

MINUTES OF MEETING - COMMERCE COMMITTEE - 55TH NEVADA ASSEMBLY  
SESSION - MARCH 25TH, 1969

Present: Wood, Mello, Hafen, Espinoza, Capurro, Bowler, Torvinen

Absent: None

Guests: Mr. Sanford, Assemblyman Reid, Mr. Tidwell, Royal Stewart, Mr. Campbell, Sierra Pacific Power Co; Mr. McAdam, Bell of Nevada; Mr. Gill, Southwest Gas; Robert Guinn, Motor Transport; Mr. Cowley, Nev. Power Co.; Reese Taylor, Nev. Public Service Comm.; Mr. Regalado, Nev. Public Service Comm.; Mr. Clark, Nev. Public Service Comm.; Mary Ann Vogel, Swallow's intern; Frankie Del Pappa, Close's intern; Mr. Daykin, Legislative Counsel Bureau

The meeting was called to order by Chairman Wood.

Discussion was held on bills to be discussed and acted upon and the preference of the committee was asked. SB-140 was mentioned to act upon. It was agreed by the committee to hear only AB bills this day.

AB-711 - Modifies rate structure applicable to installment loans.

Sanford: This bill raises ceilings on loans of finance companies. The present act enacted in 1959 and at that time \$2500 considered reasonable limit. Companies are writing off an amount almost identical to their net profits chiefly because of bankruptcies. The Federal Truth and Lending Act requires that the payment of interest charges be expressed in percentages. In order to return back to simple interest and conform to the federal act, the one section on rates amended with thoughts of giving fair return to investors.

The provision regarding garnishments identical to the Federal. Question regarding real property loans. Question regarding whether any finance companies have gone broke; there have been some closed. Espinoza felt that they were getting out of the business of small loan companies by going into real estate loans and charge this high amount of interest; Sanford pointed out that there would be a lesser percentace for these.

Question whether when a licensee is granted license to do business in the state if he could move from one city to another; it was stated that he would be licensed in one location and would have to get permission to move.

Page 9, Section 22, Disposable earnings: Questions whether union dues, group insurance, etc. would be affected; it was brought out that there was a limit of 50% of wages.

Tidwell: Gave a report on the 1966 and 1967 net earnings and the considerable write offs of loans; most of the write offs fall into the category of \$400 to \$600.

The Federal Act provides for disclosure of interest; question of ceilings and rates up to state.

It was asked how they arrived at \$7500; was said this was within the range of what a person might have to borrow.

Public Service Commission Bills

Harry Reid:

AB-450 - Adopts certain requirements concerning evidence at public service commission hearings.

No written documents or exhibits will be read into evidence is what I propose; should testify in person.

AB-451 - Provides basis for public utility rate increases.

Quoted from an article in the Las Vegas Sun. Certain telephone company had net profit of over \$12,000,000. I think we do have to revise some changes indicating the way in which they raise their rates. The present law is very brief. I have tried to establish certain guidelines for creating this increase in rates.

AB-452 - Requires public service commission to maintain duplicate records in branch offices.

The bill states that copies of tariffs are to be made available to the public. He stated that he had five or six letters stating that these tariffs were not readily available. We know that some of these tariffs are large and bulky; and Carson City is not the large center of population.

AB-453 - Requires certain public service commission hearings to be held near area affected.

This is already done on many occasions. It is much easier for the commission officials to travel rather than for several people to travel who want to protest.

AB-454 - Requires public utilities to provide free copies of tariffs and schedules.

This is similar to 452. The public service commission is to obtain from each public utility adequate supplies of tariffs and schedules and provide to the public without charge (could be "at reasonable cost").

AB-562 - Requires public utilities to pay legal rate of interest on deposits required of consumers.

PSC is already in the process of increasing the rate of interest on deposits; needs to be created by Statute. This would solve many of the complaints that people have.

AB-497 - Provides different limitation of action for telephone user discovering an overcharge in his billing.

This deals with the Statute of Limitations relating to discovery of overcharges. There is some confusion on when the Statute begins to run on an overcharge.

Royal Stewart: My committee has devoted about 15 years of work in getting the present Administrative Procedures Act.

We oppose AB-450 and 453. We should be in favor of stricter rules of evidence; unfortunately we recognized from the very beginning that the administrative agency does not have attorneys on their staff. A great deal of discussion went on with regard to this rule. We oppose on the basis of requiring a particular agency to hold hearings at a particular place. The agency involved should have some discretion at where they hold their hearings.

