

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 85693

MASS LAND ACQUISITION, LLC, a Nevada limited liability company, et al.
Petitioner
v.
FIRST JUDICIAL DISTRICT COURT of the State of Nevada, in and for Storey
County, and the Honorable James E. Wilson Jr., District Judge,
Respondents
and
SIERRA PACIFIC POWER COMPANY, a Nevada
corporation d/b/a NV Energy
Real Party in Interest

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District Court Case No.: 22 RP00001 1E
First Judicial District Court of Nevada

ANSWER/REPLY TO AMICUS CURIAE: PUBLIC UTILITIES COMMISSION OF NEVADA, SOUTHERN NEVADA WATER AUTHORITY, LAS VEGAS VALLEY WATER DISTRICT, VALLEY ELECTRIC ASSOC. INC, EDISON ELECTRIC INSTITUTE AND AMERICAN GAS ASSOCIATION, SOUTHWEST GAS, CORP., AND RAINBOW BEND HOA'S BRIEFS IN SUPPORT OF REAL PARTY IN INTEREST, NV ENERGY

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Attorneys for Petitioner Mass Land Acquisition, LLC

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I. PREFATORY STATEMENT

The people of the State of Nevada cast over 1.3 million votes¹ in 2006, 2008, and 2010 to ensure Nevada's Constitution was amended to include clear and unambiguous language prohibiting all private-to-private transfers through eminent domain, including the private-to-private transfer at issue in this case. Nev. Const. Art. 1 § 22(1). Amici have now filed untimely last-minute pleadings asking this Court to disenfranchise these 1.3 million votes by setting aside the private-to-private prohibition in the Constitution or invent an exception so NV Energy (a private, for profit, entity) can obtain the Landowners' private property through eminent domain – a clear violation of Nevada's Constitution and the clear will of the people. Amici ask for this extraordinary remedy from the Court not because we are in a time of war or facing a worldwide pandemic, but, rather, because: 1) Amici think it is too hard to comply with the Constitutional prohibition against private-to-private transfers; and, 2) Amici argue private-to-private transfers will interfere with their investors' profits.

This Court entertained similar arguments in two recent cases decided in 2021

¹ PISTOL passed in 2006 with 353,704 votes and 2008 with 534,540 votes, both of which were nearly 70% of the vote tally. 2 PA 00167, 00176. In 2010, a proposed amendment to carve out an exception to the private-to-private transfer prohibition for utility companies was rejected by 440,245 votes, which was also about 70% of the vote. 2 PA 00185.

- Doe Dancer I v. La Fuente, Inc., 137 Nev. 20, 33, 481 P.3d 860, 872 (February 25, 2021) and Myers v. Reno Cab Co., Inc., 137 Nev. 365 (July 29, 2021). Both of these cases were heard en banc and this Court unanimously held that the Minimum Wage Act (“MWA”) that was added to Nevada’s Constitution by vote of the people of Nevada, similar to the PISTOL initiative: 1) is the supreme law on minimum wage issues; 2) is not subject to repeal or exceptions drafted by the Legislature; and, 3) this Court interprets the language of the MWA, not the Legislature, otherwise, separation of powers issues are implicated. Id. In this connection, this Court rejected attempts by the Legislature to draft exceptions to the MWA and arguments by private businesses that compliance with the MWA was too hard.

The Court should apply the same legal principles from Doe Dancers I and Myers here to reject all Amici arguments.

II. INTRODUCTION

In their bid to assist Real Party in Interest, NV Energy (“NVE”), amici: Edison Electric Institute and the American Gas Association and the for-profit *private* companies they represent² (collectively, “EEI”); Southwest Gas Corp. (“SWG”); the Las Vegas Valley Water District, Southern Nevada Water Authority, and Valley

² NVE is an admitted member of EEI and thus, EEI’s brief is just an impermissible attempt by NVE to submit additional and improper pleadings in this matter by proxy. EEI Brief at 1.

Electric Association, Inc. (collectively, “SNWA”); the Public Utilities Commission of Nevada (“PUCN”); and, the Rainbow Bend Homeowners Association (“HOA”) (all collectively: “Amici”) provide no new legal basis which could assist this Court in deciding the Petition. Instead, they ignore the plain and unambiguous language of the Nevada Constitution to rehash speculative doomsday scenarios already presented and rejected by the Nevada voters in 2006, 2008 and 2010³ and completely unsupported by the record in this matter. EEI even attempts to clutter this case with the completely irrelevant argument that this Court should ignore the clear language of the Constitution so that the energy companies it represents can continue to make a “reasonable” profit, while not mentioning that those same energy companies paid their CEOs \$3.2 billion between 2017 and 2022.⁴ Profits, whether reasonable or exorbitant, have no place in this constitutional proceeding or this Court’s analysis.

³ The exact same doomsday scenarios argued by the Amici here were presented to the voters in 2006 and 2008 as the argument against passage of PISTOL and in 2010 as the argument to replace PISTOL. *See* 2-PA-00169, 178, 186.

⁴ Exhibit1. <http://energyandpolicy.org/utility-ceos-received-3-2-billion-in-executive-compensation-from-2017-2022/>. The Landowners request the Court take judicial notice of the publicly available documents attached hereto as Exhibits and referenced herein. NRS 47.130, 47.150(2) (“A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.”); *See also Caballero v. Seventh Judicial Dist. Ct.*, 123 Nev. 316, 167 P.3d 415 (2007). When cited herein, each Exhibit’s URL will also be provided but for ease of review and consistency a copy of the same is attached hereto.

In this Art. 1, § 22 constitutional proceeding, the five extremely late Amici briefs argue the same basic positions. First, they argue that compliance with the private-to-private prohibition in the Constitution⁵ is difficult and will cut into their profits and, therefore, they request that this Court set aside that prohibition for them. Second, they argue that allowing Nevada landowners a jury trial on public use, at a landowner's option, makes it more difficult for them to take private property from Nevada landowners and, therefore, this Court should set aside the clear and unambiguous language of the Constitution providing this express right. For the reasons stated herein, these arguments are not only baseless, but offensive to the important constitutional rights Nevadan's overwhelming chose to include and uphold in their Constitution.

III. THIS COURT IN THE CONTEXT OF CONSTITUTIONAL INTERPRETATION REJECTS THE AMICI'S ARGUMENTS

This Court's analysis of a violation of Nevada's Constitution always begins with a critical review of the underlying facts. *See Doe Dancer I*, supra, and *Myers* supra. Here, the facts are undisputed. The taking in this case is a transfer from Mass

⁵“Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party.” Art. 1 §22(1).

Land, a private entity, to NVE, another private entity,⁶ to accommodate NVE's private easement for facilities owned by NVE so that NVE can make a private profit. Not one part of NVE's project and not one penny of NVE's profit therefrom is "public." And, NVE's overall annual profit it makes off of Nevadans, between \$200 - \$300 million annually,⁷ are purely private – not one penny of this private profit goes to the "public." Amici EEI is no different, their members having paid their private CEOs \$3.2 billion between 2017 and 2022.⁸

Therefore, the underlying question in this case is simple and straightforward – should this Court disenfranchise 1.3 million Nevada votes and re-write Art. 1, § 22(1) to include an exception that appears nowhere in the Constitution, which grants NVE the power to take private property by eminent domain to transfer that private property to itself so it can increase its private profit. Pursuant to the plain language of Art. 1, § 22(1), the answer is no.

This Court addressed this issue previously and held neither this Court, the

⁶ Exhibit 2.

https://www.nvenergy.com/publish/content/dam/nvenergy/brochures_arch/about-nvenergy/rates-regulatory/recent-regulatory-filings/north/grc/electric/SPPC-Elec-2019-GRC-Vol-13.pdf

⁷ Exhibit 3. [BHE 12.31.22 Form 10-K \(oraclecloud.com\)](https://www.oraclecloud.com)

⁸ Exhibit 1. <http://energyandpolicy.org/utility-ceos-received-3-2-billion-in-executive-compensation-from-2017-2022/>

Legislature, nor the Executive Branch, can ignore or change the clear and unambiguous provisions of the Constitution, especially, not to protect the profits of private companies. Doe Dancer I v. La Fuente, Inc., 137 Nev. 20, 33, 481 P.3d 860, 872 (2021) (“‘It is not [a court's] function or within [a court's] power to enlarge or improve or change the law.’ ... A court has only the ‘right and the duty ... to interpret the [legislative] document’ not ‘to rewrite the words.’”) *internal citations omitted*. This Court has further held that “ingenuity [does not] create ambiguity.” Miller v. Burk, 124 Nev. 579, 592, 188 P.3d 1112, 1121(2008).

Here the Amici have argued it is just *too difficult to comply*. If accepted, this would allow disturbing potential arguments, for example: 1) the Nevada Department of Prisons could argue Art. 1, § 6 (cruel and unusual punishment) is too costly and difficult to comply with and, therefore, should be set aside; or, 2) prosecutors could claim it is too hard and costly to comply with Art. 1, § 8 (due process) so it should be set aside.

Therefore, this Court has adopted staunch reasons for rejecting Amici’s arguments and it should not allow Amici’s effort at ingenuity to create ambiguity where none exists in their bid to set aside the clear and unambiguous language that was overwhelmingly passed by Nevada voters.

IV. LEGAL ARGUMENT

A. Amici Do Not Want to Comply with the Constitution (Art. 1 § 22(1)) and Instead Advance the Exact Same Reasoning from Pappas and Kelo which Was Made Unconstitutional by Art 1, § 22(1).

The clear and unambiguous language of the Constitution provides that to sustain an eminent domain action “[p]ublic use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party.” Art. 1, § 22(1).

The Amici do not want to comply with this provision and argue that a private-to-private transfer of property through eminent domain is permissible so long as it is for a statutorily enumerated public use. Amicus of PUCN at 2, Amicus of EEI at 4, Amicus SWG at 9. However, this was the exact reasoning in City of Las Vegas Downtown Redevelopment Agency v. Pappas, 119 Nev. 429, 76 P.3d 1 (2003) and it is beyond question that the Nevada Constitution was amended to add Art. 1, § 22 to set aside and make unconstitutional the reasoning from the opinion in Pappas, as well as the reasoning from the United States Supreme Court opinion in Kelo v. City of New London, Conn., 545 U.S. 469, 125 S. Ct. 2655 (2005). 2-PA-00167 and 00187.

It is critical to review the reasoning in Pappas, as re-adopting it post PISTOL would clearly be unconstitutional. The Pappas Court affirmed the use of eminent domain to take private property from the late Ms. Carol Pappas to give it to a group

of casino owners for a pay-to-park parking garage to support the downtown casinos' Fremont Street Experience. In doing this, the Court held that "[t]he focus of the [public use] inquiry is whether the plan or project serves the public purpose, not whether the condemned property is eventually owned by a public or private entity." City of Las Vegas Downtown Redevelopment Agency v. Pappas, 119 Nev. at 443, 76 P.3d at 11.

By adopting PISTOL in 2006 and 2008, the citizens of Nevada rejected the Pappas reasoning and overwhelmingly voted in two separate elections to amend the Nevada Constitution to prevent private-to-private transfers through eminent domain either directly or indirectly. The plain language of the Constitution clearly rejects the reasoning from Pappas. Post PISTOL (Art. 1, § 22(1)), public use will not be found if the taken property will end up in private ownership, thus, the plain language of the Constitution does not initially consider the type of use or purpose for the taking, but is first concerned with where title through eminent domain ends up. Simply, under Art, 1, § 22(1), if title to taken property ends up in private ownership, either directly (as in this case) or indirectly, the taking is unconstitutional.

Accordingly, it is quite troubling for political subdivisions of the State of Nevada to appear as Amici here and advance such knowingly unconstitutional arguments, designed to thwart the overwhelming will of the citizens of the State of Nevada. Nevada citizens voted to amend their Constitution to provide Nevada

landowners protections so that eminent domain could not be used for private-to-private transfers and the Court should reject Amici’s attempt to have it ignore this clear provision of the Constitution and strip that right from Nevada citizens. Doe Dancer I, 137 Nev. 20, 33, 481 P.3d 860, 872 (2021) (recognized that “Nevada voters took it upon themselves to propose and adopt an amendment to the “superior paramount law” of this state, via “[extra]ordinary means.”)

As in Doe Dancer I, Amici try to distract the Court from the prohibited private-to-private transfers clearly set forth in Art. 1, § 22(1) and instead focus on statutory definitions of public use. Amici of PUC at 2, Amici of EEI at 7. The Amici miss the point. The citizens of the State of Nevada chose to bypass the Legislature and undertake the challenging process of amending the Constitution precisely because the Constitution controls and is not easily changed by the influences that can impact the Legislature. Doe Dancer I v. La Fuente, Inc., 137 Nev. 20, 33, 481 P.3d 860, 872 (2021) (“constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada’s Constitution...” *citing* Thomas v. Nevada Yellow Cap Corp, 130 Nev. 484, 489, 327 P.3d 518, 522 (2014)).

The Legislature’s view as to whether a particular scenario involves a public use is not relevant to this Court’s interpretation of the subject Constitutional language. For example, the Legislature, through the years, has previously defined

public use to include many circumstances and parties that are now prohibited for eminent domain such as mining, redevelopment by private entities (including casinos and private law firms), sugar beets, and even homeowners' associations.⁹ Currently, NRS 37.010(o) still has redevelopment as a public use. If the Amici's argument regarding the application of NRS 37.010 above the Constitution is accepted, then regardless of the clear Constitutional language at issue here, eminent domain could be used to transfer property from one private entity to another private entity for redevelopment but not for mining merely because redevelopment happens to be a statutorily defined public use. There can be no question that private-to-private transfers for either redevelopment or mining violate Art. 1, § 22(1), which clearly illustrates why the Amici's arguments must be rejected.

Once the Constitution was amended to remove private-to-private transfers from the definition of public use, that became bedrock Nevada law and the Court cannot look to the Legislature, the very body the citizens decided to bypass, for guidance or to override the Constitution as requested by the Amici. Myers v. Reno Cab Co., Inc., 137 Nev. Adv. Op. 36, 492 P.3d 545, 552 (2021); Doe Dancer I, 137 Nev. at 33, 481 P.3d at 872 (“[W]e have previously reasoned that ‘[i]f the Legislature could change the Constitution by ordinary enactment, no longer would the

⁹ See 2011 amendments to NRS 37.010; 2007 amendments to NRS 279.472; 1997 amendments to NRS 37.0097.

