

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELKO COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,

Appellant,

vs.

DEPUTY DIRECTOR OF THE  
GOVERNOR'S OFFICE OF ENERGY;  
ORNI 42 LLC; AND ORMAT NEVADA,  
INC.,

Respondents.

LANDER COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,

Appellant,

vs.

DEPUTY DIRECTOR OF THE  
GOVERNOR'S OFFICE OF ENERGY;  
ORNI 39 LLC; AND ORMAT NEVADA,  
INC.,

Respondents.

No. 68817

**FILED**

DEC 21 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

No. 68818

*ORDER OF AFFIRMANCE*

These are consolidated appeals from district court orders denying petitions for judicial review in actions concerning property tax abatements. First Judicial District Court, Carson City; James E. Wilson, Judge.<sup>1</sup>

Respondent ORNI 39 LLC, located in appellant Lander County, and respondent ORNI 42 LLC, located in appellant Elko County,

<sup>1</sup>The Honorable Nancy M. Saitta, Justice, having retired, this matter was decided by a six-justice court.

applied for partial property tax abatement credits under NRS 701A.360 *et seq.* for their geothermal facilities. At the time, the counties had discretion to approve applications for partial property tax abatements. In 2010, Lander County denied ORNI 39 LLC's application, and Elko County denied ORNI 42 LLC's application the following year. Then, in 2013, the Nevada Legislature passed Nevada Assembly Bill 239, which revised the counties' authority to approve applications for partial property tax abatements. *See* A.B. 239, 77th Leg. (Nev. 2013).

Thereafter, ORNI 39 LLC and ORNI 42 LLC reapplied for partial property tax abatement credits with the Governor's Office of Energy (GOE), pursuant to NRS 701A.360 *et seq.* The Lander Board of County Commissioners and the Elko Board of County Commissioners submitted letters to the GOE, requesting that the GOE reject the applications. After holding a public hearing, the GOE granted the applications. In 2014, Lander County and Elko County filed petitions for judicial review with the district court. Ultimately, the district court entered identical orders, which denied both petitions. These consolidated appeals followed.

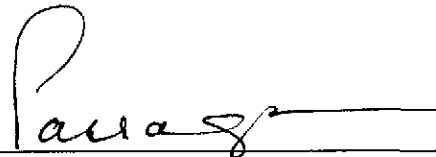
This court conducts the same analysis as the district court when reviewing a district court's denial of a petition for judicial review of an agency's decision. *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 349, 240 P.3d 2, 4 (2010). In particular, "we determine whether the agency's decision was arbitrary or capricious and was thus an abuse of the agency's discretion." *Id.* (internal quotations omitted). Further, we will defer to an agency's findings of fact that are supported by substantial evidence. *Id.* Finally, we review questions of law *de novo*. *Id.*

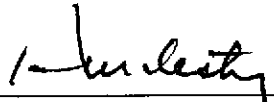
The overarching issue in these appeals is whether ORNI 39 LLC and ORNI 42 LLC can obtain the partial property tax abatements for their facilities pursuant to NRS 701A.360 *et seq.* We conclude that they can.<sup>2</sup> NRS 701A.360(1) provides that “[a] person who intends to locate a facility for the generation of process heat from solar renewable energy or a wholesale facility for the generation of electricity from renewable energy in this State may apply to the Director for a partial abatement of the local sales and use taxes.” Elko County and Lander County fail to demonstrate how NRS 701A.360 *et seq.* precludes the GOE from exercising its discretion to grant ORNI 39 LLC and ORNI 42 LLC’s applications. To be eligible for a tax abatement, the statutory scheme merely provides that an applicant fulfill certain enumerated requirements. Here, ORNI 39 LLC and ORNI 42 LLC have fulfilled these statutory requirements. Accordingly, the GOE did not abuse its discretion in granting the applications, and the district court did not err in denying the petitions for judicial review. Based on the foregoing, we

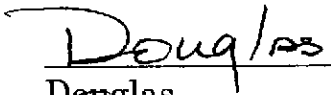
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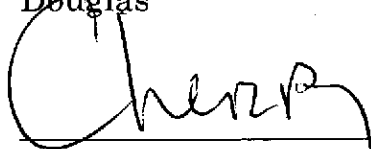
<sup>2</sup>To the extent that the parties’ arguments have not been expressly addressed in this order, we conclude that those arguments lack merit.

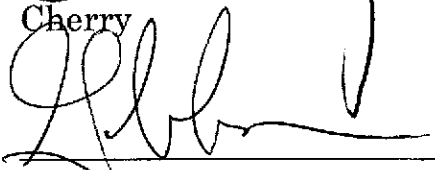
ORDER the judgment of the district court AFFIRMED.

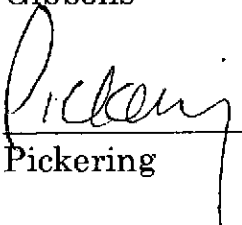
  
\_\_\_\_\_, C.J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. James E. Wilson, District Judge  
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno  
Attorney General/Carson City  
Lewis Roca Rothgerber Christie LLP/Phoenix  
Lewis Roca Rothgerber Christie LLP/Reno  
Carson City Clerk