Campbell: Oppose the strict rule of evidence in AB-450.

On AB-451, these are rapid growth industries and for rates to be based on a five year period is not realistic.

On AB-452 and 454, these are already followed and covered under existing statutes.

We are generally in support of AB-453, but there are some rate increases that affect several counties and if a hearing were to be held in each one would be costly .

AB-354 and 562. I would like to speak only as to the rate of interest. Whatever the committee decides is okay. There are bad portions in both of the bills and might be a compliance for everybody concerned. AB-354 would be impossible to calculate. AB-562, we are in agreement with the 7%; however, this can fluctuate and possible a rate of interest should be established each year.

Note: AB-720 also relates to this bill.

Bob McAdam: AB-454 would require unlimited tariff file sheets; the requests are low for these and do not feel that it would be in the public interest to make them available.

AB-497, if we were to keep the billing records for a longer period of time, would create storage problems.

AB-562, this is not a matter which should be in the Statutes; interest rates be established by rules and regulations, not a percentage set out by tariff.

Gill: AB-450; if section 4 were adopted, it would be impossible for the utility and protestants to have before the commission their exhibits by 30 days in advance of the hearing.

AB-451; rate making isn't an exact science.

AB-453; it has been my experience that the commission always hears at places where the public is affected.

Robert Guinn, Motor Transport: AB-450; would be impossible to comply for small carriers as far as costs are concerned.

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AB-451; rates are set on motor carriers on an operating ratio.

Have no objection of AB-452 and 453.

AB-454; rate tariffs can be extremely complicated; and the cost of printing excessive. We have a practice of supplying some to Carson City and other interested groups.

Sam Cowley: Our company is in general agreement with previous statements.

Reese Taylor: AB-450; we oppose. Questioned Mr. Reid's seriousness of the bill referring to AB-510. The Commission has had a set of rules since 1953; rules detailed and complete and upon request are available.

With respect to Subsection 3(a), this has always been done. Prepared testimony has always been very helpful procedure to the commission. The 30 day exchange of exhibits would almost make it impossible for the commission to live within the time frame.

AB-451 - Again questioned Mr. Reid's intentions. We would oppose this bill in its entirety. Can't go along with the 5 year basis for rates; a year end rate base would be the only applicable way. Copy of Mr. Regalado's letter attached.

AB-452 We have the same problem as the other bills with regard to AB-510.

Capurro remarked that he didn't think it necessary to keep referring to Mr. Reid and to AB-510. Wood said that he would recommend that the bills be presented and mention be made by bill number and not name.

AB-453; The commission has religiously done this.

AB-454; We feel that the provisions already in the Statutes are already adequate.

AB-497; doesn't concern us. It does have this effect; it would be extremely difficult to maintain records. Believe this bill is unconstitutional, only mentions overcharges and not undercharges.

AB-562; we are in complete accord. Our AB-720 does the same thing and the interest rate could be changed from 5% to 7%. There was discussion regarding a formula that could be used so this would not have to be changed.

AB-354; Our AB-722 with different language, we believe this is a better bill than AB-354. Brought up the issue of oil pipe lines.

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Clark: There are presently no oil pipe lines in the State of Nevada which comes under intra state authority. Trying to get the laws uniform throughout the public utilities statutes.

Reid: I think many of the points made by the council from various utilities were well taken, particularly on AB-450. I think they have given very valid reasons, but I think something must be done.

Discussion followed regarding meetings having to be held in several counties for one rate increase; there was also discussion on the rates of interest.

AB-720, 721, 722, 723.

Taylor: These all represent bill which deal with Chapter 704 NRS; all of the 706 amendments that we have suggested are in other assembly bills, and as Mr. Reid suggested there are a number of things that the commission feels have to be changed.

AB-720 - Establishes new procedure in assessing certain utilities, approving the transfer of a certificate of public convenience and giving notice of a revocation hearing by the public service commission.

On page 3, line 10, add, stock, "substantially all of" its assets.

On page 3, 704.140 has deleted language. Mr. Clark pointed out that what there were trying to do was to go through all of the sections, pull them together and pick out those areas which are troublesome to the commission and some that are almost impossible to police. Most of these are merely housekeeping bills.

Page 5, 704.180 deletion. We like all of our reporting on a calendar year basis.

Page 5, 704.290; the changes are made in an effort to update the old language.

Page 5, 704.390; changes 20 days to 30 days notice. We have a standard procedure under rates for a 30 day notice; would like to make it uniform throughout.