Constitution be superior paramount law, unchangeable by ordinary means. It would be on a level with ordinary legislative acts, and, like other acts ... alterable when the legislature shall please to alter it.”); Strickland v. Waymire, 126 Nev. 230, 241, 235 P.3d 605, 613 (2010); Nevadans for the Prot. of Prop. Rights, Inc. v. Heller, 122 Nev. 894, 914, 141 P.3d 1235, 1248 (2006).

Amici have cited overturned law to this Court and seek to ignore and void the plain language of the Constitution that prohibits the private-to-private transfers through eminent domain sought by NVE in this case. This Court’s duty is to uphold the Constitution that prohibits the use of eminent domain for such transfers. This is what the citizens of the Silver State went to *extraordinary* lengths to adopt. Contrary to the demands by NVE and its Amici, statutes adopted by the Legislature cannot create exceptions to this clear right. Therefore, fidelity to the Constitution demands that the Court reject Amici’s positions.

B. Amici Argue It Would Be Too Hard For Them to Comply With the Constitution (Art. 1, § 22(2)) and Therefore Ask This Court to Ignore Constitutional Provisions For Their Convenience.

Amici, with no real support, assert that it would be too hard and take too much time for them to comply with the Constitution’s requirement that a landowner be given a jury trial on public use if the landowner so requests (Art. 1, § 22(2)). They then ask this Court to ignore that clear Constitutional provision for their convenience. Amicus of SNWA *passim*, Amicus of PUCN at 6, Amicus of EEI

passim. This is a shocking argument. What if the Police Union asked this Court to ignore Art. 1, § 18 because warrants are too hard to get and take too much time? There is no difference here. In fact, the United States Supreme Court in Knick v. Township of Scott, 139 S.Ct. 2162 (2019), recently reminded all Courts that the rights associated with the Takings Clause are of equal import to all other rights in the Bill of Rights, and if there were any question, restored the Takings Clause to “the full-fledged constitutional status the Framers intended when they included the Clause among the other protections of the Bill of Rights.” Knick v. Township of Scott, 139 at 2169.

Art 1, § 22(2) is clear: a Nevada property owner “shall be entitled, at the property owner’s election, to a separate and distinct determination by a district court *jury*, as to whether the taking is actually for a public use.” Emphasis added. Similar to NVE (Ans. at 17), SNWA argues that if a specific type of use, such as a pipeline, is enumerated by statute – NRS 37.010 -- then there is no factual question for a jury to decide and thus, the jury trial expressly provided for under the Constitution should be ignored and the district court should determine public use pursuant to NRS 37.100. Amicus of SNWA at 3.

SNWA’s arguments ignore the key aspects created by Art. 1, § 22(2)’s “separate and distinct” determination of public use by a jury. This provision was designed to take the question of public use out of the hands of the Legislature, as the

Legislature was the body that had allowed the historical abuse of eminent domain and instead place the determination in the hands of the landowners' peers – a jury, if the landowner so chooses. Again, Amici's assertion that statutes adopted by the Legislature should override this express constitutional provision should be rejected as repeatedly held by this Court.

Indeed, instead of providing new legal arguments, Amici spend the bulk of their briefs asserting unfounded doomsday scenarios. With no evidence whatsoever to support their parade of terribles, Amici engage in wild speculation alleging that if the Constitution is upheld and landowners are given a jury trial on public use (if requested), then every landowner in the state of Nevada would be a "hold out," would receive a "windfall," and "critical public infrastructure" would be "chilled, delayed at enormous possible expense, and/or cease." Amicus of EEI at 20 and *passim*, Amicus of SNWA at 9 and *passim*, Amicus SWG at 14-17.

The truth is the right to a jury trial on public use if the landowner so chooses has been the law of the State of Nevada for 15 years and to the undersigned counsel's offices' knowledge has only been requested three times. Three times in 15 years is far short of the doomsday predictions the Amici advance. Three times in 15 years has not created any "hold outs," has not created any "windfalls," and certainly has not been the cause of any "critical public infrastructure" being "chilled" "delayed" or "ceased."

This Court has heard this same *sky will fall* argument before and has correctly rejected it in upholding the Constitution. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 671, fn. 88, 137 P.3d 1110, 1127 (2006) (rejecting contention that government cannot afford to regulate by purchase regardless of financial burden it must bear). *See also* Arkansas Game & Fish Comm'n v. United States, 568 U.S. 23, 33, 133 S.Ct. 511, 519 (2012) (right to full and complete just compensation is self-executing regardless of the impact on government's budget). Justice Ruth Bader Ginsburg, writing for the majority of the United States Supreme Court in Arkansas Game & Fish Comm's, expressly rejected all government arguments that it may cost too much to comply with the Takings Clause standards stating “[t]ime and again in Takings Clause cases, the Court has heard the prophecy that recognizing a just compensation claim would unduly impede the government’s ability to act in the public interest” and then goes on to explain how “the sky did not fall” after many of its decisions that recognized important constitutional rights in favor of landowners. Arkansas Game & Fish Comm's v. U.S., 568 U.S. at 36-37, 133 S.Ct. at 521.

C. Amici’s Reliance on Art 1, § 22(8) is Misplaced.

The Amici next argue that Art. 1, § 22(8) authorizes NVE as a “public utility” under NRS 704 to violate Art. 1, § 22(1)’s prohibition on private-to-private transfers. Amicus of EEI at 4, 7, Amicus of PUC at 1, 4, Amicus of SWG at 4-8. The Amici’s argument is that because NVE falls within the definition of “government” found in

Art. 1, § 22's inclusion clause at subsection 8, then NVE can violate Art. 1, § 22(1). This argument is fatally flawed as the portion of Article 1, § 22(1) at issue here does not contain the word "government," thus, Amici's attempt to rely on the definition of "government" provided in subsection 8 is unavailing in applying the operative language of subsection 1. Moreover, if any condemning party falls under Art. 1, § 22(8), then it must comply with the preceding seven sections of section 22, including that its' taking meets the constitutional requirement of public use. Accordingly, Art. 1, § 22(8) provides no support for the unconstitutional private-to-private transfer at issue here.

In fact, nowhere in Art. 1, § 22 is there any exemption for private utility companies as argued by the Amici. 2 PA 00176; Amicus of EEI at 4, 7, Amicus of PUC at 1, 4, Amicus of SWG at 4. Quite the opposite is true as evidenced by the 2010 failed AJR 3. In an effort to try to get in front of PISTOL, the Legislature (who the citizens of Nevada had specifically chose to bypass) proposed its own amendment to the Constitution -- AJR 3 -- which mirrored AB 102 and provided the same utility exception to the prohibition on private-to-private takings the Amici argue for here. 2-PA-00184-188. 67.8% of Nevada's voters rejected this amendment in the 2010 general election in favor of retaining PISTOL (Art. 1, sec. 22) as written. Clearly, the Legislature and NVE knew PISTOL prohibited the type of private-to-private taking in this case and wanted PISTOL repealed to allow such

takings through AJR 3. The voter “Explanation” for AJR 3 states its purpose was to provide “exceptions to the prohibition against exercising eminent domain in order to transfer property from one private party to another” for a “utility” such as a “pipeline,” recognizing PISTOL did not allow a taking for such purposes. 2-PA-00185. In 2010, AJR 3 was put on the ballot for its first vote, which would have provided a “utility” exception to the prohibition on private-to-private takings in the Constitution and may have authorized NVE’s taking in this case. 2-PA-00184-185. It was overwhelmingly rejected by Nevadans. *Id.*

Through any plain reading it is clear that Art. 1, § 22(8) is merely an inclusion clause to ensure that any entity in Nevada claiming the power of eminent domain would be subject to the preceding seven provisions of § 22. Thus, Art. 1, § 22(1) and (2) apply to NVE as an entity claiming to have the power of eminent domain. There is no exception in either provision which excludes public utilities. In fact, the voters expressly and overwhelmingly rejected such an exception in 2010. Therefore, Art. 1, § 22(1) and (2) apply to NVE and prohibit the taking in this case.

D. SNWA Relies on Overturned Caselaw in its Brief Which this Court Should Reject.

SNWA’s Brief to this Court heavily relies on *overturned law*. Amicus of SNWA at 2, 5-8. *Kelo v. City of New London*, 545 U.S. 469, 125 S.Ct. 2655

(2005)¹⁰ and City of Las Vegas Downtown Redevelopment Agency v. Pappas, 119 Nev. 429, 76 P.3d 1 (2003) have been disavowed and specifically overturned by constitutional amendment in Nevada and are no longer good law in this State on the issue of public use in an eminent domain action. Nev. Const. Art. 1, § 22. The Argument Advocating Passage of PISTOL (which again was overwhelmingly passed by the citizens of Nevada) and became the provisions of Art. 1, § 22, specifically calls these two cases out by name in identifying the primary reason that PISTOL needed to be passed. 2 PA00167, 168, 176, 178; *see also* Nevadans for the Protection of Property Rights, Inc. v. Heller, 122 Nev. 894, 907, 141 P.3d 1235, 1244 (2006) (this Court recognized specifically for Art. 1, sec. 22: “[i]ndeed, the description of the initiative's effect specifically states that ‘[t]he following constitutional provisions shall supersede all conflicting Nevada law regarding eminent domain actions.’”). Emphasis added. It is shocking that the citizens of Nevada went to the immense and extraordinary effort of adopting constitutional amendments to overturn two outrageous cases which allowed clear abuse of eminent domain, yet, governmental entities, such as SNWA, and LVVWD still cite these

¹⁰ Dayton Gold and Silver mining Company v. W. M. Seawell, 11 Nev. 394(1876) is cited by the majority opinion in Kelo v. City of New London, 545 U.S. 469, 479 fns. 7 and 8, 125 S.Ct. 2655, 2662 (2005).

cases as good law. *What else do the citizens of Nevada need to do to be free from abusive eminent domain practices?*

Now, SNWA claims that the “Nevada Constitution and NRS Chapter 37 do not conflict with the U.S. Supreme Court’s ruling in Kelo, but instead specifically supports the Kelo decision....” Amicus of SNWA at 6-8. This is a knowingly incorrect statement as Art. 1, § 22(1) and (2) directly overturn the private-to-private transfer upheld in Kelo, ***making the use of eminent domain for such takings unconstitutional in Nevada.*** The citation of this overturned law spotlights why this Court must closely safeguard the clear and plain rights set forth in the Constitution, as governmental entities continuously seek to void them. As observed by a dissenting Justice in Kelo:

“The Constitution’s text, in short, suggests that the Takings Clause authorizes the taking of property only if the public has a right to employ it, not if the public realizes any conceivable benefit from the takings...The Public use Clause, in short, embodies the Framers’ understanding that property is a natural, fundamental right, prohibiting the government from ‘tak[ing] property from A. and giv[ing] it to B.’” Kelo v. City of New London, Conn., 545 U.S. 469, 510-511, 125 S.Ct. 2655, 2680 (2005).

With the passage of PISTOL (Art. 1, § 22) all prior case law that held or suggested a “deference” to the legislature on public use or a “narrow role” for the Court in determining public use as argued by SNWA was superseded and replaced with a clear definition of public use and a *district court jury determination applying*

that definition of public use at the owner's election. Nev. Const. Art. 1, § 22(1) and (2). Accordingly, SNWA's reliance on, not only Kelo and Pappas, but also Dayton Gold and Silver Mining Co. v. W.M. Seawell, 11 Nev. 394 (1876), Urban Renewal Agency v. Iacometti, 79 Nev. 113 (1963), and Hess v. Pegg, 7 Nev. 23 (1871) are misplaced. Amicus of SNWA at 5-8. After PISTOL, these cases no longer have precedential authority for the issue of public use in Nevada.

E. The Private Trade Group EEI Argues That This Court Must Ignore the Constitution So That NVE Can Make A Profit.

In addressing EEI's arguments, it is first important to understand EEI's involvement here. EEI is a trade group whose sole responsibility is to protect the financial interests of its members. According to the Energy and Policy Institute, that financial interest is significant as EEI's members paid their CEOs \$3.2 billion over a five-year period between 2017 to 2022.¹¹

EEI encourages this Court to ignore the Constitution and the clear will of the citizens of Nevada and violate the Landowner's constitutional rights so that NVE can make a reasonable profit. Amicus of EEI at 15-16. It argues that this Court must ignore the Constitution so that NVE can make "a reasonable return on the value of property devoted to public use." Amicus of EEI at 16. This is a seriously flawed

¹¹ Exhibit 1. <http://energyandpolicy.org/utility-ceos-received-3-2-billion-in-executive-compensation-from-2017-2022/>

argument. The simple fact that NVE makes a private profit means it should not receive property through eminent domain. Since it makes a profit, it can participate in the open market just like every other profit-making private entity. Indeed, NVE's profit in 2021 was over \$200 million.¹² In this case, NVE has directly condemned and transferred private property to its private ownership so that it can make a private profit. Not one penny of that profit goes to fund Nevada's government, yet, NVE wants to make its profit off the backs of Nevada property owners by removing them from the fair and open market in direct violation of the Constitution.¹³

EEI argues that NVE should be carved out of the Constitution's prohibition of private-to-private transfers because NVE is a regulated private entity and has allegedly structured itself under such a business model. Amicus of EEI at 14-18. The Constitution does not recognize such an exemption nor should it. As cited above, an exemption for regulated utilities was provided for and rejected in the failed AJR 3. 2 PA 00184-188. There are many regulated industries in Nevada, including

¹² Exhibit 3. [BHE 12.31.22 Form 10-K \(oraclecloud.com\)](https://www.oraclecloud.com)

¹³ Exhibit 4. Apparently, NVE does not even pay the bonuses for its own employees. According to the Review Journal, the PUCN (an amicus here) just approved NVE's request to have NVE customers pay for NVE's employee bonuses "despite concerns raised by the state consumer advocate that the level of bonuses are higher than what was earned." Sean Hemmersmeier, *NV Energy Customers to Pay \$4.27M for Employee Bonuses*, LVRJ (February 13, 2024). <https://www.reviewjournal.com/business/energy/nv-energy-customers-to-pay-4-27m-for-employee-bonuses-3000693/>

mining, gaming, trash collection services, taxi companies, and cannabis. None of them are permitted a carve out to obtain private property through eminent domain. The Nevada Constitution prohibits private, for-profit, entities like NVE from obtaining property through eminent domain and EEI provides no valid legal or public policy reason to set aside this Constitutional provision for NVE.¹⁴

F. The PUCN Does Not Safeguard the Constitutional Rights of Nevada Property Owners

The PUCN's arguments are equally without merit. The PUCN is "tasked with providing 'for the safe, economic, efficient, prudent and reliable operation and services of public utilities' and 'balanc[ing] the interests of customers and shareholders of public utilities;'" it does not safeguard the Constitutional rights of Nevada property owners. Amicus of PUCN at 6. In fact, the PUCN did not even notify the Landowner here of the project that was seeking to take his private property.¹⁵ Accordingly, the PUCN's amicus offers nothing to this Court except

¹⁴ The Landowner recognizes that the out of state Amici, such as EEI, may not be aware that in Nevada many parcels have patent easements along all 4 boundaries for utilities and roadways which this Court has found makes eminent domain rarely needed for such uses. City of Las Vegas v. Cliff Shadows Prof'l Plaza, 129 Nev. 1, 7, 12-13, 293 P.3d 860, 864, 867-868 (2013).

