

**MINUTES OF THE  
SENATE COMMITTEE ON ENERGY, INFRASTRUCTURE AND  
TRANSPORTATION**

**Seventy-fifth Session  
May 12, 2009**

The Senate Committee on Energy, Infrastructure and Transportation was called to order by Chair Michael A. Schneider at 8:19 a.m. on Tuesday, May 12, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Michael A. Schneider, Chair  
Senator Maggie Carlton, Vice Chair  
Senator John J. Lee  
Senator Shirley A. Breeden  
Senator Randolph Townsend  
Senator Barbara K. Cegavske  
Senator Dennis Nolan

**GUEST LEGISLATORS PRESENT:**

Assemblyman David P. Bobzien, Assembly District No. 24

**STAFF MEMBERS PRESENT:**

Matt Nichols, Committee Counsel  
Scott Young, Committee Policy Analyst  
Sandra Hudgens, Committee Secretary

**OTHERS PRESENT:**

Jo Ann Kelly, Chair, Public Utilities Commission of Nevada  
Luke Busby, Assistant General Counsel, Public Utilities Commission of Nevada  
Charles M. Benjamin, Ph.D., J.D., Director, Western Resource Advocates;  
Nevadans for Clean Affordable Reliable Energy  
Judy Stokey, NV Energy

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Crystal Jackson, Commission Secretary, Public Utilities Commission of Nevada  
Eric Witkoski, Chief Deputy Attorney General, Public Utilities Commission of Nevada  
Rose McKinney-James, Solar Alliance

CHAIR SCHNEIDER:  
We will have a work session on Assembly Bill (A.B.) 333.

**ASSEMBLY BILL 333 (1st Reprint):** Revises certain provisions relating to motor vehicles. (BDR 58-835)

SCOTT YOUNG (Committee Policy Analyst):  
Mr. Chairman, just a note for the Committee. At the bottom of the little work-session page, and we, by the way, did not put these in the binders because there were no attachments or anything [(**Exhibit C**)]. But you'll see that Mr. [Assemblyman] Denis had orally recommended changing the dates back to what they are in the existing law. I believe that was also something that Mr. Compan had agreed to. I saw him earlier. I see people nodding. Those are the only changes that staff are aware of, regarding the bill itself. Thank you.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS A.B. 333.

SENATOR CEGAVSKE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:  
We will now discuss A.B. 402.

**ASSEMBLY BILL 402 (1st Reprint):** Revises provisions related to resource planning by public utilities. (BDR 58-888)

SENATOR TOWNSEND:  
Some history on A.B. 402 is important. The Public Utilities Commission of Nevada (PUCN) ran into a problem trying to manage a case with multiple

interveners. The same questions were being asked repetitiously by different participants representing common interests. The witnesses became overwhelmed. The goal was to get to the heart of the case. That is why we narrowed the intervention. This bill, relative to the Integrated Resource Plan (IRP), allows the PUCN leave to intervene if it "... has relevant material evidence to provide concerning the adequacy of the plan." Then they "... may limit participation of an intervener in the hearing to avoid duplication and may prohibit continued participation in the hearing ... " This is an attempt to allow more interveners, and at the same time, narrow it to things that are relevant and not repetitious.

SENATOR CEGAVSKE:

Can the PUCN already do what A.B. 402 is allowing them to do? Does the PUCN have these guidelines to control the issue?

SENATOR TOWNSEND:

The current law says, "... any interested person may make comments to the Commission regarding the contents and adequacy of the plan." That allows anyone to comment, it does not allow them to become an intervener. There is a legal difference between someone who testifies in a proceeding, in front of a regulatory body, as opposed to a public comment. That was the original testimony when we changed this, years ago.

SENATOR LEE:

Can they contain the participation to a single issue?

JO ANN KELLY (Chair, Public Utilities Commission of Nevada):

In each proceeding, there is a set of issues that must be proved according to the statute. In the IRP case, there is a certain set of requirements the company must meet in order to prove their case. What must be proven in a given case defines the issue. The issue will be different in a rate case than in a resource-planning case. You must speak to the issues, and you cannot duly broaden the issues. You would not bring a rate-case issue into a resource-planning case. You would not bring an issue that is not right for a decision in the matter.

SENATOR CEGAVSKE:

Can you already do what this bill allows you to do? Did you ask for this bill to be brought forward?

MS. KELLY:

This is not a bill we asked to bring forward; however, A.B. 402 does set a standard that if you have evidence to bring before the Commission on an issue that is at matter, then you are granted petition to intervene. The regulations require that you must have a direct and substantial interest in the matter. If you have substantial information to bring before the PUCN on the matters at hand, you make that assertion early in the case, then you would be granted petition to intervene. In the course of the case, if your assertion does not prove to be true, or your interest is shared by other people, the PUCN can limit your participation, and this bill allows the PUCN that ability.

LUKE BUSBY (Assistant General Counsel, Public Utilities Commission of Nevada):

This bill would implement the statutory requirement for intervention. Currently, the intervention rules before the PUCN are primarily controlled by regulation. In this case, the statute would control over the regulations. The only other case in statute where we have specific intervention requirements is the Utility Environmental Protection Act (UEPA) provisions. Based on my preliminary view of this proposal, these rules are very similar to those.

SENATOR CEGAVSKE:

Was there a case that caused this legislation?

MS. KELLY:

After having listened to the proponents of the bill, that would appear to be correct.

SENATOR TOWNSEND:

Must an intervener have a graduate degree of some kind, or can an interested party intervene under the PUCN regulations or under this bill?

MS. KELLY:

There is no prerequisite for a degree or academic standing. Under the regulations, you have to be an interested party. You must have an interest in the matter and an interest in the outcome. That is what is asserted when a party makes their petition for leave to intervene shortly after the application is noticed by the PUCN.

