

History of AB 366 - 1997

Versions: As Introduced First Reprint Second Reprint Third Reprint Fourth Reprint As Enrolled

BDR: 58-1390
Introduced: 04/15/97
Introduced By: Government Affairs

Summary: Reorganizes public service commission of Nevada and makes various changes concerning regulation of utilities and governmental administration. (BDR 58-1390)

Heard in the following Committees:

Assembly: Government Affairs: 5-6; 5-15 sub; 5-22 sub; 5-27 sub; 5-28; 6-30; 7-1

Senate: Commerce and Labor: 1-28; 2-7; 2-13; 3-4; 5-8; 5-9; 5-14; 5-16; 5-20; 5-21; 5-22; 5-27; 5-28; 5-29; 6-3; 6-4; 6-5; 6-9; 6-10; 6-11; 6-12; 6-13; 6-16; 6-17; 6-18; 6-19; 6-20; 6-21; 6-23; 6-24 (2 mtgs); 6-25; 6-27; 6-28; 6-30; 7-2; 7-3

Finance: 3-31; 6-21

Transportation: 6-26; 6-27- 6-28

04/15/97	Read first time. Referred to Committee on Government Affairs. To printer.
04/16/97	From printer. To committee.
05/30/97	From committee: Amend, and do pass as amended.
06/02/97	Taken from Second Reading File. Placed on Chief Clerk's desk.
06/03/97	Taken from Chief Clerk's desk. Placed on Second Reading File. Read second time. Amended. To printer.
06/04/97	From printer. To engrossment. Engrossed. First reprint.
06/05/97	Taken from General File. Placed on Chief Clerk's desk.
06/10/97	Taken from Chief Clerk's desk. Placed on General File. Read third time. Amended. To printer.
06/11/97	From printer. To re-engrossment. Re-engrossed. Second reprint.
06/12/97	Read third time. Passed, as amended. Title approved, as amended. To Senate.
06/13/97	In Senate. Read first time. Referred to Committee on Commerce and Labor. To committee.

06/27/97 From committee: Amend, and re-refer to Committee on Commerce and Labor. Placed on Second Reading File. Read second time. Amended. Re-referred to Committee on Commerce and Labor. To printer.

06/28/97 From printer. To re-engrossment. Re-engrossed. Third reprint. To committee. From committee: Do pass, as amended. Placed on General File. Read third time. Passed, as amended. Title approved, as amended. To Assembly.

06/29/97 In Assembly.

07/02/97 Senate amendment not concurred in. To Senate.

07/03/97 In Senate.

07/05/97 Senate amendment not receded from. Conference requested. First Committee on Conference appointed by Senate. To Assembly. In Assembly. First Committee on Conference appointed by Assembly. To committee. From committee: Concur in Senate amendment and further amend. First Conference report adopted by Assembly.

07/06/97 First Conference report adopted by Senate. To printer. From printer. To re-engrossment. Re-engrossed. Fourth reprint. To enrollment.

07/14/97 Enrolled and delivered to Governor.

07/16/97 Approved by the Governor.

07/17/97 Chapter 482.

Effective Dates:

Sections 4, 20, 21, 22, 27 to 54, inclusive, 230 to 233, inclusive, 320 to 326, inclusive, 334, 335 to 344, inclusive, 345, 346 and 347 of this act effective July 16, 1997.

Sections 1, 2, 3, 5 to 19, inclusive, 23 to 26, inclusive, 55 to 70, inclusive, 71 to 150, inclusive, 152 to 172, inclusive, 174, 176, 178 to 221, inclusive, 223 to 229, inclusive, 234 to 319, inclusive, 327, 328, 329, 331 to 333.5, inclusive, and 334.5 of this act effective October 1, 1997.

Sections 151, 222 and 330 of this act effective 12:01 a.m. October 1, 1997.

Sections 173, 175 and 177 of this act effective on the date provisions of 49 U.S.C. § 11501 are repealed or judicially declared to be invalid.

Sections 134, 174, 176, 178 and 179 of this act expire by limitation on the date provisions of 49 U.S.C. § 11501 are repealed or judicially declared to be invalid.

Section 239 of this act expires by limitation June 30, 2003.



BILL SUMMARY
69th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

ASSEMBLY BILL 366
(Enrolled)

Assembly Bill 366 authorizes the Public Service Commission of Nevada to reorganize itself into sections, alter its organization, and reassign responsibilities of the sections as the commission deems necessary. No later than January 1, 1999, the PUC must establish a plan to reorganize itself. The bill also changes the name of the commission to the Public Utilities Commission (PUC) and reduces the number of commissioners from five to three.

The measure provides that consumers may begin obtaining electric generation, aggregation, and any other potentially competitive service from an alternative seller not later than December 31, 1999, unless the PUC determines that a different date is necessary to protect the public interest. The PUC may phase in different services on different dates in different geographic areas. The PUC shall determine whether a service is potentially competitive and whether or not there is effective competition for a potentially competitive service. For potentially competitive services that do not have effective competition, the PUC shall adopt regulations establishing methods for determining prices as well as terms and conditions for that service. Such regulations must be repealed once effective competition for that service develops.

Assembly Bill 366 prohibits a vertically integrated electric utility from providing a potentially competitive service except through an affiliate in certain instances. The bill also provides that alternative sellers must be licensed by the PUC. The PUC is required to monitor the marketplace and prevent activities inconsistent with the provisions of this bill.

The bill requires an electric distribution utility to continue to provide all noncompetitive services within its territory unless the PUC authorizes another entity to do so. The bill also provides that electric rates for residential service must not exceed the rates charged for that service on July 1, 1997, and the limitation remains in effect until two years after the PUC repeals the regulations establishing the pricing for that service. The measure authorizes the PUC to approve an increase in residential rates in certain circumstances.

In addition, A.B. 366 establishes a mechanism to calculate and recover stranded costs of vertically integrated utilities. The measure also requires the PUC to establish procedures to prevent "slamming" and to adopt uniform standards for information disclosure by sellers of potentially competitive services to ensure that consumers have accurate, reliable information upon which to make an informed decision. Further, the PUC must carry out an educational program pursuant

to a contract with an independent person and is authorized to spend up to \$500,000 from its reserve account for this purpose.

Assembly Bill 366 includes certain provisions relating to the Colorado River Commission and the Southern Nevada Water Authority. The bill also requires the PUC to develop regular forecasts of electric energy and to establish equitable obligations for customers and suppliers to ensure capacity is available. The measure requires the PUC to establish a renewable portfolio energy standard with a gradually increasing percentage of electricity coming from renewable energy sources.

The PUC is required to make quarterly reports to the Legislature, assessing developments in the electric industry in this state. The bill also requires certain reports from the Department of Taxation to be submitted to the Legislature. The PUC must also adopt regulations concerning certain telecommunication services in rural areas. In addition, the bill makes certain changes to the Utility Environmental Protection Act and deferred energy cost accounting for utilities.

Assembly Bill 366 also creates the Transportation Services Authority (TSA), to consist of three members appointed by the Governor to four-year terms. The measure transfers certain PUC authority over surface transportation to the TSA.

Further, the bill creates the Bureau of Consumer Protection within the Office of the Attorney General. The bureau is headed by the Consumer's Advocate.

The bill also makes certain changes in the number of service stations that a refiner may directly operate in this state. On or after July 1, 1997, a refiner shall not directly operate a service station that was leased on or before that date. On or after July 1, 1997, a refiner may operate additional company service stations in this state on a phased-in schedule. The schedule allows a refiner to operate two new company stations in 1997, four in 1998, four in 1999, and five in 2000. After a refiner operates 30 service stations in this state with his own employees or through a subsidiary or commissioned agent, the refiner may only directly operate additional service stations in this state if, during the year in which new service stations are added, he leases at least one additional service station to a lessee dealer for every two directly operated service stations added.

Certain portions of the bill are effective on July 16, 1997. Other provisions of the measure are effective on July 1, 1997, and October 1, 1997.

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- As Introduced -
A.B. 366

ASSEMBLY BILL NO. 366-COMMITTEE ON GOVERNMENT AFFAIRS

APRIL 15, 1997

Referred to Committee on Government Affairs

SUMMARY—Revises provisions for regulation of electric service to allow customers direct access to alternative sellers of electric services. (BDR 58-1390)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.



EXPLANATION - Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to electric service; revising provisions for the regulation of electric service to allow customers direct access to alternative sellers of electric services; requiring the central assessment of certain property; requiring the executive director of the department of taxation to submit a report to the legislature; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Chapter 704 of NRS is hereby amended by adding thereto
- 2 the provisions set forth as sections 2 to 23, inclusive, of this act.
- 3 Sec. 2. *As used in sections 2 to 23, inclusive, of this act, unless the*
- 4 *context otherwise requires, the words and terms defined in sections 3 to 11,*
- 5 *inclusive, of this act, have the meanings ascribed to them in those sections.*
- 6 Sec. 3. *"Aggregation service" is the service of buying electricity and*
- 7 *reselling or otherwise supplying electricity to a customer, but the term does*
- 8 *not include the provision of basic electric service.*
- 9 Sec. 4. *"Alternative seller" means a seller, other than an electric utility,*
- 10 *of any electric service. The term includes an affiliate of an electric utility.*
- 11 Sec. 5. *"Customer" means the retail purchaser of electric service.*
- 12 Sec. 6. *"Effective competition" means a market structure and a process*
- 13 *under which, as a result of:*
 - 14 1. *The number of sellers of the service;*
 - 15 2. *The size of each seller's share of the market; and*
 - 16 3. *The ability of the sellers to enter or exit the market,*
 - 17 *an individual seller is not able to influence significantly the price of the*
 - 18 *service.*



1 Sec. 7. "Electric service" includes generation service, aggregation
2 service and any other service or function provided, as of December 31,
3 1996, by an electric utility.

4 Sec. 8. 1. "Electric utility" means any public utility in the business of
5 supplying electricity or its successor in interest that, as of December 31,
6 1996:

7 (a) Held a certificate of public convenience and necessity issued pursuant
8 to NRS 704.005 to 704.751, inclusive; and

9 (b) Had an annual operating revenue of \$250,000,000 or more.

10 2. The term does not include a nonprofit cooperative which:

11 (a) Provides service only to its members; and

12 (b) Allows its members to obtain services from alternative sellers.

13 Sec. 9. "Generation service" means the sale of electricity or capacity by
14 the owner of equipment that converts other forms of energy into electricity.

15 Sec. 10. "Noncompetitive service" means a transmission, distribution or
16 other electric service determined by statute or regulation to be unsuitable for
17 inclusion in a system under which the retail customer may purchase the
18 service from an alternative seller.

19 Sec. 11. "Potentially competitive service" means an electric service
20 determined by the commission to be suitable for inclusion in a system under
21 which the retail customer may purchase the service from an alternative
22 seller.

23 Sec. 12. 1. Not later than January 1, 1999, the commission shall set
24 forth by regulation the date upon which customers may begin obtaining from
25 an alternative seller generation, aggregation and any other service
26 determined by the commission to be potentially competitive. The commission
27 may:

28 (a) Establish different dates for the provision of different services by
29 alternative sellers in different geographic areas;

30 (b) Authorize, in gradual phases, the right to buy from alternative sellers;
31 and

32 (c) Authorize pilot programs that do not allow discrimination among the
33 classes of residential, commercial and industrial customers.

34 2. The commission shall determine that an electric service is a
35 potentially competitive service if the service provided by the alternative
36 seller:

37 (a) Will not harm one or more classes of customers;

38 (b) Will decrease the cost of providing service to customers in this state or
39 increase the quality or innovation of service to customers in this state;

40 (c) Is a service for which effective competition in the market is likely to
41 develop;

42 (d) Will advance the competitive position of this state relative to
43 surrounding states; and



1 (e) Will not otherwise jeopardize the safety and reliability of the electric
2 service in this state.

3 3. In determining whether effective competition is likely to develop in a
4 market for a potentially competitive service, the commission shall:

5 (a) Identify the relevant market;

6 (b) Identify the alternative sellers that participate in the relevant market;
7 and

8 (c) Calculate the market share of each participant in the market and
9 evaluate the significance of each share.

10 4. If the commission determines that a market for a potentially
11 competitive service does not include effective competition, the commission
12 shall, by regulation, establish the method for determining prices for the
13 service and the terms and conditions for providing the service. The
14 regulations must ensure that the pricing method, terms and conditions are
15 just and reasonable and not unduly discriminatory. The regulations may
16 include pricing alternatives which authorize the seller to reduce prices below
17 maximum pricing levels specified by the commission or any other form of
18 alternative pricing which the commission determines to be consistent with the
19 provisions of this section. Upon a subsequent finding by the commission that
20 the market for that service has become effectively competitive, the
21 commission shall repeal the regulations which established the pricing method
22 for that service and the terms and conditions for providing that service.

23 5. The commission may reconsider any determination made pursuant to
24 this section upon its own motion or upon a showing of good cause by a party
25 requesting a reconsideration.

26 Sec. 13. 1. It is unlawful for an alternative seller to sell any electric
27 service to a customer for consumption within this state without having first
28 obtained a license from the commission to do so.

29 2. Not later than January 1, 1999, the commission shall by regulation
30 set forth the procedures and conditions that alternative sellers must satisfy
31 before obtaining a license to sell services to a customer in this state,
32 including, but not limited to, procedures and conditions relating to:

33 (a) Safety;

34 (b) Reliability of service;

35 (c) Financial reliability;

36 (d) Fitness to serve customers; and

37 (e) Billing practices and customer service, including the initiation and
38 termination of service.

39 3. The commission may limit, suspend or revoke a license issued to an
40 alternate seller if the action is necessary to protect the interests of the public
41 or to enforce the provisions of sections 2 to 23, inclusive, of this act or of a
42 regulation of the commission.



1 *Sec. 14. 1. The commission shall prohibit a provider of a*
2 *noncompetitive service from providing a potentially competitive service,*
3 *except through an affiliate.*

4 *2. The commission shall require each provider of a noncompetitive*
5 *service that is necessary to the provision of a potentially competitive service*
6 *to make its facilities or services equally available to all alternative sellers.*

7 *Sec. 15. 1. The commission shall monitor the markets for electric*
8 *services affected by sections 2 to 23, inclusive, of this act to identify,*
9 *prevent, terminate and provide remedies for anticompetitive conduct. The*
10 *commission shall:*

11 *(a) Establish standards of conduct related to activities that are*
12 *anticompetitive, including penalties for violation of the standards; and*

13 *(b) Establish conditions and limitations on the ownership of the assets of a*
14 *provider of an electric service to minimize the incidence of anticompetitive*
15 *conduct, taking into consideration financial obligations that a provider of an*
16 *electric service incurred before July 1, 1997, to carry out a statutory*
17 *obligation of a public utility.*

18 *2. Upon a showing of good cause by a party requesting an investigation*
19 *or upon a motion of the commission, the commission shall conduct an*
20 *investigation of the operation of a market for an electric service in this state.*
21 *The investigation must include, but is not limited to, the effect on the market*
22 *of:*

23 *(a) Mergers, consolidations or acquisitions of the assets or the securities*
24 *of providers of electric services;*

25 *(b) The disposition of ownership, management or operation of the assets*
26 *of providers of electric services;*

27 *(c) Transmission congestion or constraints; and*

28 *(d) Anticompetitive or discriminatory conduct.*

29 *3. The commission may require an alternative seller or an electric utility*
30 *to provide information, including documents and testimony, in accordance*
31 *with the regulations of the commission relating to the discovery of*
32 *information for a provider of electric service.*

33 *4. Upon a determination by the commission that anticompetitive or*
34 *discriminatory conduct, including the unlawful exercise of market power, is*
35 *denying customers the benefits of effective competition in a market for*
36 *electric services, the commission shall inform the attorney general of a*
37 *violation of the law of this state and inform the United States Department of*
38 *Justice and any appropriate federal agency of a violation of federal law.*

39 *5. Statutory or regulatory provisions, including, but not limited to, NRS*
40 *703.196, relating to the disclosure of confidential, proprietary or trade*
41 *secret information notwithstanding, the commission shall disclose*
42 *information obtained pursuant to this section to the attorney general with an*
43 *appropriate agreement regarding confidentiality. The commission may*
44 *disclose information to federal officers upon a determination by the*



1 commission that disclosure is necessary to prevent or restrain a violation of
2 federal law. Before making a disclosure pursuant to this subsection, the
3 commission shall provide the author or owner of the information with
4 reasonable notice of its intention to disclose and opportunity to prevent or
5 limit the disclosure.

6 **Sec. 16.** 1. The affiliate of a provider of a noncompetitive service may
7 provide a potentially competitive service upon a finding that:

8 (a) The affiliate will have, with respect to the provision of the services, an
9 arm's length relationship with the entity that provides the noncompetitive
10 service;

11 (b) The business or organizational relationship, or both, between the
12 provider of the noncompetitive electric service and the affiliate providing the
13 competitive service does not interfere with the development of effective
14 competition; and

15 (c) The risk of anticompetitive behavior by the provider of a
16 noncompetitive service or the affiliate providing the competitive service, or
17 both, is minimal and the regulatory expenses to prevent the anticompetitive
18 behavior are minimal.

19 2. The commission shall adopt regulations which specify the information
20 which must be submitted and the procedure which will be used to process a
21 request by an affiliate of a noncompetitive service for authorization to
22 provide a potentially competitive service. The procedure must provide an
23 opportunity for the affiliate to obtain a determination from the commission
24 regarding its request to provide competitive services not later than 6 months
25 before the date on which alternative sellers may begin providing competitive
26 services.

27 3. If the commission determines that an affiliate of a provider of a
28 noncompetitive service cannot provide a competitive service pursuant to the
29 provisions of this subsection, and the provider of the noncompetitive service
30 is an electric utility, the commission shall, pursuant to section 19 of this act,
31 give the utility a reasonable opportunity to recover the costs incurred for the
32 services the utility will not provide in the future.

33 **Sec. 17.** 1. An electric utility shall provide all noncompetitive services
34 within its territory unless the commission authorizes another entity to provide
35 the noncompetitive service.

36 2. Transmission service and distribution service shall be deemed
37 noncompetitive services by the commission. Except as otherwise provided in
38 subsection 3, a noncompetitive service is subject to NRS 704.001 to 704.655,
39 inclusive, 704.701 to 704.751, inclusive, and 704.800 to 704.900, inclusive.

40 3. The commission shall adopt regulations that permit innovative pricing
41 methods upon a finding that the innovative pricing, when compared to
42 pricing pursuant to subsection 2, improves the performance of the service or
43 lowers the cost of the service to the customer, or both. The regulations for
44 innovative pricing must specify:



1 (a) The provisions that must be included in a plan of innovative pricing;
2 (b) The procedures for submitting an innovative plan for pricing to the
3 commission for approval and implementation; and

4 (c) Which provisions of this chapter do not apply to pricing changes that
5 are made during the period in which the innovative pricing plan is in effect.

6 4. The commission shall adopt regulations which ensure that a person
7 who owns a transmission or distribution facility, or both, or a facility that
8 provides access to a potentially competitive service shall make the facilities
9 available, on a comparable basis, to all alternative sellers or to the
10 customers of the alternative sellers, or both, as the commission may
11 determine.

12 Sec. 18. 1. If customers are unable to obtain electric service or fail to
13 select a provider of a potentially competitive service, the commission shall
14 designate an electric utility to provide electric service to those customers.
15 The provider so designated by the commission is obligated to provide service
16 to the customers. Service provided by the utility pursuant to this subsection
17 shall be deemed a noncompetitive service for which the utility may recover
18 its costs pursuant to NRS 704.001 to 704.655, inclusive, 704.701 to
19 704.751, inclusive, and 704.800 to 704.900, inclusive.

20 2. Upon a finding by the commission that the public interest will be
21 promoted, the commission may prescribe alternate methods for providing
22 electric service to those customers described in subsection 1. The alternate
23 methods may include, but are not limited to, the direct assignment of
24 customers to alternative sellers or a process of competitive bidding for the
25 right to provide electric service to the designated customers.

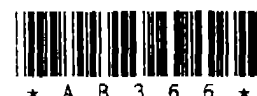
26 3. The commission shall establish minimum terms and conditions under
27 which basic service must be provided, including a minimum period during
28 which a customer must continue to take basic service. The price charged for
29 basic service for a particular group of customers must reflect the incremental
30 cost of serving the group.

31 4. If the provider of basic service is an electric utility, the utility shall
32 provide the basic service through an affiliate whose sole business activity is
33 the provision of basic service.

34 Sec. 19. 1. The commission shall fairly apportion between the
35 shareholders and ratepayers the costs for assets that are documented in the
36 accounting records of an electric utility as of July 1, 1997 which are
37 properly allocable to a potentially competitive service taking into account:

38 (a) The extent to which the electric utility was legally required to incur
39 the costs for the assets;

40 (b) The extent to which the market value of the assets of the utility
41 relating to the provision of potentially competitive services exceeds the costs
42 for the assets;



1 (c) The effectiveness of the efforts of the electric utility to increase and
2 realize the market value of any assets associated with the provision of
3 potentially competitive services;

4 (d) The extent to which the rates previously established by the commission
5 have compensated shareholders for the risk of not recovering the costs for
6 the assets;

7 (e) The effects of the difference between the market value and the cost
8 documented in the accounting records for the assets on the taxes for those
9 assets;

10 (f) If the electric utility had the discretion to determine whether to incur
11 the costs, the conduct of the electric utility with respect to the costs for the
12 assets when compared to other utilities with similar obligations to serve the
13 public.

14 2. For the purposes of this section, the commission may impose a
15 procedure for the direct and unavoidable recovery from ratepayers of a
16 portion of the past costs which are determined by the commission to be owed
17 by the ratepayers. The procedure must include a determination of:

18 (a) The period over which the recovery may occur; and

19 (b) Whether the costs are to be recovered from the customers or the
20 sellers.

21 Such a determination must not discriminate against a participant in the
22 market.

23 **Sec. 20.** 1. The commission shall establish procedures to ensure that a
24 customer of an alternative seller is not switched to another alternative seller
25 without a reliable confirmation of the customer's intent to make such a
26 change and approval of the specific details of the change.

27 2. The commission shall establish minimum and uniform standards for
28 the form and content of all disclosures, explanations or sales information
29 disseminated by a person selling a potentially competitive service to ensure
30 that the person provides adequate, accurate and understandable information
31 about the service which enables a customer to make an informed decision
32 relating to the source and type of service purchased.

33 3. The commission, before authorizing direct access to alternative sellers
34 for an electric service, shall carry out an educational program for customers
35 to:

36 (a) Inform customers of the changes in the provision of electric service,
37 including, but not limited to, the availability of alternate providers of electric
38 service;

39 (b) Inform customers of the requirements relating to disclosures,
40 explanations or sales information for sellers of potentially competitive
41 services; and

42 (c) Provide assistance to customers in understanding and using the
43 information to make reasonably informed choices about which service to
44 purchase and from whom to purchase it.



1 *Sec. 21. 1. An electric utility shall submit to the commission, pursuant*
2 *to a schedule established by the commission, a plan for compliance with the*
3 *requirements set forth in sections 2 to 23, inclusive, of this act and the*
4 *applicable regulations. The utility shall include with the schedule any*
5 *information the commission needs to:*

- 6 (i) *Set rates for electric services, such as:*
7 (1) *A statement of costs of the utility to provide the service.*
8 (2) *An estimate of the revenue required by the utility.*
9 (ii) *Allocate among customers the costs of service and the requirements*
10 *for revenues for noncompetitive services.*
11 (iii) *Adopt regulations for potentially competitive services if a market is not*
12 *sufficiently competitive.*

13 2. *The commission may exempt an electric utility or an alternative*
14 *seller, or both, from the strict application of any provision of this chapter,*
15 *other than the provisions of sections 2 to 23, inclusive, of this act, upon a*
16 *determination by the commission that the exemption is necessary to achieve*
17 *effective competition within the electric industry.*

18 *Sec. 22. 1. The commission shall develop and publish a plan for the*
19 *integration of services. The plan must:*

- 20 (i) *Be first published on July 1, 2000, and every third year thereafter.*
21 (ii) *Be based upon the information filed pursuant to subsection 2.*
22 (iii) *Include forecasts of electric capacity and energy.*
23 (iv) *Identify and consider any present and projected reductions in the*
24 *demand for energy that may result from the measures to improve energy*
25 *efficiency in the industrial, commercial, residential and energy-producing*
26 *sectors of the area being served.*
27 (v) *Evaluate the economic, environmental and other benefits to this state*
28 *and to the customers of the electric utilities associated with the following*
29 *possible sources of supply and methods to reduce demand:*
30 (1) *Improvements in the efficient production and use of energy;*
31 (2) *Pooling of power;*
32 (3) *Purchases of power from other states or countries;*
33 (4) *Facilities that operate on solar or geothermal energy or wind;*
34 (5) *Facilities that operate on the principle of cogeneration or*
35 *hydrogeneration; and*
36 (6) *Other generation facilities.*
37 (vi) *Identify the best combination of sources of supply and methods to*
38 *reduce demands available to meet forecast requirements.*
39 (vii) *Determine whether the combination of sources and methods described*
40 *in paragraph (f) will be available to customers at a reasonable price and will*
41 *be selected by customers after the commission has authorized direct access to*
42 *potentially competitive service. If the commission determines that the*
43 *combination of sources and methods will not be available to customers at a*
44 *reasonable price, the commission may establish reasonable obligations for*



1 customers, electric utilities or alternative sellers to ensure that the optimal
2 combination of sources of supply and methods to reduce demand is achieved.
3 Any obligation that discriminates against or unduly burdens an electric
4 utility, an alternative seller or a customer is not reasonable and may not be
5 imposed by the commission. The commission may give preference to the
6 source and methods identified in paragraph (e) that will provide the greatest
7 economic and environmental benefits to this state and will provide adequate
8 and reliable service.

9 2. Each entity providing a potentially competitive service or a
10 noncompetitive service shall submit to the commission annually, commencing
11 on March 15, 1999, in the format prescribed by the commission, information
12 that the commission determines is necessary to:

13 (a) Monitor the development of competition to provide electric services;

14 (b) Ensure the availability of adequate, reliable, efficient and economic
15 electric service; and

16 (c) Develop and implement the integrated resource plan pursuant to this
17 section.

18 **Sec. 23.** The commission shall prepare a quarterly report for the
19 legislature that assesses the developments in the electric industry in Nevada.
20 The reports must be submitted to the director of the legislative counsel
21 bureau for transmittal to the legislature and must include, but are not limited
22 to, a discussion of:

23 1. Whether there is effective competition for each potentially competitive
24 service;

25 2. The compatibility of direct access for retail customers to alternative
26 sellers with environmental goals;

27 3. The effects of direct access for retail customers to alternative sellers
28 on each class of customers, compared to the noncompetitive regulatory
29 structure;

30 4. The opportunities to cooperate, formally or informally, with other
31 states or the Federal Government in the implementation of effective
32 competition; and

33 5. Further legislation necessary to achieve the goals of sections 2 to 23,
34 inclusive, of this act.

35 **Sec. 24.** NRS 361.320 is hereby amended to read as follows:

36 361.320 1. At the regular session of the Nevada tax commission
37 commencing on the [1st] first Monday in October of each year, the Nevada
38 tax commission shall establish the valuation for assessment purposes of any
39 property of an interstate and intercounty nature, which must in any event
40 include the property of all interstate or intercounty railroad, sleeping car,
41 private car, street railway, traction, telegraph, water, telephone, air
42 transport, electric light and power companies, together with their franchises,
43 and the property and franchises of all railway express companies operating



1 on any common or contract carrier in this state. This valuation must not
2 include the value of vehicles as defined in NRS 371.020.

3 2. Except as otherwise provided in subsection 3 and NRS 361.323, the
4 commission shall establish and fix the valuation of the franchise, if any, and
5 all physical property used directly in the operation of any such business of
6 any such company in this state, as a collective unit. If the company is
7 operating in more than one county, on establishing the unit valuation for the
8 collective property, the commission shall then determine the total aggregate
9 mileage operated within the state and within its several counties, and
10 apportion the mileage upon a mile-unit valuation basis. The number of miles
11 apportioned to any county are subject to assessment in that county according
12 to the mile-unit valuation established by the commission.

13 3. After establishing the valuation, as a collective unit, of a public utility
14 which generates, transmits or distributes electricity, the commission shall
15 segregate the value of any project in this state for the generation of
16 electricity which is not yet put to use. This value must be assessed in the
17 county where the project is located and must be taxed at the same rate as
18 other property.

19 4. The Nevada tax commission shall adopt formulas, and cause them to
20 be incorporated in its records, providing the method or methods pursued in
21 fixing and establishing the taxable value of all franchises and property
22 assessed by it. The formulas must be adopted and may be changed from time
23 to time upon its own motion or when made necessary by judicial decisions,
24 but the formulas must in any event show all the elements of value considered
25 by the commission in arriving at and fixing the value for any class of
26 property assessed by it. These formulas must take into account, as indicators
27 of value, the company's income, stock and debt, and the cost of its assets.

28 5. *If two or more persons perform separate functions that collectively*
29 *are needed to deliver electric service to the final customer and the property*
30 *used in performing the functions would be centrally assessed if owned by one*
31 *person, the Nevada tax commission shall establish its valuation and*
32 *apportion the valuation among the several counties in the same manner as*
33 *the valuation of other centrally assessed property. The Nevada tax*
34 *commission shall determine the proportion of the tax levied upon the*
35 *property by each county according to the valuation of the contribution of*
36 *each person to the aggregate valuation of the property. This subsection does*
37 *not apply to qualified facilities, as defined in 18 C.F.R. § 292.101, which*
38 *were constructed before July 1, 1997.*

39 6. As used in this section, [the word] "company" means any person,
40 company, corporation or association engaged in the business described.

41 [6.] 7. All other property must be assessed by the county assessors,
42 except as provided in NRS 361.321 and 362.100 and except that the
43 valuation of land and mobile homes must be established for assessment
44 purposes by the Nevada tax commission as provided in NRS 361.325.



1 [7.] 8. On or before November 1 of each year the department shall
2 forward a tax statement to each private car line company based on the
3 valuation established pursuant to this section and in accordance with the tax
4 levies of the several districts in each county. The company shall remit the ad
5 valorem taxes due on or before December 15 to the department which shall
6 allocate the taxes due each county on a mile-unit basis and remit the taxes to
7 the counties no later than January 31. The portion of the taxes which is due
8 the state must be transmitted directly to the state treasurer. A company
9 which fails to pay the tax within the time required shall pay a penalty of 10
10 percent of the tax due or \$5,000, whichever is greater, in addition to the tax.
11 Any amount paid as a penalty must be deposited in the state general fund.
12 The department may, for good cause shown, waive the payment of a penalty
13 pursuant to this subsection. As an alternative to any other method of
14 recovering delinquent taxes provided by this chapter, the attorney general
15 may bring a civil action in a court of competent jurisdiction to recover
16 delinquent taxes due under this subsection in the manner provided in NRS
17 361.560.

18 **Sec. 25.** NRS 704.736, 704.741, 704.746 and 704.751 are hereby
19 repealed.

20 **Sec. 26.** The executive director of the department of taxation shall, not
21 later than January 1, 1999, submit to the director of the legislative counsel
22 bureau for distribution to the legislature a report including, but not limited
23 to:

- 24 1. An analysis of the effect of the tax policies of this state on:
25 (a) The potential for effective competition in providing electric services to
26 customers; and
27 (b) The effect of competition in providing electric services to customers
28 on the tax revenue of this state and local governments.

29 2. Recommendations for legislation that would advance the purposes of
30 sections 2 to 23, inclusive, of this act and ensure a minimal effect on the tax
31 revenue of this state and local governments.

32 **Sec. 27.** The provisions of subsection 1 of NRS 354.599 do not apply to
33 any additional expenses of a local government that are related to the
34 provisions of this act.

35 **Sec. 28.** 1. This section and sections 1 to 24, inclusive, 26 and 27 of
36 this act become effective on July 1, 1997.

37 2. Section 25 of this act becomes effective on July 1, 2000.

LEADLINES OF REPEALED SECTIONS

704.736 Applicability of NRS 704.741 to 704.751, inclusive.



704.741 Plan to increase supply or decrease demands: Triennial submission required; contents prescribed by regulation.

704.746 Public hearing on adequacy of plan; determination by commission.

704.751 Order accepting plan or specifying inadequacies; recovery of costs from customers.

30



* A B 3 6 6 *

EXECUTIVE AGENCY
FISCAL NOTE

STATE AGENCY'S ESTIMATES

Date Prepared May 2, 1997 Agency Submitting: DEPARTMENT OF TAXATION

Items of Revenue or Expense or Both	Fiscal Year 1996-97	Fiscal Year 1997-98	Fiscal Year 1998-99	Continuing (Y/N)
<u>Revenue Gain</u>				
State and Local Governments	-	-	\$ 2,334,045	Y
Total	-	-	\$ 2,334,045	

Explanation (Use additional sheets or attachments, as necessary)

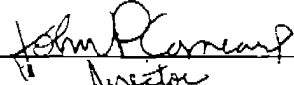
See attached narrative

Signature Title EXECUTIVE DIRECTOR

DEPARTMENT OF ADMINISTRATION'S COMMENTS

Date May 16, 1997

On the basis of the assumptions used by the agency, the projections are reasonable.

Signature Title DirectorFISCAL EFFECT ON LOCAL GOVERNMENT
(LCB Fiscal Division Use Only)

Date _____

Signature _____

Title Deputy Fiscal Analyst

BDR 58-1390 Analysis: Potential change of state-wide property tax revenue due to legislative changes allowing customers to have direct access to alternate sellers of electricity.

The data used to provide this estimate of property tax revenue change was provided by the utility section of the Department of Taxation, with certain input from the Public Service Commission. This is a model for projecting the property tax impact when certain in-state electric sales and generation is replaced by lower cost out-of-state generated electricity, such as hydropower. The following hypothetical situations are best guess estimates as no data is available on this matter.

The electric generating facilities located in Nevada are centrally assessed by Department of Taxation staff. Also, additional out-of-state electric operations are centrally assessed by Department staff. The total appraised value of the in-state and out-of-state electric facilities was \$17.8 billion for 1997-98. The Nevada property tax assessed value from the appraisals of these 21 electric utility firms was \$1.2 billion. The appraisals of the 21 electric utilities included companies such as Sierra Pacific Power and Southern California Edison. The 1996-97 and 1997-98 values shown below are actual total assessments allocated to the counties. The 1998-99 and continued values are estimated using hypothetical power purchases made by consumers and the resulting affect on assessed values.

Assessed values of electric utilities in Nevada increased approximately 10% from 1996-97 to 1997-98. This percentage is used in this model for continued growth about three years hence. This model leaves in-state assessed value at the 1997-98 level for three projected years by assuming any new plant investment would be offset by depreciation of the existing plant. The growth in present consumer power usage and corresponding utility investment has been reflected in the appraisals conducted by Department staff.

This model assumes 20% of Nevada power consumers will opt for lower cost wheeled-in out-of-state electricity. This 20% is approximately \$250,000,000 of present power sales in Nevada. Also, it is assumed this power will cost 15% less than existing in-state power. This is the incentive to switch power vendors. It is assumed that in-state producers will reduce consumer prices in an attempt to be competitive. Present electric utility appraisals in Nevada indicate that the cost indicator of value is the best indicator of value. The 20% loss in consumer energy revenue would be partially offset by revenue from wheeled-in power charges for using existing lines. There exists no crystal ball which shows a potential decline in Nevada electric utility taxable property because of wheeled-in power. The growth in the state population would offset the 20% customer revenue loss in about three years time. Any new in-state investment would involve highly efficient technology which would replace any plant and equipment costly to operate. Under this legislative proposal, out-of-state power providers who provide power to Nevada consumers will be subject to a centrally assessed ad valorem property tax.

The proposed legislative addition to NRS 361.320 does not indicate how the out-of-state plant is to be allocated to Nevada. It is to be appraised in some manner in addition to existing in-state plant which is utilized to bring the out-of-state power to Nevada consumers. This model makes the assumption the out-of-state plant will have its value based on the revenue generated by Nevada sales to total sales of power from that plant. The cost of the out-of-state plant will be derived from the best source available, be it Department staff appraisal, parent state centrally assessed appraisal, Value Line or other investor service data. The method of appraising any firms acting as power vendors, should be of the simplest form.

It is assumed that no additional investment is necessary to bring out-of-state power to consumers. This has been the situation for years as the in-state electric utilities have purchased out-of-state power provided to Nevada consumers during periods of high use or in-state generation down time. Purchased power agreements have been standard operating practice between utilities for many years.

Staff at the PSC indicated there are possibly four out-of-state power vendors waiting for legislative change in Nevada; PacificCorp, Pacific G&E, Enron and Dryfus which is a power broker. This model assumes 2% of the total revenue of two of these utilities (Enron data was not readily available) will be derived from Nevada based customers; \$250 million in Nevada sales opposed to \$15 billion in total electric sales. Therefore, 2% of the assessed value of the two utilities will accrue to Nevada. Pacific G&E plant is \$18 billion with \$9.5 billion revenue. PacificCorp plant is \$10.5 billion with \$4.2 billion revenue. Therefore, net plant of \$28.5 billion X 2% is \$570 million X 35% assessment ratio = \$200 million assessed value. It is assumed the power broker owns no operating property and will have no Nevada property tax liability.

Continued on page 2

Continued from page 1

	<u>1996-97</u> <u>Certified</u>	<u>1997-98</u> <u>Certified</u>	<u>1998-99</u> <u>Estimated</u>
Existing electric assessed value	\$ 1,080,465,000	\$ 1,181,037,000	\$ 1,181,037,000
Additional out-of-state assd. value	-	-	200,000,000
Loss of in-state assessed value	-	-	(118,103,700) as loss of growth
Net assessed value change	-	-	81,896,300
Average statewide tax rate *	X .028580	X .028580	X .028580
Estimated tax revenue change **	<u>-</u>	<u>-</u>	<u>\$ 2,334,045</u>

* 1996-97 average statewide rate used for estimates.

** If approved, the proposed legislation will be effective July 1, 1997.

Note:

See page 1 for assumption narrative details for the above computations.

The 1996-97 and 1997-98 centrally assessed values as shown were certified by the Nevada Tax Commission.

This model is somewhat fragile as it is built totally on assumptions of allocation of power use, investment climate, number of vendors, population growth, power pricing, legislative impact and utility posturing. The example illustrated above indicates a 6.9% increase in assessed value for the year indicated. To continue with the same assumptions, the next year would indicate a decline in expected assessed values. This is not necessarily a fault of the model. This model reveals that any change in the assumptions will affect the end result and that result may be a decrease or an increase in assessed value from conditions existing prior to changes brought by this legislation.

MAY 23 1997

EXECUTIVE AGENCY
FISCAL NOTE

STATE AGENCY'S ESTIMATES

Date Prepared 5/23/97 *Agency Submitting PUBLIC SERVICE COMMISSION

Items of Revenue or Expense or Both	Fiscal Year 1996-97	Fiscal Year 1997-98	Fiscal Year 1998-99	Continuing (Y/N)
PERSONNEL				
NEW POSITIONS		\$241,881	\$372,924	YES
STAFF				
CONSULTING		\$275,000	\$250,000	(50,000)
COURT REPORTERS		\$126,000	\$ 66,000	NO
NOTICES		\$ 30,000	\$ 30,000	NO
Total		\$672,881	\$703,924	\$422,924

Explanation (Use Additional Sheets or Attachments, if Required)

CONSULTING - A. THE OUTREACH PROGRAM IS BUDGETED AT \$50,000. DEPENDING ON TIMING AND NATURE OF THE PROGRAM, THIS BUDGET MAY REQUIRE UPWARD ADJUSTMENT.

B. THE CURRENT PROPOSED PUBLIC SERVICE COMMISSION CONSULTING BUDGET HAS \$150,000 FOR RESTRUCTURING ISSUES, FOR THE COMMISSION (NOT STAFF). IF THIS IS APPROVED, THE COMMISSION CONSULTING BUDGET WITH THE ADDITION OF THE \$275,000 AND \$250,000 ABOVE WILL BE ADEQUATE.

C. THE PROPOSED EXPENSES EQUATE TO .35 MILLS, WHICH WOULD INCREASE THE MILL ASSESSMENT TO 3.15, WHICH IS UNDER THE MAXIMUM ALLOWABLE RATE OF 3.5 MILLS, AS AUTHORIZED UNDER NRS 704.033

Signature [Signature]Title [Title]DEPARTMENT OF ADMINISTRATION'S
COMMENTSDate June 9, 1997

On the basis of the many unknowns stemming from this proposal, this office does not oppose the agency estimates.

Signature [Signature]Title [Title]FISCAL EFFECT ON LOCAL GOVERNMENT
(LCB - Fiscal Division Use Only)Date June 12, 1997

The bill increases or newly provides for a term of imprisonment in a city or county jail or detention facility or makes release on probation therefrom less likely; therefore, local governments will incur all appurtenant costs of enforcement, prosecution and incarceration.

Signature [Signature]Title Deputy Fiscal Analyst

BDR No. 58-1390A.B. 366

S.B. _____

EXECUTIVE AGENCY
FISCAL NOTE

STATE AGENCY'S ESTIMATES

Date Prepared June 26, 1997 *Agency Submitting Administration - Budget DivisionItems of Revenue
or Expense or BothFiscal Year
1996-97Fiscal Year
1997-98Fiscal Year
1998-99

Continuing (Y/N)

\$0.00

\$0.00

Total

Explanation (Use Additional Sheets or Attachments, if Required)

Please see attached explanation

Signature

Title

DEPARTMENT OF ADMINISTRATION'S
COMMENTS

Date _____

Signature _____

Title _____

FISCAL EFFECT ON LOCAL GOVERNMENT
(LCB - Fiscal Division Use Only)

Date _____

Signature _____

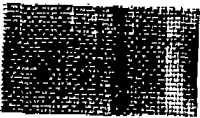
Title: _____

FN-1 (Revised 1/97)

The Department of Administration is focusing this fiscal note only on the anticipated revenue impacts from the amended version of AB366. Those impacts that were addressed by the Public Service Commission in the original version of AB366 and have remained unchanged are not addressed here.

As such, this fiscal note addresses the creation of the Transportation Services Authority (TSA). The TSA is simply a transfer of existing authority, using the existing Highway Fund appropriation and fees in the Legislatively approved Public Service Commission Budget. Hence, the Department of Administration does not believe there will be a fiscal impact.

The Budget Office assumes that transportation staff will retain all equipment they are currently using when the transfer to the TSA occurs. The TSA will not be obligated to reimburse the Public Service Commission for the equipment.