Page 6, 704.410; this brings into harmony Chapters 704 and 706.

Meeting recessed.

Mr. Clark continuing on AB-720.

Page 7, line 10 is for clarification as well as line 16.

Line 30, page 7; our commission has never been able to acquire enough funds to pay for the transcript of the hearings.

Wood questioned whether some responsibility for this cost shouldn't be borne by the contestants as well as the applicants. Discussion followed regarding this matter.

It was brought out that a transcript is furnished upon request. It was wondered if the commission could interpret crank letters, etc., of protest. There was a discussion on the possible division of costs. It was brought out that if the commission had some discretionary powers in the cost of recording transcripts that this would work.

The commission's problem now with this is that the commission doesn't have the money for this and doesn't expect to have it.

Section 10, line 28 by implication modified line 25.

Section 14 clarifies the language on the filing of a complaint.

The balance is all new which we believe is important to the public utilities regulation; it does go into the motor carrier division and harmonizes the two.

AB-721 - Authorizes public service commission to collect certain filing fees.

This is set up with the provision that applications and other filings to be made on the basis of paying the filing fee. He brought out that newspapers print their notices now but have no guarantee. They do not intend to make money on this bill, but only have money to pay costs.

Application for new authority, for rate increase, discontinuance of service, borrowing funds, is the scope of authority.

The borrowing of money was discussed in regard to applications; it was brought out that this would only be for large amounts.

AB-723 - Limits definition of public utilities and raises tax rate on intrastate revenues of public utilities.

This bill would sever from regulation any water company who has 25 persons or less of gross sales is \$15,000 or less. On Page 2, the mill rate is changed. This will provide us with enough funds to provide us with the personnel and additional travel that we have recommended for the commission.

It was suggested that sales for resale be included in this bill.

It was brought out that the small water companies would take care of themselves in the law of supply and demand. These water companies cannot be regulated.

AB-706 - Prohibits service station games and contests.

Mary Ann Vogel: Most of the gas dealers oppose them. In Reno, I found that 11 out of 23 refused games. Most of the gas stations that were playing games said that they didn't like them because they cost them money; and they must raise their prices, if not gasoline, then other products. It was said that a commission investigated and found that the winners would be selected from



certain areas; also that there were very few winners. It was found that some employees would take the winning tickets out and give them to their friends and then split the winnings. The gasoline stations are pressured into going along with the games. One magazine article suggested that this might open a new market for organized crime.

AB-707 - Regulates credit rating bureaus.

Frankie Del Pappa: Credit ratings play a major role on the American consumer. Credit purchasing is bringing us closer to a cashless society. They have information regarding births, deaths, divorces, etc. Sometimes they have faulty or misleading information in their files and this is not weeded out. Recommendations: (1) ensure confidential reports (2) information released only to the people who have a reason for it (3) information to be more current (4) would give a person an opportunity to view their credit reports and could add explanatory statements (5) if credit denied, know reason (6) have panalties.

No states have enacted this as yet and there are two federal bills pending.

AB-720; Section 4 to be deleted and Section 5 to be numbered Section 4.

Clark:

AB-722; changes on line 8, page 1, brings the act conformative with our request for fees. 704.110 brings the distance, notification to the service and other matters all within one section and provides uniformity in that particular section of the act. He discussed the changes in the number of days; he stated that there was some ambiguity in the present law. He discussed the penalties and fines.

In 1958 there was passed by the Congress a bill called the National Gas Pipeline Safety Act which to a substantial degree preempted states regulations of pipeline safety. If we comply with the requirements of this act, we can get some funds to supplement for safety acts. Each state must participate in this act with the Federal and our action must be the same.

Discussion regarding AB-354 as related to this bill. Discussion followed relating to the wording of some sections followed, and the authority it would give the public service commission.

Mr. Daykin appeared to clarify some of the questions on AB-354 and AB-722. Mr. Daykin to resolve some of the problems.

It was questioned whether AB-354 should be incorporated with AB-722 or the undesirable sections taken out and amended. It was suggested that it would be better to amend.

AB-722; Page 3, Line 17, add "shall be guilty of a misdemeanor and fined not less than \$50 nor more than \$500.00".

Espinoza, Hafen, Capurro, Mello & Wood present  
AB-711 - Modifies rate structure applicable to installment loans.

Espinoza moved to change on line 13, page 1 to \$4,000.  
Seconded by Mello

Capurro moved to amend to \$5,000.  
Seconded by Hafen.