SENATOR TOWNSEND:

"If you have an interest in the outcome" is a broad statement. Would any ratepayer qualify as an intervener as well as anyone interested in carbon issues, land-use issues and water issues?

MS. KELLY:

Our regulations insist upon a direct and a substantial interest. Yes, the ratepayer is represented by the Bureau of Consumer Protection (BCP), Office of the Attorney General, as well as our staff. Our staff is statutorily required to represent the ratepayers and shareholders, just as the PUCN mission is statutorily defined. If you are a ratepayer, or a large ratepayer, you are allowed your own representative. In the IRP proceedings, you may intervene if you have an interest in the environmental arena.

SENATOR CEGAVSKE:

What circumstances promulgated this bill?

ASSEMBLYMAN DAVID P. BOBZIEN (Assembly District No. 24):

There was a perceived difficulty in gaining access to the last IRP filing.

CHARLES M. BENJAMIN, Ph.D., J.D. (Director, Western Resource Advocates; Nevadans for Clean Affordable Reliable Energy):

I am president of a coalition called Nevadans for Clean Affordable Reliable Energy. We are a not-for-profit corporate entity under the statutes of Nevada. Under that umbrella, we have attempted to gain intervention status in IRP dockets and add amendments to those IRPs. At times we have had limited approval. Load forecasting is extremely important. We have attempted to intervene in load-forecast amendments to the dockets and have been denied. This last time we were approved. It was considered a direct and substantial interest problem. How do you show a direct and substantial interest in the load forecast? The load forecast has to do with "what is going to be the demands over time in the utility?" How do you show a direct and substantial interest in that? We have been denied because the hearing officer felt we did not have a direct and substantial interest; however, the last time we tried to intervene, we were allowed as an exception to the rule.

The proposed language in A.B. 402 sets the standard, by the Legislature, that there will be intervention and how the intervention will be allowed. The bill also provides an out for the hearing officer when someone strays off the issues. The

problem is not that people are straying off the issue, the problem is being able to intervene. It is not just us. You have received testimony from Mr. Nielson from the Washoe County Senior Law Project and other parties with the same complaint. Getting past the regulation of the direct and substantial interest makes it very difficult. This is important because the integrated resource planning is where it all starts. By the time you get to a rate case, a lot of the parts are already in place. That is what affects your constituents. Their rates affect what is happening in the environment. That is where you need to present information to the PUCN so they have all viewpoints. The reason you want to intervene is to be able to put on witnesses and cross-examine other witnesses. Simply filing comments does not allow you to do that.

My organization intervenes at dockets throughout the intermountain west. I personally have done these things in other jurisdictions outside the intermountain west. Nowhere is it more restrictive than in Nevada. It is very difficult for interested parties to participate in integrated resource planning dockets in Nevada.

SENATOR CEGAVSKE:

Can an average citizen comment?

DR. BENJAMIN:

Yes, you can comment, anybody can comment. The difference between intervening and commenting is the ability to put on experts as an intervening party. In our organization, we have highly trained experts and consultants we can hire. Those experts are subject to cross-examination by other parties, like we are able to cross-examine PUCN staff. That is the difference between commenting and intervening and why it is important to get intervention status. Not everybody is going to intervene, because it takes resources to do it.

ASSEMBLYMAN BOBZIEN:

If I could continue a little bit on ... as to the why. If you will recall back to the, to the testimony we discussed, the relationship between integrated resource planning and UEPA [Utility Environmental Protection Act], which is the more site-specific process that we have to consider projects, various power plant installations, that sort of thing. It strikes me from a policy, a policy perspective, that we have intervention mechanisms for UEPA, so that if someone wanted to gain party status for the discussion of

the siting of a coal plant, they could do that. The interesting thing, though, is that those UEPA occurrences are the result of decisions that are made at the IRP level. It strikes me that rather than having these public interest groups try to duke it out at the individual site specific, UEPA level, let's have a higher-level public conversation about what our power needs are, and how we achieve them, so that we can strike the right balance between solar, wind, natural gas, fire, coal, etc. So, my hope with the bill, and this was ultimately the reason why I brought this forward, was that if we have this public process for intervention at the UEPA level, let's have it at the IRP level, so that we don't get down in the weeds with, you know, fighting over individual projects. Let's have the higher level conversation about how we are going to meet our power needs in this State.

SENATOR CARLTON MOVED TO DO PASS A.B. 402.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CEGAVSKE ABSTAINED FROM THE VOTE.)

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CHAIR SCHNEIDER:

Do you want to record your vote, Senator Townsend?

SENATOR TOWNSEND:

..., I do Mr. Chairman. And, and, I'll support it on, on the following condition: The testimony that I heard, is that this is to codify what is being done in practice. I would hope that the members of this Committee who are going to return would take significant care with regard to this issue. Because if it is abused, then I think that it has to be revisited. And, I would also ask those that are going to return to this Committee, to take time to go sit through a rate case or in this case, ... an IRP hearing. It's laborious, most of it's repetitive and hopefully this gives the Commission the opportunity to do what they're already doing. But, if it is abused, I think you're going to be back here. So, thank you.

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CHAIR SCHNEIDER:

We will take up Senate Bill (S.B.) 358.

**SENATE BILL 358 (1st Reprint)**: Revises provisions related to energy. (BDR 58-1146)

SENATOR CEGAVSKE:

The information I received on the low-carbon emissions scenario and resource plan on S.B. 165 was a minimal cost from zero dollars to \$100,000. The cost for the gas, solar hot-water program and the energy's gas business in S.B. 188 will be about \$765,000 to \$2.3 million. Only a part of that is in the north and they assume about 30 installations a year, plus administrative costs. On the electric-car-demonstration program in S.B. 327, they estimated 200 to 600 vehicles per year at an average rebate of \$5,000, plus administrative costs of \$1.1 million to \$3.5 million.