TRANSPORTATION SERVICES AUTHORITY					
Transfer from PSC and new position					
All Expenses reflect an October 1 effective date or three-fourths of a fiscal year					
Transfer Division expenses based on FY 97					
		Transportation	Deputy & 3		
		PSC transfer	Commissioners	TSA	
Cat/GL	Title	10/1/97	10/1/97	Total	Comments
01-5000	Personnel	622,639	260,825	883,463	includes step increases
01-5930	Longevity	2,250		2,250	
01-5904	Vacancy Savings	-17,446		-17,446	portion of savings in PSC's budget
Subtotal Personnel		607,443	260,825	868,267	
02-6100	Out-State Travel	2,759	4,392	7,151	
03-6200	In-State Travel	10,339	6,000	16,339	
04-7000	OPERATING	3,375	4,500	7,875	
04-7020	Operating Supply	2,283		2,283	
04-7040	Printing	1,275		1,275	
04-7050	Insurance	1,907		1,907	16 psns x 3.67; 14 drivers x 132
04-7054	Tort Insurance	1,854		1,854	16 x 115.91
04-7059	Liability Insurance	2,396		2,396	14 psns x 171.13
04-7070	Other Contract	769		769	maintenance contracts
04-7080	Legal Costs	3,080		3,080	Court reporters
04-7082	Legal Costs	19,920		19,920	newspaper publishing
04-7100	State Rent	5,363		5,363	Location of the new TSA is unknown.
04-7110	Non-State Rent	14,562		14,562	Rent is subject to change
04-7140	Maint Blding/Grnds	27		27	
04-7170	Uniform Allowance	1,187		1,187	
04-7250	B & G Services	600		600	
04-7280	Postage	5,640		5,640	
04-7290	Telephone	10,513		10,513	
04-7370	Publications	495		495	
Subtotal Operating		75,245	4,500	79,745	
05-8240	New Furnishings		2,305	2,305	1 executive office set-up
09-7060	Contracts	15,279		15,279	
16-7150	Vehicle Operation	10,609		10,609	
26-8370	Computer Hardware		4,346	4,346	1 laptop with wk station and netwk adapter
30-7300	Training-Dues	4,869	5,175	9,844	
59-7130	Utilities	875		875	
Total TSA Expenses		727,217	287,543	1,014,760	
Taxicab Transfer		0	143,771	143,771	Equal 50% of Commissioners' and Deputy's expenses
Hwy Appropriation Needed		727,217	143,771	870,989	Equal 50% of Commissioners' and Deputy's expenses plus Transportation Division
Hwy Appr in Exec Budget		861,194			
Taxicab Licenses		12,862			
Tow Truck Licenses		12,000			
Warehouse permits		500			
TOTAL REVENUE		886,556			
Adjustment total Approp		-15,667			
Includes transfer of Transportation Division, two Commissioners, Deputy Commissioner, Asst. Staff Counsel, Management Asst. III and a Management Asst. II					

TRANSPORTATION SERVICES AUTHORITY					
Transfer from PSC and new position					
Cat/Gl	Title	Transportation PSC transfer	Deputy & 3 Commissioners	TSA Total	Comments
01-5000	Personnel	844,058	349,373	1,193,431	includes step increases
01-5930	Longevity	4,575		4,575	
01-5904	Vacancy Savings	-23,289		-23,289	portion of savings in PSC's budget
Subtotal Personnel		825,344	349,373	1,174,717	
02-6100	Out-State Travel	3,879	5,856	9,535	
03-6200	In-State Travel	13,785	8,000	21,785	
04-7000	OPERATING	4,500	6,000	10,500	
04-7020	Operating Supply	3,044		3,044	
04-7040	Printing	1,700		1,700	
04-7050	Insurance	1,907		1,907	16 x 3.78; 14 x 132
04-7064	Tort Insurance	2,040		2,040	16 x 127.50
04-7059	Liability Insurance	2,635		2,635	14 x 188.24
04-7070	Other Contract	1,025		1,025	maintenance contracts
04-7080	Legal Costs	4,107		4,107	Court reporters
04-7082	Legal Costs	26,560		26,560	newspaper publishing
04-7100	State Rent	7,150		7,150	Location of the new TSA is unknown.
04-7110	Non-State Rent	19,416		19,416	Rent is subject to change
04-7140	Maint Bldg/Grds	36		36	
04-7170	Uniform Allowance	1,583		1,583	
04-7250	B & G Services	800		800	
04-7280	Postage	7,520		7,520	
04-7290	Telephone	14,017		14,017	
04-7370	Publications	660		660	
Subtotal Operating		98,700	6,000	104,700	
09-7060	Contracts	20,372		20,372	
16-7150	Vehicle Operation	14,145		14,145	
30-7300	Training-Dues	6,225	6,900	13,125	
59-7130	Utilities	1,166		1,166	
TOTAL TSA EXPENSES		963,416	378,129	1,359,545	
Taxicab Transfer			188,065	188,065	Equal 50% of Commissioners' expense
Hwy Appropriation Needed		963,416	188,065	1,171,481	Equal 50% of Commissioners' expense plus Transportation Division
Hwy Appr in Exec Budget		1,148,258			
Taxicab Licenses		17,150			
Tow Truck Licenses		16,000			
Warehouse permits		800			
TOTAL REVENUE		1,182,208			
Adjustment Total Appr		-10,728			
Includes transfer of Transportation Division, two Commissioners, Deputy Commissioner, Asst. Staff Counsel, Management Asst. III and a Management Asst. II					

PUBLIC UTILITIES COMMISSION					
TRANSFER OF TSA, NEW POSITIONS, AND REMOVAL OF CA'S					
	PSC	(minus)	(add)	(minus)	
	Budget*	TSA	Per PSC	Commissioner	PUC
Cal/GL Title	FY 98	Transfer	New Positions	Assistants	Total
01-5000 Personnel	5,783,619	812,260	204,420	104,580	5,175,779
01-5930 Longevity	17,689	2,250			15,439
01-5904 Vacancy Savings	-161,361	-17,446			-143,915
Subtotal Personnel	5,639,947	797,064	204,420	104,580	4,942,723
02-6100 Out-State Travel	26,634	6,053	5,586		26,167
03-6200 In-State Travel	145,277	14,839	4,500		134,938
04-7000 OPERATING	0	6,750	4,500		-2,250
04-7020 Operating Supply	26,457	2,283			24,174
04-7030 Commun/Freight	1,073				1,073
04-7040 Printing	18,036	1,275			16,761
04-7050 Insurance	4,602	1,907			2,695
04-7054 Tort Insurance	11,475	1,854			9,621
04-7059 Liability Insurance	3,594	2,369			1,225
04-7070 Other Contract	39,947	769			39,178
04-7080 Legal Costs	56,141	3,360	125,000		162,867
04-7082 Legal Costs	144,878	19,920	30,000		154,958
04-7090 Equipment Repair	1,670				1,670
04-7100 State Rent	104,738	5,363			99,376
04-7110 Non-State Rent	243,201	14,562			228,639
04-7120 Advertising	18,424				18,424
04-7140 Maint Bldg/Grms	318	27			291
04-7170 Uniform Allowance	1,583	1,187			398
04-7230 Minor Improvements	412				412
04-7250 B & G Services	4,481	600			3,881
04-7270 Interest Expense	1,978				1,978
04-7280 Postage	51,981	5,640			46,341
04-7290 Telephone	76,668	10,513			66,155
04-7300 Dues / Registrations	26,518				26,518
04-7330 Special Reports	1,695				1,695
04-7370 Publications	36,256	495			35,761
04-7380 Employee Moving	5,548				5,548
04-7440 Interview Expenses	1,573				1,573
04-7980 Operating Lease Pay	3,288				3,288
Subtotal Operating	886,535	78,594	160,500		968,442
05-8240 Equipment	22,218		7,500		29,718
09-7060 Contracts	318,015	15,279	275,000		577,736
10-6100 Out-of-State Audits	20,939				20,939
16-7150 Vehicle Operation	21,218	10,609			10,609
26-7000 Information Svcs	51,569				51,569
26-8370 Computer Equipment			12,375		12,375
30-7300 Training-Dues	25,680	8,550	3,000		20,130
59-7130 Utilities	1,166	875			291
88-9159 SWCAP	77,561				77,561
TOTAL EXPENSES	7,236,759	931,863	672,881	104,580	6,873,198
REVENUES					
00-2507 Hwy Appropriation	1,148,258	861,194			287,065
00-3315 Regulatory Assess	6,046,369		672,881		6,719,250
00-3607 Taxicab Licenses	17,150	12,863			4,288
00-3608 Tow Truck Licenses	18,000	12,000			4,000
00-3655 Warehouse permits	800	600			200
00-3717 Application Fees	52,000				52,000
00-Misc Other PUC Revenues	255,700				255,700
TOTAL REVENUE	7,636,277	886,656	672,881	0	7,322,602
Total Revenue - Expense					449,305
* Base Budget and M100 Only Does not Consider Revenue and Expense for Office of Consumer Advocate					
Transfers out two Commissioners					
TSA will receive allocation from Taxicab Authority					

PUBLIC UTILITIES COMMISSION						
TRANSFER OF TSA, NEW POSITIONS, AND REMOVAL OF CA'S						
		PSC	(minus)	(add)	(minus)	
		Budget*	TSA	Per PSC	Commissioner	PUC
Cat/GL	Title	FY 99	Transfer	New Positions	Assistants	Total
01-5000	Personnel	5,807,417	1,098,089	315,364	105,354	5,024,692
01-5930	Longevity	19,239	4,575			14,664
01-5904	Vacancy Savings	-160,289	-23,289			-137,000
Subtotal Personnel		5,666,367	1,079,375	315,364	105,354	4,797,002
02-6100	Out-State Travel	26,634	8,071	9,310		27,873
03-6200	In-State Travel	145,277	19,785	7,500		132,992
04-7000	OPERATING	0	9,000	7,500		-1,500
04-7020	Operating Supply	26,457	3,044			23,413
04-7030	Commun/Freight	1,073				1,073
04-7040	Printing	22,839	1,700			21,139
04-7050	Insurance	4,569	1,907			2,662
04-7054	Tort Insurance	12,623	2,040			10,583
04-7059	Liability Insurance	3,953	2,635			1,318
04-7070	Other Contract	39,947	1,025			38,922
04-7080	Legal Costs	56,141	4,107	68,000		101,840
04-7082	Legal Costs	144,878	26,560	30,000		148,318
04-7090	Equipment Repair	1,670				1,670
04-7100	State Rent	102,143	7,150			94,993
04-7110	Non-State Rent	243,201	19,416			223,785
04-7120	Advertising	18,424				18,424
04-7140	Maint Bldg/Grds	318	36			282
04-7170	Uniform Allowance	1,583	1,583			0
04-7230	Minor Improvements	412				412
04-7250	B & G Services	4,481	800			3,681
04-7270	Interest Expense	1,978				1,978
04-7280	Postage	51,981	7,520			44,461
04-7290	Telephone	76,668	14,017			62,651
04-7300	Dues / Registrations	26,518				26,518
04-7330	Special Reports	1,695				1,695
04-7370	Publications	36,256	660			35,596
04-7380	Employee Moving	5,548				5,548
04-7430	Professional Services	850				850
04-7440	Interview Expenses	1,573				1,573
04-7980	Operating Lease Pay	3,288				3,288
Subtotal Operating		891,067	103,200	103,500		891,367
05-8240	Equipment	17,488		5,000		22,488
09-7060	Contracts	318,015	20,372	250,000		547,643
10-6100	Out-of-State Audits	20,939				20,939
16-7150	Vehicle Operation	21,218	14,145			7,073
26-7000	Information Svcs	51,569				51,569
26-8370	Computer Equipment			8,250		8,250
30-7300	Training-Dues	25,680	11,400	5,000		19,280
59-7130	Utilities	1,166	1,166			0
88-9159	SWCAP	73,561				73,561
TOTAL EXPENSES		7,258,981	1,257,514	703,924	105,354	6,600,037
REVENUES						
00-2507	Hwy Appropriation	1,148,258	1,148,258			0
00-3315	Regulatory Assess	6,421,377		703,924		7,125,301
00-3607	Taxicab Licenses	17,150	17,150			0
00-3608	Tow Truck Licenses	16,000	16,000			0
00-3655	Warehouse permits	800	800			0
00-3717	Application Fees	52,000				52,000
00-Misc	Other PUC Revenues	255,700				255,700
TOTAL REVENUE		7,911,285	1,182,208	703,924	0	7,433,001
Revenue - Expense						832,964
* Base Budget and M100 Only Does not Consider Revenue and Expense for Office of Consumer Advocate Transfers out two Commissioners						
TSA will receive allocation from Taxicab Authority						

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PSC POLICY

002

6/19/97.

TRANSPORTATION PROGRAM COSTS

	ACTUAL FY 1996	PROJECTED FY 1997	REQUESTED FY 1998	REQUESTED FY 1999
Highway Fund Authoriz	\$ 1,037,096.00	\$ 1,038,446.00	\$ 1,148,258.00	\$ 1,148,258.00
Salaries	\$ 1,361,400.83	\$ 696,301.49	\$ 719,794.00	\$ 732,951.00
Out of State Travel	\$ 2,236.52	\$ 2,215.00	\$ 2,500.00	\$ 2,500.00
In State Travel	\$ 15,524.69	\$ 10,785.00	\$ 12,708.00	\$ 12,708.00
Supplies	\$ 1,177.37	\$ 3,044.00	\$ 3,500.00	\$ 3,500.00
Freight	\$ 152.85	\$ -	\$ -	\$ -
Printing	\$ 2,140.63	\$ 1,700.00	\$ 1,700.00	\$ 1,700.00
Insurance	\$ -	\$ 11,358.00	\$ 11,600.00	\$ 11,500.00
Court Reports	\$ 14,777.74	\$ 4,107.00	\$ 4,500.00	\$ 4,500.00
Contractual Services	\$ -	\$ 20,372.00	\$ 30,000.00	\$ 30,000.00
Maintenance Contracts	\$ 1,109.78	\$ 1,026.00	\$ 1,000.00	\$ 1,000.00
Newspaper Pub	\$ 23,787.15	\$ 26,560.00	\$ 25,000.00	\$ 25,000.00
State Owned Rental	\$ 1,798.00	\$ 5,815.00	\$ 1,800.00	\$ 1,800.00
Non State Owned Rental	\$ 10,536.76	\$ 19,220.00	\$ 13,000.00	\$ 13,000.00
Uniform Allowance	\$ 2,305.71	\$ 3,800.00	\$ 3,800.00	\$ 3,800.00
B & G Special Services	\$ 346.50	\$ 800.00	\$ 350.00	\$ 350.00
Telephone	\$ 5,924.22	\$ 14,017.00	\$ 6,000.00	\$ 6,000.00
Postage	\$ 64.78	\$ 7,520.00	\$ 500.00	\$ 500.00
Dues and Registration	\$ 225.00	\$ -	\$ -	\$ -
Publications	\$ 174.67	\$ 660.00	\$ 660.00	\$ 660.00
Utilities	\$ 922.41	\$ 1,250.00	\$ 1,250.00	\$ 1,250.00
Total Operating	\$ 65,444.55	\$ 121,249.00	\$ 104,560.00	\$ 104,560.00
Equipment	\$ 49.77	\$ 39,800.00	\$ 90,052.00	\$ 89,056.00
Computers	\$ -	\$ -	\$ -21,685.00	\$ 21,685.00
Vehicle Operation	\$ 17,430.34	\$ 16,012.00	\$ 16,000.00	\$ 16,000.00
Training	\$ -	\$ 3,500.00	\$ 4,800.00	\$ 4,800.00
	\$ 1,482,066.50	\$ 661,662.49	\$ 971,479.00	\$ 983,640.00
Difference	\$ (424,390.50)	\$ 146,583.51	\$ 176,779.00	\$ 164,618.00

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PSC POLICY

0002

97097

PUBLIC SERVICE COMMISSION

Fiscal Year	Class Code	Position	Salary	Costs	Out-Of-State-Travel	In-State-Travel	Operating	Equipment	Information	Services	Training	Total Costs
1998	U4801	1 - Public Service Commissioner	\$ 76,084.00	\$ 12,575.80	\$ 1,494.00	\$ 3,800.00	\$ 1,800.00	\$ 2,316.00	\$	4,408.80	\$ 1,725.00	\$ 98,807.10
1998	U3801	1 - Commissioner Assistant	\$ 43,398.00	\$ 12,575.80	\$ 1,494.00	\$ 3,800.00	\$ 1,800.00	\$ 2,316.00	\$	4,408.80	\$ 1,725.00	\$ 71,148.60

**MINUTES OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

Sixty-ninth Session

May 6, 1997

The Committee on Government Affairs was called to order at 8:00 a.m., on Tuesday, May 6, 1997. Chairman Douglas Bache presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Douglas Bache, Chairman
Mr. Roy Neighbors, Vice Chairman
Mr. Mark Amodei
Ms. Deanna Braunlin
Mrs. Marcia de Braga
Mr. Peter (Pete) Ernaut
Mrs. Vivian Freeman
Mr. Pat Hickey
Mrs. Joan Lambert
Mr. John Jay Lee
Mr. Harry Mortenson
Mr. David Parks
Ms. Sandra Tiffany
Mr. Wendell Williams

STAFF MEMBERS PRESENT:

Denice Miller, Committee Policy Analyst, Research Division,
Legislative Counsel Bureau (LCB)
Eileen O'Grady, Legal Analyst, Legal Division, LCB
Vicki Folstad, Committee Secretary

OTHERS PRESENT:

John J. Mendoza, Chairman, Public Service Commission of Nevada
Judy Sheldrew, Commissioner, Public Service Commission of Nevada
Greg Cook, Policy Advisor, Public Service Commission of Nevada
James Kropid, Director, Utility Shareholders Association of Nevada
Perry Whitt, President, Utility Shareholders Association of Nevada
Joyce Newman, Executive Director, Utility Shareholders Association of Nevada
Douglas R. Ponn, Executive Director Governmental and Regulatory Affairs, Sierra Pacific Power Company
Larry Hawke, Government Relations Counsel, Nevada Mining Association
Bob Reeder, Outside Counsel, Barrick Mines
Thelma Clark, Representative, Nevada Seniors Coalition
Scott Barbour, Architect, Barbour and Associates

Following roll call Chairman Bache opened the hearing on A.B. 366.

ASSEMBLY BILL 366 -

Revises provisions for regulation of electric service to allow customers direct access to alternative sellers of electric services. (BDR 58-1390)

John J. Mendoza, Chairman, Public Service Commission of Nevada (PSC), introduced Judy Sheldrew, Commissioner, PSC, and Greg Cook, Policy Advisor, PSC who were with him at the witness table. Mr. Mendoza said A.B. 366 was before the committee as a result of long and complex investigation by the PSC. Many issues had been examined and debated and conclusions reached with the assistance of the electric utilities and other interested and affected entities. He said the recommendations were the best judgment of the majority of the PSC but that was all they were—recommendations. Mr. Mendoza stated as the obligation was passed on to the committee the PSC was ready to assist in any way needed. He said the PSC was not unanimous in its recommendations but it believed A.B. 366 was a viable proposal for managing rather than requiring change. He commented this proposal would put Nevada in charge of the changes in this state rather than waiting for Congress to mandate the changes.

Judy Sheldrew provided a written summary of her testimony (Exhibit C) and testified the issue of electrical restructuring was a complex subject which had occupied a great deal of the PSC's time since September, 1995, as well as that of the interim committee appointed to oversee and understand the issues. She explained she would be walking the committee through a number of handouts

beginning with the one entitled, "Electric Industry Restructuring Overview," (Exhibit D).

Ms. Sheldrew said she would like to begin with how the current industry was structured, move into rates, and then go into what was proposed in A.B. 366. She referred to Exhibit D, page 2, and said, at the present, vertically integrated utilities provided retail electric service within exclusive territories established by state or local law. Vertically integrated utilities owned and operated the assets necessary to produce and deliver electricity. Electric service was provided to customers on a bundled basis where the customer purchased a single product from the utility rather than buying some components of its service from other companies. The three main functions necessary to deliver electricity to end-use customers were generation, transmission, and distribution. She said the bundled rate for a traditional service would be \$.10 per kilowatt which included all functions such as energy, capacity, and other costs.

Ms. Sheldrew, said Exhibit D, page 3, was a depiction of the entire electric system. She explained generation plants converted a variety of fuels into useable electric energy but due to the economics of generator construction, power was produced at a low voltage and then stepped up using generator transformers to a higher voltage for more efficient, long-distance transmission to load centers. Generation plants were connected to the transmission system to transport electricity over long distances. She said the transmission system consisted of high voltage lines which formed a highly interconnected path between the generators and the distribution substations. Ms. Sheldrew stated the next level was another step-down substation transformer as the primary distribution service was entered. Distribution primary systems interconnected with the sub-transmission system at substations where voltages were step-down by way of transformers. She said for most customers voltages were further step-down all the way to 120 volts for residential customers but large customers could connect directly to the primary system depending on equipment and needs. She explained this occurred in Nevada primarily for the large casinos and mines.

Ms. Sheldrew stated services which supported the reliable delivery of electricity to end users were referred to as ancillary services. She said some of these services included functions such as:

- Scheduling the use of generation, purchase power resources, and transmission facilities to meet anticipated loads;
- Dispatching generation and purchase power resources;
- Transmission facilities on a real time basis to meet load within the utilities designated service area;

- Maintaining transmission and distribution voltages on the electrical system within acceptable limits; and
- Load-following services to provide for the continuous balancing of resources with the utility service area.

Ms. Sheldrew said there were a number of the ancillary services she would be talking about further as the issues relative to electric restructuring were examined. She felt at this point it was important to know that those services existed and were important service components of the electricity received by the consumer.

Ms. Sheldrew next referred to Exhibit D, page 4, which showed the North American Electric Reliability Council regions. She pointed out that utility companies voluntarily operated their electric systems within guidelines set forth by the National Electric Reliability Council (NERC). She said NERC was divided into 9 separate reliability councils, and Nevada utilities belonged to the Western Systems Coordinating Council (WSCC). She commented both the WSCC and NERC had extensive guidelines for the reliable and safe operation of electric systems. The coordination of energy flow required cooperation with not only directly interconnected utilities but with utilities throughout the WSCC. This cooperation was carried out with strict adherence to the NERC and WSCC reliability criteria and operations standards.

Ms. Sheldrew testified that federal and state jurisdiction over utility operations was determined by the type of service performed. Wholesale transactions were under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and state public utility commissions had jurisdiction over retail transactions. She said wholesale customers were customers who purchased electricity and resold it to end users such as distribution co-ops, municipalities, and other utilities. FERC had jurisdiction over facilities used to provide wholesale service. She explained those facilities were generally the transmission lines.

She said retail or end use customers were customers who used the energy provided by the utility to perform work such as running a refrigerator, light a building, or air condition a casino. She pointed out retail customers were divided into three categories: 1) Industrial—large casinos and mines; 2) Commercial—stores and businesses; and 3) Residential.

Ms. Sheldrew stated in 1996, FERC restructured the wholesale electric industry with the release of FERC Order 888 (Exhibit D, page 5). She said FERC Order 888 applied only to services under FERC jurisdiction or service to wholesale customers. She said the order stated each owner of transmission facilities must file a tariff at FERC to provide transmission of wholesale power.

Wholesale customers should be able to purchase generation from sellers other than the transmission owner. She remarked one of the major controversies in the evolution of the order was which facilities would be defined as FERC jurisdictional transmission facilities and which would be defined as state jurisdiction distribution facilities. This would be important in the restructuring debate and began to "unbundle" and separately price the components of electrical service.

Ms. Sheldrew said in the final order FERC gave deference to the states in stating that "where states unbundle retail sales we will give deference to their determinations as to which facilities are transmission and which are local distribution, provided that the states in making such determinations apply the "seven criteria" of its order (Exhibit D, page 5). She commented those were the guidelines FERC gave the states for determining whether it was a distribution system and subject to state control or a transmission system and subject to FERC jurisdiction.

Ms. Sheldrew said FERC Order 888 left most state decisions unaffected. FERC stated, in its order, it would be respectful of state objectives as long as they did not vulcanize interstate transmission of power or conflict with FERC's interstate open access policies. She stated through this particular order were seen the federal directives that competition and open access which should replace the old monopoly regulated areas and that FERC would keep an open eye on the states to assure that in the PSC regulation of its particular areas, it was not impeding interstate commerce.

Ms. Sheldrew commented Exhibit D, page 7, showed a comparison of Nevada residential rates as compared to other utilities in the western United States. She said the information was dated as it was a 1995 overall average price per kilowatt but it was the most recent comparative data which the PSC had available. She said when residential rates were averaged on a state-by-state basis, Nevada had above average rates when compared to the other western states. She said to remember Nevada was competing in the western region with those states which had hydro readily available in the pacific northwest and those were the states considerably lower than Nevada.

Ms. Sheldrew explained Exhibit D, page 8, showed the residential rates compared on a utility by utility basis. When this comparison was made California utilities had the higher rates while Nevada utilities had average to slightly above average rates. She said a utility's current rates reflected an average of its cost to serve groups of customers. The cost included in the rates was both future, potentially competitive costs such as the production of

electricity, and future non-competitive service costs such as the transport of the electricity to the customers.

Ms. Sheldrew pointed out another way to compare electric utility performance was to compare average annual customer bills. She said in this case, Nevada had the third highest average residential bill, (Exhibit D, page 8), out of the 12 western states but this did not provide a true cost comparison because certain geographic regions had higher average annual usage than others. She stated the charts were presented to show how certain comparisons would look and to urge caution in drawing conclusions because a number of different factors were involved in building the different comparative charts.

Ms. Sheldrew commented what the PSC was talking about in the electric restructuring debate was shown graphically in Exhibit D, page 9. She reiterated Nevada's electric utilities provide bundled services to their customers. Most residential customers view and pay for electricity as a single homogenous product. She said at present the typical residential tariff included only a customer charge, which was dollars per month, and an energy charge, which was cents per kilowatt hour. She stated most commercial and industrial customers faced demand charges, which was dollars per kilowatt month as well as energy and customer charges.

Ms. Sheldrew explained in reality electric power systems provided many other services beyond the energy and capacity output from power plants. Those services were provided by the utility's vertically integrated system of generating transmission and distribution facilities. She stated today's vertically integrated utilities with retail monopoly franchises would likely be very different organizations in the future. Industry restructuring involved the deintegration of today's utilities and greater competition at the wholesale level and retail market. She said to facilitate those changes utilities might want or be required to unbundle services that were previously provided as a bundled package. Ms. Sheldrew stated as the electrical restructuring discussions moved forward the term which would be frequently used for rate breakdown would be "unbundling"—or separately pricing the components of electric service and allowing customers to make their choice as to which services they wanted or needed and what they wanted to pay for those services. She emphasized electric utility services had to be unbundled into both competitive and non-competitive services so that customers could purchase competitive services from alternative providers. She continued initially many services would remain non-competitive and be provided by a single provider because of technical and economic considerations. In general, only aggregation which was the combining of various loads by marketers and certain generation services would contain characteristics that enabled them to be provided competitively. She said there

would also be certain ancillary services which would be able to be obtained competitively such as metering.

Ms. Sheldrew said A.B. 366 provided that unbundled electric service would initially take the following form. The generation would be categorized as a potentially competitive service; transmission would be categorized as a non-competitive service which had natural monopoly characteristics. This meant it was the least cost to society if that particular service was provided by a single entity. She said distribution was also categorized as a non-competitive natural monopoly regulated service.

Ms. Sheldrew said aggregation of power suppliers for customer groups was categorized in A.B. 366 as a potentially competitive service. Unbundling of electric services offered benefits to both electricity consumers and suppliers. She said consumers should benefit because they would be able to pick-up and choose only those services needed, wanted, and were willing to pay for and suppliers should benefit because they would be able to decide which services to offer on the basis of their costs and what services consumers were willing to buy. She stated the entire restructuring debate was predicated on the theory the consumers would be making the decisions and direct the market in the future.

Ms. Sheldrew referenced Exhibit E as the next step to go through in the presentation. She said there were also a number of other handouts in the packet which she felt could be identified at this point. The handout entitled "A.B. 366 public Service Commission Amendments", (Exhibit F), was basically housekeeping amendments to A.B. 366 which were voted on at the PSC's agenda meeting on May 1, 1997. She said there was a multi-page document put together by Regulatory Research Associates, Inc. (RRA), called "Regulatory Focus," (Exhibit G), which was a publication for the benefit of investors but it did a good job of identifying the status of electric restructuring efforts in all of the various states and the PSC had included it in its packet for the committee's information. Ms. Sheldrew noted for the record the PSC had checked with the RRA and had been given permission to copy the publication for presentation to the legislature. She said Mr. Cook had done a summary of the federal electric industry restructuring bills, (Exhibit H), and commented, as the committee was aware, there were a number of bills pending in Congress which called for retail competition throughout the nation. She said there was a question how quickly those bills would move but there was a lot of interest on Capitol Hill to move competition and industry restructuring to the retail level into the states. She stated in the next few years there would probably be some type of federal mandate to states to open their markets.

Continuing her presentation, Ms. Sheldrew brought the committee's attention to Exhibit E. Referring to pages 2 and 3, she said this was basically review. Mr. Ernaut, who had been the chairman of the ACR 49 Committee, had already informed the Committee on Government Affairs of the work done by the interim committee. She said the 68th Legislative Session had authorized the ACR 49 Committee to conduct a study of the effects of competition in the generation, sale, and transmission of electric industry.

Ms. Sheldrew commented Exhibit D, pages 3 and 4, listed the general principles which were drafted by the ACR 49 Committee and said it was interesting to note that the principles and findings by the PSC in its investigation coincided and overlapped those of the ACR 49 Committee. She stated the PSC had conducted its investigation along the same timeline that the interim committee was conducting its work. That was done for two reasons: 1) To gather information about electrical restructuring; and 2) To supplement the efforts of the ACR 49 Committee. She said the investigation began in September, 1995, and concluded in June, 1996 at which time the PSC completed a comprehensive report on restructuring in Nevada. The conclusions of the PSC's investigation were:

General:

- If the legislature chose to authorize retail competition for competitive services, it could be implemented in a manner which benefited Nevada; and
- The restructuring process must be based on the principles of flexibility and an orderly transition to a more competitive electric industry.

Economic Efficiency and Physical Feasibility:

- Unbundling of utility services would give customers the flexibility to shop for services separately; and
- Not all services should be subject to competition, some were better provided by a single supplier.

Engineering Issues:

- For a number of services, unbundling was technologically feasible without a decrease in reliability.

Effectiveness of Competition:

- Effective competition would not exist on the day competition for certain services was authorized; and
- Incumbent utility would initially have a dominant position in the market.

Consumer Protection:

- Competition could work efficiently only if customers were knowledgeable;
- Substantial regulatory effort in areas such as customer education and licensing of retail sellers will be necessary for customers to become effective shoppers; and
- A universal service option must be maintained.

Integrated Resource Planning:

- A role remained for government in influencing resource selection because prices were set by a competitive market.

Past or Stranded Costs:

- Early resolution of the disputed amount and the extent to which share holders would be reimbursed for past costs.

Regional Cooperation:

- The interstate characteristics of the electric industry made interstate cooperation essential.

Transition to Competition:

- Public policy needed to strike a balance between the short term goal of keeping customers on the system to they could contribute to fixed costs and the longer term goal of giving efficient choices to customers and suppliers.

Ms. Sheldrew said the conclusion of the investigation was the importance of statutory and regulatory flexibility could not be emphasized enough. She stated while competition was not a "no-risk" proposition, doing nothing was riskier. To do nothing left a government mandated monopoly structure which did not leave customers a choice while states all around Nevada were moving forward toward a competitive structure. She opined Nevada should consider giving the industry's customers, competitors, utilities, and the PSC flexibility. She said no one could know what the best structure would be for the industry. What made sense at the present may not make any sense 5 years from now, so the best approach would be to authorize the PSC to require unbundling for the benefit of Nevada's customers.

Ms. Sheldrew pointed out some of the advantages of a competitive electric industry would be: 1) Customers would be able to buy electric services for their current utility, utilities in other states, or non-utility suppliers; 2) Electricity producers, including utilities, would have incentive to operate as efficiently as possible which should produce lower electric rates; 3) The cost of electricity

was a key cost for business and residential customers; and 4) Restructuring of the electric industry would bring forward more "time-of-use" options. This would put everyone more in control of their own use of electricity and would encourage efficiency within the utilities and the alternative suppliers.

Ms. Sheldrew stated the next part of her testimony would get into more of an overview of A.B. 366. She said she would not refer directly to the bill but indicated there were some technical amendments. Her presentation reflected what the PSC hoped to do and what would be accomplished by the amendments.

Ms. Sheldrew stated under the definition section of A.B. 366 it "applied to all electric services provided to customers for consumption within the service territory of existing investor-owned utilities in Nevada which as of December 31, 1996 were certified by the PSC, and had gross annual revenues from Nevada exceeding \$250 million." Assembly Bill 366 did not apply to existing cooperatives (co-ops). She mentioned the language which was now in A.B. 366 was an attempt to clarify but she thought the PSC "had muddied the water" on its intent. The intent was it would not apply to existing cooperatives because co-ops were not jurisdictional for rate purposes, however, the exclusion of co-ops was a public policy decision on which the legislature would have to decide.

Ms. Sheldrew pointed out there were a number of definitions in A.B. 366, but the ones in Exhibit E, page 12, would be referred to as she continued with her presentation. Those terms defined were: Aggregation service, alternative seller, effective competition, electric service, non-comparative service, and potentially competitive service. She reminded the committee as she moved forward through her presentation she was beginning to unbundle the electric services and starting to categorize which area the particular services fell into. She reiterated A.B. 366 defined generation and aggregation as potentially competitive services and transmission and distribution as non-competitive services. Assembly Bill 366 directed the PSC to apply certain standards to those services to determine whether or not they should be potentially competitive or non-competitive.

Ms. Sheldrew explained what the criteria were for potentially competitive services suggested by the PSC under section 12.2 of A.B. 366. An electric service was a potentially competitive service if the provision of that service by alternative sellers met the following criteria:

- No harm to any class of customers;
- Cost of providing service will decrease, and quality of innovation will increase, or both;
- Effective competition likely to develop in the market for that particular service;
- Nevada's competitive position relative to surrounding states was likely to be advanced; and
- Did not jeopardize the safety and reliability of the electric system.

She continued in section 12.1 of A.B. 366, the PSC was required to establish regulations no later than January 1, 1999 which would establish a date by which retail customers would be permitted to obtain generation, aggregation, and any potentially competitive service from alternative sellers. This bill also allowed different dates for direct access to different services and geographic areas, phased in the right to buy from alternative sellers, and implemented pilot programs which did not discriminate among customer classes. This meant the pilot program had to be available to all various classes of customers such as all residential, commercial, and industrial. As to the date when competition would start, Ms. Sheldrew stated the legislature had given the PSC until January 1, 1999 to have the regulations ready for implementation. She said in those regulations there would be a date which the PSC would suggest to the legislature that competition for potentially competitive services could begin.

Assemblyman Hickey stated with regards to the date and Ms. Sheldrew's statement regarding flexibility it seemed the PSC was not being very flexible in calling for that date to begin in 1999. He wondered why the PSC should set the date for retail competition to begin and not the legislature.

Ms. Sheldrew responded January 1, 1999 was a legislative directive to the PSC to have the regulations in place and it was not set by the PSC for retail competition to begin. She said as A.B. 366 was constructed, it required in those regulations for the PSC to establish a date by which retail customers could be permitted to obtain the potentially competitive services. She stated at the time A.B. 366 was written the PSC was unclear how quickly a competitive environment was going to develop in the state of Nevada. The January 1, 1999 date was put in the bill because it was felt the PSC would be able to give a better idea in 2 years as to when there would be a more effective competitive market developing. She commented the PSC realized the January 1, 1999 date immediately preceded the beginning of the 70th Legislative Session and if there were concerns the date could be changed and another submitted.

Mr. Hickey said his concern was the regulations under A.B. 366 would be set before the 70th Legislative Session began. Ms. Sheldrew responded if on

January 1, 1999, the PSC selected a date of December, 1999 for retail competition to begin and the legislature wanted a date of July, 1999, the legislature could enact a bill which would change the date to July, 1999. The PSC felt the legislature had the flexibility to essentially correct the PSC's interpretation as to when competition should start. She said the suggested direction for the legislature to give to the PSC was that the PSC would have all the regulations, not the effective date of the regulations completed by January 1, 1999. She mentioned this would give the legislature an opportunity to revise it.

Mr. Hickey commented the legislature would not have had a chance to review the regulations as it was "work in progress" and those regulations would go into effect before the legislature convened. Ms. Sheldrew felt the legislature had more control reviewing the regulations, but those regulations could be revised by law. She said speaking for herself, she had no problem with the legislature establishing a date. If the legislature believed it should establish the date when retail competition would begin, Ms. Sheldrew felt that was a policy decision the legislature could make. The only suggestion she would make would be some language which would allow a "catch-safe" situation in case there was not an effectively competitive market, the rate payers would not be "thrown to the wolves" in a non-competitive market with no regulation.

Chairman Bache interjected he did not think all the testimony would be able to be heard at the present hearing and A.B. 366 would be going to the electric restructuring subcommittee composed of himself, Mr. Ernaut, Ms. Braunlin, Mr. Parks, and Mr. Neighbors.

Assemblywoman Lambert asked what the impact of A.B. 366 would be on the workload of the PSC and how many rule-making proceedings it would take to implement the regulations that had been discussed to put this bill into effect. Ms. Sheldrew said she could not answer that directly but Commissioner Denio had counted them up and could tell the committee precisely. She said there was a lot of work which would be required to be accomplished within the next interim. She remarked one of the reasons the PSC had continued to move its investigation forward was to try to get a head-start on some of the investigative efforts. If the legislature chose not to go ahead with the retail competition those efforts would be terminated by the PSC. Ms. Sheldrew said the PSC had continued to look at the issues of an economic by-pass of past costs and were working at the present time on an illustrative unbundled tariff and asking each one of the utilities to submit those. She said it was a lot of work for the PSC at its present staffing levels.

Mrs. Lambert asked if the committee would be able to get the number of rule-making proceedings if one of the commissioners had counted them.

Inserting some supplemental information, Mr. Mendoza said Commissioner Denio had indicated there were between 16 and 19 rule makings in his count.

Mr. Lee said there was a statement in Exhibit E, page 12, which said "there will be no harm to any class of customers," but the word "competitive" kept coming up. He did not know if an individual could ever be competitive against the large resorts and he wondered how that word would work in the electric industry. He said he did not understand how the PSC could make the statement that "there would be no harm to any class of customers," and guarantee it. He said there were some instances where poor people still would not be able to afford electricity and wondered if the PSC knew for a fact that power would be cheaper or at cost and competition would be created based upon A.B. 366.

Ms. Sheldrew stated the section Mr. Lee was referring to was one of the criteria the PSC was suggesting the legislature establish for the commission to use to determine whether a particular component of that electric service should be determined to be potentially competitive. The PSC would not be doing its job if it took a component of electric service and moved it into potentially competitive when it knew the residential customers would be stuck with all the costs of moving. If it was determined that would happen, the PSC would say that service should be a monopoly regulated service.

Assemblyman Amodei stated he was on page 6 of Exhibit E, and was looking at the integrated resource planning section which indicated there was a role for government in influencing resource selection in a competitive market. He asked if Ms. Sheldrew could expound on what she saw that role involved. Ms. Sheldrew asked if Mr. Amodei would mind if she deferred the answer until that part was covered in the presentation.

Mr. Amodei commented he could wait but he had one more question. He asked about the statement made on the mix of fuel and generation types which were best for Nevada's environment and wondered if Ms. Sheldrew was aware of any generation operations in the state that were bad.

Ms. Sheldrew replied he would have to ask others testifying about emissions from coal suppliers. There was a large amount of debate as to whether or not coal was the best choice. She said there were environmental protection requirements relative to air emissions and the generation resources that the PSC had authorized. The concern in the restructuring issue, if one was not cognizant of the environmental issues, would be coming from the midwest where there

were many coal plants and the air emissions increased. She felt those concerns translated into both internal as well as national environmental concerns. There was a debate in Congress about the impact of restructuring on air emissions and how they impacted the northeastern states as the coal emissions floated east.

Ms. Sheldrew pointed out the PSC's integrated resource planning was the most significantly changed portion that it was recommending to the legislature. What the PSC was suggesting was integrated resource planning should not be thrown out because there would be a need for assurance that sufficient electric capacity would be coming into the state. The utilities were required at the present time to do an integrated resource plan which had to be submitted every 3 years. This was a 20 year planning effort as to what the load forecasts were and how those would be met. In the restructured environment, the PSC was suggesting that responsibility be transferred to the commission.

Mr. Amodei asked if A.B. 366 gave the PSC authority to regulate generation resource selection by competitors. Ms. Sheldrew replied in the negative.

Ms. Tiffany said she understood the PSC had hired a consultant to look at the restructuring and formulate A.B. 366. She asked if the consultant also helped restructure the PSC department as far as the type of people that would be needed and the work flow.

Ms. Sheldrew said the consultant helped on the electric restructuring issue. The PSC hired two separate sets of consultants who looked at the structure of the commission itself. In the 68th Legislative Session the PSC had requested some funds in the budget to allow the hiring of a consultant to come in and analyze what the structure of the commission should do, and where it should be going in the future.

Ms. Tiffany asked if the PSC staff would need to be increased during the restructuring period of time if so, would it need to increase its mil tax.

Ms. Sheldrew did not feel it was up to the agency submitting the bill to request a fiscal note. It was her understanding the fiscal impact was attached by the research or legal staff. She said in anticipation of the question of a fiscal note the PSC had asked staff to prepare an advisory to the legislature as to the additional staff it felt would be necessary if A.B. 366 was approved by the commission. On the mil assessment, statutorily the PSC was authorized an assessment of 3.5 mils and at the present it was at 2.8 mils.

Ms. Tiffany said she hoped the subcommittee appointed on A.B.366 would take a serious look at this issue.

Continuing her presentation, Ms. Sheldrew said the next step was the discussion of the effectively competitive market. To make it easier for the committee to understand she referred to the last page of Exhibit E. The proposal the PSC was putting before the committee in an attempt to move toward the restructuring and competitive model, contemplated a continuum of lesser regulated services. There had been discussion on the description of the services, who would be the provider of those services, and what type of regulation would those services be subject to—moving toward the point where there would be effectively competitive services.

Ms. Sheldrew said what was being done in the interim during the transition was to put the potentially competitive services under an alternative form of regulation. Then the PSC would go through and measure whether or not those services had become effectively competitive.

Ms. Sheldrew stated the PSC was suggesting that the legislature give the commission direction how to find a market effectively competitive based on identifying the relevant market, the alternative sellers that participate in the relevant market, and calculate the market share of each participant in the market and the evaluation of the significance of those shares. All the providers would be subject to alternative regulation whether it was incentive or a price or some other type of regulation which would give them the flexibility to begin moving toward a much more competitive market.

Ms. Sheldrew said section 13 of A.B. 366 required an alternative seller to obtain a license from the PSC before it would be allowed to sell any electric service to a customer. All alternative sellers must satisfy certain procedures and conditions to obtain a license to sell electric services. The PSC felt the alternative sellers should be licensed to assure the commission that they were financially capable of providing the service for a period of time.

She continued section 14 of A.B. 366 said non-competitive service providers were not allowed to provide potentially competitive services except through an affiliate and all non-competitive service providers needed to facilitate nondiscriminatory access to such services. Ms. Sheldrew explained nondiscriminatory access was a key to the federal energy regulatory commission's decision to try and facilitate alternative providers to enable them to get onto the transmission line in order to provide service. It was one of the key components required to be assured that an alternative seller could get electricity to the customer so it needed to be directed that all providers have access to those services. The PSC was asking the alternative providers to formulate themselves as affiliates, not to divest themselves, but they would

have to change their form to assure the commission there was no anti-competitive behavior among the various groups.

Ms. Sheldrew said as the state moved from a monopoly and regulated environment there were different set of questions and concerns. Some of the concerns were anti-competitive conduct relative to predatory pricing and bottlenecks facilities. This section required the commission to develop a standard of conduct for all of the various market players as it related to anti-competitive conduct including penalties. It also allowed the establishment of limitations on corporate structure or ownership of assets to reduce the opportunities for such conduct.

Assembly Bill 366 authorized the PSC to conduct investigations into the operations of the markets for electric services in Nevada to assess the effects of mergers and consolidations, transmission congestion and constraints or discriminatory conduct in the markets.

Ms. Sheldrew explained if the results of the investigation found anticompetitive or discriminatory conduct was preventing retail electricity consumers from obtaining the benefits of effective competition, the PSC would give any evidence of violations of state laws to the Attorney general. She indicated on this section of A.B. 366 the Consumer Advocate had some suggested clarification language which would be brought to the subcommittee.

Ms. Sheldrew said section 16 of A.B. 366 was the mixing of monopoly and potentially competitive services. She explained an affiliate of a provider of a non-competitive service could provide a potentially competitive service if it found out the affiliate would have an "arm's-length" relationship with the entity that provided the non-competitive service; the arrangement would not adversely affect the development of effective competition; and the risk of anti-competitive behavior and all regulatory costs required to prevent such behavior was minimal. She stated if the PSC determined those conditions could not be met, it should give the utility a reasonable opportunity to recover its costs associated with that service.

Ms. Sheldrew stated section 17 of A.B. 366 assigned the responsibility for provision of non-competitive services to electric utilities in its service territory unless the PSC authorized another entity to provide some of all non-competitive electric services. She pointed out non-competitive services would remain subject to current regulatory and statutory provisions unless the PSC approved an innovative pricing plan. This was the second place in A.B. 366 where the legislature was directing the PSC to move from rate of return regulation to another alternative form of regulation and encouraging the PSC to change the

way non-competitive services were regulated if it could find the innovative pricing methodology would improve performance or lower the cost of providing those services. There would also be a requirement that alternative sellers have nondiscriminatory access to transmission, distribution, and other facilities required to access customers.

Ms. Sheldrew stated section 18 covered provision of service to those customers who decided not to or were unable to secure an alternative supplier and would remain the obligation of the electric utility unless assigned to another entity. The recovery of those costs would be subject to current regulation. She said other entities could be assigned those customers through direct assignment of the customers to the alternative sellers or by holding a bidding process for the right to provide that service. She said the PSC would establish minimum terms and conditions for the provision of basic service. If an electric utility was the basic service provider, the utility needed to provide the service through an affiliate whose sole business was the provision of basic service.

Continuing, Ms. Sheldrew stated section 19 of A.B. 366 dealt with past or stranded costs and directed that any costs on the books of an electric utility as of July 1, 1997 which were allocable to a potentially competitive service be fairly apportioned between the utility's shareholders and ratepayers, taking into consideration market value of the stranded costs, how much was left on the books, and what the tax effects were of some of those issues. She stated, next, section 19.2 said the PSC was to impose a mechanism which was nonbypassable so all the alternative sellers had to contribute to that portion of past costs for which the ratepayers would be held responsible.

She continued section 20 was the consumer protection section and dealt with three specific areas:

- Slamming - the PSC was to establish procedures to ensure no customer of an alternative seller was switched to another alternative seller without confirmation of the transfer;
- Labeling - anyone selling a potentially competitive service needed to provide information to enable retail customers to easily compare price, price variability, and resource mix; and
- Consumer Education - the PSC was to implement a consumer education program for informing customers of the changes in the electric industry and utilities and alternative sellers were to be required to provide information which allowed comparison of prices and services.

She said section 21, on transition issues, required electric utilities to submit a plan to comply with the obligations of A.B. 366 and the regulations adopted by the PSC to implement the provisions of the plan. The plan needed to give the PSC sufficient information so the rates could be set for the non-competitive services as well as establish interim price regulation for the potentially competitive services.

Commissioner Sheldrew explained that section 22 of A.B. 366 covered the integrated resource planning which took the burden from existing utilities to establish a 20-year plan and submit it every 3 years to the commission, and transferred it to the PSC effective July 1, 2000. The requirements were to forecast electric capacity and energy requirements, evaluate economic, environmental and other benefits to Nevada associated with various sources of supply, and identify the best combination of sources of supply and methods to reduce demands to meet forecasted requirements. The PSC would then determine if the combination of resources thought to be in the state's interest would be available to customers in the market at a reasonable price and selected by consumers after direct access to potentially competitive services had been authorized. Only in the event the PSC determined that the identified combination would not be available to customers at a reasonable price could it establish those nondiscriminatory obligations on retail customers, electric utilities, or alternative sellers to ensure that the combination was achieved. She said this section was a "safety net" to guard against market failure as it related to the supply or mix of resources.

Ms. Sheldrew pointed out section 23 directed the PSC to prepare a quarterly report to the legislature that assessed the developments in the electric industry in Nevada. The report would evaluate:

- Whether effective competition was developing for each potentially competitive service;
- Whether direct access was compatible with environmental goals;
- What the change was with direct access relative to the present structure; and
- Opportunities to deal with some of the regional bodies.

Continuing on to section 24, Ms. Sheldrew stated vertically integrated utilities at the present were centrally assessed for property taxation purposes and their property taxes were distributed among the various counties. The PSC did not want to disturb the county revenues therefore the section on tax policy essentially said nothing would disturb the classification, assessment, or allocation of property related to centrally assessed properties. Some of the geothermals or independent power producers, while they were centrally

assessed, they were not centrally distributed and if they were to be centrally assessed there would be a shift of property tax allocations among the various local entities. The PSC also suggested the Department of Taxation further study the tax issues and report back to the 70th Legislative Session.

Mr. Neighbors complimented Commissioner Sheldrew on her presentation and asked how many states in the past 2 years had "come on line" and what happened if no legislation on this was passed during the current legislative session.

Commissioner Sheldrew replied she would like to answer Mr. Neighbors' second question first and then Mr. Cook could give him an analysis of where some of the other states were. After the PSC completed its investigation it had concluded it was riskier to do nothing than to move forward on what the PSC felt was a "modest attempt to get moving." The reason for that was two-fold. As other states around Nevada were moving rapidly to retail competition scenarios and what California was doing could not be ignored, Nevada needed to be prepared to move with them. Arizona was moving toward retail competition and there were some pilot programs in Idaho and Washington. Oregon was also beginning to move forward. With the size of Nevada and with the possible problems in attracting competitors and alternative suppliers the PSC felt there was a need to get started encouraging the other providers to come to the state of Nevada.

Ms. Sheldrew said Congress was also likely to act. One of the bills introduced by Congressman Shaffer in 1996 had a provision which only gave a state 6 months to move into electrical restructuring. She said the penalty for not reacting quickly enough in Mr. Shaffer's bill was to essentially default it into FERC. FERC would then come in and make the decisions for Nevada. Commissioner Sheldrew did not feel that was something Nevada would want to be subjected to nor would it be in the best interests of Nevada. She said for those reasons the PSC believed it was prudent to start getting the regulatory and legislative house "in order." Secondly, she said nothing she had read indicated that competition was not a better regulator than regulators. Competition exacted more discipline from the market and provided the kinds of services that consumers wanted at the prices they were willing to pay. She said competition would encourage economic development, lower electric bills, and encourage innovation in the electric market and technological innovation.

Mr. Neighbors said his argument was that a lot of Nevada's adjoining states had higher rates and his concern was the balancing act did not affect Nevada. He wondered if Nevada's rates might go up while the others went down.

Ms. Sheldrew said that was not a correct economic analysis as the markets in the states were considerably different. The past costs which had to be dealt with, particularly in California, as a result of some of the nuclear facilities had caused their rates to be exceptionally high. The way California had chosen to pay off the stranded costs was to keep them high. She did not believe the homogenization would be seen in Nevada as it had a completely different market.

Mrs. Freeman asked what the role of the consumer advocate was and would those environmentally producing power be required to be competitive. Ms. Sheldrew replied the role of the consumer advocate, as it related to representing residential and small commercial customers in front of the PSC, would not change. The consumer advocate's office was still going to be representing those customers in all of the service areas which were non-competitive as well as representing them in those areas where there are potentially competitive issues. She said to keep in mind what was being suggested was an alternative form of regulation, not immediate deregulation of generation and aggregation. In addition, if the consumer advocate was successful in their proposal, their duties would be expanded because they would be included in the antitrust effort.

Responding to Mrs. Freeman's question on the environmental issues, Ms. Sheldrew stated the PSC concluded after its investigation that there was a continued role for integrated resource planning because of the environmental issue. She said in the short term, some of the renewables in the environmentally sensitive production technologies for electricity might not be price competitive. The reason the PSC had established the integrated resource planning effort was because it granted the commission the authority to look at and evaluate the environmental as well as the economic issues in determining resource mix.

Mr. Mortenson asked how an individual would compete in the deregulated environment and get rates comparable to a larger customer such as a hotel/casino.

Commissioner Sheldrew answered in order to take advantage of competition and the availability of alternative suppliers, retail customers were going to have to be aggregated or bundled into a group. The job of the aggregators was to go out and select particular customers who had low characteristics that when put together would get them a very good deal as far as acquiring generation resources. She felt where residents, individually, would really benefit was going to be in the metering. She said there was a lot of work being done at the present in time-of-use metering and if power could be bought or used when it

was "off-peak," a better rate could be obtained. She explained it was more educating the consumers to be wise users of electric resources.

Greg Cook, said it had to be kept in mind that many times it was less expensive to serve an entity such as Circus Circus due to load characteristics than it was to serve an individual customer. Residential customers would also have higher distribution charges which would not be applied to Circus Circus if the resident went to higher voltages. He said Commissioner Sheldrew was correct in saying a lot of the advantages would be taking place in the advance metering.