¹⁵ Exhibit 5, mailing list for PUCN Docket 20-06019. Thus, the PUCN's claim the Landowner could have intervened and then filed a petition for judicial review instead of pursuing their constitutional right to a jury trial is meritless. <https://ecms.nv.gov/puc/>

recognition that NVE provided false testimony to the district court to gain occupancy of the Landowner's private property. NVE provided sworn testimony by Zeina Randall that first, the necessary permit to construct NVE's project was obtained and then that the permit was not obtained because it was not necessary. 2 PA00307-308. Both were false. As the PUCN admits NVE did need to obtain a permit to construct its project and NVE did not have that required permit when it constructed its project. Amicus of PUCN at 12.

G. Not All Amici are Similarly Situated with NVE and Therefore Their Positions Are Not Analogous to NVE's in this Matter.

1. SNWA and LVVWD Are Political Subdivisions of The State of Nevada and Are Not Private, For-Profit, Entities.

In the pending Petition, the principal question before this Court is whether NVE, as a *private, for-profit*, entity can use the power of eminent domain to take private property for its own private ownership, given the Nevada Constitution's prohibition on such private-to-private transfers through eminent domain. Nev. Const. Art. 1, § 22(1). SNWA and the Las Vegas Valley Water District ("LVVWD") are political subdivisions of the State of Nevada and not-for-profit entities (SNWA Brief at 1), as opposed to NVE, a private, for-profit, entity owned by Berkshire Hathaway. Pet. at 9-10 and Exhibit 2. SNWA is not "similarly situated" with NVE for purposes of the principal question the Petition presents to the Court. Amicus of

SNWA at 1. Thus, this Court need not read past the first paragraph of SNWA's brief to see that the resolution of the Petition will not impact SNWA. Thus, SNWA's untimely brief and arguments, as well as those of LVVWD, should be rejected, as they are not interested parties here.

2. The HOA Does Not Have the Power of Eminent Domain

Homeowner's Associations, such as Amicus HOA, no longer have the power of eminent domain in Nevada (NRS 37.0097) thus, resolution of the Petition will not impact their legal rights. However, Amicus HOA asserts that it has benefited from NVE's unconstitutional taking as now its members have more selections at the appliance department and pay a little less for those appliances of choice as well as a little less for their new heating product. Amicus of HOA at 2. This argument is entirely irrelevant as it does not justify violating the constitutional rights of a Nevada property owner. The HOA argues that "[m]embers of the public, like [HOA] rely upon NVE to provide access to utilities..." and the Landowner's constitutional rights "threaten to block NVE's ability to provide [those] utilities." Amicus of HOA at 4. This is a dangerously flawed argument. Members of the public also rely upon the police to provide safe communities but that does not give the police the right to ignore provisions of the Constitution which may be more challenging to comply with such as Art 1, § 18 (unreasonable seizure and search). Simply, because the HOA's members may have benefited from the violation of the Landowner's constitutional

rights here should not give it a voice in this case.

The HOA also claims NVE would not have been able to comply with the Constitution and also provide its members the heating product of their choosing. This is pure speculation, not founded on any evidence. Upholding the Constitution to prevent prohibited private to private transfers through eminent domain does not automatically mean NVE cannot provide utilities. The HOA and other Amici have presented no evidence to support such a dubious claim. NVE is an extremely profitable private company, belonging to a group (EEI) whose members were able to pay their CEO \$3.2 billion over just five years. Accordingly, simply requiring NVE to participate in the open market will not prevent it from the business to which it engages. Arguments to the contrary are nothing more than unsupported inflammatory hysteria which should not weigh into this Court's careful reasoning of whether NVE's attempted taking here violates the express language of the Nevada Constitution.

V. CONCLUSION

The Amici are asking this Court to do something that is, respectfully, not within this Court's function or power. The Constitution is clear on its face and must be upheld to prohibit the use of eminent domain to transfer interests in the Landowner's private property directly to NVE a private, for profit, party. While the Amici bring many speculative doomsday scenarios to this

Court, none can justify changing or ignoring the plain language of the Constitution.

DATED this 27th day of February, 2024.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Michael Schneider
KERMITT L. WATERS, ESQ., NBN.2571
JAMES J. LEAVITT, ESQ., NBN 6032
MICHAEL SCHNEIDER, ESQ., NBN 8887
AUTUMN WATERS, ESQ., NBN 8917
Attorneys for Mass Land Acquisition, LLC

CERTIFICATE OF COMPLIANCE

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 it has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point font, Times New Roman style. I further certify that this brief complies with the type-volume limitation of NRAP 32(a)(7) and this Court’s order of February 22, 2024 in this matter because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains **5961** words.

Pursuant to NRAP 28.2, 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), which requires every assertion regarding matters in the record to be supported by a reference to the page 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 this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 27th day of February, 2024.

LAW OFFICES OF KERMIT L. WATERS

BY: /s/ Michael Schneider

KERMIT L. WATERS, ESQ., NBN.2571
JAMES J. LEAVITT, ESQ., NBN 6032
MICHAEL SCHNEIDER, ESQ., NBN 8887
AUTUMN WATERS, ESQ., NBN 8917
Attorneys for Mass Land Acquisition, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Law Offices of Kermit L. Waters, and that on this 27th day of February, 2024, a copy of the foregoing: **ANSWER/REPLY TO AMICUS CURIAE: PUBLIC UTILITIES COMMISSION OF NEVADA, SOUTHERN NEVADA WATER AUTHORITY, LAS VEGAS VALLEY WATER DISTRICT, VALLEY ELECTRIC ASSOC. INC, EDISON ELECTRIC INSTITUTE AND AMERICAN GAS ASSOCIATION, SOUTHWEST GAS, CORP., AND RAINBOW BEND HOA’S BRIEFS IN SUPPORT OF REAL PARTY IN INTEREST, NV ENERGY** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court’s E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the E-Flex system and others not registered will be served via U.S. mail as follows:

Storey County Deputy Clerk, Dept. II First Judicial District Court Honorable James E. Wilson Jr. 26 S. B Street P.O. Drawer D Virginia City, NV 89440 aduke@storeycounty.org	LEACH KERN GRUCHOW ANDERSON Kirby C. Gruchow, Jr., Esq. kgruchow@lkglawfirm.com Jeremy B. Duke, Esq. jduke@lkglawfirm.com 2525 Box Canyon Dr. Las Vegas, Nevada 89128 <i>Attorneys for Real Party in Interest</i>
DP Operating Partnership, L.P. c/o The Corporation Trust Company, Registered Agent Corporation Trust Center 1209 Orange Street Wilmington, Delaware 19801	Keith Loomis, Esq. Storey County District Attorney’s Office 201 South C Street Virginia City, Nevada 89440 <i>Attorney for Storey County</i>

<p>Garrett Weir, Esq. gweir@puc.nv.gov Cameron Dyer, Esq. camerondyer@puc.nv.gov 1150 E. William Street Carson City, Nevada 89701 <i>Attorneys for Amici Curiae Public Utilities Commission of Nevada</i></p>	<p>Gregory J. Walch, Esq. Greg.Walch@lvvwd..com Steven C. Anderson, Esq. Steven.Anderson@lvvwd.com 1001 S. Valley View Blvd. Las Vegas, Nevada 89153 <i>Attorneys for Amici Curiae Las Vegas Valley Water District and Southern Nevada Water Authority</i></p>
<p>Jeremy Marwell, Esq. jmarwell@velaw.com Adam Hosmer-Henner, Esq. ahosmerhenner@mcdonaldcarano.com MCDONALD CARANO LLP 100 W. Liberty St., Tenth Floor P.O Box 2670 Reno, Nevada 89505 <i>Attorneys for Amici Curiae Edison Electric Institute and American Gas Association as Amici Curiae</i></p>	<p>Robert D. Sweetin, Esq. rds@dvclaw.com DAVISON VAN CLEVE, PC. 4675 Teco Ave., Suite 230 Las Vegas, Nevada 89118 <i>Attorney for Amici Curiae Valley Electric Association, Inc.</i></p>
<p>Joel D. Henriod, Esq. EGLET ADAMS EGLET HAM HENIROD 400 S. 7th Street, Suite 400 Las Vegas, Nevada 89101 <i>Attorney for Amici Curiae Southwest Gas Corporation</i></p>	<p>Michelle Albert, Esq. Michelle.albert@TNC.org 1209 Orange Street Wilmington, Delaware 19801 <i>Attorney for The Nature Conservancy</i></p>
<p>Paul C. Ray, Esq. paulcraylaw@gmail.com PAUL C. RAY, CHTD. 8670 W. Cheyenne Ave., Suite 130 Las Vegas, Nevada 89129 <i>Attorneys for Amici Curiae Rainbow Bend Homeowners Association</i></p>	

/s/ Monica Villanueva

An employee of the Law Offices of Kermitt Waters

EXHIBIT 1

EXHIBIT 1



Utilities

Utility CEOs received \$3.2 billion in executive compensation from 2017 - 2022



Lee Smyth • July 5, 2023



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Investor-owned electric and gas utilities paid their CEOs \$3.2 billion between 2017 and 2022, according to corporate data reviewed by the Energy and Policy Institute.

CEOs for the 57 companies reviewed for this analysis received more than \$578 million in 2022. Total utility CEO compensation declined from last year, as it did for most other major US companies. Large portions of CEO compensation depend on company stock prices, which fell in 2022 for most companies. “The decline marks the first time in a decade that compensation for top executives at the biggest U.S. companies didn’t reach new highs,” the Wall Street Journal reported.

Top paid CEOs led utilities implicated in scandals

The highest paid utility CEO in 2022 was NextEra Energy’s James Robo, whose compensation totaled \$40.4 million after retiring in July 2022. The company also paid incoming CEO John Ketchum \$17.4 million in 2022,



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Exelon CEO Christopher Crane received the second highest compensation at \$30 million, while Southern Company CEO Tom

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Fanning received \$24 million.

All three of those top paid utility CEOs retired during the last year, and all three oversaw utilities whose subsidiaries have recently been implicated in high-profile scandals. NextEra subsidiary Florida Power & Light paid millions of dollars to consultants who helped to run spoiler candidates in Florida State Senate elections. Exelon subsidiary ComEd agreed to pay \$200 million three years ago to resolve a federal criminal investigation into a years-long bribery scheme as part of a deferred prosecution agreement. A federal jury recently found four former ComEd executives and associates guilty for bribery, record falsification, and conspiring to influence and reward the former Speaker of the Illinois House to assist with favorable utility legislation. A long-time consultant for Alabama Power, a Southern Company subsidiary, conducted surveillance of Tom Fanning “to influence corporate decision making and succession planning for his own benefit and at the direction of executives of Alabama Power Company,” according to a court filing by a former employee of the consultancy.

Exelon CEO Chris Crane's \$30 million compensation reflects a \$4.2



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corruption case. Exelon's proxy statement notes. The independent

directors believe this adjustment is appropriate because Mr. Crane was

CEO of Exelon Energy Corp. in 2015. Mr. Crane was CEO of Exelon Energy Corp. in 2015.

serving as CEO of Exelon, Commonwealth Edison's parent, at the time the conduct described in Commonwealth Edison's deferred prosecution agreement occurred. More generally, the independent directors believe this adjustment is consistent with Exelon's commitment to CEO accountability for all aspects of the Company's performance and is supportive of its strong culture of ethics and compliance." Despite the deduction, Crane's compensation in 2022 was about twice the \$15 million he received in previous years.

Florida Power & Light CEO Eric Silagy, who retired in January 2023, "signed an exit agreement that includes a multi-year "claw back on compensation" if there is a finding of "any legal wrongdoing," the Florida Times-Union [reported](#).

Some regulators and policymakers seek to limit how much ratepayers are charged for utility CEO compensation

Last month, Minnesota Public Utility Commission Chair Katie Sieben [reduced](#) how much Minnesota ratepayers will be charged to pay for the




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"In the highest cases, ratepayers pay in excess of \$1 million dollars a

year for Xcel's two highest paid executives. So my new language limits the amount of money recoverable from ratepayers of the top 10 highest paid executives to \$150,000/year. Which, as people know from last week, is now pretty close to what the Governor of Minnesota makes. Shareholders can still decide to compensate Xcel's executives above the \$150,000/year cap, but ratepayers and their bills should not."



Energy and Policy Institute
Minnesota PUC Limits How Much Ra...
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[Energy and Policy Institute](#) · [Minnesota PUC Limits How Much Ratepayers Are Charged For Utility Executive Compensation](#)

Chair Sieben explained that the move “Draws support from extensive public comment in the record about excessive compensation for top executives,” and also said “I think there needs to be further work done here in the future.”

