

Tony P Simmons, PE

January 23, 2024

Senator Dallas Harris

Chair of the Nevada Joint Intermin Standing Committee on Growth and Infrastructure

The Nevada Legislature

401 S. Carson Street

Carson City, NV 89701

RE: Request to be placed on the agenda of the next meeting of the Joint Intermin Standing Committee on Growth and Infrastructure.

Dear Chair Harris.

I ask to be placed on the agenda of the next meeting of the Joint Interim Standing Committee to propose a legislative investigation into miscommunication between attorneys who write the laws of Nevada and the attorneys who execute those laws. Attorneys who write the laws need to understand why other attorneys do not understand the laws.


Sierra Pacific Power Company (SPPC) and Nevada Power Company (NPC) are duty bound to provide transmission, distribution and ancillary (TDA) services to all bundled customers, including customer-generators. On April 10, 2001, an employee of SPPC informed the Assembly Select Committee on Energy that the company was shifting the cost of providing these services to customer-generators from customer-generators to SPPC without a cost benefit study. Four years later, another SPPC clarified that SPPC and NPS were shifting these costs to other customers of the utility.

After those revelations, the Legal Division of the Legislative Counsel were forced to adopt a writing style that I call the "professional's telegraph." Professionals, such as physicians, attorneys, and professional engineers, find a problem with document prepared by another person in the same profession or by their subject matter expert advisor. As a professional courtesy, that professional will include some provision that someone in the same profession or thier subject matter expert advisor would recognize as quirky. This style permits the offending professional to inform his or her client of the problem. There is no malintent on the part of the Legislature's attorneys.

To aid the legislative investigation, draft lists of potential witnesses and reference documents are enclosed along with recommended legislation to strengthen the Public Utilities Commission of Nevada regulatory process. The recommended legislation reduces the miscommunication between the attorneys who write the laws and the attorneys who execute those laws.

The public interest would be well served if the next meeting were scheduled as soon as due process permits. This investigation would remove obstacles to the PUCN evaluation of NV Energy' next integrated resource plan which is due on or before June 1, 2024

Respectfully,


Tony P. Simmons, PE

ENC: Draft lists of potential witnesses, reference documents, and proposed legislation.

Witnesses for the Investigation

The individuals below are identified by records of the Nevada Legislature, the Public Utilities Commission of Nevada, and a video-taped interview of Warren Buffet on March 1, 2016, in Omaha, Nebraska.

1. NVE VP Randy Atkins
2. NVE employee Jeanie Baker, PE
3. NVE General Counsel Brandon Barkhuff
4. Customer-generator Marion Irene Barritt
5. Former State Senator Chris Brooks
6. Berkshire Hathaway CEO Warren Buffet
7. Former PUCN Commissioner Alaina Burtenshaw
8. NVE Energy CEO Douglas Cannon
9. BCP Regulatory Manager David Chairez
10. Former PUCN General Counsel Jan Cohen
11. PUCN Commissioner Tamara Cordova
12. Nevada Attorney Tami D. Cowden
13. PUCN Hearing Officer Samuel Crano
14. PUCN Staff Director Anne-Marie Cuneo
15. PUCN Policy Adviser Adam Danise, PE
16. Former NVE employee Trevor Dillard
17. Former PUCN Attorney Jessica L. S. Diss
18. District Court Judge Kathleen Drakulich
19. Former NVE VP Sean Elicequi
20. Former NV Energy (NVE) attorney Elizabeth Elliot
21. Attorney General Arron Ford
22. Consumer Advocate Ernest Figueroa
23. PUCN Attorney Daniel Haggarty
24. Nevada State Senator Dallas Harris
25. Former Consumer's Advocate Timothy Hay
26. Berkshire Hathaway Energy General Counsel Natalie Hocken
27. Former PUCN Executive Director Crystal Jackson
28. Former Attorney General Adam Laxalt
29. PUCN Staff Counsel Don Lomoljo
30. PUCN Staff Engineer Percival Lucban
31. PUCN Manager of Engineering Paul Maguire, PE
32. Former PUCN Commissioner Carla Manthe
33. Former NVE VP Jack McGinley
34. PUCN Executive Director Stephanie Mullen
35. Former NVE Employee Duane L. Nelson
36. PUCN Manager of Consumer Complaint Resolution Kellie Nichols
37. Former PUCN Commission David S. Noble
38. PUCN Assistant Staff Counsel Jesse Panoff
39. LCB Attorney Kevin C. Powers
40. Former Governor Brian Sandoval
41. Former NVE non-executive CEO Phillip Satre
42. Senior Deputy Attorney General Michael Saunders
43. Former Consumer's Advocate Fred Schmidt
44. Former NVE employee Tony P. Simmons, PE
45. Former Governor Steven F. Sisolak
46. NVE VP Marie Steele
47. Senior Deputy Attorney General Paul Stuff
48. Former PUCN General Counsel Carolina Tanner
49. Former PUCN Commissioner Paul Thomsen