**SENATE BILL 165 (1st Reprint)**: Requires certain utilities that supply electricity in this State to include in the resource plan of the utility certain provisions relating to demands made on its system by its customers (BDR 58-381)

**SENATE BILL 188 (1st Reprint)**: Provides for the establishment of the Solar Thermal Systems Demonstration Program. (BDR 58-379)

**SENATE BILL 327 (1st Reprint)**: Provides incentives for certain electrification projects. (BDR S-377)

CHAIR SCHNEIDER:

Who gave you those numbers?

SENATOR CEGAVSKE:

Those numbers came from Judy Stokey with NV Energy.

CHAIR SCHNEIDER:

We would like to get the assumptions on those. Ms. Kelly, will you address the decoupling for us?

MS. KELLY:

We have a fiscal note on the proposed amendment on S.B. 358 (Exhibit D, original is on file in the Research Library). Ms. Jackson, our Commission

Secretary, has handed out the fiscal note ([Exhibit E](#)). We will go over it before we address the decoupling. We are asking for money for rule making. I want to bring to your attention section 11.1 of the bill. There is a permissive statement that indicates the newly established Renewable Energy and Energy Efficiency Authority could be using some of the PUCN personnel. At this stage, since the Authority is not up and running, we do not know to what degree they will be utilizing our people. We want to make a footnote in our presentation of the fiscal note, that once it gets running, if we need additional personnel, we would be able to hire someone. We thought about hiring another engineer. We can go to the Interim Finance Committee with that request, if the occasion warrants, after Session is over. We will see how the Authority works within their budget, and whether or not we would need to hire additional personnel. We want to make sure all of the things that are intended in this bill are accomplished.

SENATOR CEGAVSKE:

Will what you are proposing bring additional cost to the consumer, or is that part of the \$1.44 NV Energy said was part of this bill?

MATT NICHOLS (Committee Counsel):

Mr. Chairman, just a point of clarification, I didn't offer a \$1.44 amount, that's NV Energy's estimate of what, as I understand it, the renewable-energy demonstration programs and the solar generation program would cost them based on the amendments to this bill. The PUC[N] is funded through the mill tax, that's correct and ...

SENATOR CEGAVSKE:

I understand. The cost that NV Energy told us for the bill is \$1.44 plus the 68 cents, thereafter. The mill tax was under sections 11.7 and 11.9, stating the portion of the mill tax may be used by the PUCN. Is this an additional charge, or is this the same?

MS. KELLY:

Since we have recently determined the cost, I expect NV Energy would not have had this information. This is a small addition to the cost of running the PUCN. It would not affect the mill assessment.

JUDY STOKEY (NV Energy):

The \$1.44 was for the distributed generation program. We have nothing to do with the mill program.

SENATOR CEGAVSKE:

The paper I was handed from the PUCN, [Exhibit E](#), said the estimated cost for them is \$200,204 to \$377,803 for the biennium. Does this come out of the mill tax? NV Energy told us their cost. According to sections 11.7 and 11.9, the mill assessment is something the ratepayers pay. Is it another cost to the ratepayers in addition to what NV Energy is going to charge? You stated, Mr. Nichols, it reduces from 3.5 mills to 2.5 mills of the portion of the mill that would be used for the PUCN. The additional 1.0 mill would be used by the renewable energy program. Is that what pays for the position about which you are talking? I am trying to assess how much out of this Session our constituents are going to be hit with on their bills. That is my concern. How much are we going to increase what they will pay?

CRYSTAL JACKSON (Commission Secretary, Public Utilities Commission of Nevada):

We have two items in front of us. One item is the fiscal note, to which you are referring, with the estimated cost to the PUCN, between \$200,000 and \$377,000. Our operations are funded by the mill assessment. We also have taken a look at the mill separately, with respect to section 11, which does reduce the PUCN's maximum mill amount from 3.5 mills to 2.5 mills, which is 1 full mill. The Governor's Office of Energy would receive .03 of a mill and 0.97 of a mill would be for the Authority. We are projecting, if this amendment is encompassing all utilities on the mill including telecom, water and sewer, 1.0 mill will generate approximately \$4.4 million for the Authority, and it would generate approximately \$330,000 for the Governor's Energy Office. We have taken a look at the cost to residential customers, commercial customers, industrial customers and interruptible irrigation service (IS-2) ([Exhibit F](#)). We estimated an average for electric and gas. One mill was added to the current mill assessment on electricity for a residential customer. A residential customer will pay about 41 cents per month and that money goes to the PUCN and the BCP. Commercial will pay \$2.03 per month, industrial will pay \$417.87 per month and IS-2 will pay \$3.62 per month. Gas for residential customers will be 20 cents per month, commercial will be \$1.39 per month, industrial will be \$161.18 per month and IS-2 will be a zero impact. If the Committee chooses to remove telecom, water and sewer from the mill, that would reduce the

Authority's portion to about \$3.8 million. It will go roughly from \$4.4 million to \$3.8 million. The Energy Office will go from about \$330,000 to about \$289,000. Keep in mind that this is based on projected calendar-year revenue numbers. This is our best guess. Numbers may fluctuate some.

SENATOR TOWNSEND:

I would recommend the Committee carve out water, sewer and telephone companies from S.B. 358, because the customers of those utilities do not receive anything as a result of this bill. I would suggest those figures be adjusted to \$3.8 million and \$289,000. There is a technical item that staff should understand on page 54, section 21, subsection 4, "Sections 11.9 and 19.8 of this act become effective on July 1, 2011." That means we could not fund anything because section 11.9 is the mill-tax component that I find. We have to go back, unless you can tell me there is a reason to do that.