Mr. Amodei said he was looking at section 19 of A.B. 366 and asked if Commissioner Sheldrew could compare the procedures set up in this section with the procedure which had been gone through historically under Nevada Revised Statutes (NRS), Chapter 704.110. He was asking this question because he wanted to know the past determinations made by the commission regarding the appropriateness of the investments and whether or not they would be returned and in what manner they would be returned through the rate structure.

Ms. Sheldrew replied the view of stranded investment had a relationship to the review conducted under resource planning, but there was no historical way as to how this was done. There was a relationship between the determination made in a resource planning effort that a particular addition was or was not prudent. One of the discussions the PSC had during its investigation was the ramification of the commission's in-depth review on decisions made under resource planning and whether or not those were going to be automatically assumed recoverable. She said the process the PSC outlined in section 19 did not go back and rejudge any of the decisions made under resource plans. The extent to which the market value of the assets compared to the book value of those assets, or whether it could be marketed and that asset or the revenue from that asset sold, was the net effect of what the resource plans were.

As there were no more questions for Mr. Mendoza, Ms. Sheldrew, or Mr. Cook, Chairman Bache began calling for testimony from the names on the guest roster.

Joyce Newman, Executive Director, Utility Shareholders Association of Nevada (USAN), provided a written copy of her testimony, (Exhibit I). She said the USAN was comprised of people who had invested in Nevada's energy utilities. There were more than 25,000 Nevada families who owned stock in Nevada Power Company and Sierra Pacific Resources. She introduced Perry Whitt, President, USAN, who would give some brief introductory remarks and Mr. James Kropid, Director, USAN, who would testify in more length on some of USAN's views regarding stranded costs recovery.

Mr. Whitt provided a copy of his testimony, (Exhibit J), and briefly stated a few of USAN's concerns on A.B. 366 before turning the microphone over to Mr. Kropid. He said as Nevada moved forward into retail electric competition USAN felt it was necessary for the state's incumbent utilities to have the flexibility to compete. They felt flexibility was not only important to shareholders but also the companies' smaller customers who might not be sought after by competitors.

Mr. Whitt said A.B. 366 did not allow that flexibility and required more regulatory oversight than existed at the present. He said in the area of resource planning, this bill permitted the PSC to prepare the plan and required that all sellers in the market comply with a predetermined resource mix. He said in the specific areas of pricing and financing the incumbent utilities should be permitted the freedom to react to changes in the market which were not provided by this legislation.

Mr. Kropid also provided a written copy of his testimony, (Exhibit K), and said he had a total of 32 years in the utility industry and was employed with Central Telephone during the first ten years of deregulation.

Mr. Kropid stated his main focus would be on section 19 of A.B. 366, or the section which dealt with stranded costs recovery. He said section 19 called for apportioning stranded costs between shareholders and utility customers, but the USAN had to disagree with the PSC's approach. Attached to Mr. Kropid's testimony was a "White Paper," (Exhibit K, pages 7 through 12), prepared by USAN's counsel which gave the legal reasons for the opposition to section 19.

Mr. Kropid said a great deal had been written about stranded costs but one paper he found to be compelling was written by Scott Hempling, the consultant hired by the PSC to guide them through the restructuring process. He said Mr. Hempling made a "strong case for 100 percent recovery by shareholders of stranded costs."

Mr. Kropid explained that in Nevada, the resource planning process allowed the PSC to review every 3 years an electric utility's plan to acquire resources necessary to meet anticipated demand. He said Nevada law (NRS 704.110) allowed utilities to recover all just and reasonable costs of acquiring or constructing facilities which had been approved in those resource plans. The investments were deemed to be prudent and the utility and its investors relied on the fact that decisions made under the regulatory framework would not be disturbed at a later date.

Quoting Mr. Hempling, Mr. Kropid said all public utilities had certain responsibilities. First they had an obligation to serve all who applied for service in their service area and needed to provide a safe and reliable service and charge only "just and reasonable rates and may not earn monopoly profits." Still quoting, he said, "In return for undertaking these obligations, the compact, grants a right to collect a reasonable price for their services based on their prudently incurred expenses and a reasonable return on prudent investment. The right to recovery of and return on investment must reflect the risks imposed by the compact on the utility."

Mr. Kropid remarked because of this regulatory compact, utility customers had benefited from lower rates. The rate of return paid to utility investors had been set by the PSC at a rate lower than could be expected in competitive businesses and those savings had been passed on to consumers in the form of lower rates. He said that was an important concept because customers, including those who were seeking to shop for other suppliers, had already enjoyed the financial benefits of the regulatory compact.

Mr. Kropid said in summary, Nevada utilities incurred expenses pursuant to government regulation, and to tell shareholders they could not recover those costs meant shareholders were "compelled by government to take a risk but then not compensated by government for that risk. That type of asymmetry could be confiscatory, in violation of the US Constitution." He remarked that shareholders had relied on commitments made by the state when they decided to invest in Nevada utilities and USAN felt it was important to honor those commitments.

Mr. Douglas R. Ponn, Executive Director, Governmental and Regulatory Affairs, Sierra Pacific Power Company (SPPC), testified he would first like to acknowledge that the PSC, in developing A.B. 366, had done a great deal of work, and that, along with the ACR 49 interim hearings developed a basis for the 69th Legislative Session to go forward on electric restructuring. He also agreed with Chairman Bache to put this issue into a subcommittee for more detailed study and felt in that subcommittee many of the issues mentioned in previous hearings would be developed more fully.

Mr. Ponn stated Sierra Pacific had some concerns regarding the language contained in A.B. 366 and would take advantage of the subcommittee to address them, but in fairness to the full committee he would take some time to outline those concerns.

- Treatment of past or stranded costs;
- Mandated reorganization or divestiture; and
- Reciprocity, which was not addressed in A.B. 366.

He said SPPC was in support of a "date certain" and thought it could be important because it established a planning target or horizon for all the parties to "shoot toward" and reduced some of the uncertainty surrounding what was going to happen and when.

Sierra Pacific Power Company also supported the implementation of a pilot program which was mentioned in A.B. 366 as an option for the PSC. He said although other states had pilot programs, the uniqueness of Nevada made it beneficial for the state to do its own pilot just to identify those issues which had not been thought of yet.

Mr. Ponn said a clear definition was needed of the SPPC's obligation to serve those customers who chose alternative suppliers and then decided they wanted to return to the utility and those distribution customers served by the remnants of a monopoly utility.

Mr. Ponn stated on the issue of resource planning Sierra Pacific Power Company felt the legislators from this session should make it very clear who was to do resource planning and whether it was the PSC who decided both sufficiency and resource mix or renewables, or if the legislature would assert jurisdiction over the questions of resource mix.

Mr. Hickey said the Utility Shareholders had expressed some concern that the PSC bill went further in regulation than what existed at the present. He wondered if Mr. Ponn shared the shareholders' concerns that those entities within state might be over-regulated and not sharing those same regulations with potential out-of-state competitors.

Mr. Ponn stated SPPC was also concerned about the reciprocity issue because given the disparity in prices of electricity in surrounding states it was extremely important to get the reciprocity rules so there was at least as much opportunity to go into other markets and compete as there was risk or exposure from utilities or others from the neighboring states. Sierra Pacific Power felt some stringent guidelines should be in place for who could compete in Nevada, based on their behavior and their exposure in their home or other jurisdictions.

Mr. Ponn said regarding Mr. Hickey's question on the level of regulation involved, SPPC had tried throughout the proceeding to think of and propose

ways which at some time there would be more competition through less regulation.

Mrs. Freeman asked if any of the neighboring states "shut the door" on retail wheeling. Mr. Ponn replied he was not aware of any prohibition in the future against retail wheeling. Retail wheeling was not "authorized" in most states at the present time. He remarked the Idaho legislature had looked at a law which said if anyone tried to take over Idaho Power the state would step in and protect it from the external attempt. He commented that was not retail wheeling but it was the same kind of thing where a state was trying to guard the indigenous resources in that state. Mr. Ponn said the Washington legislature had recently abandoned its attempt to enact retail wheeling.

Mrs. Freeman asked what Mr. Ponn would briefly envision a pilot program to be. Mr. Ponn said it was a valid area for the PSC to get involved and to essentially decide on the parameters with input from all interested parties. He said SPCC would like to see an equal opportunity for all sorts of customers to be involved in that pilot, such as some aggregated residential customers, a mix or profile similar to the utilities customer mix. He felt some customer training in how transactions were contracted and executed, and the different steps in the billing process would be helpful. Mrs. Freeman remarked care needed to be taken to remember the rural and urban mix.

Larry Hawke, Government Relations Counsel, Nevada Mining Association (NMA), provided a written copy of his testimony, (Exhibit L), and stated mining in Nevada was a modern, hi-tech enterprise, and as such, was a major consumer of electric energy, consuming approximately 25 percent of the power sold in northern Nevada and spending over \$100 million per year for that power. He said in the interest of time, he would like to identify four underlying principles and four elements of what the NMA felt should be in A.B. 366. In terms of the underlying principles the NMA believed that:

- Competition promoted economic efficiency and innovation;
- Restructuring should increase efficiency, promote innovation, and reduce costs;
- Electric companies should be allowed the opportunity to recover an appropriate portion of past net costs imposed on them by regulation; and
- Reliability and safety of the electric supply infrastructure should be an obligation of all segments of the electric supply industry.

Mr. Hawke next addressed the four basic elements which were:

- Consumer choice—customers should have the ability to buy electricity from any supplier at a competitive market place;
- Access—transmission and distribution services should be available to customers or their aggregators on a non-discriminatory and non-preferential basis;
- Energy markets—energy sellers should be encouraged and customers should have the option to buy directly from a utility, a generator, an aggregator, or from any other seller on a regional basis; and
- Timing—a certain date should be set after which competition will be in effect in Nevada.

In conclusion, Mr. Hawke said change in the electric industry was inevitable and the legislature should move forward quickly to protect the interests of all Nevada electric consumers. He said the NMA would look forward to working with the subcommittee as appointed.

Bob Reeder, Outside Counsel, Barrick Mines, said Barrick Mines operated two properties in Nevada, one in northern Nevada—Barrick Goldstrike Mines where it had a long-term contract for the supply of electricity implemented by a tariff approved by the PSC which would take care of the northern property electricity needs until the year 2000. In southern Nevada—Barrick Bullfrog Mines bought power from a cooperative, Valley Electric, and this contract also would expire in the year 2000.

Mr. Reeder stated Barrick had been a participant in the restructuring debates, and participated in the PSC's workshops. Barrick felt A.B. 366 provided a workable framework for moving forward with restructuring in Nevada and it raised and addressed the appropriate policy questions. He said change was necessary for the reliability of the industry and a continued delay with respect to structure of the future raised questions with the respect to the continuing availability of reliable service to customers not only in North America but also in each of the states.

Mr. Reeder said there were certain issues he felt were important to restructuring which he would briefly like to outline:

- Time table—four reasons for a date certain were:
 1. Grandfathering—there were some good provisions in A.B. 366 such as stranded costs, market power assessment which should not be lost to a federal mandate.

2. Cueing—California would open to competition in 1998, he urged the committee not to let Nevada be last.
 3. Reliability—it was imperative to move forward to make sure Nevada had a reliable service.
 4. Incentive—the best way to compel change was to have a date certain.
- Market power—it was appropriate for the PSC to make the determination as to when the incumbent could enter the market because of the risk it had unfair advantage with respect to the market.
 - Anti-trust—A.B. 366 did not repeal the anti-trust exemption which existed in Nevada law so Nevada anti-trust laws would not apply to competitors without further action. Under federal law, actions sanctioned and supervised by the state could be immunized from the more pervasive federal anti-trust laws.
 - Openness—reliable service was an important factor and the way to assure this was to require all who sold in Nevada to register and demonstrate they would comply with the rules.
 - Stranded Costs—A.B. 366 allowed stranded costs to move forward. Some of the utilities in Nevada and other states had proposed if the rates could be frozen they would forego stranded costs. If the utilities could get where they wanted to go, this proposal should be considered.

Thelma Clark, Representative, Nevada Seniors Coalition, provided a copy of her written testimony, (Exhibit M), and testified on behalf of the Nevada Seniors Coalition (NSC) in support of A.B. 366. She said she had been involved in issues regarding public utilities in Nevada for 34 years.

Ms. Clark stated the NSC felt A.B. 366 was a good start in initiating the process of deregulating the electric industry in Nevada but an amendment was necessary to set a date certain for competition and to provide for divestiture when competition began. At that time utility customers would be notified of the different rates and services. The NSC hoped the deregulation of Nevada monopoly electric utilities would provide benefits for everyone—customers as well as shareholders.

Ms. Clark said deregulation was a fact of life. It could be shaped here and now, or they could sit back and watch the federal government and the surrounding states shape it in Nevada. She said the NSC did not believe A.B. 366 was

perfect and reiterated an amendment was needed to provide for a date certain and divestiture when competition began. However, it did establish the necessary framework for moving Nevada's electric industry toward a competitive environment.

Scott Barbour, Architect, Barbour and Associates, provided a copy of his written testimony, (Exhibit N), and stated he supported A.B. 366 with caveat. He said Nevada was one of five states in the nation with an abundance of solar, wind, and geothermal and felt it was time Nevada mined those resources. He stated renewables were the energy source of the future and were a clean, unlimited fuel source which could give Nevada a competitive edge in the future. He commented the only energy of the future would be a sustainable or renewable energy.

Mr. Barbour said deregulation had the potential to diversify Nevada's economy with revenues possibly exceeding those of the casino industry. Under pending national energy restructuring, a percentage of all energy will be required to be from renewables. This would give Nevada the opportunity to sell its power from its renewable energy resource and boost Nevada's economy because of the abundance of those resources.

Mr. Barbour stated there were two components which could be integrated into A.B. 366:

- A renewable portfolio standard which would set aside a percentage of all energy to be from renewable resources; and
- A systems benefit charge which would create a fund to support the development of renewable energy in the state.

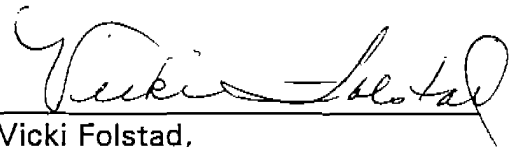
Mr. Barbour felt it was imperative to keep consumer protection in A.B. 366 as it would only be through legislative actions that consumer protections were kept. He said fairness, equal access and public interest was the purpose of any energy deregulation bill.

Chairman Bache announced the committee needed to adjourn for floor session and apologized to those signed in who did not get a chance to testify. He said A.B. 366 would be going to subcommittee for further hearings and he encouraged all to return with suggested amendments and testimony at that time.

As there was no further business before the committee, meeting adjourned at 10:57 a.m.

Mr. Timothy K. Shuba, Legal Representative, Newmont Gold Company and Sandra Rizzo, Representative, Nevada Green Party, did not testify but asked that their written comments be placed in the record (Exhibits O and P).

RESPECTFULLY SUBMITTED:



Vicki Folstad,
Committee Secretary

APPROVED BY:


Assemblyman Douglas Bache, Chairman

DATE: July 25, 1997

**OVERVIEW OF THE ELECTRIC INDUSTRY AND COMPETITION
PRESENTATION FOR THE GOVT. AFFAIRS COMMITTEE**

MAY 6, 1997

I. Overview of Current Electric Industry - Bundled Service (Handout 1 - Bundled rate)

Currently, vertically integrated utilities provide retail electric service within exclusive territories established by state or local law. Vertically integrated utilities own and operate the assets necessary to produce and deliver electricity. Electric Service is provided to customers on a bundled basis where the customer purchases a single product from the utility rather than buying some components of its service from other companies. The three main functions necessary to deliver electricity to end use customers are generation, transmission, and distribution.

A. Major Facilities and Service (Handout 2 - PG&E Dist Diagram)

1. Generation

Generation plants convert a variety of fuels into usable electrical energy. Due to the economics of generator construction, power is produced at a low voltage and then "stepped up" using generator transformers to a higher voltage for more efficient long distance transmission to load centers.

2. Transmission

Generation plants are connected to the transmission system to transport the electricity over long distances. The transmission system consists of high voltage lines that form a highly interconnected path between the generators and the distribution substations. Utilities in Nevada generally define their transmission facilities as all elements of the delivery system operated at 60 kV and above.

3. Distribution

The distribution "primary" system interconnects with the subtransmission system at substations where voltages are stepped down via transformers. For most customers, voltages are further stepped down all the way to 120 volts for residential customers. However, large customers may connect directly to the primary system, depending on their equipment and needs.

4. Ancillary Services (load following spinning reserve, voltage regulation)

Nevada's electric utilities perform a variety of distinct services in providing reliable electricity to the residents and businesses of Nevada. Services that support the reliable delivery of electricity to end users are often referred to as ancillary services. Some of these services include such functions as: scheduling the use of generation, purchased power resources, and transmission facilities to meet anticipated loads; dispatching generation and purchased power resources and transmission

facilities on a real-time basis to meet load within the utility's designated service area; maintaining transmission and distribution voltages on the electrical system within acceptable limits; and load following service to provide for the continuous balancing of resources with the utility's service area.

2. Reliability and Interconnections

a. Utilities must voluntarily operate systems within National Electric Reliability Council guidelines (NERC). (Handout 3 - NERC Regions)

Utilities voluntarily operate their electric systems within guidelines set forth by the National Electric Reliability Council or NERC. NERC is divided up into nine separate reliability councils. The Nevada utilities belong to the Western Systems Coordinating Council or WSCC. Both the WSCC and NERC have extensive guidelines for the reliable and safe operation of electric systems.

The coordination of energy flow requires cooperation with not only directly interconnected utilities, but with utilities throughout the Western Systems Coordinating Council (WSCC). This cooperation is carried out today by adhering to NERC and WSCC reliability criteria and operations standards.

C. Jurisdiction

Federal and State jurisdiction over utility operations is generally determined

by the type of service performed. Wholesale transactions are under the jurisdiction of the Federal Regulatory Energy Commission (FERC) while state public utility commission have jurisdiction over retail transactions.

1. Types of Service

a. Wholesale Service

Wholesale customers are customers who purchase electricity and resell it to end users (e.g., distribution coops, municipalities, other utilities). The Federal Energy Regulatory Commission has jurisdiction over facilities used to provide wholesale services.

b. Retail Service

Retail customers, or end use customers are customers who use the energy provided by the utility to perform work such as run a refrigerator, light a building, or air condition a casino. Retail customers are generally divided into three classes: Industrial (large casinos, mines, etc.), Commercial (stores, businesses), and Residential.

2. FERC Order 888

Last year, the Federal Energy Regulatory Commission restructured the wholesale electric industry with the release of Order 888. FERC Order 888 applies

only to services under FERC jurisdiction (i.e., service to wholesale customers). The Order states that each owner of transmission facilities must file a tariff at FERC to provide transmission of wholesale power. In effect, Wholesale customers should be able to purchase generation from sellers other than the transmission owner.

One of the major controversies in the evolution of the order was what facilities would be defined as FERC jurisdictional transmission facilities and what facilities would be defined as state jurisdictional distribution facilities. In the final order, FERC gave deference to states in stating that "Where states unbundle retail sales, we will give deference to their determinations as to which facilities are transmission and which are local distribution, provided that the states in making such determinations, apply the seven criteria...reaffirmed below." The seven criteria can be found in **handout 4.**

FERC order 888 left most state decisions unaffected. The FERC states in the order that they intend to be respectful of state objectives so long as they do not balkanize interstate transmission of power or conflict with the FERC's interstate open access policies.

II. Nevada Residential Rates as compared to other Utilities in the western U.S.

A. State Averages (See Handout 5)

When electric residential rates are averaged on a state by state basis, Nevada has above average rates when compared to other western states.

B. Utility Average Residential Rates (See Handout 6)

When residential rates are compared on a utility by utility basis, California utilities tend to have the highest rates while the Nevada utilities tend to have average to above average rates.

C. Rate Comparisons and Competition

Care must be taken when comparing utility rates as utility rates do not provide an “apples to apples” comparison of costs and do not necessarily reflect how successful a utility will be, or what future prices will be, in a more competitive environment. For example, a utility’s current rates reflect an average of its costs to serve groups of customers. The costs included in the rates include both future potentially competitive costs, such as the production of electricity, and future non-competitive service costs such as the transport of the electricity to customers. California utilities, for example, tend to have higher average rates because they 1) on average have more expensive generation plants and 2) due to mild weather, have fewer kWh sales to spread the costs of the more expensive generation plants and the transportation system over. The result is a higher average rate for their customers.

C. Average Residential Electricity Use and Costs (See Handout 7)

Another often used way to compare electric utility performance is to compare average annual customer bills. In this case, as shown in **Handout 7**, Nevada has the third highest average residential bill out of the 12 western states. However, this again does not provide a true “apples to apples” cost comparison in that certain geographic

regions have higher average annual usage than others. For example, California, although having higher average rates, has a lower average annual residential bill than Nevada due to less average residential kWh use.

III. Overview of Restructured Industry

A. Unbundling of Services (See Handout 8 - Unbundled Rate Example)

Nevada's electric utilities provide bundled services to their customers. Most residential customers view and pay for electricity as a single, homogeneous product. Today, the typical residential tariff includes only a customer charge (\$/month) and an energy charge (Cents/kWh). Most commercial and industrial customers face demand charges (\$/kW-month) as well as energy and customer charges. Thus, they may view the electricity as consisting of two elements, energy and capacity. In reality, electric power systems provide many other services beyond the energy and capacity output from power plants. These services are provided by the utility's vertically integrated system of generating, transmission, and distribution facilities.

Today's vertically integrated utilities with retail monopoly franchises will likely be very different organizations in the future. Industry restructuring involves the de-integration of today's utilities, much greater competition in wholesale electricity markets, and greater competition in retail markets. To facilitate these changes, utilities may want or be required to unbundle services that were previously provided as a bundled package. In addition, the utility may not be the only entity that can supply various services. Customers might choose to obtain some services from

other parties or even provide some themselves.

Electric utility services have to be unbundled into both competitive and non-competitive services so that customers can purchase competitive services from alternative providers. Initially, most services will remain non-competitive and be provided by a single provider because of technical and economic considerations. **Handout 9** is used to help illustrate the point that in general, only aggregation and certain generation services contain the characteristics that enable them to be provided competitively. AB366 provides that unbundled electric service will initially take the following form:

1. Generation - Potentially competitive service.
2. Transmission - Non-competitive Service that has Natural monopoly characteristics (i.e., least cost to society if provided by a single entity.) Monopoly services must be regulated.
3. Distribution - Non-competitive, Natural Monopoly, regulated service.
4. Various Ancillary services - some likely to be potentially competitive while other services are likely to be designated as non-competitive services that must be provided by a single control area operator.
4. Aggregation of power supplier for customer groups - Potentially competitive service.

Unbundling of electric services offers benefits to both electricity consumers

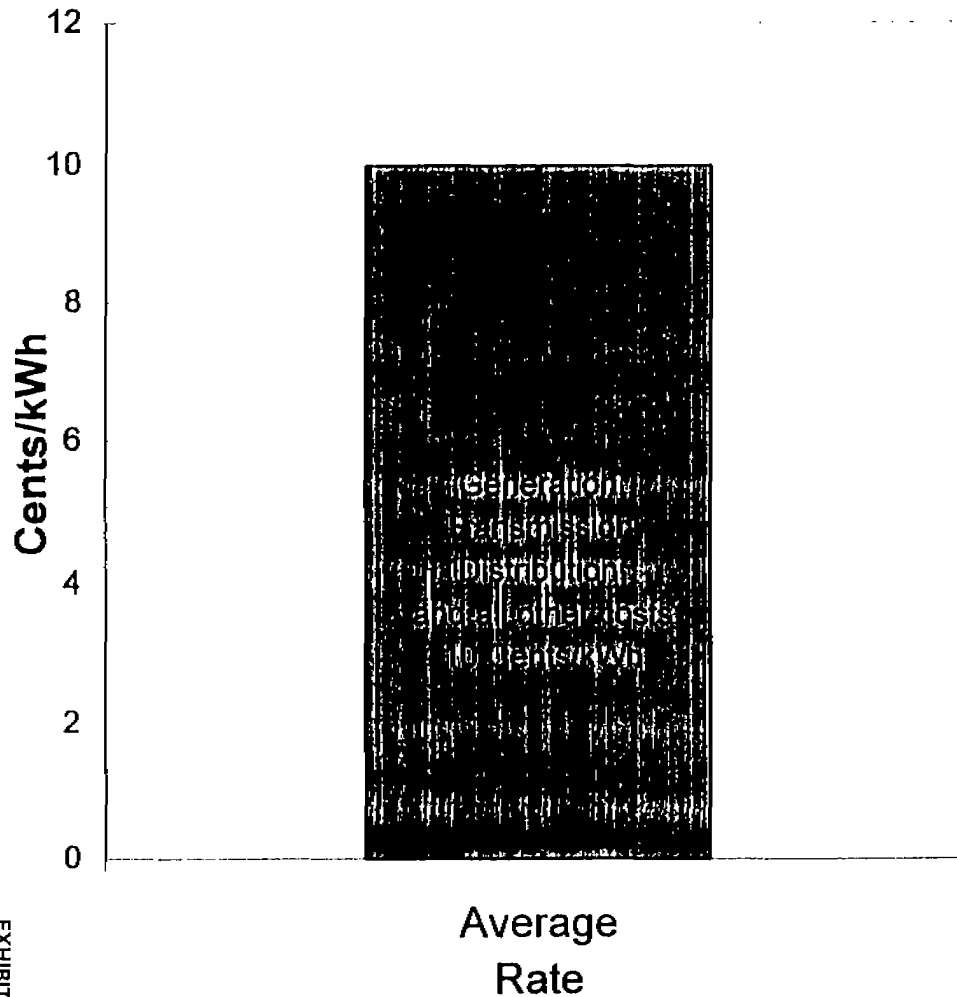
and suppliers. Consumers should benefit because they will be able to pick and choose only those services that they need, want, and are willing to pay for. Suppliers should benefit because they will be able to decide which services to offer on the basis of their costs and what services consumers are willing to buy.

ELECTRIC INDUSTRY RESTRUCTURING OVERVIEW

**PRESENTED BY
THE NEVADA PUBLIC SERVICE COMMISSION**

MAY 6, 1997

Traditional Rates: Bundled Service



Bundled Rate = 10 Cents/kWh

Rate Includes all functions

Rate includes several elements
(Energy, Capacity, other costs)

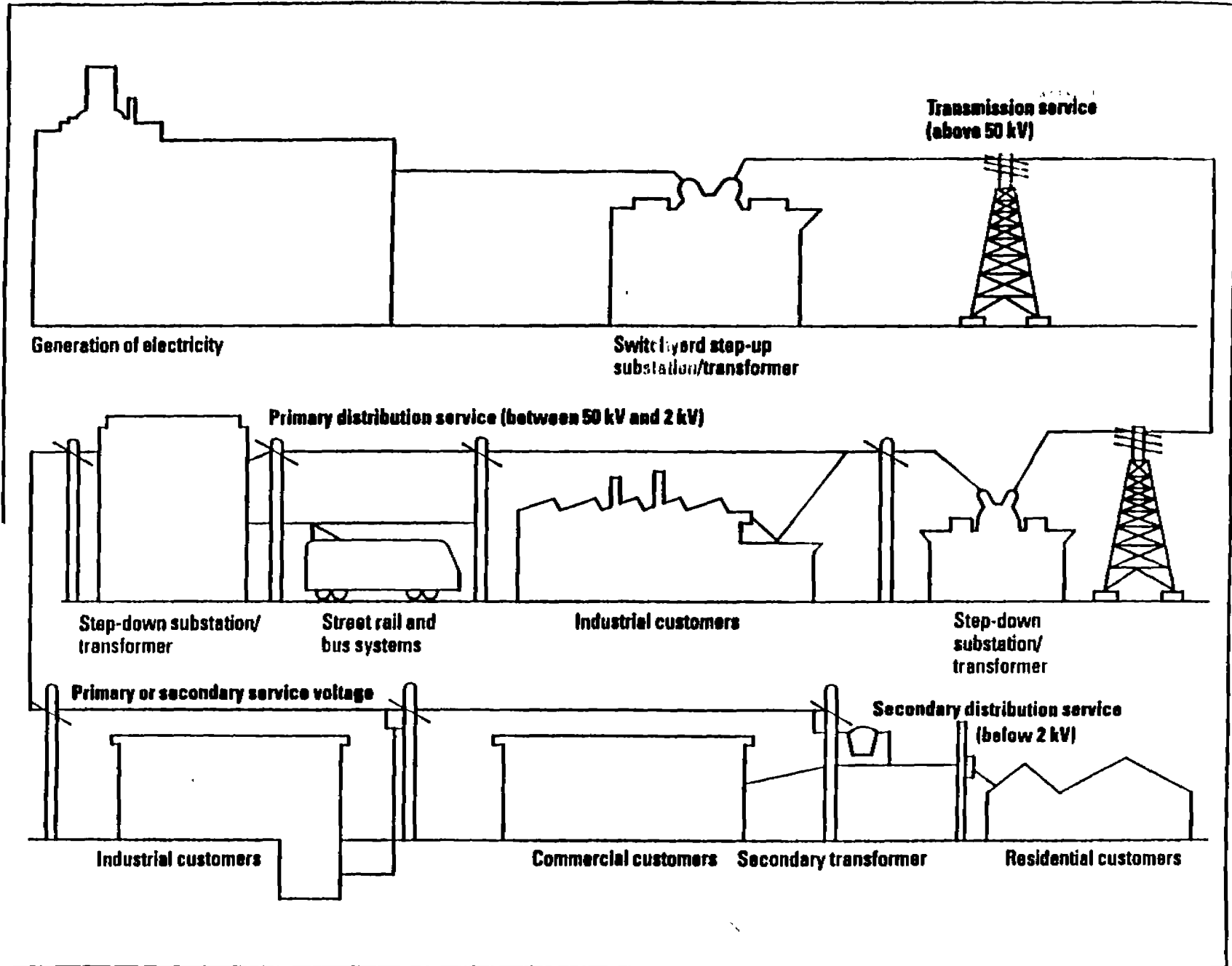


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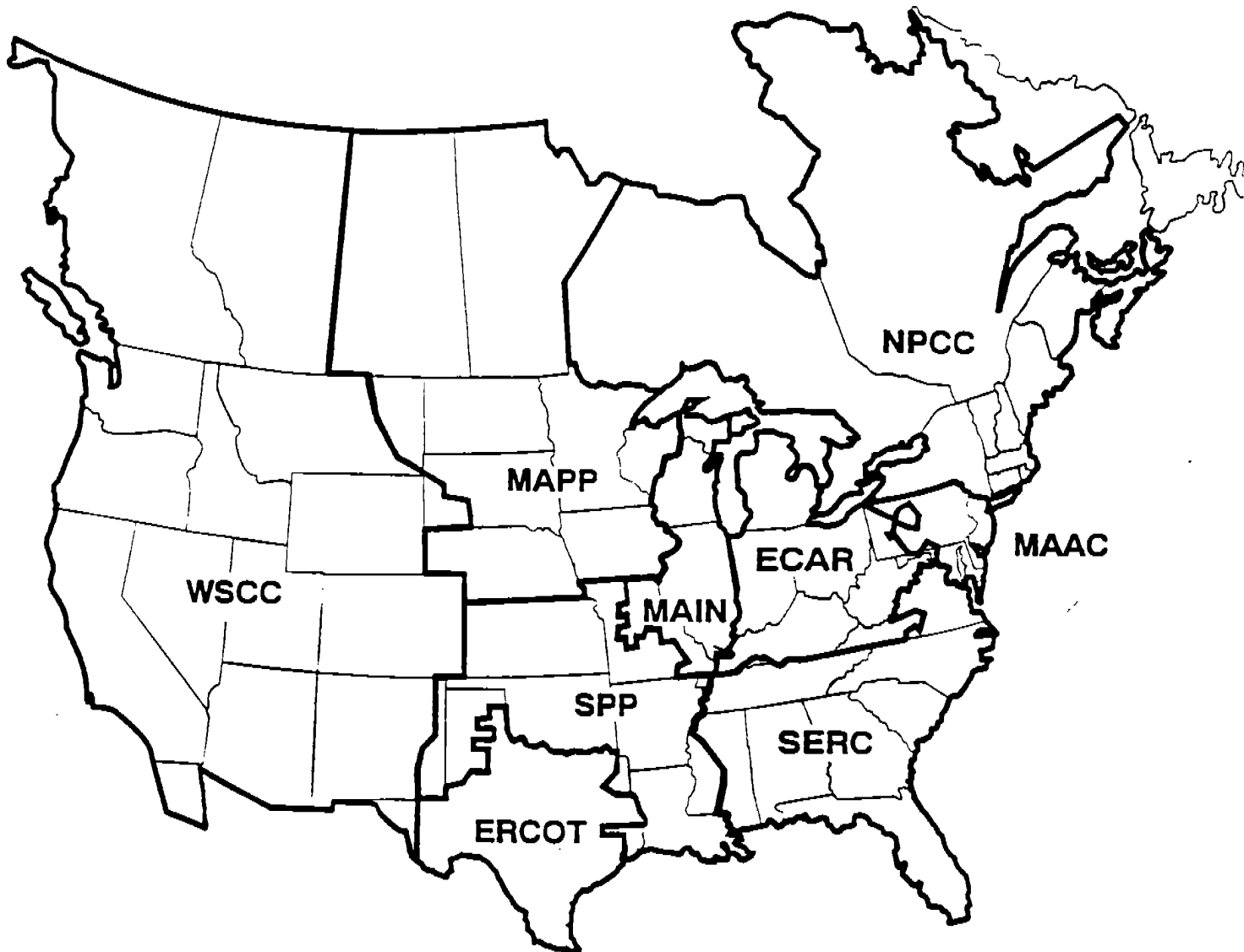
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May 6, 1997

Submitted by Judy Sheldrew, Commissioner
Public Service Commission of Nevada

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North American Electric Reliability Council



ECAR
East Central Area Reliability Coordination Agreement

ERCOT
Electric Reliability Council of Texas

MAAC
Mid-Atlantic Area Council

MAIN
Mid-America Interconnected Network

MAPP
Mid-Continent Area Power Pool

NPCC
Northeast Power Coordinating Council

SERC
Southeastern Electric Reliability Council

SPP
Southwest Power Pool

WSCC
Western Systems Coordinating Council

AFFILIATE

ASCC
Alaska Systems Coordinating Council

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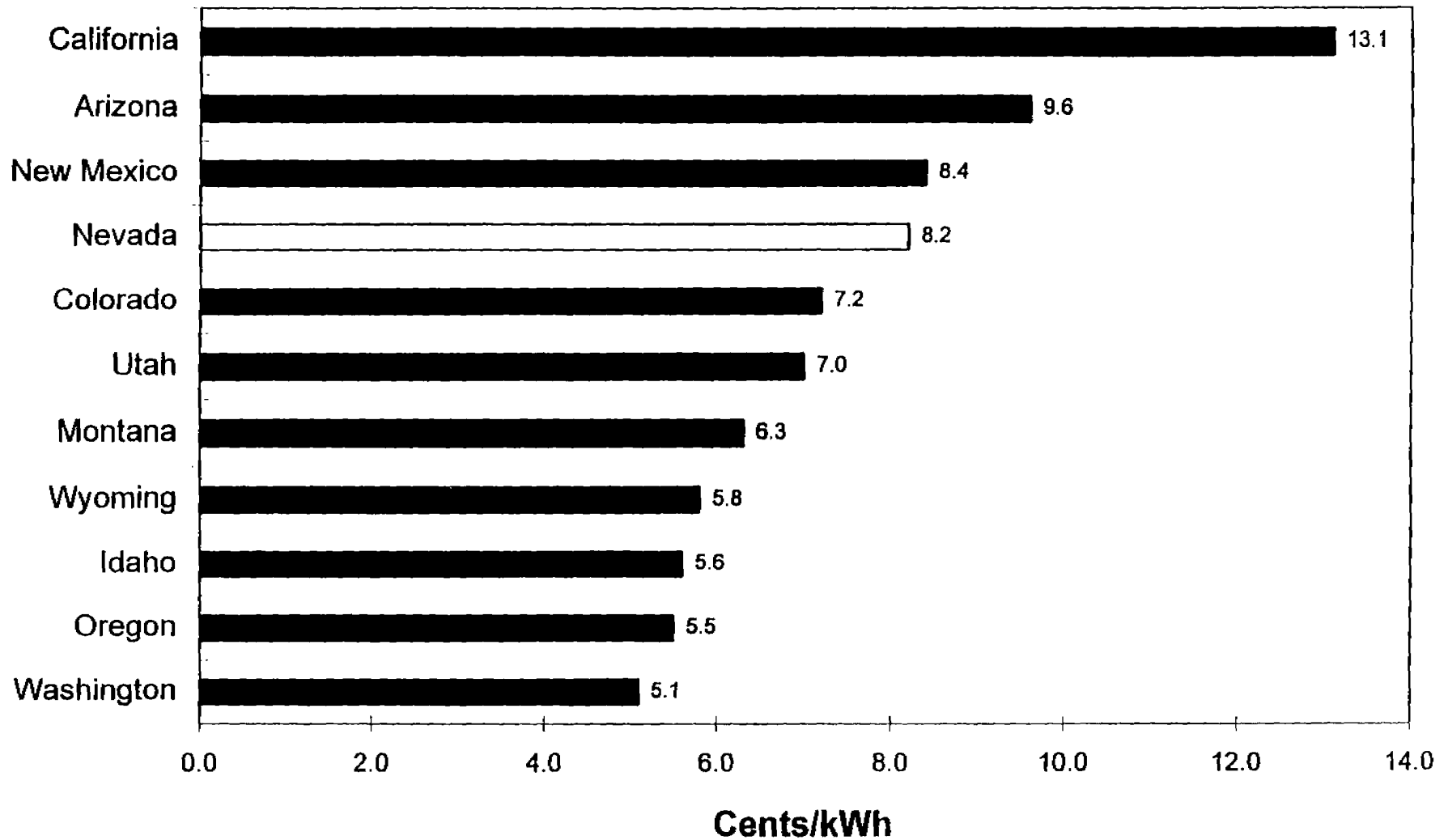
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Public Service Commission of Nevada

FERC Order 888

Seven Factors Used to Distinguish Between "Transmission and "Distribution" (p.371)

- (1) Local distribution facilities are normally in close proximity to retail customers.
- (2) Local distribution facilities are primarily radial in character.
- (3) Power flows into local distribution systems; it rarely, if ever, flows out.
- (4) When power enters a local distribution system, it is not reconsigned or transported on to some other market.
- (5) Power entering a local distribution system is consumed in a comparatively restricted geographical area.
- (6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.
- (7) Local distribution systems will be of reduced voltage.

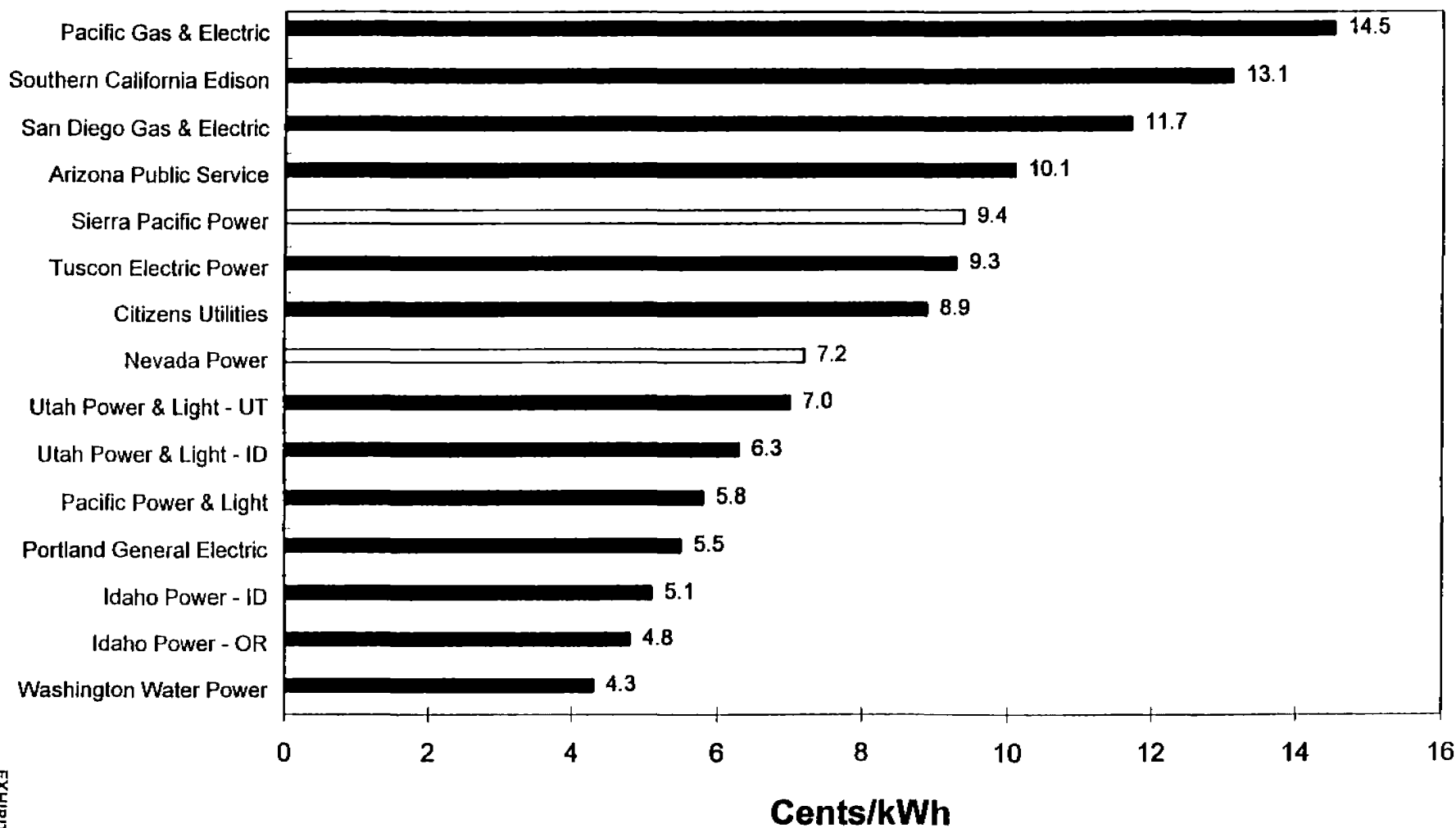
Western Electric Power Community Average Residential Electric Rates*



*Overall Average Price per kWh in 1995

Data Source: National Association of Regulatory Utility Commissioners, Residential Electric Bills, Summer 1995

Western Residential Electric Rates - Winter 1994-95



AVERAGE RESIDENTIAL CUSTOMER ELECTRICITY USE AND COSTS -- NEVADA vs WESTERN STATES 1995

State	Average Annual Use (kWh)	Average Annual Rank	Average Cost Per kWh	Average Cost Rank	Average Annual Bill
Alaska	8,175	6	0.1116	11	912.11
Arizona	10,983	10	0.0911	10	1,000.06
California	6,260	1	0.1161	12	726.62
Colorado	7,388	3	0.0741	8	545.80
Hawaii	7,433	4	0.1332	13	990.41
Idaho	13,345	12	0.0533	2	710.76
Montana	9,754	8	0.0609	5	593.94
Nevada	10,809	9	0.0711	7	768.70
New Mexico	6,343	2	0.0897	9	568.84
Oregon	12,564	11	0.0549	3	689.33
Utah	7,874	5	0.0693	6	645.94
Washington	13,584	13	0.0492	1	669.13
Wyoming	9,351	7	0.0608	4	589.92
Western States	9,528		0.0769		724.00
United States	10,042		0.0840		843.87

Source: Edison Electric Institute, Statistical Yearbook, 1996

Note: Numbers indicate the rank of the States for the respective headings with "1" representing the lowest kWh use or cost.

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EXHIBIT D

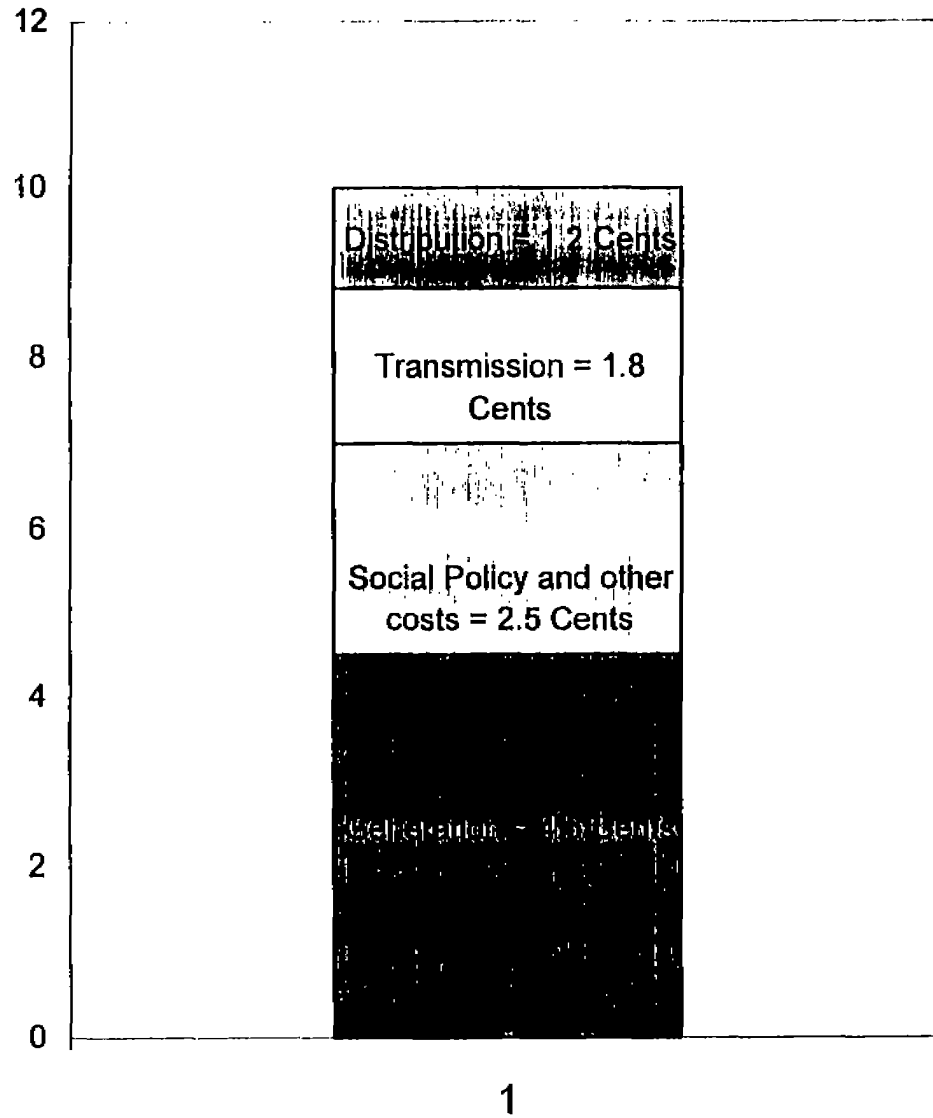
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Unbundled Rates Example



Total Unbundled Rate = 10 Cents/kWh

Rate Includes several functions:

- * Power Costs
- * Social Programs and other costs
- * Transmission
- * Distribution

Rate includes several elements (Energy, Capacity, other costs)

POTENTIALLY COMPETITIVE

NON-COMPETITIVE

Handout - 9

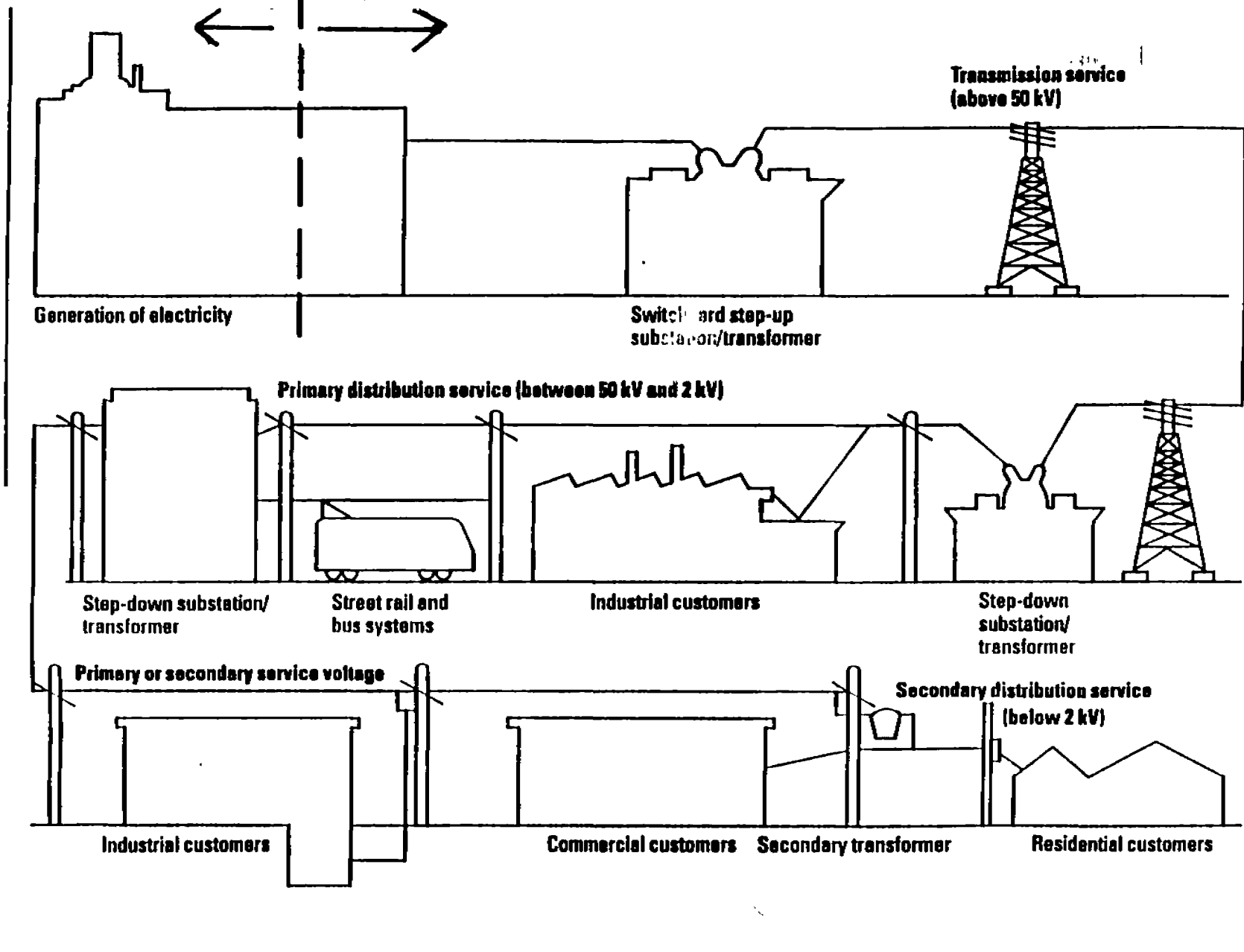


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Submitted by Judy Sheldrew, Commissioner
Public Service Commission of Nevada

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**ELECTRIC INDUSTRY RESTRUCTURING BILL
AB 366**

**PRESENTED BY
THE NEVADA PUBLIC SERVICE COMMISSION**

MAY 6, 1997

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Assembly Committee on Government Affairs
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Submitted by Judy Sheldrew, Commissioner
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BILL HISTORY

- 1995 Legislature authorizes ACR 49 Committee to conduct an interim study of the effects of competition in the generation, sale, and transmission of electric energy. The study was to include an assessment of:
 1. Financial issues,
 2. Unbundling costs of services,
 3. Social issues, and
 4. Issues related to system planning, operation and reliability.

