

**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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Case No. 80175  
Elizabeth A. Brown  
Clerk of Supreme Court

**REPLY IN SUPPORT OF MOTION FOR STAY OF  
DISTRICT COURT PROCEEDINGS**

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The Public Utilities Commission of Nevada (“PUCN”) filed its motion for a stay so that the outcome of its writ petition can apply to the district court proceedings that precipitated the need for writ relief. The district court should not consider an impermissible reply brief submitted in violation of the statutes governing judicial review of PUCN decisions.

**A. The Petition for Writ Relief Is Likely to Be Granted.**

**1. The petition is not barred by laches or estoppel.**

“In deciding whether the doctrine of laches should be applied to preclude consideration of a petition for a writ of mandamus, a court must determine: (1) whether there was an inexcusable delay in seeking the petition, (2) whether an implied waiver arose from the petitioner’s knowing acquiescence in existing conditions, and (3) whether there were circumstances causing prejudice to the respondent.” *Building & Constr. Trades v. Public Works*, 108 Nev. 605, 610-11, 836 P.2d 633, 636-37 (1992).

**a. The PUCN did not acquiesce in the district court’s decision to allow supplemental briefing.**

The PUCN opposed Southwest Gas’s motion for leave to file a reply and submitted points and authorities to the district court explaining why a reply is impermissible under NRS 703.373. The parties’ subsequent compliance with the district court’s order does not reflect acquiescence but, rather, appropriate conduct under the circumstances.

Judge Bonaventure's oral decision to allow supplemental briefing occurred on October 15, 2019, and required the PUCN and BCP to submit sur-replies by November 1, 2019. The PUCN and BCP had two weeks to respond to a pleading that took Southwest Gas 46 days to prepare. Accordingly, the PUCN immediately began drafting a sur-reply to ensure that the district court would receive points and authorities rebutting the arguments contained in Southwest Gas's reply.

Southwest Gas suggests that, instead of complying with the district court's order, the PUCN should have immediately sought relief from this Court. However, Southwest Gas overlooks that the PUCN is a public body subject to NRS Chapter 241, Nevada's Open Meeting Law, which requires the PUCN to vote in a publicly-noticed, open meeting prior to initiating an appeal or otherwise committing public resources to challenging an adverse determination by a court. *See Comm'n on Ethics of the State of Nev. v. Hansen*, 134 Nev. 304, 419 P.3d 140 (2018). Due to scheduling constraints and the short timeframe for complying with the district court's order, the PUCN was unable to hold the required public meeting to decide whether to seek writ relief prior to the deadline for submitting sur-replies. Thus, the PUCN submitted a sur-reply because, as of the date that sur-replies were due, the PUCN had not taken action on whether to pursue extraordinary relief and was therefore prohibited from filing a petition with this Court. The PUCN should not be punished for complying with the Open Meeting Law.

**b. There was no inexcusable delay in seeking writ relief.**

Southwest Gas refers to October 15 as the date of the district court's decision, but the written order memorializing Judge Bonaventure's decision was not issued by Judge Kephart until November 11, 2019, and the notice of entry of order was not filed until November 14, 2019. The PUCN filed the petition only 15 business days after the notice of entry of order, and only 3 business days after the PUCN's first regularly-scheduled open meeting following the notice of entry of the order. The time that elapsed between the district court entering its order and the PUCN filing the petition does not amount to inexcusable delay. Even the case cited by Southwest Gas, *State v. Eighth Judicial Dist. Court (Anzalone)*, provides that laches does not bar a writ petition filed within four months of the district court entering its order. 118 Nev. 140, 147-48, 42 P.3d 233, 238 (2002).

**c. There was no prejudice to Southwest Gas.**

Southwest Gas fails to even allege that it was prejudiced by the timing of the petition, so its laches argument cannot survive. Laches is more than a mere delay in seeking to enforce one's rights; it is a delay that works to the disadvantage of another. *Home Savings v. Bigelow*, 105 Nev. 494, 496, 779 P. 2d 85, 86 (1989).