MR. NICHOLS:

I can do that, if you would like. On section 11.7 is the first carve out for the mill tax for funding the Authority that would go into affect in July 2010. And then, in [section 21,] sub[section] 4, where you identified section 11.9 becomes effective in July 2011. The idea, as I understood it, was that for the next two years it is anticipated that Dr. Gecol's office would be funded through the portion of the stimulus money that has been set aside for administrative expenses. It's somewhere between 5 [percent] and 12 percent of all the money available for energy projects under the stimulus plan. And, [Interim Finance Committee] IFC with the Legislative Commission, someone would control that money and authorize an amount sufficient to fund Dr. Gecol's office for the next two years, or there would be some way that she could carve out a piece of that as it passes through her office to be distributed throughout the State. It's also anticipated that the new Authority would be funded for one year through the same administrative expenses set aside in the stimulus money. So, for this next year, there would be no mill assessment for the purpose of funding the Authority or for funding the Energy Office. Next year, the mill assessment for funding the Authority would go into effect and in two years that would be broken down so that the remaining 0.07 mill would be allocated to the Energy Office.

SENATOR TOWNSEND:

Are you saying there would be no mill-tax increase for the coming 2010 year?

MR. NICHOLS:

"That's correct. I say that the PUC[N] has not fully taken advantage of the 3.5 mills that they are authorized to assess, unless the PUC[N] increases the amount that they are going to take. Then, no, there's not going to be an increase."

SENATOR TOWNSEND:

I think it would be important, Mr. Chair, that staff makes sure they are in contact with the Energy Office and get confirmation from the federal government that the stimulus money is coming. We do not want to leave here and leave the Authority without any money.

CHAIR SCHNEIDER:

Public radio had an energy news item pertaining to Seattle, Washington, about weatherizing homes because it is cheaper than building a new power plant. All this stuff we are doing will cost money. Our goal is to not spend hundreds of millions of dollars to build a power plant.

MS. KELLY:

We were asked to talk about electric decoupling. Since the mid-1980s, the electric utilities in Nevada have been participating in demand-side management. Nevada was one of the first states to require private investor-owned utilities to promote non-sales of their product, the sale of power. Soon the theory became accepted and the Public Service Commission of Nevada developed various regulations to develop conservation and energy-efficiency programs for the electric utilities. Since the mid-1980s, those programs have become more sophisticated and more targeted, and the resource-planning regulations have changed and developed. Today the electric utilities are required to provide plans to the PUCN for their approval every three years. Those plans will provide the supply side of what is needed to add to their system, as well as ways they can meet that demand through conservation and energy efficiency, rather than supply. The two have always been part of that planning process since the mid-1980s. Today, regulations are required, on the electric side, to produce strict analysis for the program and to obtain approval for the budgets. They not only have to come in every three years with a full plan for a demand-side reduction, they have to have their budgets approved. The programs have to be

approved and there are various complicated tests that have to be performed on each program. These regulations have been in place for some time. There is also strict oversight of the program costs. The costs of the benefits are analyzed, the cost of actually producing the programs is analyzed and every year those budgets have to be put back in front of the PUCN in a report explaining to the PUCN how much they spent, how well the programs have been received and whether the savings that have been projected are being accomplished.

Their planning process requires them to be in front of the PUCN on an annual basis with demand-side plans. The company has just brought forward to the PUCN more precise ways of measuring the actual savings. Those have always been estimated and there are certain things you cannot measure precisely. They have been statistically measured, but we have requested they focus on local, rather than regional, measures. They should focus on how people are using their appliances and how much they are actually saving from the programs. The programs have been successful. Currently, NV Energy spends over \$60 million annually just for program costs. For years, the incentive, besides just recovering their cost, was the incentive for them to go out and to produce programs and to encourage their customers not to use their product. They have been allowed to do what we call "rate base" those costs and earn a return on those costs. When they put a plant in service, they are allowed a return on that investment. That return is determined during a general rate-case proceeding. We allow them to rate base the demand-side cost, which is the cost of producing the conservation programs themselves. In this State, for years, they have been able, on the electric side, to receive an equity rate basing of those costs.

This bill in front of you today, in section 11.3 of [Exhibit D](#), develops another simple incentive. They currently have been allowed to take those costs to rate base them and to earn a return on them with an extra return. This bill takes the costs and utilizes a net differential from the decreases in their load. That would be what the system saves as a result of these programs and allows them to recover those costs on an annual basis. This is the type of decoupling we call "lost revenues." Only those revenues that are associated with the losing programs are allowed to be incented through this particular statute. Because of the regulations that are in place, there is a comfort level in measuring the program savings, as well as the costs of the programs. In this statute, there is an annual-adjustment requirement that can be accomplished through an accounting mechanism. It is expected as a result of annual adjustments to these costs there will be less carry. There can be a reduction to consumers as a result

of adjusting that mechanism on an annual basis, rather than doing it on a three-year general rate-case cycle.

We had looked at the language in section 11.3, subsection 2, paragraph (b). We do not interpret that language as introducing any other types of revenue into this cost recovery. And absent any declaration to the legislative intent to the contrary, we will go forward with our interpretation as if there is no change from what I have just said to you. The only revenue that is going to be recovered through this mechanism will be lost revenue, due to the programs themselves.

We have no resource planning for gas companies. The Legislature relieved them of that responsibility several sessions ago. As a result, we do not have the mechanisms in place for the measured savings, the reduction sale calculation attributable to programs and have not looked at the kind of testing that had been done in order to evaluate programs for approval. There were differences between the southern-Nevada and the northern-Nevada approach. The two companies are very different. Eventually, we split the docket into two different approaches. We had some legal issues with respect to what we call in the trade "full versus partial decoupling," which we resolved. Those regulations were completed by year end.