50. Former PUCN Commissioner Rebecca Wagner
51. Former NVE employee Laura Walsh
52. PUCN General Counsel Garret Weir
53. NVE VP Janet Wells
54. NVE Director Kimberly Williams

55. PUCN Chair Hayley Williamson
56. District Court Judge James E. Wilson, III
57. Former Consumer's Advocate Eric Witkowski
58. All administrative attorneys who worked for PUCN since June 1, 2013

Reference Documents for the investigation.

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| <ol style="list-style-type: none"> 1. Public Utility Regulatory Policy Act of 1978 (PURPA) 2. NRS Chapter 625 3. NRS Chapter 703 4. NRS Chapter 704 5. The record of 1997 Senate Bill 255 6. The record of PUCN Docket No. 97-08045 7. The record of PUCN Docket No 97-10003 8. The record of 2001 Assembly Bill 661 9. The record of 2003 Assembly Bill 429 10. The record of 2005 Assembly Bill 236 11. The record PUCN Docket No. 05-10018 12. The record PUCN Docket No. 05-10019 13. The record of 2007 Assembly Bill 178 14. The record of 2007 Senate Bill 437 15. The record of PUCN Docket No. 07-06024 16. The record of PUCN Dockets No. 09-03010 17. The record of PUCN Docket No. 09-03011 18. The record of 2009 Assembly Bill 510 19. The record of 2009 Assembly Bill 428 20. The record of PUCN Docket No. 10-02009 21. The record of 2011 Senate Bill 59 22. The record of PUCN Docket No. 12-02013 23. The record of 2013 Assembly Bill 428 | <ol style="list-style-type: none"> 24. The May 29, 2013, NV Energy press release announcing the acquisition of Nevada Power Company (NPC) and Sierra Pacific Power Company (SPPC) by MidAmerican Energy Holding Company (MEHC). 25. The record of PUCN Docket No. 13-07010 26. The record of PUCN Docket No. 14-03026 27. The record of PUCN Docket No. 14-09015 28. The record of 2015 Senate Bill 374 29. The record of PUCN Docket No. 15-07041 30. The record of PUCN Docket No. 15-07041 31. Video interview of Warren Buffet at https://youtu.be/-Yqh9jxM9S4 32. The record of PUCN Docket No. 16-07028 33. The record of PUCN Docket No. 16.-07029 34. September 14, 2016, press release regarding the court order issued in the <i>Vote Solar vs The PUCN</i> 35. September 20, 2016, Las Vegas Review Journal news article announcing that PUCN Commissioners Burtenshaw and Noble would be replaced. 36. Commissioners 37. The record of 2017 Assembly Bill 405 |
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38. The record of PUCN Docket No. 17-07026
39. The record of 2019 Assembly Bill 265
40. The record of 2019 Senate Bill 300
41. The record of PUCN Docket No. 19-06008
42. The record of PUCN Docket No. 22-04027
43. The record of PUCN File No. 55-2216-KN
44. The PUCN response to public records request by Tony P Simmons that was submitted on August 18, 2023
45. The Office of the Attorney General's response to public records request by Tony P Simmons that was submitted on August 18, 2023
46. The Office of the Governor's response to public records request by Tony P Simmons that was submitted on August 18, 2023
47. The record of 2023 Assembly Bill 315
48. The record of 2023 Assembly Bill 425
49. The record of 2023 Senate Bill 293
50. The record of PUCN Docket No. 23-03005
51. The record of PUCN Docket No. 23-06007.
52. The record of PUCN Docket No. 23-07026
53. The record of PUCN Docket No. 23
54. The work product of the LCB Legal Division regarding the legislation cited above.