On the amended motion changing from \$4,000 to \$5,000; those in favor were Capurro and Hafen with Wood voting "yes".  
Motion carried to change to \$5,000.

Capurro moved to reduce to \$30,000 from \$50,000, sec. 3, line 4.  
His motion did not carry a second.

Capurro moved to delete section 27, page 10.  
Hafen seconded.  
Motion carried.

"A lender who charges the rates permissible under this act may not contract for an interest in land" in lieu of Section 19.  
Espinoza moved.  
Capurro seconded.  
Motion carried unanimously.

Capurro moved "do pass", with amendments.  
Hafen seconded  
Motion carried with Mello not voting.

AB-450 - Adopts certain requirements concerning evidence at public service commission hearings.

Hafen moved "postpone indefinitely".  
Capurro seconded.  
Motion carried unanimously.

AB-451 - Provides basis for public utility rate increases.

Mello moved "indefinitely postpone".  
Capurro seconded.  
Motion carried unanimously.

AB-452 - Requires public service commission to maintain duplicate records in branch offices.

Hafen moved "indefinitely postpone".  
Capurro seconded.  
Motion carried unanimously.

AB-453 - Requires certain public service commission hearings to be held near area affected.

Mello moved to "indefinitely postpone".  
Hafen seconded.  
Capurro and Espinoza voting "no"; Chairman Wood votes to postpone.  
Motion carried to postpone.



AB-454 - Requires public utilities to provide free copies of tariffs and schedules.

Hafen moved "indefinite postponement"

Mello seconded.

Motion carried unanimously.

AB-497 - Provides different limitation of action for telephone user discovering an overcharge in his billing.

Mello moved indefinite postponement.

Hafen seconded.

Motion carried with Capurro voting "no".

AB-562 - Requires public utilities to pay legal rate of interest on deposits required of consumers.

Mello moved "do pass".

Hafen seconded.

Motion carried unanimously.

AB-354 - Makes regulatory changes relating to public utilities.

It was decided to delete Sections 1 and 2, keep sections 4 and 5 down to line 29 and keep Sections 7 and 8.

Capurro moved a "do pass" as amended.

Espinoza seconded.

Motion carried unanimously.

AB-720 - Establishes new procedure in assessing certain utilities, approving the transfer of a certificate of public convenience and giving notice of a revocation hearing by the public service commission.

Capurro moved "do pass" as amended.

Hafen seconded.

Motion carried unanimously.

AB-721 - Authorizes public service commission to collect certain filing fees.

Mello moved to "do pass" as amended.

Capurro seconded.

Motion carried unanimously.

AB-723 - Limits definition of public utilities and raises tax rate on intrastate revenues of public utilities.

Capurro moved "do pass" as amended.

Hafen seconded.

Motion carried unanimously.

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AB-706 - Prohibits service station games and contests.

The committee decided to defer action on this.

AB-707 - Regulates credit rating bureaus.

Mello moved a "do pass"

Capurro seconded.

Motion carried unanimously.

Meeting adjourned.

## MEMORANDUM

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March 21, 1969

To Gene Milligan

From Ed Regalado

Subject: Assembly Bill No. 451 -- Mr. Reid

This bill, redundant and restrictive, cannot, in my opinion, serve any useful purpose or further the cause of progressive regulation of public utilities in Nevada.

The matters proposed under Subsections 2a, 2b and 2c have been, and presently continue to be, subjects of thorough audit and investigative procedures by the Commission through its technical staff. All persons entitled by law, presently receive copies of applications filed by utilities with the Commission for authority to increase consumer rates. Utilities, as a matter of forward looking public policy, already grant similar opportunity at the request of any interested person.

Utility revenues, the cost of its plant and equipment devoted to public use, taxes and depreciation accrued against it and all costs and expenses related to its operation and maintenance in connection with the utility service it provides its clientele, are matters of thorough and continuing investigation by the Commission through its staff whether or not a rate proceeding is pending.

Financial statements, complete depreciation and earnings data, current or historical, and all aspects thereof are always available to the Commission for review and analysis. The jurisdictional authority of the Commission is so broad that no phase of a utility's operations is beyond the scope of the most rigid scrutiny.

Subsection (3) completely refutes the basic premise that the Commission is the expert arm of the Legislature, equipped with the necessary technical staff of specialists, to exercise and apply its knowledge, experience and seasoned judgement in the complex principles and changing concepts of public utility regulation. This proposed subsection is highly restrictive on the Commission's freedom to apply the best approach which, in its judgment, each situation may require.