The five Minnesota PUC Commissioners unanimously agreed to Chair Sieben's motion



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In March, Michigan Capitol Confidential reported. Michigan lawmakers criticized profits and executive compensation at DTE Energy for a second

straight week Thursday, demanding to know why the utility struggles with reliability while charging high rates to customers.”

During a March 23 hearing of the Michigan Senate Energy and Environment Committee, State Senator Sue Shink questioned DTE Electric President Trevor Lauer about the company’s profits and CEO compensation as ratepayers dealt with extended outages.

“We’ve talked about the profits, about \$1 billion of profits were posted during the ice storm outage. Your CEO makes over \$10 million a year. You recently put in a request to the MPSC for the largest rate increase in state history, about \$622 million. DTE Energy has increased rates four times in the last five years, totalling over \$800 million in increases, and we’re still having regular outages.”



Energy and Policy Institute
Michigan State Senator Questions D...
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Energy paid to CEO Gerardo Norcia in 2022 during a June 28 [hearing](#) held by the House Energy, Communications, and Technology Committee.

One member contrasted Norcia's pay with the experience of his constituents, who are DTE customers. Bridge Michigan reported:

During the committee meeting, Rep. Mike McFall, D-Hazel Park, pointed out that Norcia made \$10 million last year.

"I have people that can barely pay their bills, and you're asking for such a large rate increase," McFall said. "How do I explain to residents in my district, who can barely pay their bills now and can't always count on their service, that type of rate increase?"

In April, the Ohio Consumers Counsel urged the Public Utilities Commission of Ohio to expand its investigations into FirstEnergy's multi-million dollar bribery schemes to include payments to FirstEnergy executives implicated in the bribery scandal. The Ohio Consumers Counsel, a state agency that represents Ohio ratepayers, explained:

New information has revealed that, while the bribery scheme was in progress, FirstEnergy paid over \$100 million to the executives who were fired or "separated" for their roles in the bribery scheme. This issue alone



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The Public Utilities Commission has not yet ruled on the request.

because the PUCO stayed its investigations into FirstEnergy at the request of the U.S. Department of Justice.

Last year, an audit by the Pennsylvania Public Utilities Commission highlighted that FirstEnergy failed to claw back the compensation paid to CEO Charles Jones, after he was implicated in the utility's bribery scandal. FirstEnergy later announced that it was trying to claw back \$56 million in compensation from Jones, but to date those efforts have not succeeded.

CEO compensation for 57 investor-owned electric and gas utility companies

Utility CEO Compensation 2017 - 2022

	2017	2018	2019	2020	2021
NextEra Energy (Florida Power & Light Company)					
James Robo	\$18,811,693	\$21,358,742	\$21,877,597	\$23,720,707	\$25,335,936
John Ketchum					
Exelon (Atlantic City Electric, BGE, ComEd, Delmarva Power, PECO, Pepco)					
Christopher C	\$14,857,859	\$15,643,078	\$15,383,737	\$15,162,803	\$15,757,378



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Duke Energy					
Lynn Good	\$21,415,936	\$13,982,960	\$15,029,386	\$14,544,398	\$16,451,236

Berkshire Hathaway Energy (MidAmerican Energy Company, NV Energy, PacifiCorp, Rocky Mountain Power)					
Gregory Abel	not disclosed	\$18,013,750	\$19,014,000	\$19,014,250	\$19,014,500
Sempra Energy (San Diego Gas & Electric, Southern California Gas Company)					
Jeffrey Martin	\$4,155,645	\$9,324,491	\$19,806,346	\$23,181,719	\$24,675,982
American Electric Power (AEP Ohio, AEP Texas, Appalachian Power Company, Indiana Kentucky Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company)					
Nicholas Akin	\$11,530,461	\$12,202,028	\$14,492,436	\$15,503,434	\$15,051,215
PG&E Corporation (Pacific Gas & Electric Company)					
Geisha Williard	\$8,597,220	\$9,289,842			
William Johnson			\$18,529,842	\$1,755,742	
William Smith				\$6,174,215	\$361,605
Patricia Poppe					\$51,198,471
CenterPoint Energy					
Scott Prochazka	\$8,024,525	\$8,887,981	\$7,724,121	\$6,656,290	
David Lesar				\$11,946,295	\$37,809,810
Entergy Corporation (Entergy Arkansas, Entergy Louisiana, Entergy Mississippi, Entergy Texas)					
Leo Denault	\$13,158,220	\$10,326,456	\$14,264,249	\$16,198,597	\$17,045,744
Andrew Marsl					
Eversource					
James Judge	\$15,915,461	\$14,925,381	\$19,806,088	\$14,575,276	\$10,220,941

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Public Service Enterprise Group (Public Service Electric & Gas Company)					
Ralph Izzo	\$10,621,115	\$10,419,291	\$13,074,227	\$14,308,254	\$14,208,674
Ralph LaRossa					

AES (AES Indiana, AES Ohio)					
Andrés Glusk	\$9,354,683	\$9,759,811	\$10,827,886	\$11,468,027	\$14,379,190
Edison International (Southern California Edison)					
Pedro Pizarro	\$9,754,920	\$9,777,523	\$11,761,702	\$15,785,999	\$14,364,340
Fortis (Tuscon Electric Power, UNS Electric, UNS Gas)					
Barry Perry	\$9,253,297	\$9,080,480	\$10,179,142	\$10,152,658	
David Hutchens					\$9,138,356
DTE Energy					
Gerard Anderson	\$15,835,907	\$10,986,809	\$12,145,179		
Gerardo Norcia			\$8,228,339	\$10,605,622	\$11,128,277
Xcel Energy (Northern States Power Company Minnesota, Public Service Company of Northern States Power Company Wisconsin, Southwestern Public Service Company)					
Ben Fowke	\$12,676,399	\$12,147,768	\$16,898,798	\$16,805,589	\$12,785,442
Bob Frenzel					\$8,350,364
Consolidated Edison (Consolidated Edison Company of New York, Orange and Rock)					
John McAvoy	\$16,047,911	\$9,765,858	\$15,345,285	\$15,756,548	
Timothy Cawley					\$10,342,198
National Grid					
John Pettigrew	\$4,281,087	\$6,289,634	\$6,474,427	\$6,169,076	\$7,914,951
PPL Corporation (PPL Electric Utilities, LG&E and KU Energy)					



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CMS Energy (Consumers Energy)					
Patricia Poppe	\$6,862,295	\$8,091,185	\$8,986,702	\$7,898,536	

Garrick Rochow				\$2,615,131	\$6,871,068
AltaGas (Washington Gas)					
David Harris	\$4,592,884	\$2,068,258			
Randall Crawford		\$3,730,770	\$7,841,594	\$9,189,392	\$9,273,826
FirstEnergy (The Illuminating Company, Jersey Central Power & Light, Met-Ed, Mon I Penelec, Penn Power, Potomac Edison, Toledo Edison, West Penn Power)					
Charles Jones	\$15,281,885	\$11,123,128	\$14,684,659	\$10,066,956	
Steven Strah				\$5,792,232	\$10,714,062
John Somerhalder					
Pinnacle West (Arizona Public Service)					
Donald Brand	\$10,533,439	\$12,145,522	\$12,250,614		
Jeffrey Guldner				\$6,849,455	\$8,100,157
Emera (Tampa Electric, New Mexico Gas Company)					
Christopher H	\$5,761,942	\$1,777,519			
Scott Balfour		\$6,124,668	\$6,724,441	\$7,788,017	\$8,280,544
WEC Energy (We Energies, Wisconsin Public Service, Upper Michigan Energy, Peop North Shore Gas, Minnesota Energy Resources, Michigan Gas Utilities)					
Allen Leverett	\$13,642,237				
Gale Klappa	\$5,031,171	\$9,862,993	\$8,203,944		
Kevin Fletche			\$9,262,101	\$18,136,171	\$18,481,871
Scott Lauber					
Ameren (Ameren Illinois, Ameren Missouri)					



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OGE Energy (Oklahoma Gas and Electric)					
Sean Trausch	\$4,884,882	\$5,694,937	\$6,447,313	\$5,420,683	\$8,031,634

Alliant Energy (Wisconsin Power and Light, Interstate Power and Light Company)					
Patricia Kamp	\$6,535,329	\$6,520,709	\$5,508,114		
John Larsen			\$7,619,999	\$11,020,134	\$10,449,260
NiSource (Northern Indiana Public Service Company, Columbia Gas)					
Joseph Hamre	\$5,407,202	\$5,778,515	\$6,628,690	\$6,457,725	\$9,535,782
Lloyd Yates					
Eversource					
Terry Basshar	\$5,187,320	\$6,843,344	\$5,793,975	\$8,999,456	\$43,763
David Campbell					\$11,138,082
Dominion Energy (Public Service Company of North Carolina, Questar Gas, Hope Gas)					
Thomas Farrell	\$15,495,762	\$14,956,442	\$17,257,035	\$16,040,625	
Robert Blue				\$7,912,643	\$8,161,083
PNM Resources (PNM, TNMP)					
Patricia Colla	\$4,425,922	\$4,754,536	\$5,031,193	\$7,837,411	\$5,594,739
Portland General Electric Company					
James Piro	\$3,785,253				
Maria Pope		\$3,216,062	\$4,065,948	\$3,510,132	\$5,408,355
Southwest Gas					
John Hester	\$6,562,282	\$4,096,485	\$5,870,724	\$6,511,777	\$5,674,579
Karen Haller					



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Algonquin Power (Liberty Utilities)					
Lee DeBartolo	\$2,000,710	\$4,400,000	\$4,001,000	\$7,000,400	

Ian Robertsto	\$3,933,718	\$4,432,823	\$4,621,298	\$7,865,423	
Arun Banskot				\$5,673,240	\$5,933,899
MDU Resources (Montana-Dakota Utilities Company)					
David Goodin	\$4,058,001	\$4,155,255	\$6,144,355	\$6,423,410	\$5,210,467
Otter Tail Corporation (Otter Tail Power Company)					
Charles MacF	\$3,363,331	\$3,341,624	\$5,758,533	\$5,126,043	\$4,732,251
Spire					
Suzanne Sith	\$3,607,023	\$4,016,839	\$4,515,589	\$4,404,726	\$5,568,741
Avangrid (Central Maine Power, New York State Electric & Gas Rochester Gas & Ele The United Illuminating Company)					
James Torger	\$2,660,600	\$5,709,436	\$2,258,449	\$1,225,293	
Dennis Arriola				\$1,779,329	\$12,557,063
Pedro Azagra Blázquez					
Atmos Energy					
Michael Haefr	\$4,910,061	\$10,989,838	\$10,395,993		
Kevin Akers			\$7,855,539	\$9,826,659	\$6,467,314
Puget Energy (Puget Sound Energy)					
Kimberly Harr	\$7,788,167	\$8,044,584	\$11,774,368		
Mary Kipp				\$5,296,566	\$4,414,245
Avista Corporation (Avista Utilities, Alaska Electric Light and Power Company)					
Scott Morris	\$4,239,914	\$3,817,420	\$4,652,473		



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Gas industry dark money group's influence seen in ...

Laurence Dov	\$4,597,830	\$4,553,524	\$6,236,190		
Stephen Westhoven			\$2,781,902	\$4,170,677	\$4,783,459

Essential Utilities (People's Natural Gas)					
Christopher F	\$4,313,503	\$3,552,705	\$5,811,026	\$7,173,359	\$5,339,716
Black Hills Corporation (Black Hills Energy)					
David Emery	\$5,563,935	\$4,623,698			
Linden Evans			\$3,639,302	\$4,221,114	\$4,440,908
IDACORP (Idaho Power)					
Darrel Anders	\$6,695,596	\$5,376,529	\$8,271,701	\$6,318,341	
Lisa Grow				\$5,903,347	\$5,645,525
Hawaiian Electric Industries (Hawaiian Electric Company)					
Constance La	\$5,913,746	\$5,725,431	\$4,902,901	\$5,108,212	\$5,933,523
Scott Seu					
NW Natural					
David Anders	\$3,186,533	\$3,629,634	\$4,255,777	\$3,824,428	\$3,759,354
ONE Gas					
Pierce Norton	\$4,021,229	\$4,222,330	\$5,631,324	\$5,388,789	\$4,331,191
Robert McAnnally					\$2,584,173
Northwestern Energy					
Robert Rowe	\$2,848,279	\$3,165,931	\$3,298,304	\$3,102,048	\$3,445,367
Chesapeake Utilities					
Michael McMa	\$1,654,323	\$1,905,637			



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Gas industry dark money group's influence seen in ...

William Fonte	\$3,404,238	\$1,385,218	\$3,576,742	\$3,864,793	\$2,982,846
Allstate (Minnesota Power, Superior Water, Light and Power)					

Xcel (Minnesota Power, Superior Water, Light and Power)					
Alan Hodnik	\$3,464,083	\$3,493,458	\$4,706,014		
Bethany Owen			\$1,010,272	\$1,985,344	\$2,578,539
MGE Energy (Madison Gas and Electric Company)					
Jeffrey Keeble	\$1,558,941	\$1,501,606	\$2,381,012	\$2,711,113	\$2,628,028
Unitil Corporation					
Robert Schoe	\$3,434,309	\$1,554,743			

Details [Totals](#)

The Details tab shows compensation for each CEO in each of the six years, sorted by 2022 compensation; the Totals tab is sorted by total CEO compensation during the six year period. Both tabs list the parent company, and show utility subsidiaries in parentheses.

Notes on the data

This analysis is focused on the compensation paid to the CEOs of 57 investor-owned electric and gas utility companies, during the six year period between 2017 and 2022. It includes the compensation paid only to the CEOs of the parent companies of the investor-owned utilities; it does not include compensation paid to the CEOs of those companies' subsidiaries, nor does it include compensation paid to the companies'



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Gas industry dark money group's influence seen in ...

CEOs of non-profit utilities, such as electric cooperatives, municipal utilities, and the Tennessee Valley Authority.

When utilities had more than one CEO during the five-year period, we showed compensation for each CEO, which sometimes includes payments to two people in the same year. For incoming CEOs that were promoted from within the company, data for their compensation for their first year as CEO may include compensation they received that year in their earlier position, because corporate filings typically do not distinguish between the compensation they received for each position.