BILL HISTORY CONTINUED

At its conclusion, the ACR 49 Committee drafted a set of general principles for restructuring Nevada's electric industry:

1. **Competition for Retail Electric Services**: Where effective competition exists, retail electric services should be provided on a competitive basis.
2. **Full and Fair Competition**: The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to maintain a level playing field and guarantee a fully competitive market.
3. **Reliability**: Reliable electric service must be maintained.
4. **Benefits for All Customers**: All customers and shareholders should have the opportunity to share in the benefits of increased competition.
5. **Impact of Competition**: No classification of customer should be worse off after the restructuring process.

BILL HISTORY CONTINUED

ACR 49 Committee principles continued:

6. **Unbundling of Services and Rates**: Services and rates should be unbundled to provide customers with choice and clear price information on the cost components of generation, transmission, distribution and ancillary charges.
7. **Universal Service**: Electric service is essential and should be available and affordable to all customers.
8. **Regulation**: The market framework for electric services should maximize reliance on ordinary business transactions and minimize reliance on the administrative regulatory process.
9. **Access to Transmission Facilities**: Non-discriminatory open access to the transmission system and distribution facilities should be promoted for all transactions.
10. **Environment**: Electric utility restructuring shall in no event result in the degradation of environmental quality. Increased Competition should support and further the goals of environmental improvement.

BILL HISTORY CONTINUED

- In June 1996, the Commission completed a comprehensive report on electric industry restructuring in Nevada: The Structure of Nevada's Electric Industry: Promoting the Public Interest. Some of the major conclusions of the Commission's investigation were:

In General

- If the Legislature chooses to authorize retail competition for certain potentially competitive services, it can be implemented in a manner that benefits Nevada.
- The restructuring process must be based on the principles of flexibility and an orderly transition to a more competitive electric industry.

Economic Efficiency and Physical Feasibility

- Unbundling of utility services gives customers the flexibility to shop for services separately.
- Not all services should be subject to competition. Some services are best provided by a single supplier.

BILL HISTORY CONTINUED

Commission Investigation Conclusions Continued:

Engineering Issues

- For a number of services, unbundling is technologically feasible without a diminution in reliability.

Effectiveness of Competition

- Effective competition will not exist on the day competition for certain services is authorized.
- Incumbent utility will initially have a dominant position in the market.

Consumer Protection

- Competition can work efficiently only if customers are knowledgeable.
- Substantial regulatory effort in such areas as customer education and licensing of retail sellers will be necessary for customers to become effective shoppers.
- A universal service option must be maintained.

BILL HISTORY CONTINUED

Commission Investigation Conclusions Continued:

Integrated Resource Planning

- There remains a role for government in influencing resource selection, even in a competitive market because:
 - Prices set by a competitive market are unlikely to produce the mix of fuel and generation types that are best for Nevada's environment.
 - It is risky to place full trust in the theory of markets to meet future customer electricity demands.

Past Costs

- Early resolution of the disputed amount and the extent to which shareholders should be reimbursed for past costs is essential to an orderly transition.

BILL HISTORY CONTINUED

Commission Investigation Conclusions Continued:

Regional Cooperation

- The interstate characteristics of the electric industry make interstate cooperation essential.

Transition to Competition

- Public policy must strike a fair balance between the short term goal of keeping customers on the system so they can contribute to fixed costs and the longer term goal of giving efficient choices to all customers and suppliers.

CONCLUSION -- THE RISKS OF INACTION

1. The importance of statutory and regulatory **flexibility** can not be emphasized enough. The structure of the electric industry today lacks flexibility.
2. While retail competition is not a no-risk proposition, doing nothing is riskier. Doing nothing leaves in place a government-mandated monopoly structure, which does not offer customers a choice. Today's "one-size fits all" product is ill-suited to the diversity of Nevada's needs.
3. Nevada should consider giving the industry's participants (customers, competitors, utilities and the Commission) flexibility.
4. No one knows what the best structure in the industry is. One that makes sense today may not make sense in 5 years. The best approach is to authorize the Commission to require unbundling, if and when it can benefit Nevada's customers.

**AB 366 PUBLIC SERVICE COMMISSION AMENDMENTS
MAY 2, 1997**

Revise Sec. 9.

"Generation service" means the sale of electricity or capacity ~~from~~ [by the owner of] equipment that converts other forms of energy into electricity by the owner of such equipment.

Revise 12.3

3. [In determining whether effective competition is likely to develop in a market for a potentially competitive service, the commission shall:

- (a) Identify the relevant market;
- (b) Identify the alternative sellers that participate in the relevant market; and
- (c) Calculate the market share of each participant in the market and evaluate the significance of each share.]

(a) If the commission determines that a market for a potentially competitive service does not have effective competition, the commission shall, by regulation, establish the method for determining prices for the service and the terms and conditions for providing the service. The regulations must ensure that the pricing method, terms and conditions are just and reasonable and not unduly discriminatory. The regulations may include pricing alternatives which authorize the seller to reduce prices below maximum pricing levels specified by the commission or any other form of alternative pricing which the commission determines to be consistent with the provisions of this subsection.

(b) In determining whether a market for a potentially competitive service does not have effective competition, the commission shall:

- (i) Identify the relevant market;
- (ii) Identify, where feasible, the alternative sellers that participate in the relevant market; and
- (iii) Calculate, where feasible, the market share of each participant in the market and evaluate the significance of each share.

(c) The commission may reconsider any determination made pursuant to section 12.3 upon its own motion or upon a showing of good cause by a party. Upon a finding by the commission that the market for a service previously found not to have effective competition has become effectively competitive, the commission shall repeal the regulations which established the pricing method for that service and the terms and conditions for providing that service.

Revise 12.4

[4. If the commission determines that a market for a potentially competitive service does not include effective competition, the commission shall, by regulation, establish the method for determining prices for the service and the terms and conditions for providing the service. The regulations must

ensure that the pricing method, terms and conditions are just and reasonable and not unduly discriminatory. The regulations may include pricing alternatives which authorize the seller to reduce prices below maximum pricing levels specified by the commission or any other form of alternative pricing which the commission determines to be consistent with the provisions of this section. Upon a subsequent finding by the commission that the market for that service has become effectively competitive, the commission shall repeal the regulations which established the pricing method for that service and the terms and conditions for providing that service.]

Revise 12.5

[5. The commission may reconsider any determination made pursuant to this section upon its own motion or upon a showing of good cause by a party requesting a reconsideration.]

Revise 16.2

2. The commission shall adopt regulations which specify the information which must be submitted and the procedure which will be used to process a request by an affiliate of a noncompetitive service for authorization to provide a potentially competitive service. The procedure must provide an opportunity for the affiliate to obtain a determination from the commission regarding its request to provide potentially competitive services not later than 6 months before the date on which alternative sellers may begin providing potentially competitive services.

Revise 17.3

3. The commission shall adopt regulations for noncompetitive services that permit innovative pricing methods upon a finding that the innovative pricing, when compared to pricing pursuant to subsection 2, improves the performance for the service or lowers the cost of the service to the customer, or both. The regulations for innovative pricing must specify:

- (a) The provisions that must be included in a plan of innovative pricing;
- (b) The procedures for submitting an innovative plan for pricing to the commission for approval and implementation; and
- (c) Which provisions of this chapter do not apply to pricing changes that are made during the period in which the innovative pricing plan is in effect.

Revise 18.1

1. [If] This section shall apply to service to customers who are unable to obtain electric service or fail to select a provider of a potentially competitive service.

2. [t]The commission shall designate an electric utility to provide electric service to those customers. The provider so designated by the commission is obligated to provide service to the customers. Service provided by the utility pursuant to this subsection shall be deemed a noncompetitive service for which the utility may recover its cost pursuant to NRS 704.001 to 704.655, inclusive, 704.701 to 704.751, inclusive, and 704.800 to 704.900, inclusive.

Revise 18.2

[2.] 3. Upon a finding by the commission that the public interest will be promoted, the commission may prescribe alternate methods for providing electric service to those customers described in subsection 1. The alternate methods may include, but are not limited to, the direct assignment of customers to alternative sellers or a process of competitive bidding for the right to provide electric service to the designated customers.

Revise 18.3

[3.] 4. The commission shall establish minimum terms and conditions under which [basic] electric service must be provided, including a minimum period during which a customer must continue to take basic service. The price charged for [basic] electric service for a particular group of customers must reflect the incremental cost of serving the group.

Revise 18.4

[4.] 5. If the provider of such [basic] electric service is an electric utility, the utility shall provide the [basic] service through an affiliate whose sole business activity is the provision of such [basic] service.

Revise 22.1

1. The commission shall develop and publish a plan for the integration of [services] resources.

LEGISLATIVE ACTIONS IN APPROVING AB366

- Legislature declares that competition will be used to regulate certain portions of electricity markets.
- Legislature directs that electric service be unbundled.
- Legislature requires that careful findings be made before authorizing competition. Competition will proceed only if the public interest is protected.
- Legislature prohibits the delay of competition where competition can promote the public interest.
- Legislature defines generation and aggregation services as potentially competitive.
- Legislature outlines the factors to be used to determine if other services are also potentially competitive.
- Legislature mandates all potentially competitive services are subject to alternative forms of regulation including the use of price ceilings.
- Legislature finds transmission and distribution services to be monopoly services subject to existing regulation unless innovative pricing methods are determined to be preferential.

LEGISLATIVE ACTIONS IN APPROVING AB366 (CONTINUED)

- Legislature requires non-discriminatory open access of all non-competitive services for alternative sellers.
- Legislature requires all customers have direct access to alternative sellers on a nondiscriminatory basis.
- Legislature outlines the factors to be considered in licensing alternative sellers.
- Legislature specifies factors to be used in assessing whether a market is effectively competitive.
- Legislature outlines the conditions under which a company can provide non-competitive and potentially competitive services.
- Legislature prohibits anticompetitive behavior and specifies procedures under which investigations are to be conducted.
- Legislature provides specific guidelines for determining that portion of stranded costs allocable to ratepayers.
- Legislature mandates that past investments be treated fairly, in accordance with shareholders' legitimate expectations.

LEGISLATIVE ACTIONS IN APPROVING AB366 (CONTINUED)

- Legislature preserves the state's commitment to assuring sufficient electric capacity and diversity of resources but directs the process be modified to fit within a competitive environment.
- Legislature assures all customers will be provided electric service in a competitive environment.
- Legislature directs that customers be protected through anti-slamming and labeling requirements and mandates a consumer education effort.
- Legislature directs quarterly reporting to monitor the progress of competition.
- Legislature assures that changes in existing utilities' organizational structure will not result in property tax shifts among the counties.
- Legislature directs that the regulations needed to implement the requirements of the act be completed with 18 months (by 1/1/99).

CHANGING ROLE OF THE PUBLIC SERVICE COMMISSION

- PSCN moves from concentration on quasi-judicial reviews of specific applications to quasi-legislative collaborative efforts in developing regulations
- rate based regulation is replaced by alternative forms of regulation including price ceilings and incentive regulation
- PSCN changes focus from reviewing past decisions for prudence to monitoring the marketplace to assure all participants are complying with requirements necessary to assure effective competition
- PSCN increases emphasis on consumer education programs, service standards and reliability requirements
- PSCN remains accountable to the Legislature for monitoring the quality of competition and it's actions
- PSCN assumes responsibility for assuring resource capacity and resource diversity are available to all consumers in competitive market
- PSCN moves from "command-and-control" regulation to "referee" in marketplace

CHANGING ROLE OF THE PUBLIC SERVICE COMMISSION (CONTINUED)

- PSCN's regulatory involvement is removed when vigorous competition is in existence to protect consumers
- PSCN's processes are streamlined to expedite applications while assuring appropriate review and public input opportunities

Special Report

April 21, 1997

ELECTRIC INDUSTRY RESTRUCTURING UPDATE

With developments concerning electric industry restructuring unfolding almost daily, we have prepared our ninth "Electric Industry Restructuring Update" to help industry specialists keep abreast of state-level restructuring activities. We have placed 49 regulatory jurisdictions in one of the following five tiers based on their relative progress toward industry restructuring:

- **Tier I** - A restructuring plan has been adopted by the commission or legislature.
- **Tier II** - Companies have been ordered to file restructuring plans, or enabling legislation has been enacted.
- **Tier III** - A commission or legislative investigation is underway that is likely to lead directly to the adoption of a restructuring plan.
- **Tier IV** - An informational or fact-finding workshop or study is underway, or legislation is pending.
- **Tier V** - No substantive activity is underway or a decision has been made that no action is necessary.

Table 1 below and the map on pages 2-3 provide a snap-shot view of the jurisdictions we have included in each tier. Table 2, on pages 4-32, groups jurisdictions by tier and provides the rationale for each classification and information on related developments. Table 2 also includes a discussion of retail access pilot programs (where applicable) and comments regarding the "Outlook" for industry restructuring in each state. In classifying the jurisdictions into the different tiers, we have used our judgment where the restructuring-related events do not fully conform with the description of a tier. Based upon information gathered since March 12, 1997, we are changing the classifications of 5 states. Table 1 and 2 entries for each of these states are in *italics*, and in Table 1 are followed by each state's previous tier classification. Six states are classified in Tier I. In four of these states (California, New Hampshire, Pennsylvania, and Rhode Island) statewide restructuring plans have been adopted; however in New Hampshire and Pennsylvania, there are pending court challenges to the restructuring framework. On page 33 is a "Restructuring Timetable" that indicates the year in which the introduction of retail choice has been ordered or proposed. We have not listed retail wheeling pilot programs in the Timetable. In our view, a direct access plan that is limited in scope, with no provision for expansion into a full retail access plan, is not a clear indicator as to the long-term strategy of a particular jurisdiction. The states with approved pilot programs generally have commission or legislative

(Text continued on page 4.)

TABLE 1 - TIER CLASSIFICATIONS

Tier I	Tier II	Tier III	Tier IV	Tier V
California	Michigan*	Arizona	Arkansas (IV)	Ohio
Massachusetts*	New York*	Connecticut	Kansas	Oregon
New Hampshire*	Vermont	Illinois*	Kentucky	South Carolina
<i>New Mexico (IV)</i>		Maine	Louisiana	Utah
Pennsylvania		Minnesota	Maryland	Virginia
Rhode Island		<i>Montana (IV)</i>	Mississippi	Washington*
		New Jersey	Missouri*	West Virginia
		<i>Oklahoma (IV)</i>	Nevada	Wyoming
		Texas	North Carolina	
		Wisconsin	North Dakota	
			Iowa	

* Limited direct access pilot program approved.

EXHIBIT G

Assembly Committee on Government Affairs

May 6, 1997

Submitted by Judy Sheldrew, Commissioner

Public Service Commission of Nevada

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**FEDERAL ELECTRIC INDUSTRY RESTRUCTURING BILLS
MARCH 12, 1997**

To date, electric restructuring bills have been introduced to the 105th Congress by Senator Dale Bumpers and Representative Dan Schaefer. Another bill is expected to be introduced by Representative Tom Delay that will be similar to a bill he introduced to the 104th Congress. The bills have been introduced by Federal Legislators who feel that is better to establish a uniform federal system for competition on the front end and avoid what they see as certain chaos that will result by legislating different guidelines for the industry.

The major differences in the bills are in the areas of timing for implementation of retail access, stranded investment, and renewable energy mandates. Each bill mandates retail competition for electric services by a certain date, however, the bills implementation dates range from as early as 1998 for last year's Delay Bill, to a 2003 retail competition mandate contained in the Bumpers Bill. The Bumpers and Schaefer Bills allow for states to implement the restructuring prior to the date specified in the Act as long as they conform with the principles outlined in the respective bills. The Bumpers and Schaefer bills also allow for States to impose public interest requirements as they see fit as long as they are done on a nondiscriminatory basis.

Other similarities between the Bumpers and Schaefer bills are full stranded cost recovery and renewable energy mandates facilitated through a renewable energy credit program. The Bumpers Bill has the largest renewable energy mandate that requires 12 percent of all energy supplied to retail customers be generated by renewable energy sources by the year 2013. The Schaefer bill has a more moderate 4 percent maximum renewable energy mandate. The Delay Bill, on the other hand, mandates no stranded investment cost recovery and leaves renewable energy sources up to the free market. Finally, each of the bills tend to rely on the FERC to address market power concerns.

Despite the speed with which the 105th Congress is beginning to consider electric restructuring issues, and the apparent bipartisan support for retail competition in the electric industry, it appears unlikely that such legislation will be enacted in 1997, due to the disparate viewpoints of the industry stakeholders on such issues as the timing for implementation of retail access, the treatment of stranded investment, and the Federal/State jurisdictional issues.

The following briefly summarizes the main elements of each bill. Each summary is followed by language contained in the bill relating to the bill's major provisions.

Senate Bill 237 - "Bumpers Bill"

On January 30, 1997, U.S. Senator Dale Bumpers (D-AR), the highest ranking Democrat on the Senate Energy and Natural Resources Committee, introduced legislation to deregulate the electric utility industry by December 2003 and require retail competition among electric companies.

TESTIMONY OF JOYCE NEWMAN, EXECUTIVE DIRECTOR
UTILITY SHAREHOLDERS ASSOCIATION OF NEVADA

BEFORE THE GOVERNMENT AFFAIRS COMMITTEE
REGARDING ASSEMBLY BILL 366

MAY 6, 1997

Mr. Chairman, members of the committee, my name is Joyce Newman. I'm executive director of the Utility Shareholders Association of Nevada. Our association is comprised of those people who have invested in Nevada's energy utilities. At the present time, there are more than 25,000 Nevada families who own stock in Nevada Power Company and Sierra Pacific Resources.

With me today are Perry Whitt, president of the shareholders' association, and Jim Kropid, one of our directors. Mr. Whitt will make some brief introductory remarks, and Mr. Kropid will then address in a little more detail some of our views regarding A.B. 366.

TESTIMONY OF PERRY WHITT, PRESIDENT
UTILITY SHAREHOLDERS ASSOCIATION OF NEVADA

BEFORE THE ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE
REGARDING ASSEMBLY BILL 366

MAY 6, 1997

Good morning Mr. Chairman and members of the committee. My name is Perry Whitt. I'm president of the Utility Shareholders Association of Nevada. Thank you for the opportunity to testify here this morning on A. B. 366.

I'd like to take just a few moments to give some of our general concerns about this bill, and Jim Kropid will take just a few more minutes to discuss the issue of most interest to us, and that's stranded cost recovery.

As you know, the issue of restructuring the electric utility industry is a complex one. The industry is the most capital intensive in the nation. Solutions to this set of questions will not be simple ones. For these reasons, we commend the

Public Service Commission, and Commissioner Sheldrew for all the effort that's gone into drafting this legislation.

As Nevada moves forward into retail electric competition, we feel it will be necessary for the state's incumbent utilities to have the flexibility to compete. Not only is that flexibility important to shareholders, we feel it's also important to the companies' smaller customers who may not immediately be sought after by competitors.

Unfortunately, we believe that A.B. 366 does little to allow that flexibility. In fact, the bill requires more regulatory oversight than exists today. For example, in the area of resource planning, A.B. 366 would permit the Public Service Commission to prepare the plan and require that all sellers in the market comply with a predetermined resource mix.

USAN also believes that in the specific areas of pricing and financing, for example, the incumbent utilities should be permitted freedom to react to changes in the market which are not provided by this legislation.

I'll now turn this over to Mr. Kropid, who will discuss the issue of stranded costs; an issue that's very important to the many Nevadans we represent. Thank you for your time and attention.

TESTIMONY OF JAMES KROPID, DIRECTOR
UTILITY SHAREHOLDERS ASSOCIATION OF NEVADA

BEFORE THE ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE
REGARDING ASSEMBLY BILL 366

MAY 6, 1997

Mr. Chairman, members of the committee, my name is James Kropid. I'm a member of the board of directors of the Utility Shareholders Association of Nevada. I'm also retired from Sprint in Nevada. Before I retired I served six years as president of Centel Nevada, the local telephone company in Clark County. I have a total of 32 years in the utility industry, and was with Central Telephone during the first ten years of deregulation.

I'd like to take just a few minutes to talk about the issue of stranded costs. First, I should define for you what they are. Costs will become stranded in cases in which the utility was compelled, by its franchise, to make an investment and then the rules are changed so that customers for whom the investment was intended seeks to avoid their responsibility to pay for that investment. These costs have already been deemed to be prudent by the Public Service Commission and are included in the utilities' rates. They may include investments in facilities, deferred costs or regulatory assets, or contractual commitments not yet paid for by customers.

I'm going to focus today on section 19 of Assembly Bill 366, the section which deals with stranded cost recovery. That section calls for apportioning stranded

costs between shareholders and utility customers. While that may appear to be a Solomon-like solution, we must respectfully disagree with the commission's approach. We've attached to our testimony today a white paper prepared by USAN's counsel which sets out the legal reasons for our opposition to this section of the bill. It sets out the legal and equitable arguments for full recovery by shareholders of stranded costs. I hope you'll take a few minutes to study it.

A lot has been written by others about stranded costs and the legal theories concerning them. One paper which I have found most compelling is one by Scott Hempling, the consultant hired by the Public Service Commission to guide them through the restructuring process. Mr. Hempling makes a strong case for 100 per cent recovery by shareholders of stranded costs. The paper is entitled "The Regulatory Treatment of Embedded Costs Exceeding Market Prices: Transition to a Competitive Electric Generation Market." I plan to quote liberally from it during the rest of my testimony. Since it's quite lengthy, I haven't included it, but if any of you would like copies of the paper, please contact Joyce Newman or Larry Bennett.

Mr. Hempling believes, and I agree with him, that regulatory consistency is essential in the treatment of stranded costs and that regulatory treatment must be consistent with legal promises. Hempling says: "A competitive market cannot work efficiently if competitors perceive inconsistency or unpredictability, in the rules, or the rulemakers."

Consistency in regulation has been derived from the regulatory compact which has set out rights and obligations of utilities on one hand, and regulators on behalf of customers on the other. As Hempling points out: "At the retail level,

utilities historically have had an obligation to make the investments necessary to provide universal service. The basis for this obligation has been the public utility franchise agreement, or state or local franchise territorial exclusivity laws. . . The regulatory compact is not necessarily a voluntary agreement which utilities have voluntarily accepted. Rather, it is a balancing of utility rights and responsibilities, enacted by state legislatures and enforced by state public service commissions. It represents the exercise by sovereign states of their police power. . . .”

In Nevada, the resource planning process enables the PSC every three years to review an electric utility’s plan to acquire resources necessary to meet anticipated demand. Nevada law in NRS 704.110(8) allows utilities to recover all just and reasonable costs of acquiring or constructing facilities that have been approved in these resource plans. The investments are deemed to be prudent. The utility and its investors have relied upon the fact that decisions made under the current regulatory framework would not be disturbed at a later time.

Hempling continues: “Under the current regulatory compact, public utilities have certain responsibilities. First, they have an obligation to serve all who apply for service within their service area. Second, utilities must provide safe and reliable service and not engage in undue price discrimination. . . Third, the utility can charge only just and reasonable rates and may not earn monopoly profits.

“In return for undertaking these obligations, the compact, many believe, grants a right to collect a reasonable price for their services based on their prudently incurred expenses and a reasonable return on prudent investment. The right to

recovery of and return on investment must reflect the risks imposed by the compact on the utility.”

Because of this regulatory compact, utility customers have benefitted from lower rates. The rate of return paid to utility investors has been set by the PSC at a rate lower than could be expected in competitive businesses. These savings have been passed on to consumers in the form of lower rates. This is an important concept because customers, including those who are seeking to shop for other suppliers, have already enjoyed the financial benefits of the regulatory compact. And because of the language in NRS 704.110(8), it's possible rates of return, and therefore electric rates, have been lower than they would have been in other states without similar legislation.

One question which arises in discussing the regulatory compact, is what the customer's obligation is in balancing the utility's obligation. According to Hempling: “That obligation is determined by the regulators in setting retail rates. . . Under the law, the obligation to pay is determined by the regulator. . .” That is, regulators have acted on behalf of customers in committing to the regulatory compact.

“The alternative,” according to Hempling, “is to have utility investors bear the cost of plant. But requiring utility investors to absorb the prudently incurred costs which they were legally obligated to incur, without compensating them for the risk of such cost absorption, is a regulatory inconsistency that could be termed confiscatory.”

As we've said earlier, the costs we're discussing have already been deemed by regulators to be prudent. And to go back after the fact and relitigate the prudence issue is wrong. According to Hempling: "If the decision was reasonable at the time it was made, unforeseeable subsequent events are irrelevant."

We sometimes hear the argument that utilities should have seen competition coming and altered their investment decisions. Hempling states: "If a utility was under a legal obligation to incur capacity costs, the utility had to incur those costs even if it did 'see competition coming.' It is the legal obligation at the time of the investment, not one's guesses about what their legal obligation will be in the future, that count. . .we are unaware of any situation where those anticipations altered a utility's obligation, under its retail franchise arrangement, to continue incurring costs to serve all its customers. Put another way, when a customer in 1994 says, 'Why did you incur these costs on my behalf when I wanted to leave?', a reasonable utility response is 'Why didn't you tell me that before I incurred the costs?'"

In summary, Nevada utilities incurred expenses pursuant to government regulation, and to tell shareholders now that they can't recover those costs means shareholders, as further stated by Mr. Hempling, "were compelled by government to take a risk but then not compensated by government for that risk. That type of asymmetry could be confiscatory, in violation of the U.S. Constitution." Shareholders relied on commitments made by the state when they decided to invest in Nevada utilities. It's important now, we feel, to honor those commitments.

Mr. Chairman, committee members, thank you for your time. If you have any questions, we'll attempt to answer them.

WHITE PAPER
ON
STRANDED COSTS

for
UTILITY SHAREHOLDERS ASSOCIATION OF NEVADA INC.

April, 1997

Question: Once retail competition is introduced in the electric industry, is an investor-owned electric utility regulated by the Public Service Commission of Nevada (the "PSC") entitled to recover 100% of its "stranded," or "past," costs?

Answer: Yes. Costs become stranded when an industry becomes deregulated. Stranded costs are those which were incurred during the period of time when statutes imposed a requirement to serve customers at a regulated price and include any portion of a prudent investment, deferred cost or contractual commitment not yet paid for by customers. The potential for stranded costs in the electric industry is substantial. The reason is that the electric industry's generation facilities are capital intensive and, in the past, the PSC has often deferred the recovery of major project costs over a period of years to prevent the rate shock to customers that might occur if recovery were allowed in one year. In addition, electric utilities have been required by the federal government to enter into contractual commitments for purchased power, many of which have been approved by the PSC.

Electric utilities in Nevada have invested millions of dollars in facilities built under a regulatory framework in which they have been allowed to recover all prudently incurred costs. Investors have made financial commitments in reliance upon and with the expectation that cost recovery would be made in reliance upon this framework. This system has been in place for many years in Nevada. The basic premise of this framework is that utilities have the right to charge rates that will provide a reasonable opportunity to recover costs which have been prudently incurred in the process of providing utility services.

This objective is carried out in Nevada (and many other states) by using a twelve-month historic "test period" to measure the total costs of a utility's operations. Rates are then fixed in a manner which will produce revenues to match the test period costs. Thus, the "test period" is used as a period of time which is representative of, or a surrogate for, the conditions in a future period of time when the new rates will be in effect. Overall, therefore, the revenues required by a utility in historic test period regulation should be equal to the "cost of service" incurred. Cost of service consists of operations and maintenance expense, depreciation expense, taxes and capital costs. Capital costs are measured by a rate of return factor which is applied to the utility's "rate base" which consists mainly of physical plant, facilities, inventory and cash working capital.

It is the capital cost component of the ratemaking process (*i.e.* establishing a fair rate of return on rate base) which the issue of stranded costs impacts most significantly. Rate of return is the percentage that, when multiplied by an established rate base amount, provides an appropriate return to a utility and its investors. Establishing a fair return is, therefore, a two-step process. The first step is measuring a utility's rate base and the second step is establishing a reasonable rate of return on the rate base investment. Determined in a ratemaking setting by the PSC, a company's rate base is examined to determine whether investments have been prudently incurred and costs are reasonable and verifiable. The rate of return is that rate which allows a utility to meet its obligations to investors in the utility and compete on reasonable terms with financial markets for future capital requirements.

There are two long standing U.S. Supreme Court cases¹ which have guided utility commissions for many years in establishing a fair return on rate base. Under the legal standards in these cases, there are two overriding principles. First, under the premise of efficient management, a rate of return must be adequate to maintain a utility's financial soundness as it relates to the ability to support existing credit and to attract new capital on reasonable terms. Second, the return on rate base should be the same as that being currently earned by other companies in the same geographic area with similar business risks. Accordingly, rate of return is a current or forward looking concept and takes into consideration the risks faced by a utility. In this respect, the Supreme Court stated that a fair return requires the consideration of current conditions facing a utility at the time rates are set and not just historical experience.

In general, the rate of return that a utility has been allowed to earn on its assets has been already established by the PSC for past investments of a utility. This rate of return has been established within the existing regulatory framework, in that such rates are based on returns that are comparable to companies of similar business risks. Clearly, a company operating in a monopoly environment would have different business and financial risks than one operating in a competitive market. In this respect, decisions have already been made regarding the prudence and reasonableness of a utility's investment in facilities.

In addition, in Nevada, there is a resource planning process for the large electric utilities which enables the PSC every three years to review an electric utility's plan to construct utility facilities for acceptance as prudent investments. By state law in NRS 704.110(8), a utility is allowed to recover all just and reasonable costs of planning and constructing facilities that have been approved in these resource plans. Here, again, the utility and its investors have relied upon the fact that decisions made under the current regulatory framework would not be disturbed at a later time, thereby negatively impacting the ability to recover fully for past investments.

Based on the above, electric utilities and their investors have been long operating under the assumption that prudently incurred investments and verifiable and reasonable costs would be recoverable. There has been no contemplation when past costs have been incurred that there would be a risk of less than full recovery. The prudence of the original investment has always been the standard for inquiry in determining allowance for recovery, and rates of return have been established with this standard of risk in mind. As such, rates of return would have been set higher than they have been in the past, if all parties had knowledge that the investment would be judged at some future time on a standard of recovery which assumed that a competitive market may have been in operation at the time of the purchase decision. This, however, has not been the basis upon which rates have been established in Nevada. Rates of return have not reflected this standard of higher risk. Rather, the regulatory framework in Nevada contemplates that a utility will "earn a fair return on its investment." NRS 704.001. To date, investors of Nevada utilities have invested in facilities that have been considered and approved by this Commission as prudent expenditures. To preclude investors from fully recovering or earning a fair return on their investment related to such facilities,

¹ *Bluefield Water Works & Improvement Co. v. West Virginia Public Service Commission*, 262 U.S. 679, 692 (1923); *Federal Power Commission v. Hope Natural Gas*, 320 U.S. 591 (1944).

without otherwise compensating them, runs afoul of constitutional principles, as well as provisions of state law.

Additionally, under a less than full recovery scenario, a utility and its investors would have been required to have assumed, when the investment was made, that the same legislature which has provided for and mandated a monopoly for electric service, would seek to eliminate the monopoly and change the ratemaking rules to apply on a retroactive basis. A retroactive application of this nature, however, is contrary to standards and principles well-established by both the U. S. Supreme Court and Nevada legislature and would deprive investors of fair compensation for attendant risks associated with such a scenario.

In addition to the above defects, it is inappropriate to review past decisions already deemed to be prudent based on principles of fundamental fairness and administrative *res judicata*. Electric utilities and their investors in Nevada have relied upon previous determinations by this Commission in making their investment decisions and upon the continuing right to earn a fair return on the value of the utility's property. Without a change in the law which would specifically permit a retroactive application, the PSC has no statutory authority to disallow the recovery of costs previously determined to have been prudently incurred.

It has been argued by some that the U.S. Supreme Court's 1989 decision in *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989) would call into question a utility's ability to recover all of its stranded costs. While that case is sometimes referenced as the most recent pronouncement of the United States Supreme Court on the application of Takings Clause of the United States Constitution in the utility regulation environment, the result of *Duquesne* is not particularly instructive to the issue of stranded investment. Indeed, the end result test reiterated by *Duquesne* has been the status of case law for ratemaking settings in Nevada since at least 1953, the date *Bell Telephone Company v. Public Service Commission*, 70 Nev. 25 (1953) was decided.

In *Duquesne*, the United States Supreme Court upheld an order of the Pennsylvania Supreme Court requiring the Pennsylvania Public Utility Commission to eliminate all costs associated with the planning development of a canceled nuclear power plant. The proceeding before the Pennsylvania Commission was a ratemaking proceeding. During the pendency of the case, Pennsylvania enacted a statute which specifically provided that "the cost of construction of expansion of a facility undertaken by a public utility producing . . . electricity shall not be made part of the rate base nor otherwise included in the rates charged by the electricity utility until such time as the facility is used and useful in service to the public." 48 U.S. at 304.

The amount sought by *Duquesne Light Company* for the cancellation of the nuclear plant was \$35 million, to be amortized over ten years. Such amount represented 1.9 percent of the rate base of *Duquesne*. In the rate case, the Pennsylvania Public Utility Commission authorized a 16.1 percent return on equity.

In addressing the holding of the Pennsylvania Supreme Court, the United States Supreme Court reaffirmed the holding of the Court in the landmark case of *FPC v. Hope Natural Gas Company*. In so holding, the Court stated as follows:

Today we affirm these teachings of Hope Natural Gas: "[I]t is not the theory but the impact of the rate order which counts. If the total affect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end. The fact that the method employed to reach that result may contain infirmities is not then important." (Citation omitted) 488 U.S. at 310.

Nevada law, with respect to the end result test, parallels the opinion of the Court in *Duquesne*, as well as *Hope*. However, while Nevada has adopted the end result test, Nevada has statute which is exactly the opposite of that construed by the Pennsylvania Supreme Court and discussed by the Supreme Court in *Duquesne*. NRS 704.110(8) provides as follows:

A utility facility identified in a 3-year plan submitted pursuant to NRS 704.751 or 704.755 and accepted by the commission for acquisition or construction pursuant to NRS 704.751 or 704.755 and the regulations adopted pursuant thereto shall be deemed to be a prudent investment. The utility may recover all just and reasonable costs of planning and constructing such a facility. For the purposes of this subsection, "utility facility" has the meaning ascribed to it in subsections 1, 2, and 3 of NRS 704.860.

As can be seen, NRS 704.110 specifically authorizes the recovery of all just and reasonable costs of planning and constructing a facility which has been included and ruled upon by the Commission in a resource plan proceeding. Therefore, the fact situation which gave rise to the Pennsylvania Supreme Court decision could not occur in this state.

Moreover, and perhaps more importantly, the question of the recovery of stranded costs does *not* arise in the context of a "rate case" or ratemaking setting. Rather the relevant question here is posed in light of what might happen should competition occur in the electric industry. In other words, the issue here arises presumably out of a situation where the very government that provided for and created a monopoly for the rendition of electric service and to which investors were attracted to invest their capital, now seeks to eliminate that monopoly, with utility plant, financed by stockholders and previously declared to be prudent, put to a risk not previously existing.

To that end, language in *Duquesne* is instrumental: "Consequently, a state's decision to arbitrarily switch back and forth between methodologies in a way which requires investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others, would raise serious constitutional questions." 488 U.S. at 315. The regulatory scheme in the State of Nevada is designed to remove the infirmities suggested by the Supreme Court:

It is hereby declared to be the purpose and policy of the legislature in enacting this chapter. . . . (4) To balance the interest of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates. NRS 704.001(4).

Under Nevada law, therefore, even Duquesne investors would be entitled to earn a fair return on their investment. To date, stockholders of Nevada public utilities have invested in facilities that have been considered and approved by this Commission as being prudent expenditures. To preclude stockholders from recovering or earning a return on their investment related to such facilities, without otherwise compensating them, is contrary to the constitutional principles of both *Hope Natural Gas* and *Duquesne*.

Presentation of
the Nevada Mining Association
on Assembly Bill 366

before the
Assembly Committee on Government Affairs

May 6, 1997
Carson City

Mr. Chairman and members of the committee, I am Larry Hawke, Government Relations Counsel of the Nevada Mining Association.

On behalf of our members, I appreciate the opportunity to provide comments regarding Electric Service Regulation and your consideration of Assembly Bill 366.

Mining in Nevada is a modern, high-tech enterprise, and as such is a major consumer of electrical energy consuming approximately 25% of the electric power sold in northern Nevada and spending over \$100 million per year for that power.

The Nevada Mining Association believes it is in the interest of all Nevada Electric Consumers and the state's overall economic vitality that Nevada aggressively pursues a strategy which reflects a competitive market approach such as now exists in the wholesale marketing of electricity.

Most economists would agree that greater competition in a market tends to force prices closer to production costs and, thereby, leads to more efficient use and allocation of resources. Nevada's mining industry knows from experience that fostering competition among its suppliers allows it to lower its costs and expand operations which benefit the state of Nevada by employing more people and paying more taxes.

As legislators you are well aware that the current market structure is undergoing change across the entire country. Legislators and regulators in other states have acted to introduce competitive market forces in the place of regulation. Nevada's mining industry believes that this transition to a more competitive market structure rather than a regulated structure can work for the benefit of all classes of Nevada electricity consumers.

Legislation restructuring the electric industry must have as underlying principles the following:

- Competition best promotes economic efficiency and innovation and should be allowed and encouraged wherever conditions for workable competition can exist.
- Restructuring should increase the efficiency, promote innovation and ultimately reduce the costs of electric services to all Nevada Consumers.
- Electric utilities should be allowed the opportunity to recover an appropriate portion of past net costs imposed upon them by regulation, which are verifiable, were prudently incurred, cannot otherwise be mitigated and which will be stranded by the introduction of competition. Assembly Bill 366 embraces this principle and provides for a fair balance that should be made effective before proposed federal measures are enacted.

- Reliability and safety of the electric supply infrastructure should be an obligation of all segments of the electric supply industry.

Any restructuring plan adopted by the legislature should include the following four basic elements:

1. **Consumer choice.** Customers should have the ability to buy electricity from any supplier at a competitive market price. Customers should be able to buy the products and services that best suit their needs. Generators and aggregators should be free of economic regulation and market entry restraints. Customers should have as many potential alternative suppliers as possible and practical and be protected from anti-competitive behavior by generators.
2. **Access.** Transmission and distribution services should be available to customers or their aggregators on a non-discriminatory and non-preferential basis like a "common carrier." The owners and operators of transmission and distribution systems should remain regulated and be required to file tariffs to assure that open and comparable access is available to all customers. Operation of transmission and distribution systems should be independent of the operations of generators and aggregators of electricity.

3. **Energy Markets.** Energy sellers should be encouraged and customers should have the option to buy directly from a utility, a generator, an aggregator, or from any other seller on a regional basis.

Competition is essential to promoting a competitive marketplace and critical to the development of new technologies including renewable energy resources.

4. **Timing.** Assembly Bill 366 should provide for a date certain after which competition will be in effect in Nevada. This certainty aids in the mining industry's planning for expansion of facilities and operations.

Assembly Bill 366 will serve as an excellent vehicle by which policy options may be debated and decided. Change in the electric industry is inevitable, thus this legislature should proceed with all deliberate speed to protect the interests of all Nevada electric consumers. Delay could deny Nevada consumers the benefits of competition and possibly limit the ability of the legislature to protect their interests.

Testimony of Thelma Clark

On Behalf of the

Nevada Seniors Coalition

Regarding: AB 366

May 6, 1997

Good morning, Chairman Bache' and members of the Committee on Government Affairs, my name is Thelma Clark. I am testifying today on behalf of the Nevada Seniors Coalition in support of AB 366. The Seniors Coalition is a group composed of senior citizen members from Southern Nevada.

I have been a resident of Southern Nevada since 1963 and have been involved in issues regarding public utilities in our state for these 34 years. I was formerly a member of Nevada Power's Community Advisory Panel, and have sat in on numerous hearings before the Nevada Public Service Commission. I have also participated in the drafting of legislation related to public utilities.

The purpose of AB 366 is to initiate the process of deregulating the electric industry in the state of Nevada. This is a process we support. We hope

an amendment to the bill to set a date certain for competition. We also believe that serious consideration should be given to amend AB 366 to provide for divestiture when competition begins. At this time utility customers should also be notified of the different rates and services. Those Nevada electric companies that provide monopoly electric distribution services should not also own generating plants if the benefits of true and effective competition are to be realized for ratepayers and shareholders alike.

In conclusion, AB 366 is not a perfect bill. But it does establish the necessary framework for initiating a constructive dialog on moving Nevada's electric industry towards a competitive environment. The Nevada Seniors Coalition believes that such an environment will benefit all Nevadans. AB 366 deserves your support.

ALERT

March 24, 1997

Dear Shareowner:

As you know, a number of states are considering introducing competition into the electric utility industry.

The Nevada Legislature conducted a study between the 1995 legislative session, and the current 1997 session. The Public Service Commission of Nevada (PSC) is also studying the issue of competition.

There seems to be little question that some degree of competition will emerge in Nevada's electric industry in the next several years. The question faced by lawmakers is how to bring about competition in a way which results in the most benefits for customers while causing the least amount of risk to customers and shareowners.

The PSC has drafted legislation which will soon be considered by the Nevada Legislature. Your association has studied the commission's proposal in detail, and while we commend them for their hard work, we find we differ with them dramatically in the approach we believe will best serve all Nevadans - both shareowners and utility customers.

The commission proposal would have the legislature delegate a great deal of its authority to the public service commission. **The PSC, not the legislature, would decide when competition would occur, and how much competition is good for Nevada.** The proposal would permit the PSC to force electric utilities to sell their assets; it would allow them to dictate to utilities the level of competitive services which could be provided by their subsidiaries. **In fact, the commission could tell the utilities whether they could provide any services in order to compete with new companies coming to Nevada from other states.**

Of major importance to shareowners, the bill would allow the PSC to shift shareowner property from them to customers - an approach to stranded cost recovery rejected by almost all other states considering this issue.

In our view, the Public Service Commission bill calls for too much regulation. It seems to us that if customers and shareowners are to benefit from competition, regulators should be planning ways to be less involved in utilities' business, not more. If Nevada utilities continue to be heavily regulated while their competitors are not, the playing field will be tilted in favor of out-of-state competitors. We believe Nevadans are best-served by legislation which reduces the level of regulation and which provides utilities an opportunity to recover their costs stranded by a change in state policy.

For years, Nevada utility customers have benefited from rates which reflect lower risk for utility shareowners than for investors in other, more competitive companies. If the rules are to be changed now, shareowners should be permitted to recover the costs "stranded" by the state's changed rules.

The changes which will be considered by the 1997 Nevada State Legislature are potentially the most important changes in decades to those utility shareowners who've placed your faith in the state and invested in its utilities.

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EXHIBIT M
Assembly Committee on Government Affairs
May 6, 1997
Submitted by Thelma Clark, Representative
Nevada Seniors Coalition
Page 3 of 4

We're convinced that if the legislature were to pass the PSC's proposal, Nevada Power and Sierra Pacific's ability to compete in the new market would be severely impacted. And we also believe that shareholders would be at risk, both from too much regulation and from the potential loss of their stranded costs.

We need your help in defeating this plan. If you believe as we do that the Public Service Commission's legislation is the wrong way to go, please contact the legislature now.

From Las Vegas or any place outside Reno and Carson City, call toll-free 1-800-992-0973. From the Reno-Carson City area call 687-6800. Tell the operator you'd like your message delivered to all members of the Assembly Government Affairs Committee and that you're calling to express your opposition to the Public Service Commission's electric industry restructuring proposal. The legislation may not yet have been introduced when you receive this, so it's important that you identify it as the Public Service Commission's proposal.

For your information, the members of the committee are:

Assemblyman Doug Bache', Chairman
Assemblyman Roy Neighbors
Assemblyman Mark Amodei
Assemblywoman Deanna Braunlin
Assemblywoman Marcia de Braga
Assemblyman Pete Ernaut
Assemblywoman Vivian Freeman
Assemblyman Pat Hickey
Assemblywoman Joan Lambert
Assemblyman John Lee
Assemblyman Harry Mortenson
Assemblyman David Parks
Assemblywoman Sandra Tiffany
Assemblyman Wendell Williams

It's important that you call or write these legislators now. If you have any questions about the issue, or if you'd like help in determining who your legislator is, please call the USAN office at 1-800-648-8726 from anywhere but the Reno-Carson City area, or 882-8484 from Reno-Carson City.

