IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHWEST GAS CORPORATION,
Appellant,
vs.
PUBLIC UTILITIES COMMISSION OF NEVADA; and STATE OF NEVADA BUREAU OF CONSUMER PROTECTION,
Respondents.

Case No. 80911

NEVADA RESORT ASSOCIATION'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to rule 29(c) of the Nevada Rules of Appellate Procedure, the Nevada Resort Association ("NRA") hereby moves for leave to file a brief as *amici curiae* in the above-referenced matter. The proposed brief is filed conditionally with this Motion and is attached as **Exhibit 1**.

Statement of Interest

An "amicus curiae" is "[a] person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter."[1] In this capacity, amicus curiae participate in litigation exclusively for the court's benefit by "assisting the court in cases of general public interest, by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision."[2] In Nevada, parties may file an amicus brief by leave of the court.[3]

[1] BLACKS LAW DICTIONARY 93 (8th ed. 2004).

[2] *Alexander v. Hall*, 64 F.R.D. 152, 155 (D.S.C. 1974).

[3] NRAP 29(a).

Proposed *amicus curiae* is a non-profit corporation created to represent the voice of the gaming and resort industry in Nevada. An important function of NRA is to represent the interests of its members in important matters before courts, the Nevada Legislature, and executive agencies, including Respondent, the Public Utilities Commission of Nevada. To that end, the NRA has filed *amicus curiae* briefs in cases that raise issues of vital concern to Nevada's gaming and resort industry.

NRA's members are some of the largest employers contributing to Nevada's economy[4] and are striving to recover and help Nevada's economy recover from the COVID pandemic. All of NRA's members receive service from utilities regulated by the Public Utilities Commission of Nevada and some are the largest customers of Nevada utility providers[5] and frequently participate in utility ratemaking proceedings before the Public Utilities Commission of Nevada. [6]

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[4] *See* NRA, *How Gaming Benefits Nevada*, *available at* <http:/www.nevadaresorts.org/benefits/index.php> (last visited March 7, 2021).

[5] *Compare Application of Nevada Power Co. d/b/a Nv Energy for Auth. to Adjust Its Ann. Revenue Requirement for Gen. Rates Charged to All Classes of Elec. Customers & for Relief Properly Related Thereto.*, No. 20-06003, 2020 WL 4547330, at *2 (July 16, 2020) (hereinafter, "*Application of Nevada Power Co.*") ("Caesars states that it is one of the largest electric users in Nevada and that it receives electric service from NPC pursuant to many different tariffs, including various Large General Service . . . and Distribution Only Service . . . tariffs."), *and MGM Resorts International's Petition for Leave to Intervene*, PUCN Docket No. 20-06003, at ¶ 3 (June 30, 2020), *available at* <http://pucweb1.state.nv.us/PUC2/DktDetail.aspx> ("MGM [Resorts International] is one of the largest electric users in Nevada."), *with* NRA, *Partner Resorts*, *available at* <http://www.nevadaresorts.org/partners/> (last visited March 8, 2021) (listing Caesars Palace Las Vegas and MGM Grand among NRA's members).

[6] *See e.g.*, *Application of Nevada Power Co.*, 2020 WL 4547330, at *2, 8-9 (granting intervention to, *inter alia*, MGM Resorts International; Caesars Enterprise Services, LLC; and Wynn Las Vegas, LLC;); *Application of Sierra Pac. Power Co. d/b/a Nv Energy for Auth. to Adjust Its Ann. Revenue Requirement for Gen. Rates Charged to All Classes of Elec. Customers & for Relief Properly Related Thereto.*, No. 19-

NRA has a substantial interest in the resolution of this case as it could potentially change the legal requirement that has been part of the foundation of Nevada utility ratemaking law for decades and is a fundamental requirement to ensure just and reasonable utility rates for Nevada customers. Public utilities that hold a monopoly and receive a guaranteed rate of return on their allowable expenditures bear the burden of proof in their direct case in general rate proceedings to demonstrate that the expenditures they seek to recover in customer rates are reasonable and prudent. NRA addresses this issue in its legal brief.

