference to the “unique policies and purposes of arbitration,” the Commission asserts that a stay should generally be granted unless the appeal is frivolous or dilatory. *Contra Fritz Hansen A/S*, 116 Nev. at 659, 6 P.3d at 987 (petitioner’s burden to show a “substantial case on the merits”).

280, 281 (1997) (“very few writ petitions warrant extraordinary relief”).

2. *The Petition Is Meritless*

In any event, the petition collapses on the merits. NRS 703.373(7) provides only that after the Commission files its brief “the action is at issue and parties must be ready for a hearing upon 20 days’ notice.” Petitioners say that the words “at issue” forbids a reply, even at the court’s solicitation. But their sole authority, *Rural Telephone Co. v. Public Utilities Commission*, 133 Nev. 387, 398 P.3d 909 (2017), shows that when the Legislature wants to limit the district court’s discretion, it knows how to set a specific deadline. 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.”).

The Commission’s petition, moreover, 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).

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

Here, the issue is even farther removed from the Legislature’s power to enact substantive law: the ability of a court to order supple-

mental briefing on difficult legal questions. To say that the Legislature, through silence, prohibited a district court from soliciting needed analysis for a decision—or allowed the court to solicit that analysis only during an oral hearing, without the benefit of written authorities—would not just be nonsensical; it would be unconstitutional. *See Connery*, 99 Nev. at 346, 661 P.2d at 1300; *see also Adamson v. California*, 332 U.S. 46, 59 (1947) (judicial process is “at its best” when there are “comprehensive briefs and powerful arguments on both sides”) (Frankfurter, J., concurring); Louis D. Brandeis, *The Living Law*, 10 ILL. L. REV. 461, 470 (1916) (“[A] judge rarely performs his functions adequately unless the case before him is adequately presented.”).

C. Denying a Stay Will Not Prejudice the Commission or Destroy the Object of the Petition—Any More than the Commission’s Own Delay Has Done So²

Denying a stay would not harm the Commission or BCP because

² The Commission falsely accuses Southwest Gas of making a “new” argument in reply that the Commission “should not be afforded deference on questions of fact.” (Mot. at 5.) In its original points and authorities, Southwest Gas had asked the district court to “independently review factual and legal issues” and cited specifically to the doctrine in *Ohio Valley Water Co. v. Borough of Ben Avon*, in which the United States Supreme Court held that the court in a ratesetting case must exercise “its own independent judgment as to both law and facts.” 253 U.S. 287, 289 (1920).

they have already filed their surreplies. NRAP 8(c)(2) (court should consider “whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied”). Those surreplies cured any prejudice that the Commission or BCP might have suffered from the Court granting relief to file a reply. In fact, the surreplies gave the Commission and BCP an advantage by giving them the last word.

The Court should reject the Commission’s baffling argument that a reply should not be allowed because it “is more likely to provide the court with ‘sufficient information to support what [a party is] going to be arguing at the actual hearing.’” That is exactly why a reply was warranted. Judicial decision-making is better when the court has the kind of information that Southwest Gas, the Commission, and BCP provided in its reply and surreplies.

And as the Commission concedes, the “more important” “object of the appeal or writ petition” will not “be defeated if the stay or injunction is denied.” NRAP 8(c)(4). The petition supposedly seeks to vindicate the expedited procedure that NRS 703.373 demands, but a stay would undermine—not advance—that object. Regardless, any problems with the reply briefs “influenc[ing] the district court” are those that the

Commission created by waiting to file the petition and seek a stay more than a month after filing its surreply and after the district court had already considered those briefs in preparation for the December 17 hearing.

D. The Stay Will Cause the Very Delay that the Commission Bemoans, to the Prejudice of Southwest Gas and Ratepayers

The Commission is right about one thing—these are supposed to be expedited proceedings. So by definition, delaying the January 9 hearing on judicial review would harm to Southwest Gas. *See* NRAP 8(c)(3). Initially, the Commission resists that conclusion by positing that it will win, making any delay harmless. (Mot. at 7.) Worse, before the district court the Commission argued that any delay could be recompensed by charging *ratepayers* interest. (Tr. at 13.)

The district court believed that it be “more prudent if the parties [were] given the opportunity to provide [the court] with . . . those additional arguments with some authority that [the court] may be able to prepare for prior to the date of the actual hearing” (*Id.* at 16.) The court found that the issue raised in the writ petition could be dealt with at a later time because the court was going to receive the information

contained in Southwest Gas’s reply anyway. (*Id.* at 17.) The Commission expressly agreed with the district court that the court was “still going to get the information” that Southwest Gas included in its reply brief. (*Id.*)

CONCLUSION

The Commission appears to recognize the absurdity of it requesting “a delay-causing stay.” (Mot. at 9.) Like the petition, this motion “presents many of the inefficiencies that adherence to the final judgment rule seeks to prevent—an increased caseload, piecemeal litigation, needless delay,” and confusing litigation over the separation of powers. *Archon Corp. v. Eighth Judicial Dist. Court*, 133 Nev. 816, 407 P.3d 702 (2017). There’s no reason that the issue raised in the writ petition cannot be dealt with in the ordinary appellate process.

The stay—and the writ petition—should be denied.

Dated this 31st day of December, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CERTIFICATE OF SERVICE

I certify that on December 31, 2019, I submitted the foregoing OP-
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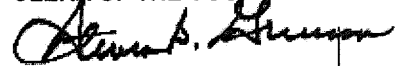
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EXHIBIT A

EXHIBIT A



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

JULIE LORD, INDEPENDENT TRANSCRIBER
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