Thank you for your help on this urgent matter.

Sincerely,

UTILITY SHAREHOLDERS ASSOCIATION



Perry Whitt,
President

P.S. If Nevada's utility shareholders are to fare well during the transition to competition it's essential that the state reduce the level of regulation, not increase it as this legislation proposes. If you'd rather write than call members of the committee, please send your letters to: Assemblyman or woman _____, Nevada State Legislature, Capitol Complex, Carson City, Nevada, 89710. **Please contact them today!**

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Good morning committee members. My name is Scot Barbour and I am a practicing architect in Washoe Valley. I am a member of the Carson City Chamber of Commerce, past president of the Washoe Valley Citizens Advisory Board, American Solar Energy Society Chapter member and a volunteer advocate for renewable energy.

Nevada is among the top five states in the nation for its abundance of solar, wind and geothermal. Nevada has the unique opportunity to obtain energy independence through the development of its renewable resources. This means the creation of a new multi-billion dollar industry, 100,000 new jobs and the potential to diversify Nevada's economy with revenues possibly exceeding those of the casino industry.

Renewables are the energy source of the future. They are clean, unlimited (renewable) resources. The opportunity in Nevada is to create a friendly environment for renewables since it is only in this way that we can hope to be energy independent. Under pending national energy restructuring, a percentage of all energy will be required to be from renewables. This will give Nevada the opportunity to sell its power or credit from its renewable energy resources. This can be a big financial win for Nevada because of our abundance of renewable energy resources and the fact that currently we spend 2.7 billion dollars a year importing fuels to meet our energy needs.

Nevada's energy needs are expected to grow 60 percent by the year 2010. One-seventh of the Nevada Test Site converted to photovoltaics with a 10 percent efficiency could provide twice the current electric requirements of the state. An area equivalent to four times the Nevada Test Site could produce the electric energy equal to the needs of the entire country.

Any utility restructuring bill should include one of the following components:

1. A **Renewable Portfolio Standard** which would set aside a percentage of all energy to be from renewable resources such as photovoltaics, wind and geothermal. A good renewable standard for Nevada would be 5 percent by the year 2005 and ten percent by the year 2010. Currently, approximately 2 percent of Nevada's energy are from renewable resources.
2. A **Systems Benefit Charge** would create a fund to support the development of renewable energy in the state. (California has enacted a systems benefits charge of 2.8 mil per kWh for all four

public interest areas).

The current restructuring eliminates existing consumer and environmental protections. It encourages the use of cheapest energy sources which are often the most damaging to the environment. Every other state and federal government bill includes explicit protections of the public good and development of renewables in adoptive or proposed legislation.

The only way to protect the consumer and the environment is to legislate those protections into this bill. Fairness, equal access and public interest is the purpose of the legislation. These protections are for low-income individuals including those retired and/or disabled, energy efficiency - "demand-side" management, the use of renewable resources for energy and continued research and development.

Energy restructuring can include other components to protect the consumer and environment interests and encourage development of a renewable industry. These components can include "*green pricing*" which gives the consumer the choice of a renewable energy source. "*Net metering*" which creates a market for renewable energy technology among residential users .

I have just returned from the American Solar Energy Society Conference in Washington, D.C., where I was introduced to a large menu of options for legislation as is currently being applied throughout the country. If you are interested in obtaining this information please contact me at 849-3006.

Before the
COMMITTEE ON GOVERNMENT AFFAIRS

Assembly Bill No. 366

Remarks of Timothy K. Shuba
on Behalf of
NEWMONT GOLD COMPANY

May 6, 1997

Mr. Chairman and members of the Committee, my name is Tim Shuba.^{1/} I am special counsel to Newmont Gold Company with respect to electric energy and electric supply matters. Newmont has asked me to come here this morning and to convey to you both Newmont's deep appreciation for your efforts in pursuing substantive electric industry restructuring legislation in Nevada and also Newmont's sincere interest in assisting you in whatever way you might find helpful in securing and maximizing the benefits of electric service competition for all of Nevada's citizens.

Newmont believes strongly in the premise underlying AB 366 -- that competition will provide the best and most efficient engine for providing lower cost, more efficient, and more consumer-responsive electric service. And Newmont believes equally strongly that such lower cost electric service is vitally important not only to it specifically, but also to the welfare of Nevada generally.

This is not simply a matter of improving the bottom line, of improving profits by reducing costs. As you all doubtless know, Newmont yesterday completed its merger with Santa

^{1/} I am a member of the law firm of Shea & Gardner, 1800 Massachusetts Avenue, N.W., Washington, D.C., 20036 (Telephone: (202) 828-2107; Fax: (202) 828-2195).

Fe Pacific Gold Corporation. Newmont, as a result of yesterday's merger, today operates upward of 22 different mines in Nevada. It will employ over 3500 Nevadans, making Newmont the largest single private employer in Nevada outside the gaming industry. The combined companies that now make up Newmont have an existing capital investment of approximately \$2.7^{billion} in Nevada; and their payroll, tax payments and very substantial purchases of goods and services from Nevada enterprises -- totaling well into the hundreds of millions of dollars annually -- are a significant component of Nevada's economy. And Newmont, of course, though large, is itself just one part of Nevada's large and vital mining industry.

The importance of competitively priced electric energy to this large piece of Nevada's economic base can scarcely be overstated. Newmont's merger with Santa Fe has, I understand, made Newmont the largest single consumer of electric energy in northern Nevada. More significantly, electric energy has historically represented in the neighborhood of 20% of Newmont's over-all operating costs at its various operations. For particular energy-intensive mining or processing projects, electric supply costs can easily represent well in excess of a third or more of total operating costs.

The point of these figures is that the cost of electric energy can be a hugely significant determinant of what projects are and are not viable in Nevada, of what new or expanded operations may or may not be available for Nevada's workers and Nevada's economy. For mining companies like Newmont, many possible new projects are under consideration at any given time. These projects may include new mine sites, new processing options, new handling mechanisms -- the whole gamut. Probably most such projects never see the light of day, in large measure because of excessive projected operating costs. Because of the large contribution of

electric supply costs to total operating costs for a given project, a reduction in electric supply costs could very easily be the difference between many projects being economically feasible in Nevada -- or not. And as the easier, and cheaper, projects are initiated and completed, the continued large contribution of Nevada's mining industry to this State's economy will become more and more dependent on controlling -- and reducing -- electric energy and other operating costs.

All this means that Newmont sees itself as a partner with you in your effort to secure the benefits of competitive electric service for Nevada. We are all in this together. It is in all our interests to do all we can to see that Nevada's participation in the national movement toward competitive electricity markets moves as expeditiously, as meaningfully, and with as few artificial or unnecessary constraints as possible. And I should emphasize that when I say that "we are all in this together," I mean just that. I have been speaking of Newmont's particular interest in a competitive electric industry because that is what Newmont is best-positioned to tell you about. But I want to make very clear that Newmont does not believe that its interests or the interests of industrial consumers generally are or should be adverse to the interests of Nevada's residential or small commercial customers. Newmont does not want, and does not believe it necessary, to achieve lower industrial electric prices at the expense of any other class of consumers. Competition -- as full, as fair, and as prompt as is possible -- is in the common interest of all electric consumers in Nevada.

AB 366 is a good and useful start toward achieving the benefits of a competitive electricity market in Nevada. Newmont applauds those who developed it and brought it forward, and it offers its encouragement and assistance to you who must now wrestle with the issues that it

raises. The bill, of course, will doubtless and rightly undergo some revision as it works its way through the scrutiny of our democratic process. The primary message I want to leave you with today, as you embark on that process, is that Newmont wants and intends to be supportive and helpful as this body, in concert with the Senate, works toward a new and progressive structure for the electric industry. Newmont is eager to work with you.

Thank you.

**MINUTES OF THE
ASSEMBLY SUBCOMMITTEE ON GOVERNMENT AFFAIRS**

**Sixty-ninth Session
May 15, 1997**

The subcommittee meeting on A.B. 366 was called to order at 4:08 p.m., on Thursday, May 15, 1997. Chairman Douglas Bache presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Douglas Bache, Chairman
Mr. Mark Amodei
Ms. Deanna Braunlin
Mr. John Jay Lee
Mr. Roy Neighbors
Mr. David Parks

COMMITTEE MEMBERS EXCUSED:

Mr. Peter (Pete) Ernaut

STAFF MEMBERS PRESENT:

Denice Miller, Committee Policy Analyst, Research Division,
Legislative Counsel Bureau (LCB)
Eileen O'Grady, Legal Analyst, Legal Division, LCB
Vicki Folstad, Committee Secretary

OTHERS PRESENT:

Judy Sheldrew, Commissioner, Public Service Commission of Nevada
Frank McRae, Director, Governmental and Regulatory Affairs, Nevada
Power Company
Joseph Cohen, Citizen, Utility Shareholder Association of Nevada
Fred Schmidt, Consumer's Advocate, State Consumer Advocate Office
Timothy Shuba, Special Counsel, Newmont Gold Company
Raymond Bacon, Representative, Nevada Manufacturers Association
Rose McKinney-James, President and CEO, Corporation for Solar
Technology and Renewable Resources
James Cain, Citizen
Ernest Nielsen, Attorney, Washoe County's Senior Law Project
Terry Graves, Representative, Saguaro Power Company

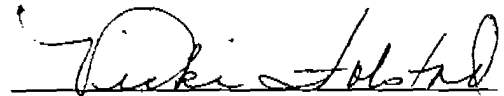
**ASSEMBLY BILL 366 - Revises provisions for regulation of electric service
to allow customers direct access to alternative
services. (BDR 58-1390)**

Testimony was heard on A.B. 366 and Exhibits C, D E, and F were submitted
for the record.

Transcription of minutes was not required. The taped recording of the meeting
is on file with the Legislative Counsel Bureau Research Library.

There being no further business, the meeting adjourned at 5:25 p.m.

RESPECTFULLY SUBMITTED:



Vicki Folstad,
Committee Secretary

APPROVED BY:



Assemblyman Douglas Bache, Chairman

DATE: May 29, 1997

ADDITIONAL HOUSEKEEPING AMENDMENTS
MAY 14, 1997

Revise Section 3.

"Aggregation service" is the service of buying electricity and reselling or otherwise supplying electricity to a customer, [, but the term does not include the provision of basic electric service.]

Revise Section 4.

"Alternative seller means a seller [, other than an electric utility,] of any component of electric service other than a noncompetitive service. The term does not include an electric utility, but does include[s] an affiliate of an electric utility.

Revise Section 8.2

[2. The term does not include a nonprofit cooperative which:

- (a) Provides service only to its members; and
- (b) Allows its members to obtain services from alternative sellers.]

Revise Section 10.

"Noncompetitive service: means (a) transmission, distribution or other component of electric service determined by statute or regulation to be unsuitable for [inclusion in a system under which the retail customer may] purchase [the service from an alternative seller] by retail customers from alternative sellers.

Revise Section 11.

"Potentially competitive service" means [an] a component of electric service determined by the commission to be suitable for [inclusion in a system under which the retail customer may] purchase [the service from an alternative seller] by retail customers from alternative sellers.

Revise Section 12.2

The commission shall determine that an electric service is a potentially competitive service if provision of the service [provided] by [the] alternative sellers:

- (a) Will not harm [one or more] any class[es] of customers;
- (b) Will decrease the cost of providing the service to customers in this state or increase the quality or innovation of the service to customers in this state;

- (c) Is a service for which effective competition in the market is likely to develop;
- (d) Will advance the competitive position of this state relative to surrounding states; and
- (e) Will not otherwise jeopardize the safety and reliability of the electric service in this state.

Revise Section 16 (3).

If the commission determines that an affiliate of a provider of a noncompetitive service cannot provide a potentially competitive service pursuant to the provisions of the subsection, and the provider of the noncompetitive service is an electric utility, the commission shall, pursuant to section 19 of this act, give the utility a reasonable opportunity to recover the costs incurred [for the services the utility will not provide in the future].

Revise Section 19.1

1. The commission shall fairly apportion between the shareholders and ratepayers the costs for assets and obligations that are documented in the accounting records of an electric utility as of July 1, 1997 which are properly allocable to a potentially competitive service, taking into account:

- (a) The extent to which the electric utility was legally required to incur the costs for the assets;
- (b) The extent to which the market value of the assets and obligations of the utility relating to the provision of potentially competitive services exceeds the costs for the assets and obligations;
- (c) The effectiveness of the efforts of the electric utility to increase and realize the market value of any assets and obligations associated with the provision of potentially competitive services;
- (d) The extent to which the rates previously established by the commission have compensated shareholders for the risk of not recovering the costs for the assets and obligations;
- (e) The effects of the difference between the market value and the costs, including tax considerations, documented in the accounting records for the assets and obligations on the taxes for those assets and obligations;
- (f) If the electric utility had the discretion to determine whether to incur the costs, the conduct of the electric utility with respect to the costs for the assets and obligations when compared to other utilities with similar obligations to serve the public.

Revise Section 19.2 (a).

2. For the purposes of this section, the commission may impose a procedure for the direct and unavoidable recovery from ratepayers of a portion of the past costs which are determined by the commission to be owed by the ratepayers. The procedure must include a determination of [:(a) T]

the period over which the recovery may occur[: and (b) Whether the costs are to be recovered from the customers or the sellers].

Revise Section 21.1 (a) (2).

[An estimate of the r] Revenue required by the utility.

CLARIFICATION LANGUAGE ON SECTION 15

Revise Section 15 to read as follows:

1. The commission shall monitor the markets for electric services affected by sections 2 to 23, inclusive, of this act to identify[,]
and prevent[, terminate and provide remedies for anticompetitive
conduct] activities inconsistent with the goals of this Act.
The commission shall:

(a) Establish standards of conduct related to activities that are [anticompetitive] inconsistent with the goals of this Act including penalties for violation of the standards and procedures for imposing such penalties; and

(b) Establish conditions and limitations on the ownership or operation of the assets of a provider of an electric service to minimize [the incidence of anticompetitive conduct] activities that are inconsistent with the goals of the Act and to ensure the development of effective competition for electric service including limitations on the ownership, operation or control of (i) transmission facilities and (ii) any generation necessary to the reliable and economic operation of such transmission facilities taking into consideration financial obligations that a provider of an electric service incurred before July 1, 1997, to carry out a statutory obligation of a public utility.

2. Upon a showing of good cause by a party requesting an investigation or upon a motion of the commission, the commission shall conduct an investigation of [the operation of a market for an electric service in this state] whether the markets for electric service are functioning in a manner consistent with provisions of this Act. The investigation must include, but is not limited to, the effect on the market of:

- (a) Mergers, consolidations or acquisitions of the assets or the securities of providers of electric services;
- (b) The disposition of ownership, management or operation of the assets of providers of electric services;
- (c) Transmission congestion or constraints; and
- (d) Anticompetitive or discriminatory conduct.

3. The commission may require an alternative seller or an electric utility to provide information, including documents and testimony, in accordance with the regulations of the commission relating to the discovery of information for a provider of electric service.

4. [Upon a determination by] If evidence is presented to the commission that anticompetitive or discriminatory conduct, including the unlawful exercise of market power is denying customers the benefits of effective competition in a market for electric services, the commission shall [inform] consult with the attorney general [of a] and transmit any evidence of violations of the law of this state to the attorney general and, if appropriate, inform the United States Department of Justice and any appropriate federal agency [of a violation of federal law].

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[5. Statutory or regulatory provisions, including, but not limited to, NRS 703.196, relating to the disclosure of confidential, proprietary or trade secret information notwithstanding, the commission shall disclose information obtained pursuant to this section to the attorney general with an appropriate agreement regarding confidentiality. The commission may disclose information to federal officers upon a determination by the commission that disclosure is necessary to prevent or restrain a violation of federal law. Before making a disclosure pursuant to this subsection, the commission shall provide the author or owner of the information with reasonable notice of its intention to disclose and opportunity to prevent or limit the disclosure.]



May 3, 1997

Chairman Bache
Members of the Assembly Government Affairs Committee

SUBJECT: AB 366 and Re-structuring of the Electric Utility Industry

The Nevada Manufacturers Association views AB 366 as similar to AB 277 on creating Higher Standards in our Public Education system. Both of these bills are proposing major changes to the status quo in one of the foundation pieces of our society. Done right both of these efforts will change our society forever with benefits for everyone. Done wrong, either or both will directly impact the quality of life and economic prosperity of Nevada.

In the bill and testimony from the governor and his staff, it is apparent that the disharmony among the elected members of the state board of education is major concern. In AB 277, the Governor wants to create a new separate appointed commission of stakeholders to look at higher standards for our schools. The nine member commission would focus on standards and remove them from the elected state board. The state board has split votes, raised voices, fundamental disagreements on how or what and perhaps intimidation between the members. The members have NOT filed legal actions and complaints against fellow members.

The PSC on the other hand is an appointed Board and in fact, every member of the current commission was appointed by this Governor. AB 366 or whatever bill emerges will not just impact the students of our state as would AB 277; it will likely establish the framework for electric restructuring that will impact every electricity user in Nevada. It will impact our residents, our businesses and even the millions of guests the state host every year. AB 366 appears likely to result in more regulations, authority and responsibility from a Public Service Commission that is in disarray with split votes, raised voices, many fundamental disagreements on this and other issues, intimidation and even legal action or threats of legal action among the appointed members.

It is our strong belief that electric restructuring should be handled by a separate commission or board of stakeholders to establish the Nevada rules on this vital issue. This board or commission should be established by this Legislature and specifically empowered to establish the regulations, rules and decisions required in AB 366, so they are effective and functional on or before 1 Jan 1999. We suggest a board

composition something like this:

- One utility person with knowledge of both ends of the state
- One Nevada utility shareholder
- Two large users of electricity - (each must be from a different industrial segment and opposite ends of the state - probably mining and gaming.)
- Two residential customers - one north and one south
- Two smaller business customers - one north and one south - (perhaps retailing and manufacturing in this group.)
- One member of the PSC or PSC staff
- One State Senator or someone designate to represent the Senate
- One State Assembly person or someone designated to represent the Assembly

Please note that in this make up, the customers will dominate the group, but that every major viewpoint would be represented at the table with a full participating voice. We suggest that the group be allowed to select its own chairman or leadership arrangement. Likewise, we suggest that the names to serve on this panel, board or commission be made by a consensus of the Governor, the Senate Majority Leader and the Assembly Speaker at a public meeting(s) within 30 or 60 days after the close of the 1997 legislative session. The legislative charge from this session should enact provisions that insure wide viewpoints and members from rural areas. These people should expect to spend most of their time for over a year on this task. It will be difficult to find people who can be freed up for this extended project, but we view this as essential. The staff of the PSC, LCB and Consumer Advocate should provide the administrative resources required for this effort. AB 366 is enabling legislation, but this would be a constituency group to get it done in a fair and equitable way.

Electric utility re-structuring is too important to be turned over to a PSC that is in turmoil. It is too detailed for the legislature, but mandatory that the legislature insure the process is handled in the best policy interest of the state and NOT just the government, the utilities, any class of customers, the shareholders or either political party. This is a monumental change that will impact residents and businesses of Nevada for years - we cannot afford to do it twice.

We have specific problems with the implied details of AB 366.

1. We believe it implies forced divestiture, but we are not convinced that is necessary if unbundling is done properly and anti-trust issues are considered.
2. It implies that all classes of customers must get lower cost, but that assumes that the current structure reflects the cost of service for all classes of service. We assert that is probably not true and should not be a requirement.

3. It sets up the PSC to determine what will be competitive service and what will be regulated. We sense that the PSC may not have a broad encompassing view on what can be market driven and what cannot or perhaps should not.

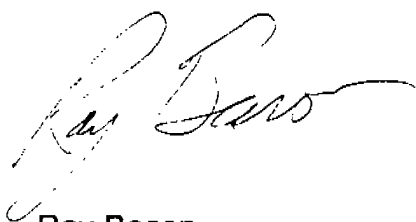
4. AB 366 does not address the issue of stranded cost with meaningful guidelines. We believe that is such a critical issue that the Legislature cannot shirk its duty to at least provide guidelines in that area.

5. It takes no action to change the structure of the PSC which should be part of the issue in our view. The PSC will ultimately have a different role than today and if our independent commission idea is accepted, the legislature can start the transition to the new role and PSC structure immediately.

We recognize that this proposal is a drastic departure from the current path. The interim legislative study gathered considerable information and input from the most interested parties. It certainly did not reach decisions that would allow clear, concise, consensus legislative action. The current composition of the PSC also does not appear to be likely to have a clear, concise and consensus view either. The best option remaining is to get the stakeholders to hammer out an agreement. The legislature has the responsibility to set the direction for the required action on this critical issue. This idea accomplishes that by having the path set by the most effected real people rather than lawyers and bureaucrats. That is the essence of our proposal. We hope you at least consider this idea as a better way to accomplish utility restructuring.

We feel obligated to disclose that NMA has both major utilities among its members as well as small and large electric users in manufacturing and mining. Many of our members are suppliers to the gaming and tourism industry. We did not consult with either utility in developing this idea, but rather borrowed it from the Governor's approach on AB 277 because of the many parallels. Both areas are critical policy decisions and the current groups with the responsibility may not have the ability to arrive at the best policy decision for the state of Nevada.

Regards,



Ray Bacon
Executive Director

COMMENTS BY
ROSE MCKINNEY-JAMES, PRESIDENT
CORPORATION FOR SOLAR TECHNOLOGY AND RENEWABLE RESOURCES
REGARDING ELECTRIC UTILITY RESTRUCTURING AND
AB 366

INTRODUCTION:

For the record, I am Rose McKinney-James, President and CEO of the Corporation for Solar Technology and Renewable Resources. Thank you for the opportunity to offer comments related to the role of renewable resources in view of AB 366 and the current debate surrounding electricity restructuring in Nevada. I will take only enough time to highlight what I believe to be the most important points for Nevada and renewables.

As the former Director of the Department of Business and Industry which includes the State Energy Office, and a former member of the Public Service Commission, I am quite familiar with past efforts to establish policy which recognizes the benefits of supporting the development and deployment of renewable energy resources. I am particularly familiar with the efforts of the PSC. Clearly, a continued role for the PSC is necessary to insure on-going protection of the public interest. While I believe it is important for the Legislature to identify and prioritize the broad policy issues, the Commission should be allowed the latitude to implement the appropriate regulatory framework and maintain the consistency necessary for transition to an open and competitive market.

I support the general direction outlined in AB 366 as it represents a significant effort by the Commission and others to establish a framework for restructuring. It is

therefore a good place to begin this important debate. Historically, issues related to renewable resources have been addressed within the integrated resource planning (IRP) provisions of the Commission's regulations. As such, I am particularly interested in section 22 of the AB 366. Clearly, the traditional need for IRP will change in a competitive market. However, those resources which are vulnerable in the initial stages of a competitive market require and deserve special treatment if they are to retain a viable place in the resource mix. As a result, I am recommending that AB 366 include a provision which establishes a renewable portfolio standard. The portfolio standard is a mechanism which has been employed by a number of states in an attempt to ensure diversity of fuel choices, in particular, the states of Arizona and Vermont have articulated measures which might serve as a model for Nevada.

Nevada is uniquely situated to demonstrate leadership relative to renewable resource development. We have been blessed with an abundance of renewable resources. There are substantial geothermal resources (here) in the north, solar radiation is plentiful throughout the state, and wind and bio-mass opportunities also exist. It is my hope that both the conclusions and policy recommendations in both the legislative and regulatory arenas will provide for some meaningful consideration of the continued development of renewable resources in this state. CSTRR has been working with our state utilities, regulatory agencies, grassroots organizations, and the interested public in an effort to promote the need and desire for the further development of Nevada's renewable energy opportunities. In particular, we have been working closely with the State Consumer Advocate to develop well-reasoned, common-sense approaches which offer a blend of responsible, business-oriented, philosophies with support for renewable resource development.

CSTRR's specific activities and mission as a not-for-profit corporation, has been designed to facilitate the development of solar and renewable energy technologies to deliver commercially competitive energy. CSTRR was incorporated in 1995 and funding for its initial staffing and program development has been provided through a \$3.0 million grant from the U.S. Department of Energy. Early efforts undertaken by the state of Nevada, the U.S. Department of Energy, and the solar industry, created the concept of a "Solar Enterprise Zone" (SEZ). The concept refers to sites identified for solar development within an encompassing "zone" existing in Southern Nevada. There are 5 sites identified by CSTRR which included the Nevada Test Site, Eldorado Valley near Boulder City (land acquired by Boulder City from the Bureau of Land Management specifically for solar development), Nevada Power Company's Harry Allen Site near APEX, Coyote Springs, and a site near Tonopah. These sites were selected on the basis of their proximity to load and electrical transmission, availability of necessary infrastructure services, favorable solar conditions, and cooperative attitudes of the underlying land owners. Environmental issues, such as the presence of endangered species were also considered in the selection of the sites identified, and potential impacts of these factors vary among the five sites. Although there has not been any initial sites designated in northern Nevada, CSTRR anticipates that future project endeavors will include northern Nevada opportunities. In 1996, CSTRR completed a comprehensive evaluation of fourteen proposals submitted in response to a Request for Proposal (RFP). An award to the partnership of Amoco/Enron/Solarex was made for a 10 MW Photovoltaic facility to be built and operated at the Nevada Test Site. This facility would be the largest, commercial central plant in the United States and possibly

the world, only to be surpassed by a 50 MW project this same group will be building in India.

The primary goal of CSTRR has been to facilitate a well defined strategy which results in moving solar energy technologies to the commercial power grid as a cost competitive energy source. CSTRR has been structured to offer a bridge to market applications for renewable technologies that have received R & D funds from the DOE and other agencies. The identification and development of market opportunities to support CSTRR projects is an essential element of this goal. Equally critical to our success is action by the Nevada Legislature to ensure that adequate support exists for the continued deployment of renewable resources and the development of those resources in Nevada.

CSTRR has been following a market strategy to promote and deliver solar power generated from solar and renewable projects. Identifying a guaranteed market in the current climate of electric restructuring has posed some difficult, yet, not insurmountable obstacles for immediate success. Of great concern to me, and unquestionably a renewables issue, is the impact electric restructuring will have upon continued development and enhancement of the renewable resources industries. The legislative efforts taking place across the nation but in particular those efforts by our neighbors in California, Arizona, Idaho, and New Mexico are of immediate concern. In order for Nevada to position itself to offer a competitive advantage for renewable energy developers, there must be some actions taking in this body to offer the necessary incentives. Clearly, the industry as whole will be served by the actions in these other states; however, Nevada would lose an opportunity and valuable resource options. I am

not asking for nor suggesting handouts or subsidies but real and honest efforts to support and encourage renewable development which will provide opportunity to the state of Nevada, the citizens, and the renewable industry.

As this (subcommittee) knows, Nevada heavily imports energy resources to meet our energy demands. Nevada citizens, like others, take very seriously the use of our collected tax dollars. Why then would we not take just as seriously the use of our energy dollars whether they be collected by the state or through energy bills we pay? Having the choice to spend our energy dollars where we believe they will serve us best and our energy needs should be important to all Nevadans. We need to invest NOW in our energy future to become more energy efficient, energy aware, and renewable energy educated. The economic development benefits and the environmental benefits of expanded renewable energy development are significant factors for why Nevada needs to act.

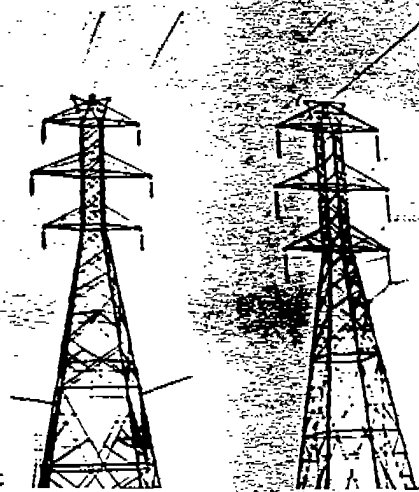
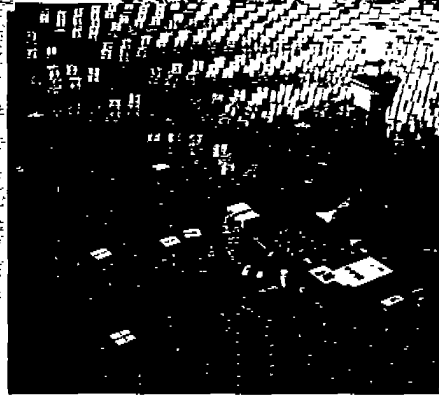
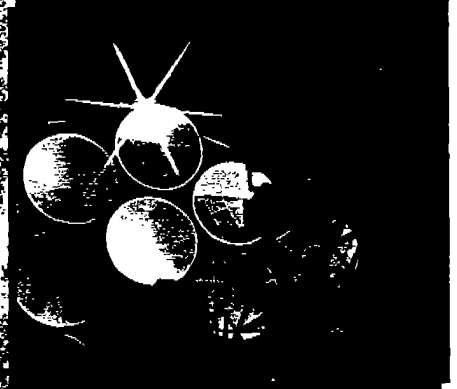
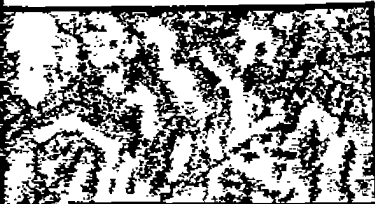
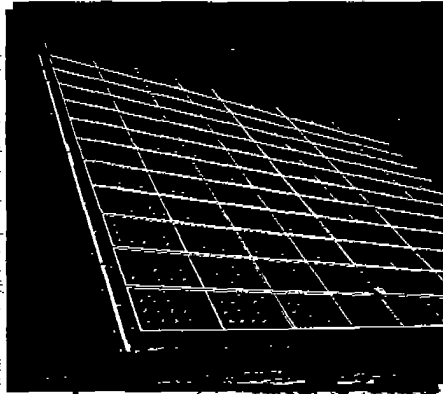
As a former member of a regulatory body, I am particularly sensitive to the challenge of balancing the needs of industry, and the needs of the consumers. Not at all an easy task, and one to be made even more difficult by this debate regarding restructuring and open access. However balancing industry needs includes the promotion of those industries which will enhance environmental quality. It is important that we take steps to avoid closing the door on the emerging technological advances in solar and other renewable resources.

I respectfully offer the support of CSTRR and any assistance necessary to the Legislature in furthering a policy strategy designed to support renewable energy

resource opportunities in Nevada. We have engaged in strategic alliances with the U.S. Department of Energy, the national laboratories of NREL and Sandia, the Federal Energy Management Program, Western Area Power Administration, the University of Nevada, Las Vegas, the Solar Energy Industry Association, and are working to secure formal alliances with Nevada Power Company and Sierra Pacific Power Company. I believe we have a local, regional, and national network that collectively would be available and willing to assist Nevada in furthering significant opportunities for renewable energy development either within the framework of restructuring or as stand-alone measures. Again, I emphasize the economic development for our state as well as the employment diversity for our residents and the environmental health of our citizenry and natural surroundings.

I sincerely appreciate the opportunity to come before this (subcommittee) and offer my comments. I believe strongly that our energy future rests with the further development and marketing of solar and renewable energy resources. As I said before, more than most, I understand the challenge facing legislators and regulators to balance the needs of the electricity industry with those of the environment, technological development and consumer choice. With the appropriate support, renewables can offer a reliable and environmentally friendly alternative if we seize the opportunity now. The issue of electricity restructuring and renewable energy development need not be an "either, or" choice. We cannot send the signal to future generations that expediency and dollars meant more than their secure energy future and environmental health.

CORPORATION FOR SOLAR TECHNOLOGY AND RENEWABLE RESOURCES



CREATING GOLDEN OPPORTUNITIES IN THE SILVER STATE

EXHIBIT F

140

(Original Brochure on File in Research Library)
Assembly Subcommittee on Government Affairs
May 15, 1997

Submitted by Rose McKinney-James, President & CEO
Corporation for Solar Technology and Renewable Service.

**MINUTES OF THE
ASSEMBLY SUBCOMMITTEE ON GOVERNMENT AFFAIRS**

**Sixty-ninth Session
May 22, 1997**

The subcommittee meeting on A.B. 366 was called to order at 8:40 a.m., on Thursday, May 22, 1997. Chairman Douglas Bache presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Douglas Bache, Chairman
Mr. Mark Amodei
Ms. Deanna Braunlin
Mr. Roy Neighbors
Mr. David Parks

COMMITTEE MEMBERS EXCUSED:

Mr. Peter (Pete) Ernaut
Mr. John Jay Lee

GUEST LEGISLATORS PRESENT:

Speaker Joseph Dini, Jr.

STAFF MEMBERS PRESENT:

Denice Miller, Committee Policy Analyst, Research Division,
Legislative Counsel Bureau (LCB)
Eileen O'Grady, Legal Analyst, Legal Division, LCB
Vicki Folstad, Committee Secretary

OTHERS PRESENT:

Jim Mulhall, Chief of Staff, Governor's Office
Judy Sheldrew, Commissioner, Public Service Commission of Nevada
Timothy Shuba, Special Counsel, Newmont Gold Company
Rose McKinney-James, President and CEO, Corporation for Solar
Technology and Renewable Resources
Ernest Nielsen, Attorney, Washoe County's Senior Law Project
Terry Graves, Representative, Saguaro Power Company
Scott Barbour, Board Vice President, Sunrise Sustainable Resources
Group

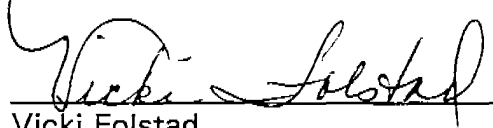
ASSEMBLY BILL 366 - Revises provisions for regulation of electric service
to allow customers direct access to alternative
services. (BDR 58-1390)

Testimony was heard on A.B. 366 and Exhibits C, D, E, F, G, H, I, and J were
submitted for the record.

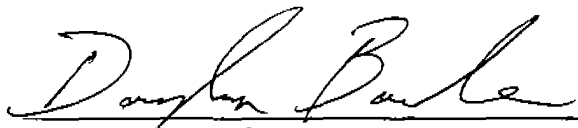
Transcription of minutes was not required. The taped recording of the meeting
is on file with the Legislative Counsel Bureau Research Library.

There being no further business, the meeting adjourned at 10:50 a.m.

RESPECTFULLY SUBMITTED:


Vicki Folstad,
Committee Secretary

APPROVED BY:


Assemblyman Douglas Bache, Chairman

DATE: May 28, 1997

PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 366

Section 1. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this act.

Sec. 2. *As used in sections 2 to 23, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Aggregation service" is the service of buying electricity and reselling or otherwise supplying electricity to a customer . [, but the term does not include the provision of basic electric service.]*

Sec. 4. *"Alternative seller" means a seller [, other than an electric utility,] of any component of electric service [.] other than a noncompetitive service. The term includes an affiliate of an electric utility. The term does not include an electric utility.*

Sec. 5. *"Customer" means the retail purchaser of electric service.*

Sec. 6. *"Effective competition" means , with respect to a particular service, a market structure and a process under which, as a result of:*

- 1. The number of sellers of the service;*
- 2. The size of each seller's share of the market; [and]*
- 3. The ability of the sellers to enter or exit the market [,]; and*

COMMITTEE ON GOVERNMENT AFFAIRS**Proposed Revisions to A.B. 366****Submitted by****Newmont Gold Company**

The following revisions to A.B. 366, proposed by Newmont Gold Company, are based on the language of the bill as revised by the "housekeeping" revisions previously submitted to the Committee by the Public Service Commission on May 2 and 14, 1997. Newmont's proposals are designed to strengthen the pro-competitive provisions of the bill without diluting the important consumer protection and reliability provisions as submitted by the PSC. Proposed additions to text are underscored, proposed deletions are bracketed.

For each proposed revision, Newmont submits suggested language and a brief explanation of the rationale for the proposal. If with respect to any provision the suggested language does not adequately serve the stated rationale, or adequately preserve the consumer protection and reliability safeguards of the original bill, Newmont would gratefully defer to any language proposed by others that better achieves its goals.

Newmont would, of course, be pleased to respond to any questions members of the Committee may have with respect to its proposed revisions.

Section 11**Proposed revision:**

"Potentially competitive service" means aggregation service, generation service, and any other [a] component of electric service determined by statute or regulation to be suitable for purchase by retail customers from alternative sellers.

Rationale:

In Section 12.1, Newmont proposes a date certain for starting competition. We do so in the interest of providing a degree of certainty upon which both the electric industry and electric consumers can rely and begin basing their decisions. To the same end, Newmont believes that it would be helpful to all interests to begin now identifying those services that are appropriate for inclusion in a competitive marketplace. It is clear that efficient and market driven generation service is the primary focus of the drive toward competitive electric markets and, indeed, is the fundamental purpose of AB 366. At the same time, aggregation service is necessary if the benefits of competitive generation service is to be meaningfully enjoyed by residential and small consumers as well as by large industrial consumers. Accordingly, Newmont recommends that both competitive generation and competitive aggregation services be made available together so

ASSEMBLY BILL NO. 366—COMMITTEE ON GOVERNMENT AFFAIRS

**Including PSC revisions dated May 2 and May 14, 1997,
and Newmont proposed revisions dated May 21, 1997**

Section 1. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this act.

Section 2. As used in sections 2 to 23, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act, have the meanings ascribed to them in those sections.

Section 3. "Aggregation service" is the service of buying electricity and reselling or otherwise supplying electricity to a customer.

Section 4. "Alternative seller" means a seller of any component of electric service other than a noncompetitive service. The term does not include an electric utility, but does include an affiliate of an electric utility.

Section 5. "Customer" means the retail purchaser of electric service.

Section 6. "Effective competition" means a market structure and a process under which, as a result of:

1. The number of sellers of the service;
2. The size of each seller's share of the market; and
3. The ability of the sellers to enter or exit the market, an individual seller is not able to influence significantly the price of the service.

Section 7. "Electric service" includes generation service, aggregation service and any other service or function provided, as of December 31, 1996, by an electric utility.

Nevada Domestic Energy Portfolio Standard

Draft amendments for Assembly Bill No. 366
rev. May 21, 1997

Section 2. 1. Whereas Nevada imports over ninety percent (90%) of its energy, which is an enormous drain on the Nevada economy, and whereas promoting Nevada's domestic energy resources and domestic energy industries creates jobs, improves air quality, promotes security, and increases economic efficiency, sellers of electricity in the state shall be required to purchase or generate a small percentage of their energy from resources in greatest abundance in the state by means of a Domestic Energy Portfolio Standard.

2. "Domestic Energy Portfolio Standard" means the minimum percentage of the total electricity sold during each calendar year that must be derived from renewable energy resources.
3. "Renewable Energy Resources" means the following energy resources that are naturally regenerated: wind, solar, geothermal, and biomass.
4. "Renewable Energy Systems" means energy systems that utilize renewable energy resources to produce electricity or solar thermal energy systems that reduce electricity consumption.
5. The commission shall complete the design and implement the provisions of a Domestic Energy Portfolio Standard that shall:
 - (a) Be set at two-tenths of one percent (0.2%) for the first year of implementation;
 - (b) Be increased biannually by two-tenths of one percent (0.2%) on an absolute basis following the first year of implementation until the Domestic Energy Portfolio Standard reaches a level of one percent (1.0%), after which time the Domestic Energy Portfolio Standard shall remain at one percent (1.0%), without sunset;
 - (c) Be applied equally to all electric utilities and alternative sellers providing electricity to retail customers in Nevada and which have annual operating revenues in this state of \$2,500,000 or more;
 - (d) Be implemented no later than when customers begin obtaining the right to buy from alternative sellers of electricity;
 - (e) Be derived entirely from new renewable energy systems. A renewable energy system is classified as new if it was installed and commenced operation after July 1, 1997;
 - (f) Be derived from no less than fifty percent (50%) renewable energy systems located within the state of Nevada;
 - (g) Be derived from no less than fifty percent (50%) solar energy resources;
 - (h) Be based on a renewable energy credit basis, if the commission finds this to be an effective means to implement the Domestic Energy Portfolio Standard. Renewable energy credits shall be issued for every kWh produced by renewable energy systems. Renewable energy credits may be traded or sold to other parties. At the conclusion of the calendar year, each electric utility and alternative seller of electricity shall submit a report of the quantity and sources of credits they have generated, purchased, sold, and traded toward meeting their Domestic Energy Portfolio Standard;

EXHIBIT F

Assembly Subcommittee on Government Affairs

May 22, 1997

Submitted by Rose McKinney-James, President and CEO
Corporation for Solar Technology and Renewable Resources

BEFORE THE ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS
AB366 Subcommittee
May 22 1997

Proposed Amendments to AB366

Submitted by Ernest Nielsen
Washoe County's Senior Law Project
328-2592, FAX 328-6193

I. Customer Bill of Rights

As the committee members know, currently the Commission has the authority to establish and has established regulations governing the relationship between customers and the utilities for such things as notices of termination, termination of service, deferred payment agreements, deposits, etc.

I see two issues. One is that there is no language that gives the Commission authority to regulate this arena with respect to alternative suppliers.

There is also some uncertainty as to whether alternative suppliers or current utilities will be responsible for these items. Though I have not proposed specific amendments for the idea, I believe the Commission should develop regulations requiring that distribution companies to offer certain types of customer services for alternative suppliers such as billing and meter reading etc.

Amendment #1. Section 12, subsection 1(d) should be added as follows: "Establish regulations governing the business relationship between alternative sellers and customers.

Amendment #2. Section 12, subsection 4, 3rd line of subsection after the phrase ". . . terms and conditions. . ." add "including rules governing the business relationship between alternative suppliers and customers."

Amendment #3. Section 12, subsection 4, last line of subsection, add before the phrase ". . . terms and conditions. . ." the following: "except for regulations governing the business relationship between alternative suppliers and customers.

**Testimony Offered by Saguaro Power Company to the
Assembly Government Affairs Committee
on
AB-366 Electric Industry Restructuring**

As a provider of generation services, Saguaro Power Company, intends to be an active participant in the regional market. In this transition to a competitive retail market, it is important that state legislation provide a clear road map to accomplish the goals of customer choice: lower power cost for consumers, improved system reliability, and an expanded array of customer services. Accordingly, state legislation should address the following issues concerning independent power producers.

Sanctity of Contract

Contracts which were entered into between utilities and qualifying facilities, under PURPA, may contain pricing provisions that will result in above market cost to the utility in a competitive environment. These contracts were entered into under quite different circumstances and were meant to secure reasonably cost, long term, reliable firm power for utility customers and to promote energy efficiency through increased use of cogeneration. In accordance with various provisions of law, these contracts need to be honored in the transition to competitive electric markets.

Non-discriminatory Access to Transmission /Distribution Systems

The transmission and distribution of electricity will remain regulated industries after retail competition has been established. In order to have robust retail competition, all sellers of generation services must have access to retail customers at transmission and distribution rates that are comparable to those of the host utility.

Operational Unbundling - Independent System Operator

The Federal Energy Regulatory Commission has promulgated rules that encourage the formation of regional transmission system operations administered by an Independent System Operator, or ISO. Economically, this avoids the current "pancaking" of rates charged by each individual utility whose system is used to deliver electrical energy to a distant customer. A truly independent systems operator will also alleviate market power concerns that transmission system owners might use their delivery systems to favor affiliate transactions.

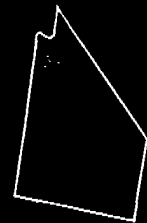
Reduced Regulation

It should be kept in mind that an objective of the electric utility industry restructuring should be to evolve into a far less regulated environment. Proper industry structure and cooperation between federal and state regulators will be necessary to achieve this goal.

Date Certain

There should be a date set when competitive electric marketing will begin. This date should be set by the legislature, not a regulatory agency.

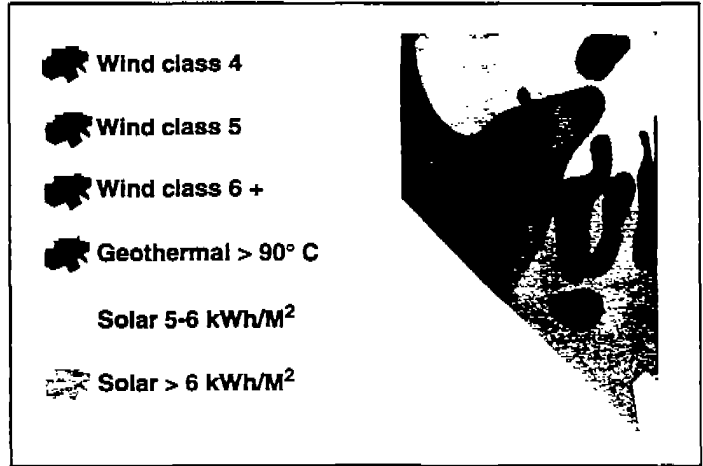
How Much Sunshine Does It Take to Energize America?



NREL
National Renewable Energy Laboratory

New Energy Capital, U.S.A.

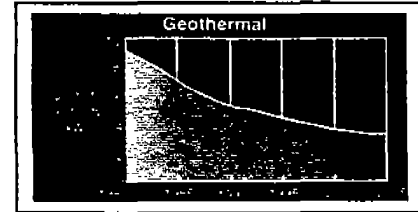
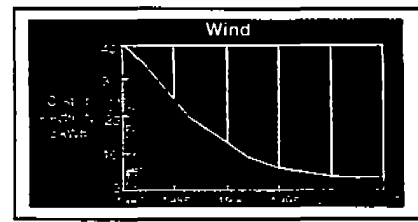
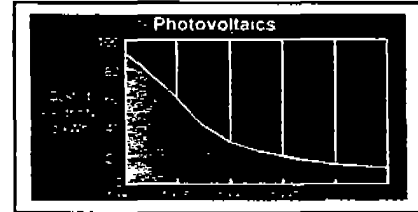
Resources



Nevada info:
Bill Cathey, UNR
702-784-1740

Nevada info:
Ellen Jacobson, UNLV
702-895-1593

Cost Trends



Add a new section to the bill to read as follows:

Sec. _. An electric utility shall take reasonable steps to minimize layoffs and any other adverse effects on its employees that result from the operation of sections 2 to 23, inclusive, of this act. The commission shall consider the failure of an electric utility to take such steps as evidence of the utility's imprudence when establishing the return on equity and the allowable operating costs of the utility. The commission shall allow recovery of reasonable costs incurred by the utility to address the adverse effects on its employees that result from the operation of sections 2 to 23, inclusive, of this act, including, without limitation, severance pay, retraining, early retirement and job placement. The commission shall determine a method to provide for the recovery of such costs in a manner which is nondiscriminatory and consistent with the sections 2 to 23, inclusive, of this act.

**MINUTES OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS'
SUBCOMMITTEE ON A.B. 366**

**Sixty-ninth Session
May 27, 1997**

The Committee on Government Affairs' Subcommittee on A.B. 366 was called to order at 3:45 p.m., on Tuesday, May 27, 1997. Chairman Douglas Bache presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

SUBCOMMITTEE MEMBERS PRESENT:

Mr. Douglas Bache, Chairman
Mr. Mark Amodei
Ms. Deanna Braunlin
Mr. Peter (Pete) Ernaut
Mr. John Jay Lee

SUBCOMMITTEE MEMBERS EXCUSED:

Mr. Roy Neighbors
Mr. David Parks

STAFF MEMBERS PRESENT:

Denice Miller, Committee Policy Analyst, Research Division,
Legislative Counsel Bureau (LCB)
Eileen O'Grady, Legal Analyst, Legal Division, LCB
Vicki Folstad, Committee Secretary

OTHERS PRESENT:

Danny Thompson, Representative, Nevada State American Federation of
Labor - Congress of Industrial Organization
Galen Denio, Commissioner, State of Nevada Public Service Commission
Terry Graves, Representative, Saguaro Power Company
Mike Reed, Representative, Local Government Energy Coalition
Judy Sheldrew, Commissioner, State of Nevada Public Service
Commission
Ernest Neilsen, Representative, Washoe County's Senior Law Project

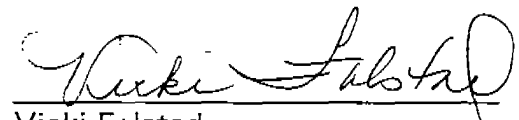
ASSEMBLY BILL 366 - **Revises provisions for regulation of electric service
to allow customers direct access to alternative
sellers of electric services. (BDR 58-1390)**

Testimony was heard on A.B. 366 and Exhibits C, D, E, F, G, and H were
submitted for the record.