Data are from summary compensation tables published in companies' 14A proxy statement or 10-K forms, [filed with the Securities and Exchange Commission \(SEC\)](#), or those forms' equivalents for companies headquartered in countries other than the US.

EPI included in our analysis nearly all of the investor-owned electric utilities that are [members of the Edison Electric Institute \(EEI\)](#), and investor-owned gas utilities that are represented on the American Gas Association (AGA) [board of directors](#). EEI is the trade association for investor-owned electric utilities in the US, and AGA is the trade association for investor-owned gas utilities in the US; several utility



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Gas industry dark money group's influence seen in ...

this analysis, because their ownership structures do not require them to report this data to the SEC. We removed one utility that was included in

report the data to the SEC. We removed one utility that was included in an earlier analysis, South Jersey Industries, because it was purchased and no longer reports executive compensation to the SEC.

Further Reading

[Utility CEOs received \\$2.7 billion in executive compensation from 2017 – 2021](#)

[Pollution Payday: analysis of executive compensation and incentives of the largest U.S. investor-owned utilities](#)

Posted in: Utilities **Tagged in:** executive compensation



Posted by Joe Smyth

Joe Smyth is a Research and Communications Manager for the Energy and Policy Institute.

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EXHIBIT 2

EXHIBIT 2

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In the Matter of the Application by Sierra Pacific Power Company D/B/A Nv Energy, filed pursuant to NRS 704.110(3) and NRS 704.110(4), addressing its annual revenue requirement for general rates charged to all classes of electric customers.

Docket No. 22-06 ____

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Recorded Test Year ended December 31, 2021
Certification Period ended May 31, 2022

BHE Organization Chart – NV Energy

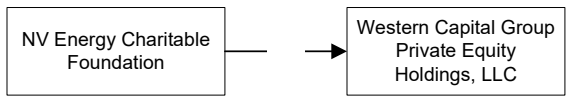
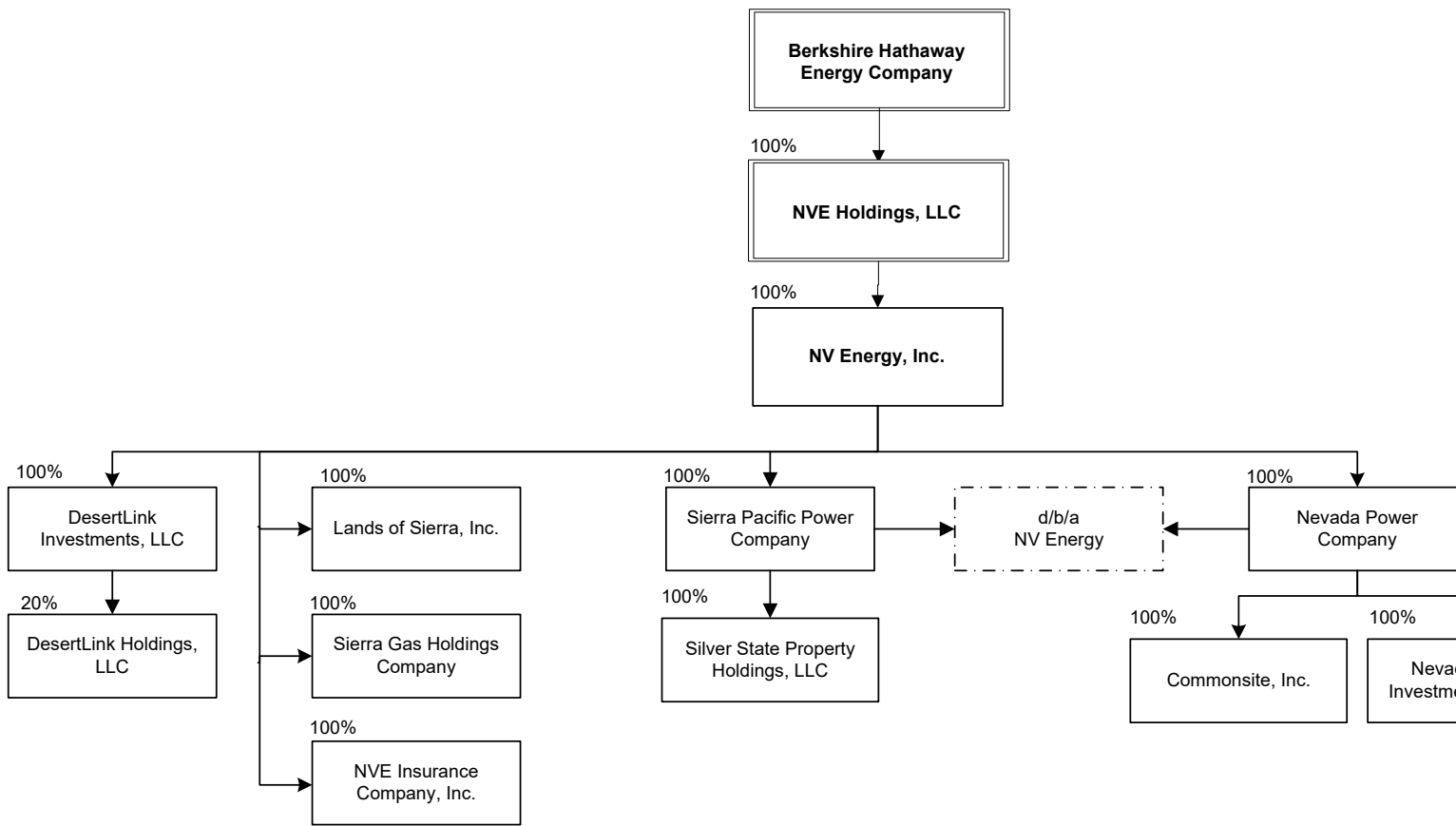


EXHIBIT 3

EXHIBIT 3

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended December 31, 2022

or

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from _____ to _____

Commission File Number	Exact name of registrant as specified in its charter; State or other jurisdiction of incorporation or organization	IRS Employer Identification No.
001-14881	BERKSHIRE HATHAWAY ENERGY COMPANY (An Iowa Corporation) 666 Grand Avenue Des Moines, Iowa 50309-2580 515-242-4300	94-2213782
001-05152	PACIFICORP (An Oregon Corporation) 825 N.E. Multnomah Street, Suite 1900 Portland, Oregon 97232 888-221-7070	93-0246090
333-90553	MIDAMERICAN FUNDING, LLC (An Iowa Limited Liability Company) 666 Grand Avenue Des Moines, Iowa 50309-2580 515-242-4300	47-0819200
333-15387	MIDAMERICAN ENERGY COMPANY (An Iowa Corporation) 666 Grand Avenue Des Moines, Iowa 50309-2580 515-242-4300	42-1425214
000-52378	NEVADA POWER COMPANY (A Nevada Corporation) 6226 West Sahara Avenue Las Vegas, Nevada 89146 702-402-5000	88-0420104
000-00508	SIERRA PACIFIC POWER COMPANY (A Nevada Corporation) 6100 Neil Road Reno, Nevada 89511 775-834-4011	88-0044418
001-37591	EASTERN ENERGY GAS HOLDINGS, LLC (A Virginia Limited Liability Company) 6603 West Broad Street Richmond, Virginia 23230 804-613-5100	46-3639580
333-266049	EASTERN GAS TRANSMISSION AND STORAGE, INC. (A Delaware Corporation) 6603 West Broad Street Richmond, Virginia 23230 804-613-5100	55-0629203

Registrant	Securities registered pursuant to Section 12(b) of the Act:
BERKSHIRE HATHAWAY ENERGY COMPANY	None
PACIFICORP	None
MIDAMERICAN FUNDING, LLC	None
MIDAMERICAN ENERGY COMPANY	None
NEVADA POWER COMPANY	None
SIERRA PACIFIC POWER COMPANY	None
EASTERN ENERGY GAS HOLDINGS, LLC	None
EASTERN GAS TRANSMISSION AND STORAGE, INC.	None

Registrant	Name of exchange on which registered:
BERKSHIRE HATHAWAY ENERGY COMPANY	None
PACIFICORP	None
MIDAMERICAN FUNDING, LLC	None
MIDAMERICAN ENERGY COMPANY	None
NEVADA POWER COMPANY	None
SIERRA PACIFIC POWER COMPANY	None
EASTERN ENERGY GAS HOLDINGS, LLC	None
EASTERN GAS TRANSMISSION AND STORAGE, INC.	None

Registrant	Securities registered pursuant to Section 12(g) of the Act:
BERKSHIRE HATHAWAY ENERGY COMPANY	None
PACIFICORP	None
MIDAMERICAN FUNDING, LLC	None
MIDAMERICAN ENERGY COMPANY	None
NEVADA POWER COMPANY	Common Stock, \$1.00 stated value
SIERRA PACIFIC POWER COMPANY	Common Stock, \$3.75 par value
EASTERN ENERGY GAS HOLDINGS, LLC	None
EASTERN GAS TRANSMISSION AND STORAGE, INC.	None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Registrant	Yes	No
BERKSHIRE HATHAWAY ENERGY COMPANY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
PACIFICORP	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MIDAMERICAN FUNDING, LLC	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MIDAMERICAN ENERGY COMPANY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NEVADA POWER COMPANY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SIERRA PACIFIC POWER COMPANY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
EASTERN ENERGY GAS HOLDINGS, LLC	<input checked="" type="checkbox"/>	<input type="checkbox"/>
EASTERN GAS TRANSMISSION AND STORAGE, INC.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Registrant	Yes	No
BERKSHIRE HATHAWAY ENERGY COMPANY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
PACIFICORP	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MIDAMERICAN FUNDING, LLC	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MIDAMERICAN ENERGY COMPANY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NEVADA POWER COMPANY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SIERRA PACIFIC POWER COMPANY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
EASTERN ENERGY GAS HOLDINGS, LLC	<input type="checkbox"/>	<input checked="" type="checkbox"/>
EASTERN GAS TRANSMISSION AND STORAGE, INC.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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Definition of Abbreviations and Industry Terms

When used in Forward-Looking Statements, Part I - Items 1 through 4, Part II - Items 5 through 7A, and Part III - Items 10 through 14, the following terms have the definitions indicated.

Entity Definitions

BHE	Berkshire Hathaway Energy Company
Berkshire Hathaway	Berkshire Hathaway Inc.
Berkshire Hathaway Energy or the Company	Berkshire Hathaway Energy Company and its subsidiaries
PacifiCorp	PacifiCorp and its subsidiaries
MidAmerican Funding	MidAmerican Funding, LLC and its subsidiaries
MidAmerican Energy	MidAmerican Energy Company
NV Energy	NV Energy, Inc. and its subsidiaries
Nevada Power	Nevada Power Company and its subsidiaries
Sierra Pacific	Sierra Pacific Power Company and its subsidiaries
Nevada Utilities	Nevada Power Company and its subsidiaries and Sierra Pacific Power Company and its subsidiaries
Eastern Energy Gas	Eastern Energy Gas Holdings, LLC and its subsidiaries
EGTS	Eastern Gas Transmission and Storage, Inc. and its subsidiaries
Registrants	Berkshire Hathaway Energy Company, PacifiCorp and its subsidiaries, MidAmerican Funding, LLC and its subsidiaries, MidAmerican Energy Company, Nevada Power Company and its subsidiaries, Sierra Pacific Power Company and its subsidiaries, Eastern Energy Gas Holdings, LLC and its subsidiaries and Eastern Gas Transmission and Storage, Inc. and its subsidiaries
Subsidiary Registrants	PacifiCorp and its subsidiaries, MidAmerican Funding, LLC and its subsidiaries, MidAmerican Energy Company, Nevada Power Company and its subsidiaries, Sierra Pacific Power Company and its subsidiaries, Eastern Energy Gas Holdings, LLC and its subsidiaries and Eastern Gas Transmission and Storage, Inc. and its subsidiaries
Northern Powergrid	Northern Powergrid Holdings Company and its subsidiaries
BHE GT&S	BHE GT&S, LLC and its subsidiaries
Northern Natural Gas	Northern Natural Gas Company
Kern River	Kern River Gas Transmission Company
BHE Canada	BHE Canada Holdings Corporation and its subsidiaries
AltaLink	AltaLink, L.P.
BHE U.S. Transmission	BHE U.S. Transmission, LLC and its subsidiaries
HomeServices	HomeServices of America, Inc. and its subsidiaries
BHE Pipeline Group or Pipeline Companies	BHE GT&S, LLC, Northern Natural Gas Company and Kern River Gas Transmission Company
BHE Transmission	BHE Canada Holdings Corporation and BHE U.S. Transmission, LLC
BHE Renewables	BHE Renewables, LLC and its subsidiaries
ETT	Electric Transmission Texas, LLC
Domestic Regulated Businesses	PacifiCorp and its subsidiaries, MidAmerican Energy Company, Nevada Power Company and its subsidiaries, Sierra Pacific Power Company and its subsidiaries, BHE GT&S, LLC and its subsidiaries, Northern Natural Gas Company and Kern River Gas Transmission Company
Regulated Businesses	PacifiCorp and its subsidiaries, MidAmerican Energy Company, Nevada Power Company and its subsidiaries, Sierra Pacific Power Company and its subsidiaries, BHE GT&S, LLC and its subsidiaries, Northern Natural Gas Company, Kern River Gas Transmission Company and AltaLink, L.P.
Utilities	PacifiCorp and its subsidiaries, MidAmerican Energy Company, Nevada Power Company and its subsidiaries and Sierra Pacific Power Company and its subsidiaries
Northern Powergrid Distribution Companies	Northern Powergrid (Northeast) plc and Northern Powergrid (Yorkshire) plc

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

BERKSHIRE HATHAWAY ENERGY

BHE's common stock is beneficially owned by Berkshire Hathaway and family members and related or affiliated entities of the late Mr. Walter Scott, Jr., a former member of BHE's Board of Directors, and has not been registered with the SEC pursuant to the Securities Act of 1933, as amended, listed on a stock exchange or otherwise publicly held or traded. BHE has not declared or paid any cash dividends to its common shareholders since Berkshire Hathaway acquired an equity ownership interest in BHE in March 2000 and does not presently anticipate that it will declare any dividends on its common stock in the foreseeable future.