Revision to NRS Chapter 7

SEC 1. Revise Chapter 7 to clarify that all attorneys who participate in judicial proceeding that results in a court order have duty to ensure that the court order is fully executed

Revisions to NRS Chapter 22 Contempt

SEC 2. Revise Chapter 2 to clarify that failure to execute a court order is a form of contempt.

Revisions to NRS Chapter 218F

SEC 3. NRS Chapter 218F. Add NRS 218F.151 to permit the Legal Division of the Nevada Legislative Counsel to release the work product underlying NRS 228.390 §1(d), NRS 704.7732, NRS 704.7735, NRS 704.774 §1(c), NRS 704.775 §(2)(c)(4), NRS 704.776, 2013 Assembly Bill sections 25.2, 25.25, 25.3, 25.4, 25.45, 25.55, and 2015 Senate Bill section 4.5

Revisions to NRS Chapter 228

SEC 4. Add a section to NRS 228 that creates the position of Director of Regulatory Operation who must be a professional electrical engineer (electrical PE) who is appointed the Attorney General. This would ensure that the Consumer's Advocate could finally and effectively represent the public interest in an engineering due diligence process.

Commentary. Records of 1997 Senate Bill 255 and 2001 Assembly Bill 661 contain patently false statements by the Consumer's Advocates Fred Schmitt and Timothy Hay regarding the benefits of PV systems. If the Consumer's Advocates had provided technically correct information to the legislative record at those times, the current energy crisis would have been averted.

Revisions to NRS Chapter 396

SEC 5. Amend NRS Chapter 396 to direct the Nevada System of Higher Education to develop a program to provide training regarding NRS Chapters 625, 703, 704 and other state and federal law regarding the rate design of electric utilities.

Revisions to NRS Chapter 625

SEC 6. NRS 625.095(2)(a) is repealed. **Commentary.** This exemption was created in 1965. Prior to that, state laws required that engineering cost-of-service studies be prepared under the responsible charge of and then signed, sealed or stamped, and dated by a PE. Nationally, this exemption has been proven to be detrimental to natural gas safety. The National Transportation Safety Board has that engineers who are the safety of natural gas systems be licensed as professional engineers. The 22-year long controversy over the rate design for customer generators demonstrates that the exemption has had an adverse impact on electric service.

SEC 7. NRS 625.XXX "Public authority" defined. "Public authority" includes, without limitation, any agency that is funded in whole or in part by federal, state, county, city or other public money, including, without limitation, a planning department, building department, zoning department, the

Public Utilities Commission of Nevada or the Tahoe Regional Planning Agency. **Commentary.** This statute is modeled after NAC 623.016.

SEC 8. NRS 625.XXX Plans, maps and specifications submitted to public authority: Contents; stamps and signatures.

1. Plans or maps submitted to a public authority must include:

- (a) The name, address, electronic mail address and telephone number of the firm which submits the plans or maps;
- (b) The name and location of the project for which the plans or maps are submitted; and
- (c) The date the plans or maps were printed or finalized for electronic submission and a statement which indicates whether the plans or maps are preliminary or final.

2. If the plans or maps submitted to a public authority are:

- (a) Original plans or maps, each sheet of the plans or maps must be dated, stamped and signed by each licensee who had responsible charge of the work indicated on the sheet. If the licensee is a licensed professional engineer, the licensee must date, stamp and sign the plans for each discipline of engineering for which the licensee is licensed that is related to the work for which the licensee is responsible.
- (b) Copies of the original plans or maps, the cover sheet and the first sheet for each discipline of engineering of the plans must be dated and stamped and include a signature of the licensee who had responsible charge of the work indicated on the sheet.

3. Each set of specifications submitted to a public authority must include a table of contents or cover sheet that:

- (a) Indicates the discipline of engineering that is the source of each specification; and
- (b) Contains the stamp of, and is signed and dated by, each licensee who had responsible charge of that discipline. **Commentary.** The statute is modeled after NAC 625.611

NRS 625.XXX Reports, studies, test results, certifications, and calculations submitted to public authority: Stamps and signatures. Each report, study, test result, certification or calculation which is submitted to a public authority must be stamped, signed and dated by the licensee who had responsible charge of that report, study, test result, certification or calculation. **Commentary** This statute is modeled after NAC 625.612. This statute would have rendered PUCN Dockets No. 14-09015 and No. 22-04027 unnecessary.

