

IN THE SUPREME COURT OF THE STATE OF NEVADA

MASS LAND ACQUISITION, LLC, a
Nevada limited liability company,

Petitioner,

vs.

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.

FILED

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

Supreme Court Case No.: 85693

District Court Case No.: 22 RP 00001
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**AMICUS CURIAE RAINBOW BEND HOMEOWNERS ASSOCIATION'S
BRIEF IN SUPPORT OF REAL PARTY IN INTEREST NV ENERGY'S
ANSWER TO PETITIONER'S PETITION FOR WRIT OF MANDAMUS,
OR IN THE ALTERNATIVE, WRIT OF PROHIBITION**

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Amicus Curiae, RAINBOW BEND HOMEOWNERS ASSOCIATION (“**Amicus**”) is a Nevada non-profit corporation.

Amicus is represented by Paul C. Ray in this Court.

DATED this 14th day of February, 2024.

PAUL C. RAY, CHTD.



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I. IDENTITY, INTEREST, AND FILING AUTHORITY OF AMICUS CURIAE RAINBOW BEND HOMEOWNERS ASSOCIATION

Amicus Curiae, RAINBOW BEND HOMEOWNERS ASSOCIATION (“**Amicus**”) is a Nevada non-profit corporation governed by NRS Chapter 116 and located in Storey County, Nevada. Amicus is the corporate entity that represents the landowners (the “**Homeowners**”) and property contained in the planned unit development community of the same name, which consists of approximately 402 lots and/or constructed homes.

Real Party in Interest, SIERRA PACIFIC POWER COMPANY d/b/a NVE’s (“**NVE**”) project at issue in the underlying eminent domain matter is known as the Second Source Gas Pipeline, which is a natural gas transmission line (the “**Project**”). Amicus will be directly serviced by the Project as an end user of the public utility (i.e., natural gas) and, moreover, does not have access to the public utility without the Project.

Petitioner MASS LAND ACQUISITIONS, LLC’s (“**Petitioner**” or “**Mass Land**”) arguments and requested relief identified in the Petition For Writ Of Mandamus, Or In The Alternative, Writ Of Prohibition (the “**Petition**”) directly and substantially impact Amicus’s continued access to the public utility provided by the Project. If this Court determines that private entities that are public utilities (like NVE) cannot exercise the power of eminent domain for their public utility

projects (like the Project), or that the Project is not a statutory “public use,” then Amicus will be significantly and negatively impacted. Amicus will lose access to the public utility provided by the Project (i.e., natural gas). Such a loss of public utility access will force Amicus and its Homeowners to utilize liquid propane as a replacement at a higher cost and with less reliability and will further force Amicus and its Homeowners to utilize liquid propane compatible appliances, which have a more limited selection than natural gas compatible appliances, and are generally more expensive.

Amicus seeks to file this Amicus Curiae Brief (the “**Brief**”) pursuant to NRAP 29, which permits Amicus to seek leave of this Court to file the Brief, and this Brief is accompanied by the required Motion for Leave to File Amicus Brief. See NRAP 29(c).

II. LEGAL ARGUMENT

A. Amicus Will Lose Access To A Critical Public Utility If The Court Rules In Favor Of Mass Land.

The NVE Project, including the natural gas currently serving Amicus through the Project, is a clearly defined “public utility,” as defined throughout the controlling statutes of Nevada:

2. “Public utility” or “utility . . . includes:

(a) Any plant or equipment, or any part of a plant or equipment, within this State for the

production, delivery or furnishing for or to other persons, including private or municipal corporations, heat, **gas,** coal slurry, light, power in any form or by any agency . . .

See NRS 704.020(2) (emphasis added). The designation of NVE’s Project (i.e., a natural gas transmission line serving Amicus) as a “public utility” is further explained in NRS 704.021:

“Public utility” or “utility” does not include:

1. Persons engaged in the **production and sale of natural gas, other than sales to the public,** or engaged in the **transmission of natural gas other than as a common carrier transmission or distribution line or system.**

See NRS 704.021(1) (emphasis added). Furthermore, the Project’s identifiable “public use” is codified in Nevada’s eminent domain statutes:

NRS 37.010 Public uses for which eminent domain may be exercised.

1. Subject to the provisions of this chapter and the limitations in subsections 2 and 3, **the right of eminent domain may be exercised in behalf of the following public uses:**

...

(g) Public utilities. Lines for telephone, electric light and electric power and sites for plants for electric light and power.

...

(k) Pipelines for petroleum products, natural gas. **Pipelines for the transportation of crude petroleum, petroleum products or natural gas**, whether interstate or intrastate.

See NRS 37.010(1)(g) and (k) (emphasis added).

Mass Land argues that NVE's Project is not a "public use" and that the natural gas flowing through the Project's pipeline to service Amicus is not a "public utility." These allegations are quantifiably incorrect as they require the Court to purposefully overlook, and overturn statutes codified by Nevada's Legislature. The Project cannot be identified as anything other than a "public use" because any other identification would require an illogical and absurd reading of controlling Nevada law. *J.E. Dunn Nw., Inc. v. Corus Const. Venture, LLC*, 127 Nev. 72, 80, 249 P.3d 501, 506 (2011) ("This court seeks to avoid interpretations that yield unreasonable or absurd result[s]."). Members of the public, like Amicus, rely upon NVE to provide access to utilities (like natural gas), and public utilities (like NVE) are tasked by Nevada's Legislature to provide for public access to such utilities. Mass Land's arguments threaten to block NVE's ability to provide essential public utilities to the citizens of Nevada, including Amicus, despite NVE's statutory mandate to the contrary.