NRA further believes its amicus brief is desirable for several reasons. First, the circumstances in which NRA's members, as some of the largest customers of regulated public utilities in Nevada, could be affected by the Court's resolution of the case, are different from those faced by the Respondents. NRA believes that the Court should take into consideration the interest of large customers of utilities who participate in general rate case proceedings in addressing the issue raised in this case regarding a public utility's burden of proof in demonstrating the prudence of expenditures it recovers from customers. Second, the central issue in these proceedings—whether utilities have and should continue to bear the burden of proof to demonstrate prudency of their expenditures under Nevada law—is complex and warrants thorough briefing. Third, several of NRA's members have participated in numerous PUCN general rate case proceedings[7] and understand well how those proceedings work, the importance to customers of having the ability to

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06002, 2019 WL 4072979, at *1, 6-7 (Aug. 14, 2019) (granting intervention to Caesars Enterprise Services, LLC; Eldorado Resorts LLC; and Circus and Eldorado Joint Venture LLC d/b/a the Silver Legacy Resort Casino Reno, CC-Reno LLC, Montbleu Resort Casino & Spa); NRA, *Partner Resorts*, *available at* <http://www.nevadaresorts.org/partners/> (last visited March 8, 2021) (listing Caesars Palace Las Vegas, MGM Grand, Wynn Las Vegas, and Silver Legacy Resort Casino Reno among the NRA's members).

[7] *See id.*

meaningfully and efficiently participate in those proceedings and, that the outcome of those proceedings can have a sizeable impact on their operating costs. It thus brings a significant body of prior knowledge and research to bear on the subject that it believes will be helpful to the Court in addressing this question of law in the case.[8]

Dated: March 8, 2021.

/s/ Laura K. Granier

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[8] *See Ellsworth Associates, Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (holding that amicus curiae could participate because they "have a special interest in th[e] litigation as well as a familiarity and knowledge of the issues raised therein that could aid in the resolution of this case"); *Waste Mgmt. of Pennsylvania v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995) ("A court may grant leave to appear as an amicus if the information offered is 'timely and useful.'").

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(e), I hereby certify that on the 8th day of March, 2021, I electronically filed the foregoing **NEVADA RESORT ASSOCIATION'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**, with the Clerk of the Nevada Supreme Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants.

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EXHIBIT 1

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IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHWEST GAS CORPORATION, Appellant, vs. PUBLIC UTILITIES COMMISSION OF NEVADA; and STATE OF NEVADA BUREAU OF CONSUMER PROTECTION, Respondents.	Case No. 80911

NEVADA RESORT ASSOCIATION'S AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS PUBLIC UTILITIES COMMISSION OF NEVADA'S AND BUREAU OF CONSUMER PROTECTION'S ANSWERING BRIEFS OPPOSING APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record for amicus curiae, the Nevada Resort Association, hereby certifies that there are no parent corporations or publicly-held companies having a ten percent or more ownership interest.

Holland & Hart, LLP, is the only law firm that has appeared in this matter on behalf of the Nevada Resort Association.

These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Dated this 8th day of March, 2021.

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I. INTEREST OF THE AMICUS

The Nevada Resort Association ("NRA") is a non-profit corporation that serves as the primary advocacy voice for Nevada's gaming and resort industry. NRA, *Mission and Purpose*, *available at* <http://www.nevadaresorts.org/about/> (last visited March 7, 2021). Established in 1965, the NRA represents Nevada's largest industry and provides information, perspective, and industry insight for decisionmakers throughout the state. The NRA's core responsibilities include monitoring government and regulatory activities impacting the gaming and resort industry. The NRA's participation through this brief provides the Court with the perspective of some of Nevada's largest employers[1] who also are some of the largest utility customers in Nevada. *Compare Application of Nevada Power Co. d/b/a Nv Energy for Auth. to Adjust Its Ann. Revenue Requirement for Gen. Rates Charged to All Classes of Elec. Customers & for Relief Properly Related Thereto.*, No. 20-06003, 2020 WL 4547330, at *2 (July 16, 2020) (hereinafter, "*Application of Nevada Power Co.*") ("Caesars states that it is one of the largest electric users in Nevada and that it receives electric service from NPC pursuant to many different tariffs, including various Large General Service . . . and Distribution Only Service . . . tariffs."), *and MGM Resorts International's Petition for Leave to Intervene*,

[1] *See* NRA, *How Gaming Benefits Nevada*, *available at* <http:/www.nevadaresorts.org/benefits/index.php> (last visited March 7, 2021).