A rate of return fixed by law and based upon a five-year historical average is not, in my candid opinion, a progressive step forward but a dangerous step backward that could easily contribute to the arrest of Nevada's

TO: Gene Milligan  
FROM: Ed Regalado  
RE: Assembly Bill No. 451 -- Mr. Reid  
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economic growth. Because of the state's tremendous expansion in the past two decades and the presently foreseeable similar growth rate for the future, economic standards of as recently as five years ago are already obsolete and today's will be obsolete tomorrow.

This bill assumes problems that simply do not exist. It is a classic example of a rash and ill-advised "solution", obviously not preceded by intelligent inquiry into such problems and yet attempts to resolve them. It should be killed in committee.

ER:NI  
cc: Reese H. Taylor, Jr.

*Make copy for  
every case number*

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CHARLES H. McCREA  
General Counsel

March 13, 1969

The Honorable Harry M. Reid  
Assemblyman  
Nevada Legislature  
Carson City, Nevada 89701

Re: A.B. 451

Dear Mr. Reid:

Thank you for taking time out of your busy schedule to visit with me for a few minutes on Thursday, March 6. As promised, I am enclosing herewith a copy of the Decision of the United States Supreme Court in the Hope Natural Gas Company case. This is the landmark decision and the case most frequently cited with respect to the question of what constitutes a reasonable rate of return for a public utility.

The establishment of utility rates is not an exact science. In the true sense, it is an exercise of value judgment, circumscribed by constitutional constraints and laced with statutory guidelines. Rate making is a legislative function, customarily delegated by legislative bodies to utility regulatory commissions, with which the land abounds at both the Federal and state levels. The constitutional constraint is that the rates may not be so low as to constitute a "taking" of the property of the utility without just compensation. There are no absolutes, and the courts normally will not over-rule the decision of a duly authorized regulatory commission which has followed procedural due process unless the court ascertains that the findings of the commission are manifestly contrary to or substantially unsupported by the evidence.

If all utilities were alike, rate making would be a rather simple process. But inasmuch as all utilities in fact differ, the process of rate making relies upon the expert judgment of regulatory commissioners in weighing the innumerable and differing factors under which different utilities operate.

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Since rates are made for the future, those which have historically produced a reasonable rate of return for a given utility have no meaning in the light of changed circumstances and, accordingly, the average rate of return over a past period of any number of years would be unsuitable as an arbitrary standard for ascertaining a reasonable rate of return with respect to the future. At the beginning of the current decade, many utilities had an average cost of debt in the neighborhood of 4%. For these utilities, in many instances a rate of return in the neighborhood of 6% was adequate to cover the cost of servicing senior securities and providing an adequate return to the common stockholders. Interest rates, however, have risen progressively and steeply during the present decade. Some utilities which in 1960 had an average imbedded cost of debt of 4% now have an average imbedded cost of debt approaching 6%, and with each re-financing of maturing debt their average imbedded cost of debt moves higher. A utility which has an average cost of debt of 6% obviously cannot get by on a rate of return of 6% or less, for this would leave a wholly inadequate return on the junior securities.

This concept is expressed by Mr. Justice Douglas in the Hope Case at 320 U.S. 280, where the following statement appears:

"The rate making process under the [Natural Gas] Act, i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests. Thus we stated in the Natural Gas Pipeline Co. case that 'regulation does not insure that the business shall produce net revenues.' [citations omitted] But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital cost of the business. These include service on the debt and dividends on the stock. [citations omitted] By that standard, the return to the equity owners should be commensurate with returns



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on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. [citations omitted] The conditions under which more or less might be allowed are not important here. Nor is it important to this case to determine the various permissible ways in which any rate base on which the return is computed might be arrived at. For we are of the view that the end result in this case cannot be condemned under the Act as unjust and unreasonable from the investor or company viewpoint."

The above language is the origin of the so-called "end result" doctrine which ~~has become the law of the land with respect to rate of return.~~ This would not preclude a statutory formula under which a regulatory commission could always arrive at a fair and reasonable "end result", but I do not believe that there is a man alive wise enough to compile a formula, however complicated, that will universally achieve such an "end result" and thus meet the requirements of the Hope Case.

As I am sure you are aware, this is a subject that covers a prodigious volume of material. I have probably had more exposure to it than most people, but knowing the dimensions of the subject, I hesitate to classify myself as an expert. However, if you wish to discuss it at any time, I would certainly be a willing participant.

Sincerely,

*/s/ CHARLES M. CREW*

CHMcC:jf  
Enclosure