PACIFICORP

All common stock of PacifiCorp is held by its parent company, PPW Holdings LLC, which is a direct, wholly owned subsidiary of BHE. PacifiCorp declared and paid dividends to PPW Holdings LLC of \$300 million in 2023, \$100 million in 2022 and \$150 million in 2021.

MIDAMERICAN FUNDING AND MIDAMERICAN ENERGY

All common stock of MidAmerican Energy is held by its parent company, MHC, which is a direct, wholly owned subsidiary of MidAmerican Funding. MidAmerican Funding is an Iowa limited liability company whose membership interest is held solely by BHE. MidAmerican Funding declared and paid cash distributions to BHE of \$100 million in 2023, \$69 million in 2022 and \$— million in 2021. MidAmerican Energy declared and paid cash dividends to MHC totaling \$100 million in 2023, \$275 million in 2022 and \$— million in 2021.

NEVADA POWER

All common stock of Nevada Power is held by its parent company, NV Energy, which is an indirect, wholly owned subsidiary of BHE. Nevada Power declared and paid dividends to NV Energy of \$— million in 2022 and \$213 million in 2021.

SIERRA PACIFIC

All common stock of Sierra Pacific is held by its parent company, NV Energy, which is an indirect, wholly owned subsidiary of BHE. Sierra Pacific declared and paid dividends to NV Energy of \$70 million in 2022 and \$— million in 2021.

EASTERN ENERGY GAS

Eastern Energy Gas is a Virginia limited liability corporation whose membership interest is held solely by its parent company, BHE GT&S, which is an indirect, wholly owned subsidiary of BHE. Eastern Energy Gas declared and paid dividends to BHE GT&S of \$— million in 2022 and 2021.

EGTS

All common stock of EGTS is held by its parent company, Eastern Energy Gas, which is an indirect, wholly owned subsidiary of BHE. EGTS declared and paid dividends to Eastern Energy Gas of \$215 million in 2022 and \$18 million in 2021.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following is management's discussion and analysis of certain significant factors that have affected the consolidated financial condition and results of operations of the Company during the periods included herein. Explanations include management's best estimate of the impact of weather, customer growth, usage trends and other factors. This discussion should be read in conjunction with the Company's historical Consolidated Financial Statements and Notes to Consolidated Financial Statements in Item 8 of this Form 10-K. The Company's actual results in the future could differ significantly from the historical results.

The reportable segment financial information includes all necessary adjustments and eliminations needed to conform to the Company's significant accounting policies. The differences between the reportable segment amounts and the consolidated amounts, described as BHE and Other, relate principally to other entities, including MES, corporate functions and intersegment eliminations.

Results of Operations

Overview

Operating revenue and earnings on common shares for the Company's reportable segments for the years ended December 31 are summarized as follows (in millions):

	2022	2021	Change		2021	2020	Change		
Operating revenue:									
PacifiCorp	\$ 5,679	\$ 5,296	\$ 383	7 %	\$ 5,296	\$ 5,341	\$ (45)	(1)%	
MidAmerican Funding	4,025	3,547	478	13	3,547	2,728	819	30	
NV Energy	3,824	3,107	717	23	3,107	2,854	253	9	
Northern Powergrid	1,365	1,188	177	15	1,188	1,022	166	16	
BHE Pipeline Group	3,844	3,544	300	8	3,544	1,578	1,966	*	
BHE Transmission	732	731	1	—	731	659	72	11	
BHE Renewables	994	981	13	1	981	936	45	5	
HomeServices	5,268	6,215	(947)	(15)	6,215	5,396	819	15	
BHE and Other	606	541	65	12	541	438	103	24	
Total operating revenue	<u>\$26,337</u>	<u>\$25,150</u>	<u>\$ 1,187</u>	5 %	<u>\$25,150</u>	<u>\$20,952</u>	<u>\$ 4,198</u>	20 %	
Earnings on common shares:									
PacifiCorp	\$ 921	\$ 889	\$ 32	4 %	\$ 889	\$ 741	\$ 148	20 %	
MidAmerican Funding	947	883	64	7	883	818	65	8	
NV Energy	427	439	(12)	(3)	439	410	29	7	
Northern Powergrid	385	247	138	56	247	201	46	23	
BHE Pipeline Group	1,040	807	233	29	807	528	279	53	
BHE Transmission	247	247	—	—	247	231	16	7	
BHE Renewables ⁽¹⁾	625	451	174	39	451	521	(70)	(13)	
HomeServices	100	387	(287)	(74)	387	375	12	3	
BHE and Other	(2,017)	1,319	(3,336)	*	1,319	3,092	(1,773)	(57)	
Total earnings on common shares	<u>\$ 2,675</u>	<u>\$ 5,669</u>	<u>\$ (2,994)</u>	(53)%	<u>\$ 5,669</u>	<u>\$ 6,917</u>	<u>\$ (1,248)</u>	(18)%	

(1) Includes the tax attributes of disregarded entities that are not required to pay income taxes and the earnings of which are taxable directly to BHE.

* Not meaningful.

Earnings on common shares decreased \$2,994 million for 2022 compared to 2021. Included in these results was a pre-tax loss in 2022 of \$1,950 million (\$1,540 million after-tax) compared to a pre-tax gain in 2021 of \$1,796 million (\$1,777 million after-tax) related to the Company's investment in BYD Company Limited. Excluding the impact of this item, adjusted earnings on common shares in 2022 was \$4,215 million, an increase of \$323 million, or 8%, compared to adjusted earnings on common shares in 2021 of \$3,892 million.

As of December 31, 2022, the Company's total net liquidity was as follows (in millions):

	<u>BHE</u>	<u>PacifiCorp</u>	<u>MidAmerican Funding</u>	<u>NV Energy</u>	<u>Northern Powergrid</u>	<u>BHE Canada</u>	<u>HomeServices</u>	<u>BHE Pipeline Group and Other</u>	<u>Total</u>
Cash and cash equivalents	\$ 32	\$ 641	\$ 261	\$ 108	\$ 37	\$ 56	\$ 239	\$ 217	\$ 1,591
Credit facilities ⁽¹⁾	3,500	1,200	1,509	650	296	793	2,925	—	10,873
Less:									
Short-term debt	(245)	—	—	—	(120)	(197)	(557)	—	(1,119)
Tax-exempt bond support and letters of credit	—	(249)	(370)	—	—	(1)	—	—	(620)
Net credit facilities	3,255	951	1,139	650	176	595	2,368	—	9,134
Total net liquidity	<u>\$3,287</u>	<u>\$ 1,592</u>	<u>\$ 1,400</u>	<u>\$ 758</u>	<u>\$ 213</u>	<u>\$ 651</u>	<u>\$ 2,607</u>	<u>\$ 217</u>	<u>\$10,725</u>
Credit facilities:									
Maturity dates	<u>2025</u>	<u>2025</u>	<u>2023, 2025</u>	<u>2025</u>	<u>2025, 2026</u>	<u>2023, 2026, 2027</u>	<u>2023, 2026</u>		

(1) Includes \$55 million drawn on capital expenditure and other uncommitted credit facilities at Northern Powergrid.

Refer to Note 9 of the Notes to Consolidated Financial Statements in Item 8 of this Form 10-K for further discussion regarding the Company's credit facilities, letters of credit, equity commitments and other related items.

Operating Activities

Net cash flows from operating activities for the years ended December 31, 2022 and 2021 were \$9.4 billion and \$8.7 billion, respectively. The increase was primarily due to an increase in income tax receipts and improved operating results, partially offset by changes in regulatory assets and working capital.

Net cash flows from operating activities for the years ended December 31, 2021 and 2020 were \$8.7 billion and \$6.2 billion, respectively. The increase was primarily due to \$970 million of incremental net cash flows from operating activities at BHE GT&S, improved operating results and changes in working capital.

The timing of the Company's income tax cash flows from period to period can be significantly affected by the estimated federal income tax payment methods selected and assumptions made for each payment date.

Investing Activities

Net cash flows from investing activities for the years ended December 31, 2022 and 2021 were \$(7.8) billion and \$(5.8) billion, respectively. The change was primarily due to the July 2021 receipt of \$1.3 billion due to the termination of the second Purchase and Sale Agreement (the "Q-Pipe Purchase Agreement" with Dominion Questar, higher capital expenditures of \$894 million and higher cash paid for acquisitions, partially offset by lower funding of tax equity investments. Refer to "Future Uses of Cash" for further discussion of capital expenditures.

Net cash flows from investing activities for the years ended December 31, 2021 and 2020 were \$(5.8) billion and \$(13.2) billion, respectively. The change was primarily due to lower funding of tax equity investments, lower cash paid for acquisitions and the July 2021 receipt of \$1.3 billion due to the termination of the Q-Pipe Purchase Agreement. Refer to "Future Uses of Cash" for further discussion of capital expenditures.

BERKSHIRE HATHAWAY ENERGY COMPANY AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

(Amounts in millions)

	Years Ended December 31,		
	2022	2021	2020
Net income	\$ 3,144	\$ 6,189	\$ 7,014
Other comprehensive (loss) income, net of tax:			
Unrecognized amounts on retirement benefits, net of tax of \$(23), \$55 and \$(19)	(72)	174	(65)
Foreign currency translation adjustment	(810)	(24)	234
Unrealized gains (losses) on cash flow hedges, net of tax of \$20, \$10 and \$(3)	76	67	(15)
Total other comprehensive (loss) income, net of tax	(806)	217	154
Comprehensive income	2,338	6,406	7,168
Comprehensive income attributable to noncontrolling interests	426	404	71
Comprehensive income attributable to BHE shareholders	\$ 1,912	\$ 6,002	\$ 7,097

The accompanying notes are an integral part of these consolidated financial statements.

BERKSHIRE HATHAWAY ENERGY COMPANY AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS

(Amounts in millions)

	Years Ended December 31,		
	2022	2021	2020
Operating revenue:			
Energy	\$ 21,069	\$ 18,935	\$ 15,556
Real estate	5,268	6,215	5,396
Total operating revenue	<u>26,337</u>	<u>25,150</u>	<u>20,952</u>
Operating expenses:			
Energy:			
Cost of sales	6,757	5,504	4,187
Operations and maintenance	4,217	3,991	3,545
Depreciation and amortization	4,230	3,829	3,410
Property and other taxes	775	789	634
Real estate	5,117	5,710	4,885
Total operating expenses	<u>21,096</u>	<u>19,823</u>	<u>16,661</u>
Operating income	<u>5,241</u>	<u>5,327</u>	<u>4,291</u>
Other income (expense):			
Interest expense	(2,216)	(2,118)	(2,021)
Capitalized interest	76	64	80
Allowance for equity funds	167	126	165
Interest and dividend income	154	89	71
(Losses) gains on marketable securities, net	(2,002)	1,823	4,797
Other, net	(7)	(17)	88
Total other income (expense)	<u>(3,828)</u>	<u>(33)</u>	<u>3,180</u>
Income before income tax (benefit) expense and equity loss	1,413	5,294	7,471
Income tax (benefit) expense	(1,916)	(1,132)	308
Equity loss	(185)	(237)	(149)
Net income	3,144	6,189	7,014
Net income attributable to noncontrolling interests	423	399	71
Net income attributable to BHE shareholders	2,721	5,790	6,943
Preferred dividends	46	121	26
Earnings on common shares	<u>\$ 2,675</u>	<u>\$ 5,669</u>	<u>\$ 6,917</u>

The accompanying notes are an integral part of these consolidated financial statements.

	Years Ended December 31,		
	2022	2021	2020
Operating income:			
PacifiCorp	\$ 1,158	\$ 1,133	\$ 924
MidAmerican Funding	438	416	454
NV Energy	606	621	649
Northern Powergrid	551	543	421
BHE Pipeline Group	1,720	1,516	779
BHE Transmission	333	339	316
BHE Renewables	300	329	291
HomeServices	151	505	511
BHE and Other ⁽¹⁾	(16)	(75)	(54)
Total operating income	5,241	5,327	4,291
Interest expense	(2,216)	(2,118)	(2,021)
Capitalized interest	76	64	80
Allowance for equity funds	167	126	165
Interest and dividend income	154	89	71
(Losses) gains on marketable securities, net	(2,002)	1,823	4,797
Other, net	(7)	(17)	88
Total income before income tax (benefit) expense and equity loss	<u>\$ 1,413</u>	<u>\$ 5,294</u>	<u>\$ 7,471</u>
Interest expense:			
PacifiCorp	\$ 431	\$ 430	\$ 426
MidAmerican Funding	333	319	322
NV Energy	221	206	227
Northern Powergrid	133	130	130
BHE Pipeline Group	148	143	74
BHE Transmission	153	155	148
BHE Renewables	175	158	166
HomeServices	7	4	11
BHE and Other ⁽¹⁾	615	573	517
Total interest expense	<u>\$ 2,216</u>	<u>\$ 2,118</u>	<u>\$ 2,021</u>
Income tax (benefit) expense:			
PacifiCorp	\$ (61)	\$ (78)	\$ (75)
MidAmerican Funding	(776)	(680)	(574)
NV Energy	56	56	61
Northern Powergrid	75	192	96
BHE Pipeline Group	276	269	162
BHE Transmission	14	10	13
BHE Renewables ⁽²⁾	(887)	(753)	(602)
HomeServices	47	138	138
BHE and Other ⁽¹⁾	(660)	(286)	1,089
Total income tax (benefit) expense	<u>\$ (1,916)</u>	<u>\$ (1,132)</u>	<u>\$ 308</u>

	Years Ended December 31,		
	2022	2021	2020
Earnings on common shares:			
PacifiCorp	\$ 921	\$ 889	\$ 741
MidAmerican Funding	947	883	818
NV Energy	427	439	410
Northern Powergrid	385	247	201
BHE Pipeline Group	1,040	807	528
BHE Transmission	247	247	231
BHE Renewables ⁽²⁾	625	451	521
HomeServices	100	387	375
BHE and Other ⁽¹⁾	(2,017)	1,319	3,092
Total earnings on common shares	<u>\$ 2,675</u>	<u>\$ 5,669</u>	<u>\$ 6,917</u>