PUCN Docket No. 20-06003, at ¶ 3 (June 30, 2020), *available at* <*http://pucweb1.state.nv.us/PUC2/DktDetail.aspx*> ("MGM [Resorts International] is one of the largest electric users in Nevada."), *with* NRA, *Partner Resorts*, *available at* <http://www.nevadaresorts.org/partners/> (last visited March 8, 2021) (listing Caesars Palace Las Vegas and the MGM Grand among NRA's members).

All NRA members receive service from utilities regulated by the Public Utilities Commission of Nevada (the "Commission" or the "PUCN"). Because the outcome of a utility's general rate proceedings can have a sizeable impact on NRA members' operating costs, many NRA members have often intervened in such proceedings before the Commission. *See, e.g.*, *Application of Nevada Power Co.*, 2020 WL 4547330, at *2, 8-9 (granting intervention to, *inter alia*, MGM Resorts International; Caesars Enterprise Services, LLC; and Wynn Las Vegas, LLC;); *Application of Sierra Pac. Power Co. d/b/a Nv Energy for Auth. to Adjust Its Ann. Revenue Requirement for Gen. Rates Charged to All Classes of Elec. Customers & for Relief Properly Related Thereto.,* No. 19-06002, 2019 WL 4072979, at *1, 6-7 (Aug. 14, 2019) (granting intervention to Caesars Enterprise Services, LLC; Eldorado Resorts LLC; and Circus and Eldorado Joint Venture LLC d/b/a the Silver Legacy Resort Casino Reno, CC-Reno LLC, Montbleu Resort Casino & Spa); NRA, *Partner Resorts*, *available at* <http://www.nevadaresorts.org/partners/> (last

visited March 8, 2021) (listing Caesars Palace Las Vegas, MGM Grand, Wynn Las Vegas, and Silver Legacy Resort Casino Reno among the NRA's members). Through its members, the NRA therefore offers the unique perspective of large utility customers and brings a significant body of knowledge and research to bear on the issue of whether, as Southwest Gas ("SWG") argues, in every general rate case filed by a Nevada utility, the utility is entitled to a presumption of prudence. *See* Appellant's Opening Brief ("AOB"), at xviii (Routing Statement). This brief addresses this single issue which stands to impact the NRA members' interest in future rate case proceedings.

II. SUMMARY OF ARGUMENTError! Bookmark not defined.

Nevada law mandates that a utility's rates which are collected from its captive customers be just and reasonable. NRS §§704.040, 704.120. Rates cannot be just and reasonable if they are based on imprudent utility expenditures. Nevada law also requires that the Commission's decision on a utility's requested increase in its rates be based on substantial evidence. Utilities are in control of the records that demonstrate their reasons for completing projects and whether they did so in a cost-effective manner. If the utilities do not produce evidence to demonstrate that their expenditures were necessary to provide service and incurred at a reasonable market rate, in order to substantiate that their proposed rate increases are just and reasonable, it is unclear where the Commission would obtain that information.

Moreover, if the Court were to adopt SWG's "presumption of prudence," utilities would have little incentive to prepare and maintain records to explain and justify their expenditures which would create serious challenges for the Commission to legally substantiate an approved utility rate increase and make it extremely difficult for other parties to somehow disprove presumed prudency.