Transcription of minutes was not required. The taped recording of the meeting
is on file with the Legislative Counsel Bureau's Research Library.

There being no further business, the meeting adjourned at 5:15 p.m.

RESPECTFULLY SUBMITTED:


Vicki Folstad,
Committee Secretary

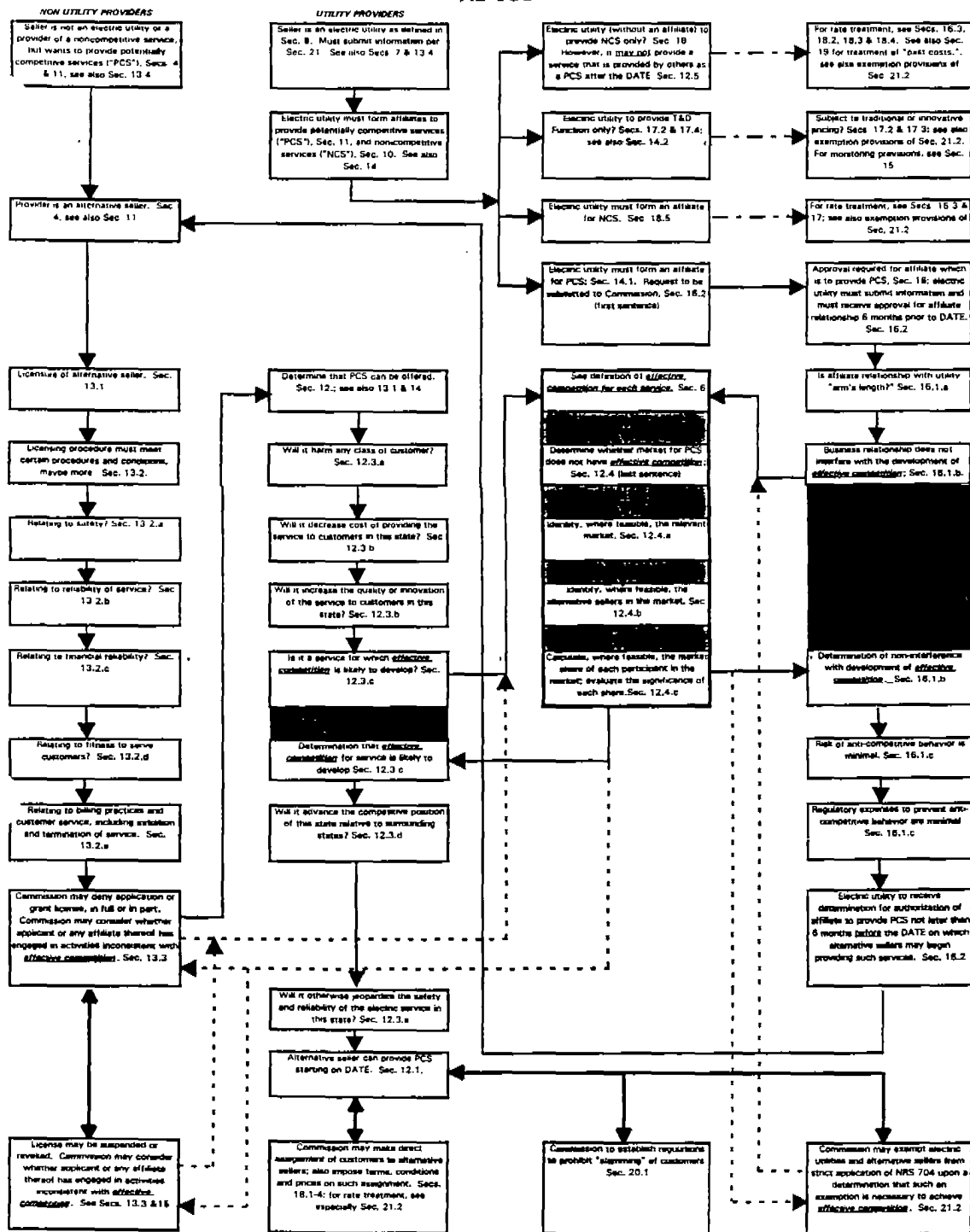
APPROVED BY:


Assemblyman Douglas Bache, Chairman

DATE: June 6, 1997

Add a new section to the bill to read as follows:

Sec. _. An electric utility shall take reasonable steps to minimize layoffs and any other adverse effects on its employees that result from the operation of sections 2 to 23, inclusive, of this act. The commission shall consider the failure of an electric utility to take such steps as evidence of the utility's imprudence when establishing the return on equity and the allowable operating costs of the utility. The commission shall allow recovery of reasonable costs incurred by the utility to address the adverse effects on its employees that result from the operation of sections 2 to 23, inclusive, of this act, including, without limitation, severance pay, retraining, early retirement and job placement. The commission shall determine a method to provide for the recovery of such costs in a manner which is nondiscriminatory and consistent with the sections 2 to 23, inclusive, of this act.



Note: This chart based on "PROPOSED AMENDMENTS TO ASSEMBLY BILL 366" which includes amendments proposed by Commission and legislators.
 Chart prepared May 26, 1997 by Commissioner Galen D. Denio

Amendments Offered by Saguaro Power Company to the
Assembly Government Affairs Committee
on
AB-366

Chairman Bache and members of the Committee, Saguaro Power Company has reviewed the amended version of AB-366 and has concluded that it would be helpful if some additional changes were made.

We suggest the following two amendments be added to the bill:

In Section 14 at the end of subsection 2, after the words "alternative sellers":
... **"at prices, terms and conditions that are just and reasonable and not unduly discriminatory and are comparable for all users of the facilities."**

In Section 19, add subsection 3 as follows:

3. "Nothing in Sections 2 to 23, inclusive, of this act shall be interpreted as requiring alterations to or voiding of any existing contractual obligations of electric utilities."

We would offer these additional comments as a result of reviewing the bill:

1. Section 12, subsection 4, second line: It appears that the amended version should read as, "not have", instead of, "have effective competition.". The omission of "not" changes the intent of the legislation.
2. The bill would be well served if there were headings for the sections, as there are many different issues covered, and it is difficult to follow in areas.
3. With regard to State anti-trust laws, there is not an indication as to when they would start to apply to electric utilities. Should there be language that defines a starting criteria?

Thank you for your consideration.


Terry K. Graves

Proposed Amendments To A.B. 366 (Revised)

submitted by
Michael R. Reed
on behalf of

The Local Government Energy Coalition

PURPOSE: Determine the potential impact of utility restructuring on local government franchise fee revenues.

PROPOSED CHANGE: Amend Sec. 25.1(b) to read:

(b) The effect of competition in providing electric services to customers on the tax *and franchise fee* revenue of this state and local governments.

PURPOSE: Authorize the state, its agencies and subdivisions to enter into intergovernmental agreements for the purposes of purchasing energy for use of the state, its agencies and political subdivisions.

PROPOSED CHANGE: Add a new subsection to Sec. 12 to read:

7. The state, its agencies and political subdivisions may begin effective date as determined by the commission pursuant to Sec. 12.1. The state, its agencies and political subdivisions may:

(a) Enter into intergovernmental agreements for the purchasing or furnishing of all or any competitive or potentially competitive services as determined by the commission under the provisions of Sec. 12.3.

(b) Any intergovernmental agreements entered into pursuant to Sec. 12.7 are not subject to the provisions of Sec. 13.4.

PURPOSE: Eliminate an unintended consequence of Sec. 13.4 which may require publicly owned utilities to be subject to PSCN jurisdiction if they are required by federal law or regulation to wheel energy through their systems on behalf of a third-party.

PROPOSED CHANGE: Delete language in Sec. 13.4.

4. A public utility or a city, county or other governmental entity, or any affiliate thereof, which is authorized to provide electric service within the State of Nevada on or before July 1, 1997, and which has an annual operating revenue of less than \$250,000,000, is subject to the provisions of sections 2 to 23, inclusive, of this act, and any regulations promulgated by the commission which are effective on the date on which the utility of entity applies to obtain a license as an alternative seller. [or directly or indirectly attempts to provide or facilitate the provision of electric service in the territory served by another public utility.]

PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 366

Section 1. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this act.

Sec. 2. *As used in sections 2 to 23, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Aggregation service" is the service of buying electricity and reselling or otherwise supplying electricity to a customer . [, but the term does not include the provision of basic electric service.]*

Sec. 4. *"Alternative seller" means a seller [, other than an electric utility,] of any component of electric service [,] other than a noncompetitive service. The term includes an affiliate of an electric utility. The term does not include an electric utility.*

Sec. 5. *"Customer" means the retail purchaser of electric service.*

Sec. 6. *"Effective competition" means , with respect to a particular service, a market structure and a process under which, as a result of:*

- 1. The number of sellers of the service;*
- 2. The size of each seller's share of the market; [and]*
- 3. The ability of the sellers to enter or exit the market [,] ; and*

**MINUTES OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Sixty-ninth Session
May 28, 1997**

The Committee on Government Affairs was called to order at 8:00 a.m., on Wednesday, May 28, 1997. Chairman Douglas Bache presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Douglas Bache, Chairman
Mr. Roy Neighbors, Vice Chairman
Mr. Mark Amodei
Ms. Deanna Braunlin
Mrs. Marcia de Braga
Mr. Peter (Pete) Ernaut
Mrs. Vivian Freeman
Mr. Pat Hickey
Mrs. Joan Lambert
Mr. John Jay Lee
Mr. Harry Mortenson
Mr. David Parks
Ms. Sandra Tiffany
Mr. Wendell Williams

GUEST LEGISLATORS PRESENT:

Senator Lawrence Jacobsen, Western Nevada Senatorial District
Assemblyman John Carpenter, District 33

STAFF MEMBERS PRESENT:

Denice Miller, Committee Policy Analyst, Research Division,
Legislative Counsel Bureau (LCB)
Eileen O'Grady, Committee Counsel, Legal Division, LCB
Sara Kaufman, Committee Secretary

OTHERS PRESENT:

Stephanie Licht, representing Elko County
Michelle Gamble, representing the Nevada Association of Counties
Renny Ashleman, II,
 of the law offices of Bell, Christensen, and Ashleman,
 representing Southern Nevada Home Builders Association
Chuck Abbottt, Commissioner,
 Office of Nevada Commissioner for Veterans Affairs,
 Department of Motor Vehicles and Public Safety,
 State of Nevada
Scott Young, Senior Research Analyst, Legislative Counsel Bureau,
 State of Nevada
Judy Sheldrew, Commissioner, Public Service Commission of Nevada
Fred Schmidt, Consumer Advocate, Attorney General's Office,
 State of Nevada

**ASSEMBLY BILL 514 - Revises provisions governing eligibility for retirement
for certain members of public employees' retirement
system.**

Chairman Bache announced that because Assemblyman Morse Arberry, Jr., was unable to be present, the hearing on A.B. 514 would be rescheduled.

**ASSEMBLY BILL 507 - Clarifies authority of governing body to maintain
local improvement projects.**

Assemblyman John Carpenter, District 33, testified. He explained the purpose of A.B. 507 was to permit Elko County to establish maintenance districts for the purpose of maintaining roads for which there was currently no provision for maintenance. Those roads were located within subdivisions and were not part of the county road system. Maintenance districts could be established only if the county was petitioned by citizens to establish them. Mr. Carpenter said he attended meetings of Elko County's Board of County Commissioners at which people requested that the county establish road maintenance districts. However, the county did not believe it had authority to do so under current law.

Assemblyman Lee asked whether A.B. 507 would allow a city, on its own initiative, to make changes to a community which would alter that community's lifestyle or whether a city must be petitioned by the voters to make changes to a community. Mr. Carpenter replied it was not the purpose of A.B. 507 to change anyone's lifestyle. A.B. 507 pertained specifically to the establishment

S.B. 234. Mrs. Lambert asked Mr. Abbott to provide the proposed amendment in writing. Mr. Abbott said he would do so.

Chairman Bache closed the hearing on S.B. 234.

Chairman Bache called for a motion to suspend Rule 92 with respect to subcommittee meetings to allow agendas for those meetings to be posted three days prior the meetings.

ASSEMBLYMAN WILLIAMS MOVED TO SUSPEND RULE 92 TO ALLOW AGENDAS FOR SUBCOMMITTEE MEETINGS TO BE POSTED THREE DAYS PRIOR TO THE MEETINGS.

ASSEMBLYWOMAN LAMBERT SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL 366 - Revises provisions for regulation of electric service to allow customers direct access to alternative sellers of electric services.

Eileen O'Grady, Committee Counsel, provided the committee with proposed amendments to A.B. 366 (Exhibit E).

Chairman Bache informed the committee that the subcommittee on A.B. 366 recommended the committee amend and do pass A.B. 366.

Chairman Bache informed the committee the language printed in bold type in the amendments was language the subcommittee proposed be added to A.B. 366 and the language surrounded by bold brackets was language the subcommittee proposed be deleted from the bill. He said the proposed amendments would delete all references to "basic electric service."

Chairman Bache said only a slight change was made to section 3 and read aloud the language of that section as it was proposed it be amended. He explained the term "electric utility" pertained to a company engaged in the transmission and distribution of electricity and the term "aggregation of service" pertained to a company engaged in buying and selling or reselling electricity.

Chairman Bache referred to the language "with respect to a particular service" proposed to be added to section 6. He explained the intent was to deal with competition with respect to each competitive service, and some services might become competitive before others did.

He said the purpose of the proposed amendment to section 6, subsection 4, was to deal with situations in which alternative energy sources competed with electricity.

Assemblywoman Freeman asked why the subcommittee deleted the term "basic electric service." Chairman Bache explained local distribution companies would provide electric service, there would be "alternative sellers," and a "public utility" would be the company which provided transmission lines. Therefore, the subcommittee decided the term "basic electric service" was obsolete.

Chairman Bache called upon Commissioner Judy Scheldrew of the Public Service Commission of Nevada (PSC) to further answer Mrs. Freeman's question. Commissioner Sheldrew explained the first draft of A.B. 366 used the term "basic service" to refer to "electric service of last resort." However, the intent was that the bill refer to electric service as it was currently supplied, which was in the form of a bundle of electric services. The price of that bundle of services included the prices for the transmission, distribution and generation of electricity. She said when attempts were made to define the term "basic service," it was discovered what was truly being discussed was "electric service" and "... electric service is included in the definitions." Therefore, the term "basic service" was replaced by the term "electric service."

Chairman Bache resumed pointing out the changes the proposed amendments (Exhibit E) would make to A.B. 366. He said the first major change the proposed amendments would make was to section 12 and read aloud the proposed language of section 12, subsection 1. He explained the reason for establishing the date of July 1, 2001, was, in part, because there would be two legislative sessions prior to that date in which to review and refine the provisions of A.B. 366. In addition, the Federal Government was contemplating taking action at about that point in time.

Chairman Bache read aloud further changes made by the proposed amendments.

Mrs. Freeman asked why it was proposed the language of section 12, subsection 2(c) be deleted. Chairman Bache replied that language was removed from section 12 and placed in another section.

Chairman Bache pointed out the language of section 13, subsection 3, was in the nature of antitrust language.

Assemblyman Mortenson referred to section 12 and asked whether there had been any discussion regarding the "particulars" of the pilot program.

Chairman Bache replied the PSC would design the pilot program and asked Commissioner Sheldrew to address Mr. Mortenson's question.

Commissioner Sheldrew stated the pilot program would be more explicitly described in regulations which would be developed by the PSC. She said the legislators who worked on the development of A.B. 366 merely wanted to provide the PSC with general guidance with respect to the pilot program. She said discussions were held regarding what percentage of new growth might be allocated to a pilot program. A requirement was established that the program be nondiscriminatory and that it not be open to participation by only large industrial users of electricity; the program would have to be open to participation by residential, industrial and commercial customers. She indicated no other specifics of the pilot program were discussed.

Chairman Bache used "Mount Wheeler" as an example in explaining the provisions of section 13, subsection 4, as set forth in the proposed amendments. He pointed out Mount Wheeler was a "co-op" and said as long as it wished to remain a co-op, do business within its own service territory, and not expand into other areas, no company would be allowed to compete with it. On the other hand, if Valley Electric, which was also a co-op, attempted to expand into the test site, where Nevada Power had a service territory, Valley Electric would have to obtain a license as an alternative seller.

Assemblyman Neighbors referred to a "recent lawsuit" which essentially divided the test site and asked, "What happens if they expand into that area." Commissioner Sheldrew responded that as a result of a district court decision, the test site had been divided into at least two service territories. Under the provisions of section 13, subsection 4, of A.B. 366, if Valley Electric decided to provide service in Nevada Power's test site service territory, Nevada Power would have the option of attempting to acquire customers in Valley Electric's service territory.

Mr. Neighbors asked whether he was correct that Valley Electric could expand its service into the area which ". . . the courts approved . . . " and not be affected by the provisions under discussion as long as it did not expand into Nevada Power's service territory. Commissioner Sheldrew replied affirmatively. She said the effect of the district court decision was to divide the test site and provide a portion of it to Valley Electric as a service territory and a portion to Nevada Power as its service territory. Outside of an agreement which those two entities had entered into, the provisions of section 13, subsection 4, would allow neither entity to provide power within the other's service territory.

Mr. Lee asked whether Valley Electric would be required to do \$250 million worth of business before it could become a "utility." Commissioner Sheldrew said the provision of A.B. 366 being discussed said "less than \$250 million."

Chairman Bache recessed the meeting until after adjournment of the Assembly's floor session.

The meeting reconvened at 12:32 p.m.

Chairman Bache asked Assemblyman Ernaut to explain the purpose of replacing the term "anti-competitive" in section 15 with the language "inconsistent with the goals of sections 2 to 23, inclusive of this act."

Mr. Ernaut explained that anti-competitive behavior was discussed in another section of A.B. 366. The replacement language caused section 15 to identify something entirely different from anti-competitive behavior, and anti-competitive behavior would to a large extent be dealt with by the Office of the Consumer Advocate (OCA) rather than by PSC. The replacement language both provided that PSC would monitor the goals set forth in sections 2 through 23 of A.B. 366 and established a public policy statement.

Chairman Bache referred to the remainder of the language of the provisions being discussed, set forth in the first five lines on page 9 of the proposed amendments (Exhibit E), and said he believed the provisions under discussion provided PSC with the power of divestiture. He observed A.B. 366 made no provision for mandatory divestiture. Mr. Ernaut pointed out there was an option "... to divest or to break into affiliates." He said it was probable that most electric companies would "divest" voluntarily within the next 2 to 4 years.

Chairman Bache briefly discussed the remaining changes the proposed amendments would make to section 15 and the changes they would make to sections 16, 17, and 18.

Chairman Bache asked Mr. Ernaut to explain the purpose of the proposed amendments to section 19.

Mr. Ernaut said the recovery of "stranded costs" was as important as any concept established by A.B. 366. He explained "stranded costs" were those costs created when a regulatory body required a utility to provide a service or to build something, and such costs were recoverable by the utility's shareholders over a period of time and at a guaranteed rate.

He said if a utility company was engaged in a contract when the utility industry became competitive, that company would have a problem and would, in essence, have broken a contract with its shareholders. He pointed out that stranded costs which were deemed appropriate for recovery when the factors enumerated in section 19, subsections 1(a) through 1(f) were taken into account, were 100 percent recoverable.

Mr. Ernaut informed the committee that the amended language of section 19 had been discussed with the PSC and with utility companies, and everyone seemed satisfied with that language.

Assemblywoman de Braga asked how existing contracts for geothermal power or other sources of energy, which because of their cost would lessen a utility company's ability to be competitive, would be handled. Chairman Bache responded he did not believe such contracts were specifically addressed by A.B. 366. Mr. Ernaut said there were a couple of ways in which to deal with such contracts. It was necessary to understand, he asserted, that one could not think of a utility contract in the traditional manner. He opined that by the time the utility industry became competitive, ". . . what you will see is, mostly, . . . the generation portion of the power companies as a different entity altogether."

Mrs. de Braga asked, "But wouldn't it still have to be included in consideration of how you're going to reduce costs or how you're going to be more efficient in the production of energy." Commissioner Sheldrew responded one of the substantial changes the proposed amendments made to section 19 was the addition of the words "and obligations" immediately following the word "assets" in subsection 1(a). Those words were added in an attempt to include "purchase power contracts," which might be uneconomical because their cost was greater than their market value, in stranded cost determinations.

Commissioner Sheldrew declared nothing in section 19 would disturb any existing contractual relationship between a utility company and a provider of geothermal energy. What section 19 did was to subject both assets and obligations which were attributable to a potentially competitive service to consideration of the factors enumerated in subsections 1(a) through 1(f). Some of those factors would determine whether a geothermal contract was or was not marketable. If such a contract was marketable, receipts due from that contract would decrease what would be described pursuant to section 19 as "stranded costs." If the cost of such a contract was greater than its market value and it could not be sold, PSC would evaluate whether the utility company which entered into the contract was legally required to do so.

Mrs. de Braga asked whether there was currently a legal requirement for utility companies to purchase such contracts. Commissioner Sheldrew replied there were federal requirements, under the Public Utility Regulatory Policies Act (PURPA), for the negotiation of such contracts, and PSC would consider that fact when determining the extent to which an electric utility company was legally required to incur costs.

Mr. Ernaut interjected if a utility company entered into a contract on its own accord, it would be responsible for the costs of that contract. However, if the company was legally required by PURPA or by integrated resource planning requirements to enter into such a contract, it could recover any loss it incurred as a result of doing so. However, Mr. Ernaut maintained, very few contracts for geothermal energy would be voluntarily entered into by utility companies because few of those contracts were cost effective.

Mr. Parks asked whether section 19 would satisfactorily address circumstances in which assets were depreciated for tax purposes at a rate which differed from the useful life of those assets and whether such circumstances would be taken into consideration by PSC. Commissioner Sheldrew replied affirmatively and called Mr. Parks' attention to the amended language of section 19, subsection 1(e), which discussed the effects of the difference between the market value of an asset or obligation and its cost. She said that language might not directly address the issue Mr. Parks had raised because the language was intended to deal with deferred taxes which had been collected and accrued over a period of time. However, pursuant to that language, any tax considerations which would enter into evaluating property in favor of either shareholders or rate payers, would be taken into consideration.

Chairman Bache orally reviewed the proposed amendments to sections 20 through 26.

Mr. Ernaut clarified that the date of July 1, 2001, was not a starting date. Rather, that date was the latest date on which the things discussed in section 12, subsection 1, could occur. He explained the regulations which PSC must create for the administration of competition must be completed by July 1, 1999. He pointed out two legislative sessions would be held prior to July 1, 2001, and PSC would provide reports to the legislature. An attempt was being made, he explained, to design a program which would allow entry into a competitive marketplace at a time feasible for the state of Nevada. That program contained a great deal of flexibility because untimely entry could be detrimental to the state.

Mr. Parks asked whether there was legislation other than A.B. 366, either pending or which might yet be proposed, which dealt with the issue of renewable resources. Chairman Bache replied the pilot program established by A.B. 366 did not preclude involvement of renewable resources; however, he was not certain what other legislation might be pending. Ms. Braunlin stated there was a bill draft, BDR 12-96, which directed the legislature to create a comprehensive long-range plan and which provided for a study of, among other things, renewable resources. Also, she said, Senator Titus had proposed two bills which dealt with renewable energy.

Scott Young, Senior Research Analyst, Legislative Counsel Bureau, State of Nevada, testified. He informed the committee that Senate Bill 255, Senator Titus's "net metering" bill, had been passed out of the Senate Committee on Commerce and Labor. That bill permitted limited residential usage of wind and solar generators and allowed those who used them to offset the electricity thus generated against their normal usage of electricity obtained from utility companies. The bill was designed to encourage use of small-scale photovoltaic apparatus and wind generators. Mr. Young said S.B. 255 was the only bill of which he was aware that addressed renewable energy sources.

Mr. Ernaut pointed out renewable energy sources and integrated resource planning would be discussed by an interim committee. He suggested a 5-week period was insufficient to make decisions regarding those subjects and contended how those subjects were dealt with was a delicate issue.

Assemblyman Amodei asked whether anyone on the committee had information regarding the fiscal note on A.B. 366.

Chairman Bache called upon Commissioner Sheldrew to respond to Mr. Amodei's question.

Commissioner Sheldrew said she could make a general representation of the fiscal impact of A.B. 366. She stated PSC was requesting it be given five additional personnel positions over the biennium: two economists and one public education specialist during the first year, and another public education specialist and a quality of service analyst during the second year. In addition, PSC was requesting it be given approximately \$275,000 during the first year of the biennium and \$250,000 during the second year with which to acquire additional consulting service and to pay for court reporting services and notification costs. In all, the cost would be approximately \$670,000 during the first year of the biennium and \$740,000 during the second year.

Commissioner Sheldrew explained the statutory cap on PSC's mil assessment was 3.5 mils, and its assessment was currently 2.8 mills. PSC's additional monetary needs as a result of A.B. 366 would cause it to increase its mil assessment to approximately 3.1 mils during the first year of the biennium and to 3.3 mils during the second year.

Mr. Amodei asked whether A.B. 366 would create any costs for the Office of the Consumer Advocate (OCA). Commissioner Sheldrew responded OCA also would have additional expenses.

Fred Schmidt, Consumer Advocate, Attorney General's Office, State of Nevada, testified. He said OCA had submitted a fiscal note which reflected a financial impact on OCA of \$208,000 during the first year of the biennium and, he believed, \$214,000 during the second year. Any sums in excess of those amounts would require OCA to seek legislation to increase the statutory cap on its mil assessment. Most of the money would be used to obtain consultants; however, the cost of one new personnel position was included in those sums.

Mr. Amodei asked whether the sums of money Mr. Schmidt cited pertained only to costs imposed by A.B. 366. Mr. Schmidt replied those sums pertained to the financial impact which would be imposed on OCA by the hearings required under A.B. 366. He said A.B. 366 would probably triple OCA's court reporting expenses.

Mr. Lee pointed out members of the public bought stock in utility companies and asked what process would be used to inform the public that the utility industry had become volatile. Mr. Schmidt replied he had testified that consumer education was critical to ensuring the success of the transition which would occur under A.B. 366 if that transition could, in fact, be successful. He contended consumers and shareholders, in light of the new choices they would be required to make, must be made aware of what was changing in the utility industry and the manner in which it was changing. He maintained it was essential that government perform the function of educating consumers and shareholders and that it not rely solely on competitors within the utility industry to do so. Under A.B. 366, the responsibility to perform that function rested with PSC, and PSC would have to develop the details of the educational process.

Mr. Ernaut pointed out Senator Townsend sponsored a bill which would, essentially, restructure PSC and cause it to interface with OCA. Therefore, the fiscal note might change.

Chairman Bache called for a motion on A.B. 366.

Mr. Ernaut said he wanted the committee to be aware that opposition to A.B. 366 was expressed to the subcommittee. However, that opposition was articulated only by one member of PSC, whose opposition was based mainly on the fact he did not believe the Federal Government would order retail competition and, therefore, A.B. 366 was "jumping the gun." Mr. Ernaut indicated the subcommittee did not agree with that opinion. He contended the Federal Government would order that there be retail competition.

ASSEMBLYMAN ERNAUT MOVED TO AMEND AND DO PASS A.B. 366.

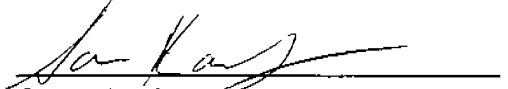
ASSEMBLYMAN BRAUNLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY BY ALL THOSE PRESENT;
ASSEMBLYWOMEN FREEMAN, LAMBERT, AND TIFFANY WERE ABSENT
AT THE TIME OF THE VOTE.

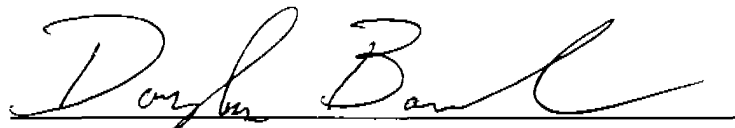
Mrs. de Braga disclosed that she received royalties and lease-site payments from a geothermal power plant but had no idea how she would be affected by A.B. 366.

There being no further business to come before the committee, Chairman Bache adjourned the meeting at 1:12 p.m.

RESPECTFULLY SUBMITTED:


Sara Kaufman,
Committee Secretary

APPROVED BY:


Assemblyman Douglas Bache, Chairman

DATE: June 22, 1997

PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 366

Section 1. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this act.

Sec. 2. *As used in sections 2 to 23, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Aggregation service" is the service of buying electricity and reselling or otherwise supplying electricity to a customer . [, but the term does not include the provision of basic electric service.]*

Sec. 4. *"Alternative seller" means a seller [, other than an electric utility,] of any component of electric service [,] other than a noncompetitive service. The term includes an affiliate of an electric utility. The term does not include an electric utility.*

Sec. 5. *"Customer" means the retail purchaser of electric service.*

Sec. 6. *"Effective competition" means , with respect to a particular service, a market structure and a process under which, as a result of:*

- 1. The number of sellers of the service;*
- 2. The size of each seller's share of the market; [and]*
- 3. The ability of the sellers to enter or exit the market [,] ; and*

EXHIBIT E -25 pages

--1-- Submitted to Committee on Government Affairs
on 5-28-96 by Eileen O'Grady, **169**
Committee Counsel, L.C.B.

**MINUTES OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Sixty-ninth Session
June 30, 1997**

The Committee on Government Affairs was called to order at 8:00 a.m., on Monday, June 30, 1997. Chairman Douglas Bache presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Douglas Bache, Chairman
Mr. Roy Neighbors, Vice Chairman
Mr. Mark Amodei
Ms. Deanna Braunlin
Mrs. Marcia de Braga
Mr. Peter (Pete) Ernaut
Mrs. Vivian Freeman
Mr. Pat Hickey
Mrs. Joan Lambert
Mr. John Jay Lee
Mr. Harry Mortenson
Mr. David Parks
Ms. Sandra Tiffany
Mr. Wendell Williams

STAFF MEMBERS PRESENT:

Denice Miller, Committee Policy Analyst, Research Division,
Legislative Counsel Bureau (LCB)
Eileen O'Grady, Legal Analyst, Legal Division, LCB
Sara Kaufman, Committee Secretary

OTHERS PRESENT:

Harvey Whittemore of Lionel, Sawyer and Collins, Tahoe Citizens'
Committee and Arco/Atlantic Richfield
Joseph Guild, Douglas County, Nevada
Stan Olsen, Las Vegas Metropolitan Police Department
Judy Sheldrew, commissioner, Public Service Commission of Nevada

Chairman Bache pointed out the language of S.B. 39 was permissive with respect to " . . . the rest of the state." He suggested if small municipalities chose to create a citizens' review board, they be allowed to create a 12-member board.

Mr. Hickey expressed reservations about excluding Washoe County from the provisions of S.B. 39.

Mr. Parks referred to section 2, subsection 2, and suggested inserting language in that section which would require civilian review boards in cities within counties which had a population of 100,000 or more to be comprised of 25 members. The insertion of that language would allow smaller cities and counties to have the smaller review board discussed in the bill.

Chairman Bache pointed out S.B. 39's population clauses were based on the 1990 census. He suggested adding a subsection (c) to section 2, subsection 2, to allow a city in any county whose population was less than 50,000 to have a 12-member citizens' review board.

Ms. Tiffany stated she would prefer that the legislature conduct a review of the effects of S.B. 39 during the 1999 legislative session rather than wait 4 years to conduct such a review. She said she believed the population clause proposed by Mr. Parks was appropriate.

Chairman Bache stated because S.B. 39 referred to "peace officers," the bill's provisions would apply to constables. However, he would like the language of the bill to make specific reference to "constables."

Chairman Bache asked Stan Olsen, present on behalf of the Las Vegas Metropolitan Police Department, whether he had any comments regarding the proposed amendments to S.B. 39 (Exhibit C). Mr. Olsen asked that he be given an opportunity to provide the committee with a copy of an amendment proposed by Metro, which he maintained delineated more clearly than Exhibit C what a citizens' review board would be able to do and the power such a board would have to issue subpoenas.

Chairman Bache indicated the committee would defer taking action on S.B. 39 to allow Mr. Olsen an opportunity to present Metro's proposed amendment.

ASSEMBLY BILL 366 -

Recognizes public service commission of Nevada and makes various changes concerning regulation of utilities and governmental administration.

Judy Sheldrew, commissioner, Public Service Commission of Nevada (PSC), testified. At Chairman Bache's request, Commissioner Sheldrew discussed how the current version of A.B. 366 compared to the previous version of the bill. She said the first significant change in definitions occurred in section 30. She explained PSC asked that A.B. 366 include language which would allow alternative sellers to compete to be providers of last resort. PSC perceived that the language of section 18 of the former version of the bill might preclude alternative sellers from engaging in such competition.

Chairman Bache asked Commissioner Sheldrew to explain the difference between the terms "vertically integrated electric utility" and "electric utility." Commissioner Sheldrew replied the Senate used those terms in the new version of A.B. 366 in an attempt to clarify that, after a certain date, " . . . electric utilities or vertically integrated electric utilities would no longer be providing . . . unbundled service . . ." At some point in time, such a utility would become either an electric distribution utility, as defined in section 33, or an alternative seller. She explained the term "vertically integrated electric utility," used in the new version of A.B. 366, replaced the term "electric utility" which was used in the previous version, and the new version of the bill established the term did not apply to either a cooperative association or a non-profit corporation.

Chairman Bache stated other than the fact that the term "vertically integrated electric utility" described Nevada Power Company and Sierra Pacific, the term held no meaning for him. He maintained the term was confusing and made no sense. Commissioner Sheldrew responded she was not certain the term added the clarity to A.B. 366 which the Senate believed it would add, and the term did not define an electric utility any differently than it was defined in the previous version of the bill. She referred to sections 33 and 38 and said at some point, vertically integrated electric utilities would no longer exist.

Commissioner Sheldrew said with the exception of the term "electric distribution utility," the terms used in the new version of A.B. 366 were the same ones used in the previous version. She explained the term "electric distribution utility" was added to the bill because it was necessary to provide the entities identified by that term an opportunity to compete to provide the services supplied by a provider of last resort.

Commissioner Sheldrew asserted the first substantive change to A.B. 366 occurred in section 39, wherein the date of July, 2001 had been replaced with the date of July 1, 1999. She maintained that change was significant in light of the amount of rule-making PSC would have to accomplish between the time the legislature adjourned and July 1, 1999. Further, the date of July 1, 1999, might not be a workable date given the fact an attempt was being made to

" . . . give a six months lead time for the vertically integrated electric utilities to have an opportunity to have their affiliates compete with alternative sellers."

Commissioner Sheldrew pointed out in addition to changing the date in section 39, the Senate had eliminated the pilot program established by the Assembly's version of A.B. 366. The elimination of that program would enhance PSC's ability to complete its regulations.

Assemblyman Amodei asked how establishing a date of July 1, 1999, would affect recovery of stranded costs. Commissioner Sheldrew replied she believed the language of the third reprint of A.B. 366 provided that stranded costs could be recovered up to the date on which PSC authorized provision of electric service by alternative sellers. The problem with establishing the date as July 1, 1999, pertained to whether or not PSC could complete its hearings on stranded costs prior to that date. She characterized the date of July 1, 1999, as a very aggressive date.

Mr. Amodei asked whether the existing language of A.B. 366 established stranded costs would be determined by July 1, 1999, and would have to be paid. Commissioner Sheldrew replied the existing language of A.B. 366 allowed utilities to recover their stranded costs through the date of July, 1, 1999. However, it was questionable whether PSC would be able to complete its hearings to determine the amount of those stranded costs and establish an assessment for rate payers by that date.

Chairman Bache pointed out the word "currently" had been inserted in the language of section 39, subsection 4(b), and asked whether that language would preclude an entity which was not currently doing business in Nevada from becoming an alternative seller in Nevada. Commissioner Sheldrew replied it might do so.

Chairman Bache pointed out the word "may" had been replaced by the word "shall" in section 39, subsection 5. He said as he interpreted the language of that subsection, if PSC was asked to reconsider a determination it previously rendered that a service was not competitive or that a market for services did not have effective competition, PSC would be required not only to reconsider its determination but also to "enter competition," regardless of whether it did or did not believe that to be appropriate.

Commissioner Sheldrew responded Senator Townsend recognized some corrections needed to be made to the Senate's version of A.B. 366. She said she interpreted the word "shall" to require PSC to reconsider a prior determination but not to require PSC to determine there was to be competition.

She said although she was not certain the single word "shall" was significant, the rest of the language of that subsection was significant, and she believed that language would be changed back to the language of the second reprint of A.B. 366.

Ms. Braunlin asked whether Commissioner Sheldrew had a copy of the technical changes to the current version of A.B. 366 which Commissioner Sheldrew testified PSC submitted to Senator Townsend. Commissioner Sheldrew replied some of those changes had not been committed to writing. However, it would not take long to type them up, and PSC would attempt to provide the committee with a written copy of the proposed changes.

Mr. Amodei referred to the language of section 2 which said "maintain to the extent possible even, fair competition among utilities" and said he was concerned about the fact that language did not address alternative suppliers. He said he had a similar concern about the fact that the language of section 17, which discussed PSC's ability to review a public utility's books, account, records, and minutes, as well as other things, did not also apply to alternative sellers. Commissioner Sheldrew responded PSC should maximize the benefits of a competitive marketplace in the provision of electric services. Therefore, the reference to "utilities" in section 2 might be too restrictive and should perhaps be deleted. With respect to Mr. Amodei's concern about section 17, Commissioner Sheldrew said because alternative sellers were not defined as "public utilities" and would have a lesser responsibility than public utilities had, she was not certain there was a need for section 17 to refer to the books and records of alternative sellers. In addition, alternative sellers had testified that their being included under the provisions of that section would have a chilling effect on their decisions about whether or not to do business in Nevada.

Mr. Amodei asked for assurance that the current version of A.B. 366 established that all entities which generated and sold electricity in Nevada would be treated equally by PSC. Commissioner Sheldrew replied PSC had attempted to establish a "level playing field" so that all entities which offered a potentially competitive service would be treated in a like manner. She said PSC was asking that utilities break into affiliates to ensure there would be no cross-subsidization.

Ms. Braunlin said she was aware of only one alternative seller who testified before the Senate regarding A.B. 366 and asked Commissioner Sheldrew if others had testified. Commissioner Sheldrew identified two alternative sellers whose representatives had testified before the Senate.

Commissioner Sheldrew stated she believed the provisions of section 40 of the new version of A.B. 366, to a large extent, comported with the provisions of

that section contained in the version of A.B. 366 sent from the Assembly to the Senate. However, some changes were made to the list of criteria used to identify alternative sellers.

Chairman Bache asked Commissioner Sheldrew to discuss section 40, subsections 3, 4, and 5. He said those subsections caused him some concern when he compared the second reprint of A.B. 366 to the third reprint.

Commissioner Sheldrew contended subsection 3 stated the obvious, which was if PSC reviewed the application of an alternative seller and found that alternative seller to be qualified, PSC would issue that alternative seller a license. Section 4, she believed, comported with the language of the previous version of A.B. 366. She pointed out with respect to subsections 3, 4 and 5, the bill drafter had taken what was previously a single paragraph and broken that paragraph into three separate paragraphs. Subsection 5 merely restated that PSC could consider whether an applicant or affiliate had engaged in activities which were inconsistent with effective competition. She said she believed the language of subsection 5 was identical to the language contained in section 13, subsection 3, of the second reprint of A.B. 366.

Ms. Braunlin observed the current version of A.B. 366 did not appear to grant PSC authority to deny an application submitted by an alternative seller. Commissioner Sheldrew responded Ms. Braunlin's observation was correct, and the bill should be amended to grant PSC that authority.

Mrs. Freeman asked Commissioner Sheldrew to explain what she meant when she described the date of July 1, 1999 as an "aggressive" date as it related to stranded costs. Commissioner Sheldrew replied A.B. 366 embodied extensive rule-making requirements, and the second reprint of the bill directed PSC to have all its regulations written by July 1, 1999. If PSC was required to open the market to alternative sellers by that date, Commissioner Sheldrew feared alternative sellers would have had no opportunity to apply for licensing. In addition, existing electric utilities would not have had an opportunity to decide whether they wished to break into affiliates and participate in the competitive market. Commissioner Sheldrew maintained PSC's rule-making process would require some period of time, and there was a need for PSC to be thoughtful while engaging in that process.

Mrs. Freeman asked whether Commissioner Sheldrew would be more comfortable with a date other than July 1, 1999. Commissioner Sheldrew replied affirmatively.

Chairman Bache suggested A.B. 366 be amended to establish a date of July 1, 2001, the date originally established by the bill. Mrs. Freeman said she concurred with Chairman Bache's suggestion.

Mrs. Freeman contended the words "to protect the interest of the public," in section 40, subsection 4, were very important. While she was sure the concept of those words was contained in PSC's mission statement, if it was necessary to retain them in A.B. 366 in order to reinforce that concept, she would support doing so.

Chairman Bache asked Commissioner Sheldrew to clarify the provisions of section 40, subsections 6, 7, and 8. Commissioner Sheldrew responded the provisions of subsection 6 were equivalent to the provisions of subsection 4 in the second reprint of A.B. 366, which directed if "the co-ops" or other governmental entities decided to compete in the marketplace for customers of electric utilities, they would be subject to the jurisdiction of PSC and would have to obtain a license. However, some changes had been made to address situations such as one which involved the city of Fallon, which provided municipal electrical services. If Fallon continued to provide such services or if it annexed a customer of Sierra Pacific Power Company, under a working arrangement the city had with that company, Fallon did not want to be cited as an alternative seller and have its service territory opened up.

Commissioner Sheldrew pointed out subsection 7 of section 40 was a new section, which was added to clarify situations in which an existing electric utility company had a customer located " . . . on the other side of a co-op . . . " and needed to use the co-op's lines in order to service that customer. The language of subsection 7 would prevent a co-op from being identified as an alternative seller merely because it transmitted electricity across its service territory to supply a customer of a utility or alternative seller. Language at the end of subsection 7 was designed to allow PSC, which otherwise had no control over co-ops, to require a co-op to provide nondiscriminatory, open access to alternative sellers in situations such as the one she described.

Commissioner Sheldrew stated section 40, subsection 8, was added to A.B. 366 to urge PSC to neither be unduly burdensome nor delay development of competition. Those who caused subsection 8 to be added to A.B. 366 thought there should be different licensing requirements for different alternative sellers and wanted assurance that all alternative sellers would not necessarily be held to the same standards. Subsection 8 allowed PSC to establish different licensing requirements for different alternative sellers based on who their customers were.

Mr. Amodei referred to language in subsection 6 which discussed authority to provide electric service on or before December 31, 1996. He said the date established by the second reprint of A.B. 366 was July 1, 1997, and asked why that date had been changed to December 31, 1996. Commissioner Sheldrew replied she did not know and suggested the date be eliminated entirely because it might be restrictive.

Mrs. de Braga pointed out the current version of A.B. 366 contained language which discussed "renewables" and asked whether anything in that language would allow renewable energy industries to be regulated. Commissioner Sheldrew replied affirmatively. She said if providers of renewable energy offered potentially competitive services, they would have to be licensed as alternative sellers.

Chairman Bache asked Commissioner Sheldrew to discuss section 41.

Commissioner Sheldrew said the provisions of section 41 comported with section 14 of the previous version of A.B. 366, which established providers of noncompetitive services could not provide a potentially competitive service except through affiliates and directed PSC to require any provider of a noncompetitive service to allow open, non-discriminatory access to its facilities.

Chairman Bache pointed out the word "equal" had been substituted for the word "equitable" and asked whether use of the word "equal" rather than "equitable" would create a problem. Commissioner Sheldrew responded she believed "equal" was the appropriate word to use.

Commissioner Sheldrew said the language of "the next section" was substantially the same as the language in the version of A.B. 366 which went from the Assembly to the Senate. She said subsection 5 commenced to add language to the bill which would assure that alternative sellers could not shield themselves from antitrust investigations by virtue of being regulated. Subsection 6, she maintained, allowed people to "forum shop" by allowing them to utilize either a court or PSC to resolve concerns about an alternative seller's conduct.

Mrs. Freeman commented the legislature had always done what it could to encourage development of alternative energy sources. However, it appeared to her the provisions of the current version of A.B. 366 provided no incentives to develop alternative sources of energy. Commissioner Sheldrew responded to the contrary, section 52 " . . . established a portfolio standard for domestic energy . . . " which would encourage utilities and alternative sellers to purchase renewable energy resources, primarily geothermal and solar, which were

indigenous to the state of Nevada. She pointed out nothing in either the second or third reprints of A.B. 366 repealed existing integrated resource planning statutes and said she believed the bill strengthened encouragement of the development of renewable energy resources.

Mrs. Freeman referred to a recycling bill previously passed by the legislature and said at the time that bill was passed, there was a "push" to burn tires and use the energy thus created. Although that had never been done in Nevada, she would not like the legislature to do anything which would prevent creation of industries of that type. Commissioner Sheldrew responded nothing in A.B. 366 discouraged " . . . that kind of thing . . . , " and the domestic energy portfolio standard which the bill would establish might encourage it.

Commissioner Sheldrew said section 43 of the third reprint of A.B. 366 comported with the language of the second reprint of the bill with the exception that it contained additional language which attempted to clarify that affiliates would not be shielded from antitrust protections and dealt with the issue of regulated utilities " . . . not being subject to antitrusts."

Commissioner Sheldrew explained section 44 assigned responsibility for the provision of noncompetitive services to electric distribution utilities, and the language of that section comported with section 17 of the version of A.B. 366 sent from the Assembly to the Senate. It directed that noncompetitive services would continue to be regulated as they presently were unless PSC developed an innovative pricing plan upon finding that such a plan would either reduce costs or improve performance.

Section 44 also directed that the owner of an electric transmission or distribution facility must provide access to that facility to entities which provided potentially competitive services. Commissioner Sheldrew pointed out the language of section 44 currently said "competitive" service rather than "potentially competitive" and said she believed that was the result of a bill drafting oversight.

Chairman Bache pointed out there was a difference between the two versions of A.B. 366 being discussed in that section 17 of the second reprint contained a reference to NRS 704.800 through NRS 704.900, inclusive, while the third reprint referred only to NRS 704.800, NRS 704.805 and NRS 704.815. He asked the reason for that difference. Commissioner Sheldrew explained the second reprint of A.B. 366 proposed to eliminate the Utility Environmental Protection Act (UEPA) from statute. The third reprint retained UEPA in statute and made some changes to the act. She maintained the statutory references contained in section 17 of the second reprint of A.B. 366 were the correct

references, and the current version of the bill should be amended to include those references.

Commissioner Sheldrew said section 45 pertained to a provider of last resort and, although it contained some typographical errors, was substantially the same as section 18 of the second reprint of A.B. 366.

Chairman Bache asked whether the amendment Commissioner Sheldrew had suggested be made to section 44, with respect to statutory references, should also be made to section 45. Commissioner Sheldrew replied affirmatively.

Commissioner Sheldrew stated section 46 dealt with stranded costs, and its language was identical to the language contained in the version of A.B. 366 sent from the Assembly to the Senate with the exception of one or two changes which had been made for the purpose of clarification. She said, "those changes were to clarify, in subsection 1(c), that we were going to decrease the costs of any obligations . . . likewise . . . in subsection (f), mitigation of costs language . . . was added." She asserted the addition of that language was appropriate. ✓

In subsection 2, the word "a" was replaced with the word "the." Absent that change, subsection 2 would imply that someone other than rate payers would pay for some portion of stranded costs. Subsection 3 was erroneously included in section 46 and had been deleted. The language of subsection 4, which was an addition to section 46, guaranteed that a "qualifying facilities contract" could not be adjusted. Commissioner Sheldrew maintained that language was in direct conflict with section 46, subsection 1(c).