ERIC WITKOSKI (Chief Deputy Attorney General, Public Utilities Commission of Nevada):

I am concerned about the legislation. We passed a gas-decoupling bill last Session that will be implemented in a current rate case to go into effect at the end of the year. Next year will be the first year we will have experience with that. With the gas companies, it is a little easier because it only affects one-third of the rate. If they over earn, there is a mechanism that refunds that, and if they under earn, there is a mechanism that reimburses. There is a "pre-quote" that was part of the bargain we passed in the last Legislative Session. In the gas legislation, we were able to look at the return on equity and the risk reduction. That is in the legislation. This bill is not really decoupling. It is a partial decoupling, allowing them to pick up the lost revenue attributable to energy efficiency and weatherization. Trying to measure the lost revenue is going to be difficult and argumentative. That was the beauty of having a 5-percent kicker in the regulation that Commissioner Kelly mentioned. They receive a basic 5 percent, on top of their 10 percent, resulting in a 15-percent return. It reduced a lot of administrative arguments and the need to get down to

details to figure out what really caused lost sales. When you have higher rates, consumers are going to use less energy. When you have appliances that are going to be more efficient, there is going to be a reduction. There are a lot of things that drive reduction. It is going to be a difficult task to determine if the cause of reduction is due to lost sales or if there is energy efficiency and weatherization.

The other portion of the bill is worrisome because we are helping stabilize the revenues. Section 11.3, subsection 2, paragraph (b), "Must not effect the public utility's incentives and allowed returns ..." says to me, if we are going to stabilize some of the revenues, we could not take this into account when we are setting the rate of return in a rate case. In respect to the bill, those are my comments.

SENATOR CARLTON:

What are the risks involved when shifting the cost from the utilities to the ratepayers within this partial decoupling?

MR. WITKOSKI:

You are shifting the risk to the ratepayers for whatever loss they think they have. We are probably the only state in the union that requires rate cases to be filed. They have to be filed every three years; it used to be every two years. Sierra Pacific and Nevada Power Companies will be due next year and NV Energy will be due in two and a half years from now. If they are having lost sales in the interim period, it will be adjusted in the rate case. They are shifting the lost-sales risk to the ratepayers. They will have an account that tracks the lost sales in order to adjust on an annual basis.

MS. KELLY:

The legislation also requires annual adjustments. There will need to be, through regulation, development of an accounting adjustment that would take place annually. The accounting adjustment could be done in the same time frame that they file their annual report on the actual programs, the savings, the budget for those programs and how those programs are being successfully received by the public. The ratepayer has always picked up what the utility spent on their programs. That has been from the inception of resource planning. The incentive mechanism was added sometime during the last ten years, which would allow them to receive their cost rate based on a return on the programs, as if they were the same kind of investment. I understand what Mr. Witkoski was saying

about section 11.3, subsection 2, paragraph (b) of S.B. 358. That is why I made my statement. I do not understand how all those words work, but I am interpreting them to mean, "not to modify." It does not modify, in my interpretation, the fact that this bill is designed to provide a recovery mechanism for just the lost revenues, due to the programs. If I am not reading it correctly, I am inviting anyone to let me know that my employees and I have read it incorrectly. If we move to an annual recovery mechanism, we can reduce the overall cost to ratepayers by reducing the amount of carry they have had, or interest, on those balances that did not carry forward to the rate cases. That is something we have looked into, before this bill was introduced, when we were doing the analysis for the stimulus package. The stimulus package, in order to get certain funding for conservation, has a requirement that the energy utilities in this State have a recovery mechanism for conservation programs, and that it is timely. We have been able to do that analysis, and we can certify that all of the energy companies have an incentive program and a recovery program. Internally, we looked at that one word "timely." We have been looking at that issue since we started the analysis for the stimulus money.

SENATOR CARLTON:

Are any of the energy-efficiency programs directed towards industrial and commercial? Would they also end up with the cost shifting or is it just directed towards residential? Do industrial and commercial pick up more of the burden?

MR. WITKOSKI:

You are correct, a lot of it goes toward residential. It was my understanding the commercial was expanding.

SENATOR CARLTON:

There seems to be a basic principal about single-issue rate making. We have taken steps into energy efficiency and that allows a better return. I am concerned, the more we concentrate on the single issue, more people are left behind. I am concerned that it is taking us further. As more sophisticated folks move forward, the other folks are left behind and end up picking up the bigger portion of the burden. My bigger concern is with the policy issue behind decoupling.

MS. KELLY:

Before resource planning, in the mid-1980s, one person used a piece of paper to estimate what he thought the company needed for supply-side and turned it

over to the engineering division to deal with it. Only when that plant came into full use would the company come in for a rate case. There was no provision for them to come in on a regular basis. They would try to time their rate cases at the same time the plant would come online, so they could take advantage of bringing a huge investment into the rate base. When we started resource planning in 1984, we brought the process into the public arena, having input from various parties. That eliminated the company using a piece of paper. Today, we use sophisticated methodologies and technologies in order to estimate the load and to determine what kind of resources we need. At that same time, there was a movement nationally to look at conservation and energy efficiency. The resource-planning process balanced the two. When we took that step to bring it into the public view, you are correct; we did take a deviation, because, before that time, those were costs that the company had to absorb until they decided it was time to come in for a rate case. Over the years, that process has become more sophisticated. The public is more involved and there are more people who participate in it. I share your concern about what happens with the little person. The companies and the PUCN have put on a tremendous effort to reach out to individual consumers. We get out the conservation message and advise people how they can control their utility bills. This last year our consumer division has put out PowerPoint presentations in consumer sessions to explain the bill, to explain generation, to explain how those costs get on their bill and how they go up. Currently, we are reaching out through the schools to help educate junior high students and above so they can go home and teach their parents about conservation, the thermostat and how it makes a difference.

The interactive programs the company has put on have had tremendous reception from the general public. One of the programs Southwest Gas has put forward on their first resource plan talks about low income. Everyone in the industry is making an effort to address the question you raise. People are working very hard trying to meet their bills, and every time the bills go up, they have to sacrifice more. I share your concern. We balance the programs and we look at the cost-effective measures. Our staff is always bringing us information on the rate impact of everything we do. We have to process that. This gets proscriptive in terms of how they want the regulations. The incentive mechanism is compared to the return on equity, like Mr. Witkoski says, through the regulation process. We get into hard numbers to see if we can process those numbers as well, and that is what we do in our workshops. We get into regulations that are complex. We actually ask our staff to run numbers so we

can get examples of numbers to compare and see how it affects people. We look at all that through the regulation process. We take everything into account.