SWG's argument that utilities enjoy a presumption of prudence in general rate case proceedings ignores the legislative framework governing the Commission and utility ratemaking and undermines the vital oversight role the Commission plays in these proceedings to regulate utilities. SWG seeks to shift NAC §703.2231's requirement that a *utility* applicant "be prepared to go forward at a hearing . . . and sustain the burden of proof . . . that its proposed changes [in rates] are just and reasonable" to the other parties to a general rate proceeding, including customers. If accepted, this would mean that once the utility certifies that it made expenditures, customers and other parties would be required to demonstrate that the costs were not prudently incurred, despite that the utility controls access to all of the information regarding the expenditures and controls the case it puts before the Commission. Such a framework would flip the existing process on its head. Instead of the utility presenting in its direct case the evidence to show why expenditures were necessary and reasonably priced, customers would have to try to discern why the utility believed certain projects were necessary, guessing at what the business

case may have been for utility expenditures. This would be onerous on customers and impose substantial costs on them to obtain information under the utility's control and hire experts to analyze and try to guess at the utility's reasoning. It also would significantly increase the risk that customers will overpay in utility rates. Nevada law, including NAC §703.2231, requires that the utility explain why expenditures were necessary and then other parties can evaluate whether that explanation is reasonable and justified.

According to the other parties in this case, SWG failed to present evidence of any business case for certain projects and its witnesses were unable to justify the vendors chosen and whether choices were the most cost-effective or best alternative. PUCN's Answering Brief, at 76-78; Bureau of Consumer Protection's Answering Brief, at 88. Instead of following Nevada law requiring the utility to present substantial evidence to demonstrate that expenditures were necessary to provide service and incurred at a reasonable market rate, SWG apparently seeks recovery based solely on the fact that it made an expenditure and the erroneous presumption that it was, therefore, necessary and reasonable. SWG's requested departure from the existing framework would undercut a vital safeguard for Nevada utility customers. Affording utilities a presumption of prudence in general rate proceedings would be inequitable, harmful to Nevada customers, and contrary to well- and long-established Nevada ratemaking law and policy.

III. ARGUMENT

A. Nevada's statutory and regulatory scheme governing utility ratemaking does not provide a presumption of prudence.

Granting utilities a presumption of prudence in general rate applications conflicts with Nevada law and would undermine the statutory and regulatory framework governing the Commission. SWG erroneously suggests that a utility sets its own rates with little oversight. AOB, at 24. That is not the law in Nevada. NRS Chapter 704 expressly prohibits a utility from charging any rate except in strict accordance with Commission requirements and approval. NRS §704.100.

The Commission is charged with determining whether a utility's proposed rates are just and reasonable. *See* NRS §704.001 (conferring upon the Commission the power to regulate utilities and providing that utility operation must be prudent); *see also* NRS §704.040(1) ("[T]he charges made for any service . . . must be just and reasonable"); NRS §704.120(1) (conferring upon the Commission the power to determine whether rates are unjust or unreasonable and the power to fix and order substituted rates that are "just and reasonable"). The Commission's regulations impose a clear initial burden of proof on the utility, requiring that a utility filing a general rate case "must be prepared to go forward at a hearing . . . and to sustain the burden of proof of establishing that its proposed changes are just and reasonable and not unduly discriminatory or preferential." NAC §703.2231. SWG ignores the burden of proof in NAC §703.2231 entirely. SWG does not seek to invalidate this

regulation and does not assert that the regulation is unlawful or that it does not apply to SWG as it does to all utilities. Nor does SWG argue that it was entitled to a waiver of NAC §703.2231 in the proceedings below pursuant to NAC §703.115, which provides a clear mechanism to seek deviation from provisions of the regulatory chapter. Thus, it is unclear why SWG would be excused from compliance with the plain language of the Commission's regulation.

Moreover, the PUCN's decisions to authorize an increase in rates must be based on *substantial evidence* demonstrating that rates are just and reasonable. *See* NRS §704.120(1); *see also Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 824, 138 P.3d 486, 488, 495 (2006). Most regulated Nevada utilities (including SWG) file general rate applications pursuant to the detailed informational requirements in NAC §§703.2201 through 703.2481, *inclusive*, after which time the other parties to the proceeding analyze the information provided and seek additional information through discovery. *See* NAC §703.680. In other words, the utility is required to provide the comprehensive detailed financial, operational, and historical information supporting its requests for an adjustment in rates – information which is in the utility's sole control – which often includes requests for recovery of complex, multi-million dollar projects related to utility operations.