SEC 9. NRS 625.XXX Defined "sealed engineering work product" to include documents listed in NAC 611 and NAC 612. **Commentary** This definition will expedite cross examination during the PUCN regulator process and other civil proceedings.

Revisions to NRS Chapter 701

SEC 10. NRS Chapter 701 is hereby amended by section 12.

SEC 11. Revise Chapter 701 to provide for a State Energy Engineer who is appointed by and responsible to Director of the Office of Energy.

Qualifications. No person may be appointed as State Energy Engineer who is not a licensed professional engineer pursuant to the provisions of chapter 625 of NRS and who does not have such training in energy planning and such practical skill and experience as shall fit that person for the position.

Commentary: Since 1919, Nevada law has provided for a professional engineer, designated as the State Engineer (NRS 533.015) to oversee water policy. The failure of the PUCN, the BCP, and the GOE recognize for twenty-two years that NPC and SPPC were not charging general service and residential customer-generators for the cost of transmission, distribution and ancillary (TDA) service evidences the need for an independent PE to advise the Governor on energy policy.

Revisions to NRS Chapter 703

SEC 12. Chapter 703 of NRS is hereby amended by sections 13 through 20, inclusive.

SEC 13. NRS 703.1543 is repealed. **Commentary:** The repeal of NRS 625.095(2)(a) renders this law unnecessary.

SEC 14. NRS 703.310 Section 4 Customer complaints against multiple utilities may be submitted directly to the Commission.

SEC 15. NRS 703.310 Section 5. Customer complaints that potentially affect multiple customers may be submitted directly to the Commission.

Commentary. The complaint process prescribed by 703.310 is designed to resolve issues affecting one customer. The process is secretive and provides no opportunity for the Consumer's Advocate or other affected parties to participate. The cost of notices and the court report are overly burdensome for an individual who has discovered a systemic issue.

SEC 16. Revise NRS 703.030 to increase the number of Commissioners from 3 to 5. Specific that the chair must be professional electrical engineer, the vice chair must be a professional mechanical engineer, and one commissioner must be a professional civil or structural engineer. All candidates receive the training created pursuant to section 4 of this bill immediately after appointment.

SEC 17. NRS 703.XXX Create the position of Chief Executive Director of the PUCN who must be a professional engineer appointed by the Commissioners Assign the duties of the Executive Director to the Chief Executive Director. The Chief Executive Director will delegate administrative duties to the Executive Director. Once the existing Executive Director retires, resigns, or is removed, the position will cease to exist.

NRS 703.YYY Create the Position of Executive Director of Regulatory Operations Staff who must be professional engineer and is appointed by the Commission. Once the existing Director of Regulatory Operations Staff retires, resigns, or is removed, the Director position will cease to exist.

SEC 18. NRS 703.ZZZ. Require the Commission to post the training materials developed pursuant to section 3 of this bill on its website.

SEC 19. NRS 703.3735. Create a statutory requirement that parties seeking judicial review submit a notice to seek judicial and a monthly status report of the judicial review process to the PUCN. **Commentary.** A court order was issued on September in Case No. 16 OC 00052 1B in the First Judicial Court of the State of Nevada in and for Carson City. That court order was never executed. The Court affected Dockets No. 15-07041 and No. 15-07042. The records of those dockets have no record that orders issued in those dockets were adjudicated.

SEC 20. Add a statute that requires PUCN and BCP attorneys and PEs to evaluate all comments for material information that is missing from the record of the docket.

Revisions to NRS Chapter 704

SEC 21. Chapter 704 of NRS is hereby amended by sections 22 through 28, inclusive.

SEC 22. Revise NRS 704.001 §3 to state: To provide for the safe, economic, efficient, prudent and reliable operation and service of public utilities [pursuant to the provisions of NRS 625.050](#):

SEC 23. NRS 704.041. Each electric utility shall list the charge for energy service, distribution service, transmission service, and each ancillary service separately on the monthly bill. **Commentary:** This statute would clear up the confusion caused by NV Energy's conflation of the avoidable charge for energy service and non-avoidable charges for transmission, distribution, and ancillary (TDA) services and then recovering the charges for TDA services with a volumetric charge.

SEC 24. Reenact NRS 704.7735

SEC 25. Reenact NRS 704.777

SEC 26. NRS 704.XXX Define energy service, distribution service, transmission service, and ancillary services as used in NRS Chapter 704.