SENATOR CARLTON:

I want to make sure the conservation numbers are verifiable and the reimbursement is on energy that is not sold. We have had a huge foreclosure problem in southern Nevada. You can drive down a street and see six or seven empty houses. How do we verify the numbers being proposed are true conservation numbers and not just from lack of use or people doing their own energy efficiency? What if I go into a new home and I change every lightbulb, buy the ENERGY STAR appliances and do everything I am supposed to do, without the utility company being involved? Yet the base load goes down, there appears to be conservation, so therefore, they can add those numbers into the formula. I need some level of comfort knowing this, especially because of the foreclosures. I need to know that you guys are watching this.

MR. WITKOSKI:

Nevada is one of the states that leads the Nation in foreclosures. On the deceptive-trade side, we do a lot of investigations into foreclosure scams. We are looking at the numbers. The numbers I have from September 2008 indicate there were 26 billion loans nationwide that would be resetting in 2009 and 67 billion resetting in 2010. I do not know. Sixty percent of the people in Las Vegas are underwater on their homes. I expect the foreclosure rate to continue and escalate next year which will cause homes to be empty. Yes, you are right, it is going to be hard to determine what is lost sales and what is conservation in energy efficiency. The slowing down of the economy does not look good, either. It is going to be difficult. That is what motivates the company to propose this legislation, because they can see things are not going to be growing as they were over the last ten years or longer. In 1994, it was common knowledge that we would grow by 250 megawatts (MW) per year and it continued. We did not look at the growth. But now, with the slowing of the growth, we are taking a close look at it. One of my consultants tells me we are going to be in for a paper fight regarding this. That is why the 5-percent kicker is good because it removes having to deal with that analysis.

MR. BUSBY:

The measurement and verification process the PUCN uses to analyze existing demand-side management programs will translate in viewing these regulations. When the PUCN looks at those programs and looks at anything throughout the

resource-planning process, the economists in our resource and marketing-analysis department “macro-look” at what the economy is doing. These issues will be vetted before the PUCN, because the utility has to come forward to prove their case and stand up to the criticism of the consumer advocate and the Commission staff.

SENATOR TOWNSEND:

Considerable time was spent on the language for gas and its implementation on S.B. 358. You made a comment in regard to the mandated rate filings that we put in a number of years ago. Would your office be comfortable with the potential offset, the Deferred Energy Accounting Adjustment (DEAA), rather than having a separate accounting process? Can that be done inside the DEAA? Is the DEAA a proper location for this adjustment? If it is; terrific. If it is not; tell me why. More importantly, is it time to review the mandated rate filings again? Could you give me some insight there? We value you, your office and your predecessors to give insight to us on how to balance these interests. This bill is here to give a certain amount of predictability in the regulatory process that customers and shareholders alike can depend on. This bill is an attempt at that. I do not know if we have met that goal yet. If you could answer those things, it would be helpful.

MR. WITKOSKI:

On your question regarding DEAA, I think you are referring to a deferred case, and I think that would be a more efficient place to put it. We already have a process in place to file every year. In 2001, the Legislature was disappointed with the companies because we had not seen them in a long time on general rate cases. When the law was passed in 2001, they were not only required to come in, they were required to come in again in two years. We did the 2001 cases and we continue doing them. If I were a utility and I knew I would have to file a rate case every two years, I would want to build everything I could to put in a rate base,

Southwest Gas filed in 1993, 1995, 2001, 2004 and 2009. They get their rate sets and they try to manage their costs. If they are not extra, it is because they managed their costs and the rates were reasonably set for their customers. When a utility has to come in every couple of years, it can build its business modeled around that. Maybe it is time to let the companies that know those filing dates decide the times to come in and file. That way they do not have a law requiring them to file. When they file a rate case, it is incumbent on them

and they cannot just say the law required them to be there. They can say why they are asking for \$310 million. I think it puts a little pressure on them to justify the rate cases and the timing of them. I recognize from a case-management standpoint that the PUCN wanted to have them staggered. We are getting to the point where we could be like other states and make it incumbent on the company to file when it has the need.

SENATOR TOWNSEND:

My question concerns the portion of S.B. 358 where we eliminate the task force and transfer its responsibilities to the PUCN. Did we fund it, the members and the tasks? If we did, where did the funds come from and at what level?

ROSE MCKINNEY-JAMES (Solar Alliance):

I did chair the task force. The funding for the task force came from an assessment on the mill. I believe the amount was \$150,000. It was funded again at a similar range from the same source.

SENATOR TOWNSEND:

Did you serve with the gentleman from the Mirage Casino-Hotel?

Ms. MCKINNEY-JAMES:

Yes, Mark Russell.

SENATOR TOWNSEND:

Did he serve on there as well?

Ms. MCKINNEY-JAMES:

He served as well, and became a subsequent chair.

SENATOR TOWNSEND:

I recall we funded that task force for \$250,000 in order to get it moving. Is the fiscal note the PUCN is putting forward commensurate with what the task force was spending, since the responsibilities were absorbed by the PUCN? We want to make sure of the actual cost.

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Ms. MCKINNEY-JAMES:

The members of the task force participated on a voluntary basis. We did not have a formal staff. We were able to take advantage of, and have the benefit of, some staff work from the BCP. In the absence of a formal staff, we hired

consultants. A consultant then became a principal staff person for the task force. I am not aware how they are functioning now, since I have been away from it. I am not aware of the fiscal note. We did what we could to be as frugal with the resources that were provided to us. Within the bounds of this new bill, we may be asking the PUCN to take on some additional responsibility.