Were a utility entitled to the presumption of prudence SWG seeks, the utility could simply certify in its application that it had made a project expenditure without

providing the Commission evidence of reasonableness (including, for example, the need for the project, requests for proposal or other project-vetting measures, the cost of outside labor fees, etc.). It is entirely unclear, then, where the Commission would obtain the "substantial evidence" necessary to render any decision regarding the prudency, justness, or reasonableness of the expenditure in its decision to authorize a utility's requested rate increase. The information is in the utility's sole control, so to excuse the utility from the burden of demonstrating reasonableness of its expenditures would undermine the Commission's ability to render any decision in a general rate proceeding which this Court could uphold pursuant to the standard articulated in *Nevada Power Co.*

Without addressing NAC §703.2231, SWG argues that the Commission "has always applied a rebuttable presumption that a utility has exercised prudent judgment when making expenditures that it later seeks to recover from the ratepayers," but fails to adequately support this statement. AOB, at 1. The meager support SWG relies on are a few cherry-picked and inapplicable[2] Commission orders that have no application here and no precedential value. *See, e.g.*, *Desert Irrigation, Ltd. v. State of Nevada*, 113 Nev. 1049, 1058, 944 P.2d 835, 841 (1997) ("[N]o binding effect is given to prior administrative decisions). Notably, the

[2] As the PUCN explains, each of the Commission orders to which SWG cites in support of this assertion are either irrelevant to general rate cases, in error, or superseded by Assembly Bill ("AB") 7. *See* PUCN's Answering Brief, at 46-48.

Commission expressly rejected SWG's argument that it is entitled to a presumption of prudence in SWG's 2012 general rate case. *In Re Southwest Gas Corp.*, No. 12-02019, 2012 WL 7170426, at ¶¶ 25, 45 (Dec. 19, 2012). In that case, the Commission explained that included within the Commission's determination of whether a rate is just and reasonable is an analysis of whether a cost is prudently incurred. *Id.* at ¶ 45. Thus, the burden of demonstrating prudency of costs falls within the utility's burden under NAC §703.2231, and SWG was aware of this burden prior to filing the general rate application at issue.

For these reasons, the presumption of prudence which SWG seeks is both contrary to Nevada law and incompatible with the framework under which the Commission regulates utilities.

B. SWG incorrectly applies relevant precedent.

SWG relies heavily on *Pub. Serv. Comm'n v. Ely Light & Power Co.*, 80 Nev. 312, 393 P.2d 305 (1964), in support of its argument that a presumption of prudence applies in general rate cases. *See, e.g.*, AOB at 26-32. However, SWG misconstrues the holding in that case.

In *Ely Light*, this Court held that *reasonable* labor costs are properly included in a utility's revenue requirement unless utility management acts in bad faith, abuses its discretion, or there is evidence of inefficiency or improvidence. 80 Nev. at 324, 393 P.2d at 311. The Court reversed the Commission's disallowance of recovery

of fifty percent of pension plan costs where it was the Commission's opinion that half of those costs should be borne by shareholders but there was no evidence to suggest the costs were unreasonable. *Id.* ("In the absence of an abuse of discretion on the part of the utility and in the absence of showing lack of good faith, inefficiency or improvidence, and if the amounts in question are reasonable and are actually paid as pensions or are allocated to a proper fund under a feasible plan, the commission should not substitute its judgment for that of management."). Implicit in this holding is that the utility had to demonstrate that relevant costs were "reasonable," were "actually paid," and were "allocated to a proper fund under a feasible plan" in the first place. *Id.* This Court's decision in *Ely Light* that the Commission should not substitute its judgment for that of utility's management as long as certain factors are present does prohibit the Commission from arbitrarily denying recovery of costs that are reasonably incurred and supported by substantial evidence, but it does not shift the utility's burden of proof expressly articulated in NAC §703.2331 and supported by Nevada's statutory and regulatory framework.