Capital expenditures:

PacifiCorp	\$ 2,166	\$ 1,513	\$ 2,540
MidAmerican Funding	1,869	1,912	1,836
NV Energy	1,113	749	675
Northern Powergrid	768	742	682
BHE Pipeline Group	1,157	1,128	659
BHE Transmission	200	279	372
BHE Renewables	138	225	95
HomeServices	48	42	36
BHE and Other	46	21	(130)
Total capital expenditures	<u>\$ 7,505</u>	<u>\$ 6,611</u>	<u>\$ 6,765</u>

As of December 31,

	2022	2021	2020
	Property, plant and equipment, net:		
PacifiCorp	\$ 24,430	\$ 22,914	\$ 22,430
MidAmerican Funding	21,092	20,302	19,279
NV Energy	10,993	10,231	9,865
Northern Powergrid	7,445	7,572	7,230
BHE Pipeline Group	16,216	15,692	15,097
BHE Transmission	6,209	6,590	6,445
BHE Renewables	6,231	6,103	5,645
HomeServices	188	169	159
BHE and Other	239	243	(22)
Total property, plant and equipment, net	<u>\$ 93,043</u>	<u>\$ 89,816</u>	<u>\$ 86,128</u>

	As of December 31,		
	2022	2021	2020
Total assets:			
PacifiCorp	\$ 30,559	\$ 27,615	\$ 26,862
MidAmerican Funding	26,077	25,352	23,530
NV Energy	16,676	15,239	14,501
Northern Powergrid	9,005	9,326	8,782
BHE Pipeline Group	21,005	20,434	19,541
BHE Transmission	9,334	9,476	9,208
BHE Renewables	11,458	11,829	12,004
HomeServices	3,436	4,574	4,955
BHE and Other	6,290	8,220	7,933
Total assets	<u>\$ 133,840</u>	<u>\$ 132,065</u>	<u>\$ 127,316</u>

	Years Ended December 31,		
	2022	2021	2020
Operating revenue by country:			
U.S.	\$ 24,263	\$ 23,215	\$ 19,254
United Kingdom	1,345	1,188	1,022
Canada	709	719	653
Australia	20	—	—
Other	—	28	23
Total operating revenue by country	<u>\$ 26,337</u>	<u>\$ 25,150</u>	<u>\$ 20,952</u>

Income before income tax (benefit) expense and equity loss by country:			
U.S.	\$ 771	\$ 4,650	\$ 6,954
United Kingdom	447	454	338
Canada	181	181	173
Australia	15	(8)	—
Other	(1)	17	6
Total income before income tax (benefit) expense and equity loss by country	<u>\$ 1,413</u>	<u>\$ 5,294</u>	<u>\$ 7,471</u>

	As of December 31,		
	2022	2021	2020
Property, plant and equipment, net by country:			
U.S.	\$ 79,578	\$ 75,774	\$ 72,583
United Kingdom	6,959	7,487	7,134
Canada	6,091	6,547	6,401
Australia	415	8	10
Total property, plant and equipment, net by country	<u>\$ 93,043</u>	<u>\$ 89,816</u>	<u>\$ 86,128</u>

- (1) The differences between the reportable segment amounts and the consolidated amounts, described as BHE and Other, relate to other corporate entities, including MidAmerican Energy Services, LLC, corporate functions and intersegment eliminations.
- (2) Income tax (benefit) expense includes the tax attributes of disregarded entities that are not required to pay income taxes and the earnings of which are taxable directly to BHE.

**Nevada Power Company and its subsidiaries
Consolidated Financial Section**

NEVADA POWER COMPANY AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in millions)

	Years Ended December 31,		
	2022	2021	2020
Operating revenue	\$ 2,630	\$ 2,139	\$ 1,998
Operating expenses:			
Cost of fuel and energy	1,427	939	816
Operations and maintenance	303	301	299
Depreciation and amortization	417	406	361
Property and other taxes	53	48	47
Total operating expenses	<u>2,200</u>	<u>1,694</u>	<u>1,523</u>
Operating income	<u>430</u>	<u>445</u>	<u>475</u>
Other income (expense):			
Interest expense	(165)	(153)	(162)
Capitalized interest	8	3	3
Allowance for equity funds	11	7	7
Interest and dividend income	47	20	10
Other, net	3	18	9
Total other income (expense)	<u>(96)</u>	<u>(105)</u>	<u>(133)</u>
Income before income tax expense	334	340	342
Income tax expense	36	37	47
Net income	<u>\$ 298</u>	<u>\$ 303</u>	<u>\$ 295</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Sierra Pacific Power Company and its subsidiaries
Consolidated Financial Section**

SIERRA PACIFIC POWER COMPANY AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS

(Amounts in millions)

	Years Ended December 31,		
	2022	2021	2020
Operating revenue:			
Regulated electric	\$ 1,025	\$ 848	\$ 738
Regulated natural gas	168	117	116
Total operating revenue	<u>1,193</u>	<u>965</u>	<u>854</u>
Operating expenses:			
Cost of fuel and energy	555	407	301
Cost of natural gas purchased for resale	111	61	62
Operations and maintenance	189	163	162
Depreciation and amortization	149	143	141
Property and other taxes	24	24	23
Total operating expenses	<u>1,028</u>	<u>798</u>	<u>689</u>
Operating income	<u>165</u>	<u>167</u>	<u>165</u>
Other income (expense):			
Interest expense	(58)	(54)	(56)
Allowance for borrowed funds	3	2	2
Allowance for equity funds	7	7	4
Interest and dividend income	18	9	4
Other, net	2	11	7
Total other income (expense)	<u>(28)</u>	<u>(25)</u>	<u>(39)</u>
Income before income tax expense	137	142	126
Income tax expense	19	18	15
Net income	<u>\$ 118</u>	<u>\$ 124</u>	<u>\$ 111</u>

The accompanying notes are an integral part of these consolidated financial statements.

EXHIBIT 4

EXHIBIT 4

NV Energy customers to pay \$4.27M for employee bonuses



NV Energy's Southern Nevada headquarters. (Las Vegas Review-Journal)

By [Sean Hemmersmeier](#) Las Vegas Review-Journal



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NV Energy customers will be paying for the utility's employee bonuses, despite concerns raised by the state consumer advocate that the level of bonuses are higher than what was earned.

In a meeting on Tuesday, the Public Utilities Commission ordered NV Energy customers in Southern Nevada to cover bonus pay for the utility's employees that are either managers or lower level positions at a higher level than NV Energy's internal performance metric. This decision on bonus pay was as part of changes to the NV Energy's [general rate](#).

The bonus pay is based on how the company meets its target goals, for example bonuses would be higher if the company meets 100 percent of its goals versus if it meets 50 percent of its goals. The approved level of bonus pay for mid and low level employees is 95 percent despite NV Energy only meeting 56.9 percent of its goals.

NV Energy originally calculated that the bonus pay level would cost about \$5.75 million. That dropped to \$4.27 million after Tuesday's decision and now makes up just 0.4 percent of the revenue NV Energy receives from its Southern Nevada general rate, said Meghan Delaney, a spokesperson for NV Energy. She also said the average residential NV Energy customer will pay about 33 cents a month towards these bonus payments.

The utility hasn't specifically disclosed the percentage or how much of a bonus an average worker could receive but said they are "performance based."

The bonuses help build up NV Energy's workforce, Delaney said.

"Many costs are included in rates paid by customers, including the salary and benefits for NV Energy's workforce," Delaney said in an emailed statement. "That is not unlike other businesses – which also factor in employee salary and benefits to costs of goods and services. To ensure NV Energy can attract and retain talent, its salary and benefit programs provide a total compensation package that is at the median level of what an employee could receive at another company."

This approval comes after the Bureau of Consumer Protection objected that it's not prudent for customers to pay for a higher percentage of bonuses than what percentage of goals were achieved by NV Energy.

Commissioner Randy Brown authored the order approving the bonus pay, saying it helps reward high performing employees and can help NV Energy retain a strong labor force. Brown also said NV Energy employees are under compensated in the utility industry.

“An obvious connection exists between compensation and successful recruitment and retention of qualified and talented personnel, making it reasonable for the Commission to allow recovery of the costs of modest compensation enhancements for the positions identified,” Brown said in a written draft order he wrote.

Another concern raised by Brown was that lowering the level of bonus pay could harm NV Energy's customer experience and make it harder for the company to meet its goals in the future.

The decision to approve the higher level of bonus pay was 2 – 1, Commissioner Tammy Cordova objected to the higher level of pay due to NV Energy not meeting 95 percent of its goals.

“A large component of the cost of (bonus pay) is included in rates but the component of (bonus pay) that was not earned and should not be included in rates,” Cordova said during the PUC meeting. “NV Energy designs the scorecard, determines the scoring and issues the awards. Ratepayers should not be responsible for costs beyond those that the employees have earned.”

Commissioner Hayley Williamson approved the higher level of bonus pay and said the amount that customers pay in their rates towards bonus pay is “de minimis” and won't have a serious impact on their bills.

Contact Sean Hemmersmeier at shemmersmeier@reviewjournal.com.

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EXHIBIT 5

EXHIBIT 5

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4	FRED VOLTZ FRED VOLTZ 1600 BROADMOOR CIR BOULDER CITY	NV	89005-	zebedee_177@yahoo.com Emailed
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ROWE LAW GROUP (775) 781-9516
850 ARROWCREEK PKWY UNIT 31502
RENO NV 89511 amanda@rowelawnv.com

- 3 Amanda Moss
SOUTHERN NEVADA HOME BUILDERS ASSN (702) 540-1881
4175 S RILEY ST STE 100
LAS VEGAS NV 89147 amanda@snhba.com

- 4 Amy Timperley
SOUTHWEST GAS CORPORATION (702) 876-7266
5241 SPRING MOUNTAIN RD LVB 300 (702) 222-1475
LAS VEGAS NV 89150-0002 amy.timperley@swgas.com

- 5 Angel De Fazio - NTEF
NATIONAL TOXIC ENCEPHALOPATHY FDN (702) 490-9677
PO BOX 29194
LAS VEGAS NV 89126 angel@ntef-usa.org

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NV ENERGY STOP SMART METERS (702) 490-9677
PO BOX 29194
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PUCN WATCH DOGS (702) 490-9677
PO BOX 29194
LAS VEGAS NV 89126 info@pucwatchdogs.com

- 8 Angel De Fazio - Self
ANGEL DE FAZIO (702) 490-9677
PO BOX 29194
LAS VEGAS NV 89126 ntefusa@aol.com

- 9 Becky Lukaesko
STATESIDE ASSOCIATES (703) 525-7466
1101 WILSON BLVD 16TH FLR
ARLINGTON VA 22209 bml@stateside.com
-
- 10 Beverly Joiner
BUREAU OF CONSUMER PROTECTION (702) 486-3579
8945 W RUSSELL RD STE 204
LAS VEGAS NV 89148 bjoiner@ag.nv.gov
-
- 11 Brad Anderson
KINECT ENERGY (303) 486-0339
777 29TH ST STE 200
BOULDER CO 80303 branderson@kinectenergy.com
-
- 12 Christopher Figgins
CLARK COUNTY DISTRICT ATTORNEY (702) 455-4761
500 S GRAND CENTRAL PKWY STE 5075 (702) 382-5178
LAS VEGAS NV 89155 christopher.figgins@clarkcountyda.com
-
- 13 Curt Ledford
DAVISON VAN CLEVE PC (503) 241-7242
5795 B ROGERS ST (503) 241-8160
LAS VEGAS NV 89118 crl@dvclaw.com
-
- 14 Dan Reaser
FENNEMORE CRAIG PC (775) 788-2209
300 E 2ND ST STE 1510 (775) 788-2227
RENO NV 89501 dreaser@fclaw.com
-
- 15 Dawn Cartellone
GVNW CONSULTING INC (719) 594-5800
2270 LA MONTANA WAY #100
COLORADO SPRINGS CO 80918 dcartellone@gvnw.com
-
- 16 Dawn Christensen
NEVADA RESORT ASSOCIATION (702) 735-4888
10000 W CHARLESTON BLVD STE 165 (702) 735-4620
LAS VEGAS NV 89135 dawn@nevadaresorts.org
-

17	Diana Wheelen FENNEMORE CRAIG PC 300 E 2ND ST STE 1510 RENO	NV 89501	(775) 788-2209 dwheelen@fclaw.com
<hr/>			
18	Fred Voltz FRED VOLTZ 1600 BROADMOOR CIR BOULDER CITY	NV 89005	zebedee_177@yahoo.com
<hr/>			
19	Gloria Voss HOLLAND & HART LLP 5441 KIETZKE LN RENO	NV 89511	(775) 327-3072 (775) 786-6179 gjvoss@hollandhart.com
<hr/>			
20	Jesse Wadhams BLACK & LOBELLO 10777 W TWAIN AVE STE 300 LAS VEGAS	NV 89135	(702) 869-8801 (702) 869-2669 jessewadhams@blacklobello.law
<hr/>			
21	Jimmy Lau FERRARI PUBLIC AFFAIRS 4741 CAUGHLIN PKWY STE 2 RENO	NV 89519	(702) 927-3742 jimmy@ferraripa.com
<hr/>			
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<hr/>			
23	Joshua Weber DAVISON VAN CLEVE PC 1750 SW HARBOR WAY STE 450 PORTLAND	OR 97201	(503) 241-7242 (503) 241-8160 jdwan@dvclaw.com
<hr/>			
24	Justin Townsend ALLISON MACKENZIE LTD 402 N DIVISION ST CARSON CITY	NV 89703	(775) 687-0202 (775) 882-7918 jtowndsend@allisonmackenzie.com