Commentary. Ancillary services are defined by NRS 704B.020. Energy service, transmission service, and distribution service are implicitly defined by the FERC Uniform Systems of Accounts.

SEC 27. Repeal 704.761 through 704.7622, inclusive. **Commentary** The PUCN has failed to develop a credible "alternative making mechanism." The customer complaint provisions in section 6 of this statute rendered the alternative rate-making mechanism logistically infeasible. The record of PUCN Docket 16-06008 evidences that no employee of the PUCN or BCP recognized the logistic infeasibility of the administrative processing of customer complaints rendered alternative ratemaking unworkable. This commentary applies to NRS 704.7611 through NRS 704.7622, inclusive.

SEC 28. NRS 704.XXX As soon as practicable after the effective date of this act, the Public Utilities Commission of Nevada shall open an investigatory docket to examine the comprehensive costs of and benefits from net metering in this State, including, without limitation, the costs and benefits to:

- (a) The State of Nevada;
- (b) Customer-generators who participate in net metering;
- (c) Customers of a utility who do not participate in net metering; and
- (d) Each utility which offers net metering.

2. The investigatory docket shall engage a knowledgeable and independent engineering firm registered with the Nevada Board of Professional Engineers and Land Surveyors to analyze all factors that the Commission or the engineering firm deems necessary to determine the costs and benefits described in subsection 1.

3. The following parties are authorized to participate in the investigatory docket:

- (a) Each utility in this State;
- (b) The Regulatory Operations Staff of the Commission;
- (c) The Consumer's Advocate of the Bureau of Consumer Protection in the Office of the Attorney General;
- (d) Any business operating in the State whose primary business is the installation, operation, and design of distributed generation systems; and
- (e) Any other interested parties.

4. On or before January 1, 2025, the Commission shall:

(a) Prepare a written report of its findings and recommendations from the investigatory docket, including, without limitation, a calculation and determination of the total costs of and benefits from net metering.

(b) Submit the written report to the Director of the Legislative Counsel Bureau for transmittal to the 84th Session of the Nevada Legislature.

5. If the report of the Commission concludes that there is a material net benefit or cost attributable to net metering, the Commission shall recommend a methodology for properly allocating and apportioning all of the costs and benefits of net metering among all persons who participate in, benefit from and pay for net metering.

6. As used in this section:

- (a) "Distributed generation system" has the meaning ascribed to it in NRS 701B.055.
- (b) "Net metering" has the meaning ascribed to it in NRS 704.769.
- (c) "Utility" has the meaning ascribed to it in NRS 704.772.

Commentary. This section is modeled after section 26.5 of 2013 Assembly Bill 428.

Reminders of Existing Duties and Authorities

Commentary. NRS 704.775(2)(c)(4) and NRS 704.773(7) are reminders of the core principles of NRS 704.040 and PURPA. NRS 704.7735 was a reminder of the PUCN's existing powers and authorities. Following those precedents, proposed sections 29, 30, and 31 below are warranted. Proposed section 30 reminds newly elected Governor Lombardo of one of his core constitutional duties.

The record of PUCN Dockets No. 14-09015, No. 22-04027, PUCN Case No. 55-2216-KN, and Executive Director Mullen's presentation to the February 9, meeting of this Committee evidence that she still does not understand her statutory duties after seven years in office. A reminder from the Legislature is warranted.

SEC 29. Existing Article 5 Section 7 of the Nevada Constitution charges the Governor of Nevada with the duty to see that all laws of the state, including NRS 704.773 through NRS 704.776, are faithfully executed.

SEC 30. Existing NRS 703.130(3)(d)(2) charges the Executive Director of the PUCN with the duty to oversee the maintenance of a hearing calendar of all matters pending before the Commission; including PUCN Docket No. 14-09015.

SEC 31. Existing NRS 703.130(3)(d)(2) charges the Executive Director of the PUCN with the duty to oversee compliance with and enforcement of statutes and regulations pertaining to utilities which are regulated by the Commission;

SEC 32. All sections become effective upon passage and approval.

In closing, the public and Legislature would be well served if the Legislature called itself into special session pursuant to Article 2A of the Nevada Constitution. Calling itself into session preserves the separation of powers embedded in Article 3 of the Nevada Constitution and emphasizes to the public the seriousness of the situation.