SENATOR TOWNSEND:

I do not want to overburden the mill tax, because we are now in another year to fund the Energy Office the same way. We will eventually lose the stimulus money. Then we are going to fund the Authority the same way in another year. We still need an appropriately funded PUCN to function because it is only going to get more complex and because of changes going on in the industry. I want to make sure this fiscal note is remotely close to what the previous efforts were by the task force. I am not comfortable with what they brought forth.

CHAIR SCHNEIDER:

Would you have any opinion on grandfathering?

MS. MCKINNEY-JAMES:

Yes, during our discussions with the utility company we indicated our desire, and they agreed, not to allow any grandfathering of existing projects to be available for the new distributed generation (DG) program.

SENATOR TOWNSEND:

There are a number of policy questions you want to go through with the Committee, Chair Schneider. The details of the financing are a little different. I want to make sure I understand where you want to go, so I can mentally get there and try to be helpful. When does the mill tax kick in and when does it not? I am comfortable if you want it in another bill. I hope the Committee would consider the following language:

The Renewable Energy and Energy Efficient Authority, as well as the PUCN, may adopt a plan to authorize additional payments of up to \$15,000 annually for unclassified employees who possess a bachelor of science or higher degree in engineering, bachelor of science or higher degree in finance, bachelor of arts or higher degree in economics, current Nevada certified public accountant certificate or a license to practice law in the State of Nevada. And utilize, in the opinion of the Commission, the skilled evidence by

these qualifications to further enhance the performance of their job duties and responsibilities.

I bring that forward to the Committee because that is close to the language used for the State Gaming Control Board. It is my understanding from the PUCN, it is becoming more difficult to get the type of quality individuals we are looking for to protect the interests of all the parties, particularly the consumers in these significant debates. The PUCN must debate issues with the best and brightest with whom the utilities have access. We have always provided, and must continue to provide, a large consulting budget to the BCP so they may go out and get the best and the brightest on individual cases. In the case of the PUCN and the new Authority, there should be some flexibility to compete with the private market. If the Committee decides this language is acceptable, we do not have to put it in this bill. We can put it in one of the other bills. The Committee should consider giving the flexibility to these individuals, because of the highly skilled nature of the people you are trying to attract. This is a unique-complex area that is evolving everyday. I hate to leave here and not give them the opportunity to compete in the open market.

CHAIR SCHNEIDER:  
I am comfortable with it.

SENATOR CEGAVSKE:  
Do we have Nevada-based suppliers or is this outsourced out of state? We want Nevada business and we want Nevada people to have jobs.

CHAIR SCHNEIDER:  
New Mexico got a manufacturing company to go there. A Chinese company was looking for someplace in the Southwest to come into. Nevada does not have a lot of companies, so we need to attract them.

SENATOR CEGAVSKE:  
That is what we want to encourage. Do we have to go out of state for supplies at this point? Does that mean we can use in-state workers or do they have to come from out of state, because they are not trained?

CHAIR SCHNEIDER:

We need to encourage the university system so we have the intellectual capability in this State to get the manufacturing and the longevity for renewable energy. We need to put something in this bill on grandfathering for the DG.

MR. NICHOLS:

Mr. Chairman, in ... the version of the proposed amendment, presented by the majority leader, the distributive [sic] generation was broken out with specific goals for a series of program years, and there was language in that portion of the amendment that specifically addressed that existing distributed generation programs, or systems, rather, would not count towards the portfolio standard for new distributed generation, so, I'll just pull that language from the majority leader's proposed amendment and put it back in here.

CHAIR SCHNEIDER:

Senator Townsend, regarding your proposed amendment on S.B. 358, *Nevada Revised Statutes* (NRS) 463.080, subsection 3:

The Board shall, within the limits of legislative appropriations or authorizations, employ and fix the salaries of or contract for the services of such professional, technical and operational personnel and consultants as the execution of its duties and the operation of the Board and Commission may require.

Should we put more flexibility in the bill, instead of having specific amounts? If we do not specify the amounts, the PUCN could set it.

SENATOR CARLTON:

Senator Townsend suggested removing language from a bill, if the same language is covered in the "Green Jobs" bill; therefore, we should go ahead and take out subsection 2 under section 19.7 of S.B. 358.

SENATOR CEGAVSKE:

I would still like to ask the Committee if they would also put in the bill the report that I asked for yesterday, listing all the suppliers, whether they are in state or out of state, how much money they are making and if they are nonprofit groups.

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CHAIR SCHNEIDER:

Is there a problem with confidentiality or propriety with that?

MR. NICHOLS:

Well, for their drafting purposes, I think the Legal Division would probably like some clarification as to whom she would like to collect the information and further, there is a bit of an issue in requiring someone who's out of the state to deliver any sort of report about their business operations to an entity in Nevada.

CHAIR SCHNEIDER:

This Committee will stay together over the interim. We can have reports given to this Committee to bring back next Session. We will have some oversight over it.

SENATOR TOWNSEND:

Alright, Mr. Chairman, if you're ready, I'll make an attempt at this. I would move we amend and do pass S.B. 358 with proposed amendment 4821. That would include the three items that come to my attention. One is the language in the previous amendment with regard to DG and grandfathering, as mentioned by Senator Carlton. The second change to this amendment would be the gaming control language, Gaming Control Board language in NRS 463.080 regarding the ability of the Authority and the Commission to utilize the flexibility necessary for those unclassified employees that are competitive, and they need to ... to respond appropriately relative to salaries. And, number three, the removal, as discussed by Senator Carlton, with any language that is previously been passed by this Committee in the "Green Jobs" bill, leaving only those things at the higher education level that are articulated in the bill. That's all I can remember.

CHAIR SCHNEIDER:

You heard the motion, which I understood clearly.