Commissioner Sheldrew said section 47 was changed, at the request of the Consumer Advocate, by deleting the last sentence.

Mrs. Freeman asked whether a recommendation was made to delete the term "vertically integrated" from A.B. 366. Chairman Bache replied he asked questions about that term because its definition defined nothing other than Nevada Power Company and Sierra Pacific Power Company, and he believed the term should be deleted from the bill.

Commissioner Sheldrew said section 48 pertained to consumer protection and essentially conformed to section 20 of the section reprint of A.B. 366. She said, "This is the anti-slamming requirement, the standards for labeling so that when you buy some of this geothermal power you know you really are buying renewable power. And we established some standards by which customers can make the choices that they need to make as well as to be sure that the information is submitted in some kind of a standardized format." She stated

section 48 also directed PSC to carry out a consumer education program to inform consumers of the forthcoming changes in the acquisition electric services.

Commissioner Sheldrew stated section 49 of the third reprint of A.B. 366 was the equivalent of section 21 of the second reprint, which directed vertically integrated utilities to submit to PSC the information PSC needed to establish prices for both potentially competitive services and noncompetitive services.

Chairman Bache asked whether, with the exception of the use of the term "vertically integrated," the language used in section 49 of the third reprint of A.B. 366 was essentially the same language as that used in section 21 of the second reprint. Commissioner Sheldrew replied she believed it was.

Commissioner Sheldrew said section 50 was a new section and was developed in conjunction with the Colorado River Commissioner. She explained there was an issue as to whether or not, and if so at what point, the Colorado River Commission should become subject to the jurisdiction of PSC if the Colorado River Commission became a competitor of private entities which provided electric services. The language of section 50 established that the Colorado River Commission could retain its existing customers without being required to be licensed. However, if the Colorado River Commission attempted to acquire new customers, it would not only have to become licensed as an alternative seller but would also be required to provide open access to its transmission and distribution system.

Mr. Amodei asked whether there was currently open access to the Colorado River Commission's transmission and distribution system or, instead, that system was used exclusively by the commission. Commissioner Sheldrew replied the Colorado River Commission was in the process of building a transmission line, and unless it was made clear that line must be accessible to everyone, a jurisdictional dispute might arise at some point in time.

Mr. Amodei asked, "Is it possible then, as a result of this, that for instance the Southern Nevada Water Authority, by virtue of having only one transmission system available to them, that these folks are welded to each other in statute now?" Commissioner Sheldrew replied section 50 applied only to transmission lines which belonged to the Colorado River Commission. She said, "They still can interconnect via the Nevada Power transmission and distribution system."

Commissioner Sheldrew stated section 51 of the third reprint of A.B. 366 was a significantly modified version of section 22 of the second reprint; reporting requirements pertaining to capacity, energy, resource diversity and similar

matters had been eliminated. She said the Senate Committee on Commerce and Labor did not want to burden PSC with a statutory reporting requirement. However, PSC would provide a report pertaining to resource diversity issues and "DSM" issues to any interim committee established to study those issues.

Commissioner Sheldrew pointed out section 52 pertained to the portfolio standard she previously mentioned. New language had been developed for that section which would allow Sierra Pacific Power Company to both acquire and trade geothermal credits, and that language would be included in a forthcoming amendment to A.B. 366.

Mr. Amodei asked whether the effect of the language "be derived from not less than 50 percent solar energy resource," on page 24, line 17, of the third reprint of A.B. 366 was to guarantee " . . . that percent of the market share to solar." Commissioner Sheldrew replied the definition of "renewable energy systems" was clarified so that it would apply to renewable energy systems within Nevada, and the language to which Mr. Amodei referred was designed to focus on development of solar energy. However, there was an amendment to A.B. 366 which provided Sierra Pacific Power Company credit for geothermal energy.

Mr. Amodei expressed concern about deregulating the generation of electricity while at the same time guaranteeing a market share to providers of solar energy. He maintained if those providers were guaranteed a market share, they would not qualify as alternative sellers and would, in effect, be utilities. He suggested if a portfolio standard was to be established, it should be established for all renewable energy sources. He referred to section 52, subsection 4, and said, "If this is working after 2008, I would think that it wouldn't need to be . . . given a boost . . ." Commissioner Sheldrew said she would ask Fred Schmidt to respond to Mr. Amodei's first concern. She maintained the intent behind A.B. 366 was to encourage development of solar energy; whether or not to focus on solar energy was a public policy issue. She indicated subsection 4 was to be deleted from A.B. 366.

Mrs. de Braga stated she had the same concerns as those expressed by Mr. Amodei.

Commissioner Sheldrew continued with her comparison of the second and third reprints of A.B. 366. She said section 53 of the third reprint comported with section 23 of the second reprint, which required PSC to prepare a quarterly report for the legislature which would establish to some extent the focus of PSC's discussions with the interim legislative committee.

Section 54 was a new section, proposed by Senator Adler, which dealt with telecommunications. It directed PSC to develop regulations so that Nevada's elementary schools and libraries could participate in the federal discount program established by the Telecommunications Act of 1996. In addition, section 54 provided PSC with direction in determining rates for public and non-profit health care providers.

Section 55 dealt with changes to UEPA and established an exemption for electric generating plants and associated facilities located in counties with populations of 100,000 or more. That exemption was established in acknowledgment of both Clark County's and Washoe County's extensive regional planning processes, which those counties believed made PSC's review of electric generating plants within those counties redundant.

Section 56 was a revision of an existing statute which gave PSC authority to require anyone who constructed a plant for the generation of electrical energy to offer part of the energy generated by that plant to other electric utilities and alternative sellers. Commissioner Sheldrew said that provision was one which the Consumer Advocate wanted included in any revision of UEPA.

Section 57 authorized PSC to spend up to \$500,00 to establish a consumer education program.

Section 58 incorporated, to a large extent, the provisions of Assembly Bill 351, which dealt with the development of alternative regulations for gas companies. Some amendments were made to that section to restrict licensing to purchasers of less than 1,000 thermal units per day because there were alternative sellers who purchased gas for large consumers.

Commissioner Sheldrew indicated she had completed her comparison of the second and third reprints of A.B. 366. She pointed out the remaining sections of the third reprint of A.B. 366 were new sections which did not correspond to anything in the second reprint of the bill.

Ms. Tiffany referred to the provisions of section 57, which authorized PSC to use \$500,00 for consumer education and informational services. She suggested the provisions of that section were somewhat general and asked if Commissioner Sheldrew could explain how they came to be part of A.B. 366. Commissioner Sheldrew replied she was not able to explain how those provisions came to be included in the bill. She pointed out the second reprint of A.B. 366 contained provisions which directed PSC to conduct a consumer education program, and those provisions had been retained in the third reprint of the bill. She said Senator Townsend believed there ought to be a limit on the

amount of money which could be spent for the PSC's consumer education program, and that limit had been established as \$500,000. She concurred with Ms. Tiffany that the provisions of section 57 were very broad. She said she anticipated PSC would provide the interim legislative committee with details about its consumer education program.

Ms. Tiffany asked whether PSC had ever before been required to educate the public in a manner similar to that required by A.B. 366. Ms. Sheldrew responded PSC currently had a "consumer division" but did nothing on the scale A.B. 366 required, which she believed was the reason Senator Townsend suggested PSC contract to obtain advice on how to conduct a marketing program.

Ms. Tiffany asked whether Commissioner Sheldrew believed PSC was the appropriate entity to conduct the consumer education program required by A.B. 366. Commissioner Sheldrew replied affirmatively.

Further discussions ensued between Ms. Tiffany and Commissioner Sheldrew regarding the provisions of section 57.

Ms. Tiffany asserted she did not understand the relevance of section 54. Commissioner Sheldrew concurred section 54 had little relevance to electric restructuring.

Ms. Tiffany asked whether Commissioner Sheldrew was involved in adding section 54 to A.B. 366 or knew anything about its addition to the bill. Commissioner Sheldrew replied she was aware of discussions between Senator Townsend and Senator Adler, and she believed a version of section 54 was previously contained in A.B. 366 but had been modified in the current version of the bill. She said a number of things had been added to the bill.

Chairman Bache asked whether section 54 related to " . . . the federal law that Commissioner Mendoza is currently having the docket on so that we can get the money from the federal government?" Commissioner Sheldrew replied affirmatively.

Ms. Braunlin referred to section 57 and asked whether Commissioner Sheldrew would feel more comfortable if the word "shall," on line 6, was replaced with the word "may." Commissioner Sheldrew replied affirmatively.

Harvey Whittemore of Lionel, Sawyer and Collins, representing Arco/Atlantic Richfield, testified. He said sections 320 through 326 of A.B. 366 set forth matters upon which the various parties involved agreed with respect to the

repeal of divorcement. The provisions of those sections implemented increased competition by allowing additional company-owned service stations to be acquired on a "phased-in basis," as discussed in section 326. Oil refining companies would be allowed to own up to 30 service stations, and all refiners were treated equally in that regard.

Mr. Whittemore said the critical points with respect to existing lessee-dealers were contained in section 324, which provided that on or after July 1, 1997, an oil refiner could not convert a lessee-dealer's service station into anything other than a lessee-dealer service station.

Mr. Whittemore explained section 325 applied to contract-dealers and provided that for a period of one year oil refiners were not to contract with contract-dealers to acquire those dealers' service stations. The purpose of section 325 was to provide a period of time during which small contract-dealers stations could not be taken over by "their refiner" unless those contract-dealers expressed agreement, in the form of a certified letter, to such take-overs. Section 325 did not apply to large contract-dealers who owned three or more service stations, and a technical correction needed to be made on page 161, line 36, to reflect that.

Mr. Whittemore said, "In addition, I would like to point out that the entire context of divorcement is still on the books, that these are market restrictions." He maintained a significant effort was made by everyone involved to develop what they believed was a good package of proposals which: increased competition, protected small lessee-dealers from the acquisition of their stations by oil refiners, protected contract-dealers and placed no limitations on the number of stations such dealers could own, and provided once an oil refiner had acquired 30 service stations, for every two additional company owned and operated stations such a refiner acquired, it must establish one lessee-dealer station. That two-for-one mechanism was discussed on page 162, lines 27 through 38.

Mr. Whittemore asserted the package of legislation which had been created clearly did not repeal divorcement, which was what his clients wanted. However, it represented the agreement reached by the parties involved and both addressed the need for increased competition and protected small lessee-dealers.

Chairman Bache asked whether it was every intimated during the discussions held among the parties that the Assembly would be given no opportunity to "hear divorcement." He expressed his displeasure that the provisions under discussion had been added to a bill generated by the Assembly as an

amendment with which the Assembly was to either concur or not concur. He contended those provisions should have been included in a bill generated by the Senate and then referred to the appropriate Assembly committee, which was the Committee on Commerce. Mr. Whittemore replied it was never contemplated that the Assembly Committee on Government Affairs would not hold hearings on the provisions which had been added to A.B. 366. There had always been agreement that if those provisions were to be included in A.B. 366, the parties involved would jointly request that hearings be held on the issue to which those provisions pertained. He maintained Assemblyman Perkins and the Speaker of the House had been involved in ensuring that the Assembly would be apprised of the issue and that its members would be able to ask questions regarding "this arrangement."

Chairman Bache pointed out the issue being discussed was one which was not normally heard by the Assembly Committee on Government Affairs. During the past three of four legislative sessions, that issue had been heard by the Assembly Committee on Commerce. Mr. Whittemore responded, "It was not a choice that was specifically made not to have a specific bill. In fact, we had offered as recently as three to four weeks ago to start a companion bill on the Assembly side and have the process work through the Assembly Commerce Committee. At the direction of Chairman Perkins, he said to continue to work out the process with negotiations . . . and if there was agreement to present it in this fashion and then have a full hearing with respect to those issues in front of this committee."

Jack Greco, Chairman, Nevada Gasoline Retailers, testified. He commented in response to the concern expressed by Chairman Bache regarding the manner in which the provisions under discussion had been presented to the Assembly. He asserted not all the elements of the agreement reached by the parties were covered by the provisions of A.B. 366 and said Nevada Gasoline Retailers did not support the bill in its present form. He stated if a trailer bill which would convert A.B. 366 to conform to the agreement the parties had reached was transmitted to the Assembly by the Senate, Nevada Gasoline Retailers would be bound by its agreement.

Mrs. Freeman asked whether it was Mr. Greco's testimony that Nevada Gasoline Retailers did not agree to the compromise Mr. Whittemore discussed and hoped a trailer bill would be created which addressed its concerns. Mr. Greco replied that was not his testimony. What he meant was that the provisions contained in A.B. 366 did not reflect the agreement reached by the parties. He submitted a one-page document (Exhibit D) which he said set forth some critical issues. He said if those issues were " . . . properly worded . . . in a manner that would convert it to the compromise we reached, we would be honor bound to agree to

that." He maintained key elements of the compromise which was reached by the parties were missing from A.B. 366, and the items set forth on Exhibit D were to be included in a trailer bill.

Mrs. Freeman asked whether there would be a trailer bill or, instead, the concerns expressed by Mr. Greco were to be addressed by amending A.B. 366 in accordance with Exhibit D. Chairman Bache responded when A.B. 366 went before the conference committee, it was his intent to include the amendments proposed in Exhibit D in the amendment upon which the Assembly would either concur or not concur.

Bob Kroll, representing Petroleum Marketers Association, testified. He said the provisions contained in A.B. 366 together with the matters discussed in Exhibit D constituted what the parties involved believed to be a sound, public policy which should be adopted by the legislature and urged that the legislature adopt that policy.

Chairman Bache asked how the negotiated agreement would affect small gasoline retailers and how it would affect gasoline prices. Mr. Greco replied the negotiated agreement provided a measure of protection which resembled "the divorcement prohibitions." However, that protection was extended to lessee-dealers who were in business as of July 1, 1997, and not necessarily to lessee-dealers who went into business after that date.

Mr. Greco expressed regret at the fact a complete hearing could not be held to discuss the merits of divorcement. Those merits had been recognized by four states on the west coast which had introduced divorcement during the current year. In addition, the state of Hawaii had passed legislation which effected a measure of divorcement and used data gathered in Nevada as the basis for doing so.

Mr. Greco stated Atlantic Richfield acknowledged that gasoline prices in Reno and Las Vegas were among the lowest on the west coast of the United States. He said he could not speculate what might happen to gasoline prices if the agreement reached by the parties was made into law. However, "non-divorced areas" of cities which had similar distribution systems and utilized the same oil companies appeared to be paying eight cents a gallon more for gasoline than "divorced Nevada" paid.

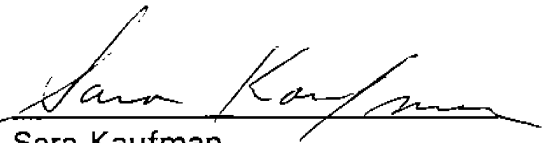
Bob Ostrovsky, representing the Petroleum Marketers Association, testified. He said he wished to make it clear A.B. 366 was moved quickly for the purpose of taking action to deregulate utilities. The amendments now under discussion had been created because of the Legislative Counsel Bureau's " . . . lack of

understanding of the interpretation of the requested policy we sent downstairs," and those amendments reflected a portion of the agreement reached by the parties.

Chairman Bache recessed the hearing on A.B. 366 until July 1, 1997.

There being no further business to come before the committee, Chairman Bache adjourned the meeting at 10:30 a.m.

RESPECTFULLY SUBMITTED:


Sara Kaufman,
Committee Secretary

APPROVED BY:

Assemblyman Douglas Bache, Chairman

DATE: _____

Nev. Retailers

Amendments related to Divorcement AB366

*Supersedes all
previous submissions*

Changes to draft amendment 6-28-97

Sec. 320 line 1

Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 321 to ~~325~~ 326, inclusive, of this act.

Sec. 321 As used in NRS 597.440 and sections 321 to ~~325~~ 326 inclusive, of this act, unless the.....

Sec. 325 #3 line 3

..... agent or person on ~~a fee basis~~ the basis of a fee, by sending a notice to the refiner ~~to engage in the refiner~~, by certified mail, return.....

Sec. 325 #3 line 7~~recession~~ rescission to the refiner by certified mail...

Sec. 325 #4 line 2 has previously operated ~~more than three~~ 3 or more service stations.

Sec. 326 change all references of ~~services stations~~ to service stations (remove the plural of service)

Sec. 326 #2 (b) line 5

...he leases at least one additional service station to a leasee dealer in addition to the number of service stations leased to leasee dealers by the refiner on July 1, 1997, for every two directly operated service stations added. For the purposes of this paragraph, ~~a~~ an additional service station leased.....

Sec. 345 # 1

This section, and sections.....and ~~324~~ 320 to ~~325~~ 326, inclusive, ...

Sec. 345 # 4

Sections.....inclusive, 234 to ~~320~~ ***, inclusive, ~~326~~ *** to 333, inclusive...

*** Note: put whatever number is necessary, but Section 320 - 326 does not belong here, it is to be effective upon passage.

EXHIBIT D

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Submitted to Committee on Government Affairs
on 6-30-97 by Jack Greco, Nevada
Retailers

**MINUTES OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Sixty-ninth Session
July 1, 1997**

The Committee on Government Affairs was called to order at 7:30 a.m., on Tuesday, July 1, 1997. Chairman Douglas Bache presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Douglas Bache, Chairman
Mr. Roy Neighbors, Vice Chairman
Mr. Mark Amodei
Ms. Deanna Braunlin
Mrs. Marcia de Braga
Mr. Peter (Pete) Ernaut
Mrs. Vivian Freeman
Mr. Pat Hickey
Mrs. Joan Lambert
Mr. John Jay Lee
Mr. John (Harry) Mortenson
Mr. David Parks
Ms. Sandra Tiffany
Mr. Wendell Williams

GUEST LEGISLATORS PRESENT:

Assemblyman Bob Price, District 17
Senator Jon C. Porter, Clark County, District 1
Lt. Governor, Lonnie L. Hammargren

STAFF MEMBERS PRESENT:

Denice Miller, Committee Policy Analyst, Research Division,
Legislative Counsel Bureau (LCB)
Eileen O'Grady, Legal Analyst, Legal Division, LCB
Philene Anderson, Committee Secretary

OTHERS PRESENT:

John Adkins, Office of the State Treasurer
Joe Guild, Southwest Gas
Charlie Silvestri, Southwest Gas
Brian Krolicki, Office of the State Treasurer
Jeannine Coward, Office of the Lieutenant Governor
Matthew Callister, Nevada Resort Association
Jack W. Grecko, Nevada Gasoline Retailer
Timothy Hay, Public Service Commission
Judy Sheldrew, Public Service Commission
Fred Schmidt, Office of the Consumer Advocate
Galen Denio, Public Service Commission
Morgan Baumgartner, Lionel Sawyer & Collins

Chairman Bache called the meeting to order at 7:50 a.m.

Chairman Bache spoke to say the committee would take further testimony on A.B. 366 which had been heard at a prior meeting.

ASSEMBLY BILL NO. 366 - **Reorganizes public service commission of Nevada and makes various changes concerning regulation of utilities and governmental administration. (BDR 58-1390)**

Mr. Jack Greco, Nevada Gasoline Retailer, testified it was his knowledge that all testimony had been given at the previous meeting and that he was available for questions.

Assemblyman Bob Price, District 17, Clark County spoke before the committee to say his testimony and interest was in procedure and divorcement. He said early on, the legislature had been intent on providing protection for the investment and the business of Nevada gas stations. He pointed out that Arco was the focus at that point in time. He felt it was unusual that divorcement and other subject matter was amended into A.B. 366. Historically, bills before the legislature were to be kept within the same subject matters. He said he was not certain how amending divorcement into a bill that was unrelated came about. Mr. Price made reference to a newspaper editorial (Exhibit C) and also a response from Arco to the Attorney General (Exhibit D). He did not appreciate the fact that this action was being amended into A.B. 366 and felt it should have been heard as a subject matter for debate on the good and bad points for the citizens of Nevada.

Chairman Bache then asked for questions.

Ms. Tiffany said she appreciated Mr. Price taking the time to speak to the committee. She said there was concern among the members that there were many issues put into A.B. 366. She was disappointed divorcee did not get a hearing. She asked Mr. Price what he recommended the committee do.

Mr. Price said it would be appropriate to take the subject matter and consider it in a manner that the average person could sit and listen to the arguments of both sides.

There being no further questions, Chairman Bache then closed the hearing on A.B. 366.

Chairman Bache then opened the hearing on S.B. 347.

SENATE BILL NO. 347 - Makes various changes relating to office of lieutenant governor. (BDR 18-398)

Chairman Bache asked if there was anyone present to testify for or against S.B. 347.

There being no one to testify, the Chairman then opened the meeting on S.B. 383.

SENATE BILL NO. 383 - Establishes Southern Nevada Strategic Planning Authority. (BDR S-506)

Chairman Bache asked if there was anyone present to testify for or against S.B. 383.

There being no one to testify, the Chairman then opened the meeting on S.B. 473.

SENATE BILL NO. 473 - Makes various changes relating to state financial administration. (BDR 31-640)

Brian Krolicki, Chief Deputy State Treasurer along with John Adkins, Deputy Treasurer for cash management in the Treasurers office, and Jennifer Stern of Swendseid & Stern testified before the committee. Mr. Krolicki had handed out a memorandum to the committee that described the thirteen sections of the bill

of the master and capital improvement plans of the county and city planning agencies. He felt three areas of the bill were critical.

- Directs the authority to identify and evaluate the needs of Clark County in relation to growth.
- Prioritize the objectives and strategies relating to such growth.
- Make recommendations to the 1999 Legislature.

He further apprised the committee a request for a facilitator to be hired was included in the bill and it also specified the qualifications for that position. The bill also requested that a technical committee be appointed, made up of CEOs of the private sector, and county and city managers of southern Nevada. He felt this was a brief overview of the bill and then asked for questions.

Chairman Bache asked for questions. There being none, he closed the hearing on S.B. 383.

Chairman Bache again opened the hearing on A.B. 366.

ASSEMBLY BILL NO. 366 -

Reorganizes public service commission of Nevada and makes various changes concerning regulation of utilities and government administration. (BDR 58-1390)

Chairman Bache asked for clarification regarding the reorganization of the Public Service Commission,.

Timothy Hay, Public Service Commission (PSC) replied he would go through the section for the committee. He pointed out one of the main structural changes in the bill, reduced the number of commissioners from five to three and created a separate transportation authority to regulate transportation. It also moved the existing transportation staff of the PSC to the new entity which operated in conjunction with the State of Nevada Taxi Cab Authority.

He explained the basic philosophy behind the change, was since they were moving toward a deregulated environment in the utility sector, and the regulation of transportation was based upon principals of restrictions on competition and market entry, the regulatory philosophies were moving in opposite directions. He said there was consensus among the transportation providers, as well as the utilities, that the commission's efforts would be better

focused, as could the new transportation authorities, if both operated separately.

Mr. Hay mentioned it was structured so that there was no fiscal impact to either entity. The PSC Transportation Regulatory Authority was funded out of the state highway fund. Those funds would transfer to the new authority with relatively minor statutory changes. He pointed out the basic regulatory parameters to be discharged by the new three member commission, that oversaw transportation, were the same powers the commission had exercised under Chapter 706 of the Nevada Revised Statutes (NRS).

Mr. Hay stated one issue that had changed since the concept was approached, was that the remaining PSC would retain its railroad inspection function. He then asked for questions.

Ms. Tiffany asked if the commission went from five people to three people.

Mr. Hay replied "yes."

Ms. Tiffany asked if this was discussed in an open meeting.

Mr. Hay replied it was discussed. When he served as general counsel to Governor Richard Bryan in the 1983 Legislative Session, the PSC was expanded from three members to five. He said there was a precedent for dealing with the open meeting law, with a three member body. He referred to the amendatory language in section 10 of the bill, which indicated all of the public hearings and meetings which resulted in deliberations, had to be conducted in public. The version the committee read was to state *...two or more members of the commission may meet in private*. He said it was now changed as follows: *...two members of the commission may meet in private upon the completion of a contested case, only to discuss issues concerning any proposed order or opinion of the commission relating to that contested case*. He said the reason behind that was since the PSC operated as quasi-judicial body when making those sorts of determinations, it was impossible to construct an order without having discussions between commissioners. Any deliberations on proposed orders, and any final action taken, occurred at a public meeting. The closest analogy in state government he came up with was the current exemption for the Gaming Control Board which was a three member body. Although the language for their meetings in private was different and broader, there was an inherent difficulty in dealing with the three member body. At present the commission was comprised of five and any two of those members could talk at anytime. This allowed what was a current practice, to continue without violating the open meeting law.

Ms. Tiffany asked when this was to take effect.

Mr. Hay replied the effective date of the changes were October 1, 1997.

Ms. Tiffany asked how the PSCs budget closed.

Mr. Hay replied there was transitory language added to the appropriations act, which allowed the PSC to come back to interim finance with more details. He said the transfer of highway funds was the big item. The utility functions of the PSC were supported through the "mill tax." He said that structure had not changed. There was legislation processed to handle the railroad inspectors.

He went on to say the appropriations act allowed the transfer, with approval of interim finance, of the existing highway funding sources to fund the new commission and the personnel transferred.

Ms. Tiffany asked if the transportation commission would be handled in transitory language.

Mr. Hay replied that was correct. He felt the LCB staff had cooperated greatly and understood it was difficult to do this type of legislation at the end of session.

Judy Sheldrew, Public Service Commission, stated she had nothing to add.

Chairman Bache requested that other issues of the bill be addressed. He said the language from A.B. 254 and A.B. 351 were incorporated into A.B. 366.

Ms. Sheldrew explained that A.B. 254 which dealt with resource planning and Utility Environmental Protection Act (UEPA) requirements for natural gas companies, and A.B. 351 which dealt with alternative regulation for natural gas companies had been incorporated into A.B. 366. She said there had been changes from A.B. 254 as it specifically dealt with UEPA. She asked the committee to look at section 55 of A.B. 366. There was a provision that removed the UEPA review requirement for the Public Utilities Commission for electric generating plants and their associated facilities in the two large counties. She said this was done to avoid a redundant review for those counties that had extensive county or regional planning processes to look at environmental citing of generating plants. However, all transmission and other items defined as a utility facility still remained subject to UEPA.

The benefit requirement had also been removed in UEPA, but the public interest requirement had been returned to A.B. 366. She felt the public interest

requirement was a more substantial requirement than the "need" requirement. In a competitive market it was difficult and not productive for the commission to determine whether a facility was needed since the rate payers were no longer responsible for the recovery of those particular facilities.

Ms. Sheldrew pointed out Section 56 of A.B. 366 was a change to current law, requiring any person that constructed a plant for generating electrical energy be required by the commission to offer up to fifty percent of the energy or capacity of the plant to existing electric utilities and alternative sellers in the state. She said this was a modification of the current statutory requirement and was quite permissive. It gave the commission the authority and outlined the requirements thereafter.

Ms. Sheldrew said there was concern regarding UEPA applications that were currently before the commission. She said the effective date of the UEPA changes had been moved to October 1, 1997.

Fred Schmidt, Office of the Consumer Advocate, made a prefatory comment about how the changes got into A.B. 366. He said his agency, Southwest Gas and Commissioner Donald Soderberg, met with the subcommittee to work out the changes proposed to UEPA that Southwest Gas had made. He said those changes were modified over a series of steps. He explained when A.B. 366 was heard by Senate Commerce, Southwest Gas came to the hearing and asked that A.B. 254, as well as A.B. 351, be amended into A.B. 366. It was at Southwest Gas' request that the issue arose. At that point, his agency presented the arrangement which had been worked out in the subcommittee among the three parties involved. He said there were objections to some of the provision changes, particularly the "needs test", by Mr. Whittemore on behalf of large customers. They again tried to resolve the differences. The "needs test" was pulled out, but "the public interest test" was added back in. The Clark County and Washoe County exemptions were provided. He pointed out the Clark County exemption involved a pending project of a large magnitude in the Eldorado Valley outside of Boulder City.

Mr. Schmidt requested the permit application for that facility, which was pending at the PSC, not be terminated by immediate application of the law. Mr. Whittemore and others agreed to the action. Corrections still needed to be added to the relevant section. The UEPA corrections would not go into affect until October 1, 1997. The reason for that, was so the large facility in Eldorado Valley could process itself through the normal hearing process.

Mr. Schmidt stated the new standards, which required public interest tests to be applied to both utility and non utility facilities, not be applied to the Eldorado

Valley project. He said it was his belief that even though the law had been modified, the UEPA process had not been "watered down." He felt in some respects, it had been strengthened. It was made so the same tests would be applied to all individuals or persons, whether they were or were not a utility who wanted to build a utility facility in areas in question.

Chairman Bache asked why exemption language was not used. He thought people may wait until after the October 1st date to start a project because of the change in legislation.

Fred Schmidt, Office of the Consumer Advocate replied it was not thought of in terms of how it affected a project that was ready to file. His agency was not aware of any projects that were about to file. He did not know of any project that would be caught between July 1st and October 1st.

Chairman Bache said if there was a project in the works, could it be delayed until after the October 1st date, so the new law would affect that particular project.

Fred Schmidt replied it was a possibility. The only insurance was that one of the improvements made in statute was under new law. UEPA permits had to be processed in a specific period of time, that being 150 days. Even though it did not apply to pending projects, he felt the commission would try to do things within the time frame. The Eldorado Valley project was filed in April. It had been pending for two months. It was his understanding that a hearing was set for August, by Commissioner Galen Denio. He stated his agency intended on participating in that hearing and the time frame was agreeable to them.

Mr. Schmidt stated he testified against the Washoe County and Clark County exemptions, and did not feel comfortable defending them. He said it was the only way in which there were, in his view, separate standards to be applied. He knew he lost that battle, and was not trying to fight it. He felt the improvements over weigh the issues he had disagreement with.

Commissioner Galen Denio, stated he had a pre-hearing conference scheduled for Docket #97-4023, which was the Eldorado Energy Application, for July 30, 1997. At that time a procedural schedule would be decided upon. He felt there was enough time before October 1st to get a hearing for this project.

Chairman Bache asked if this meant there might not be a decision on the project before October 1st.

Mr. Denio believed it could be done in two months. This was his intention.

Chairman Bache stated the loopholes in the bill should be taken care of in a technical amendment.

Judy Sheldrew interjected the language suggested by Mr. Bache would make clear that any project that was in the "works," had to be dealt before a "time certain" solution. She said they would check to see if there were any objections. She said it was a requirement that her agency be notified of any UEPA requests.

Chairman Bache asked that Mr. Schmidt address the change regarding the Office of Consumer Advocate to the Bureau of Consumer Protection.

Mr. Schmidt asked the committee to look at page 97, section 234. The changes which directly affected statutes that established his office, began in section 234 through section 250. When the Office of the Consumer Advocate (OCA) presented their budget to the money committees in February, 1997, the Attorney General and the OCA presented a re-organizational plan of the OCA office. The plan was based upon a concept which recognized change of the rate base rate of return regulation for the industries. Telecommunications had already changed, and it was their expectation that electricity and natural gas would change. He said this did not mean the distribution systems would be gone altogether, and those would remain monopolies in the foreseeable future.

The OCA and the Attorney General tried to structure the ability to deal with the changed work load and to determine what role the OCA would have in the future with regard to competitive industries.

Mr. Schmidt recognized that the Attorney General's Office already had responsibility for dealing with various consumer protection issues. Particularly, fraud and the telemarketing area. Areas of anti-trust law, or as stated in the Nevada Statutes, unfair and deceptive trade practices, were areas which the Attorney General did not have any significant resources for. One of the components of the proposal, was to try and create and assure that Nevada had a full time attorney to deal with anti-trust issues. In proposing the full time anti-trust attorney, his original intent was to make sure that activities involving utility competition, which may involve anti-trust activity, be capable of identifying and then taking action. As part of the budget proposal, they asked to re-establish the Consumer Advocate's office and two other branches of the Attorney General's office into one; Division of Consumer Protection. That proposal combined the resources of telemarketing, consumer fraud, securities fraud and anti-trust along with customers of public utilities. He pointed out both budget committees heard the proposal in detail and both supported the

concept. He believed the votes were unanimous in that it was a good proposal to protect the citizens of Nevada.

Mr. Schmidt and the Attorney General approached Senator Townsend, who had been involved in the initial establishment of the OCA, in February and asked him if he was willing to introduce a bill that would clean up language in the Consumer Advocate statute to reflect the change. The Senator felt the change was appropriate. Senator Townsend chose not to introduce a separate piece of legislation, instead, he felt the change was tied to the utility deregulation issues being addressed in A.B. 366. When the bill went to the Senate, Senator Townsend amended the bill to include the language proposed. The language contained in sections 234 to section 250, was language drafted by the Attorney General's Office and the OCA supported the language.

He said there was one item added to the original language the OCA drafted. He said that was section 239. Section 239 was a repeat of A.B. 483. That bill was passed out of the Assembly. Senator Adler requested the language in A.B. 483 be added into A.B. 366. Senator Townsend agreed to the request and section 239 was put into A.B. 366. The other portions of sections 234 through 250 repeated all statutes that created the Office of Consumer Advocate for customers of public utilities. He explained most of the changes contained there, were non substantive, and dealt with name changes and other clean up language done by the budget committees.

He pointed in section 249, the substantive change was language that made clear the designation of the scope of powers. Essentially, securities, laws, unfair trade practice, and deceptive trade practice acts. Some of the powers were criminal as opposed to civil. The second part of the first section made clear, activities could not be pursued against one entity as a representative or an attorney, then pursue the same activity as a prosecutor. He said the Attorney General's Office was familiar with those potential conflicts, and procedures were set out to deal with those conflicts. He said this was put into statute because the access to records was so pervasive for regulated monopolies. He then asked for questions.

Mrs. Freeman asked if the money committees funded the OCA for all the activities.

Mr. Schmidt replied "yes." He said the budget was closed as proposed. His agency was denied two positions that related to another bill that was being processed involving non-profit organizations. His agency requested an auditor and a clerical position related to a registration function which was amended out of the bill he referred to. The anti-trust attorney, and consolidation of the

budgets was approved and the budgets were closed by Ways and Means and Senate Finance.

Mrs. Freeman asked if the legislative committee that was created in A.B. 366, would study all the issues or just issues relating to electricity and energy.

Mr. Schmidt replied the bill encompassed natural gas issues, which were energy related and felt that area would be a point of discussion. He felt all areas that were undergoing deregulation momentum, be appropriate for overview.

Mrs. Freeman stated she did not see language regarding the funding for statutory committee.

Ms. Sheldrew stated it was Senator Townsend's intent that this would include all utilities and be funded by the "mill assessment" that was assessed against utilities as collected by the PSC and the OCA.

Mrs. Freeman asked if this had to go before interim finance for the funding discussed.

Ms. Sheldrew replied funding was not in their budget and they would have to go before interim finance to establish the budget if A.B. 366 was approved. She said the PSC was obligated to go before interim finance before October 1st. At that point the PSC would establish a category to fund the standing committee, and the OCA would do the same. She said the "mill assessment" was at the top of the authorized level in anticipation the obligations included in A.B. 366 would be assigned to them and they needed the additional resources.

Mrs. Freeman heard there might be a trailer bill amended into A.B. 366, and asked if they had knowledge of it.

Ms. Sheldrew stated Senator Townsend had talked about including a trailer bill, and took testimony from both the PSC and OCA.

Ms. Tiffany commented she wished A.B. 366 had a line item veto to it. She asked what mechanism had the OCA set up for accountability.

Mr. Schmidt noted the only reorganization was "who reports to who" within an office. The only new function or resource was already a statutory obligation, which was to enforce the anti-trust laws. His agency was putting a position there where there wasn't one. Through A.B. 622 there would be oversight over the OCA as well as the PSC. The interim committee will also require reports from the OCA before the two years was up.

Mr. Schmidt noted the Tobacco Industry Litigation was an area the State of Nevada had joined late. If there was a settlement, and the case resolved as a national policy, Nevada should get its share. Having a resource to monitor and participate in those type of cases on a regular basis, was tremendously valuable to Nevada.

Ms. Tiffany appreciated his comments, but stated the concentration of power was not to her liking. She hoped someone kept an eye on the situation.

Mr. Schmidt stated the person who would head this division had not yet been determined. His appointment already expired, and the Attorney General had to make a new appointment once the bill became law.

Mrs. Freeman asked if the OCA received funding for the anti-trust attorney.

Mr. Schmidt replied the resource was granted. The concentration of power was an efficiency, and if it worked, the state benefited.

Mrs. Freeman requested the interim committee assigned to this, get reports on a regular basis so there was a way of tracking what was being done.

Mr. Mortenson stated contrary to Ms. Tiffany, he felt great comfort in the office of the Consumer Advocate. He spoke to say he would feel insecure going into deregulation without having the OCA.

Mr. Ernaut felt there was a misunderstanding as to the appropriateness of the OCA and the difference between it and the PSC. The PSC's charge was to balance issues between the consumer and the regulated utilities. The OCA had one constituency; i.e., consumers of the State of Nevada. The concentration of all the consumer protection portions into the proposed position were appropriate. He felt the legislature had been "myopic" in looking at some of the areas the OCA should be doing in anti-trust. He drew great comfort that power was being concentrated in the OCA. He felt the consumers of the state would agree with him.

Mrs. Freeman stated she agreed with Mr. Ernaut. She said people needed a place to go for help with those sort of issues.

Chairman Bache asked Ms. Sheldrew to go through the remaining issues.

Ms. Sheldrew stated in section 50 there was language that dealt with the Colorado River Commission (CRC). This was an issue negotiated on the Senate

side to clarify at what point the PSC would have jurisdiction over the Colorado River Commission and their provision of retail electric service in southern Nevada. Section 50 excepts the Colorado River Commission from PSC review for current customers and any future requirements of those customers. Thereafter, if the CRC moved to another customer to provide energy, transmission or distribution service, the CRC agreed to obtaining a license and it also allowed their transmission service to be opened up to alternative sellers.

Ms. Sheldrew stated A.B. 366 modified the provision where the commission was required to report to the interim. Section 53 was the requirement for the commission to prepare quarterly reports on how effective competition was developing on the electricity market. Section 54 was the telecommunication section which directed the commission to determine, pursuant the requirements of the Federal Telecommunications Act of 1996, the extent of discounts authorized to be applied to intra-state services, elementary and secondary public schools and public libraries.

It directed, pursuant to the Telecommunications Act, that providers of non-profit health care have access to telecommunication services at rates equivalent to those of the urban areas. She said the addition was brought forth by Senator Adler.

Ms. Sheldrew directed the committee's attention to section 67, where there was clarification language in subsection 3, requested by a developer who thought there might be confusion in the provision of occasional water and sewer services, which made it jurisdictional to the commission. She was not sure if this clause would solve the problem.

In section 71, the utilities and OCA had agreed there was no need to continue deferred energy accounting practices. This section removed it as it was applied to electric deferred accounting. It was not removed for gas accounting, because there was a section where an alternative form of regulation was used. It was felt that deferred energy did not have a place in the future. Nevada Power did seek clarification from the Senate Commerce Committee, who stated they would send a letter of intent.

Ms. Sheldrew pointed out the next significant change was in section 225. This language was added by Senator Porter, which clarified the status of rights of way and easements of transmission lines of public utilities.

Section 230 of A.B. 366 established a legislative committee on utilities. Subsection 2 of section 231 contained the funding requirement and allowance.

Section 233 contained an advisory committee made up of members to develop recommendations to present to the interim committees. There was one for the north and one for the south. This group of people had varying interests in how the infusion of competition in the electric industry would work. This was established as counsel to the legislative committee.

Section 278 held the tax language, which was not changed by the Senate. This held harmless the counties as it related to the "unbundling" of the provision of electric service and to not change the method by which tax receipts for qualified facilities were distributed to the counties.

Section 294, subsection 6, clarified the responsibility, for environmental protection purposes, for the review of simple or combined cycle combustion turbines, as opposed to fossil fuel or steam production plants. Currently the state had the responsibility for the latter. This established that turbines would be reviewed by the county health department.

Chairman Bache then asked for questions.

Mrs. Freeman asked in regard to section 294, did the PSC hear from the counties as to what the impact would be on their budgets or resources.

Ms. Sheldrew replied "no." The PSC checked with State Environmental Protection Agency and they did not have a problem with the clarification. She was told it was unclear in the law who had the responsibility to review the turbines.

Ms. Tiffany stated she had a question regarding A.B. 483 being amended into the bill, but had answered it herself.

Fred Schmidt commented that A.B. 483 when added into A.B. 366, was voted on separately, and it was supported 7 to 0 by the committee.

Chairman Bache asked if the section regarding telecommunication was identical to A.B. 483.

Mr. Schmidt said A.B. 483 was contained in section 239. Separate from that, Senator Adler requested the universal service fund language, which was in a different section of the bill. The universal service fund language was not part of A.B. 483. It was supported by all parties. It directed the commission to comply with what the federal law and the Telecommunications Act of 1996 imposed on the states.

Ms. Sheldrew interjected Senator Adler's concern in adding that particular section, was there was a "time certain" problem to be solved so schools and libraries could apply to get the discount funding from the Federal Universal Fund. His concern was since there had been no regulation adopted, he wanted it in statute with a "time certain." The amendment set a date of November 1, 1997 to have that regulation in place. The governor's office supported it also.

Fred Schmidt made clear, when he submitted a fiscal note to the committee, he did not have resources to do anything with A.B. 483. If A.B. 366 passed both houses, the issue would have to be taken up with interim finance. As he testified before, the OCA did not have the telecommunication engineer to do the work envisioned in A.B. 483. He mentioned the OCA would advocate for the rural and low income areas identified in section 239. The advocacy would be restrained by whatever resources they received for that purpose.

Mrs. de Braga made a comment saying she had voted against A.B. 483 because of communication she had with the Churchill County telephone company, which was in strong opposition. She had concerns regarding section 239. She said Churchill County had the only privately owned telephone company in the state.

Mr. Schmidt noted the telephone company in Churchill County was not regulated by the PSC. He said he had not communicated with Churchill County. He pointed out there was no infrastructure or resource to accomplish what was set out in A.B. 483. The advocacy for function could be performed, but in terms of creating a data base and the outreach programs envisioned in the first two subsections, they would only happen if interim finance supported the request to add those resources. He explained there were many other resource areas in A.B. 366 that needed to be sanctioned by the finance committees. It was his understanding the appropriations bill would direct interim finance to pick up that issue.

Chairman Bache asked for questions. There being none, he asked for further testimony.

Joe Guild, Southwest Gas, along with Charlie Silvestri, handed out proposed amendment changes to the committee (Exhibit F). Mr. Guild explained the changes were minor word change corrections. Mr. Guild then reiterated what the Senate had done regarding A.B. 351 and A.B. 254.

He then spoke to the handout (Exhibit F). The first place he discussed was on page 27 of the bill. Section 59, line 12, the committee defined "person" to

include *an individual, corporation, partnership, public utility, a government, a governmental agency and a political subdivision of a government or any other entity*. He felt this language was consistent with the other two bills amended into A.B. 366. He requested that A.B. 366 be amended to make the definition of "person" consistent with earlier action taken by the committee.

In section 85 of A.B. 366 as amended, was defined as he just described, so there were inconsistencies in the bill.

In section 61, line 20, the word "*necessary*" replaced the word "*reasonable*." Also in section 61, subsection 2, {c} "*commercially viable*" should be deleted and replaced with "*potentially competitive*." He said this was consistent with the original version of A.B. 366.

In section 62, page 47, line 42 the consensus agreement was January 1, 1998, not 1999, to set forth procedures and conditions that alternative sellers must satisfy before obtaining a license.

Section 63, page 28, subsection 2, line 24, where it stated *gas service*, needed to be changed to *sales gas*. On page 29, subsection 3, of section 3, line 2, *cost* needed to be plural (*costs*). The word *supply* needed to be changed to *supplies*. He then turned to Charlie Silvestri for more comment.

Charlie Silvestri asked the committee to look at page 103, section 230. As he understood it, a legislative committee on utilities was to be formed. On page 106, the advisory committee did not include the natural gas industry. He said if he had spoken in error, and the natural gas industry was included elsewhere in the bill, it would take care of their concern. Since it was going to be a "utility committee" Southwest Gas wished to be included.

Chairman Bache asked for questions. There being none, he closed the hearing on A.B. 366 as amended by the Senate.

Chairman Bache then asked the committee secretary to call certain legislators in order for a work session to be held.

WORK SESSION

Chairman Bache called for a vote on S.B. 473.

SENATE BILL NO. 473 -

Makes various changes relating to state financial administration. (BDR 31-640)

Divorcement compromise wise choice

Gas station owners: Amendment will increase competition among refiners, distributors

Gas station owners were wise to agree to a compromise on divorcement, the law that banned oil refiners from owning stations in Nevada. The end was in sight for the decade-old law that resulted from gas shortages and allegations that one of the refiners, Arco, had a secret plan to force independent dealers out of business. By accepting a deal that will allow the refiners to increase their presence in Nevada, within strict limits, the dealers have bowed to reality and made the best of a bad situation.

Will consumers see any effects from the repeal of divorcement? Probably not. Gas prices are subject to a whole list of factors, ranging from Middle East politics to the condition of U.S. refineries, from environmental laws in California to the weather in New England. Mostly, however, recent revelations have shown that the price of gas is determined by that old bugaboo "what the market will bear." And it is apparent that, around the West, the market will bear quite a lot.

For mom-and-pop service station owners, the compromise law probably won't have much effect either. Though the refiners will be allowed to buy existing stations, they will not be allowed to force any of their existing retailers out of business. However, independent station owners probably are a dying breed anyway. Even with divorcement in effect, they were unable to increase

their numbers in Nevada, and, in fact, there are fewer now than when divorcement originally was adopted. That's probably because of a change in attitude among motorists who base their gas-buying decisions on price rather than service, and because of the growth of such auto-related service businesses as quick-lube shops and discount stores that sell tires and batteries.

The primary impact of the compromise will be felt by the gasoline distributors, who currently own most of the state's gas stations. They will be forced to compete with the only businesses that really are capable of competing with them, the refiners. And when mom or

pop decides to sell the station and retire, the distributors won't be the only ones in line to buy it up anymore.

However, under the compromise agreement, being handled as an amendment to AB 366 (the electric utility deregulation bill), even that is limited. Refiners will be allowed to open new stations on a phase-in schedule: two in 1997, four in 1998, four in 1999, five in 2000. Once a refiner has 30 stations, it must lease one to an independent dealer for every two stations it owns.

That should be sufficient to protect the independents from the actions of a company that might be looking for monopoly power, and it protects consumers by ensuring that there is plenty of competition for the gasoline dollar.

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EXHIBIT

C

ARCO Response to A6.

second quarter of this year, refinery upsets in California and other supply and demand dynamics unrelated to California regulations caused market prices to rise. But the unfairness of the statement is the specific reference to ARCO when the purported proof for the proposition is that earnings for all major refineries increased. Why was ARCO singled out?

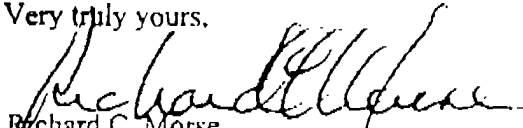
As a final matter, in the course of our meeting, Mr. Redmon asked several questions regarding the methods used by the Lundberg Survey in reaching their conclusions. I have attached some explanatory material from the Lundberg Survey which I believe will answer Mr. Redmon's questions.

General Del Papa, ARCO works hard to be a good and responsible corporate citizen of Nevada, and we do believe our policies and practices are demonstrably pro-competitive and pro-consumer. We think the perjorative implications of ARCO in the Report are unfair and potentially seriously prejudicial to a significant lawsuit pending in Las Vegas. Since the references to ARCO refer to issues beyond the scope of, and are unrelated to the subject of your Office's inquiry--the price increases in the spring of this year, we respectfully request that you publish a revised report from which the references to ARCO are deleted. It is the right thing to do.