This Court also recognized in *Ely Light* a "presumption of the proper exercise of judgment by the utility in matters which are particularly a function of management," adding that "[i]t is the commission's duty to regulate rates but not to manage the utility's business." *Id.* Again, this presumption arises where the utility provides substantial evidence in the first instance that it reasonably incurred a cost

and, where it has done so, prevents the agency from arbitrarily denying recovery of those costs. This is entirely different from shifting the direct burden of proof from the utility to customers and other parties in the first instance. SWG ignores the Court's recognition in that same paragraph of *Ely Light* that such costs must be reasonable, where the utility is required to demonstrate reasonableness under the existing framework.

SWG also relies on a concurring opinion of Justice Brandeis in *Mo. ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm'n of Mo.*, 262 U.S. 276, 289 n.1 (1923), in arguing that such a presumption of proper exercise of management's judgment is synonymous with a presumption of prudence of all expenditures for which a utility seeks recovery in general rate proceedings. AOB, at 31-32. SWG's reliance on Justice Brandeis's concurrence, while an entirely illogical leap, should be afforded no deference as courts are not bound by concurring or dissenting opinions. *See, e.g.*, *In re Thomas-Pinkney*, 840 A.2d 700, 701 (D.C. 2004).

SWG improperly applies caselaw in support of its argument where it repeatedly relies on *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 138 P.3d 486 (2006) to support its assertion that a presumption of prudence is appropriate in general rate proceedings. SWG appears to recognize that *Nevada Power Co.*'s conclusion that "a rebuttable prudence presumption applies to deferred energy accounting applications" is limited in scope and separate from

general rate applications, which are governed by a separate framework entirely.[3] 122 Nev. at 824, 138 P.3d, at 488. SWG also recognizes that the procedure and purpose of deferred energy accounting differ from that of a general rate case, and that the privileges afforded in one may not be appropriate in the other. AOB, at 44-56. Yet, it repeatedly cites to *Nevada Power Co.*'s narrow conclusion in support of its much broader argument. *See, e.g.*, AOB, at 38, 40. This leap is inappropriate not only because AB 7 superseded *Nevada Power Co.*'s presumption in the 2007 Legislative Session,[4] but because the function of deferred energy accounting – allowing quicker recovery for pass-through costs associated with fluctuations in natural gas purchased for resale pursuant to NRS §704.185 – is a far cry from the comprehensive, data-intensive general rate cases, in which the Commission must analyze all utility expenditures from the "test year" and ultimately render a decision which yields a substantial and guaranteed return on equity for the utility. The need for regulatory safeguards to protect utility customers is far greater in general rate cases, in which utilities stand to earn a substantial profit at ratepayers' expense and for which this Court should be reluctant to set a policy allowing a presumption that undermines the Commission's ability to thoroughly investigate such profits.

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[3] Deferred energy accounting is permitted under NRS §704.185, whereas general rate applications are governed by, *inter alia*, NRS §§704.100, 704.110, and NAC §§ 703.2201 through 703.2481, *inclusive*.

[4] *See* AB 7 § 1(3).

Because SWG misapplies or misconstrues relevant precedent as described herein, the Court should decline to adopt a presumption of prudence in general rate proceedings based on this precedent.

C. A presumption of prudence would undercut a vital regulatory safeguard on monopoly utilities to the detriment of customers.

SWG recognizes how complex, intricate and expensive the full-blown utility rate case, "with its myriad problems in valuation, economics, accounting, law and engineering" can be. AOB, at 45 (internal citations and quotations omitted). This is because a general rate case covers "all facets of a utility's operations, finances, rate design, and rate of return." *Id.* (*quoting* 73B C.J.S. *Public Utilities* § 21 n.5 (database updated Dec. 2020)). Indeed, NAC §§703.2201 through 703.2481, *inclusive*, provide for detailed requirements which most Nevada utilities (including SWG) must include in their general rate applications, and which both the Commission and the parties to such proceedings must analyze.