SENATOR CEGAVSKE:

Thank you, Mr. Chair, and I want to thank you for your indulgence in helping me understand this and several of the other energy bills that have come forward. I just want it on the record, the reason

I kept asking about the cost, I think it's very, very important for us to go back to our constituents and let them know exactly what their bills are going to ..., you know, what's going to happen to them and what we're going ..., you know, what's going to ..., as you have stated several times, what will be a benefit for the State of Nevada. So that, and I, I really do appreciate that. And the other, the only other concern that I did have, and still do have is that we're adding another administrator. So that, that's just a concern. I'm going to support the legislation. I, I think that all members have, have contributed to it, but those are still the concerns and just wanted to make sure that was on the record and again. Thank you.

SENATOR CARLTON:

I am going to support this bill with the amendments, even though I have some concerns about the decoupling. I received a level of comfort today on it; however, I still have that gut feeling and just learn to follow it. With the consumer advocate and everyone who is involved, and the intricacies of these rate cases, I am hoping everyone watches and makes sure that which we are allowing to happen, actually happens appropriately. I hope the people who I represent do not end up bearing the burden of this whole proposal because they are not the sophisticated buyers in this system, they are the average citizens who I do not want to see get lost in this.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS S.B. 358.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

We will now open the hearing on S.B. 395 with the proposed amendment 4875 (Exhibit G, original is on file in the Research Library). This was the Governor's bill that was passed out of the Senate Committee on Finance and sent back to us. The fiscal note was removed; therefore, it was an exempt bill.

**SENATE BILL 395 (1st Reprint):** Makes various changes regarding renewable energy and energy efficiency and alters the composition of the Commission on Economic Development. (BDR 58-1219)

MR. NICHOLS:

Thank you, Mr. Chairman. The proposed amendment would delete all of the sections in the bill that relate to abatements of certain property taxes and sales and use taxes. That would be sections 1, 2, 7, 13 through 17, 20 to 22 and 23. The bill would contain ... well, if you want to look at section 4, this is the increase in name-plate capacity for geothermal from 35 MW to 70 MW. Section 5, the amendment relating to permitting under UEPA, would remain. Section 6 alters the composition of the Commission on Economic Development. That, that change would remain. And then, section 8 requires the chief of purchasing to adopt regulations setting ... standards for procurement of energy-efficient appliances. Section 10 requires the State Public Works Board to set standards for efficient use of water and energy. And, section 18 relates to statements provided with the sale of a vehicle relating to the carbon emissions. And, I believe Senator Townsend had some ideas for tweaking the language in section 18. And then, finally, as you said, the appropriation in section 22.5 would be removed.

CHAIR SCHNEIDER:

Senator Townsend, in section 18 of **Exhibit G**, is that where you had some concern?

SENATOR TOWNSEND:

I have a problem with the language in S.B. 395 regarding carbon emissions. I do not disagree with the policy because it meets one of the Committee goals regarding transportation. In case you are not following the auto industry, things have changed a bit. The problem is the manufacturers. By the year 2012, we are not going to recognize who they are, because they are all going to change this year. We may not know what they are going to do. The problem for the dealer who sells new cars is the information on carbon emissions that is not readily available for prominent display. They have to pull it out of a book that arrives in the trunk of the car, they have to pull it out, they have to create a sticker and they have to put it on the window. For larger dealers, who may hopefully get back to their current levels with a thousand vehicles on their lot, it

becomes a burden. It would be helpful and still accomplish this requirement, if we have the dealers provide the consumer with a handout that lists every model of vehicle with their carbon emissions. This could be done now instead of waiting until 2012. A disclaimer would say, this may not work for you, but this is what we found to be an average. Right now, they can look in the window of the vehicle, because it is mandated by federal law that your federal Environmental Protection Agency information is listed for highway and city mileage. There is a significant problem for the guys operating a dealership if they had to put it in each window, because if it is put on the wrong window, then the dealer becomes liable. I was hoping the federal government would mandate putting the information on the window sticker. This is one way to make the public understand there are some vehicles substantially better in emissions than others. I do not have the specific language for this, but it should be simple to do.

SENATOR CARLTON:

Is this information available on the Internet when you research your car? Can I do some comparison shopping over the Internet?

SENATOR TOWNSEND:

I believe it is, but I do not know for certain. I would encourage people looking for cars to get on the Internet and educate themselves about each vehicle before they go to a car lot. A good dealer feels better when the customer is armed with as much information as possible, because they know what they are dealing with. It is better for both sides.

I may not have been as articulate as I should have been in the past, but the Chair and I have been working with Assemblywoman Marilyn Kirkpatrick regarding all the abatements. The tax committees have been informed. We are trying to look at this, not just in the context of protecting education relative to abatements, but also their impact on local government and local communities. Assemblywoman Kirkpatrick, Chair of the Assembly Committee on Government Affairs, has done two-years worth on abatements. She will be bringing those with her bill.

MR. NICHOLS:

Mr. Chairman, I believe the bill Senator Townsend is referring to is A.B. 522. And to be honest, I'm not sure that it will come to this

Committee, I think. Because of the nature of ... the bill as amended, it will go to [the Senate Committee on] Taxation.

**ASSEMBLY BILL 522:** Makes various changes relating to energy. (BDR 58-1139)

SENATOR TOWNSEND:

... I would move we amend and do pass Senate Bill 395 with ... amendment no. [sic] 4875 with the language in section 18, regarding the prominent display of auto emissions to be clarified to state that starting ... model year 2010, so it gives some time to do this. That's only about three months away. ... that we provide to the customer the carbon-dioxide vehicle emissions for every new car that ... the dealer represents in a handout form.

CHAIR SCHNEIDER:

Since new cars come out on the market at different times according to the manufacturer, why do we not start doing it January 2010?

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS S.B. 395.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

There being no further business, the Senate Committee on Energy, Infrastructure and Transportation is adjourned at 10:17 a.m.

RESPECTFULLY SUBMITTED:

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Sandra Hudgens,  
Committee Secretary

APPROVED BY:

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Senator Michael A. Schneider, Chair

DATE: \_\_\_\_\_