25	Justin Whitesides BOMBARD RENEWABLE ENERGY 6434 S ARVILLE ST LAS VEGAS	NV	89118	(702) 492-0957 justin.whitesides@bombardelec.com
26	Karen Bowman NV ENERGY 6100 NEIL RD RENO	NV	89511	(775) 834-4686 kbowman@nvenergy.com
27	Karen Peterson ALLISON MACKENZIE LTD 402 N DIVISION ST CARSON CITY	NV	89703	(775) 687-0202 (775) 882-7918 kpeterson@allisonmackenzie.com
28	Kristien Tary SOUTHWEST GAS CORPORATION 5241 SPRING MOUNTAIN RD LVB 105 LAS VEGAS	NV	89150-0002	(702) 876-7253 (702) 222-1475 kristien.tary@swgas.com
29	Larry Mason BEEHIVE TELEPHONE COMPANY 2000 SUNSET RD LAKE POINT	UT	84074	(435) 837-6137 (435) 837-6109 larry.mason@beehive.net
30	Laura Granier HOLLAND & HART LLP 5441 KIETZKE LN 2ND FL RENO	NV	89511	(775) 327-3000 (775) 786-6179 lkgranier@hollandhart.com
31	Lindsey Shopshire GREAT BASIN WATER CO 1005 TERMINAL WY STE 294 RENO	NV	89502	(775) 276-2507 lindsey.shopshire@greatbasinwaterco.com
32	Lisa Logsdon CLARK COUNTY DISTRICT ATTORNEY 500 S GRAND CENTRAL PKWY STE 5075 LAS VEGAS	NV	89155	(702) 455-4761 (702) 382-5178 lisa.logsdon@clarkcountyda.com

33	Lynn Dinnocenti NV ENERGY PO BOX 10100 RENO	NV	89520-0024	(775) 834-4261 ldinnocenti@nvenergy.com
<hr/>				
34	Matthew Walker GREENBERG TRAUIG LLP 10845 GRIFFITH PEAK DR STE 600 LAS VEGAS	NV	89135	(702) 300-5184 walkermatt@gtlaw.com
<hr/>				
35	Nancy Fontenot ALLISON MACKENZIE LTD 402 N DIVISION ST CARSON CITY	NV	89703	(775) 687-0202 (775) 882-7918 nfontenot@allisonmackenzie.com
<hr/>				
36	Nathan Blouin INTERWEST ENERGY ALLIANCE 1964 S 900 E APT E SALT LAKE CITY	UT	84106	(603) 724-3266 nate@interwest.org
<hr/>				
37	Neena Laxalt NEVADA PROPANE DEALERS ASSOCIATION 10883 RUSHING FLUME DR RENO	NV	89521	(775) 762-1864 nlaxalt@msn.com
<hr/>				
38	Patrick Fagan ALLISON MACKENZIE LTD 402 N DIVISION ST CARSON CITY	NV	89703	(775) 687-0202 (775) 882-7918 pfagan@allisonmackenzie.com
<hr/>				
39	Sabrina Santiago NEVADA RESORT ASSOCIATION 10000 W CHARLESTON BLVD STE 165 LAS VEGAS	NV	89135	(702) 735-4888 sabrina@nevadaresorts.org
<hr/>				
40	Sam Routson WINNEMUCCA FARMS INC ONE POTATO PL WINNEMUCCA	NV	89445	(775) 224-1015 (775) 623-1200 greatsam@usfds.com

41	Susan Burnette NV ENERGY PO BOX 10100 RENO	NV	89502	(775) 834-7278 (775) 834-7131 sburnette@nvenergy.com
42	Theron Hunt THERON HUNT 127 GLEN VISTA DR SPRING CREEK	NV	89815	(775) 934-0725 theronjhunt@gmail.com
43	Tony Simmons 5WH TECHNOLOGY LLC PO BOX 571300 LAS VEGAS	NV	89157	(702) 592-5687 tonysimmons@runbox.com
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45	Virginia Valentine NEVADA RESORT ASSOCIATION 10000 W CHARLESTON BLVD STE 165 LAS VEGAS	NV	89135	(702) 735-4888 valentine@nevadaresorts.org
46	Zach Hoefling GOVERNORS OFFICE OF ENERGY 755 N ROOP ST STE 202 CARSON CITY	NV	89701-3115	(775) 687-1850 znhoeffling@energy.nv.gov

Gas List

6/17/2020

1	Andrew Hall				
	SOUTHWEST GAS CORPORATION			(702) 364-3227	
	5241 SPRING MOUNTAIN RD LVA 110			(702) 252-7283	
	LAS VEGAS	NV	89150-0002		andrew.hall@swgas.com
<hr/>					
2	Arnold Etchemendy				
	STATE OF NEVADA			(775) 684-1826	
	515 E MUSSER ST STE 102			(775) 684-1821	
	CARSON CITY	NV	89701		aetchemendy@admin.nv.gov
<hr/>					
3	Brooks Congdon				
	SOUTHWEST GAS CORPORATION			(702) 364-3313	
	5241 SPRING MOUNTAIN RD LVB 100			(702) 222-1475	
	LAS VEGAS	NV	89150-0002		brooks.congdon@swgas.com
<hr/>					
4	Cameron Dyer				
	WESTERN RESOURCES ADVOCATES			(775) 430-4632	
	550 W MUSSER ST STE H			(775) 223-8365	
	CARSON CITY	NV	89703-4997		cameron.dyer@westernresources.org
<hr/>					
5	Caren Adkins				
	HOLLAND & HART LLP			(775) 684-6010	
	377 S NEVADA ST			(775) 684-6001	
	CARSON CITY	NV	89703		cadkins@hollandhart.com
<hr/>					
6	Carla Kolebuck				
	SOUTHWEST GAS CORPORATION			(702) 364-3287	
	5241 SPRING MOUNTAIN RD LVA 110			(702) 252-7287	
	LAS VEGAS	NV	89150-0002		carla.kolebuck@swgas.com
<hr/>					
7	Carolyn Tanner				
	TANNER LAW AND STRATEGY GROUP LTD			(775) 323-4657	
	216 E LIBERTY ST			(775) 329-8677	
	RENO	NV	89501		lina@tannerlnv.com
<hr/>					
8	Catherine Mazzeo				
	SOUTHWEST GAS CORPORATION			(702) 876-7250	
	5241 SPRING MOUNTAIN RD LVA 110			(702) 252-7283	
	LAS VEGAS	NV	89150-0002		catherine.mazzeo@swgas.com

- 9 Celine Apo
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN RD LVB 100
LAS VEGAS NV 89150-0002 celine.apo@swgas.com
-
- 10 Christopher Brown
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN RD LVB 100
LAS VEGAS NV 89150-0002 christopher.brown@swgas.com
-
- 11 Dana Walsh
SOUTHWEST GAS CORPORATION (702) 876-7250
5241 SPRING MOUNTAIN RD LVA 110 (702) 252-7283
LAS VEGAS NV 89150-0002 dana.walsh@swgas.com
-
- 12 Eileen Sierra-Brown
THE C THREE GROUP LLC (202) 664-4373
1320 ELLSWORTH INDUSTRIAL BLVD NW STE A600
ATLANTA GA 30318 esbrown@cthree.net
-
- 13 Erin Potokar
SOUTHWEST GAS CORPORATION (702) 364-3218
5241 SPRING MOUNTAIN RD LVB 100 (702) 222-1475
LAS VEGAS NV 89150-0002 erin.potokar@swgas.com
-
- 14 Frederick Schmidt
HOLLAND & HART LLP (775) 327-3000
5441 KIETZKE LN STE 200 (775) 786-6179
RENO NV 89511-2094 fschmidt@hollandhart.com
-
- 15 Jennifer Taylor
GOVERNOR'S OFFICE OF ENERGY (702) 486-7859
555 E WASHINGTON (775) 687-7869
LAS VEGAS NV 89101 jtaylor@energy.nv.gov
-
- 16 John Sande
ARGENTUM PARTNERS (775) 235-4222
6121 LAKESIDE DR STE 208
RENO NV 89511 john@argentumnv.com
-

17	<p>Kyle Stephens</p> <p>SOUTHWEST GAS CORPORATION 5241 SPRING MOUNTAIN RD LVA 110 LAS VEGAS</p>	<p>NV 89150-0002</p>	<p>(702) 876-7293 (702) 252-7283 kyle.stephens@swgas.com</p>
<hr/>			
18	<p>Lucas Foletta</p> <p>MCDONALD CARANO LLP PO BOX 2670 RENO</p>	<p>NV 89505</p>	<p>(775) 788-2000 (775) 788-2020 lfoletta@mcdonaldcarano.com</p>
<hr/>			
19	<p>Patrick Donnelly</p> <p>CENTER FOR BIOLOGICAL DIVERSITY 7345 S DURANGO DR B-107 BOX 217 LAS VEGAS</p>	<p>NV 89113</p>	<p>(702) 483-0449 pdonnelly@biologicaldiversity.org</p>
<hr/>			
20	<p>Randi Cunningham</p> <p>SOUTHWEST GAS CORPORATION 5241 SPRING MOUNTAIN RD LVB 180 LAS VEGAS</p>	<p>NV 89150-0002</p>	<p>(702) 876-7184 (702) 222-1475 randi.cunningham@swgas.com</p>
<hr/>			
21	<p>Robin Yochum</p> <p>GOVERNOR'S OFFICE OF ENERGY 755 N ROOP ST STE 202 CARSON CITY</p>	<p>NV 89701</p>	<p>(775) 434-3087 ryochum@energy.nv.gov</p>
<hr/>			
22	<p>ShaLinda Creer</p> <p>SOUTHWEST GAS CORPORATION 5241 W SPRING MOUNTAIN RD LVB 110 LAS VEGAS</p>	<p>NV 89150</p>	<p>(702) 876-7045 shalinda.creer@swgas.com</p>
<hr/>			
23	<p>Suzanne Linfante</p> <p>CITY OF RENO ONE E 1ST ST RENO</p>	<p>NV 89501</p>	<p>(775) 334-2067 linfantes@reno.gov</p>
<hr/>			
24	<p>Tashia Garry</p> <p>SOUTHWEST GAS CORPORATION 5241 SPRING MOUNTAIN RD LVB 110 LAS VEGAS</p>	<p>NV 89150-0002</p>	<p>(702) 364-3312 tashia.garry@swgas.com</p>
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25 Thomas Hitchcock

STATESIDE ASSOCIATES

1101 WILSON BLVD

ARLINGTON

VA 22209

tuh@stateside.com

Sierra Pacific Power Notice List

6/17/2020

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- | | | | | |
|---|--|----|-------|--|
| 1 | Arnold Etchemendy
STATE OF NEVADA
515 E MUSSER ST STE 102
CARSON CITY | NV | 89701 | (775) 684-1826
(775) 684-1821
aetchemendy@admin.nv.gov |
|---|--|----|-------|--|
-
- | | | | | |
|---|---|----|------------|---|
| 2 | Cameron Dyer
WESTERN RESOURCES ADVOCATES
550 W MUSSER ST STE H
CARSON CITY | NV | 89703-4997 | (775) 430-4632
(775) 223-8365
cameron.dyer@westernresources.org |
|---|---|----|------------|---|
-
- | | | | | |
|---|--|----|-------|---|
| 3 | Caren Adkins
HOLLAND & HART LLP
377 S NEVADA ST
CARSON CITY | NV | 89703 | (775) 684-6010
(775) 684-6001
cadkins@hollandhart.com |
|---|--|----|-------|---|
-
- | | | | | |
|---|---|----|-------|--|
| 4 | Carolyn Tanner
TANNER LAW AND STRATEGY GROUP LTD
216 E LIBERTY ST
RENO | NV | 89501 | (775) 323-4657
(775) 329-8677
lina@tannerlnv.com |
|---|---|----|-------|--|
-
- | | | | | |
|---|--|----|-------|--------------------------------------|
| 5 | Carolyn Turner
NEVADA RURAL ELECTRIC ASSOCIATION
1894 E WILLIAM ST STE 4222
CARSON CITY | NV | 89701 | (702) 343-0974
cmturner@nrea.coop |
|---|--|----|-------|--------------------------------------|
-
- | | | | | |
|---|---|----|-------|--------------------------------------|
| 6 | Eileen Sierra-Brown
THE C THREE GROUP LLC
1320 ELLSWORTH INDUSTRIAL BLVD NW STE A600
ATLANTA | GA | 30318 | (202) 664-4373
esbrown@cthree.net |
|---|---|----|-------|--------------------------------------|
-
- | | | | | |
|---|--|----|------------|--|
| 7 | Frederick Schmidt
HOLLAND & HART LLP
5441 KIETZKE LN STE 200
RENO | NV | 89511-2094 | (775) 327-3000
(775) 786-6179
fschmidt@hollandhart.com |
|---|--|----|------------|--|
-
- | | | | | |
|---|---|----|-------|---|
| 8 | Jennifer Taylor
GOVERNOR'S OFFICE OF ENERGY
555 E WASHINGTON
LAS VEGAS | NV | 89101 | (702) 486-7859
(775) 687-7869
jtaylor@energy.nv.gov |
|---|---|----|-------|---|
-

- 9 Jennifer Tucker
JENNIFER TUCKER (702) 885-2522
1121 BOBBY BASIN AVE
HENDERSON NV 89014 jennifer@g3nv.com
-
- 10 Laura Wickham
GOVERNOR'S OFFICE OF ENERGY (775) 687-1850
755 N ROOP ST STE 202
CARSON CITY NV 89701 lwickham@energy.nv.gov
-
- 11 Peter Colussy
CAISO (916) 608-5850
250 OUTCROPPING WAY
FOLSOM CA 95630 pcolussy@caiso.com
-
- 12 Regina Nichols
WESTERN RESOURCE ADVOCATES (775) 430-4633
550 W MUSSER ST STE G (866) 223-8365
CARSON CITY NV 89703-4997 rnichols@westernresources.org
-
- 13 Robin Yochum
GOVERNOR'S OFFICE OF ENERGY (775) 434-3087
755 N ROOP ST STE 202
CARSON CITY NV 89701 ryochum@energy.nv.gov
-
- 14 Stacey Crowley
CALIFORNIA ISO (916) 608-7130
250 OUTCROPPING WAY
FOLSOM CA 95630 scrowley@caiso.com
-
- 15 Suzanne Linfante
CITY OF RENO (775) 334-2067
ONE E 1ST ST
RENO NV 89501 linfantes@reno.gov
-
- 16 Thomas Hitchcock
STATESIDE ASSOCIATES
1101 WILSON BLVD
ARLINGTON VA 22209 tuh@stateside.com
-