The need for these comprehensive requirements as applied to a utility's application to increase its rates through a general rate proceeding are, in part, because many public utilities in Nevada have a monopoly on the service(s) they provide. *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 854, 839 P.2d 606, 611 (1992) ("Because utilities have a monopoly on a necessary service, they are regulated to protect the ratepayers, the public, and the parties who transact business with them."). This Court has long recognized that the Nevada Legislature's decision to

establish both the Commission and the legislative framework by which it regulates utilities were created out of an urgent need to regulate these monopolies for ratepayers' benefit. *Steamboat Canal Co. v. Garson*, 43 Nev. 298, 185 P. 801, 807 (1919) ("The Public Service Commission Act is the direct outgrowth of an urgent and persistent public demand for prompt, intelligent, and effective public control of public utilities. . . . Competition did not prove effective in preventing monopoly by public utility companies, and its consequent burden on the public in the different classes of public service rendered by them.").

NRA's members, many of which frequently participate in utility rate case proceedings,[5] are well-acquainted with the information and data that a utility typically includes in its rate cases before the Commission in order to satisfy the utility's burden of proof under NAC §703.2231. In addition, water and electric utilities have the clear burden in integrated resource planning to demonstrate prudency for proposed major capital expenditures. NRS §§704.661, 704.741. SWG is not required to conduct integrated resource planning under NRS Chapter 704, which further highlights the importance and need in general rate cases for SWG to provide its business case and explanation as to why projects and major expenditures are necessary to its provision of service and completed at a reasonable market cost. The burden of proof to explain why projects are needed for the utility

[5] *See supra* Section I (Interest of the Amicus).

to provide its services does not and should not rest with any party other than the utility deciding to make the expenditure and, if it is to be recovered, the utility must explain how it is necessary for its provision of service.

Given the substantial cost and effort required to intervene in utility rate cases, which often includes the need to hire outside experts to analyze the utility's data, NRA's members carefully evaluate which general rate cases warrant their participation. SWG has asserted that its requested burden-shifting framework would apply to every Nevada utility filing a general rate case, all of which are governed by substantially the same framework, and many of which hold monopolies. This would place a tremendous, undue burden on customers to intervene in utility rate cases, expend substantial resources to obtain information in the utility's sole control, hire experts to attempt to discern the utility's business case for making the expenditures, and engage a legal team in discovery to further evaluate prudency and rebut the presumption if necessary. This outcome would undermine the Legislature's aim to protect ratepayers' financial interests under NRS Chapter 704 and would nonsensically require other parties and utility customers to guess at the utility's business reasoning for making expenditures.

As a matter of policy, this Court should decline to undermine a safeguard which is essential to the regulation of Nevada utilities, and which serves the Nevada Legislature's effort to ensure that customers are provided just and reasonable rates.

See NRS §704.001. This safeguard offers a valuable counterweight to the reality that (1) many Nevada customers have no choice but to receive vital service from the utilities filing these general rate case, and (2) public utilities are guaranteed a return on equity at ratepayers' expense. *See Nevada Power Co. v. Pub. Serv. Comm'n*, 91 Nev. 816, 825, 544 P.2d 428, 434-35 (1975). SWG's request that this Court significantly relax public utilities' regulatory requirements when seeking upward adjustments in rates is dangerous and inconsistent with this Court's recognition that monopoly utilities require regulation "to protect ratepayers." *See Topaz Mut. Co.*, 108 Nev. at 854, 839 P.2d at 611.

Thus, the utility's burden under NAC §703.2331 should remain in place to ensure that utility rates going forward are just and reasonable.

IV. CONCLUSION

For the foregoing reasons, the NRA asks that the Court affirm the District Court's Order Denying Petition for Judicial Review.

Dated this 8th day of March, 2021.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, in Times New Roman 14-point font, double spaced.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, and contains 3815 words.

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

DATED this 8th day of March, 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(e), I hereby certify that on the 8th day of March, 2021, I electronically filed the foregoing **NEVADA RESORT ASSOCIATION'S AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS PUBLIC UTILITIES COMMISSION OF NEVADA'S AND BUREAU OF CONSUMER PROTECTION'S ANSWERING BRIEFS OPPOSING APPELLANT'S OPENING BRIEF**, with the Clerk of the Nevada Supreme Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants.

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