In addition to the Lundberg Survey information on sampling techniques, I enclose copies of the slides we discussed with you that demonstrate that: (1) during most of 1995 and year to date 1996, Reno and Las Vegas prices, excluding taxes, have been among the lowest on the West Coast; (2) Reno and Las Vegas prices are different by less than 1 cent/gallon for the year 1995 and less than 4 cents/gallon for year to date 1996; (3) non-major brand retail gasoline units increased by 61 while major brand units decreased by 32; and (4) the non-major market share in Reno increased from 11% to 21% between 1992 and 1995 and in Las Vegas from 23% to 26% during the same time period.

Again, I want to thank you for taking the time to meet with us. If we can provide any additional information, please let me know.

Very truly yours,


Richard C. Morse

RCM/pjv

Changes to Senate Amendment of AB366

Sec. 59.

"Person" includes an individual, corporation, partnership, public utility, a government, a governmental agency and a political subdivision of a government or any other entity.

Sec. 61.

1. Upon the receipt of a specific request for an exemption by a public utility that supplies natural gas, the commission may, to the extent it deems [necessary] reasonable, exempt any service offered by the public utility from the strict application of one or more provisions of this chapter.

2. The commission shall adopt regulations necessary to establish an alternative plan of regulation of a public utility that supplies natural gas and that is otherwise subject to regulation pursuant to the provisions of this chapter. The alternative plan may include, but is not limited to, provisions that:

(a) Allow adjustment of the rates charged by the public utility during the period in which the utility elects the alternative plan of regulation.

(b) Specify the provisions of this chapter that do not apply to a public utility which elects to be regulated under the alternative plan.

(c) Provide for flexibility of pricing for services that are discretionary, competitive or [commercially viable] potentially competitive.

3. A public utility that elects to be regulated under the alternative plan established pursuant to this section is not subject to the remaining provisions of this chapter to the extent specified pursuant to this section.

4. It is unlawful for an alternative seller to sell any service relating to the supply of natural gas to a customer for his consumption within this state without first having obtained a license from the commission to do so.

Sec. 62.

1. Not later than January 1, [1999] 1998, the commission shall, by regulation, set forth the procedures and conditions that alternative sellers must satisfy before obtaining a license to sell potentially competitive services to customers in this state, including, but not limited to:

(a) Safety;

(b) Reliability of service;

(c) Financial reliability;

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Submitted to Committee on Government Affairs
on 7/1/97 by JOE GUILD
SOUTHWEST GAS

- (d) Fitness to serve new customers; and
- (e) Billing practices and customer services including the initiation and termination of service.

Sec. 63.

1. A customer of natural gas within the service territory of a public utility that supplies natural gas who obtains his own supply of natural gas or capacity on a pipeline from a person other than the public utility for at least 30 continuous days may seek restoration of service from the public utility in accordance with the tariffs filed pursuant to this section.

2. A public utility that supplies natural gas shall file a tariff with the commission that states the terms and conditions under which a customer may restore his [gas] **sales** service from the public utility pursuant to this section. The tariff must be reviewed by the commission and must include, without limitation:

- (a) A procedure for reestablishing [the] **sales** gas service;
- (b) Methods of accounting to be used for identifying and billing actual costs incurred by the public utility for:
 - (1) Reestablishing **sales** gas service;
 - (2) Obtaining new supplies of gas for the customers; and
 - (3) Acquiring and maintaining the necessary capacity for transporting the supplies of gas, if applicable;
- (c) Methodology for determining the costs of administration and overhead costs; [and]
- (d) Methods of accounting to determine any incremental costs incurred by the public utility to serve the customer or group of customers;
- (e) Procedures for curtailment to be used in establishing priorities of service;
- (f) Procedures that will be available to customers to resolve disputes in billing; and
- (g) The minimum period during which the customer must take [the resumed] **sales** gas service.

3. For the purposes of this section, a public utility may charge its actual [cost] **costs** of obtaining any additional [supply] **supplies** of gas to serve the returning customers. The commission may verify a public utilities compliance with its tariff filed pursuant to this section.

Senate Bill No. 228.

Assemblywoman Buckley moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

Senate Bill No. 242.

Assemblywoman Buckley moved that the bill be referred to the Committee on Commerce.

Motion carried.

Senate Bill No. 283.

Assemblywoman Buckley moved that the bill be referred to the Committee on Infrastructure.

Motion carried.

Senate Bill No. 306.

Assemblywoman Buckley moved that the bill be referred to the Committee on Commerce.

Motion carried.

Senate Bill No. 320.

Assemblywoman Buckley moved that the bill be referred to the Committee on Commerce.

Motion carried.

Senate Bill No. 335.

Assemblywoman Buckley moved that the bill be referred to the Committee on Transportation.

Motion carried.

Senate Bill No. 338.

Assemblywoman Buckley moved that the bill be referred to the Committee on Ways and Means.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Perkins moved that Assembly Bill No. 366 be taken from the Chief Clerk's desk and placed at the top of the Second Reading File.

Motion carried.

Assemblyman Perkins moved that the Assembly recess subject to the call of the Chair.

Motion carried.

Assembly in recess at 11:26 a.m.

ASSEMBLY IN SESSION

At 12:25 p.m.

Mr. Speaker presiding.

Quorum present.

SECOND READING AND AMENDMENT

Assembly Bill No. 366.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 481.

Amend sec. 3, page 1, by deleting lines 7 and 8 and inserting: "reselling or otherwise supplying electricity to a customer."

Amend sec. 4, page 1, by deleting lines 9 and 10 and inserting:

"Sec. 4. 'Alternative seller' means a seller of any component of electric service other than a noncompetitive service. The term includes an affiliate of an electric utility. The term does not include an electric utility."

Amend sec. 6, page 1, line 12, after "means" by inserting: ", with respect to a particular service,".

Amend sec. 6, page 1, by deleting lines 15 and 16 and inserting:

"2. The size of each seller's share of the market;

3. The ability of the sellers to enter or exit the market; and

4. The price and availability of comparable substitutes for the service,".

Amend sec. 7, page 2, line 2, by deleting: "service or function" and inserting "component".

Amend sec. 8, page 2, line 4, by deleting "1."

Amend sec. 8, page 2, line 7, by deleting "(a)" and inserting "1."

Amend sec. 8, page 2, line 9, by deleting "(b)" and inserting "2."

Amend sec. 8, page 2, by deleting lines 10 through 12.

Amend sec. 9, page 2, by deleting lines 13 and 14 and inserting:

"Sec. 9. 'Generation service' means the sale of electricity or capacity from equipment that converts other forms of energy into electricity by the owner of the equipment."

Amend sec. 10, page 2, by deleting lines 16 through 18 and inserting: "other component of electric service determined by statute or regulation to be unsuitable for purchase by customers from alternative sellers."

Amend sec. 11, page 2, by deleting lines 19 through 22 and inserting:

"Sec. 11. 'Potentially competitive service' means a component of electric service determined by the commission to be suitable for purchase by customers from alternative sellers."

Amend sec. 12, pages 2 and 3, by deleting lines 23 through 43 on page 2 and lines 1 through 25 on page 3, and inserting:

"Sec. 12. 1. The date upon which customers may begin obtaining generation, aggregation and any other potentially competitive service from an alternative seller must be no later than July 1, 2001, unless the commission determines that a different date is necessary to protect the public interest. If the commission has not authorized customers to begin obtaining any potentially competitive service from an alternative seller by February 1, 2001, the commission shall provide a report to the legislature on that date which:

(a) Explains the reason that the commission has not granted such an authorization; and

(b) States whether the commission will grant such an authorization by July 1, 2001.

2. The commission may:

(a) Establish different dates for the provision of different services by alternative sellers in different geographic areas; and

(b) Authorize, in gradual phases, the right to buy from alternative sellers.

3. The commission shall determine that an electric service is a potentially competitive service if provision of the service by alternative sellers:

(a) Will not harm any class of customers;

(b) Will decrease the cost of providing the service to customers in this state or increase the quality or innovation of the service to customers in this state;

(c) Is a service for which effective competition in the market is likely to develop;

(d) Will advance the competitive position of this state relative to surrounding states; and

(e) Will not otherwise jeopardize the safety and reliability of the electric service in this state.

4. If the commission determines that a market for a potentially competitive service does not have effective competition, the commission shall, by regulation, establish the method for determining prices for the service and the terms and conditions for providing the service. The regulations must ensure that the pricing method, terms and conditions are just and reasonable and not unduly discriminatory. The regulations may include pricing alternatives which authorize the seller to reduce prices below maximum pricing levels specified by the commission or any other form of alternative pricing which the commission determines to be consistent with the provisions of this subsection. In determining whether a market for a potentially competitive service does not have effective competition pursuant to this subsection, the commission shall:

(a) Identify the relevant market;

(b) Identify, where feasible, the alternative sellers that participate in the relevant market; and

(c) Calculate, where feasible, the share of each participant in the market and evaluate the significance of each share.

The commission may reconsider any determination made pursuant to this subsection upon its own motion or upon a showing of good cause by a party requesting a reconsideration. Upon a finding by the commission that the market for a service previously found not to have effective competition has become effectively competitive, the commission shall repeal the regulations which established the pricing method for that service and the terms and conditions for providing that service.

5. Commencing on the date on which customers are authorized to obtain a potentially competitive service from alternative sellers, an electric utility shall not provide the potentially competitive service except through an affiliate licensed pursuant to section 13 of this act.

6. The commission shall design, conduct and evaluate at least one pilot project regarding retail competition, which must commence not later than July 1, 1998. The commission shall design the project in such a manner that the project:

(a) Provides useful information to the commission, consumers and sellers of electricity regarding the carrying out of competition to provide potentially competitive services;

(b) Prevents any unfair advantage to a seller of a potentially competitive service;

(c) Ensures substantial participation by residential, commercial and industrial customers; and

(d) Prevents any unnecessary delay in the date on which customers may obtain potentially competitive services from alternative sellers.

With respect to a pilot project, the commission possesses all of the relevant powers and duties set forth in sections 2 to 23, inclusive, of this act. The commission shall treat any costs incurred by an electric utility before July 1, 1998, on behalf of customers who participate in a pilot project in the manner set forth in section 19 of this act."

Amend sec. 13, page 3, by deleting lines 39 through 42 and inserting:

"3. The commission may deny the application of a prospective alternative seller for a license, or may limit, suspend or revoke a license issued to an alternative seller, if the action is necessary to protect the interests of the public or to enforce the provisions of sections 2 to 23, inclusive, of this act or of a regulation of the commission. In determining whether to take any of those actions, the commission may consider whether the applicant for or holder of such a license, or any affiliate thereof, has engaged in activities which are inconsistent with effective competition.

4. A city, county or other local governmental entity or a public utility, or any affiliate thereof, which is authorized to provide electric service within the State of Nevada on or before July 1, 1997, and which has an annual operating revenue of less than \$250,000,000, is subject to the provisions of sections 2 to 23, inclusive, of this act and any regulations adopted by the commission that are in effect on the date on which the city, county or other local governmental entity or public utility, or an affiliate thereof:

(a) Applies to obtain a license as an alternative seller; or

(b) Directly or indirectly attempts to provide, or act on behalf of an alternative seller in the provision of, electric service in the territory served by another city, county or other local governmental entity or public utility, or an affiliate thereof."

Amend sec. 15, pages 4 and 5, by deleting lines 7 through 44 on page 4 and lines 1 through 5 on page 5, and inserting:

"Sec. 15. 1. The commission shall monitor the markets for electric services affected by sections 2 to 23, inclusive, of this act to identify and prevent activities that are inconsistent with the goals of sections 2 to 23, inclusive, of this act. The commission shall:

(a) Proscribe activities that are inconsistent with the goals of sections 2 to 23, inclusive, of this act, and establish penalties for such activities and procedures for imposing the penalties; and

(b) Establish conditions and limitations on the ownership, operation or control of the assets of a provider of an electric service to prevent activities that are inconsistent with the goals of sections 2 to 23, inclusive, of this act and to ensure the development of effective competition for electric service, including, but not limited to, limitations on the ownership, operation or control of:

(1) Transmission facilities; and

(2) Any generation facilities necessary to the reliable and economic operation of the transmission facilities,
In establishing such conditions and limitations, the commission shall con-

sider the financial obligations that a provider of an electric service has, as of the date on which customers are authorized to obtain a potentially competitive service from alternative sellers, incurred to carry out a statutory obligation of a public utility.

2. Upon a showing of good cause by a party requesting an investigation or upon a motion of the commission, the commission shall conduct an investigation to determine whether the markets for electric service are functioning in a manner consistent with sections 2 to 23, inclusive, of this act. The investigation must include, but is not limited to, the effect on the market of:

- (a) Mergers, consolidations or acquisitions of the assets or the securities of providers of electric services;
- (b) The disposition of ownership, operation or control of the assets of providers of electric services;
- (c) Transmission congestion or constraints; and
- (d) Anticompetitive or discriminatory conduct.

3. The commission may require an alternative seller or an electric utility to provide information, including, but not limited to, documents and testimony, in accordance with the regulations of the commission relating to the discovery of information relating to a provider of electric service.

4. If evidence is presented to the commission that anticompetitive or discriminatory conduct, including, but not limited to, the unlawful exercise of market power, is denying customers the benefits of effective competition in a market for electric services, the commission shall consult with the attorney general and transmit any evidence of a violation of the law of this state to the attorney general and, if appropriate, inform the United States Department of Justice and any appropriate federal agency."

Amend sec. 16, page 5, line 24, after "provide" by inserting "potentially".

Amend sec. 16, page 5, line 25, after "providing" by inserting "potentially".

Amend sec. 16, page 5, line 28, after "a" by inserting "potentially".

Amend sec. 16, page 5, by deleting lines 31 and 32 and inserting: "give the utility a reasonable opportunity to recover the costs it has incurred."

Amend sec. 17, page 5, line 40, by deleting "that permit" and inserting: "for noncompetitive services that allow".

Amend sec. 18, page 6, by deleting lines 26 through 33 and inserting:

"3. The commission shall establish minimum terms and conditions pursuant to which electric service must be provided, including, but not limited to, a minimum period during which a customer must continue to take electric service. The price charged for electric service for a particular group of customers must reflect the incremental cost of serving the group.

4. If the provider of such electric service is an electric utility, the utility shall provide the service through an affiliate whose sole business activity is the provision of that electric service."

Amend sec. 19, pages 6 and 7, by deleting lines 34 through 42 on page 6 and lines 1 through 22 on page 7, and inserting:

"Sec. 19. 1. For each electric utility, the commission shall determine the recoverable costs associated with assets or obligations that are docu-

mented in the accounting records of the electric utility and are properly allocable to a particular potentially competitive service as of the date on which customers are authorized to obtain such a service from alternative sellers. Shareholders of the electric utility must be compensated fully for all such costs determined by the commission. In determining the costs, the commission shall take into account:

(a) The extent to which the electric utility was legally required to incur the costs for the assets and obligations;

(b) The extent to which the market value of the assets and obligations of the utility relating to the provision of potentially competitive services exceeds the costs for the assets and obligations;

(c) The effectiveness of the efforts of the electric utility to increase and realize the market value of any assets and obligations associated with the provision of potentially competitive services;

(d) The extent to which the rates previously established by the commission have compensated shareholders for the risk of not recovering the costs for the assets and obligations;

(e) The effects of the difference between the market value and the costs for the assets and obligations, including, but not limited to, tax considerations; and

(f) If the electric utility had the discretion to determine whether to incur the costs, the conduct of the electric utility with respect to the costs for the assets and obligations when compared to other utilities with similar obligations to serve the public.

2. For the purposes of this section, the commission may impose a procedure for the direct and unavoidable recovery from ratepayers of a portion of the past costs which are determined by the commission to be owed by the ratepayers. The procedure must include a determination of the period over which the recovery may occur. Such a determination must not discriminate against a participant in the market."

Amend sec. 20, page 7, line 37, by deleting "alternate providers" and inserting "alternative sellers".

Amend sec. 21, page 8, line 8, by deleting: "An estimate of the revenue" and inserting "The revenue".

Amend sec. 22, page 8, by deleting lines 18 through 21 and inserting: "Sec. 22. 1. The commission shall develop and publish a report which must:

(a) Be published not later than July 1, 2000, and every third year thereafter.

(b) Be based upon the information filed pursuant to subsection 3."

Amend sec. 22, pages 8 and 9, by deleting lines 39 through 44 on page 8 and lines 1 through 17 on page 9, and inserting:

"(g) Evaluate whether sufficient capacity will be available to customers at a reasonable price and will be selected by customers after the commission has authorized the provision of potentially competitive services by alternative sellers.

(h) Include a description of the facilities needed to meet future requirements.

(i) Evaluate the extent to which electric service is subject to competition

and the actions necessary to accommodate or facilitate competition in the provision of electric services.

2. If the commission determines that sufficient capacity will not be available to customers at a reasonable price, the commission may establish equitable obligations for customers, electric utilities or alternative sellers to ensure that sufficient capacity is made available. Any obligation that discriminates against or unduly burdens an electric utility, an alternative seller or a customer is not reasonable and may not be imposed by the commission. The commission may adopt regulations that specify the method or procedures which will be used to ensure the requirements for capacity are satisfied. The methods or procedures may include competitive solicitations to fill the requirements or any other procedures or methods deemed appropriate and necessary by the commission.

3. Each entity providing a potentially competitive service or a noncompetitive service shall submit to the commission annually, in the format prescribed by the commission, information that the commission determines is necessary to:

(a) Monitor the development of competition to provide electric services; and

(b) Ensure the availability of adequate, reliable, efficient and economic electric service.”.

Amend sec. 23, page 9, line 25, by deleting “retail”.

Amend sec. 23, page 9, line 27, by deleting “retail”.

Amend the bill as a whole by deleting sec. 25 and the leadlines of repealed sections and renumbering sec. 26 as sec. 25.

Amend the bill as a whole by renumbering sections 27 and 28 as sections 29 and 30 and adding new sections designated sections 26 through 28, following sec. 26, to read as follows:

“Sec. 26. The commission shall adopt regulations to carry out the provisions of this act not later than July 1, 1999.

Sec. 27. In the quarterly report for the first quarter of 1999, which must be submitted by the commission pursuant to section 23 of this act, the commission shall provide a comprehensive evaluation of the development of the markets for potentially competitive services since July 1, 1997.

Sec. 28. Any interim study conducted by the Legislative Commission regarding the provision of electric service in this state must include:

1. A recommendation regarding whether NRS 704.736, 704.741, 704.743, 704.746 and 704.751 should be continued, repealed or amended.

2. An evaluation of whether or the extent to which:

(a) Requirements should be established regarding the use of renewable resources and the creation of programs to improve energy efficiency; and

(b) The diversity of fuel, the diversity of generation resources or any economic or environmental factors should be considered in determining the optimal combination of generation resources necessary to meet the requirements for electric energy in this state.”.

Amend sec. 28, page 11, by deleting lines 35 through 37 and inserting:

“Sec. 30. This act becomes effective on July 1, 1997.”.

Assemblyman Bache moved the adoption of the amendment.

Remarks by Assemblymen Bache, Ernaut, Buckley, Goldwater, Giunchigliani, de Braga, Koivisto, Collins, Lambert and Sandoval.

Conflict of interest declared by Assemblymen de Braga, Koivisto, Lambert and Sandoval.

Potential conflict of interest declared by Assemblyman Collins.

Amendment adopted.

The following amendment was proposed by Assemblyman Collins:

Amendment No. 483.

Amend the bill as a whole by adding a new section designated sec. 16.5, following sec. 16, to read as follows:

“Sec. 16.5. An electric utility shall take reasonable steps to minimize layoffs and any other adverse effects on its employees that result from the operation of sections 2 to 23, inclusive, of this act. The commission shall allow recovery of reasonable costs incurred by the utility to address those adverse effects, including, without limitation, costs for severance pay, retraining, early retirement and job placement. The commission shall determine a method to provide for the recovery of such costs in a manner that is nondiscriminatory and consistent with the sections 2 to 23, inclusive, of this act.”.

Assemblyman Collins withdrew the amendment.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 123.

Bill read second time.

The following amendment was proposed by the Committee on Elections, Procedures, and Ethics:

Amendment No. 460.

Amend the bill as a whole by deleting sections 1 through 6 and inserting: “Secs. 1-6. (Deleted by amendment.)”.

Amend sec. 8, page 4, line 13, by deleting “and micrographics”.

Amend sec. 8, page 4, line 37, by deleting “and micrographics”.

Amend sec. 10, page 5, by deleting lines 15 and 16 and inserting:

“(a) Include:

(1) A statement of the need for and purpose of the proposed regulation.”.

Amend sec. 10, page 5, line 19, by deleting “The” and inserting: “A statement of the”.

Amend sec. 10, page 5, line 26, by deleting “Any” and inserting: “A description of any”.

Amend sec. 10, page 5, line 28, after “necessary.” by inserting: “If the regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

(6) If the regulation is required pursuant to federal law, a citation and description of the federal law.

(7) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.”.

Amend sec. 10, page 5, line 29, by deleting “(6)” and inserting “(8)”.

Amend sec. 11, page 6, line 9, by deleting “agency regulation” and inserting: “regulation of an agency”.

Amend sec. 11, page 6, lines 11 and 12 by deleting: “policy, every permanent regulation [shall] *must*” and inserting: “policy:

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

A.B. 366

ASSEMBLY BILL NO. 366—COMMITTEE ON GOVERNMENT AFFAIRS

APRIL 15, 1997

Referred to Committee on Government Affairs

SUMMARY—Revises provisions for regulation of electric service to allow customers direct access to alternative sellers of electric services. (BDR 58-1390)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.



EXPLANATION - Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to electric service; revising provisions for the regulation of electric service to allow customers direct access to alternative sellers of electric services; requiring the central assessment of certain property; requiring the executive director of the department of taxation to submit a report to the legislature; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 704 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 23, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 23, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to 11,*
5 *inclusive, of this act, have the meanings ascribed to them in those sections.*
6 **Sec. 3.** *"Aggregation service" is the service of buying electricity and*
7 *reselling or otherwise supplying electricity to a customer.*
8 **Sec. 4.** *"Alternative seller" means a seller of any component of electric*
9 *service other than a noncompetitive service. The term includes an affiliate of*
10 *an electric utility. The term does not include an electric utility.*
11 **Sec. 5.** *"Customer" means the retail purchaser of electric service.*
12 **Sec. 6.** *"Effective competition" means, with respect to a particular*
13 *service, a market structure and a process under which, as a result of:*
14 1. *The number of sellers of the service;*
15 2. *The size of each seller's share of the market;*
16 3. *The ability of the sellers to enter or exit the market; and*
17 4. *The price and availability of comparable substitutes for the service,*
18 *an individual seller is not able to influence significantly the price of the*
19 *service.*



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1 *Sec. 7. "Electric service" includes generation service, aggregation*
2 *service and any other component provided, as of December 31, 1996, by an*
3 *electric utility.*

4 *Sec. 8. "Electric utility" means any public utility in the business of*
5 *supplying electricity or its successor in interest that, as of December 31,*
6 *1996:*

7 1. *Held a certificate of public convenience and necessity issued pursuant*
8 *to NRS 704.005 to 704.751, inclusive; and*

9 2. *Had an annual operating revenue of \$250,000,000 or more.*

10 *Sec. 9. "Generation service" means the sale of electricity or capacity*
11 *from equipment that converts other forms of energy into electricity by the*
12 *owner of the equipment.*

13 *Sec. 10. "Noncompetitive service" means a transmission, distribution or*
14 *other component of electric service determined by statute or regulation to be*
15 *unsuitable for purchase by customers from alternative sellers.*

16 *Sec. 11. "Potentially competitive service" means a component of*
17 *electric service determined by the commission to be suitable for purchase by*
18 *customers from alternative sellers.*

19 *Sec. 12. 1. The date upon which customers may begin obtaining*
20 *generation, aggregation and any other potentially competitive service from*
21 *an alternative seller must be no later than July 1, 2001, unless the*
22 *commission determines that a different date is necessary to protect the*
23 *public interest. If the commission has not authorized customers to begin*
24 *obtaining any potentially competitive service from an alternative seller by*
25 *February 1, 2001, the commission shall provide a report to the legislature*
26 *on that date which:*

27 (a) *Explains the reason that the commission has not granted such an*
28 *authorization; and*

29 (b) *States whether the commission will grant such an authorization by*
30 *July 1, 2001.*

31 2. *The commission may:*

32 (a) *Establish different dates for the provision of different services by*
33 *alternative sellers in different geographic areas; and*

34 (b) *Authorize, in gradual phases, the right to buy from alternative*
35 *sellers.*

36 3. *The commission shall determine that an electric service is a*
37 *potentially competitive service if provision of the service by alternative*
38 *sellers:*

39 (a) *Will not harm any class of customers;*

40 (b) *Will decrease the cost of providing the service to customers in this*
41 *state or increase the quality or innovation of the service to customers in this*
42 *state;*

43 (c) *Is a service for which effective competition in the market is likely to*
44 *develop;*



1 (d) Will advance the competitive position of this state relative to
2 surrounding states; and

3 (e) Will not otherwise jeopardize the safety and reliability of the electric
4 service in this state.

5 4. If the commission determines that a market for a potentially
6 competitive service does not have effective competition, the commission
7 shall, by regulation, establish the method for determining prices for the
8 service and the terms and conditions for providing the service. The
9 regulations must ensure that the pricing method, terms and conditions are
10 just and reasonable and not unduly discriminatory. The regulations may
11 include pricing alternatives which authorize the seller to reduce prices
12 below maximum pricing levels specified by the commission or any other
13 form of alternative pricing which the commission determines to be consistent
14 with the provisions of this subsection. In determining whether a market for a
15 potentially competitive service does not have effective competition pursuant
16 to this subsection, the commission shall:

17 (a) Identify the relevant market;

18 (b) Identify, where feasible, the alternative sellers that participate in the
19 relevant market; and

20 (c) Calculate, where feasible, the share of each participant in the market
21 and evaluate the significance of each share.

22 The commission may reconsider any determination made pursuant to this
23 subsection upon its own motion or upon a showing of good cause by a party
24 requesting a reconsideration. Upon a finding by the commission that the
25 market for a service previously found not to have effective competition has
26 become effectively competitive, the commission shall repeal the regulations
27 which established the pricing method for that service and the terms and
28 conditions for providing that service.

29 5. Commencing on the date on which customers are authorized to obtain
30 a potentially competitive service from alternative sellers, an electric utility
31 shall not provide the potentially competitive service except through an
32 affiliate licensed pursuant to section 13 of this act.

33 6. The commission shall design, conduct and evaluate at least one pilot
34 project regarding retail competition, which must commence not later than
35 July 1, 1998. The commission shall design the project in such a manner that
36 the project:

37 (a) Provides useful information to the commission, consumers and sellers
38 of electricity regarding the carrying out of competition to provide potentially
39 competitive services;

40 (b) Prevents any unfair advantage to a seller of a potentially competitive
41 service;

42 (c) Ensures substantial participation by residential, commercial and
43 industrial customers; and



1 (d) Prevents any unnecessary delay in the date on which customers may
2 obtain potentially competitive services from alternative sellers.

3 With respect to a pilot project, the commission possesses all of the relevant
4 powers and duties set forth in sections 2 to 23, inclusive, of this act. The
5 commission shall treat any costs incurred by an electric utility before July 1,
6 1998, on behalf of customers who participate in a pilot project in the
7 manner set forth in section 19 of this act.

8 Sec. 13. 1. It is unlawful for an alternative seller to sell any electric
9 service to a customer for consumption within this state without having first
10 obtained a license from the commission to do so.

11 2. Not later than January 1, 1999, the commission shall by regulation
12 set forth the procedures and conditions that alternative sellers must satisfy
13 before obtaining a license to sell services to a customer in this state,
14 including, but not limited to, procedures and conditions relating to:

15 (a) Safety;

16 (b) Reliability of service;

17 (c) Financial reliability;

18 (d) Fitness to serve customers; and

19 (e) Billing practices and customer service, including the initiation and
20 termination of service.

21 3. The commission may deny the application of a prospective alternative
22 seller for a license, or may limit, suspend or revoke a license issued to an
23 alternative seller, if the action is necessary to protect the interests of the
24 public or to enforce the provisions of sections 2 to 23, inclusive, of this act
25 or of a regulation of the commission. In determining whether to take any of
26 those actions, the commission may consider whether the applicant for or
27 holder of such a license, or any affiliate thereof, has engaged in activities
28 which are inconsistent with effective competition.

29 4. A city, county or other local governmental entity or a public utility,
30 or any affiliate thereof, which is authorized to provide electric service within
31 the State of Nevada on or before July 1, 1997, and which has an annual
32 operating revenue of less than \$250,000,000, is subject to the provisions of
33 sections 2 to 23, inclusive, of this act and any regulations adopted by the
34 commission that are in effect on the date on which the city, county or other
35 local governmental entity or public utility, or an affiliate thereof:

36 (a) Applies to obtain a license as an alternative seller; or

37 (b) Directly or indirectly attempts to provide, or act on behalf of an
38 alternative seller in the provision of, electric service in the territory served
39 by another city, county or other local governmental entity or public utility,
40 or an affiliate thereof.

41 Sec. 14. 1. The commission shall prohibit a provider of a
42 noncompetitive service from providing a potentially competitive service,
43 except through an affiliate.



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1 2. The commission shall require each provider of a noncompetitive
2 service that is necessary to the provision of a potentially competitive service
3 to make its facilities or services equally available to all alternative sellers.

4 **Sec. 15.** 1. The commission shall monitor the markets for electric
5 services affected by sections 2 to 23, inclusive, of this act to identify and
6 prevent activities that are inconsistent with the goals of sections 2 to 23,
7 inclusive, of this act. The commission shall:

8 (a) Proscribe activities that are inconsistent with the goals of sections 2
9 to 23, inclusive, of this act, and establish penalties for such activities and
10 procedures for imposing the penalties; and

11 (b) Establish conditions and limitations on the ownership, operation or
12 control of the assets of a provider of an electric service to prevent activities
13 that are inconsistent with the goals of sections 2 to 23, inclusive, of this act
14 and to ensure the development of effective competition for electric service,
15 including, but not limited to, limitations on the ownership, operation or
16 control of:

17 (1) Transmission facilities; and

18 (2) Any generation facilities necessary to the reliable and economic
19 operation of the transmission facilities.

20 In establishing such conditions and limitations, the commission shall
21 consider the financial obligations that a provider of an electric service has,
22 as of the date on which customers are authorized to obtain a potentially
23 competitive service from alternative sellers, incurred to carry out a statutory
24 obligation of a public utility.

25 2. Upon a showing of good cause by a party requesting an investigation
26 or upon a motion of the commission, the commission shall conduct an
27 investigation to determine whether the markets for electric service are
28 functioning in a manner consistent with sections 2 to 23, inclusive, of this
29 act. The investigation must include, but is not limited to, the effect on the
30 market of:

31 (a) Mergers, consolidations or acquisitions of the assets or the securities
32 of providers of electric services;

33 (b) The disposition of ownership, operation or control of the assets of
34 providers of electric services;

35 (c) Transmission congestion or constraints; and

36 (d) Anticompetitive or discriminatory conduct.

37 3. The commission may require an alternative seller or an electric
38 utility to provide information, including, but not limited to, documents and
39 testimony, in accordance with the regulations of the commission relating to
40 the discovery of information relating to a provider of electric service.

41 4. If evidence is presented to the commission that anticompetitive or
42 discriminatory conduct, including, but not limited to, the unlawful exercise
43 of market power, is denying customers the benefits of effective competition
44 in a market for electric services, the commission shall consult with the



1 attorney general and transmit any evidence of a violation of the law of this
2 state to the attorney general and, if appropriate, inform the United States
3 Department of Justice and any appropriate federal agency.

4 **Sec. 16. 1.** The affiliate of a provider of a noncompetitive service may
5 provide a potentially competitive service upon a finding that:

6 (a) The affiliate will have, with respect to the provision of the services, an
7 arm's length relationship with the entity that provides the noncompetitive
8 service;

9 (b) The business or organizational relationship, or both, between the
10 provider of the noncompetitive electric service and the affiliate providing the
11 competitive service does not interfere with the development of effective
12 competition; and

13 (c) The risk of anticompetitive behavior by the provider of a
14 noncompetitive service or the affiliate providing the competitive service, or
15 both, is minimal and the regulatory expenses to prevent the anticompetitive
16 behavior are minimal.

17 2. The commission shall adopt regulations which specify the information
18 which must be submitted and the procedure which will be used to process a
19 request by an affiliate of a noncompetitive service for authorization to
20 provide a potentially competitive service. The procedure must provide an
21 opportunity for the affiliate to obtain a determination from the commission
22 regarding its request to provide potentially competitive services not later
23 than 6 months before the date on which alternative sellers may begin
24 providing potentially competitive services.

25 3. If the commission determines that an affiliate of a provider of a
26 noncompetitive service cannot provide a potentially competitive service
27 pursuant to the provisions of this subsection, and the provider of the
28 noncompetitive service is an electric utility, the commission shall, pursuant
29 to section 19 of this act, give the utility a reasonable opportunity to recover
30 the costs it has incurred.

31 **Sec. 17. 1.** An electric utility shall provide all noncompetitive services
32 within its territory unless the commission authorizes another entity to provide
33 the noncompetitive service.

34 2. Transmission service and distribution service shall be deemed
35 noncompetitive services by the commission. Except as otherwise provided in
36 subsection 3, a noncompetitive service is subject to NRS 704.001 to 704.655,
37 inclusive, 704.701 to 704.751, inclusive, and 704.800 to 704.900, inclusive.

38 3. The commission shall adopt regulations for noncompetitive services
39 that allow innovative pricing methods upon a finding that the innovative
40 pricing, when compared to pricing pursuant to subsection 2, improves the
41 performance of the service or lowers the cost of the service to the customer,
42 or both. The regulations for innovative pricing must specify:

43 (a) The provisions that must be included in a plan of innovative pricing;



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1 (b) The procedures for submitting an innovative plan for pricing to the
2 commission for approval and implementation; and

3 (c) Which provisions of this chapter do not apply to pricing changes that
4 are made during the period in which the innovative pricing plan is in effect.

5 4. The commission shall adopt regulations which ensure that a person
6 who owns a transmission or distribution facility, or both, or a facility that
7 provides access to a potentially competitive service shall make the facilities
8 available, on a comparable basis, to all alternative sellers or to the
9 customers of the alternative sellers, or both, as the commission may
10 determine.

11 **Sec. 18.** 1. If customers are unable to obtain electric service or fail to
12 select a provider of a potentially competitive service, the commission shall
13 designate an electric utility to provide electric service to those customers.
14 The provider so designated by the commission is obligated to provide service
15 to the customers. Service provided by the utility pursuant to this subsection
16 shall be deemed a noncompetitive service for which the utility may recover
17 its costs pursuant to NRS 704.001 to 704.655, inclusive, 704.701 to
18 704.751, inclusive, and 704.800 to 704.900, inclusive.

19 2. Upon a finding by the commission that the public interest will be
20 promoted, the commission may prescribe alternate methods for providing
21 electric service to those customers described in subsection 1. The alternate
22 methods may include, but are not limited to, the direct assignment of
23 customers to alternative sellers or a process of competitive bidding for the
24 right to provide electric service to the designated customers.

25 3. The commission shall establish minimum terms and conditions
26 pursuant to which electric service must be provided, including, but not
27 limited to, a minimum period during which a customer must continue to take
28 electric service. The price charged for electric service for a particular group
29 of customers must reflect the incremental cost of serving the group.

30 4. If the provider of such electric service is an electric utility, the utility
31 shall provide the service through an affiliate whose sole business activity is
32 the provision of that electric service.

33 **Sec. 19.** 1. For each electric utility, the commission shall determine
34 the recoverable costs associated with assets or obligations that are
35 documented in the accounting records of the electric utility and are properly
36 allocable to a particular potentially competitive service as of the date on
37 which customers are authorized to obtain such a service from alternative
38 sellers. Shareholders of the electric utility must be compensated fully for all
39 such costs determined by the commission. In determining the costs, the
40 commission shall take into account:

41 (a) The extent to which the electric utility was legally required to incur
42 the costs for the assets and obligations;



1 (b) The extent to which the market value of the assets and obligations of
2 the utility relating to the provision of potentially competitive services
3 exceeds the costs for the assets and obligations;

4 (c) The effectiveness of the efforts of the electric utility to increase and
5 realize the market value of any assets and obligations associated with the
6 provision of potentially competitive services;

7 (d) The extent to which the rates previously established by the
8 commission have compensated shareholders for the risk of not recovering
9 the costs for the assets and obligations;

10 (e) The effects of the difference between the market value and the costs
11 for the assets and obligations, including, but not limited to, tax
12 considerations; and

13 (f) If the electric utility had the discretion to determine whether to incur
14 the costs, the conduct of the electric utility with respect to the costs for the
15 assets and obligations when compared to other utilities with similar
16 obligations to serve the public.

17 2. For the purposes of this section, the commission may impose a
18 procedure for the direct and unavoidable recovery from ratepayers of a
19 portion of the past costs which are determined by the commission to be owed
20 by the ratepayers. The procedure must include a determination of the period
21 over which the recovery may occur. Such a determination must not
22 discriminate against a participant in the market.

23 Sec. 20. 1. The commission shall establish procedures to ensure that a
24 customer of an alternative seller is not switched to another alternative seller
25 without a reliable confirmation of the customer's intent to make such a
26 change and approval of the specific details of the change.

27 2. The commission shall establish minimum and uniform standards for
28 the form and content of all disclosures, explanations or sales information
29 disseminated by a person selling a potentially competitive service to ensure
30 that the person provides adequate, accurate and understandable information
31 about the service which enables a customer to make an informed decision
32 relating to the source and type of service purchased.

33 3. The commission, before authorizing direct access to alternative sellers
34 for an electric service, shall carry out an educational program for customers
35 to:

36 (a) Inform customers of the changes in the provision of electric service,
37 including, but not limited to, the availability of alternative sellers of electric
38 service;

39 (b) Inform customers of the requirements relating to disclosures,
40 explanations or sales information for sellers of potentially competitive
41 services; and

42 (c) Provide assistance to customers in understanding and using the
43 information to make reasonably informed choices about which service to
44 purchase and from whom to purchase it.



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1 *Sec. 21. 1. An electric utility shall submit to the commission, pursuant*
2 *to a schedule established by the commission, a plan for compliance with the*
3 *requirements set forth in sections 2 to 23, inclusive, of this act and the*
4 *applicable regulations. The utility shall include with the schedule any*
5 *information the commission needs to:*

6 *(a) Set rates for electric services, such as:*

7 *(1) A statement of costs of the utility to provide the service.*

8 *(2) The revenue required by the utility.*

9 *(b) Allocate among customers the costs of service and the requirements*
10 *for revenues for noncompetitive services.*

11 *(c) Adopt regulations for potentially competitive services if a market is not*
12 *sufficiently competitive.*

13 *2. The commission may exempt an electric utility or an alternative*
14 *seller, or both, from the strict application of any provision of this chapter,*
15 *other than the provisions of sections 2 to 23, inclusive, of this act, upon a*
16 *determination by the commission that the exemption is necessary to achieve*
17 *effective competition within the electric industry.*

18 *Sec. 22. 1. The commission shall develop and publish a report which*
19 *must:*

20 *(a) Be published not later than July 1, 2000, and every third year*
21 *thereafter.*

22 *(b) Be based upon the information filed pursuant to subsection 3.*

23 *(c) Include forecasts of electric capacity and energy.*

24 *(d) Identify and consider any present and projected reductions in the*
25 *demand for energy that may result from the measures to improve energy*
26 *efficiency in the industrial, commercial, residential and energy-producing*
27 *sectors of the area being served.*

28 *(e) Evaluate the economic, environmental and other benefits to this state*
29 *and to the customers of the electric utilities associated with the following*
30 *possible sources of supply and methods to reduce demand:*

31 *(1) Improvements in the efficient production and use of energy;*

32 *(2) Pooling of power;*

33 *(3) Purchases of power from other states or countries;*

34 *(4) Facilities that operate on solar or geothermal energy or wind;*

35 *(5) Facilities that operate on the principle of cogeneration or*
36 *hydrogeneration; and*

37 *(6) Other generation facilities.*

38 *(f) Identify the best combination of sources of supply and methods to*
39 *reduce demands available to meet forecast requirements.*

40 *(g) Evaluate whether sufficient capacity will be available to customers at*
41 *a reasonable price and will be selected by customers after the commission*
42 *has authorized the provision of potentially competitive services by*
43 *alternative sellers.*



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1 (h) Include a description of the facilities needed to meet future
2 requirements.

3 (i) Evaluate the extent to which electric service is subject to competition
4 and the actions necessary to accommodate or facilitate competition in the
5 provision of electric services.

6 2. If the commission determines that sufficient capacity will not be
7 available to customers at a reasonable price, the commission may establish
8 equitable obligations for customers, electric utilities or alternative sellers to
9 ensure that sufficient capacity is made available. Any obligation that
10 discriminates against or unduly burdens an electric utility, an alternative
11 seller or a customer is not reasonable and may not be imposed by the
12 commission. The commission may adopt regulations that specify the method
13 or procedures which will be used to ensure the requirements for capacity
14 are satisfied. The methods or procedures may include competitive
15 solicitations to fill the requirements or any other procedures or methods
16 deemed appropriate and necessary by the commission.

17 3. Each entity providing a potentially competitive service or a
18 noncompetitive service shall submit to the commission annually, in the
19 format prescribed by the commission, information that the commission
20 determines is necessary to:

21 (a) Monitor the development of competition to provide electric services;
22 and

23 (b) Ensure the availability of adequate, reliable, efficient and economic
24 electric service.

25 **Sec. 23.** The commission shall prepare a quarterly report for the
26 legislature that assesses the developments in the electric industry in Nevada.
27 The reports must be submitted to the director of the legislative counsel
28 bureau for transmittal to the legislature and must include, but are not limited
29 to, a discussion of:

30 1. Whether there is effective competition for each potentially competitive
31 service;

32 2. The compatibility of direct access for customers to alternative sellers
33 with environmental goals;

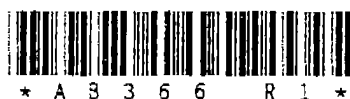
34 3. The effects of direct access for customers to alternative sellers on
35 each class of customers, compared to the noncompetitive regulatory
36 structure;

37 4. The opportunities to cooperate, formally or informally, with other
38 states or the Federal Government in the implementation of effective
39 competition; and

40 5. Further legislation necessary to achieve the goals of sections 2 to 23,
41 inclusive, of this act.

42 **Sec. 24.** NRS 361.320 is hereby amended to read as follows:

43 361.320 1. At the regular session of the Nevada tax commission
44 commencing on the [1st] first Monday in October of each year, the Nevada



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1 tax commission shall establish the valuation for assessment purposes of any
2 property of an interstate and intercounty nature, which must in any event
3 include the property of all interstate or intercounty railroad, sleeping car,
4 private car, street railway, traction, telegraph, water, telephone, air
5 transport, electric light and power companies, together with their franchises,
6 and the property and franchises of all railway express companies operating
7 on any common or contract carrier in this state. This valuation must not
8 include the value of vehicles as defined in NRS 371.020.

9 2. Except as otherwise provided in subsection 3 and NRS 361.323, the
10 commission shall establish and fix the valuation of the franchise, if any, and
11 all physical property used directly in the operation of any such business of
12 any such company in this state, as a collective unit. If the company is
13 operating in more than one county, on establishing the unit valuation for the
14 collective property, the commission shall then determine the total aggregate
15 mileage operated within the state and within its several counties, and
16 apportion the mileage upon a mile-unit valuation basis. The number of miles
17 apportioned to any county are subject to assessment in that county according
18 to the mile-unit valuation established by the commission.

19 3. After establishing the valuation, as a collective unit, of a public utility
20 which generates, transmits or distributes electricity, the commission shall
21 segregate the value of any project in this state for the generation of
22 electricity which is not yet put to use. This value must be assessed in the
23 county where the project is located and must be taxed at the same rate as
24 other property.

25 4. The Nevada tax commission shall adopt formulas, and cause them to
26 be incorporated in its records, providing the method or methods pursued in
27 fixing and establishing the taxable value of all franchises and property
28 assessed by it. The formulas must be adopted and may be changed from time
29 to time upon its own motion or when made necessary by judicial decisions,
30 but the formulas must in any event show all the elements of value considered
31 by the commission in arriving at and fixing the value for any class of
32 property assessed by it. These formulas must take into account, as indicators
33 of value, the company's income, stock and debt, and the cost of its assets.

34 5. *If two or more persons perform separate functions that collectively*
35 *are needed to deliver electric service to the final customer and the property*
36 *used in performing the functions would be centrally assessed if owned by one*
37 *person, the Nevada tax commission shall establish its valuation and*
38 *apportion the valuation among the several counties in the same manner as*
39 *the valuation of other centrally assessed property. The Nevada tax*
40 *commission shall determine the proportion of the tax levied upon the*
41 *property by each county according to the valuation of the contribution of*
42 *each person to the aggregate valuation of the property. This subsection does*
43 *not apply to qualified facilities, as defined in 18 C.F.R. § 292.101, which*
44 *were constructed before July 1, 1997.*



1 6. As used in this section , [the word] "company" means any person,
2 company, corporation or association engaged in the business described.

3 [6.] 7. All other property must be assessed by the county assessors,
4 except as provided in NRS 361.321 and 362.100 and except that the
5 valuation of land and mobile homes must be established for assessment
6 purposes by the Nevada tax commission as provided in NRS 361.325.

7 [7.] 8. On or before November 1 of each year the department shall
8 forward a tax statement to each private car line company based on the
9 valuation established pursuant to this section and in accordance with the tax
10 levies of the several districts in each county. The company shall remit the ad
11 valorem taxes due on or before December 15 to the department which shall
12 allocate the taxes due each county on a mile-unit basis and remit the taxes to
13 the counties no later than January 31. The portion of the taxes which is due
14 the state must be transmitted directly to the state treasurer. A company
15 which fails to pay the tax within the time required shall pay a penalty of 10
16 percent of the tax due or \$5,000, whichever is greater, in addition to the tax.
17 Any amount paid as a penalty must be deposited in the state general fund.
18 The department may, for good cause shown, waive the payment of a penalty
19 pursuant to this subsection. As an alternative to any other method of
20 recovering delinquent taxes provided by this chapter, the attorney general
21 may bring a civil action in a court of competent jurisdiction to recover
22 delinquent taxes due under this subsection in the manner provided in NRS
23 361.560.

24 **Sec. 25.** The executive director of the department of taxation shall, not
25 later than January 1, 1999, submit to the director of the legislative counsel
26 bureau for distribution to the legislature a report including, but not limited
27 to:

28 1. An analysis of the effect of the tax policies of this state on:

29 (a) The potential for effective competition in providing electric services to
30 customers; and

31 (b) The effect of competition in providing electric services to customers
32 on the tax revenue of this state and local governments.

33 2. Recommendations for legislation that would advance the purposes of
34 sections 2 to 23, inclusive, of this act and ensure a minimal effect on the tax
35 revenue of this state and local governments.

36 **Sec. 26.** The commission shall adopt regulations to carry out the
37 provisions of this act not later than July 1, 1999.

38 **Sec. 27.** In the quarterly report for the first quarter of 1999, which
39 must be submitted by the commission pursuant to section 23 of this act, the
40 commission shall provide a comprehensive evaluation of the development of
41 the markets for potentially competitive services since July 1, 1997.

42 **Sec. 28.** Any interim study conducted by the Legislative Commission
43 regarding the provision of electric service in this state must include:



1 1. A recommendation regarding whether NRS 704.736, 704.741,
2 704.743, 704.746 and 704.751 should be continued, repealed or amended.

3 2. An evaluation of whether or the extent to which:

4 (a) Requirements should be established regarding the use of renewable
5 resources and the creation of programs to improve energy efficiency; and

6 (b) The diversity of fuel, the diversity of generation resources or any
7 economic or environmental factors should be considered in determining the
8 optimal combination of generation resources necessary to meet the
9 requirements for electric energy in this state.

10 **Sec. 29.** The provisions of subsection 1 of NRS 354.599 do not apply to
11 any additional expenses of a local government that are related to the
12 provisions of this act.

13 **Sec. 30.** This act becomes effective on July 1, 1997.

