

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA
DEPARTMENT OF TAXATION,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT OF
THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE; AND THE
HONORABLE JANET J. BERRY,

Respondents,

and

SIERRA PACIFIC POWER COMPANY
AND NEVADA POWER COMPANY,
INC., JOINTLY DOING BUSINESS AS
NV ENERGY,

Real Parties in Interest.

No. 56740

FILED

JUL 07 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. McEwen*
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order determining that a use tax refund matter should proceed in the district court as an independent action subject to de novo review, rather than as a petition for judicial review under the Nevada Administrative Procedure Act, NRS Chapter 233B.¹

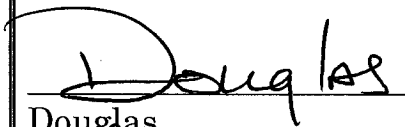
Having reviewed the parties' filings, we conclude that writ relief is warranted. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Recently, in Southern California Edison v. District Court, 127 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 22, May 26, 2011), reh'g pending, we concluded that as the result of several


¹The Honorable Kristina Pickering, Justice, voluntarily recused herself from consideration of this matter.

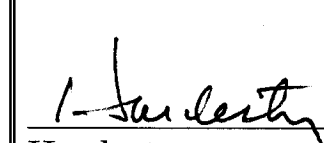
amendments over the past several years, "NRS 372.680 now contemplates judicial review, in accordance with NRS Chapter 233B, and a petition for judicial review under those statutes is the sole remedy after a final decision by the [Tax] Commission in regard to a sales and use tax refund matter." Accordingly, here, the district court improperly directed that the matter proceed as an independent action subject to de novo review; instead, the matter should proceed as a petition for judicial review under NRS Chapter 233B.

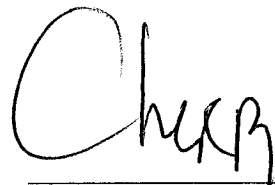
Consequently, we grant this petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to allow real parties in interest to take any steps necessary to comply with the applicable provisions of NRS Chapter 233B and to thereafter proceed with its review of this matter under that chapter.

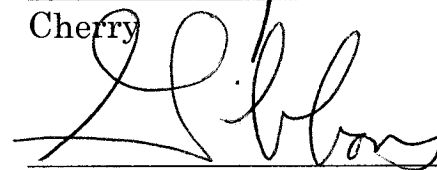
It is so ORDERED.

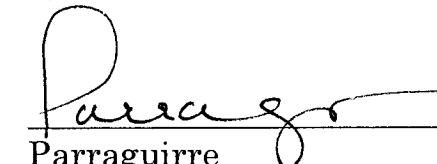
 _____, C.J.
Douglas

 _____, J.
Saitta

 _____, J.
Hardesty

 _____, J.
Cherry

 _____, J.
Gibbons

 _____, J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Attorney General/Carson City
John Bartlett, Attorney at Law
Washoe District Court Clerk