Mass Land has further argued in its Petition that the Project must be removed from its property. Amicus does not have access to natural gas from any

source other than through the Project. Thus, this Court's ruling in favor of Mass Land's Petition will force Amicus to lose access to the natural gas public utility from the pipeline in NVE's Project. The briefings submitted to this Court by NVE and Mass Land have identified the potential future impacts to Nevadans from this Court's determination in this matter. Amicus, which is made up of Homeowners that are members of the public and constituents of Nevada, will suffer a real, concrete, and imminent harm if this Court agrees with Mass Land's Petition: more than 400 homes will no longer have access to natural gas from the Project or from any other source. The detrimental impact to Amicus is not a hypothetical outcome, and the clarity and imminence of such an injurious result for the citizens of Nevada highlights why this Court should deny Mass Land's Petition.

B. Accepting Mass Land's Arguments Will Harm Amicus.

As discussed *supra*, the arguments advanced by Mass Land will directly and specifically harm Amicus through the loss of access to the natural gas public utility from NVE's Project. Furthermore, the fallout from Amicus's loss of natural gas access has broader implications. Without a connection to natural gas, Amicus's approximate 400 Homeowners will be forced to utilize an alternative means of accessing a replacement utility. The next best alternative to natural gas for Amicus is liquid propane, which comes at a higher cost to the Homeowners, compared to natural gas. There are additional costs that will be incurred by Homeowners by

removing access natural gas, including the costs related liquid propane compatible appliances in their homes. Natural gas compatible home appliances (e.g., stoves, ovens, water heaters, dryers, and furnaces) offer a broader selection of options to Homeowners for use in their homes, whereas liquid propane compatible appliances have a more restrictive selection. Moreover, the limited selections of liquid propane compatible appliances are more expensive than comparable natural gas compatible appliances.

NVE's Project is designed to deliver the natural gas public utility to Amicus via an underground pipeline. The Project is part of a public utility infrastructure network that is maintained by NVE, which increases the underlying reliability of the natural gas public utility and Amicus's access thereto. The only viable alternative to natural gas for Amicus, liquid propane, can only be accessed via liquid propane tanks that are installed above ground. The tanks must be regularly refilled by a vehicle carrying a cache of liquid propane because the tanks are not linked to a pipeline (like the Project), which would provide a constant supply of the utility. Liquid propane tanks are not as reliable as a natural gas pipeline because they contain a finite fuel source and are subjected to the wear and tear of the elements, whereas the Project pipeline is secured underground. Moreover, the liquid propane tank refilling operation can be subject to delays resulting from blocked vehicular access due to bad weather, delivery scheduling issues, or other

related problems. Without access to the natural gas public utility from the Project's pipeline, Amicus's only option is to use less reliable and more expensive liquid propane tanks.

Based upon the foregoing, cutting off Amicus's access to natural gas from the NVE Project will cause foreseeable, quantifiable, and immediate financial harm to Amicus.

III. CONCLUSION

Based upon the foregoing, Mass Land's Petition should be denied in its entirety by this Court.

DATED this 14th day of February, 2024.

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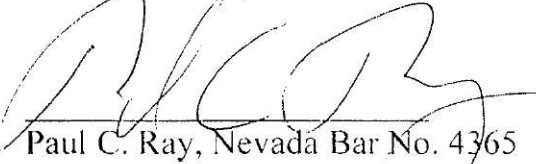
CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Amicus Curiae Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this Amicus Curiae Brief has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point font, Times New Roman style.

2. I further certify that this Answer complies with the page-volume limitations of NRAP 32(a)(7) because, excluding the parts of the Amicus Curiae Brief exempted by NRAP 32(a)(7)(C), it does not exceed 15 pages or contains 2055 words.

DATED this 14th day of February, 2024.

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CERTIFICATE OF SERVICE

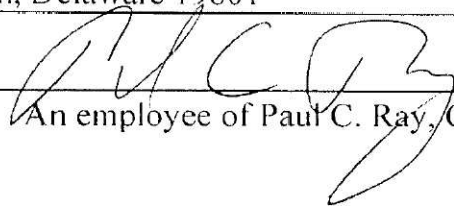
Pursuant to NRAP 25(c), the undersigned, an employee of Paul C. Ray, Chtd., hereby certified that on the 14th day of February, 2024, s/he served a true and correct copy of the foregoing, **AMICUS CURIAE RAINBOW BEND HOMEOWNERS ASSOCIATION'S BRIEF IN SUPPORT OF REAL PARTY IN INTEREST NV ENERGY'S ANSWER TO PETITIONER'S PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION**, by:

- _____ Depositing for mailing, in a sealed envelope, U.S. postage prepaid, at Las Vegas, Nevada
- _____ Personal Delivery
- _____ Facsimile
- _____ Federal Express/Airborne Express/Other Overnight Delivery
- _____ Las Vegas Messenger Service
- XX _____ Electronic Service – via E-mail – Supreme Court E-Filing System

addressed as follows:

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