**2. The petition raises an issue warranting this Court's intervention.**

The interpretation and application of NRS 703.373, and the matter of whether PUCN decisions actually 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 because it will effectuate legislative intent and protect utility customers throughout the State from the potentially harmful rate impact of delays associated with prolonged briefing. (*See* Pet. at 24-26.)

Moreover, the circumstances reveal urgency and strong necessity, and judicial economy and sound administration militate in favor of issuing a writ to ensure consistent application of the law and resolve what will otherwise become a recurring issue in all future appeals of PUCN decisions. (*Id.* at 26-29.)

Southwest Gas criticizes the subject matter of the petition as uninteresting, “arcane,” and “confusing” (Opp’n at 4, 10); however, notwithstanding Southwest Gas’s subjective perception of what is interesting or confusing, there is no requirement that an issue be widely-understood or exciting for it to be important and worthy of this Court’s attention.

### **3. The petition has merit.**

Southwest Gas’s paradoxical opposition argues, on the one hand, that the petition “presents no pressing—or even interesting—issues” but adds, only two paragraphs later, that the requested relief could “force a constitutional conflict”! (Opp’n at 4, 6.) Southwest Gas similarly contradicts itself when it argues that the Legislature lacks the power to limit a court’s discretion in conducting judicial review, while also arguing that “when the Legislature wants to limit a court’s discretion, it knows how to set a specific deadline.” (*Id.* at 5-6.)

NRS 703.373, which establishes a unique process for judicial review of PUCN decisions, reflects the Legislature’s substantive policy decision in balancing the harm of delay against the benefit of additional written argument. Properly interpreted,<sup>1</sup> it prohibits supplemental briefing and imposes an appropriate limit on a district court’s review of unique administrative decisions that often involve the PUCN’s performance of the delegated legislative function of rate-setting.

**B. Denying the Stay Will Prejudice the Rights of the PUCN and BCP as Parties to the District Court Proceedings.**

The benefit to Southwest Gas of having an opportunity to clarify and, theoretically, improve upon its arguments accrues to the detriment of the PUCN and BCP, who are opposing Southwest Gas’s arguments.<sup>2</sup>

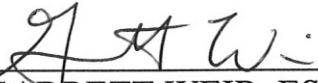
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<sup>1</sup> Southwest Gas finally acknowledges in its opposition that appeals of PUCN decisions “are supposed to be expedited proceedings.” (Opp’n at 9.) Yet, it proposes an interpretation of NRS 703.373 that places no restrictions on whether or when supplemental briefing can occur. Indeed, because the Legislature exempted PUCN decisions from the judicial review process in NRS 233B and created an “expedited” process under NRS 703.373, the 30-day deadline for filing replies under NRS 233B.133(3) is no longer applicable. If, as Southwest Gas argues, NRS 703.373 does not prohibit supplemental briefs, then parties may file such briefs as late as a district court will allow (here, for example, Southwest Gas was allowed 46 days to file a reply), potentially resulting in a judicial review process for PUCN decisions that takes longer than the process applicable to non-expedited cases.

<sup>2</sup> The PUCN concedes that the benefit to Southwest Gas was mitigated by the district court allowing sur-replies, which enabled the PUCN and BCP to fully rebut the arguments in Southwest Gas’s reply. The PUCN further concedes that, as the date of the scheduled hearing on Southwest Gas’s appeal draws nearer, the value of a stay decreases because the parties have already dedicated time and resources to preparing to address the arguments contained in Southwest Gas’s reply.

Dated this 7th day of January, 2020.

THE PUBLIC UTILITIES COMMISSION OF NEVADA

by:   
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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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Dated this January 7<sup>th</sup>, 2020.

/S/ SHAYLA HOOKER  
SHAYLA HOOKER